

Public Law 111–126
111th Congress

An Act

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the earthquake in Haiti.

Jan. 22, 2010
[H.R. 4462]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACCELERATION OF INCOME TAX BENEFITS FOR CHARITABLE CASH CONTRIBUTIONS FOR RELIEF OF VICTIMS OF EARTHQUAKE IN HAITI.

(a) **IN GENERAL.**—For purposes of section 170 of the Internal Revenue Code of 1986, a taxpayer may treat any contribution described in subsection (b) made after January 11, 2010, and before March 1, 2010, as if such contribution was made on December 31, 2009, and not in 2010.

(b) **CONTRIBUTION DESCRIBED.**—A contribution is described in this subsection if such contribution is a cash contribution made for the relief of victims in areas affected by the earthquake in Haiti on January 12, 2010, for which a charitable contribution deduction is allowable under section 170 of the Internal Revenue Code of 1986.

(c) **RECORDKEEPING.**—In the case of a contribution described in subsection (b), a telephone bill showing the name of the donee organization, the date of the contribution, and the amount of the contribution shall be treated as meeting the recordkeeping requirements of section 170(f)(17) of the Internal Revenue Code of 1986.

(d) **PAYGO.**—All applicable provisions in this section are designated as an emergency for purposes of pay-as-you-go principles.

Approved January 22, 2010.

LEGISLATIVE HISTORY—H.R. 4462:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 20, considered and passed House.

Jan. 21, considered and passed Senate.



Public Law 111–127
111th Congress

An Act

Jan. 27, 2010
[S. 2949]

Emergency Aid
to American
Survivors of
the Haiti
Earthquake Act.
42 USC 1305
note.

To amend section 1113 of the Social Security Act to provide authority for increased fiscal year 2010 payments for temporary assistance to United States citizens returned from foreign countries, to provide necessary funding to avoid shortfalls in the Medicare cost-sharing program for low-income qualifying individuals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Emergency Aid to American Survivors of the Haiti Earthquake Act”.

SEC. 2. INCREASE IN AGGREGATE PAYMENTS FOR FISCAL YEAR 2010 FOR TEMPORARY ASSISTANCE TO UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES.

Section 1113(d) of the Social Security Act (42 U.S.C. 1313(d)) is amended by striking “September, 30, 2003” and all that follows and inserting “September 30, 2009, except that, in the case of fiscal year 2010, the total amount of such assistance provided during that fiscal year shall not exceed \$25,000,000.”.

SEC. 3. QI PROGRAM FUNDING.

Section 1933(g)(2) of the Social Security Act (42 U.S.C. 1396u–3(g)(2)) is amended—

(1) in subparagraph (M), by striking “\$412,500,000” and inserting “\$462,500,000”; and

(2) in subparagraph (N), by striking “\$150,000,000” and inserting “\$165,000,000”.

SEC. 4. APPLICATION OF MEDICAID IMPROVEMENT FUND.

Section 1941(b)(1)(A) of the Social Security Act (42 U.S.C. 1396w–1(b)(1)(A)) is amended by striking “\$100,000,000” and inserting “\$10,000,000”.

Approved January 27, 2010.

LEGISLATIVE HISTORY—S. 2949:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 25, considered and passed Senate.

Jan. 26, considered and passed House.



Public Law 111–136
111th Congress

An Act

Jan. 29, 2010
[H.R. 4508]

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) **IN GENERAL.**—Section 1 of the Act entitled “An Act to extend temporarily certain authorities of the Small Business Administration”, approved October 10, 2006 (Public Law 109–316; 120 Stat. 1742), as most recently amended by section 1 of Public Law 111–89 (123 Stat. 2975), is amended by striking “January 31, 2010” each place it appears and inserting “April 30, 2010”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on January 30, 2010.

Approved January 29, 2010.

LEGISLATIVE HISTORY—H.R. 4508:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 27, considered and passed House.

Jan. 28, considered and passed Senate.



Public Law 111–138
111th Congress

An Act

To provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances.

Feb. 1, 2010
[S. 692]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TREATMENT OF OWNERSHIP OF CERTAIN DOCUMENTS
RELATING TO FRANKLIN DELANO ROOSEVELT.**

(a) **IN GENERAL.**—If any person or entity makes a gift of any property described in subsection (b) to the National Archives and Records Administration, then any claim of the United States to such property shall be treated as having been waived and relinquished on the day before the date of such gift.

(b) **PROPERTY DESCRIBED.**—Property is described in this subsection if such property—

(1) is a part of the collection of documents, papers, and memorabilia relating to Franklin Delano Roosevelt or any member of his family or staff; and

(2) was in the possession of Grace Tully and retained by her at the time of her death.

(c) **DATE OF GIFT.**—The date of a gift referred to in subsection (a) is any date specified by the donor so long as such date is subsequent to the physical delivery of the property described in subsection (b) to the National Archives and Records Administration.

Approved February 1, 2010.

LEGISLATIVE HISTORY—S. 692:

HOUSE REPORTS: No. 111–87 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 14, considered and passed Senate.

Vol. 156 (2010): Jan. 13, considered and passed House.



Public Law 111–139
111th Congress

Joint Resolution

Feb. 12, 2010

[H.J. Res. 45]

Increasing the statutory limit on the public debt.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$14,294,000,000,000.

Statutory
Pay-As-You-Go
Act of 2010.

**TITLE I—STATUTORY PAY-AS-YOU-GO
ACT OF 2010**

2 USC 931 note.

SEC. 1. SHORT TITLE.

This title may be cited as the “Statutory Pay-As-You-Go Act of 2010”.

2 USC 931.

SEC. 2. PURPOSE.

The purpose of this title is to reestablish a statutory procedure to enforce a rule of budget neutrality on new revenue and direct spending legislation.

2 USC 932.

SEC. 3. DEFINITIONS AND APPLICATIONS.

As used in this title—

(1) The term “BBEDCA” means the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) The definitions set forth in section 3 of the Congressional Budget and Impoundment Control Act of 1974 and in section 250 of BBEDCA shall apply to this title, except to the extent that they are specifically modified as follows:

(A) The term “outyear” means a fiscal year one or more years after the budget year.

(B) In section 250(c)(8)(C), the reference to the food stamp program shall be deemed to be a reference to the Supplemental Nutrition Assistance Program.

(3) The term “AMT” means the Alternative Minimum Tax for individuals under sections 55–59 of the Internal Revenue Code of 1986, the term “EGTRRA” means the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16), and the term “JGTRRA” means the Jobs and Growth Tax Relief and Reconciliation Act of 2003 (Public Law 108–27).

(4)(A) The term “budgetary effects” means the amount by which PAYGO legislation changes outlays flowing from direct spending or revenues relative to the baseline and shall be

determined on the basis of estimates prepared under section 4. Budgetary effects that increase outlays flowing from direct spending or decrease revenues are termed “costs” and budgetary effects that increase revenues or decrease outlays flowing from direct spending are termed “savings”. Budgetary effects shall not include any costs associated with debt service.

(B) For purposes of these definitions, off-budget effects shall not be counted as budgetary effects.

(C) Solely for purposes of recording entries on a PAYGO scorecard, provisions in appropriation Acts are also considered to be budgetary effects for purposes of this title if such provisions make outyear modifications to substantive law, except that provisions for which the outlay effects net to zero over a period consisting of the current year, the budget year, and the 4 subsequent years shall not be considered budgetary effects. For purposes of this paragraph, the term, “modifications to substantive law” refers to changes to or restrictions on entitlement law or other mandatory spending contained in appropriations Acts, notwithstanding section 250(c)(8) of BBEDCA. Provisions in appropriations Acts that are neither outyear modifications to substantive law nor changes in revenues have no budgetary effects for purposes of this title.

(5) The term “debit” refers to the net total amount, when positive, by which costs recorded on the PAYGO scorecards for a fiscal year exceed savings recorded on those scorecards for that year.

(6) The term “entitlement law” refers to a section of law which provides entitlement authority.

(7) The term “PAYGO legislation” or a “PAYGO Act” refers to a bill or joint resolution that affects direct spending or revenue relative to the baseline. The budgetary effects of changes in revenues and outyear modifications to substantive law included in appropriation Acts as defined in paragraph (4) shall be treated as if they were contained in PAYGO legislation or a PAYGO Act.

(8) The term “timing shift” refers to a delay of the date on which outlays flowing from direct spending would otherwise occur from the ninth outyear to the tenth outyear or an acceleration of the date on which revenues would otherwise occur from the tenth outyear to the ninth outyear.

SEC. 4. PAYGO ESTIMATES AND PAYGO SCORECARDS.

2 USC 933.

(a) PAYGO ESTIMATES.—

(1) REQUIRED DESIGNATION IN PAYGO ACTS.—

Submissions.

(A) HOUSE OF REPRESENTATIVES.—To establish the budgetary effects of a PAYGO Act consistent with the determination made by the Chairman of the House Budget Committee, a PAYGO Act originated in or amended by the House of Representatives may include the following statement: “The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.”.

(B) SENATE.—To establish the budgetary effects of a PAYGO Act consistent with the determination made by the Chairman of the Senate Budget Committee, a PAYGO Act originated in or amended by the Senate shall include the following statement: “The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.”.

(C) CONFERENCE REPORTS AND AMENDMENTS BETWEEN THE HOUSES.—To establish the budgetary effects of the conference report on a PAYGO Act, or an amendment to an amendment between Houses on a PAYGO Act, which if estimated shall be estimated jointly by the Chairmen of the House and Senate Budget Committees, the conference report or amendment between the Houses shall include the following statement: “The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.”.

(2) DETERMINATION OF BUDGETARY EFFECTS OF PAYGO ACTS.—

(A) ORIGINAL LEGISLATION.—

(i) STATEMENT AND ESTIMATE.—Prior to a vote on passage of a PAYGO Act originated or amended by one House, the Chairman of the Budget Committee of that House may submit for printing in the Congressional Record a statement titled “Budgetary Effects of PAYGO Legislation” which shall include an estimate of the budgetary effects of that Act, if available prior to passage of the Act by that House and shall submit, if applicable, an identification of any current policy adjustments made pursuant to section 7 of this Act. The timely submission of such a statement, in conjunction with the appropriate designation made pursuant to paragraph (1)(A) or (1)(B), as applicable, shall establish the budgetary effects of the PAYGO Act for the purposes of this Act.

(ii) EFFECT.—The latest statement submitted by the Chairman of the Budget Committee of that House prior to passage shall supersede any prior statements submitted in the Congressional Record and shall be valid only if the PAYGO Act is not further amended by either House.

(iii) FAILURE TO SUBMIT ESTIMATE.—If—

(I) the estimate required by clause (i) has not been submitted prior to passage by that House;

(II) such estimate has been submitted but is no longer valid due to a subsequent amendment to the PAYGO Act; or

(III) the designation required pursuant to this subsection has not been made;

the budgetary effects of the PAYGO Act shall be determined under subsection (d)(3), provided that this clause shall not apply if a valid designation is subsequently included in that PAYGO Act pursuant to paragraph (1)(C) and a statement is submitted pursuant to subparagraph (B).

(B) CONFERENCE REPORTS AND AMENDMENTS BETWEEN HOUSES.—

(i) IN GENERAL.—Prior to the adoption of a report of a committee of conference on a PAYGO Act in either House, or disposition of an amendment to an amendment between Houses on a PAYGO Act, the Chairmen of the Budget Committees of the House and Senate may jointly submit for printing in the Congressional Record a statement titled “Budgetary Effects of PAYGO Legislation” which shall include an estimate of the budgetary effects of that Act if available prior to passage of the Act by the House acting first on the legislation and shall submit, if applicable, an identification of any current policy adjustments made pursuant to section 7 of this title. The timely submission of such a statement, in conjunction with the appropriate designation made pursuant to paragraph (1)(C), shall establish the budgetary effects of the PAYGO Act for the purposes of this Act.

(ii) FAILURE TO SUBMIT ESTIMATE.—If such estimate has not been submitted prior to the adoption of a report of a committee of conference by either House, or if the designation required pursuant to this subsection has not been made, the budgetary effects of the PAYGO Act shall be determined under subsection (d)(3).

(3) PROCEDURE IN THE SENATE.—In the Senate, upon submission of a statement titled “Budgetary Effects of PAYGO Legislation” by the Chairman of the Senate Budget Committee for printing in the Congressional Record, the Legislative Clerk shall read the statement.

(4) JURISDICTION OF THE BUDGET COMMITTEES.—For the purposes of enforcing section 306 of the Congressional Budget Act of 1974, a designation made pursuant to paragraph (1)(A), (1)(B), or (1)(C), that includes only the language specifically prescribed therein, shall not be considered a matter within the jurisdiction of either the Senate or House Committees on the Budget.

(b) CBO PAYGO ESTIMATES.—

(1) IN GENERAL.—

(A) ESTIMATES.—Section 308(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following new paragraph:

“(3) CBO PAYGO ESTIMATES.—

“(A) The Chairs of the Committees on the Budget of the House and Senate, as applicable, shall request from

the Director of the Congressional Budget Office an estimate of the budgetary effects of PAYGO legislation.

“(B) Estimates shall be prepared using baseline estimates supplied by the Congressional Budget Office, consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

“(C) The Director shall not count timing shifts, as that term is defined at section 3(8) of the Statutory Pay-As-You-Go Act of 2010, in estimates of the budgetary effects of PAYGO Legislation.”.

(B) SIDEHEADING.—The side heading of section 308(a) of the Congressional Budget Act of 1974 is amended by striking “Reports on”.

(2) GUIDELINES.—Section 308 of the Congressional Budget Act of 1974 is amended by adding at the end the following new subsection:

“(d) Scorekeeping Guidelines.—Estimates under this section shall be provided in accordance with the scorekeeping guidelines determined under section 252(d)(5) of the Balanced Budget and Emergency Deficit Control Act of 1985.”.

(c) CURRENT POLICY ADJUSTMENTS FOR CERTAIN LEGISLATION.—

(1) IN GENERAL.—For any provision of legislation that meets the criteria in subsection (c), (d), (e) or (f) of section 7, the Chairs of the Committees on the Budget of the House and Senate, as applicable, shall request that CBO adjust the estimate of budgetary effects of that legislation pursuant to paragraph (2) for the purposes of this title. A single piece of legislation may contain provisions that meet criteria in more than one of the subsections referred to in the preceding sentence. CBO shall adjust estimates for legislation designated under subsection (a) and estimated under subsection (b). OMB shall adjust estimates for legislation estimated under subsection (d)(3).

(2) ADJUSTMENTS.—

(A) ESTIMATES.—CBO or OMB, as applicable, shall exclude from the estimate of budgetary effects any budgetary effects of a provision that meets the criteria in subsection (c), (d), (e) or (f) of section 7, to the extent that those budgetary effects, when combined with all other excluded budgetary effects of any other previously designated provisions of enacted legislation under the same subsection of section 7, do not exceed the maximum applicable current policy adjustment defined under the applicable subsection of section 7 for the applicable 10-year period.

(B) BASELINE.—Any estimate made pursuant to subparagraph (A) shall be prepared using baseline estimates supplied by the Congressional Budget Office, consistent with section 257 of the BBEDCA. CBO estimates of legislation adjusted for current policy shall include a separate presentation of costs excluded from the calculation of budgetary effects for the legislation, as well as an updated total of all excluded costs of provisions within subsection (c), (d), or (e) of section 7, as applicable, and in the case of paragraph (1) of section 7(f), within any of the subparagraphs (A) through (L) of such paragraph, as applicable.

(3) LIMITATION ON AVAILABILITY OF EXCESS SAVINGS.—

(A) PROHIBITION ON USE OF EXCESS SAVING FOR INELIGIBLE POLICIES.—To the extent the adjustment for current policy of any provision estimated under this subsection exceeds the estimated budgetary effects of that provision, these excess savings shall not be available to offset the costs of any provisions not otherwise eligible for a current policy adjustment under section 7, and shall not be counted on the PAYGO scorecards established pursuant to subsections (d)(4) and (d)(5).

(B) PROHIBITION ON USE OF EXCESS SAVINGS ACROSS BUDGET AREAS.—For provisions eligible for a current policy adjustment under subsections (c) through (f) of section 7, to the extent the adjustment for current policy of any provision exceeds the estimated budgetary effects of that same provision, the excess savings shall be available only to offset the costs of other provisions that qualify for a current policy adjustment in that same subsection. Each paragraph in section 7(f)(1) shall be considered a separate subsection for purposes of this section.

(4) FURTHER GUIDANCE ON ESTIMATING BUDGETARY EFFECTS.—Estimates of budgetary effects under this subsection shall be consistent with the guidance provided at section 7(h).

(5) INCLUSION OF STATEMENT.—For PAYGO legislation adjusted pursuant to section 7, the Chairman of the House or Senate Budget Committee, as applicable, shall include in any statement titled “Budgetary Effects of PAYGO Legislation”, submitted for that legislation pursuant to section 4, an explanation of the current policy designation and adjustments.

(d) OMB PAYGO SCORECARDS.—

(1) IN GENERAL.—OMB shall maintain and make publicly available a continuously updated document containing two PAYGO scorecards displaying the budgetary effects of PAYGO legislation as determined under section 308 of the Congressional Budget Act of 1974, applying the look-back requirement in subsection (e) and the averaging requirement in subsection (f), and a separate addendum displaying the estimates of the costs of provisions designated in statute as emergency requirements.

Public
information.

(2) ESTIMATES IN LEGISLATION.—Except as provided in paragraph (3), in making the calculations for the PAYGO scorecards, OMB shall use the budgetary effects included by reference in the applicable legislation pursuant to subsection (a).

(3) OMB PAYGO ESTIMATES.—If a PAYGO Act does not contain a valid reference to its budgetary effects consistent with subsection (a), OMB shall estimate the budgetary effects of that legislation upon its enactment. The OMB estimate shall be based on the approaches to scorekeeping set forth in section 308 of the Congressional Budget Act of 1974, as amended by this title, and subsection (g)(4), and shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under section 1105(a) of title 31 of the United States Code.

(4) 5-YEAR SCORECARD.—The first scorecard shall display the budgetary effects of PAYGO legislation in each year over the 5-year period beginning in the budget year.

(5) 10-YEAR SCORECARD.—The second scorecard shall display the budgetary effects of PAYGO legislation in each year over the 10-year period beginning in the budget year.

(6) COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS ACT.—Neither scorecard maintained by OMB pursuant to this subsection shall include net savings from any provisions of legislation titled “Community Living Assistance Services and Supports Act”, which establishes a Federal insurance program for long-term care, if such legislation is enacted into law, or amended, subsequent to the date of enactment of this title.

(e) LOOK-BACK TO CAPTURE CURRENT-YEAR EFFECTS.—For purposes of this section, OMB shall treat the budgetary effects of PAYGO legislation enacted during a session of Congress that occur during the current year as though they occurred in the budget year.

(f) AVERAGING USED TO MEASURE COMPLIANCE OVER 5-YEAR AND 10-YEAR PERIODS.—OMB shall cumulate the budgetary effects of a PAYGO Act over the budget year (which includes any look-back effects under subsection (e)) and—

(1) for purposes of the 5-year scorecard referred to in subsection (d)(4), the four subsequent outyears, divide that cumulative total by five, and enter the quotient in the budget-year column and in each subsequent column of the 5-year PAYGO scorecard; and

(2) for purposes of the 10-year scorecard referred to in subsection (d)(5), the nine subsequent outyears, divide that cumulative total by ten, and enter the quotient in the budget-year column and in each subsequent column of the 10-year PAYGO scorecard.

(g) EMERGENCY LEGISLATION.—

(1) DESIGNATION IN STATUTE.—If a provision of direct spending or revenue legislation in a PAYGO Act is enacted as an emergency requirement that the Congress so designates in statute pursuant to this section, the amounts of new budget authority, outlays, and revenue in all fiscal years resulting from that provision shall be treated as an emergency requirement for the purposes of this Act.

(2) DESIGNATION IN THE HOUSE OF REPRESENTATIVES.—If a PAYGO Act includes a provision expressly designated as an emergency for the purposes of this title, the Chair shall put the question of consideration with respect thereto.

(3) POINT OF ORDER IN THE SENATE.—

(A) IN GENERAL.—When the Senate is considering a PAYGO Act, if a point of order is made by a Senator against an emergency designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment from the floor.

(B) SUPERMAJORITY WAIVER AND APPEALS.—

(i) WAIVER.—Subparagraph (A) may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(ii) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this subsection shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the

case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this subsection.

(C) DEFINITION OF AN EMERGENCY DESIGNATION.—For purposes of subparagraph (A), a provision shall be considered an emergency designation if it designates any item as an emergency requirement pursuant to this subsection.

(D) FORM OF THE POINT OF ORDER.—A point of order under subparagraph (A) may be raised by a Senator as provided in section 313 (e) of the Congressional Budget Act of 1974.

(E) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a PAYGO Act, upon a point of order being made by any Senator pursuant to this section, and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(4) EFFECT OF DESIGNATION ON SCORING.—If a provision is designated as an emergency requirement under this Act, CBO or OMB, as applicable, shall not include the budgetary effects of such a provision in its estimate of the budgetary effects of that PAYGO legislation.

SEC. 5. ANNUAL REPORT AND SEQUESTRATION ORDER.

(a) ANNUAL REPORT.—Not later than 14 days (excluding weekends and holidays) after Congress adjourns to end a session, OMB shall make publicly available and cause to be printed in the Federal Register an annual PAYGO report. The report shall include an up-to-date document containing the PAYGO scorecards, a description of any current policy adjustments made under section 4(c), information about emergency legislation (if any) designated under section 4(g), information about any sequestration if required by subsection (b), and other data and explanations that enhance public understanding of this title and actions taken under it.

(b) SEQUESTRATION ORDER.—If the annual report issued at the end of a session of Congress under subsection (a) shows a debit on either PAYGO scorecard for the budget year, OMB shall prepare and the President shall issue and include in that report a sequestration order that, upon issuance, shall reduce budgetary resources of direct spending programs by enough to offset that debit as prescribed in section 6. If there is a debit on both scorecards, the order shall fully offset the larger of the two debits. OMB shall transmit the order and the report to the House of

2 USC 934.

Public
information.
Federal Register,
publication.

President.

Representatives and the Senate. If the President issues a sequestration order, the annual report shall contain, for each budget account to be sequestered, estimates of the baseline level of budgetary resources subject to sequestration, the amount of budgetary resources to be sequestered, and the outlay reductions that will occur in the budget year and the subsequent fiscal year because of that sequestration.

2 USC 935.

SEC. 6. CALCULATING A SEQUESTRATION.

(a) **REDUCING NONEXEMPT BUDGETARY RESOURCES BY A UNIFORM PERCENTAGE.**—

(1) **IN GENERAL.**—OMB shall calculate the uniform percentage by which the budgetary resources of nonexempt direct spending programs are to be sequestered such that the outlay savings resulting from that sequestration, as calculated under subsection (b), shall offset the budget-year debit, if any, on the applicable PAYGO scorecard. If the uniform percentage calculated under the prior sentence exceeds 4 percent, the Medicare programs described in section 256(d) of BBEDCA shall be reduced by 4 percent and the uniform percentage by which the budgetary resources of all other nonexempt direct spending programs are to be sequestered shall be increased, as necessary, so that the sequestration of Medicare and of all other nonexempt direct spending programs together produce the required outlay savings.

Determination.

(2) **PROGRAMS AND ACTIVITIES IN UNIFIED BUDGET ONLY.**—Subject to the exemptions set forth in section 11, OMB shall determine the uniform percentage required under paragraph (1) with respect to programs and activities contained in the unified budget only.

(b) **OUTLAY SAVINGS.**—In determining the amount by which a sequestration offsets a budget-year debit, OMB shall count—

(1) the amount by which the sequestration in a crop year of crop support payments, pursuant to section 256(j) of BBEDCA, reduces outlays in the budget year and the subsequent fiscal year;

(2) the amount by which the sequestration of Medicare payments in the 12-month period following the sequestration order, pursuant to section 256(d) of BBEDCA, reduces outlays in the budget year and the subsequent fiscal year; and

(3) the amount by which the sequestration in the budget year of the budgetary resources of other nonexempt mandatory programs reduces outlays in the budget year and in the subsequent fiscal year.

2 USC 936.

SEC. 7. ADJUSTMENT FOR CURRENT POLICIES.

(a) **PURPOSE.**—The purpose of this section is to provide for adjustments of estimates of budgetary effects of PAYGO legislation for legislation affecting 4 areas of the budget—

(1) payments made under section 1848 of the Social Security Act (referred to in this section as “Payment for Physicians’ Services”);

(2) the Estate and Gift Tax under subtitle B of the Internal Revenue Code of 1986;

(3) the AMT; and

(4) provisions of EGTRRA or JGTRRA that amended the Internal Revenue Code of 1986 (or provisions in later statutes

further amending the amendments made by EGTRRA or JGTRRA), other than—

(A) the provisions of those 2 Acts that were made permanent by the Pension Protection Act of 2006 (Public Law 109-280);

(B) amendments to the Estate and Gift Tax referred to in paragraph (2);

(C) the AMT referred to in paragraph (3); and

(D) the income tax rates on ordinary income that apply to individuals with adjusted gross incomes greater than \$200,000 for a single filer and \$250,000 for joint filers.

(b) DURATION.—This section shall remain in effect through December 31, 2011.

(c) MEDICARE PAYMENTS TO PHYSICIANS.—

(1) CRITERIA.—Legislation that includes provisions amending or superseding the system for updating payments under subsections (d) and (f) of section 1848 of the Social Security Act shall trigger the current policy adjustment required by this title.

(2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between—

(A) estimated net outlays attributable to the payment rates and related parameters in accordance with subsections (d) and (f) of section 1848 of the Social Security Act (as scheduled on December 31, 2009, to be in effect); and

(B) what those net outlays would have been if—

(i) the nominal payment rates and related parameters in effect for 2009 had been in effect through December 31, 2014, without change; and

(ii) thereafter, the nominal payment rates and related parameters described in subparagraph (A) had applied and the assumption described in clause (i) had never applied.

(3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in paragraph (1) cover a time period that ends before December 31, 2014, subject to the maximum adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) estimated net outlays attributable to the payment rates and related parameters specified in that section of the Social Security Act (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those net outlays would have been if the nominal payment rates and related parameters in effect for 2009 had been in effect, without change, for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

(d) ESTATE AND GIFT TAX.—

(1) CRITERIA.—Legislation that includes provisions amending the Estate and Gift Tax under subtitle B of the Internal Revenue Code of 1986 shall trigger the current policy adjustment required by this title.

(2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between—

(A) total revenues projected to be collected under the Internal Revenue Code of 1986 (as scheduled on December 31, 2009, to be in effect); and

(B) what those revenue collections would have been if, on the date of enactment of the legislation meeting the criteria in paragraph (1), estate and gift tax law had instead been amended so that the tax rates, nominal exemption amounts, and related parameters in effect for tax year 2009 had remained in effect through December 31, 2011, with nominal exemption amounts indexed for inflation after 2009 consistent with subsection (g).

(3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in paragraph (1) cover a time period that ends before December 31, 2011, subject to the maximum adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) total revenues projected to be collected under the Internal Revenue Code of 1986 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those revenues would have been if the estate and gift tax law rates, nominal exemption amounts, and related parameters in effect for 2009, with nominal exemption amounts indexed for inflation after 2009 consistent with subsection (g), had been in effect for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

(4) DURATION OF POLICY ADJUSTMENT.—Adjustments made pursuant to this subsection are available for policies affecting the estate and gift tax through only December 31, 2011. Any adjustments shall include budgetary effects in all years from these policy changes.

(e) AMT RELIEF.—

(1) CRITERIA.—Legislation that includes provisions extending AMT relief shall trigger the current policy adjustment required by this title.

(2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between—

(A) total revenues projected to be collected under the Internal Revenue Code of 1986 (as scheduled on December 31, 2009, to be in effect); and

(B) what those revenue collections would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), AMT law had instead been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the number of taxpayers with AMT liability or lost credits that occur as a result of the AMT would not be estimated to exceed the number of taxpayers affected by the AMT in tax year 2008 in any year for which relief is provided, through December 31, 2011.

(3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in paragraph (1) cover a time period that ends before December 31, 2011, subject to the maximum adjustment provided for under paragraph (2), the

amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) total revenues projected to be collected under the Internal Revenue Code of 1986 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those revenues would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), AMT law had instead been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the number of taxpayers with AMT liability or lost credits that occur as a result of the AMT would not be estimated to exceed the number of AMT taxpayers in tax year 2008 for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

(4) DURATION OF POLICY ADJUSTMENT.—Adjustments made pursuant to this subsection are available for policies affecting the AMT through only December 31, 2011. Any adjustments shall include budgetary effects in all years from these policy changes.

(f) PERMANENT EXTENSION OF MIDDLE-CLASS TAX CUTS.—

(1) CRITERIA.—Legislation that includes provisions extending middle-class tax cuts shall trigger the current policy adjustment required by this title if those provisions extend 1 or more of the following provisions:

(A) The 10 percent bracket as in effect for tax year 2010, as provided for under section 101(a) of EGTRRA and any later amendments through December 31, 2009.

(B) The child tax credit as in effect for tax year 2010, as provided for under section 201 of EGTRRA and any later amendments through December 31, 2009.

(C) Tax benefits for married couples as in effect for tax year 2010, as provided for under title III of EGTRRA and any later amendments through December 31, 2009.

(D) The adoption credit as in effect in tax year 2010, as provided for under section 202 of EGTRRA and any later amendments through December 31, 2009.

(E) The dependent care credit as in effect in tax year 2010, as provided for under section 204 of EGTRRA and any later amendments through December 31, 2009.

(F) The employer-provided child care credit as in effect in tax year 2010, as provided for under section 205 of EGTRRA and any later amendments through December 31, 2009.

(G) The education tax benefits as in effect in tax year 2010, as provided for under title IV of EGTRRA and any later amendments through December 31, 2009.

(H) The 25 and 28 percent brackets as in effect for tax year 2010, as provided for under section 101(a) of EGTRRA and any later amendments through December 31, 2009.

(I) The 33 percent bracket as in effect for tax year 2010, as provided for under section 101(a) of EGTRRA and any later amendment through December 31, 2009, affecting taxpayers with adjusted gross income of \$200,000 or less for single filers and \$250,000 or less for joint filers

in tax year 2010, with these income levels indexed for inflation in each subsequent year consistent with subsection (g).

(J) The rates on income derived from capital gains and qualified dividends as in effect for tax year 2010, as provided for under sections 301 and 302 of JGTRRA and any later amendment through December 31, 2009, affecting taxpayers with adjusted gross income of \$200,000 or less for single filers and \$250,000 for joint filers with these income levels indexed for inflation in each subsequent year consistent with subsection (g).

(K) The phaseout of personal exemptions and the overall limitation on itemized deductions as in effect for tax year 2010, as provided for under sections 102 and 103 of EGTRRA of 2001, respectively, and any later amendment through December 31, 2009, affecting taxpayer with adjusted gross income of \$200,000 or less for single filers and \$250,000 for joint filers, with these income levels indexed for inflation in each subsequent year consistent with subsection (g).

(L) The increase in the limitations on expensing depreciable business assets for small businesses under section 179(b) of the Internal Revenue Code of 1986 as in effect in tax year 2010, as provided under section 202 of JGTRRA and any later amendment through December 31, 2009.

(2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between—

(A) total revenues projected to be collected and outlays to be paid under the Internal Revenue Code of 1986 (as scheduled on December 31, 2009, to be in effect); and

(B) what those revenue collections and outlay payments would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), the provisions identified in paragraph (1) were made permanent.

(3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in paragraph (1) are not permanent, subject to the maximum adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) total revenues projected to be collected and outlays to be paid under the Internal Revenue Code of 1986 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those revenue collections and outlay payments would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), the provisions identified in paragraph (1) had been in effect, without change, for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

(g) INDEXING FOR INFLATION.—Indexed amounts are assumed to increase in each year by an amount equal to the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, determined by substituting “calendar year 2008” for “calendar year 1992” in subparagraph (B) of such section.

(h) GUIDANCE ON ESTIMATES AND CURRENT POLICY ADJUSTMENTS.—

(1) **MIDDLE CLASS TAX CUTS.**—For purposes of estimates made pursuant to subsection (f)—

(A) each of the income tax provisions shall be estimated as though the AMT had remained at current law as scheduled on December 31, 2009 to be in effect; and

(B) if more than 1 of the income tax provisions is included in a single piece of legislation, those provisions shall be estimated in the order in which they appear.

(2) **AMT.**—For purposes of estimates made pursuant to subsection (e), changes to the AMT shall be estimated as if, on the date of enactment of legislation meeting the criteria in subsection (e)(1), all of the income tax provisions identified in subsection (f)(1) were made permanent.

SEC. 8. APPLICATION OF BBEDCA.

2 USC 937.

For purposes of this title—

(1) notwithstanding section 275 of BBEDCA, the provisions of sections 255, 256, 257, and 274 of BBEDCA, as amended by this title, shall apply to the provisions of this title;

(2) references in sections 255, 256, 257, and 274 to “this part” or “this title” shall be interpreted as applying to this title;

(3) references in sections 255, 256, 257, and 274 of BBEDCA to “section 254” shall be interpreted as referencing section 5 of this title;

(4) the reference in section 256(b) of BBEDCA to “section 252 or 253” shall be interpreted as referencing section 5 of this title;

(5) the reference in section 256(d)(1) of BBEDCA to “section 252 or 253” shall be interpreted as referencing section 6 of this title;

(6) the reference in section 256(d)(4) of BBEDCA to “section 252 or 253” shall be interpreted as referencing section 5 of this title;

(7) section 256(k) of BBEDCA shall apply to a sequestration, if any, under this title; and

(8) references in section 257(e) of BBEDCA to “section 251, 252, or 253” shall be interpreted as referencing section 4 of this title.

SEC. 9. TECHNICAL CORRECTIONS.

(a) Section 250(c)(18) of BBEDCA is amended by striking “the expenses the Federal deposit insurance agencies” and inserting “the expenses of the Federal deposit insurance agencies”. 2 USC 900.

(b) Section 256(k)(1) of BBEDCA is amended by striking “in paragraph (5)” and inserting “in paragraph (6)”. 2 USC 906.

SEC. 10. CONFORMING AMENDMENTS.

(a) Section 256(a) of BBEDCA is repealed.

Repeal.

(b) Section 256(b) of BBEDCA is amended by striking “origination fees under sections 438(c)(2) and 455(c) of that Act shall each be increased by 0.50 percentage point.” and inserting in lieu thereof “origination fees under sections 438(c)(2) and (6) and 455(c) and loan processing and issuance fees under section 428(f)(1)(A)(ii) of that Act shall each be increased by the uniform percentage specified in that sequestration order, and, for student loans originated during

the period of the sequestration, special allowance payments under section 438(b) of that Act accruing during the period of the sequestration shall be reduced by the uniform percentage specified in that sequestration order.”.

Repeal.

(c) Section 256(c) of BBEDCA is repealed.

(d) Section 256(d) of BBEDCA is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (5), and (6);

(2) by amending paragraph (1) to read as follows:

Determination.
Applicability.

“(1) CALCULATION OF REDUCTION IN PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by section 252 or 253, subject to paragraph (2), and notwithstanding section 710 of the Social Security Act, OMB shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply, with respect to the health insurance programs under title XVIII of the Social Security Act—

“(A) in the case of parts A and B of such title, to individual payments for services furnished during the one-year period beginning on the first day of the first month beginning after the date the order is issued (or, if later, the date specified in paragraph (4)); and

“(B) in the case of parts C and D, to monthly payments under contracts under such parts for the same one-year period;

such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that period.”.

(3) by inserting after paragraph (1) the following:

“(2) UNIFORM REDUCTION RATE; MAXIMUM PERMISSIBLE REDUCTION.—Reductions in payments for programs and activities under such title XVIII pursuant to a sequestration order under section 254 shall be at a uniform rate, which shall not exceed 4 percent, across all such programs and activities subject to such order.”;

(4) by inserting after paragraph (3), as redesignated, the following:

“(4) TIMING OF SUBSEQUENT SEQUESTRATION ORDER.—A sequestration order required by section 252 or 253 with respect to programs under such title XVIII shall not take effect until the first month beginning after the end of the effective period of any prior sequestration order with respect to such programs, as determined in accordance with paragraph (1).”;

(5) in paragraph (6), as redesignated, to read as follows:

“(6) SEQUESTRATION DISREGARDED IN COMPUTING PAYMENT AMOUNTS.—The Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part, for purposes of computing any adjustments to payment rates under such title XVIII, specifically including—

“(A) the part C growth percentage under section 1853(c)(6);

“(B) the part D annual growth rate under section 1860D-2(b)(6); and

“(C) application of risk corridors to part D payment rates under section 1860D-15(e).”; and

(6) by adding after paragraph (6), as redesignated, the following:

“(7) EXEMPTIONS FROM SEQUESTRATION.—In addition to the programs and activities specified in section 255, the following shall be exempt from sequestration under this part:

“(A) PART D LOW-INCOME SUBSIDIES.—Premium and cost-sharing subsidies under section 1860D-14 of the Social Security Act.

“(B) PART D CATASTROPHIC SUBSIDY.—Payments under section 1860D-15(b) and (e)(2)(B) of the Social Security Act.

“(C) QUALIFIED INDIVIDUAL (QI) PREMIUMS.—Payments to States for coverage of Medicare cost-sharing for certain low-income Medicare beneficiaries under section 1933 of the Social Security Act.”.

SEC. 11. EXEMPT PROGRAMS AND ACTIVITIES.

(a) DESIGNATIONS.—Section 255 of BBEDCA is amended by redesignating subsection (i) as (j) and striking “1998” and inserting in lieu thereof “2010”. 2 USC 905.

(b) SOCIAL SECURITY, VETERANS PROGRAMS, NET INTEREST, AND TAX CREDITS.—Subsections (a) through (d) of section 255 of BBEDCA are amended to read as follows:

“(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act (42 U.S.C. 401 et seq.), and benefits payable under section 231b(a), 231b(f)(2), 231c(a), and 231c(f) of title 45 United States Code, shall be exempt from reduction under any order issued under this part.

“(b) VETERANS PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

“All programs administered by the Department of Veterans Affairs.

“Special Benefits for Certain World War II Veterans (28-0401-0-1-701).

“(c) NET INTEREST.—No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this part.

“(d) REFUNDABLE INCOME TAX CREDITS.—Payments to individuals made pursuant to provisions of the Internal Revenue Code of 1986 establishing refundable tax credits shall be exempt from reduction under any order issued under this part.”.

(c) OTHER PROGRAMS AND ACTIVITIES, LOW-INCOME PROGRAMS, AND ECONOMIC RECOVERY PROGRAMS.—Subsections (g) and (h) of section 255 of BBEDCA are amended to read as follows:

“(g) OTHER PROGRAMS AND ACTIVITIES.—

“(1)(A) The following budget accounts and activities shall be exempt from reduction under any order issued under this part:

“Activities resulting from private donations, bequests, or voluntary contributions to the Government.

“Activities financed by voluntary payments to the Government for goods or services to be provided for such payments.

“Administration of Territories, Northern Mariana Islands Covenant grants (14-0412-0-1-808).

“Advances to the Unemployment Trust Fund and Other Funds (16-0327-0-1-600).

“Black Lung Disability Trust Fund Refinancing (16-0329-0-1-601).

“Bonneville Power Administration Fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-271).

“Claims, Judgments, and Relief Acts (20-1895-0-1-808).

“Compact of Free Association (14-0415-0-1-808).

“Compensation of the President (11-0209-01-1-802).

“Comptroller of the Currency, Assessment Funds (20-8413-0-8-373).

“Continuing Fund, Southeastern Power Administration (89-5653-0-2-271).

“Continuing Fund, Southwestern Power Administration (89-5649-0-2-271).

“Dual Benefits Payments Account (60-0111-0-1-601).

“Emergency Fund, Western Area Power Administration (89-5069-0-2-271).

“Exchange Stabilization Fund (20-4444-0-3-155).

“Farm Credit Administration Operating Expenses Fund (78-4131-0-3-351).

“Farm Credit System Insurance Corporation, Farm Credit Insurance Fund (78-4171-0-3-351).

“Federal Deposit Insurance Corporation, Deposit Insurance Fund (51-4596-0-4-373).

“Federal Deposit Insurance Corporation, FSLIC Resolution Fund (51-4065-0-3-373).

“Federal Deposit Insurance Corporation, Noninterest Bearing Transaction Account Guarantee (51-4458-0-3-373).

“Federal Deposit Insurance Corporation, Senior Unsecured Debt Guarantee (51-4457-0-3-373).

“Federal Home Loan Mortgage Corporation (Freddie Mac).

“Federal Housing Finance Agency, Administrative Expenses (95-5532-0-2-371).

“Federal National Mortgage Corporation (Fannie Mae).

“Federal Payment to the District of Columbia Judicial Retirement and Survivors Annuity Fund (20-1713-0-1-752).

“Federal Payment to the District of Columbia Pension Fund (20-1714-0-1-601).

“Federal Payments to the Railroad Retirement Accounts (60-0113-0-1-601).

“Federal Reserve Bank Reimbursement Fund (20-1884-0-1-803).

“Financial Agent Services (20-1802-0-1-803).

“Foreign Military Sales Trust Fund (11-8242-0-7-155).

“Hazardous Waste Management, Conservation Reserve Program (12-4336-0-3-999).

“Host Nation Support Fund for Relocation (97-8337-0-7-051).

“Internal Revenue Collections for Puerto Rico (20-5737-0-2-806).

“Intragovernmental funds, including those from which the outlays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect.

“Medical Facilities Guarantee and Loan Fund (75-9931-0-3-551).

“National Credit Union Administration, Central Liquidity Facility (25-4470-0-3-373).

“National Credit Union Administration, Corporate Credit Union Share Guarantee Program (25-4476-0-3-376).

“National Credit Union Administration, Credit Union Homeowners Affordability Relief Program (25-4473-0-3-371).

“National Credit Union Administration, Credit Union Share Insurance Fund (25-4468-0-3-373).

“National Credit Union Administration, Credit Union System Investment Program (25-4474-0-3-376).

“National Credit Union Administration, Operating fund (25-4056-0-3-373).

“National Credit Union Administration, Share Insurance Fund Corporate Debt Guarantee Program (25-4469-0-3-376).

“National Credit Union Administration, U.S. Central Federal Credit Union Capital Program (25-4475-0-3-376).

“Office of Thrift Supervision (20-4108-0-3-373).

“Panama Canal Commission Compensation Fund (16-5155-0-2-602).

“Payment of Vietnam and USS Pueblo prisoner-of-war claims within the Salaries and Expenses, Foreign Claims Settlement account (15-0100-0-1-153).

“Payment to Civil Service Retirement and Disability Fund (24-0200-0-1-805).

“Payment to Department of Defense Medicare-Eligible Retiree Health Care Fund (97-0850-0-1-054).

“Payment to Judiciary Trust Funds (10-0941-0-1-752).

“Payment to Military Retirement Fund (97-0040-0-1-054).

“Payment to the Foreign Service Retirement and Disability Fund (19-0540-0-1-153).

“Payments to Copyright Owners (03-5175-0-2-376).

“Payments to Health Care Trust Funds (75-0580-0-1-571).

“Payment to Radiation Exposure Compensation Trust Fund (15-0333-0-1-054).

“Payments to Social Security Trust Funds (28-0404-0-1-651).

“Payments to the United States Territories, Fiscal Assistance (14-0418-0-1-806).

“Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds.

“Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801).

“Postal Service Fund (18-4020-0-3-372).

“Radiation Exposure Compensation Trust Fund (15-8116-0-1-054).

“Reimbursement to Federal Reserve Banks (20-0562-0-1-803).

“Salaries of Article III judges.

“Soldiers and Airmen’s Home, payment of claims (84-8930-0-7-705).

“Tennessee Valley Authority Fund, except nonpower programs and activities (64-4110-0-3-999).

“Tribal and Indian trust accounts within the Department of the Interior which fund prior legal obligations of the Government or which are established pursuant to Acts of Congress regarding Federal management of tribal real property or other fiduciary responsibilities, including but not limited to Tribal Special Fund (14-5265-0-2-452), Tribal Trust Fund (14-8030-0-7-452), White Earth Settlement (14-2204-0-1-452), and Indian Water Rights and Habitat Acquisition (14-5505-0-2-303).

“United Mine Workers of America 1992 Benefit Plan (95-8260-0-7-551).

“United Mine Workers of America 1993 Benefit Plan (95-8535-0-7-551).

“United Mine Workers of America Combined Benefit Fund (95-8295-0-7-551).

“United States Enrichment Corporation Fund (95-4054-0-3-271).

“Universal Service Fund (27-5183-0-2-376).

“Vaccine Injury Compensation (75-0320-0-1-551).

“Vaccine Injury Compensation Program Trust Fund (20-8175-0-7-551).

“(B) The following Federal retirement and disability accounts and activities shall be exempt from reduction under any order issued under this part:

“Black Lung Disability Trust Fund (20-8144-0-7-601).

“Central Intelligence Agency Retirement and Disability System Fund (56-3400-0-1-054).

“Civil Service Retirement and Disability Fund (24-8135-0-7-602).

“Comptrollers general retirement system (05-0107-0-1-801).

“Contributions to U.S. Park Police annuity benefits, Other Permanent Appropriations (14-9924-0-2-303).

“Court of Appeals for Veterans Claims Retirement Fund (95-8290-0-7-705).

“Department of Defense Medicare-Eligible Retiree Health Care Fund (97-5472-0-2-551).

“District of Columbia Federal Pension Fund (20-5511-0-2-601).

“District of Columbia Judicial Retirement and Survivors Annuity Fund (20-8212-0-7-602).

“Energy Employees Occupational Illness Compensation Fund (16-1523-0-1-053).

“Foreign National Employees Separation Pay (97-8165-0-7-051).

“Foreign Service National Defined Contributions Retirement Fund (19-5497-0-2-602).

“Foreign Service National Separation Liability Trust Fund (19-8340-0-7-602).

“Foreign Service Retirement and Disability Fund (19-8186-0-7-602).

“Government Payment for Annuitants, Employees Health Benefits (24-0206-0-1-551).

“Government Payment for Annuitants, Employee Life Insurance (24-0500-0-1-602).

“Judicial Officers’ Retirement Fund (10-8122-0-7-602).

“Judicial Survivors’ Annuities Fund (10-8110-0-7-602).

“Military Retirement Fund (97-8097-0-7-602).

“National Railroad Retirement Investment Trust (60-8118-0-7-601).

“National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306).

“Pensions for former Presidents (47-0105-0-1-802).

“Postal Service Retiree Health Benefits Fund (24-5391-0-2-551).

“Public Safety Officer Benefits (15-0403-0-1-754).

“Rail Industry Pension Fund (60-8011-0-7-601).

“Retired Pay, Coast Guard (70-0602-0-1-403).

“Retirement Pay and Medical Benefits for Commissioned Officers, Public Health Service (75-0379-0-1-551).

“Special Benefits for Disabled Coal Miners (16-0169-0-1-601).

“Special Benefits, Federal Employees’ Compensation Act (16-1521-0-1-600).

“Special Workers Compensation Expenses (16-9971-0-7-601).

“Tax Court Judges Survivors Annuity Fund (23-8115-0-7-602).

“United States Court of Federal Claims Judges’ Retirement Fund (10-8124-0-7-602).

“United States Secret Service, DC Annuity (70-0400-0-1-751).

“Voluntary Separation Incentive Fund (97-8335-0-7-051).

“(2) Prior legal obligations of the Government in the following budget accounts and activities shall be exempt from any order issued under this part:

“Biomass Energy Development (20-0114-0-1-271).

“Check Forgery Insurance Fund (20-4109-0-3-803).

“Credit liquidating accounts.

“Credit reestimates.

“Employees Life Insurance Fund (24-8424-0-8-602).

“Federal Aviation Insurance Revolving Fund (69-4120-0-3-402).

“Federal Crop Insurance Corporation Fund (12-4085-0-3-351).

“Federal Emergency Management Agency, National Flood Insurance Fund (58-4236-0-3-453).

“Geothermal resources development fund (89-0206-0-1-271).

“Low-Rent Public Housing—Loans and Other Expenses (86-4098-0-3-604).

“Maritime Administration, War Risk Insurance Revolving Fund (69-4302-0-3-403).

“Natural Resource Damage Assessment Fund (14-1618-0-1-302).

“Overseas Private Investment Corporation, Noncredit Account (71-4184-0-3-151).

“Pension Benefit Guaranty Corporation Fund (16-4204-0-3-601).

“San Joaquin Restoration Fund (14-5537-0-2-301).

“Servicemembers’ Group Life Insurance Fund (36-4009-0-3-701).

“Terrorism Insurance Program (20-0123-0-1-376).

“(h) LOW-INCOME PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

“Academic Competitiveness/Smart Grant Program (91-0205-0-1-502).

“Child Care Entitlement to States (75-1550-0-1-609).

“Child Enrollment Contingency Fund (75-5551-0-2-551).

“Child Nutrition Programs (with the exception of special milk programs) (12-3539-0-1-605).

“Children’s Health Insurance Fund (75-0515-0-1-551).

“Commodity Supplemental Food Program (12-3507-0-1-605).

“Contingency Fund (75-1522-0-1-609).

“Family Support Programs (75-1501-0-1-609).

“Federal Pell Grants under section 401 Title IV of the Higher Education Act.

“Grants to States for Medicaid (75-0512-0-1-551).

“Payments for Foster Care and Permanency (75-1545-0-1-609).

“Supplemental Nutrition Assistance Program (12-3505-0-1-605).

“Supplemental Security Income Program (28-0406-0-1-609).

“Temporary Assistance for Needy Families (75-1552-0-1-609).”.

2 USC 905.

(d) ADDITIONAL EXCLUDED PROGRAMS.—Section 255 of BBEDCA is amended by adding the following after subsection (h):

“(i) ECONOMIC RECOVERY PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

“GSE Preferred Stock Purchase Agreements (20-0125-0-1-371).

“Office of Financial Stability (20-0128-0-1-376).

“Special Inspector General for the Troubled Asset Relief Program (20-0133-0-1-376).

“(j) SPLIT TREATMENT PROGRAMS.—Each of the following programs shall be exempt from any order under this part to the extent that the budgetary resources of such programs are subject to obligation limitations in appropriations bills:

“Federal-Aid Highways (69-8083-0-7-401).

“Highway Traffic Safety Grants (69-8020-0-7-401).

“Operations and Research NHTSA and National Driver Register (69-8016-0-7-401).

“Motor Carrier Safety Operations and Programs (69-8159-0-7-401).

“Motor Carrier Safety Grants (69-8158-0-7-401).

“Formula and Bus Grants (69–8350–0–7–401).
“Grants-In-Aid for Airports (69–8106–0–7–402).”.

SEC. 12. DETERMINATIONS AND POINTS OF ORDER.

2 USC 938.

Nothing in this title shall be construed as limiting the authority of the chairmen of the Committees on the Budget of the House and Senate under section 312 of the Congressional Budget Act of 1974. CBO may consult with the Chairmen of the House and Senate Budget Committees to resolve any ambiguities in this title.

SEC. 13. LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.

2 USC 939.

(a) **LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.**—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any bill or resolution pursuant to any expedited procedure to consider the recommendations of a Task Force for Responsible Fiscal Action or other commission that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or the taxes received under subchapter A of chapter 9; the taxes imposed by subchapter E of chapter 1; and the taxes collected under section 86 of part II of subchapter B of chapter 1 of the Internal Revenue Code.

(b) **WAIVER.**—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(c) **APPEALS.**—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

TITLE II—ELIMINATION OF DUPLICATIVE AND WASTEFUL SPENDING

SEC. 21. IDENTIFICATION, CONSOLIDATION, AND ELIMINATION OF DUPLICATIVE GOVERNMENT PROGRAMS.

31 USC 712 note.

The Comptroller General of the Government Accountability Office shall conduct routine investigations to identify programs, agencies, offices, and initiatives with duplicative goals and activities within Departments and governmentwide and report annually to Congress on the findings, including the cost of such duplication

Investigations.
Reports.
Deadline.

and with recommendations for consolidation and elimination to reduce duplication identifying specific rescissions.

Approved February 12, 2010.

LEGISLATIVE HISTORY—H.J. Res. 45:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Apr. 29, considered and passed House pursuant to S. Con. Res. 13.

Vol. 156 (2010): Jan. 20–22, 25, 26, 28, considered and passed Senate, amended.

Feb. 4, House concurred in Senate amendment.



Public Law 111–140
111th Congress

An Act

To strengthen efforts in the Department of Homeland Security to develop nuclear forensics capabilities to permit attribution of the source of nuclear material, and for other purposes.

Feb. 16, 2010
[H.R. 730]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nuclear Forensics and Attribution Act”.

Nuclear
Forensics and
Attribution Act.
6 USC 101 note.

SEC. 2. FINDINGS.

6 USC 592 note.

Congress finds the following:

(1) The threat of a nuclear terrorist attack on American interests, both domestic and abroad, is one of the most serious threats to the national security of the United States. In the wake of an attack, attribution of responsibility would be of utmost importance. Because of the destructive power of a nuclear weapon, there could be little forensic evidence except the radioactive material in the weapon itself.

(2) Through advanced nuclear forensics, using both existing techniques and those under development, it may be possible to identify the source and pathway of a weapon or material after it is interdicted or detonated. Though identifying intercepted smuggled material is now possible in some cases, predetonation forensics is a relatively undeveloped field. The postdetonation nuclear forensics field is also immature, and the challenges are compounded by the pressures and time constraints of performing forensics after a nuclear or radiological attack.

(3) A robust and well-known capability to identify the source of nuclear or radiological material intended for or used in an act of terror could also deter prospective proliferators. Furthermore, the threat of effective attribution could compel improved security at material storage facilities, preventing the unwitting transfer of nuclear or radiological materials.

(4)(A) In order to identify special nuclear material and other radioactive materials confidently, it is necessary to have a robust capability to acquire samples in a timely manner, analyze and characterize samples, and compare samples against known signatures of nuclear and radiological material.

(B) Many of the radioisotopes produced in the detonation of a nuclear device have short half-lives, so the timely acquisition of samples is of the utmost importance. Over the past several decades, the ability of the United States to gather

atmospheric samples—often the preferred method of sample acquisition—has diminished. This ability must be restored and modern techniques that could complement or replace existing techniques should be pursued.

(C) The discipline of pre-detonation forensics is a relatively undeveloped field. The radiation associated with a nuclear or radiological device may affect traditional forensics techniques in unknown ways. In a post-detonation scenario, radiochemistry may provide the most useful tools for analysis and characterization of samples. The number of radiochemistry programs and radiochemists in United States National Laboratories and universities has dramatically declined over the past several decades. The narrowing pipeline of qualified people into this critical field is a serious impediment to maintaining a robust and credible nuclear forensics program.

(5) Once samples have been acquired and characterized, it is necessary to compare the results against samples of known material from reactors, weapons, and enrichment facilities, and from medical, academic, commercial, and other facilities containing such materials, throughout the world. Some of these samples are available to the International Atomic Energy Agency through safeguards agreements, and some countries maintain internal sample databases. Access to samples in many countries is limited by national security concerns.

(6) In order to create a sufficient deterrent, it is necessary to have the capability to positively identify the source of nuclear or radiological material, and potential traffickers in nuclear or radiological material must be aware of that capability. International cooperation may be essential to catalogue all existing sources of nuclear or radiological material.

SEC. 3. SENSE OF CONGRESS ON INTERNATIONAL AGREEMENTS FOR FORENSICS COOPERATION.

It is the sense of the Congress that the President should—

(1) pursue bilateral and multilateral international agreements to establish, or seek to establish under the auspices of existing bilateral or multilateral agreements, an international framework for determining the source of any confiscated nuclear or radiological material or weapon, as well as the source of any detonated weapon and the nuclear or radiological material used in such a weapon;

(2) develop protocols for the data exchange and dissemination of sensitive information relating to nuclear or radiological materials and samples of controlled nuclear or radiological materials, to the extent required by the agreements entered into under paragraph (1); and

(3) develop expedited protocols for the data exchange and dissemination of sensitive information needed to publicly identify the source of a nuclear detonation.

SEC. 4. RESPONSIBILITIES OF DOMESTIC NUCLEAR DETECTION OFFICE.

(a) **ADDITIONAL RESPONSIBILITIES.**—Section 1902 of the Homeland Security Act of 2002 (as redesignated by Public Law 110-53; 6 U.S.C. 592) is amended—

(1) in subsection (a)—

(A) in paragraph (9), by striking “and” after the semicolon;

(B) by redesignating paragraph (10) as paragraph (14);
and

(C) by inserting after paragraph (9) the following:

“(10) lead the development and implementation of the national strategic five-year plan for improving the nuclear forensic and attribution capabilities of the United States required under section 1036 of the National Defense Authorization Act for Fiscal Year 2010;

“(11) establish, within the Domestic Nuclear Detection Office, the National Technical Nuclear Forensics Center to provide centralized stewardship, planning, assessment, gap analysis, exercises, improvement, and integration for all Federal nuclear forensics and attribution activities—

“(A) to ensure an enduring national technical nuclear forensics capability to strengthen the collective response of the United States to nuclear terrorism or other nuclear attacks; and

“(B) to coordinate and implement the national strategic five-year plan referred to in paragraph (10);

“(12) establish a National Nuclear Forensics Expertise Development Program, which—

“(A) is devoted to developing and maintaining a vibrant and enduring academic pathway from undergraduate to post-doctorate study in nuclear and geochemical science specialties directly relevant to technical nuclear forensics, including radiochemistry, geochemistry, nuclear physics, nuclear engineering, materials science, and analytical chemistry;

“(B) shall—

“(i) make available for undergraduate study student scholarships, with a duration of up to 4 years per student, which shall include, if possible, at least 1 summer internship at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student’s undergraduate career;

“(ii) make available for doctoral study student fellowships, with a duration of up to 5 years per student, which shall—

“(I) include, if possible, at least 2 summer internships at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student’s graduate career; and

“(II) require each recipient to commit to serve for 2 years in a post-doctoral position in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after graduation;

“(iii) make available to faculty awards, with a duration of 3 to 5 years each, to ensure faculty and their graduate students have a sustained funding stream; and

“(iv) place a particular emphasis on reinvigorating technical nuclear forensics programs while encouraging the participation of undergraduate students, graduate students, and university faculty from historically Black

colleges and universities, Hispanic-serving institutions, Tribal Colleges and Universities, Asian American and Native American Pacific Islander-serving institutions, Alaska Native-serving institutions, and Hawaiian Native-serving institutions; and

“(C) shall—

“(i) provide for the selection of individuals to receive scholarships or fellowships under this section through a competitive process primarily on the basis of academic merit and the nuclear forensics and attribution needs of the United States Government;

“(ii) provide for the setting aside of up to 10 percent of the scholarships or fellowships awarded under this section for individuals who are Federal employees to enhance the education of such employees in areas of critical nuclear forensics and attribution needs of the United States Government, for doctoral education under the scholarship on a full-time or part-time basis;

“(iii) provide that the Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which such scholarship is awarded;

“(iv) require scholarship recipients to maintain satisfactory academic progress; and

“(v) require that—

“(I) a scholarship recipient who fails to maintain a high level of academic standing, as defined by the Secretary, who is dismissed for disciplinary reasons from the educational institution such recipient is attending, or who voluntarily terminates academic training before graduation from the educational program for which the scholarship was awarded shall be liable to the United States for repayment within 1 year after the date of such default of all scholarship funds paid to such recipient and to the institution of higher education on the behalf of such recipient, provided that the repayment period may be extended by the Secretary if the Secretary determines it necessary, as established by regulation; and

“(II) a scholarship recipient who, for any reason except death or disability, fails to begin or complete the post-doctoral service requirements in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after completion of academic training shall be liable to the United States for an amount equal to—

“(aa) the total amount of the scholarship received by such recipient under this section; and

“(bb) the interest on such amounts which would be payable if at the time the scholarship was received such scholarship was a loan

bearing interest at the maximum legally prevailing rate;

“(13) provide an annual report to Congress on the activities carried out under paragraphs (10), (11), and (12); and”;

Deadline.
Reports.

(2) by adding at the end the following new subsection:
“(b) DEFINITIONS.—In this section:

“(1) ALASKA NATIVE-SERVING INSTITUTION.—The term ‘Alaska Native-serving institution’ has the meaning given the term in section 317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

“(2) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-SERVING INSTITUTION.—The term ‘Asian American and Native American Pacific Islander-serving institution’ has the meaning given the term in section 320 of the Higher Education Act of 1965 (20 U.S.C. 1059g).

“(3) HAWAIIAN NATIVE-SERVING INSTITUTION.—The term ‘Hawaiian native-serving institution’ has the meaning given the term in section 317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

“(4) HISPANIC-SERVING INSTITUTION.—The term ‘Hispanic-serving institution’ has the meaning given that term in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a).

“(5) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term ‘historically Black college or university’ has the meaning given the term ‘part B institution’ in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

“(6) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘Tribal College or University’ has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).”.

(b) JOINT INTERAGENCY ANNUAL REPORTING REQUIREMENT TO CONGRESS AND THE PRESIDENT.—

(1) IN GENERAL.—Section 1907(a)(1) of the Homeland Security Act of 2002 (6 U.S.C. 596a(a)(1)) is amended—

(A) in subparagraph (A)(ii), by striking “; and” and inserting a semicolon;

(B) in subparagraph (B)(iii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(C) the Director of the Domestic Nuclear Detection Office and each of the relevant departments that are partners in the National Technical Forensics Center—

“(i) include, as part of the assessments, evaluations, and reviews required under this paragraph, each office’s or department’s activities and investments in support of nuclear forensics and attribution activities and specific goals and objectives accomplished during the previous year pursuant to the national strategic five-year plan for improving the nuclear forensic and attribution capabilities of the United States required under section 1036 of the National Defense Authorization Act for Fiscal Year 2010;

“(ii) attaches, as an appendix to the Joint Interagency Annual Review, the most current version of such strategy and plan; and

“(iii) includes a description of new or amended bilateral and multilateral agreements and efforts in support of nuclear forensics and attribution activities accomplished during the previous year.”.

Approved February 16, 2010.

LEGISLATIVE HISTORY—H.R. 730:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Mar. 24, considered and passed House.

Dec. 23, considered and passed Senate, amended.

Vol. 156 (2010): Jan. 20, 21, House considered and concurred in Senate amendment.



Public Law 111–141
111th Congress

An Act

To extend expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004 until February 28, 2011.

Feb. 27, 2010
[H.R. 3961]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF SUNSETS.

(a) USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862 note) is amended by striking “February 28, 2010” and inserting “February 28, 2011”.

50 USC 1805,
1861, 1862.

(b) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3742; 50 U.S.C. 1801 note) is amended by striking “February 28, 2010” and inserting “February 28, 2011”.

Approved February 27, 2010.

LEGISLATIVE HISTORY—H.R. 3961:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Nov. 19, considered and passed House.

Vol. 156 (2010): Feb. 24, considered and passed Senate, amended.

Feb. 25, House concurred in Senate amendments.



Public Law 111–142
111th Congress

An Act

Feb. 27, 2010
[H.R. 4532]

To provide for permanent extension of the attorney fee withholding procedures under title II of the Social Security Act to title XVI of such Act, and to provide for permanent extension of such procedures under titles II and XVI of such Act to qualified non-attorney representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Social Security
Disability
Applicants'
Access to
Professional
Representation
Act of 2010.
42 USC 1305
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Social Security Disability Applicants’ Access to Professional Representation Act of 2010”.

SEC. 2. PERMANENT EXTENSION OF ATTORNEY FEE WITHHOLDING PROCEDURES TO TITLE XVI.

42 USC 1383
note.

(a) IN GENERAL.—Section 302 of the Social Security Protection Act of 2004 (Public Law 108–203; 118 Stat. 519) is amended—
(1) in the section heading, by striking “TEMPORARY”; and
(2) in subsection (c), by striking “EFFECTIVE DATE.—” and all that follows through “The amendments” and inserting “EFFECTIVE DATE.—The amendments”, and by striking paragraph (2).

(b) CLERICAL AMENDMENT.—The item relating to section 302 in the table of contents in section 1(b) of such Act is amended by striking “Temporary extension” and inserting “Extension”.

SEC. 3. PERMANENT EXTENSION OF FEE WITHHOLDING PROCEDURES TO QUALIFIED NON-ATTORNEY REPRESENTATIVES.

(a) IN GENERAL.—Section 206 of the Social Security Act (42 U.S.C. 406) is amended by adding at the end the following new subsection:

“(e)(1) The Commissioner shall provide for the extension of the fee withholding procedures and assessment procedures that apply under the preceding provisions of this section to agents and other persons, other than attorneys, who represent claimants under this title before the Commissioner.

“(2) Fee-withholding procedures may be extended under paragraph (1) to any nonattorney representative only if such representative meets at least the following prerequisites:

“(A) The representative has been awarded a bachelor’s degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

“(B) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of this Act and the most recent

developments in agency and court decisions affecting this title and title XVI.

“(C) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

“(D) The representative has undergone a criminal background check to ensure the representative’s fitness to practice before the Commissioner.

“(E) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under this title and title XVI. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

“(3)(A) The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in paragraph (2).

“(B) Fees collected under subparagraph (A) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner determines appropriate.

“(C) The fees authorized under this paragraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in paragraph (2).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1631(d)(2)(A) of such Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(A) in clause (iv), by striking “and” at the end;

(B) in clause (v), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new clause:

“(vi) by substituting, in subsection (e)(1)—

“(I) ‘subparagraphs (B) and (C) of section 1631(d)(2)’ for ‘the preceding provisions of this section’; and

“(II) ‘title XVI’ for ‘this title’.”.

(2) Section 303(e)(2) of the Social Security Protection Act of 2004 (Public Law 108-203; 118 Stat. 523) is amended by striking “AND FINAL REPORT” in the heading and by striking the last sentence.

42 USC 406 note.

(c) EFFECTIVE DATE.—The Commissioner of Social Security shall provide for full implementation of the provisions of section 206(e) of the Social Security Act (as added by subsection (a)) and

42 USC 406 note.

the amendments made by subsection (b) not later than March 1, 2010.

Approved February 27, 2010.

LEGISLATIVE HISTORY—H.R. 4532:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Feb. 3, 4, considered and passed House.

Feb. 22, considered and passed Senate.



Public Law 111–143
111th Congress

An Act

To extend the pilot program for volunteer groups to obtain criminal history background checks.

Mar. 1, 2010

[S. 2950]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Criminal History Background Checks Pilot Extension Act of 2009”.

SEC. 2. EXTENSION OF PILOT PROGRAM.

Section 108(a)(3)(A) of the PROTECT Act (42 U.S.C. 5119a note) is amended by striking “a 78-month” and inserting “a 92-month”.

Criminal History
Background
Checks Pilot
Extension Act of
2009.
42 USC 5101
note.

Approved March 1, 2010.

LEGISLATIVE HISTORY—S. 2950:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 25, considered and passed Senate.

Feb. 2, 4, considered and passed House.



Public Law 111–144
111th Congress

An Act

Mar. 2, 2010
[H.R. 4691]

Temporary
Extension Act of
2010.
26 USC 1 note.

To provide a temporary extension of certain programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Temporary Extension Act of 2010”.

SEC. 2. EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) IN GENERAL.—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking “February 28, 2010” each place it appears and inserting “April 5, 2010”;

(B) in the heading for subsection (b)(2), by striking “FEBRUARY 28, 2010” and inserting “APRIL 5, 2010”; and

(C) in subsection (b)(3), by striking “July 31, 2010” and inserting “September 4, 2010”.

(2) Section 2002(e) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438), is amended—

(A) in paragraph (1)(B), by striking “February 28, 2010” and inserting “April 5, 2010”;

(B) in the heading for paragraph (2), by striking “FEBRUARY 28, 2010” and inserting “APRIL 5, 2010”; and

(C) in paragraph (3), by striking “August 31, 2010” and inserting “October 5, 2010”.

(3) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking “February 28, 2010” each place it appears and inserting “April 5, 2010”; and

(B) in subsection (c), by striking “July 31, 2010” and inserting “September 4, 2010”.

(4) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “July 31, 2010” and inserting “September 4, 2010”.

(b) FUNDING.—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (B), by striking “and” at the end;

(2) in subparagraph (C), by striking “1009” and inserting “1009(a)(1)”; and

(3) by inserting after subparagraph (C) the following new subparagraph:

“(D) the amendments made by section 2(a)(1) of the Temporary Extension Act of 2010; and”.

SEC. 3. EXTENSION AND IMPROVEMENT OF PREMIUM ASSISTANCE FOR COBRA BENEFITS.

(a) **EXTENSION OF ELIGIBILITY PERIOD.**—Subsection (a)(3)(A) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) is amended by striking “February 28, 2010” and inserting “March 31, 2010”.

26 USC 6432
note.

(b) **CLARIFICATIONS RELATING TO SECTION 3001 OF ARRA.**—

(1) **CLARIFICATION REGARDING COBRA CONTINUATION RESULTING FROM REDUCTIONS IN HOURS.**—Subsection (a) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) is amended—

(A) in paragraph (3)(C), by inserting before the period at the end the following: “or consists of a reduction of hours followed by such an involuntary termination of employment during such period (as described in paragraph (17)(C))”; and

(B) by adding at the end the following:

“(17) **SPECIAL RULES IN CASE OF INDIVIDUALS LOSING COVERAGE BECAUSE OF A REDUCTION OF HOURS.**—

“(A) **NEW ELECTION PERIOD.**—

“(i) **IN GENERAL.**—For the purposes of the COBRA continuation provisions, in the case of an individual described in subparagraph (C) who did not make (or who made and discontinued) an election of COBRA continuation coverage on the basis of the reduction of hours of employment, the involuntary termination of employment of such individual on or after the date of the enactment of this paragraph shall be treated as a qualifying event.

“(ii) **COUNTING COBRA DURATION PERIOD FROM PREVIOUS QUALIFYING EVENT.**—In any case of an individual referred to in clause (i), the period of such individual’s continuation coverage shall be determined as though the qualifying event were the reduction of hours of employment.

“(iii) **CONSTRUCTION.**—Nothing in this paragraph shall be construed as requiring an individual referred to in clause (i) to make a payment for COBRA continuation coverage between the reduction of hours and the involuntary termination of employment.

“(iv) **PREEXISTING CONDITIONS.**—With respect to an individual referred to in clause (i) who elects COBRA continuation coverage pursuant to such clause, rules similar to the rules in paragraph (4)(C) shall apply.

Applicability.

“(B) **NOTICES.**—In the case of an individual described in subparagraph (C), the administrator of the group health plan (or other entity) involved shall provide, during the 60-day period beginning on the date of such individual’s involuntary termination of employment, an additional notification described in paragraph (7)(A), including information on the provisions of this paragraph. Rules

Time period.

Applicability.

similar to the rules of paragraph (7) shall apply with respect to such notification.

“(C) INDIVIDUALS DESCRIBED.—Individuals described in this subparagraph are individuals who are assistance eligible individuals on the basis of a qualifying event consisting of a reduction of hours occurring during the period described in paragraph (3)(A) followed by an involuntary termination of employment insofar as such involuntary termination of employment occurred on or after the date of the enactment of this paragraph.”.

(2) CODIFICATION OF CURRENT INTERPRETATION.—Subsection (a)(16) of such section is amended—

(A) by striking clause (ii) of subparagraph (A) and inserting the following:

“(ii) such individual pays, the amount of such premium, after the application of paragraph (1)(A), by the latest of—

“(I) 60 days after the date of the enactment of this paragraph,

“(II) 30 days after the date of provision of the notification required under subparagraph (D)(ii), or

“(III) the end of the period described in section 4980B(f)(2)(B)(iii) of the Internal Revenue Code of 1986.”; and

(B) by striking subclause (I) of subparagraph (C)(i), and inserting the following:

“(I) such assistance eligible individual experienced an involuntary termination that was a qualifying event prior to the date of enactment of the Department of Defense Appropriations Act, 2010; and”.

(3) CLARIFICATION OF PERIOD OF ASSISTANCE.—Subsection (a)(2)(A)(ii)(I) of such section is amended by striking “of the first month”.

(4) ENFORCEMENT.—Subsection (a)(5) of such section is amended by adding at the end the following: “In addition to civil actions that may be brought to enforce applicable provisions of such Act or other laws, the appropriate Secretary or an affected individual may bring a civil action to enforce such determinations and for appropriate relief. In addition, such Secretary may assess a penalty against a plan sponsor or health insurance issuer of not more than \$110 per day for each failure to comply with such determination of such Secretary after 10 days after the date of the plan sponsor’s or issuer’s receipt of the determination.”.

(5) AMENDMENTS RELATING TO SECTION 3001 OF ARRA.—

26 USC 35.

(A) Subsection (g)(9) of section 35 of the Internal Revenue Code of 1986 is amended by striking “section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009”.

26 USC 139C.

(B) Section 139C of such Code is amended by striking “section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001 of

title III of division B of the American Recovery and Reinvestment Act of 2009”.

(C) Section 6432 of such Code is amended—

26 USC 6432.

(i) in subsection (a), by striking “section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009”;

(ii) in subsection (c)(3), by striking “section 3002(a)(1)(A) of such Act” and inserting “section 3001(a)(1)(A) of title III of division B of the American Recovery and Reinvestment Act of 2009”; and

(iii) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following new subsection:

“(e) EMPLOYER DETERMINATION OF QUALIFYING EVENT AS INVOLUNTARY TERMINATION.—For purposes of this section, in any case in which—

“(1) based on a reasonable interpretation of section 3001(a)(3)(C) of division B of the American Recovery and Reinvestment Act of 2009 and administrative guidance thereunder, an employer determines that the qualifying event with respect to COBRA continuation coverage for an individual was involuntary termination of a covered employee’s employment, and

“(2) the employer maintains supporting documentation of the determination, including an attestation by the employer of involuntary termination with respect to the covered employee,

the qualifying event for the individual shall be deemed to be involuntary termination of the covered employee’s employment.”.

(D) Subsection (a) of section 6720C of such Code is amended by striking “section 3002(a)(2)(C) of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001(a)(2)(C) of title III of division B of the American Recovery and Reinvestment Act of 2009”.

26 USC 6720C.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 to which they relate, except that—

26 USC 6432 note.

(1) the amendments made by subsection (b)(1) shall apply to periods of coverage beginning after the date of the enactment of this Act;

Applicability.

(2) the amendments made by subsection (b)(2) shall take effect as if included in the amendments made by section 1010 of division B of the Department of Defense Appropriations Act, 2010; and

(3) the amendments made by subsections (b)(3) and (b)(4) shall take effect on the date of the enactment of this Act.

SEC. 4. EXTENSION OF SURFACE TRANSPORTATION PROGRAMS.

(a) IN GENERAL.—Except as provided in subsection (b), for purposes of the continued extension of surface transportation programs and related authority to make expenditures from the Highway Trust Fund and other trust funds under sections 157 through 162 of the Continuing Appropriations Resolution, 2010 (Public Law 111–68; 123 Stat. 2050), the date specified in section 106(3) of

that resolution (Public Law 111-68; 123 Stat. 2045) shall be deemed to be March 28, 2010.

(b) EXCEPTION.—Subsection (a) shall not apply if an extension of the programs and authorities described in that subsection for a longer term than the extension contained in the Continuing Appropriations Resolution, 2010 (Public Law 111-68; 123 Stat. 2050), is enacted before the date of enactment of this Act.

SEC. 5. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE.

Paragraph (10) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111-118), is amended—

(1) in subparagraph (A), by striking “February 28, 2010” and inserting “March 31, 2010”; and

(2) in subparagraph (B), by striking “March 1, 2010” and inserting “April 1, 2010”.

SEC. 6. EXTENSION OF MEDICARE THERAPY CAPS EXCEPTIONS PROCESS.

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by striking “December 31, 2009” and inserting “March 31, 2010”.

SEC. 7. EXTENSION OF USE OF 2009 POVERTY GUIDELINES.

Section 1012 of the Department of Defense Appropriations Act, 2010 (Public Law 111-118) is amended by striking “March 1, 2010” and inserting “March 31, 2010”.

SEC. 8. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

Section 129 of the Continuing Appropriations Resolution, 2010 (Public Law 111-68), as amended by section 1005 of Public Law 111-118, is further amended by striking “by substituting” and all that follows through the period at the end, and inserting “by substituting March 28, 2010, for the date specified in each such section.”.

SEC. 9. EXTENSION OF SMALL BUSINESS LOAN GUARANTEE PROGRAM.

(a) IN GENERAL.—Section 502(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 153) is amended by striking “February 28, 2010” and inserting “March 28, 2010”.

(b) APPROPRIATION.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, for an additional amount for “Small Business Administration – Business Loans Program Account”, \$60,000,000, to remain available through March 28, 2010, for the cost of—

(1) fee reductions and eliminations under section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 151) for loans guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), or section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 152), as amended by this section; and

(2) loan guarantees under section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 152), as amended by this section,

Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

SEC. 10. SATELLITE TELEVISION EXTENSION.

(a) AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.—

(1) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(A) in subsection (c)(1)(E), by striking “February 28, 2010” and inserting “March 28, 2010”; and

(B) in subsection (e), by striking “February 28, 2010” and inserting “March 28, 2010”.

(2) TERMINATION OF LICENSE.—Section 1003(a)(2)(A) of Public Law 111-118 is amended by striking “February 28, 2010”, and inserting “March 28, 2010”.

17 USC 119 note.

(b) AMENDMENTS TO COMMUNICATIONS ACT OF 1934.—Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) in paragraph (2)(C), by striking “February 28, 2010” and inserting “March 28, 2010”; and

(2) in paragraph (3)(C), by striking “March 1, 2010” each place it appears in clauses (ii) and (iii) and inserting “March 29, 2010”.

SEC. 11. DETERMINATION OF BUDGETARY EFFECTS.

(a) IN GENERAL.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—This Act, with the exception of section 5, is designated as an emergency for purposes of pay-as-you-go principles. In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(c) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—This Act, with the exception of section 5, is designated as an emergency

requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

Approved March 2, 2010.

LEGISLATIVE HISTORY—H.R. 4691:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Feb. 25, considered and passed House.

Mar. 2, considered and passed Senate.



Public Law 111–145
111th Congress

An Act

To make technical corrections to the laws affecting certain administrative authorities of the United States Capitol Police, and for other purposes.

Mar. 4, 2010
[H.R. 1299]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States Capitol Police Administrative Technical Corrections Act of 2009”.

United States
Capitol Police
Administrative
Technical
Corrections Act
of 2009.
2 USC 1901 note.

SEC. 2. ADMINISTRATIVE AUTHORITIES OF THE CHIEF OF THE CAPITOL POLICE.

(a) CLARIFICATION OF CERTAIN HIRING AUTHORITIES.—

(1) CHIEF ADMINISTRATIVE OFFICER.—Section 108(a) of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1903(a)) is amended to read as follows:

“(a) CHIEF ADMINISTRATIVE OFFICER.—

“(1) ESTABLISHMENT.—There shall be within the United States Capitol Police an Office of Administration, to be headed by the Chief Administrative Officer, who shall report to and serve at the pleasure of the Chief of the Capitol Police.

“(2) APPOINTMENT.—The Chief Administrative Officer shall be appointed by the Chief of the United States Capitol Police, after consultation with the Capitol Police Board, without regard to political affiliation and solely on the basis of fitness to perform the duties of the position.

“(3) COMPENSATION.—The annual rate of pay for the Chief Administrative Officer shall be the amount equal to \$1,000 less than the annual rate of pay in effect for the Chief of the Capitol Police.”.

(2) ADMINISTRATIVE PROVISIONS.—Section 108 of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1903) is amended by striking subsection (c).

(3) CERTIFYING OFFICERS.—Section 107 of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1904) is amended—

(A) in subsection (a), by striking “the Capitol Police Board” and inserting “the Chief of the Capitol Police”; and

(B) in subsection (b)(1), by striking “the Capitol Police Board” and inserting “the Chief of the Capitol Police”.

(4) PERSONNEL ACTIONS OF THE CHIEF OF THE CAPITOL POLICE.—

(A) IN GENERAL.—Section 1018(e) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907(e)) is

amended by striking paragraph (1) and inserting the following:

“(1) AUTHORITY.—

“(A) IN GENERAL.—The Chief of the Capitol Police, in carrying out the duties of office, is authorized to appoint, hire, suspend with or without pay, discipline, discharge, and set the terms, conditions, and privileges of employment of employees of the Capitol Police, subject to and in accordance with applicable laws and regulations.

“(B) SPECIAL RULE FOR TERMINATIONS.—The Chief may terminate an officer, member, or employee only after the Chief has provided notice of the termination to the Capitol Police Board (in such manner as the Board may from time to time require) and the Board has approved the termination, except that if the Board has not disapproved the termination prior to the expiration of the 30-day period which begins on the date the Board receives the notice, the Board shall be deemed to have approved the termination.

“(C) NOTICE OR APPROVAL.—The Chief of the Capitol Police shall provide notice or receive approval, as required by the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives, as each Committee determines appropriate for—

“(i) the exercise of any authority under subparagraph (A); or

“(ii) the establishment of any new position for officers, members, or employees of the Capitol Police, for reclassification of existing positions, for reorganization plans, or for hiring, termination, or promotion for officers, members, or employees of the Capitol Police.”.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) SUSPENSION AUTHORITY.—Section 1823 of the Revised Statutes of the United States (2 U.S.C. 1928) is repealed.

(ii) PAY OF MEMBERS UNDER SUSPENSION.—The proviso in the Act of Mar. 3, 1875 (ch. 129; 18 Stat. 345), popularly known as the “Legislature, Executive, and Judicial Appropriation Act, fiscal year 1876”, which is codified at section 1929 of title 2, United States Code (2000 Editions, Supp. V), is repealed.

(5) CONFORMING APPLICATION OF CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(A) IN GENERAL.—Section 101(9)(D) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(9)(D)) is amended by striking “the Capitol Police Board,” and inserting “the United States Capitol Police,”.

(B) NO EFFECT ON CURRENT PROCEEDINGS.—Nothing in the amendment made by subparagraph (A) may be construed to affect any procedure initiated under title IV of the Congressional Accountability Act of 1995 prior to the date of the enactment of this Act.

(6) NO EFFECT ON CURRENT PERSONNEL.—Nothing in the amendments made by this subsection may be construed to affect the status of any individual serving as an officer or

Notice.
Time period.

Repeal.

Repeal.

2 USC 1929.

2 USC 1301 note.

2 USC 1903 note.

employee of the United States Capitol Police as of the date of the enactment of this Act.

(b) DEPOSIT OF REIMBURSEMENTS FOR LAW ENFORCEMENT ASSISTANCE.—

(1) IN GENERAL.—Section 2802 of the Supplemental Appropriations Act, 2001 (2 U.S.C. 1905) is amended—

(A) in subsection (a)(1), by striking “Capitol Police Board” each place it appears and inserting “United States Capitol Police”; and

(B) in subsection (a)(2), by striking “Capitol Police Board” and inserting “Chief of the United States Capitol Police”.

(2) EFFECTIVE DATE.—The amendments made by paragraph 2 USC 1905 note.

(1) shall take effect as if included in the enactment of the Supplemental Appropriations Act, 2001.

(c) PRIOR NOTICE TO AUTHORIZING COMMITTEES OF DEPLOYMENT OUTSIDE JURISDICTION.—Section 1007(a)(1) of the Legislative Branch Appropriations Act, 2005 (2 U.S.C. 1978(a)(1)) is amended by striking “prior notification to” and inserting the following: “prior notification to the Committee on House Administration of the House of Representatives, the Committee on Rules and Administration of the Senate, and”.

(d) ADVANCE PAYMENTS FOR SUBSCRIPTION SERVICES.—

(1) IN GENERAL.—Section 1002 of the Legislative Branch Appropriations Act, 2008 (Public Law 110-161; 2 U.S.C. 1981) is amended by inserting “the Committee on House Administration of the House of Representatives, and the Committee on Rules and Administration of the Senate” after “the Senate,”.

(2) EFFECTIVE DATE AND APPLICATION.—The amendment made by this subsection shall take effect 30 days after the date of enactment of this Act and apply to payments made on or after that effective date. 2 USC 1981 note.

SEC. 3. GENERAL COUNSEL TO THE CHIEF OF POLICE AND THE UNITED STATES CAPITOL POLICE.

(a) APPOINTMENT AND SERVICE.—

2 USC 1911.

(1) IN GENERAL.—There shall be within the United States Capitol Police the General Counsel to the Chief of Police and the United States Capitol Police (in this subsection referred to as the “General Counsel”), who shall report to and serve at the pleasure of the Chief of the United States Capitol Police.

(2) APPOINTMENT.—The General Counsel shall be appointed by the Chief of the Capitol Police in accordance with section 1018(e)(1) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907(e)(1)) (as amended by section 2(a)(4)), after consultation with the Capitol Police Board, without regard to political affiliation and solely on the basis of fitness to perform the duties of the position.

(3) COMPENSATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the annual rate of pay for the General Counsel shall be fixed by the Chief of the Capitol Police.

(B) LIMITATION.—The annual rate of pay for the General Counsel may not exceed an annual rate equal to \$1,000 less than the annual rate of pay in effect for the Chief of the Capitol Police.

Repeal.

(4) **TECHNICAL AND CONFORMING AMENDMENT.**—House Resolution 661, Ninety-fifth Congress, agreed to July 29, 1977, as enacted into permanent law by section 111 of the Legislative Branch Appropriation Act, 1979 (2 U.S.C. 1901 note) is repealed.

2 USC 84-2.

(5) **NO EFFECT ON CURRENT GENERAL COUNSEL.**—Nothing in this subsection or the amendments made by this subsection may be construed to affect the status of the individual serving as the General Counsel to the Chief of Police and the United States Capitol Police as of the date of the enactment of this Act.

(b) **LEGAL REPRESENTATION AUTHORITY.**—

(1) **IN GENERAL.**—Section 1002(a)(2)(A) of the Legislative Branch Appropriations Act, 2004 (2 U.S.C. 1908(a)(2)(A)) is amended by striking “the General Counsel for the United States Capitol Police Board and the Chief of the Capitol Police” and inserting “the General Counsel to the Chief of Police and the United States Capitol Police”.

2 USC 1908 note.

(2) **NO EFFECT ON CURRENT PROCEEDINGS.**—Nothing in the amendment made by paragraph (1) may be construed to affect the authority of any individual to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof which is initiated prior to the date of the enactment of this Act.

SEC. 4. EMPLOYMENT COUNSEL TO THE CHIEF OF POLICE AND THE UNITED STATES CAPITOL POLICE.

(a) **LEGAL REPRESENTATION AUTHORITY.**—

(1) **IN GENERAL.**—Section 1002(a)(2)(B) of the Legislative Branch Appropriations Act, 2004 (2 U.S.C. 1908(a)(2)(B)) is amended by striking “the Employment Counsel for the United States Capitol Police Board and the United States Capitol Police” and inserting “the Employment Counsel to the Chief of Police and the United States Capitol Police”.

2 USC 1908 note.

(2) **NO EFFECT ON CURRENT PROCEEDINGS.**—Nothing in the amendment made by paragraph (1) may be construed to affect the authority of any individual to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof which is initiated prior to the date of the enactment of this Act.

2 USC 1908 note.

(b) **NO EFFECT ON CURRENT EMPLOYMENT COUNSEL.**—Nothing in this section or the amendments made by this section may be construed to affect the status of the individual serving as the Employment Counsel to the Chief of Police and the United States Capitol Police as of the date of the enactment of this Act.

2 USC 1933.

SEC. 5. CLARIFICATION OF AUTHORITIES REGARDING CERTAIN PERSONNEL BENEFITS.

(a) **NO LUMP-SUM PAYMENT PERMITTED FOR UNUSED COMPENSATORY TIME.**—

(1) **IN GENERAL.**—No officer or employee of the United States Capitol Police whose service with the United States Capitol Police is terminated may receive any lump-sum payment with respect to accrued compensatory time off, except to the extent permitted under section 203(c)(4) of the Congressional Accountability Act of 1995 (2 U.S.C. 1313(c)(4)).

(2) **REPEAL OF RELATED OBSOLETE PROVISIONS.**—

(A) OVERTIME PAY DISBURSED BY HOUSE.—Section 3 of House Resolution 449, Ninety-second Congress, agreed to June 2, 1971, as enacted into permanent law by chapter IV of the Supplemental Appropriations Act, 1972 (85 Stat. 636) (2 U.S.C. 1924), together with any other provision of law which relates to compensatory time for the Capitol Police which is codified at section 1924 of title 2, United States Code (2000 Editions, Supp. V), is repealed.

(B) OVERTIME PAY DISBURSED BY SENATE.—The last full paragraph under the heading “Administrative Provisions” in the appropriation for the Senate in the Legislative Branch Appropriations Act, 1972 (85 Stat. 130) (2 U.S.C. 1925) is repealed.

(b) OVERTIME COMPENSATION FOR OFFICERS AND EMPLOYEES EXEMPT FROM FAIR LABOR STANDARDS ACT OF 1938.—

(1) CRITERIA UNDER WHICH COMPENSATION PERMITTED.—

The Chief of the Capitol Police may provide for the compensation of overtime work of exempt individuals which is performed on or after the date of the enactment of this Act, in the form of additional pay or compensatory time off, only if—

(A) the overtime work is carried out in connection with special circumstances, as determined by the Chief;

(B) the Chief has established a monetary value for the overtime work performed by such individual; and

(C) the sum of the total amount of the compensation paid to the individual for the overtime work (as determined on the basis of the monetary value established under subparagraph (B)) and the total regular compensation paid to the individual with respect to the pay period involved may not exceed an amount equal to the cap on the aggregate amount of annual compensation that may be paid to the individual under applicable law during the year in which the pay period occurs, as allocated on a per pay period basis consistent with premium pay regulations of the Capitol Police Board.

(2) EXEMPT INDIVIDUALS DEFINED.—In this subsection, an “exempt individual” is an officer or employee of the United States Capitol Police—

(A) who is classified under regulations issued pursuant to section 203 of the Congressional Accountability Act of 1995 (2 U.S.C. 1313) as exempt from the application of the rights and protections established by subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (a)(1) and (d), 207, 212(c)); or

(B) whose annual rate of pay is not established specifically under any law.

(3) CONFORMING AMENDMENT.—

(A) IN GENERAL.—Section 1009 of the Legislative Branch Appropriations Act, 2003 (Public Law 108-7; 117 Stat. 359) is repealed.

Repeal.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of the Legislative Branch Appropriations Act, 2003, except that the amendment shall not apply with respect to any overtime work performed prior to the date of the enactment of this Act.

SEC. 6. OTHER MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) **REPEAL OF OBSOLETE PROCEDURES FOR INITIAL APPOINTMENT OF CHIEF ADMINISTRATIVE OFFICER.**—Section 108 of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1903) is amended by striking subsections (d) through (g).

(b) **REPEAL OF REQUIREMENT THAT OFFICERS PURCHASE OWN UNIFORMS.**—Section 1825 of the Revised Statutes of the United States (2 U.S.C. 1943) is repealed.

(c) **REPEAL OF REFERENCES TO OFFICERS AND PRIVATES IN AUTHORITIES RELATING TO HOUSE AND SENATE OFFICE BUILDINGS.**—

(1) **HOUSE OFFICE BUILDINGS.**—The item relating to “House of Representatives Office Building” in the Act entitled “An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and eight, and for other purposes”, approved March 4, 1907 (34 Stat. 1365; 2 U.S.C. 2001), is amended by striking “other than officers and privates of the Capitol police” each place it appears and inserting “other than the United States Capitol Police”.

(2) **SENATE OFFICE BUILDINGS.**—The item relating to “Senate Office Building” in the Legislative Branch Appropriation Act, 1943 (56 Stat. 343; 2 U.S.C. 2023) is amended by striking “other than for officers and privates of the Capitol Police” each place it appears and inserting “other than for the United States Capitol Police”.

2 USC 1901 note.

(d) **CLARIFICATION OF APPLICABILITY OF U.S. CAPITOL POLICE AND LIBRARY OF CONGRESS POLICE MERGER IMPLEMENTATION ACT OF 2007.**—

(1) **REPEAL OF DUPLICATE PROVISIONS.**—Effective as if included in the enactment of the Legislative Branch Appropriations Act, 2008 (Public Law 110-161), section 1004 of such Act is repealed, and any provision of law amended or repealed by such section is restored or revived to read as if such section had not been enacted into law.

(2) **NO EFFECT ON OTHER ACT.**—Nothing in paragraph (1) may be construed to prevent the enactment or implementation of any provision of the U.S. Capitol Police and Library of Congress Police Merger Implementation Act of 2007 (Public Law 110-178), including any provision of such Act that amends or repeals a provision of law which is restored or revived pursuant to paragraph (1).

(e) **AUTHORITY OF CHIEF OF POLICE.**—

(1) **REPEAL OF CERTAIN PROVISIONS CODIFIED IN TITLE 2, UNITED STATES CODE.**—The provisions appearing in the first paragraph under the heading “Capitol Police” in the Act of April 28, 1902 (ch. 594; 32 Stat. 124), and the provisions appearing in the first paragraph under the heading “Capitol Police” in title I of the Legislative and Judiciary Appropriation Act, 1944 (ch. 173; 57 Stat. 230), insofar as all of those provisions are related to the sentence “The captain and lieutenants shall be selected jointly by the Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives; and one-half of the privates shall be selected by the Sergeant at Arms of the Senate and one-half by the Sergeant at Arms of the House of Representatives.”, which appears in 2 U.S.C. 1901 (2000 Edition, Supp. V), are repealed.

(2) **RESTORATION OF REPEALED PROVISION.**—Section 1018(h)(1) of the Legislative Branch Appropriations Act, 2003 (Public Law 108-7, div. H, title I, 117 Stat. 368) is repealed, and the sentence “The Capitol Police shall be headed by a Chief who shall be appointed by the Capitol Police Board and shall serve at the pleasure of the Board.”, which was repealed by such section, is restored to appear at the end of section 1821 of the Revised Statutes of the United States (2 U.S.C. 1901). 2 USC 1901.

(3) **CONFORMING AMENDMENT.**—The first sentence of section 1821 of the Revised Statutes of the United States (2 U.S.C. 1901) is amended by striking “, the members of which shall be appointed by the Sergeants-at-Arms of the two Houses and the Architect of the Capitol Extension”.

(4) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect as if included in the enactment of the Legislative Branch Appropriations Act, 2003. 2 USC 1901 note.

SEC. 7. TREATMENT OF CAPITOL POLICE EMPLOYEES AS CONGRESSIONAL EMPLOYEES.

(a) **DEFINITION OF CONGRESSIONAL EMPLOYEE.**—Section 2107(4) of title 5, United States Code, is amended by inserting “or employee” after “member”.

(b) **DUAL PAY AND DUAL EMPLOYMENT.**—

(1) **DEFINITION OF AGENCY IN THE LEGISLATIVE BRANCH.**—Section 5531(4) of title 5, United States Code, is amended by striking “and the Congressional Budget Office” and inserting “the Congressional Budget Office, and the United States Capitol Police”.

(2) **DUAL PAY.**—Section 5533 of title 5, United States Code, is amended—

(A) in subsection (c)—

(i) in paragraph (1), by striking “or the Chief Administrative Officer of the House of Representatives” and inserting “, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police”; and

(ii) in paragraph (2), by inserting “or the Chief of the Capitol Police” after “House of Representatives”; and

(B) in subsection (d)(5)(A), by striking “or the Chief Administrative Officer of the House of Representatives” and inserting “, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police”.

(c) **FEEES FOR JURY AND WITNESS SERVICE.**—

(1) **CREDITING AMOUNTS RECEIVED.**—Section 5515 of title 5, United States Code, is amended by striking “or the Chief Administrative Officer of the House of Representatives” and inserting “, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police”.

(2) **FEEES FOR SERVICE.**—Section 5537(a) of title 5, United States Code, is amended by striking “or the Chief Administrative Officer of the House of Representatives” and inserting “, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police”.

5 USC 2107 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as though enacted as part of section 1018 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907).

2 USC 61f-14.

SEC. 8. LAW ENFORCEMENT AUTHORITY OF SERGEANT-AT-ARMS AND DOORKEEPER OF THE SENATE.

(a) **IN GENERAL.**—The Sergeant-at-Arms and Doorkeeper of the Senate shall have the same law enforcement authority, including the authority to carry firearms, as a member of the Capitol Police. The law enforcement authority under the preceding sentence shall be subject to the requirement that the Sergeant-at-Arms and Doorkeeper of the Senate have the qualifications specified in subsection (b).

(b) **QUALIFICATIONS.**—The qualifications referred to in subsection (a) are the following:

(1) A minimum of 5 years of experience as a law enforcement officer before beginning service as the Sergeant-at-Arms and Doorkeeper of the Senate.

(2) Current certification in the use of firearms by the appropriate Federal law enforcement entity or an equivalent non-Federal entity.

(3) Any other firearms qualification required for members of the Capitol Police.

(c) **REGULATIONS.**—The Committee on Rules and Administration of the Senate shall have authority to prescribe regulations to carry out this section.

Travel Promotion
Act of 2009.
22 USC 2131.

SEC. 9. TRAVEL PROMOTION ACT OF 2009.

(a) **SHORT TITLE.**—This section may be cited as the “Travel Promotion Act of 2009”.

(b) **THE CORPORATION FOR TRAVEL PROMOTION.**—

(1) **ESTABLISHMENT.**—The Corporation for Travel Promotion is established as a nonprofit corporation. The Corporation shall not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29-1001 et seq.), to the extent that such provisions are consistent with this subsection, and shall have the powers conferred upon a nonprofit corporation by that Act to carry out its purposes and activities.

(2) **BOARD OF DIRECTORS.**—

(A) **IN GENERAL.**—The Corporation shall have a board of directors of 11 members with knowledge of international travel promotion and marketing, broadly representing various regions of the United States, who are United States citizens. Members of the board shall be appointed by the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State), as follows:

(i) 1 shall have appropriate expertise and experience in the hotel accommodations sector;

(ii) 1 shall have appropriate expertise and experience in the restaurant sector;

(iii) 1 shall have appropriate expertise and experience in the small business or retail sector or in associations representing that sector;

(iv) 1 shall have appropriate expertise and experience in the travel distribution services sector;

Appointment.

(v) 1 shall have appropriate expertise and experience in the attractions or recreations sector;

(vi) 1 shall have appropriate expertise and experience as officials of a city convention and visitors' bureau;

(vii) 2 shall have appropriate expertise and experience as officials of a State tourism office;

(viii) 1 shall have appropriate expertise and experience in the passenger air sector;

(ix) 1 shall have appropriate expertise and experience in immigration law and policy, including visa requirements and United States entry procedures; and

(x) 1 shall have appropriate expertise in the inter-city passenger railroad business.

(B) INCORPORATION.—The members of the initial board of directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29–301.01 et seq.).

(C) TERM OF OFFICE.—The term of office of each member of the board appointed by the Secretary shall be 3 years, except that, of the members first appointed—

(i) 3 shall be appointed for terms of 1 year;

(ii) 4 shall be appointed for terms of 2 years; and

(iii) 4 shall be appointed for terms of 3 years.

(D) REMOVAL FOR CAUSE.—The Secretary of Commerce may remove any member of the board for good cause.

(E) VACANCIES.—Any vacancy in the board shall not affect its power, but shall be filled in the manner required by this subsection. Any member whose term has expired may serve until the member's successor has taken office, or until the end of the calendar year in which the member's term has expired, whichever is earlier. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall be appointed for the remainder of the predecessor's term. No member of the board shall be eligible to serve more than 2 consecutive full 3-year terms.

(F) ELECTION OF CHAIRMAN AND VICE CHAIRMAN.—Deadline. Members of the board shall annually elect one of the members to be Chairman and elect 1 or 2 of the members as Vice Chairman or Vice Chairmen.

(G) STATUS AS FEDERAL EMPLOYEES.—Notwithstanding any provision of law to the contrary, no member of the board may be considered to be a Federal employee of the United States by virtue of his or her service as a member of the board.

(H) COMPENSATION; EXPENSES.—No member shall receive any compensation from the Federal government for serving on the Board. Each member of the Board shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5, United States Code.

(3) OFFICERS AND EMPLOYEES.—

(A) IN GENERAL.—The Corporation shall have an executive director and such other officers as may be named and appointed by the board for terms and at rates of compensation fixed by the board. No individual other than a citizen of the United States may be an officer of the Corporation. The Corporation may hire and fix the compensation of such employees as may be necessary to carry out its purposes. No officer or employee of the Corporation may receive any salary or other compensation (except for compensation for services on boards of directors of other organizations that do not receive funds from the Corporation, on committees of such boards, and in similar activities for such organizations) from any sources other than the Corporation for services rendered during the period of his or her employment by the Corporation. Service by any officer on boards of directors of other organizations, on committees of such boards, and in similar activities for such organizations shall be subject to annual advance approval by the board and subject to the provisions of the Corporation's Statement of Ethical Conduct. All officers and employees shall serve at the pleasure of the board.

(B) NONPOLITICAL NATURE OF APPOINTMENT.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, or employees of the Corporation.

(4) NONPROFIT AND NONPOLITICAL NATURE OF CORPORATION.—

(A) STOCK.—The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(B) PROFIT.—No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(C) POLITICS.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(D) SENSE OF CONGRESS REGARDING LOBBYING ACTIVITIES.—It is the sense of Congress that the Corporation should not engage in lobbying activities (as defined in section 3(7) of the Lobbying Disclosure Act of 1995 (5 U.S.C. 1602(7))).

(5) DUTIES AND POWERS.—

(A) IN GENERAL.—The Corporation shall develop and execute a plan—

(i) to provide useful information to foreign tourists, business people, students, scholars, scientists, and others interested in traveling to the United States, including the distribution of material provided by the Federal government concerning entry requirements, required documentation, fees, processes, and information concerning declared public health emergencies, to prospective travelers, travel agents, tour operators, meeting planners, foreign governments, travel media and other international stakeholders;

Plan.

(ii) to identify, counter, and correct misperceptions regarding United States entry policies around the world;

(iii) to maximize the economic and diplomatic benefits of travel to the United States by promoting the United States of America to world travelers through the use of, but not limited to, all forms of advertising, outreach to trade shows, and other appropriate promotional activities;

(iv) to ensure that international travel benefits all States and the District of Columbia and to identify opportunities and strategies to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers; and

(v) to give priority to the Corporation's efforts with respect to countries and populations most likely to travel to the United States.

(B) SPECIFIC POWERS.—In order to carry out the purposes of this subsection, the Corporation may—

(i) obtain grants from and make contracts with individuals and private companies, State, and Federal agencies, organizations, and institutions;

(ii) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out its purposes; and

(iii) take such other actions as may be necessary to accomplish the purposes set forth in this subsection.

(C) PUBLIC OUTREACH AND INFORMATION.—The Corporation shall develop and maintain a publicly accessible website.

Web site.

(6) OPEN MEETINGS.—Meetings of the board of directors of the Corporation, including any committee of the board, shall be open to the public. The board may, by majority vote, close any such meeting only for the time necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting the Corporation, including pending or potential litigation.

(7) MAJOR CAMPAIGNS.—The board may not authorize the Corporation to obligate or expend more than \$25,000,000 on any advertising campaign, promotion, or related effort unless—

(A) the obligation or expenditure is approved by an affirmative vote of at least 2/3 of the members of the board present at the meeting;

(B) at least 6 members of the board are present at the meeting at which it is approved; and

(C) each member of the board has been given at least 3 days advance notice of the meeting at which the vote is to be taken and the matters to be voted upon at that meeting.

(8) FISCAL ACCOUNTABILITY.—

(A) FISCAL YEAR.—The Corporation shall establish as its fiscal year the 12-month period beginning on October 1.

(B) BUDGET.—The Corporation shall adopt a budget for each fiscal year.

(C) ANNUAL AUDITS.—The Corporation shall engage an independent accounting firm to conduct an annual financial audit of the Corporation's operations and shall publish the results of the audit. The Comptroller General of the United States may review any audit of a financial statement conducted under this paragraph by an independent accounting firm and may audit the Corporation's operations at the discretion of the Comptroller General. The Comptroller General and the Congress shall have full and complete access to the books and records of the Corporation.

Deadlines.
Review.

(D) PROGRAM AUDITS.—Not later than 2 years after the date of enactment of this section, the Comptroller General shall conduct a review of the programmatic activities of the Corporation for Travel Promotion. This report shall be provided to appropriate congressional committees.

Deadlines.

(c) ACCOUNTABILITY MEASURES.—

Marketing plan.

(1) OBJECTIVES.—The Board shall establish annual objectives for the Corporation for each fiscal year subject to approval by the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State). The Corporation shall establish a marketing plan for each fiscal year not less than 60 days before the beginning of that year and provide a copy of the plan, and any revisions thereof, to the Secretary.

Public
information.
Web posting.

(2) BUDGET.—The board shall transmit a copy of the Corporation's budget for the forthcoming fiscal year to the Secretary not less than 60 days before the beginning of each fiscal year, together with an explanation of any expenditure provided for by the budget in excess of \$5,000,000 for the fiscal year. The Corporation shall make a copy of the budget and the explanation available to the public and shall provide public access to the budget and explanation on the Corporation's website.

(3) ANNUAL REPORT TO CONGRESS.—The Corporation shall submit an annual report for the preceding fiscal year to the Secretary of Commerce for transmittal to the Congress on or before the 15th day of May of each year. The report shall include—

(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this section;

(B) a comprehensive and detailed inventory of amounts obligated or expended by the Corporation during the preceding fiscal year;

(C) a detailed description of each in-kind contribution, its fair market value, the individual or organization responsible for contributing, its specific use, and a justification for its use within the context of the Corporation's mission;

(D) an objective and quantifiable measurement of its progress, on an objective-by-objective basis, in meeting the objectives established by the board;

(E) an explanation of the reason for any failure to achieve an objective established by the board and any revisions or alterations to the Corporation's objectives under paragraph (1);

(F) a comprehensive and detailed report of the Corporation's operations and activities to promote tourism in rural and urban areas; and

(G) such recommendations as the Corporation deems appropriate.

(4) LIMITATION ON USE OF FUNDS.—Amounts deposited in the Fund may not be used for any purpose inconsistent with carrying out the objectives, budget, and report described in this subsection.

(d) MATCHING PUBLIC AND PRIVATE FUNDING.—

(1) ESTABLISHMENT OF TRAVEL PROMOTION FUND.—There is hereby established in the Treasury a fund which shall be known as the Travel Promotion Fund.

(2) FUNDING.—

Deadlines.

(A) START-UP EXPENSES.—For fiscal year 2010, the Secretary of the Treasury shall make available to the Corporation such sums as may be necessary, but not to exceed \$10,000,000, from amounts deposited in the general fund of the Treasury from fees under section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)(i)(I)) to cover the Corporation's initial expenses and activities under this section. Transfers shall be made at least quarterly, beginning on January 1, 2010, on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the amounts required to be transferred.

Effective date.

(B) SUBSEQUENT YEARS.—For each of fiscal years 2011 through 2014, from amounts deposited in the general fund of the Treasury during the preceding fiscal year from fees under section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)(i)(I)), the Secretary of the Treasury shall transfer not more than \$100,000,000 to the Fund, which shall be made available to the Corporation, subject to paragraph (3) of this subsection, to carry out its functions under this section. Transfers shall be made at least quarterly on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the amounts required to be transferred.

(3) MATCHING REQUIREMENT.—

(A) IN GENERAL.—No amounts may be made available to the Corporation under this subsection after fiscal year 2010, except to the extent that—

(i) for fiscal year 2011, the Corporation provides matching amounts from non-Federal sources equal in the aggregate to 50 percent or more of the amount transferred to the Fund under paragraph (2); and

(ii) for any fiscal year after fiscal year 2011, the Corporation provides matching amounts from non-Federal sources equal in the aggregate to 100 percent of the amount transferred to the Fund under paragraph (2) for the fiscal year.

(B) GOODS AND SERVICES.—For the purpose of determining the amount received from non-Federal sources by the Corporation, other than money—

(i) the fair market value of goods and services (including advertising) contributed to the Corporation for use under this section may be included in the determination; but

(ii) the fair market value of such goods and services may not account for more than 80 percent of the matching requirement under subparagraph (A) for the Corporation in any fiscal year.

(C) RIGHT OF REFUSAL.—The Corporation may decline to accept any contribution in-kind that it determines to be inappropriate, not useful, or commercially worthless.

(D) LIMITATION.—The Corporation may not obligate or expend funds in excess of the total amount received by the Corporation for a fiscal year from Federal and non-Federal sources.

(4) CARRYFORWARD.—

(A) FEDERAL FUNDS.—Amounts transferred to the Fund under paragraph (2)(B) shall remain available until expended.

(B) MATCHING FUNDS.—Any amount received by the Corporation from non-Federal sources in fiscal year 2010, 2011, 2012, 2013, or 2014 that cannot be used to meet the matching requirement under paragraph (3)(A) for the fiscal year in which amount was collected may be carried forward and treated as having been received in the succeeding fiscal year for purposes of meeting the matching requirement of paragraph (3)(A) in such succeeding fiscal year.

(e) TRAVEL PROMOTION FUND FEES.—Section 217(h)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)) is amended to read as follows:

“(B) FEES.—

Deadline.

“(i) IN GENERAL.—No later than 6 months after the date of enactment of the Travel Promotion Act of 2009, the Secretary of Homeland Security shall establish a fee for the use of the System and begin assessment and collection of that fee. The initial fee shall be the sum of—

“(I) \$10 per travel authorization; and

“(II) an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary.

“(ii) DISPOSITION OF AMOUNTS COLLECTED.—Amounts collected under clause (i)(I) shall be credited to the Travel Promotion Fund established by subsection (d) of section 11 of the Travel Promotion Act of 2009. Amounts collected under clause (i)(II) shall be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer the System.

“(iii) SUNSET OF TRAVEL PROMOTION FUND FEE.—The Secretary may not collect the fee authorized by clause (i)(I) for fiscal years beginning after September 30, 2014.”.

(f) ASSESSMENT AUTHORITY.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the Corporation may impose an annual assessment on United States members of the international travel and tourism industry (other than those described in subsection (b)(2)(A)(iii) or (H)) represented on the Board in proportion to their share of the aggregate international travel and tourism revenue of the industry. The Corporation shall be responsible for verifying, implementing, and collecting the assessment authorized by this subsection.

(2) INITIAL ASSESSMENT LIMITED.—The Corporation may establish the initial assessment after the date of enactment of this section at no greater, in the aggregate, than \$20,000,000.

(3) REFERENDA.—

(A) IN GENERAL.—The Corporation may not impose an annual assessment unless—

(i) the Corporation submits the proposed annual assessment to members of the industry in a referendum; and

(ii) the assessment is approved by a majority of those voting in the referendum.

(B) PROCEDURAL REQUIREMENTS.—In conducting a referendum under this paragraph, the Corporation shall—

Notice.
Deadline.

(i) provide written or electronic notice not less than 60 days before the date of the referendum;

(ii) describe the proposed assessment or increase and explain the reasons for the referendum in the notice; and

(iii) determine the results of the referendum on the basis of weighted voting apportioned according to each business entity's relative share of the aggregate annual United States international travel and tourism revenue for the industry per business entity, treating all related entities as a single entity.

(4) COLLECTION.—

(A) IN GENERAL.—The Corporation shall establish a means of collecting the assessment that it finds to be efficient and effective. The Corporation may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Corporation any amount assessed by the Corporation under this section.

(B) ENFORCEMENT.—The Corporation may bring suit in Federal court to compel compliance with an assessment levied by the Corporation under this section.

(5) INVESTMENT OF FUNDS.—Pending disbursement pursuant to a program, plan, or project, the Corporation may invest funds collected through assessments, and any other funds received by the Corporation, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(g) OFFICE OF TRAVEL PROMOTION.—Title II of the International Travel Act of 1961 (22 U.S.C. 2121 et seq.) is amended by inserting after section 201 the following:

22 USC 2123.

“SEC. 202. OFFICE OF TRAVEL PROMOTION.

“(a) OFFICE ESTABLISHED.—There is established within the Department of Commerce an office to be known as the Office of Travel Promotion.

“(b) DIRECTOR.—

“(1) APPOINTMENT.—The Office shall be headed by a Director who shall be appointed by the Secretary.

“(2) QUALIFICATIONS.—The Director shall be a citizen of the United States and have experience in a field directly related to the promotion of travel to and within the United States.

“(3) DUTIES.—The Director shall be responsible for ensuring the office is carrying out its functions effectively and shall report to the Secretary.

“(c) FUNCTIONS.—The Office shall—

“(1) serve as liaison to the Corporation for Travel Promotion established by subsection (b) of section 11 of the Travel Promotion Act of 2009 and support and encourage the development of programs to increase the number of international visitors to the United States for business, leisure, educational, medical, exchange, and other purposes;

“(2) work with the Corporation, the Secretary of State and the Secretary of Homeland Security—

“(A) to disseminate information more effectively to potential international visitors about documentation and procedures required for admission to the United States as a visitor;

“(B) to ensure that arriving international visitors are generally welcomed with accurate information and in an inviting manner;

“(C) to collect accurate data on the total number of international visitors that visit each State; and

“(D) enhance the entry and departure experience for international visitors through the use of advertising, signage, and customer service; and

“(3) support State, regional, and private sector initiatives to promote travel to and within the United States.

“(d) REPORTS TO CONGRESS.—Within a year after the date of enactment of the Travel Promotion Act of 2009, and periodically thereafter as appropriate, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on Foreign Relations, the House of Representatives Committee on Energy and Commerce, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on Foreign Affairs describing the Office’s work with the Corporation, the Secretary of State and the Secretary of Homeland Security to carry out subsection (c)(2).”.

(h) RESEARCH PROGRAM.—Title II of the International Travel Act of 1961 (22 U.S.C. 2121 et seq.), as amended by subsection (g), is further amended by inserting after section 202 the following:

22 USC 2123a.

“SEC. 203. RESEARCH PROGRAM.

“(a) IN GENERAL.—The Office of Travel and Tourism Industries shall expand and continue its research and development activities in connection with the promotion of international travel to the United States, including—

“(1) expanding access to the official Mexican travel surveys data to provide the States with traveler characteristics and visitation estimates for targeted marketing programs;

“(2) expanding the number of inbound air travelers sampled by the Commerce Department’s Survey of International Travelers to reach a 1 percent sample size and revising the design and format of questionnaires to accommodate a new survey instrument, improve response rates to at least double the number of States and cities with reliable international visitor estimates and improve market coverage;

“(3) developing estimates of international travel exports (expenditures) on a State-by-State basis to enable each State to compare its comparative position to national totals and other States;

“(4) evaluate the success of the Corporation in achieving its objectives and carrying out the purposes of the Travel Promotion Act of 2009; and

“(5) research to support the annual reports required by section 202(d) of this Act.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for fiscal years 2010 through 2014 such sums as may be necessary to carry out this section.”.

Approved March 4, 2010.

LEGISLATIVE HISTORY—H.R. 1299:

HOUSE REPORTS: No. 111–66 (Comm. on House Administration).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Mar. 31, considered and passed House.

Oct. 29, considered and passed Senate, amended.

Nov. 6, House concurred in Senate amendment with an amendment pursuant to H. Res. 896.

Vol. 156 (2010): Feb. 24, 25, Senate considered and concurred in House amendment.



Public Law 111–146
111th Congress

An Act

Mar. 17, 2010
[S. 2968]

Trademark
Technical and
Conforming
Amendment Act
of 2010.
15 USC 1051
note.

To make certain technical and conforming amendments to the Lanham Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Trademark Technical and Conforming Amendment Act of 2010.”.

SEC. 2. DEFINITION.

For purposes of this Act, the term “Trademark Act of 1946” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Lanham Act”; 15 U.S.C. 1051 et. seq).

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) **CERTIFICATES OF REGISTRATION.**—Section 7 of the Trademark Act of 1946 (15 U.S.C. 1057) is amended—

(1) by inserting “United States” before “Patent and Trademark Office” each place that term appears;

(2) in subsection (b), by striking “registrant’s” each place that appears and inserting “owner’s”;

(3) in subsection (e)—

(A) by striking “registrant” each place that term appears and inserting “owner”; and

(B) in the third sentence, by striking “or, if said certificate is lost or destroyed, upon a certified copy thereof”; and

(4) by amending subsection (g) to read as follows:

Certification.

“(g) **CORRECTION OF PATENT AND TRADEMARK OFFICE MISTAKE.**—Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the United States Patent and Trademark Office and the registrations to which they are attached shall

have the same force and effect as if such certificates and their issue had been specifically authorized by statute.”

(b) INCONTESTABILITY OF RIGHT TO USE MARK UNDER CERTAIN CONDITIONS.—Section 15 of the Trademark Act of 1946 (15 U.S.C. 1065) is amended—

(1) by striking “right of the registrant” and inserting “right of the owner”;

(2) by amending paragraph (1) to read as follows:

“(1) there has been no final decision adverse to the owner’s claim of ownership of such mark for such goods or services, or to the owner’s right to register the same or to keep the same on the register; and”;

(3) in paragraph (2), by inserting “United States” before “Patent and Trademark Office”.

(c) APPEAL TO COURTS.—Section 21 of the Trademark Act of 1946 (15 U.S.C. 1071) is amended—

(1) by inserting “United States” before “Patent and Trademark Office” each place that term appears;

(2) in subsection (a)(1), by inserting “or section 71” after “section 8”; and

(3) in subsection (b)(4), by striking “If there be” and inserting “If there are”.

(d) CONFORMING REQUIREMENTS FOR AFFIDAVITS.—

(1) DURATION, AFFIDAVITS AND FEES.—Section 8 of the Trademark Act of 1946 (15 U.S.C. 1058) is amended to read as follows:

“SEC. 8. DURATION, AFFIDAVITS AND FEES.

“(a) TIME PERIODS FOR REQUIRED AFFIDAVITS.—Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

“(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of registration under this Act or the date of the publication under section 12(c).

“(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of registration, and each successive 10-year period following the date of registration.

“(3) The owner may file the affidavit required under this section within the 6-month grace period immediately following the expiration of the periods established in paragraphs (1) and (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

“(b) REQUIREMENTS FOR AFFIDAVIT.—The affidavit referred to in subsection (a) shall—

“(1)(A) state that the mark is in use in commerce;

“(B) set forth the goods and services recited in the registration on or in connection with which the mark is in use in commerce;

“(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

“(D) be accompanied by the fee prescribed by the Director;

or

“(2)(A) set forth the goods and services recited in the registration on or in connection with which the mark is not in use in commerce;

“(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

“(C) be accompanied by the fee prescribed by the Director.

“(c) DEFICIENT AFFIDAVIT.—If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the owner of the registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

“(d) NOTICE OF REQUIREMENT.—Special notice of the requirement for such affidavit shall be attached to each certificate of registration and notice of publication under section 12(c).

“(e) NOTIFICATION OF ACCEPTANCE OR REFUSAL.—The Director shall notify any owner who files any affidavit required by this section of the Director’s acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

“(f) DESIGNATION OF RESIDENT FOR SERVICE OF PROCESS AND NOTICES.—If the owner is not domiciled in the United States, the owner may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the owner does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.”

(2) AFFIDAVITS AND FEES.—Section 71 of the Trademark Act of 1946 (15 U.S.C. 1141k) is amended to read as follows:

“SEC. 71. DURATION, AFFIDAVITS AND FEES.

“(a) TIME PERIODS FOR REQUIRED AFFIDAVITS.—Each extension of protection for which a certificate has been issued under section 69 shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director unless the holder of the international registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

“(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of issuance of the certificate of extension of protection.

“(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of issuance of the certificate of extension of protection, and each successive 10-year period following the date of issuance of the certificate of extension of protection.

“(3) The holder may file the affidavit required under this section within a grace period of 6 months after the end of the applicable time period established in paragraph (1) or (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

“(b) REQUIREMENTS FOR AFFIDAVIT.—The affidavit referred to in subsection (a) shall—

“(1)(A) state that the mark is in use in commerce;

“(B) set forth the goods and services recited in the extension of protection on or in connection with which the mark is in use in commerce;

“(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

“(D) be accompanied by the fee prescribed by the Director;

or

“(2)(A) set forth the goods and services recited in the extension of protection on or in connection with which the mark is not in use in commerce;

“(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

“(C) be accompanied by the fee prescribed by the Director.

“(c) DEFICIENT AFFIDAVIT.—If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the holder of the international registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

“(d) NOTICE OF REQUIREMENT.—Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

“(e) NOTIFICATION OF ACCEPTANCE OR REFUSAL.—The Director shall notify the holder of the international registration who files any affidavit required by this section of the Director’s acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

“(f) DESIGNATION OF RESIDENT FOR SERVICE OF PROCESS AND NOTICES.—If the holder of the international registration of the mark is not domiciled in the United States, the holder may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.”.

SEC. 4. STUDY AND REPORT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce, in consultation with

the Intellectual Property Enforcement Coordinator, shall study and report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on—

(1) the extent to which small businesses may be harmed by litigation tactics by corporations attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner; and

(2) the best use of Federal Government services to protect trademarks and prevent counterfeiting.

(b) RECOMMENDATIONS.—The study and report required under paragraph (1) shall also include any policy recommendations the Secretary of Commerce and the Intellectual Property Enforcement Coordinator deem appropriate.

Approved March 17, 2010.

LEGISLATIVE HISTORY—S. 2968:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 28, considered and passed Senate.

Mar. 3, considered and passed House.



Public Law 111–147
111th Congress

An Act

Making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

Mar. 18, 2010
[H.R. 2847]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

Hiring Incentives
to Restore
Employment Act.

(a) **SHORT TITLE.**—This Act may be cited as the “Hiring Incentives to Restore Employment Act”.

26 USC 1 note.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—INCENTIVES FOR HIRING AND RETAINING UNEMPLOYED WORKERS

Sec. 101. Payroll tax forgiveness for hiring unemployed workers.

Sec. 102. Business credit for retention of certain newly hired individuals in 2010.

TITLE II—EXPENSING

Sec. 201. Increase in expensing of certain depreciable business assets.

TITLE III—QUALIFIED TAX CREDIT BONDS

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Sec. 411. In general.

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Subtitle B—National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, and Additional Programs

Sec. 421. Extension of National Highway Traffic Safety Administration Highway Safety Programs.

Sec. 422. Extension of Federal Motor Carrier Safety Administration Programs.

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Subtitle C—Public Transportation Programs

Sec. 431. Allocation of funds for planning programs.

- Sec. 432. Special rule for urbanized area formula grants.
- Sec. 433. Allocating amounts for capital investment grants.
- Sec. 434. Apportionment of formula grants for other than urbanized areas.
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- Sec. 436. Authorizations for public transportation.
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Subtitle D—Revenue Provisions

- Sec. 441. Repeal of provision prohibiting the crediting of interest to the Highway Trust Fund.
- Sec. 442. Restoration of certain foregone interest to Highway Trust Fund.
- Sec. 443. Treatment of certain amounts appropriated to Highway Trust Fund.
- Sec. 444. Termination of transfers from highway trust fund for certain repayments and credits.
- Sec. 445. Extension of authority for expenditures.
- Sec. 446. Level of obligation limitations.

Subtitle E—Disadvantaged Business Enterprises

- Sec. 451. Disadvantaged business enterprises.

TITLE V—OFFSET PROVISIONS

Subtitle A—Foreign Account Tax Compliance

PART I—INCREASED DISCLOSURE OF BENEFICIAL OWNERS

- Sec. 501. Reporting on certain foreign accounts.
- Sec. 502. Repeal of certain foreign exceptions to registered bond requirements.

PART II—UNDER REPORTING WITH RESPECT TO FOREIGN ASSETS

- Sec. 511. Disclosure of information with respect to foreign financial assets.
- Sec. 512. Penalties for underpayments attributable to undisclosed foreign financial assets.
- Sec. 513. Modification of statute of limitations for significant omission of income in connection with foreign assets.

PART III—OTHER DISCLOSURE PROVISIONS

- Sec. 521. Reporting of activities with respect to passive foreign investment companies.
- Sec. 522. Secretary permitted to require financial institutions to file certain returns related to withholding on foreign transfers electronically.

PART IV—PROVISIONS RELATED TO FOREIGN TRUSTS

- Sec. 531. Clarifications with respect to foreign trusts which are treated as having a United States beneficiary.
- Sec. 532. Presumption that foreign trust has United States beneficiary.
- Sec. 533. Uncompensated use of trust property.
- Sec. 534. Reporting requirement of United States owners of foreign trusts.
- Sec. 535. Minimum penalty with respect to failure to report on certain foreign trusts.

PART V—SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS

- Sec. 541. Substitute dividends and dividend equivalent payments received by foreign persons treated as dividends.

Subtitle B—Delay in Application of Worldwide Allocation of Interest

- Sec. 551. Delay in application of worldwide allocation of interest.

Subtitle C—Budgetary Provisions

- Sec. 561. Time for payment of corporate estimated taxes.
- Sec. 562. PAYGO Compliance.

TITLE I—INCENTIVES FOR HIRING AND RETAINING UNEMPLOYED WORKERS

SEC. 101. PAYROLL TAX FORGIVENESS FOR HIRING UNEMPLOYED WORKERS.

26 USC 3111.

(a) IN GENERAL.—Section 3111 is amended by adding at the end the following new subsection:

“(d) SPECIAL EXEMPTION FOR CERTAIN INDIVIDUALS HIRED IN 2010.—

“(1) IN GENERAL.—Subsection (a) shall not apply to wages paid by a qualified employer with respect to employment during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, of any qualified individual for services performed—

Time period.

“(A) in a trade or business of such qualified employer, or

“(B) in the case of a qualified employer exempt from tax under section 501(a), in furtherance of the activities related to the purpose or function constituting the basis of the employer’s exemption under section 501.

“(2) QUALIFIED EMPLOYER.—For purposes of this subsection—

Definition.

“(A) IN GENERAL.—The term ‘qualified employer’ means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

“(B) TREATMENT OF EMPLOYEES OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.—Notwithstanding subparagraph (A), the term ‘qualified employer’ includes any employer which is a public institution of higher education (as defined in section 101(b) of the Higher Education Act of 1965).

“(3) QUALIFIED INDIVIDUAL.—For purposes of this subsection, the term ‘qualified individual’ means any individual who—

Definition.

“(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

“(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

“(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

“(D) is not an individual described in section 51(i)(1) (applied by substituting ‘qualified employer’ for ‘taxpayer’ each place it appears).

“(4) ELECTION.—A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

“(5) SPECIAL RULE FOR FIRST CALENDAR QUARTER OF 2010.—

“(A) NONAPPLICATION OF EXEMPTION DURING FIRST QUARTER.—Paragraph (1) shall not apply with respect to wages paid during the first calendar quarter of 2010.

“(B) CREDITING OF FIRST QUARTER EXEMPTION DURING SECOND QUARTER.—The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to wages paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.”.

- (b) COORDINATION WITH WORK OPPORTUNITY CREDIT.—Section 51(c) is amended by adding at the end the following new paragraph:
- “ (5) COORDINATION WITH PAYROLL TAX FORGIVENESS.—The term ‘wages’ shall not include any amount paid or incurred to a qualified individual (as defined in section 3111(d)(3)) during the 1-year period beginning on the hiring date of such individual by a qualified employer (as defined in section 3111(d)) unless such qualified employer makes an election not to have section 3111(d) apply.”.
- (c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) amounts equal to the reduction in revenues to the Treasury by reason of the amendments made by subsection (a). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.
- (d) APPLICATION TO RAILROAD RETIREMENT TAXES.—
- (1) IN GENERAL.—Section 3221 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:
- “(c) SPECIAL RATE FOR CERTAIN INDIVIDUALS HIRED IN 2010.—
- “(1) IN GENERAL.—In the case of compensation paid by a qualified employer during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, with respect to having a qualified individual in the employer’s employ for services rendered to such qualified employer, the applicable percentage under subsection (a) shall be equal to the rate of tax in effect under section 3111(b) for the calendar year.
- “(2) QUALIFIED EMPLOYER.—The term ‘qualified employer’ means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.
- “(3) QUALIFIED INDIVIDUAL.—For purposes of this subsection, the term ‘qualified individual’ means any individual who—
- “(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,
- “(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,
- “(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and
- “(D) is not an individual described in section 51(i)(1) (applied by substituting ‘qualified employer’ for ‘taxpayer’ each place it appears).
- “(4) ELECTION.—A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

“(5) SPECIAL RULE FOR FIRST CALENDAR QUARTER OF 2010.—

“(A) NONAPPLICATION OF EXEMPTION DURING FIRST QUARTER.—Paragraph (1) shall not apply with respect to compensation paid during the first calendar quarter of 2010.

“(B) CREDITING OF FIRST QUARTER EXEMPTION DURING SECOND QUARTER.—The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to compensation paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.”.

(2) TRANSFERS TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—There are hereby appropriated to the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of the amendments made by paragraph (1). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Account had such amendments not been enacted.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subsection shall apply to wages paid after the date of the enactment of this Act.

(2) RAILROAD RETIREMENT TAXES.—The amendments made by subsection (d) shall apply to compensation paid after the date of the enactment of this Act.

Applicability.
26 USC 51 note.

SEC. 102. BUSINESS CREDIT FOR RETENTION OF CERTAIN NEWLY HIRED INDIVIDUALS IN 2010.

26 USC 38 note.

(a) IN GENERAL.—In the case of any taxable year ending after the date of the enactment of this Act, the current year business credit determined under section 38(b) of the Internal Revenue Code of 1986 for such taxable year shall be increased, with respect to each retained worker with respect to which subsection (b)(2) is first satisfied during such taxable year, by the lesser of—

(1) \$1,000, or

(2) 6.2 percent of the wages (as defined in section 3401(a)) paid by the taxpayer to such retained worker during the 52 consecutive week period referred to in subsection (b)(2).

(b) RETAINED WORKER.—For purposes of this section, the term “retained worker” means any qualified individual (as defined in section 3111(d)(3) or section 3221(c)(3) of the Internal Revenue Code of 1986)—

Definition.

(1) who was employed by the taxpayer on any date during the taxable year,

(2) who was so employed by the taxpayer for a period of not less than 52 consecutive weeks, and

(3) whose wages (as defined in section 3401(a)) for such employment during the last 26 weeks of such period equaled at least 80 percent of such wages for the first 26 weeks of such period.

(c) **LIMITATION ON CARRYBACKS.**—No portion of the unused business credit under section 38 of the Internal Revenue Code of 1986 for any taxable year which is attributable to the increase in the current year business credit under this section may be carried to a taxable year beginning before the date of the enactment of this section.

(d) **TREATMENT OF POSSESSIONS.**—

(1) **PAYMENTS TO POSSESSIONS.**—

(A) **MIRROR CODE POSSESSIONS.**—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of this section (other than this subsection). Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

Determination.

(B) **OTHER POSSESSIONS.**—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of this section (other than this subsection) if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

Estimate.

Plans.

(2) **COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.**—No increase in the credit determined under section 38(b) of the Internal Revenue Code of 1986 against United States income taxes for any taxable year determined under subsection (a) shall be taken into account with respect to any person—

(A) to whom a credit is allowed against taxes imposed by the possession by reason of this section for such taxable year, or

(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

(3) **DEFINITIONS AND SPECIAL RULES.**—

(A) **POSSESSION OF THE UNITED STATES.**—For purposes of this subsection, the term “possession of the United States” includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) **MIRROR CODE TAX SYSTEM.**—For purposes of this subsection, the term “mirror code tax system” means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

Applicability.

(C) **TREATMENT OF PAYMENTS.**—For purposes of section 1324(b)(2) of title 31, United States Code, rules similar to the rules of section 1001(b)(3)(C) of the American Recovery and Reinvestment Tax Act of 2009 shall apply.

TITLE II—EXPENSING

SEC. 201. INCREASE IN EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) IN GENERAL.—Subsection (b) of section 179 is amended— 26 USC 179.

(1) by striking “(\$125,000 in the case of taxable years beginning after 2006 and before 2011)” in paragraph (1) and inserting “(\$250,000 in the case of taxable years beginning after 2007 and before 2011)”;

(2) by striking “(\$500,000 in the case of taxable years beginning after 2006 and before 2011)” in paragraph (2) and inserting “(\$800,000 in the case of taxable years beginning after 2007 and before 2011)”;

(3) by striking paragraphs (5) and (7), and

(4) by redesignating paragraph (6) as paragraph (5).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009. Applicability. 26 USC 179 note.

TITLE III—QUALIFIED TAX CREDIT BONDS

SEC. 301. ISSUER ALLOWED REFUNDABLE CREDIT FOR CERTAIN QUALIFIED TAX CREDIT BONDS.

(a) CREDIT ALLOWED.—Section 6431 is amended by adding at the end the following new subsection:

“(f) APPLICATION OF SECTION TO CERTAIN QUALIFIED TAX CREDIT BONDS.—

“(1) IN GENERAL.—In the case of any specified tax credit bond—

“(A) such bond shall be treated as a qualified bond for purposes of this section,

“(B) subsection (a) shall be applied without regard to the requirement that the qualified bond be issued before January 1, 2011,

“(C) the amount of the payment determined under subsection (b) with respect to any interest payment due under such bond shall be equal to the lesser of—

“(i) the amount of interest payable under such bond on such date, or

“(ii) the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable credit rate determined under section 54A(b)(3),

“(D) interest on any such bond shall be includible in gross income for purposes of this title,

“(E) no credit shall be allowed under section 54A with respect to such bond,

“(F) any payment made under subsection (b) shall not be includible as income for purposes of this title, and

“(G) the deduction otherwise allowed under this title to the issuer of such bond with respect to interest paid under such bond shall be reduced by the amount of the payment made under this section with respect to such interest.

“(2) SPECIAL RULE FOR NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS.—In the case of any specified tax credit bond described in clause (i) or (ii) of paragraph (3)(A), the amount determined under paragraph (1)(C)(ii) shall be 70 percent of the amount so determined without regard to this paragraph and sections 54C(b) and 54D(b).

“(3) SPECIFIED TAX CREDIT BOND.—For purposes of this subsection, the term ‘specified tax credit bond’ means any qualified tax credit bond (as defined in section 54A(d)) if—

“(A) such bond is—

“(i) a new clean renewable energy bond (as defined in section 54C),

“(ii) a qualified energy conservation bond (as defined in section 54D),

“(iii) a qualified zone academy bond (as defined in section 54E), or

“(iv) a qualified school construction bond (as defined in section 54F), and

“(B) the issuer of such bond makes an irrevocable election to have this subsection apply.”.

(b) TECHNICAL CORRECTIONS RELATING TO QUALIFIED SCHOOL CONSTRUCTION BONDS.—

26 USC 54.

(1) The second sentence of section 54F(d)(1) is amended by striking “by the State” and inserting “by the State education agency (or such other agency as is authorized under State law to make such allocation)”.

(2) The second sentence of section 54F(e) is amended by striking “subsection (d)(4)” and inserting “paragraphs (2) and (4) of subsection (d)”.

(c) EFFECTIVE DATES.—

Applicability.
26 USC 6431
note.

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

26 USC 54F note.

(2) TECHNICAL CORRECTIONS.—The amendments made by subsection (b) shall take effect as if included in section 1521 of the American Recovery and Reinvestment Tax Act of 2009.

Surface
Transportation
Extension Act of
2010.

TITLE IV—EXTENSION OF CURRENT SURFACE TRANSPORTATION PRO- GRAMS

23 USC 101 note.

SEC. 401. SHORT TITLE.

This title may be cited as the “Surface Transportation Extension Act of 2010”.

Subtitle A—Federal-aid Highways

SEC. 411. IN GENERAL.

Incorporation by
reference.
Termination
date.

(a) IN GENERAL.—Except as provided in this Act, requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under titles I, V, and VI of the SAFETEA-LU (119 Stat. 1144), the SAFETEA-LU Technical Corrections Act of 2008

(122 Stat. 1572), titles I and VI of the Intermodal Surface Transportation Act of 1991 (105 Stat. 1914), titles I and V of the Transportation Equity Act for the 21st Century (112 Stat. 107), and title 23, United States Code (excluding chapter 4 of that title), which would otherwise expire on or cease to apply after September 30, 2009, or the date specified in section 106(3) of the Continuing Appropriations Resolution, 2010 (Public Law 111-68), are incorporated by reference and shall continue in effect until December 31, 2010.

(b) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in section 412, there are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account)—

(1) for fiscal year 2010, a sum equal to the total amount authorized to be appropriated out of the Highway Trust Fund for programs, projects, and activities for fiscal year 2009 under titles I, V, and VI of the SAFETEA-LU (119 Stat. 1144), and title 23, United States Code (excluding chapter 4 of that title); and

(2) for the period beginning on October 1, 2010, and ending on December 31, 2010, a sum equal to $\frac{1}{4}$ of the total amount authorized to be appropriated out of the Highway Trust Fund for programs, projects, and activities for fiscal year 2009 under titles I, V, and VI of the SAFETEA-LU (119 Stat. 1144), and title 23, United States Code (excluding chapter 4 of that title).

Time period.

(c) USE OF FUNDS.—

(1) FISCAL YEAR 2010.—Except as otherwise expressly provided in this Act, funds authorized to be appropriated under subsection (b)(1) for fiscal year 2010 shall be distributed, administered, limited, and made available for obligation in the same manner and at the same level as funds authorized to be appropriated out of the Highway Trust Fund for fiscal year 2009 to carry out programs, projects, activities, eligibilities, and requirements under the SAFETEA-LU (119 Stat. 1144), the SAFETEA-LU Technical Corrections Act of 2008 (122 Stat. 1572), titles I and VI of the Intermodal Surface Transportation Act of 1991 (105 Stat. 1914), titles I and V of the Transportation Equity Act for the 21st Century (112 Stat. 107), and title 23, United States Code (excluding chapter 4 of that title).

(2) FISCAL YEAR 2011.—Except as otherwise expressly provided in this Act, funds authorized to be appropriated under subsection (b)(2) for the period beginning on October 1, 2010, and ending on December 31, 2010, shall be distributed, administered, limited, and made available for obligation in the same manner and at the same level as $\frac{1}{4}$ of the total amount of funds authorized to be appropriated out of the Highway Trust Fund for fiscal year 2009 to carry out programs, projects, activities, eligibilities, and requirements under the SAFETEA-LU (119 Stat. 1144), the SAFETEA-LU Technical Corrections Act of 2008 (122 Stat. 1572), titles I and VI of the Intermodal Surface Transportation Act of 1991 (105 Stat. 1914), titles I and V of the Transportation Equity Act for the 21st Century (112 Stat. 107), and title 23, United States Code (excluding chapter 4 of that title).

(3) CALCULATION.—The amounts authorized to be appropriated under subsection (b) shall be calculated without regard to any rescission or cancellation of funds or contract authority

for fiscal year 2009 under the SAFETEA-LU (119 Stat. 1144) or any other law.

(4) CONTRACT AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds authorized to be appropriated under this section shall be available for obligation and shall be administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, and—

Time period.

(i) for fiscal year 2010, shall be subject to a limitation on obligations for Federal-aid highways and highway safety construction programs included in an Act making appropriations for fiscal year 2010 or a portion of that fiscal year; and

(ii) for the period beginning on October 1, 2010, and ending on December 31, 2010, shall be subject to a limitation on obligations included in an Act making appropriations for fiscal year 2011 or a portion of that fiscal year, except that during such period obligations subject to such limitation shall not exceed $\frac{1}{4}$ of the limitation on obligations included in an Act making appropriations for fiscal year 2011.

(B) EXCEPTIONS.—A limitation on obligations described in clause (i) or (ii) of subparagraph (A) shall not apply to any obligation under—

(i) section 125 of title 23, United States Code;

or

(ii) section 105 of title 23, United States Code—

(I) for fiscal year 2010, only in an amount equal to \$639,000,000; and

Time period.

(II) for the period beginning on October 1, 2010, and ending on December 31, 2010, only in an amount equal to \$159,750,000.

(5) CALCULATIONS FOR DISTRIBUTION OF OBLIGATION LIMITATION.—Upon enactment of an Act making appropriations for the Department of Transportation for fiscal year 2011 (other than an Act or resolution making continuing appropriations), the Secretary shall—

(A) as necessary for purposes of making the calculations for the distribution of any obligation limitation under such Act, annualize the amount of contract authority provided under this Act for Federal-aid highways and highway safety construction programs; and

(B) multiply the resulting distribution of any obligation limitation under such Act by $\frac{1}{4}$.

(d) EXTENSION AND FLEXIBILITY FOR CERTAIN ALLOCATED PROGRAMS.—

(1) FISCAL YEAR 2010.—Notwithstanding any other provision of law, for fiscal year 2010, the portion of the share of funds of a State under subsection (b)(1) determined by the amount that the State received or was authorized to receive for fiscal year 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of the SAFETEA-LU (119 Stat. 1198, 1204, 1217, 1256, and 1485), and section 144(f)(1) of title 23, United States Code, shall be—

(A) made available to the State for programs apportioned under sections 104(b) and 144 of title 23, United

States Code, and in the same proportion for each such program that—

(i) the amount apportioned to the State for that program for fiscal year 2009; bears to

(ii) the amount apportioned to the State for fiscal year 2009 for all programs apportioned under such sections of such Code; and

(B) administered in the same manner and with the same period of availability as such funding is administered under programs identified in subparagraph (A), except that no funds may be used to carry out the project described in section 1307(d)(1) of the SAFETEA-LU (119 Stat. 1217; 122 Stat. 1577).

(2) FISCAL YEAR 2011.—Notwithstanding any other provision of law, for the period beginning on October 1, 2010, and ending on December 31, 2010, the portion of the share of funds of a State under subsection (b)(2) determined by $\frac{1}{4}$ of the amount that the State received or was authorized to receive for fiscal year 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of the SAFETEA-LU (119 Stat. 1198, 1204, 1217, 1256, and 1485) and section 144(f)(1) of title 23, United States Code, shall be—

(A) made available to the State for programs apportioned under sections 104(b) and 144 of title 23, United States Code, and in the same proportion for each such program that—

(i) the amount apportioned to the State for that program for fiscal year 2009; bears to

(ii) the amount apportioned to the State for fiscal year 2009 for all programs apportioned under such sections of such Code; and

(B) administered in the same manner and with the same period of availability as such funding is administered under programs identified in subparagraph (A), except that no funds may be used to carry out the project described in section 1307(d)(1) of the SAFETEA-LU (119 Stat. 1217; 122 Stat. 1577).

(3) TERRITORIES AND PUERTO RICO.—

(A) FISCAL YEAR 2010.—Notwithstanding any other provision of law, for fiscal year 2010, the portion of the share of funds of a territory or Puerto Rico under paragraph (b)(1) determined by the amount that the territory or Puerto Rico received or was authorized to receive for fiscal year 2009 to carry out section 1934 of SAFETEA-LU (119 Stat. 1485), shall be—

(i) for a territory, made available and administered in the same manner as funding is made available and administered under section 215 of title 23, United States Code; and

(ii) for Puerto Rico, made available and administered in the same manner as funding is made available and administered under section 165 of title 23, United States Code.

(B) FISCAL YEAR 2011.—Notwithstanding any other provision of law, for the period beginning on October 1, 2010, and ending on December 31, 2010, the portion of the share of funds of a territory or Puerto Rico under

paragraph (b)(2) determined by $\frac{1}{4}$ of the amount that the territory or Puerto Rico received or was authorized to receive for fiscal year 2009 to carry out section 1934 of SAFETEA-LU (119 Stat. 1485), shall be—

(i) for a territory, made available and administered in the same manner as funding is made available and administered under section 215 of title 23, United States Code; and

(ii) for Puerto Rico, made available and administered in the same manner as funding is made available and administered under section 165 of title 23, United States Code.

(C) TERRITORY DEFINED.—In this paragraph, the term “territory” means any of the following territories of the United States: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the United States Virgin Islands.

(4) ADDITIONAL FUNDS.—

Determination.

(A) IN GENERAL.—No additional funds shall be provided for any project or activity under subsection (c), or paragraph (1) or (2) of this subsection, that the Secretary of Transportation determines was sufficiently funded before or during fiscal year 2009 to achieve the authorized purpose of the project or activity.

(B) RESERVATION AND REDISTRIBUTION OF FUNDS.—Funds made available in accordance with paragraph (1) or (2) of subsection (c) or paragraph (1) or (2) of this subsection for a project or activity described in subparagraph (A) shall be—

(i) reserved by the Secretary of Transportation; and

(ii) distributed to each State in accordance with paragraph (1) or (2) of subsection (c), or paragraph (1) or (2) of this subsection, as appropriate, for use in carrying out other highway projects and activities extended by subsection (c) or this subsection, in the proportion that—

(I) the total amount of funds made available for fiscal year 2009 for projects and activities described in subparagraph (A) in the State; bears to

(II) the total amount of funds made available for fiscal year 2009 for those projects and activities in all States.

(e) EXTENSION OF AUTHORIZATIONS UNDER TITLE V OF SAFETEA-LU.—

(1) IN GENERAL.—The programs authorized under paragraphs (1) through (5) of section 5101(a) of the SAFETEA-LU (119 Stat. 1779) shall be continued—

(A) for fiscal year 2010, at the funding levels authorized for those programs for fiscal year 2009; and

Time period.

(B) for the period beginning on October 1, 2010, and ending on December 31, 2010, at $\frac{1}{4}$ the funding levels authorized for those programs for fiscal year 2009.

(2) DISTRIBUTION OF FUNDS.—Funds for programs continued under paragraph (1) shall be distributed to major program areas under those programs in the same proportions as funds

were allocated for those program areas for fiscal year 2009, except that designations for specific activities shall not be required to be continued for—

(A) fiscal year 2010; or

(B) the period beginning on October 1, 2010, and ending on December 31, 2010.

(3) ADDITIONAL FUNDS.—

(A) IN GENERAL.—No additional funds shall be provided for any project or activity under this subsection that the Secretary of Transportation determines was sufficiently funded before or during fiscal year 2009 to achieve the authorized purpose of the project or activity.

Determination.

(B) DISTRIBUTION.—Funds that would have been made available under paragraph (1) for a project or activity but for the prohibition under subparagraph (A) shall be distributed in accordance with paragraph (2).

SEC. 412. ADMINISTRATIVE EXPENSES.

(a) AUTHORIZATION OF CONTRACT AUTHORITY.—Notwithstanding any other provision of this Act or any other law, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account), from amounts provided under section 411, for administrative expenses of the Federal-aid highway program—

(1) \$422,425,000 for fiscal year 2010; and

(2) \$105,606,250 for the period beginning on October 1, 2010, and ending on December 31, 2010.

Time period.

(b) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be—

(1) available for obligation, and shall be administered, in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; and

(2) subject to a limitation on obligations for Federal-aid highways and highway safety construction programs, except that such funds shall remain available until expended.

SEC. 413. RESCISSION OF UNOBLIGATED BALANCES.

(a) IN GENERAL.—The Secretary of Transportation shall restore funds rescinded pursuant to section 10212 of the SAFETEA-LU (Public Law 109-59; 119 Stat. 1937) to the States and to the programs from which the funds were rescinded.

(b) ADMINISTRATION OF FUNDS.—The restored amounts shall be administered in the same manner as the funds originally rescinded, except those funds may only be used with an obligation limitation provided in an Act making appropriations for Federal-aid highways and highway safety construction programs enacted after implementation of the rescission under section 10212 of the SAFETEA-LU (Public Law 109-59; 119 Stat. 1937).

(c) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for fiscal year 2010 to carry out this section an amount equal to the amount of funds rescinded under section 10212 of the SAFETEA-LU (Public Law 109-59; 119 Stat. 1937).

(2) AVAILABILITY FOR OBLIGATION.—Funds authorized to be appropriated by this section shall be—

(A) made available under this section and available for obligation in the same manner as if the funds were

apportioned under chapter 1 of title 23, United States Code, except that the funds shall retain the characteristics of the funds originally rescinded; and

(B) subject to a limitation on obligations for Federal-aid highways and highway safety construction programs included in an Act making appropriations for fiscal year 2010 or a portion of the fiscal year.

(d) LIMITATION.—No funds authorized to be restored under this section shall be restored after the end of fiscal year 2010.

SEC. 414. RECONCILIATION OF FUNDS.

The Secretary shall reduce the amount apportioned or allocated for a program, project, or activity under this title by amounts apportioned or allocated pursuant to the Continuing Appropriations Resolution, 2010 (Public Law 111–68).

Subtitle B—National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, and Additional Programs

SEC. 421. EXTENSION OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION HIGHWAY SAFETY PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2001(a)(1) of the SAFETEA–LU (119 Stat. 1519) is amended—

(1) by striking “and”; and

(2) by striking “2009.” and inserting “2009, \$235,000,000 for fiscal year 2010, and \$58,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2001(a)(2) of the SAFETEA–LU (119 Stat. 1519) is amended—

(1) by striking “and”; and

(2) by striking “2009.” and inserting “2009, \$107,329,000 for fiscal year 2010, and \$27,061,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—

(1) EXTENSION OF PROGRAM.—Section 405(a) of title 23, United States Code, is amended—

(A) in paragraph (3), by striking “6” and inserting “8”; and

(B) in paragraph (4)(C), by striking “fifth and sixth” and inserting “fifth through eighth”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2001(a)(3) of the SAFETEA–LU (119 Stat. 1519) is amended—

(A) by striking “and”; and

(B) by striking “2009.” and inserting “2009, \$25,000,000 for fiscal year 2010, and \$6,250,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(d) SAFETY BELT PERFORMANCE GRANTS.—Section 2001(a)(4) of the SAFETEA–LU (119 Stat. 1519) is amended—

(1) by striking “and”; and

(2) by striking “2009.” and inserting “2009, \$124,500,000 for fiscal year 2010, and \$31,125,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(e) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—Section 2001(a)(5) of the SAFETEA–LU (119 Stat. 1519) is amended—

(1) by striking “and”; and

(2) by striking “2009.” and inserting “2009, \$34,500,000 for fiscal year 2010, and \$8,625,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(f) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANT PROGRAM.—

(1) EXTENSION OF PROGRAM.—Section 410 of title 23, United States Code, is amended—

(A) in subsection (a)(3)(C), by striking “fifth, sixth, seventh, and eighth” and inserting “fifth through tenth”; and

(B) in subsection (b)(2)(C), by striking “2008 and 2009” and inserting “2008, 2009, 2010, and 2011”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2001(a)(6) of the SAFETEA–LU (119 Stat. 1519) is amended—

(A) by striking “and”; and

(B) by striking “2009.” and inserting “2009, \$139,000,000 for fiscal year 2010, and \$34,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(g) NATIONAL DRIVER REGISTER.—Section 2001(a)(7) of the SAFETEA–LU (119 Stat. 1520) is amended—

(1) by striking “and”; and

(2) by striking “2009.” and inserting “2009, \$4,078,000 for fiscal year 2010, and \$1,029,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(h) HIGH VISIBILITY ENFORCEMENT PROGRAM.—

(1) EXTENSION OF PROGRAM.—Section 2009(a) of the SAFETEA–LU (23 U.S.C. 402 note) is amended by striking “2009” and inserting “2011”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2001(a)(8) of the SAFETEA–LU (119 Stat. 1520) is amended—

(A) by striking “and”; and

(B) by striking “2009.” and inserting “2009, \$29,000,000 for fiscal year 2010, and \$7,250,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(i) MOTORCYCLIST SAFETY.—

(1) EXTENSION OF PROGRAM.—Section 2010(d)(1)(B) of the SAFETEA–LU (23 U.S.C. 402 note) is amended by striking “and fourth” and inserting “fourth, fifth, and sixth”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2001(a)(9) of the SAFETEA–LU (119 Stat. 1520) is amended—

(A) by striking “and”; and

(B) by striking “2009.” and inserting “2009, \$7,000,000 for fiscal year 2010, and \$1,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(j) CHILD SAFETY AND CHILD BOOSTER SEAT SAFETY INCENTIVE GRANTS.—

(1) EXTENSION OF PROGRAM.—Section 2011(c)(2) of the SAFETEA–LU (23 U.S.C. 405 note) is amended by striking “fourth fiscal year” and inserting “fourth, fifth, and sixth fiscal years”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2001(a)(10) of the SAFETEA–LU (119 Stat. 1520) is amended—

(A) by striking “and”; and

(B) by striking “2009.” and inserting “2009, \$7,000,000 for fiscal year 2010, and \$1,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(k) ADMINISTRATIVE EXPENSES.—Section 2001(a)(11) of the SAFETEA-LU (119 Stat. 1520) is amended—

(1) by striking “and” the last place it appears; and

(2) by striking “2009.” and inserting “2009, \$25,047,000 for fiscal year 2010, and \$6,332,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(l) APPLICABILITY OF TITLE 23.—Section 2001(c) of the SAFETEA-LU (119 Stat. 1520) is amended by striking “2009” and inserting “2011”.

(m) DRUG-IMPAIRED DRIVING ENFORCEMENT.—Section 2013(f) of the SAFETEA-LU (23 U.S.C. 403 note) is amended by striking “2009” and inserting “2011”.

(n) OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.—Section 2017 of the SAFETEA-LU is amended—

(1) in subsection (a)(1) (119 Stat. 1541), by striking “2009” and inserting “2011”; and

(2) in subsection (b)(2) (23 U.S.C. 402 note), by striking “2009” and inserting “2011”.

SEC. 422. EXTENSION OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAMS.

(a) MOTOR CARRIER SAFETY GRANTS.—Section 31104(a) of title 49, United States Code, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) \$209,000,000 for fiscal year 2010; and

“(7) \$52,679,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(b) ADMINISTRATIVE EXPENSES.—Section 31104(i)(1) of title 49, United States Code, is amended—

(1) in subparagraph (D), by striking “and”;

(2) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(F) “(F) \$239,828,000 for fiscal year 2010; and

“(G) “(G) \$61,036,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(c) GRANT PROGRAMS.—Section 4101(c) of the SAFETEA-LU (119 Stat. 1715) is amended—

(1) in paragraph (1), by striking “2009.” and inserting “2009, and \$25,000,000 for fiscal year 2010, and \$6,301,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”;

(2) in paragraph (2), by striking “2009.” and inserting “2009, \$32,000,000 for fiscal year 2010, and \$8,066,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”;

(3) in paragraph (3), by striking “2009.” and inserting “2009, \$5,000,000 for fiscal year 2010, and \$1,260,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”;

(4) in paragraph (4), by striking “2009.” and inserting “2009, \$25,000,000 for fiscal year 2010, and \$6,301,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”; and

(5) in paragraph (5), by striking “2009.” and inserting “2009, \$3,000,000 for fiscal year 2010, and \$756,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(d) HIGH-PRIORITY ACTIVITIES.—Section 31104(k) of title 49, United States Code, is amended by striking “2009” in paragraph (2) and inserting “2009, \$15,000,000 for fiscal year 2010, and \$3,781,000 for the period beginning on October 1, 2010, and ending on December 31, 2010”.

(e) NEW ENTRANT AUDITS.—Section 31144(g)(5)(B) of title 49, United States Code, is amended by inserting “(and up to \$7,310,000 for the period beginning on October 1, 2010, and ending on December 31, 2010)” after “fiscal year”.

(f) COMMERCIAL DRIVER’S LICENSE INFORMATION SYSTEM MODERNIZATION.—Section 4123(d) of the SAFETEA–LU (119 Stat. 1736) is amended—

49 USC 31309
note.

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(5) \$8,000,000 for fiscal year 2010; and

“(6) \$2,016,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(g) OUTREACH AND EDUCATION.—Section 4127(e) of the SAFETEA–LU (119 Stat. 1741) is amended by striking “and 2009” and inserting “2009, and 2010, and \$252,000 to the Federal Motor Carrier Safety Administration, and \$756,000 to the National Highway Traffic Safety Administration, for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

49 USC 31100
note.

(h) GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS.—Section 4134(c) of the SAFETEA–LU (119 Stat. 1744) is amended by striking “2009” and inserting “2009, 2010, and \$252,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

49 USC 31301
note.

(i) MOTOR CARRIER SAFETY ADVISORY COMMITTEE.—Section 4144(d) of the SAFETEA–LU (1119 Stat. 1748) is amended by striking “September 30, 2010” and inserting “December 31, 2010”.

49 USC 31100
note.

(j) WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.—Section 4213(d) of the SAFETEA–LU (49 U.S.C. 14710 note) is amended by striking “September 30, 2009” and inserting “December 31, 2010”.

SEC. 423. ADDITIONAL PROGRAMS.

(a) HAZARDOUS MATERIALS RESEARCH PROJECTS.—Section 7131(c) of the SAFETEA–LU (119 Stat. 1910) is amended by striking “through 2009” and inserting “through 2010, and \$315,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”.

(b) DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—Section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking “2009,” and inserting “2010 and for the period beginning on October 1, 2010, and ending on December 31, 2010,”; and

(2) in subsection (b)(1)(A), by striking “2010,” and inserting “and for the period beginning on October 1, 2010, and ending on December 31, 2010,”.

Subtitle C—Public Transportation Programs

SEC. 431. ALLOCATION OF FUNDS FOR PLANNING PROGRAMS.

Section 5305(g) of title 49, United States Code, is amended by striking “2009” and inserting “2010, and for the period beginning October 1, 2010, and ending December 31, 2010,”.

SEC. 432. SPECIAL RULE FOR URBANIZED AREA FORMULA GRANTS.

Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading, by striking “2009” and inserting “2010, AND THE PERIOD BEGINNING OCTOBER 1, 2010, AND ENDING DECEMBER 31, 2010”;

(2) in subparagraph (A), by striking “2009,” and inserting “2010, and the period beginning October 1, 2010, and ending December 31, 2010,”; and

(3) in subparagraph (E)—

(A) in the subparagraph heading, by striking “AND 2009” and inserting “THROUGH 2010 AND DURING THE PERIOD BEGINNING OCTOBER 1, 2010, AND ENDING DECEMBER 31, 2010”; and

(B) in the matter preceding clause (i), by striking “and 2009” and inserting “through 2010, and during the period beginning October 1, 2010, and ending December 31, 2010,”.

SEC. 433. ALLOCATING AMOUNTS FOR CAPITAL INVESTMENT GRANTS.

Section 5309(m) of title 49, United States Code, is amended—

(1) in paragraph (2)—

(A) in the heading, by striking “2009” and inserting “2010 AND OCTOBER 1, 2010, THROUGH DECEMBER 31, 2010”;

(B) in the matter preceding subparagraph (A), by striking “2009” and inserting “2010, and during the period beginning October 1, 2010, and ending December 31, 2010,”; and

(C) in subparagraph (A)(i), by striking “2009” and inserting “2010, and \$50,000,000 for the period beginning October 1, 2010, and ending December 31, 2010,”;

(2) in paragraph (6)—

(A) in subparagraph (B), by striking “2009” and inserting “2010, and \$3,750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010,”; and

(B) in subparagraph (C), by striking “2009” and inserting “2010, and \$1,250,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010,”; and

(3) in paragraph (7)—

(A) in subparagraph (A)—

(i) by redesignating clauses (i) through (viii) as subclauses (I) through (VIII), respectively;

(ii) in the matter preceding subclause (I), as so redesignated, by striking “\$10,000,000” and all that follows through “2009” and inserting the following:

“(i) FISCAL YEARS 2006 THROUGH 2010.—\$10,000,000 shall be available in each of fiscal years 2006 through 2010”; and

(iii) by inserting after subclause (VIII), as so redesignated, the following:

“(ii) SPECIAL RULE FOR OCTOBER 1, 2010, THROUGH DECEMBER 31, 2010.—\$2,500,000 shall be available in the period beginning October 1, 2010, and ending December 31, 2010, for ferry boats or ferry terminal facilities. The Secretary shall set aside a portion of such amount in accordance with clause (i), except that the Secretary shall set aside 25 percent of each dollar amount specified in subclauses (I) through (VIII).”;

(B) in subparagraph (B), by inserting after “2009.” the following:

“(v) \$13,500,000 for fiscal year 2010.

“(vi) \$3,375,000 for the period beginning October 1, 2010, and ending December 31, 2010.”;

(C) in subparagraph (C), by inserting “, and during the period beginning October 1, 2010, and ending December 31, 2010,” after “fiscal year”;

(D) in subparagraph (D), by inserting “, and not less than \$8,750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010,” after “year”; and

(E) in subparagraph (E), by inserting “, and \$750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010,” after “year”.

SEC. 434. APPORTIONMENT OF FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

Section 5311(c)(1) of title 49, United States Code, is amended by adding at the end the following:

“(E) \$15,000,000 for fiscal year 2010.

“(F) \$3,750,000 for the period beginning October 1, 2010, and ending December 31, 2010.”.

SEC. 435. APPORTIONMENT BASED ON FIXED GUIDEWAY FACTORS.

Section 5337 of title 49, United States Code, is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking “2009” and inserting “2010”; and

(2) by adding at the end the following:

“(g) SPECIAL RULE FOR OCTOBER 1, 2010, THROUGH DECEMBER 31, 2010.—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning October 1, 2010, and ending December 31, 2010, in accordance with subsection (a), except that the Secretary shall apportion 25 percent of each dollar amount specified in subsection (a).”.

SEC. 436. AUTHORIZATIONS FOR PUBLIC TRANSPORTATION.

(a) **FORMULA AND BUS GRANTS.**—Section 5338(b) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (C), by striking “and” at the end;

(B) in subparagraph (D), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(E) \$8,360,565,000 for fiscal year 2010; and

“(F) \$2,090,141,250 for the period beginning October 1, 2010, and ending December 31, 2010.”; and

(2) in paragraph (2)—

(A) in subparagraph (A), by striking “and \$113,500,000 for fiscal year 2009” and inserting “\$113,500,000 for each of fiscal years 2009 and 2010, and \$28,375,000 for the period beginning October 1, 2010, and ending December 31, 2010.”;

(B) in subparagraph (B), by striking “and \$4,160,365,000 for fiscal year 2009” and inserting “\$4,160,365,000 for each of fiscal years 2009 and 2010, and \$1,040,091,250 for the period beginning October 1, 2010, and ending December 31, 2010.”;

(C) in subparagraph (C), by striking “and \$51,500,000 for fiscal year 2009” and inserting “\$51,500,000 for each of fiscal years 2009 and 2010, and \$12,875,000 for the period beginning October 1, 2010, and ending December 31, 2010.”;

(D) in subparagraph (D), by striking “and \$1,666,500,000 for fiscal year 2009” and inserting “\$1,666,500,000 for each of fiscal years 2009 and 2010, and \$416,625,000 for the period beginning October 1, 2010 and ending December 31, 2010.”;

(E) in subparagraph (E), by striking “and \$984,000,000 for fiscal year 2009” and inserting “\$984,000,000 for each of fiscal years 2009 and 2010, and \$246,000,000 for the period beginning October 1, 2010 and ending December 31, 2010.”;

(F) in subparagraph (F), by striking “and \$133,500,000 for fiscal year 2009” and inserting “\$133,500,000 for each of fiscal years 2009 and 2010, and \$33,375,000 for the period beginning October 1, 2010 and ending December 31, 2010.”;

(G) in subparagraph (G), by striking “and \$465,000,000 for fiscal year 2009” and inserting “\$465,000,000 for each of fiscal years 2009 and 2010, and \$116,250,000 for the period beginning October 1, 2010 and ending December 31, 2010.”;

(H) in subparagraph (H), by striking “and \$164,500,000 for fiscal year 2009” and inserting “\$164,500,000 for each of fiscal years 2009 and 2010, and \$41,125,000 for the period beginning October 1, 2010 and ending December 31, 2010.”;

(I) in subparagraph (I), by striking “and \$92,500,000 for fiscal year 2009” and inserting “\$92,500,000 for each of fiscal years 2009 and 2010, and \$23,125,000 for the period beginning October 1, 2010 and ending December 31, 2010.”;

(J) in subparagraph (J), by striking “and \$26,900,000 for fiscal year 2009” and inserting “\$26,900,000 for each of fiscal years 2009 and 2010, and \$6,725,000 for the period beginning October 1, 2010 and ending December 31, 2010,”;

(K) in subparagraph (K), by striking “and \$3,500,000 for fiscal year 2009” and inserting “\$3,500,000 for each of fiscal years 2009 and 2010, and \$875,000 for the period beginning October 1, 2010 and ending December 31, 2010,”;

(L) in subparagraph (L), by striking “and \$25,000,000 for fiscal year 2009” and inserting “\$25,000,000 for each of fiscal years 2009 and 2010, and \$6,250,000 for the period beginning October 1, 2010 and ending December 31, 2010,”;

(M) in subparagraph (M), by striking “and \$465,000,000 for fiscal year 2009” and inserting “\$465,000,000 for each of fiscal years 2009 and 2010, and \$116,250,000 for the period beginning October 1, 2010 and ending December 31, 2010,”; and

(N) in subparagraph (N), by striking “and \$8,800,000 for fiscal year 2009” and inserting “\$8,800,000 for each of fiscal years 2009 and 2010, and \$2,200,000 for the period beginning October 1, 2010 and ending December 31, 2010,”.

(b) CAPITAL INVESTMENT GRANTS.—Section 5338(c) of title 49, United States Code, is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(5) \$2,000,000,000 for fiscal year 2010; and

“(6) \$500,000,000 for the period of October 1, 2010 through December 31, 2010.”.

(c) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—Section 5338(d) of title 49, United States Code, is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking “and \$69,750,000 for fiscal year 2009” and inserting “\$69,750,000 for each of fiscal years 2009 and 2010, and \$17,437,500 for the period beginning October 1, 2010, and ending December 31, 2010”; and

(2) by adding at the end the following:

“(3) ADDITIONAL AUTHORIZATIONS.—

Allocations.

“(A) IN GENERAL.—

“(i) FISCAL YEAR 2010.—Of amounts authorized to be appropriated for fiscal year 2010 under paragraph (1), the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to the amount allocated for fiscal year 2009 under each such subparagraph.

“(ii) OCTOBER 1, 2010 THROUGH DECEMBER 31, 2010.—Of amounts authorized to be appropriated for the period beginning October 1, 2010, through December 31, 2010, under paragraph (1), the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to 25 percent of the amount allocated for fiscal year 2009 under each such subparagraph.

“(B) UNIVERSITY CENTERS PROGRAM.—

“(i) FISCAL YEAR 2010.—Of the amounts allocated under subparagraph (A)(i) for the university centers program under section 5506 for fiscal year 2010, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to the amount allocated for fiscal year 2009 under each such clause.

“(ii) OCTOBER 1, 2010 THROUGH DECEMBER 31, 2010.—Of the amounts allocated under subparagraph (A)(i) for the university centers program under section 5506 for the period beginning October 1, 2010, and ending December 31, 2010, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to 25 percent of the amount allocated for fiscal year 2009 under each such clause.

Determination.

“(iii) FUNDING.—If the Secretary determines that a project or activity described in paragraph (2) received sufficient funds in fiscal year 2009, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under clause (i) or (ii) for the project or activity for fiscal year 2010, or any subsequent fiscal year.”

(d) ADMINISTRATION.—Section 5338(e) of title 49, United States Code, is amended—

- (1) in paragraph (3), by striking “and” at the end;
- (2) in paragraph (4), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:
 - “(5) \$98,911,000 for fiscal year 2010; and
 - “(6) \$24,727,750 for the period beginning October 1, 2010, and ending December 31, 2010.”

SEC. 437. AMENDMENTS TO SAFETEA-LU.

(a) CONTRACTED PARATRANSIT PILOT.—Section 3009(i)(1) of the SAFETEA-LU (Public Law 109–59; 119 Stat. 1572) is amended by striking “2009” and inserting “2010, and for the period beginning October 1, 2010, and ending December 31, 2010”.

(b) PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.—Section 3011 of the SAFETEA-LU (49 U.S.C. 5309 note) is amended—

- (1) in subsection (c)(5), by striking “2009” and inserting “2010 and the period beginning October 1, 2010, and ending December 31, 2010”; and
- (2) in subsection (d), by striking “2009” and inserting “2010, and for the period beginning October 1, 2010, and ending December 31, 2010”.

(c) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PILOT PROGRAM.—Section 3012(b)(8) of the SAFETEA-LU (49 U.S.C. 5310 note) is amended by striking “September 30, 2009” and inserting “December 31, 2010”.

(d) OBLIGATION CEILING.—Section 3040 of the SAFETEA-LU (Public Law 109–59; 119 Stat. 1639) is amended—

- (1) in paragraph (4), by striking “and” at the end;
- (2) in paragraph (5), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:

“(6) \$10,507,752,000 for fiscal year 2010, of which not more than \$8,360,565,000 shall be from the Mass Transit Account; and

“(7) \$2,626,938,000 for the period beginning October 1, 2010, and ending December 31, 2010, of which not more than \$2,090,141,250 shall be from the Mass Transit Account.”.

(e) PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.—Section 3043 of the SAFETEA–LU (Public Law 109–59; 119 Stat. 1640) is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by striking “2009” and inserting “2010, and for the period beginning October 1, 2010, and ending December 31, 2010,”; and

(2) in subsection (c), in the matter preceding paragraph (1), by striking “2009” and inserting “2010, and for the period beginning October 1, 2010, and ending December 31, 2010,”.

(f) ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.—Section 3046 of the SAFETEA–LU (49 U.S.C. 5338 note) is amended—

(1) in subsection (b), by inserting “or period” after “fiscal year”; and

(2) by adding at the end the following:

“(c) ADDITIONAL APPROPRIATIONS.—The Secretary shall allocate amounts appropriated pursuant to section 5338(d) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 of such title—

“(1) for fiscal year 2010, in amounts equal to the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), (6), and (8) through (25) of subsection (a); and

“(2) for the period beginning October 1, 2010, and ending December 31, 2010, in amounts equal to 25 percent of the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), (6), and (8) through (25) of subsection (a).

“(d) FUNDING.—If the Secretary determines that a project or activity described in subsection (a) received sufficient funds in fiscal year 2009, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under subsection (c) for the project or activity for fiscal year 2010, or any subsequent fiscal year.”.

Determination.

Subtitle D—Revenue Provisions

SEC. 441. REPEAL OF PROVISION PROHIBITING THE CREDITING OF INTEREST TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Paragraph (1) of section 9503(f) is amended by striking subparagraph (B). 26 USC 9503.

(b) CONFORMING AMENDMENTS.—Such paragraph, as amended by paragraph (1), is further amended—

(1) by striking “, and” at the end of subparagraph (A) and inserting a period; and

(2) by striking “1998” in the matter preceding subparagraph (A) and all that follows through “the opening balance” and inserting “1998, the opening balance”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this title. 26 USC 9503 note.

SEC. 442. RESTORATION OF CERTAIN FOREGONE INTEREST TO HIGHWAY TRUST FUND.

26 USC 9503.

(a) IN GENERAL.—Paragraph (2) of section 9503(f) is amended to read as follows:

“(2) RESTORATION OF FOREGONE INTEREST.—Out of money in the Treasury not otherwise appropriated, there is hereby appropriated—

“(A) \$14,700,000,000 to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund; and

“(B) \$4,800,000,000 to the Mass Transit Account in the Highway Trust Fund.”.

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 9503(e) is amended by striking “this subsection” and inserting “this section”.

26 USC 9503 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 443. TREATMENT OF CERTAIN AMOUNTS APPROPRIATED TO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503(f), as amended by this Act, is amended by adding at the end the following new paragraph:

“(4) TREATMENT OF APPROPRIATED AMOUNTS.—Any amount appropriated under this subsection to the Highway Trust Fund shall remain available without fiscal year limitation.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 444. TERMINATION OF TRANSFERS FROM HIGHWAY TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.

(a) IN GENERAL.—Section 9503(c) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 9502(a) is amended by striking “section 9503(c)(7)” and inserting “section 9503(c)(5)”.

(2) Section 9503(b)(4)(D) is amended by striking “paragraph (4)(D) or (5)(B)” and inserting “paragraph (3)(D) or (4)(B)”.

(3) Paragraph (2) of section 9503(c), as redesignated by subsection (a), is amended by adding at the end the following new sentence: “The amounts payable from the Highway Trust Fund under the preceding sentence shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund.”.

(4) Section 9503(e)(5)(A) is amended by striking “(2), (3), and (4)” and inserting “(2) and (3)”.

(5) Section 9504(a) is amended by striking “section 9503(c)(4), section 9503(c)(5)” and inserting “section 9503(c)(3), section 9503(c)(4)”.

(6) Section 9504(b)(2) is amended by striking “section 9503(c)(5)” and inserting “section 9503(c)(4)”.

(7) Section 9504(e) is amended by striking “section 9503(c)(4)” and inserting section “9503(c)(3)”.

Applicability.
26 USC 9502
note.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers relating to amounts paid and credits allowed after the date of the enactment of this Act.

SEC. 445. EXTENSION OF AUTHORITY FOR EXPENDITURES.

(a) HIGHWAYS TRUST FUND.—

(1) HIGHWAY ACCOUNT.—Paragraph (1) of section 9503(c) 26 USC 9503.
is amended—

(A) by striking “September 30, 2009 (October 1, 2009”
and inserting “December 31, 2010 (January 1, 2011”; and

(B) by striking “under” and all that follows and
inserting “under the Surface Transportation Extension Act
of 2010 or any other provision of law which was referred
to in this paragraph before the date of the enactment
of such Act (as such Act and provisions of law are in
effect on the date of the enactment of such Act).”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section
9503(e) is amended—

(A) by striking “October 1, 2009” and inserting
“January 1, 2011”; and

(B) by striking “in accordance with” and all that follows
and inserting “in accordance with the Surface Transpor-
tation Extension Act of 2010 or any other provision of
law which was referred to in this paragraph before the
date of the enactment of such Act (as such Act and provi-
sions of law are in effect on the date of the enactment
of such Act).”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subpara-
graph (B) of section 9503(b)(6) is amended by striking “Sep-
tember 30, 2009 (October 1, 2009” and inserting “December
31, 2010 (January 1, 2011”.

(b) SPORT FISH RESTORATION AND BOATING TRUST FUND.—

(1) IN GENERAL.—Paragraph (2) of section 9504(b) is
amended—

(A) by striking “(as in effect” in subparagraph (A)
and all that follows in such subparagraph and inserting
“(as in effect on the date of the enactment of the Surface
Transportation Extension Act of 2010).”,

(B) by striking “(as in effect” in subparagraph (B)
and all that follows in such subparagraph and inserting
“(as in effect on the date of the enactment of the Surface
Transportation Extension Act of 2010), and”, and

(C) by striking “(as in effect” in subparagraph (C)
and all that follows in such subparagraph and inserting
“(as in effect on the date of the enactment of the Surface
Transportation Extension Act of 2010).”.

(2) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph
(2) of section 9504(d) is amended by striking “October 1, 2009”
and inserting “January 1, 2011”.

(c) EFFECTIVE DATE.—The amendments made by this section 26 USC 9503
shall take effect on September 30, 2009. note.

SEC. 446. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—Section 8003(a) of the SAFETEA-
LU (2 U.S.C. 901 note; 119 Stat. 1917) is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end
and inserting “; and”; and

(3) by adding at the end the following:

“(6) for the period beginning on October 1, 2009, and ending
on September 30, 2010, \$42,469,970,178.

“(7) for the period beginning on October 1, 2010, and ending
on December 31, 2010, \$10,617,492,545.”.

(b) **MASS TRANSIT CATEGORY.**—Section 8003(b) of the SAFETEA-LU (2 U.S.C. 901 note; 119 Stat. 1917) is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) for the period beginning on October 1, 2009, and ending on December 31, 2010, \$10,338,065,000.

“(7) for the period beginning on October 1, 2010, and ending on December 31, 2010, \$2,584,516,250.”.

(c) **TREATMENT OF FUNDS.**—No adjustment pursuant to section 110 of title 23, United States Code, shall be made for fiscal year 2010 or fiscal year 2011.

Subtitle E—Disadvantaged Business Enterprises

23 USC 101 note.

SEC. 451. DISADVANTAGED BUSINESS ENTERPRISES.

(a) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **SMALL BUSINESS CONCERN.**—The term “small business concern” has the meaning that term has under section 3 of the Small Business Act (15 U.S.C. 632), except that the term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of \$22,410,000, as adjusted annually by the Secretary of Transportation for inflation.

(2) **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**—The term “socially and economically disadvantaged individuals” has the meaning that term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations issued pursuant to that Act, except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this section.

(b) **GENERAL RULE.**—Except to the extent that the Secretary of Transportation determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of SAFETEA-LU (Public Law 109-59), subtitles A and C of this title, and section 403 of title 23, United States Code, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.

States.

(c) **ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.**—Each State shall annually

(1) survey and compile a list of the small business concerns referred to in subsection (a) and the location of the concerns in the State; and

Notification.

(2) notify the Secretary of Transportation, in writing, of the percentage of the concerns that are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

Criteria.

(d) **UNIFORM CERTIFICATION.**—The Secretary of Transportation shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this section. The minimum uniform criteria shall include, but not

be limited to, on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(e) COMPLIANCE WITH COURT ORDERS.—Nothing in this section limits the eligibility of an entity or person to receive funds made available under titles I, III, and V of SAFETEA-LU (Public Law 109–59), subtitles A and C of this title, and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part, from complying with subsection (b) because a Federal court issues a final order in which the court finds that the requirement of subsection (b), or the program established under subsection (b), is unconstitutional.

TITLE V—OFFSET PROVISIONS

Subtitle A—Foreign Account Tax Compliance

PART I—INCREASED DISCLOSURE OF BENEFICIAL OWNERS

SEC. 501. REPORTING ON CERTAIN FOREIGN ACCOUNTS.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after chapter 3 the following new chapter:

“CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS

“Sec. 1471. Withholdable payments to foreign financial institutions.

“Sec. 1472. Withholdable payments to other foreign entities.

“Sec. 1473. Definitions.

“Sec. 1474. Special rules.

“SEC. 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.

“(a) IN GENERAL.—In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

“(b) REPORTING REQUIREMENTS, ETC.—

“(1) IN GENERAL.—The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees—

“(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

“(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

“(C) in the case of any United States account maintained by such institution, to report on an annual basis

the information described in subsection (c) with respect to such account,

“(D) to deduct and withhold a tax equal to 30 percent of—

“(i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and

“(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,

“(E) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and

“(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution—

“(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

“(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

“(2) FINANCIAL INSTITUTIONS DEEMED TO MEET REQUIREMENTS IN CERTAIN CASES.—A foreign financial institution may be treated by the Secretary as meeting the requirements of this subsection if—

“(A) such institution—

“(i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain United States accounts, and

“(ii) meets such other requirements as the Secretary may prescribe with respect to accounts of other foreign financial institutions maintained by such institution, or

“(B) such institution is a member of a class of institutions with respect to which the Secretary has determined that the application of this section is not necessary to carry out the purposes of this section.

“(3) ELECTION TO BE WITHHELD UPON RATHER THAN WITHHOLD ON PAYMENTS TO RECALCITRANT ACCOUNT HOLDERS AND NONPARTICIPATING FOREIGN FINANCIAL INSTITUTIONS.—In the case of a foreign financial institution which meets the requirements of this subsection and such other requirements as the Secretary may provide and which elects the application of this paragraph—

“(A) the requirements of paragraph (1)(D) shall not apply,

“(B) the withholding tax imposed under subsection (a) shall apply with respect to any withholdable payment to such institution to the extent such payment is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection, and

Applicability.

“(C) the agreement described in paragraph (1) shall—

“(i) require such institution to notify the withholding agent with respect to each such payment of the institution’s election under this paragraph and such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from such payment, and

“(ii) include a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to an election under this paragraph.

To the extent provided by the Secretary, the election under this paragraph may be made with respect to certain classes or types of accounts of the foreign financial institution.

“(c) INFORMATION REQUIRED TO BE REPORTED ON UNITED STATES ACCOUNTS.—

“(1) IN GENERAL.—The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:

“(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.

“(B) The account number.

“(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

“(D) Except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

“(2) ELECTION TO BE SUBJECT TO SAME REPORTING AS UNITED STATES FINANCIAL INSTITUTIONS.—In the case of a foreign financial institution which elects the application of this paragraph—

“(A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and

“(B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if—

“(i) such institution were a United States person, and

“(ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

“(3) SEPARATE REQUIREMENTS FOR QUALIFIED INTERMEDIARIES.—In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment.

“(d) DEFINITIONS.—For purposes of this section—

“(1) UNITED STATES ACCOUNT.—

“(A) IN GENERAL.—The term ‘United States account’ means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

“(B) EXCEPTION FOR CERTAIN ACCOUNTS HELD BY INDIVIDUALS.—Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—

“(i) each holder of such account is a natural person, and

“(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed \$50,000.

To the extent provided by the Secretary, financial institutions which are members of the same expanded affiliated group shall be treated for purposes of clause (ii) as a single financial institution.

“(C) ELIMINATION OF DUPLICATIVE REPORTING REQUIREMENTS.—Such term shall not include any financial account in a foreign financial institution if—

“(i) such account is held by another financial institution which meets the requirements of subsection (b), or

“(ii) the holder of such account is otherwise subject to information reporting requirements which the Secretary determines would make the reporting required by this section with respect to United States accounts duplicative.

“(2) FINANCIAL ACCOUNT.—Except as otherwise provided by the Secretary, the term ‘financial account’ means, with respect to any financial institution—

“(A) any depository account maintained by such financial institution,

“(B) any custodial account maintained by such financial institution, and

“(C) any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

“(3) UNITED STATES OWNED FOREIGN ENTITY.—The term ‘United States owned foreign entity’ means any foreign entity which has one or more substantial United States owners.

“(4) FOREIGN FINANCIAL INSTITUTION.—The term ‘foreign financial institution’ means any financial institution which is a foreign entity. Except as otherwise provided by the Secretary, such term shall not include a financial institution which is organized under the laws of any possession of the United States.

“(5) FINANCIAL INSTITUTION.—Except as otherwise provided by the Secretary, the term ‘financial institution’ means any entity that—

“(A) accepts deposits in the ordinary course of a banking or similar business,

“(B) as a substantial portion of its business, holds financial assets for the account of others, or

“(C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

“(6) RECALCITRANT ACCOUNT HOLDER.—The term ‘recalcitrant account holder’ means any account holder which—

“(A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or

“(B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

“(7) PASSTHRU PAYMENT.—The term ‘passthru payment’ means any withholdable payment or other payment to the extent attributable to a withholdable payment.

“(e) AFFILIATED GROUPS.—

“(1) IN GENERAL.—The requirements of subsections (b) and (c)(1) shall apply— Applicability.

“(A) with respect to United States accounts maintained by the foreign financial institution, and

“(B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

“(2) EXPANDED AFFILIATED GROUP.—For purposes of this section, the term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(A) by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears, and

“(B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section

954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(f) EXCEPTION FOR CERTAIN PAYMENTS.—Subsection (a) shall not apply to any payment to the extent that the beneficial owner of such payment is—

“(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

“(2) any international organization or any wholly owned agency or instrumentality thereof,

“(3) any foreign central bank of issue, or

“(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

“SEC. 1472. WITHHOLDABLE PAYMENTS TO OTHER FOREIGN ENTITIES.

“(a) IN GENERAL.—In the case of any withholdable payment to a non-financial foreign entity, if—

“(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

“(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

“(b) REQUIREMENTS FOR WAIVER OF WITHHOLDING.—The requirements of this subsection are met with respect to the beneficial owner of a payment if—

“(1) such beneficial owner or the payee provides the withholding agent with either—

“(A) a certification that such beneficial owner does not have any substantial United States owners, or

“(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,

“(2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and

“(3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

“(c) EXCEPTIONS.—Subsection (a) shall not apply to—

“(1) except as otherwise provided by the Secretary, any payment beneficially owned by—

“(A) any corporation the stock of which is regularly traded on an established securities market,

“(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

“(C) any entity which is organized under the laws of a possession of the United States and which is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such possession,

“(D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

“(E) any international organization or any wholly owned agency or instrumentality thereof,

“(F) any foreign central bank of issue, or

“(G) any other class of persons identified by the Secretary for purposes of this subsection, and

“(2) any class of payments identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

“(d) NON-FINANCIAL FOREIGN ENTITY.—For purposes of this section, the term ‘non-financial foreign entity’ means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).

“SEC. 1473. DEFINITIONS.

“For purposes of this chapter—

“(1) WITHHOLDABLE PAYMENT.—Except as otherwise provided by the Secretary—

“(A) IN GENERAL.—The term ‘withholdable payment’ means—

“(i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and

“(ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

“(B) EXCEPTION FOR INCOME CONNECTED WITH UNITED STATES BUSINESS.—Such term shall not include any item of income which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

“(C) SPECIAL RULE FOR SOURCING INTEREST PAID BY FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS.—Subparagraph (B) of section 861(a)(1) shall not apply.

“(2) SUBSTANTIAL UNITED STATES OWNER.—

“(A) IN GENERAL.—The term ‘substantial United States owner’ means—

“(i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

“(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and

“(iii) in the case of a trust—

“(I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

“(II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.

“(B) SPECIAL RULE FOR INVESTMENT VEHICLES.—In the case of any financial institution described in section 1471(d)(5)(C), clauses (i), (ii), and (iii) of subparagraph (A) shall be applied by substituting ‘0 percent’ for ‘10 percent’.

“(3) SPECIFIED UNITED STATES PERSON.—Except as otherwise provided by the Secretary, the term ‘specified United States person’ means any United States person other than—

“(A) any corporation the stock of which is regularly traded on an established securities market,

“(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,

“(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

“(D) the United States or any wholly owned agency or instrumentality thereof,

“(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

“(F) any bank (as defined in section 581),

“(G) any real estate investment trust (as defined in section 856),

“(H) any regulated investment company (as defined in section 851),

“(I) any common trust fund (as defined in section 584(a)), and

“(J) any trust which—

“(i) is exempt from tax under section 664(c), or

“(ii) is described in section 4947(a)(1).

“(4) WITHHOLDING AGENT.—The term ‘withholding agent’ means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

“(5) FOREIGN ENTITY.—The term ‘foreign entity’ means any entity which is not a United States person.

“SEC. 1474. SPECIAL RULES.

“(a) LIABILITY FOR WITHHELD TAX.—Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

“(b) CREDITS AND REFUNDS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

“(2) SPECIAL RULE WHERE FOREIGN FINANCIAL INSTITUTION IS BENEFICIAL OWNER OF PAYMENT.—

“(A) IN GENERAL.—In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment—

“(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States—

“(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

“(II) no interest shall be allowed or paid with respect to such credit or refund, and

“(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

“(B) SPECIFIED FINANCIAL INSTITUTION PAYMENT.—The term ‘specified financial institution payment’ means any payment if the beneficial owner of such payment is a foreign financial institution.

“(3) REQUIREMENT TO IDENTIFY SUBSTANTIAL UNITED STATES OWNERS.—No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of any substantial United States owners of such entity.

“(c) CONFIDENTIALITY OF INFORMATION.—

“(1) IN GENERAL.—For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply. Applicability.

“(2) DISCLOSURE OF LIST OF PARTICIPATING FOREIGN FINANCIAL INSTITUTIONS PERMITTED.—The identity of a foreign financial institution which meets the requirements of section 1471(b) shall not be treated as return information for purposes of section 6103.

“(d) COORDINATION WITH OTHER WITHHOLDING PROVISIONS.—The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for the proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions.

“(e) TREATMENT OF WITHHOLDING UNDER AGREEMENTS.—Any tax deducted and withheld pursuant to an agreement described in section 1471(b) shall be treated for purposes of this title as a tax deducted and withheld by a withholding agent under section 1471(a).

“(f) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, this chapter.”

(b) SPECIAL RULE FOR INTEREST ON OVERPAYMENTS.—Subsection (e) of section 6611 is amended by adding at the end the following new paragraph: 26 USC 6611.

Applicability.

“(4) CERTAIN WITHHOLDING TAXES.—In the case of any overpayment resulting from tax deducted and withheld under chapter 3 or 4, paragraphs (1), (2), and (3) shall be applied by substituting ‘180 days’ for ‘45 days’ each place it appears.”.

(c) CONFORMING AMENDMENTS.—

26 USC 6414.

(1) Section 6414 is amended by inserting “or 4” after “chapter 3”.

(2) Paragraph (1) of section 6501(b) is amended by inserting “4,” after “chapter 3,”.

(3) Paragraph (2) of section 6501(b) is amended—

(A) by inserting “4,” after “chapter 3,” in the text thereof, and

(B) by striking “TAXES AND TAX IMPOSED BY CHAPTER 3” in the heading thereof and inserting “AND WITHHOLDING TAXES”.

(4) Paragraph (3) of section 6513(b) is amended—

(A) by inserting “or 4” after “chapter 3”, and

(B) by inserting “or 1474(b)” after “section 1462”.

(5) Subsection (c) of section 6513 is amended by inserting “4,” after “chapter 3,”.

(6) Paragraph (1) of section 6724(d) is amended by inserting “under chapter 4 or” after “filed with the Secretary” in the last sentence thereof.

(7) Paragraph (2) of section 6724(d) is amended by inserting “or 4” after “chapter 3”.

(8) The table of chapters of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS.”.

Applicability.
26 USC 1471
note.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to payments made after December 31, 2012.

(2) GRANDFATHERED TREATMENT OF OUTSTANDING OBLIGATIONS.—The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on the date which is 2 years after the date of the enactment of this Act or from the gross proceeds from any disposition of such an obligation.

(3) INTEREST ON OVERPAYMENTS.—The amendment made by subsection (b) shall apply—

(A) in the case of such amendment’s application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

(B) in the case of such amendment’s application to paragraph (2) of such section, to claims for credit or refund of any overpayment filed after the date of the enactment of this Act (regardless of the taxable period to which such refund relates), and

(C) in the case of such amendment’s application to paragraph (3) of such section, to refunds paid after the date of the enactment of this Act (regardless of the taxable period to which such refund relates).

SEC. 502. REPEAL OF CERTAIN FOREIGN EXCEPTIONS TO REGISTERED BOND REQUIREMENTS.

(a) REPEAL OF EXCEPTION TO DENIAL OF DEDUCTION FOR INTEREST ON NON-REGISTERED BONDS.—

(1) IN GENERAL.—Paragraph (2) of section 163(f) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B). 26 USC 163.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (2) of section 149(a) is amended by inserting “or” at the end of subparagraph (A), by striking “, or” at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(B) Subparagraph (A) of section 163(f)(2) is amended by inserting “or” at the end of clause (ii), by striking “, or” at the end of clause (iii) and inserting a period, and by striking clause (iv).

(C) Subparagraph (B) of section 163(f)(2), as redesignated by paragraph (1), is amended—

(i) by striking “, and subparagraph (B),” in the matter preceding clause (i), and

(ii) by amending clause (i) to read as follows:

“(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and”.

(D) Sections 165(j)(2)(A) and 1287(b)(1) are each amended by striking “except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply”.

(b) REPEAL OF TREATMENT AS PORTFOLIO DEBT.—

(1) IN GENERAL.—Paragraph (2) of section 871(h) is amended to read as follows:

“(2) PORTFOLIO INTEREST.—For purposes of this subsection, the term ‘portfolio interest’ means any interest (including original issue discount) which—

“(A) would be subject to tax under subsection (a) but for this subsection, and

“(B) is paid on an obligation—

“(i) which is in registered form, and

“(ii) with respect to which—

“(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or

“(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 871(h)(3)(A) is amended by striking “subparagraph (A) or (B) of”.

(B) Paragraph (2) of section 881(c) is amended to read as follows:

“(2) PORTFOLIO INTEREST.—For purposes of this subsection, the term ‘portfolio interest’ means any interest (including original issue discount) which—

“(A) would be subject to tax under subsection (a) but for this subsection, and

“(B) is paid on an obligation—

“(i) which is in registered form, and

“(ii) with respect to which—

“(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or

“(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.”.

26 USC 163. (c) DEMATERIALIZED BOOK ENTRY SYSTEMS TREATED AS REGISTERED FORM.—Paragraph (3) of section 163(f) is amended by inserting “, except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section” before the period at the end.

(d) REPEAL OF EXCEPTION TO REQUIREMENT THAT TREASURY OBLIGATIONS BE IN REGISTERED FORM.—

(1) IN GENERAL.—Subsection (g) of section 3121 of title 31, United States Code, is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) CONFORMING AMENDMENTS.—Paragraph (1) of section 3121(g) of such title is amended—

(A) by adding “or” at the end of subparagraph (A),

(B) by striking “; or” at the end of subparagraph (B)

and inserting a period, and

(C) by striking subparagraph (C).

26 USC 4701. (e) PRESERVATION OF EXCEPTION FOR EXCISE TAX PURPOSES.—Paragraph (1) of section 4701(b) is amended to read as follows:

“(1) REGISTRATION-REQUIRED OBLIGATION.—

“(A) IN GENERAL.—The term ‘registration-required obligation’ has the same meaning as when used in section 163(f), except that such term shall not include any obligation which—

“(i) is required to be registered under section 149(a), or

“(ii) is described in subparagraph (B).

“(B) CERTAIN OBLIGATIONS NOT INCLUDED.—An obligation is described in this subparagraph if—

“(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,

“(ii) interest on such obligation is payable only outside the United States and its possessions, and

“(iii) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.”.

Applicability.
26 USC 149 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date which is 2 years after the date of the enactment of this Act.

PART II—UNDER REPORTING WITH RESPECT TO FOREIGN ASSETS

SEC. 511. DISCLOSURE OF INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.

(a) **IN GENERAL.**—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6038C the following new section:

“SEC. 6038D. INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.

“(a) **IN GENERAL.**—Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person’s return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds \$50,000 (or such higher dollar amount as the Secretary may prescribe).

“(b) **SPECIFIED FOREIGN FINANCIAL ASSETS.**—For purposes of this section, the term ‘specified foreign financial asset’ means—

“(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

“(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

“(A) any stock or security issued by a person other than a United States person,

“(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

“(C) any interest in a foreign entity (as defined in section 1473).

“(c) **REQUIRED INFORMATION.**—The information described in this subsection with respect to any asset is:

“(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

“(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

“(3) In the case of any other instrument, contract, or interest—

“(A) such information as is necessary to identify such instrument, contract, or interest, and

“(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

“(4) The maximum value of the asset during the taxable year.

“(d) **PENALTY FOR FAILURE TO DISCLOSE.**—

“(1) **IN GENERAL.**—If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of \$10,000.

Time period.	<p>“(2) INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION.—If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed \$50,000.</p>
Determination.	<p>“(e) PRESUMPTION THAT VALUE OF SPECIFIED FOREIGN FINANCIAL ASSETS EXCEEDS DOLLAR THRESHOLD.—If—</p> <p>“(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and</p> <p>“(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,</p> <p>then the aggregate value of such assets shall be treated as being in excess of \$50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.</p> <p>“(f) APPLICATION TO CERTAIN ENTITIES.—To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.</p> <p>“(g) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.</p> <p>“(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of—</p> <p>“(1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures,</p> <p>“(2) nonresident aliens, and</p> <p>“(3) bona fide residents of any possession of the United States.”.</p> <p>(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038C the following new item:</p> <p>“Sec. 6038D. Information with respect to foreign financial assets.”.</p>
Applicability. 26 USC 6038D note.	<p>(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.</p>
26 USC 6662.	<p>SEC. 512. PENALTIES FOR UNDERPAYMENTS ATTRIBUTABLE TO UNDISCLOSED FOREIGN FINANCIAL ASSETS.</p> <p>(a) IN GENERAL.—Section 6662, as amended by this Act, is amended—</p>

(1) in subsection (b), by inserting after paragraph (6) the following new paragraph:

“(7) Any undisclosed foreign financial asset understatement.”, and

(2) by adding at the end the following new subsection:

“(j) UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENT.—

“(1) IN GENERAL.—For purposes of this section, the term ‘undisclosed foreign financial asset understatement’ means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

“(2) UNDISCLOSED FOREIGN FINANCIAL ASSET.—For purposes of this subsection, the term ‘undisclosed foreign financial asset’ means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.

“(3) INCREASE IN PENALTY FOR UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENTS.—In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Applicability.
26 USC 6662
note.

SEC. 513. MODIFICATION OF STATUTE OF LIMITATIONS FOR SIGNIFICANT OMISSION OF INCOME IN CONNECTION WITH FOREIGN ASSETS.

(a) EXTENSION OF STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 6501(e) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

26 USC 6501.

“(A) GENERAL RULE.—If the taxpayer omits from gross income an amount properly includible therein and—

Time period.

“(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

“(ii) such amount—

“(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

“(II) is in excess of \$5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.”.

(2) CONFORMING AMENDMENTS.—

26 USC 6501.

(A) Subparagraph (B) of section 6501(e)(1), as redesignated by paragraph (1), is amended by striking all that precedes clause (i) and inserting the following:

“(B) DETERMINATION OF GROSS INCOME.—For purposes of subparagraph (A)—”.

(B) Paragraph (2) of section 6229(c) is amended by striking “which is in excess of 25 percent of the amount of gross income stated in its return” and inserting “and such amount is described in clause (i) or (ii) of section 6501(e)(1)(A)”.

(b) ADDITIONAL REPORTS SUBJECT TO EXTENDED PERIOD.—Paragraph (8) of section 6501(c) is amended—

(1) by inserting “pursuant to an election under section 1295(b) or” before “under section 6038”,

(2) by inserting “1298(f),” before “6038”, and

(3) by inserting “6038D,” after “6038B,”.

(c) CLARIFICATIONS RELATED TO FAILURE TO DISCLOSE FOREIGN TRANSFERS.—Paragraph (8) of section 6501(c) is amended by striking “event” and inserting “tax return, event,”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) returns filed after the date of the enactment of this Act; and

(2) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 (determined without regard to such amendments) for assessment of such taxes has not expired as of such date.

Applicability.
26 USC 6229
note.

PART III—OTHER DISCLOSURE PROVISIONS

SEC. 521. REPORTING OF ACTIVITIES WITH RESPECT TO PASSIVE FOREIGN INVESTMENT COMPANIES.

(a) IN GENERAL.—Section 1298 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) REPORTING REQUIREMENT.—Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.”.

(b) CONFORMING AMENDMENT.—Subsection (e) of section 1291 is amended by striking “, (d), and (f)” and inserting “and (d)”.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

26 USC 1291
note.

SEC. 522. SECRETARY PERMITTED TO REQUIRE FINANCIAL INSTITUTIONS TO FILE CERTAIN RETURNS RELATED TO WITHHOLDING ON FOREIGN TRANSFERS ELECTRONICALLY.

(a) IN GENERAL.—Subsection (e) of section 6011 is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULE FOR RETURNS FILED BY FINANCIAL INSTITUTIONS WITH RESPECT TO WITHHOLDING ON FOREIGN TRANSFERS.—The numerical limitation under paragraph (2)(A) shall not apply to any return filed by a financial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).”.

(b) CONFORMING AMENDMENT.—Subsection (c) of section 6724 is amended by inserting “or with respect to a return described in section 6011(e)(4)” before the end period. 26 USC 6724.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act. 26 USC 6011 note.

PART IV—PROVISIONS RELATED TO FOREIGN TRUSTS

SEC. 531. CLARIFICATIONS WITH RESPECT TO FOREIGN TRUSTS WHICH ARE TREATED AS HAVING A UNITED STATES BENEFICIARY.

(a) IN GENERAL.—Paragraph (1) of section 679(c) is amended by adding at the end the following:

“For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person’s interest in the trust is contingent on a future event.”.

(b) CLARIFICATION REGARDING DISCRETION TO IDENTIFY BENEFICIARIES.—Subsection (c) of section 679 is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULE IN CASE OF DISCRETION TO IDENTIFY BENEFICIARIES.—For purposes of paragraph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless—

“(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and

“(B) none of those persons are United States persons during the taxable year.”.

(c) CLARIFICATION THAT CERTAIN AGREEMENTS AND UNDERSTANDINGS ARE TERMS OF THE TRUST.—Subsection (c) of section 679, as amended by subsection (b), is amended by adding at the end the following new paragraph:

“(5) CERTAIN AGREEMENTS AND UNDERSTANDINGS TREATED AS TERMS OF THE TRUST.—For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person, such agreement or understanding shall be treated as a term of the trust.”.

SEC. 532. PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.

(a) IN GENERAL.—Section 679 is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

“(d) PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.—If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in

section 6048(a)(3)(B)(ii)), the Secretary may treat such trust as having a United States beneficiary for purposes of applying this section to such transfer unless such person—

“(1) submits such information to the Secretary as the Secretary may require with respect to such transfer, and

“(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).”.

Applicability.
26 USC 679 note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transfers of property after the date of the enactment of this Act.

SEC. 533. UNCOMPENSATED USE OF TRUST PROPERTY.

26 USC 643.

(a) **IN GENERAL.**—Paragraph (1) of section 643(i) is amended—

(1) by striking “directly or indirectly to” and inserting “(or permits the use of any other trust property) directly or indirectly to or by”, and

(2) by inserting “(or the fair market value of the use of such property)” after “the amount of such loan”.

(b) **EXCEPTION FOR COMPENSATED USE.**—Paragraph (2) of section 643(i) is amended by adding at the end the following new subparagraph:

“(E) **EXCEPTION FOR COMPENSATED USE OF PROPERTY.**—

In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.”.

(c) **APPLICATION TO GRANTOR TRUSTS.**—Subsection (c) of section 679, as amended by this Act, is amended by adding at the end the following new paragraph:

“(6) **UNCOMPENSATED USE OF TRUST PROPERTY TREATED AS A PAYMENT.**—For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.”.

(d) **CONFORMING AMENDMENTS.**—Paragraph (3) of section 643(i) is amended—

(1) by inserting “(or use of property)” after “If any loan”,

(2) by inserting “or the return of such property” before “shall be disregarded”, and

(3) by striking “REGARDING LOAN PRINCIPAL” in the heading thereof.

Applicability.
26 USC 643 note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to loans made, and uses of property, after the date of the enactment of this Act.

SEC. 534. REPORTING REQUIREMENT OF UNITED STATES OWNERS OF FOREIGN TRUSTS.

(a) **IN GENERAL.**—Paragraph (1) of section 6048(b) is amended by inserting “shall submit such information as the Secretary may

prescribe with respect to such trust for such year and” before “shall be responsible to ensure”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Applicability.
26 USC 6048
note.

SEC. 535. MINIMUM PENALTY WITH RESPECT TO FAILURE TO REPORT ON CERTAIN FOREIGN TRUSTS.

(a) **IN GENERAL.**—Subsection (a) of section 6677 is amended— 26 USC 6677.

(1) by inserting “the greater of \$10,000 or” before “35 percent”, and

(2) by striking the last sentence and inserting the following: “At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer).”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to notices and returns required to be filed after December 31, 2009.

Applicability.
26 USC 6677
note.

PART V—SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS

SEC. 541. SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS.

(a) **IN GENERAL.**—Section 871 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(l) **TREATMENT OF DIVIDEND EQUIVALENT PAYMENTS.**—

Definitions.

“(1) **IN GENERAL.**—For purposes of subsection (a), sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

“(2) **DIVIDEND EQUIVALENT.**—For purposes of this subsection, the term ‘dividend equivalent’ means—

“(A) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States,

“(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

“(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

“(3) SPECIFIED NOTIONAL PRINCIPAL CONTRACT.—For purposes of this subsection, the term ‘specified notional principal contract’ means—

“(A) any notional principal contract if—

“(i) in connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract,

“(ii) in connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract,

“(iii) the underlying security is not readily tradable on an established securities market,

“(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract, or

“(v) such contract is identified by the Secretary as a specified notional principal contract,

“(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

“(4) DEFINITIONS.—For purposes of paragraph (3)(A)—

“(A) LONG PARTY.—The term ‘long party’ means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

“(B) SHORT PARTY.—The term ‘short party’ means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

“(C) UNDERLYING SECURITY.—The term ‘underlying security’ means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

“(5) PAYMENTS DETERMINED ON GROSS BASIS.—For purposes of this subsection, the term ‘payment’ includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

“(6) PREVENTION OF OVER-WITHHOLDING.—In the case of any chain of dividend equivalents one or more of which is subject to tax under subsection (a) or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain, or is not otherwise due, or as the Secretary determines is appropriate to address the role of financial intermediaries in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

“(7) COORDINATION WITH CHAPTERS 3 AND 4.—For purposes of chapters 3 and 4, each person that is a party to any contract

or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made on or after the date that is 180 days after the date of the enactment of this Act. Applicability.
26 USC 871 note.

Subtitle B—Delay in Application of Worldwide Allocation of Interest

SEC. 551. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST.

(a) IN GENERAL.—Paragraphs (5)(D) and (6) of section 864(f) are each amended by striking “December 31, 2017” and inserting “December 31, 2020”. 26 USC 864.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 864 note.

Subtitle C—Budgetary Provisions

SEC. 561. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986, in the case of a corporation with assets of not less than \$1,000,000,000 (determined as of the end of the preceding taxable year)—

26 USC 6655
note.

(1) the percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 23 percentage points,

(2) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2015 shall be 121.5 percent of such amount,

(3) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2019 shall be 106.5 percent of such amount, and

(4) the amount of the next required installment after an installment referred to in paragraph (2) or (3) shall be appropriately reduced to reflect the amount of the increase by reason of such paragraph.

SEC. 562. PAYGO COMPLIANCE.

The budgetary effects of this Act, for purposes of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairman of the House and Senate Budget Committees, provided that such statement has been

submitted prior to the vote on passage in the House acting first on this conference report or amendments between the Houses.

Approved March 18, 2010.

LEGISLATIVE HISTORY—H.R. 2847:

HOUSE REPORTS: No. 111–149 (Comm. on Appropriations).

SENATE REPORTS: No. 111–34 (Comm. on Appropriations).

CONGRESSIONAL RECORD:

Vol. 155 (2009): June 16–18, considered and passed House.
Oct. 7, 8, 13, Nov. 5, considered and passed Senate, amended.
Dec. 16, House concurred in Senate amendment with an amendment.

Vol. 156 (2010): Feb. 11, 22–24, Senate considered and concurred in House amendment with an amendment.
Mar. 4, House concurred in Senate amendment with an amendment.
Mar. 11, 15, 17, Senate considered and concurred in House amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Mar. 18, Presidential remarks.



Public Law 111–148
111th Congress

An Act

Entitled The Patient Protection and Affordable Care Act.

Mar. 23, 2010
[H.R. 3590]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Patient Protection and Affordable Care Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Patient
Protection and
Affordable Care
Act.
42 USC 18001
note.

Sec. 1. Short title; table of contents.

TITLE I—QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Subtitle A—Immediate Improvements in Health Care Coverage for All Americans

Sec. 1001. Amendments to the Public Health Service Act.

“PART A—INDIVIDUAL AND GROUP MARKET REFORMS

“SUBPART II—IMPROVING COVERAGE

“Sec. 2711. No lifetime or annual limits.

“Sec. 2712. Prohibition on rescissions.

“Sec. 2713. Coverage of preventive health services.

“Sec. 2714. Extension of dependent coverage.

“Sec. 2715. Development and utilization of uniform explanation of coverage documents and standardized definitions.

“Sec. 2716. Prohibition of discrimination based on salary.

“Sec. 2717. Ensuring the quality of care.

“Sec. 2718. Bringing down the cost of health care coverage.

“Sec. 2719. Appeals process.

Sec. 1002. Health insurance consumer information.

Sec. 1003. Ensuring that consumers get value for their dollars.

Sec. 1004. Effective dates.

Subtitle B—Immediate Actions to Preserve and Expand Coverage

Sec. 1101. Immediate access to insurance for uninsured individuals with a pre-existing condition.

Sec. 1102. Reinsurance for early retirees.

Sec. 1103. Immediate information that allows consumers to identify affordable coverage options.

Sec. 1104. Administrative simplification.

Sec. 1105. Effective date.

Subtitle C—Quality Health Insurance Coverage for All Americans

PART I—HEALTH INSURANCE MARKET REFORMS

Sec. 1201. Amendment to the Public Health Service Act.

“SUBPART I—GENERAL REFORM

“Sec. 2704. Prohibition of preexisting condition exclusions or other discrimination based on health status.

“Sec. 2701. Fair health insurance premiums.

“Sec. 2702. Guaranteed availability of coverage.

- “Sec. 2703. Guaranteed renewability of coverage.
- “Sec. 2705. Prohibiting discrimination against individual participants and beneficiaries based on health status.
- “Sec. 2706. Non-discrimination in health care.
- “Sec. 2707. Comprehensive health insurance coverage.
- “Sec. 2708. Prohibition on excessive waiting periods.

PART II—OTHER PROVISIONS

- Sec. 1251. Preservation of right to maintain existing coverage.
- Sec. 1252. Rating reforms must apply uniformly to all health insurance issuers and group health plans.
- Sec. 1253. Effective dates.

Subtitle D—Available Coverage Choices for All Americans

PART I—ESTABLISHMENT OF QUALIFIED HEALTH PLANS

- Sec. 1301. Qualified health plan defined.
- Sec. 1302. Essential health benefits requirements.
- Sec. 1303. Special rules.
- Sec. 1304. Related definitions.

PART II—CONSUMER CHOICES AND INSURANCE COMPETITION THROUGH HEALTH BENEFIT EXCHANGES

- Sec. 1311. Affordable choices of health benefit plans.
- Sec. 1312. Consumer choice.
- Sec. 1313. Financial integrity.

PART III—STATE FLEXIBILITY RELATING TO EXCHANGES

- Sec. 1321. State flexibility in operation and enforcement of Exchanges and related requirements.
- Sec. 1322. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers.
- Sec. 1323. Community health insurance option.
- Sec. 1324. Level playing field.

PART IV—STATE FLEXIBILITY TO ESTABLISH ALTERNATIVE PROGRAMS

- Sec. 1331. State flexibility to establish basic health programs for low-income individuals not eligible for Medicaid.
- Sec. 1332. Waiver for State innovation.
- Sec. 1333. Provisions relating to offering of plans in more than one State.

PART V—REINSURANCE AND RISK ADJUSTMENT

- Sec. 1341. Transitional reinsurance program for individual and small group markets in each State.
- Sec. 1342. Establishment of risk corridors for plans in individual and small group markets.
- Sec. 1343. Risk adjustment.

Subtitle E—Affordable Coverage Choices for All Americans

PART I—PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS

SUBPART A—PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS

- Sec. 1401. Refundable tax credit providing premium assistance for coverage under a qualified health plan.
- Sec. 1402. Reduced cost-sharing for individuals enrolling in qualified health plans.

SUBPART B—ELIGIBILITY DETERMINATIONS

- Sec. 1411. Procedures for determining eligibility for Exchange participation, premium tax credits and reduced cost-sharing, and individual responsibility exemptions.
- Sec. 1412. Advance determination and payment of premium tax credits and cost-sharing reductions.
- Sec. 1413. Streamlining of procedures for enrollment through an exchange and State Medicaid, CHIP, and health subsidy programs.
- Sec. 1414. Disclosures to carry out eligibility requirements for certain programs.
- Sec. 1415. Premium tax credit and cost-sharing reduction payments disregarded for Federal and Federally-assisted programs.

PART II—SMALL BUSINESS TAX CREDIT

- Sec. 1421. Credit for employee health insurance expenses of small businesses.

Subtitle F—Shared Responsibility for Health Care

PART I—INDIVIDUAL RESPONSIBILITY

- Sec. 1501. Requirement to maintain minimum essential coverage.
- Sec. 1502. Reporting of health insurance coverage.

PART II—EMPLOYER RESPONSIBILITIES

- Sec. 1511. Automatic enrollment for employees of large employers.
- Sec. 1512. Employer requirement to inform employees of coverage options.
- Sec. 1513. Shared responsibility for employers.
- Sec. 1514. Reporting of employer health insurance coverage.
- Sec. 1515. Offering of Exchange-participating qualified health plans through cafeteria plans.

Subtitle G—Miscellaneous Provisions

- Sec. 1551. Definitions.
- Sec. 1552. Transparency in government.
- Sec. 1553. Prohibition against discrimination on assisted suicide.
- Sec. 1554. Access to therapies.
- Sec. 1555. Freedom not to participate in Federal health insurance programs.
- Sec. 1556. Equity for certain eligible survivors.
- Sec. 1557. Nondiscrimination.
- Sec. 1558. Protections for employees.
- Sec. 1559. Oversight.
- Sec. 1560. Rules of construction.
- Sec. 1561. Health information technology enrollment standards and protocols.
- Sec. 1562. Conforming amendments.
- Sec. 1563. Sense of the Senate promoting fiscal responsibility.

TITLE II—ROLE OF PUBLIC PROGRAMS

Subtitle A—Improved Access to Medicaid

- Sec. 2001. Medicaid coverage for the lowest income populations.
- Sec. 2002. Income eligibility for nonelderly determined using modified gross income.
- Sec. 2003. Requirement to offer premium assistance for employer-sponsored insurance.
- Sec. 2004. Medicaid coverage for former foster care children.
- Sec. 2005. Payments to territories.
- Sec. 2006. Special adjustment to FMAP determination for certain States recovering from a major disaster.
- Sec. 2007. Medicaid Improvement Fund rescission.

Subtitle B—Enhanced Support for the Children’s Health Insurance Program

- Sec. 2101. Additional federal financial participation for CHIP.
- Sec. 2102. Technical corrections.

Subtitle C—Medicaid and CHIP Enrollment Simplification

- Sec. 2201. Enrollment Simplification and coordination with State Health Insurance Exchanges.
- Sec. 2202. Permitting hospitals to make presumptive eligibility determinations for all Medicaid eligible populations.

Subtitle D—Improvements to Medicaid Services

- Sec. 2301. Coverage for freestanding birth center services.
- Sec. 2302. Concurrent care for children.
- Sec. 2303. State eligibility option for family planning services.
- Sec. 2304. Clarification of definition of medical assistance.

Subtitle E—New Options for States to Provide Long-Term Services and Supports

- Sec. 2401. Community First Choice Option.
- Sec. 2402. Removal of barriers to providing home and community-based services.
- Sec. 2403. Money Follows the Person Rebalancing Demonstration.
- Sec. 2404. Protection for recipients of home and community-based services against spousal impoverishment.
- Sec. 2405. Funding to expand State Aging and Disability Resource Centers.
- Sec. 2406. Sense of the Senate regarding long-term care.

Subtitle F—Medicaid Prescription Drug Coverage

- Sec. 2501. Prescription drug rebates.

- Sec. 2502. Elimination of exclusion of coverage of certain drugs.
- Sec. 2503. Providing adequate pharmacy reimbursement.

Subtitle G—Medicaid Disproportionate Share Hospital (DSH) Payments

- Sec. 2551. Disproportionate share hospital payments.

Subtitle H—Improved Coordination for Dual Eligible Beneficiaries

- Sec. 2601. 5-year period for demonstration projects.
- Sec. 2602. Providing Federal coverage and payment coordination for dual eligible beneficiaries.

Subtitle I—Improving the Quality of Medicaid for Patients and Providers

- Sec. 2701. Adult health quality measures.
- Sec. 2702. Payment Adjustment for Health Care-Acquired Conditions.
- Sec. 2703. State option to provide health homes for enrollees with chronic conditions.
- Sec. 2704. Demonstration project to evaluate integrated care around a hospitalization.
- Sec. 2705. Medicaid Global Payment System Demonstration Project.
- Sec. 2706. Pediatric Accountable Care Organization Demonstration Project.
- Sec. 2707. Medicaid emergency psychiatric demonstration project.

Subtitle J—Improvements to the Medicaid and CHIP Payment and Access Commission (MACPAC)

- Sec. 2801. MACPAC assessment of policies affecting all Medicaid beneficiaries.

Subtitle K—Protections for American Indians and Alaska Natives

- Sec. 2901. Special rules relating to Indians.
- Sec. 2902. Elimination of sunset for reimbursement for all medicare part B services furnished by certain indian hospitals and clinics.

Subtitle L—Maternal and Child Health Services

- Sec. 2951. Maternal, infant, and early childhood home visiting programs.
- Sec. 2952. Support, education, and research for postpartum depression.
- Sec. 2953. Personal responsibility education.
- Sec. 2954. Restoration of funding for abstinence education.
- Sec. 2955. Inclusion of information about the importance of having a health care power of attorney in transition planning for children aging out of foster care and independent living programs.

TITLE III—IMPROVING THE QUALITY AND EFFICIENCY OF HEALTH CARE

Subtitle A—Transforming the Health Care Delivery System

PART I—LINKING PAYMENT TO QUALITY OUTCOMES UNDER THE MEDICARE PROGRAM

- Sec. 3001. Hospital Value-Based purchasing program.
- Sec. 3002. Improvements to the physician quality reporting system.
- Sec. 3003. Improvements to the physician feedback program.
- Sec. 3004. Quality reporting for long-term care hospitals, inpatient rehabilitation hospitals, and hospice programs.
- Sec. 3005. Quality reporting for PPS-exempt cancer hospitals.
- Sec. 3006. Plans for a Value-Based purchasing program for skilled nursing facilities and home health agencies.
- Sec. 3007. Value-based payment modifier under the physician fee schedule.
- Sec. 3008. Payment adjustment for conditions acquired in hospitals.

PART II—NATIONAL STRATEGY TO IMPROVE HEALTH CARE QUALITY

- Sec. 3011. National strategy.
- Sec. 3012. Interagency Working Group on Health Care Quality.
- Sec. 3013. Quality measure development.
- Sec. 3014. Quality measurement.
- Sec. 3015. Data collection; public reporting.

PART III—ENCOURAGING DEVELOPMENT OF NEW PATIENT CARE MODELS

- Sec. 3021. Establishment of Center for Medicare and Medicaid Innovation within CMS.
- Sec. 3022. Medicare shared savings program.
- Sec. 3023. National pilot program on payment bundling.
- Sec. 3024. Independence at home demonstration program.
- Sec. 3025. Hospital readmissions reduction program.

- Sec. 3026. Community-Based Care Transitions Program.
- Sec. 3027. Extension of gainsharing demonstration.

Subtitle B—Improving Medicare for Patients and Providers

PART I—ENSURING BENEFICIARY ACCESS TO PHYSICIAN CARE AND OTHER SERVICES

- Sec. 3101. Increase in the physician payment update.
- Sec. 3102. Extension of the work geographic index floor and revisions to the practice expense geographic adjustment under the Medicare physician fee schedule.
- Sec. 3103. Extension of exceptions process for Medicare therapy caps.
- Sec. 3104. Extension of payment for technical component of certain physician pathology services.
- Sec. 3105. Extension of ambulance add-ons.
- Sec. 3106. Extension of certain payment rules for long-term care hospital services and of moratorium on the establishment of certain hospitals and facilities.
- Sec. 3107. Extension of physician fee schedule mental health add-on.
- Sec. 3108. Permitting physician assistants to order post-Hospital extended care services.
- Sec. 3109. Exemption of certain pharmacies from accreditation requirements.
- Sec. 3110. Part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 3111. Payment for bone density tests.
- Sec. 3112. Revision to the Medicare Improvement Fund.
- Sec. 3113. Treatment of certain complex diagnostic laboratory tests.
- Sec. 3114. Improved access for certified nurse-midwife services.

PART II—RURAL PROTECTIONS

- Sec. 3121. Extension of outpatient hold harmless provision.
- Sec. 3122. Extension of Medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 3123. Extension of the Rural Community Hospital Demonstration Program.
- Sec. 3124. Extension of the Medicare-dependent hospital (MDH) program.
- Sec. 3125. Temporary improvements to the Medicare inpatient hospital payment adjustment for low-volume hospitals.
- Sec. 3126. Improvements to the demonstration project on community health integration models in certain rural counties.
- Sec. 3127. MedPAC study on adequacy of Medicare payments for health care providers serving in rural areas.
- Sec. 3128. Technical correction related to critical access hospital services.
- Sec. 3129. Extension of and revisions to Medicare rural hospital flexibility program.

PART III—IMPROVING PAYMENT ACCURACY

- Sec. 3131. Payment adjustments for home health care.
- Sec. 3132. Hospice reform.
- Sec. 3133. Improvement to medicare disproportionate share hospital (DSH) payments.
- Sec. 3134. Misvalued codes under the physician fee schedule.
- Sec. 3135. Modification of equipment utilization factor for advanced imaging services.
- Sec. 3136. Revision of payment for power-driven wheelchairs.
- Sec. 3137. Hospital wage index improvement.
- Sec. 3138. Treatment of certain cancer hospitals.
- Sec. 3139. Payment for biosimilar biological products.
- Sec. 3140. Medicare hospice concurrent care demonstration program.
- Sec. 3141. Application of budget neutrality on a national basis in the calculation of the Medicare hospital wage index floor.
- Sec. 3142. HHS study on urban Medicare-dependent hospitals.
- Sec. 3143. Protecting home health benefits.

Subtitle C—Provisions Relating to Part C

- Sec. 3201. Medicare Advantage payment.
- Sec. 3202. Benefit protection and simplification.
- Sec. 3203. Application of coding intensity adjustment during MA payment transition.
- Sec. 3204. Simplification of annual beneficiary election periods.
- Sec. 3205. Extension for specialized MA plans for special needs individuals.
- Sec. 3206. Extension of reasonable cost contracts.
- Sec. 3207. Technical correction to MA private fee-for-service plans.
- Sec. 3208. Making senior housing facility demonstration permanent.

- Sec. 3209. Authority to deny plan bids.
- Sec. 3210. Development of new standards for certain Medigap plans.

Subtitle D—Medicare Part D Improvements for Prescription Drug Plans and MA–PD Plans

- Sec. 3301. Medicare coverage gap discount program.
- Sec. 3302. Improvement in determination of Medicare part D low-income benchmark premium.
- Sec. 3303. Voluntary de minimis policy for subsidy eligible individuals under prescription drug plans and MA–PD plans.
- Sec. 3304. Special rule for widows and widowers regarding eligibility for low-income assistance.
- Sec. 3305. Improved information for subsidy eligible individuals reassigned to prescription drug plans and MA–PD plans.
- Sec. 3306. Funding outreach and assistance for low-income programs.
- Sec. 3307. Improving formulary requirements for prescription drug plans and MA–PD plans with respect to certain categories or classes of drugs.
- Sec. 3308. Reducing part D premium subsidy for high-income beneficiaries.
- Sec. 3309. Elimination of cost sharing for certain dual eligible individuals.
- Sec. 3310. Reducing wasteful dispensing of outpatient prescription drugs in long-term care facilities under prescription drug plans and MA–PD plans.
- Sec. 3311. Improved Medicare prescription drug plan and MA–PD plan complaint system.
- Sec. 3312. Uniform exceptions and appeals process for prescription drug plans and MA–PD plans.
- Sec. 3313. Office of the Inspector General studies and reports.
- Sec. 3314. Including costs incurred by AIDS drug assistance programs and Indian Health Service in providing prescription drugs toward the annual out-of-pocket threshold under part D.
- Sec. 3315. Immediate reduction in coverage gap in 2010.

Subtitle E—Ensuring Medicare Sustainability

- Sec. 3401. Revision of certain market basket updates and incorporation of productivity improvements into market basket updates that do not already incorporate such improvements.
- Sec. 3402. Temporary adjustment to the calculation of part B premiums.
- Sec. 3403. Independent Medicare Advisory Board.

Subtitle F—Health Care Quality Improvements

- Sec. 3501. Health care delivery system research; Quality improvement technical assistance.
- Sec. 3502. Establishing community health teams to support the patient-centered medical home.
- Sec. 3503. Medication management services in treatment of chronic disease.
- Sec. 3504. Design and implementation of regionalized systems for emergency care.
- Sec. 3505. Trauma care centers and service availability.
- Sec. 3506. Program to facilitate shared decisionmaking.
- Sec. 3507. Presentation of prescription drug benefit and risk information.
- Sec. 3508. Demonstration program to integrate quality improvement and patient safety training into clinical education of health professionals.
- Sec. 3509. Improving women's health.
- Sec. 3510. Patient navigator program.
- Sec. 3511. Authorization of appropriations.

Subtitle G—Protecting and Improving Guaranteed Medicare Benefits

- Sec. 3601. Protecting and improving guaranteed Medicare benefits.
- Sec. 3602. No cuts in guaranteed benefits.

TITLE IV—PREVENTION OF CHRONIC DISEASE AND IMPROVING PUBLIC HEALTH

Subtitle A—Modernizing Disease Prevention and Public Health Systems

- Sec. 4001. National Prevention, Health Promotion and Public Health Council.
- Sec. 4002. Prevention and Public Health Fund.
- Sec. 4003. Clinical and community preventive services.
- Sec. 4004. Education and outreach campaign regarding preventive benefits.

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- Sec. 4101. School-based health centers.
- Sec. 4102. Oral healthcare prevention activities.

- Sec. 4103. Medicare coverage of annual wellness visit providing a personalized prevention plan.
- Sec. 4104. Removal of barriers to preventive services in Medicare.
- Sec. 4105. Evidence-based coverage of preventive services in Medicare.
- Sec. 4106. Improving access to preventive services for eligible adults in Medicaid.
- Sec. 4107. Coverage of comprehensive tobacco cessation services for pregnant women in Medicaid.
- Sec. 4108. Incentives for prevention of chronic diseases in Medicaid.

Subtitle C—Creating Healthier Communities

- Sec. 4201. Community transformation grants.
- Sec. 4202. Healthy aging, living well; evaluation of community-based prevention and wellness programs for Medicare beneficiaries.
- Sec. 4203. Removing barriers and improving access to wellness for individuals with disabilities.
- Sec. 4204. Immunizations.
- Sec. 4205. Nutrition labeling of standard menu items at chain restaurants.
- Sec. 4206. Demonstration project concerning individualized wellness plan.
- Sec. 4207. Reasonable break time for nursing mothers.

Subtitle D—Support for Prevention and Public Health Innovation

- Sec. 4301. Research on optimizing the delivery of public health services.
- Sec. 4302. Understanding health disparities: data collection and analysis.
- Sec. 4303. CDC and employer-based wellness programs.
- Sec. 4304. Epidemiology-Laboratory Capacity Grants.
- Sec. 4305. Advancing research and treatment for pain care management.
- Sec. 4306. Funding for Childhood Obesity Demonstration Project.

Subtitle E—Miscellaneous Provisions

- Sec. 4401. Sense of the Senate concerning CBO scoring.
- Sec. 4402. Effectiveness of Federal health and wellness initiatives.

TITLE V—HEALTH CARE WORKFORCE

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- Sec. 5001. Purpose.
- Sec. 5002. Definitions.

Subtitle B—Innovations in the Health Care Workforce

- Sec. 5101. National health care workforce commission.
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Subtitle C—Increasing the Supply of the Health Care Workforce

- Sec. 5201. Federally supported student loan funds.
- Sec. 5202. Nursing student loan program.
- Sec. 5203. Health care workforce loan repayment programs.
- Sec. 5204. Public health workforce recruitment and retention programs.
- Sec. 5205. Allied health workforce recruitment and retention programs.
- Sec. 5206. Grants for State and local programs.
- Sec. 5207. Funding for National Health Service Corps.
- Sec. 5208. Nurse-managed health clinics.
- Sec. 5209. Elimination of cap on commissioned corps.
- Sec. 5210. Establishing a Ready Reserve Corps.

Subtitle D—Enhancing Health Care Workforce Education and Training

- Sec. 5301. Training in family medicine, general internal medicine, general pediatrics, and physician assistantship.
- Sec. 5302. Training opportunities for direct care workers.
- Sec. 5303. Training in general, pediatric, and public health dentistry.
- Sec. 5304. Alternative dental health care providers demonstration project.
- Sec. 5305. Geriatric education and training; career awards; comprehensive geriatric education.
- Sec. 5306. Mental and behavioral health education and training grants.
- Sec. 5307. Cultural competency, prevention, and public health and individuals with disabilities training.
- Sec. 5308. Advanced nursing education grants.
- Sec. 5309. Nurse education, practice, and retention grants.
- Sec. 5310. Loan repayment and scholarship program.
- Sec. 5311. Nurse faculty loan program.

- Sec. 5312. Authorization of appropriations for parts B through D of title VIII.
- Sec. 5313. Grants to promote the community health workforce.
- Sec. 5314. Fellowship training in public health.
- Sec. 5315. United States Public Health Sciences Track.

Subtitle E—Supporting the Existing Health Care Workforce

- Sec. 5401. Centers of excellence.
- Sec. 5402. Health care professionals training for diversity.
- Sec. 5403. Interdisciplinary, community-based linkages.
- Sec. 5404. Workforce diversity grants.
- Sec. 5405. Primary care extension program.

Subtitle F—Strengthening Primary Care and Other Workforce Improvements

- Sec. 5501. Expanding access to primary care services and general surgery services.
- Sec. 5502. Medicare Federally qualified health center improvements.
- Sec. 5503. Distribution of additional residency positions.
- Sec. 5504. Counting resident time in nonprovider settings.
- Sec. 5505. Rules for counting resident time for didactic and scholarly activities and other activities.
- Sec. 5506. Preservation of resident cap positions from closed hospitals.
- Sec. 5507. Demonstration projects To address health professions workforce needs; extension of family-to-family health information centers.
- Sec. 5508. Increasing teaching capacity.
- Sec. 5509. Graduate nurse education demonstration.

Subtitle G—Improving Access to Health Care Services

- Sec. 5601. Spending for Federally Qualified Health Centers (FQHCs).
- Sec. 5602. Negotiated rulemaking for development of methodology and criteria for designating medically underserved populations and health professions shortage areas.
- Sec. 5603. Reauthorization of the Wakefield Emergency Medical Services for Children Program.
- Sec. 5604. Co-locating primary and specialty care in community-based mental health settings.
- Sec. 5605. Key National indicators.

Subtitle H—General Provisions

- Sec. 5701. Reports.

TITLE VI—TRANSPARENCY AND PROGRAM INTEGRITY

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- Sec. 6001. Limitation on Medicare exception to the prohibition on certain physician referrals for hospitals.
- Sec. 6002. Transparency reports and reporting of physician ownership or investment interests.
- Sec. 6003. Disclosure requirements for in-office ancillary services exception to the prohibition on physician self-referral for certain imaging services.
- Sec. 6004. Prescription drug sample transparency.
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Subtitle B—Nursing Home Transparency and Improvement

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- Sec. 6101. Required disclosure of ownership and additional disclosable parties information.
- Sec. 6102. Accountability requirements for skilled nursing facilities and nursing facilities.
- Sec. 6103. Nursing home compare Medicare website.
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- Sec. 6105. Standardized complaint form.
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- Sec. 6107. GAO study and report on Five-Star Quality Rating System.

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- Sec. 6111. Civil money penalties.
- Sec. 6112. National independent monitor demonstration project.
- Sec. 6113. Notification of facility closure.
- Sec. 6114. National demonstration projects on culture change and use of information technology in nursing homes.

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Sec. 6121. Dementia and abuse prevention training.

Subtitle C—Nationwide Program for National and State Background Checks on
Direct Patient Access Employees of Long-term Care Facilities and Providers

Sec. 6201. Nationwide program for National and State background checks on direct patient access employees of long-term care facilities and providers.

Subtitle D—Patient-Centered Outcomes Research

Sec. 6301. Patient-Centered Outcomes Research.

Sec. 6302. Federal coordinating council for comparative effectiveness research.

Subtitle E—Medicare, Medicaid, and CHIP Program Integrity Provisions

Sec. 6401. Provider screening and other enrollment requirements under Medicare, Medicaid, and CHIP.

Sec. 6402. Enhanced Medicare and Medicaid program integrity provisions.

Sec. 6403. Elimination of duplication between the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank.

Sec. 6404. Maximum period for submission of Medicare claims reduced to not more than 12 months.

Sec. 6405. Physicians who order items or services required to be Medicare enrolled physicians or eligible professionals.

Sec. 6406. Requirement for physicians to provide documentation on referrals to programs at high risk of waste and abuse.

Sec. 6407. Face to face encounter with patient required before physicians may certify eligibility for home health services or durable medical equipment under Medicare.

Sec. 6408. Enhanced penalties.

Sec. 6409. Medicare self-referral disclosure protocol.

Sec. 6410. Adjustments to the Medicare durable medical equipment, prosthetics, orthotics, and supplies competitive acquisition program.

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Sec. 6501. Termination of provider participation under Medicaid if terminated under Medicare or other State plan.

Sec. 6502. Medicaid exclusion from participation relating to certain ownership, control, and management affiliations.

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Sec. 6505. Prohibition on payments to institutions or entities located outside of the United States.

Sec. 6506. Overpayments.

Sec. 6507. Mandatory State use of national correct coding initiative.

Sec. 6508. General effective date.

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Sec. 6601. Prohibition on false statements and representations.

Sec. 6602. Clarifying definition.

Sec. 6603. Development of model uniform report form.

Sec. 6604. Applicability of State law to combat fraud and abuse.

Sec. 6605. Enabling the Department of Labor to issue administrative summary cease and desist orders and summary seizures orders against plans that are in financially hazardous condition.

Sec. 6606. MEWA plan registration with Department of Labor.

Sec. 6607. Permitting evidentiary privilege and confidential communications.

Subtitle H—Elder Justice Act

Sec. 6701. Short title of subtitle.

Sec. 6702. Definitions.

Sec. 6703. Elder Justice.

Subtitle I—Sense of the Senate Regarding Medical Malpractice

Sec. 6801. Sense of the Senate regarding medical malpractice.

TITLE VII—IMPROVING ACCESS TO INNOVATIVE MEDICAL THERAPIES

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Sec. 7001. Short title.

- Sec. 7002. Approval pathway for biosimilar biological products.
- Sec. 7003. Savings.

Subtitle B—More Affordable Medicines for Children and Underserved Communities

- Sec. 7101. Expanded participation in 340B program.
- Sec. 7102. Improvements to 340B program integrity.
- Sec. 7103. GAO study to make recommendations on improving the 340B program.

TITLE VIII—CLASS ACT

- Sec. 8001. Short title of title.
- Sec. 8002. Establishment of national voluntary insurance program for purchasing community living assistance services and support.

TITLE IX—REVENUE PROVISIONS

Subtitle A—Revenue Offset Provisions

- Sec. 9001. Excise tax on high cost employer-sponsored health coverage.
- Sec. 9002. Inclusion of cost of employer-sponsored health coverage on W–2.
- Sec. 9003. Distributions for medicine qualified only if for prescribed drug or insulin.
- Sec. 9004. Increase in additional tax on distributions from HSAs and Archer MSAs not used for qualified medical expenses.
- Sec. 9005. Limitation on health flexible spending arrangements under cafeteria plans.
- Sec. 9006. Expansion of information reporting requirements.
- Sec. 9007. Additional requirements for charitable hospitals.
- Sec. 9008. Imposition of annual fee on branded prescription pharmaceutical manufacturers and importers.
- Sec. 9009. Imposition of annual fee on medical device manufacturers and importers.
- Sec. 9010. Imposition of annual fee on health insurance providers.
- Sec. 9011. Study and report of effect on veterans health care.
- Sec. 9012. Elimination of deduction for expenses allocable to Medicare Part D subsidy.
- Sec. 9013. Modification of itemized deduction for medical expenses.
- Sec. 9014. Limitation on excessive remuneration paid by certain health insurance providers.
- Sec. 9015. Additional hospital insurance tax on high-income taxpayers.
- Sec. 9016. Modification of section 833 treatment of certain health organizations.
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- Sec. 9021. Exclusion of health benefits provided by Indian tribal governments.
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TITLE X—STRENGTHENING QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Subtitle A—Provisions Relating to Title I

- Sec. 10101. Amendments to subtitle A.
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- Sec. 10107. Amendments to subtitle G.
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Subtitle B—Provisions Relating to Title II

PART I—MEDICAID AND CHIP

- Sec. 10201. Amendments to the Social Security Act and title II of this Act.
- Sec. 10202. Incentives for States to offer home and community-based services as a long-term care alternative to nursing homes.
- Sec. 10203. Extension of funding for CHIP through fiscal year 2015 and other CHIP-related provisions.

PART II—SUPPORT FOR PREGNANT AND PARENTING TEENS AND WOMEN

- Sec. 10211. Definitions.

- Sec. 10212. Establishment of pregnancy assistance fund.
- Sec. 10213. Permissible uses of Fund.
- Sec. 10214. Appropriations.

PART III—INDIAN HEALTH CARE IMPROVEMENT

- Sec. 10221. Indian health care improvement.

Subtitle C—Provisions Relating to Title III

- Sec. 10301. Plans for a Value-Based purchasing program for ambulatory surgical centers.
- Sec. 10302. Revision to national strategy for quality improvement in health care.
- Sec. 10303. Development of outcome measures.
- Sec. 10304. Selection of efficiency measures.
- Sec. 10305. Data collection; public reporting.
- Sec. 10306. Improvements under the Center for Medicare and Medicaid Innovation.
- Sec. 10307. Improvements to the Medicare shared savings program.
- Sec. 10308. Revisions to national pilot program on payment bundling.
- Sec. 10309. Revisions to hospital readmissions reduction program.
- Sec. 10310. Repeal of physician payment update.
- Sec. 10311. Revisions to extension of ambulance add-ons.
- Sec. 10312. Certain payment rules for long-term care hospital services and moratorium on the establishment of certain hospitals and facilities.
- Sec. 10313. Revisions to the extension for the rural community hospital demonstration program.
- Sec. 10314. Adjustment to low-volume hospital provision.
- Sec. 10315. Revisions to home health care provisions.
- Sec. 10316. Medicare DSH.
- Sec. 10317. Revisions to extension of section 508 hospital provisions.
- Sec. 10318. Revisions to transitional extra benefits under Medicare Advantage.
- Sec. 10319. Revisions to market basket adjustments.
- Sec. 10320. Expansion of the scope of, and additional improvements to, the Independent Medicare Advisory Board.
- Sec. 10321. Revision to community health teams.
- Sec. 10322. Quality reporting for psychiatric hospitals.
- Sec. 10323. Medicare coverage for individuals exposed to environmental health hazards.
- Sec. 10324. Protections for frontier States.
- Sec. 10325. Revision to skilled nursing facility prospective payment system.
- Sec. 10326. Pilot testing pay-for-performance programs for certain Medicare providers.
- Sec. 10327. Improvements to the physician quality reporting system.
- Sec. 10328. Improvement in part D medication therapy management (MTM) programs.
- Sec. 10329. Developing methodology to assess health plan value.
- Sec. 10330. Modernizing computer and data systems of the Centers for Medicare & Medicaid services to support improvements in care delivery.
- Sec. 10331. Public reporting of performance information.
- Sec. 10332. Availability of medicare data for performance measurement.
- Sec. 10333. Community-based collaborative care networks.
- Sec. 10334. Minority health.
- Sec. 10335. Technical correction to the hospital value-based purchasing program.
- Sec. 10336. GAO study and report on Medicare beneficiary access to high-quality dialysis services.

Subtitle D—Provisions Relating to Title IV

- Sec. 10401. Amendments to subtitle A.
- Sec. 10402. Amendments to subtitle B.
- Sec. 10403. Amendments to subtitle C.
- Sec. 10404. Amendments to subtitle D.
- Sec. 10405. Amendments to subtitle E.
- Sec. 10406. Amendment relating to waiving coinsurance for preventive services.
- Sec. 10407. Better diabetes care.
- Sec. 10408. Grants for small businesses to provide comprehensive workplace wellness programs.
- Sec. 10409. Cures Acceleration Network.
- Sec. 10410. Centers of Excellence for Depression.
- Sec. 10411. Programs relating to congenital heart disease.
- Sec. 10412. Automated Defibrillation in Adam's Memory Act.
- Sec. 10413. Young women's breast health awareness and support of young women diagnosed with breast cancer.

Subtitle E—Provisions Relating to Title V

- Sec. 10501. Amendments to the Public Health Service Act, the Social Security Act, and title V of this Act.

- Sec. 10502. Infrastructure to Expand Access to Care.
- Sec. 10503. Community Health Centers and the National Health Service Corps Fund.
- Sec. 10504. Demonstration project to provide access to affordable care.

Subtitle F—Provisions Relating to Title VI

- Sec. 10601. Revisions to limitation on medicare exception to the prohibition on certain physician referrals for hospitals.
- Sec. 10602. Clarifications to patient-centered outcomes research.
- Sec. 10603. Striking provisions relating to individual provider application fees.
- Sec. 10604. Technical correction to section 6405.
- Sec. 10605. Certain other providers permitted to conduct face to face encounter for home health services.
- Sec. 10606. Health care fraud enforcement.
- Sec. 10607. State demonstration programs to evaluate alternatives to current medical tort litigation.
- Sec. 10608. Extension of medical malpractice coverage to free clinics.
- Sec. 10609. Labeling changes.

Subtitle G—Provisions Relating to Title VIII

- Sec. 10801. Provisions relating to title VIII.

Subtitle H—Provisions Relating to Title IX

- Sec. 10901. Modifications to excise tax on high cost employer-sponsored health coverage.
- Sec. 10902. Inflation adjustment of limitation on health flexible spending arrangements under cafeteria plans.
- Sec. 10903. Modification of limitation on charges by charitable hospitals.
- Sec. 10904. Modification of annual fee on medical device manufacturers and importers.
- Sec. 10905. Modification of annual fee on health insurance providers.
- Sec. 10906. Modifications to additional hospital insurance tax on high-income taxpayers.
- Sec. 10907. Excise tax on indoor tanning services in lieu of elective cosmetic medical procedures.
- Sec. 10908. Exclusion for assistance provided to participants in State student loan repayment programs for certain health professionals.
- Sec. 10909. Expansion of adoption credit and adoption assistance programs.

TITLE I—QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Subtitle A—Immediate Improvements in Health Care Coverage for All Americans

SEC. 1001. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

Part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended—

(1) by striking the part heading and inserting the following:

“PART A—INDIVIDUAL AND GROUP MARKET REFORMS”;

42 USC
300gg-4—
300gg-7,
300gg-25—
300gg-28.
42 USC
300gg-11—
300gg-13,
300gg-9.
42 USC
300gg-21—
300gg-23.

(2) by redesignating sections 2704 through 2707 as sections 2725 through 2728, respectively;

(3) by redesignating sections 2711 through 2713 as sections 2731 through 2733, respectively;

(4) by redesignating sections 2721 through 2723 as sections 2735 through 2737, respectively; and

(5) by inserting after section 2702, the following:

“Subpart II—Improving Coverage**“SEC. 2711. NO LIFETIME OR ANNUAL LIMITS.**42 USC
300gg-11.

“(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish—

“(1) lifetime limits on the dollar value of benefits for any participant or beneficiary; or

“(2) unreasonable annual limits (within the meaning of section 223 of the Internal Revenue Code of 1986) on the dollar value of benefits for any participant or beneficiary.

“(b) PER BENEFICIARY LIMITS.—Subsection (a) shall not be construed to prevent a group health plan or health insurance coverage that is not required to provide essential health benefits under section 1302(b) of the Patient Protection and Affordable Care Act from placing annual or lifetime per beneficiary limits on specific covered benefits to the extent that such limits are otherwise permitted under Federal or State law.

“SEC. 2712. PROHIBITION ON RESCISSIONS.42 USC
300gg-12.

“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not rescind such plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage involved, except that this section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Such plan or coverage may not be cancelled except with prior notice to the enrollee, and only as permitted under section 2702(c) or 2742(b).

“SEC. 2713. COVERAGE OF PREVENTIVE HEALTH SERVICES.42 USC
300gg-13.

“(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for—

“(1) evidence-based items or services that have in effect a rating of ‘A’ or ‘B’ in the current recommendations of the United States Preventive Services Task Force;

“(2) immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved; and

“(3) with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration.

“(4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.

“(5) for the purposes of this Act, and for the purposes of any other provision of law, the current recommendations of the United States Preventive Service Task Force regarding breast cancer screening, mammography, and prevention shall

be considered the most current other than those issued in or around November 2009.

Nothing in this subsection shall be construed to prohibit a plan or issuer from providing coverage for services in addition to those recommended by United States Preventive Services Task Force or to deny coverage for services that are not recommended by such Task Force.

“(b) INTERVAL.—

“(1) IN GENERAL.—The Secretary shall establish a minimum interval between the date on which a recommendation described in subsection (a)(1) or (a)(2) or a guideline under subsection (a)(3) is issued and the plan year with respect to which the requirement described in subsection (a) is effective with respect to the service described in such recommendation or guideline.

“(2) MINIMUM.—The interval described in paragraph (1) shall not be less than 1 year.

“(c) VALUE-BASED INSURANCE DESIGN.—The Secretary may develop guidelines to permit a group health plan and a health insurance issuer offering group or individual health insurance coverage to utilize value-based insurance designs.

42 USC
300gg-14.

“SEC. 2714. EXTENSION OF DEPENDENT COVERAGE.

“(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child (who is not married) until the child turns 26 years of age. Nothing in this section shall require a health plan or a health insurance issuer described in the preceding sentence to make coverage available for a child of a child receiving dependent coverage.

“(b) REGULATIONS.—The Secretary shall promulgate regulations to define the dependents to which coverage shall be made available under subsection (a).

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to modify the definition of ‘dependent’ as used in the Internal Revenue Code of 1986 with respect to the tax treatment of the cost of coverage.

42 USC
300gg-15.

“SEC. 2715. DEVELOPMENT AND UTILIZATION OF UNIFORM EXPLANATION OF COVERAGE DOCUMENTS AND STANDARDIZED DEFINITIONS.

Deadline.

“(a) IN GENERAL.—Not later than 12 months after the date of enactment of the Patient Protection and Affordable Care Act, the Secretary shall develop standards for use by a group health plan and a health insurance issuer offering group or individual health insurance coverage, in compiling and providing to enrollees a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage. In developing such standards, the Secretary shall consult with the National Association of Insurance Commissioners (referred to in this section as the ‘NAIC’), a working group composed of representatives of health insurance-related consumer advocacy organizations, health insurance issuers, health care professionals, patient advocates including those representing individuals with limited English proficiency, and other qualified individuals.

“(b) REQUIREMENTS.—The standards for the summary of benefits and coverage developed under subsection (a) shall provide for the following:

“(1) APPEARANCE.—The standards shall ensure that the summary of benefits and coverage is presented in a uniform format that does not exceed 4 pages in length and does not include print smaller than 12-point font.

“(2) LANGUAGE.—The standards shall ensure that the summary is presented in a culturally and linguistically appropriate manner and utilizes terminology understandable by the average plan enrollee.

“(3) CONTENTS.—The standards shall ensure that the summary of benefits and coverage includes—

“(A) uniform definitions of standard insurance terms and medical terms (consistent with subsection (g)) so that consumers may compare health insurance coverage and understand the terms of coverage (or exception to such coverage);

“(B) a description of the coverage, including cost sharing for—

“(i) each of the categories of the essential health benefits described in subparagraphs (A) through (J) of section 1302(b)(1) of the Patient Protection and Affordable Care Act; and

“(ii) other benefits, as identified by the Secretary;

“(C) the exceptions, reductions, and limitations on coverage;

“(D) the cost-sharing provisions, including deductible, coinsurance, and co-payment obligations;

“(E) the renewability and continuation of coverage provisions;

“(F) a coverage facts label that includes examples to illustrate common benefits scenarios, including pregnancy and serious or chronic medical conditions and related cost sharing, such scenarios to be based on recognized clinical practice guidelines;

“(G) a statement of whether the plan or coverage—

“(i) provides minimum essential coverage (as defined under section 5000A(f) of the Internal Revenue Code 1986); and

“(ii) ensures that the plan or coverage share of the total allowed costs of benefits provided under the plan or coverage is not less than 60 percent of such costs;

“(H) a statement that the outline is a summary of the policy or certificate and that the coverage document itself should be consulted to determine the governing contractual provisions; and

“(I) a contact number for the consumer to call with additional questions and an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.

“(c) PERIODIC REVIEW AND UPDATING.—The Secretary shall periodically review and update, as appropriate, the standards developed under this section.

“(d) REQUIREMENT TO PROVIDE.—

“(1) IN GENERAL.—Not later than 24 months after the date of enactment of the Patient Protection and Affordable Care Act, each entity described in paragraph (3) shall provide, prior

Deadline.

to any enrollment restriction, a summary of benefits and coverage explanation pursuant to the standards developed by the Secretary under subsection (a) to—

“(A) an applicant at the time of application;

“(B) an enrollee prior to the time of enrollment or reenrollment, as applicable; and

“(C) a policyholder or certificate holder at the time of issuance of the policy or delivery of the certificate.

“(2) COMPLIANCE.—An entity described in paragraph (3) is deemed to be in compliance with this section if the summary of benefits and coverage described in subsection (a) is provided in paper or electronic form.

“(3) ENTITIES IN GENERAL.—An entity described in this paragraph is—

“(A) a health insurance issuer (including a group health plan that is not a self-insured plan) offering health insurance coverage within the United States; or

“(B) in the case of a self-insured group health plan, the plan sponsor or designated administrator of the plan (as such terms are defined in section 3(16) of the Employee Retirement Income Security Act of 1974).

Deadline.

“(4) NOTICE OF MODIFICATIONS.—If a group health plan or health insurance issuer makes any material modification in any of the terms of the plan or coverage involved (as defined for purposes of section 102 of the Employee Retirement Income Security Act of 1974) that is not reflected in the most recently provided summary of benefits and coverage, the plan or issuer shall provide notice of such modification to enrollees not later than 60 days prior to the date on which such modification will become effective.

“(e) PREEMPTION.—The standards developed under subsection (a) shall preempt any related State standards that require a summary of benefits and coverage that provides less information to consumers than that required to be provided under this section, as determined by the Secretary.

Fine.

“(f) FAILURE TO PROVIDE.—An entity described in subsection (d)(3) that willfully fails to provide the information required under this section shall be subject to a fine of not more than \$1,000 for each such failure. Such failure with respect to each enrollee shall constitute a separate offense for purposes of this subsection.

Regulations.

“(g) DEVELOPMENT OF STANDARD DEFINITIONS.—

“(1) IN GENERAL.—The Secretary shall, by regulation, provide for the development of standards for the definitions of terms used in health insurance coverage, including the insurance-related terms described in paragraph (2) and the medical terms described in paragraph (3).

“(2) INSURANCE-RELATED TERMS.—The insurance-related terms described in this paragraph are premium, deductible, co-insurance, co-payment, out-of-pocket limit, preferred provider, non-preferred provider, out-of-network co-payments, UCR (usual, customary and reasonable) fees, excluded services, grievance and appeals, and such other terms as the Secretary determines are important to define so that consumers may compare health insurance coverage and understand the terms of their coverage.

“(3) MEDICAL TERMS.—The medical terms described in this paragraph are hospitalization, hospital outpatient care, emergency room care, physician services, prescription drug coverage, durable medical equipment, home health care, skilled nursing care, rehabilitation services, hospice services, emergency medical transportation, and such other terms as the Secretary determines are important to define so that consumers may compare the medical benefits offered by health insurance and understand the extent of those medical benefits (or exceptions to those benefits).

“SEC. 2716. PROHIBITION OF DISCRIMINATION BASED ON SALARY.

42 USC
300gg-16.

“(a) IN GENERAL.—The plan sponsor of a group health plan (other than a self-insured plan) may not establish rules relating to the health insurance coverage eligibility (including continued eligibility) of any full-time employee under the terms of the plan that are based on the total hourly or annual salary of the employee or otherwise establish eligibility rules that have the effect of discriminating in favor of higher wage employees.

“(b) LIMITATION.—Subsection (a) shall not be construed to prohibit a plan sponsor from establishing contribution requirements for enrollment in the plan or coverage that provide for the payment by employees with lower hourly or annual compensation of a lower dollar or percentage contribution than the payment required of similarly situated employees with a higher hourly or annual compensation.

“SEC. 2717. ENSURING THE QUALITY OF CARE.

42 USC
300gg-17.

“(a) QUALITY REPORTING.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Patient Protection and Affordable Care Act, the Secretary, in consultation with experts in health care quality and stakeholders, shall develop reporting requirements for use by a group health plan, and a health insurance issuer offering group or individual health insurance coverage, with respect to plan or coverage benefits and health care provider reimbursement structures that—

“(A) improve health outcomes through the implementation of activities such as quality reporting, effective case management, care coordination, chronic disease management, and medication and care compliance initiatives, including through the use of the medical homes model as defined for purposes of section 3602 of the Patient Protection and Affordable Care Act, for treatment or services under the plan or coverage;

“(B) implement activities to prevent hospital readmissions through a comprehensive program for hospital discharge that includes patient-centered education and counseling, comprehensive discharge planning, and post discharge reinforcement by an appropriate health care professional;

“(C) implement activities to improve patient safety and reduce medical errors through the appropriate use of best clinical practices, evidence based medicine, and health information technology under the plan or coverage; and

“(D) implement wellness and health promotion activities.

“(2) REPORTING REQUIREMENTS.—

“(A) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall annually submit to the Secretary, and to enrollees under the plan or coverage, a report on whether the benefits under the plan or coverage satisfy the elements described in subparagraphs (A) through (D) of paragraph (1).

“(B) TIMING OF REPORTS.—A report under subparagraph (A) shall be made available to an enrollee under the plan or coverage during each open enrollment period.

“(C) AVAILABILITY OF REPORTS.—The Secretary shall make reports submitted under subparagraph (A) available to the public through an Internet website.

“(D) PENALTIES.—In developing the reporting requirements under paragraph (1), the Secretary may develop and impose appropriate penalties for non-compliance with such requirements.

“(E) EXCEPTIONS.—In developing the reporting requirements under paragraph (1), the Secretary may provide for exceptions to such requirements for group health plans and health insurance issuers that substantially meet the goals of this section.

“(b) WELLNESS AND PREVENTION PROGRAMS.—For purposes of subsection (a)(1)(D), wellness and health promotion activities may include personalized wellness and prevention services, which are coordinated, maintained or delivered by a health care provider, a wellness and prevention plan manager, or a health, wellness or prevention services organization that conducts health risk assessments or offers ongoing face-to-face, telephonic or web-based intervention efforts for each of the program’s participants, and which may include the following wellness and prevention efforts:

“(1) Smoking cessation.

“(2) Weight management.

“(3) Stress management.

“(4) Physical fitness.

“(5) Nutrition.

“(6) Heart disease prevention.

“(7) Healthy lifestyle support.

“(8) Diabetes prevention.

Deadline.

“(c) REGULATIONS.—Not later than 2 years after the date of enactment of the Patient Protection and Affordable Care Act, the Secretary shall promulgate regulations that provide criteria for determining whether a reimbursement structure is described in subsection (a).

“(d) STUDY AND REPORT.—Not later than 180 days after the date on which regulations are promulgated under subsection (c), the Government Accountability Office shall review such regulations and conduct a study and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the impact the activities under this section have had on the quality and cost of health care.

42 USC
300gg-18.
Reports.

“SEC. 2718. BRINGING DOWN THE COST OF HEALTH CARE COVERAGE.

“(a) CLEAR ACCOUNTING FOR COSTS.—A health insurance issuer offering group or individual health insurance coverage shall, with

respect to each plan year, submit to the Secretary a report concerning the percentage of total premium revenue that such coverage expends—

- “(1) on reimbursement for clinical services provided to enrollees under such coverage;
- “(2) for activities that improve health care quality; and
- “(3) on all other non-claims costs, including an explanation of the nature of such costs, and excluding State taxes and licensing or regulatory fees.

The Secretary shall make reports received under this section available to the public on the Internet website of the Department of Health and Human Services.

Public
information.
Web posting.

“(b) ENSURING THAT CONSUMERS RECEIVE VALUE FOR THEIR PREMIUM PAYMENTS.—

“(1) REQUIREMENT TO PROVIDE VALUE FOR PREMIUM PAYMENTS.—A health insurance issuer offering group or individual health insurance coverage shall, with respect to each plan year, provide an annual rebate to each enrollee under such coverage, on a pro rata basis, in an amount that is equal to the amount by which premium revenue expended by the issuer on activities described in subsection (a)(3) exceeds—

“(A) with respect to a health insurance issuer offering coverage in the group market, 20 percent, or such lower percentage as a State may by regulation determine; or

“(B) with respect to a health insurance issuer offering coverage in the individual market, 25 percent, or such lower percentage as a State may by regulation determine, except that such percentage shall be adjusted to the extent the Secretary determines that the application of such percentage with a State may destabilize the existing individual market in such State.

“(2) CONSIDERATION IN SETTING PERCENTAGES.—In determining the percentages under paragraph (1), a State shall seek to ensure adequate participation by health insurance issuers, competition in the health insurance market in the State, and value for consumers so that premiums are used for clinical services and quality improvements.

“(3) TERMINATION.—The provisions of this subsection shall have no force or effect after December 31, 2013.

“(c) STANDARD HOSPITAL CHARGES.—Each hospital operating within the United States shall for each year establish (and update) and make public (in accordance with guidelines developed by the Secretary) a list of the hospital’s standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Social Security Act.

“(d) DEFINITIONS.—The Secretary, in consultation with the National Association of Insurance Commissioners, shall establish uniform definitions for the activities reported under subsection (a).

“SEC. 2719. APPEALS PROCESS.

“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall implement an effective appeals process for appeals of coverage determinations and claims, under which the plan or issuer shall, at a minimum—

- “(1) have in effect an internal claims appeal process;

42 USC
300gg-19.

Notification.

“(2) provide notice to enrollees, in a culturally and linguistically appropriate manner, of available internal and external appeals processes, and the availability of any applicable office of health insurance consumer assistance or ombudsman established under section 2793 to assist such enrollees with the appeals processes;

“(3) allow an enrollee to review their file, to present evidence and testimony as part of the appeals process, and to receive continued coverage pending the outcome of the appeals process; and

“(4) provide an external review process for such plans and issuers that, at a minimum, includes the consumer protections set forth in the Uniform External Review Model Act promulgated by the National Association of Insurance Commissioners and is binding on such plans.”.

SEC. 1002. HEALTH INSURANCE CONSUMER INFORMATION.

Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–91 et seq.) is amended by adding at the end the following:

42 USC
300gg–93.
Grants.

“SEC. 2793. HEALTH INSURANCE CONSUMER INFORMATION.

“(a) IN GENERAL.—The Secretary shall award grants to States to enable such States (or the Exchanges operating in such States) to establish, expand, or provide support for—

“(1) offices of health insurance consumer assistance; or

“(2) health insurance ombudsman programs.

“(b) ELIGIBILITY.—

“(1) IN GENERAL.—To be eligible to receive a grant, a State shall designate an independent office of health insurance consumer assistance, or an ombudsman, that, directly or in coordination with State health insurance regulators and consumer assistance organizations, receives and responds to inquiries and complaints concerning health insurance coverage with respect to Federal health insurance requirements and under State law.

“(2) CRITERIA.—A State that receives a grant under this section shall comply with criteria established by the Secretary for carrying out activities under such grant.

“(c) DUTIES.—The office of health insurance consumer assistance or health insurance ombudsman shall—

“(1) assist with the filing of complaints and appeals, including filing appeals with the internal appeal or grievance process of the group health plan or health insurance issuer involved and providing information about the external appeal process;

“(2) collect, track, and quantify problems and inquiries encountered by consumers;

“(3) educate consumers on their rights and responsibilities with respect to group health plans and health insurance coverage;

“(4) assist consumers with enrollment in a group health plan or health insurance coverage by providing information, referral, and assistance; and

“(5) resolve problems with obtaining premium tax credits under section 36B of the Internal Revenue Code of 1986.

“(d) **DATA COLLECTION.**—As a condition of receiving a grant under subsection (a), an office of health insurance consumer assistance or ombudsman program shall be required to collect and report data to the Secretary on the types of problems and inquiries encountered by consumers. The Secretary shall utilize such data to identify areas where more enforcement action is necessary and shall share such information with State insurance regulators, the Secretary of Labor, and the Secretary of the Treasury for use in the enforcement activities of such agencies.

“(e) **FUNDING.**—

“(1) **INITIAL FUNDING.**—There is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, \$30,000,000 for the first fiscal year for which this section applies to carry out this section. Such amount shall remain available without fiscal year limitation.

“(2) **AUTHORIZATION FOR SUBSEQUENT YEARS.**—There is authorized to be appropriated to the Secretary for each fiscal year following the fiscal year described in paragraph (1), such sums as may be necessary to carry out this section.”.

SEC. 1003. ENSURING THAT CONSUMERS GET VALUE FOR THEIR DOLLARS.

Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–91 et seq.), as amended by section 1002, is further amended by adding at the end the following:

“SEC. 2794. ENSURING THAT CONSUMERS GET VALUE FOR THEIR DOLLARS.

42 USC
300gg–94.

“(a) **INITIAL PREMIUM REVIEW PROCESS.**—

“(1) **IN GENERAL.**—The Secretary, in conjunction with States, shall establish a process for the annual review, beginning with the 2010 plan year and subject to subsection (b)(2)(A), of unreasonable increases in premiums for health insurance coverage.

Effective date.

“(2) **JUSTIFICATION AND DISCLOSURE.**—The process established under paragraph (1) shall require health insurance issuers to submit to the Secretary and the relevant State a justification for an unreasonable premium increase prior to the implementation of the increase. Such issuers shall prominently post such information on their Internet websites. The Secretary shall ensure the public disclosure of information on such increases and justifications for all health insurance issuers.

Web posting.

“(b) **CONTINUING PREMIUM REVIEW PROCESS.**—

“(1) **INFORMING SECRETARY OF PREMIUM INCREASE PATTERNS.**—As a condition of receiving a grant under subsection (c)(1), a State, through its Commissioner of Insurance, shall—

“(A) provide the Secretary with information about trends in premium increases in health insurance coverage in premium rating areas in the State; and

“(B) make recommendations, as appropriate, to the State Exchange about whether particular health insurance issuers should be excluded from participation in the Exchange based on a pattern or practice of excessive or unjustified premium increases.

“(2) **MONITORING BY SECRETARY OF PREMIUM INCREASES.**—

“(A) **IN GENERAL.**—Beginning with plan years beginning in 2014, the Secretary, in conjunction with the States

Effective date.

and consistent with the provisions of subsection (a)(2), shall monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

“(B) CONSIDERATION IN OPENING EXCHANGE.—In determining under section 1312(f)(2)(B) of the Patient Protection and Affordable Care Act whether to offer qualified health plans in the large group market through an Exchange, the State shall take into account any excess of premium growth outside of the Exchange as compared to the rate of such growth inside the Exchange.

“(c) GRANTS IN SUPPORT OF PROCESS.—

“(1) PREMIUM REVIEW GRANTS DURING 2010 THROUGH 2014.—The Secretary shall carry out a program to award grants to States during the 5-year period beginning with fiscal year 2010 to assist such States in carrying out subsection (a), including—

“(A) in reviewing and, if appropriate under State law, approving premium increases for health insurance coverage; and

“(B) in providing information and recommendations to the Secretary under subsection (b)(1).

“(2) FUNDING.—

“(A) IN GENERAL.—Out of all funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary \$250,000,000, to be available for expenditure for grants under paragraph (1) and subparagraph (B).

“(B) FURTHER AVAILABILITY FOR INSURANCE REFORM AND CONSUMER PROTECTION.—If the amounts appropriated under subparagraph (A) are not fully obligated under grants under paragraph (1) by the end of fiscal year 2014, any remaining funds shall remain available to the Secretary for grants to States for planning and implementing the insurance reforms and consumer protections under part A.

“(C) ALLOCATION.—The Secretary shall establish a formula for determining the amount of any grant to a State under this subsection. Under such formula—

“(i) the Secretary shall consider the number of plans of health insurance coverage offered in each State and the population of the State; and

“(ii) no State qualifying for a grant under paragraph (1) shall receive less than \$1,000,000, or more than \$5,000,000 for a grant year.”.

42 USC
300gg–11 note.

SEC. 1004. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided for in subsection (b), this subtitle (and the amendments made by this subtitle) shall become effective for plan years beginning on or after the date that is 6 months after the date of enactment of this Act, except that the amendments made by sections 1002 and 1003 shall become effective for fiscal years beginning with fiscal year 2010.

(b) SPECIAL RULE.—The amendments made by sections 1002 and 1003 shall take effect on the date of enactment of this Act.

Subtitle B—Immediate Actions to Preserve and Expand Coverage

SEC. 1101. IMMEDIATE ACCESS TO INSURANCE FOR UNINSURED INDIVIDUALS WITH A PREEXISTING CONDITION. 42 USC 18001.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a temporary high risk health insurance pool program to provide health insurance coverage for eligible individuals during the period beginning on the date on which such program is established and ending on January 1, 2014.

Deadline.
Time period.

(b) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary may carry out the program under this section directly or through contracts to eligible entities.

(2) ELIGIBLE ENTITIES.—To be eligible for a contract under paragraph (1), an entity shall—

(A) be a State or nonprofit private entity;

(B) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require; and

(C) agree to utilize contract funding to establish and administer a qualified high risk pool for eligible individuals.

(3) MAINTENANCE OF EFFORT.—To be eligible to enter into a contract with the Secretary under this subsection, a State shall agree not to reduce the annual amount the State expended for the operation of one or more State high risk pools during the year preceding the year in which such contract is entered into.

(c) QUALIFIED HIGH RISK POOL.—

(1) IN GENERAL.—Amounts made available under this section shall be used to establish a qualified high risk pool that meets the requirements of paragraph (2).

(2) REQUIREMENTS.—A qualified high risk pool meets the requirements of this paragraph if such pool—

(A) provides to all eligible individuals health insurance coverage that does not impose any preexisting condition exclusion with respect to such coverage;

(B) provides health insurance coverage—

(i) in which the issuer's share of the total allowed costs of benefits provided under such coverage is not less than 65 percent of such costs; and

(ii) that has an out of pocket limit not greater than the applicable amount described in section 223(c)(2) of the Internal Revenue Code of 1986 for the year involved, except that the Secretary may modify such limit if necessary to ensure the pool meets the actuarial value limit under clause (i);

(C) ensures that with respect to the premium rate charged for health insurance coverage offered to eligible individuals through the high risk pool, such rate shall—

(i) except as provided in clause (ii), vary only as provided for under section 2701 of the Public Health Service Act (as amended by this Act and notwithstanding the date on which such amendments take effect);

(ii) vary on the basis of age by a factor of not greater than 4 to 1; and

(iii) be established at a standard rate for a standard population; and

(D) meets any other requirements determined appropriate by the Secretary.

(d) **ELIGIBLE INDIVIDUAL.**—An individual shall be deemed to be an eligible individual for purposes of this section if such individual—

(1) is a citizen or national of the United States or is lawfully present in the United States (as determined in accordance with section 1411);

(2) has not been covered under creditable coverage (as defined in section 2701(c)(1) of the Public Health Service Act as in effect on the date of enactment of this Act) during the 6-month period prior to the date on which such individual is applying for coverage through the high risk pool; and

(3) has a pre-existing condition, as determined in a manner consistent with guidance issued by the Secretary.

(e) **PROTECTION AGAINST DUMPING RISK BY INSURERS.**—

Criteria.

(1) **IN GENERAL.**—The Secretary shall establish criteria for determining whether health insurance issuers and employment-based health plans have discouraged an individual from remaining enrolled in prior coverage based on that individual's health status.

(2) **SANCTIONS.**—An issuer or employment-based health plan shall be responsible for reimbursing the program under this section for the medical expenses incurred by the program for an individual who, based on criteria established by the Secretary, the Secretary finds was encouraged by the issuer to disenroll from health benefits coverage prior to enrolling in coverage through the program. The criteria shall include at least the following circumstances:

(A) In the case of prior coverage obtained through an employer, the provision by the employer, group health plan, or the issuer of money or other financial consideration for disenrolling from the coverage.

(B) In the case of prior coverage obtained directly from an issuer or under an employment-based health plan—

(i) the provision by the issuer or plan of money or other financial consideration for disenrolling from the coverage; or

(ii) in the case of an individual whose premium for the prior coverage exceeded the premium required by the program (adjusted based on the age factors applied to the prior coverage)—

(I) the prior coverage is a policy that is no longer being actively marketed (as defined by the Secretary) by the issuer; or

(II) the prior coverage is a policy for which duration of coverage form issue or health status are factors that can be considered in determining premiums at renewal.

(3) **CONSTRUCTION.**—Nothing in this subsection shall be construed as constituting exclusive remedies for violations of criteria established under paragraph (1) or as preventing States

from applying or enforcing such paragraph or other provisions under law with respect to health insurance issuers.

(f) OVERSIGHT.—The Secretary shall establish—

(1) an appeals process to enable individuals to appeal a determination under this section; and

(2) procedures to protect against waste, fraud, and abuse.

(g) FUNDING; TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—There is appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, \$5,000,000,000 to pay claims against (and the administrative costs of) the high risk pool under this section that are in excess of the amount of premiums collected from eligible individuals enrolled in the high risk pool. Such funds shall be available without fiscal year limitation.

(2) INSUFFICIENT FUNDS.—If the Secretary estimates for any fiscal year that the aggregate amounts available for the payment of the expenses of the high risk pool will be less than the actual amount of such expenses, the Secretary shall make such adjustments as are necessary to eliminate such deficit.

(3) TERMINATION OF AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), coverage of eligible individuals under a high risk pool in a State shall terminate on January 1, 2014.

(B) TRANSITION TO EXCHANGE.—The Secretary shall develop procedures to provide for the transition of eligible individuals enrolled in health insurance coverage offered through a high risk pool established under this section into qualified health plans offered through an Exchange. Such procedures shall ensure that there is no lapse in coverage with respect to the individual and may extend coverage after the termination of the risk pool involved, if the Secretary determines necessary to avoid such a lapse.

Procedures.

(4) LIMITATIONS.—The Secretary has the authority to stop taking applications for participation in the program under this section to comply with the funding limitation provided for in paragraph (1).

(5) RELATION TO STATE LAWS.—The standards established under this section shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to qualified high risk pools which are established in accordance with this section.

SEC. 1102. REINSURANCE FOR EARLY RETIREES.

42 USC 18002.

(a) ADMINISTRATION.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a temporary reinsurance program to provide reimbursement to participating employment-based plans for a portion of the cost of providing health insurance coverage to early retirees (and to the eligible spouses, surviving spouses, and dependents of such retirees) during the period beginning on the date on which such program is established and ending on January 1, 2014.

Deadline.
Time period.

(2) REFERENCE.—In this section:

(A) HEALTH BENEFITS.—The term “health benefits” means medical, surgical, hospital, prescription drug, and such other benefits as shall be determined by the Secretary,

whether self-funded, or delivered through the purchase of insurance or otherwise.

(B) EMPLOYMENT-BASED PLAN.—The term “employment-based plan” means a group health benefits plan that—

(i) is—

(I) maintained by one or more current or former employers (including without limitation any State or local government or political subdivision thereof), employee organization, a voluntary employees’ beneficiary association, or a committee or board of individuals appointed to administer such plan; or

(II) a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974); and

(ii) provides health benefits to early retirees.

(C) EARLY RETIREES.—The term “early retirees” means individuals who are age 55 and older but are not eligible for coverage under title XVIII of the Social Security Act, and who are not active employees of an employer maintaining, or currently contributing to, the employment-based plan or of any employer that has made substantial contributions to fund such plan.

(b) PARTICIPATION.—

(1) EMPLOYMENT-BASED PLAN ELIGIBILITY.—A participating employment-based plan is an employment-based plan that—

(A) meets the requirements of paragraph (2) with respect to health benefits provided under the plan; and

(B) submits to the Secretary an application for participation in the program, at such time, in such manner, and containing such information as the Secretary shall require.

(2) EMPLOYMENT-BASED HEALTH BENEFITS.—An employment-based plan meets the requirements of this paragraph if the plan—

(A) implements programs and procedures to generate cost-savings with respect to participants with chronic and high-cost conditions;

(B) provides documentation of the actual cost of medical claims involved; and

(C) is certified by the Secretary.

(c) PAYMENTS.—

(1) SUBMISSION OF CLAIMS.—

(A) IN GENERAL.—A participating employment-based plan shall submit claims for reimbursement to the Secretary which shall contain documentation of the actual costs of the items and services for which each claim is being submitted.

(B) BASIS FOR CLAIMS.—Claims submitted under subparagraph (A) shall be based on the actual amount expended by the participating employment-based plan involved within the plan year for the health benefits provided to an early retiree or the spouse, surviving spouse, or dependent of such retiree. In determining the amount of a claim for purposes of this subsection, the participating

Certification.

employment-based plan shall take into account any negotiated price concessions (such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations) obtained by such plan with respect to such health benefit. For purposes of determining the amount of any such claim, the costs paid by the early retiree or the retiree's spouse, surviving spouse, or dependent in the form of deductibles, co-payments, or co-insurance shall be included in the amounts paid by the participating employment-based plan.

(2) PROGRAM PAYMENTS.—If the Secretary determines that a participating employment-based plan has submitted a valid claim under paragraph (1), the Secretary shall reimburse such plan for 80 percent of that portion of the costs attributable to such claim that exceed \$15,000, subject to the limits contained in paragraph (3).

(3) LIMIT.—To be eligible for reimbursement under the program, a claim submitted by a participating employment-based plan shall not be less than \$15,000 nor greater than \$90,000. Such amounts shall be adjusted each fiscal year based on the percentage increase in the Medical Care Component of the Consumer Price Index for all urban consumers (rounded to the nearest multiple of \$1,000) for the year involved.

(4) USE OF PAYMENTS.—Amounts paid to a participating employment-based plan under this subsection shall be used to lower costs for the plan. Such payments may be used to reduce premium costs for an entity described in subsection (a)(2)(B)(i) or to reduce premium contributions, co-payments, deductibles, co-insurance, or other out-of-pocket costs for plan participants. Such payments shall not be used as general revenues for an entity described in subsection (a)(2)(B)(i). The Secretary shall develop a mechanism to monitor the appropriate use of such payments by such entities.

(5) PAYMENTS NOT TREATED AS INCOME.—Payments received under this subsection shall not be included in determining the gross income of an entity described in subsection (a)(2)(B)(i) that is maintaining or currently contributing to a participating employment-based plan.

(6) APPEALS.—The Secretary shall establish—

(A) an appeals process to permit participating employment-based plans to appeal a determination of the Secretary with respect to claims submitted under this section; and

(B) procedures to protect against fraud, waste, and abuse under the program.

(d) AUDITS.—The Secretary shall conduct annual audits of claims data submitted by participating employment-based plans under this section to ensure that such plans are in compliance with the requirements of this section.

(e) FUNDING.—There is appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, \$5,000,000,000 to carry out the program under this section. Such funds shall be available without fiscal year limitation.

(f) LIMITATION.—The Secretary has the authority to stop taking applications for participation in the program based on the availability of funding under subsection (e).

Deadlines.
42 USC 18003.

SEC. 1103. IMMEDIATE INFORMATION THAT ALLOWS CONSUMERS TO IDENTIFY AFFORDABLE COVERAGE OPTIONS.

(a) INTERNET PORTAL TO AFFORDABLE COVERAGE OPTIONS.—

(1) IMMEDIATE ESTABLISHMENT.—Not later than July 1, 2010, the Secretary, in consultation with the States, shall establish a mechanism, including an Internet website, through which a resident of any State may identify affordable health insurance coverage options in that State.

(2) CONNECTING TO AFFORDABLE COVERAGE.—An Internet website established under paragraph (1) shall, to the extent practicable, provide ways for residents of any State to receive information on at least the following coverage options:

(A) Health insurance coverage offered by health insurance issuers, other than coverage that provides reimbursement only for the treatment or mitigation of—

(i) a single disease or condition; or

(ii) an unreasonably limited set of diseases or conditions (as determined by the Secretary);

(B) Medicaid coverage under title XIX of the Social Security Act.

(C) Coverage under title XXI of the Social Security Act.

(D) A State health benefits high risk pool, to the extent that such high risk pool is offered in such State; and

(E) Coverage under a high risk pool under section 1101.

(b) ENHANCING COMPARATIVE PURCHASING OPTIONS.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall develop a standardized format to be used for the presentation of information relating to the coverage options described in subsection (a)(2). Such format shall, at a minimum, require the inclusion of information on the percentage of total premium revenue expended on nonclinical costs (as reported under section 2718(a) of the Public Health Service Act), eligibility, availability, premium rates, and cost sharing with respect to such coverage options and be consistent with the standards adopted for the uniform explanation of coverage as provided for in section 2715 of the Public Health Service Act.

(2) USE OF FORMAT.—The Secretary shall utilize the format developed under paragraph (1) in compiling information concerning coverage options on the Internet website established under subsection (a).

(c) AUTHORITY TO CONTRACT.—The Secretary may carry out this section through contracts entered into with qualified entities.

SEC. 1104. ADMINISTRATIVE SIMPLIFICATION.

(a) PURPOSE OF ADMINISTRATIVE SIMPLIFICATION.—Section 261 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d note) is amended—

(1) by inserting “uniform” before “standards”; and

(2) by inserting “and to reduce the clerical burden on patients, health care providers, and health plans” before the period at the end.

(b) OPERATING RULES FOR HEALTH INFORMATION TRANSACTIONS.—

Deadline.
Standard format.

(1) DEFINITION OF OPERATING RULES.—Section 1171 of the Social Security Act (42 U.S.C. 1320d) is amended by adding at the end the following:

“(9) OPERATING RULES.—The term ‘operating rules’ means the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications as adopted for purposes of this part.”.

(2) TRANSACTION STANDARDS; OPERATING RULES AND COMPLIANCE.—Section 1173 of the Social Security Act (42 U.S.C. 1320d-2) is amended—

(A) in subsection (a)(2), by adding at the end the following new subparagraph:

“(J) Electronic funds transfers.”;

(B) in subsection (a), by adding at the end the following new paragraph:

“(4) REQUIREMENTS FOR FINANCIAL AND ADMINISTRATIVE TRANSACTIONS.—

“(A) IN GENERAL.—The standards and associated operating rules adopted by the Secretary shall—

“(i) to the extent feasible and appropriate, enable determination of an individual’s eligibility and financial responsibility for specific services prior to or at the point of care;

“(ii) be comprehensive, requiring minimal augmentation by paper or other communications;

“(iii) provide for timely acknowledgment, response, and status reporting that supports a transparent claims and denial management process (including adjudication and appeals); and

“(iv) describe all data elements (including reason and remark codes) in unambiguous terms, require that such data elements be required or conditioned upon set values in other fields, and prohibit additional conditions (except where necessary to implement State or Federal law, or to protect against fraud and abuse).

“(B) REDUCTION OF CLERICAL BURDEN.—In adopting standards and operating rules for the transactions referred to under paragraph (1), the Secretary shall seek to reduce the number and complexity of forms (including paper and electronic forms) and data entry required by patients and providers.”; and

(C) by adding at the end the following new subsections:

“(g) OPERATING RULES.—

“(1) IN GENERAL.—The Secretary shall adopt a single set of operating rules for each transaction referred to under subsection (a)(1) with the goal of creating as much uniformity in the implementation of the electronic standards as possible. Such operating rules shall be consensus-based and reflect the necessary business rules affecting health plans and health care providers and the manner in which they operate pursuant to standards issued under Health Insurance Portability and Accountability Act of 1996.

“(2) OPERATING RULES DEVELOPMENT.—In adopting operating rules under this subsection, the Secretary shall consider recommendations for operating rules developed by a qualified nonprofit entity that meets the following requirements:

“(A) The entity focuses its mission on administrative simplification.

“(B) The entity demonstrates a multi-stakeholder and consensus-based process for development of operating rules, including representation by or participation from health plans, health care providers, vendors, relevant Federal agencies, and other standard development organizations.

“(C) The entity has a public set of guiding principles that ensure the operating rules and process are open and transparent, and supports nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory practices.

“(D) The entity builds on the transaction standards issued under Health Insurance Portability and Accountability Act of 1996.

“(E) The entity allows for public review and updates of the operating rules.

“(3) REVIEW AND RECOMMENDATIONS.—The National Committee on Vital and Health Statistics shall—

“(A) advise the Secretary as to whether a nonprofit entity meets the requirements under paragraph (2);

“(B) review the operating rules developed and recommended by such nonprofit entity;

“(C) determine whether such operating rules represent a consensus view of the health care stakeholders and are consistent with and do not conflict with other existing standards;

“(D) evaluate whether such operating rules are consistent with electronic standards adopted for health information technology; and

“(E) submit to the Secretary a recommendation as to whether the Secretary should adopt such operating rules.

“(4) IMPLEMENTATION.—

Regulations.

“(A) IN GENERAL.—The Secretary shall adopt operating rules under this subsection, by regulation in accordance with subparagraph (C), following consideration of the operating rules developed by the non-profit entity described in paragraph (2) and the recommendation submitted by the National Committee on Vital and Health Statistics under paragraph (3)(E) and having ensured consultation with providers.

Deadlines.

“(B) ADOPTION REQUIREMENTS; EFFECTIVE DATES.—

“(i) ELIGIBILITY FOR A HEALTH PLAN AND HEALTH CLAIM STATUS.—The set of operating rules for eligibility for a health plan and health claim status transactions shall be adopted not later than July 1, 2011, in a manner ensuring that such operating rules are effective not later than January 1, 2013, and may allow for the use of a machine readable identification card.

“(ii) ELECTRONIC FUNDS TRANSFERS AND HEALTH CARE PAYMENT AND REMITTANCE ADVICE.—The set of operating rules for electronic funds transfers and health care payment and remittance advice transactions shall—

“(I) allow for automated reconciliation of the electronic payment with the remittance advice; and

“(II) be adopted not later than July 1, 2012, in a manner ensuring that such operating rules are effective not later than January 1, 2014.

“(iii) HEALTH CLAIMS OR EQUIVALENT ENCOUNTER INFORMATION, ENROLLMENT AND DISENROLLMENT IN A HEALTH PLAN, HEALTH PLAN PREMIUM PAYMENTS, REFERRAL CERTIFICATION AND AUTHORIZATION.—The set of operating rules for health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, and referral certification and authorization transactions shall be adopted not later than July 1, 2014, in a manner ensuring that such operating rules are effective not later than January 1, 2016.

“(C) EXPEDITED RULEMAKING.—The Secretary shall promulgate an interim final rule applying any standard or operating rule recommended by the National Committee on Vital and Health Statistics pursuant to paragraph (3). The Secretary shall accept and consider public comments on any interim final rule published under this subparagraph for 60 days after the date of such publication.

Public comments.

“(h) COMPLIANCE.—

“(1) HEALTH PLAN CERTIFICATION.—

Deadlines.

“(A) ELIGIBILITY FOR A HEALTH PLAN, HEALTH CLAIM STATUS, ELECTRONIC FUNDS TRANSFERS, HEALTH CARE PAYMENT AND REMITTANCE ADVICE.—Not later than December 31, 2013, a health plan shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable standards (as described under paragraph (7) of section 1171) and associated operating rules (as described under paragraph (9) of such section) for electronic funds transfers, eligibility for a health plan, health claim status, and health care payment and remittance advice, respectively.

Certification.

“(B) HEALTH CLAIMS OR EQUIVALENT ENCOUNTER INFORMATION, ENROLLMENT AND DISENROLLMENT IN A HEALTH PLAN, HEALTH PLAN PREMIUM PAYMENTS, HEALTH CLAIMS ATTACHMENTS, REFERRAL CERTIFICATION AND AUTHORIZATION.—Not later than December 31, 2015, a health plan shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable standards and associated operating rules for health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health claims attachments, and referral certification and authorization, respectively. A health plan shall provide the same level of documentation to certify compliance with such transactions as is required to certify compliance with the transactions specified in subparagraph (A).

“(2) DOCUMENTATION OF COMPLIANCE.—A health plan shall provide the Secretary, in such form as the Secretary may require, with adequate documentation of compliance with the standards and operating rules described under paragraph (1). A health plan shall not be considered to have provided adequate

documentation and shall not be certified as being in compliance with such standards, unless the health plan—

“(A) demonstrates to the Secretary that the plan conducts the electronic transactions specified in paragraph (1) in a manner that fully complies with the regulations of the Secretary; and

“(B) provides documentation showing that the plan has completed end-to-end testing for such transactions with their partners, such as hospitals and physicians.

“(3) SERVICE CONTRACTS.—A health plan shall be required to ensure that any entities that provide services pursuant to a contract with such health plan shall comply with any applicable certification and compliance requirements (and provide the Secretary with adequate documentation of such compliance) under this subsection.

“(4) CERTIFICATION BY OUTSIDE ENTITY.—The Secretary may designate independent, outside entities to certify that a health plan has complied with the requirements under this subsection, provided that the certification standards employed by such entities are in accordance with any standards or operating rules issued by the Secretary.

“(5) COMPLIANCE WITH REVISED STANDARDS AND OPERATING RULES.—

Certification.

“(A) IN GENERAL.—A health plan (including entities described under paragraph (3)) shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable revised standards and associated operating rules under this subsection for any interim final rule promulgated by the Secretary under subsection (i) that—

“(i) amends any standard or operating rule described under paragraph (1) of this subsection; or

“(ii) establishes a standard (as described under subsection (a)(1)(B)) or associated operating rules (as described under subsection (i)(5)) for any other financial and administrative transactions.

“(B) DATE OF COMPLIANCE.—A health plan shall comply with such requirements not later than the effective date of the applicable standard or operating rule.

“(6) AUDITS OF HEALTH PLANS.—The Secretary shall conduct periodic audits to ensure that health plans (including entities described under paragraph (3)) are in compliance with any standards and operating rules that are described under paragraph (1) or subsection (i)(5).

Deadlines.

“(i) REVIEW AND AMENDMENT OF STANDARDS AND OPERATING RULES.—

“(1) ESTABLISHMENT.—Not later than January 1, 2014, the Secretary shall establish a review committee (as described under paragraph (4)).

“(2) EVALUATIONS AND REPORTS.—

“(A) HEARINGS.—Not later than April 1, 2014, and not less than biennially thereafter, the Secretary, acting through the review committee, shall conduct hearings to evaluate and review the adopted standards and operating rules established under this section.

“(B) REPORT.—Not later than July 1, 2014, and not less than biennially thereafter, the review committee shall provide recommendations for updating and improving such standards and operating rules. The review committee shall recommend a single set of operating rules per transaction standard and maintain the goal of creating as much uniformity as possible in the implementation of the electronic standards.

“(3) INTERIM FINAL RULEMAKING.—

“(A) IN GENERAL.—Any recommendations to amend adopted standards and operating rules that have been approved by the review committee and reported to the Secretary under paragraph (2)(B) shall be adopted by the Secretary through promulgation of an interim final rule not later than 90 days after receipt of the committee’s report.

“(B) PUBLIC COMMENT.—

“(i) PUBLIC COMMENT PERIOD.—The Secretary shall accept and consider public comments on any interim final rule published under this paragraph for 60 days after the date of such publication.

“(ii) EFFECTIVE DATE.—The effective date of any amendment to existing standards or operating rules that is adopted through an interim final rule published under this paragraph shall be 25 months following the close of such public comment period.

“(4) REVIEW COMMITTEE.—

“(A) DEFINITION.—For the purposes of this subsection, the term ‘review committee’ means a committee chartered by or within the Department of Health and Human services that has been designated by the Secretary to carry out this subsection, including—

“(i) the National Committee on Vital and Health Statistics; or

“(ii) any appropriate committee as determined by the Secretary.

“(B) COORDINATION OF HIT STANDARDS.—In developing recommendations under this subsection, the review committee shall ensure coordination, as appropriate, with the standards that support the certified electronic health record technology approved by the Office of the National Coordinator for Health Information Technology.

“(5) OPERATING RULES FOR OTHER STANDARDS ADOPTED BY THE SECRETARY.—The Secretary shall adopt a single set of operating rules (pursuant to the process described under subsection (g)) for any transaction for which a standard had been adopted pursuant to subsection (a)(1)(B).

“(j) PENALTIES.—

“(1) PENALTY FEE.—

“(A) IN GENERAL.—Not later than April 1, 2014, and annually thereafter, the Secretary shall assess a penalty fee (as determined under subparagraph (B)) against a health plan that has failed to meet the requirements under subsection (h) with respect to certification and documentation of compliance with—

“(i) the standards and associated operating rules described under paragraph (1) of such subsection; and

Deadline.

“(ii) a standard (as described under subsection (a)(1)(B)) and associated operating rules (as described under subsection (i)(5)) for any other financial and administrative transactions.

“(B) FEE AMOUNT.—Subject to subparagraphs (C), (D), and (E), the Secretary shall assess a penalty fee against a health plan in the amount of \$1 per covered life until certification is complete. The penalty shall be assessed per person covered by the plan for which its data systems for major medical policies are not in compliance and shall be imposed against the health plan for each day that the plan is not in compliance with the requirements under subsection (h).

“(C) ADDITIONAL PENALTY FOR MISREPRESENTATION.—A health plan that knowingly provides inaccurate or incomplete information in a statement of certification or documentation of compliance under subsection (h) shall be subject to a penalty fee that is double the amount that would otherwise be imposed under this subsection.

“(D) ANNUAL FEE INCREASE.—The amount of the penalty fee imposed under this subsection shall be increased on an annual basis by the annual percentage increase in total national health care expenditures, as determined by the Secretary.

“(E) PENALTY LIMIT.—A penalty fee assessed against a health plan under this subsection shall not exceed, on an annual basis—

“(i) an amount equal to \$20 per covered life under such plan; or

“(ii) an amount equal to \$40 per covered life under the plan if such plan has knowingly provided inaccurate or incomplete information (as described under subparagraph (C)).

“(F) DETERMINATION OF COVERED INDIVIDUALS.—The Secretary shall determine the number of covered lives under a health plan based upon the most recent statements and filings that have been submitted by such plan to the Securities and Exchange Commission.

“(2) NOTICE AND DISPUTE PROCEDURE.—The Secretary shall establish a procedure for assessment of penalty fees under this subsection that provides a health plan with reasonable notice and a dispute resolution procedure prior to provision of a notice of assessment by the Secretary of the Treasury (as described under paragraph (4)(B)).

“(3) PENALTY FEE REPORT.—Not later than May 1, 2014, and annually thereafter, the Secretary shall provide the Secretary of the Treasury with a report identifying those health plans that have been assessed a penalty fee under this subsection.

“(4) COLLECTION OF PENALTY FEE.—

“(A) IN GENERAL.—The Secretary of the Treasury, acting through the Financial Management Service, shall administer the collection of penalty fees from health plans that have been identified by the Secretary in the penalty fee report provided under paragraph (3).

“(B) NOTICE.—Not later than August 1, 2014, and annually thereafter, the Secretary of the Treasury shall

Deadline.

provide notice to each health plan that has been assessed a penalty fee by the Secretary under this subsection. Such notice shall include the amount of the penalty fee assessed by the Secretary and the due date for payment of such fee to the Secretary of the Treasury (as described in subparagraph (C)).

“(C) PAYMENT DUE DATE.—Payment by a health plan for a penalty fee assessed under this subsection shall be made to the Secretary of the Treasury not later than November 1, 2014, and annually thereafter.

“(D) UNPAID PENALTY FEES.—Any amount of a penalty fee assessed against a health plan under this subsection for which payment has not been made by the due date provided under subparagraph (C) shall be—

“(i) increased by the interest accrued on such amount, as determined pursuant to the underpayment rate established under section 6621 of the Internal Revenue Code of 1986; and

“(ii) treated as a past-due, legally enforceable debt owed to a Federal agency for purposes of section 6402(d) of the Internal Revenue Code of 1986.

“(E) ADMINISTRATIVE FEES.—Any fee charged or allocated for collection activities conducted by the Financial Management Service will be passed on to a health plan on a pro-rata basis and added to any penalty fee collected from the plan.”.

(c) PROMULGATION OF RULES.—

(1) UNIQUE HEALTH PLAN IDENTIFIER.—The Secretary shall promulgate a final rule to establish a unique health plan identifier (as described in section 1173(b) of the Social Security Act (42 U.S.C. 1320d-2(b))) based on the input of the National Committee on Vital and Health Statistics. The Secretary may do so on an interim final basis and such rule shall be effective not later than October 1, 2012.

42 USC
1320d-2 note.

Effective date.

(2) ELECTRONIC FUNDS TRANSFER.—The Secretary shall promulgate a final rule to establish a standard for electronic funds transfers (as described in section 1173(a)(2)(J) of the Social Security Act, as added by subsection (b)(2)(A)). The Secretary may do so on an interim final basis and shall adopt such standard not later than January 1, 2012, in a manner ensuring that such standard is effective not later than January 1, 2014.

Deadline.
Effective date.

(3) HEALTH CLAIMS ATTACHMENTS.—The Secretary shall promulgate a final rule to establish a transaction standard and a single set of associated operating rules for health claims attachments (as described in section 1173(a)(2)(B) of the Social Security Act (42 U.S.C. 1320d-2(a)(2)(B))) that is consistent with the X12 Version 5010 transaction standards. The Secretary may do so on an interim final basis and shall adopt a transaction standard and a single set of associated operating rules not later than January 1, 2014, in a manner ensuring that such standard is effective not later than January 1, 2016.

Deadline.
Effective date.

(d) EXPANSION OF ELECTRONIC TRANSACTIONS IN MEDICARE.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended—

(1) in paragraph (23), by striking the “or” at the end;

(2) in paragraph (24), by striking the period and inserting “; or”; and

(3) by inserting after paragraph (24) the following new paragraph:

“(25) not later than January 1, 2014, for which the payment is other than by electronic funds transfer (EFT) or an electronic remittance in a form as specified in ASC X12 835 Health Care Payment and Remittance Advice or subsequent standard.”.

42 USC
1320d note.

SEC. 1105. EFFECTIVE DATE.

This subtitle shall take effect on the date of enactment of this Act.

Subtitle C—Quality Health Insurance Coverage for All Americans

PART I—HEALTH INSURANCE MARKET REFORMS

SEC. 1201. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.), as amended by section 1001, is further amended—

(1) by striking the heading for subpart 1 and inserting the following:

“Subpart I—General Reform”;

(2)(A) in section 2701 (42 U.S.C. 300gg), by striking the section heading and subsection (a) and inserting the following:

“SEC. 2704. PROHIBITION OF PREEXISTING CONDITION EXCLUSIONS OR OTHER DISCRIMINATION BASED ON HEALTH STATUS.

“(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage.”; and

42 USC
300gg–3.

(B) by transferring such section (as amended by subparagraph (A)) so as to appear after the section 2703 added by paragraph (4);

42 USC
300gg–1,
300gg–4.

(3)(A) in section 2702 (42 U.S.C. 300gg–1)—

(i) by striking the section heading and all that follows through subsection (a);

(ii) in subsection (b)—

(I) by striking “health insurance issuer offering health insurance coverage in connection with a group health plan” each place that such appears and inserting “health insurance issuer offering group or individual health insurance coverage”; and

(II) in paragraph (2)(A)—

(aa) by inserting “or individual” after “employer”; and

(bb) by inserting “or individual health coverage, as the case may be” before the semicolon; and

(iii) in subsection (e)—

- (I) by striking “(a)(1)(F)” and inserting “(a)(6)”;
- (II) by striking “2701” and inserting “2704”; and
- (III) by striking “2721(a)” and inserting “2735(a)”;

and

(B) by transferring such section (as amended by subparagraph (A)) to appear after section 2705(a) as added by paragraph (4); and

(4) by inserting after the subpart heading (as added by paragraph (1)) the following:

“SEC. 2701. FAIR HEALTH INSURANCE PREMIUMS.

42 USC 300gg.

“(a) PROHIBITING DISCRIMINATORY PREMIUM RATES.—

“(1) IN GENERAL.—With respect to the premium rate charged by a health insurance issuer for health insurance coverage offered in the individual or small group market—

“(A) such rate shall vary with respect to the particular plan or coverage involved only by—

“(i) whether such plan or coverage covers an individual or family;

“(ii) rating area, as established in accordance with paragraph (2);

“(iii) age, except that such rate shall not vary by more than 3 to 1 for adults (consistent with section 2707(c)); and

“(iv) tobacco use, except that such rate shall not vary by more than 1.5 to 1; and

“(B) such rate shall not vary with respect to the particular plan or coverage involved by any other factor not described in subparagraph (A).

“(2) RATING AREA.—

“(A) IN GENERAL.—Each State shall establish 1 or more rating areas within that State for purposes of applying the requirements of this title.

“(B) SECRETARIAL REVIEW.—The Secretary shall review the rating areas established by each State under subparagraph (A) to ensure the adequacy of such areas for purposes of carrying out the requirements of this title. If the Secretary determines a State’s rating areas are not adequate, or that a State does not establish such areas, the Secretary may establish rating areas for that State.

“(3) PERMISSIBLE AGE BANDS.—The Secretary, in consultation with the National Association of Insurance Commissioners, shall define the permissible age bands for rating purposes under paragraph (1)(A)(iii).

Definition.

“(4) APPLICATION OF VARIATIONS BASED ON AGE OR TOBACCO USE.—With respect to family coverage under a group health plan or health insurance coverage, the rating variations permitted under clauses (iii) and (iv) of paragraph (1)(A) shall be applied based on the portion of the premium that is attributable to each family member covered under the plan or coverage.

“(5) SPECIAL RULE FOR LARGE GROUP MARKET.—If a State permits health insurance issuers that offer coverage in the large group market in the State to offer such coverage through the State Exchange (as provided for under section 1312(f)(2)(B)

of the Patient Protection and Affordable Care Act), the provisions of this subsection shall apply to all coverage offered in such market in the State.

42 USC
300gg-1.

“SEC. 2702. GUARANTEED AVAILABILITY OF COVERAGE.

“(a) **GUARANTEED ISSUANCE OF COVERAGE IN THE INDIVIDUAL AND GROUP MARKET.**—Subject to subsections (b) through (e), each health insurance issuer that offers health insurance coverage in the individual or group market in a State must accept every employer and individual in the State that applies for such coverage.

“(b) **ENROLLMENT.**—

“(1) **RESTRICTION.**—A health insurance issuer described in subsection (a) may restrict enrollment in coverage described in such subsection to open or special enrollment periods.

“(2) **ESTABLISHMENT.**—A health insurance issuer described in subsection (a) shall, in accordance with the regulations promulgated under paragraph (3), establish special enrollment periods for qualifying events (under section 603 of the Employee Retirement Income Security Act of 1974).

“(3) **REGULATIONS.**—The Secretary shall promulgate regulations with respect to enrollment periods under paragraphs (1) and (2).

42 USC
300gg-2.

“SEC. 2703. GUARANTEED RENEWABILITY OF COVERAGE.

“(a) **IN GENERAL.**—Except as provided in this section, if a health insurance issuer offers health insurance coverage in the individual or group market, the issuer must renew or continue in force such coverage at the option of the plan sponsor or the individual, as applicable.

42 USC
300gg-4.

“SEC. 2705. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

“(a) **IN GENERAL.**—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan or coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

“(1) Health status.

“(2) Medical condition (including both physical and mental illnesses).

“(3) Claims experience.

“(4) Receipt of health care.

“(5) Medical history.

“(6) Genetic information.

“(7) Evidence of insurability (including conditions arising out of acts of domestic violence).

“(8) Disability.

“(9) Any other health status-related factor determined appropriate by the Secretary.

“(j) **PROGRAMS OF HEALTH PROMOTION OR DISEASE PREVENTION.**—

“(1) **GENERAL PROVISIONS.**—

“(A) **GENERAL RULE.**—For purposes of subsection (b)(2)(B), a program of health promotion or disease prevention (referred to in this subsection as a ‘wellness program’) shall be a program offered by an employer that is designed

to promote health or prevent disease that meets the applicable requirements of this subsection.

“(B) NO CONDITIONS BASED ON HEALTH STATUS FACTOR.—If none of the conditions for obtaining a premium discount or rebate or other reward for participation in a wellness program is based on an individual satisfying a standard that is related to a health status factor, such wellness program shall not violate this section if participation in the program is made available to all similarly situated individuals and the requirements of paragraph (2) are complied with.

“(C) CONDITIONS BASED ON HEALTH STATUS FACTOR.—If any of the conditions for obtaining a premium discount or rebate or other reward for participation in a wellness program is based on an individual satisfying a standard that is related to a health status factor, such wellness program shall not violate this section if the requirements of paragraph (3) are complied with.

“(2) WELLNESS PROGRAMS NOT SUBJECT TO REQUIREMENTS.—If none of the conditions for obtaining a premium discount or rebate or other reward under a wellness program as described in paragraph (1)(B) are based on an individual satisfying a standard that is related to a health status factor (or if such a wellness program does not provide such a reward), the wellness program shall not violate this section if participation in the program is made available to all similarly situated individuals. The following programs shall not have to comply with the requirements of paragraph (3) if participation in the program is made available to all similarly situated individuals:

“(A) A program that reimburses all or part of the cost for memberships in a fitness center.

“(B) A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.

“(C) A program that encourages preventive care related to a health condition through the waiver of the copayment or deductible requirement under group health plan for the costs of certain items or services related to a health condition (such as prenatal care or well-baby visits).

“(D) A program that reimburses individuals for the costs of smoking cessation programs without regard to whether the individual quits smoking.

“(E) A program that provides a reward to individuals for attending a periodic health education seminar.

“(3) WELLNESS PROGRAMS SUBJECT TO REQUIREMENTS.—If any of the conditions for obtaining a premium discount, rebate, or reward under a wellness program as described in paragraph (1)(C) is based on an individual satisfying a standard that is related to a health status factor, the wellness program shall not violate this section if the following requirements are complied with:

“(A) The reward for the wellness program, together with the reward for other wellness programs with respect to the plan that requires satisfaction of a standard related to a health status factor, shall not exceed 30 percent of the cost of employee-only coverage under the plan. If, in

addition to employees or individuals, any class of dependents (such as spouses or spouses and dependent children) may participate fully in the wellness program, such reward shall not exceed 30 percent of the cost of the coverage in which an employee or individual and any dependents are enrolled. For purposes of this paragraph, the cost of coverage shall be determined based on the total amount of employer and employee contributions for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage. A reward may be in the form of a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism (such as deductibles, copayments, or coinsurance), the absence of a surcharge, or the value of a benefit that would otherwise not be provided under the plan. The Secretaries of Labor, Health and Human Services, and the Treasury may increase the reward available under this subparagraph to up to 50 percent of the cost of coverage if the Secretaries determine that such an increase is appropriate.

“(B) The wellness program shall be reasonably designed to promote health or prevent disease. A program complies with the preceding sentence if the program has a reasonable chance of improving the health of, or preventing disease in, participating individuals and it is not overly burdensome, is not a subterfuge for discriminating based on a health status factor, and is not highly suspect in the method chosen to promote health or prevent disease.

“(C) The plan shall give individuals eligible for the program the opportunity to qualify for the reward under the program at least once each year.

“(D) The full reward under the wellness program shall be made available to all similarly situated individuals. For such purpose, among other things:

“(i) The reward is not available to all similarly situated individuals for a period unless the wellness program allows—

“(I) for a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

“(II) for a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

“(ii) If reasonable under the circumstances, the plan or issuer may seek verification, such as a statement from an individual’s physician, that a health status factor makes it unreasonably difficult or medically inadvisable for the individual to satisfy or attempt to satisfy the otherwise applicable standard.

“(E) The plan or issuer involved shall disclose in all plan materials describing the terms of the wellness program the availability of a reasonable alternative standard (or the possibility of waiver of the otherwise applicable standard) required under subparagraph (D). If plan materials disclose that such a program is available, without describing its terms, the disclosure under this subparagraph shall not be required.

“(k) EXISTING PROGRAMS.—Nothing in this section shall prohibit a program of health promotion or disease prevention that was established prior to the date of enactment of this section and applied with all applicable regulations, and that is operating on such date, from continuing to be carried out for as long as such regulations remain in effect.

“(l) WELLNESS PROGRAM DEMONSTRATION PROJECT.—

“(1) IN GENERAL.—Not later than July 1, 2014, the Secretary, in consultation with the Secretary of the Treasury and the Secretary of Labor, shall establish a 10-State demonstration project under which participating States shall apply the provisions of subsection (j) to programs of health promotion offered by a health insurance issuer that offers health insurance coverage in the individual market in such State.

Deadline.

“(2) EXPANSION OF DEMONSTRATION PROJECT.—If the Secretary, in consultation with the Secretary of the Treasury and the Secretary of Labor, determines that the demonstration project described in paragraph (1) is effective, such Secretaries may, beginning on July 1, 2017 expand such demonstration project to include additional participating States.

Expansion date.

“(3) REQUIREMENTS.—

“(A) MAINTENANCE OF COVERAGE.—The Secretary, in consultation with the Secretary of the Treasury and the Secretary of Labor, shall not approve the participation of a State in the demonstration project under this section unless the Secretaries determine that the State’s project is designed in a manner that—

“(i) will not result in any decrease in coverage; and

“(ii) will not increase the cost to the Federal Government in providing credits under section 36B of the Internal Revenue Code of 1986 or cost-sharing assistance under section 1402 of the Patient Protection and Affordable Care Act.

“(B) OTHER REQUIREMENTS.—States that participate in the demonstration project under this subsection—

“(i) may permit premium discounts or rebates or the modification of otherwise applicable copayments or deductibles for adherence to, or participation in, a reasonably designed program of health promotion and disease prevention;

“(ii) shall ensure that requirements of consumer protection are met in programs of health promotion in the individual market;

“(iii) shall require verification from health insurance issuers that offer health insurance coverage in the individual market of such State that premium discounts—

“(I) do not create undue burdens for individuals insured in the individual market;

“(II) do not lead to cost shifting; and

“(III) are not a subterfuge for discrimination;

“(iv) shall ensure that consumer data is protected in accordance with the requirements of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note); and

“(v) shall ensure and demonstrate to the satisfaction of the Secretary that the discounts or other rewards provided under the project reflect the expected level of participation in the wellness program involved and the anticipated effect the program will have on utilization or medical claim costs.

“(m) REPORT.—

“(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Patient Protection and Affordable Care Act, the Secretary, in consultation with the Secretary of the Treasury and the Secretary of Labor, shall submit a report to the appropriate committees of Congress concerning—

“(A) the effectiveness of wellness programs (as defined in subsection (j)) in promoting health and preventing disease;

“(B) the impact of such wellness programs on the access to care and affordability of coverage for participants and non-participants of such programs;

“(C) the impact of premium-based and cost-sharing incentives on participant behavior and the role of such programs in changing behavior; and

“(D) the effectiveness of different types of rewards.

“(2) DATA COLLECTION.—In preparing the report described in paragraph (1), the Secretaries shall gather relevant information from employers who provide employees with access to wellness programs, including State and Federal agencies.

“(n) REGULATIONS.—Nothing in this section shall be construed as prohibiting the Secretaries of Labor, Health and Human Services, or the Treasury from promulgating regulations in connection with this section.

42 USC
300gg-5.

“SEC. 2706. NON-DISCRIMINATION IN HEALTH CARE.

“(a) PROVIDERS.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law. This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.

Applicability.

“(b) INDIVIDUALS.—The provisions of section 1558 of the Patient Protection and Affordable Care Act (relating to non-discrimination) shall apply with respect to a group health plan or health insurance issuer offering group or individual health insurance coverage.

“SEC. 2707. COMPREHENSIVE HEALTH INSURANCE COVERAGE.42 USC
300gg-6.

“(a) **COVERAGE FOR ESSENTIAL HEALTH BENEFITS PACKAGE.**—A health insurance issuer that offers health insurance coverage in the individual or small group market shall ensure that such coverage includes the essential health benefits package required under section 1302(a) of the Patient Protection and Affordable Care Act.

“(b) **COST-SHARING UNDER GROUP HEALTH PLANS.**—A group health plan shall ensure that any annual cost-sharing imposed under the plan does not exceed the limitations provided for under paragraphs (1) and (2) of section 1302(c).

“(c) **CHILD-ONLY PLANS.**—If a health insurance issuer offers health insurance coverage in any level of coverage specified under section 1302(d) of the Patient Protection and Affordable Care Act, the issuer shall also offer such coverage in that level as a plan in which the only enrollees are individuals who, as of the beginning of a plan year, have not attained the age of 21.

“(d) **DENTAL ONLY.**—This section shall not apply to a plan described in section 1302(d)(2)(B)(ii)(I).

“SEC. 2708. PROHIBITION ON EXCESSIVE WAITING PERIODS.42 USC
300gg-7.

“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not apply any waiting period (as defined in section 2704(b)(4)) that exceeds 90 days.”.

PART II—OTHER PROVISIONS**SEC. 1251. PRESERVATION OF RIGHT TO MAINTAIN EXISTING COVERAGE.**

42 USC 18011.

(a) NO CHANGES TO EXISTING COVERAGE.—

(1) **IN GENERAL.**—Nothing in this Act (or an amendment made by this Act) shall be construed to require that an individual terminate coverage under a group health plan or health insurance coverage in which such individual was enrolled on the date of enactment of this Act.

(2) **CONTINUATION OF COVERAGE.**—With respect to a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment of this Act, this subtitle and subtitle A (and the amendments made by such subtitles) shall not apply to such plan or coverage, regardless of whether the individual renews such coverage after such date of enactment.

(b) **ALLOWANCE FOR FAMILY MEMBERS TO JOIN CURRENT COVERAGE.**—With respect to a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment of this Act and which is renewed after such date, family members of such individual shall be permitted to enroll in such plan or coverage if such enrollment is permitted under the terms of the plan in effect as of such date of enactment.

(c) **ALLOWANCE FOR NEW EMPLOYEES TO JOIN CURRENT PLAN.**—A group health plan that provides coverage on the date of enactment of this Act may provide for the enrolling of new employees (and their families) in such plan, and this subtitle and subtitle A (and the amendments made by such subtitles) shall not apply with respect to such plan and such new employees (and their families).

(d) **EFFECT ON COLLECTIVE BARGAINING AGREEMENTS.**—In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before the date of enactment of this Act, the provisions of this subtitle and subtitle A (and the amendments made by such subtitles) shall not apply until the date on which the last of the collective bargaining agreements relating to the coverage terminates. Any coverage amendment made pursuant to a collective bargaining agreement relating to the coverage which amends the coverage solely to conform to any requirement added by this subtitle or subtitle A (or amendments) shall not be treated as a termination of such collective bargaining agreement.

(e) **DEFINITION.**—In this title, the term “grandfathered health plan” means any group health plan or health insurance coverage to which this section applies.

42 USC 18012.

SEC. 1252. RATING REFORMS MUST APPLY UNIFORMLY TO ALL HEALTH INSURANCE ISSUERS AND GROUP HEALTH PLANS.

Any standard or requirement adopted by a State pursuant to this title, or any amendment made by this title, shall be applied uniformly to all health plans in each insurance market to which the standard and requirements apply. The preceding sentence shall also apply to a State standard or requirement relating to the standard or requirement required by this title (or any such amendment) that is not the same as the standard or requirement but that is not preempted under section 1321(d).

42 USC
300gg note.

SEC. 1253. EFFECTIVE DATES.

This subtitle (and the amendments made by this subtitle) shall become effective for plan years beginning on or after January 1, 2014.

Subtitle D—Available Coverage Choices for All Americans

PART I—ESTABLISHMENT OF QUALIFIED HEALTH PLANS

42 USC 18021.

SEC. 1301. QUALIFIED HEALTH PLAN DEFINED.

(a) **QUALIFIED HEALTH PLAN.**—In this title:

(1) **IN GENERAL.**—The term “qualified health plan” means a health plan that—

(A) has in effect a certification (which may include a seal or other indication of approval) that such plan meets the criteria for certification described in section 1311(c) issued or recognized by each Exchange through which such plan is offered;

(B) provides the essential health benefits package described in section 1302(a); and

(C) is offered by a health insurance issuer that—

(i) is licensed and in good standing to offer health insurance coverage in each State in which such issuer offers health insurance coverage under this title;

(ii) agrees to offer at least one qualified health plan in the silver level and at least one plan in the gold level in each such Exchange;

(iii) agrees to charge the same premium rate for each qualified health plan of the issuer without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent; and

(iv) complies with the regulations developed by the Secretary under section 1311(d) and such other requirements as an applicable Exchange may establish.

(2) INCLUSION OF CO-OP PLANS AND COMMUNITY HEALTH INSURANCE OPTION.—Any reference in this title to a qualified health plan shall be deemed to include a qualified health plan offered through the CO-OP program under section 1322 or a community health insurance option under section 1323, unless specifically provided for otherwise.

(b) TERMS RELATING TO HEALTH PLANS.—In this title:

(1) HEALTH PLAN.—

(A) IN GENERAL.—The term “health plan” means health insurance coverage and a group health plan.

(B) EXCEPTION FOR SELF-INSURED PLANS AND MEWAS.—Except to the extent specifically provided by this title, the term “health plan” shall not include a group health plan or multiple employer welfare arrangement to the extent the plan or arrangement is not subject to State insurance regulation under section 514 of the Employee Retirement Income Security Act of 1974.

(2) HEALTH INSURANCE COVERAGE AND ISSUER.—The terms “health insurance coverage” and “health insurance issuer” have the meanings given such terms by section 2791(b) of the Public Health Service Act.

(3) GROUP HEALTH PLAN.—The term “group health plan” has the meaning given such term by section 2791(a) of the Public Health Service Act.

SEC. 1302. ESSENTIAL HEALTH BENEFITS REQUIREMENTS.

42 USC 18022.

(a) ESSENTIAL HEALTH BENEFITS PACKAGE.—In this title, the term “essential health benefits package” means, with respect to any health plan, coverage that—

(1) provides for the essential health benefits defined by the Secretary under subsection (b);

(2) limits cost-sharing for such coverage in accordance with subsection (c); and

(3) subject to subsection (e), provides either the bronze, silver, gold, or platinum level of coverage described in subsection (d).

(b) ESSENTIAL HEALTH BENEFITS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall define the essential health benefits, except that such benefits shall include at least the following general categories and the items and services covered within the categories:

(A) Ambulatory patient services.

(B) Emergency services.

(C) Hospitalization.

(D) Maternity and newborn care.

(E) Mental health and substance use disorder services, including behavioral health treatment.

(F) Prescription drugs.

(G) Rehabilitative and habilitative services and devices.

(H) Laboratory services.

(I) Preventive and wellness services and chronic disease management.

(J) Pediatric services, including oral and vision care.

(2) LIMITATION.—

Determination.

(A) IN GENERAL.—The Secretary shall ensure that the scope of the essential health benefits under paragraph (1) is equal to the scope of benefits provided under a typical employer plan, as determined by the Secretary. To inform this determination, the Secretary of Labor shall conduct a survey of employer-sponsored coverage to determine the benefits typically covered by employers, including multiemployer plans, and provide a report on such survey to the Secretary.

Survey.
Reports.

Reports.

(B) CERTIFICATION.—In defining the essential health benefits described in paragraph (1), and in revising the benefits under paragraph (4)(H), the Secretary shall submit a report to the appropriate committees of Congress containing a certification from the Chief Actuary of the Centers for Medicare & Medicaid Services that such essential health benefits meet the limitation described in paragraph (2).

(3) NOTICE AND HEARING.—In defining the essential health benefits described in paragraph (1), and in revising the benefits under paragraph (4)(H), the Secretary shall provide notice and an opportunity for public comment.

(4) REQUIRED ELEMENTS FOR CONSIDERATION.—In defining the essential health benefits under paragraph (1), the Secretary shall—

(A) ensure that such essential health benefits reflect an appropriate balance among the categories described in such subsection, so that benefits are not unduly weighted toward any category;

(B) not make coverage decisions, determine reimbursement rates, establish incentive programs, or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life;

(C) take into account the health care needs of diverse segments of the population, including women, children, persons with disabilities, and other groups;

(D) ensure that health benefits established as essential not be subject to denial to individuals against their wishes on the basis of the individuals' age or expected length of life or of the individuals' present or predicted disability, degree of medical dependency, or quality of life;

(E) provide that a qualified health plan shall not be treated as providing coverage for the essential health benefits described in paragraph (1) unless the plan provides that—

(i) coverage for emergency department services will be provided without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services does not have a contractual relationship with the plan

for the providing of services that is more restrictive than the requirements or limitations that apply to emergency department services received from providers who do have such a contractual relationship with the plan; and

(ii) if such services are provided out-of-network, the cost-sharing requirement (expressed as a copayment amount or coinsurance rate) is the same requirement that would apply if such services were provided in-network;

(F) provide that if a plan described in section 1311(b)(2)(B)(ii) (relating to stand-alone dental benefits plans) is offered through an Exchange, another health plan offered through such Exchange shall not fail to be treated as a qualified health plan solely because the plan does not offer coverage of benefits offered through the stand-alone plan that are otherwise required under paragraph (1)(J); and

(G) periodically review the essential health benefits under paragraph (1), and provide a report to Congress and the public that contains—

(i) an assessment of whether enrollees are facing any difficulty accessing needed services for reasons of coverage or cost;

(ii) an assessment of whether the essential health benefits needs to be modified or updated to account for changes in medical evidence or scientific advancement;

(iii) information on how the essential health benefits will be modified to address any such gaps in access or changes in the evidence base;

(iv) an assessment of the potential of additional or expanded benefits to increase costs and the interactions between the addition or expansion of benefits and reductions in existing benefits to meet actuarial limitations described in paragraph (2); and

(H) periodically update the essential health benefits under paragraph (1) to address any gaps in access to coverage or changes in the evidence base the Secretary identifies in the review conducted under subparagraph (G).

(5) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit a health plan from providing benefits in excess of the essential health benefits described in this subsection.

(c) REQUIREMENTS RELATING TO COST-SHARING.—

(1) ANNUAL LIMITATION ON COST-SHARING.—

(A) 2014.—The cost-sharing incurred under a health plan with respect to self-only coverage or coverage other than self-only coverage for a plan year beginning in 2014 shall not exceed the dollar amounts in effect under section 223(c)(2)(A)(ii) of the Internal Revenue Code of 1986 for self-only and family coverage, respectively, for taxable years beginning in 2014.

(B) 2015 AND LATER.—In the case of any plan year beginning in a calendar year after 2014, the limitation under this paragraph shall—

(i) in the case of self-only coverage, be equal to the dollar amount under subparagraph (A) for self-only coverage for plan years beginning in 2014, increased by an amount equal to the product of that amount and the premium adjustment percentage under paragraph (4) for the calendar year; and

(ii) in the case of other coverage, twice the amount in effect under clause (i).

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

(2) ANNUAL LIMITATION ON DEDUCTIBLES FOR EMPLOYER-SPONSORED PLANS.—

(A) IN GENERAL.—In the case of a health plan offered in the small group market, the deductible under the plan shall not exceed—

(i) \$2,000 in the case of a plan covering a single individual; and

(ii) \$4,000 in the case of any other plan.

The amounts under clauses (i) and (ii) may be increased by the maximum amount of reimbursement which is reasonably available to a participant under a flexible spending arrangement described in section 106(c)(2) of the Internal Revenue Code of 1986 (determined without regard to any salary reduction arrangement).

(B) INDEXING OF LIMITS.—In the case of any plan year beginning in a calendar year after 2014—

(i) the dollar amount under subparagraph (A)(i) shall be increased by an amount equal to the product of that amount and the premium adjustment percentage under paragraph (4) for the calendar year; and

(ii) the dollar amount under subparagraph (A)(ii) shall be increased to an amount equal to twice the amount in effect under subparagraph (A)(i) for plan years beginning in the calendar year, determined after application of clause (i).

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

(C) ACTUARIAL VALUE.—The limitation under this paragraph shall be applied in such a manner so as to not affect the actuarial value of any health plan, including a plan in the bronze level.

(D) COORDINATION WITH PREVENTIVE LIMITS.—Nothing in this paragraph shall be construed to allow a plan to have a deductible under the plan apply to benefits described in section 2713 of the Public Health Service Act.

(3) COST-SHARING.—In this title—

(A) IN GENERAL.—The term “cost-sharing” includes—

(i) deductibles, coinsurance, copayments, or similar charges; and

(ii) any other expenditure required of an insured individual which is a qualified medical expense (within the meaning of section 223(d)(2) of the Internal Revenue Code of 1986) with respect to essential health benefits covered under the plan.

(B) EXCEPTIONS.—Such term does not include premiums, balance billing amounts for non-network providers, or spending for non-covered services.

(4) PREMIUM ADJUSTMENT PERCENTAGE.—For purposes of paragraphs (1)(B)(i) and (2)(B)(i), the premium adjustment percentage for any calendar year is the percentage (if any) by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year (as estimated by the Secretary no later than October 1 of such preceding calendar year) exceeds such average per capita premium for 2013 (as determined by the Secretary).

Determination.
Deadline.

(d) LEVELS OF COVERAGE.—

(1) LEVELS OF COVERAGE DEFINED.—The levels of coverage described in this subsection are as follows:

(A) BRONZE LEVEL.—A plan in the bronze level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

(B) SILVER LEVEL.—A plan in the silver level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan.

(C) GOLD LEVEL.—A plan in the gold level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 80 percent of the full actuarial value of the benefits provided under the plan.

(D) PLATINUM LEVEL.—A plan in the platinum level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 90 percent of the full actuarial value of the benefits provided under the plan.

(2) ACTUARIAL VALUE.—

(A) IN GENERAL.—Under regulations issued by the Secretary, the level of coverage of a plan shall be determined on the basis that the essential health benefits described in subsection (b) shall be provided to a standard population (and without regard to the population the plan may actually provide benefits to).

(B) EMPLOYER CONTRIBUTIONS.—The Secretary may issue regulations under which employer contributions to a health savings account (within the meaning of section 223 of the Internal Revenue Code of 1986) may be taken into account in determining the level of coverage for a plan of the employer.

(C) APPLICATION.—In determining under this title, the Public Health Service Act, or the Internal Revenue Code of 1986 the percentage of the total allowed costs of benefits provided under a group health plan or health insurance coverage that are provided by such plan or coverage, the rules contained in the regulations under this paragraph shall apply.

(3) ALLOWABLE VARIANCE.—The Secretary shall develop guidelines to provide for a de minimis variation in the actuarial valuations used in determining the level of coverage of a plan to account for differences in actuarial estimates.

Guidelines.

(4) **PLAN REFERENCE.**—In this title, any reference to a bronze, silver, gold, or platinum plan shall be treated as a reference to a qualified health plan providing a bronze, silver, gold, or platinum level of coverage, as the case may be.

(e) **CATASTROPHIC PLAN.**—

(1) **IN GENERAL.**—A health plan not providing a bronze, silver, gold, or platinum level of coverage shall be treated as meeting the requirements of subsection (d) with respect to any plan year if—

(A) the only individuals who are eligible to enroll in the plan are individuals described in paragraph (2); and

(B) the plan provides—

(i) except as provided in clause (ii), the essential health benefits determined under subsection (b), except that the plan provides no benefits for any plan year until the individual has incurred cost-sharing expenses in an amount equal to the annual limitation in effect under subsection (c)(1) for the plan year (except as provided for in section 2713); and

(ii) coverage for at least three primary care visits.

(2) **INDIVIDUALS ELIGIBLE FOR ENROLLMENT.**—An individual is described in this paragraph for any plan year if the individual—

(A) has not attained the age of 30 before the beginning of the plan year; or

(B) has a certification in effect for any plan year under this title that the individual is exempt from the requirement under section 5000A of the Internal Revenue Code of 1986 by reason of—

(i) section 5000A(e)(1) of such Code (relating to individuals without affordable coverage); or

(ii) section 5000A(e)(5) of such Code (relating to individuals with hardships).

(3) **RESTRICTION TO INDIVIDUAL MARKET.**—If a health insurance issuer offers a health plan described in this subsection, the issuer may only offer the plan in the individual market.

(f) **CHILD-ONLY PLANS.**—If a qualified health plan is offered through the Exchange in any level of coverage specified under subsection (d), the issuer shall also offer that plan through the Exchange in that level as a plan in which the only enrollees are individuals who, as of the beginning of a plan year, have not attained the age of 21, and such plan shall be treated as a qualified health plan.

42 USC 18023.

SEC. 1303. SPECIAL RULES.

(a) **SPECIAL RULES RELATING TO COVERAGE OF ABORTION SERVICES.**—

(1) **VOLUNTARY CHOICE OF COVERAGE OF ABORTION SERVICES.**—

(A) **IN GENERAL.**—Notwithstanding any other provision of this title (or any amendment made by this title), and subject to subparagraphs (C) and (D)—

(i) nothing in this title (or any amendment made by this title), shall be construed to require a qualified health plan to provide coverage of services described in subparagraph (B)(i) or (B)(ii) as part of its essential health benefits for any plan year; and

(ii) the issuer of a qualified health plan shall determine whether or not the plan provides coverage of services described in subparagraph (B)(i) or (B)(ii) as part of such benefits for the plan year.

Determination.

(B) ABORTION SERVICES.—

(i) ABORTIONS FOR WHICH PUBLIC FUNDING IS PROHIBITED.—The services described in this clause are abortions for which the expenditure of Federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.

(ii) ABORTIONS FOR WHICH PUBLIC FUNDING IS ALLOWED.—The services described in this clause are abortions for which the expenditure of Federal funds appropriated for the Department of Health and Human Services is permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.

(C) PROHIBITION ON FEDERAL FUNDS FOR ABORTION SERVICES IN COMMUNITY HEALTH INSURANCE OPTION.—

(i) DETERMINATION BY SECRETARY.—The Secretary may not determine, in accordance with subparagraph (A)(ii), that the community health insurance option established under section 1323 shall provide coverage of services described in subparagraph (B)(i) as part of benefits for the plan year unless the Secretary—

(I) assures compliance with the requirements of paragraph (2);

(II) assures, in accordance with applicable provisions of generally accepted accounting requirements, circulars on funds management of the Office of Management and Budget, and guidance on accounting of the Government Accountability Office, that no Federal funds are used for such coverage; and

(III) notwithstanding section 1323(e)(1)(C) or any other provision of this title, takes all necessary steps to assure that the United States does not bear the insurance risk for a community health insurance option's coverage of services described in subparagraph (B)(i).

(ii) STATE REQUIREMENT.—If a State requires, in addition to the essential health benefits required under section 1323(b)(3) (A), coverage of services described in subparagraph (B)(i) for enrollees of a community health insurance option offered in such State, the State shall assure that no funds flowing through or from the community health insurance option, and no other Federal funds, pay or defray the cost of providing coverage of services described in subparagraph (B)(i). The United States shall not bear the insurance risk for a State's required coverage of services described in subparagraph (B)(i).

(iii) EXCEPTIONS.—Nothing in this subparagraph shall apply to coverage of services described in subparagraph (B)(ii) by the community health insurance

option. Services described in subparagraph (B)(ii) shall be covered to the same extent as such services are covered under title XIX of the Social Security Act.

(D) ASSURED AVAILABILITY OF VARIED COVERAGE THROUGH EXCHANGES.—

(i) IN GENERAL.—The Secretary shall assure that with respect to qualified health plans offered in any Exchange established pursuant to this title—

(I) there is at least one such plan that provides coverage of services described in clauses (i) and (ii) of subparagraph (B); and

(II) there is at least one such plan that does not provide coverage of services described in subparagraph (B)(i).

(ii) SPECIAL RULES.—For purposes of clause (i)—

(I) a plan shall be treated as described in clause (i)(II) if the plan does not provide coverage of services described in either subparagraph (B)(i) or (B)(ii); and

(II) if a State has one Exchange covering more than 1 insurance market, the Secretary shall meet the requirements of clause (i) separately with respect to each such market.

(2) PROHIBITION ON THE USE OF FEDERAL FUNDS.—

(A) IN GENERAL.—If a qualified health plan provides coverage of services described in paragraph (1)(B)(i), the issuer of the plan shall not use any amount attributable to any of the following for purposes of paying for such services:

(i) The credit under section 36B of the Internal Revenue Code of 1986 (and the amount (if any) of the advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act).

(ii) Any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act (and the amount (if any) of the advance payment of the reduction under section 1412 of the Patient Protection and Affordable Care Act).

(B) SEGREGATION OF FUNDS.—In the case of a plan to which subparagraph (A) applies, the issuer of the plan shall, out of amounts not described in subparagraph (A), segregate an amount equal to the actuarial amounts determined under subparagraph (C) for all enrollees from the amounts described in subparagraph (A).

(C) ACTUARIAL VALUE OF OPTIONAL SERVICE COVERAGE.—

(i) IN GENERAL.—The Secretary shall estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage under a qualified health plan of the services described in paragraph (1)(B)(i).

(ii) CONSIDERATIONS.—In making such estimate, the Secretary—

(I) may take into account the impact on overall costs of the inclusion of such coverage, but may not take into account any cost reduction estimated

Cost estimate.

to result from such services, including prenatal care, delivery, or postnatal care;

(II) shall estimate such costs as if such coverage were included for the entire population covered; and

(III) may not estimate such a cost at less than \$1 per enrollee, per month.

(3) PROVIDER CONSCIENCE PROTECTIONS.—No individual health care provider or health care facility may be discriminated against because of a willingness or an unwillingness, if doing so is contrary to the religious or moral beliefs of the provider or facility, to provide, pay for, provide coverage of, or refer for abortions.

Abortions.

(b) APPLICATION OF STATE AND FEDERAL LAWS REGARDING ABORTION.—

(1) NO PREEMPTION OF STATE LAWS REGARDING ABORTION.—Nothing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.

(2) NO EFFECT ON FEDERAL LAWS REGARDING ABORTION.—

(A) IN GENERAL.—Nothing in this Act shall be construed to have any effect on Federal laws regarding—

(i) conscience protection;

(ii) willingness or refusal to provide abortion; and

(iii) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

(3) NO EFFECT ON FEDERAL CIVIL RIGHTS LAW.—Nothing in this subsection shall alter the rights and obligations of employees and employers under title VII of the Civil Rights Act of 1964.

(c) APPLICATION OF EMERGENCY SERVICES LAWS.—Nothing in this Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including section 1867 of the Social Security Act (popularly known as “EMTALA”).

SEC. 1304. RELATED DEFINITIONS.

42 USC 18024.

(a) DEFINITIONS RELATING TO MARKETS.—In this title:

(1) GROUP MARKET.—The term “group market” means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by an employer.

(2) INDIVIDUAL MARKET.—The term “individual market” means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(3) LARGE AND SMALL GROUP MARKETS.—The terms “large group market” and “small group market” mean the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer (as defined in subsection

(b)(1)) or by a small employer (as defined in subsection (b)(2)), respectively.

(b) EMPLOYERS.—In this title:

(1) LARGE EMPLOYER.—The term “large employer” means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

(2) SMALL EMPLOYER.—The term “small employer” means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

(3) STATE OPTION TO TREAT 50 EMPLOYEES AS SMALL.—In the case of plan years beginning before January 1, 2016, a State may elect to apply this subsection by substituting “51 employees” for “101 employees” in paragraph (1) and by substituting “50 employees” for “100 employees” in paragraph (2).

(4) RULES FOR DETERMINING EMPLOYER SIZE.—For purposes of this subsection—

(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) CONTINUATION OF PARTICIPATION FOR GROWING SMALL EMPLOYERS.—If—

(i) a qualified employer that is a small employer makes enrollment in qualified health plans offered in the small group market available to its employees through an Exchange; and

(ii) the employer ceases to be a small employer by reason of an increase in the number of employees of such employer;

the employer shall continue to be treated as a small employer for purposes of this subtitle for the period beginning with the increase and ending with the first day on which the employer does not make such enrollment available to its employees.

(c) SECRETARY.—In this title, the term “Secretary” means the Secretary of Health and Human Services.

(d) STATE.—In this title, the term “State” means each of the 50 States and the District of Columbia.

Time period.

PART II—CONSUMER CHOICES AND INSURANCE COMPETITION THROUGH HEALTH BENEFIT EXCHANGES

SEC. 1311. AFFORDABLE CHOICES OF HEALTH BENEFIT PLANS.

42 USC 18031.

(a) ASSISTANCE TO STATES TO ESTABLISH AMERICAN HEALTH BENEFIT EXCHANGES.—

(1) PLANNING AND ESTABLISHMENT GRANTS.—There shall be appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, an amount necessary to enable the Secretary to make awards, not later than 1 year after the date of enactment of this Act, to States in the amount specified in paragraph (2) for the uses described in paragraph (3).

Deadline.

(2) AMOUNT SPECIFIED.—For each fiscal year, the Secretary shall determine the total amount that the Secretary will make available to each State for grants under this subsection.

Determination.

(3) USE OF FUNDS.—A State shall use amounts awarded under this subsection for activities (including planning activities) related to establishing an American Health Benefit Exchange, as described in subsection (b).

(4) RENEWABILITY OF GRANT.—

(A) IN GENERAL.—Subject to subsection (d)(4), the Secretary may renew a grant awarded under paragraph (1) if the State recipient of such grant—

(i) is making progress, as determined by the Secretary, toward—

(I) establishing an Exchange; and

(II) implementing the reforms described in subtitles A and C (and the amendments made by such subtitles); and

(ii) is meeting such other benchmarks as the Secretary may establish.

(B) LIMITATION.—No grant shall be awarded under this subsection after January 1, 2015.

Deadline.

(5) TECHNICAL ASSISTANCE TO FACILITATE PARTICIPATION IN SHOP EXCHANGES.—The Secretary shall provide technical assistance to States to facilitate the participation of qualified small businesses in such States in SHOP Exchanges.

(b) AMERICAN HEALTH BENEFIT EXCHANGES.—

(1) IN GENERAL.—Each State shall, not later than January 1, 2014, establish an American Health Benefit Exchange (referred to in this title as an “Exchange”) for the State that—

Establishment.
Deadline.

(A) facilitates the purchase of qualified health plans;

(B) provides for the establishment of a Small Business Health Options Program (in this title referred to as a “SHOP Exchange”) that is designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market in the State; and

(C) meets the requirements of subsection (d).

(2) MERGER OF INDIVIDUAL AND SHOP EXCHANGES.—A State may elect to provide only one Exchange in the State for providing both Exchange and SHOP Exchange services to both qualified individuals and qualified small employers, but only

if the Exchange has adequate resources to assist such individuals and employers.

(c) RESPONSIBILITIES OF THE SECRETARY.—

Regulations.

(1) IN GENERAL.—The Secretary shall, by regulation, establish criteria for the certification of health plans as qualified health plans. Such criteria shall require that, to be certified, a plan shall, at a minimum—

(A) meet marketing requirements, and not employ marketing practices or benefit designs that have the effect of discouraging the enrollment in such plan by individuals with significant health needs;

(B) ensure a sufficient choice of providers (in a manner consistent with applicable network adequacy provisions under section 2702(c) of the Public Health Service Act), and provide information to enrollees and prospective enrollees on the availability of in-network and out-of-network providers;

(C) include within health insurance plan networks those essential community providers, where available, that serve predominately low-income, medically-underserved individuals, such as health care providers defined in section 340B(a)(4) of the Public Health Service Act and providers described in section 1927(c)(1)(D)(i)(IV) of the Social Security Act as set forth by section 221 of Public Law 111-8, except that nothing in this subparagraph shall be construed to require any health plan to provide coverage for any specific medical procedure;

(D)(i) be accredited with respect to local performance on clinical quality measures such as the Healthcare Effectiveness Data and Information Set, patient experience ratings on a standardized Consumer Assessment of Healthcare Providers and Systems survey, as well as consumer access, utilization management, quality assurance, provider credentialing, complaints and appeals, network adequacy and access, and patient information programs by any entity recognized by the Secretary for the accreditation of health insurance issuers or plans (so long as any such entity has transparent and rigorous methodological and scoring criteria); or

(ii) receive such accreditation within a period established by an Exchange for such accreditation that is applicable to all qualified health plans;

(E) implement a quality improvement strategy described in subsection (g)(1);

(F) utilize a uniform enrollment form that qualified individuals and qualified employers may use (either electronically or on paper) in enrolling in qualified health plans offered through such Exchange, and that takes into account criteria that the National Association of Insurance Commissioners develops and submits to the Secretary;

(G) utilize the standard format established for presenting health benefits plan options; and

(H) provide information to enrollees and prospective enrollees, and to each Exchange in which the plan is offered, on any quality measures for health plan performance endorsed under section 399JJ of the Public Health Service Act, as applicable.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1)(C) shall be construed to require a qualified health plan to contract with a provider described in such paragraph if such provider refuses to accept the generally applicable payment rates of such plan. Contracts.

(3) RATING SYSTEM.—The Secretary shall develop a rating system that would rate qualified health plans offered through an Exchange in each benefits level on the basis of the relative quality and price. The Exchange shall include the quality rating in the information provided to individuals and employers through the Internet portal established under paragraph (4).

(4) ENROLLEE SATISFACTION SYSTEM.—The Secretary shall develop an enrollee satisfaction survey system that would evaluate the level of enrollee satisfaction with qualified health plans offered through an Exchange, for each such qualified health plan that had more than 500 enrollees in the previous year. The Exchange shall include enrollee satisfaction information in the information provided to individuals and employers through the Internet portal established under paragraph (5) in a manner that allows individuals to easily compare enrollee satisfaction levels between comparable plans.

(5) INTERNET PORTALS.—The Secretary shall—

(A) continue to operate, maintain, and update the Internet portal developed under section 1103(a) and to assist States in developing and maintaining their own such portal; and

(B) make available for use by Exchanges a model template for an Internet portal that may be used to direct qualified individuals and qualified employers to qualified health plans, to assist such individuals and employers in determining whether they are eligible to participate in an Exchange or eligible for a premium tax credit or cost-sharing reduction, and to present standardized information (including quality ratings) regarding qualified health plans offered through an Exchange to assist consumers in making easy health insurance choices.

Such template shall include, with respect to each qualified health plan offered through the Exchange in each rating area, access to the uniform outline of coverage the plan is required to provide under section 2716 of the Public Health Service Act and to a copy of the plan's written policy.

(6) ENROLLMENT PERIODS.—The Secretary shall require an Exchange to provide for—

(A) an initial open enrollment, as determined by the Secretary (such determination to be made not later than July 1, 2012); Determination.

(B) annual open enrollment periods, as determined by the Secretary for calendar years after the initial enrollment period; Determination.

(C) special enrollment periods specified in section 9801 of the Internal Revenue Code of 1986 and other special enrollment periods under circumstances similar to such periods under part D of title XVIII of the Social Security Act; and

(D) special monthly enrollment periods for Indians (as defined in section 4 of the Indian Health Care Improvement Act). Native Americans.

(d) REQUIREMENTS.—

(1) IN GENERAL.—An Exchange shall be a governmental agency or nonprofit entity that is established by a State.

(2) OFFERING OF COVERAGE.—

(A) IN GENERAL.—An Exchange shall make available qualified health plans to qualified individuals and qualified employers.

(B) LIMITATION.—

(i) IN GENERAL.—An Exchange may not make available any health plan that is not a qualified health plan.

(ii) OFFERING OF STAND-ALONE DENTAL BENEFITS.—Each Exchange within a State shall allow an issuer of a plan that only provides limited scope dental benefits meeting the requirements of section 9832(c)(2)(A) of the Internal Revenue Code of 1986 to offer the plan through the Exchange (either separately or in conjunction with a qualified health plan) if the plan provides pediatric dental benefits meeting the requirements of section 1302(b)(1)(J).

(3) RULES RELATING TO ADDITIONAL REQUIRED BENEFITS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an Exchange may make available a qualified health plan notwithstanding any provision of law that may require benefits other than the essential health benefits specified under section 1302(b).

(B) STATES MAY REQUIRE ADDITIONAL BENEFITS.—

(i) IN GENERAL.—Subject to the requirements of clause (ii), a State may require that a qualified health plan offered in such State offer benefits in addition to the essential health benefits specified under section 1302(b).

(ii) STATE MUST ASSUME COST.—A State shall make payments to or on behalf of an individual eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under section 1402 to defray the cost to the individual of any additional benefits described in clause (i) which are not eligible for such credit or reduction under section 36B(b)(3)(D) of such Code and section 1402(c)(4).

(4) FUNCTIONS.—An Exchange shall, at a minimum—

(A) implement procedures for the certification, recertification, and decertification, consistent with guidelines developed by the Secretary under subsection (c), of health plans as qualified health plans;

(B) provide for the operation of a toll-free telephone hotline to respond to requests for assistance;

(C) maintain an Internet website through which enrollees and prospective enrollees of qualified health plans may obtain standardized comparative information on such plans;

(D) assign a rating to each qualified health plan offered through such Exchange in accordance with the criteria developed by the Secretary under subsection (c)(3);

(E) utilize a standardized format for presenting health benefits plan options in the Exchange, including the use

Payments.

Procedures.

Hotline.

Web site.

of the uniform outline of coverage established under section 2715 of the Public Health Service Act;

(F) in accordance with section 1413, inform individuals of eligibility requirements for the medicaid program under title XIX of the Social Security Act, the CHIP program under title XXI of such Act, or any applicable State or local public program and if through screening of the application by the Exchange, the Exchange determines that such individuals are eligible for any such program, enroll such individuals in such program;

(G) establish and make available by electronic means a calculator to determine the actual cost of coverage after the application of any premium tax credit under section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under section 1402;

(H) subject to section 1411, grant a certification attesting that, for purposes of the individual responsibility penalty under section 5000A of the Internal Revenue Code of 1986, an individual is exempt from the individual requirement or from the penalty imposed by such section because—

Certification.

(i) there is no affordable qualified health plan available through the Exchange, or the individual's employer, covering the individual; or

(ii) the individual meets the requirements for any other such exemption from the individual responsibility requirement or penalty;

(I) transfer to the Secretary of the Treasury—

(i) a list of the individuals who are issued a certification under subparagraph (H), including the name and taxpayer identification number of each individual;

Lists.

(ii) the name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 because—

(I) the employer did not provide minimum essential coverage; or

(II) the employer provided such minimum essential coverage but it was determined under section 36B(c)(2)(C) of such Code to either be unaffordable to the employee or not provide the required minimum actuarial value; and

(iii) the name and taxpayer identification number of each individual who notifies the Exchange under section 1411(b)(4) that they have changed employers and of each individual who ceases coverage under a qualified health plan during a plan year (and the effective date of such cessation);

(J) provide to each employer the name of each employee of the employer described in subparagraph (I)(ii) who ceases coverage under a qualified health plan during a plan year (and the effective date of such cessation); and

(K) establish the Navigator program described in subsection (i).

(5) FUNDING LIMITATIONS.—

Effective date.

(A) NO FEDERAL FUNDS FOR CONTINUED OPERATIONS.—In establishing an Exchange under this section, the State shall ensure that such Exchange is self-sustaining beginning on January 1, 2015, including allowing the Exchange to charge assessments or user fees to participating health insurance issuers, or to otherwise generate funding, to support its operations.

(B) PROHIBITING WASTEFUL USE OF FUNDS.—In carrying out activities under this subsection, an Exchange shall not utilize any funds intended for the administrative and operational expenses of the Exchange for staff retreats, promotional giveaways, excessive executive compensation, or promotion of Federal or State legislative and regulatory modifications.

(6) CONSULTATION.—An Exchange shall consult with stakeholders relevant to carrying out the activities under this section, including—

(A) health care consumers who are enrollees in qualified health plans;

(B) individuals and entities with experience in facilitating enrollment in qualified health plans;

(C) representatives of small businesses and self-employed individuals;

(D) State Medicaid offices; and

(E) advocates for enrolling hard to reach populations.

Web site.

(7) PUBLICATION OF COSTS.—An Exchange shall publish the average costs of licensing, regulatory fees, and any other payments required by the Exchange, and the administrative costs of such Exchange, on an Internet website to educate consumers on such costs. Such information shall also include monies lost to waste, fraud, and abuse.

(e) CERTIFICATION.—

(1) IN GENERAL.—An Exchange may certify a health plan as a qualified health plan if—

(A) such health plan meets the requirements for certification as promulgated by the Secretary under subsection (c)(1); and

Determination.

(B) the Exchange determines that making available such health plan through such Exchange is in the interests of qualified individuals and qualified employers in the State or States in which such Exchange operates, except that the Exchange may not exclude a health plan—

(i) on the basis that such plan is a fee-for-service plan;

(ii) through the imposition of premium price controls; or

(iii) on the basis that the plan provides treatments necessary to prevent patients' deaths in circumstances the Exchange determines are inappropriate or too costly.

Web site.

(2) PREMIUM CONSIDERATIONS.—The Exchange shall require health plans seeking certification as qualified health plans to submit a justification for any premium increase prior to implementation of the increase. Such plans shall prominently post such information on their websites. The Exchange may take this information, and the information and the recommendations provided to the Exchange by the State under

section 2794(b)(1) of the Public Health Service Act (relating to patterns or practices of excessive or unjustified premium increases), into consideration when determining whether to make such health plan available through the Exchange. The Exchange shall take into account any excess of premium growth outside the Exchange as compared to the rate of such growth inside the Exchange, including information reported by the States.

(f) FLEXIBILITY.—

(1) REGIONAL OR OTHER INTERSTATE EXCHANGES.—An Exchange may operate in more than one State if—

(A) each State in which such Exchange operates permits such operation; and

(B) the Secretary approves such regional or interstate Exchange.

(2) SUBSIDIARY EXCHANGES.—A State may establish one or more subsidiary Exchanges if—

(A) each such Exchange serves a geographically distinct area; and

(B) the area served by each such Exchange is at least as large as a rating area described in section 2701(a) of the Public Health Service Act.

(3) AUTHORITY TO CONTRACT.—

(A) IN GENERAL.—A State may elect to authorize an Exchange established by the State under this section to enter into an agreement with an eligible entity to carry out 1 or more responsibilities of the Exchange.

(B) ELIGIBLE ENTITY.—In this paragraph, the term “eligible entity” means—

(i) a person—

(I) incorporated under, and subject to the laws of, 1 or more States;

(II) that has demonstrated experience on a State or regional basis in the individual and small group health insurance markets and in benefits coverage; and

(III) that is not a health insurance issuer or that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer; or

(ii) the State medicaid agency under title XIX of the Social Security Act.

(g) REWARDING QUALITY THROUGH MARKET-BASED INCENTIVES.—

(1) STRATEGY DESCRIBED.—A strategy described in this paragraph is a payment structure that provides increased reimbursement or other incentives for—

(A) improving health outcomes through the implementation of activities that shall include quality reporting, effective case management, care coordination, chronic disease management, medication and care compliance initiatives, including through the use of the medical home model, for treatment or services under the plan or coverage;

(B) the implementation of activities to prevent hospital readmissions through a comprehensive program for hospital discharge that includes patient-centered education and counseling, comprehensive discharge planning, and post discharge reinforcement by an appropriate health care professional;

(C) the implementation of activities to improve patient safety and reduce medical errors through the appropriate use of best clinical practices, evidence based medicine, and health information technology under the plan or coverage; and

(D) the implementation of wellness and health promotion activities.

(2) GUIDELINES.—The Secretary, in consultation with experts in health care quality and stakeholders, shall develop guidelines concerning the matters described in paragraph (1).

Reports.

(3) REQUIREMENTS.—The guidelines developed under paragraph (2) shall require the periodic reporting to the applicable Exchange of the activities that a qualified health plan has conducted to implement a strategy described in paragraph (1).

(h) QUALITY IMPROVEMENT.—

Effective date.

(1) ENHANCING PATIENT SAFETY.—Beginning on January 1, 2015, a qualified health plan may contract with—

(A) a hospital with greater than 50 beds only if such hospital—

(i) utilizes a patient safety evaluation system as described in part C of title IX of the Public Health Service Act; and

(ii) implements a mechanism to ensure that each patient receives a comprehensive program for hospital discharge that includes patient-centered education and counseling, comprehensive discharge planning, and post discharge reinforcement by an appropriate health care professional; or

(B) a health care provider only if such provider implements such mechanisms to improve health care quality as the Secretary may by regulation require.

(2) EXCEPTIONS.—The Secretary may establish reasonable exceptions to the requirements described in paragraph (1).

(3) ADJUSTMENT.—The Secretary may by regulation adjust the number of beds described in paragraph (1)(A).

(i) NAVIGATORS.—

Grants.

(1) IN GENERAL.—An Exchange shall establish a program under which it awards grants to entities described in paragraph (2) to carry out the duties described in paragraph (3).

(2) ELIGIBILITY.—

(A) IN GENERAL.—To be eligible to receive a grant under paragraph (1), an entity shall demonstrate to the Exchange involved that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan.

(B) TYPES.—Entities described in subparagraph (A) may include trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused

nonprofit groups, chambers of commerce, unions, small business development centers, other licensed insurance agents and brokers, and other entities that—

- (i) are capable of carrying out the duties described in paragraph (3);
- (ii) meet the standards described in paragraph (4); and
- (iii) provide information consistent with the standards developed under paragraph (5).

(3) DUTIES.—An entity that serves as a navigator under a grant under this subsection shall—

(A) conduct public education activities to raise awareness of the availability of qualified health plans;

(B) distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(C) facilitate enrollment in qualified health plans;

(D) provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and

(E) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.

(4) STANDARDS.—

(A) IN GENERAL.—The Secretary shall establish standards for navigators under this subsection, including provisions to ensure that any private or public entity that is selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities described in this subsection and to avoid conflicts of interest. Under such standards, a navigator shall not—

- (i) be a health insurance issuer; or
- (ii) receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.

(5) FAIR AND IMPARTIAL INFORMATION AND SERVICES.—The Secretary, in collaboration with States, shall develop standards to ensure that information made available by navigators is fair, accurate, and impartial.

Standards.

(6) FUNDING.—Grants under this subsection shall be made from the operational funds of the Exchange and not Federal funds received by the State to establish the Exchange.

(j) APPLICABILITY OF MENTAL HEALTH PARITY.—Section 2726 of the Public Health Service Act shall apply to qualified health plans in the same manner and to the same extent as such section applies to health insurance issuers and group health plans.

(k) CONFLICT.—An Exchange may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary under this subtitle.

SEC. 1312. CONSUMER CHOICE.**(a) CHOICE.—**

(1) **QUALIFIED INDIVIDUALS.**—A qualified individual may enroll in any qualified health plan available to such individual.

(2) QUALIFIED EMPLOYERS.—

(A) **EMPLOYER MAY SPECIFY LEVEL.**—A qualified employer may provide support for coverage of employees under a qualified health plan by selecting any level of coverage under section 1302(d) to be made available to employees through an Exchange.

(B) **EMPLOYEE MAY CHOOSE PLANS WITHIN A LEVEL.**—Each employee of a qualified employer that elects a level of coverage under subparagraph (A) may choose to enroll in a qualified health plan that offers coverage at that level.

(b) PAYMENT OF PREMIUMS BY QUALIFIED INDIVIDUALS.—A qualified individual enrolled in any qualified health plan may pay any applicable premium owed by such individual to the health insurance issuer issuing such qualified health plan.

(c) SINGLE RISK POOL.—

(1) **INDIVIDUAL MARKET.**—A health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.

(2) **SMALL GROUP MARKET.**—A health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the small group market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.

(3) **MERGER OF MARKETS.**—A State may require the individual and small group insurance markets within a State to be merged if the State determines appropriate.

(4) **STATE LAW.**—A State law requiring grandfathered health plans to be included in a pool described in paragraph (1) or (2) shall not apply.

(d) EMPOWERING CONSUMER CHOICE.—

(1) **CONTINUED OPERATION OF MARKET OUTSIDE EXCHANGES.**—Nothing in this title shall be construed to prohibit—

(A) a health insurance issuer from offering outside of an Exchange a health plan to a qualified individual or qualified employer; and

(B) a qualified individual from enrolling in, or a qualified employer from selecting for its employees, a health plan offered outside of an Exchange.

(2) **CONTINUED OPERATION OF STATE BENEFIT REQUIREMENTS.**—Nothing in this title shall be construed to terminate, abridge, or limit the operation of any requirement under State law with respect to any policy or plan that is offered outside of an Exchange to offer benefits.

(3) VOLUNTARY NATURE OF AN EXCHANGE.—

(A) **CHOICE TO ENROLL OR NOT TO ENROLL.**—Nothing in this title shall be construed to restrict the choice of

a qualified individual to enroll or not to enroll in a qualified health plan or to participate in an Exchange.

(B) PROHIBITION AGAINST COMPELLED ENROLLMENT.—Nothing in this title shall be construed to compel an individual to enroll in a qualified health plan or to participate in an Exchange.

(C) INDIVIDUALS ALLOWED TO ENROLL IN ANY PLAN.—A qualified individual may enroll in any qualified health plan, except that in the case of a catastrophic plan described in section 1302(e), a qualified individual may enroll in the plan only if the individual is eligible to enroll in the plan under section 1302(e)(2).

(D) MEMBERS OF CONGRESS IN THE EXCHANGE.—

(i) REQUIREMENT.—Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—

(I) created under this Act (or an amendment made by this Act); or

(II) offered through an Exchange established under this Act (or an amendment made by this Act).

(ii) DEFINITIONS.—In this section:

(I) MEMBER OF CONGRESS.—The term “Member of Congress” means any member of the House of Representatives or the Senate.

(II) CONGRESSIONAL STAFF.—The term “congressional staff” means all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

(4) NO PENALTY FOR TRANSFERRING TO MINIMUM ESSENTIAL COVERAGE OUTSIDE EXCHANGE.—An Exchange, or a qualified health plan offered through an Exchange, shall not impose any penalty or other fee on an individual who cancels enrollment in a plan because the individual becomes eligible for minimum essential coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986 without regard to paragraph (1)(C) or (D) thereof) or such coverage becomes affordable (within the meaning of section 36B(c)(2)(C) of such Code).

(e) ENROLLMENT THROUGH AGENTS OR BROKERS.—The Secretary shall establish procedures under which a State may allow agents or brokers—

Procedures.

(1) to enroll individuals in any qualified health plans in the individual or small group market as soon as the plan is offered through an Exchange in the State; and

(2) to assist individuals in applying for premium tax credits and cost-sharing reductions for plans sold through an Exchange. Such procedures may include the establishment of rate schedules for broker commissions paid by health benefits plans offered through an exchange.

(f) QUALIFIED INDIVIDUALS AND EMPLOYERS; ACCESS LIMITED TO CITIZENS AND LAWFUL RESIDENTS.—

(1) QUALIFIED INDIVIDUALS.—In this title:

Definition.

(A) IN GENERAL.—The term “qualified individual” means, with respect to an Exchange, an individual who—

(i) is seeking to enroll in a qualified health plan in the individual market offered through the Exchange; and

(ii) resides in the State that established the Exchange (except with respect to territorial agreements under section 1312(f)).

(B) INCARCERATED INDIVIDUALS EXCLUDED.—An individual shall not be treated as a qualified individual if, at the time of enrollment, the individual is incarcerated, other than incarceration pending the disposition of charges.

(2) QUALIFIED EMPLOYER.—In this title:

Definition.

(A) IN GENERAL.—The term “qualified employer” means a small employer that elects to make all full-time employees of such employer eligible for 1 or more qualified health plans offered in the small group market through an Exchange that offers qualified health plans.

(B) EXTENSION TO LARGE GROUPS.—

Effective date.

(i) IN GENERAL.—Beginning in 2017, each State may allow issuers of health insurance coverage in the large group market in the State to offer qualified health plans in such market through an Exchange. Nothing in this subparagraph shall be construed as requiring the issuer to offer such plans through an Exchange.

(ii) LARGE EMPLOYERS ELIGIBLE.—If a State under clause (i) allows issuers to offer qualified health plans in the large group market through an Exchange, the term “qualified employer” shall include a large employer that elects to make all full-time employees of such employer eligible for 1 or more qualified health plans offered in the large group market through the Exchange.

(3) ACCESS LIMITED TO LAWFUL RESIDENTS.—If an individual is not, or is not reasonably expected to be for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States, the individual shall not be treated as a qualified individual and may not be covered under a qualified health plan in the individual market that is offered through an Exchange.

42 USC 18033.

SEC. 1313. FINANCIAL INTEGRITY.

(a) ACCOUNTING FOR EXPENDITURES.—

Deadline.
Reports.

(1) IN GENERAL.—An Exchange shall keep an accurate accounting of all activities, receipts, and expenditures and shall annually submit to the Secretary a report concerning such accountings.

(2) INVESTIGATIONS.—The Secretary, in coordination with the Inspector General of the Department of Health and Human Services, may investigate the affairs of an Exchange, may examine the properties and records of an Exchange, and may require periodic reports in relation to activities undertaken by an Exchange. An Exchange shall fully cooperate in any investigation conducted under this paragraph.

Deadline.

(3) AUDITS.—An Exchange shall be subject to annual audits by the Secretary.

(4) **PATTERN OF ABUSE.**—If the Secretary determines that an Exchange or a State has engaged in serious misconduct with respect to compliance with the requirements of, or carrying out of activities required under, this title, the Secretary may rescind from payments otherwise due to such State involved under this or any other Act administered by the Secretary an amount not to exceed 1 percent of such payments per year until corrective actions are taken by the State that are determined to be adequate by the Secretary. Determination.

(5) **PROTECTIONS AGAINST FRAUD AND ABUSE.**—With respect to activities carried out under this title, the Secretary shall provide for the efficient and non-discriminatory administration of Exchange activities and implement any measure or procedure that—

(A) the Secretary determines is appropriate to reduce fraud and abuse in the administration of this title; and

(B) the Secretary has authority to implement under this title or any other Act.

(6) **APPLICATION OF THE FALSE CLAIMS ACT.**—

(A) **IN GENERAL.**—Payments made by, through, or in connection with an Exchange are subject to the False Claims Act (31 U.S.C. 3729 et seq.) if those payments include any Federal funds. Compliance with the requirements of this Act concerning eligibility for a health insurance issuer to participate in the Exchange shall be a material condition of an issuer's entitlement to receive payments, including payments of premium tax credits and cost-sharing reductions, through the Exchange.

(B) **DAMAGES.**—Notwithstanding paragraph (1) of section 3729(a) of title 31, United States Code, and subject to paragraph (2) of such section, the civil penalty assessed under the False Claims Act on any person found liable under such Act as described in subparagraph (A) shall be increased by not less than 3 times and not more than 6 times the amount of damages which the Government sustains because of the act of that person. Penalty.

(b) **GAO OVERSIGHT.**—Not later than 5 years after the first date on which Exchanges are required to be operational under this title, the Comptroller General shall conduct an ongoing study of Exchange activities and the enrollees in qualified health plans offered through Exchanges. Such study shall review— Deadline. Study.

(1) the operations and administration of Exchanges, including surveys and reports of qualified health plans offered through Exchanges and on the experience of such plans (including data on enrollees in Exchanges and individuals purchasing health insurance coverage outside of Exchanges), the expenses of Exchanges, claims statistics relating to qualified health plans, complaints data relating to such plans, and the manner in which Exchanges meet their goals;

(2) any significant observations regarding the utilization and adoption of Exchanges;

(3) where appropriate, recommendations for improvements in the operations or policies of Exchanges; and

(4) how many physicians, by area and specialty, are not taking or accepting new patients enrolled in Federal Government health care programs, and the adequacy of provider networks of Federal Government health care programs.

PART III—STATE FLEXIBILITY RELATING TO EXCHANGES

42 USC 18041. **SEC. 1321. STATE FLEXIBILITY IN OPERATION AND ENFORCEMENT OF
EXCHANGES AND RELATED REQUIREMENTS.**

(a) **ESTABLISHMENT OF STANDARDS.**—

Regulations. (1) **IN GENERAL.**—The Secretary shall, as soon as practicable after the date of enactment of this Act, issue regulations setting standards for meeting the requirements under this title, and the amendments made by this title, with respect to—

(A) the establishment and operation of Exchanges (including SHOP Exchanges);

(B) the offering of qualified health plans through such Exchanges;

(C) the establishment of the reinsurance and risk adjustment programs under part V; and

(D) such other requirements as the Secretary determines appropriate.

The preceding sentence shall not apply to standards for requirements under subtitles A and C (and the amendments made by such subtitles) for which the Secretary issues regulations under the Public Health Service Act.

(2) **CONSULTATION.**—In issuing the regulations under paragraph (1), the Secretary shall consult with the National Association of Insurance Commissioners and its members and with health insurance issuers, consumer organizations, and such other individuals as the Secretary selects in a manner designed to ensure balanced representation among interested parties.

Deadline. (b) **STATE ACTION.**—Each State that elects, at such time and in such manner as the Secretary may prescribe, to apply the requirements described in subsection (a) shall, not later than January 1, 2014, adopt and have in effect—

(1) the Federal standards established under subsection (a);

or

(2) a State law or regulation that the Secretary determines implements the standards within the State.

(c) **FAILURE TO ESTABLISH EXCHANGE OR IMPLEMENT REQUIREMENTS.**—

(1) **IN GENERAL.**—If—

(A) a State is not an electing State under subsection (b); or

(B) the Secretary determines, on or before January 1, 2013, that an electing State—

(i) will not have any required Exchange operational by January 1, 2014; or

(ii) has not taken the actions the Secretary determines necessary to implement—

(I) the other requirements set forth in the standards under subsection (a); or

(II) the requirements set forth in subtitles A and C and the amendments made by such subtitles;

the Secretary shall (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State and the Secretary shall take such actions as are necessary to implement such other requirements.

Determination.
Deadline.

(2) **ENFORCEMENT AUTHORITY.**—The provisions of section 2736(b) of the Public Health Services Act shall apply to the enforcement under paragraph (1) of requirements of subsection (a)(1) (without regard to any limitation on the application of those provisions to group health plans).

Applicability.

(d) **NO INTERFERENCE WITH STATE REGULATORY AUTHORITY.**—Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.

(e) **PRESUMPTION FOR CERTAIN STATE-OPERATED EXCHANGES.**—

(1) **IN GENERAL.**—In the case of a State operating an Exchange before January 1, 2010, and which has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of this Act, that seeks to operate an Exchange under this section, the Secretary shall presume that such Exchange meets the standards under this section unless the Secretary determines, after completion of the process established under paragraph (2), that the Exchange does not comply with such standards.

Determination.

(2) **PROCESS.**—The Secretary shall establish a process to work with a State described in paragraph (1) to provide assistance necessary to assist the State's Exchange in coming into compliance with the standards for approval under this section.

SEC. 1322. FEDERAL PROGRAM TO ASSIST ESTABLISHMENT AND OPERATION OF NONPROFIT, MEMBER-RUN HEALTH INSURANCE ISSUERS.

42 USC 18042.

(a) **ESTABLISHMENT OF PROGRAM.**—

(1) **IN GENERAL.**—The Secretary shall establish a program to carry out the purposes of this section to be known as the Consumer Operated and Oriented Plan (CO-OP) program.

(2) **PURPOSE.**—It is the purpose of the CO-OP program to foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets in the States in which the issuers are licensed to offer such plans.

(b) **LOANS AND GRANTS UNDER THE CO-OP PROGRAM.**—

(1) **IN GENERAL.**—The Secretary shall provide through the CO-OP program for the awarding to persons applying to become qualified nonprofit health insurance issuers of—

(A) loans to provide assistance to such person in meeting its start-up costs; and

(B) grants to provide assistance to such person in meeting any solvency requirements of States in which the person seeks to be licensed to issue qualified health plans.

(2) **REQUIREMENTS FOR AWARDING LOANS AND GRANTS.**—

(A) **IN GENERAL.**—In awarding loans and grants under the CO-OP program, the Secretary shall—

(i) take into account the recommendations of the advisory board established under paragraph (3);

(ii) give priority to applicants that will offer qualified health plans on a Statewide basis, will utilize integrated care models, and have significant private support; and

(iii) ensure that there is sufficient funding to establish at least 1 qualified nonprofit health insurance

issuer in each State, except that nothing in this clause shall prohibit the Secretary from funding the establishment of multiple qualified nonprofit health insurance issuers in any State if the funding is sufficient to do so.

(B) STATES WITHOUT ISSUERS IN PROGRAM.—If no health insurance issuer applies to be a qualified nonprofit health insurance issuer within a State, the Secretary may use amounts appropriated under this section for the awarding of grants to encourage the establishment of a qualified nonprofit health insurance issuer within the State or the expansion of a qualified nonprofit health insurance issuer from another State to the State.

(C) AGREEMENT.—

(i) IN GENERAL.—The Secretary shall require any person receiving a loan or grant under the CO-OP program to enter into an agreement with the Secretary which requires such person to meet (and to continue to meet)—

(I) any requirement under this section for such person to be treated as a qualified nonprofit health insurance issuer; and

(II) any requirements contained in the agreement for such person to receive such loan or grant.

(ii) RESTRICTIONS ON USE OF FEDERAL FUNDS.—

The agreement shall include a requirement that no portion of the funds made available by any loan or grant under this section may be used—

(I) for carrying on propaganda, or otherwise attempting, to influence legislation; or

(II) for marketing.

Nothing in this clause shall be construed to allow a person to take any action prohibited by section 501(c)(29) of the Internal Revenue Code of 1986.

(iii) FAILURE TO MEET REQUIREMENTS.—If the Secretary determines that a person has failed to meet any requirement described in clause (i) or (ii) and has failed to correct such failure within a reasonable period of time of when the person first knows (or reasonably should have known) of such failure, such person shall repay to the Secretary an amount equal to the sum of—

(I) 110 percent of the aggregate amount of loans and grants received under this section; plus

(II) interest on the aggregate amount of loans and grants received under this section for the period the loans or grants were outstanding.

The Secretary shall notify the Secretary of the Treasury of any determination under this section of a failure that results in the termination of an issuer's tax-exempt status under section 501(c)(29) of such Code.

(D) TIME FOR AWARDED LOANS AND GRANTS.—The Secretary shall not later than July 1, 2013, award the loans and grants under the CO-OP program and begin the distribution of amounts awarded under such loans and grants.

(3) ADVISORY BOARD.—

Lobbying.

Determination.
Payments.

Notification.

Deadline.

Establishment.

(A) IN GENERAL.—The advisory board under this paragraph shall consist of 15 members appointed by the Comptroller General of the United States from among individuals with qualifications described in section 1805(c)(2) of the Social Security Act.

(B) RULES RELATING TO APPOINTMENTS.—

(i) STANDARDS.—Any individual appointed under subparagraph (A) shall meet ethics and conflict of interest standards protecting against insurance industry involvement and interference.

(ii) ORIGINAL APPOINTMENTS.—The original appointment of board members under subparagraph (A)(ii) shall be made no later than 3 months after the date of enactment of this Act.

Deadline.

(C) VACANCY.—Any vacancy on the advisory board shall be filled in the same manner as the original appointment.

(D) PAY AND REIMBURSEMENT.—

(i) NO COMPENSATION FOR MEMBERS OF ADVISORY BOARD.—Except as provided in clause (ii), a member of the advisory board may not receive pay, allowances, or benefits by reason of their service on the board.

(ii) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence under subchapter I of chapter 57 of title 5, United States Code.

(E) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the advisory board, except that section 14 of such Act shall not apply.

(F) TERMINATION.—The advisory board shall terminate on the earlier of the date that it completes its duties under this section or December 31, 2015.

(c) QUALIFIED NONPROFIT HEALTH INSURANCE ISSUER.—For purposes of this section—

(1) IN GENERAL.—The term “qualified nonprofit health insurance issuer” means a health insurance issuer that is an organization—

Definition.

(A) that is organized under State law as a nonprofit, member corporation;

(B) substantially all of the activities of which consist of the issuance of qualified health plans in the individual and small group markets in each State in which it is licensed to issue such plans; and

(C) that meets the other requirements of this subsection.

(2) CERTAIN ORGANIZATIONS PROHIBITED.—An organization shall not be treated as a qualified nonprofit health insurance issuer if—

(A) the organization or a related entity (or any predecessor of either) was a health insurance issuer on July 16, 2009; or

(B) the organization is sponsored by a State or local government, any political subdivision thereof, or any instrumentality of such government or political subdivision.

(3) GOVERNANCE REQUIREMENTS.—An organization shall not be treated as a qualified nonprofit health insurance issuer unless—

(A) the governance of the organization is subject to a majority vote of its members;

(B) its governing documents incorporate ethics and conflict of interest standards protecting against insurance industry involvement and interference; and

(C) as provided in regulations promulgated by the Secretary, the organization is required to operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members.

(4) PROFITS INURE TO BENEFIT OF MEMBERS.—An organization shall not be treated as a qualified nonprofit health insurance issuer unless any profits made by the organization are required to be used to lower premiums, to improve benefits, or for other programs intended to improve the quality of health care delivered to its members.

(5) COMPLIANCE WITH STATE INSURANCE LAWS.—An organization shall not be treated as a qualified nonprofit health insurance issuer unless the organization meets all the requirements that other issuers of qualified health plans are required to meet in any State where the issuer offers a qualified health plan, including solvency and licensure requirements, rules on payments to providers, and compliance with network adequacy rules, rate and form filing rules, any applicable State premium assessments and any other State law described in section 1324(b).

(6) COORDINATION WITH STATE INSURANCE REFORMS.—An organization shall not be treated as a qualified nonprofit health insurance issuer unless the organization does not offer a health plan in a State until that State has in effect (or the Secretary has implemented for the State) the market reforms required by part A of title XXVII of the Public Health Service Act (as amended by subtitles A and C of this Act).

(d) ESTABLISHMENT OF PRIVATE PURCHASING COUNCIL.—

(1) IN GENERAL.—Qualified nonprofit health insurance issuers participating in the CO–OP program under this section may establish a private purchasing council to enter into collective purchasing arrangements for items and services that increase administrative and other cost efficiencies, including claims administration, administrative services, health information technology, and actuarial services.

(2) COUNCIL MAY NOT SET PAYMENT RATES.—The private purchasing council established under paragraph (1) shall not set payment rates for health care facilities or providers participating in health insurance coverage provided by qualified nonprofit health insurance issuers.

(3) CONTINUED APPLICATION OF ANTITRUST LAWS.—

(A) IN GENERAL.—Nothing in this section shall be construed to limit the application of the antitrust laws to any private purchasing council (whether or not established under this subsection) or to any qualified nonprofit health insurance issuer participating in such a council.

(B) ANTITRUST LAWS.—For purposes of this subparagraph, the term “antitrust laws” has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)). Such term also includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to

the extent that such section 5 applies to unfair methods of competition.

(e) LIMITATION ON PARTICIPATION.—No representative of any Federal, State, or local government (or of any political subdivision or instrumentality thereof), and no representative of a person described in subsection (c)(2)(A), may serve on the board of directors of a qualified nonprofit health insurance issuer or with a private purchasing council established under subsection (d).

(f) LIMITATIONS ON SECRETARY.—

(1) IN GENERAL.—The Secretary shall not—

(A) participate in any negotiations between 1 or more qualified nonprofit health insurance issuers (or a private purchasing council established under subsection (d)) and any health care facilities or providers, including any drug manufacturer, pharmacy, or hospital; and

(B) establish or maintain a price structure for reimbursement of any health benefits covered by such issuers.

(2) COMPETITION.—Nothing in this section shall be construed as authorizing the Secretary to interfere with the competitive nature of providing health benefits through qualified nonprofit health insurance issuers.

(g) APPROPRIATIONS.—There are hereby appropriated, out of any funds in the Treasury not otherwise appropriated, \$6,000,000,000 to carry out this section.

(h) TAX EXEMPTION FOR QUALIFIED NONPROFIT HEALTH INSURANCE ISSUER.—

(1) IN GENERAL.—Section 501(c) of the Internal Revenue Code of 1986 (relating to list of exempt organizations) is amended by adding at the end the following: 26 USC 501.

“(29) CO-OP HEALTH INSURANCE ISSUERS.—

“(A) IN GENERAL.—A qualified nonprofit health insurance issuer (within the meaning of section 1322 of the Patient Protection and Affordable Care Act) which has received a loan or grant under the CO-OP program under such section, but only with respect to periods for which the issuer is in compliance with the requirements of such section and any agreement with respect to the loan or grant.

“(B) CONDITIONS FOR EXEMPTION.—Subparagraph (A) shall apply to an organization only if—

“(i) the organization has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of its status under this paragraph, Notice.

“(ii) except as provided in section 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of the net earnings of which inures to the benefit of any private shareholder or individual,

“(iii) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and Lobbying.

“(iv) the organization does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”.

(2) **ADDITIONAL REPORTING REQUIREMENT.**—Section 6033 of such Code (relating to returns by exempt organizations) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

“(m) **ADDITIONAL INFORMATION REQUIRED FROM CO-OP INSURERS.**—An organization described in section 501(c)(29) shall include on the return required under subsection (a) the following information:

“(1) The amount of the reserves required by each State in which the organization is licensed to issue qualified health plans.

“(2) The amount of reserves on hand.”.

(3) **APPLICATION OF TAX ON EXCESS BENEFIT TRANSACTIONS.**—Section 4958(e)(1) of such Code (defining applicable tax-exempt organization) is amended by striking “paragraph (3) or (4)” and inserting “paragraph (3), (4), or (29)”.

(i) **GAO STUDY AND REPORT.**—

(1) **STUDY.**—The Comptroller General of the General Accountability Office shall conduct an ongoing study on competition and market concentration in the health insurance market in the United States after the implementation of the reforms in such market under the provisions of, and the amendments made by, this Act. Such study shall include an analysis of new issuers of health insurance in such market.

Effective date.

(2) **REPORT.**—The Comptroller General shall, not later than December 31 of each even-numbered year (beginning with 2014), report to the appropriate committees of the Congress the results of the study conducted under paragraph (1), including any recommendations for administrative or legislative changes the Comptroller General determines necessary or appropriate to increase competition in the health insurance market.

42 USC 18043.

SEC. 1323. COMMUNITY HEALTH INSURANCE OPTION.

(a) **VOLUNTARY NATURE.**—

(1) **NO REQUIREMENT FOR HEALTH CARE PROVIDERS TO PARTICIPATE.**—Nothing in this section shall be construed to require a health care provider to participate in a community health insurance option, or to impose any penalty for non-participation.

(2) **NO REQUIREMENT FOR INDIVIDUALS TO JOIN.**—Nothing in this section shall be construed to require an individual to participate in a community health insurance option, or to impose any penalty for non-participation.

(3) **STATE OPT OUT.**—

(A) **IN GENERAL.**—A State may elect to prohibit Exchanges in such State from offering a community health insurance option if such State enacts a law to provide for such prohibition.

(B) **TERMINATION OF OPT OUT.**—A State may repeal a law described in subparagraph (A) and provide for the offering of such an option through the Exchange.

(b) **ESTABLISHMENT OF COMMUNITY HEALTH INSURANCE OPTION.**—

(1) **ESTABLISHMENT.**—The Secretary shall establish a community health insurance option to offer, through the Exchanges established under this title (other than Exchanges

in States that elect to opt out as provided for in subsection (a)(3)), health care coverage that provides value, choice, competition, and stability of affordable, high quality coverage throughout the United States.

(2) COMMUNITY HEALTH INSURANCE OPTION.—In this section, the term “community health insurance option” means health insurance coverage that—

Definition.

(A) except as specifically provided for in this section, complies with the requirements for being a qualified health plan;

(B) provides high value for the premium charged;

(C) reduces administrative costs and promotes administrative simplification for beneficiaries;

(D) promotes high quality clinical care;

(E) provides high quality customer service to beneficiaries;

(F) offers a sufficient choice of providers; and

(G) complies with State laws (if any), except as otherwise provided for in this title, relating to the laws described in section 1324(b).

(3) ESSENTIAL HEALTH BENEFITS.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), a community health insurance option offered under this section shall provide coverage only for the essential health benefits described in section 1302(b).

(B) STATES MAY OFFER ADDITIONAL BENEFITS.—Nothing in this section shall preclude a State from requiring that benefits in addition to the essential health benefits required under subparagraph (A) be provided to enrollees of a community health insurance option offered in such State.

(C) CREDITS.—

(i) IN GENERAL.—An individual enrolled in a community health insurance option under this section shall be eligible for credits under section 36B of the Internal Revenue Code of 1986 in the same manner as an individual who is enrolled in a qualified health plan.

(ii) NO ADDITIONAL FEDERAL COST.—A requirement by a State under subparagraph (B) that benefits in addition to the essential health benefits required under subparagraph (A) be provided to enrollees of a community health insurance option shall not affect the amount of a premium tax credit provided under section 36B of the Internal Revenue Code of 1986 with respect to such plan.

(D) STATE MUST ASSUME COST.—A State shall make payments to or on behalf of an eligible individual to defray the cost of any additional benefits described in subparagraph (B).

Payments.

(E) ENSURING ACCESS TO ALL SERVICES.—Nothing in this Act shall prohibit an individual enrolled in a community health insurance option from paying out-of-pocket the full cost of any item or service not included as an essential health benefit or otherwise covered as a benefit by a health plan. Nothing in subparagraph (B) shall prohibit any type of medical provider from accepting an out-of-pocket payment from an individual enrolled in a community health

insurance option for a service otherwise not included as an essential health benefit.

(F) PROTECTING ACCESS TO END OF LIFE CARE.—A community health insurance option offered under this section shall be prohibited from limiting access to end of life care.

(4) COST SHARING.—A community health insurance option shall offer coverage at each of the levels of coverage described in section 1302(d).

(5) PREMIUMS.—

(A) PREMIUMS SUFFICIENT TO COVER COSTS.—The Secretary shall establish geographically adjusted premium rates in an amount sufficient to cover expected costs (including claims and administrative costs) using methods in general use by qualified health plans.

(B) APPLICABLE RULES.—The provisions of title XXVII of the Public Health Service Act relating to premiums shall apply to community health insurance options under this section, including modified community rating provisions under section 2701 of such Act.

(C) COLLECTION OF DATA.—The Secretary shall collect data as necessary to set premium rates under subparagraph (A).

(D) NATIONAL POOLING.—Notwithstanding any other provision of law, the Secretary may treat all enrollees in community health insurance options as members of a single pool.

(E) CONTINGENCY MARGIN.—In establishing premium rates under subparagraph (A), the Secretary shall include an appropriate amount for a contingency margin.

(6) REIMBURSEMENT RATES.—

(A) NEGOTIATED RATES.—The Secretary shall negotiate rates for the reimbursement of health care providers for benefits covered under a community health insurance option.

(B) LIMITATION.—The rates described in subparagraph (A) shall not be higher, in aggregate, than the average reimbursement rates paid by health insurance issuers offering qualified health plans through the Exchange.

(C) INNOVATION.—Subject to the limits contained in subparagraph (A), a State Advisory Council established or designated under subsection (d) may develop or encourage the use of innovative payment policies that promote quality, efficiency and savings to consumers.

(7) SOLVENCY AND CONSUMER PROTECTION.—

Standard.

(A) SOLVENCY.—The Secretary shall establish a Federal solvency standard to be applied with respect to a community health insurance option. A community health insurance option shall also be subject to the solvency standard of each State in which such community health insurance option is offered.

(B) MINIMUM REQUIRED.—In establishing the standard described under subparagraph (A), the Secretary shall require a reserve fund that shall be equal to at least the dollar value of the incurred but not reported claims of a community health insurance option.

(C) CONSUMER PROTECTIONS.—The consumer protection laws of a State shall apply to a community health insurance option. Applicability.

(8) REQUIREMENTS ESTABLISHED IN PARTNERSHIP WITH INSURANCE COMMISSIONERS.—

(A) IN GENERAL.—The Secretary, in collaboration with the National Association of Insurance Commissioners (in this paragraph referred to as the “NAIC”), may promulgate regulations to establish additional requirements for a community health insurance option.

(B) APPLICABILITY.—Any requirement promulgated under subparagraph (A) shall be applicable to such option beginning 90 days after the date on which the regulation involved becomes final. Effective date.

(c) START-UP FUND.—

(1) ESTABLISHMENT OF FUND.—

(A) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the “Health Benefit Plan Start-Up Fund” (referred to in this section as the “Start-Up Fund”), that shall consist of such amounts as may be appropriated or credited to the Start-Up Fund as provided for in this subsection to provide loans for the initial operations of a community health insurance option. Such amounts shall remain available until expended.

(B) FUNDING.—There is hereby appropriated to the Start-Up Fund, out of any moneys in the Treasury not otherwise appropriated an amount requested by the Secretary of Health and Human Services as necessary to—

(i) pay the start-up costs associated with the initial operations of a community health insurance option; and

(ii) pay the costs of making payments on claims submitted during the period that is not more than 90 days from the date on which such option is offered.

(2) USE OF START-UP FUND.—The Secretary shall use amounts contained in the Start-Up Fund to make payments (subject to the repayment requirements in paragraph (4)) for the purposes described in paragraph (1)(B).

(3) PASS THROUGH OF REBATES.—The Secretary may establish procedures for reducing the amount of payments to a contracting administrator to take into account any rebates or price concessions.

(4) REPAYMENT.—

(A) IN GENERAL.—A community health insurance option shall be required to repay the Secretary of the Treasury (on such terms as the Secretary may require) for any payments made under paragraph (1)(B) by the date that is not later than 9 years after the date on which the payment is made. The Secretary may require the payment of interest with respect to such repayments at rates that do not exceed the market interest rate (as determined by the Secretary). Deadline.

(B) SANCTIONS IN CASE OF FOR-PROFIT CONVERSION.—In any case in which the Secretary enters into a contract with a qualified entity for the offering of a community health insurance option and such entity is determined to

be a for-profit entity by the Secretary, such entity shall be—

(i) immediately liable to the Secretary for any payments received by such entity from the Start-Up Fund; and

(ii) permanently ineligible to offer a qualified health plan.

(d) STATE ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—A State (other than a State that elects to opt out as provided for in subsection (a)(3)) shall establish or designate a public or non-profit private entity to serve as the State Advisory Council to provide recommendations to the Secretary on the operations and policies of a community health insurance option in the State. Such Council shall provide recommendations on at least the following:

(A) policies and procedures to integrate quality improvement and cost containment mechanisms into the health care delivery system;

(B) mechanisms to facilitate public awareness of the availability of a community health insurance option; and

(C) alternative payment structures under a community health insurance option for health care providers that encourage quality improvement and cost control.

(2) MEMBERS.—The members of the State Advisory Council shall be representatives of the public and shall include health care consumers and providers.

(3) APPLICABILITY OF RECOMMENDATIONS.—The Secretary may apply the recommendations of a State Advisory Council to a community health insurance option in that State, in any other State, or in all States.

(e) AUTHORITY TO CONTRACT; TERMS OF CONTRACT.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary may enter into a contract or contracts with one or more qualified entities for the purpose of performing administrative functions (including functions described in subsection (a)(4) of section 1874A of the Social Security Act) with respect to a community health insurance option in the same manner as the Secretary may enter into contracts under subsection (a)(1) of such section. The Secretary shall have the same authority with respect to a community health insurance option under this section as the Secretary has under subsections (a)(1) and (b) of section 1874A of the Social Security Act with respect to title XVIII of such Act.

(B) REQUIREMENTS APPLY.—If the Secretary enters into a contract with a qualified entity to offer a community health insurance option, under such contract such entity—

(i) shall meet the criteria established under paragraph (2); and

(ii) shall receive an administrative fee under paragraph (7).

(C) LIMITATION.—Contracts under this subsection shall not involve the transfer of insurance risk to the contracting administrator.

(D) REFERENCE.—An entity with which the Secretary has entered into a contract under this paragraph shall be referred to as a “contracting administrator”.

Fee.

(2) **QUALIFIED ENTITY.**—To be qualified to be selected by the Secretary to offer a community health insurance option, an entity shall—

(A) meet the criteria established under section 1874A(a)(2) of the Social Security Act;

(B) be a nonprofit entity for purposes of offering such option;

(C) meet the solvency standards applicable under subsection (b)(7);

(D) be eligible to offer health insurance or health benefits coverage;

(E) meet quality standards specified by the Secretary;

(F) have in place effective procedures to control fraud, abuse, and waste; and

(G) meet such other requirements as the Secretary may impose.

Procedures described under subparagraph (F) shall include the implementation of procedures to use beneficiary identifiers to identify individuals entitled to benefits so that such an individual's social security account number is not used, and shall also include procedures for the use of technology (including front-end, prepayment intelligent data-matching technology similar to that used by hedge funds, investment funds, and banks) to provide real-time data analysis of claims for payment under this title to identify and investigate unusual billing or order practices under this title that could indicate fraud or abuse.

(3) **TERM.**—A contract provided for under paragraph (1) shall be for a term of at least 5 years but not more than 10 years, as determined by the Secretary. At the end of each such term, the Secretary shall conduct a competitive bidding process for the purposes of renewing existing contracts or selecting new qualified entities with which to enter into contracts under such paragraph.

(4) **LIMITATION.**—A contract may not be renewed under this subsection unless the Secretary determines that the contracting administrator has met performance requirements established by the Secretary in the areas described in paragraph (7)(B).

Determination.

(5) **AUDITS.**—The Inspector General shall conduct periodic audits with respect to contracting administrators under this subsection to ensure that the administrator involved is in compliance with this section.

(6) **REVOCATION.**—A contract awarded under this subsection shall be revoked by the Secretary, upon the recommendation of the Inspector General, only after notice to the contracting administrator involved and an opportunity for a hearing. The Secretary may revoke such contract if the Secretary determines that such administrator has engaged in fraud, deception, waste, abuse of power, negligence, mismanagement of taxpayer dollars, or gross mismanagement. An entity that has had a contract revoked under this paragraph shall not be qualified to enter into a subsequent contract under this subsection.

Notification.

(7) **FEE FOR ADMINISTRATION.**—

(A) **IN GENERAL.**—The Secretary shall pay the contracting administrator a fee for the management, administration, and delivery of the benefits under this section.

(B) REQUIREMENT FOR HIGH QUALITY ADMINISTRATION.—The Secretary may increase the fee described in subparagraph (A) by not more than 10 percent, or reduce the fee described in subparagraph (A) by not more than 50 percent, based on the extent to which the contracting administrator, in the determination of the Secretary, meets performance requirements established by the Secretary, in at least the following areas:

(i) Maintaining low premium costs and low cost sharing requirements, provided that such requirements are consistent with section 1302.

(ii) Reducing administrative costs and promoting administrative simplification for beneficiaries.

(iii) Promoting high quality clinical care.

(iv) Providing high quality customer service to beneficiaries.

(C) NON-RENEWAL.—The Secretary may not renew a contract to offer a community health insurance option under this section with any contracting entity that has been assessed more than one reduction under subparagraph (B) during the contract period.

(8) LIMITATION.—Notwithstanding the terms of a contract under this subsection, the Secretary shall negotiate the reimbursement rates for purposes of subsection (b)(6).

(f) REPORT BY HHS AND INSOLVENCY WARNINGS.—

(1) IN GENERAL.—On an annual basis, the Secretary shall conduct a study on the solvency of a community health insurance option and submit to Congress a report describing the results of such study.

(2) RESULT.—If, in any year, the result of the study under paragraph (1) is that a community health insurance option is insolvent, such result shall be treated as a community health insurance option solvency warning.

(3) SUBMISSION OF PLAN AND PROCEDURE.—

(A) IN GENERAL.—If there is a community health insurance option solvency warning under paragraph (2) made in a year, the President shall submit to Congress, within the 15-day period beginning on the date of the budget submission to Congress under section 1105(a) of title 31, United States Code, for the succeeding year, proposed legislation to respond to such warning.

(B) PROCEDURE.—In the case of a legislative proposal submitted by the President pursuant to subparagraph (A), such proposal shall be considered by Congress using the same procedures described under sections 803 and 804 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 that shall be used for a medicare funding warning.

(g) MARKETING PARITY.—In a facility controlled by the Federal Government, or by a State, where marketing or promotional materials related to a community health insurance option are made available to the public, making available marketing or promotional materials relating to private health insurance plans shall not be prohibited. Such materials include informational pamphlets, guidebooks, enrollment forms, or other materials determined reasonable for display.

President.
Deadline.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 1324. LEVEL PLAYING FIELD.

42 USC 18044.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, any health insurance coverage offered by a private health insurance issuer shall not be subject to any Federal or State law described in subsection (b) if a qualified health plan offered under the Consumer Operated and Oriented Plan program under section 1322, a community health insurance option under section 1323, or a nationwide qualified health plan under section 1333(b), is not subject to such law.

(b) **LAWS DESCRIBED.**—The Federal and State laws described in this subsection are those Federal and State laws relating to—

- (1) guaranteed renewal;
- (2) rating;
- (3) preexisting conditions;
- (4) non-discrimination;
- (5) quality improvement and reporting;
- (6) fraud and abuse;
- (7) solvency and financial requirements;
- (8) market conduct;
- (9) prompt payment;
- (10) appeals and grievances;
- (11) privacy and confidentiality;
- (12) licensure; and
- (13) benefit plan material or information.

**PART IV—STATE FLEXIBILITY TO ESTABLISH
ALTERNATIVE PROGRAMS**

SEC. 1331. STATE FLEXIBILITY TO ESTABLISH BASIC HEALTH PROGRAMS FOR LOW-INCOME INDIVIDUALS NOT ELIGIBLE FOR MEDICAID.

42 USC 18051.

(a) **ESTABLISHMENT OF PROGRAM.**—

(1) **IN GENERAL.**—The Secretary shall establish a basic health program meeting the requirements of this section under which a State may enter into contracts to offer 1 or more standard health plans providing at least the essential health benefits described in section 1302(b) to eligible individuals in lieu of offering such individuals coverage through an Exchange.

(2) **CERTIFICATIONS AS TO BENEFIT COVERAGE AND COSTS.**—Such program shall provide that a State may not establish a basic health program under this section unless the State establishes to the satisfaction of the Secretary, and the Secretary certifies, that—

(A) in the case of an eligible individual enrolled in a standard health plan offered through the program, the State provides—

(i) that the amount of the monthly premium an eligible individual is required to pay for coverage under the standard health plan for the individual and the individual's dependents does not exceed the amount of the monthly premium that the eligible individual would have been required to pay (in the rating area in which the individual resides) if the individual had

enrolled in the applicable second lowest cost silver plan (as defined in section 36B(b)(3)(B) of the Internal Revenue Code of 1986) offered to the individual through an Exchange; and

(ii) that the cost-sharing an eligible individual is required to pay under the standard health plan does not exceed—

(I) the cost-sharing required under a platinum plan in the case of an eligible individual with household income not in excess of 150 percent of the poverty line for the size of the family involved; and

(II) the cost-sharing required under a gold plan in the case of an eligible individual not described in subclause (I); and

(B) the benefits provided under the standard health plans offered through the program cover at least the essential health benefits described in section 1302(b).

For purposes of subparagraph (A)(i), the amount of the monthly premium an individual is required to pay under either the standard health plan or the applicable second lowest cost silver plan shall be determined after reduction for any premium tax credits and cost-sharing reductions allowable with respect to either plan.

Definition.

(b) STANDARD HEALTH PLAN.—In this section, the term “standard health plan” means a health benefits plan that the State contracts with under this section—

(1) under which the only individuals eligible to enroll are eligible individuals;

(2) that provides at least the essential health benefits described in section 1302(b); and

(3) in the case of a plan that provides health insurance coverage offered by a health insurance issuer, that has a medical loss ratio of at least 85 percent.

(c) CONTRACTING PROCESS.—

(1) IN GENERAL.—A State basic health program shall establish a competitive process for entering into contracts with standard health plans under subsection (a), including negotiation of premiums and cost-sharing and negotiation of benefits in addition to the essential health benefits described in section 1302(b).

(2) SPECIFIC ITEMS TO BE CONSIDERED.—A State shall, as part of its competitive process under paragraph (1), include at least the following:

(A) INNOVATION.—Negotiation with offerors of a standard health plan for the inclusion of innovative features in the plan, including—

(i) care coordination and care management for enrollees, especially for those with chronic health conditions;

(ii) incentives for use of preventive services; and

(iii) the establishment of relationships between providers and patients that maximize patient involvement in health care decision-making, including providing incentives for appropriate utilization under the plan.

(B) HEALTH AND RESOURCE DIFFERENCES.—Consideration of, and the making of suitable allowances for, differences in health care needs of enrollees and differences in local availability of, and access to, health care providers. Nothing in this subparagraph shall be construed as allowing discrimination on the basis of pre-existing conditions or other health status-related factors.

(C) MANAGED CARE.—Contracting with managed care systems, or with systems that offer as many of the attributes of managed care as are feasible in the local health care market.

(D) PERFORMANCE MEASURES.—Establishing specific performance measures and standards for issuers of standard health plans that focus on quality of care and improved health outcomes, requiring such plans to report to the State with respect to the measures and standards, and making the performance and quality information available to enrollees in a useful form.

(3) ENHANCED AVAILABILITY.—

(A) MULTIPLE PLANS.—A State shall, to the maximum extent feasible, seek to make multiple standard health plans available to eligible individuals within a State to ensure individuals have a choice of such plans.

(B) REGIONAL COMPACTS.—A State may negotiate a regional compact with other States to include coverage of eligible individuals in all such States in agreements with issuers of standard health plans.

(4) COORDINATION WITH OTHER STATE PROGRAMS.—A State shall seek to coordinate the administration of, and provision of benefits under, its program under this section with the State medicaid program under title XIX of the Social Security Act, the State child health plan under title XXI of such Act, and other State-administered health programs to maximize the efficiency of such programs and to improve the continuity of care.

(d) TRANSFER OF FUNDS TO STATES.—

(1) IN GENERAL.—If the Secretary determines that a State electing the application of this section meets the requirements of the program established under subsection (a), the Secretary shall transfer to the State for each fiscal year for which 1 or more standard health plans are operating within the State the amount determined under paragraph (3).

Determination.

(2) USE OF FUNDS.—A State shall establish a trust for the deposit of the amounts received under paragraph (1) and amounts in the trust fund shall only be used to reduce the premiums and cost-sharing of, or to provide additional benefits for, eligible individuals enrolled in standard health plans within the State. Amounts in the trust fund, and expenditures of such amounts, shall not be included in determining the amount of any non-Federal funds for purposes of meeting any matching or expenditure requirement of any federally-funded program.

(3) AMOUNT OF PAYMENT.—

(A) SECRETARIAL DETERMINATION.—

(i) IN GENERAL.—The amount determined under this paragraph for any fiscal year is the amount the Secretary determines is equal to 85 percent of the premium tax credits under section 36B of the Internal

Revenue Code of 1986, and the cost-sharing reductions under section 1402, that would have been provided for the fiscal year to eligible individuals enrolled in standard health plans in the State if such eligible individuals were allowed to enroll in qualified health plans through an Exchange established under this subtitle.

(ii) **SPECIFIC REQUIREMENTS.**—The Secretary shall make the determination under clause (i) on a per enrollee basis and shall take into account all relevant factors necessary to determine the value of the premium tax credits and cost-sharing reductions that would have been provided to eligible individuals described in clause (i), including the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a qualified health plan through an Exchange, and whether any reconciliation of the credit or cost-sharing reductions would have occurred if the enrollee had been so enrolled. This determination shall take into consideration the experience of other States with respect to participation in an Exchange and such credits and reductions provided to residents of the other States, with a special focus on enrollees with income below 200 percent of poverty.

(iii) **CERTIFICATION.**—The Chief Actuary of the Centers for Medicare & Medicaid Services, in consultation with the Office of Tax Analysis of the Department of the Treasury, shall certify whether the methodology used to make determinations under this subparagraph, and such determinations, meet the requirements of clause (ii). Such certifications shall be based on sufficient data from the State and from comparable States about their experience with programs created by this Act.

(B) **CORRECTIONS.**—The Secretary shall adjust the payment for any fiscal year to reflect any error in the determinations under subparagraph (A) for any preceding fiscal year.

(4) **APPLICATION OF SPECIAL RULES.**—The provisions of section 1303 shall apply to a State basic health program, and to standard health plans offered through such program, in the same manner as such rules apply to qualified health plans.

(e) **ELIGIBLE INDIVIDUAL.**—

(1) **IN GENERAL.**—In this section, the term “eligible individual” means, with respect to any State, an individual—

(A) who a resident of the State who is not eligible to enroll in the State’s medicaid program under title XIX of the Social Security Act for benefits that at a minimum consist of the essential health benefits described in section 1302(b);

Definition.

(B) whose household income exceeds 133 percent but does not exceed 200 percent of the poverty line for the size of the family involved;

(C) who is not eligible for minimum essential coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986) or is eligible for an employer-sponsored plan that is not affordable coverage (as determined under section 5000A(e)(2) of such Code); and

(D) who has not attained age 65 as of the beginning of the plan year.

Such term shall not include any individual who is not a qualified individual under section 1312 who is eligible to be covered by a qualified health plan offered through an Exchange.

(2) ELIGIBLE INDIVIDUALS MAY NOT USE EXCHANGE.—An eligible individual shall not be treated as a qualified individual under section 1312 eligible for enrollment in a qualified health plan offered through an Exchange established under section 1311.

(f) SECRETARIAL OVERSIGHT.—The Secretary shall each year conduct a review of each State program to ensure compliance with the requirements of this section, including ensuring that the State program meets—

Review.

(1) eligibility verification requirements for participation in the program;

(2) the requirements for use of Federal funds received by the program; and

(3) the quality and performance standards under this section.

(g) STANDARD HEALTH PLAN OFFERORS.—A State may provide that persons eligible to offer standard health plans under a basic health program established under this section may include a licensed health maintenance organization, a licensed health insurance insurer, or a network of health care providers established to offer services under the program.

(h) DEFINITIONS.—Any term used in this section which is also used in section 36B of the Internal Revenue Code of 1986 shall have the meaning given such term by such section.

SEC. 1332. WAIVER FOR STATE INNOVATION.

42 USC 18052.

(a) APPLICATION.—

(1) IN GENERAL.—A State may apply to the Secretary for the waiver of all or any requirements described in paragraph (2) with respect to health insurance coverage within that State for plan years beginning on or after January 1, 2017. Such application shall—

Effective date.

(A) be filed at such time and in such manner as the Secretary may require;

(B) contain such information as the Secretary may require, including—

(i) a comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under this section; and

(ii) a 10-year budget plan for such plan that is budget neutral for the Federal Government; and

(C) provide an assurance that the State has enacted the law described in subsection (b)(2).

Effective date.

(2) REQUIREMENTS.—The requirements described in this paragraph with respect to health insurance coverage within the State for plan years beginning on or after January 1, 2014, are as follows:

(A) Part I of subtitle D.

(B) Part II of subtitle D.

(C) Section 1402.

(D) Sections 36B, 4980H, and 5000A of the Internal Revenue Code of 1986.

(3) PASS THROUGH OF FUNDING.—With respect to a State waiver under paragraph (1), under which, due to the structure of the State plan, individuals and small employers in the State would not qualify for the premium tax credits, cost-sharing reductions, or small business credits under sections 36B of the Internal Revenue Code of 1986 or under part I of subtitle E for which they would otherwise be eligible, the Secretary shall provide for an alternative means by which the aggregate amount of such credits or reductions that would have been paid on behalf of participants in the Exchanges established under this title had the State not received such waiver, shall be paid to the State for purposes of implementing the State plan under the waiver. Such amount shall be determined annually by the Secretary, taking into consideration the experience of other States with respect to participation in an Exchange and credits and reductions provided under such provisions to residents of the other States.

(4) WAIVER CONSIDERATION AND TRANSPARENCY.—

(A) IN GENERAL.—An application for a waiver under this section shall be considered by the Secretary in accordance with the regulations described in subparagraph (B).

Deadline.

(B) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations relating to waivers under this section that provide—

(i) a process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input;

(ii) a process for the submission of an application that ensures the disclosure of—

(I) the provisions of law that the State involved seeks to waive; and

(II) the specific plans of the State to ensure that the waiver will be in compliance with subsection (b);

(iii) a process for providing public notice and comment after the application is received by the Secretary, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance;

(iv) a process for the submission to the Secretary of periodic reports by the State concerning the implementation of the program under the waiver; and

(v) a process for the periodic evaluation by the Secretary of the program under the waiver.

(C) REPORT.—The Secretary shall annually report to Congress concerning actions taken by the Secretary with respect to applications for waivers under this section.

(5) COORDINATED WAIVER PROCESS.—The Secretary shall develop a process for coordinating and consolidating the State waiver processes applicable under the provisions of this section, and the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act, and any other Federal law relating to the provision of health care items or services. Such process shall permit a State to submit a single application for a waiver under any or all of such provisions.

(6) DEFINITION.—In this section, the term “Secretary” means—

(A) the Secretary of Health and Human Services with respect to waivers relating to the provisions described in subparagraph (A) through (C) of paragraph (2); and

(B) the Secretary of the Treasury with respect to waivers relating to the provisions described in paragraph (2)(D).

(b) GRANTING OF WAIVERS.—

(1) IN GENERAL.—The Secretary may grant a request for a waiver under subsection (a)(1) only if the Secretary determines that the State plan—

(A) will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) and offered through Exchanges established under this title as certified by Office of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by this Act and the provisions of this Act that would be waived;

(B) will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide;

(C) will provide coverage to at least a comparable number of its residents as the provisions of this title would provide; and

(D) will not increase the Federal deficit.

(2) REQUIREMENT TO ENACT A LAW.—

(A) IN GENERAL.—A law described in this paragraph is a State law that provides for State actions under a waiver under this section, including the implementation of the State plan under subsection (a)(1)(B).

(B) TERMINATION OF OPT OUT.—A State may repeal a law described in subparagraph (A) and terminate the authority provided under the waiver with respect to the State.

(c) SCOPE OF WAIVER.—

(1) IN GENERAL.—The Secretary shall determine the scope of a waiver of a requirement described in subsection (a)(2) granted to a State under subsection (a)(1).

Determination.

(2) LIMITATION.—The Secretary may not waive under this section any Federal law or requirement that is not within the authority of the Secretary.

(d) DETERMINATIONS BY SECRETARY.—

(1) TIME FOR DETERMINATION.—The Secretary shall make a determination under subsection (a)(1) not later than 180

Deadline.

days after the receipt of an application from a State under such subsection.

Notification.

(2) EFFECT OF DETERMINATION.—

(A) GRANTING OF WAIVERS.—If the Secretary determines to grant a waiver under subsection (a)(1), the Secretary shall notify the State involved of such determination and the terms and effectiveness of such waiver.

(B) DENIAL OF WAIVER.—If the Secretary determines a waiver should not be granted under subsection (a)(1), the Secretary shall notify the State involved, and the appropriate committees of Congress of such determination and the reasons therefore.

Deadline.
Notification.

(e) TERM OF WAIVER.—No waiver under this section may extend over a period of longer than 5 years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the request.

42 USC 18053.

SEC. 1333. PROVISIONS RELATING TO OFFERING OF PLANS IN MORE THAN ONE STATE.

(a) HEALTH CARE CHOICE COMPACTS.—

Deadline.
Regulations.

(1) IN GENERAL.—Not later than July 1, 2013, the Secretary shall, in consultation with the National Association of Insurance Commissioners, issue regulations for the creation of health care choice compacts under which 2 or more States may enter into an agreement under which—

(A) 1 or more qualified health plans could be offered in the individual markets in all such States but, except as provided in subparagraph (B), only be subject to the laws and regulations of the State in which the plan was written or issued;

(B) the issuer of any qualified health plan to which the compact applies—

(i) would continue to be subject to market conduct, unfair trade practices, network adequacy, and consumer protection standards (including standards relating to rating), including addressing disputes as to the performance of the contract, of the State in which the purchaser resides;

(ii) would be required to be licensed in each State in which it offers the plan under the compact or to submit to the jurisdiction of each such State with regard to the standards described in clause (i) (including allowing access to records as if the insurer were licensed in the State); and

Notification.

(iii) must clearly notify consumers that the policy may not be subject to all the laws and regulations of the State in which the purchaser resides.

(2) STATE AUTHORITY.—A State may not enter into an agreement under this subsection unless the State enacts a law after the date of the enactment of this title that specifically authorizes the State to enter into such agreements.

(3) APPROVAL OF COMPACTS.—The Secretary may approve interstate health care choice compacts under paragraph (1)

only if the Secretary determines that such health care choice compact—

(A) will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) and offered through Exchanges established under this title;

(B) will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide;

(C) will provide coverage to at least a comparable number of its residents as the provisions of this title would provide;

(D) will not increase the Federal deficit; and

(E) will not weaken enforcement of laws and regulations described in paragraph (1)(B)(i) in any State that is included in such compact.

(4) EFFECTIVE DATE.—A health care choice compact described in paragraph (1) shall not take effect before January 1, 2016.

(b) AUTHORITY FOR NATIONWIDE PLANS.—

(1) IN GENERAL.—Except as provided in paragraph (2), if an issuer (including a group of health insurance issuers affiliated either by common ownership and control or by the common use of a nationally licensed service mark) of a qualified health plan in the individual or small group market meets the requirements of this subsection (in this subsection a “nationwide qualified health plan”)—

(A) the issuer of the plan may offer the nationwide qualified health plan in the individual or small group market in more than 1 State; and

(B) with respect to State laws mandating benefit coverage by a health plan, only the State laws of the State in which such plan is written or issued shall apply to the nationwide qualified health plan.

Applicability.

(2) STATE OPT-OUT.—A State may, by specific reference in a law enacted after the date of enactment of this title, provide that this subsection shall not apply to that State. Such opt-out shall be effective until such time as the State by law revokes it.

(3) PLAN REQUIREMENTS.—An issuer meets the requirements of this subsection with respect to a nationwide qualified health plan if, in the determination of the Secretary—

(A) the plan offers a benefits package that is uniform in each State in which the plan is offered and meets the requirements set forth in paragraphs (4) through (6);

(B) the issuer is licensed in each State in which it offers the plan and is subject to all requirements of State law not inconsistent with this section, including but not limited to, the standards and requirements that a State imposes that do not prevent the application of a requirement of part A of title XXVII of the Public Health Service Act or a requirement of this title;

(C) the issuer meets all requirements of this title with respect to a qualified health plan, including the requirement to offer the silver and gold levels of the plan in each Exchange in the State for the market in which the plan is offered;

(D) the issuer determines the premiums for the plan in any State on the basis of the rating rules in effect in that State for the rating areas in which it is offered;

(E) the issuer offers the nationwide qualified health plan in at least 60 percent of the participating States in the first year in which the plan is offered, 65 percent of such States in the second year, 70 percent of such States in the third year, 75 percent of such States in the fourth year, and 80 percent of such States in the fifth and subsequent years;

(F) the issuer shall offer the plan in participating States across the country, in all geographic regions, and in all States that have adopted adjusted community rating before the date of enactment of this Act; and

(G) the issuer clearly notifies consumers that the policy may not contain some benefits otherwise mandated for plans in the State in which the purchaser resides and provides a detailed statement of the benefits offered and the benefit differences in that State, in accordance with rules promulgated by the Secretary.

Deadline.

(4) FORM REVIEW FOR NATIONWIDE PLANS.—Notwithstanding any contrary provision of State law, at least 3 months before any nationwide qualified health plan is offered, the issuer shall file all nationwide qualified health plan forms with the regulator in each participating State in which the plan will be offered. An issuer may appeal the disapproval of a nationwide qualified health plan form to the Secretary.

(5) APPLICABLE RULES.—The Secretary shall, in consultation with the National Association of Insurance Commissioners, issue rules for the offering of nationwide qualified health plans under this subsection. Nationwide qualified health plans may be offered only after such rules have taken effect.

(6) COVERAGE.—The Secretary shall provide that the health benefits coverage provided to an individual through a nationwide qualified health plan under this subsection shall include at least the essential benefits package described in section 1302.

(7) STATE LAW MANDATING BENEFIT COVERAGE BY A HEALTH BENEFITS PLAN.—For the purposes of this subsection, a State law mandating benefit coverage by a health plan is a law that mandates health insurance coverage or the offer of health insurance coverage for specific health services or specific diseases. A law that mandates health insurance coverage or reimbursement for services provided by certain classes of providers of health care services, or a law that mandates that certain classes of individuals must be covered as a group or as dependents, is not a State law mandating benefit coverage by a health benefits plan.

PART V—REINSURANCE AND RISK ADJUSTMENT

42 USC 18061.

SEC. 1341. TRANSITIONAL REINSURANCE PROGRAM FOR INDIVIDUAL AND SMALL GROUP MARKETS IN EACH STATE.

Deadline.

(a) IN GENERAL.—Each State shall, not later than January 1, 2014—

(1) include in the Federal standards or State law or regulation the State adopts and has in effect under section 1321(b) the provisions described in subsection (b); and

(2) establish (or enter into a contract with) 1 or more applicable reinsurance entities to carry out the reinsurance program under this section.

Contracts.

(b) MODEL REGULATION.—

(1) IN GENERAL.—In establishing the Federal standards under section 1321(a), the Secretary, in consultation with the National Association of Insurance Commissioners (the “NAIC”), shall include provisions that enable States to establish and maintain a program under which—

(A) health insurance issuers, and third party administrators on behalf of group health plans, are required to make payments to an applicable reinsurance entity for any plan year beginning in the 3-year period beginning January 1, 2014 (as specified in paragraph (3)); and

Effective date.
Time period.

(B) the applicable reinsurance entity collects payments under subparagraph (A) and uses amounts so collected to make reinsurance payments to health insurance issuers described in subparagraph (A) that cover high risk individuals in the individual market (excluding grandfathered health plans) for any plan year beginning in such 3-year period.

(2) HIGH-RISK INDIVIDUAL; PAYMENT AMOUNTS.—The Secretary shall include the following in the provisions under paragraph (1):

(A) DETERMINATION OF HIGH-RISK INDIVIDUALS.—The method by which individuals will be identified as high risk individuals for purposes of the reinsurance program established under this section. Such method shall provide for identification of individuals as high-risk individuals on the basis of—

(i) a list of at least 50 but not more than 100 medical conditions that are identified as high-risk conditions and that may be based on the identification of diagnostic and procedure codes that are indicative of individuals with pre-existing, high-risk conditions; or

(ii) any other comparable objective method of identification recommended by the American Academy of Actuaries.

(B) PAYMENT AMOUNT.—The formula for determining the amount of payments that will be paid to health insurance issuers described in paragraph (1)(A) that insure high-risk individuals. Such formula shall provide for the equitable allocation of available funds through reconciliation and may be designed—

(i) to provide a schedule of payments that specifies the amount that will be paid for each of the conditions identified under subparagraph (A); or

(ii) to use any other comparable method for determining payment amounts that is recommended by the American Academy of Actuaries and that encourages the use of care coordination and care management programs for high risk conditions.

(3) DETERMINATION OF REQUIRED CONTRIBUTIONS.—

Effective date.
Time period.

(A) IN GENERAL.—The Secretary shall include in the provisions under paragraph (1) the method for determining the amount each health insurance issuer and group health plan described in paragraph (1)(A) contributing to the reinsurance program under this section is required to contribute under such paragraph for each plan year beginning in the 36-month period beginning January 1, 2014. The contribution amount for any plan year may be based on the percentage of revenue of each issuer and the total costs of providing benefits to enrollees in self-insured plans or on a specified amount per enrollee and may be required to be paid in advance or periodically throughout the plan year.

(B) SPECIFIC REQUIREMENTS.—The method under this paragraph shall be designed so that—

(i) the contribution amount for each issuer proportionally reflects each issuer's fully insured commercial book of business for all major medical products and the total value of all fees charged by the issuer and the costs of coverage administered by the issuer as a third party administrator;

(ii) the contribution amount can include an additional amount to fund the administrative expenses of the applicable reinsurance entity;

(iii) the aggregate contribution amounts for all States shall, based on the best estimates of the NAIC and without regard to amounts described in clause (ii), equal \$10,000,000,000 for plan years beginning in 2014, \$6,000,000,000 for plan years beginning 2015, and \$4,000,000,000 for plan years beginning in 2016; and

(iv) in addition to the aggregate contribution amounts under clause (iii), each issuer's contribution amount for any calendar year under clause (iii) reflects its proportionate share of an additional \$2,000,000,000 for 2014, an additional \$2,000,000,000 for 2015, and an additional \$1,000,000,000 for 2016.

Nothing in this subparagraph shall be construed to preclude a State from collecting additional amounts from issuers on a voluntary basis.

(4) EXPENDITURE OF FUNDS.—The provisions under paragraph (1) shall provide that—

(A) the contribution amounts collected for any calendar year may be allocated and used in any of the three calendar years for which amounts are collected based on the reinsurance needs of a particular period or to reflect experience in a prior period; and

(B) amounts remaining unexpended as of December, 2016, may be used to make payments under any reinsurance program of a State in the individual market in effect in the 2-year period beginning on January 1, 2017.

Notwithstanding the preceding sentence, any contribution amounts described in paragraph (3)(B)(iv) shall be deposited into the general fund of the Treasury of the United States and may not be used for the program established under this section.

Time period.
Effective date.

(c) **APPLICABLE REINSURANCE ENTITY.**—For purposes of this section—

(1) **IN GENERAL.**—The term “applicable reinsurance entity” means a not-for-profit organization— Definition.

(A) the purpose of which is to help stabilize premiums for coverage in the individual and small group markets in a State during the first 3 years of operation of an Exchange for such markets within the State when the risk of adverse selection related to new rating rules and market changes is greatest; and

(B) the duties of which shall be to carry out the reinsurance program under this section by coordinating the funding and operation of the risk-spreading mechanisms designed to implement the reinsurance program.

(2) **STATE DISCRETION.**—A State may have more than 1 applicable reinsurance entity to carry out the reinsurance program under this section within the State and 2 or more States may enter into agreements to provide for an applicable reinsurance entity to carry out such program in all such States.

(3) **ENTITIES ARE TAX-EXEMPT.**—An applicable reinsurance entity established under this section shall be exempt from taxation under chapter 1 of the Internal Revenue Code of 1986. The preceding sentence shall not apply to the tax imposed by section 511 such Code (relating to tax on unrelated business taxable income of an exempt organization).

(d) **COORDINATION WITH STATE HIGH-RISK POOLS.**—The State shall eliminate or modify any State high-risk pool to the extent necessary to carry out the reinsurance program established under this section. The State may coordinate the State high-risk pool with such program to the extent not inconsistent with the provisions of this section.

SEC. 1342. ESTABLISHMENT OF RISK CORRIDORS FOR PLANS IN INDIVIDUAL AND SMALL GROUP MARKETS. 42 USC 18062.

(a) **IN GENERAL.**—The Secretary shall establish and administer a program of risk corridors for calendar years 2014, 2015, and 2016 under which a qualified health plan offered in the individual or small group market shall participate in a payment adjustment system based on the ratio of the allowable costs of the plan to the plan’s aggregate premiums. Such program shall be based on the program for regional participating provider organizations under part D of title XVIII of the Social Security Act.

(b) **PAYMENT METHODOLOGY.**—

(1) **PAYMENTS OUT.**—The Secretary shall provide under the program established under subsection (a) that if—

(A) a participating plan’s allowable costs for any plan year are more than 103 percent but not more than 108 percent of the target amount, the Secretary shall pay to the plan an amount equal to 50 percent of the target amount in excess of 103 percent of the target amount; and

(B) a participating plan’s allowable costs for any plan year are more than 108 percent of the target amount, the Secretary shall pay to the plan an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of allowable costs in excess of 108 percent of the target amount.

(2) PAYMENTS IN.—The Secretary shall provide under the program established under subsection (a) that if—

(A) a participating plan's allowable costs for any plan year are less than 97 percent but not less than 92 percent of the target amount, the plan shall pay to the Secretary an amount equal to 50 percent of the excess of 97 percent of the target amount over the allowable costs; and

(B) a participating plan's allowable costs for any plan year are less than 92 percent of the target amount, the plan shall pay to the Secretary an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of the excess of 92 percent of the target amount over the allowable costs.

(c) DEFINITIONS.—In this section:

(1) ALLOWABLE COSTS.—

(A) IN GENERAL.—The amount of allowable costs of a plan for any year is an amount equal to the total costs (other than administrative costs) of the plan in providing benefits covered by the plan.

(B) REDUCTION FOR RISK ADJUSTMENT AND REINSURANCE PAYMENTS.—Allowable costs shall be reduced by any risk adjustment and reinsurance payments received under section 1341 and 1343.

(2) TARGET AMOUNT.—The target amount of a plan for any year is an amount equal to the total premiums (including any premium subsidies under any governmental program), reduced by the administrative costs of the plan.

42 USC 18063.

SEC. 1343. RISK ADJUSTMENT.

(a) IN GENERAL.—

(1) LOW ACTUARIAL RISK PLANS.—Using the criteria and methods developed under subsection (b), each State shall assess a charge on health plans and health insurance issuers (with respect to health insurance coverage) described in subsection (c) if the actuarial risk of the enrollees of such plans or coverage for a year is less than the average actuarial risk of all enrollees in all plans or coverage in such State for such year that are not self-insured group health plans (which are subject to the provisions of the Employee Retirement Income Security Act of 1974).

(2) HIGH ACTUARIAL RISK PLANS.—Using the criteria and methods developed under subsection (b), each State shall provide a payment to health plans and health insurance issuers (with respect to health insurance coverage) described in subsection (c) if the actuarial risk of the enrollees of such plans or coverage for a year is greater than the average actuarial risk of all enrollees in all plans and coverage in such State for such year that are not self-insured group health plans (which are subject to the provisions of the Employee Retirement Income Security Act of 1974).

(b) CRITERIA AND METHODS.—The Secretary, in consultation with States, shall establish criteria and methods to be used in carrying out the risk adjustment activities under this section. The Secretary may utilize criteria and methods similar to the criteria and methods utilized under part C or D of title XVIII of the Social Security Act. Such criteria and methods shall be included

in the standards and requirements the Secretary prescribes under section 1321.

(c) SCOPE.—A health plan or a health insurance issuer is described in this subsection if such health plan or health insurance issuer provides coverage in the individual or small group market within the State. This subsection shall not apply to a grandfathered health plan or the issuer of a grandfathered health plan with respect to that plan.

Subtitle E—Affordable Coverage Choices for All Americans

PART I—PREMIUM TAX CREDITS AND COST- SHARING REDUCTIONS

Subpart A—Premium Tax Credits and Cost- sharing Reductions

SEC. 1401. REFUNDABLE TAX CREDIT PROVIDING PREMIUM ASSIST- ANCE FOR COVERAGE UNDER A QUALIFIED HEALTH PLAN.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by inserting after section 36A the following new section:

“SEC. 36B. REFUNDABLE CREDIT FOR COVERAGE UNDER A QUALIFIED HEALTH PLAN. 26 USC 36.

“(a) IN GENERAL.—In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the premium assistance credit amount of the taxpayer for the taxable year.

“(b) PREMIUM ASSISTANCE CREDIT AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘premium assistance credit amount’ means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year. Definition.

“(2) PREMIUM ASSISTANCE AMOUNT.—The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of—

“(A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the taxpayer, the taxpayer’s spouse, or any dependent (as defined in section 152) of the taxpayer and which were enrolled in through an Exchange established by the State under 1311 of the Patient Protection and Affordable Care Act, or

“(B) the excess (if any) of—

“(i) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over

“(ii) an amount equal to 1/12 of the product of the applicable percentage and the taxpayer’s household income for the taxable year.

“(3) OTHER TERMS AND RULES RELATING TO PREMIUM ASSISTANCE AMOUNTS.—For purposes of paragraph (2)—

“(A) APPLICABLE PERCENTAGE.—

“(i) IN GENERAL.—Except as provided in clause (ii), the applicable percentage with respect to any taxpayer for any taxable year is equal to 2.8 percent, increased by the number of percentage points (not greater than 7) which bears the same ratio to 7 percentage points as—

“(I) the taxpayer’s household income for the taxable year in excess of 100 percent of the poverty line for a family of the size involved, bears to

“(II) an amount equal to 200 percent of the poverty line for a family of the size involved.

“(ii) SPECIAL RULE FOR TAXPAYERS UNDER 133 PERCENT OF POVERTY LINE.—If a taxpayer’s household income for the taxable year is in excess of 100 percent, but not more than 133 percent, of the poverty line for a family of the size involved, the taxpayer’s applicable percentage shall be 2 percent.

“(iii) INDEXING.—In the case of taxable years beginning in any calendar year after 2014, the Secretary shall adjust the initial and final applicable percentages under clause (i), and the 2 percent under clause (ii), for the calendar year to reflect the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

“(B) APPLICABLE SECOND LOWEST COST SILVER PLAN.—The applicable second lowest cost silver plan with respect to any applicable taxpayer is the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides which—

“(i) is offered through the same Exchange through which the qualified health plans taken into account under paragraph (2)(A) were offered, and

“(ii) provides—

“(I) self-only coverage in the case of an applicable taxpayer—

“(aa) whose tax for the taxable year is determined under section 1(c) (relating to unmarried individuals other than surviving spouses and heads of households) and who is not allowed a deduction under section 151 for the taxable year with respect to a dependent, or

“(bb) who is not described in item (aa) but who purchases only self-only coverage, and

“(II) family coverage in the case of any other applicable taxpayer.

If a taxpayer files a joint return and no credit is allowed under this section with respect to 1 of the spouses by reason of subsection (e), the taxpayer shall be treated as described in clause (ii)(I) unless a deduction is allowed

under section 151 for the taxable year with respect to a dependent other than either spouse and subsection (e) does not apply to the dependent.

“(C) ADJUSTED MONTHLY PREMIUM.—The adjusted monthly premium for an applicable second lowest cost silver plan is the monthly premium which would have been charged (for the rating area with respect to which the premiums under paragraph (2)(A) were determined) for the plan if each individual covered under a qualified health plan taken into account under paragraph (2)(A) were covered by such silver plan and the premium was adjusted only for the age of each such individual in the manner allowed under section 2701 of the Public Health Service Act. In the case of a State participating in the wellness discount demonstration project under section 2705(d) of the Public Health Service Act, the adjusted monthly premium shall be determined without regard to any premium discount or rebate under such project.

“(D) ADDITIONAL BENEFITS.—If—

“(i) a qualified health plan under section 1302(b)(5) of the Patient Protection and Affordable Care Act offers benefits in addition to the essential health benefits required to be provided by the plan, or

“(ii) a State requires a qualified health plan under section 1311(d)(3)(B) of such Act to cover benefits in addition to the essential health benefits required to be provided by the plan,

the portion of the premium for the plan properly allocable (under rules prescribed by the Secretary of Health and Human Services) to such additional benefits shall not be taken into account in determining either the monthly premium or the adjusted monthly premium under paragraph (2).

“(E) SPECIAL RULE FOR PEDIATRIC DENTAL COVERAGE.—

For purposes of determining the amount of any monthly premium, if an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(ii)(I) of the Patient Protection and Affordable Care Act for any plan year, the portion of the premium for the plan described in such section that (under regulations prescribed by the Secretary) is properly allocable to pediatric dental benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J) of such Act shall be treated as a premium payable for a qualified health plan.

“(c) DEFINITION AND RULES RELATING TO APPLICABLE TAXPAYERS, COVERAGE MONTHS, AND QUALIFIED HEALTH PLAN.—For purposes of this section—

“(1) APPLICABLE TAXPAYER.—

“(A) IN GENERAL.—The term ‘applicable taxpayer’ means, with respect to any taxable year, a taxpayer whose household income for the taxable year exceeds 100 percent but does not exceed 400 percent of an amount equal to the poverty line for a family of the size involved.

“(B) SPECIAL RULE FOR CERTAIN INDIVIDUALS LAWFULLY PRESENT IN THE UNITED STATES.—If—

“(i) a taxpayer has a household income which is not greater than 100 percent of an amount equal to the poverty line for a family of the size involved, and

“(ii) the taxpayer is an alien lawfully present in the United States, but is not eligible for the medicaid program under title XIX of the Social Security Act by reason of such alien status,

the taxpayer shall, for purposes of the credit under this section, be treated as an applicable taxpayer with a household income which is equal to 100 percent of the poverty line for a family of the size involved.

“(C) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married (within the meaning of section 7703) at the close of the taxable year, the taxpayer shall be treated as an applicable taxpayer only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.

“(D) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual’s taxable year begins.

“(2) COVERAGE MONTH.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘coverage month’ means, with respect to an applicable taxpayer, any month if—

“(i) as of the first day of such month the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer is covered by a qualified health plan described in subsection (b)(2)(A) that was enrolled in through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act, and

“(ii) the premium for coverage under such plan for such month is paid by the taxpayer (or through advance payment of the credit under subsection (a) under section 1412 of the Patient Protection and Affordable Care Act).

“(B) EXCEPTION FOR MINIMUM ESSENTIAL COVERAGE.—

“(i) IN GENERAL.—The term ‘coverage month’ shall not include any month with respect to an individual if for such month the individual is eligible for minimum essential coverage other than eligibility for coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

“(ii) MINIMUM ESSENTIAL COVERAGE.—The term ‘minimum essential coverage’ has the meaning given such term by section 5000A(f).

“(C) SPECIAL RULE FOR EMPLOYER-SPONSORED MINIMUM ESSENTIAL COVERAGE.—For purposes of subparagraph (B)—

“(i) COVERAGE MUST BE AFFORDABLE.—Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage—

“(I) consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), and

“(II) the employee’s required contribution (within the meaning of section 5000A(e)(1)(B)) with

respect to the plan exceeds 9.8 percent of the applicable taxpayer's household income.

This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee. Applicability.

“(ii) COVERAGE MUST PROVIDE MINIMUM VALUE.—Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) and the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs.

“(iii) EMPLOYEE OR FAMILY MUST NOT BE COVERED UNDER EMPLOYER PLAN.—Clauses (i) and (ii) shall not apply if the employee (or any individual described in the last sentence of clause (i)) is covered under the eligible employer-sponsored plan or the grandfathered health plan.

“(iv) INDEXING.—In the case of plan years beginning in any calendar year after 2014, the Secretary shall adjust the 9.8 percent under clause (i)(II) in the same manner as the percentages are adjusted under subsection (b)(3)(A)(ii).

“(3) DEFINITIONS AND OTHER RULES.—

“(A) QUALIFIED HEALTH PLAN.—The term ‘qualified health plan’ has the meaning given such term by section 1301(a) of the Patient Protection and Affordable Care Act, except that such term shall not include a qualified health plan which is a catastrophic plan described in section 1302(e) of such Act.

“(B) GRANDFATHERED HEALTH PLAN.—The term ‘grandfathered health plan’ has the meaning given such term by section 1251 of the Patient Protection and Affordable Care Act.

“(d) TERMS RELATING TO INCOME AND FAMILIES.—For purposes of this section—

“(1) FAMILY SIZE.—The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

“(2) HOUSEHOLD INCOME.—

“(A) HOUSEHOLD INCOME.—The term ‘household income’ means, with respect to any taxpayer, an amount equal to the sum of—

“(i) the modified gross income of the taxpayer, plus

“(ii) the aggregate modified gross incomes of all other individuals who—

“(I) were taken into account in determining the taxpayer's family size under paragraph (1), and

“(II) were required to file a return of tax imposed by section 1 for the taxable year.

“(B) MODIFIED GROSS INCOME.—The term ‘modified gross income’ means gross income—

“(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

“(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

“(iii) determined without regard to sections 911, 931, and 933.

“(3) POVERTY LINE.—

“(A) IN GENERAL.—The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

“(B) POVERTY LINE USED.—In the case of any qualified health plan offered through an Exchange for coverage during a taxable year beginning in a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of the regular enrollment period for coverage during such calendar year.

“(e) RULES FOR INDIVIDUALS NOT LAWFULLY PRESENT.—

“(1) IN GENERAL.—If 1 or more individuals for whom a taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year (including the taxpayer or his spouse) are individuals who are not lawfully present—

“(A) the aggregate amount of premiums otherwise taken into account under clauses (i) and (ii) of subsection (b)(2)(A) shall be reduced by the portion (if any) of such premiums which is attributable to such individuals, and

“(B) for purposes of applying this section, the determination as to what percentage a taxpayer’s household income bears to the poverty level for a family of the size involved shall be made under one of the following methods:

“(i) A method under which—

“(I) the taxpayer’s family size is determined by not taking such individuals into account, and

“(II) the taxpayer’s household income is equal to the product of the taxpayer’s household income (determined without regard to this subsection) and a fraction—

“(aa) the numerator of which is the poverty line for the taxpayer’s family size determined after application of subclause (I), and

“(bb) the denominator of which is the poverty line for the taxpayer’s family size determined without regard to subclause (I).

“(ii) A comparable method reaching the same result as the method under clause (i).

“(2) LAWFULLY PRESENT.—For purposes of this section, an individual shall be treated as lawfully present only if the individual is, and is reasonably expected to be for the entire period of enrollment for which the credit under this section is being claimed, a citizen or national of the United States or an alien lawfully present in the United States.

“(3) SECRETARIAL AUTHORITY.—The Secretary of Health and Human Services, in consultation with the Secretary, shall prescribe rules setting forth the methods by which calculations of family size and household income are made for purposes

of this subsection. Such rules shall be designed to ensure that the least burden is placed on individuals enrolling in qualified health plans through an Exchange and taxpayers eligible for the credit allowable under this section.

“(f) RECONCILIATION OF CREDIT AND ADVANCE CREDIT.—

“(1) IN GENERAL.—The amount of the credit allowed under this section for any taxable year shall be reduced (but not below zero) by the amount of any advance payment of such credit under section 1412 of the Patient Protection and Affordable Care Act.

“(2) EXCESS ADVANCE PAYMENTS.—

“(A) IN GENERAL.—If the advance payments to a taxpayer under section 1412 of the Patient Protection and Affordable Care Act for a taxable year exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess.

“(B) LIMITATION ON INCREASE WHERE INCOME LESS THAN 400 PERCENT OF POVERTY LINE.—

“(i) IN GENERAL.—In the case of an applicable taxpayer whose household income is less than 400 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed \$400 (\$250 in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year).

“(ii) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2014, each of the dollar amounts under clause (i) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2013’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations which provide for—

“(1) the coordination of the credit allowed under this section with the program for advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act, and

“(2) the application of subsection (f) where the filing status of the taxpayer for a taxable year is different from such status used for determining the advance payment of the credit.”.

(b) DISALLOWANCE OF DEDUCTION.—Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

26 USC 280C.

“(g) CREDIT FOR HEALTH INSURANCE PREMIUMS.—No deduction shall be allowed for the portion of the premiums paid by the taxpayer for coverage of 1 or more individuals under a qualified health plan which is equal to the amount of the credit determined for the taxable year under section 36B(a) with respect to such premiums.”.

(c) STUDY ON AFFORDABLE COVERAGE.—

(1) STUDY AND REPORT.—

(A) IN GENERAL.—Not later than 5 years after the date of the enactment of this Act, the Comptroller General shall conduct a study on the affordability of health insurance coverage, including—

(i) the impact of the tax credit for qualified health insurance coverage of individuals under section 36B of the Internal Revenue Code of 1986 and the tax credit for employee health insurance expenses of small employers under section 45R of such Code on maintaining and expanding the health insurance coverage of individuals;

(ii) the availability of affordable health benefits plans, including a study of whether the percentage of household income used for purposes of section 36B(c)(2)(C) of the Internal Revenue Code of 1986 (as added by this section) is the appropriate level for determining whether employer-provided coverage is affordable for an employee and whether such level may be lowered without significantly increasing the costs to the Federal Government and reducing employer-provided coverage; and

(iii) the ability of individuals to maintain essential health benefits coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986).

(B) REPORT.—The Comptroller General shall submit to the appropriate committees of Congress a report on the study conducted under subparagraph (A), together with legislative recommendations relating to the matters studied under such subparagraph.

(2) APPROPRIATE COMMITTEES OF CONGRESS.—In this subsection, the term “appropriate committees of Congress” means the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor and Pensions of the Senate.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting “36B,” after “36A,”.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 36A the following new item:

“Sec. 36B. Refundable credit for coverage under a qualified health plan.”.

26 USC 36B note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2013.

42 USC 18071.

SEC. 1402. REDUCED COST-SHARING FOR INDIVIDUALS ENROLLING IN QUALIFIED HEALTH PLANS.

(a) IN GENERAL.—In the case of an eligible insured enrolled in a qualified health plan—

Notification.

(1) the Secretary shall notify the issuer of the plan of such eligibility; and

(2) the issuer shall reduce the cost-sharing under the plan at the level and in the manner specified in subsection (c).

(b) **ELIGIBLE INSURED.**—In this section, the term “eligible insured” means an individual—

(1) who enrolls in a qualified health plan in the silver level of coverage in the individual market offered through an Exchange; and

(2) whose household income exceeds 100 percent but does not exceed 400 percent of the poverty line for a family of the size involved.

In the case of an individual described in section 36B(c)(1)(B) of the Internal Revenue Code of 1986, the individual shall be treated as having household income equal to 100 percent for purposes of applying this section.

(c) **DETERMINATION OF REDUCTION IN COST-SHARING.**—

(1) **REDUCTION IN OUT-OF-POCKET LIMIT.**—

(A) **IN GENERAL.**—The reduction in cost-sharing under this subsection shall first be achieved by reducing the applicable out-of-pocket limit under section 1302(c)(1) in the case of—

(i) an eligible insured whose household income is more than 100 percent but not more than 200 percent of the poverty line for a family of the size involved, by two-thirds;

(ii) an eligible insured whose household income is more than 200 percent but not more than 300 percent of the poverty line for a family of the size involved, by one-half; and

(iii) an eligible insured whose household income is more than 300 percent but not more than 400 percent of the poverty line for a family of the size involved, by one-third.

(B) **COORDINATION WITH ACTUARIAL VALUE LIMITS.**—

(i) **IN GENERAL.**—The Secretary shall ensure the reduction under this paragraph shall not result in an increase in the plan’s share of the total allowed costs of benefits provided under the plan above—

(I) 90 percent in the case of an eligible insured described in paragraph (2)(A);

(II) 80 percent in the case of an eligible insured described in paragraph (2)(B); and

(III) 70 percent in the case of an eligible insured described in clause (ii) or (iii) of subparagraph (A).

(ii) **ADJUSTMENT.**—The Secretary shall adjust the out-of-pocket limits under paragraph (1) if necessary to ensure that such limits do not cause the respective actuarial values to exceed the levels specified in clause (i).

(2) **ADDITIONAL REDUCTION FOR LOWER INCOME INSURED.**—

The Secretary shall establish procedures under which the issuer of a qualified health plan to which this section applies shall further reduce cost-sharing under the plan in a manner sufficient to—

(A) in the case of an eligible insured whose household income is not less than 100 percent but not more than 150 percent of the poverty line for a family of the size involved, increase the plan’s share of the total allowed

Procedures.

costs of benefits provided under the plan to 90 percent of such costs; and

(B) in the case of an eligible insured whose household income is more than 150 percent but not more than 200 percent of the poverty line for a family of the size involved, increase the plan's share of the total allowed costs of benefits provided under the plan to 80 percent of such costs.

(3) METHODS FOR REDUCING COST-SHARING.—

Notification.

(A) IN GENERAL.—An issuer of a qualified health plan making reductions under this subsection shall notify the Secretary of such reductions and the Secretary shall make periodic and timely payments to the issuer equal to the value of the reductions.

(B) CAPITATED PAYMENTS.—The Secretary may establish a capitated payment system to carry out the payment of cost-sharing reductions under this section. Any such system shall take into account the value of the reductions and make appropriate risk adjustments to such payments.

(4) ADDITIONAL BENEFITS.—If a qualified health plan under section 1302(b)(5) offers benefits in addition to the essential health benefits required to be provided by the plan, or a State requires a qualified health plan under section 1311(d)(3)(B) to cover benefits in addition to the essential health benefits required to be provided by the plan, the reductions in cost-sharing under this section shall not apply to such additional benefits.

(5) SPECIAL RULE FOR PEDIATRIC DENTAL PLANS.—If an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(ii)(I) for any plan year, subsection (a) shall not apply to that portion of any reduction in cost-sharing under subsection (c) that (under regulations prescribed by the Secretary) is properly allocable to pediatric dental benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J).

(d) SPECIAL RULES FOR INDIANS.—

(1) INDIANS UNDER 300 PERCENT OF POVERTY.—If an individual enrolled in any qualified health plan in the individual market through an Exchange is an Indian (as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d))) whose household income is not more than 300 percent of the poverty line for a family of the size involved, then, for purposes of this section—

(A) such individual shall be treated as an eligible insured; and

(B) the issuer of the plan shall eliminate any cost-sharing under the plan.

(2) ITEMS OR SERVICES FURNISHED THROUGH INDIAN HEALTH PROVIDERS.—If an Indian (as so defined) enrolled in a qualified health plan is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services—

(A) no cost-sharing under the plan shall be imposed under the plan for such item or service; and

(B) the issuer of the plan shall not reduce the payment to any such entity for such item or service by the amount

of any cost-sharing that would be due from the Indian but for subparagraph (A).

(3) PAYMENT.—The Secretary shall pay to the issuer of a qualified health plan the amount necessary to reflect the increase in actuarial value of the plan required by reason of this subsection.

(e) RULES FOR INDIVIDUALS NOT LAWFULLY PRESENT.—

(1) IN GENERAL.—If an individual who is an eligible insured is not lawfully present—

(A) no cost-sharing reduction under this section shall apply with respect to the individual; and

(B) for purposes of applying this section, the determination as to what percentage a taxpayer's household income bears to the poverty level for a family of the size involved shall be made under one of the following methods:

(i) A method under which—

(I) the taxpayer's family size is determined by not taking such individuals into account, and

(II) the taxpayer's household income is equal to the product of the taxpayer's household income (determined without regard to this subsection) and a fraction—

(aa) the numerator of which is the poverty line for the taxpayer's family size determined after application of subclause (I), and

(bb) the denominator of which is the poverty line for the taxpayer's family size determined without regard to subclause (I).

(ii) A comparable method reaching the same result as the method under clause (i).

(2) LAWFULLY PRESENT.—For purposes of this section, an individual shall be treated as lawfully present only if the individual is, and is reasonably expected to be for the entire period of enrollment for which the cost-sharing reduction under this section is being claimed, a citizen or national of the United States or an alien lawfully present in the United States.

(3) SECRETARIAL AUTHORITY.—The Secretary, in consultation with the Secretary of the Treasury, shall prescribe rules setting forth the methods by which calculations of family size and household income are made for purposes of this subsection. Such rules shall be designed to ensure that the least burden is placed on individuals enrolling in qualified health plans through an Exchange and taxpayers eligible for the credit allowable under this section.

Regulations.

(f) DEFINITIONS AND SPECIAL RULES.—In this section:

(1) IN GENERAL.—Any term used in this section which is also used in section 36B of the Internal Revenue Code of 1986 shall have the meaning given such term by such section.

(2) LIMITATIONS ON REDUCTION.—No cost-sharing reduction shall be allowed under this section with respect to coverage for any month unless the month is a coverage month with respect to which a credit is allowed to the insured (or an applicable taxpayer on behalf of the insured) under section 36B of such Code.

(3) DATA USED FOR ELIGIBILITY.—Any determination under this section shall be made on the basis of the taxable year for which the advance determination is made under section

1412 and not the taxable year for which the credit under section 36B of such Code is allowed.

Subpart B—Eligibility Determinations

42 USC 18081.

SEC. 1411. PROCEDURES FOR DETERMINING ELIGIBILITY FOR EXCHANGE PARTICIPATION, PREMIUM TAX CREDITS AND REDUCED COST-SHARING, AND INDIVIDUAL RESPONSIBILITY EXEMPTIONS.

(a) **ESTABLISHMENT OF PROGRAM.**—The Secretary shall establish a program meeting the requirements of this section for determining—

(1) whether an individual who is to be covered in the individual market by a qualified health plan offered through an Exchange, or who is claiming a premium tax credit or reduced cost-sharing, meets the requirements of sections 1312(f)(3), 1402(e), and 1412(d) of this title and section 36B(e) of the Internal Revenue Code of 1986 that the individual be a citizen or national of the United States or an alien lawfully present in the United States;

(2) in the case of an individual claiming a premium tax credit or reduced cost-sharing under section 36B of such Code or section 1402—

(A) whether the individual meets the income and coverage requirements of such sections; and

(B) the amount of the tax credit or reduced cost-sharing;

(3) whether an individual's coverage under an employer-sponsored health benefits plan is treated as unaffordable under sections 36B(c)(2)(C) and 5000A(e)(2); and

(4) whether to grant a certification under section 1311(d)(4)(H) attesting that, for purposes of the individual responsibility requirement under section 5000A of the Internal Revenue Code of 1986, an individual is entitled to an exemption from either the individual responsibility requirement or the penalty imposed by such section.

(b) **INFORMATION REQUIRED TO BE PROVIDED BY APPLICANTS.**—

(1) **IN GENERAL.**—An applicant for enrollment in a qualified health plan offered through an Exchange in the individual market shall provide—

(A) the name, address, and date of birth of each individual who is to be covered by the plan (in this subsection referred to as an “enrollee”); and

(B) the information required by any of the following paragraphs that is applicable to an enrollee.

(2) **CITIZENSHIP OR IMMIGRATION STATUS.**—The following information shall be provided with respect to every enrollee:

(A) In the case of an enrollee whose eligibility is based on an attestation of citizenship of the enrollee, the enrollee's social security number.

(B) In the case of an individual whose eligibility is based on an attestation of the enrollee's immigration status, the enrollee's social security number (if applicable) and such identifying information with respect to the enrollee's immigration status as the Secretary, after consultation with the Secretary of Homeland Security, determines appropriate.

(3) **ELIGIBILITY AND AMOUNT OF TAX CREDIT OR REDUCED COST-SHARING.**—In the case of an enrollee with respect to whom a premium tax credit or reduced cost-sharing under section 36B of such Code or section 1402 is being claimed, the following information:

(A) **INFORMATION REGARDING INCOME AND FAMILY SIZE.**—The information described in section 6103(l)(21) for the taxable year ending with or within the second calendar year preceding the calendar year in which the plan year begins.

(B) **CHANGES IN CIRCUMSTANCES.**—The information described in section 1412(b)(2), including information with respect to individuals who were not required to file an income tax return for the taxable year described in subparagraph (A) or individuals who experienced changes in marital status or family size or significant reductions in income.

(4) **EMPLOYER-SPONSORED COVERAGE.**—In the case of an enrollee with respect to whom eligibility for a premium tax credit under section 36B of such Code or cost-sharing reduction under section 1402 is being established on the basis that the enrollee's (or related individual's) employer is not treated under section 36B(c)(2)(C) of such Code as providing minimum essential coverage or affordable minimum essential coverage, the following information:

(A) The name, address, and employer identification number (if available) of the employer.

(B) Whether the enrollee or individual is a full-time employee and whether the employer provides such minimum essential coverage.

(C) If the employer provides such minimum essential coverage, the lowest cost option for the enrollee's or individual's enrollment status and the enrollee's or individual's required contribution (within the meaning of section 5000A(e)(1)(B) of such Code) under the employer-sponsored plan.

(D) If an enrollee claims an employer's minimum essential coverage is unaffordable, the information described in paragraph (3).

If an enrollee changes employment or obtains additional employment while enrolled in a qualified health plan for which such credit or reduction is allowed, the enrollee shall notify the Exchange of such change or additional employment and provide the information described in this paragraph with respect to the new employer.

(5) **EXEMPTIONS FROM INDIVIDUAL RESPONSIBILITY REQUIREMENTS.**—In the case of an individual who is seeking an exemption certificate under section 1311(d)(4)(H) from any requirement or penalty imposed by section 5000A, the following information:

(A) In the case of an individual seeking exemption based on the individual's status as a member of an exempt religious sect or division, as a member of a health care sharing ministry, as an Indian, or as an individual eligible for a hardship exemption, such information as the Secretary shall prescribe.

(B) In the case of an individual seeking exemption based on the lack of affordable coverage or the individual's status as a taxpayer with household income less than 100 percent of the poverty line, the information described in paragraphs (3) and (4), as applicable.

(c) VERIFICATION OF INFORMATION CONTAINED IN RECORDS OF SPECIFIC FEDERAL OFFICIALS.—

(1) INFORMATION TRANSFERRED TO SECRETARY.—An Exchange shall submit the information provided by an applicant under subsection (b) to the Secretary for verification in accordance with the requirements of this subsection and subsection (d).

(2) CITIZENSHIP OR IMMIGRATION STATUS.—

(A) COMMISSIONER OF SOCIAL SECURITY.—The Secretary shall submit to the Commissioner of Social Security the following information for a determination as to whether the information provided is consistent with the information in the records of the Commissioner:

(i) The name, date of birth, and social security number of each individual for whom such information was provided under subsection (b)(2).

(ii) The attestation of an individual that the individual is a citizen.

(B) SECRETARY OF HOMELAND SECURITY.—

(i) IN GENERAL.—In the case of an individual—

(I) who attests that the individual is an alien lawfully present in the United States; or

(II) who attests that the individual is a citizen but with respect to whom the Commissioner of Social Security has notified the Secretary under subsection (e)(3) that the attestation is inconsistent with information in the records maintained by the Commissioner;

the Secretary shall submit to the Secretary of Homeland Security the information described in clause (ii) for a determination as to whether the information provided is consistent with the information in the records of the Secretary of Homeland Security.

(ii) INFORMATION.—The information described in clause (ii) is the following:

(I) The name, date of birth, and any identifying information with respect to the individual's immigration status provided under subsection (b)(2).

(II) The attestation that the individual is an alien lawfully present in the United States or in the case of an individual described in clause (i)(II), the attestation that the individual is a citizen.

(3) ELIGIBILITY FOR TAX CREDIT AND COST-SHARING REDUCTION.—The Secretary shall submit the information described in subsection (b)(3)(A) provided under paragraph (3), (4), or (5) of subsection (b) to the Secretary of the Treasury for verification of household income and family size for purposes of eligibility.

(4) METHODS.—

(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Treasury, the Secretary of Homeland

Submission.

Electronic submission.

Security, and the Commissioner of Social Security, shall provide that verifications and determinations under this subsection shall be done—

(i) through use of an on-line system or otherwise for the electronic submission of, and response to, the information submitted under this subsection with respect to an applicant; or

(ii) by determining the consistency of the information submitted with the information maintained in the records of the Secretary of the Treasury, the Secretary of Homeland Security, or the Commissioner of Social Security through such other method as is approved by the Secretary.

(B) FLEXIBILITY.—The Secretary may modify the methods used under the program established by this section for the Exchange and verification of information if the Secretary determines such modifications would reduce the administrative costs and burdens on the applicant, including allowing an applicant to request the Secretary of the Treasury to provide the information described in paragraph (3) directly to the Exchange or to the Secretary. The Secretary shall not make any such modification unless the Secretary determines that any applicable requirements under this section and section 6103 of the Internal Revenue Code of 1986 with respect to the confidentiality, disclosure, maintenance, or use of information will be met.

(d) VERIFICATION BY SECRETARY.—In the case of information provided under subsection (b) that is not required under subsection (c) to be submitted to another person for verification, the Secretary shall verify the accuracy of such information in such manner as the Secretary determines appropriate, including delegating responsibility for verification to the Exchange.

(e) ACTIONS RELATING TO VERIFICATION.—

(1) IN GENERAL.—Each person to whom the Secretary provided information under subsection (c) shall report to the Secretary under the method established under subsection (c)(4) the results of its verification and the Secretary shall notify the Exchange of such results. Each person to whom the Secretary provided information under subsection (d) shall report to the Secretary in such manner as the Secretary determines appropriate.

Reports.

(2) VERIFICATION.—

(A) ELIGIBILITY FOR ENROLLMENT AND PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS.—If information provided by an applicant under paragraphs (1), (2), (3), and (4) of subsection (b) is verified under subsections (c) and (d)—

(i) the individual's eligibility to enroll through the Exchange and to apply for premium tax credits and cost-sharing reductions shall be satisfied; and

(ii) the Secretary shall, if applicable, notify the Secretary of the Treasury under section 1412(c) of the amount of any advance payment to be made.

Notification.

(B) EXEMPTION FROM INDIVIDUAL RESPONSIBILITY.—If information provided by an applicant under subsection (b)(5) is verified under subsections (c) and (d), the Secretary

shall issue the certification of exemption described in section 1311(d)(4)(H).

(3) INCONSISTENCIES INVOLVING ATTESTATION OF CITIZENSHIP OR LAWFUL PRESENCE.—If the information provided by any applicant under subsection (b)(2) is inconsistent with information in the records maintained by the Commissioner of Social Security or Secretary of Homeland Security, whichever is applicable, the applicant's eligibility will be determined in the same manner as an individual's eligibility under the medicaid program is determined under section 1902(ee) of the Social Security Act (as in effect on January 1, 2010).

Notifications.

(4) INCONSISTENCIES INVOLVING OTHER INFORMATION.—

(A) IN GENERAL.—If the information provided by an applicant under subsection (b) (other than subsection (b)(2)) is inconsistent with information in the records maintained by persons under subsection (c) or is not verified under subsection (d), the Secretary shall notify the Exchange and the Exchange shall take the following actions:

(i) REASONABLE EFFORT.—The Exchange shall make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors, by contacting the applicant to confirm the accuracy of the information, and by taking such additional actions as the Secretary, through regulation or other guidance, may identify.

(ii) NOTICE AND OPPORTUNITY TO CORRECT.—In the case the inconsistency or inability to verify is not resolved under subparagraph (A), the Exchange shall—

(I) notify the applicant of such fact;

Time period.

(II) provide the applicant an opportunity to either present satisfactory documentary evidence or resolve the inconsistency with the person verifying the information under subsection (c) or (d) during the 90-day period beginning the date on which the notice required under subclause (I) is sent to the applicant.

The Secretary may extend the 90-day period under subclause (II) for enrollments occurring during 2014.

(B) SPECIFIC ACTIONS NOT INVOLVING CITIZENSHIP OR LAWFUL PRESENCE.—

(i) IN GENERAL.—Except as provided in paragraph (3), the Exchange shall, during any period before the close of the period under subparagraph (A)(ii)(II), make any determination under paragraphs (2), (3), and (4) of subsection (a) on the basis of the information contained on the application.

(ii) ELIGIBILITY OR AMOUNT OF CREDIT OR REDUCTION.—If an inconsistency involving the eligibility for, or amount of, any premium tax credit or cost-sharing reduction is unresolved under this subsection as of the close of the period under subparagraph (A)(ii)(II), the Exchange shall notify the applicant of the amount (if any) of the credit or reduction that is determined on the basis of the records maintained by persons under subsection (c).

(iii) EMPLOYER AFFORDABILITY.—If the Secretary notifies an Exchange that an enrollee is eligible for

a premium tax credit under section 36B of such Code or cost-sharing reduction under section 1402 because the enrollee's (or related individual's) employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide that coverage but it is not affordable coverage, the Exchange shall notify the employer of such fact and that the employer may be liable for the payment assessed under section 4980H of such Code.

(iv) EXEMPTION.—In any case where the inconsistency involving, or inability to verify, information provided under subsection (b)(5) is not resolved as of the close of the period under subparagraph (A)(ii)(II), the Exchange shall notify an applicant that no certification of exemption from any requirement or payment under section 5000A of such Code will be issued.

(C) APPEALS PROCESS.—The Exchange shall also notify each person receiving notice under this paragraph of the appeals processes established under subsection (f).

(f) APPEALS AND REDETERMINATIONS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Commissioner of Social Security, shall establish procedures by which the Secretary or one of such other Federal officers—

Procedures.

(A) hears and makes decisions with respect to appeals of any determination under subsection (e); and

(B) redetermines eligibility on a periodic basis in appropriate circumstances.

(2) EMPLOYER LIABILITY.—

(A) IN GENERAL.—The Secretary shall establish a separate appeals process for employers who are notified under subsection (e)(4)(C) that the employer may be liable for a tax imposed by section 4980H of the Internal Revenue Code of 1986 with respect to an employee because of a determination that the employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide that coverage but it is not affordable coverage with respect to an employee. Such process shall provide an employer the opportunity to—

(i) present information to the Exchange for review of the determination either by the Exchange or the person making the determination, including evidence of the employer-sponsored plan and employer contributions to the plan; and

(ii) have access to the data used to make the determination to the extent allowable by law.

Such process shall be in addition to any rights of appeal the employer may have under subtitle F of such Code.

(B) CONFIDENTIALITY.—Notwithstanding any provision of this title (or the amendments made by this title) or section 6103 of the Internal Revenue Code of 1986, an employer shall not be entitled to any taxpayer return information with respect to an employee for purposes of determining whether the employer is subject to the penalty under section 4980H of such Code with respect to the employee, except that—

(i) the employer may be notified as to the name of an employee and whether or not the employee's income is above or below the threshold by which the affordability of an employer's health insurance coverage is measured; and

(ii) this subparagraph shall not apply to an employee who provides a waiver (at such time and in such manner as the Secretary may prescribe) authorizing an employer to have access to the employee's taxpayer return information.

(g) CONFIDENTIALITY OF APPLICANT INFORMATION.—

(1) IN GENERAL.—An applicant for insurance coverage or for a premium tax credit or cost-sharing reduction shall be required to provide only the information strictly necessary to authenticate identity, determine eligibility, and determine the amount of the credit or reduction.

(2) RECEIPT OF INFORMATION.—Any person who receives information provided by an applicant under subsection (b) (whether directly or by another person at the request of the applicant), or receives information from a Federal agency under subsection (c), (d), or (e), shall—

(A) use the information only for the purposes of, and to the extent necessary in, ensuring the efficient operation of the Exchange, including verifying the eligibility of an individual to enroll through an Exchange or to claim a premium tax credit or cost-sharing reduction or the amount of the credit or reduction; and

(B) not disclose the information to any other person except as provided in this section.

(h) PENALTIES.—

(1) FALSE OR FRAUDULENT INFORMATION.—

(A) CIVIL PENALTY.—

(i) IN GENERAL.—If—

(I) any person fails to provide correct information under subsection (b); and

(II) such failure is attributable to negligence or disregard of any rules or regulations of the Secretary,

such person shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than \$25,000 with respect to any failures involving an application for a plan year. For purposes of this subparagraph, the terms “negligence” and “disregard” shall have the same meanings as when used in section 6662 of the Internal Revenue Code of 1986.

(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under clause (i) if the Secretary determines that there was a reasonable cause for the failure and that the person acted in good faith.

(B) KNOWING AND WILLFUL VIOLATIONS.—Any person who knowingly and willfully provides false or fraudulent information under subsection (b) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than \$250,000.

(2) **IMPROPER USE OR DISCLOSURE OF INFORMATION.**—Any person who knowingly and willfully uses or discloses information in violation of subsection (g) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than \$25,000.

(3) **LIMITATIONS ON LIENS AND LEVIES.**—The Secretary (or, if applicable, the Attorney General of the United States) shall not—

(A) file notice of lien with respect to any property of a person by reason of any failure to pay the penalty imposed by this subsection; or

(B) levy on any such property with respect to such failure.

(i) **STUDY OF ADMINISTRATION OF EMPLOYER RESPONSIBILITY.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall, in consultation with the Secretary of the Treasury, conduct a study of the procedures that are necessary to ensure that in the administration of this title and section 4980H of the Internal Revenue Code of 1986 (as added by section 1513) that the following rights are protected:

(A) The rights of employees to preserve their right to confidentiality of their taxpayer return information and their right to enroll in a qualified health plan through an Exchange if an employer does not provide affordable coverage.

(B) The rights of employers to adequate due process and access to information necessary to accurately determine any payment assessed on employers.

(2) **REPORT.**—Not later than January 1, 2013, the Secretary of Health and Human Services shall report the results of the study conducted under paragraph (1), including any recommendations for legislative changes, to the Committees on Finance and Health, Education, Labor and Pensions of the Senate and the Committees of Education and Labor and Ways and Means of the House of Representatives.

SEC. 1412. ADVANCE DETERMINATION AND PAYMENT OF PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS. 42 USC 18082.

(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of the Treasury, shall establish a program under which—

(1) upon request of an Exchange, advance determinations are made under section 1411 with respect to the income eligibility of individuals enrolling in a qualified health plan in the individual market through the Exchange for the premium tax credit allowable under section 36B of the Internal Revenue Code of 1986 and the cost-sharing reductions under section 1402;

(2) the Secretary notifies—

(A) the Exchange and the Secretary of the Treasury of the advance determinations; and

(B) the Secretary of the Treasury of the name and employer identification number of each employer with respect to whom 1 or more employee of the employer were determined to be eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 and the cost-sharing reductions under section 1402 because—

Notification.

(i) the employer did not provide minimum essential coverage; or

(ii) the employer provided such minimum essential coverage but it was determined under section 36B(c)(2)(C) of such Code to either be unaffordable to the employee or not provide the required minimum actuarial value; and

(3) the Secretary of the Treasury makes advance payments of such credit or reductions to the issuers of the qualified health plans in order to reduce the premiums payable by individuals eligible for such credit.

(b) ADVANCE DETERMINATIONS.—

(1) IN GENERAL.—The Secretary shall provide under the program established under subsection (a) that advance determination of eligibility with respect to any individual shall be made—

(A) during the annual open enrollment period applicable to the individual (or such other enrollment period as may be specified by the Secretary); and

(B) on the basis of the individual's household income for the most recent taxable year for which the Secretary, after consultation with the Secretary of the Treasury, determines information is available.

(2) CHANGES IN CIRCUMSTANCES.—The Secretary shall provide procedures for making advance determinations on the basis of information other than that described in paragraph (1)(B) in cases where information included with an application form demonstrates substantial changes in income, changes in family size or other household circumstances, change in filing status, the filing of an application for unemployment benefits, or other significant changes affecting eligibility, including—

(A) allowing an individual claiming a decrease of 20 percent or more in income, or filing an application for unemployment benefits, to have eligibility for the credit determined on the basis of household income for a later period or on the basis of the individual's estimate of such income for the taxable year; and

(B) the determination of household income in cases where the taxpayer was not required to file a return of tax imposed by this chapter for the second preceding taxable year.

Notifications.

(c) PAYMENT OF PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS.—

(1) IN GENERAL.—The Secretary shall notify the Secretary of the Treasury and the Exchange through which the individual is enrolling of the advance determination under section 1411.

(2) PREMIUM TAX CREDIT.—

(A) IN GENERAL.—The Secretary of the Treasury shall make the advance payment under this section of any premium tax credit allowed under section 36B of the Internal Revenue Code of 1986 to the issuer of a qualified health plan on a monthly basis (or such other periodic basis as the Secretary may provide).

(B) ISSUER RESPONSIBILITIES.—An issuer of a qualified health plan receiving an advance payment with respect to an individual enrolled in the plan shall—

(i) reduce the premium charged the insured for any period by the amount of the advance payment for the period;

(ii) notify the Exchange and the Secretary of such reduction;

(iii) include with each billing statement the amount by which the premium for the plan has been reduced by reason of the advance payment; and

(iv) in the case of any nonpayment of premiums by the insured—

(I) notify the Secretary of such nonpayment; and

(II) allow a 3-month grace period for nonpayment of premiums before discontinuing coverage.

(3) **COST-SHARING REDUCTIONS.**—The Secretary shall also notify the Secretary of the Treasury and the Exchange under paragraph (1) if an advance payment of the cost-sharing reductions under section 1402 is to be made to the issuer of any qualified health plan with respect to any individual enrolled in the plan. The Secretary of the Treasury shall make such advance payment at such time and in such amount as the Secretary specifies in the notice.

(d) **NO FEDERAL PAYMENTS FOR INDIVIDUALS NOT LAWFULLY PRESENT.**—Nothing in this subtitle or the amendments made by this subtitle allows Federal payments, credits, or cost-sharing reductions for individuals who are not lawfully present in the United States.

(e) **STATE FLEXIBILITY.**—Nothing in this subtitle or the amendments made by this subtitle shall be construed to prohibit a State from making payments to or on behalf of an individual for coverage under a qualified health plan offered through an Exchange that are in addition to any credits or cost-sharing reductions allowable to the individual under this subtitle and such amendments.

SEC. 1413. STREAMLINING OF PROCEDURES FOR ENROLLMENT THROUGH AN EXCHANGE AND STATE MEDICAID, CHIP, AND HEALTH SUBSIDY PROGRAMS. 42 USC 18083.

(a) **IN GENERAL.**—The Secretary shall establish a system meeting the requirements of this section under which residents of each State may apply for enrollment in, receive a determination of eligibility for participation in, and continue participation in, applicable State health subsidy programs. Such system shall ensure that if an individual applying to an Exchange is found through screening to be eligible for medical assistance under the State medicaid plan under title XIX, or eligible for enrollment under a State children's health insurance program (CHIP) under title XXI of such Act, the individual is enrolled for assistance under such plan or program.

(b) **REQUIREMENTS RELATING TO FORMS AND NOTICE.**—

(1) **REQUIREMENTS RELATING TO FORMS.**—

(A) **IN GENERAL.**—The Secretary shall develop and provide to each State a single, streamlined form that—

(i) may be used to apply for all applicable State health subsidy programs within the State;

(ii) may be filed online, in person, by mail, or by telephone;

(iii) may be filed with an Exchange or with State officials operating one of the other applicable State health subsidy programs; and

(iv) is structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who qualify for applicable State health subsidy programs.

(B) STATE AUTHORITY TO ESTABLISH FORM.—A State may develop and use its own single, streamlined form as an alternative to the form developed under subparagraph (A) if the alternative form is consistent with standards promulgated by the Secretary under this section.

(C) SUPPLEMENTAL ELIGIBILITY FORMS.—The Secretary may allow a State to use a supplemental or alternative form in the case of individuals who apply for eligibility that is not determined on the basis of the household income (as defined in section 36B of the Internal Revenue Code of 1986).

(2) NOTICE.—The Secretary shall provide that an applicant filing a form under paragraph (1) shall receive notice of eligibility for an applicable State health subsidy program without any need to provide additional information or paperwork unless such information or paperwork is specifically required by law when information provided on the form is inconsistent with data used for the electronic verification under paragraph (3) or is otherwise insufficient to determine eligibility.

(c) REQUIREMENTS RELATING TO ELIGIBILITY BASED ON DATA EXCHANGES.—

(1) DEVELOPMENT OF SECURE INTERFACES.—Each State shall develop for all applicable State health subsidy programs a secure, electronic interface allowing an exchange of data (including information contained in the application forms described in subsection (b)) that allows a determination of eligibility for all such programs based on a single application. Such interface shall be compatible with the method established for data verification under section 1411(c)(4).

(2) DATA MATCHING PROGRAM.—Each applicable State health subsidy program shall participate in a data matching arrangement for determining eligibility for participation in the program under paragraph (3) that—

(A) provides access to data described in paragraph (3);

(B) applies only to individuals who—

(i) receive assistance from an applicable State health subsidy program; or

(ii) apply for such assistance—

(I) by filing a form described in subsection (b); or

(II) by requesting a determination of eligibility and authorizing disclosure of the information described in paragraph (3) to applicable State health coverage subsidy programs for purposes of determining and establishing eligibility; and

(C) consistent with standards promulgated by the Secretary, including the privacy and data security safeguards described in section 1942 of the Social Security Act or that are otherwise applicable to such programs.

(3) DETERMINATION OF ELIGIBILITY.—

(A) IN GENERAL.—Each applicable State health subsidy program shall, to the maximum extent practicable—

(i) establish, verify, and update eligibility for participation in the program using the data matching arrangement under paragraph (2); and

(ii) determine such eligibility on the basis of reliable, third party data, including information described in sections 1137, 453(i), and 1942(a) of the Social Security Act, obtained through such arrangement.

(B) EXCEPTION.—This paragraph shall not apply in circumstances with respect to which the Secretary determines that the administrative and other costs of use of the data matching arrangement under paragraph (2) outweigh its expected gains in accuracy, efficiency, and program participation.

(4) SECRETARIAL STANDARDS.—The Secretary shall, after consultation with persons in possession of the data to be matched and representatives of applicable State health subsidy programs, promulgate standards governing the timing, contents, and procedures for data matching described in this subsection. Such standards shall take into account administrative and other costs and the value of data matching to the establishment, verification, and updating of eligibility for applicable State health subsidy programs.

(d) ADMINISTRATIVE AUTHORITY.—

(1) AGREEMENTS.—Subject to section 1411 and section 6103(l)(21) of the Internal Revenue Code of 1986 and any other requirement providing safeguards of privacy and data integrity, the Secretary may establish model agreements, and enter into agreements, for the sharing of data under this section.

(2) AUTHORITY OF EXCHANGE TO CONTRACT OUT.—Nothing in this section shall be construed to—

(A) prohibit contractual arrangements through which a State medicaid agency determines eligibility for all applicable State health subsidy programs, but only if such agency complies with the Secretary's requirements ensuring reduced administrative costs, eligibility errors, and disruptions in coverage; or

(B) change any requirement under title XIX that eligibility for participation in a State's medicaid program must be determined by a public agency.

(e) APPLICABLE STATE HEALTH SUBSIDY PROGRAM.—In this section, the term “applicable State health subsidy program” means—

(1) the program under this title for the enrollment in qualified health plans offered through an Exchange, including the premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(2) a State medicaid program under title XIX of the Social Security Act;

(3) a State children's health insurance program (CHIP) under title XXI of such Act; and

(4) a State program under section 1331 establishing qualified basic health plans.

SEC. 1414. DISCLOSURES TO CARRY OUT ELIGIBILITY REQUIREMENTS FOR CERTAIN PROGRAMS.**(a) DISCLOSURE OF TAXPAYER RETURN INFORMATION AND SOCIAL SECURITY NUMBERS.—**

26 USC 6103.

(1) **TAXPAYER RETURN INFORMATION.**—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(21) **DISCLOSURE OF RETURN INFORMATION TO CARRY OUT ELIGIBILITY REQUIREMENTS FOR CERTAIN PROGRAMS.**—

“(A) **IN GENERAL.**—The Secretary, upon written request from the Secretary of Health and Human Services, shall disclose to officers, employees, and contractors of the Department of Health and Human Services return information of any taxpayer whose income is relevant in determining any premium tax credit under section 36B or any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act or eligibility for participation in a State medicaid program under title XIX of the Social Security Act, a State’s children’s health insurance program under title XXI of the Social Security Act, or a basic health program under section 1331 of Patient Protection and Affordable Care Act. Such return information shall be limited to—

“(i) taxpayer identity information with respect to such taxpayer,

“(ii) the filing status of such taxpayer,

“(iii) the number of individuals for whom a deduction is allowed under section 151 with respect to the taxpayer (including the taxpayer and the taxpayer’s spouse),

“(iv) the modified gross income (as defined in section 36B) of such taxpayer and each of the other individuals included under clause (iii) who are required to file a return of tax imposed by chapter 1 for the taxable year,

“(v) such other information as is prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for such credit or reduction (and the amount thereof), and

“(vi) the taxable year with respect to which the preceding information relates or, if applicable, the fact that such information is not available.

“(B) **INFORMATION TO EXCHANGE AND STATE AGENCIES.**—The Secretary of Health and Human Services may disclose to an Exchange established under the Patient Protection and Affordable Care Act or its contractors, or to a State agency administering a State program described in subparagraph (A) or its contractors, any inconsistency between the information provided by the Exchange or State agency to the Secretary and the information provided to the Secretary under subparagraph (A).

“(C) **RESTRICTION ON USE OF DISCLOSED INFORMATION.**—Return information disclosed under subparagraph (A) or (B) may be used by officers, employees, and contractors of the Department of Health and Human Services, an Exchange, or a State agency only for the purposes of, and to the extent necessary in—

“(i) establishing eligibility for participation in the Exchange, and verifying the appropriate amount of, any credit or reduction described in subparagraph (A),

“(ii) determining eligibility for participation in the State programs described in subparagraph (A).”.

(2) SOCIAL SECURITY NUMBERS.—Section 205(c)(2)(C) of the Social Security Act is amended by adding at the end the following new clause: 42 USC 405.

“(x) The Secretary of Health and Human Services, and the Exchanges established under section 1311 of the Patient Protection and Affordable Care Act, are authorized to collect and use the names and social security account numbers of individuals as required to administer the provisions of, and the amendments made by, the such Act.”.

(b) CONFIDENTIALITY AND DISCLOSURE.—Paragraph (3) of section 6103(a) of such Code is amended by striking “or (20)” and inserting “(20), or (21)”. 26 USC 6103.

(c) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Paragraph (4) of section 6103(p) of such Code is amended—

(1) by inserting “, or any entity described in subsection (l)(21),” after “or (20)” in the matter preceding subparagraph (A),

(2) by inserting “or any entity described in subsection (l)(21),” after “or (o)(1)(A)” in subparagraph (F)(ii), and

(3) by inserting “or any entity described in subsection (l)(21),” after “or (20)” both places it appears in the matter after subparagraph (F).

(d) UNAUTHORIZED DISCLOSURE OR INSPECTION.—Paragraph (2) of section 7213(a) of such Code is amended by striking “or (20)” and inserting “(20), or (21)”.

SEC. 1415. PREMIUM TAX CREDIT AND COST-SHARING REDUCTION PAYMENTS DISREGARDED FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS. 42 USC 18084.

For purposes of determining the eligibility of any individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds—

(1) any credit or refund allowed or made to any individual by reason of section 36B of the Internal Revenue Code of 1986 (as added by section 1401) shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months; and

(2) any cost-sharing reduction payment or advance payment of the credit allowed under such section 36B that is made under section 1402 or 1412 shall be treated as made to the qualified health plan in which an individual is enrolled and not to that individual.

PART II—SMALL BUSINESS TAX CREDIT

SEC. 1421. CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES OF SMALL BUSINESSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-

related credits) is amended by inserting after section 45Q the following:

26 USC 45R.

“SEC. 45R. EMPLOYEE HEALTH INSURANCE EXPENSES OF SMALL EMPLOYERS.

“(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

“(b) HEALTH INSURANCE CREDIT AMOUNT.—Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

“(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

“(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

“(c) PHASEOUT OF CREDIT AMOUNT BASED ON NUMBER OF EMPLOYEES AND AVERAGE WAGES.—The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

“(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

“(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

“(d) ELIGIBLE SMALL EMPLOYER.—For purposes of this section—

“(1) IN GENERAL.—The term ‘eligible small employer’ means, with respect to any taxable year, an employer—

“(A) which has no more than 25 full-time equivalent employees for the taxable year,

“(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

“(C) which has in effect an arrangement described in paragraph (4).

“(2) FULL-TIME EQUIVALENT EMPLOYEES.—

“(A) IN GENERAL.—The term ‘full-time equivalent employees’ means a number of employees equal to the number determined by dividing—

“(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

“(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

“(B) EXCESS HOURS NOT COUNTED.—If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).

“(C) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

Regulations.

“(3) AVERAGE ANNUAL WAGES.—

“(A) IN GENERAL.—The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

“(i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by

“(ii) the number of full-time equivalent employees of the employer determined under paragraph (2) for the taxable year.

Such amount shall be rounded to the next lowest multiple of \$1,000 if not otherwise such a multiple.

“(B) DOLLAR AMOUNT.—For purposes of paragraph (1)(B)—

“(i) 2011, 2012, AND 2013.—The dollar amount in effect under this paragraph for taxable years beginning in 2011, 2012, or 2013 is \$20,000.

“(ii) SUBSEQUENT YEARS.—In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to \$20,000, multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2012’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(4) CONTRIBUTION ARRANGEMENT.—An arrangement is described in this paragraph if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan offered to employees by the employer through an exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the qualified health plan.

“(5) SEASONAL WORKER HOURS AND WAGES NOT COUNTED.—For purposes of this subsection—

“(A) IN GENERAL.—The number of hours of service worked by, and wages paid to, a seasonal worker of an employer shall not be taken into account in determining the full-time equivalent employees and average annual wages of the employer unless the worker works for the employer on more than 120 days during the taxable year.

“(B) DEFINITION OF SEASONAL WORKER.—The term ‘seasonal worker’ means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

“(e) OTHER RULES AND DEFINITIONS.—For purposes of this section—

“(1) EMPLOYEE.—

“(A) CERTAIN EMPLOYEES EXCLUDED.—The term ‘employee’ shall not include—

“(i) an employee within the meaning of section 401(c)(1),

“(ii) any 2-percent shareholder (as defined in section 1372(b)) of an eligible small business which is an S corporation,

“(iii) any 5-percent owner (as defined in section 416(i)(1)(B)(i)) of an eligible small business, or

“(iv) any individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to, or is a dependent described in section 152(d)(2)(H) of, an individual described in clause (i), (ii), or (iii).

“(B) LEASED EMPLOYEES.—The term ‘employee’ shall include a leased employee within the meaning of section 414(n).

“(2) CREDIT PERIOD.—The term ‘credit period’ means, with respect to any eligible small employer, the 2-consecutive-taxable year period beginning with the 1st taxable year in which the employer (or any predecessor) offers 1 or more qualified health plans to its employees through an Exchange.

“(3) NONELECTIVE CONTRIBUTION.—The term ‘nonelective contribution’ means an employer contribution other than an employer contribution pursuant to a salary reduction arrangement.

“(4) WAGES.—The term ‘wages’ has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

“(5) AGGREGATION AND OTHER RULES MADE APPLICABLE.—

“(A) AGGREGATION RULES.—All employers treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer for purposes of this section.

“(B) OTHER RULES.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

“(f) CREDIT MADE AVAILABLE TO TAX-EXEMPT ELIGIBLE SMALL EMPLOYERS.—

“(1) IN GENERAL.—In the case of a tax-exempt eligible small employer, there shall be treated as a credit allowable under subpart C (and not allowable under this subpart) the lesser of—

“(A) the amount of the credit determined under this section with respect to such employer, or

“(B) the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

“(2) TAX-EXEMPT ELIGIBLE SMALL EMPLOYER.—For purposes of this section, the term ‘tax-exempt eligible small employer’ means an eligible small employer which is any organization described in section 501(c) which is exempt from taxation under section 501(a).

“(3) PAYROLL TAXES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘payroll taxes’ means—

Applicability.

“(i) amounts required to be withheld from the employees of the tax-exempt eligible small employer under section 3401(a),

“(ii) amounts required to be withheld from such employees under section 3101(b), and

“(iii) amounts of the taxes imposed on the tax-exempt eligible small employer under section 3111(b).

“(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

Applicability.

“(g) APPLICATION OF SECTION FOR CALENDAR YEARS 2011, 2012, AND 2013.—In the case of any taxable year beginning in 2011, 2012, or 2013, the following modifications to this section shall apply in determining the amount of the credit under subsection (a):

“(1) NO CREDIT PERIOD REQUIRED.—The credit shall be determined without regard to whether the taxable year is in a credit period and for purposes of applying this section to taxable years beginning after 2013, no credit period shall be treated as beginning with a taxable year beginning before 2014.

“(2) AMOUNT OF CREDIT.—The amount of the credit determined under subsection (b) shall be determined—

“(A) by substituting ‘35 percent (25 percent in the case of a tax-exempt eligible small employer)’ for ‘50 percent (35 percent in the case of a tax-exempt eligible small employer)’,

“(B) by reference to an eligible small employer’s non-elective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an employee, and

“(C) by substituting for the average premium determined under subsection (b)(2) the amount the Secretary of Health and Human Services determines is the average premium for the small group market in the State in which the employer is offering health insurance coverage (or for such area within the State as is specified by the Secretary).

Determination.

“(3) CONTRIBUTION ARRANGEMENT.—An arrangement shall not fail to meet the requirements of subsection (d)(4) solely because it provides for the offering of insurance outside of an Exchange.

“(h) INSURANCE DEFINITIONS.—Any term used in this section which is also used in the Public Health Service Act or subtitle A of title I of the Patient Protection and Affordable Care Act shall have the meaning given such term by such Act or subtitle.

“(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and the avoidance of the limitations under subsection (c) through the use of multiple entities.”

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking “plus” at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting “, plus”, and by inserting after paragraph (35) the following:

26 USC 38.

“(36) the small employer health insurance credit determined under section 45R.”.

26 USC 38. (c) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—Section 38(c)(4)(B) of the Internal Revenue Code of 1986 (defining specified credits) is amended by redesignating clauses (vi), (vii), and (viii) as clauses (vii), (viii), and (ix), respectively, and by inserting after clause (v) the following new clause:

“(vi) the credit determined under section 45R,”.

(d) DISALLOWANCE OF DEDUCTION FOR CERTAIN EXPENSES FOR WHICH CREDIT ALLOWED.—

(1) IN GENERAL.—Section 280C of the Internal Revenue Code of 1986 (relating to disallowance of deduction for certain expenses for which credit allowed), as amended by section 1401(b), is amended by adding at the end the following new subsection:

“(h) CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES OF SMALL EMPLOYERS.—No deduction shall be allowed for that portion of the premiums for qualified health plans (as defined in section 1301(a) of the Patient Protection and Affordable Care Act), or for health insurance coverage in the case of taxable years beginning in 2011, 2012, or 2013, paid by an employer which is equal to the amount of the credit determined under section 45R(a) with respect to the premiums.”.

(2) DEDUCTION FOR EXPIRING CREDITS.—Section 196(c) of such Code is amended by striking “and” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “, and”, and by adding at the end the following new paragraph:

“(14) the small employer health insurance credit determined under section 45R(a).”.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following: “Sec. 45R. Employee health insurance expenses of small employers.”.

Applicability.
26 USC 38 note.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2010.

(2) MINIMUM TAX.—The amendments made by subsection (c) shall apply to credits determined under section 45R of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2010, and to carrybacks of such credits.

Subtitle F—Shared Responsibility for Health Care

PART I—INDIVIDUAL RESPONSIBILITY

42 USC 18091.

SEC. 1501. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.

(a) FINDINGS.—Congress makes the following findings:

(1) IN GENERAL.—The individual responsibility requirement provided for in this section (in this subsection referred to as the “requirement”) is commercial and economic in nature, and substantially affects interstate commerce, as a result of the effects described in paragraph (2).

(2) EFFECTS ON THE NATIONAL ECONOMY AND INTERSTATE COMMERCE.—The effects described in this paragraph are the following:

(A) The requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased.

(B) Health insurance and health care services are a significant part of the national economy. National health spending is projected to increase from \$2,500,000,000,000, or 17.6 percent of the economy, in 2009 to \$4,700,000,000,000 in 2019. Private health insurance spending is projected to be \$854,000,000,000 in 2009, and pays for medical supplies, drugs, and equipment that are shipped in interstate commerce. Since most health insurance is sold by national or regional health insurance companies, health insurance is sold in interstate commerce and claims payments flow through interstate commerce.

(C) The requirement, together with the other provisions of this Act, will add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services. According to the Congressional Budget Office, the requirement will increase the number and share of Americans who are insured.

(D) The requirement achieves near-universal coverage by building upon and strengthening the private employer-based health insurance system, which covers 176,000,000 Americans nationwide. In Massachusetts, a similar requirement has strengthened private employer-based coverage: despite the economic downturn, the number of workers offered employer-based coverage has actually increased.

(E) Half of all personal bankruptcies are caused in part by medical expenses. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will improve financial security for families.

(F) Under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), the Public Health Service Act (42 U.S.C. 201 et seq.), and this Act, the Federal Government has a significant role in regulating health insurance which is in interstate commerce.

(G) Under sections 2704 and 2705 of the Public Health Service Act (as added by section 1201 of this Act), if there were no requirement, many individuals would wait to purchase health insurance until they needed care. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums. The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.

(H) Administrative costs for private health insurance, which were \$90,000,000,000 in 2006, are 26 to 30 percent of premiums in the current individual and small group

markets. By significantly increasing health insurance coverage and the size of purchasing pools, which will increase economies of scale, the requirement, together with the other provisions of this Act, will significantly reduce administrative costs and lower health insurance premiums. The requirement is essential to creating effective health insurance markets that do not require underwriting and eliminate its associated administrative costs.

(3) SUPREME COURT RULING.—In *United States v. South-Eastern Underwriters Association* (322 U.S. 533 (1944)), the Supreme Court of the United States ruled that insurance is interstate commerce subject to Federal regulation.

(b) IN GENERAL.—Subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

“CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE

“Sec. 5000A. Requirement to maintain minimum essential coverage.

26 USC 5000A.

“SEC. 5000A. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.

“(a) REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.—An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

Penalty.

“(b) SHARED RESPONSIBILITY PAYMENT.—

“(1) IN GENERAL.—If an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013, then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c).

“(2) INCLUSION WITH RETURN.—Any penalty imposed by this section with respect to any month shall be included with a taxpayer’s return under chapter 1 for the taxable year which includes such month.

“(3) PAYMENT OF PENALTY.—If an individual with respect to whom a penalty is imposed by this section for any month—

“(A) is a dependent (as defined in section 152) of another taxpayer for the other taxpayer’s taxable year including such month, such other taxpayer shall be liable for such penalty, or

“(B) files a joint return for the taxable year including such month, such individual and the spouse of such individual shall be jointly liable for such penalty.

“(c) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—The penalty determined under this subsection for any month with respect to any individual is an amount equal to $\frac{1}{12}$ of the applicable dollar amount for the calendar year.

“(2) DOLLAR LIMITATION.—The amount of the penalty imposed by this section on any taxpayer for any taxable year with respect to all individuals for whom the taxpayer is liable under subsection (b)(3) shall not exceed an amount equal to 300 percent the applicable dollar amount (determined without

regard to paragraph (3)(C)) for the calendar year with or within which the taxable year ends.

“(3) APPLICABLE DOLLAR AMOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the applicable dollar amount is \$750.

“(B) PHASE IN.—The applicable dollar amount is \$95 for 2014 and \$350 for 2015.

“(C) SPECIAL RULE FOR INDIVIDUALS UNDER AGE 18.—If an applicable individual has not attained the age of 18 as of the beginning of a month, the applicable dollar amount with respect to such individual for the month shall be equal to one-half of the applicable dollar amount for the calendar year in which the month occurs.

“(D) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2016, the applicable dollar amount shall be equal to \$750, increased by an amount equal to—

“(i) \$750, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2015’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

“(4) TERMS RELATING TO INCOME AND FAMILIES.—For purposes of this section—

“(A) FAMILY SIZE.—The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

“(B) HOUSEHOLD INCOME.—The term ‘household income’ means, with respect to any taxpayer for any taxable year, an amount equal to the sum of—

“(i) the modified gross income of the taxpayer, plus

“(ii) the aggregate modified gross incomes of all other individuals who—

“(I) were taken into account in determining the taxpayer’s family size under paragraph (1), and

“(II) were required to file a return of tax imposed by section 1 for the taxable year.

“(C) MODIFIED GROSS INCOME.—The term ‘modified gross income’ means gross income—

“(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

“(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

“(iii) determined without regard to sections 911, 931, and 933.

“(D) POVERTY LINE.—

“(i) IN GENERAL.—The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

“(ii) POVERTY LINE USED.—In the case of any taxable year ending with or within a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of such calendar year.

“(d) APPLICABLE INDIVIDUAL.—For purposes of this section—

“(1) IN GENERAL.—The term ‘applicable individual’ means, with respect to any month, an individual other than an individual described in paragraph (2), (3), or (4).

“(2) RELIGIOUS EXEMPTIONS.—

“(A) RELIGIOUS CONSCIENCE EXEMPTION.—Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section.

“(B) HEALTH CARE SHARING MINISTRY.—

“(i) IN GENERAL.—Such term shall not include any individual for any month if such individual is a member of a health care sharing ministry for the month.

“(ii) HEALTH CARE SHARING MINISTRY.—The term ‘health care sharing ministry’ means an organization—

“(I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),

“(II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,

“(III) members of which retain membership even after they develop a medical condition,

“(IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and

“(V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

“(3) INDIVIDUALS NOT LAWFULLY PRESENT.—Such term shall not include an individual for any month if for the month the individual is not a citizen or national of the United States or an alien lawfully present in the United States.

“(4) INCARCERATED INDIVIDUALS.—Such term shall not include an individual for any month if for the month the individual is incarcerated, other than incarceration pending the disposition of charges.

“(e) EXEMPTIONS.—No penalty shall be imposed under subsection (a) with respect to—

“(1) INDIVIDUALS WHO CANNOT AFFORD COVERAGE.—

“(A) IN GENERAL.—Any applicable individual for any month if the applicable individual’s required contribution (determined on an annual basis) for coverage for the month exceeds 8 percent of such individual’s household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act. For purposes of applying this subparagraph, the taxpayer’s household income shall be increased by any exclusion from gross income for any portion of the required contribution made through a salary reduction arrangement.

“(B) REQUIRED CONTRIBUTION.—For purposes of this paragraph, the term ‘required contribution’ means—

Definition.

“(i) in the case of an individual eligible to purchase minimum essential coverage consisting of coverage through an eligible-employer-sponsored plan, the portion of the annual premium which would be paid by the individual (without regard to whether paid through salary reduction or otherwise) for self-only coverage, or

“(ii) in the case of an individual eligible only to purchase minimum essential coverage described in subsection (f)(1)(C), the annual premium for the lowest cost bronze plan available in the individual market through the Exchange in the State in the rating area in which the individual resides (without regard to whether the individual purchased a qualified health plan through the Exchange), reduced by the amount of the credit allowable under section 36B for the taxable year (determined as if the individual was covered by a qualified health plan offered through the Exchange for the entire taxable year).

“(C) SPECIAL RULES FOR INDIVIDUALS RELATED TO EMPLOYEES.—For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination shall be made by reference to the affordability of the coverage to the employee.

“(D) INDEXING.—In the case of plan years beginning in any calendar year after 2014, subparagraph (A) shall be applied by substituting for ‘8 percent’ the percentage the Secretary of Health and Human Services determines reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

Applicability.
Determination.

“(2) TAXPAYERS WITH INCOME UNDER 100 PERCENT OF POVERTY LINE.—Any applicable individual for any month during a calendar year if the individual’s household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act is less than 100 percent of the poverty line for the size of the family involved (determined in the same manner as under subsection (b)(4)).

“(3) MEMBERS OF INDIAN TRIBES.—Any applicable individual for any month during which the individual is a member of an Indian tribe (as defined in section 45A(c)(6)).

“(4) MONTHS DURING SHORT COVERAGE GAPS.—

“(A) IN GENERAL.—Any month the last day of which occurred during a period in which the applicable individual

was not covered by minimum essential coverage for a continuous period of less than 3 months.

Applicability.

“(B) SPECIAL RULES.—For purposes of applying this paragraph—

“(i) the length of a continuous period shall be determined without regard to the calendar years in which months in such period occur,

“(ii) if a continuous period is greater than the period allowed under subparagraph (A), no exception shall be provided under this paragraph for any month in the period, and

“(iii) if there is more than 1 continuous period described in subparagraph (A) covering months in a calendar year, the exception provided by this paragraph shall only apply to months in the first of such periods.

The Secretary shall prescribe rules for the collection of the penalty imposed by this section in cases where continuous periods include months in more than 1 taxable year.

“(5) HARDSHIPS.—Any applicable individual who for any month is determined by the Secretary of Health and Human Services under section 1311(d)(4)(H) to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.

“(f) MINIMUM ESSENTIAL COVERAGE.—For purposes of this section—

Definition.

“(1) IN GENERAL.—The term ‘minimum essential coverage’ means any of the following:

“(A) GOVERNMENT SPONSORED PROGRAMS.—Coverage under—

“(i) the Medicare program under part A of title XVIII of the Social Security Act,

“(ii) the Medicaid program under title XIX of the Social Security Act,

“(iii) the CHIP program under title XXI of the Social Security Act,

“(iv) the TRICARE for Life program,

“(v) the veteran’s health care program under chapter 17 of title 38, United States Code, or

“(vi) a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers).

“(B) EMPLOYER-SPONSORED PLAN.—Coverage under an eligible employer-sponsored plan.

“(C) PLANS IN THE INDIVIDUAL MARKET.—Coverage under a health plan offered in the individual market within a State.

“(D) GRANDFATHERED HEALTH PLAN.—Coverage under a grandfathered health plan.

“(E) OTHER COVERAGE.—Such other health benefits coverage, such as a State health benefits risk pool, as the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of this subsection.

“(2) ELIGIBLE EMPLOYER-SPONSORED PLAN.—The term ‘eligible employer-sponsored plan’ means, with respect to any

employee, a group health plan or group health insurance coverage offered by an employer to the employee which is—

“(A) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or

“(B) any other plan or coverage offered in the small or large group market within a State.

Such term shall include a grandfathered health plan described in paragraph (1)(D) offered in a group market.

“(3) EXCEPTED BENEFITS NOT TREATED AS MINIMUM ESSENTIAL COVERAGE.—The term ‘minimum essential coverage’ shall not include health insurance coverage which consists of coverage of excepted benefits—

“(A) described in paragraph (1) of subsection (c) of section 2791 of the Public Health Service Act; or

“(B) described in paragraph (2), (3), or (4) of such subsection if the benefits are provided under a separate policy, certificate, or contract of insurance.

“(4) INDIVIDUALS RESIDING OUTSIDE UNITED STATES OR RESIDENTS OF TERRITORIES.—Any applicable individual shall be treated as having minimum essential coverage for any month—

“(A) if such month occurs during any period described in subparagraph (A) or (B) of section 911(d)(1) which is applicable to the individual, or

“(B) if such individual is a bona fide resident of any possession of the United States (as determined under section 937(a)) for such month.

“(5) INSURANCE-RELATED TERMS.—Any term used in this section which is also used in title I of the Patient Protection and Affordable Care Act shall have the same meaning as when used in such title.

“(g) ADMINISTRATION AND PROCEDURE.—

“(1) IN GENERAL.—The penalty provided by this section shall be paid upon notice and demand by the Secretary, and except as provided in paragraph (2), shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

“(2) SPECIAL RULES.—Notwithstanding any other provision of law—

“(A) WAIVER OF CRIMINAL PENALTIES.—In the case of any failure by a taxpayer to timely pay any penalty imposed by this section, such taxpayer shall not be subject to any criminal prosecution or penalty with respect to such failure.

“(B) LIMITATIONS ON LIENS AND LEVIES.—The Secretary shall not—

“(i) file notice of lien with respect to any property of a taxpayer by reason of any failure to pay the penalty imposed by this section, or

“(ii) levy on any such property with respect to such failure.”.

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle D of the Internal Revenue Code of 1986 is amended by inserting after the item relating to chapter 47 the following new item:

“CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2013.

26 USC 5000A
note.

SEC. 1502. REPORTING OF HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by inserting after subpart C the following new subpart:

**“Subpart D—Information Regarding Health
Insurance Coverage**

“Sec. 6055. Reporting of health insurance coverage.

26 USC 6055.

“SEC. 6055. REPORTING OF HEALTH INSURANCE COVERAGE.

“(a) IN GENERAL.—Every person who provides minimum essential coverage to an individual during a calendar year shall, at such time as the Secretary may prescribe, make a return described in subsection (b).

“(b) FORM AND MANNER OF RETURN.—

“(1) IN GENERAL.—A return is described in this subsection if such return—

“(A) is in such form as the Secretary may prescribe, and

“(B) contains—

“(i) the name, address and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy,

“(ii) the dates during which such individual was covered under minimum essential coverage during the calendar year,

“(iii) in the case of minimum essential coverage which consists of health insurance coverage, information concerning—

“(I) whether or not the coverage is a qualified health plan offered through an Exchange established under section 1311 of the Patient Protection and Affordable Care Act, and

“(II) in the case of a qualified health plan, the amount (if any) of any advance payment under section 1412 of the Patient Protection and Affordable Care Act of any cost-sharing reduction under section 1402 of such Act or of any premium tax credit under section 36B with respect to such coverage, and

“(iv) such other information as the Secretary may require.

“(2) INFORMATION RELATING TO EMPLOYER-PROVIDED COVERAGE.—If minimum essential coverage provided to an individual under subsection (a) consists of health insurance coverage of a health insurance issuer provided through a group health plan of an employer, a return described in this subsection shall include—

“(A) the name, address, and employer identification number of the employer maintaining the plan,

“(B) the portion of the premium (if any) required to be paid by the employer, and

“(C) if the health insurance coverage is a qualified health plan in the small group market offered through an Exchange, such other information as the Secretary may require for administration of the credit under section 45R

(relating to credit for employee health insurance expenses of small employers).

“(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REPORTED.—

“(1) IN GENERAL.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

“(A) the name and address of the person required to make such return and the phone number of the information contact for such person, and

“(B) the information required to be shown on the return with respect to such individual.

“(2) TIME FOR FURNISHING STATEMENTS.—The written statement required under paragraph (1) shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

“(d) COVERAGE PROVIDED BY GOVERNMENTAL UNITS.—In the case of coverage provided by any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide such coverage (or the person appropriately designated for purposes of this section) shall make the returns and statements required by this section.

“(e) MINIMUM ESSENTIAL COVERAGE.—For purposes of this section, the term ‘minimum essential coverage’ has the meaning given such term by section 5000A(f).”.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) of the Internal Revenue Code of 1986 (relating to definitions) is amended by striking “or” at the end of clause (xxii), by striking “and” at the end of clause (xxiii) and inserting “or”, and by inserting after clause (xxiii) the following new clause:

26 USC 6724.

“(xxiv) section 6055 (relating to returns relating to information regarding health insurance coverage), and”.

(2) Paragraph (2) of section 6724(d) of such Code is amended by striking “or” at the end of subparagraph (EE), by striking the period at the end of subparagraph (FF) and inserting “, or” and by inserting after subparagraph (FF) the following new subparagraph:

“(GG) section 6055(c) (relating to statements relating to information regarding health insurance coverage).”.

(c) NOTIFICATION OF NONENROLLMENT.—Not later than June 30 of each year, the Secretary of the Treasury, acting through the Internal Revenue Service and in consultation with the Secretary of Health and Human Services, shall send a notification to each individual who files an individual income tax return and who is not enrolled in minimum essential coverage (as defined in section 5000A of the Internal Revenue Code of 1986). Such notification shall contain information on the services available through the Exchange operating in the State in which such individual resides.

Deadline.

42 USC 18092.

(d) CONFORMING AMENDMENT.—The table of subparts for part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to subpart C the following new item:

“SUBPART D—INFORMATION REGARDING HEALTH INSURANCE COVERAGE”.

26 USC 6055
note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to calendar years beginning after 2013.

PART II—EMPLOYER RESPONSIBILITIES

SEC. 1511. AUTOMATIC ENROLLMENT FOR EMPLOYEES OF LARGE EMPLOYERS.

The Fair Labor Standards Act of 1938 is amended by inserting after section 18 (29 U.S.C. 218) the following:

29 USC 218A.

“SEC. 18A. AUTOMATIC ENROLLMENT FOR EMPLOYEES OF LARGE EMPLOYERS.

“In accordance with regulations promulgated by the Secretary, an employer to which this Act applies that has more than 200 full-time employees and that offers employees enrollment in 1 or more health benefits plans shall automatically enroll new full-time employees in one of the plans offered (subject to any waiting period authorized by law) and to continue the enrollment of current employees in a health benefits plan offered through the employer. Any automatic enrollment program shall include adequate notice and the opportunity for an employee to opt out of any coverage the individual or employee were automatically enrolled in. Nothing in this section shall be construed to supersede any State law which establishes, implements, or continues in effect any standard or requirement relating to employers in connection with payroll except to the extent that such standard or requirement prevents an employer from instituting the automatic enrollment program under this section.”.

SEC. 1512. EMPLOYER REQUIREMENT TO INFORM EMPLOYEES OF COVERAGE OPTIONS.

The Fair Labor Standards Act of 1938 is amended by inserting after section 18A (as added by section 1513) the following:

29 USC 218B.

“SEC. 18B. NOTICE TO EMPLOYEES.

Deadline.

“(a) **IN GENERAL.**—In accordance with regulations promulgated by the Secretary, an employer to which this Act applies, shall provide to each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), written notice—

“(1) informing the employee of the existence of an Exchange, including a description of the services provided by such Exchange, and the manner in which the employee may contact the Exchange to request assistance;

“(2) if the employer plan’s share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986 and a cost sharing reduction under section 1402 of the Patient Protection and Affordable Care Act if the employee purchases a qualified health plan through the Exchange; and

“(3) if the employee purchases a qualified health plan through the Exchange, the employee will lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

“(b) EFFECTIVE DATE.—Subsection (a) shall take effect with respect to employers in a State beginning on March 1, 2013.”.

SEC. 1513. SHARED RESPONSIBILITY FOR EMPLOYERS.

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE. 26 USC 4980H.

“(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—
If—

“(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

“(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee, then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

“(b) LARGE EMPLOYERS WITH WAITING PERIODS EXCEEDING 30 DAYS.—

“(1) IN GENERAL.—In the case of any applicable large employer which requires an extended waiting period to enroll in any minimum essential coverage under an employer-sponsored plan (as defined in section 5000A(f)(2)), there is hereby imposed on the employer an assessable payment, in the amount specified in paragraph (2), for each full-time employee of the employer to whom the extended waiting period applies.

“(2) AMOUNT.—For purposes of paragraph (1), the amount specified in this paragraph for a full-time employee is—

“(A) in the case of an extended waiting period which exceeds 30 days but does not exceed 60 days, \$400, and

“(B) in the case of an extended waiting period which exceeds 60 days, \$600.

“(3) EXTENDED WAITING PERIOD.—The term ‘extended waiting period’ means any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act) which exceeds 30 days.

“(c) LARGE EMPLOYERS OFFERING COVERAGE WITH EMPLOYEES WHO QUALIFY FOR PREMIUM TAX CREDITS OR COST-SHARING REDUCTIONS.—

“(1) IN GENERAL.—If—

“(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

“(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health

plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee, then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and 400 percent of the applicable payment amount.

“(2) OVERALL LIMITATION.—The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) APPLICABLE PAYMENT AMOUNT.—The term ‘applicable payment amount’ means, with respect to any month, $\frac{1}{12}$ of \$750.

“(2) APPLICABLE LARGE EMPLOYER.—

“(A) IN GENERAL.—The term ‘applicable large employer’ means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

“(B) EXEMPTION FOR CERTAIN EMPLOYERS.—

“(i) IN GENERAL.—An employer shall not be considered to employ more than 50 full-time employees if—

“(I) the employer’s workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

“(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

“(ii) DEFINITION OF SEASONAL WORKERS.—The term ‘seasonal worker’ means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

“(C) RULES FOR DETERMINING EMPLOYER SIZE.—For purposes of this paragraph—

“(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

“(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(iii) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

“(3) APPLICABLE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION.—The term ‘applicable premium tax credit and cost-sharing reduction’ means—

“(A) any premium tax credit allowed under section 36B,

“(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

“(C) any advance payment of such credit or reduction under section 1412 of such Act.

“(4) FULL-TIME EMPLOYEE.—

“(A) IN GENERAL.—The term ‘full-time employee’ means an employee who is employed on average at least 30 hours of service per week.

“(B) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

Regulations.
Guidance.

“(5) INFLATION ADJUSTMENT.—

“(A) IN GENERAL.—In the case of any calendar year after 2014, each of the dollar amounts in subsection (b)(2) and (d)(1) shall be increased by an amount equal to the product of—

“(i) such dollar amount, and

“(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

“(B) ROUNDING.—If the amount of any increase under subparagraph (A) is not a multiple of \$10, such increase shall be rounded to the next lowest multiple of \$10.

“(6) OTHER DEFINITIONS.—Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

“(7) TAX NONDEDUCTIBLE.—For denial of deduction for the tax imposed by this section, see section 275(a)(6).

“(e) ADMINISTRATION AND PROCEDURE.—

“(1) IN GENERAL.—Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

“(2) TIME FOR PAYMENT.—The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

“(3) COORDINATION WITH CREDITS, ETC.—The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.”.

Regulations.
Guidance.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

“Sec. 4980H. Shared responsibility for employers regarding health coverage.”.

(c) STUDY AND REPORT OF EFFECT OF TAX ON WORKERS’ WAGES.—

Determination.

(1) IN GENERAL.—The Secretary of Labor shall conduct a study to determine whether employees’ wages are reduced by reason of the application of the assessable payments under section 4980H of the Internal Revenue Code of 1986 (as added by the amendments made by this section). The Secretary shall make such determination on the basis of the National Compensation Survey published by the Bureau of Labor Statistics.

(2) REPORT.—The Secretary shall report the results of the study under paragraph (1) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

26 USC 4980H
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2013.

SEC. 1514. REPORTING OF EMPLOYER HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Subpart D of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986, as added by section 1502, is amended by inserting after section 6055 the following new section:

26 USC 6056.

“SEC. 6056. LARGE EMPLOYERS REQUIRED TO REPORT ON HEALTH INSURANCE COVERAGE.

“(a) IN GENERAL.—Every applicable large employer required to meet the requirements of section 4980H with respect to its full-time employees during a calendar year shall, at such time as the Secretary may prescribe, make a return described in subsection (b).

“(b) FORM AND MANNER OF RETURN.—A return is described in this subsection if such return—

“(1) is in such form as the Secretary may prescribe, and

“(2) contains—

“(A) the name, date, and employer identification number of the employer,

“(B) a certification as to whether the employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)),

Certification.

“(C) if the employer certifies that the employer did offer to its full-time employees (and their dependents) the opportunity to so enroll—

“(i) the length of any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act) with respect to such coverage,

“(ii) the months during the calendar year for which coverage under the plan was available,

“(iii) the monthly premium for the lowest cost option in each of the enrollment categories under the plan, and

“(iv) the applicable large employer’s share of the total allowed costs of benefits provided under the plan,

“(D) the number of full-time employees for each month during the calendar year,

“(E) the name, address, and TIN of each full-time employee during the calendar year and the months (if any) during which such employee (and any dependents) were covered under any such health benefits plans, and

“(F) such other information as the Secretary may require.

“(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REPORTED.—

“(1) IN GENERAL.—Every person required to make a return under subsection (a) shall furnish to each full-time employee whose name is required to be set forth in such return under subsection (b)(2)(E) a written statement showing—

“(A) the name and address of the person required to make such return and the phone number of the information contact for such person, and

“(B) the information required to be shown on the return with respect to such individual.

“(2) TIME FOR FURNISHING STATEMENTS.—The written statement required under paragraph (1) shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

“(d) COORDINATION WITH OTHER REQUIREMENTS.—To the maximum extent feasible, the Secretary may provide that—

“(1) any return or statement required to be provided under this section may be provided as part of any return or statement required under section 6051 or 6055, and

“(2) in the case of an applicable large employer offering health insurance coverage of a health insurance issuer, the employer may enter into an agreement with the issuer to include information required under this section with the return and statement required to be provided by the issuer under section 6055.

“(e) COVERAGE PROVIDED BY GOVERNMENTAL UNITS.—In the case of any applicable large employer which is a governmental unit or any agency or instrumentality thereof, the person appropriately designated for purposes of this section shall make the returns and statements required by this section.

“(f) DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 4980H shall have the meaning given such term by section 4980H.”.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) of the Internal Revenue Code of 1986 (relating to definitions), as amended by section 1502, is amended by striking “or” at the end of clause (xxiii), by striking “and” at the end of clause (xxiv) and inserting “or”, and by inserting after clause (xxiv) the following new clause:

26 USC 6724.

“(xxv) section 6056 (relating to returns relating to large employers required to report on health insurance coverage), and”.

(2) Paragraph (2) of section 6724(d) of such Code, as so amended, is amended by striking “or” at the end of subparagraph (FF), by striking the period at the end of subparagraph

(GG) and inserting “, or” and by inserting after subparagraph (GG) the following new subparagraph:

“(HH) section 6056(c) (relating to statements relating to large employers required to report on health insurance coverage).”.

(c) CONFORMING AMENDMENT.—The table of sections for subpart D of part III of subchapter A of chapter 61 of such Code, as added by section 1502, is amended by adding at the end the following new item:

“Sec. 6056. Large employers required to report on health insurance coverage.”.

26 USC 6056
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after December 31, 2013.

SEC. 1515. OFFERING OF EXCHANGE-PARTICIPATING QUALIFIED HEALTH PLANS THROUGH CAFETERIA PLANS.

26 USC 125.

(a) IN GENERAL.—Subsection (f) of section 125 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(3) CERTAIN EXCHANGE-PARTICIPATING QUALIFIED HEALTH PLANS NOT QUALIFIED.—

“(A) IN GENERAL.—The term ‘qualified benefit’ shall not include any qualified health plan (as defined in section 1301(a) of the Patient Protection and Affordable Care Act) offered through an Exchange established under section 1311 of such Act.

“(B) EXCEPTION FOR EXCHANGE-ELIGIBLE EMPLOYERS.—Subparagraph (A) shall not apply with respect to any employee if such employee’s employer is a qualified employer (as defined in section 1312(f)(2) of the Patient Protection and Affordable Care Act) offering the employee the opportunity to enroll through such an Exchange in a qualified health plan in a group market.”.

(b) CONFORMING AMENDMENTS.—Subsection (f) of section 125 of such Code is amended—

(1) by striking “For purposes of this section, the term” and inserting “For purposes of this section—

“(1) IN GENERAL.—The term”, and

(2) by striking “Such term shall not include” and inserting the following:

“(2) LONG-TERM CARE INSURANCE NOT QUALIFIED.—The term ‘qualified benefit’ shall not include”.

26 USC 125 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

Subtitle G—Miscellaneous Provisions

Applicability.
42 USC 18111.

SEC. 1551. DEFINITIONS.

Unless specifically provided for otherwise, the definitions contained in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91) shall apply with respect to this title.

42 USC 18112.

SEC. 1552. TRANSPARENCY IN GOVERNMENT.

Deadline.
Web posting.

Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish on the Internet website of the Department of Health and Human Services, a list of all of the authorities provided to the Secretary under this Act (and the amendments made by this Act).

SEC. 1553. PROHIBITION AGAINST DISCRIMINATION ON ASSISTED SUICIDE. 42 USC 18113.

(a) **IN GENERAL.**—The Federal Government, and any State or local government or health care provider that receives Federal financial assistance under this Act (or under an amendment made by this Act) or any health plan created under this Act (or under an amendment made by this Act), may not subject an individual or institutional health care entity to discrimination on the basis that the entity does not provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(b) **DEFINITION.**—In this section, the term “health care entity” includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

(c) **CONSTRUCTION AND TREATMENT OF CERTAIN SERVICES.**—Nothing in subsection (a) shall be construed to apply to, or to affect, any limitation relating to—

(1) the withholding or withdrawing of medical treatment or medical care;

(2) the withholding or withdrawing of nutrition or hydration;

(3) abortion; or

Abortion.

(4) the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(d) **ADMINISTRATION.**—The Office for Civil Rights of the Department of Health and Human Services is designated to receive complaints of discrimination based on this section.

SEC. 1554. ACCESS TO THERAPIES.

42 USC 18114.

Notwithstanding any other provision of this Act, the Secretary of Health and Human Services shall not promulgate any regulation that—

(1) creates any unreasonable barriers to the ability of individuals to obtain appropriate medical care;

(2) impedes timely access to health care services;

(3) interferes with communications regarding a full range of treatment options between the patient and the provider;

(4) restricts the ability of health care providers to provide full disclosure of all relevant information to patients making health care decisions;

(5) violates the principles of informed consent and the ethical standards of health care professionals; or

(6) limits the availability of health care treatment for the full duration of a patient’s medical needs.

42 USC 18115. **SEC. 1555. FREEDOM NOT TO PARTICIPATE IN FEDERAL HEALTH INSURANCE PROGRAMS.**

No individual, company, business, nonprofit entity, or health insurance issuer offering group or individual health insurance coverage shall be required to participate in any Federal health insurance program created under this Act (or any amendments made by this Act), or in any Federal health insurance program expanded by this Act (or any such amendments), and there shall be no penalty or fine imposed upon any such issuer for choosing not to participate in such programs.

SEC. 1556. EQUITY FOR CERTAIN ELIGIBLE SURVIVORS.

(a) **REBUTTABLE PRESUMPTION.**—Section 411(c)(4) of the Black Lung Benefits Act (30 U.S.C. 921(c)(4)) is amended by striking the last sentence.

(b) **CONTINUATION OF BENEFITS.**—Section 422(l) of the Black Lung Benefits Act (30 U.S.C. 932(l)) is amended by striking “, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981”.

Applicability.
30 USC 921 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to claims filed under part B or part C of the Black Lung Benefits Act (30 U.S.C. 921 et seq., 931 et seq.) after January 1, 2005, that are pending on or after the date of enactment of this Act.

42 USC 18116. **SEC. 1557. NONDISCRIMINATION.**

(a) **IN GENERAL.**—Except as otherwise provided for in this title (or an amendment made by this title), an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 504, or such Age Discrimination Act shall apply for purposes of violations of this subsection.

Applicability.

(b) **CONTINUED APPLICATION OF LAWS.**—Nothing in this title (or an amendment made by this title) shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Age Discrimination Act of 1975 (42 U.S.C. 611 et seq.), or to supersede State laws that provide additional protections against discrimination on any basis described in subsection (a).

(c) **REGULATIONS.**—The Secretary may promulgate regulations to implement this section.

SEC. 1558. PROTECTIONS FOR EMPLOYEES.

The Fair Labor Standards Act of 1938 is amended by inserting after section 18B (as added by section 1512) the following:

“SEC. 18C. PROTECTIONS FOR EMPLOYEES.

29 USC 218C.

“(a) PROHIBITION.—No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

“(1) received a credit under section 36B of the Internal Revenue Code of 1986 or a subsidy under section 1402 of this Act;

“(2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);

“(3) testified or is about to testify in a proceeding concerning such violation;

“(4) assisted or participated, or is about to assist or participate, in such a proceeding; or

“(5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

“(b) COMPLAINT PROCEDURE.—

“(1) IN GENERAL.—An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

“(2) NO LIMITATION ON RIGHTS.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.”.

SEC. 1559. OVERSIGHT.

42 USC 18117.

The Inspector General of the Department of Health and Human Services shall have oversight authority with respect to the administration and implementation of this title as it relates to such Department.

SEC. 1560. RULES OF CONSTRUCTION.

42 USC 18118.

(a) NO EFFECT ON ANTITRUST LAWS.—Nothing in this title (or an amendment made by this title) shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For the purposes of this section, the term “antitrust laws” has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(b) **RULE OF CONSTRUCTION REGARDING HAWAII'S PREPAID HEALTH CARE ACT.**—Nothing in this title (or an amendment made by this title) shall be construed to modify or limit the application of the exemption for Hawaii's Prepaid Health Care Act (Haw. Rev. Stat. §§ 393–1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)).

(c) **STUDENT HEALTH INSURANCE PLANS.**—Nothing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State or local law.

(d) **NO EFFECT ON EXISTING REQUIREMENTS.**—Nothing in this title (or an amendment made by this title, unless specified by direct statutory reference) shall be construed to modify any existing Federal requirement concerning the State agency responsible for determining eligibility for programs identified in section 1413.

SEC. 1561. HEALTH INFORMATION TECHNOLOGY ENROLLMENT STANDARDS AND PROTOCOLS.

Title XXX of the Public Health Service Act (42 U.S.C. 300jj et seq.) is amended by adding at the end the following:

“Subtitle C—Other Provisions

42 USC 300jj–51. **“SEC. 3021. HEALTH INFORMATION TECHNOLOGY ENROLLMENT STANDARDS AND PROTOCOLS.**

Deadline.
Determination.

“(a) **IN GENERAL.**—

“(1) **STANDARDS AND PROTOCOLS.**—Not later than 180 days after the date of enactment of this title, the Secretary, in consultation with the HIT Policy Committee and the HIT Standards Committee, shall develop interoperable and secure standards and protocols that facilitate enrollment of individuals in Federal and State health and human services programs, as determined by the Secretary.

“(2) **METHODS.**—The Secretary shall facilitate enrollment in such programs through methods determined appropriate by the Secretary, which shall include providing individuals and third parties authorized by such individuals and their designees notification of eligibility and verification of eligibility required under such programs.

“(b) **CONTENT.**—The standards and protocols for electronic enrollment in the Federal and State programs described in subsection (a) shall allow for the following:

“(1) Electronic matching against existing Federal and State data, including vital records, employment history, enrollment systems, tax records, and other data determined appropriate by the Secretary to serve as evidence of eligibility and in lieu of paper-based documentation.

“(2) Simplification and submission of electronic documentation, digitization of documents, and systems verification of eligibility.

“(3) Reuse of stored eligibility information (including documentation) to assist with retention of eligible individuals.

“(4) Capability for individuals to apply, recertify and manage their eligibility information online, including at home, at points of service, and other community-based locations.

“(5) Ability to expand the enrollment system to integrate new programs, rules, and functionalities, to operate at increased volume, and to apply streamlined verification and eligibility processes to other Federal and State programs, as appropriate.

“(6) Notification of eligibility, recertification, and other needed communication regarding eligibility, which may include communication via email and cellular phones.

“(7) Other functionalities necessary to provide eligibles with streamlined enrollment process.

“(c) APPROVAL AND NOTIFICATION.—With respect to any standard or protocol developed under subsection (a) that has been approved by the HIT Policy Committee and the HIT Standards Committee, the Secretary—

“(1) shall notify States of such standards or protocols; and

“(2) may require, as a condition of receiving Federal funds for the health information technology investments, that States or other entities incorporate such standards and protocols into such investments.

“(d) GRANTS FOR IMPLEMENTATION OF APPROPRIATE ENROLLMENT HIT.—

“(1) IN GENERAL.—The Secretary shall award grant to eligible entities to develop new, and adapt existing, technology systems to implement the HIT enrollment standards and protocols developed under subsection (a) (referred to in this subsection as ‘appropriate HIT technology’).

“(2) ELIGIBLE ENTITIES.—To be eligible for a grant under this subsection, an entity shall—

“(A) be a State, political subdivision of a State, or a local governmental entity; and

“(B) submit to the Secretary an application at such time, in such manner, and containing—

“(i) a plan to adopt and implement appropriate enrollment technology that includes—

“(I) proposed reduction in maintenance costs of technology systems;

“(II) elimination or updating of legacy systems; and

“(III) demonstrated collaboration with other entities that may receive a grant under this section that are located in the same State, political subdivision, or locality;

“(ii) an assurance that the entity will share such appropriate enrollment technology in accordance with paragraph (4); and

“(iii) such other information as the Secretary may require.

“(3) SHARING.—

“(A) IN GENERAL.—The Secretary shall ensure that appropriate enrollment HIT adopted under grants under this subsection is made available to other qualified State, qualified political subdivisions of a State, or other appropriate qualified entities (as described in subparagraph (B)) at no cost.

“(B) QUALIFIED ENTITIES.—The Secretary shall determine what entities are qualified to receive enrollment HIT under subparagraph (A), taking into consideration the recommendations of the HIT Policy Committee and the HIT Standards Committee.”.

SEC. 1562. CONFORMING AMENDMENTS.

(a) **APPLICABILITY.**—Section 2735 of the Public Health Service Act (42 U.S.C. 300gg–21), as so redesignated by section 1001(4), is amended—

(1) by striking subsection (a);

(2) in subsection (b)—

(A) in paragraph (1), by striking “1 through 3” and inserting “1 and 2”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “subparagraph (D)” and inserting “subparagraph (D) or (E)”; and

(ii) by striking “1 through 3” and inserting “1 and 2”; and

(iii) by adding at the end the following:

“(E) **ELECTION NOT APPLICABLE.**—The election described in subparagraph (A) shall not be available with respect to the provisions of subpart 1.”;

(3) in subsection (c), by striking “1 through 3 shall not apply to any group” and inserting “1 and 2 shall not apply to any individual coverage or any group”; and

(4) in subsection (d)—

(A) in paragraph (1), by striking “1 through 3 shall not apply to any group” and inserting “1 and 2 shall not apply to any individual coverage or any group”; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking “1 through 3 shall not apply to any group” and inserting “1 and 2 shall not apply to any individual coverage or any group”; and

(ii) in subparagraph (C), by inserting “or, with respect to individual coverage, under any health insurance coverage maintained by the same health insurance issuer”; and

(C) in paragraph (3), by striking “any group” and inserting “any individual coverage or any group”.

(b) **DEFINITIONS.**—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

“(20) **QUALIFIED HEALTH PLAN.**—The term ‘qualified health plan’ has the meaning given such term in section 1301(a) of the Patient Protection and Affordable Care Act.

“(21) **EXCHANGE.**—The term ‘Exchange’ means an American Health Benefit Exchange established under section 1311 of the Patient Protection and Affordable Care Act.”.

(c) **TECHNICAL AND CONFORMING AMENDMENTS.**—Title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended—

(1) in section 2704 (42 U.S.C. 300gg), as so redesignated by section 1201(2)—

(A) in subsection (c)—

(i) in paragraph (2), by striking “group health plan” each place that such term appears and inserting “group or individual health plan”; and

(ii) in paragraph (3)—

(I) by striking “group health insurance” each place that such term appears and inserting “group or individual health insurance”; and

(II) in subparagraph (D), by striking “small or large” and inserting “individual or group”;

(B) in subsection (d), by striking “group health insurance” each place that such term appears and inserting “group or individual health insurance”; and

(C) in subsection (e)(1)(A), by striking “group health insurance” and inserting “group or individual health insurance”;

(2) by striking the second heading for subpart 2 of part A (relating to other requirements);

(3) in section 2725 (42 U.S.C. 300gg–4), as so redesignated by section 1001(2)—

42 USC
300gg–25.

(A) in subsection (a), by striking “health insurance issuer offering group health insurance coverage” and inserting “health insurance issuer offering group or individual health insurance coverage”;

(B) in subsection (b)—

(i) by striking “health insurance issuer offering group health insurance coverage in connection with a group health plan” in the matter preceding paragraph (1) and inserting “health insurance issuer offering group or individual health insurance coverage”; and

(ii) in paragraph (1), by striking “plan” and inserting “plan or coverage”;

(C) in subsection (c)—

(i) in paragraph (2), by striking “group health insurance coverage offered by a health insurance issuer” and inserting “health insurance issuer offering group or individual health insurance coverage”; and

(ii) in paragraph (3), by striking “issuer” and inserting “health insurance issuer”; and

(D) in subsection (e), by striking “health insurance issuer offering group health insurance coverage” and inserting “health insurance issuer offering group or individual health insurance coverage”;

(4) in section 2726 (42 U.S.C. 300gg–5), as so redesignated by section 1001(2)—

42 USC
300gg–26.

(A) in subsection (a), by striking “(or health insurance coverage offered in connection with such a plan)” each place that such term appears and inserting “or a health insurance issuer offering group or individual health insurance coverage”;

(B) in subsection (b), by striking “(or health insurance coverage offered in connection with such a plan)” each place that such term appears and inserting “or a health insurance issuer offering group or individual health insurance coverage”; and

(C) in subsection (c)—

(i) in paragraph (1), by striking “(and group health insurance coverage offered in connection with a group health plan)” and inserting “and a health insurance issuer offering group or individual health insurance coverage”;

(ii) in paragraph (2), by striking “(or health insurance coverage offered in connection with such a plan)” each place that such term appears and inserting “or a health insurance issuer offering group or individual health insurance coverage”;

42 USC
300gg-27.

(5) in section 2727 (42 U.S.C. 300gg-6), as so redesignated by section 1001(2), by striking “health insurance issuers providing health insurance coverage in connection with group health plans” and inserting “and health insurance issuers offering group or individual health insurance coverage”;

42 USC
300gg-28.

(6) in section 2728 (42 U.S.C. 300gg-7), as so redesignated by section 1001(2)—

(A) in subsection (a), by striking “health insurance coverage offered in connection with such plan” and inserting “individual health insurance coverage”;

(B) in subsection (b)—

(i) in paragraph (1), by striking “or a health insurance issuer that provides health insurance coverage in connection with a group health plan” and inserting “or a health insurance issuer that offers group or individual health insurance coverage”;

(ii) in paragraph (2), by striking “health insurance coverage offered in connection with the plan” and inserting “individual health insurance coverage”; and

(iii) in paragraph (3), by striking “health insurance coverage offered by an issuer in connection with such plan” and inserting “individual health insurance coverage”;

(C) in subsection (c), by striking “health insurance issuer providing health insurance coverage in connection with a group health plan” and inserting “health insurance issuer that offers group or individual health insurance coverage”; and

(D) in subsection (e)(1), by striking “health insurance coverage offered in connection with such a plan” and inserting “individual health insurance coverage”;

(7) by striking the heading for subpart 3;

42 USC 300gg-1.

(8) in section 2731 (42 U.S.C. 300gg-11), as so redesignated by section 1001(3)—

(A) by striking the section heading and all that follows through subsection (b);

(B) in subsection (c)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking “small group” and inserting “group and individual”; and

(II) in subparagraph (B)—

(aa) in the matter preceding clause (i), by inserting “and individuals” after “employers”;

(bb) in clause (i), by inserting “or any additional individuals” after “additional groups”; and

(cc) in clause (ii), by striking “without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such” and inserting “and individuals without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals”; and

(ii) in paragraph (2), by striking “small group” and inserting “group or individual”;

(C) in subsection (d)—

(i) by striking “small group” each place that such appears and inserting “group or individual”; and

(ii) in paragraph (1)(B)—

(I) by striking “all employers” and inserting “all employers and individuals”;

(II) by striking “those employers” and inserting “those individuals, employers”; and

(III) by striking “such employees” and inserting “such individuals, employees”;

(D) by striking subsection (e);

(E) by striking subsection (f); and

(F) by transferring such section (as amended by this paragraph) to appear at the end of section 2702 (as added by section 1001(4));

(9) in section 2732 (42 U.S.C. 300gg-12), as so redesignated 42 USC 300gg-2.
by section 1001(3)—

(A) by striking the section heading and all that follows through subsection (a);

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by striking “group health plan in the small or large group market” and inserting “health insurance coverage offered in the group or individual market”;

(ii) in paragraph (1), by inserting “, or individual, as applicable,” after “plan sponsor”;

(iii) in paragraph (2), by inserting “, or individual, as applicable,” after “plan sponsor”; and

(iv) by striking paragraph (3) and inserting the following:

“(3) VIOLATION OF PARTICIPATION OR CONTRIBUTION RATES.—In the case of a group health plan, the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules, pursuant to applicable State law.”;

(C) in subsection (c)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking “group health insurance coverage offered in the small or large group market” and inserting “group or individual health insurance coverage”;

(II) in subparagraph (A), by inserting “or individual, as applicable,” after “plan sponsor”;

(III) in subparagraph (B)—

(aa) by inserting “or individual, as applicable,” after “plan sponsor”; and

(bb) by inserting “or individual health insurance coverage”; and

(IV) in subparagraph (C), by inserting “or individuals, as applicable,” after “those sponsors”; and

(ii) in paragraph (2)(A)—

(I) in the matter preceding clause (i), by striking “small group market or the large group market, or both markets,” and inserting “individual or group market, or all markets,”; and

(II) in clause (i), by inserting “or individual, as applicable,” after “plan sponsor”; and

(D) by transferring such section (as amended by this paragraph) to appear at the end of section 2703 (as added by section 1001(4));

42 USC 300gg-9.

(10) in section 2733 (42 U.S.C. 300gg-13), as so redesignated by section 1001(4)—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking “small employer” and inserting “small employer or an individual”;

(ii) in paragraph (1), by inserting “, or individual, as applicable,” after “employer” each place that such appears; and

(iii) in paragraph (2), by striking “small employer” and inserting “employer, or individual, as applicable,”;

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking “small employer” and inserting “employer, or individual, as applicable,”;

(II) in subparagraph (A), by adding “and” at the end;

(III) by striking subparagraphs (B) and (C); and

(IV) in subparagraph (D)—

(aa) by inserting “, or individual, as applicable,” after “employer”; and

(bb) by redesignating such subparagraph as subparagraph (B);

(ii) in paragraph (2)—

(I) by striking “small employers” each place that such term appears and inserting “employers, or individuals, as applicable,”; and

(II) by striking “small employer” and inserting “employer, or individual, as applicable,”; and

(C) by redesignating such section (as amended by this paragraph) as section 2709 and transferring such section to appear after section 2708 (as added by section 1001(5));

(11) by redesignating subpart 4 as subpart 2;

(12) in section 2735 (42 U.S.C. 300gg-21), as so redesignated by section 1001(4)—

(A) by striking subsection (a);

(B) by striking “subparts 1 through 3” each place that such appears and inserting “subpart 1”;

(C) by redesignating subsections (b) through (e) as subsections (a) through (d), respectively; and

(D) by redesignating such section (as amended by this paragraph) as section 2722;

(13) in section 2736 (42 U.S.C. 300gg-22), as so redesignated by section 1001(4)—

42 USC
300gg-21.

(A) in subsection (a)—

(i) in paragraph (1), by striking “small or large group markets” and inserting “individual or group market”; and

(ii) in paragraph (2), by inserting “or individual health insurance coverage” after “group health plans”;

(B) in subsection (b)(1)(B), by inserting “individual health insurance coverage or” after “respect to”; and

(C) by redesignating such section (as amended by this paragraph) as section 2723;

42 USC
300gg-22.

(14) in section 2737(a)(1) (42 U.S.C. 300gg-23), as so redesignated by section 1001(4)—

(A) by inserting “individual or” before “group health insurance”; and

(B) by redesignating such section (as amended by this paragraph) as section 2724;

42 USC
300gg-23.

(15) in section 2762 (42 U.S.C. 300gg-62)—

(A) in the section heading by inserting “**AND APPLICATION**” before the period; and

(B) by adding at the end the following:

“(c) APPLICATION OF PART A PROVISIONS.—

“(1) IN GENERAL.—The provisions of part A shall apply to health insurance issuers providing health insurance coverage in the individual market in a State as provided for in such part.

“(2) CLARIFICATION.—To the extent that any provision of this part conflicts with a provision of part A with respect to health insurance issuers providing health insurance coverage in the individual market in a State, the provisions of such part A shall apply.”; and

(16) in section 2791(e) (42 U.S.C. 300gg-91(e))—

(A) in paragraph (2), by striking “51” and inserting “101”; and

(B) in paragraph (4)—

(i) by striking “at least 2” each place that such appears and inserting “at least 1”; and

(ii) by striking “50” and inserting “100”.

(d) APPLICATION.—Notwithstanding any other provision of the Patient Protection and Affordable Care Act, nothing in such Act (or an amendment made by such Act) shall be construed to—

42 USC 18120.

(1) prohibit (or authorize the Secretary of Health and Human Services to promulgate regulations that prohibit) a group health plan or health insurance issuer from carrying out utilization management techniques that are commonly used as of the date of enactment of this Act; or

(2) restrict the application of the amendments made by this subtitle.

(e) TECHNICAL AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subpart B of part 7 of subtitle A of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181 et. seq.) is amended, by adding at the end the following:

Applicability.
29 USC 1185d.

“SEC. 715. ADDITIONAL MARKET REFORMS.

“(a) GENERAL RULE.—Except as provided in subsection (b)—

“(1) the provisions of part A of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart; and

“(2) to the extent that any provision of this part conflicts with a provision of such part A with respect to group health plans, or health insurance issuers providing health insurance coverage in connection with group health plans, the provisions of such part A shall apply.

“(b) EXCEPTION.—Notwithstanding subsection (a), the provisions of sections 2716 and 2718 of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall not apply with respect to self-insured group health plans, and the provisions of this part shall continue to apply to such plans as if such sections of the Public Health Service Act (as so amended) had not been enacted.”.

(f) TECHNICAL AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

Applicability.
29 USC 9815.

“SEC. 9815. ADDITIONAL MARKET REFORMS.

“(a) GENERAL RULE.—Except as provided in subsection (b)—

“(1) the provisions of part A of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subchapter; and

“(2) to the extent that any provision of this subchapter conflicts with a provision of such part A with respect to group health plans, or health insurance issuers providing health insurance coverage in connection with group health plans, the provisions of such part A shall apply.

“(b) EXCEPTION.—Notwithstanding subsection (a), the provisions of sections 2716 and 2718 of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall not apply with respect to self-insured group health plans, and the provisions of this subchapter shall continue to apply to such plans as if such sections of the Public Health Service Act (as so amended) had not been enacted.”.

SEC. 1563. SENSE OF THE SENATE PROMOTING FISCAL RESPONSIBILITY.

(a) FINDINGS.—The Senate makes the following findings:

(1) Based on Congressional Budget Office (CBO) estimates, this Act will reduce the Federal deficit between 2010 and 2019.

(2) CBO projects this Act will continue to reduce budget deficits after 2019.

(3) Based on CBO estimates, this Act will extend the solvency of the Medicare HI Trust Fund.

(4) This Act will increase the surplus in the Social Security Trust Fund, which should be reserved to strengthen the finances of Social Security.

(5) The initial net savings generated by the Community Living Assistance Services and Supports (CLASS) program are necessary to ensure the long-term solvency of that program.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the additional surplus in the Social Security Trust Fund generated by this Act should be reserved for Social Security and not spent in this Act for other purposes; and

(2) the net savings generated by the CLASS program should be reserved for the CLASS program and not spent in this Act for other purposes.

TITLE II—ROLE OF PUBLIC PROGRAMS

Subtitle A—Improved Access to Medicaid

SEC. 2001. MEDICAID COVERAGE FOR THE LOWEST INCOME POPULATIONS.

(a) COVERAGE FOR INDIVIDUALS WITH INCOME AT OR BELOW 133 PERCENT OF THE POVERTY LINE.—

(1) BEGINNING 2014.—Section 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) by striking “or” at the end of subclause (VI);

(B) by adding “or” at the end of subclause (VII); and

(C) by inserting after subclause (VII) the following:

“(VIII) beginning January 1, 2014, who are under 65 years of age, not pregnant, not entitled to, or enrolled for, benefits under part A of title XVIII, or enrolled for benefits under part B of title XVIII, and are not described in a previous subclause of this clause, and whose income (as determined under subsection (e)(14)) does not exceed 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved, subject to subsection (k);”.

(2) PROVISION OF AT LEAST MINIMUM ESSENTIAL COVERAGE.—

(A) IN GENERAL.—Section 1902 of such Act (42 U.S.C. 1396a) is amended by inserting after subsection (j) the following:

“(k)(1) The medical assistance provided to an individual described in subclause (VIII) of subsection (a)(10)(A)(i) shall consist of benchmark coverage described in section 1937(b)(1) or benchmark equivalent coverage described in section 1937(b)(2). Such medical assistance shall be provided subject to the requirements of section 1937, without regard to whether a State otherwise has elected the option to provide medical assistance through coverage under that section, unless an individual described in subclause (VIII) of subsection (a)(10)(A)(i) is also an individual for whom, under subparagraph (B) of section 1937(a)(2), the State may not require enrollment in benchmark coverage described in subsection (b)(1)

Effective date.

of section 1937 or benchmark equivalent coverage described in subsection (b)(2) of that section.”.

42 USC 13966.

(B) CONFORMING AMENDMENT.—Section 1903(i) of the Social Security Act, as amended by section 6402(c), is amended—

- (i) in paragraph (24), by striking “or” at the end;
- (ii) in paragraph (25), by striking the period and inserting “; or”; and

(iii) by adding at the end the following:

“(26) with respect to any amounts expended for medical assistance for individuals described in subclause (VIII) of subsection (a)(10)(A)(i) other than medical assistance provided through benchmark coverage described in section 1937(b)(1) or benchmark equivalent coverage described in section 1937(b)(2).”.

(3) FEDERAL FUNDING FOR COST OF COVERING NEWLY ELIGIBLE INDIVIDUALS.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), is amended—

(A) in subsection (b), in the first sentence, by inserting “subsection (y) and” before “section 1933(d)”; and

(B) by adding at the end the following new subsection:

“(y) INCREASED FMAP FOR MEDICAL ASSISTANCE FOR NEWLY ELIGIBLE MANDATORY INDIVIDUALS.—

Time periods.

“(1) AMOUNT OF INCREASE.—

“(A) 100 PERCENT FMAP.—During the period that begins on January 1, 2014, and ends on December 31, 2016, notwithstanding subsection (b), the Federal medical assistance percentage determined for a State that is one of the 50 States or the District of Columbia for each fiscal year occurring during that period with respect to amounts expended for medical assistance for newly eligible individuals described in subclause (VIII) of section 1902(a)(10)(A)(i) shall be equal to 100 percent.

“(B) 2017 AND 2018.—

“(i) IN GENERAL.—During the period that begins on January 1, 2017, and ends on December 31, 2018, notwithstanding subsection (b) and subject to subparagraph (D), the Federal medical assistance percentage determined for a State that is one of the 50 States or the District of Columbia for each fiscal year occurring during that period with respect to amounts expended for medical assistance for newly eligible individuals described in subclause (VIII) of section 1902(a)(10)(A)(i), shall be increased by the applicable percentage point increase specified in clause (ii) for the quarter and the State.

“(ii) APPLICABLE PERCENTAGE POINT INCREASE.—

“(I) IN GENERAL.—For purposes of clause (i), the applicable percentage point increase for a quarter is the following:

“For any fiscal year quarter occurring in the calendar year:	If the State is an expansion State, the applicable percentage point increase is:	If the State is not an expansion State, the applicable percentage point increase is:
2017	30.3	34.3
2018	31.3	33.3

“(II) EXPANSION STATE DEFINED.—For purposes of the table in subclause (I), a State is an expansion State if, on the date of the enactment of the Patient Protection and Affordable Care Act, the State offers health benefits coverage statewide to parents and nonpregnant, childless adults whose income is at least 100 percent of the poverty line, that is not dependent on access to employer coverage, employer contribution, or employment and is not limited to premium assistance, hospital-only benefits, a high deductible health plan, or alternative benefits under a demonstration program authorized under section 1938. A State that offers health benefits coverage to only parents or only nonpregnant childless adults described in the preceding sentence shall not be considered to be an expansion State.

“(C) 2019 AND SUCCEEDING YEARS.—Beginning January 1, 2019, notwithstanding subsection (b) but subject to subparagraph (D), the Federal medical assistance percentage determined for a State that is one of the 50 States or the District of Columbia for each fiscal year quarter occurring during that period with respect to amounts expended for medical assistance for newly eligible individuals described in subclause (VIII) of section 1902(a)(10)(A)(i), shall be increased by 32.3 percentage points.

Effective date.

“(D) LIMITATION.—The Federal medical assistance percentage determined for a State under subparagraph (B) or (C) shall in no case be more than 95 percent.

“(2) DEFINITIONS.—In this subsection:

“(A) NEWLY ELIGIBLE.—The term ‘newly eligible’ means, with respect to an individual described in subclause (VIII) of section 1902(a)(10)(A)(i), an individual who is not under 19 years of age (or such higher age as the State may have elected) and who, on the date of enactment of the Patient Protection and Affordable Care Act, is not eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage described in subparagraph (A), (B), or (C) of section 1937(b)(1) or benchmark equivalent coverage described in section 1937(b)(2) that has an aggregate actuarial value that is at least actuarially equivalent to benchmark coverage described in subparagraph (A), (B), or (C) of section 1937(b)(1), or is eligible but not enrolled (or is on a waiting list) for such benefits or coverage through a waiver under the plan that has a capped or limited enrollment that is full.

“(B) FULL BENEFITS.—The term ‘full benefits’ means, with respect to an individual, medical assistance for all services covered under the State plan under this title that is not less in amount, duration, or scope, or is determined by the Secretary to be substantially equivalent, to the medical assistance available for an individual described in section 1902(a)(10)(A)(i).”.

(4) STATE OPTIONS TO OFFER COVERAGE EARLIER AND PRESUMPTIVE ELIGIBILITY; CHILDREN REQUIRED TO HAVE COVERAGE FOR PARENTS TO BE ELIGIBLE.—

42 USC 1396a.

Effective date.
Time period.

(A) IN GENERAL.—Subsection (k) of section 1902 of the Social Security Act (as added by paragraph (2)), is amended by inserting after paragraph (1) the following:

“(2) Beginning with the first day of any fiscal year quarter that begins on or after January 1, 2011, and before January 1, 2014, a State may elect through a State plan amendment to provide medical assistance to individuals who would be described in subclause (VIII) of subsection (a)(10)(A)(i) if that subclause were effective before January 1, 2014. A State may elect to phase-in the extension of eligibility for medical assistance to such individuals based on income, so long as the State does not extend such eligibility to individuals described in such subclause with higher income before making individuals described in such subclause with lower income eligible for medical assistance.

“(3) If an individual described in subclause (VIII) of subsection (a)(10)(A)(i) is the parent of a child who is under 19 years of age (or such higher age as the State may have elected) who is eligible for medical assistance under the State plan or under a waiver of such plan (under that subclause or under a State plan amendment under paragraph (2), the individual may not be enrolled under the State plan unless the individual’s child is enrolled under the State plan or under a waiver of the plan or is enrolled in other health insurance coverage. For purposes of the preceding sentence, the term ‘parent’ includes an individual treated as a caretaker relative for purposes of carrying out section 1931.”.

(B) PRESUMPTIVE ELIGIBILITY.—Section 1920 of the Social Security Act (42 U.S.C. 1396r–1) is amended by adding at the end the following:

Guidelines.

“(e) If the State has elected the option to provide a presumptive eligibility period under this section or section 1920A, the State may elect to provide a presumptive eligibility period (as defined in subsection (b)(1)) for individuals who are eligible for medical assistance under clause (i)(VIII) of subsection (a)(10)(A) or section 1931 in the same manner as the State provides for such a period under this section or section 1920A, subject to such guidance as the Secretary shall establish.”.

(5) CONFORMING AMENDMENTS.—

(A) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (G), by striking “and (XIV)” and inserting “(XIV)” and by inserting “and (XV) the medical assistance made available to an individual described in subparagraph (A)(i)(VIII) shall be limited to medical assistance described in subsection (k)(1)” before the semicolon.

(B) Section 1902(l)(2)(C) of such Act (42 U.S.C. 1396a(l)(2)(C)) is amended by striking “100” and inserting “133”.

(C) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(i) by striking “or” at the end of clause (xii);

(ii) by inserting “or” at the end of clause (xiii);

and

(iii) by inserting after clause (xiii) the following:

“(xiv) individuals described in section 1902(a)(10)(A)(i)(VIII),”.

(D) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting “1902(a)(10)(A)(i)(VIII),” after “1902(a)(10)(A)(i)(VII),”.

(E) Section 1937(a)(1)(B) of such Act (42 U.S.C. 1396u–7(a)(1)(B)) is amended by inserting “subclause (VIII) of section 1902(a)(10)(A)(i) or under” after “eligible under”.

(b) MAINTENANCE OF MEDICAID INCOME ELIGIBILITY.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)—

(A) by striking “and” at the end of paragraph (72);

(B) by striking the period at the end of paragraph (73) and inserting “; and”; and

(C) by inserting after paragraph (73) the following new paragraph:

“(74) provide for maintenance of effort under the State plan or under any waiver of the plan in accordance with subsection (gg).”; and

(2) by adding at the end the following new subsection: “(gg) MAINTENANCE OF EFFORT.—

“(1) GENERAL REQUIREMENT TO MAINTAIN ELIGIBILITY STANDARDS UNTIL STATE EXCHANGE IS FULLY OPERATIONAL.—Subject to the succeeding paragraphs of this subsection, during the period that begins on the date of enactment of the Patient Protection and Affordable Care Act and ends on the date on which the Secretary determines that an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act is fully operational, as a condition for receiving any Federal payments under section 1903(a) for calendar quarters occurring during such period, a State shall not have in effect eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of such plan that is in effect during that period, that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under the plan or waiver that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

Time period.
Determination.

“(2) CONTINUATION OF ELIGIBILITY STANDARDS FOR CHILDREN UNTIL OCTOBER 1, 2019.—The requirement under paragraph (1) shall continue to apply to a State through September 30, 2019, with respect to the eligibility standards, methodologies, and procedures under the State plan under this title or under any waiver of such plan that are applicable to determining the eligibility for medical assistance of any child who is under 19 years of age (or such higher age as the State may have elected).

Applicability.

“(3) NONAPPLICATION.—During the period that begins on January 1, 2011, and ends on December 31, 2013, the requirement under paragraph (1) shall not apply to a State with respect to nonpregnant, nondisabled adults who are eligible

Time period.
Deadline.
Certification.

for medical assistance under the State plan or under a waiver of the plan at the option of the State and whose income exceeds 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved if, on or after December 31, 2010, the State certifies to the Secretary that, with respect to the State fiscal year during which the certification is made, the State has a budget deficit, or with respect to the succeeding State fiscal year, the State is projected to have a budget deficit. Upon submission of such a certification to the Secretary, the requirement under paragraph (1) shall not apply to the State with respect to any remaining portion of the period described in the preceding sentence.

“(4) DETERMINATION OF COMPLIANCE.—

“(A) STATES SHALL APPLY MODIFIED GROSS INCOME.—

A State’s determination of income in accordance with subsection (e)(14) shall not be considered to be eligibility standards, methodologies, or procedures that are more restrictive than the standards, methodologies, or procedures in effect under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act for purposes of determining compliance with the requirements of paragraph (1), (2), or (3).

“(B) STATES MAY EXPAND ELIGIBILITY OR MOVE WAIVERED POPULATIONS INTO COVERAGE UNDER THE STATE PLAN.—With respect to any period applicable under paragraph (1), (2), or (3), a State that applies eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of the plan that are less restrictive than the eligibility standards, methodologies, or procedures, applied under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act, or that makes individuals who, on such date of enactment, are eligible for medical assistance under a waiver of the State plan, after such date of enactment eligible for medical assistance through a State plan amendment with an income eligibility level that is not less than the income eligibility level that applied under the waiver, or as a result of the application of subclause (VIII) of section 1902(a)(10)(A)(i), shall not be considered to have in effect eligibility standards, methodologies, or procedures that are more restrictive than the standards, methodologies, or procedures in effect under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act for purposes of determining compliance with the requirements of paragraph (1), (2), or (3).”.

(c) MEDICAID BENCHMARK BENEFITS MUST CONSIST OF AT LEAST MINIMUM ESSENTIAL COVERAGE.—Section 1937(b) of such Act (42 U.S.C. 1396u–7(b)) is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by inserting “subject to paragraphs (5) and (6),” before “each”;

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by inserting “subject to paragraphs (5) and (6)” after “subsection (a)(1),”;

(B) in subparagraph (A)—

- (i) by redesignating clauses (iv) and (v) as clauses (vi) and (vii), respectively; and
- (ii) by inserting after clause (iii), the following:
 - “(iv) Coverage of prescription drugs.
 - “(v) Mental health services.”; and

(C) in subparagraph (C)—

- (i) by striking clauses (i) and (ii); and
- (ii) by redesignating clauses (iii) and (iv) as clauses (i) and (ii), respectively; and

(3) by adding at the end the following new paragraphs:

“(5) MINIMUM STANDARDS.—Effective January 1, 2014, any benchmark benefit package under paragraph (1) or benchmark equivalent coverage under paragraph (2) must provide at least essential health benefits as described in section 1302(b) of the Patient Protection and Affordable Care Act. Effective date.

“(6) MENTAL HEALTH SERVICES PARITY.—

“(A) IN GENERAL.—In the case of any benchmark benefit package under paragraph (1) or benchmark equivalent coverage under paragraph (2) that is offered by an entity that is not a medicaid managed care organization and that provides both medical and surgical benefits and mental health or substance use disorder benefits, the entity shall ensure that the financial requirements and treatment limitations applicable to such mental health or substance use disorder benefits comply with the requirements of section 2705(a) of the Public Health Service Act in the same manner as such requirements apply to a group health plan.

“(B) DEEMED COMPLIANCE.—Coverage provided with respect to an individual described in section 1905(a)(4)(B) and covered under the State plan under section 1902(a)(10)(A) of the services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnostic, and treatment services defined in section 1905(r)) and provided in accordance with section 1902(a)(43), shall be deemed to satisfy the requirements of subparagraph (A).”.

(d) ANNUAL REPORTS ON MEDICAID ENROLLMENT.—

(1) STATE REPORTS.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by subsection (b), is amended—

- (A) by striking “and” at the end of paragraph (73);
- (B) by striking the period at the end of paragraph (74) and inserting “; and”; and
- (C) by inserting after paragraph (74) the following new paragraph:

“(75) provide that, beginning January 2015, and annually thereafter, the State shall submit a report to the Secretary that contains— Effective date.

“(A) the total number of enrolled and newly enrolled individuals in the State plan or under a waiver of the plan for the fiscal year ending on September 30 of the preceding calendar year, disaggregated by population, including children, parents, nonpregnant childless adults, disabled individuals, elderly individuals, and such other

categories or sub-categories of individuals eligible for medical assistance under the State plan or under a waiver of the plan as the Secretary may require;

“(B) a description, which may be specified by population, of the outreach and enrollment processes used by the State during such fiscal year; and

“(C) any other data reporting determined necessary by the Secretary to monitor enrollment and retention of individuals eligible for medical assistance under the State plan or under a waiver of the plan.”.

Effective date.
42 USC 1396a
note.

(2) REPORTS TO CONGRESS.—Beginning April 2015, and annually thereafter, the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress on the total enrollment and new enrollment in Medicaid for the fiscal year ending on September 30 of the preceding calendar year on a national and State-by-State basis, and shall include in each such report such recommendations for administrative or legislative changes to improve enrollment in the Medicaid program as the Secretary determines appropriate.

(e) STATE OPTION FOR COVERAGE FOR INDIVIDUALS WITH INCOME THAT EXCEEDS 133 PERCENT OF THE POVERTY LINE.—

(1) COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(ii)—

(i) in subclause (XVIII), by striking “or” at the end;

(ii) in subclause (XIX), by adding “or” at the end; and

(iii) by adding at the end the following new subclause:

“(XX) beginning January 1, 2014, who are under 65 years of age and are not described in or enrolled under a previous subclause of this clause, and whose income (as determined under subsection (e)(14)) exceeds 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved but does not exceed the highest income eligibility level established under the State plan or under a waiver of the plan, subject to subsection (hh);” and

(B) by adding at the end the following new subsection:

“(hh)(1) A State may elect to phase-in the extension of eligibility for medical assistance to individuals described in subclause (XX) of subsection (a)(10)(A)(ii) based on the categorical group (including nonpregnant childless adults) or income, so long as the State does not extend such eligibility to individuals described in such subclause with higher income before making individuals described in such subclause with lower income eligible for medical assistance.

“(2) If an individual described in subclause (XX) of subsection (a)(10)(A)(ii) is the parent of a child who is under 19 years of age (or such higher age as the State may have elected) who is eligible for medical assistance under the State plan or under a waiver of such plan, the individual may not be enrolled under the State plan unless the individual’s child is enrolled under the State plan or under a waiver of the plan or is enrolled in other health insurance coverage. For purposes of the preceding sentence,

Effective date.

the term ‘parent’ includes an individual treated as a caretaker relative for purposes of carrying out section 1931.”

(2) CONFORMING AMENDMENTS.—

(A) Section 1905(a) of such Act (42 U.S.C. 1396d(a)), as amended by subsection (a)(5)(C), is amended in the matter preceding paragraph (1)—

(i) by striking “or” at the end of clause (xiii);

(ii) by inserting “or” at the end of clause (xiv);

and

(iii) by inserting after clause (xiv) the following:

“(xv) individuals described in section 1902(a)(10)(A)(ii)(XX),”

(B) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting “1902(a)(10)(A)(ii)(XX),” after “1902(a)(10)(A)(ii)(XIX),”.

(C) Section 1920(e) of such Act (42 U.S.C. 1396r–1(e)), as added by subsection (a)(4)(B), is amended by inserting “or clause (ii)(XX)” after “clause (i)(VIII)”.

SEC. 2002. INCOME ELIGIBILITY FOR NONELDERLY DETERMINED USING MODIFIED GROSS INCOME.

(a) IN GENERAL.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following:

“(14) INCOME DETERMINED USING MODIFIED GROSS INCOME.—

“(A) IN GENERAL.—Notwithstanding subsection (r) or any other provision of this title, except as provided in subparagraph (D), for purposes of determining income eligibility for medical assistance under the State plan or under any waiver of such plan and for any other purpose applicable under the plan or waiver for which a determination of income is required, including with respect to the imposition of premiums and cost-sharing, a State shall use the modified gross income of an individual and, in the case of an individual in a family greater than 1, the household income of such family. A State shall establish income eligibility thresholds for populations to be eligible for medical assistance under the State plan or a waiver of the plan using modified gross income and household income that are not less than the effective income eligibility levels that applied under the State plan or waiver on the date of enactment of the Patient Protection and Affordable Care Act. For purposes of complying with the maintenance of effort requirements under subsection (gg) during the transition to modified gross income and household income, a State shall, working with the Secretary, establish an equivalent income test that ensures individuals eligible for medical assistance under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act, do not lose coverage under the State plan or under a waiver of the plan. The Secretary may waive such provisions of this title and title XXI as are necessary to ensure that States establish income and eligibility determination systems that protect beneficiaries.

“(B) NO INCOME OR EXPENSE DISREGARDS.—No type of expense, block, or other income disregard shall be applied

Waiver authority.

by a State to determine income eligibility for medical assistance under the State plan or under any waiver of such plan or for any other purpose applicable under the plan or waiver for which a determination of income is required.

“(C) NO ASSETS TEST.—A State shall not apply any assets or resources test for purposes of determining eligibility for medical assistance under the State plan or under a waiver of the plan.

“(D) EXCEPTIONS.—

“(i) INDIVIDUALS ELIGIBLE BECAUSE OF OTHER AID OR ASSISTANCE, ELDERLY INDIVIDUALS, MEDICALLY NEEDY INDIVIDUALS, AND INDIVIDUALS ELIGIBLE FOR MEDICARE COST-SHARING.—Subparagraphs (A), (B), and (C) shall not apply to the determination of eligibility under the State plan or under a waiver for medical assistance for the following:

“(I) Individuals who are eligible for medical assistance under the State plan or under a waiver of the plan on a basis that does not require a determination of income by the State agency administering the State plan or waiver, including as a result of eligibility for, or receipt of, other Federal or State aid or assistance, individuals who are eligible on the basis of receiving (or being treated as if receiving) supplemental security income benefits under title XVI, and individuals who are eligible as a result of being or being deemed to be a child in foster care under the responsibility of the State.

“(II) Individuals who have attained age 65.

“(III) Individuals who qualify for medical assistance under the State plan or under any waiver of such plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under title XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3).

“(IV) Individuals described in subsection (a)(10)(C).

“(V) Individuals described in any clause of subsection (a)(10)(E).

“(ii) EXPRESS LANE AGENCY FINDINGS.—In the case of a State that elects the Express Lane option under paragraph (13), notwithstanding subparagraphs (A), (B), and (C), the State may rely on a finding made by an Express Lane agency in accordance with that paragraph relating to the income of an individual for purposes of determining the individual’s eligibility for medical assistance under the State plan or under a waiver of the plan.

“(iii) MEDICARE PRESCRIPTION DRUG SUBSIDIES DETERMINATIONS.—Subparagraphs (A), (B), and (C) shall not apply to any determinations of eligibility for premium and cost-sharing subsidies under and in

accordance with section 1860D-14 made by the State pursuant to section 1935(a)(2).

“(iv) LONG-TERM CARE.—Subparagraphs (A), (B), and (C) shall not apply to any determinations of eligibility of individuals for purposes of medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, home or community-based services furnished under a waiver or State plan amendment under section 1915 or a waiver under section 1115, and services described in section 1917(c)(1)(C)(ii).

“(v) GRANDFATHER OF CURRENT ENROLLEES UNTIL DATE OF NEXT REGULAR REDETERMINATION.—An individual who, on January 1, 2014, is enrolled in the State plan or under a waiver of the plan and who would be determined ineligible for medical assistance solely because of the application of the modified gross income or household income standard described in subparagraph (A), shall remain eligible for medical assistance under the State plan or waiver (and subject to the same premiums and cost-sharing as applied to the individual on that date) through March 31, 2014, or the date on which the individual’s next regularly scheduled redetermination of eligibility is to occur, whichever is later.

“(E) TRANSITION PLANNING AND OVERSIGHT.—Each State shall submit to the Secretary for the Secretary’s approval the income eligibility thresholds proposed to be established using modified gross income and household income, the methodologies and procedures to be used to determine income eligibility using modified gross income and household income and, if applicable, a State plan amendment establishing an optional eligibility category under subsection (a)(10)(A)(ii)(XX). To the extent practicable, the State shall use the same methodologies and procedures for purposes of making such determinations as the State used on the date of enactment of the Patient Protection and Affordable Care Act. The Secretary shall ensure that the income eligibility thresholds proposed to be established using modified gross income and household income, including under the eligibility category established under subsection (a)(10)(A)(ii)(XX), and the methodologies and procedures proposed to be used to determine income eligibility, will not result in children who would have been eligible for medical assistance under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act no longer being eligible for such assistance. Submission.

“(F) LIMITATION ON SECRETARIAL AUTHORITY.—The Secretary shall not waive compliance with the requirements of this paragraph except to the extent necessary to permit a State to coordinate eligibility requirements for dual eligible individuals (as defined in section 1915(h)(2)(B)) under the State plan or under a waiver of the plan and under title XVIII and individuals who require the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded.

“(G) DEFINITIONS OF MODIFIED GROSS INCOME AND HOUSEHOLD INCOME.—In this paragraph, the terms ‘modified gross income’ and ‘household income’ have the meanings given such terms in section 36B(d)(2) of the Internal Revenue Code of 1986.

“(H) CONTINUED APPLICATION OF MEDICAID RULES REGARDING POINT-IN-TIME INCOME AND SOURCES OF INCOME.—The requirement under this paragraph for States to use modified gross income and household income to determine income eligibility for medical assistance under the State plan or under any waiver of such plan and for any other purpose applicable under the plan or waiver for which a determination of income is required shall not be construed as affecting or limiting the application of—

“(i) the requirement under this title and under the State plan or a waiver of the plan to determine an individual’s income as of the point in time at which an application for medical assistance under the State plan or a waiver of the plan is processed; or

“(ii) any rules established under this title or under the State plan or a waiver of the plan regarding sources of countable income.”.

(b) CONFORMING AMENDMENT.—Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by inserting “(e)(14),” before “(1)(3)”.

42 USC 1396a
note.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on January 1, 2014.

SEC. 2003. REQUIREMENT TO OFFER PREMIUM ASSISTANCE FOR EMPLOYER-SPONSORED INSURANCE.

(a) IN GENERAL.—Section 1906A of such Act (42 U.S.C. 1396e–1) is amended—

(1) in subsection (a)—

(A) by striking “may elect to” and inserting “shall”;

(B) by striking “under age 19”; and

(C) by inserting “, in the case of an individual under age 19,” after “(and”;

(2) in subsection (c), in the first sentence, by striking “under age 19”; and

(3) in subsection (d)—

(A) in paragraph (2)—

(i) in the first sentence, by striking “under age 19”; and

(ii) by striking the third sentence and inserting “A State may not require, as a condition of an individual (or the individual’s parent) being or remaining eligible for medical assistance under this title, that the individual (or the individual’s parent) apply for enrollment in qualified employer-sponsored coverage under this section.”; and

(B) in paragraph (3), by striking “the parent of an individual under age 19” and inserting “an individual (or the parent of an individual)”; and

(4) in subsection (e), by striking “under age 19” each place it appears.

(b) **CONFORMING AMENDMENT.**—The heading for section 1906A of such Act (42 U.S.C. 1396e–1) is amended by striking “OPTION FOR CHILDREN”.

(c) **EFFECTIVE DATE.**—The amendments made by this section take effect on January 1, 2014. 42 USC 1396e–1 note.

SEC. 2004. MEDICAID COVERAGE FOR FORMER FOSTER CARE CHILDREN.

(a) **IN GENERAL.**—Section 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. 1396a), as amended by section 2001(a)(1), is amended—

- (1) by striking “or” at the end of subclause (VII);
- (2) by adding “or” at the end of subclause (VIII); and
- (3) by inserting after subclause (VIII) the following:

“(IX) who were in foster care under the responsibility of a State for more than 6 months (whether or not consecutive) but are no longer in such care, who are not described in any of subclauses (I) through (VII) of this clause, and who are under 25 years of age;”.

(b) **OPTION TO PROVIDE PRESUMPTIVE ELIGIBILITY.**—Section 1920(e) of such Act (42 U.S.C. 1396r–1(e)), as added by section 2001(a)(4)(B) and amended by section 2001(e)(2)(C), is amended by inserting “, clause (i)(IX),” after “clause (i)(VIII)”.

(c) **CONFORMING AMENDMENTS.**—

(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)), as amended by section 2001(a)(5)(D), is amended by inserting “1902(a)(10)(A)(i)(IX),” after “1902(a)(10)(A)(i)(VIII),”.

(2) Section 1937(a)(2)(B)(viii) of such Act (42 U.S.C. 1396u–7(a)(2)(B)(viii)) is amended by inserting “, or the individual qualifies for medical assistance on the basis of section 1902(a)(10)(A)(i)(IX)” before the period.

(d) **EFFECTIVE DATE.**—The amendments made by this section take effect on January 1, 2019. 42 USC 1396a note.

SEC. 2005. PAYMENTS TO TERRITORIES.

(a) **INCREASE IN LIMIT ON PAYMENTS.**—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2), in the matter preceding subparagraph (A), by striking “paragraph (3)” and inserting “paragraphs (3) and (5)”;

(2) in paragraph (4), by striking “and (3)” and inserting “(3), and (4)”;

(3) by adding at the end the following paragraph:

“(5) **FISCAL YEAR 2011 AND THEREAFTER.**—The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for the second, third, and fourth quarters of fiscal year 2011, and for each fiscal year after fiscal year 2011 (after the application of subsection (f) and the preceding paragraphs of this subsection), shall be increased by 30 percent.”.

(b) **DISREGARD OF PAYMENTS FOR MANDATORY EXPANDED ENROLLMENT.**—Section 1108(g)(4) of such Act (42 U.S.C. 1308(g)(4)) is amended—

(1) by striking “to fiscal years beginning” and inserting “to—

“(A) fiscal years beginning”;

(2) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(B) fiscal years beginning with fiscal year 2014, payments made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa with respect to amounts expended for medical assistance for newly eligible (as defined in section 1905(y)(2)) nonpregnant childless adults who are eligible under subclause (VIII) of section 1902(a)(10)(A)(i) and whose income (as determined under section 1902(e)(14)) does not exceed (in the case of each such commonwealth and territory respectively) the income eligibility level in effect for that population under title XIX or under a waiver on the date of enactment of the Patient Protection and Affordable Care Act, shall not be taken into account in applying subsection (f) (as increased in accordance with paragraphs (1), (2), (3), and (5) of this subsection) to such commonwealth or territory for such fiscal year.”.

(c) INCREASED FMAP.—

(1) IN GENERAL.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by striking “shall be 50 per centum” and inserting “shall be 55 percent”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect on January 1, 2011.

42 USC 1396d
note.

SEC. 2006. SPECIAL ADJUSTMENT TO FMAP DETERMINATION FOR CERTAIN STATES RECOVERING FROM A MAJOR DISASTER.

Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3) and 2001(b)(2), is amended—

(1) in subsection (b), in the first sentence, by striking “subsection (y)” and inserting “subsections (y) and (aa)”; and

(2) by adding at the end the following new subsection:

“(aa)(1) Notwithstanding subsection (b), beginning January 1, 2011, the Federal medical assistance percentage for a fiscal year for a disaster-recovery FMAP adjustment State shall be equal to the following:

Effective date.

“(A) In the case of the first fiscal year (or part of a fiscal year) for which this subsection applies to the State, the Federal medical assistance percentage determined for the fiscal year without regard to this subsection and subsection (y), increased by 50 percent of the number of percentage points by which the Federal medical assistance percentage determined for the State for the fiscal year without regard to this subsection and subsection (y), is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year after the application of only subsection (a) of section 5001 of Public Law 111–5 (if applicable to the preceding fiscal year) and without regard to this subsection, subsection (y), and subsections (b) and (c) of section 5001 of Public Law 111–5.

“(B) In the case of the second or any succeeding fiscal year for which this subsection applies to the State, the Federal medical assistance percentage determined for the preceding fiscal year under this subsection for the State, increased by 25 percent of the number of percentage points by which the Federal medical assistance percentage determined for the State

for the fiscal year without regard to this subsection and subsection (y), is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year under this subsection.

“(2) In this subsection, the term ‘disaster-recovery FMAP adjustment State’ means a State that is one of the 50 States or the District of Columbia, for which, at any time during the preceding 7 fiscal years, the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and determined as a result of such disaster that every county or parish in the State warrant individual and public assistance or public assistance from the Federal Government under such Act and for which—

Definition.

“(A) in the case of the first fiscal year (or part of a fiscal year) for which this subsection applies to the State, the Federal medical assistance percentage determined for the State for the fiscal year without regard to this subsection and subsection (y), is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year after the application of only subsection (a) of section 5001 of Public Law 111-5 (if applicable to the preceding fiscal year) and without regard to this subsection, subsection (y), and subsections (b) and (c) of section 5001 of Public Law 111-5, by at least 3 percentage points; and

“(B) in the case of the second or any succeeding fiscal year for which this subsection applies to the State, the Federal medical assistance percentage determined for the State for the fiscal year without regard to this subsection and subsection (y), is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year under this subsection by at least 3 percentage points.

“(3) The Federal medical assistance percentage determined for a disaster-recovery FMAP adjustment State under paragraph (1) shall apply for purposes of this title (other than with respect to disproportionate share hospital payments described in section 1923 and payments under this title that are based on the enhanced FMAP described in 2105(b)) and shall not apply with respect to payments under title IV (other than under part E of title IV) or payments under title XXI.”.

Applicability.

SEC. 2007. MEDICAID IMPROVEMENT FUND RESCISSION.

(a) **RESCISSION.**—Any amounts available to the Medicaid Improvement Fund established under section 1941 of the Social Security Act (42 U.S.C. 1396w-1) for any of fiscal years 2014 through 2018 that are available for expenditure from the Fund and that are not so obligated as of the date of the enactment of this Act are rescinded.

(b) **CONFORMING AMENDMENTS.**—Section 1941(b)(1) of the Social Security Act (42 U.S.C. 1396w-1(b)(1)) is amended—

(1) in subparagraph (A), by striking “\$100,000,000” and inserting “\$0”; and

(2) in subparagraph (B), by striking “\$150,000,000” and inserting “\$0”.

Subtitle B—Enhanced Support for the Children’s Health Insurance Program

SEC. 2101. ADDITIONAL FEDERAL FINANCIAL PARTICIPATION FOR CHIP.

Time period.

(a) IN GENERAL.—Section 2105(b) of the Social Security Act (42 U.S.C. 1397ee(b)) is amended by adding at the end the following: “Notwithstanding the preceding sentence, during the period that begins on October 1, 2013, and ends on September 30, 2019, the enhanced FMAP determined for a State for a fiscal year (or for any portion of a fiscal year occurring during such period) shall be increased by 23 percentage points, but in no case shall exceed 100 percent. The increase in the enhanced FMAP under the preceding sentence shall not apply with respect to determining the payment to a State under subsection (a)(1) for expenditures described in subparagraph (D)(iv), paragraphs (8), (9), (11) of subsection (c), or clause (4) of the first sentence of section 1905(b).”.

(b) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Section 2105(d) of the Social Security Act (42 U.S.C. 1397ee(d)) is amended by adding at the end the following:

“(3) CONTINUATION OF ELIGIBILITY STANDARDS FOR CHILDREN UNTIL OCTOBER 1, 2019.—

Time period.

“(A) IN GENERAL.—During the period that begins on the date of enactment of the Patient Protection and Affordable Care Act and ends on September 30, 2019, a State shall not have in effect eligibility standards, methodologies, or procedures under its State child health plan (including any waiver under such plan) for children (including children provided medical assistance for which payment is made under section 2105(a)(1)(A)) that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on the date of enactment of that Act. The preceding sentence shall not be construed as preventing a State during such period from—

“(i) applying eligibility standards, methodologies, or procedures for children under the State child health plan or under any waiver of the plan that are less restrictive than the eligibility standards, methodologies, or procedures, respectively, for children under the plan or waiver that are in effect on the date of enactment of such Act; or

“(ii) imposing a limitation described in section 2112(b)(7) for a fiscal year in order to limit expenditures under the State child health plan to those for which Federal financial participation is available under this section for the fiscal year.

Procedures.

“(B) ASSURANCE OF EXCHANGE COVERAGE FOR TARGETED LOW-INCOME CHILDREN UNABLE TO BE PROVIDED CHILD HEALTH ASSISTANCE AS A RESULT OF FUNDING SHORTFALLS.—In the event that allotments provided under section 2104 are insufficient to provide coverage to all children who are eligible to be targeted low-income children under the State child health plan under this title, a State shall

establish procedures to ensure that such children are provided coverage through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act.”.

(2) CONFORMING AMENDMENT TO TITLE XXI MEDICAID MAINTENANCE OF EFFORT.—Section 2105(d)(1) of the Social Security Act (42 U.S.C. 1397ee(d)(1)) is amended by adding before the period “, except as required under section 1902(e)(14)”.

(c) NO ENROLLMENT BONUS PAYMENTS FOR CHILDREN ENROLLED AFTER FISCAL YEAR 2013.—Section 2105(a)(3)(F)(iii) of the Social Security Act (42 U.S.C. 1397ee(a)(3)(F)(iii)) is amended by inserting “or any children enrolled on or after October 1, 2013” before the period.

(d) INCOME ELIGIBILITY DETERMINED USING MODIFIED GROSS INCOME.—

(1) STATE PLAN REQUIREMENT.—Section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) is amended—

(A) in clause (iii), by striking “and” after the semicolon;

(B) in clause (iv), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(v) shall, beginning January 1, 2014, use modified gross income and household income (as defined in section 36B(d)(2) of the Internal Revenue Code of 1986) to determine eligibility for child health assistance under the State child health plan or under any waiver of such plan and for any other purpose applicable under the plan or waiver for which a determination of income is required, including with respect to the imposition of premiums and cost-sharing, consistent with section 1902(e)(14).”.

Effective date.

(2) CONFORMING AMENDMENT.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) by redesignating subparagraphs (E) through (L) as subparagraphs (F) through (M), respectively; and

(B) by inserting after subparagraph (D), the following:

“(E) Section 1902(e)(14) (relating to income determined using modified gross income and household income).”.

(e) APPLICATION OF STREAMLINED ENROLLMENT SYSTEM.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)), as amended by subsection (d)(2), is amended by adding at the end the following:

“(N) Section 1943(b) (relating to coordination with State Exchanges and the State Medicaid agency).”.

(f) CHIP ELIGIBILITY FOR CHILDREN INELIGIBLE FOR MEDICAID AS A RESULT OF ELIMINATION OF DISREGARDS.—Notwithstanding any other provision of law, a State shall treat any child who is determined to be ineligible for medical assistance under the State Medicaid plan or under a waiver of the plan as a result of the elimination of the application of an income disregard based on expense or type of income, as required under section 1902(e)(14) of the Social Security Act (as added by this Act), as a targeted low-income child under section 2110(b) (unless the child is excluded under paragraph (2) of that section) and shall provide child health assistance to the child under the State child health plan (whether

42 USC 1397jj
note.

implemented under title XIX or XXI, or both, of the Social Security Act).

SEC. 2102. TECHNICAL CORRECTIONS.

Effective date.
42 USC 1396b
note.

(a) CHIPRA.—Effective as if included in the enactment of the Children’s Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3) (in this section referred to as “CHIPRA”):

42 USC 1397dd.

(1) Section 2104(m) of the Social Security Act, as added by section 102 of CHIPRA, is amended—

(A) by redesignating paragraph (7) as paragraph (8); and

(B) by inserting after paragraph (6), the following:

“(7) ADJUSTMENT OF FISCAL YEAR 2010 ALLOTMENTS TO ACCOUNT FOR CHANGES IN PROJECTED SPENDING FOR CERTAIN PREVIOUSLY APPROVED EXPANSION PROGRAMS.—For purposes of recalculating the fiscal year 2010 allotment, in the case of one of the 50 States or the District of Columbia that has an approved State plan amendment effective January 1, 2006, to provide child health assistance through the provision of benefits under the State plan under title XIX for children from birth through age 5 whose family income does not exceed 200 percent of the poverty line, the Secretary shall increase the allotment by an amount that would be equal to the Federal share of expenditures that would have been claimed at the enhanced FMAP rate rather than the Federal medical assistance percentage matching rate for such population.”.

42 USC 1396
note.

(2) Section 605 of CHIPRA is amended by striking “legal residents” and insert “lawfully residing in the United States”.

(3) Subclauses (I) and (II) of paragraph (3)(C)(i) of section 2105(a) of the Social Security Act (42 U.S.C. 1397ee(a)(3)(ii)), as added by section 104 of CHIPRA, are each amended by striking “, respectively”.

(4) Section 2105(a)(3)(E)(ii) of the Social Security Act (42 U.S.C. 1397ee(a)(3)(E)(ii)), as added by section 104 of CHIPRA, is amended by striking subclause (IV).

42 USC 1397ee.

(5) Section 2105(c)(9)(B) of the Social Security Act (42 U.S.C. 1397e(c)(9)(B)), as added by section 211(c)(1) of CHIPRA, is amended by striking “section 1903(a)(3)(F)” and inserting “section 1903(a)(3)(G)”.

(6) Section 2109(b)(2)(B) of the Social Security Act (42 U.S.C. 1397ii(b)(2)(B)), as added by section 602 of CHIPRA, is amended by striking “the child population growth factor under section 2104(m)(5)(B)” and inserting “a high-performing State under section 2111(b)(3)(B)”.

(7) Section 2110(c)(9)(B)(v) of the Social Security Act (42 U.S.C. 1397jj(c)(9)(B)(v)), as added by section 505(b) of CHIPRA, is amended by striking “school or school system” and inserting “local educational agency (as defined under section 9101 of the Elementary and Secondary Education Act of 1965”.

42 USC 1396b.

(8) Section 211(a)(1)(B) of CHIPRA is amended—

(A) by striking “is amended” and all that follows through “adding” and inserting “is amended by adding”; and

(B) by redesignating the new subparagraph to be added by such section to section 1903(a)(3) of the Social Security Act as a new subparagraph (H).

(b) ARRA.—Effective as if included in the enactment of section 5006(a) of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), the second sentence of section 1916A(a)(1) of the Social Security Act (42 U.S.C. 1396o–1(a)(1)) is amended by striking “or (i)” and inserting “, (i), or (j)”. 42 USC 13960–1 note.

Subtitle C—Medicaid and CHIP Enrollment Simplification

SEC. 2201. ENROLLMENT SIMPLIFICATION AND COORDINATION WITH STATE HEALTH INSURANCE EXCHANGES.

Title XIX of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

“SEC. 1943. ENROLLMENT SIMPLIFICATION AND COORDINATION WITH STATE HEALTH INSURANCE EXCHANGES. 42 USC 1396w–3.

“(a) CONDITION FOR PARTICIPATION IN MEDICAID.—As a condition of the State plan under this title and receipt of any Federal financial assistance under section 1903(a) for calendar quarters beginning after January 1, 2014, a State shall ensure that the requirements of subsection (b) is met. Effective date.

“(b) ENROLLMENT SIMPLIFICATION AND COORDINATION WITH STATE HEALTH INSURANCE EXCHANGES AND CHIP.—

“(1) IN GENERAL.—A State shall establish procedures for— Procedures.

“(A) enabling individuals, through an Internet website that meets the requirements of paragraph (4), to apply for medical assistance under the State plan or under a waiver of the plan, to be enrolled in the State plan or waiver, to renew their enrollment in the plan or waiver, and to consent to enrollment or reenrollment in the State plan through electronic signature; Web site.

“(B) enrolling, without any further determination by the State and through such website, individuals who are identified by an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act as being eligible for—

“(i) medical assistance under the State plan or under a waiver of the plan; or

“(ii) child health assistance under the State child health plan under title XXI;

“(C) ensuring that individuals who apply for but are determined to be ineligible for medical assistance under the State plan or a waiver or ineligible for child health assistance under the State child health plan under title XXI, are screened for eligibility for enrollment in qualified health plans offered through such an Exchange and, if applicable, premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 (and, if applicable, advance payment of such assistance under section 1412 of the Patient Protection and Affordable Care Act), and, if eligible, enrolled in such a plan without having to submit an additional or separate application, and that such individuals receive information regarding reduced cost-sharing for eligible individuals under section 1402 of the Patient Protection and Affordable

Care Act, and any other assistance or subsidies available for coverage obtained through the Exchange;

“(D) ensuring that the State agency responsible for administering the State plan under this title (in this section referred to as the ‘State Medicaid agency’), the State agency responsible for administering the State child health plan under title XXI (in this section referred to as the ‘State CHIP agency’) and an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act utilize a secure electronic interface sufficient to allow for a determination of an individual’s eligibility for such medical assistance, child health assistance, or premium assistance, and enrollment in the State plan under this title, title XXI, or a qualified health plan, as appropriate;

“(E) coordinating, for individuals who are enrolled in the State plan or under a waiver of the plan and who are also enrolled in a qualified health plan offered through such an Exchange, and for individuals who are enrolled in the State child health plan under title XXI and who are also enrolled in a qualified health plan, the provision of medical assistance or child health assistance to such individuals with the coverage provided under the qualified health plan in which they are enrolled, including services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnostic, and treatment services defined in section 1905(r)) and provided in accordance with the requirements of section 1902(a)(43); and

“(F) conducting outreach to and enrolling vulnerable and underserved populations eligible for medical assistance under this title XIX or for child health assistance under title XXI, including children, unaccompanied homeless youth, children and youth with special health care needs, pregnant women, racial and ethnic minorities, rural populations, victims of abuse or trauma, individuals with mental health or substance-related disorders, and individuals with HIV/AIDS.

“(2) AGREEMENTS WITH STATE HEALTH INSURANCE EXCHANGES.—The State Medicaid agency and the State CHIP agency may enter into an agreement with an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act under which the State Medicaid agency or State CHIP agency may determine whether a State resident is eligible for premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 (and, if applicable, advance payment of such assistance under section 1412 of the Patient Protection and Affordable Care Act), so long as the agreement meets such conditions and requirements as the Secretary of the Treasury may prescribe to reduce administrative costs and the likelihood of eligibility errors and disruptions in coverage.

“(3) STREAMLINED ENROLLMENT SYSTEM.—The State Medicaid agency and State CHIP agency shall participate in and comply with the requirements for the system established under section 1413 of the Patient Protection and Affordable Care Act (relating to streamlined procedures for enrollment through an Exchange, Medicaid, and CHIP).

“(4) **ENROLLMENT WEBSITE REQUIREMENTS.**—The procedures established by State under paragraph (1) shall include establishing and having in operation, not later than January 1, 2014, an Internet website that is linked to any website of an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act and to the State CHIP agency (if different from the State Medicaid agency) and allows an individual who is eligible for medical assistance under the State plan or under a waiver of the plan and who is eligible to receive premium credit assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 to compare the benefits, premiums, and cost-sharing applicable to the individual under the State plan or waiver with the benefits, premiums, and cost-sharing available to the individual under a qualified health plan offered through such an Exchange, including, in the case of a child, the coverage that would be provided for the child through the State plan or waiver with the coverage that would be provided to the child through enrollment in family coverage under that plan and as supplemental coverage by the State under the State plan or waiver. Deadline.

“(5) **CONTINUED NEED FOR ASSESSMENT FOR HOME AND COMMUNITY-BASED SERVICES.**—Nothing in paragraph (1) shall limit or modify the requirement that the State assess an individual for purposes of providing home and community-based services under the State plan or under any waiver of such plan for individuals described in subsection (a)(10)(A)(ii)(VI).”.

SEC. 2202. PERMITTING HOSPITALS TO MAKE PRESUMPTIVE ELIGIBILITY DETERMINATIONS FOR ALL MEDICAID ELIGIBLE POPULATIONS.

(a) **IN GENERAL.**—Section 1902(a)(47) of the Social Security Act (42 U.S.C. 1396a(a)(47)) is amended—

(1) by striking “at the option of the State, provide” and inserting “provide—

“(A) at the option of the State,”;

(2) by inserting “and” after the semicolon; and

(3) by adding at the end the following:

“(B) that any hospital that is a participating provider under the State plan may elect to be a qualified entity for purposes of determining, on the basis of preliminary information, whether any individual is eligible for medical assistance under the State plan or under a waiver of the plan for purposes of providing the individual with medical assistance during a presumptive eligibility period, in the same manner, and subject to the same requirements, as apply to the State options with respect to populations described in section 1920, 1920A, or 1920B (but without regard to whether the State has elected to provide for a presumptive eligibility period under any such sections), subject to such guidance as the Secretary shall establish.”. Guidelines.

(b) **CONFORMING AMENDMENT.**—Section 1903(u)(1)(D)(v) of such Act (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

(1) by striking “or for” and inserting “for”; and

(2) by inserting before the period at the end the following: “, or for medical assistance provided to an individual during a presumptive eligibility period resulting from a determination

Applicability.
42 USC 1396a
note.

of presumptive eligibility made by a hospital that elects under section 1902(a)(47)(B) to be a qualified entity for such purpose”.
(c) EFFECTIVE DATE.—The amendments made by this section take effect on January 1, 2014, and apply to services furnished on or after that date.

Subtitle D—Improvements to Medicaid Services

SEC. 2301. COVERAGE FOR FREESTANDING BIRTH CENTER SERVICES.

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), is amended—

(1) in subsection (a)—

(A) in paragraph (27), by striking “and” at the end;

(B) by redesignating paragraph (28) as paragraph (29);

and

(C) by inserting after paragraph (27) the following new paragraph:

“(28) freestanding birth center services (as defined in subsection (1)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in subsection (1)(3)(B)) and that are otherwise included in the plan; and”;

(2) in subsection (1), by adding at the end the following new paragraph:

Definitions.

“(3)(A) The term ‘freestanding birth center services’ means services furnished to an individual at a freestanding birth center (as defined in subparagraph (B)) at such center.

“(B) The term ‘freestanding birth center’ means a health facility—

“(i) that is not a hospital;

“(ii) where childbirth is planned to occur away from the pregnant woman’s residence;

“(iii) that is licensed or otherwise approved by the State to provide prenatal labor and delivery or postpartum care and other ambulatory services that are included in the plan; and

“(iv) that complies with such other requirements relating to the health and safety of individuals furnished services by the facility as the State shall establish.

Payments.

“(C) A State shall provide separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center (as defined in subparagraph (B)), such as nurse midwives and other providers of services such as birth attendants recognized under State law, as determined appropriate by the Secretary. For purposes of the preceding sentence, the term ‘birth attendant’ means an individual who is recognized or registered by the State involved to provide health care at childbirth and who provides such care within the scope of practice under which the individual is legally authorized to perform such care under State law (or the State regulatory mechanism provided by State law), regardless of whether the individual is under the supervision of, or associated with, a physician or other health care provider. Nothing in this subparagraph shall be construed as changing State law requirements applicable to a birth attendant.”.

(b) CONFORMING AMENDMENT.—Section 1902(a)(10)(A) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)), is amended in the

matter preceding clause (i) by striking “and (21)” and inserting “, (21), and (28)”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to services furnished on or after such date.

42 USC 1396a
note.
Applicability.

(2) EXCEPTION IF STATE LEGISLATION REQUIRED.—In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Determination.

SEC. 2302. CONCURRENT CARE FOR CHILDREN.

(a) IN GENERAL.—Section 1905(o)(1) of the Social Security Act (42 U.S.C. 1396d(o)(1)) is amended—

(1) in subparagraph (A), by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(2) by adding at the end the following new subparagraph: “(C) A voluntary election to have payment made for hospice care for a child (as defined by the State) shall not constitute a waiver of any rights of the child to be provided with, or to have payment made under this title for, services that are related to the treatment of the child’s condition for which a diagnosis of terminal illness has been made.”

(b) APPLICATION TO CHIP.—Section 2110(a)(23) of the Social Security Act (42 U.S.C. 1397jj(a)(23)) is amended by inserting “(concurrent, in the case of an individual who is a child, with care related to the treatment of the child’s condition with respect to which a diagnosis of terminal illness has been made” after “hospice care”.

SEC. 2303. STATE ELIGIBILITY OPTION FOR FAMILY PLANNING SERVICES.

(a) COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)), as amended by section 2001(e), is amended—

(A) in subclause (XIX), by striking “or” at the end;

(B) in subclause (XX), by adding “or” at the end; and

(C) by adding at the end the following new subclause:

“(XXI) who are described in subsection (ii) (relating to individuals who meet certain income standards);”.

(2) GROUP DESCRIBED.—Section 1902 of such Act (42 U.S.C. 1396a), as amended by section 2001(d), is amended by adding at the end the following new subsection:

“(ii)(1) Individuals described in this subsection are individuals—

“(A) whose income does not exceed an income eligibility level established by the State that does not exceed the highest income eligibility level established under the State plan under this title (or under its State child health plan under title XXI) for pregnant women; and

“(B) who are not pregnant.

“(2) At the option of a State, individuals described in this subsection may include individuals who, had individuals applied on or before January 1, 2007, would have been made eligible pursuant to the standards and processes imposed by that State for benefits described in clause (XV) of the matter following subparagraph (G) of section subsection (a)(10) pursuant to a waiver granted under section 1115.

“(3) At the option of a State, for purposes of subsection (a)(17)(B), in determining eligibility for services under this subsection, the State may consider only the income of the applicant or recipient.”.

(3) LIMITATION ON BENEFITS.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)), as amended by section 2001(a)(5)(A), is amended in the matter following subparagraph (G)—

(A) by striking “and (XV)” and inserting “(XV)”; and

(B) by inserting “, and (XVI) the medical assistance made available to an individual described in subsection (ii) shall be limited to family planning services and supplies described in section 1905(a)(4)(C) including medical diagnosis and treatment services that are provided pursuant to a family planning service in a family planning setting” before the semicolon.

(4) CONFORMING AMENDMENTS.—

(A) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), as amended by section 2001(e)(2)(A), is amended in the matter preceding paragraph (1)—

(i) in clause (xiv), by striking “or” at the end;

(ii) in clause (xv), by adding “or” at the end; and

(iii) by inserting after clause (xv) the following: “(xvi) individuals described in section 1902(ii),”.

(B) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)), as amended by section 2001(e)(2)(B), is amended by inserting “1902(a)(10)(A)(ii)(XXI),” after “1902(a)(10)(A)(ii)(XX),”.

(b) PRESUMPTIVE ELIGIBILITY.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1920B the following:

“PRESUMPTIVE ELIGIBILITY FOR FAMILY PLANNING SERVICES

“SEC. 1920C. (a) STATE OPTION.—State plan approved under section 1902 may provide for making medical assistance available to an individual described in section 1902(ii) (relating to individuals who meet certain income eligibility standard) during a presumptive eligibility period. In the case of an individual described in section 1902(ii), such medical assistance shall be limited to family planning services and supplies described in 1905(a)(4)(C) and, at the State’s option, medical diagnosis and treatment services that are provided

in conjunction with a family planning service in a family planning setting.

“(b) DEFINITIONS.—For purposes of this section:

“(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The term ‘presumptive eligibility period’ means, with respect to an individual described in subsection (a), the period that—

“(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the individual is described in section 1902(ii); and

“(B) ends with (and includes) the earlier of—

“(i) the day on which a determination is made with respect to the eligibility of such individual for services under the State plan; or

“(ii) in the case of such an individual who does not file an application by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

“(2) QUALIFIED ENTITY.—

“(A) IN GENERAL.—Subject to subparagraph (B), the term ‘qualified entity’ means any entity that—

“(i) is eligible for payments under a State plan approved under this title; and

“(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).

“(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing a State from limiting the classes of entities that may become qualified entities in order to prevent fraud and abuse.

“(c) ADMINISTRATION.—

“(1) IN GENERAL.—The State agency shall provide qualified entities with—

“(A) such forms as are necessary for an application to be made by an individual described in subsection (a) for medical assistance under the State plan; and

“(B) information on how to assist such individuals in completing and filing such forms.

“(2) NOTIFICATION REQUIREMENTS.—A qualified entity that determines under subsection (b)(1)(A) that an individual described in subsection (a) is presumptively eligible for medical assistance under a State plan shall—

“(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

“(B) inform such individual at the time the determination is made that an application for medical assistance is required to be made by not later than the last day of the month following the month during which the determination is made.

“(3) APPLICATION FOR MEDICAL ASSISTANCE.—In the case of an individual described in subsection (a) who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the individual shall apply for medical assistance by not later than the last day of the month following the month during which the determination is made.

“(d) PAYMENT.—Notwithstanding any other provision of law, medical assistance that—

“(1) is furnished to an individual described in subsection (a)—

“(A) during a presumptive eligibility period; and

“(B) by a entity that is eligible for payments under the State plan; and

“(2) is included in the care and services covered by the State plan, shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1905(b).”.

(2) CONFORMING AMENDMENTS.—

(A) Section 1902(a)(47) of the Social Security Act (42 U.S.C. 1396a(a)(47)), as amended by section 2202(a), is amended—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: “and provide for making medical assistance available to individuals described in subsection (a) of section 1920C during a presumptive eligibility period in accordance with such section”; and

(ii) in subparagraph (B), by striking “or 1920B” and inserting “1920B, or 1920C”.

(B) Section 1903(u)(1)(D)(v) of such Act (42 U.S.C. 1396b(u)(1)(D)(v)), as amended by section 2202(b), is amended by inserting “or for medical assistance provided to an individual described in subsection (a) of section 1920C during a presumptive eligibility period under such section,” after “1920B during a presumptive eligibility period under such section.”.

(c) CLARIFICATION OF COVERAGE OF FAMILY PLANNING SERVICES AND SUPPLIES.—Section 1937(b) of the Social Security Act (42 U.S.C. 1396u-7(b)), as amended by section 2001(c), is amended by adding at the end the following:

“(7) COVERAGE OF FAMILY PLANNING SERVICES AND SUPPLIES.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark-equivalent coverage under this section unless such coverage includes for any individual described in section 1905(a)(4)(C), medical assistance for family planning services and supplies in accordance with such section.”.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act and shall apply to items and services furnished on or after such date.

SEC. 2304. CLARIFICATION OF DEFINITION OF MEDICAL ASSISTANCE.

Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended by inserting “or the care and services themselves, or both” before “(if provided in or after”.

Applicability.
42 USC 1396a
note.

Subtitle E—New Options for States to Provide Long-Term Services and Supports

SEC. 2401. COMMUNITY FIRST CHOICE OPTION.

Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following:

“(k) STATE PLAN OPTION TO PROVIDE HOME AND COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

“(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, beginning October 1, 2010, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based attendant services and supports for individuals who are eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 2110(c)(5)) or, if greater, the income level applicable for an individual who has been determined to require an institutional level of care to be eligible for nursing facility services under the State plan and with respect to whom there has been a determination that, but for the provision of such services, the individuals would require the level of care provided in a hospital, a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases, the cost of which could be reimbursed under the State plan, but only if the individual chooses to receive such home and community-based attendant services and supports, and only if the State meets the following requirements:

Effective date.

“(A) AVAILABILITY.—The State shall make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing—

“(i) under a person-centered plan of services and supports that is based on an assessment of functional need and that is agreed to in writing by the individual or, as appropriate, the individual’s representative;

Contracts.

“(ii) in a home or community setting, which does not include a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded;

“(iii) under an agency-provider model or other model (as defined in paragraph (6)(C)); and

“(iv) the furnishing of which—

“(I) is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual’s representative;

“(II) is controlled, to the maximum extent possible, by the individual or where appropriate, the individual’s representative, regardless of who may act as the employer of record; and

“(III) provided by an individual who is qualified to provide such services, including family members (as defined by the Secretary).

“(B) INCLUDED SERVICES AND SUPPORTS.—In addition to assistance in accomplishing activities of daily living,

instrumental activities of daily living, and health related tasks, the home and community-based attendant services and supports made available include—

“(i) the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health related tasks;

“(ii) back-up systems or mechanisms (such as the use of beepers or other electronic devices) to ensure continuity of services and supports; and

“(iii) voluntary training on how to select, manage, and dismiss attendants.

“(C) EXCLUDED SERVICES AND SUPPORTS.—Subject to subparagraph (D), the home and community-based attendant services and supports made available do not include—

“(i) room and board costs for the individual;

“(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

“(iii) assistive technology devices and assistive technology services other than those under (1)(B)(ii);

“(iv) medical supplies and equipment; or

“(v) home modifications.

“(D) PERMISSIBLE SERVICES AND SUPPORTS.—The home and community-based attendant services and supports may include—

“(i) expenditures for transition costs such as rent and utility deposits, first month’s rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility, institution for mental diseases, or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides; and

“(ii) expenditures relating to a need identified in an individual’s person-centered plan of services that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

“(2) INCREASED FEDERAL FINANCIAL PARTICIPATION.—For purposes of payments to a State under section 1903(a)(1), with respect to amounts expended by the State to provide medical assistance under the State plan for home and community-based attendant services and supports to eligible individuals in accordance with this subsection during a fiscal year quarter occurring during the period described in paragraph (1), the Federal medical assistance percentage applicable to the State (as determined under section 1905(b)) shall be increased by 6 percentage points.

“(3) STATE REQUIREMENTS.—In order for a State plan amendment to be approved under this subsection, the State shall—

“(A) develop and implement such amendment in collaboration with a Development and Implementation Council established by the State that includes a majority of members with disabilities, elderly individuals, and their

Establishment.

representatives and consults and collaborates with such individuals;

“(B) provide consumer controlled home and community-based attendant services and supports to individuals on a statewide basis, in a manner that provides such services and supports in the most integrated setting appropriate to the individual’s needs, and without regard to the individual’s age, type or nature of disability, severity of disability, or the form of home and community-based attendant services and supports that the individual requires in order to lead an independent life;

“(C) with respect to expenditures during the first full fiscal year in which the State plan amendment is implemented, maintain or exceed the level of State expenditures for medical assistance that is provided under section 1905(a), section 1915, section 1115, or otherwise to individuals with disabilities or elderly individuals attributable to the preceding fiscal year;

“(D) establish and maintain a comprehensive, continuous quality assurance system with respect to community-based attendant services and supports that—

“(i) includes standards for agency-based and other delivery models with respect to training, appeals for denials and reconsideration procedures of an individual plan, and other factors as determined by the Secretary;

“(ii) incorporates feedback from consumers and their representatives, disability organizations, providers, families of disabled or elderly individuals, members of the community, and others and maximizes consumer independence and consumer control;

“(iii) monitors the health and well-being of each individual who receives home and community-based attendant services and supports, including a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports; and

“(iv) provides information about the provisions of the quality assurance required under clauses (i) through (iii) to each individual receiving such services; and

“(E) collect and report information, as determined necessary by the Secretary, for the purposes of approving the State plan amendment, providing Federal oversight, and conducting an evaluation under paragraph (5)(A), including data regarding how the State provides home and community-based attendant services and supports and other home and community-based services, the cost of such services and supports, and how the State provides individuals with disabilities who otherwise qualify for institutional care under the State plan or under a waiver the choice to instead receive home and community-based services in lieu of institutional care.

“(4) COMPLIANCE WITH CERTAIN LAWS.—A State shall ensure that, regardless of whether the State uses an agency-provider model or other models to provide home and community-based attendant services and supports under a State plan

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amendment under this subsection, such services and supports are provided in accordance with the requirements of the Fair Labor Standards Act of 1938 and applicable Federal and State laws regarding—

“(A) withholding and payment of Federal and State income and payroll taxes;

“(B) the provision of unemployment and workers compensation insurance;

“(C) maintenance of general liability insurance; and

“(D) occupational health and safety.

“(5) EVALUATION, DATA COLLECTION, AND REPORT TO CONGRESS.—

“(A) EVALUATION.—The Secretary shall conduct an evaluation of the provision of home and community-based attendant services and supports under this subsection in order to determine the effectiveness of the provision of such services and supports in allowing the individuals receiving such services and supports to lead an independent life to the maximum extent possible; the impact on the physical and emotional health of the individuals who receive such services; and an comparative analysis of the costs of services provided under the State plan amendment under this subsection and those provided under institutional care in a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded.

“(B) DATA COLLECTION.—The State shall provide the Secretary with the following information regarding the provision of home and community-based attendant services and supports under this subsection for each fiscal year for which such services and supports are provided:

“(i) The number of individuals who are estimated to receive home and community-based attendant services and supports under this subsection during the fiscal year.

“(ii) The number of individuals that received such services and supports during the preceding fiscal year.

“(iii) The specific number of individuals served by type of disability, age, gender, education level, and employment status.

“(iv) Whether the specific individuals have been previously served under any other home and community based services program under the State plan or under a waiver.

“(C) REPORTS.—Not later than—

“(i) December 31, 2013, the Secretary shall submit to Congress and make available to the public an interim report on the findings of the evaluation under subparagraph (A); and

“(ii) December 31, 2015, the Secretary shall submit to Congress and make available to the public a final report on the findings of the evaluation under subparagraph (A).

“(6) DEFINITIONS.—In this subsection:

“(A) ACTIVITIES OF DAILY LIVING.—The term ‘activities of daily living’ includes tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

“(B) CONSUMER CONTROLLED.—The term ‘consumer controlled’ means a method of selecting and providing services and supports that allow the individual, or where appropriate, the individual’s representative, maximum control of the home and community-based attendant services and supports, regardless of who acts as the employer of record.

“(C) DELIVERY MODELS.—

“(i) AGENCY-PROVIDER MODEL.—The term ‘agency-provider model’ means, with respect to the provision of home and community-based attendant services and supports for an individual, subject to paragraph (4), a method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports.

“(ii) OTHER MODELS.—The term ‘other models’ means, subject to paragraph (4), methods, other than an agency-provider model, for the provision of consumer controlled services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

“(D) HEALTH-RELATED TASKS.—The term ‘health-related tasks’ means specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

“(E) INDIVIDUAL’S REPRESENTATIVE.—The term ‘individual’s representative’ means a parent, family member, guardian, advocate, or other authorized representative of an individual

“(F) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term ‘instrumental activities of daily living’ includes (but is not limited to) meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.”.

SEC. 2402. REMOVAL OF BARRIERS TO PROVIDING HOME AND COMMUNITY-BASED SERVICES.

(a) OVERSIGHT AND ASSESSMENT OF THE ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES.—The Secretary of Health and Human Services shall promulgate regulations to ensure that all States develop service systems that are designed to—

42 USC 1396n
note.
Regulations.

(1) allocate resources for services in a manner that is responsive to the changing needs and choices of beneficiaries receiving non-institutionally-based long-term services and supports (including such services and supports that are provided under programs other than the State Medicaid program), and that provides strategies for beneficiaries receiving such services to maximize their independence, including through the use of client-employed providers;

(2) provide the support and coordination needed for a beneficiary in need of such services (and their family caregivers or representative, if applicable) to design an individualized, self-directed, community-supported life; and

(3) improve coordination among, and the regulation of, all providers of such services under federally and State-funded programs in order to—

(A) achieve a more consistent administration of policies and procedures across programs in relation to the provision of such services; and

(B) oversee and monitor all service system functions to assure—

(i) coordination of, and effectiveness of, eligibility determinations and individual assessments;

(ii) development and service monitoring of a complaint system, a management system, a system to qualify and monitor providers, and systems for role-setting and individual budget determinations; and

(iii) an adequate number of qualified direct care workers to provide self-directed personal assistance services.

(b) ADDITIONAL STATE OPTIONS.—Section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)) is amended by adding at the end the following new paragraphs:

“(6) STATE OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO INDIVIDUALS ELIGIBLE FOR SERVICES UNDER A WAIVER.—

“(A) IN GENERAL.—A State that provides home and community-based services in accordance with this subsection to individuals who satisfy the needs-based criteria for the receipt of such services established under paragraph (1)(A) may, in addition to continuing to provide such services to such individuals, elect to provide home and community-based services in accordance with the requirements of this paragraph to individuals who are eligible for home and community-based services under a waiver approved for the State under subsection (c), (d), or (e) or under section 1115 to provide such services, but only for those individuals whose income does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1).

“(B) APPLICATION OF SAME REQUIREMENTS FOR INDIVIDUALS SATISFYING NEEDS-BASED CRITERIA.—Subject to subparagraph (C), a State shall provide home and community-based services to individuals under this paragraph in the same manner and subject to the same requirements as apply under the other paragraphs of this subsection to the provision of home and community-based services to individuals who satisfy the needs-based criteria established under paragraph (1)(A).

“(C) AUTHORITY TO OFFER DIFFERENT TYPE, AMOUNT, DURATION, OR SCOPE OF HOME AND COMMUNITY-BASED SERVICES.—A State may offer home and community-based services to individuals under this paragraph that differ in type, amount, duration, or scope from the home and community-based services offered for individuals who satisfy the needs-based criteria established under paragraph (1)(A), so long as such services are within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and do not include room or board.

“(7) STATE OPTION TO OFFER HOME AND COMMUNITY-BASED SERVICES TO SPECIFIC, TARGETED POPULATIONS.—

“(A) IN GENERAL.—A State may elect in a State plan amendment under this subsection to target the provision of home and community-based services under this subsection to specific populations and to differ the type, amount, duration, or scope of such services to such specific populations.

“(B) 5-YEAR TERM.—

“(i) IN GENERAL.—An election by a State under this paragraph shall be for a period of 5 years.

“(ii) PHASE-IN OF SERVICES AND ELIGIBILITY PERMITTED DURING INITIAL 5-YEAR PERIOD.—A State making an election under this paragraph may, during the first 5-year period for which the election is made, phase-in the enrollment of eligible individuals, or the provision of services to such individuals, or both, so long as all eligible individuals in the State for such services are enrolled, and all such services are provided, before the end of the initial 5-year period.

“(C) RENEWAL.—An election by a State under this paragraph may be renewed for additional 5-year terms if the Secretary determines, prior to beginning of each such renewal period, that the State has—

Time period.
Determination.
Deadline.

“(i) adhered to the requirements of this subsection and paragraph in providing services under such an election; and

“(ii) met the State’s objectives with respect to quality improvement and beneficiary outcomes.”.

(c) REMOVAL OF LIMITATION ON SCOPE OF SERVICES.—Paragraph (1) of section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)), as amended by subsection (a), is amended by striking “or such other services requested by the State as the Secretary may approve”.

(d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING HOME AND COMMUNITY-BASED SERVICES UNDER A STATE PLAN AMENDMENT.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)), as amended by section 2304(a)(1), is amended—

(A) in subclause (XX), by striking “or” at the end;

(B) in subclause (XXI), by adding “or” at the end;

and

(C) by inserting after subclause (XXI), the following new subclause:

“(XXII) who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection;”.

(2) CONFORMING AMENDMENTS.—

(A) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)), as amended by section 2304(a)(4)(B), is amended in the matter preceding subparagraph (A),

by inserting “1902(a)(10)(A)(ii)(XXII),” after “1902(a)(10)(A)(ii)(XXI),”.

(B) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), as so amended, is amended in the matter preceding paragraph (1)—

(i) in clause (xv), by striking “or” at the end;

(ii) in clause (xvi), by adding “or” at the end;

and

(iii) by inserting after clause (xvi) the following new clause:

“(xvii) individuals who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection,”.

(e) **ELIMINATION OF OPTION TO LIMIT NUMBER OF ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA IS MODIFIED.**—Paragraph (1) of section 1915(i) of such Act (42 U.S.C. 1396n(i)) is amended—

(1) by striking subparagraph (C) and inserting the following:

“(C) **PROJECTION OF NUMBER OF INDIVIDUALS TO BE PROVIDED HOME AND COMMUNITY-BASED SERVICES.**—The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.”; and

(2) in subclause (II) of subparagraph (D)(ii), by striking “to be eligible for such services for a period of at least 12 months beginning on the date the individual first received medical assistance for such services” and inserting “to continue to be eligible for such services after the effective date of the modification and until such time as the individual no longer meets the standard for receipt of such services under such pre-modified criteria”.

(f) **ELIMINATION OF OPTION TO WAIVE STATEWIDENESS; ADDITION OF OPTION TO WAIVE COMPARABILITY.**—Paragraph (3) of section 1915(i) of such Act (42 U.S.C. 1396n(3)) is amended by striking “1902(a)(1) (relating to statewideness)” and inserting “1902(a)(10)(B) (relating to comparability)”.

(g) **EFFECTIVE DATE.**—The amendments made by subsections (b) through (f) take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

SEC. 2403. MONEY FOLLOWS THE PERSON REBALANCING DEMONSTRATION.

(a) **EXTENSION OF DEMONSTRATION.**—

(1) **IN GENERAL.**—Section 6071(h) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396a note) is amended—

(A) in paragraph (1)(E), by striking “fiscal year 2011” and inserting “each of fiscal years 2011 through 2016”; and

(B) in paragraph (2), by striking “2011” and inserting “2016”.

(2) EVALUATION.—Paragraphs (2) and (3) of section 6071(g) of such Act is amended are each amended by striking “2011” and inserting “2016”.

(b) REDUCTION OF INSTITUTIONAL RESIDENCY PERIOD.—

(1) IN GENERAL.—Section 6071(b)(2) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396a note) is amended—

(A) in subparagraph (A)(i), by striking “, for a period of not less than 6 months or for such longer minimum period, not to exceed 2 years, as may be specified by the State” and inserting “for a period of not less than 90 consecutive days”; and

(B) by adding at the end the following:

“Any days that an individual resides in an institution on the basis of having been admitted solely for purposes of receiving short-term rehabilitative services for a period for which payment for such services is limited under title XVIII shall not be taken into account for purposes of determining the 90-day period required under subparagraph (A)(i).”.

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect 30 days after the date of enactment of this Act.

42 USC 1396a
note.

SEC. 2404. PROTECTION FOR RECIPIENTS OF HOME AND COMMUNITY-BASED SERVICES AGAINST SPOUSAL IMPOVERISHMENT.

42 USC 1396r–5
note.

During the 5-year period that begins on January 1, 2014, section 1924(h)(1)(A) of the Social Security Act (42 U.S.C. 1396r–5(h)(1)(A)) shall be applied as though “is eligible for medical assistance for home and community-based services provided under subsection (c), (d), or (i) of section 1915, under a waiver approved under section 1115, or who is eligible for such medical assistance by reason of being determined eligible under section 1902(a)(10)(C) or by reason of section 1902(f) or otherwise on the basis of a reduction of income based on costs incurred for medical or other remedial care, or who is eligible for medical assistance for home and community-based attendant services and supports under section 1915(k)” were substituted in such section for “(at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI)”.

Time period.
Applicability.

SEC. 2405. FUNDING TO EXPAND STATE AGING AND DISABILITY RESOURCE CENTERS.

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, acting through the Assistant Secretary for Aging, \$10,000,000 for each of fiscal years 2010 through 2014, to carry out subsections (a)(20)(B)(iii) and (b)(8) of section 202 of the Older Americans Act of 1965 (42 U.S.C. 3012).

SEC. 2406. SENSE OF THE SENATE REGARDING LONG-TERM CARE.

(a) FINDINGS.—The Senate makes the following findings:

(1) Nearly 2 decades have passed since Congress seriously considered long-term care reform. The United States Bipartisan Commission on Comprehensive Health Care, also known as the “Pepper Commission”, released its “Call for Action” blueprint for health reform in September 1990. In the 20 years since those recommendations were made, Congress has never acted on the report.

(2) In 1999, under the United States Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), individuals

with disabilities have the right to choose to receive their long-term services and supports in the community, rather than in an institutional setting.

(3) Despite the Pepper Commission and Olmstead decision, the long-term care provided to our Nation’s elderly and disabled has not improved. In fact, for many, it has gotten far worse.

(4) In 2007, 69 percent of Medicaid long-term care spending for elderly individuals and adults with physical disabilities paid for institutional services. Only 6 states spent 50 percent or more of their Medicaid long-term care dollars on home and community-based services for elderly individuals and adults with physical disabilities while $\frac{1}{2}$ of the States spent less than 25 percent. This disparity continues even though, on average, it is estimated that Medicaid dollars can support nearly 3 elderly individuals and adults with physical disabilities in home and community-based services for every individual in a nursing home. Although every State has chosen to provide certain services under home and community-based waivers, these services are unevenly available within and across States, and reach a small percentage of eligible individuals.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) during the 111th session of Congress, Congress should address long-term services and supports in a comprehensive way that guarantees elderly and disabled individuals the care they need; and

(2) long term services and supports should be made available in the community in addition to in institutions.

Subtitle F—Medicaid Prescription Drug Coverage

SEC. 2501. PRESCRIPTION DRUG REBATES.

(a) INCREASE IN MINIMUM REBATE PERCENTAGE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

(1) IN GENERAL.—Section 1927(c)(1)(B) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(B)) is amended—

(A) in clause (i)—

(i) in subclause (IV), by striking “and” at the end;

(ii) in subclause (V)—

(I) by inserting “and before January 1, 2010” after “December 31, 1995,”; and

(II) by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following new subclause:

“(VI) except as provided in clause (iii), after December 31, 2009, 23.1 percent.”; and

(B) by adding at the end the following new clause:

“(iii) MINIMUM REBATE PERCENTAGE FOR CERTAIN DRUGS.—

“(I) IN GENERAL.—In the case of a single source drug or an innovator multiple source drug described in subclause (II), the minimum rebate percentage for rebate periods specified in clause (i)(VI) is 17.1 percent.

“(II) DRUG DESCRIBED.—For purposes of subclause (I), a single source drug or an innovator multiple source drug described in this subclause is any of the following drugs:

“(aa) A clotting factor for which a separate furnishing payment is made under section 1842(o)(5) and which is included on a list of such factors specified and updated regularly by the Secretary.

“(bb) A drug approved by the Food and Drug Administration exclusively for pediatric indications.”.

(2) RECAPTURE OF TOTAL SAVINGS DUE TO INCREASE.—Section 1927(b)(1) of such Act (42 U.S.C. 1396r-8(b)(1)) is amended by adding at the end the following new subparagraph:

“(C) SPECIAL RULE FOR INCREASED MINIMUM REBATE PERCENTAGE.—

“(i) IN GENERAL.—In addition to the amounts applied as a reduction under subparagraph (B), for rebate periods beginning on or after January 1, 2010, during a fiscal year, the Secretary shall reduce payments to a State under section 1903(a) in the manner specified in clause (ii), in an amount equal to the product of—

Time period.

“(I) 100 percent minus the Federal medical assistance percentage applicable to the rebate period for the State; and

“(II) the amounts received by the State under such subparagraph that are attributable (as estimated by the Secretary based on utilization and other data) to the increase in the minimum rebate percentage effected by the amendments made by subsections (a)(1), (b), and (d) of section 2501 of the Patient Protection and Affordable Care Act, taking into account the additional drugs included under the amendments made by subsection (c) of section 2501 of such Act.

The Secretary shall adjust such payment reduction for a calendar quarter to the extent the Secretary determines, based upon subsequent utilization and other data, that the reduction for such quarter was greater or less than the amount of payment reduction that should have been made.

Determination.

“(ii) MANNER OF PAYMENT REDUCTION.—The amount of the payment reduction under clause (i) for a State for a quarter shall be deemed an overpayment to the State under this title to be disallowed against the State’s regular quarterly draw for all Medicaid spending under section 1903(d)(2). Such a disallowance is not subject to a reconsideration under section 1116(d).”.

(b) INCREASE IN REBATE FOR OTHER DRUGS.—Section 1927(c)(3)(B) of such Act (42 U.S.C. 1396r-8(c)(3)(B)) is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii)—

(A) by inserting “and before January 1, 2010,” after “December 31, 1993,”; and

(B) by striking the period and inserting “; and”; and
 (3) by adding at the end the following new clause:

“(iii) after December 31, 2009, is 13 percent.”.

(c) EXTENSION OF PRESCRIPTION DRUG DISCOUNTS TO ENROLLEES OF MEDICAID MANAGED CARE ORGANIZATIONS.—

(1) IN GENERAL.—Section 1903(m)(2)(A) of such Act (42 U.S.C. 1396b(m)(2)(A)) is amended—

(A) in clause (xi), by striking “and” at the end;

(B) in clause (xii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(xiii) such contract provides that (I) covered outpatient drugs dispensed to individuals eligible for medical assistance who are enrolled with the entity shall be subject to the same rebate required by the agreement entered into under section 1927 as the State is subject to and that the State shall collect such rebates from manufacturers, (II) capitation rates paid to the entity shall be based on actual cost experience related to rebates and subject to the Federal regulations requiring actuarially sound rates, and (III) the entity shall report to the State, on such timely and periodic basis as specified by the Secretary in order to include in the information submitted by the State to a manufacturer and the Secretary under section 1927(b)(2)(A), information on the total number of units of each dosage form and strength and package size by National Drug Code of each covered outpatient drug dispensed to individuals eligible for medical assistance who are enrolled with the entity and for which the entity is responsible for coverage of such drug under this subsection (other than covered outpatient drugs that under subsection (j)(1) of section 1927 are not subject to the requirements of that section) and such other data as the Secretary determines necessary to carry out this subsection.”.

(2) CONFORMING AMENDMENTS.—Section 1927 (42 U.S.C. 1396r-8) is amended—

(A) in subsection (b)—

(i) in paragraph (1)(A), in the first sentence, by inserting “, including such drugs dispensed to individuals enrolled with a medicaid managed care organization if the organization is responsible for coverage of such drugs” before the period; and

(ii) in paragraph (2)(A), by inserting “including such information reported by each medicaid managed care organization,” after “for which payment was made under the plan during the period,”; and

(B) in subsection (j), by striking paragraph (1) and inserting the following:

“(1) Covered outpatient drugs are not subject to the requirements of this section if such drugs are—

“(A) dispensed by health maintenance organizations, including Medicaid managed care organizations that contract under section 1903(m); and

“(B) subject to discounts under section 340B of the Public Health Service Act.”.

Contracts.
 Reports.
 Determination.

(d) ADDITIONAL REBATE FOR NEW FORMULATIONS OF EXISTING DRUGS.—

(1) IN GENERAL.—Section 1927(c)(2) of the Social Security Act (42 U.S.C. 1396r-8(c)(2)) is amended by adding at the end the following new subparagraph:

“(C) TREATMENT OF NEW FORMULATIONS.—

“(i) IN GENERAL.—Except as provided in clause (ii), in the case of a drug that is a new formulation, such as an extended-release formulation, of a single source drug or an innovator multiple source drug, the rebate obligation with respect to the drug under this section shall be the amount computed under this section for the new formulation of the drug or, if greater, the product of—

“(I) the average manufacturer price for each dosage form and strength of the new formulation of the single source drug or innovator multiple source drug;

“(II) the highest additional rebate (calculated as a percentage of average manufacturer price) under this section for any strength of the original single source drug or innovator multiple source drug; and

“(III) the total number of units of each dosage form and strength of the new formulation paid for under the State plan in the rebate period (as reported by the State).

“(ii) NO APPLICATION TO NEW FORMULATIONS OF ORPHAN DRUGS.—Clause (i) shall not apply to a new formulation of a covered outpatient drug that is or has been designated under section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb) for a rare disease or condition, without regard to whether the period of market exclusivity for the drug under section 527 of such Act has expired or the specific indication for use of the drug.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to drugs that are paid for by a State after December 31, 2009.

42 USC 1396r-8 note.

(e) MAXIMUM REBATE AMOUNT.—Section 1927(c)(2) of such Act (42 U.S.C. 1396r-8(c)(2)), as amended by subsection (d), is amended by adding at the end the following new subparagraph:

“(D) MAXIMUM REBATE AMOUNT.—In no case shall the sum of the amounts applied under paragraph (1)(A)(ii) and this paragraph with respect to each dosage form and strength of a single source drug or an innovator multiple source drug for a rebate period beginning after December 31, 2009, exceed 100 percent of the average manufacturer price of the drug.”.

(f) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended—

(A) in subsection (a)(2)(B)(i), by striking “1927(c)(4)” and inserting “1927(c)(3)”; and

(B) by striking subsection (c); and

(C) redesignating subsection (d) as subsection (c).

42 USC 256b
note.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection take effect on January 1, 2010.

SEC. 2502. ELIMINATION OF EXCLUSION OF COVERAGE OF CERTAIN DRUGS.

(a) **IN GENERAL.**—Section 1927(d) of the Social Security Act (42 U.S.C. 1397r–8(d)) is amended—

(1) in paragraph (2)—

(A) by striking subparagraphs (E), (I), and (J), respectively; and

(B) by redesignating subparagraphs (F), (G), (H), and (K) as subparagraphs (E), (F), (G), and (H), respectively; and

(2) by adding at the end the following new paragraph:

“(7) **NON-EXCLUDABLE DRUGS.**—The following drugs or classes of drugs, or their medical uses, shall not be excluded from coverage:

“(A) Agents when used to promote smoking cessation, including agents approved by the Food and Drug Administration under the over-the-counter monograph process for purposes of promoting, and when used to promote, tobacco cessation.

“(B) Barbiturates.

“(C) Benzodiazepines.”.

42 USC 1396r–8
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to services furnished on or after January 1, 2014.

SEC. 2503. PROVIDING ADEQUATE PHARMACY REIMBURSEMENT.

(a) **PHARMACY REIMBURSEMENT LIMITS.**—

(1) **IN GENERAL.**—Section 1927(e) of the Social Security Act (42 U.S.C. 1396r–8(e)) is amended—

(A) in paragraph (4), by striking “(or, effective January 1, 2007, two or more)”; and

(B) by striking paragraph (5) and inserting the following:

“(5) **USE OF AMP IN UPPER PAYMENT LIMITS.**—The Secretary shall calculate the Federal upper reimbursement limit established under paragraph (4) as no less than 175 percent of the weighted average (determined on the basis of utilization) of the most recently reported monthly average manufacturer prices for pharmaceutically and therapeutically equivalent multiple source drug products that are available for purchase by retail community pharmacies on a nationwide basis. The Secretary shall implement a smoothing process for average manufacturer prices. Such process shall be similar to the smoothing process used in determining the average sales price of a drug or biological under section 1847A.”.

(2) **DEFINITION OF AMP.**—Section 1927(k)(1) of such Act (42 U.S.C. 1396r–8(k)(1)) is amended—

(A) in subparagraph (A), by striking “by” and all that follows through the period and inserting “by—

“(i) wholesalers for drugs distributed to retail community pharmacies; and

“(ii) retail community pharmacies that purchase drugs directly from the manufacturer.”; and

(B) by striking subparagraph (B) and inserting the following:

“(B) EXCLUSION OF CUSTOMARY PROMPT PAY DISCOUNTS AND OTHER PAYMENTS.—

“(i) IN GENERAL.—The average manufacturer price for a covered outpatient drug shall exclude—

“(I) customary prompt pay discounts extended to wholesalers;

“(II) bona fide service fees paid by manufacturers to wholesalers or retail community pharmacies, including (but not limited to) distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs);

“(III) reimbursement by manufacturers for recalled, damaged, expired, or otherwise unsalable returned goods, including (but not limited to) reimbursement for the cost of the goods and any reimbursement of costs associated with return goods handling and processing, reverse logistics, and drug destruction; and

“(IV) payments received from, and rebates or discounts provided to, pharmacy benefit managers, managed care organizations, health maintenance organizations, insurers, hospitals, clinics, mail order pharmacies, long term care providers, manufacturers, or any other entity that does not conduct business as a wholesaler or a retail community pharmacy.

“(ii) INCLUSION OF OTHER DISCOUNTS AND PAYMENTS.—Notwithstanding clause (i), any other discounts, rebates, payments, or other financial transactions that are received by, paid by, or passed through to, retail community pharmacies shall be included in the average manufacturer price for a covered outpatient drug.”; and

(C) in subparagraph (C), by striking “the retail pharmacy class of trade” and inserting “retail community pharmacies”.

(3) DEFINITION OF MULTIPLE SOURCE DRUG.—Section 1927(k)(7) of such Act (42 U.S.C. 1396r-8(k)(7)) is amended—

(A) in subparagraph (A)(i)(III), by striking “the State” and inserting “the United States”; and

(B) in subparagraph (C)—

(i) in clause (i), by inserting “and” after the semicolon;

(ii) in clause (ii), by striking “; and” and inserting a period; and

(iii) by striking clause (iii).

(4) DEFINITIONS OF RETAIL COMMUNITY PHARMACY; WHOLE-SALER.—Section 1927(k) of such Act (42 U.S.C. 1396r-8(k)) is amended by adding at the end the following new paragraphs:

“(10) RETAIL COMMUNITY PHARMACY.—The term ‘retail community pharmacy’ means an independent pharmacy, a chain pharmacy, a supermarket pharmacy, or a mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medications to the general public at retail

prices. Such term does not include a pharmacy that dispenses prescription medications to patients primarily through the mail, nursing home pharmacies, long-term care facility pharmacies, hospital pharmacies, clinics, charitable or not-for-profit pharmacies, government pharmacies, or pharmacy benefit managers.

“(11) WHOLESALER.—The term ‘wholesaler’ means a drug wholesaler that is engaged in wholesale distribution of prescription drugs to retail community pharmacies, including (but not limited to) manufacturers, repackers, distributors, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturer’s and distributor’s warehouses, chain drug warehouses, and wholesale drug warehouses) independent wholesale drug traders, and retail community pharmacies that conduct wholesale distributions.”

(b) DISCLOSURE OF PRICE INFORMATION TO THE PUBLIC.—Section 1927(b)(3) of such Act (42 U.S.C. 1396r-8(b)(3)) is amended—

(1) in subparagraph (A)—

(A) in the first sentence, by inserting after clause (iii) the following:

“(iv) not later than 30 days after the last day of each month of a rebate period under the agreement, on the manufacturer’s total number of units that are used to calculate the monthly average manufacturer price for each covered outpatient drug;”;

(B) in the second sentence, by inserting “(relating to the weighted average of the most recently reported monthly average manufacturer prices)” after “(D)(v)”; and

(2) in subparagraph (D)(v), by striking “average manufacturer prices” and inserting “the weighted average of the most recently reported monthly average manufacturer prices and the average retail survey price determined for each multiple source drug in accordance with subsection (f)”.

(c) CLARIFICATION OF APPLICATION OF SURVEY OF RETAIL PRICES.—Section 1927(f)(1) of such Act (42 U.S.C. 1396r-8(b)(1)) is amended—

(1) in subparagraph (A)(i), by inserting “with respect to a retail community pharmacy,” before “the determination”; and

(2) in subparagraph (C)(ii), by striking “retail pharmacies” and inserting “retail community pharmacies”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar year quarter that begins at least 180 days after the date of enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

42 USC 1396r-8
note.

Subtitle G—Medicaid Disproportionate Share Hospital (DSH) Payments

SEC. 2551. DISPROPORTIONATE SHARE HOSPITAL PAYMENTS.

(a) IN GENERAL.—Section 1923(f) of the Social Security Act (42 U.S.C. 1396r-4(f)) is amended—

(1) in paragraph (1), by striking “and (3)” and inserting “, (3), and (7)”; and

(2) in paragraph (3)(A), by striking “paragraph (6)” and inserting “paragraphs (6) and (7)”; and

(3) by redesignating paragraph (7) as paragraph (8); and
 (4) by inserting after paragraph (6) the following new paragraph:

“(7) REDUCTION OF STATE DSH ALLOTMENTS ONCE REDUCTION IN UNINSURED THRESHOLD REACHED.—

“(A) IN GENERAL.—Subject to subparagraph (E), the DSH allotment for a State for fiscal years beginning with the fiscal year described in subparagraph (C) (with respect to the State), is equal to—

“(i) in the case of the first fiscal year described in subparagraph (C) with respect to a State, the DSH allotment that would be determined under this subsection for the State for the fiscal year without application of this paragraph (but after the application of subparagraph (D)), reduced by the applicable percentage determined for the State for the fiscal year under subparagraph (B)(i); and

“(ii) in the case of any subsequent fiscal year with respect to the State, the DSH allotment determined under this paragraph for the State for the preceding fiscal year, reduced by the applicable percentage determined for the State for the fiscal year under subparagraph (B)(ii).

“(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage for a State for a fiscal year is the following:

“(i) UNINSURED REDUCTION THRESHOLD FISCAL YEAR.—In the case of the first fiscal year described in subparagraph (C) with respect to the State—

“(I) if the State is a low DSH State described in paragraph (5)(B), the applicable percentage is equal to 25 percent; and

“(II) if the State is any other State, the applicable percentage is 50 percent.

“(ii) SUBSEQUENT FISCAL YEARS IN WHICH THE PERCENTAGE OF UNINSURED DECREASES.—In the case of any fiscal year after the first fiscal year described in subparagraph (C) with respect to a State, if the Secretary determines on the basis of the most recent American Community Survey of the Bureau of the Census, that the percentage of uncovered individuals residing in the State is less than the percentage of such individuals determined for the State for the preceding fiscal year—

“(I) if the State is a low DSH State described in paragraph (5)(B), the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 25 percent; and

“(II) if the State is any other State, the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 50 percent.

“(C) FISCAL YEAR DESCRIBED.—For purposes of subparagraph (A), the fiscal year described in this subparagraph with respect to a State is the first fiscal year that

Determination.

Determination.

occurs after fiscal year 2012 for which the Secretary determines, on the basis of the most recent American Community Survey of the Bureau of the Census, that the percentage of uncovered individuals residing in the State is at least 45 percent less than the percentage of such individuals determined for the State for fiscal year 2009.

“(D) EXCLUSION OF PORTIONS DIVERTED FOR COVERAGE EXPANSIONS.—For purposes of applying the applicable percentage reduction under subparagraph (A) to the DSH allotment for a State for a fiscal year, the DSH allotment for a State that would be determined under this subsection for the State for the fiscal year without the application of this paragraph (and prior to any such reduction) shall not include any portion of the allotment for which the Secretary has approved the State’s diversion to the costs of providing medical assistance or other health benefits coverage under a waiver that is in effect on July 2009.

“(E) MINIMUM ALLOTMENT.—In no event shall the DSH allotment determined for a State in accordance with this paragraph for fiscal year 2013 or any succeeding fiscal year be less than the amount equal to 35 percent of the DSH allotment determined for the State for fiscal year 2012 under this subsection (and after the application of this paragraph, if applicable), increased by the percentage change in the consumer price index for all urban consumers (all items, U.S. city average) for each previous fiscal year occurring before the fiscal year.

Definition.

“(F) UNCOVERED INDIVIDUALS.—In this paragraph, the term ‘uncovered individuals’ means individuals with no health insurance coverage at any time during a year (as determined by the Secretary based on the most recent data available).”.

42 USC 1396r–4
note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2011.

Subtitle H—Improved Coordination for Dual Eligible Beneficiaries

SEC. 2601. 5-YEAR PERIOD FOR DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Section 1915(h) of the Social Security Act (42 U.S.C. 1396n(h)) is amended—

(1) by inserting “(1)” after “(h)”;

(2) by inserting “, or a waiver described in paragraph (2)” after “(e)”; and

(3) by adding at the end the following new paragraph:

Determination.

“(2)(A) Notwithstanding subsections (c)(3) and (d) (3), any waiver under subsection (b), (c), or (d), or a waiver under section 1115, that provides medical assistance for dual eligible individuals (including any such waivers under which non dual eligible individuals may be enrolled in addition to dual eligible individuals) may be conducted for a period of 5 years and, upon the request of the State, may be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the conditions for the waiver have not been met or it would no longer be cost-effective and efficient, or consistent with the purposes of this title, to extend the waiver.

“(B) In this paragraph, the term ‘dual eligible individual’ means an individual who is entitled to, or enrolled for, benefits under part A of title XVIII, or enrolled for benefits under part B of title XVIII, and is eligible for medical assistance under the State plan under this title or under a waiver of such plan.” Definition.

(b) CONFORMING AMENDMENTS.—

(1) Section 1915 of such Act (42 U.S.C. 1396n) is amended—

(A) in subsection (b), by adding at the end the following new sentence: “Subsection (h)(2) shall apply to a waiver under this subsection.”;

(B) in subsection (c)(3), in the second sentence, by inserting “(other than a waiver described in subsection (h)(2))” after “A waiver under this subsection”;

(C) in subsection (d)(3), in the second sentence, by inserting “(other than a waiver described in subsection (h)(2))” after “A waiver under this subsection”.

(2) Section 1115 of such Act (42 U.S.C. 1315) is amended—

(A) in subsection (e)(2), by inserting “(5 years, in the case of a waiver described in section 1915(h)(2))” after “3 years”; and

(B) in subsection (f)(6), by inserting “(5 years, in the case of a waiver described in section 1915(h)(2))” after “3 years”.

SEC. 2602. PROVIDING FEDERAL COVERAGE AND PAYMENT COORDINATION FOR DUAL ELIGIBLE BENEFICIARIES.

42 USC 1315b.

(a) ESTABLISHMENT OF FEDERAL COORDINATED HEALTH CARE OFFICE.—

(1) IN GENERAL.—Not later than March 1, 2010, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish a Federal Coordinated Health Care Office. Deadline.

(2) ESTABLISHMENT AND REPORTING TO CMS ADMINISTRATOR.—The Federal Coordinated Health Care Office—

(A) shall be established within the Centers for Medicare & Medicaid Services; and

(B) have as the Office a Director who shall be appointed by, and be in direct line of authority to, the Administrator of the Centers for Medicare & Medicaid Services. Appointment.

(b) PURPOSE.—The purpose of the Federal Coordinated Health Care Office is to bring together officers and employees of the Medicare and Medicaid programs at the Centers for Medicare & Medicaid Services in order to—

(1) more effectively integrate benefits under the Medicare program under title XVIII of the Social Security Act and the Medicaid program under title XIX of such Act; and

(2) improve the coordination between the Federal Government and States for individuals eligible for benefits under both such programs in order to ensure that such individuals get full access to the items and services to which they are entitled under titles XVIII and XIX of the Social Security Act.

(c) GOALS.—The goals of the Federal Coordinated Health Care Office are as follows:

(1) Providing dual eligible individuals full access to the benefits to which such individuals are entitled under the Medicare and Medicaid programs.

(2) Simplifying the processes for dual eligible individuals to access the items and services they are entitled to under the Medicare and Medicaid programs.

(3) Improving the quality of health care and long-term services for dual eligible individuals.

(4) Increasing dual eligible individuals' understanding of and satisfaction with coverage under the Medicare and Medicaid programs.

(5) Eliminating regulatory conflicts between rules under the Medicare and Medicaid programs.

(6) Improving care continuity and ensuring safe and effective care transitions for dual eligible individuals.

(7) Eliminating cost-shifting between the Medicare and Medicaid program and among related health care providers.

(8) Improving the quality of performance of providers of services and suppliers under the Medicare and Medicaid programs.

(d) SPECIFIC RESPONSIBILITIES.—The specific responsibilities of the Federal Coordinated Health Care Office are as follows:

(1) Providing States, specialized MA plans for special needs individuals (as defined in section 1859(b)(6) of the Social Security Act (42 U.S.C. 1395w–28(b)(6))), physicians and other relevant entities or individuals with the education and tools necessary for developing programs that align benefits under the Medicare and Medicaid programs for dual eligible individuals.

(2) Supporting State efforts to coordinate and align acute care and long-term care services for dual eligible individuals with other items and services furnished under the Medicare program.

(3) Providing support for coordination of contracting and oversight by States and the Centers for Medicare & Medicaid Services with respect to the integration of the Medicare and Medicaid programs in a manner that is supportive of the goals described in paragraph (3).

(4) To consult and coordinate with the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) and the Medicaid and CHIP Payment and Access Commission established under section 1900 of such Act (42 U.S.C. 1396) with respect to policies relating to the enrollment in, and provision of, benefits to dual eligible individuals under the Medicare program under title XVIII of the Social Security Act and the Medicaid program under title XIX of such Act.

(5) To study the provision of drug coverage for new full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))), as well as to monitor and report annual total expenditures, health outcomes, and access to benefits for all dual eligible individuals.

(e) REPORT.—The Secretary shall, as part of the budget transmitted under section 1105(a) of title 31, United States Code, submit to Congress an annual report containing recommendations for legislation that would improve care coordination and benefits for dual eligible individuals.

(f) DUAL ELIGIBLE DEFINED.—In this section, the term “dual eligible individual” means an individual who is entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act, or enrolled for benefits under part B of title XVIII

of such Act, and is eligible for medical assistance under a State plan under title XIX of such Act or under a waiver of such plan.

Subtitle I—Improving the Quality of Medicaid for Patients and Providers

SEC. 2701. ADULT HEALTH QUALITY MEASURES.

Title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by section 401 of the Children’s Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), is amended by inserting after section 1139A the following new section:

“SEC. 1139B. ADULT HEALTH QUALITY MEASURES.

42 USC
1320b–9b.

“(a) DEVELOPMENT OF CORE SET OF HEALTH CARE QUALITY MEASURES FOR ADULTS ELIGIBLE FOR BENEFITS UNDER MEDICAID.—The Secretary shall identify and publish a recommended core set of adult health quality measures for Medicaid eligible adults in the same manner as the Secretary identifies and publishes a core set of child health quality measures under section 1139A, including with respect to identifying and publishing existing adult health quality measures that are in use under public and privately sponsored health care coverage arrangements, or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time, that may be applicable to Medicaid eligible adults.

Publication.

“(b) DEADLINES.—

“(1) RECOMMENDED MEASURES.—Not later than January 1, 2011, the Secretary shall identify and publish for comment a recommended core set of adult health quality measures for Medicaid eligible adults.

Publication.

“(2) DISSEMINATION.—Not later than January 1, 2012, the Secretary shall publish an initial core set of adult health quality measures that are applicable to Medicaid eligible adults.

Publication.

“(3) STANDARDIZED REPORTING.—Not later than January 1, 2013, the Secretary, in consultation with States, shall develop a standardized format for reporting information based on the initial core set of adult health quality measures and create procedures to encourage States to use such measures to voluntarily report information regarding the quality of health care for Medicaid eligible adults.

“(4) REPORTS TO CONGRESS.—Not later than January 1, 2014, and every 3 years thereafter, the Secretary shall include in the report to Congress required under section 1139A(a)(6) information similar to the information required under that section with respect to the measures established under this section.

“(5) ESTABLISHMENT OF MEDICAID QUALITY MEASUREMENT PROGRAM.—

“(A) IN GENERAL.—Not later than 12 months after the release of the recommended core set of adult health quality measures under paragraph (1)), the Secretary shall establish a Medicaid Quality Measurement Program in the same manner as the Secretary establishes the pediatric quality measures program under section 1139A(b). The aggregate amount awarded by the Secretary for grants and contracts for the development, testing, and validation of emerging

	and innovative evidence-based measures under such program shall equal the aggregate amount awarded by the Secretary for grants under section 1139A(b)(4)(A)
Publication.	“(B) REVISING, STRENGTHENING, AND IMPROVING INITIAL CORE MEASURES.—Beginning not later than 24 months after the establishment of the Medicaid Quality Measurement Program, and annually thereafter, the Secretary shall publish recommended changes to the initial core set of adult health quality measures that shall reflect the results of the testing, validation, and consensus process for the development of adult health quality measures.
	“(c) CONSTRUCTION.—Nothing in this section shall be construed as supporting the restriction of coverage, under title XIX or XXI or otherwise, to only those services that are evidence-based, or in anyway limiting available services.
	“(d) ANNUAL STATE REPORTS REGARDING STATE-SPECIFIC QUALITY OF CARE MEASURES APPLIED UNDER MEDICAID.—
	“(1) ANNUAL STATE REPORTS.—Each State with a State plan or waiver approved under title XIX shall annually report (separately or as part of the annual report required under section 1139A(c)), to the Secretary on the—
	“(A) State-specific adult health quality measures applied by the State under the such plan, including measures described in subsection (a)(5); and
	“(B) State-specific information on the quality of health care furnished to Medicaid eligible adults under such plan, including information collected through external quality reviews of managed care organizations under section 1932 and benchmark plans under section 1937.
Deadlines. Public information.	“(2) PUBLICATION.—Not later than September 30, 2014, and annually thereafter, the Secretary shall collect, analyze, and make publicly available the information reported by States under paragraph (1).
	“(e) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2010 through 2014, \$60,000,000 for the purpose of carrying out this section. Funds appropriated under this subsection shall remain available until expended.”.
42 USC 1396b–1.	SEC. 2702. PAYMENT ADJUSTMENT FOR HEALTH CARE-ACQUIRED CONDITIONS.
Determination. Regulations.	(a) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the “Secretary”) shall identify current State practices that prohibit payment for health care-acquired conditions and shall incorporate the practices identified, or elements of such practices, which the Secretary determines appropriate for application to the Medicaid program in regulations.
Effective date.	Such regulations shall be effective as of July 1, 2011, and shall prohibit payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations. The regulations shall ensure that the prohibition on payment for health care-acquired conditions shall not result in a loss of access to care or services for Medicaid beneficiaries.
Definition.	(b) HEALTH CARE-ACQUIRED CONDITION.—In this section, the term “health care-acquired condition” means a medical condition for which an individual was diagnosed that could be identified

by a secondary diagnostic code described in section 1886(d)(4)(D)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(4)(D)(iv)).

(c) **MEDICARE PROVISIONS.**—In carrying out this section, the Secretary shall apply to State plans (or waivers) under title XIX of the Social Security Act the regulations promulgated pursuant to section 1886(d)(4)(D) of such Act (42 U.S.C. 1395ww(d)(4)(D)) relating to the prohibition of payments based on the presence of a secondary diagnosis code specified by the Secretary in such regulations, as appropriate for the Medicaid program. The Secretary may exclude certain conditions identified under title XVIII of the Social Security Act for non-payment under title XIX of such Act when the Secretary finds the inclusion of such conditions to be inapplicable to beneficiaries under title XIX. Applicability.

SEC. 2703. STATE OPTION TO PROVIDE HEALTH HOMES FOR ENROLLEES WITH CHRONIC CONDITIONS.

(a) **STATE PLAN AMENDMENT.**—Title XIX of the Social Security Act (42 U.S.C. 1396a et seq.), as amended by sections 2201 and 2305, is amended by adding at the end the following new section:

“SEC. 1945. STATE OPTION TO PROVIDE COORDINATED CARE THROUGH A HEALTH HOME FOR INDIVIDUALS WITH CHRONIC CONDITIONS.— 42 USC 1396w–4.

“(a) **IN GENERAL.**—Notwithstanding section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and any other provision of this title for which the Secretary determines it is necessary to waive in order to implement this section, beginning January 1, 2011, a State, at its option as a State plan amendment, may provide for medical assistance under this title to eligible individuals with chronic conditions who select a designated provider (as described under subsection (h)(5)), a team of health care professionals (as described under subsection (h)(6)) operating with such a provider, or a health team (as described under subsection (h)(7)) as the individual’s health home for purposes of providing the individual with health home services. Determination.
Effective date.

“(b) **HEALTH HOME QUALIFICATION STANDARDS.**—The Secretary shall establish standards for qualification as a designated provider for the purpose of being eligible to be a health home for purposes of this section.

“(c) **PAYMENTS.**—

“(1) **IN GENERAL.**—A State shall provide a designated provider, a team of health care professionals operating with such a provider, or a health team with payments for the provision of health home services to each eligible individual with chronic conditions that selects such provider, team of health care professionals, or health team as the individual’s health home. Payments made to a designated provider, a team of health care professionals operating with such a provider, or a health team for such services shall be treated as medical assistance for purposes of section 1903(a), except that, during the first 8 fiscal year quarters that the State plan amendment is in effect, the Federal medical assistance percentage applicable to such payments shall be equal to 90 percent.

“(2) **METHODOLOGY.**—

“(A) **IN GENERAL.**—The State shall specify in the State plan amendment the methodology the State will use for determining payment for the provision of health home services. Such methodology for determining payment—

“(i) may be tiered to reflect, with respect to each eligible individual with chronic conditions provided such services by a designated provider, a team of health care professionals operating with such a provider, or a health team, as well as the severity or number of each such individual’s chronic conditions or the specific capabilities of the provider, team of health care professionals, or health team; and

“(ii) shall be established consistent with section 1902(a)(30)(A).

“(B) ALTERNATE MODELS OF PAYMENT.—The methodology for determining payment for provision of health home services under this section shall not be limited to a per-member per-month basis and may provide (as proposed by the State and subject to approval by the Secretary) for alternate models of payment.

“(3) PLANNING GRANTS.—

Effective date.

“(A) IN GENERAL.—Beginning January 1, 2011, the Secretary may award planning grants to States for purposes of developing a State plan amendment under this section. A planning grant awarded to a State under this paragraph shall remain available until expended.

“(B) STATE CONTRIBUTION.—A State awarded a planning grant shall contribute an amount equal to the State percentage determined under section 1905(b) (without regard to section 5001 of Public Law 111-5) for each fiscal year for which the grant is awarded.

“(C) LIMITATION.—The total amount of payments made to States under this paragraph shall not exceed \$25,000,000.

“(d) HOSPITAL REFERRALS.—A State shall include in the State plan amendment a requirement for hospitals that are participating providers under the State plan or a waiver of such plan to establish procedures for referring any eligible individuals with chronic conditions who seek or need treatment in a hospital emergency department to designated providers.

“(e) COORDINATION.—A State shall consult and coordinate, as appropriate, with the Substance Abuse and Mental Health Services Administration in addressing issues regarding the prevention and treatment of mental illness and substance abuse among eligible individuals with chronic conditions.

“(f) MONITORING.—A State shall include in the State plan amendment—

“(1) a methodology for tracking avoidable hospital readmissions and calculating savings that result from improved chronic care coordination and management under this section; and

“(2) a proposal for use of health information technology in providing health home services under this section and improving service delivery and coordination across the care continuum (including the use of wireless patient technology to improve coordination and management of care and patient adherence to recommendations made by their provider).

“(g) REPORT ON QUALITY MEASURES.—As a condition for receiving payment for health home services provided to an eligible individual with chronic conditions, a designated provider shall report to the State, in accordance with such requirements as the Secretary shall specify, on all applicable measures for determining

the quality of such services. When appropriate and feasible, a designated provider shall use health information technology in providing the State with such information.

“(h) DEFINITIONS.—In this section:

“(1) ELIGIBLE INDIVIDUAL WITH CHRONIC CONDITIONS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the term ‘eligible individual with chronic conditions’ means an individual who—

“(i) is eligible for medical assistance under the State plan or under a waiver of such plan; and

“(ii) has at least—

“(I) 2 chronic conditions;

“(II) 1 chronic condition and is at risk of having a second chronic condition; or

“(III) 1 serious and persistent mental health condition.

“(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall prevent the Secretary from establishing higher levels as to the number or severity of chronic or mental health conditions for purposes of determining eligibility for receipt of health home services under this section.

“(2) CHRONIC CONDITION.—The term ‘chronic condition’ has the meaning given that term by the Secretary and shall include, but is not limited to, the following:

“(A) A mental health condition.

“(B) Substance use disorder.

“(C) Asthma.

“(D) Diabetes.

“(E) Heart disease.

“(F) Being overweight, as evidenced by having a Body Mass Index (BMI) over 25.

“(3) HEALTH HOME.—The term ‘health home’ means a designated provider (including a provider that operates in coordination with a team of health care professionals) or a health team selected by an eligible individual with chronic conditions to provide health home services.

“(4) HEALTH HOME SERVICES.—

“(A) IN GENERAL.—The term ‘health home services’ means comprehensive and timely high-quality services described in subparagraph (B) that are provided by a designated provider, a team of health care professionals operating with such a provider, or a health team.

“(B) SERVICES DESCRIBED.—The services described in this subparagraph are—

“(i) comprehensive care management;

“(ii) care coordination and health promotion;

“(iii) comprehensive transitional care, including appropriate follow-up, from inpatient to other settings;

“(iv) patient and family support (including authorized representatives);

“(v) referral to community and social support services, if relevant; and

“(vi) use of health information technology to link services, as feasible and appropriate.

“(5) DESIGNATED PROVIDER.—The term ‘designated provider’ means a physician, clinical practice or clinical group practice, rural clinic, community health center, community mental health

center, home health agency, or any other entity or provider (including pediatricians, gynecologists, and obstetricians) that is determined by the State and approved by the Secretary to be qualified to be a health home for eligible individuals with chronic conditions on the basis of documentation evidencing that the physician, practice, or clinic—

“(A) has the systems and infrastructure in place to provide health home services; and

“(B) satisfies the qualification standards established by the Secretary under subsection (b).

“(6) TEAM OF HEALTH CARE PROFESSIONALS.—The term ‘team of health care professionals’ means a team of health professionals (as described in the State plan amendment) that may—

“(A) include physicians and other professionals, such as a nurse care coordinator, nutritionist, social worker, behavioral health professional, or any professionals deemed appropriate by the State; and

“(B) be free standing, virtual, or based at a hospital, community health center, community mental health center, rural clinic, clinical practice or clinical group practice, academic health center, or any entity deemed appropriate by the State and approved by the Secretary.

“(7) HEALTH TEAM.—The term ‘health team’ has the meaning given such term for purposes of section 3502 of the Patient Protection and Affordable Care Act.”.

(b) EVALUATION.—

(1) INDEPENDENT EVALUATION.—

Contracts.

(A) IN GENERAL.—The Secretary shall enter into a contract with an independent entity or organization to conduct an evaluation and assessment of the States that have elected the option to provide coordinated care through a health home for Medicaid beneficiaries with chronic conditions under section 1945 of the Social Security Act (as added by subsection (a)) for the purpose of determining the effect of such option on reducing hospital admissions, emergency room visits, and admissions to skilled nursing facilities.

(B) EVALUATION REPORT.—Not later than January 1, 2017, the Secretary shall report to Congress on the evaluation and assessment conducted under subparagraph (A).

42 USC 1396w-4
note.

(2) SURVEY AND INTERIM REPORT.—

(A) IN GENERAL.—Not later than January 1, 2014, the Secretary of Health and Human Services shall survey States that have elected the option under section 1945 of the Social Security Act (as added by subsection (a)) and report to Congress on the nature, extent, and use of such option, particularly as it pertains to—

(i) hospital admission rates;

(ii) chronic disease management;

(iii) coordination of care for individuals with chronic conditions;

(iv) assessment of program implementation;

(v) processes and lessons learned (as described in subparagraph (B));

(vi) assessment of quality improvements and clinical outcomes under such option; and

(vii) estimates of cost savings.

(B) IMPLEMENTATION REPORTING.—A State that has elected the option under section 1945 of the Social Security Act (as added by subsection (a)) shall report to the Secretary, as necessary, on processes that have been developed and lessons learned regarding provision of coordinated care through a health home for Medicaid beneficiaries with chronic conditions under such option.

SEC. 2704. DEMONSTRATION PROJECT TO EVALUATE INTEGRATED CARE AROUND A HOSPITALIZATION.

42 USC 1396a
note.

(a) AUTHORITY TO CONDUCT PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish a demonstration project under title XIX of the Social Security Act to evaluate the use of bundled payments for the provision of integrated care for a Medicaid beneficiary—

(A) with respect to an episode of care that includes a hospitalization; and

(B) for concurrent physicians services provided during a hospitalization.

(2) DURATION.—The demonstration project shall begin on January 1, 2012, and shall end on December 31, 2016.

(b) REQUIREMENTS.—The demonstration project shall be conducted in accordance with the following:

(1) The demonstration project shall be conducted in up to 8 States, determined by the Secretary based on consideration of the potential to lower costs under the Medicaid program while improving care for Medicaid beneficiaries. A State selected to participate in the demonstration project may target the demonstration project to particular categories of beneficiaries, beneficiaries with particular diagnoses, or particular geographic regions of the State, but the Secretary shall insure that, as a whole, the demonstration project is, to the greatest extent possible, representative of the demographic and geographic composition of Medicaid beneficiaries nationally.

Determination.

(2) The demonstration project shall focus on conditions where there is evidence of an opportunity for providers of services and suppliers to improve the quality of care furnished to Medicaid beneficiaries while reducing total expenditures under the State Medicaid programs selected to participate, as determined by the Secretary.

(3) A State selected to participate in the demonstration project shall specify the 1 or more episodes of care the State proposes to address in the project, the services to be included in the bundled payments, and the rationale for the selection of such episodes of care and services. The Secretary may modify the episodes of care as well as the services to be included in the bundled payments prior to or after approving the project. The Secretary may also vary such factors among the different States participating in the demonstration project.

(4) The Secretary shall ensure that payments made under the demonstration project are adjusted for severity of illness and other characteristics of Medicaid beneficiaries within a category or having a diagnosis targeted as part of the demonstration project. States shall ensure that Medicaid beneficiaries are not liable for any additional cost sharing than

if their care had not been subject to payment under the demonstration project.

(5) Hospitals participating in the demonstration project shall have or establish robust discharge planning programs to ensure that Medicaid beneficiaries requiring post-acute care are appropriately placed in, or have ready access to, post-acute care settings.

(6) The Secretary and each State selected to participate in the demonstration project shall ensure that the demonstration project does not result in the Medicaid beneficiaries whose care is subject to payment under the demonstration project being provided with less items and services for which medical assistance is provided under the State Medicaid program than the items and services for which medical assistance would have been provided to such beneficiaries under the State Medicaid program in the absence of the demonstration project.

(c) **WAIVER OF PROVISIONS.**—Notwithstanding section 1115(a) of the Social Security Act (42 U.S.C. 1315(a)), the Secretary may waive such provisions of titles XIX, XVIII, and XI of that Act as may be necessary to accomplish the goals of the demonstration, ensure beneficiary access to acute and post-acute care, and maintain quality of care.

(d) **EVALUATION AND REPORT.**—

(1) **DATA.**—Each State selected to participate in the demonstration project under this section shall provide to the Secretary, in such form and manner as the Secretary shall specify, relevant data necessary to monitor outcomes, costs, and quality, and evaluate the rationales for selection of the episodes of care and services specified by States under subsection (b)(3).

(2) **REPORT.**—Not later than 1 year after the conclusion of the demonstration project, the Secretary shall submit a report to Congress on the results of the demonstration project.

42 USC 1315a
note.

SEC. 2705. MEDICAID GLOBAL PAYMENT SYSTEM DEMONSTRATION PROJECT.

(a) **IN GENERAL.**—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall, in coordination with the Center for Medicare and Medicaid Innovation (as established under section 1115A of the Social Security Act, as added by section 3021 of this Act), establish the Medicaid Global Payment System Demonstration Project under which a participating State shall adjust the payments made to an eligible safety net hospital system or network from a fee-for-service payment structure to a global capitated payment model.

Selection.

(b) **DURATION AND SCOPE.**—The demonstration project conducted under this section shall operate during a period of fiscal years 2010 through 2012. The Secretary shall select not more than 5 States to participate in the demonstration project.

Definition.

(c) **ELIGIBLE SAFETY NET HOSPITAL SYSTEM OR NETWORK.**—For purposes of this section, the term “eligible safety net hospital system or network” means a large, safety net hospital system or network (as defined by the Secretary) that operates within a State selected by the Secretary under subsection (b).

(d) **EVALUATION.**—

(1) **TESTING.**—The Innovation Center shall test and evaluate the demonstration project conducted under this section

to examine any changes in health care quality outcomes and spending by the eligible safety net hospital systems or networks.

(2) BUDGET NEUTRALITY.—During the testing period under paragraph (1), any budget neutrality requirements under section 1115A(b)(3) of the Social Security Act (as so added) shall not be applicable.

(3) MODIFICATION.—During the testing period under paragraph (1), the Secretary may, in the Secretary’s discretion, modify or terminate the demonstration project conducted under this section.

(e) REPORT.—Not later than 12 months after the date of completion of the demonstration project under this section, the Secretary shall submit to Congress a report containing the results of the evaluation and testing conducted under subsection (d), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 2706. PEDIATRIC ACCOUNTABLE CARE ORGANIZATION DEMONSTRATION PROJECT.

42 USC 1396a
note.

(a) AUTHORITY TO CONDUCT DEMONSTRATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall establish the Pediatric Accountable Care Organization Demonstration Project to authorize a participating State to allow pediatric medical providers that meet specified requirements to be recognized as an accountable care organization for purposes of receiving incentive payments (as described under subsection (d)), in the same manner as an accountable care organization is recognized and provided with incentive payments under section 1899 of the Social Security Act (as added by section 3022).

(2) DURATION.—The demonstration project shall begin on January 1, 2012, and shall end on December 31, 2016.

(b) APPLICATION.—A State that desires to participate in the demonstration project under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) REQUIREMENTS.—

(1) PERFORMANCE GUIDELINES.—The Secretary, in consultation with the States and pediatric providers, shall establish guidelines to ensure that the quality of care delivered to individuals by a provider recognized as an accountable care organization under this section is not less than the quality of care that would have otherwise been provided to such individuals.

(2) SAVINGS REQUIREMENT.—A participating State, in consultation with the Secretary, shall establish an annual minimal level of savings in expenditures for items and services covered under the Medicaid program under title XIX of the Social Security Act and the CHIP program under title XXI of such Act that must be reached by an accountable care organization in order for such organization to receive an incentive payment under subsection (d).

(3) MINIMUM PARTICIPATION PERIOD.—A provider desiring to be recognized as an accountable care organization under

Contracts.

the demonstration project shall enter into an agreement with the State to participate in the project for not less than a 3-year period.

(d) INCENTIVE PAYMENT.—An accountable care organization that meets the performance guidelines established by the Secretary under subsection (c)(1) and achieves savings greater than the annual minimal savings level established by the State under subsection (c)(2) shall receive an incentive payment for such year equal to a portion (as determined appropriate by the Secretary) of the amount of such excess savings. The Secretary may establish an annual cap on incentive payments for an accountable care organization.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

42 USC 1396a
note.

SEC. 2707. MEDICAID EMERGENCY PSYCHIATRIC DEMONSTRATION PROJECT.

(a) AUTHORITY TO CONDUCT DEMONSTRATION PROJECT.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish a demonstration project under which an eligible State (as described in subsection (c)) shall provide payment under the State Medicaid plan under title XIX of the Social Security Act to an institution for mental diseases that is not publicly owned or operated and that is subject to the requirements of section 1867 of the Social Security Act (42 U.S.C. 1395dd) for the provision of medical assistance available under such plan to individuals who—

- (1) have attained age 21, but have not attained age 65;
 - (2) are eligible for medical assistance under such plan;
- and
- (3) require such medical assistance to stabilize an emergency medical condition.

(b) STABILIZATION REVIEW.—A State shall specify in its application described in subsection (c)(1) establish a mechanism for how it will ensure that institutions participating in the demonstration will determine whether or not such individuals have been stabilized (as defined in subsection (h)(5)). This mechanism shall commence before the third day of the inpatient stay. States participating in the demonstration project may manage the provision of services for the stabilization of medical emergency conditions through utilization review, authorization, or management practices, or the application of medical necessity and appropriateness criteria applicable to behavioral health.

Commencement
date.

(c) ELIGIBLE STATE DEFINED.—

(1) IN GENERAL.—An eligible State is a State that has made an application and has been selected pursuant to paragraphs (2) and (3).

(2) APPLICATION.—A State seeking to participate in the demonstration project under this section shall submit to the Secretary, at such time and in such format as the Secretary requires, an application that includes such information, provisions, and assurances, as the Secretary may require.

(3) SELECTION.—A State shall be determined eligible for the demonstration by the Secretary on a competitive basis among States with applications meeting the requirements of

paragraph (1). In selecting State applications for the demonstration project, the Secretary shall seek to achieve an appropriate national balance in the geographic distribution of such projects.

(d) LENGTH OF DEMONSTRATION PROJECT.—The demonstration project established under this section shall be conducted for a period of 3 consecutive years.

(e) LIMITATIONS ON FEDERAL FUNDING.—

(1) APPROPRIATION.—

(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this section, \$75,000,000 for fiscal year 2011.

(B) BUDGET AUTHORITY.—Subparagraph (A) constitutes budget authority in advance of appropriations Act and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under that subparagraph.

(2) 5-YEAR AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available for obligation through December 31, 2015.

(3) LIMITATION ON PAYMENTS.—In no case may—

(A) the aggregate amount of payments made by the Secretary to eligible States under this section exceed \$75,000,000; or

(B) payments be provided by the Secretary under this section after December 31, 2015.

(4) FUNDS ALLOCATED TO STATES.—Funds shall be allocated to eligible States on the basis of criteria, including a State's application and the availability of funds, as determined by the Secretary.

(5) PAYMENTS TO STATES.—The Secretary shall pay to each eligible State, from its allocation under paragraph (4), an amount each quarter equal to the Federal medical assistance percentage of expenditures in the quarter for medical assistance described in subsection (a). As a condition of receiving payment, a State shall collect and report information, as determined necessary by the Secretary, for the purposes of providing Federal oversight and conducting an evaluation under subsection (f)(1).

(f) EVALUATION AND REPORT TO CONGRESS.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration project in order to determine the impact on the functioning of the health and mental health service system and on individuals enrolled in the Medicaid program and shall include the following:

(A) An assessment of access to inpatient mental health services under the Medicaid program; average lengths of inpatient stays; and emergency room visits.

(B) An assessment of discharge planning by participating hospitals.

(C) An assessment of the impact of the demonstration project on the costs of the full range of mental health services (including inpatient, emergency and ambulatory care).

(D) An analysis of the percentage of consumers with Medicaid coverage who are admitted to inpatient facilities as a result of the demonstration project as compared to

those admitted to these same facilities through other means.

(E) A recommendation regarding whether the demonstration project should be continued after December 31, 2013, and expanded on a national basis.

(2) REPORT.—Not later than December 31, 2013, the Secretary shall submit to Congress and make available to the public a report on the findings of the evaluation under paragraph (1).

(g) WAIVER AUTHORITY.—

(1) IN GENERAL.—The Secretary shall waive the limitation of subdivision (B) following paragraph (28) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) (relating to limitations on payments for care or services for individuals under 65 years of age who are patients in an institution for mental diseases) for purposes of carrying out the demonstration project under this section.

(2) LIMITED OTHER WAIVER AUTHORITY.—The Secretary may waive other requirements of titles XI and XIX of the Social Security Act (including the requirements of sections 1902(a)(1) (relating to statewideness) and 1902(1)(10)(B) (relating to comparability)) only to extent necessary to carry out the demonstration project under this section.

(h) DEFINITIONS.—In this section:

(1) EMERGENCY MEDICAL CONDITION.—The term “emergency medical condition” means, with respect to an individual, an individual who expresses suicidal or homicidal thoughts or gestures, if determined dangerous to self or others.

(2) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—The term “Federal medical assistance percentage” has the meaning given that term with respect to a State under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(3) INSTITUTION FOR MENTAL DISEASES.—The term “institution for mental diseases” has the meaning given to that term in section 1905(i) of the Social Security Act (42 U.S.C. 1396d(i)).

(4) MEDICAL ASSISTANCE.—The term “medical assistance” has the meaning given that term in section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)).

(5) STABILIZED.—The term “stabilized” means, with respect to an individual, that the emergency medical condition no longer exists with respect to the individual and the individual is no longer dangerous to self or others.

(6) STATE.—The term “State” has the meaning given that term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

Subtitle J—Improvements to the Medicaid and CHIP Payment and Access Commission (MACPAC)

SEC. 2801. MACPAC ASSESSMENT OF POLICIES AFFECTING ALL MEDICAID BENEFICIARIES.

(a) IN GENERAL.—Section 1900 of the Social Security Act (42 U.S.C. 1396) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the paragraph heading, by inserting “FOR ALL STATES” before “AND ANNUAL”; and

(ii) in subparagraph (A), by striking “children’s”;

(iii) in subparagraph (B), by inserting “, the Secretary, and States” after “Congress”;

(iv) in subparagraph (C), by striking “March 1” and inserting “March 15”; and

(v) in subparagraph (D), by striking “June 1” and inserting “June 15”;

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in clause (i)—

(aa) by inserting “the efficient provision of” after “expenditures for”; and

(bb) by striking “hospital, skilled nursing facility, physician, Federally-qualified health center, rural health center, and other fees” and inserting “payments to medical, dental, and health professionals, hospitals, residential and long-term care providers, providers of home and community based services, Federally-qualified health centers and rural health clinics, managed care entities, and providers of other covered items and services”; and

(II) in clause (iii), by inserting “(including how such factors and methodologies enable such beneficiaries to obtain the services for which they are eligible, affect provider supply, and affect providers that serve a disproportionate share of low-income and other vulnerable populations)” after “beneficiaries”;

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (F) and (H), respectively;

(iii) by inserting after subparagraph (A), the following:

“(B) ELIGIBILITY POLICIES.—Medicaid and CHIP eligibility policies, including a determination of the degree to which Federal and State policies provide health care coverage to needy populations.

“(C) ENROLLMENT AND RETENTION PROCESSES.—Medicaid and CHIP enrollment and retention processes, including a determination of the degree to which Federal and State policies encourage the enrollment of individuals who are eligible for such programs and screen out individuals who are ineligible, while minimizing the share of program expenses devoted to such processes.

“(D) COVERAGE POLICIES.—Medicaid and CHIP benefit and coverage policies, including a determination of the degree to which Federal and State policies provide access to the services enrollees require to improve and maintain their health and functional status.

“(E) QUALITY OF CARE.—Medicaid and CHIP policies as they relate to the quality of care provided under those programs, including a determination of the degree to which Federal and State policies achieve their stated goals and

interact with similar goals established by other purchasers of health care services.”;

(iv) by inserting after subparagraph (F) (as redesignated by clause (ii) of this subparagraph), the following:

“(G) INTERACTIONS WITH MEDICARE AND MEDICAID.—Consistent with paragraph (11), the interaction of policies under Medicaid and the Medicare program under title XVIII, including with respect to how such interactions affect access to services, payments, and dual eligible individuals.” and

(v) in subparagraph (H) (as so redesignated), by inserting “and preventive, acute, and long-term services and supports” after “barriers”;

(C) by redesignating paragraphs (3) through (9) as paragraphs (4) through (10), respectively;

(D) by inserting after paragraph (2), the following new paragraph:

“(3) RECOMMENDATIONS AND REPORTS OF STATE-SPECIFIC DATA.—MACPAC shall—

“(A) review national and State-specific Medicaid and CHIP data; and

“(B) submit reports and recommendations to Congress, the Secretary, and States based on such reviews.”;

(E) in paragraph (4), as redesignated by subparagraph (C), by striking “or any other problems” and all that follows through the period and inserting “, as well as other factors that adversely affect, or have the potential to adversely affect, access to care by, or the health care status of, Medicaid and CHIP beneficiaries. MACPAC shall include in the annual report required under paragraph (1)(D) a description of all such areas or problems identified with respect to the period addressed in the report.”;

(F) in paragraph (5), as so redesignated,—

(i) in the paragraph heading, by inserting “AND REGULATIONS” after “REPORTS”; and

(ii) by striking “If” and inserting the following: “(A) CERTAIN SECRETARIAL REPORTS.—If”; and

(iii) in the second sentence, by inserting “and the Secretary” after “appropriate committees of Congress”; and

(iv) by adding at the end the following:

“(B) REGULATIONS.—MACPAC shall review Medicaid and CHIP regulations and may comment through submission of a report to the appropriate committees of Congress and the Secretary, on any such regulations that affect access, quality, or efficiency of health care.”;

(G) in paragraph (10), as so redesignated, by inserting “, and shall submit with any recommendations, a report on the Federal and State-specific budget consequences of the recommendations” before the period; and

(H) by adding at the end the following:

“(11) CONSULTATION AND COORDINATION WITH MEDPAC.—

“(A) IN GENERAL.—MACPAC shall consult with the Medicare Payment Advisory Commission (in this paragraph referred to as ‘MedPAC’) established under section 1805 in carrying out its duties under this section, as appropriate and particularly with respect to the issues specified in

Reports.

paragraph (2) as they relate to those Medicaid beneficiaries who are dually eligible for Medicaid and the Medicare program under title XVIII, adult Medicaid beneficiaries (who are not dually eligible for Medicare), and beneficiaries under Medicare. Responsibility for analysis of and recommendations to change Medicare policy regarding Medicare beneficiaries, including Medicare beneficiaries who are dually eligible for Medicare and Medicaid, shall rest with MedPAC.

“(B) INFORMATION SHARING.—MACPAC and MedPAC shall have access to deliberations and records of the other such entity, respectively, upon the request of the other such entity.

“(12) CONSULTATION WITH STATES.—MACPAC shall regularly consult with States in carrying out its duties under this section, including with respect to developing processes for carrying out such duties, and shall ensure that input from States is taken into account and represented in MACPAC’s recommendations and reports.

“(13) COORDINATE AND CONSULT WITH THE FEDERAL COORDINATED HEALTH CARE OFFICE.—MACPAC shall coordinate and consult with the Federal Coordinated Health Care Office established under section 2081 of the Patient Protection and Affordable Care Act before making any recommendations regarding dual eligible individuals.

“(14) PROGRAMMATIC OVERSIGHT VESTED IN THE SECRETARY.—MACPAC’s authority to make recommendations in accordance with this section shall not affect, or be considered to duplicate, the Secretary’s authority to carry out Federal responsibilities with respect to Medicaid and CHIP.”;

(2) in subsection (c)(2)—

(A) by striking subparagraphs (A) and (B) and inserting the following:

“(A) IN GENERAL.—The membership of MACPAC shall include individuals who have had direct experience as enrollees or parents or caregivers of enrollees in Medicaid or CHIP and individuals with national recognition for their expertise in Federal safety net health programs, health finance and economics, actuarial science, health plans and integrated delivery systems, reimbursement for health care, health information technology, and other providers of health services, public health, and other related fields, who provide a mix of different professions, broad geographic representation, and a balance between urban and rural representation.

“(B) INCLUSION.—The membership of MACPAC shall include (but not be limited to) physicians, dentists, and other health professionals, employers, third-party payers, and individuals with expertise in the delivery of health services. Such membership shall also include representatives of children, pregnant women, the elderly, individuals with disabilities, caregivers, and dual eligible individuals, current or former representatives of State agencies responsible for administering Medicaid, and current or former representatives of State agencies responsible for administering CHIP.”.

(3) in subsection (d)(2), by inserting “and State” after “Federal”;

(4) in subsection (e)(1), in the first sentence, by inserting “and, as a condition for receiving payments under sections 1903(a) and 2105(a), from any State agency responsible for administering Medicaid or CHIP,” after “United States”; and

(5) in subsection (f)—

(A) in the subsection heading, by striking “AUTHORIZATION OF APPROPRIATIONS” and inserting “FUNDING”;

(B) in paragraph (1), by inserting “(other than for fiscal year 2010)” before “in the same manner”; and

(C) by adding at the end the following:

“(3) FUNDING FOR FISCAL YEAR 2010.—

“(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to MACPAC to carry out the provisions of this section for fiscal year 2010, \$9,000,000.

“(B) TRANSFER OF FUNDS.—Notwithstanding section 2104(a)(13), from the amounts appropriated in such section for fiscal year 2010, \$2,000,000 is hereby transferred and made available in such fiscal year to MACPAC to carry out the provisions of this section.

“(4) AVAILABILITY.—Amounts made available under paragraphs (2) and (3) to MACPAC to carry out the provisions of this section shall remain available until expended.”.

(b) CONFORMING MEDPAC AMENDMENTS.—Section 1805(b) of the Social Security Act (42 U.S.C. 1395b-6(b)), is amended—

(1) in paragraph (1)(C), by striking “March 1 of each year (beginning with 1998)” and inserting “March 15”;

(2) in paragraph (1)(D), by inserting “, and (beginning with 2012) containing an examination of the topics described in paragraph (9), to the extent feasible” before the period; and

(3) by adding at the end the following:

“(9) REVIEW AND ANNUAL REPORT ON MEDICAID AND COMMERCIAL TRENDS.—The Commission shall review and report on aggregate trends in spending, utilization, and financial performance under the Medicaid program under title XIX and the private market for health care services with respect to providers for which, on an aggregate national basis, a significant portion of revenue or services is associated with the Medicaid program. Where appropriate, the Commission shall conduct such review in consultation with the Medicaid and CHIP Payment and Access Commission established under section 1900 (in this section referred to as ‘MACPAC’).

“(10) COORDINATE AND CONSULT WITH THE FEDERAL COORDINATED HEALTH CARE OFFICE.—The Commission shall coordinate and consult with the Federal Coordinated Health Care Office established under section 2081 of the Patient Protection and Affordable Care Act before making any recommendations regarding dual eligible individuals.

“(11) INTERACTION OF MEDICAID AND MEDICARE.—The Commission shall consult with MACPAC in carrying out its duties under this section, as appropriate. Responsibility for analysis of and recommendations to change Medicare policy regarding Medicare beneficiaries, including Medicare beneficiaries who are dually eligible for Medicare and Medicaid,

shall rest with the Commission. Responsibility for analysis of and recommendations to change Medicaid policy regarding Medicaid beneficiaries, including Medicaid beneficiaries who are dually eligible for Medicare and Medicaid, shall rest with MACPAC.”.

Subtitle K—Protections for American Indians and Alaska Natives

SEC. 2901. SPECIAL RULES RELATING TO INDIANS.

(a) **NO COST-SHARING FOR INDIANS WITH INCOME AT OR BELOW 300 PERCENT OF POVERTY ENROLLED IN COVERAGE THROUGH A STATE EXCHANGE.**—For provisions prohibiting cost sharing for Indians enrolled in any qualified health plan in the individual market through an Exchange, see section 1402(d) of the Patient Protection and Affordable Care Act. 25 USC 1623.

(b) **PAYER OF LAST RESORT.**—Health programs operated by the Indian Health Service, Indian tribes, tribal organizations, and Urban Indian organizations (as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) shall be the payer of last resort for services provided by such Service, tribes, or organizations to individuals eligible for services through such programs, notwithstanding any Federal, State, or local law to the contrary. 25 USC 1623.

(c) **FACILITATING ENROLLMENT OF INDIANS UNDER THE EXPRESS LANE OPTION.**—Section 1902(e)(13)(F)(ii) of the Social Security Act (42 U.S.C. 1396a(e)(13)(F)(ii)) is amended—

(1) in the clause heading, by inserting “AND INDIAN TRIBES AND TRIBAL ORGANIZATIONS” after “AGENCIES”; and

(2) by adding at the end the following:

“(IV) The Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization (as defined in section 1139(c)).”.

(d) **TECHNICAL CORRECTIONS.**—Section 1139(c) of the Social Security Act (42 U.S.C. 1320b–9(c)) is amended by striking “In this section” and inserting “For purposes of this section, title XIX, and title XXI”.

SEC. 2902. ELIMINATION OF SUNSET FOR REIMBURSEMENT FOR ALL MEDICARE PART B SERVICES FURNISHED BY CERTAIN INDIAN HOSPITALS AND CLINICS.

(a) **REIMBURSEMENT FOR ALL MEDICARE PART B SERVICES FURNISHED BY CERTAIN INDIAN HOSPITALS AND CLINICS.**—Section 1880(e)(1)(A) of the Social Security Act (42 U.S.C. 1395qq(e)(1)(A)) is amended by striking “during the 5-year period beginning on” and inserting “on or after”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to items or services furnished on or after January 1, 2010.

Applicability.
42 USC 1395qq
note.

Subtitle L—Maternal and Child Health Services

SEC. 2951. MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING PROGRAMS.

Title V of the Social Security Act (42 U.S.C. 701 et seq.) is amended by adding at the end the following new section:

42 USC 711.

“SEC. 511. MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING PROGRAMS.

“(a) PURPOSES.—The purposes of this section are—

“(1) to strengthen and improve the programs and activities carried out under this title;

“(2) to improve coordination of services for at risk communities; and

“(3) to identify and provide comprehensive services to improve outcomes for families who reside in at risk communities.

“(b) REQUIREMENT FOR ALL STATES TO ASSESS STATEWIDE NEEDS AND IDENTIFY AT RISK COMMUNITIES.—

Deadline.

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this section, each State shall, as a condition of receiving payments from an allotment for the State under section 502 for fiscal year 2011, conduct a statewide needs assessment (which shall be separate from the statewide needs assessment required under section 505(a)) that identifies—

“(A) communities with concentrations of—

“(i) premature birth, low-birth weight infants, and infant mortality, including infant death due to neglect, or other indicators of at-risk prenatal, maternal, newborn, or child health;

“(ii) poverty;

“(iii) crime;

“(iv) domestic violence;

“(v) high rates of high-school drop-outs;

“(vi) substance abuse;

“(vii) unemployment; or

“(viii) child maltreatment;

“(B) the quality and capacity of existing programs or initiatives for early childhood home visitation in the State including—

“(i) the number and types of individuals and families who are receiving services under such programs or initiatives;

“(ii) the gaps in early childhood home visitation in the State; and

“(iii) the extent to which such programs or initiatives are meeting the needs of eligible families described in subsection (k)(2); and

“(C) the State’s capacity for providing substance abuse treatment and counseling services to individuals and families in need of such treatment or services.

“(2) COORDINATION WITH OTHER ASSESSMENTS.—In conducting the statewide needs assessment required under paragraph (1), the State shall coordinate with, and take into account, other appropriate needs assessments conducted by

the State, as determined by the Secretary, including the needs assessment required under section 505(a) (both the most recently completed assessment and any such assessment in progress), the communitywide strategic planning and needs assessments conducted in accordance with section 640(g)(1)(C) of the Head Start Act, and the inventory of current unmet needs and current community-based and prevention-focused programs and activities to prevent child abuse and neglect, and other family resource services operating in the State required under section 205(3) of the Child Abuse Prevention and Treatment Act.

“(3) SUBMISSION TO THE SECRETARY.—Each State shall submit to the Secretary, in such form and manner as the Secretary shall require—

“(A) the results of the statewide needs assessment required under paragraph (1); and

“(B) a description of how the State intends to address needs identified by the assessment, particularly with respect to communities identified under paragraph (1)(A), which may include applying for a grant to conduct an early childhood home visitation program in accordance with the requirements of this section.

“(c) GRANTS FOR EARLY CHILDHOOD HOME VISITATION PROGRAMS.—

“(1) AUTHORITY TO MAKE GRANTS.—In addition to any other payments made under this title to a State, the Secretary shall make grants to eligible entities to enable the entities to deliver services under early childhood home visitation programs that satisfy the requirements of subsection (d) to eligible families in order to promote improvements in maternal and prenatal health, infant health, child health and development, parenting related to child development outcomes, school readiness, and the socioeconomic status of such families, and reductions in child abuse, neglect, and injuries.

“(2) AUTHORITY TO USE INITIAL GRANT FUNDS FOR PLANNING OR IMPLEMENTATION.—An eligible entity that receives a grant under paragraph (1) may use a portion of the funds made available to the entity during the first 6 months of the period for which the grant is made for planning or implementation activities to assist with the establishment of early childhood home visitation programs that satisfy the requirements of subsection (d).

“(3) GRANT DURATION.—The Secretary shall determine the period of years for which a grant is made to an eligible entity under paragraph (1).

Determination.

“(4) TECHNICAL ASSISTANCE.—The Secretary shall provide an eligible entity that receives a grant under paragraph (1) with technical assistance in administering programs or activities conducted in whole or in part with grant funds.

“(d) REQUIREMENTS.—The requirements of this subsection for an early childhood home visitation program conducted with a grant made under this section are as follows:

“(1) QUANTIFIABLE, MEASURABLE IMPROVEMENT IN BENCHMARK AREAS.—

“(A) IN GENERAL.—The eligible entity establishes, subject to the approval of the Secretary, quantifiable, measurable 3- and 5-year benchmarks for demonstrating that the

program results in improvements for the eligible families participating in the program in each of the following areas:

- “(i) Improved maternal and newborn health.
- “(ii) Prevention of child injuries, child abuse, neglect, or maltreatment, and reduction of emergency department visits.
- “(iii) Improvement in school readiness and achievement.
- “(iv) Reduction in crime or domestic violence.
- “(v) Improvements in family economic self-sufficiency.
- “(vi) Improvements in the coordination and referrals for other community resources and supports.

“(B) DEMONSTRATION OF IMPROVEMENTS AFTER 3 YEARS.—

“(i) REPORT TO THE SECRETARY.—Not later than 30 days after the end of the 3rd year in which the eligible entity conducts the program, the entity submits to the Secretary a report demonstrating improvement in at least 4 of the areas specified in subparagraph (A).

“(ii) CORRECTIVE ACTION PLAN.—If the report submitted by the eligible entity under clause (i) fails to demonstrate improvement in at least 4 of the areas specified in subparagraph (A), the entity shall develop and implement a plan to improve outcomes in each of the areas specified in subparagraph (A), subject to approval by the Secretary. The plan shall include provisions for the Secretary to monitor implementation of the plan and conduct continued oversight of the program, including through submission by the entity of regular reports to the Secretary.

“(iii) TECHNICAL ASSISTANCE.—

“(I) IN GENERAL.—The Secretary shall provide an eligible entity required to develop and implement an improvement plan under clause (ii) with technical assistance to develop and implement the plan. The Secretary may provide the technical assistance directly or through grants, contracts, or cooperative agreements.

“(II) ADVISORY PANEL.—The Secretary shall establish an advisory panel for purposes of obtaining recommendations regarding the technical assistance provided to entities in accordance with subclause (I).

“(iv) NO IMPROVEMENT OR FAILURE TO SUBMIT REPORT.—If the Secretary determines after a period of time specified by the Secretary that an eligible entity implementing an improvement plan under clause (ii) has failed to demonstrate any improvement in the areas specified in subparagraph (A), or if the Secretary determines that an eligible entity has failed to submit the report required under clause (i), the Secretary shall terminate the entity’s grant and may include any unexpended grant funds in grants made to nonprofit organizations under subsection (h)(2)(B).

Establishment.

Determination.
Termination.

“(C) FINAL REPORT.—Not later than December 31, 2015, the eligible entity shall submit a report to the Secretary demonstrating improvements (if any) in each of the areas specified in subparagraph (A).

“(2) IMPROVEMENTS IN OUTCOMES FOR INDIVIDUAL FAMILIES.—

“(A) IN GENERAL.—The program is designed, with respect to an eligible family participating in the program, to result in the participant outcomes described in subparagraph (B) that the eligible entity identifies on the basis of an individualized assessment of the family, are relevant for that family.

“(B) PARTICIPANT OUTCOMES.—The participant outcomes described in this subparagraph are the following:

“(i) Improvements in prenatal, maternal, and newborn health, including improved pregnancy outcomes

“(ii) Improvements in child health and development, including the prevention of child injuries and maltreatment and improvements in cognitive, language, social-emotional, and physical developmental indicators.

“(iii) Improvements in parenting skills.

“(iv) Improvements in school readiness and child academic achievement.

“(v) Reductions in crime or domestic violence.

“(vi) Improvements in family economic self-sufficiency.

“(vii) Improvements in the coordination of referrals for, and the provision of, other community resources and supports for eligible families, consistent with State child welfare agency training.

“(3) CORE COMPONENTS.—The program includes the following core components:

“(A) SERVICE DELIVERY MODEL OR MODELS.—

“(i) IN GENERAL.—Subject to clause (ii), the program is conducted using 1 or more of the service delivery models described in item (aa) or (bb) of subclause (I) or in subclause (II) selected by the eligible entity:

“(I) The model conforms to a clear consistent home visitation model that has been in existence for at least 3 years and is research-based, grounded in relevant empirically-based knowledge, linked to program determined outcomes, associated with a national organization or institution of higher education that has comprehensive home visitation program standards that ensure high quality service delivery and continuous program quality improvement, and has demonstrated significant, (and in the case of the service delivery model described in item (aa), sustained) positive outcomes, as described in the benchmark areas specified in paragraph (1)(A) and the participant outcomes described in paragraph (2)(B), when evaluated using well-designed and rigorous—

“(aa) randomized controlled research designs, and the evaluation results have been published in a peer-reviewed journal; or

“(bb) quasi-experimental research designs.

“(II) The model conforms to a promising and new approach to achieving the benchmark areas specified in paragraph (1)(A) and the participant outcomes described in paragraph (2)(B), has been developed or identified by a national organization or institution of higher education, and will be evaluated through well-designed and rigorous process.

“(ii) MAJORITY OF GRANT FUNDS USED FOR EVIDENCE-BASED MODELS.—An eligible entity shall use not more than 25 percent of the amount of the grant paid to the entity for a fiscal year for purposes of conducting a program using the service delivery model described in clause (i)(II).

“(iii) CRITERIA FOR EVIDENCE OF EFFECTIVENESS OF MODELS.—The Secretary shall establish criteria for evidence of effectiveness of the service delivery models and shall ensure that the process for establishing the criteria is transparent and provides the opportunity for public comment.

“(B) ADDITIONAL REQUIREMENTS.—

“(i) The program adheres to a clear, consistent model that satisfies the requirements of being grounded in empirically-based knowledge related to home visiting and linked to the benchmark areas specified in paragraph (1)(A) and the participant outcomes described in paragraph (2)(B) related to the purposes of the program.

“(ii) The program employs well-trained and competent staff, as demonstrated by education or training, such as nurses, social workers, educators, child development specialists, or other well-trained and competent staff, and provides ongoing and specific training on the model being delivered.

“(iii) The program maintains high quality supervision to establish home visitor competencies.

“(iv) The program demonstrates strong organizational capacity to implement the activities involved.

“(v) The program establishes appropriate linkages and referral networks to other community resources and supports for eligible families.

“(vi) The program monitors the fidelity of program implementation to ensure that services are delivered pursuant to the specified model.

“(4) PRIORITY FOR SERVING HIGH-RISK POPULATIONS.—The eligible entity gives priority to providing services under the program to the following:

“(A) Eligible families who reside in communities in need of such services, as identified in the statewide needs assessment required under subsection (b)(1)(A).

“(B) Low-income eligible families.

“(C) Eligible families who are pregnant women who have not attained age 21.

“(D) Eligible families that have a history of child abuse or neglect or have had interactions with child welfare services.

“(E) Eligible families that have a history of substance abuse or need substance abuse treatment.

“(F) Eligible families that have users of tobacco products in the home.

“(G) Eligible families that are or have children with low student achievement.

“(H) Eligible families with children with developmental delays or disabilities.

“(I) Eligible families who, or that include individuals who, are serving or formerly served in the Armed Forces, including such families that have members of the Armed Forces who have had multiple deployments outside of the United States.

“(e) APPLICATION REQUIREMENTS.—An eligible entity desiring a grant under this section shall submit an application to the Secretary for approval, in such manner as the Secretary may require, that includes the following:

“(1) A description of the populations to be served by the entity, including specific information regarding how the entity will serve high risk populations described in subsection (d)(4).

“(2) An assurance that the entity will give priority to serving low-income eligible families and eligible families who reside in at risk communities identified in the statewide needs assessment required under subsection (b)(1)(A).

“(3) The service delivery model or models described in subsection (d)(3)(A) that the entity will use under the program and the basis for the selection of the model or models.

“(4) A statement identifying how the selection of the populations to be served and the service delivery model or models that the entity will use under the program for such populations is consistent with the results of the statewide needs assessment conducted under subsection (b).

“(5) The quantifiable, measurable benchmarks established by the State to demonstrate that the program contributes to improvements in the areas specified in subsection (d)(1)(A).

“(6) An assurance that the entity will obtain and submit documentation or other appropriate evidence from the organization or entity that developed the service delivery model or models used under the program to verify that the program is implemented and services are delivered according to the model specifications.

“(7) Assurances that the entity will establish procedures to ensure that—

“(A) the participation of each eligible family in the program is voluntary; and

“(B) services are provided to an eligible family in accordance with the individual assessment for that family.

“(8) Assurances that the entity will—

“(A) submit annual reports to the Secretary regarding the program and activities carried out under the program that include such information and data as the Secretary shall require; and

“(B) participate in, and cooperate with, data and information collection necessary for the evaluation required

under subsection (g)(2) and other research and evaluation activities carried out under subsection (h)(3).

“(9) A description of other State programs that include home visitation services, including, if applicable to the State, other programs carried out under this title with funds made available from allotments under section 502(c), programs funded under title IV, title II of the Child Abuse Prevention and Treatment Act (relating to community-based grants for the prevention of child abuse and neglect), and section 645A of the Head Start Act (relating to Early Head Start programs).

“(10) Other information as required by the Secretary.

“(f) MAINTENANCE OF EFFORT.—Funds provided to an eligible entity receiving a grant under this section shall supplement, and not supplant, funds from other sources for early childhood home visitation programs or initiatives.

“(g) EVALUATION.—

Establishment.

“(1) INDEPENDENT, EXPERT ADVISORY PANEL.—The Secretary, in accordance with subsection (h)(1)(A), shall appoint an independent advisory panel consisting of experts in program evaluation and research, education, and early childhood development—

“(A) to review, and make recommendations on, the design and plan for the evaluation required under paragraph (2) within 1 year after the date of enactment of this section;

“(B) to maintain and advise the Secretary regarding the progress of the evaluation; and

“(C) to comment, if the panel so desires, on the report submitted under paragraph (3).

Grants.
Contracts.

“(2) AUTHORITY TO CONDUCT EVALUATION.—On the basis of the recommendations of the advisory panel under paragraph (1), the Secretary shall, by grant, contract, or interagency agreement, conduct an evaluation of the statewide needs assessments submitted under subsection (b) and the grants made under subsections (c) and (h)(3)(B). The evaluation shall include—

“(A) an analysis, on a State-by-State basis, of the results of such assessments, including indicators of maternal and prenatal health and infant health and mortality, and State actions in response to the assessments; and

Assessment.

“(B) an assessment of—

“(i) the effect of early childhood home visitation programs on child and parent outcomes, including with respect to each of the benchmark areas specified in subsection (d)(1)(A) and the participant outcomes described in subsection (d)(2)(B);

“(ii) the effectiveness of such programs on different populations, including the extent to which the ability of programs to improve participant outcomes varies across programs and populations; and

“(iii) the potential for the activities conducted under such programs, if scaled broadly, to improve health care practices, eliminate health disparities, and improve health care system quality, efficiencies, and reduce costs.

“(3) REPORT.—Not later than March 31, 2015, the Secretary shall submit a report to Congress on the results of the evaluation conducted under paragraph (2) and shall make the report publicly available.

“(h) OTHER PROVISIONS.—

“(1) INTRA-AGENCY COLLABORATION.—The Secretary shall ensure that the Maternal and Child Health Bureau and the Administration for Children and Families collaborate with respect to carrying out this section, including with respect to—

“(A) reviewing and analyzing the statewide needs assessments required under subsection (b), the awarding and oversight of grants awarded under this section, the establishment of the advisory panels required under subsections (d)(1)(B)(iii)(II) and (g)(1), and the evaluation and report required under subsection (g); and

“(B) consulting with other Federal agencies with responsibility for administering or evaluating programs that serve eligible families to coordinate and collaborate with respect to research related to such programs and families, including the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services, the Centers for Disease Control and Prevention, the National Institute of Child Health and Human Development of the National Institutes of Health, the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice, and the Institute of Education Sciences of the Department of Education.

“(2) GRANTS TO ELIGIBLE ENTITIES THAT ARE NOT STATES.—

Requirements.

“(A) INDIAN TRIBES, TRIBAL ORGANIZATIONS, OR URBAN INDIAN ORGANIZATIONS.—The Secretary shall specify requirements for eligible entities that are Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations to apply for and conduct an early childhood home visitation program with a grant under this section. Such requirements shall, to the greatest extent practicable, be consistent with the requirements applicable to eligible entities that are States and shall require an Indian Tribe (or consortium), Tribal Organization, or Urban Indian Organization to—

“(i) conduct a needs assessment similar to the assessment required for all States under subsection (b); and

“(ii) establish quantifiable, measurable 3- and 5-year benchmarks consistent with subsection (d)(1)(A).

“(B) NONPROFIT ORGANIZATIONS.—If, as of the beginning of fiscal year 2012, a State has not applied or been approved for a grant under this section, the Secretary may use amounts appropriated under paragraph (1) of subsection (j) that are available for expenditure under paragraph (3) of that subsection to make a grant to an eligible entity that is a nonprofit organization described in subsection (k)(1)(B) to conduct an early childhood home visitation program in the State. The Secretary shall specify the requirements for such an organization to apply for and conduct the program which shall, to the greatest extent practicable, be consistent with the requirements applicable

to eligible entities that are States and shall require the organization to—

“(i) carry out the program based on the needs assessment conducted by the State under subsection (b); and

“(ii) establish quantifiable, measurable 3- and 5-year benchmarks consistent with subsection (d)(1)(A).

“(3) RESEARCH AND OTHER EVALUATION ACTIVITIES.—

“(A) IN GENERAL.—The Secretary shall carry out a continuous program of research and evaluation activities in order to increase knowledge about the implementation and effectiveness of home visiting programs, using random assignment designs to the maximum extent feasible. The Secretary may carry out such activities directly, or through grants, cooperative agreements, or contracts.

“(B) REQUIREMENTS.—The Secretary shall ensure that—

“(i) evaluation of a specific program or project is conducted by persons or individuals not directly involved in the operation of such program or project; and

“(ii) the conduct of research and evaluation activities includes consultation with independent researchers, State officials, and developers and providers of home visiting programs on topics including research design and administrative data matching.

“(4) REPORT AND RECOMMENDATION.—Not later than December 31, 2015, the Secretary shall submit a report to Congress regarding the programs conducted with grants under this section. The report required under this paragraph shall include—

“(A) information regarding the extent to which eligible entities receiving grants under this section demonstrated improvements in each of the areas specified in subsection (d)(1)(A);

“(B) information regarding any technical assistance provided under subsection (d)(1)(B)(iii)(I), including the type of any such assistance provided; and

“(C) recommendations for such legislative or administrative action as the Secretary determines appropriate.

“(i) APPLICATION OF OTHER PROVISIONS OF TITLE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the other provisions of this title shall not apply to a grant made under this section.

“(2) EXCEPTIONS.—The following provisions of this title shall apply to a grant made under this section to the same extent and in the same manner as such provisions apply to allotments made under section 502(c):

“(A) Section 504(b)(6) (relating to prohibition on payments to excluded individuals and entities).

“(B) Section 504(c) (relating to the use of funds for the purchase of technical assistance).

“(C) Section 504(d) (relating to a limitation on administrative expenditures).

“(D) Section 506 (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.

“(E) Section 507 (relating to penalties for false statements).

“(F) Section 508 (relating to nondiscrimination).

“(G) Section 509(a) (relating to the administration of the grant program).

“(j) APPROPRIATIONS.—

“(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this section—

“(A) \$100,000,000 for fiscal year 2010;

“(B) \$250,000,000 for fiscal year 2011;

“(C) \$350,000,000 for fiscal year 2012;

“(D) \$400,000,000 for fiscal year 2013; and

“(E) \$400,000,000 for fiscal year 2014.

“(2) RESERVATIONS.—Of the amount appropriated under this subsection for a fiscal year, the Secretary shall reserve—

“(A) 3 percent of such amount for purposes of making grants to eligible entities that are Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations; and

“(B) 3 percent of such amount for purposes of carrying out subsections (d)(1)(B)(iii), (g), and (h)(3).

“(3) AVAILABILITY.—Funds made available to an eligible entity under this section for a fiscal year shall remain available for expenditure by the eligible entity through the end of the second succeeding fiscal year after award. Any funds that are not expended by the eligible entity during the period in which the funds are available under the preceding sentence may be used for grants to nonprofit organizations under subsection (h)(2)(B).

“(k) DEFINITIONS.—In this section:

“(1) ELIGIBLE ENTITY.—

“(A) IN GENERAL.—The term ‘eligible entity’ means a State, an Indian Tribe, Tribal Organization, or Urban Indian Organization, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa.

“(B) NONPROFIT ORGANIZATIONS.—Only for purposes of awarding grants under subsection (h)(2)(B), such term shall include a nonprofit organization with an established record of providing early childhood home visitation programs or initiatives in a State or several States.

“(2) ELIGIBLE FAMILY.—The term ‘eligible family’ means—

“(A) a woman who is pregnant, and the father of the child if the father is available; or

“(B) a parent or primary caregiver of a child, including grandparents or other relatives of the child, and foster parents, who are serving as the child’s primary caregiver from birth to kindergarten entry, and including a noncustodial parent who has an ongoing relationship with, and at times provides physical care for, the child.

“(3) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ‘Indian Tribe’ and ‘Tribal Organization’, and ‘Urban Indian Organization’ have the meanings given such terms in section 4 of the Indian Health Care Improvement Act.”.

42 USC 712 note. **SEC. 2952. SUPPORT, EDUCATION, AND RESEARCH FOR POSTPARTUM DEPRESSION.****(a) RESEARCH ON POSTPARTUM CONDITIONS.—**

(1) **EXPANSION AND INTENSIFICATION OF ACTIVITIES.**—The Secretary of Health and Human Services (in this subsection and subsection (c) referred to as the “Secretary”) is encouraged to continue activities on postpartum depression or postpartum psychosis (in this subsection and subsection (c) referred to as “postpartum conditions”), including research to expand the understanding of the causes of, and treatments for, postpartum conditions. Activities under this paragraph shall include conducting and supporting the following:

(A) Basic research concerning the etiology and causes of the conditions.

(B) Epidemiological studies to address the frequency and natural history of the conditions and the differences among racial and ethnic groups with respect to the conditions.

(C) The development of improved screening and diagnostic techniques.

(D) Clinical research for the development and evaluation of new treatments.

(E) Information and education programs for health care professionals and the public, which may include a coordinated national campaign to increase the awareness and knowledge of postpartum conditions. Activities under such a national campaign may—

(i) include public service announcements through television, radio, and other means; and

(ii) focus on—

(I) raising awareness about screening;

(II) educating new mothers and their families about postpartum conditions to promote earlier diagnosis and treatment; and

(III) ensuring that such education includes complete information concerning postpartum conditions, including its symptoms, methods of coping with the illness, and treatment resources.

(2) **SENSE OF CONGRESS REGARDING LONGITUDINAL STUDY OF RELATIVE MENTAL HEALTH CONSEQUENCES FOR WOMEN OF RESOLVING A PREGNANCY.—**

(A) **SENSE OF CONGRESS.**—It is the sense of Congress that the Director of the National Institute of Mental Health may conduct a nationally representative longitudinal study (during the period of fiscal years 2010 through 2019) of the relative mental health consequences for women of resolving a pregnancy (intended and unintended) in various ways, including carrying the pregnancy to term and parenting the child, carrying the pregnancy to term and placing the child for adoption, miscarriage, and having an abortion. This study may assess the incidence, timing, magnitude, and duration of the immediate and long-term mental health consequences (positive or negative) of these pregnancy outcomes.

(B) **REPORT.**—Subject to the completion of the study under subsection (a), beginning not later than 5 years after the date of the enactment of this Act, and periodically

thereafter for the duration of the study, such Director may prepare and submit to the Congress reports on the findings of the study.

(b) **GRANTS TO PROVIDE SERVICES TO INDIVIDUALS WITH A POSTPARTUM CONDITION AND THEIR FAMILIES.**—Title V of the Social Security Act (42 U.S.C. 701 et seq.), as amended by section 2951, is amended by adding at the end the following new section:

“SEC. 512. SERVICES TO INDIVIDUALS WITH A POSTPARTUM CONDITION AND THEIR FAMILIES. 42 USC 712.

“(a) **IN GENERAL.**—In addition to any other payments made under this title to a State, the Secretary may make grants to eligible entities for projects for the establishment, operation, and coordination of effective and cost-efficient systems for the delivery of essential services to individuals with or at risk for postpartum conditions and their families.

“(b) **CERTAIN ACTIVITIES.**—To the extent practicable and appropriate, the Secretary shall ensure that projects funded under subsection (a) provide education and services with respect to the diagnosis and management of postpartum conditions for individuals with or at risk for postpartum conditions and their families. The Secretary may allow such projects to include the following:

“(1) Delivering or enhancing outpatient and home-based health and support services, including case management and comprehensive treatment services.

“(2) Delivering or enhancing inpatient care management services that ensure the well-being of the mother and family and the future development of the infant.

“(3) Improving the quality, availability, and organization of health care and support services (including transportation services, attendant care, homemaker services, day or respite care, and providing counseling on financial assistance and insurance).

“(4) Providing education about postpartum conditions to promote earlier diagnosis and treatment. Such education may include—

“(A) providing complete information on postpartum conditions, symptoms, methods of coping with the illness, and treatment resources; and

“(B) in the case of a grantee that is a State, hospital, or birthing facility—

“(i) providing education to new mothers and fathers, and other family members as appropriate, concerning postpartum conditions before new mothers leave the health facility; and

“(ii) ensuring that training programs regarding such education are carried out at the health facility.

“(c) **INTEGRATION WITH OTHER PROGRAMS.**—To the extent practicable and appropriate, the Secretary may integrate the grant program under this section with other grant programs carried out by the Secretary, including the program under section 330 of the Public Health Service Act.

“(d) **REQUIREMENTS.**—The Secretary shall establish requirements for grants made under this section that include a limit on the amount of grants funds that may be used for administration, accounting, reporting, or program oversight functions and a requirement for each eligible entity that receives a grant to submit, for

each grant period, a report to the Secretary that describes how grant funds were used during such period.

“(e) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to entities seeking a grant under this section in order to assist such entities in complying with the requirements of this section.

“(f) APPLICATION OF OTHER PROVISIONS OF TITLE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the other provisions of this title shall not apply to a grant made under this section.

“(2) EXCEPTIONS.—The following provisions of this title shall apply to a grant made under this section to the same extent and in the same manner as such provisions apply to allotments made under section 502(c):

“(A) Section 504(b)(6) (relating to prohibition on payments to excluded individuals and entities).

“(B) Section 504(c) (relating to the use of funds for the purchase of technical assistance).

“(C) Section 504(d) (relating to a limitation on administrative expenditures).

“(D) Section 506 (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.

“(E) Section 507 (relating to penalties for false statements).

“(F) Section 508 (relating to nondiscrimination).

“(G) Section 509(a) (relating to the administration of the grant program).

“(g) DEFINITIONS.—In this section:

“(1) The term ‘eligible entity’—

“(A) means a public or nonprofit private entity; and

“(B) includes a State or local government, public-private partnership, recipient of a grant under section 330H of the Public Health Service Act (relating to the Healthy Start Initiative), public or nonprofit private hospital, community-based organization, hospice, ambulatory care facility, community health center, migrant health center, public housing primary care center, or homeless health center.

“(2) The term ‘postpartum condition’ means postpartum depression or postpartum psychosis.”.

(c) GENERAL PROVISIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section and the amendment made by subsection (b), there are authorized to be appropriated, in addition to such other sums as may be available for such purpose—

(A) \$3,000,000 for fiscal year 2010; and

(B) such sums as may be necessary for fiscal years 2011 and 2012.

(2) REPORT BY THE SECRETARY.—

(A) STUDY.—The Secretary shall conduct a study on the benefits of screening for postpartum conditions.

(B) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall complete the study required by subparagraph (A) and submit a report to the Congress on the results of such study.

SEC. 2953. PERSONAL RESPONSIBILITY EDUCATION.

Title V of the Social Security Act (42 U.S.C. 701 et seq.), as amended by sections 2951 and 2952(c), is amended by adding at the end the following:

“SEC. 513. PERSONAL RESPONSIBILITY EDUCATION.

42 USC 713.

“(a) ALLOTMENTS TO STATES.—

“(1) AMOUNT.—

“(A) IN GENERAL.—For the purpose described in subsection (b), subject to the succeeding provisions of this section, for each of fiscal years 2010 through 2014, the Secretary shall allot to each State an amount equal to the product of—

“(i) the amount appropriated under subsection (f) for the fiscal year and available for allotments to States after the application of subsection (c); and

“(ii) the State youth population percentage determined under paragraph (2).

“(B) MINIMUM ALLOTMENT.—

“(i) IN GENERAL.—Each State allotment under this paragraph for a fiscal year shall be at least \$250,000.

“(ii) PRO RATA ADJUSTMENTS.—The Secretary shall adjust on a pro rata basis the amount of the State allotments determined under this paragraph for a fiscal year to the extent necessary to comply with clause (i).

“(C) APPLICATION REQUIRED TO ACCESS ALLOTMENTS.—

“(i) IN GENERAL.—A State shall not be paid from its allotment for a fiscal year unless the State submits an application to the Secretary for the fiscal year and the Secretary approves the application (or requires changes to the application that the State satisfies) and meets such additional requirements as the Secretary may specify.

“(ii) REQUIREMENTS.—The State application shall contain an assurance that the State has complied with the requirements of this section in preparing and submitting the application and shall include the following as well as such additional information as the Secretary may require:

“(I) Based on data from the Centers for Disease Control and Prevention National Center for Health Statistics, the most recent pregnancy rates for the State for youth ages 10 to 14 and youth ages 15 to 19 for which data are available, the most recent birth rates for such youth populations in the State for which data are available, and trends in those rates for the most recently preceding 5-year period for which such data are available.

“(II) State-established goals for reducing the pregnancy rates and birth rates for such youth populations.

“(III) A description of the State’s plan for using the State allotments provided under this section to achieve such goals, especially among youth

populations that are the most high-risk or vulnerable for pregnancies or otherwise have special circumstances, including youth in foster care, homeless youth, youth with HIV/AIDS, pregnant youth who are under 21 years of age, mothers who are under 21 years of age, and youth residing in areas with high birth rates for youth.

“(2) STATE YOUTH POPULATION PERCENTAGE.—

“(A) IN GENERAL.—For purposes of paragraph (1)(A)(ii), the State youth population percentage is, with respect to a State, the proportion (expressed as a percentage) of—

“(i) the number of individuals who have attained age 10 but not attained age 20 in the State; to

“(ii) the number of such individuals in all States.

“(B) DETERMINATION OF NUMBER OF YOUTH.—The number of individuals described in clauses (i) and (ii) of subparagraph (A) in a State shall be determined on the basis of the most recent Bureau of the Census data.

“(3) AVAILABILITY OF STATE ALLOTMENTS.—Subject to paragraph (4)(A), amounts allotted to a State pursuant to this subsection for a fiscal year shall remain available for expenditure by the State through the end of the second succeeding fiscal year.

“(4) AUTHORITY TO AWARD GRANTS FROM STATE ALLOTMENTS TO LOCAL ORGANIZATIONS AND ENTITIES IN NONPARTICIPATING STATES.—

“(A) GRANTS FROM UNEXPENDED ALLOTMENTS.—If a State does not submit an application under this section for fiscal year 2010 or 2011, the State shall no longer be eligible to submit an application to receive funds from the amounts allotted for the State for each of fiscal years 2010 through 2014 and such amounts shall be used by the Secretary to award grants under this paragraph for each of fiscal years 2012 through 2014. The Secretary also shall use any amounts from the allotments of States that submit applications under this section for a fiscal year that remain unexpended as of the end of the period in which the allotments are available for expenditure under paragraph (3) for awarding grants under this paragraph.

“(B) 3-YEAR GRANTS.—

“(i) IN GENERAL.—The Secretary shall solicit applications to award 3-year grants in each of fiscal years 2012, 2013, and 2014 to local organizations and entities to conduct, consistent with subsection (b), programs and activities in States that do not submit an application for an allotment under this section for fiscal year 2010 or 2011.

“(ii) FAITH-BASED ORGANIZATIONS OR CONSORTIA.—The Secretary may solicit and award grants under this paragraph to faith-based organizations or consortia.

“(C) EVALUATION.—An organization or entity awarded a grant under this paragraph shall agree to participate in a rigorous Federal evaluation.

“(5) MAINTENANCE OF EFFORT.—No payment shall be made to a State from the allotment determined for the State under this subsection or to a local organization or entity awarded

a grant under paragraph (4), if the expenditure of non-federal funds by the State, organization, or entity for activities, programs, or initiatives for which amounts from allotments and grants under this subsection may be expended is less than the amount expended by the State, organization, or entity for such programs or initiatives for fiscal year 2009.

“(6) DATA COLLECTION AND REPORTING.—A State or local organization or entity receiving funds under this section shall cooperate with such requirements relating to the collection of data and information and reporting on outcomes regarding the programs and activities carried out with such funds, as the Secretary shall specify.

“(b) PURPOSE.—

“(1) IN GENERAL.—The purpose of an allotment under subsection (a)(1) to a State is to enable the State (or, in the case of grants made under subsection (a)(4)(B), to enable a local organization or entity) to carry out personal responsibility education programs consistent with this subsection.

“(2) PERSONAL RESPONSIBILITY EDUCATION PROGRAMS.—

“(A) IN GENERAL.—In this section, the term ‘personal responsibility education program’ means a program that is designed to educate adolescents on—

Definition.

“(i) both abstinence and contraception for the prevention of pregnancy and sexually transmitted infections, including HIV/AIDS, consistent with the requirements of subparagraph (B); and

“(ii) at least 3 of the adulthood preparation subjects described in subparagraph (C).

“(B) REQUIREMENTS.—The requirements of this subparagraph are the following:

“(i) The program replicates evidence-based effective programs or substantially incorporates elements of effective programs that have been proven on the basis of rigorous scientific research to change behavior, which means delaying sexual activity, increasing condom or contraceptive use for sexually active youth, or reducing pregnancy among youth.

“(ii) The program is medically-accurate and complete.

“(iii) The program includes activities to educate youth who are sexually active regarding responsible sexual behavior with respect to both abstinence and the use of contraception.

“(iv) The program places substantial emphasis on both abstinence and contraception for the prevention of pregnancy among youth and sexually transmitted infections.

“(v) The program provides age-appropriate information and activities.

“(vi) The information and activities carried out under the program are provided in the cultural context that is most appropriate for individuals in the particular population group to which they are directed.

“(C) ADULTHOOD PREPARATION SUBJECTS.—The adulthood preparation subjects described in this subparagraph are the following:

“(i) Healthy relationships, such as positive self-esteem and relationship dynamics, friendships, dating, romantic involvement, marriage, and family interactions.

“(ii) Adolescent development, such as the development of healthy attitudes and values about adolescent growth and development, body image, racial and ethnic diversity, and other related subjects.

“(iii) Financial literacy.

“(iv) Parent-child communication.

“(v) Educational and career success, such as developing skills for employment preparation, job seeking, independent living, financial self-sufficiency, and workplace productivity.

“(vi) Healthy life skills, such as goal-setting, decision making, negotiation, communication and interpersonal skills, and stress management.

“(c) RESERVATIONS OF FUNDS.—

“(1) GRANTS TO IMPLEMENT INNOVATIVE STRATEGIES.—From the amount appropriated under subsection (f) for the fiscal year, the Secretary shall reserve \$10,000,000 of such amount for purposes of awarding grants to entities to implement innovative youth pregnancy prevention strategies and target services to high-risk, vulnerable, and culturally under-represented youth populations, including youth in foster care, homeless youth, youth with HIV/AIDS, pregnant women who are under 21 years of age and their partners, mothers who are under 21 years of age and their partners, and youth residing in areas with high birth rates for youth. An entity awarded a grant under this paragraph shall agree to participate in a rigorous Federal evaluation of the activities carried out with grant funds.

“(2) OTHER RESERVATIONS.—From the amount appropriated under subsection (f) for the fiscal year that remains after the application of paragraph (1), the Secretary shall reserve the following amounts:

“(A) GRANTS FOR INDIAN TRIBES OR TRIBAL ORGANIZATIONS.—The Secretary shall reserve 5 percent of such remainder for purposes of awarding grants to Indian tribes and tribal organizations in such manner, and subject to such requirements, as the Secretary, in consultation with Indian tribes and tribal organizations, determines appropriate.

“(B) SECRETARIAL RESPONSIBILITIES.—

“(i) RESERVATION OF FUNDS.—The Secretary shall reserve 10 percent of such remainder for expenditures by the Secretary for the activities described in clauses (ii) and (iii).

“(ii) PROGRAM SUPPORT.—The Secretary shall provide, directly or through a competitive grant process, research, training and technical assistance, including dissemination of research and information regarding effective and promising practices, providing consultation and resources on a broad array of teen pregnancy prevention strategies, including abstinence and contraception, and developing resources and materials to support the activities of recipients of grants and other State, tribal, and community organizations working

to reduce teen pregnancy. In carrying out such functions, the Secretary shall collaborate with a variety of entities that have expertise in the prevention of teen pregnancy, HIV and sexually transmitted infections, healthy relationships, financial literacy, and other topics addressed through the personal responsibility education programs.

“(iii) EVALUATION.—The Secretary shall evaluate the programs and activities carried out with funds made available through allotments or grants under this section.

“(d) ADMINISTRATION.—

“(1) IN GENERAL.—The Secretary shall administer this section through the Assistant Secretary for the Administration for Children and Families within the Department of Health and Human Services.

“(2) APPLICATION OF OTHER PROVISIONS OF TITLE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the other provisions of this title shall not apply to allotments or grants made under this section.

“(B) EXCEPTIONS.—The following provisions of this title shall apply to allotments and grants made under this section to the same extent and in the same manner as such provisions apply to allotments made under section 502(c):

“(i) Section 504(b)(6) (relating to prohibition on payments to excluded individuals and entities).

“(ii) Section 504(c) (relating to the use of funds for the purchase of technical assistance).

“(iii) Section 504(d) (relating to a limitation on administrative expenditures).

“(iv) Section 506 (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.

“(v) Section 507 (relating to penalties for false statements).

“(vi) Section 508 (relating to nondiscrimination).

“(e) DEFINITIONS.—In this section:

“(1) AGE-APPROPRIATE.—The term ‘age-appropriate’, with respect to the information in pregnancy prevention, means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

“(2) MEDICALLY ACCURATE AND COMPLETE.—The term ‘medically accurate and complete’ means verified or supported by the weight of research conducted in compliance with accepted scientific methods and—

“(A) published in peer-reviewed journals, where applicable; or

“(B) comprising information that leading professional organizations and agencies with relevant expertise in the field recognize as accurate, objective, and complete.

“(3) INDIAN TRIBES; TRIBAL ORGANIZATIONS.—The terms ‘Indian tribe’ and ‘Tribal organization’ have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)).

“(4) YOUTH.—The term ‘youth’ means an individual who has attained age 10 but has not attained age 20.

“(f) APPROPRIATION.—For the purpose of carrying out this section, there is appropriated, out of any money in the Treasury not otherwise appropriated, \$75,000,000 for each of fiscal years 2010 through 2014. Amounts appropriated under this subsection shall remain available until expended.”.

SEC. 2954. RESTORATION OF FUNDING FOR ABSTINENCE EDUCATION.

Section 510 of the Social Security Act (42 U.S.C. 710) is amended—

(1) in subsection (a), by striking “fiscal year 1998 and each subsequent fiscal year” and inserting “each of fiscal years 2010 through 2014”; and

(2) in subsection (d)—

(A) in the first sentence, by striking “1998 through 2003” and inserting “2010 through 2014”; and

(B) in the second sentence, by inserting “(except that such appropriation shall be made on the date of enactment of the Patient Protection and Affordable Care Act in the case of fiscal year 2010)” before the period.

SEC. 2955. INCLUSION OF INFORMATION ABOUT THE IMPORTANCE OF HAVING A HEALTH CARE POWER OF ATTORNEY IN TRANSITION PLANNING FOR CHILDREN AGING OUT OF FOSTER CARE AND INDEPENDENT LIVING PROGRAMS.

(a) TRANSITION PLANNING.—Section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)) is amended by inserting “includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under State law,” after “employment services,”.

(b) INDEPENDENT LIVING EDUCATION.—Section 477(b)(3) of such Act (42 U.S.C. 677(b)(3)) is amended by adding at the end the following:

Certification.

“(K) A certification by the chief executive officer of the State that the State will ensure that an adolescent participating in the program under this section are provided with education about the importance of designating another individual to make health care treatment decisions on behalf of the adolescent if the adolescent becomes unable to participate in such decisions and the adolescent does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, whether a health care power of attorney, health care proxy, or other similar document is recognized under State law, and how to execute such a document if the adolescent wants to do so.”.

(c) HEALTH OVERSIGHT AND COORDINATION PLAN.—Section 422(b)(15)(A) of such Act (42 U.S.C. 622(b)(15)(A)) is amended—

(1) in clause (v), by striking “and” at the end; and

(2) by adding at the end the following:

“(vii) steps to ensure that the components of the transition plan development process required under

section 475(5)(H) that relate to the health care needs of children aging out of foster care, including the requirements to include options for health insurance, information about a health care power of attorney, health care proxy, or other similar document recognized under State law, and to provide the child with the option to execute such a document, are met; and”.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2010. 42 USC 622 note.

TITLE III—IMPROVING THE QUALITY AND EFFICIENCY OF HEALTH CARE

Subtitle A—Transforming the Health Care Delivery System

PART I—LINKING PAYMENT TO QUALITY OUTCOMES UNDER THE MEDICARE PROGRAM

SEC. 3001. HOSPITAL VALUE-BASED PURCHASING PROGRAM.

(a) PROGRAM.—

(1) IN GENERAL.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 4102(a) of the HITECH Act (Public Law 111–5), is amended by adding at the end the following new subsection:

“(o) HOSPITAL VALUE-BASED PURCHASING PROGRAM.—

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall establish a hospital value-based purchasing program (in this subsection referred to as the ‘Program’) under which value-based incentive payments are made in a fiscal year to hospitals that meet the performance standards under paragraph (3) for the performance period for such fiscal year (as established under paragraph (4)).

“(B) PROGRAM TO BEGIN IN FISCAL YEAR 2013.—The Program shall apply to payments for discharges occurring on or after October 1, 2012.

“(C) APPLICABILITY OF PROGRAM TO HOSPITALS.—

“(i) IN GENERAL.—For purposes of this subsection, subject to clause (ii), the term ‘hospital’ means a subsection (d) hospital (as defined in subsection (d)(1)(B)).

“(ii) EXCLUSIONS.—The term ‘hospital’ shall not include, with respect to a fiscal year, a hospital—

“(I) that is subject to the payment reduction under subsection (b)(3)(B)(viii)(I) for such fiscal year;

“(II) for which, during the performance period for such fiscal year, the Secretary has cited deficiencies that pose immediate jeopardy to the health or safety of patients;

“(III) for which there are not a minimum number (as determined by the Secretary) of measures that apply to the hospital for the performance period for such fiscal year; or

“(IV) for which there are not a minimum number (as determined by the Secretary) of cases for the measures that apply to the hospital for the performance period for such fiscal year.

“(iii) INDEPENDENT ANALYSIS.—For purposes of determining the minimum numbers under subclauses (III) and (IV) of clause (ii), the Secretary shall have conducted an independent analysis of what numbers are appropriate.

“(iv) EXEMPTION.—In the case of a hospital that is paid under section 1814(b)(3), the Secretary may exempt such hospital from the application of this subsection if the State which is paid under such section submits an annual report to the Secretary describing how a similar program in the State for a participating hospital or hospitals achieves or surpasses the measured results in terms of patient health outcomes and cost savings established under this subsection.

“(2) MEASURES.—

“(A) IN GENERAL.—The Secretary shall select measures for purposes of the Program. Such measures shall be selected from the measures specified under subsection (b)(3)(B)(viii).

“(B) REQUIREMENTS.—

“(i) FOR FISCAL YEAR 2013.—For value-based incentive payments made with respect to discharges occurring during fiscal year 2013, the Secretary shall ensure the following:

“(I) CONDITIONS OR PROCEDURES.—Measures are selected under subparagraph (A) that cover at least the following 5 specific conditions or procedures:

“(aa) Acute myocardial infarction (AMI).

“(bb) Heart failure.

“(cc) Pneumonia.

“(dd) Surgeries, as measured by the Surgical Care Improvement Project (formerly referred to as ‘Surgical Infection Prevention’ for discharges occurring before July 2006).

“(ee) Healthcare-associated infections, as measured by the prevention metrics and targets established in the HHS Action Plan to Prevent Healthcare-Associated Infections (or any successor plan) of the Department of Health and Human Services.

“(II) HCAHPS.—Measures selected under subparagraph (A) shall be related to the Hospital Consumer Assessment of Healthcare Providers and Systems survey (HCAHPS).

“(ii) INCLUSION OF EFFICIENCY MEASURES.—For value-based incentive payments made with respect to

discharges occurring during fiscal year 2014 or a subsequent fiscal year, the Secretary shall ensure that measures selected under subparagraph (A) include efficiency measures, including measures of ‘Medicare spending per beneficiary’. Such measures shall be adjusted for factors such as age, sex, race, severity of illness, and other factors that the Secretary determines appropriate.

“(C) LIMITATIONS.—

“(i) TIME REQUIREMENT FOR PRIOR REPORTING AND NOTICE.—The Secretary may not select a measure under subparagraph (A) for use under the Program with respect to a performance period for a fiscal year (as established under paragraph (4)) unless such measure has been specified under subsection (b)(3)(B)(viii) and included on the Hospital Compare Internet website for at least 1 year prior to the beginning of such performance period.

“(ii) MEASURE NOT APPLICABLE UNLESS HOSPITAL FURNISHES SERVICES APPROPRIATE TO THE MEASURE.—A measure selected under subparagraph (A) shall not apply to a hospital if such hospital does not furnish services appropriate to such measure.

“(D) REPLACING MEASURES.—Subclause (VI) of subsection (b)(3)(B)(viii) shall apply to measures selected under subparagraph (A) in the same manner as such subclause applies to measures selected under such subsection.

“(3) PERFORMANCE STANDARDS.—

“(A) ESTABLISHMENT.—The Secretary shall establish performance standards with respect to measures selected under paragraph (2) for a performance period for a fiscal year (as established under paragraph (4)).

“(B) ACHIEVEMENT AND IMPROVEMENT.—The performance standards established under subparagraph (A) shall include levels of achievement and improvement.

“(C) TIMING.—The Secretary shall establish and announce the performance standards under subparagraph (A) not later than 60 days prior to the beginning of the performance period for the fiscal year involved.

“(D) CONSIDERATIONS IN ESTABLISHING STANDARDS.—In establishing performance standards with respect to measures under this paragraph, the Secretary shall take into account appropriate factors, such as—

“(i) practical experience with the measures involved, including whether a significant proportion of hospitals failed to meet the performance standard during previous performance periods;

“(ii) historical performance standards;

“(iii) improvement rates; and

“(iv) the opportunity for continued improvement.

“(4) PERFORMANCE PERIOD.—For purposes of the Program, the Secretary shall establish the performance period for a fiscal year. Such performance period shall begin and end prior to the beginning of such fiscal year.

“(5) HOSPITAL PERFORMANCE SCORE.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall develop a methodology for assessing the

total performance of each hospital based on performance standards with respect to the measures selected under paragraph (2) for a performance period (as established under paragraph (4)). Using such methodology, the Secretary shall provide for an assessment (in this subsection referred to as the ‘hospital performance score’) for each hospital for each performance period.

“(B) APPLICATION.—

“(i) APPROPRIATE DISTRIBUTION.—The Secretary shall ensure that the application of the methodology developed under subparagraph (A) results in an appropriate distribution of value-based incentive payments under paragraph (6) among hospitals achieving different levels of hospital performance scores, with hospitals achieving the highest hospital performance scores receiving the largest value-based incentive payments.

“(ii) HIGHER OF ACHIEVEMENT OR IMPROVEMENT.—The methodology developed under subparagraph (A) shall provide that the hospital performance score is determined using the higher of its achievement or improvement score for each measure.

“(iii) WEIGHTS.—The methodology developed under subparagraph (A) shall provide for the assignment of weights for categories of measures as the Secretary determines appropriate.

“(iv) NO MINIMUM PERFORMANCE STANDARD.—The Secretary shall not set a minimum performance standard in determining the hospital performance score for any hospital.

“(v) REFLECTION OF MEASURES APPLICABLE TO THE HOSPITAL.—The hospital performance score for a hospital shall reflect the measures that apply to the hospital.

“(6) CALCULATION OF VALUE-BASED INCENTIVE PAYMENTS.—

Determination.

“(A) IN GENERAL.—In the case of a hospital that the Secretary determines meets (or exceeds) the performance standards under paragraph (3) for the performance period for a fiscal year (as established under paragraph (4)), the Secretary shall increase the base operating DRG payment amount (as defined in paragraph (7)(D)), as determined after application of paragraph (7)(B)(i), for a hospital for each discharge occurring in such fiscal year by the value-based incentive payment amount.

“(B) VALUE-BASED INCENTIVE PAYMENT AMOUNT.—The value-based incentive payment amount for each discharge of a hospital in a fiscal year shall be equal to the product of—

“(i) the base operating DRG payment amount (as defined in paragraph (7)(D)) for the discharge for the hospital for such fiscal year; and

“(ii) the value-based incentive payment percentage specified under subparagraph (C) for the hospital for such fiscal year.

“(C) VALUE-BASED INCENTIVE PAYMENT PERCENTAGE.—

“(i) IN GENERAL.—The Secretary shall specify a value-based incentive payment percentage for a hospital for a fiscal year.

“(ii) REQUIREMENTS.—In specifying the value-based incentive payment percentage for each hospital for a fiscal year under clause (i), the Secretary shall ensure that—

“(I) such percentage is based on the hospital performance score of the hospital under paragraph (5); and

“(II) the total amount of value-based incentive payments under this paragraph to all hospitals in such fiscal year is equal to the total amount available for value-based incentive payments for such fiscal year under paragraph (7)(A), as estimated by the Secretary.

“(7) FUNDING FOR VALUE-BASED INCENTIVE PAYMENTS.—

“(A) AMOUNT.—The total amount available for value-based incentive payments under paragraph (6) for all hospitals for a fiscal year shall be equal to the total amount of reduced payments for all hospitals under subparagraph (B) for such fiscal year, as estimated by the Secretary.

“(B) ADJUSTMENT TO PAYMENTS.—

“(i) IN GENERAL.—The Secretary shall reduce the base operating DRG payment amount (as defined in subparagraph (D)) for a hospital for each discharge in a fiscal year (beginning with fiscal year 2013) by an amount equal to the applicable percent (as defined in subparagraph (C)) of the base operating DRG payment amount for the discharge for the hospital for such fiscal year. The Secretary shall make such reductions for all hospitals in the fiscal year involved, regardless of whether or not the hospital has been determined by the Secretary to have earned a value-based incentive payment under paragraph (6) for such fiscal year.

“(ii) NO EFFECT ON OTHER PAYMENTS.—Payments described in items (aa) and (bb) of subparagraph (D)(i)(II) for a hospital shall be determined as if this subsection had not been enacted.

“(C) APPLICABLE PERCENT DEFINED.—For purposes of subparagraph (B), the term ‘applicable percent’ means—

“(i) with respect to fiscal year 2013, 1.0 percent;

“(ii) with respect to fiscal year 2014, 1.25 percent;

“(iii) with respect to fiscal year 2015, 1.5 percent;

“(iv) with respect to fiscal year 2016, 1.75 percent;

and

“(v) with respect to fiscal year 2017 and succeeding fiscal years, 2 percent.

“(D) BASE OPERATING DRG PAYMENT AMOUNT DEFINED.—

“(i) IN GENERAL.—Except as provided in clause (ii), in this subsection, the term ‘base operating DRG payment amount’ means, with respect to a hospital for a fiscal year—

“(I) the payment amount that would otherwise be made under subsection (d) (determined without

regard to subsection (q)) for a discharge if this subsection did not apply; reduced by

“(II) any portion of such payment amount that is attributable to—

“(aa) payments under paragraphs (5)(A), (5)(B), (5)(F), and (12) of subsection (d); and

“(bb) such other payments under subsection (d) determined appropriate by the Secretary.

“(ii) SPECIAL RULES FOR CERTAIN HOSPITALS.—

“(I) SOLE COMMUNITY HOSPITALS AND MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.—In the case of a medicare-dependent, small rural hospital (with respect to discharges occurring during fiscal year 2012 and 2013) or a sole community hospital, in applying subparagraph (A)(i), the payment amount that would otherwise be made under subsection (d) shall be determined without regard to subparagraphs (I) and (L) of subsection (b)(3) and subparagraphs (D) and (G) of subsection (d)(5).

“(II) HOSPITALS PAID UNDER SECTION 1814.—In the case of a hospital that is paid under section 1814(b)(3), the term ‘base operating DRG payment amount’ means the payment amount under such section.

Deadline.

“(8) ANNOUNCEMENT OF NET RESULT OF ADJUSTMENTS.—

Under the Program, the Secretary shall, not later than 60 days prior to the fiscal year involved, inform each hospital of the adjustments to payments to the hospital for discharges occurring in such fiscal year under paragraphs (6) and (7)(B)(i).

“(9) NO EFFECT IN SUBSEQUENT FISCAL YEARS.—The value-based incentive payment under paragraph (6) and the payment reduction under paragraph (7)(B)(i) shall each apply only with respect to the fiscal year involved, and the Secretary shall not take into account such value-based incentive payment or payment reduction in making payments to a hospital under this section in a subsequent fiscal year.

“(10) PUBLIC REPORTING.—

“(A) HOSPITAL SPECIFIC INFORMATION.—

“(i) IN GENERAL.—The Secretary shall make information available to the public regarding the performance of individual hospitals under the Program, including—

“(I) the performance of the hospital with respect to each measure that applies to the hospital;

“(II) the performance of the hospital with respect to each condition or procedure; and

“(III) the hospital performance score assessing the total performance of the hospital.

“(ii) OPPORTUNITY TO REVIEW AND SUBMIT CORRECTIONS.—The Secretary shall ensure that a hospital has the opportunity to review, and submit corrections for, the information to be made public with respect to the hospital under clause (i) prior to such information being made public.

“(iii) WEBSITE.—Such information shall be posted on the Hospital Compare Internet website in an easily understandable format.

“(B) AGGREGATE INFORMATION.—The Secretary shall periodically post on the Hospital Compare Internet website aggregate information on the Program, including—

Web posting.

“(i) the number of hospitals receiving value-based incentive payments under paragraph (6) and the range and total amount of such value-based incentive payments; and

“(ii) the number of hospitals receiving less than the maximum value-based incentive payment available to the hospital for the fiscal year involved and the range and amount of such payments.

“(11) IMPLEMENTATION.—

“(A) APPEALS.—The Secretary shall establish a process by which hospitals may appeal the calculation of a hospital’s performance assessment with respect to the performance standards established under paragraph (3)(A) and the hospital performance score under paragraph (5). The Secretary shall ensure that such process provides for resolution of such appeals in a timely manner.

“(B) LIMITATION ON REVIEW.—Except as provided in subparagraph (A), there shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the following:

“(i) The methodology used to determine the amount of the value-based incentive payment under paragraph (6) and the determination of such amount.

“(ii) The determination of the amount of funding available for such value-based incentive payments under paragraph (7)(A) and the payment reduction under paragraph (7)(B)(i).

“(iii) The establishment of the performance standards under paragraph (3) and the performance period under paragraph (4).

“(iv) The measures specified under subsection (b)(3)(B)(viii) and the measures selected under paragraph (2).

“(v) The methodology developed under paragraph (5) that is used to calculate hospital performance scores and the calculation of such scores.

“(vi) The validation methodology specified in subsection (b)(3)(B)(viii)(XI).

“(C) CONSULTATION WITH SMALL HOSPITALS.—The Secretary shall consult with small rural and urban hospitals on the application of the Program to such hospitals.

“(12) PROMULGATION OF REGULATIONS.—The Secretary shall promulgate regulations to carry out the Program, including the selection of measures under paragraph (2), the methodology developed under paragraph (5) that is used to calculate hospital performance scores, and the methodology used to determine the amount of value-based incentive payments under paragraph (6).”.

(2) AMENDMENTS FOR REPORTING OF HOSPITAL QUALITY INFORMATION.—Section 1886(b)(3)(B)(viii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(viii)) is amended—

(A) in subclause (II), by adding at the end the following sentence: “The Secretary may require hospitals to submit data on measures that are not used for the determination of value-based incentive payments under subsection (o).”;

(B) in subclause (V), by striking “beginning with fiscal year 2008” and inserting “for fiscal years 2008 through 2012”;

(C) in subclause (VII), in the first sentence, by striking “data submitted” and inserting “information regarding measures submitted”; and

(D) by adding at the end the following new subclauses:
 Effective date. “(VIII) Effective for payments beginning with fiscal year 2013, with respect to quality measures for outcomes of care, the Secretary shall provide for such risk adjustment as the Secretary determines to be appropriate to maintain incentives for hospitals to treat patients with severe illnesses or conditions.

“(IX)(aa) Subject to item (bb), effective for payments beginning with fiscal year 2013, each measure specified by the Secretary under this clause shall be endorsed by the entity with a contract under section 1890(a).

“(bb) In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(X) To the extent practicable, the Secretary shall, with input from consensus organizations and other stakeholders, take steps to ensure that the measures specified by the Secretary under this clause are coordinated and aligned with quality measures applicable to—

“(aa) physicians under section 1848(k); and

“(bb) other providers of services and suppliers under this title.???

Validation process. “(XI) The Secretary shall establish a process to validate measures specified under this clause as appropriate. Such process shall include the auditing of a number of randomly selected hospitals sufficient to ensure validity of the reporting program under this clause as a whole and shall provide a hospital with an opportunity to appeal the validation of measures reported by such hospital.”.

(3) WEBSITE IMPROVEMENTS.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 4102(b) of the HITECH Act (Public Law 111–5), is amended by adding at the end the following new clause:

Web posting. Reports. “(x)(I) The Secretary shall develop standard Internet website reports tailored to meet the needs of various stakeholders such as hospitals, patients, researchers, and policymakers. The Secretary shall seek input from such stakeholders in determining the type of information that is useful and the formats that best facilitate the use of the information.

“(II) The Secretary shall modify the Hospital Compare Internet website to make the use and navigation of that website readily available to individuals accessing it.”.

(4) GAO STUDY AND REPORT.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study on the performance of the

hospital value-based purchasing program established under section 1886(o) of the Social Security Act, as added by paragraph (1). Such study shall include an analysis of the impact of such program on—

(i) the quality of care furnished to Medicare beneficiaries, including diverse Medicare beneficiary populations (such as diverse in terms of race, ethnicity, and socioeconomic status);

(ii) expenditures under the Medicare program, including any reduced expenditures under Part A of title XVIII of such Act that are attributable to the improvement in the delivery of inpatient hospital services by reason of such hospital value-based purchasing program;

(iii) the quality performance among safety net hospitals and any barriers such hospitals face in meeting the performance standards applicable under such hospital value-based purchasing program; and

(iv) the quality performance among small rural and small urban hospitals and any barriers such hospitals face in meeting the performance standards applicable under such hospital value-based purchasing program.

(B) REPORTS.—

(i) INTERIM REPORT.—Not later than October 1, 2015, the Comptroller General of the United States shall submit to Congress an interim report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(ii) FINAL REPORT.—Not later than July 1, 2017, the Comptroller General of the United States shall submit to Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(5) HHS STUDY AND REPORT.—

(A) STUDY.—The Secretary of Health and Human Services shall conduct a study on the performance of the hospital value-based purchasing program established under section 1886(o) of the Social Security Act, as added by paragraph (1). Such study shall include an analysis—

(i) of ways to improve the hospital value-based purchasing program and ways to address any unintended consequences that may occur as a result of such program;

(ii) of whether the hospital value-based purchasing program resulted in lower spending under the Medicare program under title XVIII of such Act or other financial savings to hospitals;

(iii) the appropriateness of the Medicare program sharing in any savings generated through the hospital value-based purchasing program; and

(iv) any other area determined appropriate by the Secretary.

(B) REPORT.—Not later than January 1, 2016, the Secretary of Health and Human Services shall submit to Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

42 USC 1395ww
note.

(b) VALUE-BASED PURCHASING DEMONSTRATION PROGRAMS.—
(1) VALUE-BASED PURCHASING DEMONSTRATION PROGRAM
FOR INPATIENT CRITICAL ACCESS HOSPITALS.—

(A) ESTABLISHMENT.—

Deadline.

(i) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services (in this subsection referred to as the “Secretary”) shall establish a demonstration program under which the Secretary establishes a value-based purchasing program under the Medicare program under title XVIII of the Social Security Act for critical access hospitals (as defined in paragraph (1) of section 1861(mm) of such Act (42 U.S.C. 1395x(mm))) with respect to inpatient critical access hospital services (as defined in paragraph (2) of such section) in order to test innovative methods of measuring and rewarding quality and efficient health care furnished by such hospitals.

(ii) DURATION.—The demonstration program under this paragraph shall be conducted for a 3-year period.

(iii) SITES.—The Secretary shall conduct the demonstration program under this paragraph at an appropriate number (as determined by the Secretary) of critical access hospitals. The Secretary shall ensure that such hospitals are representative of the spectrum of such hospitals that participate in the Medicare program.

(B) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary to carry out the demonstration program under this paragraph.

(C) BUDGET NEUTRALITY REQUIREMENT.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

(D) REPORT.—Not later than 18 months after the completion of the demonstration program under this paragraph, the Secretary shall submit to Congress a report on the demonstration program together with—

(i) recommendations on the establishment of a permanent value-based purchasing program under the Medicare program for critical access hospitals with respect to inpatient critical access hospital services; and

(ii) recommendations for such other legislation and administrative action as the Secretary determines appropriate.

(2) VALUE-BASED PURCHASING DEMONSTRATION PROGRAM FOR HOSPITALS EXCLUDED FROM HOSPITAL VALUE-BASED PURCHASING PROGRAM AS A RESULT OF INSUFFICIENT NUMBERS OF MEASURES AND CASES.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall establish a demonstration program under which the Secretary establishes a value-based purchasing program under the Medicare program under title XVIII of the Social Security Act for applicable hospitals (as defined in clause (ii)) with respect to inpatient hospital services (as defined in section 1861(b) of the Social Security Act (42 U.S.C. 1395x(b))) in order to test innovative methods of measuring and rewarding quality and efficient health care furnished by such hospitals.

Deadline.

(ii) APPLICABLE HOSPITAL DEFINED.—For purposes of this paragraph, the term “applicable hospital” means a hospital described in subclause (III) or (IV) of section 1886(o)(1)(C)(ii) of the Social Security Act, as added by subsection (a)(1).

(iii) DURATION.—The demonstration program under this paragraph shall be conducted for a 3-year period.

(iv) SITES.—The Secretary shall conduct the demonstration program under this paragraph at an appropriate number (as determined by the Secretary) of applicable hospitals. The Secretary shall ensure that such hospitals are representative of the spectrum of such hospitals that participate in the Medicare program.

(B) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary to carry out the demonstration program under this paragraph.

(C) BUDGET NEUTRALITY REQUIREMENT.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

(D) REPORT.—Not later than 18 months after the completion of the demonstration program under this paragraph, the Secretary shall submit to Congress a report on the demonstration program together with—

(i) recommendations on the establishment of a permanent value-based purchasing program under the Medicare program for applicable hospitals with respect to inpatient hospital services; and

(ii) recommendations for such other legislation and administrative action as the Secretary determines appropriate.

SEC. 3002. IMPROVEMENTS TO THE PHYSICIAN QUALITY REPORTING SYSTEM.

(a) EXTENSION.—Section 1848(m) of the Social Security Act (42 U.S.C. 1395w-4(m)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), in the matter preceding clause (i), by striking “2010” and inserting “2014”; and

(B) in subparagraph (B)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following new clauses:

“(iii) for 2011, 1.0 percent; and

“(iv) for 2012, 2013, and 2014, 0.5 percent.”;

(2) in paragraph (3)—

(A) in subparagraph (A), in the matter preceding clause (i), by inserting “(or, for purposes of subsection (a)(8), for the quality reporting period for the year)” after “reporting period”; and

(B) in subparagraph (C)(i), by inserting “, or, for purposes of subsection (a)(8), for a quality reporting period for the year” after “(a)(5), for a reporting period for a year”;

(3) in paragraph (5)(E)(iv), by striking “subsection (a)(5)(A)” and inserting “paragraphs (5)(A) and (8)(A) of subsection (a)”;

and

(4) in paragraph (6)(C)—

(A) in clause (i)(II), by striking “, 2009, 2010, and 2011” and inserting “and subsequent years”; and

(B) in clause (iii)—

(i) by inserting “(a)(8)” after “(a)(5)”; and

(ii) by striking “under subparagraph (D)(iii) of such subsection” and inserting “under subsection (a)(5)(D)(iii) or the quality reporting period under subsection (a)(8)(D)(iii), respectively”.

(b) INCENTIVE PAYMENT ADJUSTMENT FOR QUALITY REPORTING.—Section 1848(a) of the Social Security Act (42 U.S.C. 1395w-4(a)) is amended by adding at the end the following new paragraph:

“(8) INCENTIVES FOR QUALITY REPORTING.—

“(A) ADJUSTMENT.—

“(i) IN GENERAL.—With respect to covered professional services furnished by an eligible professional during 2015 or any subsequent year, if the eligible professional does not satisfactorily submit data on quality measures for covered professional services for the quality reporting period for the year (as determined under subsection (m)(3)(A)), the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after application of paragraphs (3), (5), and (7), but without regard to this paragraph).

“(ii) APPLICABLE PERCENT.—For purposes of clause (i), the term ‘applicable percent’ means—

“(I) for 2015, 98.5 percent; and

“(II) for 2016 and each subsequent year, 98 percent.

“(B) APPLICATION.—

“(i) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

“(ii) INCENTIVE PAYMENT VALIDATION RULES.—Clauses (ii) and (iii) of subsection (m)(5)(D) shall apply for purposes of this paragraph in a similar manner as they apply for purposes of such subsection.

“(C) DEFINITIONS.—For purposes of this paragraph:

“(i) ELIGIBLE PROFESSIONAL; COVERED PROFESSIONAL SERVICES.—The terms ‘eligible professional’ and ‘covered professional services’ have the meanings given such terms in subsection (k)(3).

“(ii) PHYSICIAN REPORTING SYSTEM.—The term ‘physician reporting system’ means the system established under subsection (k).

“(iii) QUALITY REPORTING PERIOD.—The term ‘quality reporting period’ means, with respect to a year, a period specified by the Secretary.”.

(c) MAINTENANCE OF CERTIFICATION PROGRAMS.—

(1) IN GENERAL.—Section 1848(k)(4) of the Social Security Act (42 U.S.C. 1395w-4(k)(4)) is amended by inserting “or through a Maintenance of Certification program operated by a specialty body of the American Board of Medical Specialties that meets the criteria for such a registry” after “Database”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for years after 2010.

42 USC 1395w-4
note.

(d) INTEGRATION OF PHYSICIAN QUALITY REPORTING AND EHR REPORTING.—Section 1848(m) of the Social Security Act (42 U.S.C. 1395w-4(m)) is amended by adding at the end the following new paragraph:

“(7) INTEGRATION OF PHYSICIAN QUALITY REPORTING AND EHR REPORTING.—Not later than January 1, 2012, the Secretary shall develop a plan to integrate reporting on quality measures under this subsection with reporting requirements under subsection (o) relating to the meaningful use of electronic health records. Such integration shall consist of the following:

Plan.

“(A) The selection of measures, the reporting of which would both demonstrate—

“(i) meaningful use of an electronic health record for purposes of subsection (o); and

“(ii) quality of care furnished to an individual.

“(B) Such other activities as specified by the Secretary.”.

(e) FEEDBACK.—Section 1848(m)(5) of the Social Security Act (42 U.S.C. 1395w-4(m)(5)) is amended by adding at the end the following new subparagraph:

“(H) FEEDBACK.—The Secretary shall provide timely feedback to eligible professionals on the performance of the eligible professional with respect to satisfactorily submitting data on quality measures under this subsection.”.

(f) APPEALS.—Such section is further amended—

(1) in subparagraph (E), by striking “There shall” and inserting “Except as provided in subparagraph (I), there shall”; and

Deadline.

(2) by adding at the end the following new subparagraph:
 “(I) INFORMAL APPEALS PROCESS.—The Secretary shall, by not later than January 1, 2011, establish and have in place an informal process for eligible professionals to seek a review of the determination that an eligible professional did not satisfactorily submit data on quality measures under this subsection.”.

SEC. 3003. IMPROVEMENTS TO THE PHYSICIAN FEEDBACK PROGRAM.

(a) IN GENERAL.—Section 1848(n) of the Social Security Act (42 U.S.C. 1395w-4(n)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by striking “GENERAL.—The Secretary” and inserting “GENERAL.—

“(i) ESTABLISHMENT.—The Secretary”;

(ii) in clause (i), as added by clause (i), by striking “the ‘Program’” and all that follows through the period at the end of the second sentence and inserting “the ‘Program’.”; and

(iii) by adding at the end the following new clauses:

“(ii) REPORTS ON RESOURCES.—The Secretary shall use claims data under this title (and may use other data) to provide confidential reports to physicians (and, as determined appropriate by the Secretary, to groups of physicians) that measure the resources involved in furnishing care to individuals under this title.

“(iii) INCLUSION OF CERTAIN INFORMATION.—If determined appropriate by the Secretary, the Secretary may include information on the quality of care furnished to individuals under this title by the physician (or group of physicians) in such reports.”; and

(B) in subparagraph (B), by striking “subparagraph (A)” and inserting “subparagraph (A)(ii)”;

(2) in paragraph (4)—

(A) in the heading, by inserting “INITIAL” after “FOCUS”; and

(B) in the matter preceding subparagraph (A), by inserting “initial” after “focus the”;

(3) in paragraph (6), by adding at the end the following new sentence: “For adjustments for reports on utilization under paragraph (9), see subparagraph (D) of such paragraph.”; and

(4) by adding at the end the following new paragraphs:

“(9) REPORTS ON UTILIZATION.—

“(A) DEVELOPMENT OF EPISODE GROUPER.—

“(i) IN GENERAL.—The Secretary shall develop an episode grouper that combines separate but clinically related items and services into an episode of care for an individual, as appropriate.

“(ii) TIMELINE FOR DEVELOPMENT.—The episode grouper described in subparagraph (A) shall be developed by not later than January 1, 2012.

“(iii) PUBLIC AVAILABILITY.—The Secretary shall make the details of the episode grouper described in subparagraph (A) available to the public.

“(iv) ENDORSEMENT.—The Secretary shall seek endorsement of the episode grouper described in

subparagraph (A) by the entity with a contract under section 1890(a).

“(B) REPORTS ON UTILIZATION.—Effective beginning with 2012, the Secretary shall provide reports to physicians that compare, as determined appropriate by the Secretary, patterns of resource use of the individual physician to such patterns of other physicians.

“(C) ANALYSIS OF DATA.—The Secretary shall, for purposes of preparing reports under this paragraph, establish methodologies as appropriate, such as to—

“(i) attribute episodes of care, in whole or in part, to physicians;

“(ii) identify appropriate physicians for purposes of comparison under subparagraph (B); and

“(iii) aggregate episodes of care attributed to a physician under clause (i) into a composite measure per individual.

“(D) DATA ADJUSTMENT.—In preparing reports under this paragraph, the Secretary shall make appropriate adjustments, including adjustments—

“(i) to account for differences in socioeconomic and demographic characteristics, ethnicity, and health status of individuals (such as to recognize that less healthy individuals may require more intensive interventions); and

“(ii) to eliminate the effect of geographic adjustments in payment rates (as described in subsection (e)).

“(E) PUBLIC AVAILABILITY OF METHODOLOGY.—The Secretary shall make available to the public—

“(i) the methodologies established under subparagraph (C);

“(ii) information regarding any adjustments made to data under subparagraph (D); and

“(iii) aggregate reports with respect to physicians.

“(F) DEFINITION OF PHYSICIAN.—In this paragraph:

“(i) IN GENERAL.—The term ‘physician’ has the meaning given that term in section 1861(r)(1).

“(ii) TREATMENT OF GROUPS.—Such term includes, as the Secretary determines appropriate, a group of physicians.

“(G) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the establishment of the methodology under subparagraph (C), including the determination of an episode of care under such methodology.

“(10) COORDINATION WITH OTHER VALUE-BASED PURCHASING REFORMS.—The Secretary shall coordinate the Program with the value-based payment modifier established under subsection (p) and, as the Secretary determines appropriate, other similar provisions of this title.”.

(b) CONFORMING AMENDMENT.—Section 1890(b) of the Social Security Act (42 U.S.C. 1395aaa(b)) is amended by adding at the end the following new paragraph:

“(6) REVIEW AND ENDORSEMENT OF EPISODE GROUPER UNDER THE PHYSICIAN FEEDBACK PROGRAM.—The entity shall provide for the review and, as appropriate, the endorsement of the

episode grouper developed by the Secretary under section 1848(n)(9)(A). Such review shall be conducted on an expedited basis.”.

SEC. 3004. QUALITY REPORTING FOR LONG-TERM CARE HOSPITALS, INPATIENT REHABILITATION HOSPITALS, AND HOSPICE PROGRAMS.

(a) LONG-TERM CARE HOSPITALS.—Section 1886(m) of the Social Security Act (42 U.S.C. 1395ww(m)), as amended by section 3401(c), is amended by adding at the end the following new paragraph:

“(5) QUALITY REPORTING.—

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a long-term care hospital that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (3), shall be reduced by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

“(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each long-term care hospital shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a long-term care hospital has the opportunity to review the data that is to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in long-term care hospitals on the Internet website of the Centers for Medicare & Medicaid Services.”

Procedures.

Review.

Web posting.

(b) INPATIENT REHABILITATION HOSPITALS.—Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

“(7) QUALITY REPORTING.—

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—For purposes of fiscal year 2014 and each subsequent fiscal year, in the case of a rehabilitation facility that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a fiscal year, after determining the increase factor described in paragraph (3)(C), and after application of paragraph (3)(D), the Secretary shall reduce such increase factor for payments for discharges occurring during such fiscal year by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in the increase factor described in paragraph (3)(C) being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the payment amount under this subsection for a subsequent fiscal year.

“(C) SUBMISSION OF QUALITY DATA.—For fiscal year 2014 and each subsequent rate year, each rehabilitation facility shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or

- adopted by a consensus organization identified by the Secretary.
- Publication. “(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to fiscal year 2014.
- Procedures. “(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a rehabilitation facility has the opportunity to review the data that is to be made public with respect to the facility prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in rehabilitation facilities on the Internet website of the Centers for Medicare & Medicaid Services.”
- Review.
- Web posting.
- (c) HOSPICE PROGRAMS.—Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) is amended—
- (1) by redesignating paragraph (5) as paragraph (6); and
 - (2) by inserting after paragraph (4) the following new paragraph:
- “(5) QUALITY REPORTING.—
- “(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—
- “(i) IN GENERAL.—For purposes of fiscal year 2014 and each subsequent fiscal year, in the case of a hospice program that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a fiscal year, after determining the market basket percentage increase under paragraph (1)(C)(ii)(VII) or paragraph (1)(C)(iii), as applicable, and after application of paragraph (1)(C)(iv), with respect to the fiscal year, the Secretary shall reduce such market basket percentage increase by 2 percentage points.
- “(ii) SPECIAL RULE.—The application of this subparagraph may result in the market basket percentage increase under paragraph (1)(C)(ii)(VII) or paragraph (1)(C)(iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.
- “(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the payment amount under this subsection for a subsequent fiscal year.
- “(C) SUBMISSION OF QUALITY DATA.—For fiscal year 2014 and each subsequent fiscal year, each hospice program shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.
- “(D) QUALITY MEASURES.—
- “(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to fiscal year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a hospice program has the opportunity to review the data that is to be made public with respect to the hospice program prior to such data being made public. The Secretary shall report quality measures that relate to hospice care provided by hospice programs on the Internet website of the Centers for Medicare & Medicaid Services.”.

Publication.

Procedures.

Review.

Web posting.

SEC. 3005. QUALITY REPORTING FOR PPS-EXEMPT CANCER HOSPITALS.

Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (U), by striking “and” at the end;

(B) in subparagraph (V), by striking the period at the end and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(W) in the case of a hospital described in section 1886(d)(1)(B)(v), to report quality data to the Secretary in accordance with subsection (k).”; and

(2) by adding at the end the following new subsection:

“(k) QUALITY REPORTING BY CANCER HOSPITALS.—

“(1) IN GENERAL.—For purposes of fiscal year 2014 and each subsequent fiscal year, a hospital described in section 1886(d)(1)(B)(v) shall submit data to the Secretary in accordance with paragraph (2) with respect to such a fiscal year.

“(2) SUBMISSION OF QUALITY DATA.—For fiscal year 2014 and each subsequent fiscal year, each hospital described in such section shall submit to the Secretary data on quality measures specified under paragraph (3). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(3) QUALITY MEASURES.—

“(A) IN GENERAL.—Subject to subparagraph (B), any measure specified by the Secretary under this paragraph must have been endorsed by the entity with a contract under section 1890(a).

“(B) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been

Publication.	<p>endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.</p> <p>“(C) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this paragraph that will be applicable with respect to fiscal year 2014.</p>
Procedures.	“(4) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under paragraph (4) available to the public. Such procedures shall ensure that a hospital described in section 1886(d)(1)(B)(v) has the opportunity to review the data that is to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients’ perspective on care, efficiency, and costs of care that relate to services furnished in such hospitals on the Internet website of the Centers for Medicare & Medicaid Services.”.
Review.	
Web posting.	

SEC. 3006. PLANS FOR A VALUE-BASED PURCHASING PROGRAM FOR SKILLED NURSING FACILITIES AND HOME HEALTH AGENCIES.

(a) SKILLED NURSING FACILITIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall develop a plan to implement a value-based purchasing program for payments under the Medicare program under title XVIII of the Social Security Act for skilled nursing facilities (as defined in section 1819(a) of such Act (42 U.S.C. 1395i–3(a))).

(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall consider the following issues:

(A) The ongoing development, selection, and modification process for measures (including under section 1890 of the Social Security Act (42 U.S.C. 1395aaa) and section 1890A such Act, as added by section 3014), to the extent feasible and practicable, of all dimensions of quality and efficiency in skilled nursing facilities.

(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under subparagraph (A)(iii) must have been endorsed by the entity with a contract under section 1890(a).

(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(B) The reporting, collection, and validation of quality data.

(C) The structure of value-based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment,

the size of such payments, and the sources of funding for the value-based bonus payments.

(D) Methods for the public disclosure of information on the performance of skilled nursing facilities.

(E) Any other issues determined appropriate by the Secretary.

(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall—

(A) consult with relevant affected parties; and

(B) consider experience with such demonstrations that the Secretary determines are relevant to the value-based purchasing program described in paragraph (1).

(4) REPORT TO CONGRESS.—Not later than October 1, 2011, the Secretary shall submit to Congress a report containing the plan developed under paragraph (1).

(b) HOME HEALTH AGENCIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall develop a plan to implement a value-based purchasing program for payments under the Medicare program under title XVIII of the Social Security Act for home health agencies (as defined in section 1861(o) of such Act (42 U.S.C. 1395x(o))).

(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall consider the following issues:

(A) The ongoing development, selection, and modification process for measures (including under section 1890 of the Social Security Act (42 U.S.C. 1395aaa) and section 1890A such Act, as added by section 3014), to the extent feasible and practicable, of all dimensions of quality and efficiency in home health agencies.

(B) The reporting, collection, and validation of quality data.

(C) The structure of value-based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value-based bonus payments.

(D) Methods for the public disclosure of information on the performance of home health agencies.

(E) Any other issues determined appropriate by the Secretary.

(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall—

(A) consult with relevant affected parties; and

(B) consider experience with such demonstrations that the Secretary determines are relevant to the value-based purchasing program described in paragraph (1).

(4) REPORT TO CONGRESS.—Not later than October 1, 2011, the Secretary shall submit to Congress a report containing the plan developed under paragraph (1).

SEC. 3007. VALUE-BASED PAYMENT MODIFIER UNDER THE PHYSICIAN FEE SCHEDULE.

Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(1) in subsection (b)(1), by inserting “subject to subsection (p),” after “1998,”; and

(2) by adding at the end the following new subsection:
 “(p) ESTABLISHMENT OF VALUE-BASED PAYMENT MODIFIER.—

“(1) IN GENERAL.—The Secretary shall establish a payment modifier that provides for differential payment to a physician or a group of physicians under the fee schedule established under subsection (b) based upon the quality of care furnished compared to cost (as determined under paragraphs (2) and (3), respectively) during a performance period. Such payment modifier shall be separate from the geographic adjustment factors established under subsection (e).

“(2) QUALITY.—

“(A) IN GENERAL.—For purposes of paragraph (1), quality of care shall be evaluated, to the extent practicable, based on a composite of measures of the quality of care furnished (as established by the Secretary under subparagraph (B)).

“(B) MEASURES.—

“(i) The Secretary shall establish appropriate measures of the quality of care furnished by a physician or group of physicians to individuals enrolled under this part, such as measures that reflect health outcomes. Such measures shall be risk adjusted as determined appropriate by the Secretary.

“(ii) The Secretary shall seek endorsement of the measures established under this subparagraph by the entity with a contract under section 1890(a).

“(3) COSTS.—For purposes of paragraph (1), costs shall be evaluated, to the extent practicable, based on a composite of appropriate measures of costs established by the Secretary (such as the composite measure under the methodology established under subsection (n)(9)(C)(iii)) that eliminate the effect of geographic adjustments in payment rates (as described in subsection (e)), and take into account risk factors (such as socioeconomic and demographic characteristics, ethnicity, and health status of individuals (such as to recognize that less healthy individuals may require more intensive interventions) and other factors determined appropriate by the Secretary.

“(4) IMPLEMENTATION.—

“(A) PUBLICATION OF MEASURES, DATES OF IMPLEMENTATION, PERFORMANCE PERIOD.—Not later than January 1, 2012, the Secretary shall publish the following:

“(i) The measures of quality of care and costs established under paragraphs (2) and (3), respectively.

“(ii) The dates for implementation of the payment modifier (as determined under subparagraph (B)).

“(iii) The initial performance period (as specified under subparagraph (B)(ii)).

“(B) DEADLINES FOR IMPLEMENTATION.—

“(i) INITIAL IMPLEMENTATION.—Subject to the preceding provisions of this subparagraph, the Secretary shall begin implementing the payment modifier established under this subsection through the rulemaking process during 2013 for the physician fee schedule established under subsection (b).

“(ii) INITIAL PERFORMANCE PERIOD.—

“(I) IN GENERAL.—The Secretary shall specify an initial performance period for application of

Deadline.

the payment modifier established under this subsection with respect to 2015.

“(II) PROVISION OF INFORMATION DURING INITIAL PERFORMANCE PERIOD.—During the initial performance period, the Secretary shall, to the extent practicable, provide information to physicians and groups of physicians about the quality of care furnished by the physician or group of physicians to individuals enrolled under this part compared to cost (as determined under paragraphs (2) and (3), respectively) with respect to the performance period.

“(iii) APPLICATION.—The Secretary shall apply the payment modifier established under this subsection for items and services furnished—

“(I) beginning on January 1, 2015, with respect to specific physicians and groups of physicians the Secretary determines appropriate; and

“(II) beginning not later than January 1, 2017, with respect to all physicians and groups of physicians.

“(C) BUDGET NEUTRALITY.—The payment modifier established under this subsection shall be implemented in a budget neutral manner.

“(5) SYSTEMS-BASED CARE.—The Secretary shall, as appropriate, apply the payment modifier established under this subsection in a manner that promotes systems-based care.

“(6) CONSIDERATION OF SPECIAL CIRCUMSTANCES OF CERTAIN PROVIDERS.—In applying the payment modifier under this subsection, the Secretary shall, as appropriate, take into account the special circumstances of physicians or groups of physicians in rural areas and other underserved communities.

“(7) APPLICATION.—For purposes of the initial application of the payment modifier established under this subsection during the period beginning on January 1, 2015, and ending on December 31, 2016, the term ‘physician’ has the meaning given such term in section 1861(r). On or after January 1, 2017, the Secretary may apply this subsection to eligible professionals (as defined in subsection (k)(3)(B)) as the Secretary determines appropriate.

“(8) DEFINITIONS.—For purposes of this subsection:

“(A) COSTS.—The term ‘costs’ means expenditures per individual as determined appropriate by the Secretary. In making the determination under the preceding sentence, the Secretary may take into account the amount of growth in expenditures per individual for a physician compared to the amount of such growth for other physicians.

“(B) PERFORMANCE PERIOD.—The term ‘performance period’ means a period specified by the Secretary.

“(9) COORDINATION WITH OTHER VALUE-BASED PURCHASING REFORMS.—The Secretary shall coordinate the value-based payment modifier established under this subsection with the Physician Feedback Program under subsection (n) and, as the Secretary determines appropriate, other similar provisions of this title.

Effective date.

Deadline.

Applicability.

Time period.

Effective date.
Determination.

Determination.

“(10) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of—

“(A) the establishment of the value-based payment modifier under this subsection;

“(B) the evaluation of quality of care under paragraph (2), including the establishment of appropriate measures of the quality of care under paragraph (2)(B);

“(C) the evaluation of costs under paragraph (3), including the establishment of appropriate measures of costs under such paragraph;

“(D) the dates for implementation of the value-based payment modifier;

“(E) the specification of the initial performance period and any other performance period under paragraphs (4)(B)(ii) and (8)(B), respectively;

“(F) the application of the value-based payment modifier under paragraph (7); and

“(G) the determination of costs under paragraph (8)(A).”.

SEC. 3008. PAYMENT ADJUSTMENT FOR CONDITIONS ACQUIRED IN HOSPITALS.

(a) IN GENERAL.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 3001, is amended by adding at the end the following new subsection:

“(p) ADJUSTMENT TO HOSPITAL PAYMENTS FOR HOSPITAL ACQUIRED CONDITIONS.—

“(1) IN GENERAL.—In order to provide an incentive for applicable hospitals to reduce hospital acquired conditions under this title, with respect to discharges from an applicable hospital occurring during fiscal year 2015 or a subsequent fiscal year, the amount of payment under this section or section 1814(b)(3), as applicable, for such discharges during the fiscal year shall be equal to 99 percent of the amount of payment that would otherwise apply to such discharges under this section or section 1814(b)(3) (determined after the application of subsections (o) and (q) and section 1814(l)(4) but without regard to this subsection).

“(2) APPLICABLE HOSPITALS.—

Definition.

“(A) IN GENERAL.—For purposes of this subsection, the term ‘applicable hospital’ means a subsection (d) hospital that meets the criteria described in subparagraph (B).

Determined.

“(B) CRITERIA DESCRIBED.—

“(i) IN GENERAL.—The criteria described in this subparagraph, with respect to a subsection (d) hospital, is that the subsection (d) hospital is in the top quartile of all subsection (d) hospitals, relative to the national average, of hospital acquired conditions during the applicable period, as determined by the Secretary.

“(ii) RISK ADJUSTMENT.—In carrying out clause (i), the Secretary shall establish and apply an appropriate risk adjustment methodology.

Deadline.
Reports.

“(C) EXEMPTION.—In the case of a hospital that is paid under section 1814(b)(3), the Secretary may exempt such hospital from the application of this subsection if the State which is paid under such section submits an

annual report to the Secretary describing how a similar program in the State for a participating hospital or hospitals achieves or surpasses the measured results in terms of patient health outcomes and cost savings established under this subsection.

“(3) HOSPITAL ACQUIRED CONDITIONS.—For purposes of this subsection, the term ‘hospital acquired condition’ means a condition identified for purposes of subsection (d)(4)(D)(iv) and any other condition determined appropriate by the Secretary that an individual acquires during a stay in an applicable hospital, as determined by the Secretary. Definition.

“(4) APPLICABLE PERIOD.—In this subsection, the term ‘applicable period’ means, with respect to a fiscal year, a period specified by the Secretary.

“(5) REPORTING TO HOSPITALS.—Prior to fiscal year 2015 and each subsequent fiscal year, the Secretary shall provide confidential reports to applicable hospitals with respect to hospital acquired conditions of the applicable hospital during the applicable period.

“(6) REPORTING HOSPITAL SPECIFIC INFORMATION.—

“(A) IN GENERAL.—The Secretary shall make information available to the public regarding hospital acquired conditions of each applicable hospital. Public information.

“(B) OPPORTUNITY TO REVIEW AND SUBMIT CORRECTIONS.—The Secretary shall ensure that an applicable hospital has the opportunity to review, and submit corrections for, the information to be made public with respect to the hospital under subparagraph (A) prior to such information being made public.

“(C) WEBSITE.—Such information shall be posted on the Hospital Compare Internet website in an easily understandable format.

“(7) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the following:

“(A) The criteria described in paragraph (2)(A).

“(B) The specification of hospital acquired conditions under paragraph (3).

“(C) The specification of the applicable period under paragraph (4).

“(D) The provision of reports to applicable hospitals under paragraph (5) and the information made available to the public under paragraph (6).”.

(b) STUDY AND REPORT ON EXPANSION OF HEALTHCARE ACQUIRED CONDITIONS POLICY TO OTHER PROVIDERS.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on expanding the healthcare acquired conditions policy under subsection (d)(4)(D) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) to payments made to other facilities under the Medicare program under title XVIII of the Social Security Act, including such payments made to inpatient rehabilitation facilities, long-term care hospitals (as described in subsection(d)(1)(B)(iv) of such section), hospital outpatient departments, and other hospitals excluded from the inpatient prospective payment system under such section, skilled nursing facilities, ambulatory surgical centers, and health clinics. Such study shall include an analysis of

how such policies could impact quality of patient care, patient safety, and spending under the Medicare program.

(2) REPORT.—Not later than January 1, 2012, the Secretary shall submit to Congress a report containing the results of the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

PART II—NATIONAL STRATEGY TO IMPROVE HEALTH CARE QUALITY

SEC. 3011. NATIONAL STRATEGY.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

“PART S—HEALTH CARE QUALITY PROGRAMS

“Subpart I—National Strategy for Quality Improvement in Health Care

42 USC 280j.

“SEC. 399HH. NATIONAL STRATEGY FOR QUALITY IMPROVEMENT IN HEALTH CARE.

“(a) ESTABLISHMENT OF NATIONAL STRATEGY AND PRIORITIES.—

“(1) NATIONAL STRATEGY.—The Secretary, through a transparent collaborative process, shall establish a national strategy to improve the delivery of health care services, patient health outcomes, and population health.

“(2) IDENTIFICATION OF PRIORITIES.—

“(A) IN GENERAL.—The Secretary shall identify national priorities for improvement in developing the strategy under paragraph (1).

“(B) REQUIREMENTS.—The Secretary shall ensure that priorities identified under subparagraph (A) will—

“(i) have the greatest potential for improving the health outcomes, efficiency, and patient-centeredness of health care for all populations, including children and vulnerable populations;

“(ii) identify areas in the delivery of health care services that have the potential for rapid improvement in the quality and efficiency of patient care;

“(iii) address gaps in quality, efficiency, comparative effectiveness information, and health outcomes measures and data aggregation techniques;

“(iv) improve Federal payment policy to emphasize quality and efficiency;

“(v) enhance the use of health care data to improve quality, efficiency, transparency, and outcomes;

“(vi) address the health care provided to patients with high-cost chronic diseases;

“(vii) improve research and dissemination of strategies and best practices to improve patient safety and reduce medical errors, preventable admissions and readmissions, and health care-associated infections;

“(viii) reduce health disparities across health disparity populations (as defined in section 485E) and geographic areas; and

“(ix) address other areas as determined appropriate by the Secretary.

“(C) CONSIDERATIONS.—In identifying priorities under subparagraph (A), the Secretary shall take into consideration the recommendations submitted by the entity with a contract under section 1890(a) of the Social Security Act and other stakeholders.

“(D) COORDINATION WITH STATE AGENCIES.—The Secretary shall collaborate, coordinate, and consult with State agencies responsible for administering the Medicaid program under title XIX of the Social Security Act and the Children’s Health Insurance Program under title XXI of such Act with respect to developing and disseminating strategies, goals, models, and timetables that are consistent with the national priorities identified under subparagraph (A).

“(b) STRATEGIC PLAN.—

“(1) IN GENERAL.—The national strategy shall include a comprehensive strategic plan to achieve the priorities described in subsection (a).

“(2) REQUIREMENTS.—The strategic plan shall include provisions for addressing, at a minimum, the following:

“(A) Coordination among agencies within the Department, which shall include steps to minimize duplication of efforts and utilization of common quality measures, where available. Such common quality measures shall be measures identified by the Secretary under section 1139A or 1139B of the Social Security Act or endorsed under section 1890 of such Act.

“(B) Agency-specific strategic plans to achieve national priorities.

“(C) Establishment of annual benchmarks for each relevant agency to achieve national priorities.

“(D) A process for regular reporting by the agencies to the Secretary on the implementation of the strategic plan.

“(E) Strategies to align public and private payers with regard to quality and patient safety efforts.

“(F) Incorporating quality improvement and measurement in the strategic plan for health information technology required by the American Recovery and Reinvestment Act of 2009 (Public Law 111–5).

“(c) PERIODIC UPDATE OF NATIONAL STRATEGY.—The Secretary shall update the national strategy not less than annually. Any such update shall include a review of short- and long-term goals.

“(d) SUBMISSION AND AVAILABILITY OF NATIONAL STRATEGY AND UPDATES.—

“(1) DEADLINE FOR INITIAL SUBMISSION OF NATIONAL STRATEGY.—Not later than January 1, 2011, the Secretary shall submit to the relevant committees of Congress the national strategy described in subsection (a).

“(2) UPDATES.—

“(A) IN GENERAL.—The Secretary shall submit to the relevant committees of Congress an annual update to the strategy described in paragraph (1).

“(B) INFORMATION SUBMITTED.—Each update submitted under subparagraph (A) shall include—

“(i) a review of the short- and long-term goals of the national strategy and any gaps in such strategy;

“(ii) an analysis of the progress, or lack of progress, in meeting such goals and any barriers to such progress;

“(iii) the information reported under section 1139A of the Social Security Act, consistent with the reporting requirements of such section; and

“(iv) in the case of an update required to be submitted on or after January 1, 2014, the information reported under section 1139B(b)(4) of the Social Security Act, consistent with the reporting requirements of such section.

“(C) SATISFACTION OF OTHER REPORTING REQUIREMENTS.—Compliance with the requirements of clauses (iii) and (iv) of subparagraph (B) shall satisfy the reporting requirements under sections 1139A(a)(6) and 1139B(b)(4), respectively, of the Social Security Act.

Deadline.
Public
information.

“(e) HEALTH CARE QUALITY INTERNET WEBSITE.—Not later than January 1, 2011, the Secretary shall create an Internet website to make public information regarding—

“(1) the national priorities for health care quality improvement established under subsection (a)(2);

“(2) the agency-specific strategic plans for health care quality described in subsection (b)(2)(B); and

“(3) other information, as the Secretary determines to be appropriate.”.

42 USC 280j
note.

SEC. 3012. INTERAGENCY WORKING GROUP ON HEALTH CARE QUALITY.

President.
Establishment.

(a) IN GENERAL.—The President shall convene a working group to be known as the Interagency Working Group on Health Care Quality (referred to in this section as the “Working Group”).

(b) GOALS.—The goals of the Working Group shall be to achieve the following:

(1) Collaboration, cooperation, and consultation between Federal departments and agencies with respect to developing and disseminating strategies, goals, models, and timetables that are consistent with the national priorities identified under section 399HH(a)(2) of the Public Health Service Act (as added by section 3011).

(2) Avoidance of inefficient duplication of quality improvement efforts and resources, where practicable, and a streamlined process for quality reporting and compliance requirements.

(3) Assess alignment of quality efforts in the public sector with private sector initiatives.

(c) COMPOSITION.—

(1) IN GENERAL.—The Working Group shall be composed of senior level representatives of—

(A) the Department of Health and Human Services;

(B) the Centers for Medicare & Medicaid Services;

(C) the National Institutes of Health;

(D) the Centers for Disease Control and Prevention;

(E) the Food and Drug Administration;

(F) the Health Resources and Services Administration;

(G) the Agency for Healthcare Research and Quality;

(H) the Office of the National Coordinator for Health Information Technology;
 (I) the Substance Abuse and Mental Health Services Administration;
 (J) the Administration for Children and Families;
 (K) the Department of Commerce;
 (L) the Office of Management and Budget;
 (M) the United States Coast Guard;
 (N) the Federal Bureau of Prisons;
 (O) the National Highway Traffic Safety Administration;
 (P) the Federal Trade Commission;
 (Q) the Social Security Administration;
 (R) the Department of Labor;
 (S) the United States Office of Personnel Management;
 (T) the Department of Defense;
 (U) the Department of Education;
 (V) the Department of Veterans Affairs;
 (W) the Veterans Health Administration; and
 (X) any other Federal agencies and departments with activities relating to improving health care quality and safety, as determined by the President.

(2) CHAIR AND VICE-CHAIR.—

(A) CHAIR.—The Working Group shall be chaired by the Secretary of Health and Human Services.

(B) VICE CHAIR.—Members of the Working Group, other than the Secretary of Health and Human Services, shall serve as Vice Chair of the Group on a rotating basis, as determined by the Group.

(d) REPORT TO CONGRESS.—Not later than December 31, 2010, and annually thereafter, the Working Group shall submit to the relevant Committees of Congress, and make public on an Internet website, a report describing the progress and recommendations of the Working Group in meeting the goals described in subsection (b).

Public
information.
Web posting.

SEC. 3013. QUALITY MEASURE DEVELOPMENT.

(a) PUBLIC HEALTH SERVICE ACT.—Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended—

(1) by redesignating part D as part E;

(2) by redesignating sections 931 through 938 as sections 941 through 948, respectively;

(3) in section 948(1), as so redesignated, by striking “931” and inserting “941”; and

(4) by inserting after section 926 the following:

42 USC
299c—299c–7.

“PART D—HEALTH CARE QUALITY IMPROVEMENT

“Subpart I—Quality Measure Development

“SEC. 931. QUALITY MEASURE DEVELOPMENT.

42 USC 299b–31.

“(a) QUALITY MEASURE.—In this subpart, the term ‘quality measure’ means a standard for measuring the performance and improvement of population health or of health plans, providers of services, and other clinicians in the delivery of health care services.

Definition.

Consultation.

“(b) IDENTIFICATION OF QUALITY MEASURES.—

“(1) IDENTIFICATION.—The Secretary, in consultation with the Director of the Agency for Healthcare Research and Quality and the Administrator of the Centers for Medicare & Medicaid Services, shall identify, not less often than triennially, gaps where no quality measures exist and existing quality measures that need improvement, updating, or expansion, consistent with the national strategy under section 399HH, to the extent available, for use in Federal health programs. In identifying such gaps and existing quality measures that need improvement, the Secretary shall take into consideration—

“(A) the gaps identified by the entity with a contract under section 1890(a) of the Social Security Act and other stakeholders;

“(B) quality measures identified by the pediatric quality measures program under section 1139A of the Social Security Act; and

“(C) quality measures identified through the Medicaid Quality Measurement Program under section 1139B of the Social Security Act.

Public
information.
Web posting.
Reports.

“(2) PUBLICATION.—The Secretary shall make available to the public on an Internet website a report on any gaps identified under paragraph (1) and the process used to make such identification.

“(c) GRANTS OR CONTRACTS FOR QUALITY MEASURE DEVELOPMENT.—

“(1) IN GENERAL.—The Secretary shall award grants, contracts, or intergovernmental agreements to eligible entities for purposes of developing, improving, updating, or expanding quality measures identified under subsection (b).

“(2) PRIORITIZATION IN THE DEVELOPMENT OF QUALITY MEASURES.—In awarding grants, contracts, or agreements under this subsection, the Secretary shall give priority to the development of quality measures that allow the assessment of—

“(A) health outcomes and functional status of patients;

“(B) the management and coordination of health care across episodes of care and care transitions for patients across the continuum of providers, health care settings, and health plans;

“(C) the experience, quality, and use of information provided to and used by patients, caregivers, and authorized representatives to inform decisionmaking about treatment options, including the use of shared decisionmaking tools and preference sensitive care (as defined in section 936);

“(D) the meaningful use of health information technology;

“(E) the safety, effectiveness, patient-centeredness, appropriateness, and timeliness of care;

“(F) the efficiency of care;

“(G) the equity of health services and health disparities across health disparity populations (as defined in section 485E) and geographic areas;

“(H) patient experience and satisfaction;

“(I) the use of innovative strategies and methodologies identified under section 933; and

“(J) other areas determined appropriate by the Secretary.

“(3) ELIGIBLE ENTITIES.—To be eligible for a grant or contract under this subsection, an entity shall—

“(A) have demonstrated expertise and capacity in the development and evaluation of quality measures;

“(B) have adopted procedures to include in the quality measure development process—

“(i) the views of those providers or payers whose performance will be assessed by the measure; and

“(ii) the views of other parties who also will use the quality measures (such as patients, consumers, and health care purchasers);

“(C) collaborate with the entity with a contract under section 1890(a) of the Social Security Act and other stakeholders, as practicable, and the Secretary so that quality measures developed by the eligible entity will meet the requirements to be considered for endorsement by the entity with a contract under such section 1890(a);

“(D) have transparent policies regarding governance and conflicts of interest; and

“(E) submit an application to the Secretary at such time and in such manner, as the Secretary may require.

“(4) USE OF FUNDS.—An entity that receives a grant, contract, or agreement under this subsection shall use such award to develop quality measures that meet the following requirements:

Requirements.

“(A) Such measures support measures required to be reported under the Social Security Act, where applicable, and in support of gaps and existing quality measures that need improvement, as described in subsection (b)(1)(A).

“(B) Such measures support measures developed under section 1139A of the Social Security Act and the Medicaid Quality Measurement Program under section 1139B of such Act, where applicable.

“(C) To the extent practicable, data on such quality measures is able to be collected using health information technologies.

“(D) Each quality measure is free of charge to users of such measure.

“(E) Each quality measure is publicly available on an Internet website.

“(d) OTHER ACTIVITIES BY THE SECRETARY.—The Secretary may use amounts available under this section to update and test, where applicable, quality measures endorsed by the entity with a contract under section 1890(a) of the Social Security Act or adopted by the Secretary.

“(e) COORDINATION OF GRANTS.—The Secretary shall ensure that grants or contracts awarded under this section are coordinated with grants and contracts awarded under sections 1139A(5) and 1139B(4)(A) of the Social Security Act.”.

(b) SOCIAL SECURITY ACT.—Section 1890A of the Social Security Act, as added by section 3014(b), is amended by adding at the end the following new subsection:

“(e) DEVELOPMENT OF QUALITY MEASURES.—The Administrator of the Center for Medicare & Medicaid Services shall through contracts develop quality measures (as determined appropriate by

the Administrator) for use under this Act. In developing such measures, the Administrator shall consult with the Director of the Agency for Healthcare Research and Quality.”.

(c) FUNDING.—There are authorized to be appropriated to the Secretary of Health and Human Services to carry out this section, \$75,000,000 for each of fiscal years 2010 through 2014. Of the amounts appropriated under the preceding sentence in a fiscal year, not less than 50 percent of such amounts shall be used pursuant to subsection (e) of section 1890A of the Social Security Act, as added by subsection (b), with respect to programs under such Act. Amounts appropriated under this subsection for a fiscal year shall remain available until expended.

SEC. 3014. QUALITY MEASUREMENT.

(a) NEW DUTIES FOR CONSENSUS-BASED ENTITY.—

(1) MULTI-STAKEHOLDER GROUP INPUT.—Section 1890(b) of the Social Security Act (42 U.S.C. 1395aaa(b)), as amended by section 3003, is amended by adding at the end the following new paragraphs:

“(7) CONVENING MULTI-STAKEHOLDER GROUPS.—

“(A) IN GENERAL.—The entity shall convene multi-stakeholder groups to provide input on—

“(i) the selection of quality measures described in subparagraph (B), from among—

“(I) such measures that have been endorsed by the entity; and

“(II) such measures that have not been considered for endorsement by such entity but are used or proposed to be used by the Secretary for the collection or reporting of quality measures; and

“(ii) national priorities (as identified under section 399HH of the Public Health Service Act) for improvement in population health and in the delivery of health care services for consideration under the national strategy established under section 399HH of the Public Health Service Act.

“(B) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), the quality measures described in this subparagraph are quality measures—

“(I) for use pursuant to sections 1814(i)(5)(D), 1833(i)(7), 1833(t)(17), 1848(k)(2)(C), 1866(k)(3), 1881(h)(2)(A)(iii), 1886(b)(3)(B)(viii), 1886(j)(7)(D), 1886(m)(5)(D), 1886(o)(2), and 1895(b)(3)(B)(v);

“(II) for use in reporting performance information to the public; and

“(III) for use in health care programs other than for use under this Act.

“(ii) EXCLUSION.—Data sets (such as the outcome and assessment information set for home health services and the minimum data set for skilled nursing facility services) that are used for purposes of classification systems used in establishing payment rates under this title shall not be quality measures described in this subparagraph.

“(C) REQUIREMENT FOR TRANSPARENCY IN PROCESS.—

“(i) IN GENERAL.—In convening multi-stakeholder groups under subparagraph (A) with respect to the selection of quality measures, the entity shall provide for an open and transparent process for the activities conducted pursuant to such convening.

“(ii) SELECTION OF ORGANIZATIONS PARTICIPATING IN MULTI-STAKEHOLDER GROUPS.—The process described in clause (i) shall ensure that the selection of representatives comprising such groups provides for public nominations for, and the opportunity for public comment on, such selection.

“(D) MULTI-STAKEHOLDER GROUP DEFINED.—In this paragraph, the term ‘multi-stakeholder group’ means, with respect to a quality measure, a voluntary collaborative of organizations representing a broad group of stakeholders interested in or affected by the use of such quality measure.

“(8) TRANSMISSION OF MULTI-STAKEHOLDER INPUT.—Not later than February 1 of each year (beginning with 2012), the entity shall transmit to the Secretary the input of multi-stakeholder groups provided under paragraph (7).”.

Deadline.

(2) ANNUAL REPORT.—Section 1890(b)(5)(A) of the Social Security Act (42 U.S.C. 1395aaa(b)(5)(A)) is amended—

(A) in clause (ii), by striking “and” at the end;

(B) in clause (iii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new clauses:

“(iv) gaps in endorsed quality measures, which shall include measures that are within priority areas identified by the Secretary under the national strategy established under section 399HH of the Public Health Service Act, and where quality measures are unavailable or inadequate to identify or address such gaps;

“(v) areas in which evidence is insufficient to support endorsement of quality measures in priority areas identified by the Secretary under the national strategy established under section 399HH of the Public Health Service Act and where targeted research may address such gaps; and

“(vi) the matters described in clauses (i) and (ii) of paragraph (7)(A).”.

(b) MULTI-STAKEHOLDER GROUP INPUT INTO SELECTION OF QUALITY MEASURES.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1890 the following:

“QUALITY MEASUREMENT

“SEC. 1890A. (a) MULTI-STAKEHOLDER GROUP INPUT INTO SELECTION OF QUALITY MEASURES.—The Secretary shall establish a pre-rulemaking process under which the following steps occur with respect to the selection of quality measures described in section 1890(b)(7)(B):

Deadlines.
42 USC
1395aaa–1.
Regulations.

“(1) INPUT.—Pursuant to section 1890(b)(7), the entity with a contract under section 1890 shall convene multi-stakeholder groups to provide input to the Secretary on the selection of quality measures described in subparagraph (B) of such paragraph.

“(2) PUBLIC AVAILABILITY OF MEASURES CONSIDERED FOR SELECTION.—Not later than December 1 of each year (beginning with 2011), the Secretary shall make available to the public a list of quality measures described in section 1890(b)(7)(B) that the Secretary is considering under this title.

“(3) TRANSMISSION OF MULTI-STAKEHOLDER INPUT.—Pursuant to section 1890(b)(8), not later than February 1 of each year (beginning with 2012), the entity shall transmit to the Secretary the input of multi-stakeholder groups described in paragraph (1).

“(4) CONSIDERATION OF MULTI-STAKEHOLDER INPUT.—The Secretary shall take into consideration the input from multi-stakeholder groups described in paragraph (1) in selecting quality measures described in section 1890(b)(7)(B) that have been endorsed by the entity with a contract under section 1890 and measures that have not been endorsed by such entity.

“(5) RATIONALE FOR USE OF QUALITY MEASURES.—The Secretary shall publish in the Federal Register the rationale for the use of any quality measure described in section 1890(b)(7)(B) that has not been endorsed by the entity with a contract under section 1890.

“(6) ASSESSMENT OF IMPACT.—Not later than March 1, 2012, and at least once every three years thereafter, the Secretary shall—

“(A) conduct an assessment of the quality impact of the use of endorsed measures described in section 1890(b)(7)(B); and

“(B) make such assessment available to the public.

“(b) PROCESS FOR DISSEMINATION OF MEASURES USED BY THE SECRETARY.—

“(1) IN GENERAL.—The Secretary shall establish a process for disseminating quality measures used by the Secretary. Such process shall include the following:

“(A) The incorporation of such measures, where applicable, in workforce programs, training curricula, and any other means of dissemination determined appropriate by the Secretary.

“(B) The dissemination of such quality measures through the national strategy developed under section 399HH of the Public Health Service Act.

“(2) EXISTING METHODS.—To the extent practicable, the Secretary shall utilize and expand existing dissemination methods in disseminating quality measures under the process established under paragraph (1).

“(c) REVIEW OF QUALITY MEASURES USED BY THE SECRETARY.—

“(1) IN GENERAL.—The Secretary shall—

“(A) periodically (but in no case less often than once every 3 years) review quality measures described in section 1890(b)(7)(B); and

“(B) with respect to each such measure, determine whether to—

“(i) maintain the use of such measure; or

“(ii) phase out such measure.

“(2) CONSIDERATIONS.—In conducting the review under paragraph (1), the Secretary shall take steps to—

“(A) seek to avoid duplication of measures used; and

Federal Register,
publication.

Public
information.

“(B) take into consideration current innovative methodologies and strategies for quality improvement practices in the delivery of health care services that represent best practices for such quality improvement and measures endorsed by the entity with a contract under section 1890 since the previous review by the Secretary.

“(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall preclude a State from using the quality measures identified under sections 1139A and 1139B.”.

(c) **FUNDING.**—For purposes of carrying out the amendments made by this section, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in such proportion as the Secretary determines appropriate, of \$20,000,000, to the Centers for Medicare & Medicaid Services Program Management Account for each of fiscal years 2010 through 2014. Amounts transferred under the preceding sentence shall remain available until expended.

SEC. 3015. DATA COLLECTION; PUBLIC REPORTING.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 3011, is further amended by adding at the end the following:

“SEC. 399II. COLLECTION AND ANALYSIS OF DATA FOR QUALITY AND RESOURCE USE MEASURES. 42 USC 280j-1.

“(a) **IN GENERAL.**—The Secretary shall collect and aggregate consistent data on quality and resource use measures from information systems used to support health care delivery to implement the public reporting of performance information, as described in section 399JJ, and may award grants or contracts for this purpose. The Secretary shall ensure that such collection, aggregation, and analysis systems span an increasingly broad range of patient populations, providers, and geographic areas over time.

“(b) **GRANTS OR CONTRACTS FOR DATA COLLECTION.**—

“(1) **IN GENERAL.**—The Secretary may award grants or contracts to eligible entities to support new, or improve existing, efforts to collect and aggregate quality and resource use measures described under subsection (c).

“(2) **ELIGIBLE ENTITIES.**—To be eligible for a grant or contract under this subsection, an entity shall—

“(A) be—

“(i) a multi-stakeholder entity that coordinates the development of methods and implementation plans for the consistent reporting of summary quality and cost information;

“(ii) an entity capable of submitting such summary data for a particular population and providers, such as a disease registry, regional collaboration, health plan collaboration, or other population-wide source; or

“(iii) a Federal Indian Health Service program or a health program operated by an Indian tribe (as defined in section 4 of the Indian Health Care Improvement Act);

“(B) promote the use of the systems that provide data to improve and coordinate patient care;

“(C) support the provision of timely, consistent quality and resource use information to health care providers, and other groups and organizations as appropriate, with an opportunity for providers to correct inaccurate measures; and

“(D) agree to report, as determined by the Secretary, measures on quality and resource use to the public in accordance with the public reporting process established under section 399JJ.

Standards.

“(c) CONSISTENT DATA AGGREGATION.—The Secretary may award grants or contracts under this section only to entities that enable summary data that can be integrated and compared across multiple sources. The Secretary shall provide standards for the protection of the security and privacy of patient data.

“(d) MATCHING FUNDS.—The Secretary may not award a grant or contract under this section to an entity unless the entity agrees that it will make available (directly or through contributions from other public or private entities) non-Federal contributions toward the activities to be carried out under the grant or contract in an amount equal to \$1 for each \$5 of Federal funds provided under the grant or contract. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

“(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2010 through 2014.

42 USC 280j-2.

“SEC. 399JJ. PUBLIC REPORTING OF PERFORMANCE INFORMATION.

Web posting.

“(a) DEVELOPMENT OF PERFORMANCE WEBSITES.—The Secretary shall make available to the public, through standardized Internet websites, performance information summarizing data on quality measures. Such information shall be tailored to respond to the differing needs of hospitals and other institutional health care providers, physicians and other clinicians, patients, consumers, researchers, policymakers, States, and other stakeholders, as the Secretary may specify.

“(b) INFORMATION ON CONDITIONS.—The performance information made publicly available on an Internet website, as described in subsection (a), shall include information regarding clinical conditions to the extent such information is available, and the information shall, where appropriate, be provider-specific and sufficiently disaggregated and specific to meet the needs of patients with different clinical conditions.

“(c) CONSULTATION.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall consult with the entity with a contract under section 1890(a) of the Social Security Act, and other entities, as appropriate, to determine the type of information that is useful to stakeholders and the format that best facilitates use of the reports and of performance reporting Internet websites.

“(2) CONSULTATION WITH STAKEHOLDERS.—The entity with a contract under section 1890(a) of the Social Security Act shall convene multi-stakeholder groups, as described in such section, to review the design and format of each Internet website made available under subsection (a) and shall transmit

to the Secretary the views of such multi-stakeholder groups with respect to each such design and format.

“(d) COORDINATION.—Where appropriate, the Secretary shall coordinate the manner in which data are presented through Internet websites described in subsection (a) and for public reporting of other quality measures by the Secretary, including such quality measures under title XVIII of the Social Security Act.

“(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2010 through 2014.”.

PART III—ENCOURAGING DEVELOPMENT OF NEW PATIENT CARE MODELS

SEC. 3021. ESTABLISHMENT OF CENTER FOR MEDICARE AND MEDICAID INNOVATION WITHIN CMS.

(a) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1115 the following new section:

“CENTER FOR MEDICARE AND MEDICAID INNOVATION

“SEC. 1115A. (a) CENTER FOR MEDICARE AND MEDICAID INNOVATION ESTABLISHED.— 42 USC 1315a.

“(1) IN GENERAL.—There is created within the Centers for Medicare & Medicaid Services a Center for Medicare and Medicaid Innovation (in this section referred to as the ‘CMI’) to carry out the duties described in this section. The purpose of the CMI is to test innovative payment and service delivery models to reduce program expenditures under the applicable titles while preserving or enhancing the quality of care furnished to individuals under such titles. In selecting such models, the Secretary shall give preference to models that also improve the coordination, quality, and efficiency of health care services furnished to applicable individuals defined in paragraph (4)(A).

“(2) DEADLINE.—The Secretary shall ensure that the CMI is carrying out the duties described in this section by not later than January 1, 2011.

“(3) CONSULTATION.—In carrying out the duties under this section, the CMI shall consult representatives of relevant Federal agencies, and clinical and analytical experts with expertise in medicine and health care management. The CMI shall use open door forums or other mechanisms to seek input from interested parties.

“(4) DEFINITIONS.—In this section:

“(A) APPLICABLE INDIVIDUAL.—The term ‘applicable individual’ means—

“(i) an individual who is entitled to, or enrolled for, benefits under part A of title XVIII or enrolled for benefits under part B of such title;

“(ii) an individual who is eligible for medical assistance under title XIX, under a State plan or waiver; or

“(iii) an individual who meets the criteria of both clauses (i) and (ii).

“(B) APPLICABLE TITLE.—The term ‘applicable title’ means title XVIII, title XIX, or both.

“(b) TESTING OF MODELS (PHASE I).—

“(1) IN GENERAL.—The CMI shall test payment and service delivery models in accordance with selection criteria under paragraph (2) to determine the effect of applying such models under the applicable title (as defined in subsection (a)(4)(B)) on program expenditures under such titles and the quality of care received by individuals receiving benefits under such title.

“(2) SELECTION OF MODELS TO BE TESTED.—

Determination.

“(A) IN GENERAL.—The Secretary shall select models to be tested from models where the Secretary determines that there is evidence that the model addresses a defined population for which there are deficits in care leading to poor clinical outcomes or potentially avoidable expenditures. The models selected under the preceding sentence may include the models described in subparagraph (B).

“(B) OPPORTUNITIES.—The models described in this subparagraph are the following models:

“(i) Promoting broad payment and practice reform in primary care, including patient-centered medical home models for high-need applicable individuals, medical homes that address women’s unique health care needs, and models that transition primary care practices away from fee-for-service based reimbursement and toward comprehensive payment or salary-based payment.

“(ii) Contracting directly with groups of providers of services and suppliers to promote innovative care delivery models, such as through risk-based comprehensive payment or salary-based payment.

“(iii) Utilizing geriatric assessments and comprehensive care plans to coordinate the care (including through interdisciplinary teams) of applicable individuals with multiple chronic conditions and at least one of the following:

“(I) An inability to perform 2 or more activities of daily living.

“(II) Cognitive impairment, including dementia.

“(iv) Promote care coordination between providers of services and suppliers that transition health care providers away from fee-for-service based reimbursement and toward salary-based payment.

“(v) Supporting care coordination for chronically-ill applicable individuals at high risk of hospitalization through a health information technology-enabled provider network that includes care coordinators, a chronic disease registry, and home tele-health technology.

“(vi) Varying payment to physicians who order advanced diagnostic imaging services (as defined in section 1834(e)(1)(B)) according to the physician’s adherence to appropriateness criteria for the ordering of such services, as determined in consultation with physician specialty groups and other relevant stakeholders.

“(vii) Utilizing medication therapy management services, such as those described in section 935 of the Public Health Service Act.

“(viii) Establishing community-based health teams to support small-practice medical homes by assisting the primary care practitioner in chronic care management, including patient self-management, activities.

“(ix) Assisting applicable individuals in making informed health care choices by paying providers of services and suppliers for using patient decision-support tools, including tools that meet the standards developed and identified under section 936(c)(2)(A) of the Public Health Service Act, that improve applicable individual and caregiver understanding of medical treatment options.

“(x) Allowing States to test and evaluate fully integrating care for dual eligible individuals in the State, including the management and oversight of all funds under the applicable titles with respect to such individuals.

“(xi) Allowing States to test and evaluate systems of all-payer payment reform for the medical care of residents of the State, including dual eligible individuals.

“(xii) Aligning nationally recognized, evidence-based guidelines of cancer care with payment incentives under title XVIII in the areas of treatment planning and follow-up care planning for applicable individuals described in clause (i) or (iii) of subsection (a)(4)(A) with cancer, including the identification of gaps in applicable quality measures.

“(xiii) Improving post-acute care through continuing care hospitals that offer inpatient rehabilitation, long-term care hospitals, and home health or skilled nursing care during an inpatient stay and the 30 days immediately following discharge.

“(xiv) Funding home health providers who offer chronic care management services to applicable individuals in cooperation with interdisciplinary teams.

“(xv) Promoting improved quality and reduced cost by developing a collaborative of high-quality, low-cost health care institutions that is responsible for—

“(I) developing, documenting, and disseminating best practices and proven care methods;

“(II) implementing such best practices and proven care methods within such institutions to demonstrate further improvements in quality and efficiency; and

“(III) providing assistance to other health care institutions on how best to employ such best practices and proven care methods to improve health care quality and lower costs.

“(xvi) Facilitate inpatient care, including intensive care, of hospitalized applicable individuals at their local hospital through the use of electronic monitoring by specialists, including intensivists and critical care specialists, based at integrated health systems.

“(xvii) Promoting greater efficiencies and timely access to outpatient services (such as outpatient physical therapy services) through models that do not require a physician or other health professional to refer the service or be involved in establishing the plan of care for the service, when such service is furnished by a health professional who has the authority to furnish the service under existing State law.

“(xviii) Establishing comprehensive payments to Healthcare Innovation Zones, consisting of groups of providers that include a teaching hospital, physicians, and other clinical entities, that, through their structure, operations, and joint-activity deliver a full spectrum of integrated and comprehensive health care services to applicable individuals while also incorporating innovative methods for the clinical training of future health care professionals.

“(C) ADDITIONAL FACTORS FOR CONSIDERATION.—In selecting models for testing under subparagraph (A), the CMI may consider the following additional factors:

“(i) Whether the model includes a regular process for monitoring and updating patient care plans in a manner that is consistent with the needs and preferences of applicable individuals.

“(ii) Whether the model places the applicable individual, including family members and other informal caregivers of the applicable individual, at the center of the care team of the applicable individual.

“(iii) Whether the model provides for in-person contact with applicable individuals.

“(iv) Whether the model utilizes technology, such as electronic health records and patient-based remote monitoring systems, to coordinate care over time and across settings.

“(v) Whether the model provides for the maintenance of a close relationship between care coordinators, primary care practitioners, specialist physicians, community-based organizations, and other providers of services and suppliers.

“(vi) Whether the model relies on a team-based approach to interventions, such as comprehensive care assessments, care planning, and self-management coaching.

“(vii) Whether, under the model, providers of services and suppliers are able to share information with patients, caregivers, and other providers of services and suppliers on a real time basis.

“(3) BUDGET NEUTRALITY.—

“(A) INITIAL PERIOD.—The Secretary shall not require, as a condition for testing a model under paragraph (1), that the design of such model ensure that such model is budget neutral initially with respect to expenditures under the applicable title.

Determination.

“(B) TERMINATION OR MODIFICATION.—The Secretary shall terminate or modify the design and implementation of a model unless the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services,

with respect to program spending under the applicable title, certifies), after testing has begun, that the model is expected to—

“(i) improve the quality of care (as determined by the Administrator of the Centers for Medicare & Medicaid Services) without increasing spending under the applicable title;

“(ii) reduce spending under the applicable title without reducing the quality of care; or

“(iii) improve the quality of care and reduce spending.

Such termination may occur at any time after such testing has begun and before completion of the testing.

“(4) EVALUATION.—

“(A) IN GENERAL.—The Secretary shall conduct an evaluation of each model tested under this subsection. Such evaluation shall include an analysis of—

“(i) the quality of care furnished under the model, including the measurement of patient-level outcomes and patient-centeredness criteria determined appropriate by the Secretary; and

“(ii) the changes in spending under the applicable titles by reason of the model.

“(B) INFORMATION.—The Secretary shall make the results of each evaluation under this paragraph available to the public in a timely fashion and may establish requirements for States and other entities participating in the testing of models under this section to collect and report information that the Secretary determines is necessary to monitor and evaluate such models.

Public
information.
Determination.

“(c) EXPANSION OF MODELS (PHASE II).—Taking into account the evaluation under subsection (b)(4), the Secretary may, through rulemaking, expand (including implementation on a nationwide basis) the duration and the scope of a model that is being tested under subsection (b) or a demonstration project under section 1866C, to the extent determined appropriate by the Secretary, if—

Determination.

“(1) the Secretary determines that such expansion is expected to—

“(A) reduce spending under applicable title without reducing the quality of care; or

“(B) improve the quality of care and reduce spending; and

“(2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under applicable titles.

Certification.

“(d) IMPLEMENTATION.—

“(1) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII and of sections 1902(a)(1), 1902(a)(13), and 1903(m)(2)(A)(iii) as may be necessary solely for purposes of carrying out this section with respect to testing models described in subsection (b).

“(2) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of—

“(A) the selection of models for testing or expansion under this section;

“(B) the selection of organizations, sites, or participants to test those models selected;

“(C) the elements, parameters, scope, and duration of such models for testing or dissemination;

“(D) determinations regarding budget neutrality under subsection (b)(3);

“(E) the termination or modification of the design and implementation of a model under subsection (b)(3)(B); and

“(F) determinations about expansion of the duration and scope of a model under subsection (c), including the determination that a model is not expected to meet criteria described in paragraph (1) or (2) of such subsection.

“(3) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to the testing and evaluation of models or expansion of such models under this section.

“(e) APPLICATION TO CHIP.—The Center may carry out activities under this section with respect to title XXI in the same manner as provided under this section with respect to the program under the applicable titles.

“(f) FUNDING.—

“(1) IN GENERAL.—There are appropriated, from amounts in the Treasury not otherwise appropriated—

“(A) \$5,000,000 for the design, implementation, and evaluation of models under subsection (b) for fiscal year 2010;

“(B) \$10,000,000,000 for the activities initiated under this section for the period of fiscal years 2011 through 2019; and

“(C) the amount described in subparagraph (B) for the activities initiated under this section for each subsequent 10-year fiscal period (beginning with the 10-year fiscal period beginning with fiscal year 2020).

Amounts appropriated under the preceding sentence shall remain available until expended.

“(2) USE OF CERTAIN FUNDS.—Out of amounts appropriated under subparagraphs (B) and (C) of paragraph (1), not less than \$25,000,000 shall be made available each such fiscal year to design, implement, and evaluate models under subsection (b).

“(g) REPORT TO CONGRESS.—Beginning in 2012, and not less than once every other year thereafter, the Secretary shall submit to Congress a report on activities under this section. Each such report shall describe the models tested under subsection (b), including the number of individuals described in subsection (a)(4)(A)(i) and of individuals described in subsection (a)(4)(A)(ii) participating in such models and payments made under applicable titles for services on behalf of such individuals, any models chosen for expansion under subsection (c), and the results from evaluations under subsection (b)(4). In addition, each such report shall provide such recommendations as the Secretary determines are appropriate for legislative action to facilitate the development and expansion of successful payment models.”

Determination.

(b) MEDICAID CONFORMING AMENDMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 8002(b), is amended—

(1) in paragraph (81), by striking “and” at the end;

(2) in paragraph (82), by striking the period at the end and inserting “; and”; and

(3) by inserting after paragraph (82) the following new paragraph:

“(83) provide for implementation of the payment models specified by the Secretary under section 1115A(c) for implementation on a nationwide basis unless the State demonstrates to the satisfaction of the Secretary that implementation would not be administratively feasible or appropriate to the health care delivery system of the State.”.

(c) REVISIONS TO HEALTH CARE QUALITY DEMONSTRATION PROGRAM.—Subsections (b) and (f) of section 1866C of the Social Security Act (42 U.S.C. 1395cc–3) are amended by striking “5-year” each place it appears.

SEC. 3022. MEDICARE SHARED SAVINGS PROGRAM.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

“SHARED SAVINGS PROGRAM

“SEC. 1899. (a) ESTABLISHMENT.—

“(1) IN GENERAL.—Not later than January 1, 2012, the Secretary shall establish a shared savings program (in this section referred to as the ‘program’) that promotes accountability for a patient population and coordinates items and services under parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery. Under such program—

“(A) groups of providers of services and suppliers meeting criteria specified by the Secretary may work together to manage and coordinate care for Medicare fee-for-service beneficiaries through an accountable care organization (referred to in this section as an ‘ACO’); and

“(B) ACOs that meet quality performance standards established by the Secretary are eligible to receive payments for shared savings under subsection (d)(2).

“(b) ELIGIBLE ACOS.—

“(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, as determined appropriate by the Secretary, the following groups of providers of services and suppliers which have established a mechanism for shared governance are eligible to participate as ACOs under the program under this section:

“(A) ACO professionals in group practice arrangements.

“(B) Networks of individual practices of ACO professionals.

“(C) Partnerships or joint venture arrangements between hospitals and ACO professionals.

“(D) Hospitals employing ACO professionals.

“(E) Such other groups of providers of services and suppliers as the Secretary determines appropriate.

“(2) REQUIREMENTS.—An ACO shall meet the following requirements:

“(A) The ACO shall be willing to become accountable for the quality, cost, and overall care of the Medicare fee-for-service beneficiaries assigned to it.

42 USC 1395jjj.
Deadline.

Contracts.

“(B) The ACO shall enter into an agreement with the Secretary to participate in the program for not less than a 3-year period (referred to in this section as the ‘agreement period’).

“(C) The ACO shall have a formal legal structure that would allow the organization to receive and distribute payments for shared savings under subsection (d)(2) to participating providers of services and suppliers.

“(D) The ACO shall include primary care ACO professionals that are sufficient for the number of Medicare fee-for-service beneficiaries assigned to the ACO under subsection (c). At a minimum, the ACO shall have at least 5,000 such beneficiaries assigned to it under subsection (c) in order to be eligible to participate in the ACO program.

“(E) The ACO shall provide the Secretary with such information regarding ACO professionals participating in the ACO as the Secretary determines necessary to support the assignment of Medicare fee-for-service beneficiaries to an ACO, the implementation of quality and other reporting requirements under paragraph (3), and the determination of payments for shared savings under subsection (d)(2).

“(F) The ACO shall have in place a leadership and management structure that includes clinical and administrative systems.

“(G) The ACO shall define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care, such as through the use of telehealth, remote patient monitoring, and other such enabling technologies.

“(H) The ACO shall demonstrate to the Secretary that it meets patient-centeredness criteria specified by the Secretary, such as the use of patient and caregiver assessments or the use of individualized care plans.

“(3) QUALITY AND OTHER REPORTING REQUIREMENTS.—

Determinations.

“(A) IN GENERAL.—The Secretary shall determine appropriate measures to assess the quality of care furnished by the ACO, such as measures of—

“(i) clinical processes and outcomes;

“(ii) patient and, where practicable, caregiver experience of care; and

“(iii) utilization (such as rates of hospital admissions for ambulatory care sensitive conditions).

“(B) REPORTING REQUIREMENTS.—An ACO shall submit data in a form and manner specified by the Secretary on measures the Secretary determines necessary for the ACO to report in order to evaluate the quality of care furnished by the ACO. Such data may include care transitions across health care settings, including hospital discharge planning and post-hospital discharge follow-up by ACO professionals, as the Secretary determines appropriate.

“(C) QUALITY PERFORMANCE STANDARDS.—The Secretary shall establish quality performance standards to assess the quality of care furnished by ACOs. The Secretary shall seek to improve the quality of care furnished by

ACOs over time by specifying higher standards, new measures, or both for purposes of assessing such quality of care.

“(D) OTHER REPORTING REQUIREMENTS.—The Secretary may, as the Secretary determines appropriate, incorporate reporting requirements and incentive payments related to the physician quality reporting initiative (PQRI) under section 1848, including such requirements and such payments related to electronic prescribing, electronic health records, and other similar initiatives under section 1848, and may use alternative criteria than would otherwise apply under such section for determining whether to make such payments. The incentive payments described in the preceding sentence shall not be taken into consideration when calculating any payments otherwise made under subsection (d).

“(4) NO DUPLICATION IN PARTICIPATION IN SHARED SAVINGS PROGRAMS.—A provider of services or supplier that participates in any of the following shall not be eligible to participate in an ACO under this section:

“(A) A model tested or expanded under section 1115A that involves shared savings under this title, or any other program or demonstration project that involves such shared savings.

“(B) The independence at home medical practice pilot program under section 1866E.

“(c) ASSIGNMENT OF MEDICARE FEE-FOR-SERVICE BENEFICIARIES TO ACOS.—The Secretary shall determine an appropriate method to assign Medicare fee-for-service beneficiaries to an ACO based on their utilization of primary care services provided under this title by an ACO professional described in subsection (h)(1)(A).

Determination.

“(d) PAYMENTS AND TREATMENT OF SAVINGS.—

“(1) PAYMENTS.—

“(A) IN GENERAL.—Under the program, subject to paragraph (3), payments shall continue to be made to providers of services and suppliers participating in an ACO under the original Medicare fee-for-service program under parts A and B in the same manner as they would otherwise be made except that a participating ACO is eligible to receive payment for shared savings under paragraph (2) if—

“(i) the ACO meets quality performance standards established by the Secretary under subsection (b)(3); and

“(ii) the ACO meets the requirement under subparagraph (B)(i).

“(B) SAVINGS REQUIREMENT AND BENCHMARK.—

“(i) DETERMINING SAVINGS.—In each year of the agreement period, an ACO shall be eligible to receive payment for shared savings under paragraph (2) only if the estimated average per capita Medicare expenditures under the ACO for Medicare fee-for-service beneficiaries for parts A and B services, adjusted for beneficiary characteristics, is at least the percent specified by the Secretary below the applicable benchmark under clause (ii). The Secretary shall determine the appropriate percent described in the preceding sentence to account for normal variation in expenditures under

this title, based upon the number of Medicare fee-for-service beneficiaries assigned to an ACO.

“(ii) ESTABLISH AND UPDATE BENCHMARK.—The Secretary shall estimate a benchmark for each agreement period for each ACO using the most recent available 3 years of per-beneficiary expenditures for parts A and B services for Medicare fee-for-service beneficiaries assigned to the ACO. Such benchmark shall be adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate and updated by the projected absolute amount of growth in national per capita expenditures for parts A and B services under the original Medicare fee-for-service program, as estimated by the Secretary. Such benchmark shall be reset at the start of each agreement period.

“(2) PAYMENTS FOR SHARED SAVINGS.—Subject to performance with respect to the quality performance standards established by the Secretary under subsection (b)(3), if an ACO meets the requirements under paragraph (1), a percent (as determined appropriate by the Secretary) of the difference between such estimated average per capita Medicare expenditures in a year, adjusted for beneficiary characteristics, under the ACO and such benchmark for the ACO may be paid to the ACO as shared savings and the remainder of such difference shall be retained by the program under this title. The Secretary shall establish limits on the total amount of shared savings that may be paid to an ACO under this paragraph.

“(3) MONITORING AVOIDANCE OF AT-RISK PATIENTS.—If the Secretary determines that an ACO has taken steps to avoid patients at risk in order to reduce the likelihood of increasing costs to the ACO the Secretary may impose an appropriate sanction on the ACO, including termination from the program.

“(4) TERMINATION.—The Secretary may terminate an agreement with an ACO if it does not meet the quality performance standards established by the Secretary under subsection (b)(3).

“(e) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to the program.

“(f) WAIVER AUTHORITY.—The Secretary may waive such requirements of sections 1128A and 1128B and title XVIII of this Act as may be necessary to carry out the provisions of this section.

“(g) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of—

“(1) the specification of criteria under subsection (a)(1)(B);

“(2) the assessment of the quality of care furnished by an ACO and the establishment of performance standards under subsection (b)(3);

“(3) the assignment of Medicare fee-for-service beneficiaries to an ACO under subsection (c);

“(4) the determination of whether an ACO is eligible for shared savings under subsection (d)(2) and the amount of such shared savings, including the determination of the estimated average per capita Medicare expenditures under the ACO for Medicare fee-for-service beneficiaries assigned to the ACO and the average benchmark for the ACO under subsection (d)(1)(B);

Limitations.

“(5) the percent of shared savings specified by the Secretary under subsection (d)(2) and any limit on the total amount of shared savings established by the Secretary under such subsection; and

“(6) the termination of an ACO under subsection (d)(4).

“(h) DEFINITIONS.—In this section:

“(1) ACO PROFESSIONAL.—The term ‘ACO professional’ means—

“(A) a physician (as defined in section 1861(r)(1)); and

“(B) a practitioner described in section 1842(b)(18)(C)(i).

“(2) HOSPITAL.—The term ‘hospital’ means a subsection (d) hospital (as defined in section 1886(d)(1)(B)).

“(3) MEDICARE FEE-FOR-SERVICE BENEFICIARY.—The term ‘Medicare fee-for-service beneficiary’ means an individual who is enrolled in the original Medicare fee-for-service program under parts A and B and is not enrolled in an MA plan under part C, an eligible organization under section 1876, or a PACE program under section 1894.”.

SEC. 3023. NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING.

Title XVIII of the Social Security Act, as amended by section 3021, is amended by inserting after section 1886C the following new section:

“NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING

“SEC. 1866D. (a) IMPLEMENTATION.—

“(1) IN GENERAL.—The Secretary shall establish a pilot program for integrated care during an episode of care provided to an applicable beneficiary around a hospitalization in order to improve the coordination, quality, and efficiency of health care services under this title.

“(2) DEFINITIONS.—In this section:

“(A) APPLICABLE BENEFICIARY.—The term ‘applicable beneficiary’ means an individual who—

“(i) is entitled to, or enrolled for, benefits under part A and enrolled for benefits under part B of such title, but not enrolled under part C or a PACE program under section 1894; and

“(ii) is admitted to a hospital for an applicable condition.

“(B) APPLICABLE CONDITION.—The term ‘applicable condition’ means 1 or more of 8 conditions selected by the Secretary. In selecting conditions under the preceding sentence, the Secretary shall take into consideration the following factors:

“(i) Whether the conditions selected include a mix of chronic and acute conditions.

“(ii) Whether the conditions selected include a mix of surgical and medical conditions.

“(iii) Whether a condition is one for which there is evidence of an opportunity for providers of services and suppliers to improve the quality of care furnished while reducing total expenditures under this title.

“(iv) Whether a condition has significant variation in—

“(I) the number of readmissions; and

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“(II) the amount of expenditures for post-acute care spending under this title.

“(v) Whether a condition is high-volume and has high post-acute care expenditures under this title.

“(vi) Which conditions the Secretary determines are most amenable to bundling across the spectrum of care given practice patterns under this title.

“(C) APPLICABLE SERVICES.—The term ‘applicable services’ means the following:

“(i) Acute care inpatient services.

“(ii) Physicians’ services delivered in and outside of an acute care hospital setting.

“(iii) Outpatient hospital services, including emergency department services.

“(iv) Post-acute care services, including home health services, skilled nursing services, inpatient rehabilitation services, and inpatient hospital services furnished by a long-term care hospital.

“(v) Other services the Secretary determines appropriate.

“(D) EPISODE OF CARE.—

“(i) IN GENERAL.—Subject to clause (ii), the term ‘episode of care’ means, with respect to an applicable condition and an applicable beneficiary, the period that includes—

“(I) the 3 days prior to the admission of the applicable beneficiary to a hospital for the applicable condition;

“(II) the length of stay of the applicable beneficiary in such hospital; and

“(III) the 30 days following the discharge of the applicable beneficiary from such hospital.

“(ii) ESTABLISHMENT OF PERIOD BY THE SECRETARY.—The Secretary, as appropriate, may establish a period (other than the period described in clause (i)) for an episode of care under the pilot program.

“(E) PHYSICIANS’ SERVICES.—The term ‘physicians’ services’ has the meaning given such term in section 1861(q).

“(F) PILOT PROGRAM.—The term ‘pilot program’ means the pilot program under this section.

“(G) PROVIDER OF SERVICES.—The term ‘provider of services’ has the meaning given such term in section 1861(u).

“(H) READMISSION.—The term ‘readmission’ has the meaning given such term in section 1886(q)(5)(E).

“(I) SUPPLIER.—The term ‘supplier’ has the meaning given such term in section 1861(d).

“(3) DEADLINE FOR IMPLEMENTATION.—The Secretary shall establish the pilot program not later than January 1, 2013.

“(b) DEVELOPMENTAL PHASE.—

“(1) DETERMINATION OF PATIENT ASSESSMENT INSTRUMENT.—The Secretary shall determine which patient assessment instrument (such as the Continuity Assessment Record and Evaluation (CARE) tool) shall be used under the pilot program to evaluate the applicable condition of an applicable beneficiary for purposes of determining the most

clinically appropriate site for the provision of post-acute care to the applicable beneficiary.

“(2) DEVELOPMENT OF QUALITY MEASURES FOR AN EPISODE OF CARE AND FOR POST-ACUTE CARE.—

“(A) IN GENERAL.—The Secretary, in consultation with the Agency for Healthcare Research and Quality and the entity with a contract under section 1890(a) of the Social Security Act, shall develop quality measures for use in the pilot program—

“(i) for episodes of care; and

“(ii) for post-acute care.

“(B) SITE-NEUTRAL POST-ACUTE CARE QUALITY MEASURES.—Any quality measures developed under subparagraph (A)(ii) shall be site-neutral.

“(C) COORDINATION WITH QUALITY MEASURE DEVELOPMENT AND ENDORSEMENT PROCEDURES.—The Secretary shall ensure that the development of quality measures under subparagraph (A) is done in a manner that is consistent with the measures developed and endorsed under section 1890 and 1890A that are applicable to all post-acute care settings.

“(c) DETAILS.—

“(1) DURATION.—

“(A) IN GENERAL.—Subject to subparagraph (B), the pilot program shall be conducted for a period of 5 years.

“(B) EXTENSION.—The Secretary may extend the duration of the pilot program for providers of services and suppliers participating in the pilot program as of the day before the end of the 5-year period described in subparagraph (A), for a period determined appropriate by the Secretary, if the Secretary determines that such extension will result in improving or not reducing the quality of patient care and reducing spending under this title.

Determination.

“(2) PARTICIPATING PROVIDERS OF SERVICES AND SUPPLIERS.—

“(A) IN GENERAL.—An entity comprised of providers of services and suppliers, including a hospital, a physician group, a skilled nursing facility, and a home health agency, who are otherwise participating under this title, may submit an application to the Secretary to provide applicable services to applicable individuals under this section.

“(B) REQUIREMENTS.—The Secretary shall develop requirements for entities to participate in the pilot program under this section. Such requirements shall ensure that applicable beneficiaries have an adequate choice of providers of services and suppliers under the pilot program.

“(3) PAYMENT METHODOLOGY.—

“(A) IN GENERAL.—

“(i) ESTABLISHMENT OF PAYMENT METHODS.—The Secretary shall develop payment methods for the pilot program for entities participating in the pilot program. Such payment methods may include bundled payments and bids from entities for episodes of care. The Secretary shall make payments to the entity for services covered under this section.

“(ii) NO ADDITIONAL PROGRAM EXPENDITURES.—Payments under this section for applicable items and

services under this title (including payment for services described in subparagraph (B)) for applicable beneficiaries for a year shall be established in a manner that does not result in spending more for such entity for such beneficiaries than would otherwise be expended for such entity for such beneficiaries for such year if the pilot program were not implemented, as estimated by the Secretary.

“(B) INCLUSION OF CERTAIN SERVICES.—A payment methodology tested under the pilot program shall include payment for the furnishing of applicable services and other appropriate services, such as care coordination, medication reconciliation, discharge planning, transitional care services, and other patient-centered activities as determined appropriate by the Secretary.

“(C) BUNDLED PAYMENTS.—

“(i) IN GENERAL.—A bundled payment under the pilot program shall—

“(I) be comprehensive, covering the costs of applicable services and other appropriate services furnished to an individual during an episode of care (as determined by the Secretary); and

“(II) be made to the entity which is participating in the pilot program.

“(ii) REQUIREMENT FOR PROVISION OF APPLICABLE SERVICES AND OTHER APPROPRIATE SERVICES.—Applicable services and other appropriate services for which payment is made under this subparagraph shall be furnished or directed by the entity which is participating in the pilot program.

“(D) PAYMENT FOR POST-ACUTE CARE SERVICES AFTER THE EPISODE OF CARE.—The Secretary shall establish procedures, in the case where an applicable beneficiary requires continued post-acute care services after the last day of the episode of care, under which payment for such services shall be made.

“(4) QUALITY MEASURES.—

“(A) IN GENERAL.—The Secretary shall establish quality measures (including quality measures of process, outcome, and structure) related to care provided by entities participating in the pilot program. Quality measures established under the preceding sentence shall include measures of the following:

“(i) Functional status improvement.

“(ii) Reducing rates of avoidable hospital readmissions.

“(iii) Rates of discharge to the community.

“(iv) Rates of admission to an emergency room after a hospitalization.

“(v) Incidence of health care acquired infections.

“(vi) Efficiency measures.

“(vii) Measures of patient-centeredness of care.

“(viii) Measures of patient perception of care.

“(ix) Other measures, including measures of patient outcomes, determined appropriate by the Secretary.

“(B) REPORTING ON QUALITY MEASURES.—

Procedures.

“(i) IN GENERAL.—A entity shall submit data to the Secretary on quality measures established under subparagraph (A) during each year of the pilot program (in a form and manner, subject to clause (iii), specified by the Secretary).

“(ii) SUBMISSION OF DATA THROUGH ELECTRONIC HEALTH RECORD.—To the extent practicable, the Secretary shall specify that data on measures be submitted under clause (i) through the use of an qualified electronic health record (as defined in section 3000(13) of the Public Health Service Act (42 U.S.C. 300jj–11(13)) in a manner specified by the Secretary.

“(d) WAIVER.—The Secretary may waive such provisions of this title and title XI as may be necessary to carry out the pilot program.

“(e) INDEPENDENT EVALUATION AND REPORTS ON PILOT PROGRAM.—

“(1) INDEPENDENT EVALUATION.—The Secretary shall conduct an independent evaluation of the pilot program, including the extent to which the pilot program has—

“(A) improved quality measures established under subsection (c)(4)(A);

“(B) improved health outcomes;

“(C) improved applicable beneficiary access to care; and

“(D) reduced spending under this title.

“(2) REPORTS.—

“(A) INTERIM REPORT.—Not later than 2 years after the implementation of the pilot program, the Secretary shall submit to Congress a report on the initial results of the independent evaluation conducted under paragraph (1).

“(B) FINAL REPORT.—Not later than 3 years after the implementation of the pilot program, the Secretary shall submit to Congress a report on the final results of the independent evaluation conducted under paragraph (1).

“(f) CONSULTATION.—The Secretary shall consult with representatives of small rural hospitals, including critical access hospitals (as defined in section 1861(mm)(1)), regarding their participation in the pilot program. Such consultation shall include consideration of innovative methods of implementing bundled payments in hospitals described in the preceding sentence, taking into consideration any difficulties in doing so as a result of the low volume of services provided by such hospitals.

“(g) IMPLEMENTATION PLAN.—

“(1) IN GENERAL.—Not later than January 1, 2016, the Secretary shall submit a plan for the implementation of an expansion of the pilot program if the Secretary determines that such expansion will result in improving or not reducing the quality of patient care and reducing spending under this title.

Deadline.

“(h) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to the selection, testing, and evaluation of models or the expansion of such models under this section.”.

SEC. 3024. INDEPENDENCE AT HOME DEMONSTRATION PROGRAM.

Title XVIII of the Social Security Act is amended by inserting after section 1866D, as inserted by section 3023, the following new section:

“INDEPENDENCE AT HOME MEDICAL PRACTICE DEMONSTRATION
PROGRAM

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“SEC. 1866D. (a) ESTABLISHMENT.—

“(1) IN GENERAL.—The Secretary shall conduct a demonstration program (in this section referred to as the ‘demonstration program’) to test a payment incentive and service delivery model that utilizes physician and nurse practitioner directed home-based primary care teams designed to reduce expenditures and improve health outcomes in the provision of items and services under this title to applicable beneficiaries (as defined in subsection (d)).

“(2) REQUIREMENT.—The demonstration program shall test whether a model described in paragraph (1), which is accountable for providing comprehensive, coordinated, continuous, and accessible care to high-need populations at home and coordinating health care across all treatment settings, results in—

“(A) reducing preventable hospitalizations;

“(B) preventing hospital readmissions;

“(C) reducing emergency room visits;

“(D) improving health outcomes commensurate with the beneficiaries’ stage of chronic illness;

“(E) improving the efficiency of care, such as by reducing duplicative diagnostic and laboratory tests;

“(F) reducing the cost of health care services covered under this title; and

“(G) achieving beneficiary and family caregiver satisfaction.

“(b) INDEPENDENCE AT HOME MEDICAL PRACTICE.—

“(1) INDEPENDENCE AT HOME MEDICAL PRACTICE DEFINED.—

In this section:

“(A) IN GENERAL.—The term ‘independence at home medical practice’ means a legal entity that—

“(i) is comprised of an individual physician or nurse practitioner or group of physicians and nurse practitioners that provides care as part of a team that includes physicians, nurses, physician assistants, pharmacists, and other health and social services staff as appropriate who have experience providing home-based primary care to applicable beneficiaries, make in-home visits, and are available 24 hours per day, 7 days per week to carry out plans of care that are tailored to the individual beneficiary’s chronic conditions and designed to achieve the results in subsection (a);

“(ii) is organized at least in part for the purpose of providing physicians’ services;

“(iii) has documented experience in providing home-based primary care services to high-cost chronically ill beneficiaries, as determined appropriate by the Secretary;

“(iv) furnishes services to at least 200 applicable beneficiaries (as defined in subsection (d)) during each year of the demonstration program;

“(v) has entered into an agreement with the Secretary;

“(vi) uses electronic health information systems, remote monitoring, and mobile diagnostic technology; and

“(vii) meets such other criteria as the Secretary determines to be appropriate to participate in the demonstration program.

The entity shall report on quality measures (in such form, manner, and frequency as specified by the Secretary, which may be for the group, for providers of services and suppliers, or both) and report to the Secretary (in a form, manner, and frequency as specified by the Secretary) such data as the Secretary determines appropriate to monitor and evaluate the demonstration program.

Reports.
Determination.

“(B) PHYSICIAN.—The term ‘physician’ includes, except as the Secretary may otherwise provide, any individual who furnishes services for which payment may be made as physicians’ services and has the medical training or experience to fulfill the physician’s role described in subparagraph (A)(i).

“(2) PARTICIPATION OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS.—Nothing in this section shall be construed to prevent a nurse practitioner or physician assistant from participating in, or leading, a home-based primary care team as part of an independence at home medical practice if—

“(A) all the requirements of this section are met;

“(B) the nurse practitioner or physician assistant, as the case may be, is acting consistent with State law; and

“(C) the nurse practitioner or physician assistant has the medical training or experience to fulfill the nurse practitioner or physician assistant role described in paragraph (1)(A)(i).

“(3) INCLUSION OF PROVIDERS AND PRACTITIONERS.—Nothing in this subsection shall be construed as preventing an independence at home medical practice from including a provider of services or a participating practitioner described in section 1842(b)(18)(C) that is affiliated with the practice under an arrangement structured so that such provider of services or practitioner participates in the demonstration program and shares in any savings under the demonstration program.

“(4) QUALITY AND PERFORMANCE STANDARDS.—The Secretary shall develop quality performance standards for independence at home medical practices participating in the demonstration program.

“(c) PAYMENT METHODOLOGY.—

“(1) ESTABLISHMENT OF TARGET SPENDING LEVEL.—The Secretary shall establish an estimated annual spending target, for the amount the Secretary estimates would have been spent in the absence of the demonstration, for items and services

covered under parts A and B furnished to applicable beneficiaries for each qualifying independence at home medical practice under this section. Such spending targets shall be determined on a per capita basis. Such spending targets shall include a risk corridor that takes into account normal variation in expenditures for items and services covered under parts A and B furnished to such beneficiaries with the size of the corridor being related to the number of applicable beneficiaries furnished services by each independence at home medical practice. The spending targets may also be adjusted for other factors as the Secretary determines appropriate.

“(2) INCENTIVE PAYMENTS.—Subject to performance on quality measures, a qualifying independence at home medical practice is eligible to receive an incentive payment under this section if actual expenditures for a year for the applicable beneficiaries it enrolls are less than the estimated spending target established under paragraph (1) for such year. An incentive payment for such year shall be equal to a portion (as determined by the Secretary) of the amount by which actual expenditures (including incentive payments under this paragraph) for applicable beneficiaries under parts A and B for such year are estimated to be less than 5 percent less than the estimated spending target for such year, as determined under paragraph (1).

“(d) APPLICABLE BENEFICIARIES.—

“(1) DEFINITION.—In this section, the term ‘applicable beneficiary’ means, with respect to a qualifying independence at home medical practice, an individual who the practice has determined—

“(A) is entitled to benefits under part A and enrolled for benefits under part B;

“(B) is not enrolled in a Medicare Advantage plan under part C or a PACE program under section 1894;

“(C) has 2 or more chronic illnesses, such as congestive heart failure, diabetes, other dementias designated by the Secretary, chronic obstructive pulmonary disease, ischemic heart disease, stroke, Alzheimer’s Disease and neurodegenerative diseases, and other diseases and conditions designated by the Secretary which result in high costs under this title;

“(D) within the past 12 months has had a nonelective hospital admission;

“(E) within the past 12 months has received acute or subacute rehabilitation services;

“(F) has 2 or more functional dependencies requiring the assistance of another person (such as bathing, dressing, toileting, walking, or feeding); and

“(G) meets such other criteria as the Secretary determines appropriate.

Determination.

“(2) PATIENT ELECTION TO PARTICIPATE.—The Secretary shall determine an appropriate method of ensuring that applicable beneficiaries have agreed to enroll in an independence at home medical practice under the demonstration program. Enrollment in the demonstration program shall be voluntary.

“(3) BENEFICIARY ACCESS TO SERVICES.—Nothing in this section shall be construed as encouraging physicians or nurse

practitioners to limit applicable beneficiary access to services covered under this title and applicable beneficiaries shall not be required to relinquish access to any benefit under this title as a condition of receiving services from an independence at home medical practice.

“(e) IMPLEMENTATION.—

“(1) STARTING DATE.—The demonstration program shall begin no later than January 1, 2012. An agreement with an independence at home medical practice under the demonstration program may cover not more than a 3-year period.

“(2) NO PHYSICIAN DUPLICATION IN DEMONSTRATION PARTICIPATION.—The Secretary shall not pay an independence at home medical practice under this section that participates in section 1899.

“(3) NO BENEFICIARY DUPLICATION IN DEMONSTRATION PARTICIPATION.—The Secretary shall ensure that no applicable beneficiary enrolled in an independence at home medical practice under this section is participating in the programs under section 1899.

“(4) PREFERENCE.—In approving an independence at home medical practice, the Secretary shall give preference to practices that are—

“(A) located in high-cost areas of the country;

“(B) have experience in furnishing health care services to applicable beneficiaries in the home; and

“(C) use electronic medical records, health information technology, and individualized plans of care.

“(5) LIMITATION ON NUMBER OF PRACTICES.—In selecting qualified independence at home medical practices to participate under the demonstration program, the Secretary shall limit the number of such practices so that the number of applicable beneficiaries that may participate in the demonstration program does not exceed 10,000.

“(6) WAIVER.—The Secretary may waive such provisions of this title and title XI as the Secretary determines necessary in order to implement the demonstration program.

“(7) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to this section.

“(f) EVALUATION AND MONITORING.—

“(1) IN GENERAL.—The Secretary shall evaluate each independence at home medical practice under the demonstration program to assess whether the practice achieved the results described in subsection (a).

“(2) MONITORING APPLICABLE BENEFICIARIES.—The Secretary may monitor data on expenditures and quality of services under this title after an applicable beneficiary discontinues receiving services under this title through a qualifying independence at home medical practice.

“(g) REPORTS TO CONGRESS.—The Secretary shall conduct an independent evaluation of the demonstration program and submit to Congress a final report, including best practices under the demonstration program. Such report shall include an analysis of the demonstration program on coordination of care, expenditures under this title, applicable beneficiary access to services, and the quality of health care services provided to applicable beneficiaries.

“(h) FUNDING.—For purposes of administering and carrying out the demonstration program, other than for payments for items

and services furnished under this title and incentive payments under subsection (c), in addition to funds otherwise appropriated, there shall be transferred to the Secretary for the Center for Medicare & Medicaid Services Program Management Account from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841 (in proportions determined appropriate by the Secretary) \$5,000,000 for each of fiscal years 2010 through 2015. Amounts transferred under this subsection for a fiscal year shall be available until expended.

“(i) TERMINATION.—

“(1) MANDATORY TERMINATION.—The Secretary shall terminate an agreement with an independence at home medical practice if—

“(A) the Secretary estimates or determines that such practice will not receive an incentive payment for the second of 2 consecutive years under the demonstration program; or

“(B) such practice fails to meet quality standards during any year of the demonstration program.

“(2) PERMISSIVE TERMINATION.—The Secretary may terminate an agreement with an independence at home medical practice for such other reasons determined appropriate by the Secretary.”.

SEC. 3025. HOSPITAL READMISSIONS REDUCTION PROGRAM.

(a) IN GENERAL.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by sections 3001 and 3008, is amended by adding at the end the following new subsection:

“(q) HOSPITAL READMISSIONS REDUCTION PROGRAM.—

“(1) IN GENERAL.—With respect to payment for discharges from an applicable hospital (as defined in paragraph (5)(C)) occurring during a fiscal year beginning on or after October 1, 2012, in order to account for excess readmissions in the hospital, the Secretary shall reduce the payments that would otherwise be made to such hospital under subsection (d) (or section 1814(b)(3), as the case may be) for such a discharge by an amount equal to the product of—

“(A) the base operating DRG payment amount (as defined in paragraph (2)) for the discharge; and

“(B) the adjustment factor (described in paragraph (3)(A)) for the hospital for the fiscal year.

“(2) BASE OPERATING DRG PAYMENT AMOUNT DEFINED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in this subsection, the term ‘base operating DRG payment amount’ means, with respect to a hospital for a fiscal year—

“(i) the payment amount that would otherwise be made under subsection (d) (determined without regard to subsection (o)) for a discharge if this subsection did not apply; reduced by

“(ii) any portion of such payment amount that is attributable to payments under paragraphs (5)(A), (5)(B), (5)(F), and (12) of subsection (d).

“(B) SPECIAL RULES FOR CERTAIN HOSPITALS.—

“(i) SOLE COMMUNITY HOSPITALS AND MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.—In the case of

Definition.

a medicare-dependent, small rural hospital (with respect to discharges occurring during fiscal years 2012 and 2013) or a sole community hospital, in applying subparagraph (A)(i), the payment amount that would otherwise be made under subsection (d) shall be determined without regard to subparagraphs (I) and (L) of subsection (b)(3) and subparagraphs (D) and (G) of subsection (d)(5).

“(ii) HOSPITALS PAID UNDER SECTION 1814.—In the case of a hospital that is paid under section 1814(b)(3), the Secretary may exempt such hospitals provided that States paid under such section submit an annual report to the Secretary describing how a similar program in the State for a participating hospital or hospitals achieves or surpasses the measured results in terms of patient health outcomes and cost savings established herein with respect to this section.

Reports.
Deadline.

“(3) ADJUSTMENT FACTOR.—

“(A) IN GENERAL.—For purposes of paragraph (1), the adjustment factor under this paragraph for an applicable hospital for a fiscal year is equal to the greater of—

“(i) the ratio described in subparagraph (B) for the hospital for the applicable period (as defined in paragraph (5)(D)) for such fiscal year; or

“(ii) the floor adjustment factor specified in subparagraph (C).

“(B) RATIO.—The ratio described in this subparagraph for a hospital for an applicable period is equal to 1 minus the ratio of—

“(i) the aggregate payments for excess readmissions (as defined in paragraph (4)(A)) with respect to an applicable hospital for the applicable period; and

“(ii) the aggregate payments for all discharges (as defined in paragraph (4)(B)) with respect to such applicable hospital for such applicable period.

“(C) FLOOR ADJUSTMENT FACTOR.—For purposes of subparagraph (A), the floor adjustment factor specified in this subparagraph for—

“(i) fiscal year 2013 is 0.99;

“(ii) fiscal year 2014 is 0.98; or

“(iii) fiscal year 2015 and subsequent fiscal years is 0.97.

“(4) AGGREGATE PAYMENTS, EXCESS READMISSION RATIO DEFINED.—For purposes of this subsection:

“(A) AGGREGATE PAYMENTS FOR EXCESS READMISSIONS.—The term ‘aggregate payments for excess readmissions’ means, for a hospital for an applicable period, the sum, for applicable conditions (as defined in paragraph (5)(A)), of the product, for each applicable condition, of—

“(i) the base operating DRG payment amount for such hospital for such applicable period for such condition;

“(ii) the number of admissions for such condition for such hospital for such applicable period; and

“(iii) the excess readmissions ratio (as defined in subparagraph (C)) for such hospital for such applicable period minus 1.

“(B) AGGREGATE PAYMENTS FOR ALL DISCHARGES.—The term ‘aggregate payments for all discharges’ means, for a hospital for an applicable period, the sum of the base operating DRG payment amounts for all discharges for all conditions from such hospital for such applicable period.

“(C) EXCESS READMISSION RATIO.—

“(i) IN GENERAL.—Subject to clause (ii), the term ‘excess readmissions ratio’ means, with respect to an applicable condition for a hospital for an applicable period, the ratio (but not less than 1.0) of—

“(I) the risk adjusted readmissions based on actual readmissions, as determined consistent with a readmission measure methodology that has been endorsed under paragraph (5)(A)(ii)(I), for an applicable hospital for such condition with respect to such applicable period; to

“(II) the risk adjusted expected readmissions (as determined consistent with such a methodology) for such hospital for such condition with respect to such applicable period.

“(ii) EXCLUSION OF CERTAIN READMISSIONS.—For purposes of clause (i), with respect to a hospital, excess readmissions shall not include readmissions for an applicable condition for which there are fewer than a minimum number (as determined by the Secretary) of discharges for such applicable condition for the applicable period and such hospital.

“(5) DEFINITIONS.—For purposes of this subsection:

“(A) APPLICABLE CONDITION.—The term ‘applicable condition’ means, subject to subparagraph (B), a condition or procedure selected by the Secretary among conditions and procedures for which—

“(i) readmissions (as defined in subparagraph (E)) that represent conditions or procedures that are high volume or high expenditures under this title (or other criteria specified by the Secretary); and

“(ii) measures of such readmissions—

“(I) have been endorsed by the entity with a contract under section 1890(a); and

“(II) such endorsed measures have exclusions for readmissions that are unrelated to the prior discharge (such as a planned readmission or transfer to another applicable hospital).

Effective date.

“(B) EXPANSION OF APPLICABLE CONDITIONS.—Beginning with fiscal year 2015, the Secretary shall, to the extent practicable, expand the applicable conditions beyond the 3 conditions for which measures have been endorsed as described in subparagraph (A)(ii)(I) as of the date of the enactment of this subsection to the additional 4 conditions that have been identified by the Medicare Payment Advisory Commission in its report to Congress in June 2007 and to other conditions and procedures as determined appropriate by the Secretary. In expanding such applicable conditions, the Secretary shall seek the endorsement described in subparagraph (A)(ii)(I) but may apply such measures without such an endorsement in the case of a specified area or medical topic determined appropriate by

the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(C) APPLICABLE HOSPITAL.—The term ‘applicable hospital’ means a subsection (d) hospital or a hospital that is paid under section 1814(b)(3), as the case may be.

“(D) APPLICABLE PERIOD.—The term ‘applicable period’ means, with respect to a fiscal year, such period as the Secretary shall specify.

“(E) READMISSION.—The term ‘readmission’ means, in the case of an individual who is discharged from an applicable hospital, the admission of the individual to the same or another applicable hospital within a time period specified by the Secretary from the date of such discharge. Insofar as the discharge relates to an applicable condition for which there is an endorsed measure described in subparagraph (A)(ii)(I), such time period (such as 30 days) shall be consistent with the time period specified for such measure.

“(6) REPORTING HOSPITAL SPECIFIC INFORMATION.—

“(A) IN GENERAL.—The Secretary shall make information available to the public regarding readmission rates of each subsection (d) hospital under the program.

Public
information.

“(B) OPPORTUNITY TO REVIEW AND SUBMIT CORRECTIONS.—The Secretary shall ensure that a subsection (d) hospital has the opportunity to review, and submit corrections for, the information to be made public with respect to the hospital under subparagraph (A) prior to such information being made public.

“(C) WEBSITE.—Such information shall be posted on the Hospital Compare Internet website in an easily understandable format.

“(7) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the following:

“(A) The determination of base operating DRG payment amounts.

“(B) The methodology for determining the adjustment factor under paragraph (3), including excess readmissions ratio under paragraph (4)(C), aggregate payments for excess readmissions under paragraph (4)(A), and aggregate payments for all discharges under paragraph (4)(B), and applicable periods and applicable conditions under paragraph (5).

“(C) The measures of readmissions as described in paragraph (5)(A)(ii).

“(8) READMISSION RATES FOR ALL PATIENTS.—

“(A) CALCULATION OF READMISSION.—The Secretary shall calculate readmission rates for all patients (as defined in subparagraph (D)) for a specified hospital (as defined in subparagraph (D)(ii)) for an applicable condition (as defined in paragraph (5)(B)) and other conditions deemed appropriate by the Secretary for an applicable period (as defined in paragraph (5)(D)) in the same manner as used to calculate such readmission rates for hospitals with

respect to this title and posted on the CMS Hospital Compare website.

Web posting.

“(B) POSTING OF HOSPITAL SPECIFIC ALL PATIENT READMISSION RATES.—The Secretary shall make information on all patient readmission rates calculated under subparagraph (A) available on the CMS Hospital Compare website in a form and manner determined appropriate by the Secretary. The Secretary may also make other information determined appropriate by the Secretary available on such website.

“(C) HOSPITAL SUBMISSION OF ALL PATIENT DATA.—

“(i) Except as provided for in clause (ii), each specified hospital (as defined in subparagraph (D)(ii)) shall submit to the Secretary, in a form, manner and time specified by the Secretary, data and information determined necessary by the Secretary for the Secretary to calculate the all patient readmission rates described in subparagraph (A).

“(ii) Instead of a specified hospital submitting to the Secretary the data and information described in clause (i), such data and information may be submitted to the Secretary, on behalf of such a specified hospital, by a state or an entity determined appropriate by the Secretary.

“(D) DEFINITIONS.—For purposes of this paragraph:

“(i) The term ‘all patients’ means patients who are treated on an inpatient basis and discharged from a specified hospital (as defined in clause (ii)).

“(ii) The term ‘specified hospital’ means a subsection (d) hospital, hospitals described in clauses (i) through (v) of subsection (d)(1)(B) and, as determined feasible and appropriate by the Secretary, other hospitals not otherwise described in this subparagraph.”.

(b) QUALITY IMPROVEMENT.—Part S of title III of the Public Health Service Act, as amended by section 3015, is further amended by adding at the end the following:

42 USC 280j–3.

“SEC. 399KK. QUALITY IMPROVEMENT PROGRAM FOR HOSPITALS WITH A HIGH SEVERITY ADJUSTED READMISSION RATE.

“(a) ESTABLISHMENT.—

Deadline.

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Secretary shall make available a program for eligible hospitals to improve their readmission rates through the use of patient safety organizations (as defined in section 921(4)).

“(2) ELIGIBLE HOSPITAL DEFINED.—In this subsection, the term ‘eligible hospital’ means a hospital that the Secretary determines has a high rate of risk adjusted readmissions for the conditions described in section 1886(q)(8)(A) of the Social Security Act and has not taken appropriate steps to reduce such readmissions and improve patient safety as evidenced through historically high rates of readmissions, as determined by the Secretary.

“(3) RISK ADJUSTMENT.—The Secretary shall utilize appropriate risk adjustment measures to determine eligible hospitals.

Determination.

“(b) REPORT TO THE SECRETARY.—As determined appropriate by the Secretary, eligible hospitals and patient safety organizations

working with those hospitals shall report to the Secretary on the processes employed by the hospital to improve readmission rates and the impact of such processes on readmission rates.”.

SEC. 3026. COMMUNITY-BASED CARE TRANSITIONS PROGRAM.

42 USC 1395b-1
note.

(a) **IN GENERAL.**—The Secretary shall establish a Community-Based Care Transitions Program under which the Secretary provides funding to eligible entities that furnish improved care transition services to high-risk Medicare beneficiaries.

(b) **DEFINITIONS.**—In this section:

(1) **ELIGIBLE ENTITY.**—The term “eligible entity” means the following:

(A) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) identified by the Secretary as having a high readmission rate, such as under section 1886(q) of the Social Security Act, as added by section 3025.

(B) An appropriate community-based organization that provides care transition services under this section across a continuum of care through arrangements with subsection (d) hospitals (as so defined) to furnish the services described in subsection (c)(2)(B)(i) and whose governing body includes sufficient representation of multiple health care stakeholders (including consumers).

(2) **HIGH-RISK MEDICARE BENEFICIARY.**—The term “high-risk Medicare beneficiary” means a Medicare beneficiary who has attained a minimum hierarchical condition category score, as determined by the Secretary, based on a diagnosis of multiple chronic conditions or other risk factors associated with a hospital readmission or substandard transition into post-hospitalization care, which may include 1 or more of the following:

(A) Cognitive impairment.

(B) Depression.

(C) A history of multiple readmissions.

(D) Any other chronic disease or risk factor as determined by the Secretary.

(3) **MEDICARE BENEFICIARY.**—The term “Medicare beneficiary” means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and enrolled under part B of such title, but not enrolled under part C of such title.

(4) **PROGRAM.**—The term “program” means the program conducted under this section.

(5) **READMISSION.**—The term “readmission” has the meaning given such term in section 1886(q)(5)(E) of the Social Security Act, as added by section 3025.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(c) **REQUIREMENTS.**—

(1) **DURATION.**—

(A) **IN GENERAL.**—The program shall be conducted for a 5-year period, beginning January 1, 2011.

(B) **EXPANSION.**—The Secretary may expand the duration and the scope of the program, to the extent determined appropriate by the Secretary, if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services, with respect to spending under this

Determination.
Certification.

title, certifies) that such expansion would reduce spending under this title without reducing quality.

(2) APPLICATION; PARTICIPATION.—

(A) IN GENERAL.—

(i) APPLICATION.—An eligible entity seeking to participate in the program shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(ii) PARTNERSHIP.—If an eligible entity is a hospital, such hospital shall enter into a partnership with a community-based organization to participate in the program.

(B) INTERVENTION PROPOSAL.—Subject to subparagraph (C), an application submitted under subparagraph (A)(i) shall include a detailed proposal for at least 1 care transition intervention, which may include the following:

(i) Initiating care transition services for a high-risk Medicare beneficiary not later than 24 hours prior to the discharge of the beneficiary from the eligible entity.

(ii) Arranging timely post-discharge follow-up services to the high-risk Medicare beneficiary to provide the beneficiary (and, as appropriate, the primary caregiver of the beneficiary) with information regarding responding to symptoms that may indicate additional health problems or a deteriorating condition.

(iii) Providing the high-risk Medicare beneficiary (and, as appropriate, the primary caregiver of the beneficiary) with assistance to ensure productive and timely interactions between patients and post-acute and outpatient providers.

(iv) Assessing and actively engaging with a high-risk Medicare beneficiary (and, as appropriate, the primary caregiver of the beneficiary) through the provision of self-management support and relevant information that is specific to the beneficiary's condition.

(v) Conducting comprehensive medication review and management (including, if appropriate, counseling and self-management support).

(C) LIMITATION.—A care transition intervention proposed under subparagraph (B) may not include payment for services required under the discharge planning process described in section 1861(ee) of the Social Security Act (42 U.S.C. 1395x(ee)).

(3) SELECTION.—In selecting eligible entities to participate in the program, the Secretary shall give priority to eligible entities that—

(A) participate in a program administered by the Administration on Aging to provide concurrent care transitions interventions with multiple hospitals and practitioners; or

(B) provide services to medically underserved populations, small communities, and rural areas.

(d) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement the provisions of this section by program instruction or otherwise.

(e) **WAIVER AUTHORITY.**—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary to carry out the program.

(f) **FUNDING.**—For purposes of carrying out this section, the Secretary of Health and Human Services shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in such proportion as the Secretary determines appropriate, of \$500,000,000, to the Centers for Medicare & Medicaid Services Program Management Account for the period of fiscal years 2011 through 2015. Amounts transferred under the preceding sentence shall remain available until expended.

SEC. 3027. EXTENSION OF GAINSHARING DEMONSTRATION.

(a) **IN GENERAL.**—Subsection (d)(3) of section 5007 of the Deficit Reduction Act of 2005 (Public Law 109–171) is amended by inserting “(or September 30, 2011, in the case of a demonstration project in operation as of October 1, 2008)” after “December 31, 2009”.

42 USC 1395ww
note.

(b) **FUNDING.**—

(1) **IN GENERAL.**—Subsection (f)(1) of such section is amended by inserting “and for fiscal year 2010, \$1,600,000,” after “\$6,000,000”.

(2) **AVAILABILITY.**—Subsection (f)(2) of such section is amended by striking “2010” and inserting “2014 or until expended”.

(c) **REPORTS.**—

(1) **QUALITY IMPROVEMENT AND SAVINGS.**—Subsection (e)(3) of such section is amended by striking “December 1, 2008” and inserting “March 31, 2011”.

(2) **FINAL REPORT.**—Subsection (e)(4) of such section is amended by striking “May 1, 2010” and inserting “March 31, 2013”.

Subtitle B—Improving Medicare for Patients and Providers

PART I—ENSURING BENEFICIARY ACCESS TO PHYSICIAN CARE AND OTHER SERVICES

SEC. 3101. INCREASE IN THE PHYSICIAN PAYMENT UPDATE.

Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

“(10) **UPDATE FOR 2010.**—

“(A) **IN GENERAL.**—Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2010, the update to the single conversion factor shall be 0.5 percent.

“(B) **NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2011 AND SUBSEQUENT YEARS.**—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2011 and subsequent years as if subparagraph (A) had never applied.”.

SEC. 3102. EXTENSION OF THE WORK GEOGRAPHIC INDEX FLOOR AND REVISIONS TO THE PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

(a) **EXTENSION OF WORK GPCI FLOOR.**—Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)) is amended by striking “before January 1, 2010” and inserting “before January 1, 2011”.

(b) **PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT FOR 2010 AND SUBSEQUENT YEARS.**—Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)) is amended—

(1) in subparagraph (A), by striking “and (G)” and inserting “(G), and (H)”; and

(2) by adding at the end the following new subparagraph:

“(H) **PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT FOR 2010 AND SUBSEQUENT YEARS.**—

“(i) **FOR 2010.**—Subject to clause (iii), for services furnished during 2010, the employee wage and rent portions of the practice expense geographic index described in subparagraph (A)(i) shall reflect $\frac{3}{4}$ of the difference between the relative costs of employee wages and rents in each of the different fee schedule areas and the national average of such employee wages and rents.

“(ii) **FOR 2011.**—Subject to clause (iii), for services furnished during 2011, the employee wage and rent portions of the practice expense geographic index described in subparagraph (A)(i) shall reflect $\frac{1}{2}$ of the difference between the relative costs of employee wages and rents in each of the different fee schedule areas and the national average of such employee wages and rents.

“(iii) **HOLD HARMLESS.**—The practice expense portion of the geographic adjustment factor applied in a fee schedule area for services furnished in 2010 or 2011 shall not, as a result of the application of clause (i) or (ii), be reduced below the practice expense portion of the geographic adjustment factor under subparagraph (A)(i) (as calculated prior to the application of such clause (i) or (ii), respectively) for such area for such year.

“(iv) **ANALYSIS.**—The Secretary shall analyze current methods of establishing practice expense geographic adjustments under subparagraph (A)(i) and evaluate data that fairly and reliably establishes distinctions in the costs of operating a medical practice in the different fee schedule areas. Such analysis shall include an evaluation of the following:

“(I) The feasibility of using actual data or reliable survey data developed by medical organizations on the costs of operating a medical practice, including office rents and non-physician staff wages, in different fee schedule areas.

“(II) The office expense portion of the practice expense geographic adjustment described in subparagraph (A)(i), including the extent to which

types of office expenses are determined in local markets instead of national markets.

“(III) The weights assigned to each of the categories within the practice expense geographic adjustment described in subparagraph (A)(i).

“(v) REVISION FOR 2012 AND SUBSEQUENT YEARS.—Deadline.

As a result of the analysis described in clause (iv), the Secretary shall, not later than January 1, 2012, make appropriate adjustments to the practice expense geographic adjustment described in subparagraph (A)(i) to ensure accurate geographic adjustments across fee schedule areas, including—

“(I) basing the office rents component and its weight on office expenses that vary among fee schedule areas; and

“(II) considering a representative range of professional and non-professional personnel employed in a medical office based on the use of the American Community Survey data or other reliable data for wage adjustments.

Such adjustments shall be made without regard to adjustments made pursuant to clauses (i) and (ii) and shall be made in a budget neutral manner.”.

SEC. 3103. EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

SEC. 3104. EXTENSION OF PAYMENT FOR TECHNICAL COMPONENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES.

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106-554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w-4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w-4 note), section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), and section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), is amended by striking “and 2009” and inserting “2009, and 2010”.

SEC. 3105. EXTENSION OF AMBULANCE ADD-ONS.

(a) GROUND AMBULANCE.—Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)) is amended—

(1) in the matter preceding clause (i)—

(A) by striking “2007, and for” and inserting “2007, for”; and

(B) by striking “2010” and inserting “2010, and for such services furnished on or after April 1, 2010, and before January 1, 2011,”; and

(2) in each of clauses (i) and (ii), by inserting “, and on or after April 1, 2010, and before January 1, 2011” after “January 1, 2010” each place it appears.

(b) AIR AMBULANCE.—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law

42 USC 1395m
note.

110–275) is amended by striking “December 31, 2009” and inserting “December 31, 2009, and during the period beginning on April 1, 2010, and ending on January 1, 2011”.

(c) **SUPER RURAL AMBULANCE.**—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended by striking “2010” and inserting “2010, and on or after April 1, 2010, and before January 1, 2011”.

SEC. 3106. EXTENSION OF CERTAIN PAYMENT RULES FOR LONG-TERM CARE HOSPITAL SERVICES AND OF MORATORIUM ON THE ESTABLISHMENT OF CERTAIN HOSPITALS AND FACILITIES.

(a) **EXTENSION OF CERTAIN PAYMENT RULES.**—Section 114(c) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395www note), as amended by section 4302(a) of the American Recovery and Reinvestment Act (Public Law 111–5), is further amended by striking “3-year period” each place it appears and inserting “4-year period”.

(b) **EXTENSION OF MORATORIUM.**—Section 114(d)(1) of such Act (42 U.S.C. 1395www note), in the matter preceding subparagraph (A), is amended by striking “3-year period” and inserting “4-year period”.

SEC. 3107. EXTENSION OF PHYSICIAN FEE SCHEDULE MENTAL HEALTH ADD-ON.

Section 138(a)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

SEC. 3108. PERMITTING PHYSICIAN ASSISTANTS TO ORDER POST-HOSPITAL EXTENDED CARE SERVICES.

(a) **ORDERING POST-HOSPITAL EXTENDED CARE SERVICES.**—

(1) **IN GENERAL.**—Section 1814(a)(2) of the Social Security Act (42 U.S.C. 1395f(a)(2)), in the matter preceding subparagraph (A), is amended by striking “or clinical nurse specialist” and inserting “, a clinical nurse specialist, or a physician assistant (as those terms are defined in section 1861(aa)(5))” after “nurse practitioner”.

(2) **CONFORMING AMENDMENT.**—Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)) is amended, in the second sentence, by striking “or clinical nurse specialist” and inserting “clinical nurse specialist, or physician assistant” after “nurse practitioner”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to items and services furnished on or after January 1, 2011.

SEC. 3109. EXEMPTION OF CERTAIN PHARMACIES FROM ACCREDITATION REQUIREMENTS.

(a) **IN GENERAL.**—Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)), as added by section 154(b)(1)(A) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 100–275), is amended—

(1) in subparagraph (F)(i)—

(A) by inserting “and subparagraph (G)” after “clause (ii)”; and

(B) by inserting “, except that the Secretary shall not require a pharmacy to have submitted to the Secretary

42 USC 1395w–4
note.

42 USC 1395f
note.

such evidence of accreditation prior to January 1, 2011” before the semicolon at the end; and

(2) by adding at the end the following new subparagraph:

“(G) APPLICATION OF ACCREDITATION REQUIREMENT TO CERTAIN PHARMACIES.—

“(i) IN GENERAL.—With respect to items and services furnished on or after January 1, 2011, in implementing quality standards under this paragraph—

“(I) subject to subclause (II), in applying such standards and the accreditation requirement of subparagraph (F)(i) with respect to pharmacies described in clause (ii) furnishing such items and services, such standards and accreditation requirement shall not apply to such pharmacies; and

“(II) the Secretary may apply to such pharmacies an alternative accreditation requirement established by the Secretary if the Secretary determines such alternative accreditation requirement is more appropriate for such pharmacies.

“(ii) PHARMACIES DESCRIBED.—A pharmacy described in this clause is a pharmacy that meets each of the following criteria: Criteria.

“(I) The total billings by the pharmacy for such items and services under this title are less than 5 percent of total pharmacy sales, as determined based on the average total pharmacy sales for the previous 3 calendar years, 3 fiscal years, or other yearly period specified by the Secretary.

“(II) The pharmacy has been enrolled under section 1866(j) as a supplier of durable medical equipment, prosthetics, orthotics, and supplies, has been issued (which may include the renewal of) a provider number for at least 5 years, and for which a final adverse action (as defined in section 424.57(a) of title 42, Code of Federal Regulations) has not been imposed in the past 5 years.

“(III) The pharmacy submits to the Secretary an attestation, in a form and manner, and at a time, specified by the Secretary, that the pharmacy meets the criteria described in subclauses (I) and (II). Such attestation shall be subject to section 1001 of title 18, United States Code.

“(IV) The pharmacy agrees to submit materials as requested by the Secretary, or during the course of an audit conducted on a random sample of pharmacies selected annually, to verify that the pharmacy meets the criteria described in subclauses (I) and (II). Materials submitted under the preceding sentence shall include a certification by an accountant on behalf of the pharmacy or the submission of tax returns filed by the pharmacy during the relevant periods, as requested by the Secretary.”

(b) ADMINISTRATION.—Notwithstanding any other provision of law, the Secretary may implement the amendments made by subsection (a) by program instruction or otherwise. 42 USC 1395m note.

42 USC 1395m
note.

(c) **RULE OF CONSTRUCTION.**—Nothing in the provisions of or amendments made by this section shall be construed as affecting the application of an accreditation requirement for pharmacies to qualify for bidding in a competitive acquisition area under section 1847 of the Social Security Act (42 U.S.C. 1395w–3).

SEC. 3110. PART B SPECIAL ENROLLMENT PERIOD FOR DISABLED TRICARE BENEFICIARIES.

(a) **IN GENERAL.**—

(1) **IN GENERAL.**—Section 1837 of the Social Security Act (42 U.S.C. 1395p) is amended by adding at the end the following new subsection:

“(1)(1) In the case of any individual who is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code) at the time the individual is entitled to part A under section 226(b) or section 226A and who is eligible to enroll but who has elected not to enroll (or to be deemed enrolled) during the individual’s initial enrollment period, there shall be a special enrollment period described in paragraph (2).

“(2) The special enrollment period described in this paragraph, with respect to an individual, is the 12-month period beginning on the day after the last day of the initial enrollment period of the individual or, if later, the 12-month period beginning with the month the individual is notified of enrollment under this section.

“(3) In the case of an individual who enrolls during the special enrollment period provided under paragraph (1), the coverage period under this part shall begin on the first day of the month in which the individual enrolls, or, at the option of the individual, the first month after the end of the individual’s initial enrollment period.

“(4) An individual may only enroll during the special enrollment period provided under paragraph (1) one time during the individual’s lifetime.

“(5) The Secretary shall ensure that the materials relating to coverage under this part that are provided to an individual described in paragraph (1) prior to the individual’s initial enrollment period contain information concerning the impact of not enrolling under this part, including the impact on health care benefits under the TRICARE program under chapter 55 of title 10, United States Code.

“(6) The Secretary of Defense shall collaborate with the Secretary of Health and Human Services and the Commissioner of Social Security to provide for the accurate identification of individuals described in paragraph (1). The Secretary of Defense shall provide such individuals with notification with respect to this subsection. The Secretary of Defense shall collaborate with the Secretary of Health and Human Services and the Commissioner of Social Security to ensure appropriate follow up pursuant to any notification provided under the preceding sentence.”.

42 USC 1395p
note.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to elections made with respect to initial enrollment periods that end after the date of the enactment of this Act.

(b) **WAIVER OF INCREASE OF PREMIUM.**—Section 1839(b) of the Social Security Act (42 U.S.C. 1395r(b)) is amended by striking “section 1837(i)(4)” and inserting “subsection (i)(4) or (l) of section 1837”.

SEC. 3111. PAYMENT FOR BONE DENSITY TESTS.**(a) PAYMENT.—**

(1) **IN GENERAL.**—Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(A) in subsection (b)—

(i) in paragraph (4)(B), by inserting “, and for 2010 and 2011, dual-energy x-ray absorptiometry services (as described in paragraph (6))” before the period at the end; and

(ii) by adding at the end the following new paragraph:

“(6) **TREATMENT OF BONE MASS SCANS.**—For dual-energy x-ray absorptiometry services (identified in 2006 by HCPCS codes 76075 and 76077 (and any succeeding codes)) furnished during 2010 and 2011, instead of the payment amount that would otherwise be determined under this section for such years, the payment amount shall be equal to 70 percent of the product of—

“(A) the relative value for the service (as determined in subsection (c)(2)) for 2006;

“(B) the conversion factor (established under subsection (d)) for 2006; and

“(C) the geographic adjustment factor (established under subsection (e)(2)) for the service for the fee schedule area for 2010 and 2011, respectively.”; and

(B) in subsection (c)(2)(B)(iv)—

(i) in subclause (II), by striking “and” at the end;

(ii) in subclause (III), by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following new subclause:

“(IV) subsection (b)(6) shall not be taken into account in applying clause (ii)(II) for 2010 or 2011.”.

(2) **IMPLEMENTATION.**—Notwithstanding any other provision of law, the Secretary may implement the amendments made by paragraph (1) by program instruction or otherwise.

42 USC 1395w-4
note.

(b) STUDY AND REPORT BY THE INSTITUTE OF MEDICINE.—

(1) **IN GENERAL.**—The Secretary of Health and Human Services is authorized to enter into an agreement with the Institute of Medicine of the National Academies to conduct a study on the ramifications of Medicare payment reductions for dual-energy x-ray absorptiometry (as described in section 1848(b)(6) of the Social Security Act, as added by subsection (a)(1)) during 2007, 2008, and 2009 on beneficiary access to bone mass density tests.

(2) **REPORT.**—An agreement entered into under paragraph (1) shall provide for the Institute of Medicine to submit to the Secretary and to Congress a report containing the results of the study conducted under such paragraph.

SEC. 3112. REVISION TO THE MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1)(A) of the Social Security Act (42 U.S.C. 1395iii) is amended by striking “\$22,290,000,000” and inserting “\$0”.

42 USC 1395l
note.

SEC. 3113. TREATMENT OF CERTAIN COMPLEX DIAGNOSTIC LABORATORY TESTS.

(a) DEMONSTRATION PROJECT.—

(1) **IN GENERAL.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct a demonstration project under part B title XVIII of the Social Security Act under which separate payments are made under such part for complex diagnostic laboratory tests provided to individuals under such part. Under the demonstration project, the Secretary shall establish appropriate payment rates for such tests.

(2) **COVERED COMPLEX DIAGNOSTIC LABORATORY TEST DEFINED.**—In this section, the term “complex diagnostic laboratory test” means a diagnostic laboratory test—

(A) that is an analysis of gene protein expression, topographic genotyping, or a cancer chemotherapy sensitivity assay;

(B) that is determined by the Secretary to be a laboratory test for which there is not an alternative test having equivalent performance characteristics;

(C) which is billed using a Health Care Procedure Coding System (HCPCS) code other than a not otherwise classified code under such Coding System;

(D) which is approved or cleared by the Food and Drug Administration or is covered under title XVIII of the Social Security Act; and

(E) is described in section 1861(s)(3) of the Social Security Act (42 U.S.C. 1395x(s)(3)).

(3) **SEPARATE PAYMENT DEFINED.**—In this section, the term “separate payment” means direct payment to a laboratory (including a hospital-based or independent laboratory) that performs a complex diagnostic laboratory test with respect to a specimen collected from an individual during a period in which the individual is a patient of a hospital if the test is performed after such period of hospitalization and if separate payment would not otherwise be made under title XVIII of the Social Security Act by reason of sections 1862(a)(14) and 1866(a)(1)(H)(i) of the such Act (42 U.S.C. 1395y(a)(14); 42 U.S.C. 1395cc(a)(1)(H)(i)).

(b) **DURATION.**—Subject to subsection (c)(2), the Secretary shall conduct the demonstration project under this section for the 2-year period beginning on July 1, 2011.

(c) **PAYMENTS AND LIMITATION.**—Payments under the demonstration project under this section shall—

(1) be made from the Federal Supplemental Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t); and

(2) may not exceed \$100,000,000.

(d) **REPORT.**—Not later than 2 years after the completion of the demonstration project under this section, the Secretary shall submit to Congress a report on the project. Such report shall include—

(1) an assessment of the impact of the demonstration project on access to care, quality of care, health outcomes, and expenditures under title XVIII of the Social Security Act (including any savings under such title); and

(2) such recommendations as the Secretary determines appropriate.

(e) **IMPLEMENTATION FUNDING.**—For purposes of administering this section (including preparing and submitting the report under subsection (d)), the Secretary shall provide for the transfer, from the Federal Supplemental Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t), to the Centers for Medicare & Medicaid Services Program Management Account, of \$5,000,000. Amounts transferred under the preceding sentence shall remain available until expended.

SEC. 3114. IMPROVED ACCESS FOR CERTIFIED NURSE-MIDWIFE SERVICES.

Section 1833(a)(1)(K) of the Social Security Act (42 U.S.C. 1395l(a)(1)(K)) is amended by inserting “(or 100 percent for services furnished on or after January 1, 2011)” after “1992, 65 percent”.

PART II—RURAL PROTECTIONS

SEC. 3121. EXTENSION OF OUTPATIENT HOLD HARMLESS PROVISION.

(a) **IN GENERAL.**—Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

(1) in subclause (II)—

(A) in the first sentence, by striking “2010” and inserting “2011”; and

(B) in the second sentence, by striking “or 2009” and inserting “, 2009, or 2010”; and

(2) in subclause (III), by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) **PERMITTING ALL SOLE COMMUNITY HOSPITALS TO BE ELIGIBLE FOR HOLD HARMLESS.**—Section 1833(t)(7)(D)(i)(III) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)(III)) is amended by adding at the end the following new sentence: “In the case of covered OPD services furnished on or after January 1, 2010, and before January 1, 2011, the preceding sentence shall be applied without regard to the 100-bed limitation.”

Time period.
Applicability.

SEC. 3122. EXTENSION OF MEDICARE REASONABLE COSTS PAYMENTS FOR CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL PATIENTS IN CERTAIN RURAL AREAS.

42 USC 1395l
note.

Section 416(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395l–4), as amended by section 105 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l note) and section 107 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395l note), is amended by inserting “or during the 1-year period beginning on July 1, 2010” before the period at the end.

SEC. 3123. EXTENSION OF THE RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM.

42 USC 1395ww
note.

(a) **ONE-YEAR EXTENSION.**—Section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2272) is amended by adding at the end the following new subsection:

“(g) **ONE-YEAR EXTENSION OF DEMONSTRATION PROGRAM.**—

“(1) **IN GENERAL.**—Subject to the succeeding provisions of this subsection, the Secretary shall conduct the demonstration

program under this section for an additional 1-year period (in this section referred to as the ‘1-year extension period’) that begins on the date immediately following the last day of the initial 5-year period under subsection (a)(5).

“(2) EXPANSION OF DEMONSTRATION STATES.—Notwithstanding subsection (a)(2), during the 1-year extension period, the Secretary shall expand the number of States with low population densities determined by the Secretary under such subsection to 20. In determining which States to include in such expansion, the Secretary shall use the same criteria and data that the Secretary used to determine the States under such subsection for purposes of the initial 5-year period.

“(3) INCREASE IN MAXIMUM NUMBER OF HOSPITALS PARTICIPATING IN THE DEMONSTRATION PROGRAM.—Notwithstanding subsection (a)(4), during the 1-year extension period, not more than 30 rural community hospitals may participate in the demonstration program under this section.

“(4) NO AFFECT ON HOSPITALS IN DEMONSTRATION PROGRAM ON DATE OF ENACTMENT.—In the case of a rural community hospital that is participating in the demonstration program under this section as of the last day of the initial 5-year period, the Secretary shall provide for the continued participation of such rural community hospital in the demonstration program during the 1-year extension period unless the rural community hospital makes an election, in such form and manner as the Secretary may specify, to discontinue such participation.”.

(b) CONFORMING AMENDMENTS.—Subsection (a)(5) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2272) is amended by inserting “(in this section referred to as the ‘initial 5-year period’) and, as provided in subsection (g), for the 1-year extension period” after “5-year period”.

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (b) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2272) is amended—

(A) in paragraph (1)(B)(ii), by striking “2)” and inserting “2)”; and

(B) in paragraph (2), by inserting “cost” before “reporting period” the first place such term appears in each of subparagraphs (A) and (B).

(2) Subsection (f)(1) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2272) is amended—

(A) in subparagraph (A)(ii), by striking “paragraph (2)” and inserting “subparagraph (B)”; and

(B) in subparagraph (B), by striking “paragraph (1)(B)” and inserting “subparagraph (A)(ii)”.

SEC. 3124. EXTENSION OF THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM.

(a) EXTENSION OF PAYMENT METHODOLOGY.—Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(1) in clause (i), by striking “October 1, 2011” and inserting “October 1, 2012”; and

(2) in clause (ii)(II), by striking “October 1, 2011” and inserting “October 1, 2012”.

(b) CONFORMING AMENDMENTS.—

(1) EXTENSION OF TARGET AMOUNT.—Section 1886(b)(3)(D) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(D)) is amended—

(A) in the matter preceding clause (i), by striking “October 1, 2011” and inserting “October 1, 2012”; and

(B) in clause (iv), by striking “through fiscal year 2011” and inserting “through fiscal year 2012”.

(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—Section 13501(e)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 1395ww note) is amended by striking “through fiscal year 2011” and inserting “through fiscal year 2012”.

SEC. 3125. TEMPORARY IMPROVEMENTS TO THE MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.

Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12)) is amended—

(1) in subparagraph (A), by inserting “or (D)” after “subparagraph (B)”;

(2) in subparagraph (B), in the matter preceding clause (i), by striking “The Secretary” and inserting “For discharges occurring in fiscal years 2005 through 2010 and for discharges occurring in fiscal year 2013 and subsequent fiscal years, the Secretary”;

(3) in subparagraph (C)(i)—

(A) by inserting “(or, with respect to fiscal years 2011 and 2012, 15 road miles)” after “25 road miles”; and

(B) by inserting “(or, with respect to fiscal years 2011 and 2012, 1,500 discharges of individuals entitled to, or enrolled for, benefits under part A)” after “800 discharges”; and

(4) by adding at the end the following new subparagraph:

“(D) TEMPORARY APPLICABLE PERCENTAGE INCREASE.—For discharges occurring in fiscal years 2011 and 2012, the Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) using a continuous linear sliding scale ranging from 25 percent for low-volume hospitals with 200 or fewer discharges of individuals entitled to, or enrolled for, benefits under part A in the fiscal year to 0 percent for low-volume hospitals with greater than 1,500 discharges of such individuals in the fiscal year.”.

SEC. 3126. IMPROVEMENTS TO THE DEMONSTRATION PROJECT ON COMMUNITY HEALTH INTEGRATION MODELS IN CERTAIN RURAL COUNTIES.

(a) REMOVAL OF LIMITATION ON NUMBER OF ELIGIBLE COUNTIES SELECTED.—Subsection (d)(3) of section 123 of the Medicare Improvements for Patients and Providers Act of 2008 (42 U.S.C. 1395i–4 note) is amended by striking “not more than 6”.

(b) REMOVAL OF REFERENCES TO RURAL HEALTH CLINIC SERVICES AND INCLUSION OF PHYSICIANS’ SERVICES IN SCOPE OF DEMONSTRATION PROJECT.—Such section 123 is amended—

(1) in subsection (d)(4)(B)(i)(3), by striking subclause (III); and

(2) in subsection (j)—

(A) in paragraph (8), by striking subparagraph (B) and inserting the following:

“(B) Physicians’ services (as defined in section 1861(q) of the Social Security Act (42 U.S.C. 1395x(q)).”;

(B) by striking paragraph (9); and

(C) by redesignating paragraph (10) as paragraph (9).

SEC. 3127. MEDPAC STUDY ON ADEQUACY OF MEDICARE PAYMENTS FOR HEALTH CARE PROVIDERS SERVING IN RURAL AREAS.

(a) **STUDY.**—The Medicare Payment Advisory Commission shall conduct a study on the adequacy of payments for items and services furnished by providers of services and suppliers in rural areas under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). Such study shall include an analysis of—

(1) any adjustments in payments to providers of services and suppliers that furnish items and services in rural areas;

(2) access by Medicare beneficiaries to items and services in rural areas;

(3) the adequacy of payments to providers of services and suppliers that furnish items and services in rural areas; and

(4) the quality of care furnished in rural areas.

(b) **REPORT.**—Not later than January 1, 2011, the Medicare Payment Advisory Commission shall submit to Congress a report containing the results of the study conducted under subsection (a). Such report shall include recommendations on appropriate modifications to any adjustments in payments to providers of services and suppliers that furnish items and services in rural areas, together with recommendations for such legislation and administrative action as the Medicare Payment Advisory Commission determines appropriate.

SEC. 3128. TECHNICAL CORRECTION RELATED TO CRITICAL ACCESS HOSPITAL SERVICES.

(a) **IN GENERAL.**—Subsections (g)(2)(A) and (l)(8) of section 1834 of the Social Security Act (42 U.S.C. 1395m) are each amended by inserting “101 percent of” before “the reasonable costs”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect as if included in the enactment of section 405(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2266).

SEC. 3129. EXTENSION OF AND REVISIONS TO MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.

(a) **AUTHORIZATION.**—Section 1820(j) of the Social Security Act (42 U.S.C. 1395i–4(j)) is amended—

(1) by striking “2010, and for” and inserting “2010, for”; and

(2) by inserting “and for making grants to all States under subsection (g), such sums as may be necessary in each of fiscal years 2011 and 2012, to remain available until expended” before the period at the end.

(b) **USE OF FUNDS.**—Section 1820(g)(3) of the Social Security Act (42 U.S.C. 1395i–4(g)(3)) is amended—

(1) in subparagraph (A), by inserting “and to assist such hospitals in participating in delivery system reforms under the provisions of and amendments made by the Patient Protection and Affordable Care Act, such as value-based purchasing programs, accountable care organizations under section 1899, the National pilot program on payment bundling under section 1866D, and other delivery system reform programs determined appropriate by the Secretary” before the period at the end; and

(2) in subparagraph (E)—

(A) by striking “, and to offset” and inserting “, to offset”; and

(B) by inserting “and to participate in delivery system reforms under the provisions of and amendments made by the Patient Protection and Affordable Care Act, such as value-based purchasing programs, accountable care organizations under section 1899, the National pilot program on payment bundling under section 1866D, and other delivery system reform programs determined appropriate by the Secretary” before the period at the end.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to grants made on or after January 1, 2010.

42 USC 1395i-4
note.

PART III—IMPROVING PAYMENT ACCURACY

SEC. 3131. PAYMENT ADJUSTMENTS FOR HOME HEALTH CARE.

(a) REBASING HOME HEALTH PROSPECTIVE PAYMENT AMOUNT.—

(1) IN GENERAL.—Section 1895(b)(3)(A) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(A)) is amended—

(A) in clause (i)(III), by striking “For periods” and inserting “Subject to clause (iii), for periods”; and

(B) by adding at the end the following new clause:
“(iii) ADJUSTMENT FOR 2013 AND SUBSEQUENT YEARS.—

“(I) IN GENERAL.—Subject to subclause (II), for 2013 and subsequent years, the amount (or amounts) that would otherwise be applicable under clause (i)(III) shall be adjusted by a percentage determined appropriate by the Secretary to reflect such factors as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other factors that the Secretary considers to be relevant. In conducting the analysis under the preceding sentence, the Secretary may consider differences between hospital-based and free-standing agencies, between for-profit and nonprofit agencies, and between the resource costs of urban and rural agencies. Such adjustment shall be made before the update under subparagraph (B) is applied for the year.

“(II) TRANSITION.—The Secretary shall provide for a 4-year phase-in (in equal increments) of the adjustment under subclause (I), with such adjustment being fully implemented for 2016. During each year of such phase-in, the amount of any

adjustment under subclause (I) for the year may not exceed 3.5 percent of the amount (or amounts) applicable under clause (i)(III) as of the date of enactment of the Patient Protection and Affordable Care Act.”.

(2) MEDPAC STUDY AND REPORT.—

(A) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the implementation of the amendments made by paragraph (1). Such study shall include an analysis of the impact of such amendments on—

- (i) access to care;
- (ii) quality outcomes;
- (iii) the number of home health agencies; and
- (iv) rural agencies, urban agencies, for-profit agencies, and nonprofit agencies.

(B) REPORT.—Not later than January 1, 2015, the Medicare Payment Advisory Commission shall submit to Congress a report on the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Commission determines appropriate.

(b) PROGRAM-SPECIFIC OUTLIER CAP.—Section 1895(b) of the Social Security Act (42 U.S.C. 1395fff(b)) is amended—

(1) in paragraph (3)(C), by striking “the aggregate” and all that follows through the period at the end and inserting “5 percent of the total payments estimated to be made based on the prospective payment system under this subsection for the period.”; and

(2) in paragraph (5)—

(A) by striking “OUTLIERS.—The Secretary” and inserting the following: “OUTLIERS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary”;

(B) in subparagraph (A), as added by subparagraph (A), by striking “5 percent” and inserting “2.5 percent”; and

(C) by adding at the end the following new subparagraph:

“(B) PROGRAM SPECIFIC OUTLIER CAP.—The estimated total amount of additional payments or payment adjustments made under subparagraph (A) with respect to a home health agency for a year (beginning with 2011) may not exceed an amount equal to 10 percent of the estimated total amount of payments made under this section (without regard to this paragraph) with respect to the home health agency for the year.”.

(c) APPLICATION OF THE MEDICARE RURAL HOME HEALTH ADD-ON POLICY.—Section 421 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2283), as amended by section 5201(b) of the Deficit Reduction Act of 2005 (Public Law 109-171; 120 Stat. 46), is amended—

(1) in the section heading, by striking “ONE-YEAR” and inserting “TEMPORARY”; and

(2) in subsection (a)—

(A) by striking “, and episodes” and inserting “, episodes”;

(B) by inserting “and episodes and visits ending on or after April 1, 2010, and before January 1, 2016,” after “January 1, 2007,”; and

(C) by inserting “(or, in the case of episodes and visits ending on or after April 1, 2010, and before January 1, 2016, 3 percent)” before the period at the end.

(d) STUDY AND REPORT ON THE DEVELOPMENT OF HOME HEALTH PAYMENT REFORMS IN ORDER TO ENSURE ACCESS TO CARE AND QUALITY SERVICES.—

42 USC 1395fff
note.

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct a study to evaluate the costs and quality of care among efficient home health agencies relative to other such agencies in providing ongoing access to care and in treating Medicare beneficiaries with varying severity levels of illness. Such study shall include an analysis of the following:

(A) Methods to revise the home health prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1395fff) to more accurately account for the costs related to patient severity of illness or to improving beneficiary access to care, including—

(i) payment adjustments for services that may be under- or over-valued;

(ii) necessary changes to reflect the resource use relative to providing home health services to low-income Medicare beneficiaries or Medicare beneficiaries living in medically underserved areas;

(iii) ways the outlier payment may be improved to more accurately reflect the cost of treating Medicare beneficiaries with high severity levels of illness;

(iv) the role of quality of care incentives and penalties in driving provider and patient behavior;

(v) improvements in the application of a wage index; and

(vi) other areas determined appropriate by the Secretary.

(B) The validity and reliability of responses on the OASIS instrument with particular emphasis on questions that relate to higher payment under the home health prospective payment system and higher outcome scores under Home Care Compare.

(C) Additional research or payment revisions under the home health prospective payment system that may be necessary to set the payment rates for home health services based on costs of high-quality and efficient home health agencies or to improve Medicare beneficiary access to care.

(D) A timetable for implementation of any appropriate changes based on the analysis of the matters described in subparagraphs (A), (B), and (C).

(E) Other areas determined appropriate by the Secretary.

(2) CONSIDERATIONS.—In conducting the study under paragraph (1), the Secretary shall consider whether certain factors

should be used to measure patient severity of illness and access to care, such as—

(A) population density and relative patient access to care;

(B) variations in service costs for providing care to individuals who are dually eligible under the Medicare and Medicaid programs;

(C) the presence of severe or chronic diseases, as evidenced by multiple, discontinuous home health episodes;

(D) poverty status, as evidenced by the receipt of Supplemental Security Income under title XVI of the Social Security Act;

(E) the absence of caregivers;

(F) language barriers;

(G) atypical transportation costs;

(H) security costs; and

(I) other factors determined appropriate by the Secretary.

(3) REPORT.—Not later than March 1, 2011, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(4) CONSULTATIONS.—In conducting the study under paragraph (1) and preparing the report under paragraph (3), the Secretary shall consult with—

(A) stakeholders representing home health agencies;

(B) groups representing Medicare beneficiaries;

(C) the Medicare Payment Advisory Commission;

(D) the Inspector General of the Department of Health and Human Services; and

(E) the Comptroller General of the United States.

SEC. 3132. HOSPICE REFORM.

(a) HOSPICE CARE PAYMENT REFORMS.—

(1) IN GENERAL.—Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)), as amended by section 3004(c), is amended—

(A) by redesignating paragraph (6) as paragraph (7); and

(B) by inserting after paragraph (5) the following new paragraph:

“(6)(A) The Secretary shall collect additional data and information as the Secretary determines appropriate to revise payments for hospice care under this subsection pursuant to subparagraph (D) and for other purposes as determined appropriate by the Secretary. The Secretary shall begin to collect such data by not later than January 1, 2011.

“(B) The additional data and information to be collected under subparagraph (A) may include data and information on—

“(i) charges and payments;

“(ii) the number of days of hospice care which are attributable to individuals who are entitled to, or enrolled for, benefits under part A; and

“(iii) with respect to each type of service included in hospice care—

Data and
information
collection.

Deadline.

“(I) the number of days of hospice care attributable to the type of service;

“(II) the cost of the type of service; and

“(III) the amount of payment for the type of service;

“(iv) charitable contributions and other revenue of the hospice program;

“(v) the number of hospice visits;

“(vi) the type of practitioner providing the visit; and

“(vii) the length of the visit and other basic information with respect to the visit.

“(C) The Secretary may collect the additional data and information under subparagraph (A) on cost reports, claims, or other mechanisms as the Secretary determines to be appropriate.

“(D)(i) Notwithstanding the preceding paragraphs of this subsection, not earlier than October 1, 2013, the Secretary shall, by regulation, implement revisions to the methodology for determining the payment rates for routine home care and other services included in hospice care under this part, as the Secretary determines to be appropriate. Such revisions may be based on an analysis of data and information collected under subparagraph (A). Such revisions may include adjustments to per diem payments that reflect changes in resource intensity in providing such care and services during the course of the entire episode of hospice care.

Deadline.
Regulation.

“(ii) Revisions in payment implemented pursuant to clause (i) shall result in the same estimated amount of aggregate expenditures under this title for hospice care furnished in the fiscal year in which such revisions in payment are implemented as would have been made under this title for such care in such fiscal year if such revisions had not been implemented.

“(E) The Secretary shall consult with hospice programs and the Medicare Payment Advisory Commission regarding the additional data and information to be collected under subparagraph (A) and the payment revisions under subparagraph (D).”.

(2) CONFORMING AMENDMENTS.—Section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)) is amended—

(A) in clause (ii)—

(i) in the matter preceding subclause (I), by inserting “(before the first fiscal year in which the payment revisions described in paragraph (6)(D) are implemented)” after “subsequent fiscal year”; and

(ii) in subclause (VII), by inserting “(before the first fiscal year in which the payment revisions described in paragraph (6)(D) are implemented), subject to clause (iv),” after “subsequent fiscal year”; and
(B) by adding at the end the following new clause:

“(iii) With respect to routine home care and other services included in hospice care furnished during fiscal years subsequent to the first fiscal year in which payment revisions described in paragraph (6)(D) are implemented, the payment rates for such care and services shall be the payment rates in effect under this clause during the preceding fiscal year increased by, subject to clause (iv), the market basket percentage increase

(as defined in section 1886(b)(3)(B)(iii)) for the fiscal year.”.

(b) **ADOPTION OF MEDPAC HOSPICE PROGRAM ELIGIBILITY RE-CERTIFICATION RECOMMENDATIONS.**—Section 1814(a)(7) of the Social Security Act (42 U.S.C. 1395f(a)(7)) is amended—

(1) in subparagraph (B), by striking “and” at the end; and

(2) by adding at the end the following new subparagraph:
“(D) on and after January 1, 2011—

“(i) a hospice physician or nurse practitioner has a face-to-face encounter with the individual to determine continued eligibility of the individual for hospice care prior to the 180th-day recertification and each subsequent recertification under subparagraph (A)(ii) and attests that such visit took place (in accordance with procedures established by the Secretary); and

“(ii) in the case of hospice care provided an individual for more than 180 days by a hospice program for which the number of such cases for such program comprises more than a percent (specified by the Secretary) of the total number of such cases for all programs under this title, the hospice care provided to such individual is medically reviewed (in accordance with procedures established by the Secretary); and”.

SEC. 3133. IMPROVEMENT TO MEDICARE DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS.

Section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by sections 3001, 3008, and 3025, is amended—

(1) in subsection (d)(5)(F)(i), by striking “For” and inserting “Subject to subsection (r), for”; and

(2) by adding at the end the following new subsection:
“(r) **ADJUSTMENTS TO MEDICARE DSH PAYMENTS.**—

“(1) **EMPIRICALLY JUSTIFIED DSH PAYMENTS.**—For fiscal year 2015 and each subsequent fiscal year, instead of the amount of disproportionate share hospital payment that would otherwise be made under subsection (d)(5)(F) to a subsection (d) hospital for the fiscal year, the Secretary shall pay to the subsection (d) hospital 25 percent of such amount (which represents the empirically justified amount for such payment, as determined by the Medicare Payment Advisory Commission in its March 2007 Report to the Congress).

“(2) **ADDITIONAL PAYMENT.**—In addition to the payment made to a subsection (d) hospital under paragraph (1), for fiscal year 2015 and each subsequent fiscal year, the Secretary shall pay to such subsection (d) hospitals an additional amount equal to the product of the following factors:

“(A) **FACTOR ONE.**—A factor equal to the difference between—

“(i) the aggregate amount of payments that would be made to subsection (d) hospitals under subsection (d)(5)(F) if this subsection did not apply for such fiscal year (as estimated by the Secretary); and

“(ii) the aggregate amount of payments that are made to subsection (d) hospitals under paragraph (1) for such fiscal year (as so estimated).

“(B) **FACTOR TWO.**—

“(i) FISCAL YEARS 2015, 2016, AND 2017.—For each of fiscal years 2015, 2016, and 2017, a factor equal to 1 minus the percent change (divided by 100) in the percent of individuals under the age of 65 who are uninsured, as determined by comparing the percent of such individuals—

“(I) who are uninsured in 2012, the last year before coverage expansion under the Patient Protection and Affordable Care Act (as calculated by the Secretary based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on such Act that, if determined in the affirmative, would clear such Act for enrollment); and

“(II) who are uninsured in the most recent period for which data is available (as so calculated).

“(ii) 2018 AND SUBSEQUENT YEARS.—For fiscal year 2018 and each subsequent fiscal year, a factor equal to 1 minus the percent change (divided by 100) in the percent of individuals who are uninsured, as determined by comparing the percent of individuals—

“(I) who are uninsured in 2012 (as estimated by the Secretary, based on data from the Census Bureau or other sources the Secretary determines appropriate, and certified by the Chief Actuary of the Centers for Medicare & Medicaid Services); and

“(II) who are uninsured in the most recent period for which data is available (as so estimated and certified).

“(C) FACTOR THREE.—A factor equal to the percent, for each subsection (d) hospital, that represents the quotient of—

“(i) the amount of uncompensated care for such hospital for a period selected by the Secretary (as estimated by the Secretary, based on appropriate data (including, in the case where the Secretary determines that alternative data is available which is a better proxy for the costs of subsection (d) hospitals for treating the uninsured, the use of such alternative data)); and

“(ii) the aggregate amount of uncompensated care for all subsection (d) hospitals that receive a payment under this subsection for such period (as so estimated, based on such data).

“(3) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the following:

“(A) Any estimate of the Secretary for purposes of determining the factors described in paragraph (2).

“(B) Any period selected by the Secretary for such purposes.”.

SEC. 3134. MISVALUED CODES UNDER THE PHYSICIAN FEE SCHEDULE.

(a) IN GENERAL.—Section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w-4(c)(2)) is amended by adding at the end the following new subparagraphs:

“(K) POTENTIALLY MISVALUED CODES.—

“(i) IN GENERAL.—The Secretary shall—

“(I) periodically identify services as being potentially misvalued using criteria specified in clause (ii); and

“(II) review and make appropriate adjustments to the relative values established under this paragraph for services identified as being potentially misvalued under subclause (I).

“(ii) IDENTIFICATION OF POTENTIALLY MISVALUED CODES.—For purposes of identifying potentially misvalued services pursuant to clause (i)(I), the Secretary shall examine (as the Secretary determines to be appropriate) codes (and families of codes as appropriate) for which there has been the fastest growth; codes (and families of codes as appropriate) that have experienced substantial changes in practice expenses; codes for new technologies or services within an appropriate period (such as 3 years) after the relative values are initially established for such codes; multiple codes that are frequently billed in conjunction with furnishing a single service; codes with low relative values, particularly those that are often billed multiple times for a single treatment; codes which have not been subject to review since the implementation of the RBRVS (the so-called ‘Harvard-valued codes’); and such other codes determined to be appropriate by the Secretary.

“(iii) REVIEW AND ADJUSTMENTS.—

“(I) The Secretary may use existing processes to receive recommendations on the review and appropriate adjustment of potentially misvalued services described in clause (i)(II).

“(II) The Secretary may conduct surveys, other data collection activities, studies, or other analyses as the Secretary determines to be appropriate to facilitate the review and appropriate adjustment described in clause (i)(II).

“(III) The Secretary may use analytic contractors to identify and analyze services identified under clause (i)(I), conduct surveys or collect data, and make recommendations on the review and appropriate adjustment of services described in clause (i)(II).

“(IV) The Secretary may coordinate the review and appropriate adjustment described in clause (i)(II) with the periodic review described in subparagraph (B).

“(V) As part of the review and adjustment described in clause (i)(II), including with respect to codes with low relative values described in clause (ii), the Secretary may make appropriate coding revisions (including using existing processes

for consideration of coding changes) which may include consolidation of individual services into bundled codes for payment under the fee schedule under subsection (b).

“(VI) The provisions of subparagraph (B)(ii)(II) shall apply to adjustments to relative value units made pursuant to this subparagraph in the same manner as such provisions apply to adjustments under subparagraph (B)(ii)(II).

“(L) VALIDATING RELATIVE VALUE UNITS.—

“(i) IN GENERAL.—The Secretary shall establish a process to validate relative value units under the fee schedule under subsection (b).

“(ii) COMPONENTS AND ELEMENTS OF WORK.—The process described in clause (i) may include validation of work elements (such as time, mental effort and professional judgment, technical skill and physical effort, and stress due to risk) involved with furnishing a service and may include validation of the pre-, post-, and intra-service components of work.

“(iii) SCOPE OF CODES.—The validation of work relative value units shall include a sampling of codes for services that is the same as the codes listed under subparagraph (K)(ii).

“(iv) METHODS.—The Secretary may conduct the validation under this subparagraph using methods described in subclauses (I) through (V) of subparagraph (K)(iii) as the Secretary determines to be appropriate.

“(v) ADJUSTMENTS.—The Secretary shall make appropriate adjustments to the work relative value units under the fee schedule under subsection (b). The provisions of subparagraph (B)(ii)(II) shall apply to adjustments to relative value units made pursuant to this subparagraph in the same manner as such provisions apply to adjustments under subparagraph (B)(ii)(II).”.

(b) IMPLEMENTATION.—

(1) ADMINISTRATION.—

(A) Chapter 35 of title 44, United States Code and the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to this section or the amendment made by this section.

(B) Notwithstanding any other provision of law, the Secretary may implement subparagraphs (K) and (L) of 1848(c)(2) of the Social Security Act, as added by subsection (a), by program instruction or otherwise.

(C) Section 4505(d) of the Balanced Budget Act of 1997 is repealed.

(D) Except for provisions related to confidentiality of information, the provisions of the Federal Acquisition Regulation shall not apply to this section or the amendment made by this section.

(2) FOCUSING CMS RESOURCES ON POTENTIALLY OVERVALUED CODES.—Section 1868(a) of the Social Security Act (42 U.S.C. 1395ee(a)) is repealed.

42 USC 1395w–4
note.

Repeal.

Repeal.

SEC. 3135. MODIFICATION OF EQUIPMENT UTILIZATION FACTOR FOR ADVANCED IMAGING SERVICES.

(a) **ADJUSTMENT IN PRACTICE EXPENSE TO REFLECT HIGHER PRESUMED UTILIZATION.**—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (b)(4)—

(A) in subparagraph (B), by striking “subparagraph (A)” and inserting “this paragraph”; and

(B) by adding at the end the following new subparagraph:

Time periods.

“(C) **ADJUSTMENT IN PRACTICE EXPENSE TO REFLECT HIGHER PRESUMED UTILIZATION.**—Consistent with the methodology for computing the number of practice expense relative value units under subsection (c)(2)(C)(ii) with respect to advanced diagnostic imaging services (as defined in section 1834(e)(1)(B)) furnished on or after January 1, 2010, the Secretary shall adjust such number of units so it reflects—

“(i) in the case of services furnished on or after January 1, 2010, and before January 1, 2013, a 65 percent (rather than 50 percent) presumed rate of utilization of imaging equipment;

“(ii) in the case of services furnished on or after January 1, 2013, and before January 1, 2014, a 70 percent (rather than 50 percent) presumed rate of utilization of imaging equipment; and

“(iii) in the case of services furnished on or after January 1, 2014, a 75 percent (rather than 50 percent) presumed rate of utilization of imaging equipment.”; and

(2) in subsection (c)(2)(B)(v), by adding at the end the following new subclauses:

“(III) **CHANGE IN PRESUMED UTILIZATION LEVEL OF CERTAIN ADVANCED DIAGNOSTIC IMAGING SERVICES FOR 2010 THROUGH 2012.**—Effective for fee schedules established beginning with 2010 and ending with 2012, reduced expenditures attributable to the presumed rate of utilization of imaging equipment of 65 percent under subsection (b)(4)(C)(i) instead of a presumed rate of utilization of such equipment of 50 percent.

“(IV) **CHANGE IN PRESUMED UTILIZATION LEVEL OF CERTAIN ADVANCED DIAGNOSTIC IMAGING SERVICES FOR 2013.**—Effective for fee schedules established for 2013, reduced expenditures attributable to the presumed rate of utilization of imaging equipment of 70 percent under subsection (b)(4)(C)(ii) instead of a presumed rate of utilization of such equipment of 50 percent.

“(V) **CHANGE IN PRESUMED UTILIZATION LEVEL OF CERTAIN ADVANCED DIAGNOSTIC IMAGING SERVICES FOR 2014 AND SUBSEQUENT YEARS.**—Effective for fee schedules established beginning with 2014, reduced expenditures attributable to the presumed

rate of utilization of imaging equipment of 75 percent under subsection (b)(4)(C)(iii) instead of a presumed rate of utilization of such equipment of 50 percent.”.

(b) **ADJUSTMENT IN TECHNICAL COMPONENT “DISCOUNT” ON SINGLE-SESSION IMAGING TO CONSECUTIVE BODY PARTS.**—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as amended by subsection (a), is amended—

(1) in subsection (b)(4), by adding at the end the following new subparagraph:

“(D) **ADJUSTMENT IN TECHNICAL COMPONENT DISCOUNT ON SINGLE-SESSION IMAGING INVOLVING CONSECUTIVE BODY PARTS.**—For services furnished on or after July 1, 2010, the Secretary shall increase the reduction in payments attributable to the multiple procedure payment reduction applicable to the technical component for imaging under the final rule published by the Secretary in the Federal Register on November 21, 2005 (part 405 of title 42, Code of Federal Regulations) from 25 percent to 50 percent.”; and

(2) in subsection (c)(2)(B)(v), by adding at the end the following new subclause:

“(VI) **ADDITIONAL REDUCED PAYMENT FOR MULTIPLE IMAGING PROCEDURES.**—Effective for fee schedules established beginning with 2010 (but not applied for services furnished prior to July 1, 2010), reduced expenditures attributable to the increase in the multiple procedure payment reduction from 25 to 50 percent (as described in subsection (b)(4)(D)).”.

(c) **ANALYSIS BY THE CHIEF ACTUARY OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES.**—Not later than January 1, 2013, the Chief Actuary of the Centers for Medicare & Medicaid Services shall make publicly available an analysis of whether, for the period of 2010 through 2019, the cumulative expenditure reductions under title XVIII of the Social Security Act that are attributable to the adjustments under the amendments made by this section are projected to exceed \$3,000,000,000.

Deadline.
Public
information.
Time period.

SEC. 3136. REVISION OF PAYMENT FOR POWER-DRIVEN WHEELCHAIRS.

(a) **IN GENERAL.**—Section 1834(a)(7)(A) of the Social Security Act (42 U.S.C. 1395m(a)(7)(A)) is amended—

(1) in clause (i)—

(A) in subclause (II), by inserting “subclause (III) and” after “Subject to”; and

(B) by adding at the end the following new subclause:

“(III) **SPECIAL RULE FOR POWER-DRIVEN WHEELCHAIRS.**—For purposes of payment for power-driven wheelchairs, subclause (II) shall be applied by substituting ‘15 percent’ and ‘6 percent’ for ‘10 percent’ and ‘7.5 percent’, respectively.”; and

(2) in clause (iii)—

(A) in the heading, by inserting “COMPLEX, REHABILITATIVE” before “POWER-DRIVEN”; and

(B) by inserting “complex, rehabilitative” before “power-driven”.

(b) TECHNICAL AMENDMENT.—Section 1834(a)(7)(C)(ii)(II) of the Social Security Act (42 U.S.C. 1395m(a)(7)(C)(ii)(II)) is amended by striking “(A)(ii) or”.

42 USC 1395m
note.
Applicability.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsection (a) shall take effect on January 1, 2011, and shall apply to power-driven wheelchairs furnished on or after such date.

(2) APPLICATION TO COMPETITIVE BIDDING.—The amendments made by subsection (a) shall not apply to payment made for items and services furnished pursuant to contracts entered into under section 1847 of the Social Security Act (42 U.S.C. 1395w–3) prior to January 1, 2011, pursuant to the implementation of subsection (a)(1)(B)(i)(I) of such section 1847.

SEC. 3137. HOSPITAL WAGE INDEX IMPROVEMENT.

(a) EXTENSION OF SECTION 508 HOSPITAL RECLASSIFICATIONS.—

42 USC 1395ww
note.

(1) IN GENERAL.—Subsection (a) of section 106 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) and section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), is amended by striking “September 30, 2009” and inserting “September 30, 2010”.

42 USC 1395ww
note.

(2) USE OF PARTICULAR WAGE INDEX IN FISCAL YEAR 2010.—For purposes of implementation of the amendment made by this subsection during fiscal year 2010, the Secretary shall use the hospital wage index that was promulgated by the Secretary in the Federal Register on August 27, 2009 (74 Fed. Reg. 43754), and any subsequent corrections.

42 USC 1395ww
note.

(b) PLAN FOR REFORMING THE MEDICARE HOSPITAL WAGE INDEX SYSTEM.—

Deadline.
Reports.

(1) IN GENERAL.—Not later than December 31, 2011, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall submit to Congress a report that includes a plan to reform the hospital wage index system under section 1886 of the Social Security Act.

(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall take into account the goals for reforming such system set forth in the Medicare Payment Advisory Commission June 2007 report entitled “Report to Congress: Promoting Greater Efficiency in Medicare”, including establishing a new hospital compensation index system that—

(A) uses Bureau of Labor Statistics data, or other data or methodologies, to calculate relative wages for each geographic area involved;

(B) minimizes wage index adjustments between and within metropolitan statistical areas and statewide rural areas;

(C) includes methods to minimize the volatility of wage index adjustments that result from implementation of policy, while maintaining budget neutrality in applying such adjustments;

(D) takes into account the effect that implementation of the system would have on health care providers and on each region of the country;

(E) addresses issues related to occupational mix, such as staffing practices and ratios, and any evidence on the effect on quality of care or patient safety as a result of the implementation of the system; and

(F) provides for a transition.

(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall consult with relevant affected parties.

(c) USE OF PARTICULAR CRITERIA FOR DETERMINING RECLASSIFICATIONS.—Notwithstanding any other provision of law, in making decisions on applications for reclassification of a subsection (d) hospital (as defined in paragraph (1)(B) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for the purposes described in paragraph (10)(D)(v) of such section for fiscal year 2011 and each subsequent fiscal year (until the first fiscal year beginning on or after the date that is 1 year after the Secretary of Health and Human Services submits the report to Congress under subsection (b)), the Geographic Classification Review Board established under paragraph (10) of such section shall use the average hourly wage comparison criteria used in making such decisions as of September 30, 2008. The preceding sentence shall be effected in a budget neutral manner.

Effective date.

SEC. 3138. TREATMENT OF CERTAIN CANCER HOSPITALS.

Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)) is amended by adding at the end the following new paragraph:

“(18) AUTHORIZATION OF ADJUSTMENT FOR CANCER HOSPITALS.—

“(A) STUDY.—The Secretary shall conduct a study to determine if, under the system under this subsection, costs incurred by hospitals described in section 1886(d)(1)(B)(v) with respect to ambulatory payment classification groups exceed those costs incurred by other hospitals furnishing services under this subsection (as determined appropriate by the Secretary). In conducting the study under this subparagraph, the Secretary shall take into consideration the cost of drugs and biologicals incurred by such hospitals.

“(B) AUTHORIZATION OF ADJUSTMENT.—Insofar as the Secretary determines under subparagraph (A) that costs incurred by hospitals described in section 1886(d)(1)(B)(v) exceed those costs incurred by other hospitals furnishing services under this subsection, the Secretary shall provide for an appropriate adjustment under paragraph (2)(E) to reflect those higher costs effective for services furnished on or after January 1, 2011.”.

SEC. 3139. PAYMENT FOR BIOSIMILAR BIOLOGICAL PRODUCTS.

(a) IN GENERAL.—Section 1847A of the Social Security Act (42 U.S.C. 1395w–3a) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “or” at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(iii) by adding at the end the following new subparagraph:

“(C) in the case of a biosimilar biological product (as defined in subsection (c)(6)(H)), the amount determined under paragraph (8).”; and

(B) by adding at the end the following new paragraph: “(8) BIOSIMILAR BIOLOGICAL PRODUCT.—The amount specified in this paragraph for a biosimilar biological product described in paragraph (1)(C) is the sum of—

“(A) the average sales price as determined using the methodology described under paragraph (6) applied to a biosimilar biological product for all National Drug Codes assigned to such product in the same manner as such paragraph is applied to drugs described in such paragraph; and

“(B) 6 percent of the amount determined under paragraph (4) for the reference biological product (as defined in subsection (c)(6)(I)).”; and

(2) in subsection (c)(6), by adding at the end the following new subparagraph:

“(H) BIOSIMILAR BIOLOGICAL PRODUCT.—The term ‘biosimilar biological product’ means a biological product approved under an abbreviated application for a license of a biological product that relies in part on data or information in an application for another biological product licensed under section 351 of the Public Health Service Act.

“(I) REFERENCE BIOLOGICAL PRODUCT.—The term ‘reference biological product’ means the biological product licensed under such section 351 that is referred to in the application described in subparagraph (H) of the biosimilar biological product.”.

Applicability.
42 USC
1395w-3a note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments for biosimilar biological products beginning with the first day of the second calendar quarter after enactment of legislation providing for a biosimilar pathway (as determined by the Secretary).

42 USC 1395d
note.

SEC. 3140. MEDICARE HOSPICE CONCURRENT CARE DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish a Medicare Hospice Concurrent Care demonstration program at participating hospice programs under which Medicare beneficiaries are furnished, during the same period, hospice care and any other items or services covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) from funds otherwise paid under such title to such hospice programs.

(2) DURATION.—The demonstration program under this section shall be conducted for a 3-year period.

(3) SITES.—The Secretary shall select not more than 15 hospice programs at which the demonstration program under this section shall be conducted. Such hospice programs shall be located in urban and rural areas.

(b) INDEPENDENT EVALUATION AND REPORTS.—

(1) INDEPENDENT EVALUATION.—The Secretary shall provide for the conduct of an independent evaluation of the demonstration program under this section. Such independent evaluation shall determine whether the demonstration program

has improved patient care, quality of life, and cost-effectiveness for Medicare beneficiaries participating in the demonstration program.

(2) **REPORTS.**—The Secretary shall submit to Congress a report containing the results of the evaluation conducted under paragraph (1), together with such recommendations as the Secretary determines appropriate.

(c) **BUDGET NEUTRALITY.**—With respect to the 3-year period of the demonstration program under this section, the Secretary shall ensure that the aggregate expenditures under title XVIII for such period shall not exceed the aggregate expenditures that would have been expended under such title if the demonstration program under this section had not been implemented.

SEC. 3141. APPLICATION OF BUDGET NEUTRALITY ON A NATIONAL BASIS IN THE CALCULATION OF THE MEDICARE HOSPITAL WAGE INDEX FLOOR.

42 USC 1395ww
note.

In the case of discharges occurring on or after October 1, 2010, for purposes of applying section 4410 of the Balanced Budget Act of 1997 (42 U.S.C. 1395ww note) and paragraph (h)(4) of section 412.64 of title 42, Code of Federal Regulations, the Secretary of Health and Human Services shall administer subsection (b) of such section 4410 and paragraph (e) of such section 412.64 in the same manner as the Secretary administered such subsection (b) and paragraph (e) for discharges occurring during fiscal year 2008 (through a uniform, national adjustment to the area wage index).

SEC. 3142. HHS STUDY ON URBAN MEDICARE-DEPENDENT HOSPITALS.

(a) **STUDY.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct a study on the need for an additional payment for urban Medicare-dependent hospitals for inpatient hospital services under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Such study shall include an analysis of—

(A) the Medicare inpatient margins of urban Medicare-dependent hospitals, as compared to other hospitals which receive 1 or more additional payments or adjustments under such section (including those payments or adjustments described in paragraph (2)(A)); and

(B) whether payments to medicare-dependent, small rural hospitals under subsection (d)(5)(G) of such section should be applied to urban Medicare-dependent hospitals.

(2) **URBAN MEDICARE-DEPENDENT HOSPITAL DEFINED.**—For purposes of this section, the term “urban Medicare-dependent hospital” means a subsection (d) hospital (as defined in subsection (d)(1)(B) of such section) that—

(A) does not receive any additional payment or adjustment under such section, such as payments for indirect medical education costs under subsection (d)(5)(B) of such section, disproportionate share payments under subsection (d)(5)(A) of such section, payments to a rural referral center under subsection (d)(5)(C) of such section, payments to a critical access hospital under section 1814(l) of such Act (42 U.S.C. 1395f(l)), payments to a sole community hospital under subsection (d)(5)(D) of such section 1886, or payments to a medicare-dependent, small rural hospital under subsection (d)(5)(G) of such section 1886; and

(B) for which more than 60 percent of its inpatient days or discharges during 2 of the 3 most recently audited cost reporting periods for which the Secretary has a settled cost report were attributable to inpatients entitled to benefits under part A of title XVIII of such Act.

(b) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

42 USC 1395d
note.

SEC. 3143. PROTECTING HOME HEALTH BENEFITS.

Nothing in the provisions of, or amendments made by, this Act shall result in the reduction of guaranteed home health benefits under title XVIII of the Social Security Act.

Subtitle C—Provisions Relating to Part C

SEC. 3201. MEDICARE ADVANTAGE PAYMENT.

(a) MA BENCHMARK BASED ON PLAN’S COMPETITIVE BIDS.—

(1) IN GENERAL.—Section 1853(j) of the Social Security Act (42 U.S.C. 1395w–23(j)) is amended—

(A) by striking “AMOUNTS.—For purposes” and inserting “AMOUNTS.—

“(1) IN GENERAL.—For purposes”;

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting the subparagraphs appropriately;

(C) in subparagraph (A), as redesignated by subparagraph (B)—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting the clauses appropriately; and

(ii) in clause (i), as redesignated by clause (i), by striking “an amount equal to” and all that follows through the end and inserting “an amount equal to—

“(I) for years before 2007, $\frac{1}{12}$ of the annual MA capitation rate under section 1853(c)(1) for the area for the year, adjusted as appropriate for the purpose of risk adjustment;

“(II) for 2007 through 2011, $\frac{1}{12}$ of the applicable amount determined under subsection (k)(1) for the area for the year;

“(III) for 2012, the sum of—

“(aa) $\frac{2}{3}$ of the quotient of—

“(AA) the applicable amount determined under subsection (k)(1) for the area for the year; and

“(BB) 12; and

“(bb) $\frac{1}{3}$ of the MA competitive benchmark amount (determined under paragraph (2)) for the area for the month;

“(IV) for 2013, the sum of—

“(aa) $\frac{1}{3}$ of the quotient of—

“(AA) the applicable amount determined under subsection (k)(1) for the area for the year; and

“(BB) 12; and

“(bb) $\frac{2}{3}$ of the MA competitive benchmark amount (as so determined) for the area for the month;

“(V) for 2014, the MA competitive benchmark amount for the area for a month in 2013 (as so determined), increased by the national per capita MA growth percentage, described in subsection (c)(6) for 2014, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

“(VI) for 2015 and each subsequent year, the MA competitive benchmark amount (as so determined) for the area for the month; or”;

(iii) in clause (ii), as redesignated by clause (i), by striking “subparagraph (A)” and inserting “clause (i)”;

(D) by adding at the end the following new paragraphs:

“(2) COMPUTATION OF MA COMPETITIVE BENCHMARK AMOUNT.—

“(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), for months in each year (beginning with 2012) for each MA payment area the Secretary shall compute an MA competitive benchmark amount equal to the weighted average of the unadjusted MA statutory non-drug monthly bid amount (as defined in section 1854(b)(2)(E)) for each MA plan in the area, with the weight for each plan being equal to the average number of beneficiaries enrolled under such plan in the reference month (as defined in section 1858(f)(4), except that, in applying such definition for purposes of this paragraph, ‘to compute the MA competitive benchmark amount under section 1853(j)(2)’ shall be substituted for ‘to compute the percentage specified in subparagraph (A) and other relevant percentages under this part’).

“(B) WEIGHTING RULES.—

“(i) SINGLE PLAN RULE.—In the case of an MA payment area in which only a single MA plan is being offered, the weight under subparagraph (A) shall be equal to 1.

“(ii) USE OF SIMPLE AVERAGE AMONG MULTIPLE PLANS IF NO PLANS OFFERED IN PREVIOUS YEAR.—In the case of an MA payment area in which no MA plan was offered in the previous year and more than 1 MA plan is offered in the current year, the Secretary shall use a simple average of the unadjusted MA statutory non-drug monthly bid amount (as so defined) for purposes of computing the MA competitive benchmark amount under subparagraph (A).

“(3) CAP ON MA COMPETITIVE BENCHMARK AMOUNT.—In no case shall the MA competitive benchmark amount for an area for a month in a year be greater than the applicable amount

that would (but for the application of this subsection) be determined under subsection (k)(1) for the area for the month in the year.”; and

(E) in subsection (k)(2)(B)(ii)(III), by striking “(j)(1)(A)” and inserting “(j)(1)(A)(i)”.

(2) CONFORMING AMENDMENTS.—

(A) Section 1853(k)(2) of the Social Security Act (42 U.S.C. 1395w-23(k)(2)) is amended—

(i) in subparagraph (A), by striking “through 2010” and inserting “and subsequent years”; and

(ii) in subparagraph (C)—

(I) in clause (iii), by striking “and” at the end;

(II) in clause (iv), by striking the period at the end and inserting “; and”; and

(III) by adding at the end the following new clause:

“(v) for 2011 and subsequent years, 0.00.”.

(B) Section 1854(b) of the Social Security Act (42 U.S.C. 1395w-24(b)) is amended—

(i) in paragraph (3)(B)(i), by striking “1853(j)(1)” and inserting “1853(j)(1)(A)”; and

(ii) in paragraph (4)(B)(i), by striking “1853(j)(2)” and inserting “1853(j)(1)(B)”.

(C) Section 1858(f) of the Social Security Act (42 U.S.C. 1395w-27(f)) is amended—

(i) in paragraph (1), by striking “1853(j)(2)” and inserting “1853(j)(1)(B)”; and

(ii) in paragraph (3)(A), by striking “1853(j)(1)(A)” and inserting “1853(j)(1)(A)(i)”.

(D) Section 1860C-1(d)(1)(A) of the Social Security Act (42 U.S.C. 1395w-29(d)(1)(A)) is amended by striking “1853(j)(1)(A)” and inserting “1853(j)(1)(A)(i)”.

(b) REDUCTION OF NATIONAL PER CAPITA GROWTH PERCENTAGE FOR 2011.—Section 1853(c)(6) of the Social Security Act (42 U.S.C. 1395w-23(c)(6)) is amended—

(1) in clause (v), by striking “and” at the end;

(2) in clause (vi)—

(A) by striking “for a year after 2002” and inserting “for 2003 through 2010”; and

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following new clauses:

“(vii) for 2011, 3 percentage points; and

“(viii) for a year after 2011, 0 percentage points.”.

(c) ENHANCEMENT OF BENEFICIARY REBATES.—Section 1854(b)(1)(C)(i) of the Social Security Act (42 U.S.C. 1395w-24(b)(1)(C)(i)) is amended by inserting “(or 100 percent in the case of plan years beginning on or after January 1, 2014)” after “75 percent”.

(d) BIDDING RULES.—

(1) REQUIREMENTS FOR INFORMATION SUBMITTED.—Section 1854(a)(6)(A) of the Social Security Act (42 U.S.C. 1395w-24(a)(6)(A)) is amended, in the flush matter following clause (v), by adding at the end the following sentence: “Information to be submitted under this paragraph shall be certified by a qualified member of the American Academy of Actuaries

42 USC
1395w-27a.

Certification.

and shall meet actuarial guidelines and rules established by the Secretary under subparagraph (B)(v).”.

(2) ESTABLISHMENT OF ACTUARIAL GUIDELINES.—Section 1854(a)(6)(B) of the Social Security Act (42 U.S.C. 1395w-24(a)(6)(B)) is amended—

(A) in clause (i), by striking “(iii) and (iv)” and inserting “(iii), (iv), and (v)”; and

(B) by adding at the end the following new clause:

“(v) ESTABLISHMENT OF ACTUARIAL GUIDELINES.—

“(I) IN GENERAL.—In order to establish fair MA competitive benchmarks under section 1853(j)(1)(A)(i), the Secretary, acting through the Chief Actuary of the Centers for Medicare & Medicaid Services (in this clause referred to as the ‘Chief Actuary’), shall establish—

“(aa) actuarial guidelines for the submission of bid information under this paragraph; and

“(bb) bidding rules that are appropriate to ensure accurate bids and fair competition among MA plans.

“(II) DENIAL OF BID AMOUNTS.—The Secretary shall deny monthly bid amounts submitted under subparagraph (A) that do not meet the actuarial guidelines and rules established under subclause (I).

“(III) REFUSAL TO ACCEPT CERTAIN BIDS DUE TO MISREPRESENTATIONS AND FAILURES TO ADEQUATELY MEET REQUIREMENTS.—In the case where the Secretary determines that information submitted by an MA organization under subparagraph (A) contains consistent misrepresentations and failures to adequately meet requirements of the organization, the Secretary may refuse to accept any additional such bid amounts from the organization for the plan year and the Chief Actuary shall, if the Chief Actuary determines that the actuaries of the organization were complicit in those misrepresentations and failures, report those actuaries to the Actuarial Board for Counseling and Discipline.”.

Determinations.
Reports.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to bid amounts submitted on or after January 1, 2012.

42 USC
1395w-24 note.

(e) MA LOCAL PLAN SERVICE AREAS.—

(1) IN GENERAL.—Section 1853(d) of the Social Security Act (42 U.S.C. 1395w-23(d)) is amended—

(A) in the subsection heading, by striking “MA REGION” and inserting “MA REGION; MA LOCAL PLAN SERVICE AREA”;

(B) in paragraph (1), by striking subparagraph (A) and inserting the following:

“(A) with respect to an MA local plan—

“(i) for years before 2012, an MA local area (as defined in paragraph (2)); and

“(ii) for 2012 and succeeding years, a service area that is an entire urban or rural area, as applicable (as described in paragraph (5)); and”;

(C) by adding at the end the following new paragraph:

“(5) MA LOCAL PLAN SERVICE AREA.—For 2012 and succeeding years, the service area for an MA local plan shall be an entire urban or rural area in each State as follows:

“(A) URBAN AREAS.—

“(i) IN GENERAL.—Subject to clause (ii) and subparagraphs (C) and (D), the service area for an MA local plan in an urban area shall be the Core Based Statistical Area (in this paragraph referred to as a ‘CBSA’) or, if applicable, a conceptually similar alternative classification, as defined by the Director of the Office of Management and Budget.

“(ii) CBSA COVERING MORE THAN ONE STATE.—In the case of a CBSA (or alternative classification) that covers more than one State, the Secretary shall divide the CBSA (or alternative classification) into separate service areas with respect to each State covered by the CBSA (or alternative classification).

“(B) RURAL AREAS.—Subject to subparagraphs (C) and (D), the service area for an MA local plan in a rural area shall be a county that does not qualify for inclusion in a CBSA (or alternative classification), as defined by the Director of the Office of Management and Budget.

“(C) REFINEMENTS TO SERVICE AREAS.—For 2015 and succeeding years, in order to reflect actual patterns of health care service utilization, the Secretary may adjust the boundaries of service areas for MA local plans in urban areas and rural areas under subparagraphs (A) and (B), respectively, but may only do so based on recent analyses of actual patterns of care.

“(D) ADDITIONAL AUTHORITY TO MAKE LIMITED EXCEPTIONS TO SERVICE AREA REQUIREMENTS FOR MA LOCAL PLANS.—The Secretary may, in addition to any adjustments under subparagraph (C), make limited exceptions to service area requirements otherwise applicable under this part for MA local plans that have in effect (as of the date of enactment of the Patient Protection and Affordable Care Act)—

“(i) agreements with another MA organization or MA plan that preclude the offering of benefits throughout an entire service area; or

“(ii) limitations in their structural capacity to support adequate networks throughout an entire service area as a result of the delivery system model of the MA local plan.”.

(2) CONFORMING AMENDMENTS.—

(A) IN GENERAL.—

(i) Section 1851(b)(1) of the Social Security Act (42 U.S.C. 1395w-21(b)(1)) is amended by striking subparagraph (C).

(ii) Section 1853(b)(1)(B)(i) of such Act (42 U.S.C. 1395w-23(b)(1)(B)(i))—

(I) in the matter preceding subclause (I), by striking “MA payment area” and inserting “MA local area (as defined in subsection (d)(2))”; and

(II) in subclause (I), by striking “MA payment area” and inserting “MA local area (as so defined)”.

(iii) Section 1853(b)(4) of such Act (42 U.S.C. 1395w-23(b)(4)) is amended by striking “Medicare Advantage payment area” and inserting “MA local area (as so defined)”.

(iv) Section 1853(c)(1) of such Act (42 U.S.C. 1395w-23(c)(1)) is amended—

(I) in the matter preceding subparagraph (A), by striking “a Medicare Advantage payment area that is”; and

(II) in subparagraph (D)(i), by striking “MA payment area” and inserting “MA local area (as defined in subsection (d)(2))”.

(v) Section 1854 of such Act (42 U.S.C. 1395w-24) is amended by striking subsection (h).

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on January 1, 2012.

42 USC
1395w-21 note.

(f) PERFORMANCE BONUSES.—

(1) MA PLANS.—

(A) IN GENERAL.—Section 1853 of the Social Security Act (42 U.S.C. 1395w-23) is amended by adding at the end the following new subsection:

“(n) PERFORMANCE BONUSES.—

“(1) CARE COORDINATION AND MANAGEMENT PERFORMANCE BONUS.—

“(A) IN GENERAL.—For years beginning with 2014, subject to subparagraph (B), in the case of an MA plan that conducts 1 or more programs described in subparagraph (C) with respect to the year, the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an individual under this part, to the MA plan in an amount equal to the product of—

Effective date.
Payments.

“(i) 0.5 percent of the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year; and

“(ii) the total number of programs described in clauses (i) through (ix) of subparagraph (C) that the Secretary determines the plan is conducting for the year under such subparagraph.

“(B) LIMITATION.—In no case may the total amount of payment with respect to a year under subparagraph (A) be greater than 2 percent of the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year, as determined prior to the application of risk adjustment under paragraph (4).

“(C) PROGRAMS DESCRIBED.—The following programs are described in this paragraph:

“(i) Care management programs that—

“(I) target individuals with 1 or more chronic conditions;

“(II) identify gaps in care; and

“(III) facilitate improved care by using additional resources like nurses, nurse practitioners, and physician assistants.

“(ii) Programs that focus on patient education and self-management of health conditions, including interventions that—

“(I) help manage chronic conditions;

“(II) reduce declines in health status; and

“(III) foster patient and provider collaboration.

“(iii) Transitional care interventions that focus on care provided around a hospital inpatient episode, including programs that target post-discharge patient care in order to reduce unnecessary health complications and readmissions.

“(iv) Patient safety programs, including provisions for hospital-based patient safety programs in contracts that the Medicare Advantage organization offering the MA plan has with hospitals.

“(v) Financial policies that promote systematic coordination of care by primary care physicians across the full spectrum of specialties and sites of care, such as medical homes, capitation arrangements, or pay-for-performance programs.

“(vi) Programs that address, identify, and ameliorate health care disparities among principal at-risk subpopulations.

“(vii) Medication therapy management programs that are more extensive than is required under section 1860D-4(c) (as determined by the Secretary).

“(viii) Health information technology programs, including clinical decision support and other tools to facilitate data collection and ensure patient-centered, appropriate care.

“(ix) Such other care management and coordination programs as the Secretary determines appropriate.

“(D) CONDUCT OF PROGRAM IN URBAN AND RURAL AREAS.—An MA plan may conduct a program described in subparagraph (C) in a manner appropriate for an urban or rural area, as applicable.

“(E) REPORTING OF DATA.—Each Medicare Advantage organization shall provide to the Secretary the information needed to determine whether they are eligible for a care coordination and management performance bonus at a time and in a manner specified by the Secretary.

Deadline.

“(F) PERIODIC AUDITING.—The Secretary shall provide for the annual auditing of programs described in subparagraph (C) for which an MA plan receives a care coordination and management performance bonus under this paragraph. The Comptroller General shall monitor auditing activities conducted under this subparagraph.

“(2) QUALITY PERFORMANCE BONUSES.—

Effective date.
Payments.

“(A) QUALITY BONUS.—For years beginning with 2014, the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an individual under this part, to an MA plan that achieves at least a 3 star rating (or

comparable rating) on a rating system described in subparagraph (C) in an amount equal to—

“(i) in the case of a plan that achieves a 3 star rating (or comparable rating) on such system 2 percent of the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year; and

“(ii) in the case of a plan that achieves a 4 or 5 star rating (or comparable rating on such system, 4 percent of such national monthly per capita cost for the year.

“(B) IMPROVED QUALITY BONUS.—For years beginning with 2014, in the case of an MA plan that does not receive a quality bonus under subparagraph (A) and is an improved quality MA plan with respect to the year (as identified by the Secretary), the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an individual under this part, to the MA plan in an amount equal to 1 percent of such national monthly per capita cost for the year.

Effective date.
Payments.

“(C) USE OF RATING SYSTEM.—For purposes of subparagraph (A), a rating system described in this paragraph is—

“(i) a rating system that uses up to 5 stars to rate clinical quality and enrollee satisfaction and performance at the Medicare Advantage contract or MA plan level; or

“(ii) such other system established by the Secretary that provides for the determination of a comparable quality performance rating to the rating system described in clause (i).

“(D) DATA USED IN DETERMINING SCORE.—

“(i) IN GENERAL.—The rating of an MA plan under the rating system described in subparagraph (C) with respect to a year shall be based on the most recent data available.

“(ii) PLANS THAT FAIL TO REPORT DATA.—An MA plan which does not report data that enables the Secretary to rate the plan for purposes of subparagraph (A) or identify the plan for purposes of subparagraph (B) shall be counted, for purposes of such rating or identification, as having the lowest plan performance rating and the lowest percentage improvement, respectively.

“(3) QUALITY BONUS FOR NEW AND LOW ENROLLMENT MA PLANS.—

“(A) NEW MA PLANS.—For years beginning with 2014, in the case of an MA plan that first submits a bid under section 1854(a)(1)(A) for 2012 or a subsequent year, only receives enrollments made during the coverage election periods described in section 1851(e), and is not able to receive a bonus under subparagraph (A) or (B) of paragraph (2) for the year, the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an individual under this part, to the MA plan in an amount equal to 2 percent of national monthly per capita cost for expenditures for

Effective date.
Payments.

individuals enrolled under the original medicare fee-for-service program for the year. In its fourth year of operation, the MA plan shall be paid in the same manner as other MA plans with comparable enrollment.

Effective date.
Determination.

“(B) LOW ENROLLMENT PLANS.—For years beginning with 2014, in the case of an MA plan that has low enrollment (as defined by the Secretary) and would not otherwise be able to receive a bonus under subparagraph (A) or (B) of paragraph (2) or subparagraph (A) of this paragraph for the year (referred to in this subparagraph as a ‘low enrollment plan’), the Secretary shall use a regional or local mean of the rating of all MA plans in the region or local area, as determined appropriate by the Secretary, on measures used to determine whether MA plans are eligible for a quality or an improved quality bonus, as applicable, to determine whether the low enrollment plan is eligible for a bonus under such a subparagraph.

“(4) RISK ADJUSTMENT.—The Secretary shall risk adjust a performance bonus under this subsection in the same manner as the Secretary risk adjusts beneficiary rebates described in section 1854(b)(1)(C).

“(5) NOTIFICATION.—The Secretary, in the annual announcement required under subsection (b)(1)(B) for 2014 and each succeeding year, shall notify the Medicare Advantage organization of any performance bonus (including a care coordination and management performance bonus under paragraph (1), a quality performance bonus under paragraph (2), and a quality bonus for new and low enrollment plans under paragraph (3)) that the organization will receive under this subsection with respect to the year. The Secretary shall provide for the publication of the information described in the previous sentence on the Internet website of the Centers for Medicare & Medicaid Services.”

Web posting.

(B) CONFORMING AMENDMENT.—Section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(B)) is amended—

(i) in clause (i), by inserting “and any performance bonus under subsection (n)” before the period at the end; and

(ii) in clause (ii), by striking “(G)” and inserting “(G), plus the amount (if any) of any performance bonus under subsection (n)”.

(2) APPLICATION OF PERFORMANCE BONUSES TO MA REGIONAL PLANS.—Section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is amended—

(A) in subsection (f)(1), by striking “subsection (e)” and inserting “subsections (e) and (i)”; and

(B) by adding at the end the following new subsection:

Effective date.

“(i) APPLICATION OF PERFORMANCE BONUSES TO MA REGIONAL PLANS.—For years beginning with 2014, the Secretary shall apply the performance bonuses under section 1853(n) (relating to bonuses for care coordination and management, quality performance, and new and low enrollment MA plans) to MA regional plans in a similar manner as such performance bonuses apply to MA plans under such subsection.”

(g) GRANDFATHERING SUPPLEMENTAL BENEFITS FOR CURRENT ENROLLEES AFTER IMPLEMENTATION OF COMPETITIVE BIDDING.—

Section 1853 of the Social Security Act (42 U.S.C. 1395w-23), as amended by subsection (f), is amended by adding at the end the following new subsection:

“(o) GRANDFATHERING SUPPLEMENTAL BENEFITS FOR CURRENT ENROLLEES AFTER IMPLEMENTATION OF COMPETITIVE BIDDING.—

“(1) IDENTIFICATION OF AREAS.—The Secretary shall identify MA local areas in which, with respect to 2009, average bids submitted by an MA organization under section 1854(a) for MA local plans in the area are not greater than 75 percent of the adjusted average per capita cost for the year involved, determined under section 1876(a)(4), for the area for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under section 1848(o), 1886(n), and 1886(h).

“(2) ELECTION TO PROVIDE REBATES TO GRANDFATHERED ENROLLEES.—

“(A) IN GENERAL.—For years beginning with 2012, each Medicare Advantage organization offering an MA local plan in an area identified by the Secretary under paragraph (1) may elect to provide rebates to grandfathered enrollees under section 1854(b)(1)(C). In the case where an MA organization makes such an election, the monthly per capita dollar amount of such rebates shall not exceed the applicable amount for the year (as defined in subparagraph (B)).

Effective date.

“(B) APPLICABLE AMOUNT.—For purposes of this subsection, the term ‘applicable amount’ means—

Definition.

“(i) for 2012, the monthly per capita dollar amount of such rebates provided to enrollees under the MA local plan with respect to 2011; and

“(ii) for a subsequent year, 95 percent of the amount determined under this subparagraph for the preceding year.

“(3) SPECIAL RULES FOR PLANS IN IDENTIFIED AREAS.—Notwithstanding any other provision of this part, the following shall apply with respect to each Medicare Advantage organization offering an MA local plan in an area identified by the Secretary under paragraph (1) that makes an election described in paragraph (2):

Applicability.

“(A) PAYMENTS.—The amount of the monthly payment under this section to the Medicare Advantage organization, with respect to coverage of a grandfathered enrollee under this part in the area for a month, shall be equal to—

“(i) for 2012 and 2013, the sum of—

“(I) the bid amount under section 1854(a) for the MA local plan; and

“(II) the applicable amount (as defined in paragraph (2)(B)) for the MA local plan for the year.

“(ii) for 2014 and subsequent years, the sum of—

“(I) the MA competitive benchmark amount under subsection (j)(1)(A)(i) for the area for the month, adjusted, only to the extent the Secretary determines necessary, to account for induced utilization as a result of rebates provided to grandfathered enrollees (except that such adjustment shall not exceed 0.5 percent of such MA competitive benchmark amount); and

“(II) the applicable amount (as so defined) for the MA local plan for the year.

“(B) REQUIREMENT TO SUBMIT BIDS UNDER COMPETITIVE BIDDING.—The Medicare Advantage organization shall submit a single bid amount under section 1854(a) for the MA local plan. The Medicare Advantage organization shall remove from such bid amount any effects of induced demand for care that may result from the higher rebates available to grandfathered enrollees under this subsection.

“(C) NONAPPLICATION OF BONUS PAYMENTS AND ANY OTHER REBATES.—The Medicare Advantage organization offering the MA local plan shall not be eligible for any bonus payment under subsection (n) or any rebate under this part (other than as provided under this subsection) with respect to grandfathered enrollees.

“(D) NONAPPLICATION OF UNIFORM BID AND PREMIUM AMOUNTS TO GRANDFATHERED ENROLLEES.—Section 1854(c) shall not apply with respect to the MA local plan.

“(E) NONAPPLICATION OF LIMITATION ON APPLICATION OF PLAN REBATES TOWARD PAYMENT OF PART B PREMIUM.—Notwithstanding clause (iii) of section 1854(b)(1)(C), in the case of a grandfathered enrollee, a rebate under such section may be used for the purpose described in clause (ii)(III) of such section.

“(F) RISK ADJUSTMENT.—The Secretary shall risk adjust rebates to grandfathered enrollees under this subsection in the same manner as the Secretary risk adjusts beneficiary rebates described in section 1854(b)(1)(C).

“(4) DEFINITION OF GRANDFATHERED ENROLLEE.—In this subsection, the term ‘grandfathered enrollee’ means an individual who is enrolled (effective as of the date of enactment of this subsection) in an MA local plan in an area that is identified by the Secretary under paragraph (1).”

(h) TRANSITIONAL EXTRA BENEFITS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w-23), as amended by subsections (f) and (g), is amended by adding at the end the following new subsection:

“(p) TRANSITIONAL EXTRA BENEFITS.—

Effective date.

“(1) IN GENERAL.—For years beginning with 2012, the Secretary shall provide transitional rebates under section 1854(b)(1)(C) for the provision of extra benefits (as specified by the Secretary) to enrollees described in paragraph (2).

“(2) ENROLLEES DESCRIBED.—An enrollee described in this paragraph is an individual who—

“(A) enrolls in an MA local plan in an applicable area; and

“(B) experiences a significant reduction in extra benefits described in clause (ii) of section 1854(b)(1)(C) as a result of competitive bidding under this part (as determined by the Secretary).

Definition.

“(3) APPLICABLE AREAS.—In this subsection, the term ‘applicable area’ means the following:

“(A) The 2 largest metropolitan statistical areas, if the Secretary determines that the total amount of such extra benefits for each enrollee for the month in those areas is greater than \$100.

“(B) A county where—

“(i) the MA area-specific non-drug monthly benchmark amount for a month in 2011 is equal to the legacy urban floor amount (as described in subsection (c)(1)(B)(iii)), as determined by the Secretary for the area for 2011;

“(ii) the percentage of Medicare Advantage eligible beneficiaries in the county who are enrolled in an MA plan for 2009 is greater than 30 percent (as determined by the Secretary); and

“(iii) average bids submitted by an MA organization under section 1854(a) for MA local plans in the county for 2011 are not greater than the adjusted average per capita cost for the year involved, determined under section 1876(a)(4), for the county for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under section 1848(o), 1886(n), and 1886(h).

“(C) If the Secretary determines appropriate, a county contiguous to an area or county described in subparagraph (A) or (B), respectively.

“(4) REVIEW OF PLAN BIDS.—In the case of a bid submitted by an MA organization under section 1854(a) for an MA local plan in an applicable area, the Secretary shall review such bid in order to ensure that extra benefits (as specified by the Secretary) are provided to enrollees described in paragraph (2).

“(5) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund established under section 1841, in such proportion as the Secretary determines appropriate, of an amount not to exceed \$5,000,000,000 for the period of fiscal years 2012 through 2019 for the purpose of providing transitional rebates under section 1854(b)(1)(C) for the provision of extra benefits under this subsection.”

Determination.

(i) NONAPPLICATION OF COMPETITIVE BIDDING AND RELATED PROVISIONS AND CLARIFICATION OF MA PAYMENT AREA FOR PACE PROGRAMS.—

(1) NONAPPLICATION OF COMPETITIVE BIDDING AND RELATED PROVISIONS FOR PACE PROGRAMS.—Section 1894 of the Social Security Act (42 U.S.C. 1395eee) is amended—

(A) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively;

(B) by inserting after subsection (g) the following new subsection:

“(h) NONAPPLICATION OF COMPETITIVE BIDDING AND RELATED PROVISIONS UNDER PART C.—With respect to a PACE program under this section, the following provisions (and regulations relating to such provisions) shall not apply:

“(1) Section 1853(j)(1)(A)(i), relating to MA area-specific non-drug monthly benchmark amount being based on competitive bids.

“(2) Section 1853(d)(5), relating to the establishment of MA local plan service areas.

“(3) Section 1853(n), relating to the payment of performance bonuses.

“(4) Section 1853(o), relating to grandfathering supplemental benefits for current enrollees after implementation of competitive bidding.

“(5) Section 1853(p), relating to transitional extra benefits.”.

(2) SPECIAL RULE FOR MA PAYMENT AREA FOR PACE PROGRAMS.—Section 1853(d) of the Social Security Act (42 U.S.C. 1395w-23(d)), as amended by subsection (e), is amended by adding at the end the following new paragraph:

Effective date.

“(6) SPECIAL RULE FOR MA PAYMENT AREA FOR PACE PROGRAMS.—For years beginning with 2012, in the case of a PACE program under section 1894, the MA payment area shall be the MA local area (as defined in paragraph (2)).”.

SEC. 3202. BENEFIT PROTECTION AND SIMPLIFICATION.

(a) LIMITATION ON VARIATION OF COST SHARING FOR CERTAIN BENEFITS.—

(1) IN GENERAL.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w-22(a)(1)(B)) is amended—

(A) in clause (i), by inserting “, subject to clause (iii),” after “and B or”; and

(B) by adding at the end the following new clauses:

“(iii) LIMITATION ON VARIATION OF COST SHARING FOR CERTAIN BENEFITS.—Subject to clause (v), cost-sharing for services described in clause (iv) shall not exceed the cost-sharing required for those services under parts A and B.

“(iv) SERVICES DESCRIBED.—The following services are described in this clause:

“(I) Chemotherapy administration services.

“(II) Renal dialysis services (as defined in section 1881(b)(14)(B)).

“(III) Skilled nursing care.

“(IV) Such other services that the Secretary determines appropriate (including services that the Secretary determines require a high level of predictability and transparency for beneficiaries).

“(v) EXCEPTION.—In the case of services described in clause (iv) for which there is no cost-sharing required under parts A and B, cost-sharing may be required for those services in accordance with clause (i).”.

42 USC
1395w-22 note.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning on or after January 1, 2011.

(b) APPLICATION OF REBATES, PERFORMANCE BONUSES, AND PREMIUMS.—

(1) APPLICATION OF REBATES.—Section 1854(b)(1)(C) of the Social Security Act (42 U.S.C. 1395w-24(b)(1)(C)) is amended—

(A) in clause (ii), by striking “REBATE.—A rebate” and inserting “REBATE FOR PLAN YEARS BEFORE 2012.—For plan years before 2012, a rebate”;

(B) by redesignating clauses (iii) and (iv) as clauses (iv) and (v); and

(C) by inserting after clause (ii) the following new clause:

Effective date.

“(iii) FORM OF REBATE FOR PLAN YEAR 2012 AND SUBSEQUENT PLAN YEARS.—For plan years beginning on or after January 1, 2012, a rebate required under

this subparagraph may not be used for the purpose described in clause (ii)(III) and shall be provided through the application of the amount of the rebate in the following priority order:

“(I) First, to use the most significant share to meaningfully reduce cost-sharing otherwise applicable for benefits under the original medicare fee-for-service program under parts A and B and for qualified prescription drug coverage under part D, including the reduction of any deductibles, copayments, and maximum limitations on out-of-pocket expenses otherwise applicable. Any reduction of maximum limitations on out-of-pocket expenses under the preceding sentence shall apply to all benefits under the original medicare fee-for-service program option. The Secretary may provide guidance on meaningfully reducing cost-sharing under this subclause, except that such guidance may not require a particular amount of cost-sharing or reduction in cost-sharing.

Applicability.

“(II) Second, to use the next most significant share to meaningfully provide coverage of preventive and wellness health care benefits (as defined by the Secretary) which are not benefits under the original medicare fee-for-service program, such as smoking cessation, a free flu shot, and an annual physical examination.

“(III) Third, to use the remaining share to meaningfully provide coverage of other health care benefits which are not benefits under the original medicare fee-for-service program, such as eye examinations and dental coverage, and are not benefits described in subclause (II).”.

(2) APPLICATION OF PERFORMANCE BONUSES.—Section 1853(n) of the Social Security Act, as added by section 3201(f), is amended by adding at the end the following new paragraph:

“(6) APPLICATION OF PERFORMANCE BONUSES.—For plan years beginning on or after January 1, 2014, any performance bonus paid to an MA plan under this subsection shall be used for the purposes, and in the priority order, described in subclauses (I) through (III) of section 1854(b)(1)(C)(iii).”.

Effective date.

(3) APPLICATION OF MA MONTHLY SUPPLEMENTARY BENEFICIARY PREMIUM.—Section 1854(b)(2)(C) of the Social Security Act (42 U.S.C. 1395w-24(b)(2)(C)) is amended—

(A) by striking “PREMIUM.—The term” and inserting “PREMIUM.—

“(i) IN GENERAL.—The term”; and

(B) by adding at the end the following new clause:

“(ii) APPLICATION OF MA MONTHLY SUPPLEMENTARY BENEFICIARY PREMIUM.—For plan years beginning on or after January 1, 2012, any MA monthly supplementary beneficiary premium charged to an individual enrolled in an MA plan shall be used for the purposes, and in the priority order, described in subclauses (I) through (III) of paragraph (1)(C)(iii).”.

Effective date.

SEC. 3203. APPLICATION OF CODING INTENSITY ADJUSTMENT DURING MA PAYMENT TRANSITION.

Section 1853(a)(1)(C) of the Social Security Act (42 U.S.C. 1395w-23(a)(1)(C)) is amended by adding at the end the following new clause:

“(iii) APPLICATION OF CODING INTENSITY ADJUSTMENT FOR 2011 AND SUBSEQUENT YEARS.—

“(I) REQUIREMENT TO APPLY IN 2011 THROUGH 2013.—In order to ensure payment accuracy, the Secretary shall conduct an analysis of the differences described in clause (ii)(I). The Secretary shall ensure that the results of such analysis are incorporated into the risk scores for 2011, 2012, and 2013.

“(II) AUTHORITY TO APPLY IN 2014 AND SUBSEQUENT YEARS.—The Secretary may, as appropriate, incorporate the results of such analysis into the risk scores for 2014 and subsequent years.”.

SEC. 3204. SIMPLIFICATION OF ANNUAL BENEFICIARY ELECTION PERIODS.

(a) ANNUAL 45-DAY PERIOD FOR DISENROLLMENT FROM MA PLANS TO ELECT TO RECEIVE BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM.—

42 USC
1395w-21.

(1) IN GENERAL.—Section 1851(e)(2)(C) of the Social Security Act (42 U.S.C. 1395w-1(e)(2)(C)) is amended to read as follows:

Effective date.

“(C) ANNUAL 45-DAY PERIOD FOR DISENROLLMENT FROM MA PLANS TO ELECT TO RECEIVE BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM.—Subject to subparagraph (D), at any time during the first 45 days of a year (beginning with 2011), an individual who is enrolled in a Medicare Advantage plan may change the election under subsection (a)(1), but only with respect to coverage under the original medicare fee-for-service program under parts A and B, and may elect qualified prescription drug coverage in accordance with section 1860D-1.”.

42 USC
1395w-21 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to 2011 and succeeding years.

(b) TIMING OF THE ANNUAL, COORDINATED ELECTION PERIOD UNDER PARTS C AND D.—Section 1851(e)(3)(B) of the Social Security Act (42 U.S.C. 1395w-1(e)(3)(B)) is amended—

42 USC
1395w-21.

(1) in clause (iii), by striking “and” at the end;

(2) in clause (iv)—

(A) by striking “and succeeding years” and inserting “, 2008, 2009, and 2010”; and

(B) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new clause:

“(v) with respect to 2012 and succeeding years, the period beginning on October 15 and ending on December 7 of the year before such year.”.

SEC. 3205. EXTENSION FOR SPECIALIZED MA PLANS FOR SPECIAL NEEDS INDIVIDUALS.

(a) **EXTENSION OF SNP AUTHORITY.**—Section 1859(f)(1) of the Social Security Act (42 U.S.C. 1395w-28(f)(1)), as amended by section 164(a) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), is amended by striking “2011” and inserting “2014”.

(b) **AUTHORITY TO APPLY FRAILTY ADJUSTMENT UNDER PACE PAYMENT RULES.**—Section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w-23(a)(1)(B)) is amended by adding at the end the following new clause:

“(iv) **AUTHORITY TO APPLY FRAILTY ADJUSTMENT UNDER PACE PAYMENT RULES FOR CERTAIN SPECIALIZED MA PLANS FOR SPECIAL NEEDS INDIVIDUALS.**—

“(I) **IN GENERAL.**—Notwithstanding the preceding provisions of this paragraph, for plan year 2011 and subsequent plan years, in the case of a plan described in subclause (II), the Secretary may apply the payment rules under section 1894(d) (other than paragraph (3) of such section) rather than the payment rules that would otherwise apply under this part, but only to the extent necessary to reflect the costs of treating high concentrations of frail individuals.

“(II) **PLAN DESCRIBED.**—A plan described in this subclause is a specialized MA plan for special needs individuals described in section 1859(b)(6)(B)(ii) that is fully integrated with capitated contracts with States for Medicaid benefits, including long-term care, and that have similar average levels of frailty (as determined by the Secretary) as the PACE program.”.

(c) **TRANSITION AND EXCEPTION REGARDING RESTRICTION ON ENROLLMENT.**—Section 1859(f) of the Social Security Act (42 U.S.C. 1395w-28(f)) is amended by adding at the end the following new paragraph:

“(6) **TRANSITION AND EXCEPTION REGARDING RESTRICTION ON ENROLLMENT.**—

“(A) **IN GENERAL.**—Subject to subparagraph (C), the Secretary shall establish procedures for the transition of applicable individuals to—

Procedures.

“(i) a Medicare Advantage plan that is not a specialized MA plan for special needs individuals (as defined in subsection (b)(6)); or

“(ii) the original medicare fee-for-service program under parts A and B.

“(B) **APPLICABLE INDIVIDUALS.**—For purposes of clause (i), the term ‘applicable individual’ means an individual who—

Definition.

“(i) is enrolled under a specialized MA plan for special needs individuals (as defined in subsection (b)(6)); and

“(ii) is not within the 1 or more of the classes of special needs individuals to which enrollment under the plan is restricted to.

“(C) **EXCEPTION.**—The Secretary shall provide for an exception to the transition described in subparagraph (A)

for a limited period of time for individuals enrolled under a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii) who are no longer eligible for medical assistance under title XIX.

Deadline.

“(D) TIMELINE FOR INITIAL TRANSITION.—The Secretary shall ensure that applicable individuals enrolled in a specialized MA plan for special needs individuals (as defined in subsection (b)(6)) prior to January 1, 2010, are transitioned to a plan or the program described in subparagraph (A) by not later than January 1, 2013.”.

42 USC
1395w–28 note.

(d) TEMPORARY EXTENSION OF AUTHORITY TO OPERATE BUT NO SERVICE AREA EXPANSION FOR DUAL SPECIAL NEEDS PLANS THAT DO NOT MEET CERTAIN REQUIREMENTS.—Section 164(c)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275) is amended by striking “December 31, 2010” and inserting “December 31, 2012”.

(e) AUTHORITY TO REQUIRE SPECIAL NEEDS PLANS BE NCQA APPROVED.—Section 1859(f) of the Social Security Act (42 U.S.C. 1395w–28(f)), as amended by subsections (a) and (c), is amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

“(C) If applicable, the plan meets the requirement described in paragraph (7).”;

(2) in paragraph (3), by adding at the end the following new subparagraph:

“(E) If applicable, the plan meets the requirement described in paragraph (7).”;

(3) in paragraph (4), by adding at the end the following new subparagraph:

“(C) If applicable, the plan meets the requirement described in paragraph (7).”; and

(4) by adding at the end the following new paragraph:

Standards.

“(7) AUTHORITY TO REQUIRE SPECIAL NEEDS PLANS BE NCQA APPROVED.—For 2012 and subsequent years, the Secretary shall require that a Medicare Advantage organization offering a specialized MA plan for special needs individuals be approved by the National Committee for Quality Assurance (based on standards established by the Secretary).”.

42 USC
1395w–23.

(f) RISK ADJUSTMENT.—Section 1853(a)(1)(C) of the Social Security Act (42 U.S.C. 1395i–23(a)(1)(C)) is amended by adding at the end the following new clause:

“(iii) IMPROVEMENTS TO RISK ADJUSTMENT FOR SPECIAL NEEDS INDIVIDUALS WITH CHRONIC HEALTH CONDITIONS.—

“(I) IN GENERAL.—For 2011 and subsequent years, for purposes of the adjustment under clause (i) with respect to individuals described in subclause (II), the Secretary shall use a risk score that reflects the known underlying risk profile and chronic health status of similar individuals. Such risk score shall be used instead of the default risk score for new enrollees in Medicare Advantage plans that are not specialized MA plans for special needs individuals (as defined in section 1859(b)(6)).

“(II) INDIVIDUALS DESCRIBED.—An individual described in this subclause is a special needs individual described in subsection (b)(6)(B)(iii) who

enrolls in a specialized MA plan for special needs individuals on or after January 1, 2011.

“(III) EVALUATION.—For 2011 and periodically thereafter, the Secretary shall evaluate and revise the risk adjustment system under this subparagraph in order to, as accurately as possible, account for higher medical and care coordination costs associated with frailty, individuals with multiple, comorbid chronic conditions, and individuals with a diagnosis of mental illness, and also to account for costs that may be associated with higher concentrations of beneficiaries with those conditions.

“(IV) PUBLICATION OF EVALUATION AND REVISIONS.—The Secretary shall publish, as part of an announcement under subsection (b), a description of any evaluation conducted under subclause (III) during the preceding year and any revisions made under such subclause as a result of such evaluation.”.

(g) TECHNICAL CORRECTION.—Section 1859(f)(5) of the Social Security Act (42 U.S.C. 1395w-28(f)(5)) is amended, in the matter preceding subparagraph (A), by striking “described in subsection (b)(6)(B)(i)”.

SEC. 3206. EXTENSION OF REASONABLE COST CONTRACTS.

Section 1876(h)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)(ii)) is amended, in the matter preceding subclause (I), by striking “January 1, 2010” and inserting “January 1, 2013”.

SEC. 3207. TECHNICAL CORRECTION TO MA PRIVATE FEE-FOR-SERVICE PLANS.

42 USC
1395w-27 note.

Applicability.

For plan year 2011 and subsequent plan years, to the extent that the Secretary of Health and Human Services is applying the 2008 service area extension waiver policy (as modified in the April 11, 2008, Centers for Medicare & Medicaid Services’ memorandum with the subject “2009 Employer Group Waiver-Modification of the 2008 Service Area Extension Waiver Granted to Certain MA Local Coordinated Care Plans”) to Medicare Advantage coordinated care plans, the Secretary shall extend the application of such waiver policy to employers who contract directly with the Secretary as a Medicare Advantage private fee-for-service plan under section 1857(i)(2) of the Social Security Act (42 U.S.C. 1395w-27(i)(2)) and that had enrollment as of October 1, 2009.

SEC. 3208. MAKING SENIOR HOUSING FACILITY DEMONSTRATION PERMANENT.

(a) IN GENERAL.—Section 1859 of the Social Security Act (42 U.S.C. 1395w-28) is amended by adding at the end the following new subsection:

“(g) SPECIAL RULES FOR SENIOR HOUSING FACILITY PLANS.—

“(1) IN GENERAL.—In the case of a Medicare Advantage senior housing facility plan described in paragraph (2), notwithstanding any other provision of this part to the contrary and in accordance with regulations of the Secretary, the service area of such plan may be limited to a senior housing facility in a geographic area.

“(2) **MEDICARE ADVANTAGE SENIOR HOUSING FACILITY PLAN DESCRIBED.**—For purposes of this subsection, a Medicare Advantage senior housing facility plan is a Medicare Advantage plan that—

“(A) restricts enrollment of individuals under this part to individuals who reside in a continuing care retirement community (as defined in section 1852(l)(4)(B));

“(B) provides primary care services onsite and has a ratio of accessible physicians to beneficiaries that the Secretary determines is adequate;

“(C) provides transportation services for beneficiaries to specialty providers outside of the facility; and

“(D) has participated (as of December 31, 2009) in a demonstration project established by the Secretary under which such a plan was offered for not less than 1 year.”.

42 USC
1395w-28 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on January 1, 2010, and shall apply to plan years beginning on or after such date.

SEC. 3209. AUTHORITY TO DENY PLAN BIDS.

(a) **IN GENERAL.**—Section 1854(a)(5) of the Social Security Act (42 U.S.C. 1395w-24(a)(5)) is amended by adding at the end the following new subparagraph:

“(C) **REJECTION OF BIDS.**—

“(i) **IN GENERAL.**—Nothing in this section shall be construed as requiring the Secretary to accept any or every bid submitted by an MA organization under this subsection.

“(ii) **AUTHORITY TO DENY BIDS THAT PROPOSE SIGNIFICANT INCREASES IN COST SHARING OR DECREASES IN BENEFITS.**—The Secretary may deny a bid submitted by an MA organization for an MA plan if it proposes significant increases in cost sharing or decreases in benefits offered under the plan.”.

(b) **APPLICATION UNDER PART D.**—Section 1860D-11(d) of such Act (42 U.S.C. 1395w-111(d)) is amended by adding at the end the following new paragraph:

Applicability.

“(3) **REJECTION OF BIDS.**—Paragraph (5)(C) of section 1854(a) shall apply with respect to bids submitted by a PDP sponsor under subsection (b) in the same manner as such paragraph applies to bids submitted by an MA organization under such section 1854(a).”.

42 USC
1395w-24 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bids submitted for contract years beginning on or after January 1, 2011.

SEC. 3210. DEVELOPMENT OF NEW STANDARDS FOR CERTAIN MEDIGAP PLANS.

(a) **IN GENERAL.**—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

“(y) **DEVELOPMENT OF NEW STANDARDS FOR CERTAIN MEDICARE SUPPLEMENTAL POLICIES.**—

“(1) **IN GENERAL.**—The Secretary shall request the National Association of Insurance Commissioners to review and revise the standards for benefit packages described in paragraph (2) under subsection (p)(1), to otherwise update standards to include requirements for nominal cost sharing to encourage

the use of appropriate physicians’ services under part B. Such revisions shall be based on evidence published in peer-reviewed journals or current examples used by integrated delivery systems and made consistent with the rules applicable under subsection (p)(1)(E) with the reference to the ‘1991 NAIC Model Regulation’ deemed a reference to the NAIC Model Regulation as published in the Federal Register on December 4, 1998, and as subsequently updated by the National Association of Insurance Commissioners to reflect previous changes in law and the reference to ‘date of enactment of this subsection’ deemed a reference to the date of enactment of the Patient Protection and Affordable Care Act. To the extent practicable, such revision shall provide for the implementation of revised standards for benefit packages as of January 1, 2015.

Effective date.

“(2) BENEFIT PACKAGES DESCRIBED.—The benefit packages described in this paragraph are benefit packages classified as ‘C’ and ‘F’.”

(b) CONFORMING AMENDMENT.—Section 1882(o)(1) of the Social Security Act (42 U.S.C. 1395ss(o)(1)) is amended by striking “, and (w)” and inserting “(w), and (y)”.

Subtitle D—Medicare Part D Improvements for Prescription Drug Plans and MA-PD Plans

SEC. 3301. MEDICARE COVERAGE GAP DISCOUNT PROGRAM.

(a) CONDITION FOR COVERAGE OF DRUGS UNDER PART D.—Part D of Title XVIII of the Social Security Act (42 U.S.C. 1395w–101 et seq.), is amended by adding at the end the following new section:

“CONDITION FOR COVERAGE OF DRUGS UNDER THIS PART

“SEC. 1860D–43. (a) IN GENERAL.—In order for coverage to be available under this part for covered part D drugs (as defined in section 1860D–2(e)) of a manufacturer, the manufacturer must—

Contracts.
42 USC
1395w–153.

“(1) participate in the Medicare coverage gap discount program under section 1860D–14A;

“(2) have entered into and have in effect an agreement described in subsection (b) of such section with the Secretary; and

“(3) have entered into and have in effect, under terms and conditions specified by the Secretary, a contract with a third party that the Secretary has entered into a contract with under subsection (d)(3) of such section.

“(b) EFFECTIVE DATE.—Subsection (a) shall apply to covered part D drugs dispensed under this part on or after July 1, 2010.

“(c) AUTHORIZING COVERAGE FOR DRUGS NOT COVERED UNDER AGREEMENTS.—Subsection (a) shall not apply to the dispensing of a covered part D drug if—

“(1) the Secretary has made a determination that the availability of the drug is essential to the health of beneficiaries under this part; or

Determination.

Determination.
Time period.

“(2) the Secretary determines that in the period beginning on July 1, 2010, and ending on December 31, 2010, there were extenuating circumstances.

“(d) DEFINITION OF MANUFACTURER.—In this section, the term ‘manufacturer’ has the meaning given such term in section 1860D-14A(g)(5).”.

(b) MEDICARE COVERAGE GAP DISCOUNT PROGRAM.—Part D of title XVIII of the Social Security Act (42 U.S.C. 1395w-101) is amended by inserting after section 1860D-14 the following new section:

“MEDICARE COVERAGE GAP DISCOUNT PROGRAM

Deadlines.
42 USC
1395w-114a.
Contracts.

“SEC. 1860D-14A. (a) ESTABLISHMENT.—The Secretary shall establish a Medicare coverage gap discount program (in this section referred to as the ‘program’) by not later than July 1, 2010. Under the program, the Secretary shall enter into agreements described in subsection (b) with manufacturers and provide for the performance of the duties described in subsection (c)(1). The Secretary shall establish a model agreement for use under the program by not later than April 1, 2010, in consultation with manufacturers, and allow for comment on such model agreement.

“(b) TERMS OF AGREEMENT.—

“(1) IN GENERAL.—

“(A) AGREEMENT.—An agreement under this section shall require the manufacturer to provide applicable beneficiaries access to discounted prices for applicable drugs of the manufacturer.

“(B) PROVISION OF DISCOUNTED PRICES AT THE POINT-OF-SALE.—Except as provided in subsection (c)(1)(A)(iii), such discounted prices shall be provided to the applicable beneficiary at the pharmacy or by the mail order service at the point-of-sale of an applicable drug.

Deadlines.

“(C) TIMING OF AGREEMENT.—

“(i) SPECIAL RULE FOR 2010 AND 2011.—In order for an agreement with a manufacturer to be in effect under this section with respect to the period beginning on July 1, 2010, and ending on December 31, 2011, the manufacturer shall enter into such agreement not later than May 1, 2010.

“(ii) 2012 AND SUBSEQUENT YEARS.—In order for an agreement with a manufacturer to be in effect under this section with respect to plan year 2012 or a subsequent plan year, the manufacturer shall enter into such agreement (or such agreement shall be renewed under paragraph (4)(A)) not later than January 30 of the preceding year.

Determination.

“(2) PROVISION OF APPROPRIATE DATA.—Each manufacturer with an agreement in effect under this section shall collect and have available appropriate data, as determined by the Secretary, to ensure that it can demonstrate to the Secretary compliance with the requirements under the program.

“(3) COMPLIANCE WITH REQUIREMENTS FOR ADMINISTRATION OF PROGRAM.—Each manufacturer with an agreement in effect under this section shall comply with requirements imposed by the Secretary or a third party with a contract under subsection (d)(3), as applicable, for purposes of administering the

program, including any determination under clause (i) of subsection (c)(1)(A) or procedures established under such subsection (c)(1)(A).

“(4) LENGTH OF AGREEMENT.—

“(A) IN GENERAL.—An agreement under this section shall be effective for an initial period of not less than 18 months and shall be automatically renewed for a period of not less than 1 year unless terminated under subparagraph (B). Time period.

“(B) TERMINATION.—

“(i) BY THE SECRETARY.—The Secretary may provide for termination of an agreement under this section for a knowing and willful violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 30 days after the date of notice to the manufacturer of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, and such hearing shall take place prior to the effective date of the termination with sufficient time for such effective date to be repealed if the Secretary determines appropriate. Notice.

“(ii) BY A MANUFACTURER.—A manufacturer may terminate an agreement under this section for any reason. Any such termination shall be effective, with respect to a plan year—

“(I) if the termination occurs before January 30 of a plan year, as of the day after the end of the plan year; and

“(II) if the termination occurs on or after January 30 of a plan year, as of the day after the end of the succeeding plan year.

“(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect discounts for applicable drugs of the manufacturer that are due under the agreement before the effective date of its termination.

“(iv) NOTICE TO THIRD PARTY.—The Secretary shall provide notice of such termination to a third party with a contract under subsection (d)(3) within not less than 30 days before the effective date of such termination. Deadline.

“(c) DUTIES DESCRIBED AND SPECIAL RULE FOR SUPPLEMENTAL BENEFITS.—

“(1) DUTIES DESCRIBED.—The duties described in this subsection are the following:

“(A) ADMINISTRATION OF PROGRAM.—Administering the program, including— Procedures.

“(i) the determination of the amount of the discounted price of an applicable drug of a manufacturer; Determination.

“(ii) except as provided in clause (iii), the establishment of procedures under which discounted prices are provided to applicable beneficiaries at pharmacies or by mail order service at the point-of-sale of an applicable drug;

“(iii) in the case where, during the period beginning on July 1, 2010, and ending on December 31, 2011,

it is not practicable to provide such discounted prices at the point-of-sale (as described in clause (ii)), the establishment of procedures to provide such discounted prices as soon as practicable after the point-of-sale;

“(iv) the establishment of procedures to ensure that, not later than the applicable number of calendar days after the dispensing of an applicable drug by a pharmacy or mail order service, the pharmacy or mail order service is reimbursed for an amount equal to the difference between—

“(I) the negotiated price of the applicable drug;

and

“(II) the discounted price of the applicable drug;

“(v) the establishment of procedures to ensure that the discounted price for an applicable drug under this section is applied before any coverage or financial assistance under other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of applicable beneficiaries as the Secretary may specify;

“(vi) the establishment of procedures to implement the special rule for supplemental benefits under paragraph (2); and

“(vii) providing a reasonable dispute resolution mechanism to resolve disagreements between manufacturers, applicable beneficiaries, and the third party with a contract under subsection (d)(3).

“(B) MONITORING COMPLIANCE.—

“(i) IN GENERAL.—The Secretary shall monitor compliance by a manufacturer with the terms of an agreement under this section.

“(ii) NOTIFICATION.—If a third party with a contract under subsection (d)(3) determines that the manufacturer is not in compliance with such agreement, the third party shall notify the Secretary of such noncompliance for appropriate enforcement under subsection (e).

“(C) COLLECTION OF DATA FROM PRESCRIPTION DRUG PLANS AND MA-PD PLANS.—The Secretary may collect appropriate data from prescription drug plans and MA-PD plans in a timeframe that allows for discounted prices to be provided for applicable drugs under this section.

“(2) SPECIAL RULE FOR SUPPLEMENTAL BENEFITS.—For plan year 2010 and each subsequent plan year, in the case where an applicable beneficiary has supplemental benefits with respect to applicable drugs under the prescription drug plan or MA-PD plan that the applicable beneficiary is enrolled in, the applicable beneficiary shall not be provided a discounted price for an applicable drug under this section until after such supplemental benefits have been applied with respect to the applicable drug.

“(d) ADMINISTRATION.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall provide for the implementation of this section, including the performance of the duties described in subsection (c)(1).

“(2) LIMITATION.—

“(A) IN GENERAL.—Subject to subparagraph (B), in providing for such implementation, the Secretary shall not receive or distribute any funds of a manufacturer under the program.

“(B) EXCEPTION.—The limitation under subparagraph (A) shall not apply to the Secretary with respect to drugs dispensed during the period beginning on July 1, 2010, and ending on December 31, 2010, but only if the Secretary determines that the exception to such limitation under this subparagraph is necessary in order for the Secretary to begin implementation of this section and provide applicable beneficiaries timely access to discounted prices during such period.

Time period.
Determination.

“(3) CONTRACT WITH THIRD PARTIES.—The Secretary shall enter into a contract with 1 or more third parties to administer the requirements established by the Secretary in order to carry out this section. At a minimum, the contract with a third party under the preceding sentence shall require that the third party—

“(A) receive and transmit information between the Secretary, manufacturers, and other individuals or entities the Secretary determines appropriate;

“(B) receive, distribute, or facilitate the distribution of funds of manufacturers to appropriate individuals or entities in order to meet the obligations of manufacturers under agreements under this section;

“(C) provide adequate and timely information to manufacturers, consistent with the agreement with the manufacturer under this section, as necessary for the manufacturer to fulfill its obligations under this section; and

“(D) permit manufacturers to conduct periodic audits, directly or through contracts, of the data and information used by the third party to determine discounts for applicable drugs of the manufacturer under the program.

“(4) PERFORMANCE REQUIREMENTS.—The Secretary shall establish performance requirements for a third party with a contract under paragraph (3) and safeguards to protect the independence and integrity of the activities carried out by the third party under the program under this section.

“(5) IMPLEMENTATION.—The Secretary may implement the program under this section by program instruction or otherwise.

“(6) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to the program under this section.

“(e) ENFORCEMENT.—

“(1) AUDITS.—Each manufacturer with an agreement in effect under this section shall be subject to periodic audit by the Secretary.

“(2) CIVIL MONEY PENALTY.—

“(A) IN GENERAL.—The Secretary shall impose a civil money penalty on a manufacturer that fails to provide applicable beneficiaries discounts for applicable drugs of the manufacturer in accordance with such agreement for each such failure in an amount the Secretary determines is commensurate with the sum of—

Determination.

“(i) the amount that the manufacturer would have paid with respect to such discounts under the agreement, which will then be used to pay the discounts which the manufacturer had failed to provide; and
“(ii) 25 percent of such amount.

“(B) APPLICATION.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

“(f) CLARIFICATION REGARDING AVAILABILITY OF OTHER COVERED PART D DRUGS.—Nothing in this section shall prevent an applicable beneficiary from purchasing a covered part D drug that is not an applicable drug (including a generic drug or a drug that is not on the formulary of the prescription drug plan or MA-PD plan that the applicable beneficiary is enrolled in).

“(g) DEFINITIONS.—In this section:

“(1) APPLICABLE BENEFICIARY.—The term ‘applicable beneficiary’ means an individual who, on the date of dispensing an applicable drug—

“(A) is enrolled in a prescription drug plan or an MA-PD plan;

“(B) is not enrolled in a qualified retiree prescription drug plan;

“(C) is not entitled to an income-related subsidy under section 1860D-14(a);

“(D) is not subject to a reduction in premium subsidy under section 1839(i); and

“(E) who—

“(i) has reached or exceeded the initial coverage limit under section 1860D-2(b)(3) during the year; and

“(ii) has not incurred costs for covered part D drugs in the year equal to the annual out-of-pocket threshold specified in section 1860D-2(b)(4)(B).

“(2) APPLICABLE DRUG.—The term ‘applicable drug’ means, with respect to an applicable beneficiary, a covered part D drug—

“(A) approved under a new drug application under section 505(b) of the Federal Food, Drug, and Cosmetic Act or, in the case of a biologic product, licensed under section 351 of the Public Health Service Act (other than a product licensed under subsection (k) of such section 351); and

“(B)(i) if the PDP sponsor of the prescription drug plan or the MA organization offering the MA-PD plan uses a formulary, which is on the formulary of the prescription drug plan or MA-PD plan that the applicable beneficiary is enrolled in;

“(ii) if the PDP sponsor of the prescription drug plan or the MA organization offering the MA-PD plan does not use a formulary, for which benefits are available under the prescription drug plan or MA-PD plan that the applicable beneficiary is enrolled in; or

“(iii) is provided through an exception or appeal.

“(3) APPLICABLE NUMBER OF CALENDAR DAYS.—The term ‘applicable number of calendar days’ means—

“(A) with respect to claims for reimbursement submitted electronically, 14 days; and

“(B) with respect to claims for reimbursement submitted otherwise, 30 days.

“(4) DISCOUNTED PRICE.—

“(A) IN GENERAL.—The term ‘discounted price’ means 50 percent of the negotiated price of the applicable drug of a manufacturer.

“(B) CLARIFICATION.—Nothing in this section shall be construed as affecting the responsibility of an applicable beneficiary for payment of a dispensing fee for an applicable drug.

“(C) SPECIAL CASE FOR CERTAIN CLAIMS.—In the case where the entire amount of the negotiated price of an individual claim for an applicable drug with respect to an applicable beneficiary does not fall at or above the initial coverage limit under section 1860D-2(b)(3) and below the annual out-of-pocket threshold specified in section 1860D-2(b)(4)(B) for the year, the manufacturer of the applicable drug shall provide the discounted price under this section on only the portion of the negotiated price of the applicable drug that falls at or above such initial coverage limit and below such annual out-of-pocket threshold.

“(5) MANUFACTURER.—The term ‘manufacturer’ means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

“(6) NEGOTIATED PRICE.—The term ‘negotiated price’ has the meaning given such term in section 423.100 of title 42, Code of Federal Regulations (as in effect on the date of enactment of this section), except that such negotiated price shall not include any dispensing fee for the applicable drug.

“(7) QUALIFIED RETIREE PRESCRIPTION DRUG PLAN.—The term ‘qualified retiree prescription drug plan’ has the meaning given such term in section 1860D-22(a)(2).”.

(c) INCLUSION IN INCURRED COSTS.—

(1) IN GENERAL.—Section 1860D-2(b)(4) of the Social Security Act (42 U.S.C. 1395w-102(b)(4)) is amended—

(A) in subparagraph (C), in the matter preceding clause (i), by striking “In applying” and inserting “Except as provided in subparagraph (E), in applying”; and

(B) by adding at the end the following new subparagraph:

“(E) INCLUSION OF COSTS OF APPLICABLE DRUGS UNDER MEDICARE COVERAGE GAP DISCOUNT PROGRAM.—In applying subparagraph (A), incurred costs shall include the negotiated price (as defined in paragraph (6) of section 1860D-14A(g)) of an applicable drug (as defined in paragraph (2) of such section) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount

program under section 1860D-14A, regardless of whether part of such costs were paid by a manufacturer under such program.”.

42 USC
1395w-102 note.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to costs incurred on or after July 1, 2010.

(d) CONFORMING AMENDMENT PERMITTING PRESCRIPTION DRUG DISCOUNTS.—

(1) IN GENERAL.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

(A) by striking “and” at the end of subparagraph (G);

(B) in the subparagraph (H) added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2213)—

(i) by moving such subparagraph 2 ems to the left; and

(ii) by striking the period at the end and inserting a semicolon;

(C) in the subparagraph (H) added by section 431(a) of such Act (117 Stat. 2287)—

(i) by redesignating such subparagraph as subparagraph (I);

(ii) by moving such subparagraph 2 ems to the left; and

(iii) by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following new subparagraph:

“(J) a discount in the price of an applicable drug (as defined in paragraph (2) of section 1860D-14A(g)) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1860D-14A.”.

(2) CONFORMING AMENDMENT TO DEFINITION OF BEST PRICE UNDER MEDICAID.—Section 1927(c)(1)(C)(i)(VI) of the Social Security Act (42 U.S.C. 1396r-8(c)(1)(C)(i)(VI)) is amended by inserting “, or any discounts provided by manufacturers under the Medicare coverage gap discount program under section 1860D-14A” before the period at the end.

42 USC
1320a-76 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to drugs dispensed on or after July 1, 2010.

SEC. 3302. IMPROVEMENT IN DETERMINATION OF MEDICARE PART D LOW-INCOME BENCHMARK PREMIUM.

(a) IN GENERAL.—Section 1860D-14(b)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395w-114(b)(2)(B)(iii)) is amended by inserting “, determined without regard to any reduction in such premium as a result of any beneficiary rebate under section 1854(b)(1)(C) or bonus payment under section 1853(n)” before the period at the end.

42 USC
1395w-114 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to premiums for months beginning on or after January 1, 2011.

SEC. 3303. VOLUNTARY DE MINIMIS POLICY FOR SUBSIDY ELIGIBLE INDIVIDUALS UNDER PRESCRIPTION DRUG PLANS AND MA-PD PLANS.

(a) **IN GENERAL.**—Section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w-114(a)) is amended by adding at the end the following new paragraph:

“(5) **WAIVER OF DE MINIMIS PREMIUMS.**—The Secretary shall, under procedures established by the Secretary, permit a prescription drug plan or an MA-PD plan to waive the monthly beneficiary premium for a subsidy eligible individual if the amount of such premium is de minimis. If such premium is waived under the plan, the Secretary shall not reassign subsidy eligible individuals enrolled in the plan to other plans based on the fact that the monthly beneficiary premium under the plan was greater than the low-income benchmark premium amount.”.

Procedures.

(b) **AUTHORIZING THE SECRETARY TO AUTO-ENROLL SUBSIDY ELIGIBLE INDIVIDUALS IN PLANS THAT WAIVE DE MINIMIS PREMIUMS.**—Section 1860D-1(b)(1) of the Social Security Act (42 U.S.C. 1395w-101(b)(1)) is amended—

(1) in subparagraph (C), by inserting “except as provided in subparagraph (D),” after “shall include,”

(2) by adding at the end the following new subparagraph:

“(D) **SPECIAL RULE FOR PLANS THAT WAIVE DE MINIMIS PREMIUMS.**—The process established under subparagraph (A) may include, in the case of a part D eligible individual who is a subsidy eligible individual (as defined in section 1860D-14(a)(3)) who has failed to enroll in a prescription drug plan or an MA-PD plan, for the enrollment in a prescription drug plan or MA-PD plan that has waived the monthly beneficiary premium for such subsidy eligible individual under section 1860D-14(a)(5). If there is more than one such plan available, the Secretary shall enroll such an individual under the preceding sentence on a random basis among all such plans in the PDP region. Nothing in the previous sentence shall prevent such an individual from declining or changing such enrollment.”.

(c) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to premiums for months, and enrollments for plan years, beginning on or after January 1, 2011.

42 USC
1395w-101 note.

SEC. 3304. SPECIAL RULE FOR WIDOWS AND WIDOWERS REGARDING ELIGIBILITY FOR LOW-INCOME ASSISTANCE.

(a) **IN GENERAL.**—Section 1860D-14(a)(3)(B) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)(B)) is amended by adding at the end the following new clause:

“(vi) **SPECIAL RULE FOR WIDOWS AND WIDOWERS.**—Notwithstanding the preceding provisions of this subparagraph, in the case of an individual whose spouse dies during the effective period for a determination or redetermination that has been made under this subparagraph, such effective period shall be extended through the date that is 1 year after the date on which the determination or redetermination would (but for the application of this clause) otherwise cease to be effective.”.

42 USC
1395w-114 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on January 1, 2011.

SEC. 3305. IMPROVED INFORMATION FOR SUBSIDY ELIGIBLE INDIVIDUALS REASSIGNED TO PRESCRIPTION DRUG PLANS AND MA-PD PLANS.

Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114) is amended—

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting after subsection (c) the following new subsection:

Deadlines.

“(d) **FACILITATION OF REASSIGNMENTS.**—Beginning not later than January 1, 2011, the Secretary shall, in the case of a subsidy eligible individual who is enrolled in one prescription drug plan and is subsequently reassigned by the Secretary to a new prescription drug plan, provide the individual, within 30 days of such reassignment, with—

“(1) information on formulary differences between the individual’s former plan and the plan to which the individual is reassigned with respect to the individual’s drug regimens; and

“(2) a description of the individual’s right to request a coverage determination, exception, or reconsideration under section 1860D-4(g), bring an appeal under section 1860D-4(h), or resolve a grievance under section 1860D-4(f).”.

SEC. 3306. FUNDING OUTREACH AND ASSISTANCE FOR LOW-INCOME PROGRAMS.

(a) **ADDITIONAL FUNDING FOR STATE HEALTH INSURANCE PROGRAMS.**—Subsection (a)(1)(B) of section 119 of the Medicare Improvements for Patients and Providers Act of 2008 (42 U.S.C. 1395b-3 note) is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Centers for Medicare & Medicaid Services Program Management Account—

“(i) for fiscal year 2009, of \$7,500,000; and

“(ii) for the period of fiscal years 2010 through 2012, of \$15,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(b) **ADDITIONAL FUNDING FOR AREA AGENCIES ON AGING.**—Subsection (b)(1)(B) of such section 119 is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Administration on Aging—

“(i) for fiscal year 2009, of \$7,500,000; and

“(ii) for the period of fiscal years 2010 through 2012, of \$15,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(c) **ADDITIONAL FUNDING FOR AGING AND DISABILITY RESOURCE CENTERS.**—Subsection (c)(1)(B) of such section 119 is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Administration on Aging—

“(i) for fiscal year 2009, of \$5,000,000; and

“(ii) for the period of fiscal years 2010 through 2012, of \$10,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(d) **ADDITIONAL FUNDING FOR CONTRACT WITH THE NATIONAL CENTER FOR BENEFITS AND OUTREACH ENROLLMENT.**—Subsection (d)(2) of such section 119 is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Administration on Aging—

“(i) for fiscal year 2009, of \$5,000,000; and

“(ii) for the period of fiscal years 2010 through 2012, of \$5,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(e) **SECRETARIAL AUTHORITY TO ENLIST SUPPORT IN CONDUCTING CERTAIN OUTREACH ACTIVITIES.**—Such section 119 is amended by adding at the end the following new subsection:

“(g) **SECRETARIAL AUTHORITY TO ENLIST SUPPORT IN CONDUCTING CERTAIN OUTREACH ACTIVITIES.**—The Secretary may request that an entity awarded a grant under this section support the conduct of outreach activities aimed at preventing disease and promoting wellness. Notwithstanding any other provision of this section, an entity may use a grant awarded under this subsection to support the conduct of activities described in the preceding sentence.”.

SEC. 3307. IMPROVING FORMULARY REQUIREMENTS FOR PRESCRIPTION DRUG PLANS AND MA-PD PLANS WITH RESPECT TO CERTAIN CATEGORIES OR CLASSES OF DRUGS.

(a) **IMPROVING FORMULARY REQUIREMENTS.**—Section 1860D-4(b)(3)(G) of the Social Security Act is amended to read as follows:

“(G) **REQUIRED INCLUSION OF DRUGS IN CERTAIN CATEGORIES AND CLASSES.**—

42 USC
1395w-104.

“(i) **FORMULARY REQUIREMENTS.**—

“(I) **IN GENERAL.**—Subject to subclause (II), a PDP sponsor offering a prescription drug plan shall be required to include all covered part D drugs in the categories and classes identified by the Secretary under clause (ii)(I).

“(II) **EXCEPTIONS.**—The Secretary may establish exceptions that permit a PDP sponsor offering a prescription drug plan to exclude from its formulary a particular covered part D drug in a category or class that is otherwise required to be included in the formulary under subclause (I) (or to otherwise limit access to such a drug, including through prior authorization or utilization management).

“(ii) **IDENTIFICATION OF DRUGS IN CERTAIN CATEGORIES AND CLASSES.**—

“(I) **IN GENERAL.**—Subject to clause (iv), the Secretary shall identify, as appropriate, categories and classes of drugs for which the Secretary determines are of clinical concern.

“(II) **CRITERIA.**—The Secretary shall use criteria established by the Secretary in making any determination under subclause (I).

Regulations.
Public
information.

“(iii) IMPLEMENTATION.—The Secretary shall establish the criteria under clause (ii)(II) and any exceptions under clause (i)(II) through the promulgation of a regulation which includes a public notice and comment period.

“(iv) REQUIREMENT FOR CERTAIN CATEGORIES AND CLASSES UNTIL CRITERIA ESTABLISHED.—Until such time as the Secretary establishes the criteria under clause (ii)(II) the following categories and classes of drugs shall be identified under clause (ii)(I):

“(I) Anticonvulsants.

“(II) Antidepressants.

“(III) Antineoplastics.

“(IV) Antipsychotics.

“(V) Antiretrovirals.

“(VI) Immunosuppressants for the treatment of transplant rejection.”.

42 USC
1395w-104 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan year 2011 and subsequent plan years.

SEC. 3308. REDUCING PART D PREMIUM SUBSIDY FOR HIGH-INCOME BENEFICIARIES.

(a) INCOME-RELATED INCREASE IN PART D PREMIUM.—

(1) IN GENERAL.—Section 1860D-13(a) of the Social Security Act (42 U.S.C. 1395w-113(a)) is amended by adding at the end the following new paragraph:

“(7) INCREASE IN BASE BENEFICIARY PREMIUM BASED ON INCOME.—

“(A) IN GENERAL.—In the case of an individual whose modified adjusted gross income exceeds the threshold amount applicable under paragraph (2) of section 1839(i) (including application of paragraph (5) of such section) for the calendar year, the monthly amount of the beneficiary premium applicable under this section for a month after December 2010 shall be increased by the monthly adjustment amount specified in subparagraph (B).

“(B) MONTHLY ADJUSTMENT AMOUNT.—The monthly adjustment amount specified in this subparagraph for an individual for a month in a year is equal to the product of—

“(i) the quotient obtained by dividing—

“(I) the applicable percentage determined under paragraph (3)(C) of section 1839(i) (including application of paragraph (5) of such section) for the individual for the calendar year reduced by 25.5 percent; by

“(II) 25.5 percent; and

“(ii) the base beneficiary premium (as computed under paragraph (2)).

“(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term ‘modified adjusted gross income’ has the meaning given such term in subparagraph (A) of section 1839(i)(4), determined for the taxable year applicable under subparagraphs (B) and (C) of such section.

“(D) DETERMINATION BY COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall make any determination necessary to carry out the income-

related increase in the base beneficiary premium under this paragraph.

“(E) PROCEDURES TO ASSURE CORRECT INCOME-RELATED INCREASE IN BASE BENEFICIARY PREMIUM.—

Deadlines.

“(i) DISCLOSURE OF BASE BENEFICIARY PREMIUM.—

Not later than September 15 of each year beginning with 2010, the Secretary shall disclose to the Commissioner of Social Security the amount of the base beneficiary premium (as computed under paragraph (2)) for the purpose of carrying out the income-related increase in the base beneficiary premium under this paragraph with respect to the following year.

“(ii) ADDITIONAL DISCLOSURE.—Not later than October 15 of each year beginning with 2010, the Secretary shall disclose to the Commissioner of Social Security the following information for the purpose of carrying out the income-related increase in the base beneficiary premium under this paragraph with respect to the following year:

“(I) The modified adjusted gross income threshold applicable under paragraph (2) of section 1839(i) (including application of paragraph (5) of such section).

“(II) The applicable percentage determined under paragraph (3)(C) of section 1839(i) (including application of paragraph (5) of such section).

“(III) The monthly adjustment amount specified in subparagraph (B).

“(IV) Any other information the Commissioner of Social Security determines necessary to carry out the income-related increase in the base beneficiary premium under this paragraph.

“(F) RULE OF CONSTRUCTION.—The formula used to determine the monthly adjustment amount specified under subparagraph (B) shall only be used for the purpose of determining such monthly adjustment amount under such subparagraph.”.

(2) COLLECTION OF MONTHLY ADJUSTMENT AMOUNT.—Section 1860D-13(c) of the Social Security Act (42 U.S.C. 1395w-113(c)) is amended—

(A) in paragraph (1), by striking “(2) and (3)” and inserting “(2), (3), and (4)”; and

(B) by adding at the end the following new paragraph:

“(4) COLLECTION OF MONTHLY ADJUSTMENT AMOUNT.—

“(A) IN GENERAL.—Notwithstanding any provision of this subsection or section 1854(d)(2), subject to subparagraph (B), the amount of the income-related increase in the base beneficiary premium for an individual for a month (as determined under subsection (a)(7)) shall be paid through withholding from benefit payments in the manner provided under section 1840.

“(B) AGREEMENTS.—In the case where the monthly benefit payments of an individual that are withheld under subparagraph (A) are insufficient to pay the amount described in such subparagraph, the Commissioner of Social Security shall enter into agreements with the Secretary, the Director of the Office of Personnel Management,

and the Railroad Retirement Board as necessary in order to allow other agencies to collect the amount described in subparagraph (A) that was not withheld under such subparagraph.”.

(b) CONFORMING AMENDMENTS.—

(1) MEDICARE.—Section 1860D-13(a)(1) of the Social Security Act (42 U.S.C. 1395w-113(a)(1)) is amended—

(A) by redesignating subparagraph (F) as subparagraph (G);

(B) in subparagraph (G), as redesignated by subparagraph (A), by striking “(D) and (E)” and inserting “(D), (E), and (F)”; and

(C) by inserting after subparagraph (E) the following new subparagraph:

“(F) INCREASE BASED ON INCOME.—The monthly beneficiary premium shall be increased pursuant to paragraph (7).”.

26 USC 6103.

(2) INTERNAL REVENUE CODE.—Section 6103(l)(20) of the Internal Revenue Code of 1986 (relating to disclosure of return information to carry out Medicare part B premium subsidy adjustment) is amended—

(A) in the heading, by inserting “AND PART D BASE BENEFICIARY PREMIUM INCREASE” after “PART B PREMIUM SUBSIDY ADJUSTMENT”;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting “or increase under section 1860D-13(a)(7)” after “1839(i)”; and

(ii) in clause (vii), by inserting after “subsection (i) of such section” the following: “or increase under section 1860D-13(a)(7) of such Act”; and

(C) in subparagraph (B)—

(i) by striking “Return information” and inserting the following:

“(i) IN GENERAL.—Return information”;

(ii) by inserting “or increase under such section 1860D-13(a)(7)” before the period at the end;

(iii) as amended by clause (i), by inserting “or for the purpose of resolving taxpayer appeals with respect to any such premium adjustment or increase” before the period at the end; and

(iv) by adding at the end the following new clause:

“(ii) DISCLOSURE TO OTHER AGENCIES.—Officers, employees, and contractors of the Social Security Administration may disclose—

“(I) the taxpayer identity information and the amount of the premium subsidy adjustment or premium increase with respect to a taxpayer described in subparagraph (A) to officers, employees, and contractors of the Centers for Medicare and Medicaid Services, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

“(II) the taxpayer identity information and the amount of the premium subsidy adjustment or the increased premium amount with respect to

a taxpayer described in subparagraph (A) to officers and employees of the Office of Personnel Management and the Railroad Retirement Board, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

“(III) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Health and Human Services to the extent necessary to resolve administrative appeals of such premium subsidy adjustment or increased premium, and

“(IV) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Justice for use in judicial proceedings to the extent necessary to carry out the purposes described in clause (i).”.

SEC. 3309. ELIMINATION OF COST SHARING FOR CERTAIN DUAL ELIGIBLE INDIVIDUALS.

Section 1860D–14(a)(1)(D)(i) of the Social Security Act (42 U.S.C. 1395w–114(a)(1)(D)(i)) is amended by inserting “or, effective on a date specified by the Secretary (but in no case earlier than January 1, 2012), who would be such an institutionalized individual or couple, if the full-benefit dual eligible individual were not receiving services under a home and community-based waiver authorized for a State under section 1115 or subsection (c) or (d) of section 1915 or under a State plan amendment under subsection (i) of such section or services provided through enrollment in a medicaid managed care organization with a contract under section 1903(m) or under section 1932” after “1902(q)(1)(B))”.

SEC. 3310. REDUCING WASTEFUL DISPENSING OF OUTPATIENT PRESCRIPTION DRUGS IN LONG-TERM CARE FACILITIES UNDER PRESCRIPTION DRUG PLANS AND MA-PD PLANS.

(a) IN GENERAL.—Section 1860D–4(c) of the Social Security Act (42 U.S.C. 1395w–104(c)) is amended by adding at the end the following new paragraph:

“(3) REDUCING WASTEFUL DISPENSING OF OUTPATIENT PRESCRIPTION DRUGS IN LONG-TERM CARE FACILITIES.—The Secretary shall require PDP sponsors of prescription drug plans to utilize specific, uniform dispensing techniques, as determined by the Secretary, in consultation with relevant stakeholders (including representatives of nursing facilities, residents of nursing facilities, pharmacists, the pharmacy industry (including retail and long-term care pharmacy), prescription drug plans, MA–PD plans, and any other stakeholders the Secretary determines appropriate), such as weekly, daily, or automated dose dispensing, when dispensing covered part D drugs to enrollees who reside in a long-term care facility in order to reduce waste associated with 30-day fills.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning on or after January 1, 2012.

42 USC
1395w–104 note.

SEC. 3311. IMPROVED MEDICARE PRESCRIPTION DRUG PLAN AND MA-PD PLAN COMPLAINT SYSTEM.

42 USC
1395w–154.

(a) IN GENERAL.—The Secretary shall develop and maintain a complaint system, that is widely known and easy to use, to

collect and maintain information on MA-PD plan and prescription drug plan complaints that are received (including by telephone, letter, e-mail, or any other means) by the Secretary (including by a regional office of the Department of Health and Human Services, the Medicare Beneficiary Ombudsman, a subcontractor, a carrier, a fiscal intermediary, and a Medicare administrative contractor under section 1874A of the Social Security Act (42 U.S.C. 1395kk)) through the date on which the complaint is resolved. The system shall be able to report and initiate appropriate interventions and monitoring based on substantial complaints and to guide quality improvement.

(b) **MODEL ELECTRONIC COMPLAINT FORM.**—The Secretary shall develop a model electronic complaint form to be used for reporting plan complaints under the system. Such form shall be prominently displayed on the front page of the Medicare.gov Internet website and on the Internet website of the Medicare Beneficiary Ombudsman.

(c) **ANNUAL REPORTS BY THE SECRETARY.**—The Secretary shall submit to Congress annual reports on the system. Such reports shall include an analysis of the number and types of complaints reported in the system, geographic variations in such complaints, the timeliness of agency or plan responses to such complaints, and the resolution of such complaints.

(d) **DEFINITIONS.**—In this section:

(1) **MA-PD PLAN.**—The term “MA-PD plan” has the meaning given such term in section 1860D-41(a)(9) of such Act (42 U.S.C. 1395w-151(a)(9)).

(2) **PRESCRIPTION DRUG PLAN.**—The term “prescription drug plan” has the meaning given such term in section 1860D-41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14)).

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(4) **SYSTEM.**—The term “system” means the plan complaint system developed and maintained under subsection (a).

SEC. 3312. UNIFORM EXCEPTIONS AND APPEALS PROCESS FOR PRESCRIPTION DRUG PLANS AND MA-PD PLANS.

(a) **IN GENERAL.**—Section 1860D-4(b)(3) of the Social Security Act (42 U.S.C. 1395w-104(b)(3)) is amended by adding at the end the following new subparagraph:

“(H) **USE OF SINGLE, UNIFORM EXCEPTIONS AND APPEALS PROCESS.**—Notwithstanding any other provision of this part, each PDP sponsor of a prescription drug plan shall—

“(i) use a single, uniform exceptions and appeals process (including, to the extent the Secretary determines feasible, a single, uniform model form for use under such process) with respect to the determination of prescription drug coverage for an enrollee under the plan; and

“(ii) provide instant access to such process by enrollees through a toll-free telephone number and an Internet website.”.

42 USC
1395w-104 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to exceptions and appeals on or after January 1, 2012.

SEC. 3313. OFFICE OF THE INSPECTOR GENERAL STUDIES AND REPORTS.42 USC
1395w-101 note.

(a) **STUDY AND ANNUAL REPORT ON PART D FORMULARIES' INCLUSION OF DRUGS COMMONLY USED BY DUAL ELIGIBLES.—**

(1) **STUDY.**—The Inspector General of the Department of Health and Human Services shall conduct a study of the extent to which formularies used by prescription drug plans and MA-PD plans under part D include drugs commonly used by full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))).

(2) **ANNUAL REPORTS.**—Not later than July 1 of each year (beginning with 2011), the Inspector General shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate.

(b) **STUDY AND REPORT ON PRESCRIPTION DRUG PRICES UNDER MEDICARE PART D AND MEDICAID.—**

(1) **STUDY.**—

(A) **IN GENERAL.**—The Inspector General of the Department of Health and Human Services shall conduct a study on prices for covered part D drugs under the Medicare prescription drug program under part D of title XVIII of the Social Security Act and for covered outpatient drugs under title XIX. Such study shall include the following:

(i) A comparison, with respect to the 200 most frequently dispensed covered part D drugs under such program and covered outpatient drugs under such title (as determined by the Inspector General based on volume and expenditures), of—

(I) the prices paid for covered part D drugs by PDP sponsors of prescription drug plans and Medicare Advantage organizations offering MA-PD plans; and

(II) the prices paid for covered outpatient drugs by a State plan under title XIX.

(ii) An assessment of—

(I) the financial impact of any discrepancies in such prices on the Federal Government; and

(II) the financial impact of any such discrepancies on enrollees under part D or individuals eligible for medical assistance under a State plan under title XIX.

(B) **PRICE.**—For purposes of subparagraph (A), the price of a covered part D drug or a covered outpatient drug shall include any rebate or discount under such program or such title, respectively, including any negotiated price concession described in section 1860D-2(d)(1)(B) of the Social Security Act (42 U.S.C. 1395w-102(d)(1)(B)) or rebate under an agreement under section 1927 of the Social Security Act (42 U.S.C. 1396r-8).

(C) **AUTHORITY TO COLLECT ANY NECESSARY INFORMATION.**—Notwithstanding any other provision of law, the Inspector General of the Department of Health and Human Services shall be able to collect any information related to the prices of covered part D drugs under such program

and covered outpatient drugs under such title XIX necessary to carry out the comparison under subparagraph (A).

(2) REPORT.—

(A) IN GENERAL.—Not later than October 1, 2011, subject to subparagraph (B), the Inspector General shall submit to Congress a report containing the results of the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Inspector General determines appropriate.

(B) LIMITATION ON INFORMATION CONTAINED IN REPORT.—The report submitted under subparagraph (A) shall not include any information that the Inspector General determines is proprietary or is likely to negatively impact the ability of a PDP sponsor or a State plan under title XIX to negotiate prices for covered part D drugs or covered outpatient drugs, respectively.

(3) DEFINITIONS.—In this section:

(A) COVERED PART D DRUG.—The term “covered part D drug” has the meaning given such term in section 1860D-2(e) of the Social Security Act (42 U.S.C. 1395w-102(e)).

(B) COVERED OUTPATIENT DRUG.—The term “covered outpatient drug” has the meaning given such term in section 1927(k) of such Act (42 U.S.C. 1396r(k)).

(C) MA-PD PLAN.—The term “MA-PD plan” has the meaning given such term in section 1860D-41(a)(9) of such Act (42 U.S.C. 1395w-151(a)(9)).

(D) MEDICARE ADVANTAGE ORGANIZATION.—The term “Medicare Advantage organization” has the meaning given such term in section 1859(a)(1) of such Act (42 U.S.C. 1395w-28)(a)(1)).

(E) PDP SPONSOR.—The term “PDP sponsor” has the meaning given such term in section 1860D-41(a)(13) of such Act (42 U.S.C. 1395w-151(a)(13)).

(F) PRESCRIPTION DRUG PLAN.—The term “prescription drug plan” has the meaning given such term in section 1860D-41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14)).

SEC. 3314. INCLUDING COSTS INCURRED BY AIDS DRUG ASSISTANCE PROGRAMS AND INDIAN HEALTH SERVICE IN PROVIDING PRESCRIPTION DRUGS TOWARD THE ANNUAL OUT-OF-POCKET THRESHOLD UNDER PART D.

(a) IN GENERAL.—Section 1860D-2(b)(4)(C) of the Social Security Act (42 U.S.C. 1395w-102(b)(4)(C)) is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii)—

(A) by striking “such costs shall be treated as incurred only if” and inserting “subject to clause (iii), such costs shall be treated as incurred only if”;

(B) by striking “, under section 1860D-14, or under a State Pharmaceutical Assistance Program”; and

(C) by striking the period at the end and inserting “; and”; and

(3) by inserting after clause (ii) the following new clause:

“(iii) such costs shall be treated as incurred and shall not be considered to be reimbursed under clause (ii) if such costs are borne or paid—

“(I) under section 1860D-14;

“(II) under a State Pharmaceutical Assistance Program;

“(III) by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act); or

“(IV) under an AIDS Drug Assistance Program under part B of title XXVI of the Public Health Service Act.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to costs incurred on or after January 1, 2011. 42 USC 1395w-102 note.

SEC. 3315. IMMEDIATE REDUCTION IN COVERAGE GAP IN 2010.

Section 1860D-2(b) of the Social Security Act (42 U.S.C. 1395w-102(b)) is amended—

(1) in paragraph (3)(A), by striking “paragraph (4)” and inserting “paragraphs (4) and (7)”; and

(2) by adding at the end the following new paragraph:

“(7) **INCREASE IN INITIAL COVERAGE LIMIT IN 2010.**—

“(A) **IN GENERAL.**—For the plan year beginning on January 1, 2010, the initial coverage limit described in paragraph (3)(B) otherwise applicable shall be increased by \$500.

Effective date.

“(B) **APPLICATION.**—In applying subparagraph (A)—

“(i) except as otherwise provided in this subparagraph, there shall be no change in the premiums, bids, or any other parameters under this part or part C;

“(ii) costs that would be treated as incurred costs for purposes of applying paragraph (4) but for the application of subparagraph (A) shall continue to be treated as incurred costs;

“(iii) the Secretary shall establish procedures, which may include a reconciliation process, to fully reimburse PDP sponsors with respect to prescription drug plans and MA organizations with respect to MA-PD plans for the reduction in beneficiary cost sharing associated with the application of subparagraph (A);

Procedures.

“(iv) the Secretary shall develop an estimate of the additional increased costs attributable to the application of this paragraph for increased drug utilization and financing and administrative costs and shall use such estimate to adjust payments to PDP sponsors with respect to prescription drug plans under this part and MA organizations with respect to MA-PD plans under part C; and

“(v) the Secretary shall establish procedures for retroactive reimbursement of part D eligible individuals who are covered under such a plan for costs which are incurred before the date of initial implementation of subparagraph (A) and which would be reimbursed under such a plan if such implementation occurred as of January 1, 2010.

Procedures.

“(C) **NO EFFECT ON SUBSEQUENT YEARS.**—The increase under subparagraph (A) shall only apply with respect to the plan year beginning on January 1, 2010, and the initial coverage limit for plan years beginning on or after January

Applicability.
Time periods.

1, 2011, shall be determined as if subparagraph (A) had never applied.”.

Subtitle E—Ensuring Medicare Sustainability

SEC. 3401. REVISION OF CERTAIN MARKET BASKET UPDATES AND INCORPORATION OF PRODUCTIVITY IMPROVEMENTS INTO MARKET BASKET UPDATES THAT DO NOT ALREADY INCORPORATE SUCH IMPROVEMENTS.

(a) INPATIENT ACUTE HOSPITALS.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 3001(a)(3), is further amended—

(1) in clause (i)(XX), by striking “clause (viii)” and inserting “clauses (viii), (ix), (xi), and (xii)”;

(2) in the first sentence of clause (viii), by inserting “of such applicable percentage increase (determined without regard to clause (ix), (xi), or (xii))” after “one-quarter”;

(3) in the first sentence of clause (ix)(I), by inserting “(determined without regard to clause (viii), (xi), or (xii))” after “clause (i)” the second time it appears; and

(4) by adding at the end the following new clauses:

“(xi)(I) For 2012 and each subsequent fiscal year, after determining the applicable percentage increase described in clause (i) and after application of clauses (viii) and (ix), such percentage increase shall be reduced by the productivity adjustment described in subclause (II).

“(II) The productivity adjustment described in this subclause, with respect to a percentage, factor, or update for a fiscal year, year, cost reporting period, or other annual period, is a productivity adjustment equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period).

“(III) The application of subclause (I) may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

“(xii) After determining the applicable percentage increase described in clause (i), and after application of clauses (viii), (ix), and (xi), the Secretary shall reduce such applicable percentage increase—

“(I) for each of fiscal years 2010 and 2011, by 0.25 percentage point; and

“(II) subject to clause (xiii), for each of fiscal years 2012 through 2019, by 0.2 percentage point.

The application of this clause may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

“(xiii) Clause (xii) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.2 percentage point’, if for such fiscal year—

Applicability.

“(I) the excess (if any) of—

“(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

(b) SKILLED NURSING FACILITIES.—Section 1888(e)(5)(B) of the Social Security Act (42 U.S.C. 1395yy(e)(5)(B)) is amended—

(1) by striking “PERCENTAGE.—The term” and inserting “PERCENTAGE.—

“(i) IN GENERAL.—Subject to clause (ii), the term”;

and

(2) by adding at the end the following new clause:

“(ii) ADJUSTMENT.—For fiscal year 2012 and each subsequent fiscal year, after determining the percentage described in clause (i), the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such percentage being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.”.

(c) LONG-TERM CARE HOSPITALS.—Section 1886(m) of the Social Security Act (42 U.S.C. 1395ww(m)) is amended by adding at the end the following new paragraphs:

“(3) IMPLEMENTATION FOR RATE YEAR 2010 AND SUBSEQUENT YEARS.—

“(A) IN GENERAL.—In implementing the system described in paragraph (1) for rate year 2010 and each subsequent rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, shall be reduced—

“(i) for rate year 2012 and each subsequent rate year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of rate years 2010 through 2019, by the other adjustment described in paragraph (4).

“(B) SPECIAL RULE.—The application of this paragraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(4) OTHER ADJUSTMENT.—

“(A) IN GENERAL.—For purposes of paragraph (3)(A)(ii), the other adjustment described in this paragraph is—

“(i) for each of rate years 2010 and 2011, 0.25 percentage point; and

“(ii) subject to subparagraph (B), for each of rate years 2012 through 2019, 0.2 percentage point.

“(B) REDUCTION OF OTHER ADJUSTMENT.—Subparagraph (A)(ii) shall be applied with respect to any of rate years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.2 percentage point’, if for such rate year—

“(i) the excess (if any) of—

“(I) the total percentage of the non-elderly insured population for the preceding rate year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(II) the total percentage of the non-elderly insured population for such preceding rate year (as estimated by the Secretary); exceeds

“(ii) 5 percentage points.”.

(d) INPATIENT REHABILITATION FACILITIES.—Section 1886(j)(3) of the Social Security Act (42 U.S.C. 1395ww(j)(3)) is amended—

(1) in subparagraph (C)—

(A) by striking “FACTOR.—For purposes” and inserting “FACTOR.—

“(i) IN GENERAL.—For purposes”;

(B) by inserting “subject to clause (ii)” before the period at the end of the first sentence of clause (i), as added by paragraph (1); and

(C) by adding at the end the following new clause:

“(ii) PRODUCTIVITY AND OTHER ADJUSTMENT.—After establishing the increase factor described in clause (i) for a fiscal year, the Secretary shall reduce such increase factor—

“(I) for fiscal year 2012 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of fiscal years 2010 through 2019, by the other adjustment described in subparagraph (D).

The application of this clause may result in the increase factor under this subparagraph being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.”; and

(2) by adding at the end the following new subparagraph:

“(D) OTHER ADJUSTMENT.—

“(i) IN GENERAL.—For purposes of subparagraph (C)(ii)(II), the other adjustment described in this subparagraph is—

“(I) for each of fiscal years 2010 and 2011, 0.25 percentage point; and

“(II) subject to clause (ii), for each of fiscal years 2012 through 2019, 0.2 percentage point.

“(ii) REDUCTION OF OTHER ADJUSTMENT.—Clause (i)(II) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.2 percentage point’, if for such fiscal year—

Applicability.

“(I) the excess (if any) of—

“(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

(e) HOME HEALTH AGENCIES.—Section 1895(b)(3)(B) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

(1) in clause (ii)(V), by striking “clause (v)” and inserting “clauses (v) and (vi)”; and

(2) by adding at the end the following new clause:

“(vi) ADJUSTMENTS.—After determining the home health market basket percentage increase under clause (iii), and after application of clause (v), the Secretary shall reduce such percentage—

“(I) for 2015 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of 2011 and 2012, by 1 percentage point.

The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.”.

(f) PSYCHIATRIC HOSPITALS.—Section 1886 of the Social Security Act, as amended by sections 3001, 3008, 3025, and 3133, is amended by adding at the end the following new subsection: 42 USC 1395ww.

“(s) PROSPECTIVE PAYMENT FOR PSYCHIATRIC HOSPITALS.—

“(1) REFERENCE TO ESTABLISHMENT AND IMPLEMENTATION OF SYSTEM.—For provisions related to the establishment and implementation of a prospective payment system for payments under this title for inpatient hospital services furnished by psychiatric hospitals (as described in clause (i) of subsection (d)(1)(B)) and psychiatric units (as described in the matter following clause (v) of such subsection), see section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.

“(2) IMPLEMENTATION FOR RATE YEAR BEGINNING IN 2010 AND SUBSEQUENT RATE YEARS.—

“(A) IN GENERAL.—In implementing the system described in paragraph (1) for the rate year beginning in 2010 and any subsequent rate year, any update to a base rate for days during the rate year for a psychiatric hospital or unit, respectively, shall be reduced—

“(i) for the rate year beginning in 2012 and each subsequent rate year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of the rate years beginning in 2010 through 2019, by the other adjustment described in paragraph (3).

“(B) SPECIAL RULE.—The application of this paragraph may result in such update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(3) OTHER ADJUSTMENT.—

“(A) IN GENERAL.—For purposes of paragraph (2)(A)(ii), the other adjustment described in this paragraph is—

“(i) for each of the rate years beginning in 2010 and 2011, 0.25 percentage point; and

“(ii) subject to subparagraph (B), for each of the rate years beginning in 2012 through 2019, 0.2 percentage point.

“(B) REDUCTION OF OTHER ADJUSTMENT.—Subparagraph (A)(ii) shall be applied with respect to any of rate years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.2 percentage point’, if for such rate year—

“(i) the excess (if any) of—

“(I) the total percentage of the non-elderly insured population for the preceding rate year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(II) the total percentage of the non-elderly insured population for such preceding rate year (as estimated by the Secretary); exceeds

“(ii) 5 percentage points.”

(g) HOSPICE CARE.—Section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)), as amended by section 3132, is amended by adding at the end the following new clauses:

“(iv) After determining the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, with respect to fiscal year 2013 and each subsequent fiscal year, the Secretary shall reduce such percentage—

“(I) for 2013 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) subject to clause (v), for each of fiscal years 2013 through 2019, by 0.5 percentage point.

The application of this clause may result in the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

“(v) Clause (iv)(II) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.5 percentage point’, if for such fiscal year—

“(I) the excess (if any) of—

Applicability.

“(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

(h) DIALYSIS.—Section 1881(b)(14)(F) of the Social Security Act (42 U.S.C. 1395rr(b)(14)(F)) is amended—

(1) in clause (i)—

(A) by inserting “(I)” after “(F)(i)”

(B) in subclause (I), as inserted by subparagraph (A)—

(i) by striking “clause (ii)” and inserting “subclause

(II) and clause (ii)”; and

(ii) by striking “minus 1.0 percentage point”; and

(C) by adding at the end the following new subclause:

“(II) For 2012 and each subsequent year, after determining the increase factor described in subclause (I), the Secretary shall reduce such increase factor by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such increase factor being less than 0.0 for a year, and may result in payment rates under the payment system under this paragraph for a year being less than such payment rates for the preceding year.”; and

(2) in clause (ii)(II)—

(A) by striking “The” and inserting “Subject to clause (i)(II), the”; and

(B) by striking “clause (i) minus 1.0 percentage point” and inserting “clause (i)(I)”.

(i) OUTPATIENT HOSPITALS.—Section 1833(t)(3) of the Social Security Act (42 U.S.C. 1395l(t)(3)) is amended—

(1) in subparagraph (C)(iv), by inserting “and subparagraph (F) of this paragraph” after “(17)”; and

(2) by adding at the end the following new subparagraphs:

“(F) PRODUCTIVITY AND OTHER ADJUSTMENT.—After determining the OPD fee schedule increase factor under subparagraph (C)(iv), the Secretary shall reduce such increase factor—

“(i) for 2012 and subsequent years, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of 2010 through 2019, by the adjustment described in subparagraph (G).

The application of this subparagraph may result in the increase factor under subparagraph (C)(iv) being less than 0.0 for a year, and may result in payment rates under the payment system under this subsection for a year being less than such payment rates for the preceding year.

“(G) OTHER ADJUSTMENT.—

“(i) ADJUSTMENT.—For purposes of subparagraph (F)(ii), the adjustment described in this subparagraph is—

“(I) for each of 2010 and 2011, 0.25 percentage point; and

“(II) subject to clause (ii), for each of 2012 through 2019, 0.2 percentage point.

“(ii) REDUCTION OF OTHER ADJUSTMENT.—Clause (i)(II) shall be applied with respect to any of 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.2 percentage point’, if for such year—

“(I) the excess (if any) of—

“(aa) the total percentage of the non-elderly insured population for the preceding year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(bb) the total percentage of the non-elderly insured population for such preceding year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

(j) AMBULANCE SERVICES.—Section 1834(l)(3) of the Social Security Act (42 U.S.C. 1395m(l)(3)) is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B)—

(A) by inserting “, subject to subparagraph (C) and the succeeding sentence of this paragraph,” after “increased”; and

(B) by striking the period at the end and inserting “; and”;

(3) by adding at the end the following new subparagraph:

“(C) for 2011 and each subsequent year, after determining the percentage increase under subparagraph (B) for the year, reduce such percentage increase by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(4) by adding at the end the following flush sentence: “The application of subparagraph (C) may result in the percentage increase under subparagraph (B) being less than 0.0 for a year, and may result in payment rates under the fee schedule under this subsection for a year being less than such payment rates for the preceding year.”.

(k) AMBULATORY SURGICAL CENTER SERVICES.—Section 1833(i)(2)(D) of the Social Security Act (42 U.S.C. 1395l(i)(2)(D)) is amended—

(1) by redesignating clause (v) as clause (vi); and

(2) by inserting after clause (iv) the following new clause:

“(v) In implementing the system described in clause (i) for 2011 and each subsequent year, any annual update under such system for the year, after application of clause (iv), shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such update being less than 0.0 for a year, and may result in payment rates under the system described in clause (i) for a year being less than such payment rates for the preceding year.”.

(l) LABORATORY SERVICES.—Section 1833(h)(2)(A) of the Social Security Act (42 U.S.C. 1395l(h)(2)(A)) is amended—

(1) in clause (i)—

(A) by inserting “, subject to clause (iv),” after “year by”; and

(B) by striking “through 2013” and inserting “and 2010”; and

(2) by adding at the end the following new clause:

“(iv) After determining the adjustment to the fee schedules under clause (i), the Secretary shall reduce such adjustment—

“(I) for 2011 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of 2011 through 2015, by 1.75 percentage points.

Subclause (I) shall not apply in a year where the adjustment to the fee schedules determined under clause (i) is 0.0 or a percentage decrease for a year. The application of the productivity adjustment under subclause (I) shall not result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year. The application of subclause (II) may result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year, and may result in payment rates for a year being less than such payment rates for the preceding year.”.

(m) CERTAIN DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) is amended—

(1) in subparagraph (K)—

(A) by striking “2011, 2012, and 2013,”; and

(B) by inserting “and” after the semicolon at the end;

(2) by striking subparagraphs (L) and (M) and inserting the following new subparagraph:

“(L) for 2011 and each subsequent year—

“(i) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

“(ii) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(3) by adding at the end the following flush sentence: “The application of subparagraph (L)(ii) may result in the covered item update under this paragraph being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.”.

(n) PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Section 1834(h)(4) of the Social Security Act (42 U.S.C. 1395m(h)(4)) is amended—

(1) in subparagraph (A)—

(A) in clause (ix), by striking “and” at the end;

(B) in clause (x)—

(i) by striking “a subsequent year” and inserting “for each of 2007 through 2010”; and

(ii) by inserting “and” after the semicolon at the end;

(C) by adding at the end the following new clause:

“(xi) for 2011 and each subsequent year—

“(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

“(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(D) by adding at the end the following flush sentence:

“The application of subparagraph (A)(xi)(II) may result in the applicable percentage increase under subparagraph (A) being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.”.

(o) OTHER ITEMS.—Section 1842(s)(1) of the Social Security Act (42 U.S.C. 1395u(s)(1)) is amended—

(1) in the first sentence, by striking “Subject to” and inserting “(A) Subject to”;

(2) by striking the second sentence and inserting the following new subparagraph:

“(B) Any fee schedule established under this paragraph for such item or service shall be updated—

“(i) for years before 2011—

“(I) subject to subclause (II), by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year; and

“(II) for items and services described in paragraph (2)(D) for 2009, section 1834(a)(14)(J) shall apply under this paragraph instead of the percentage increase otherwise applicable; and

“(ii) for 2011 and subsequent years—

“(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

“(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(3) by adding at the end the following flush sentence:

“The application of subparagraph (B)(ii)(II) may result in the update under this paragraph being less than 0.0 for a year, and may result in payment rates under any fee schedule established under this paragraph for a year being less than such payment rates for the preceding year.”.

(p) NO APPLICATION PRIOR TO APRIL 1, 2010.—Notwithstanding the preceding provisions of this section, the amendments made by subsections (a), (c), and (d) shall not apply to discharges occurring before April 1, 2010.

42 USC
1395ww note.

SEC. 3402. TEMPORARY ADJUSTMENT TO THE CALCULATION OF PART B PREMIUMS.

Section 1839(i) of the Social Security Act (42 U.S.C. 1395r(i)) is amended—

(1) in paragraph (2), in the matter preceding subparagraph (A), by inserting “subject to paragraph (6),” after “subsection,”;
 (2) in paragraph (3)(A)(i), by striking “The applicable” and inserting “Subject to paragraph (6), the applicable”;
 (3) by redesignating paragraph (6) as paragraph (7); and
 (4) by inserting after paragraph (5) the following new paragraph:

“(6) TEMPORARY ADJUSTMENT TO INCOME THRESHOLDS.— Time period.
 Notwithstanding any other provision of this subsection, during the period beginning on January 1, 2011, and ending on December 31, 2019—

“(A) the threshold amount otherwise applicable under paragraph (2) shall be equal to such amount for 2010; and

“(B) the dollar amounts otherwise applicable under paragraph (3)(C)(i) shall be equal to such dollar amounts for 2010.”.

SEC. 3403. INDEPENDENT MEDICARE ADVISORY BOARD.

(a) BOARD.—

(1) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), as amended by section 3022, is amended by adding at the end the following new section:

“INDEPENDENT MEDICARE ADVISORY BOARD

“SEC. 1899A. (a) ESTABLISHMENT.—There is established an independent board to be known as the ‘Independent Medicare Advisory Board’. 42 USC 1395kkk.

“(b) PURPOSE.—It is the purpose of this section to, in accordance with the following provisions of this section, reduce the per capita rate of growth in Medicare spending—

“(1) by requiring the Chief Actuary of the Centers for Medicare & Medicaid Services to determine in each year to which this section applies (in this section referred to as ‘a determination year’) the projected per capita growth rate under Medicare for the second year following the determination year (in this section referred to as ‘an implementation year’);

“(2) if the projection for the implementation year exceeds the target growth rate for that year, by requiring the Board to develop and submit during the first year following the determination year (in this section referred to as ‘a proposal year’) a proposal containing recommendations to reduce the Medicare per capita growth rate to the extent required by this section; and

“(3) by requiring the Secretary to implement such proposals unless Congress enacts legislation pursuant to this section.

“(c) BOARD PROPOSALS.—

“(1) DEVELOPMENT.—

“(A) IN GENERAL.—The Board shall develop detailed and specific proposals related to the Medicare program in accordance with the succeeding provisions of this section.

“(B) ADVISORY REPORTS.—Beginning January 15, 2014, the Board may develop and submit to Congress advisory reports on matters related to the Medicare program, regardless of whether or not the Board submitted a proposal for such year. Such a report may, for years prior to 2020,

include recommendations regarding improvements to payment systems for providers of services and suppliers who are not otherwise subject to the scope of the Board's recommendations in a proposal under this section. Any advisory report submitted under this subparagraph shall not be subject to the rules for congressional consideration under subsection (d).

“(2) PROPOSALS.—

“(A) REQUIREMENTS.—Each proposal submitted under this section in a proposal year shall meet each of the following requirements:

“(i) If the Chief Actuary of the Centers for Medicare & Medicaid Services has made a determination under paragraph (7)(A) in the determination year, the proposal shall include recommendations so that the proposal as a whole (after taking into account recommendations under clause (v)) will result in a net reduction in total Medicare program spending in the implementation year that is at least equal to the applicable savings target established under paragraph (7)(B) for such implementation year. In determining whether a proposal meets the requirement of the preceding sentence, reductions in Medicare program spending during the 3-month period immediately preceding the implementation year shall be counted to the extent that such reductions are a result of the implementation of recommendations contained in the proposal for a change in the payment rate for an item or service that was effective during such period pursuant to subsection (e)(2)(A).

“(ii) The proposal shall not include any recommendation to ration health care, raise revenues or Medicare beneficiary premiums under section 1818, 1818A, or 1839, increase Medicare beneficiary cost-sharing (including deductibles, coinsurance, and copayments), or otherwise restrict benefits or modify eligibility criteria.

“(iii) In the case of proposals submitted prior to December 31, 2018, the proposal shall not include any recommendation that would reduce payment rates for items and services furnished, prior to December 31, 2019, by providers of services (as defined in section 1861(u)) and suppliers (as defined in section 1861(d)) scheduled, pursuant to the amendments made by section 3401 of the Patient Protection and Affordable Care Act, to receive a reduction to the inflationary payment updates of such providers of services and suppliers in excess of a reduction due to productivity in a year in which such recommendations would take effect.

“(iv) As appropriate, the proposal shall include recommendations to reduce Medicare payments under parts C and D, such as reductions in direct subsidy payments to Medicare Advantage and prescription drug plans specified under paragraph (1) and (2) of section 1860D-15(a) that are related to administrative expenses (including profits) for basic coverage, denying high bids or removing high bids for prescription drug

coverage from the calculation of the national average monthly bid amount under section 1860D–13(a)(4), and reductions in payments to Medicare Advantage plans under clauses (i) and (ii) of section 1853(a)(1)(B) that are related to administrative expenses (including profits) and performance bonuses for Medicare Advantage plans under section 1853(n). Any such recommendation shall not affect the base beneficiary premium percentage specified under 1860D–13(a).

“(v) The proposal shall include recommendations with respect to administrative funding for the Secretary to carry out the recommendations contained in the proposal.

“(vi) The proposal shall only include recommendations related to the Medicare program.

“(B) ADDITIONAL CONSIDERATIONS.—In developing and submitting each proposal under this section in a proposal year, the Board shall, to the extent feasible—

“(i) give priority to recommendations that extend Medicare solvency;

“(ii) include recommendations that—

“(I) improve the health care delivery system and health outcomes, including by promoting integrated care, care coordination, prevention and wellness, and quality and efficiency improvement; and

“(II) protect and improve Medicare beneficiaries’ access to necessary and evidence-based items and services, including in rural and frontier areas;

“(iii) include recommendations that target reductions in Medicare program spending to sources of excess cost growth;

“(iv) consider the effects on Medicare beneficiaries of changes in payments to providers of services (as defined in section 1861(u)) and suppliers (as defined in section 1861(d));

“(v) consider the effects of the recommendations on providers of services and suppliers with actual or projected negative cost margins or payment updates; and

“(vi) consider the unique needs of Medicare beneficiaries who are dually eligible for Medicare and the Medicaid program under title XIX.

“(C) NO INCREASE IN TOTAL MEDICARE PROGRAM SPENDING.—Each proposal submitted under this section shall be designed in such a manner that implementation of the recommendations contained in the proposal would not be expected to result, over the 10-year period starting with the implementation year, in any increase in the total amount of net Medicare program spending relative to the total amount of net Medicare program spending that would have occurred absent such implementation.

“(D) CONSULTATION WITH MEDPAC.—The Board shall submit a draft copy of each proposal to be submitted under this section to the Medicare Payment Advisory Commission established under section 1805 for its review. The Board

Submission.

Deadline.

shall submit such draft copy by not later than September 1 of the determination year.

Submission.
Deadlines.

“(E) REVIEW AND COMMENT BY THE SECRETARY.—The Board shall submit a draft copy of each proposal to be submitted to Congress under this section to the Secretary for the Secretary’s review and comment. The Board shall submit such draft copy by not later than September 1 of the determination year. Not later than March 1 of the submission year, the Secretary shall submit a report to Congress on the results of such review, unless the Secretary submits a proposal under paragraph (5)(A) in that year.

Reports.

“(F) CONSULTATIONS.—In carrying out its duties under this section, the Board shall engage in regular consultations with the Medicaid and CHIP Payment and Access Commission under section 1900.

“(3) TRANSMISSION OF BOARD PROPOSAL TO PRESIDENT.—

Deadline.

“(A) IN GENERAL.—

“(i) IN GENERAL.—Except as provided in clause (ii) and subsection (f)(3)(B), the Board shall transmit a proposal under this section to the President on January 15 of each year (beginning with 2014).

“(ii) EXCEPTION.—The Board shall not submit a proposal under clause (i) in a proposal year if the year is—

“(I) a year for which the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year under paragraph (6)(A) that the growth rate described in clause (i) of such paragraph does not exceed the growth rate described in clause (ii) of such paragraph;

“(II) a year in which the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year that the projected percentage increase (if any) for the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average) for the implementation year is less than the projected percentage increase (if any) in the Consumer Price Index for All Urban Consumers (all items; United States city average) for such implementation year; or

“(III) for proposal year 2019 and subsequent proposal years, a year in which the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year that the growth rate described in paragraph (8) exceeds the growth rate described in paragraph (6)(A)(i).

“(iii) START-UP PERIOD.—The Board may not submit a proposal under clause (i) prior to January 15, 2014.

“(B) REQUIRED INFORMATION.—Each proposal submitted by the Board under subparagraph (A)(i) shall include—

“(i) the recommendations described in paragraph (2)(A)(i);

“(ii) an explanation of each recommendation contained in the proposal and the reasons for including such recommendation;

“(iii) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the proposal meets the requirements of subparagraphs (A)(i) and (C) of paragraph (2);

“(iv) a legislative proposal that implements the recommendations; and

“(v) other information determined appropriate by the Board.

“(4) PRESIDENTIAL SUBMISSION TO CONGRESS.—Upon receiving a proposal from the Board under paragraph (3)(A)(i) or the Secretary under paragraph (5), the President shall immediately submit such proposal to Congress.

“(5) CONTINGENT SECRETARIAL DEVELOPMENT OF PROPOSAL.—If, with respect to a proposal year, the Board is required, to but fails, to submit a proposal to the President by the deadline applicable under paragraph (3)(A)(i), the Secretary shall develop a detailed and specific proposal that satisfies the requirements of subparagraphs (A) and (C) (and, to the extent feasible, subparagraph (B)) of paragraph (2) and contains the information required paragraph (3)(B)). By not later than January 25 of the year, the Secretary shall transmit—

Deadline.
Transmission.

“(A) such proposal to the President; and

“(B) a copy of such proposal to the Medicare Payment Advisory Commission for its review.

“(6) PER CAPITA GROWTH RATE PROJECTIONS BY CHIEF ACTUARY.—

“(A) IN GENERAL.—Subject to subsection (f)(3)(A), not later than April 30, 2013, and annually thereafter, the Chief Actuary of the Centers for Medicare & Medicaid Services shall determine in each such year whether—

Deadlines.
Determination.

“(i) the projected Medicare per capita growth rate for the implementation year (as determined under subparagraph (B)); exceeds

“(ii) the projected Medicare per capita target growth rate for the implementation year (as determined under subparagraph (C)).

“(B) MEDICARE PER CAPITA GROWTH RATE.—

“(i) IN GENERAL.—For purposes of this section, the Medicare per capita growth rate for an implementation year shall be calculated as the projected 5-year average (ending with such year) of the growth in Medicare program spending per unduplicated enrollee.

“(ii) REQUIREMENT.—The projection under clause (i) shall—

“(I) to the extent that there is projected to be a negative update to the single conversion factor applicable to payments for physicians’ services under section 1848(d) furnished in the proposal year or the implementation year, assume that such update for such services is 0 percent rather than the negative percent that would otherwise apply; and

“(II) take into account any delivery system reforms or other payment changes that have been enacted or published in final rules but not yet implemented as of the making of such calculation.

“(C) MEDICARE PER CAPITA TARGET GROWTH RATE.—For purposes of this section, the Medicare per capita target growth rate for an implementation year shall be calculated as the projected 5-year average (ending with such year) percentage increase in—

“(i) with respect to a determination year that is prior to 2018, the average of the projected percentage increase (if any) in—

“(I) the Consumer Price Index for All Urban Consumers (all items; United States city average); and

“(II) the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average); and

“(ii) with respect to a determination year that is after 2017, the nominal gross domestic product per capita plus 1.0 percentage point.

“(7) SAVINGS REQUIREMENT.—

“(A) IN GENERAL.—If, with respect to a determination year, the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination under paragraph (6)(A) that the growth rate described in clause (i) of such paragraph exceeds the growth rate described in clause (ii) of such paragraph, the Chief Actuary shall establish an applicable savings target for the implementation year.

“(B) APPLICABLE SAVINGS TARGET.—For purposes of this section, the applicable savings target for an implementation year shall be an amount equal to the product of—

“(i) the total amount of projected Medicare program spending for the proposal year; and

“(ii) the applicable percent for the implementation year.

“(C) APPLICABLE PERCENT.—For purposes of subparagraph (B), the applicable percent for an implementation year is the lesser of—

“(i) in the case of—

“(I) implementation year 2015, 0.5 percent;

“(II) implementation year 2016, 1.0 percent;

“(III) implementation year 2017, 1.25 percent;

and

“(IV) implementation year 2018 or any subsequent implementation year, 1.5 percent; and

“(ii) the projected excess for the implementation year (expressed as a percent) determined under subparagraph (A).

“(8) PER CAPITA RATE OF GROWTH IN NATIONAL HEALTH EXPENDITURES.—In each determination year (beginning in 2018), the Chief Actuary of the Centers for Medicare & Medicaid Services shall project the per capita rate of growth in national health expenditures for the implementation year. Such rate of growth for an implementation year shall be calculated as the projected 5-year average (ending with such year) percentage increase in national health care expenditures.

Effective date.

“(d) CONGRESSIONAL CONSIDERATION.—

“(1) INTRODUCTION.—

Proposal.

“(A) IN GENERAL.—On the day on which a proposal is submitted by the President to the House of Representatives and the Senate under subsection (c)(4), the legislative proposal (described in subsection (c)(3)(B)(iv)) contained in the proposal shall be introduced (by request) in the Senate by the majority leader of the Senate or by Members of the Senate designated by the majority leader of the Senate and shall be introduced (by request) in the House by the majority leader of the House or by Members of the House designated by the majority leader of the House.

“(B) NOT IN SESSION.—If either House is not in session on the day on which such legislative proposal is submitted, the legislative proposal shall be introduced in that House, as provided in subparagraph (A), on the first day thereafter on which that House is in session.

“(C) ANY MEMBER.—If the legislative proposal is not introduced in either House within 5 days on which that House is in session after the day on which the legislative proposal is submitted, then any Member of that House may introduce the legislative proposal.

Deadline.

“(D) REFERRAL.—The legislation introduced under this paragraph shall be referred by the Presiding Officers of the respective Houses to the Committee on Finance in the Senate and to the Committee on Energy and Commerce and the Committee on Ways and Means in the House of Representatives.

“(2) COMMITTEE CONSIDERATION OF PROPOSAL.—

“(A) REPORTING BILL.—Not later than April 1 of any proposal year in which a proposal is submitted by the President to Congress under this section, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate may report the bill referred to the Committee under paragraph (1)(D) with committee amendments related to the Medicare program.

“(B) CALCULATIONS.—In determining whether a committee amendment meets the requirement of subparagraph (A), the reductions in Medicare program spending during the 3-month period immediately preceding the implementation year shall be counted to the extent that such reductions are a result of the implementation provisions in the committee amendment for a change in the payment rate for an item or service that was effective during such period pursuant to such amendment.

“(C) COMMITTEE JURISDICTION.—Notwithstanding rule XV of the Standing Rules of the Senate, a committee amendment described in subparagraph (A) may include matter not within the jurisdiction of the Committee on Finance if that matter is relevant to a proposal contained in the bill submitted under subsection (c)(3).

“(D) DISCHARGE.—If, with respect to the House involved, the committee has not reported the bill by the date required by subparagraph (A), the committee shall be discharged from further consideration of the proposal.

“(3) LIMITATION ON CHANGES TO THE BOARD RECOMMENDATIONS.—

“(A) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, or amendment, pursuant to this subsection or conference report thereon, that fails to satisfy the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

“(B) LIMITATION ON CHANGES TO THE BOARD RECOMMENDATIONS IN OTHER LEGISLATION.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report (other than pursuant to this section) that would repeal or otherwise change the recommendations of the Board if that change would fail to satisfy the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

“(C) LIMITATION ON CHANGES TO THIS SUBSECTION.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise change this subsection.

“(D) WAIVER.—This paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

“(E) APPEALS.—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

“(4) EXPEDITED PROCEDURE.—

“(A) CONSIDERATION.—A motion to proceed to the consideration of the bill in the Senate is not debatable.

“(B) AMENDMENT.—

“(i) TIME LIMITATION.—Debate in the Senate on any amendment to a bill under this section shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or such leader’s designee.

“(ii) GERMANE.—No amendment that is not germane to the provisions of such bill shall be received.

“(iii) ADDITIONAL TIME.—The leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

“(iv) AMENDMENT NOT IN ORDER.—It shall not be in order to consider an amendment that would cause the bill to result in a net reduction in total Medicare program spending in the implementation year that is less than the applicable savings target established

under subsection (c)(7)(B) for such implementation year.

“(v) WAIVER AND APPEALS.—This paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

“(C) CONSIDERATION BY THE OTHER HOUSE.—

“(i) IN GENERAL.—The expedited procedures provided in this subsection for the consideration of a bill introduced pursuant to paragraph (1) shall not apply to such a bill that is received by one House from the other House if such a bill was not introduced in the receiving House.

“(ii) BEFORE PASSAGE.—If a bill that is introduced pursuant to paragraph (1) is received by one House from the other House, after introduction but before disposition of such a bill in the receiving House, then the following shall apply:

Applicability.

“(I) The receiving House shall consider the bill introduced in that House through all stages of consideration up to, but not including, passage.

“(II) The question on passage shall be put on the bill of the other House as amended by the language of the receiving House.

“(iii) AFTER PASSAGE.—If a bill introduced pursuant to paragraph (1) is received by one House from the other House, after such a bill is passed by the receiving House, then the vote on passage of the bill that originates in the receiving House shall be considered to be the vote on passage of the bill received from the other House as amended by the language of the receiving House.

“(iv) DISPOSITION.—Upon disposition of a bill introduced pursuant to paragraph (1) that is received by one House from the other House, it shall no longer be in order to consider the bill that originates in the receiving House.

“(v) LIMITATION.—Clauses (ii), (iii), and (iv) shall apply only to a bill received by one House from the other House if the bill—

Applicability.

“(I) is related only to the program under this title; and

“(II) satisfies the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

“(D) SENATE LIMITS ON DEBATE.—

“(i) IN GENERAL.—In the Senate, consideration of the bill and on all debatable motions and appeals in connection therewith shall not exceed a total of 30 hours, which shall be divided equally between the majority and minority leaders or their designees.

“(ii) MOTION TO FURTHER LIMIT DEBATE.—A motion to further limit debate on the bill is in order and is not debatable.

“(iii) MOTION OR APPEAL.—Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal.

“(iv) FINAL DISPOSITION.—After 30 hours of consideration, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins.

“(E) CONSIDERATION IN CONFERENCE.—

“(i) IN GENERAL.—Consideration in the Senate and the House of Representatives on the conference report or any messages between Houses shall be limited to 10 hours, equally divided and controlled by the majority and minority leaders of the Senate or their designees and the Speaker of the House of Representatives and the minority leader of the House of Representatives or their designees.

“(ii) TIME LIMITATION.—Debate in the Senate on any amendment under this subparagraph shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or such leader’s designee.

“(iii) FINAL DISPOSITION.—After 10 hours of consideration, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all motions not then pending before the Senate at that time or necessary to resolve the differences between the Houses and to the exclusion of all other motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins.

Applicability.

“(iv) LIMITATION.—Clauses (i) through (iii) shall only apply to a conference report, message or the amendments thereto if the conference report, message, or an amendment thereto—

“(I) is related only to the program under this title; and

“(II) satisfies the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

“(F) VETO.—If the President vetoes the bill debate on a veto message in the Senate under this subsection shall

be 1 hour equally divided between the majority and minority leaders or their designees.

“(5) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—This subsection and subsection (f)(2) are enacted by Congress—

“(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of bill under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

“(e) IMPLEMENTATION OF PROPOSAL.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall, except as provided in paragraph (3), implement the recommendations contained in a proposal submitted by the President to Congress pursuant to this section on August 15 of the year in which the proposal is so submitted.

“(2) APPLICATION.—

“(A) IN GENERAL.—A recommendation described in paragraph (1) shall apply as follows:

“(i) In the case of a recommendation that is a change in the payment rate for an item or service under Medicare in which payment rates change on a fiscal year basis (or a cost reporting period basis that relates to a fiscal year), on a calendar year basis (or a cost reporting period basis that relates to a calendar year), or on a rate year basis (or a cost reporting period basis that relates to a rate year), such recommendation shall apply to items and services furnished on the first day of the first fiscal year, calendar year, or rate year (as the case may be) that begins after such August 15.

“(ii) In the case of a recommendation relating to payments to plans under parts C and D, such recommendation shall apply to plan years beginning on the first day of the first calendar year that begins after such August 15.

“(iii) In the case of any other recommendation, such recommendation shall be addressed in the regular regulatory process timeframe and shall apply as soon as practicable.

“(B) INTERIM FINAL RULEMAKING.—The Secretary may use interim final rulemaking to implement any recommendation described in paragraph (1).

“(3) EXCEPTION.—The Secretary shall not be required to implement the recommendations contained in a proposal submitted in a proposal year by the President to Congress pursuant to this section if—

“(A) prior to August 15 of the proposal year, Federal legislation is enacted that includes the following provision: ‘This Act supercedes the recommendations of the Board

Deadline.	<p>contained in the proposal submitted, in the year which includes the date of enactment of this Act, to Congress under section 1899A of the Social Security Act.’; and</p> <p>“(B) in the case of implementation year 2020 and subsequent implementation years, a joint resolution described in subsection (f)(1) is enacted not later than August 15, 2017.</p>
	<p>“(4) NO AFFECT ON AUTHORITY TO IMPLEMENT CERTAIN PROVISIONS.—Nothing in paragraph (3) shall be construed to affect the authority of the Secretary to implement any recommendation contained in a proposal or advisory report under this section to the extent that the Secretary otherwise has the authority to implement such recommendation administratively.</p>
	<p>“(5) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation by the Secretary under this subsection of the recommendations contained in a proposal.</p>
	<p>“(f) JOINT RESOLUTION REQUIRED TO DISCONTINUE THE BOARD.—</p>
Definition.	<p>“(1) IN GENERAL.—For purposes of subsection (e)(3)(B), a joint resolution described in this paragraph means only a joint resolution—</p>
	<p>“(A) that is introduced in 2017 by not later than February 1 of such year;</p>
	<p>“(B) which does not have a preamble;</p>
	<p>“(C) the title of which is as follows: ‘Joint resolution approving the discontinuation of the process for consideration and automatic implementation of the annual proposal of the Independent Medicare Advisory Board under section 1899A of the Social Security Act’; and</p>
	<p>“(D) the matter after the resolving clause of which is as follows: ‘That Congress approves the discontinuation of the process for consideration and automatic implementation of the annual proposal of the Independent Medicare Advisory Board under section 1899A of the Social Security Act.’</p>
	<p>“(2) PROCEDURE.—</p>
	<p>“(A) REFERRAL.—A joint resolution described in paragraph (1) shall be referred to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.</p>
Deadline. Petition.	<p>“(B) DISCHARGE.—In the Senate, if the committee to which is referred a joint resolution described in paragraph (1) has not reported such joint resolution (or an identical joint resolution) at the end of 20 days after the joint resolution described in paragraph (1) is introduced, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.</p>
	<p>“(C) CONSIDERATION.—</p>
	<p>“(i) IN GENERAL.—In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subparagraph (C)) from further consideration of a joint</p>

resolution described in paragraph (1), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution to be made, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived, except for points of order under the Congressional Budget act of 1974 or under budget resolutions pursuant to that Act. The motion is not debatable. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

“(ii) DEBATE LIMITATION.—In the Senate, consideration of the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader, or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(iii) PASSAGE.—In the Senate, immediately following the conclusion of the debate on a joint resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on passage of the joint resolution shall occur.

“(iv) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in paragraph (1) shall be decided without debate.

“(D) OTHER HOUSE ACTS FIRST.—If, before the passage by 1 House of a joint resolution of that House described in paragraph (1), that House receives from the other House a joint resolution described in paragraph (1), then the following procedures shall apply:

Applicability.

“(i) The joint resolution of the other House shall not be referred to a committee.

“(ii) With respect to a joint resolution described in paragraph (1) of the House receiving the joint resolution—

“(I) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

“(II) the vote on final passage shall be on the joint resolution of the other House.

“(E) EXCLUDED DAYS.—For purposes of determining the period specified in subparagraph (B), there shall be excluded any days either House of Congress is adjourned for more than 3 days during a session of Congress.

“(F) MAJORITY REQUIRED FOR ADOPTION.—A joint resolution considered under this subsection shall require an affirmative vote of three-fifths of the Members, duly chosen and sworn, for adoption.

Deadlines.

“(3) TERMINATION.—If a joint resolution described in paragraph (1) is enacted not later than August 15, 2017—

“(A) the Chief Actuary of the Medicare & Medicaid Services shall not—

“(i) make any determinations under subsection (c)(6) after May 1, 2017; or

“(ii) provide any opinion pursuant to subsection (c)(3)(B)(iii) after January 16, 2018;

“(B) the Board shall not submit any proposals or advisory reports to Congress under this section after January 16, 2018; and

“(C) the Board and the consumer advisory council under subsection (k) shall terminate on August 16, 2018.

“(g) BOARD MEMBERSHIP; TERMS OF OFFICE; CHAIRPERSON; REMOVAL.—

“(1) MEMBERSHIP.—

President.
Appointments.

“(A) IN GENERAL.—The Board shall be composed of—

“(i) 15 members appointed by the President, by and with the advice and consent of the Senate; and

“(ii) the Secretary, the Administrator of the Center for Medicare & Medicaid Services, and the Administrator of the Health Resources and Services Administration, all of whom shall serve ex officio as nonvoting members of the Board.

“(B) QUALIFICATIONS.—

“(i) IN GENERAL.—The appointed membership of the Board shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

“(ii) INCLUSION.—The appointed membership of the Board shall include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescription drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

“(iii) MAJORITY NONPROVIDERS.—Individuals who are directly involved in the provision or management of the delivery of items and services covered under this title shall not constitute a majority of the appointed membership of the Board.

President.
Public
information.

“(C) ETHICAL DISCLOSURE.—The President shall establish a system for public disclosure by appointed members

of the Board of financial and other potential conflicts of interest relating to such members. Appointed members of the Board shall be treated as officers in the executive branch for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95-521).

“(D) CONFLICTS OF INTEREST.—No individual may serve as an appointed member if that individual engages in any other business, vocation, or employment.

“(E) CONSULTATION WITH CONGRESS.—In selecting individuals for nominations for appointments to the Board, the President shall consult with—

“(i) the majority leader of the Senate concerning the appointment of 3 members;

“(ii) the Speaker of the House of Representatives concerning the appointment of 3 members;

“(iii) the minority leader of the Senate concerning the appointment of 3 members; and

“(iv) the minority leader of the House of Representatives concerning the appointment of 3 members.

“(2) TERM OF OFFICE.—Each appointed member shall hold office for a term of 6 years except that—

“(A) a member may not serve more than 2 full consecutive terms (but may be reappointed to 2 full consecutive terms after being appointed to fill a vacancy on the Board);

“(B) a member appointed to fill a vacancy occurring prior to the expiration of the term for which that member’s predecessor was appointed shall be appointed for the remainder of such term;

“(C) a member may continue to serve after the expiration of the member’s term until a successor has taken office; and

“(D) of the members first appointed under this section, 5 shall be appointed for a term of 1 year, 5 shall be appointed for a term of 3 years, and 5 shall be appointed for a term of 6 years, the term of each to be designated by the President at the time of nomination.

“(3) CHAIRPERSON.—

“(A) IN GENERAL.—The Chairperson shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Board.

“(B) DUTIES.—The Chairperson shall be the principal executive officer of the Board, and shall exercise all of the executive and administrative functions of the Board, including functions of the Board with respect to—

“(i) the appointment and supervision of personnel employed by the Board;

“(ii) the distribution of business among personnel appointed and supervised by the Chairperson and among administrative units of the Board; and

“(iii) the use and expenditure of funds.

“(C) GOVERNANCE.—In carrying out any of the functions under subparagraph (B), the Chairperson shall be governed by the general policies established by the Board and by the decisions, findings, and determinations the Board shall by law be authorized to make.

“(D) REQUESTS FOR APPROPRIATIONS.—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Board may not be submitted by the Chairperson without the prior approval of a majority vote of the Board.

“(4) REMOVAL.—Any appointed member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

“(h) VACANCIES; QUORUM; SEAL; VICE CHAIRPERSON; VOTING ON REPORTS.—

“(1) VACANCIES.—No vacancy on the Board shall impair the right of the remaining members to exercise all the powers of the Board.

“(2) QUORUM.—A majority of the appointed members of the Board shall constitute a quorum for the transaction of business, but a lesser number of members may hold hearings.

“(3) SEAL.—The Board shall have an official seal, of which judicial notice shall be taken.

Deadline.

“(4) VICE CHAIRPERSON.—The Board shall annually elect a Vice Chairperson to act in the absence or disability of the Chairperson or in case of a vacancy in the office of the Chairperson.

“(5) VOTING ON PROPOSALS.—Any proposal of the Board must be approved by the majority of appointed members present.

“(i) POWERS OF THE BOARD.—

“(1) HEARINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this section.

“(2) AUTHORITY TO INFORM RESEARCH PRIORITIES FOR DATA COLLECTION.—The Board may advise the Secretary on priorities for health services research, particularly as such priorities pertain to necessary changes and issues regarding payment reforms under Medicare.

“(3) OBTAINING OFFICIAL DATA.—The Board may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson, the head of that department or agency shall furnish that information to the Board on an agreed upon schedule.

“(4) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

“(5) GIFTS.—The Board may accept, use, and dispose of gifts or donations of services or property.

“(6) OFFICES.—The Board shall maintain a principal office and such field offices as it determines necessary, and may meet and exercise any of its powers at any other place.

“(j) PERSONNEL MATTERS.—

“(1) COMPENSATION OF MEMBERS AND CHAIRPERSON.—Each appointed member, other than the Chairperson, shall be compensated at a rate equal to the annual rate of basic pay prescribed for level III of the Executive Schedule under section 5315 of title 5, United States Code. The Chairperson shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level II of the

Executive Schedule under section 5315 of title 5, United States Code.

“(2) TRAVEL EXPENSES.—The appointed members shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

“(3) STAFF.—

“(A) IN GENERAL.—The Chairperson may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties. The employment of an executive director shall be subject to confirmation by the Board.

“(B) COMPENSATION.—The Chairperson may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

“(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

“(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

“(k) CONSUMER ADVISORY COUNCIL.—

“(1) IN GENERAL.—There is established a consumer advisory council to advise the Board on the impact of payment policies under this title on consumers.

Establishment.

“(2) MEMBERSHIP.—

“(A) NUMBER AND APPOINTMENT.—The consumer advisory council shall be composed of 10 consumer representatives appointed by the Comptroller General of the United States, 1 from among each of the 10 regions established by the Secretary as of the date of enactment of this section.

“(B) QUALIFICATIONS.—The membership of the council shall represent the interests of consumers and particular communities.

“(3) DUTIES.—The consumer advisory council shall, subject to the call of the Board, meet not less frequently than 2 times each year in the District of Columbia.

Deadlines.

“(4) OPEN MEETINGS.—Meetings of the consumer advisory council shall be open to the public.

“(5) ELECTION OF OFFICERS.—Members of the consumer advisory council shall elect their own officers.

“(6) APPLICATION OF FACCA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the consumer advisory council except that section 14 of such Act shall not apply.

“(1) DEFINITIONS.—In this section:

“(1) BOARD; CHAIRPERSON; MEMBER.—The terms ‘Board’, ‘Chairperson’, and ‘Member’ mean the Independent Medicare Advisory Board established under subsection (a) and the Chairperson and any Member thereof, respectively.

“(2) MEDICARE.—The term ‘Medicare’ means the program established under this title, including parts A, B, C, and D.

“(3) MEDICARE BENEFICIARY.—The term ‘Medicare beneficiary’ means an individual who is entitled to, or enrolled for, benefits under part A or enrolled for benefits under part B.

“(4) MEDICARE PROGRAM SPENDING.—The term ‘Medicare program spending’ means program spending under parts A, B, and D net of premiums.

“(m) FUNDING.—

“(1) IN GENERAL.—There are appropriated to the Board to carry out its duties and functions—

“(A) for fiscal year 2012, \$15,000,000; and

“(B) for each subsequent fiscal year, the amount appropriated under this paragraph for the previous fiscal year increased by the annual percentage increase in the Consumer Price Index for All Urban Consumers (all items; United States city average) as of June of the previous fiscal year.

“(2) FROM TRUST FUNDS.—Sixty percent of amounts appropriated under paragraph (1) shall be derived by transfer from the Federal Hospital Insurance Trust Fund under section 1817 and 40 percent of amounts appropriated under such paragraph shall be derived by transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1841.”

(2) LOBBYING COOLING-OFF PERIOD FOR MEMBERS OF THE INDEPENDENT MEDICARE ADVISORY BOARD.—Section 207(c) of title 18, United States Code, is amended by inserting at the end the following:

“(3) MEMBERS OF THE INDEPENDENT MEDICARE ADVISORY BOARD.—

Applicability.

“(A) IN GENERAL.—Paragraph (1) shall apply to a member of the Independent Medicare Advisory Board under section 1899A.

“(B) AGENCIES AND CONGRESS.—For purposes of paragraph (1), the agency in which the individual described in subparagraph (A) served shall be considered to be the Independent Medicare Advisory Board, the Department of Health and Human Services, and the relevant committees of jurisdiction of Congress, including the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.”

42 USC
1395kkk-1.

(b) GAO STUDY AND REPORT ON DETERMINATION AND IMPLEMENTATION OF PAYMENT AND COVERAGE POLICIES UNDER THE MEDICARE PROGRAM.—

(1) INITIAL STUDY AND REPORT.—

(A) STUDY.—The Comptroller General of the United States (in this section referred to as the “Comptroller General”) shall conduct a study on changes to payment policies, methodologies, and rates and coverage policies and methodologies under the Medicare program under title XVIII

of the Social Security Act as a result of the recommendations contained in the proposals made by the Independent Medicare Advisory Board under section 1899A of such Act (as added by subsection (a)), including an analysis of the effect of such recommendations on—

(i) Medicare beneficiary access to providers and items and services;

(ii) the affordability of Medicare premiums and cost-sharing (including deductibles, coinsurance, and copayments);

(iii) the potential impact of changes on other government or private-sector purchasers and payers of care; and

(iv) quality of patient care, including patient experience, outcomes, and other measures of care.

(B) REPORT.—Not later than July 1, 2015, the Comptroller General shall submit to Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(2) SUBSEQUENT STUDIES AND REPORTS.—The Comptroller General shall periodically conduct such additional studies and submit reports to Congress on changes to Medicare payments policies, methodologies, and rates and coverage policies and methodologies as the Comptroller General determines appropriate, in consultation with the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

(c) CONFORMING AMENDMENTS.—Section 1805(b) of the Social Security Act (42 U.S.C. 1395b–6(b)) is amended—

(1) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively; and

(2) by inserting after paragraph (3) the following:

“(4) REVIEW AND COMMENT ON THE INDEPENDENT MEDICARE ADVISORY BOARD OR SECRETARIAL PROPOSAL.—If the Independent Medicare Advisory Board (as established under subsection (a) of section 1899A) or the Secretary submits a proposal to the Commission under such section in a year, the Commission shall review the proposal and, not later than March 1 of that year, submit to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate written comments on such proposal. Such comments may include such recommendations as the Commission deems appropriate.”.

Deadline.

Subtitle F—Health Care Quality Improvements

SEC. 3501. HEALTH CARE DELIVERY SYSTEM RESEARCH; QUALITY IMPROVEMENT TECHNICAL ASSISTANCE.

Part D of title IX of the Public Health Service Act, as amended by section 3013, is further amended by adding at the end the following:

“Subpart II—Health Care Quality Improvement Programs

42 USC 299b–33. **“SEC. 933. HEALTH CARE DELIVERY SYSTEM RESEARCH.**

“(a) PURPOSE.—The purposes of this section are to—

“(1) enable the Director to identify, develop, evaluate, disseminate, and provide training in innovative methodologies and strategies for quality improvement practices in the delivery of health care services that represent best practices (referred to as ‘best practices’) in health care quality, safety, and value; and

“(2) ensure that the Director is accountable for implementing a model to pursue such research in a collaborative manner with other related Federal agencies.

“(b) GENERAL FUNCTIONS OF THE CENTER.—The Center for Quality Improvement and Patient Safety of the Agency for Healthcare Research and Quality (referred to in this section as the ‘Center’), or any other relevant agency or department designated by the Director, shall—

“(1) carry out its functions using research from a variety of disciplines, which may include epidemiology, health services, sociology, psychology, human factors engineering, biostatistics, health economics, clinical research, and health informatics;

“(2) conduct or support activities consistent with the purposes described in subsection (a), and for—

“(A) best practices for quality improvement practices in the delivery of health care services; and

“(B) that include changes in processes of care and the redesign of systems used by providers that will reliably result in intended health outcomes, improve patient safety, and reduce medical errors (such as skill development for health care providers in team-based health care delivery and rapid cycle process improvement) and facilitate adoption of improved workflow;

“(3) identify health care providers, including health care systems, single institutions, and individual providers, that—

“(A) deliver consistently high-quality, efficient health care services (as determined by the Secretary); and

“(B) employ best practices that are adaptable and scalable to diverse health care settings or effective in improving care across diverse settings;

“(4) assess research, evidence, and knowledge about what strategies and methodologies are most effective in improving health care delivery;

“(5) find ways to translate such information rapidly and effectively into practice, and document the sustainability of those improvements;

“(6) create strategies for quality improvement through the development of tools, methodologies, and interventions that can successfully reduce variations in the delivery of health care;

“(7) identify, measure, and improve organizational, human, or other causative factors, including those related to the culture and system design of a health care organization, that contribute to the success and sustainability of specific quality improvement and patient safety strategies;

“(8) provide for the development of best practices in the delivery of health care services that—

“(A) have a high likelihood of success, based on structured review of empirical evidence;

“(B) are specified with sufficient detail of the individual processes, steps, training, skills, and knowledge required for implementation and incorporation into workflow of health care practitioners in a variety of settings;

“(C) are designed to be readily adapted by health care providers in a variety of settings; and

“(D) where applicable, assist health care providers in working with other health care providers across the continuum of care and in engaging patients and their families in improving the care and patient health outcomes;

“(9) provide for the funding of the activities of organizations with recognized expertise and excellence in improving the delivery of health care services, including children’s health care, by involving multiple disciplines, managers of health care entities, broad development and training, patients, caregivers and families, and frontline health care workers, including activities for the examination of strategies to share best quality improvement practices and to promote excellence in the delivery of health care services; and

“(10) build capacity at the State and community level to lead quality and safety efforts through education, training, and mentoring programs to carry out the activities under paragraphs (1) through (9).

“(c) RESEARCH FUNCTIONS OF CENTER.—

“(1) IN GENERAL.—The Center shall support, such as through a contract or other mechanism, research on health care delivery system improvement and the development of tools to facilitate adoption of best practices that improve the quality, safety, and efficiency of health care delivery services. Such support may include establishing a Quality Improvement Network Research Program for the purpose of testing, scaling, and disseminating of interventions to improve quality and efficiency in health care. Recipients of funding under the Program may include national, State, multi-State, or multi-site quality improvement networks.

“(2) RESEARCH REQUIREMENTS.—The research conducted pursuant to paragraph (1) shall—

“(A) address the priorities identified by the Secretary in the national strategic plan established under section 399HH;

“(B) identify areas in which evidence is insufficient to identify strategies and methodologies, taking into consideration areas of insufficient evidence identified by the entity with a contract under section 1890(a) of the Social Security Act in the report required under section 399JJ;

“(C) address concerns identified by health care institutions and providers and communicated through the Center pursuant to subsection (d);

“(D) reduce preventable morbidity, mortality, and associated costs of morbidity and mortality by building capacity for patient safety research;

“(E) support the discovery of processes for the reliable, safe, efficient, and responsive delivery of health care, taking

into account discoveries from clinical research and comparative effectiveness research;

“(F) allow communication of research findings and translate evidence into practice recommendations that are adaptable to a variety of settings, and which, as soon as practicable after the establishment of the Center, shall include—

“(i) the implementation of a national application of Intensive Care Unit improvement projects relating to the adult (including geriatric), pediatric, and neonatal patient populations;

“(ii) practical methods for addressing health care associated infections, including Methicillin-Resistant *Staphylococcus Aureus* and Vancomycin-Resistant *Enterococcus* infections and other emerging infections; and

“(iii) practical methods for reducing preventable hospital admissions and readmissions;

“(G) expand demonstration projects for improving the quality of children’s health care and the use of health information technology, such as through Pediatric Quality Improvement Collaboratives and Learning Networks, consistent with provisions of section 1139A of the Social Security Act for assessing and improving quality, where applicable;

“(H) identify and mitigate hazards by—

“(i) analyzing events reported to patient safety reporting systems and patient safety organizations; and

“(ii) using the results of such analyses to develop scientific methods of response to such events;

“(I) include the conduct of systematic reviews of existing practices that improve the quality, safety, and efficiency of health care delivery, as well as new research on improving such practices; and

“(J) include the examination of how to measure and evaluate the progress of quality and patient safety activities.

“(d) DISSEMINATION OF RESEARCH FINDINGS.—

“(1) PUBLIC AVAILABILITY.—The Director shall make the research findings of the Center available to the public through multiple media and appropriate formats to reflect the varying needs of health care providers and consumers and diverse levels of health literacy.

“(2) LINKAGE TO HEALTH INFORMATION TECHNOLOGY.—The Secretary shall ensure that research findings and results generated by the Center are shared with the Office of the National Coordinator of Health Information Technology and used to inform the activities of the health information technology extension program under section 3012, as well as any relevant standards, certification criteria, or implementation specifications.

“(e) PRIORITIZATION.—The Director shall identify and regularly update a list of processes or systems on which to focus research and dissemination activities of the Center, taking into account—

“(1) the cost to Federal health programs;

“(2) consumer assessment of health care experience;

List.

“(3) provider assessment of such processes or systems and opportunities to minimize distress and injury to the health care workforce;

“(4) the potential impact of such processes or systems on health status and function of patients, including vulnerable populations including children;

“(5) the areas of insufficient evidence identified under subsection (c)(2)(B); and

“(6) the evolution of meaningful use of health information technology, as defined in section 3000.

“(f) COORDINATION.—The Center shall coordinate its activities with activities conducted by the Center for Medicare and Medicaid Innovation established under section 1115A of the Social Security Act.

“(g) FUNDING.—There is authorized to be appropriated to carry out this section \$20,000,000 for fiscal years 2010 through 2014.

“SEC. 934. QUALITY IMPROVEMENT TECHNICAL ASSISTANCE AND IMPLEMENTATION.

Grants.
Contracts.
42 USC 299b–34.

“(a) IN GENERAL.—The Director, through the Center for Quality Improvement and Patient Safety of the Agency for Healthcare Research and Quality (referred to in this section as the ‘Center’), shall award—

“(1) technical assistance grants or contracts to eligible entities to provide technical support to institutions that deliver health care and health care providers (including rural and urban providers of services and suppliers with limited infrastructure and financial resources to implement and support quality improvement activities, providers of services and suppliers with poor performance scores, and providers of services and suppliers for which there are disparities in care among subgroups of patients) so that such institutions and providers understand, adapt, and implement the models and practices identified in the research conducted by the Center, including the Quality Improvement Networks Research Program; and

“(2) implementation grants or contracts to eligible entities to implement the models and practices described under paragraph (1).

“(b) ELIGIBLE ENTITIES.—

“(1) TECHNICAL ASSISTANCE AWARD.—To be eligible to receive a technical assistance grant or contract under subsection (a)(1), an entity—

“(A) may be a health care provider, health care provider association, professional society, health care worker organization, Indian health organization, quality improvement organization, patient safety organization, local quality improvement collaborative, the Joint Commission, academic health center, university, physician-based research network, primary care extension program established under section 399W, a Federal Indian Health Service program or a health program operated by an Indian tribe (as defined in section 4 of the Indian Health Care Improvement Act), or any other entity identified by the Secretary; and

“(B) shall have demonstrated expertise in providing information and technical support and assistance to health care providers regarding quality improvement.

“(2) IMPLEMENTATION AWARD.—To be eligible to receive an implementation grant or contract under subsection (a)(2), an entity—

“(A) may be a hospital or other health care provider or consortium or providers, as determined by the Secretary; and

“(B) shall have demonstrated expertise in providing information and technical support and assistance to health care providers regarding quality improvement.

“(c) APPLICATION.—

“(1) TECHNICAL ASSISTANCE AWARD.—To receive a technical assistance grant or contract under subsection (a)(1), an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing—

“(A) a plan for a sustainable business model that may include a system of—

“(i) charging fees to institutions and providers that receive technical support from the entity; and

“(ii) reducing or eliminating such fees for such institutions and providers that serve low-income populations; and

“(B) such other information as the Director may require.

“(2) IMPLEMENTATION AWARD.—To receive a grant or contract under subsection (a)(2), an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing—

“(A) a plan for implementation of a model or practice identified in the research conducted by the Center including—

“(i) financial cost, staffing requirements, and timeline for implementation; and

“(ii) pre- and projected post-implementation quality measure performance data in targeted improvement areas identified by the Secretary; and

“(B) such other information as the Director may require.

“(d) MATCHING FUNDS.—The Director may not award a grant or contract under this section to an entity unless the entity agrees that it will make available (directly or through contributions from other public or private entities) non-Federal contributions toward the activities to be carried out under the grant or contract in an amount equal to \$1 for each \$5 of Federal funds provided under the grant or contract. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

“(e) EVALUATION.—

“(1) IN GENERAL.—The Director shall evaluate the performance of each entity that receives a grant or contract under this section. The evaluation of an entity shall include a study of—

“(A) the success of such entity in achieving the implementation, by the health care institutions and providers assisted by such entity, of the models and practices identified in the research conducted by the Center under section 933;

“(B) the perception of the health care institutions and providers assisted by such entity regarding the value of the entity; and

“(C) where practicable, better patient health outcomes and lower cost resulting from the assistance provided by such entity.

“(2) EFFECT OF EVALUATION.—Based on the outcome of the evaluation of the entity under paragraph (1), the Director shall determine whether to renew a grant or contract with such entity under this section.

Determination.

“(f) COORDINATION.—The entities that receive a grant or contract under this section shall coordinate with health information technology regional extension centers under section 3012(c) and the primary care extension program established under section 399W regarding the dissemination of quality improvement, system delivery reform, and best practices information.”.

SEC. 3502. ESTABLISHING COMMUNITY HEALTH TEAMS TO SUPPORT THE PATIENT-CENTERED MEDICAL HOME.

Grants.
Contracts.
42 USC 256a-1.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall establish a program to provide grants to or enter into contracts with eligible entities to establish community-based interdisciplinary, interprofessional teams (referred to in this section as “health teams”) to support primary care practices, including obstetrics and gynecology practices, within the hospital service areas served by the eligible entities. Grants or contracts shall be used to—

(1) establish health teams to provide support services to primary care providers; and

(2) provide capitated payments to primary care providers as determined by the Secretary.

(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant or contract under subsection (a), an entity shall—

(1)(A) be a State or State-designated entity; or

(B) be an Indian tribe or tribal organization, as defined in section 4 of the Indian Health Care Improvement Act;

(2) submit a plan for achieving long-term financial sustainability within 3 years;

Plans.
Deadline.

(3) submit a plan for incorporating prevention initiatives and patient education and care management resources into the delivery of health care that is integrated with community-based prevention and treatment resources, where available;

Plans.

(4) ensure that the health team established by the entity includes an interdisciplinary, interprofessional team of health care providers, as determined by the Secretary; such team may include medical specialists, nurses, pharmacists, nutritionists, dietitians, social workers, behavioral and mental health providers (including substance use disorder prevention and treatment providers), doctors of chiropractic, licensed complementary and alternative medicine practitioners, and physicians’ assistants;

(5) agree to provide services to eligible individuals with chronic conditions, as described in section 1945 of the Social Security Act (as added by section 2703), in accordance with the payment methodology established under subsection (c) of such section; and

(6) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) REQUIREMENTS FOR HEALTH TEAMS.—A health team established pursuant to a grant or contract under subsection (a) shall—

(1) establish contractual agreements with primary care providers to provide support services;

(2) support patient-centered medical homes, defined as a mode of care that includes—

(A) personal physicians;

(B) whole person orientation;

(C) coordinated and integrated care;

(D) safe and high-quality care through evidence-informed medicine, appropriate use of health information technology, and continuous quality improvements;

(E) expanded access to care; and

(F) payment that recognizes added value from additional components of patient-centered care;

(3) collaborate with local primary care providers and existing State and community based resources to coordinate disease prevention, chronic disease management, transitioning between health care providers and settings and case management for patients, including children, with priority given to those amenable to prevention and with chronic diseases or conditions identified by the Secretary;

(4) in collaboration with local health care providers, develop and implement interdisciplinary, interprofessional care plans that integrate clinical and community preventive and health promotion services for patients, including children, with a priority given to those amenable to prevention and with chronic diseases or conditions identified by the Secretary;

(5) incorporate health care providers, patients, caregivers, and authorized representatives in program design and oversight;

(6) provide support necessary for local primary care providers to—

(A) coordinate and provide access to high-quality health care services;

(B) coordinate and provide access to preventive and health promotion services;

(C) provide access to appropriate specialty care and inpatient services;

(D) provide quality-driven, cost-effective, culturally appropriate, and patient- and family-centered health care;

(E) provide access to pharmacist-delivered medication management services, including medication reconciliation;

(F) provide coordination of the appropriate use of complementary and alternative (CAM) services to those who request such services;

(G) promote effective strategies for treatment planning, monitoring health outcomes and resource use, sharing information, treatment decision support, and organizing care to avoid duplication of service and other medical management approaches intended to improve quality and value of health care services;

(H) provide local access to the continuum of health care services in the most appropriate setting, including

Plans.

access to individuals that implement the care plans of patients and coordinate care, such as integrative health care practitioners;

(I) collect and report data that permits evaluation of the success of the collaborative effort on patient outcomes, including collection of data on patient experience of care, and identification of areas for improvement; and

(J) establish a coordinated system of early identification and referral for children at risk for developmental or behavioral problems such as through the use of infolines, health information technology, or other means as determined by the Secretary;

(7) provide 24-hour care management and support during transitions in care settings including—

(A) a transitional care program that provides onsite visits from the care coordinator, assists with the development of discharge plans and medication reconciliation upon admission to and discharge from the hospitals, nursing home, or other institution setting;

(B) discharge planning and counseling support to providers, patients, caregivers, and authorized representatives;

(C) assuring that post-discharge care plans include medication management, as appropriate;

(D) referrals for mental and behavioral health services, which may include the use of infolines; and

(E) transitional health care needs from adolescence to adulthood;

(8) serve as a liaison to community prevention and treatment programs;

(9) demonstrate a capacity to implement and maintain health information technology that meets the requirements of certified EHR technology (as defined in section 3000 of the Public Health Service Act (42 U.S.C. 300jj)) to facilitate coordination among members of the applicable care team and affiliated primary care practices; and

(10) where applicable, report to the Secretary information on quality measures used under section 399JJ of the Public Health Service Act. Reports.

(d) REQUIREMENT FOR PRIMARY CARE PROVIDERS.—A provider who contracts with a care team shall—

(1) provide a care plan to the care team for each patient participant; Plans.

(2) provide access to participant health records; and Records.

(3) meet regularly with the care team to ensure integration of care.

(e) REPORTING TO SECRETARY.—An entity that receives a grant or contract under subsection (a) shall submit to the Secretary a report that describes and evaluates, as requested by the Secretary, the activities carried out by the entity under subsection (c).

(f) DEFINITION OF PRIMARY CARE.—In this section, the term “primary care” means the provision of integrated, accessible health care services by clinicians who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community.

SEC. 3503. MEDICATION MANAGEMENT SERVICES IN TREATMENT OF CHRONIC DISEASE.

Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.), as amended by section 3501, is further amended by inserting after section 934 the following:

42 USC 299b–35. **“SEC. 935. GRANTS OR CONTRACTS TO IMPLEMENT MEDICATION MANAGEMENT SERVICES IN TREATMENT OF CHRONIC DISEASES.**

Deadline. “(a) **IN GENERAL.**—The Secretary, acting through the Patient Safety Research Center established in section 933 (referred to in this section as the ‘Center’), shall establish a program to provide grants or contracts to eligible entities to implement medication management (referred to in this section as ‘MTM’) services provided by licensed pharmacists, as a collaborative, multidisciplinary, inter-professional approach to the treatment of chronic diseases for targeted individuals, to improve the quality of care and reduce overall cost in the treatment of such diseases. The Secretary shall commence the program under this section not later than May 1, 2010.

Plans. “(b) **ELIGIBLE ENTITIES.**—To be eligible to receive a grant or contract under subsection (a), an entity shall—

“(1) provide a setting appropriate for MTM services, as recommended by the experts described in subsection (e);

“(2) submit to the Secretary a plan for achieving long-term financial sustainability;

“(3) where applicable, submit a plan for coordinating MTM services through local community health teams established in section 3502 of the Patient Protection and Affordable Care Act or in collaboration with primary care extension programs established in section 399W;

“(4) submit a plan for meeting the requirements under subsection (c); and

“(5) submit to the Secretary such other information as the Secretary may require.

“(c) **MTM SERVICES TO TARGETED INDIVIDUALS.**—The MTM services provided with the assistance of a grant or contract awarded under subsection (a) shall, as allowed by State law including applicable collaborative pharmacy practice agreements, include—

“(1) performing or obtaining necessary assessments of the health and functional status of each patient receiving such MTM services;

“(2) formulating a medication treatment plan according to therapeutic goals agreed upon by the prescriber and the patient or caregiver or authorized representative of the patient;

“(3) selecting, initiating, modifying, recommending changes to, or administering medication therapy;

“(4) monitoring, which may include access to, ordering, or performing laboratory assessments, and evaluating the response of the patient to therapy, including safety and effectiveness;

“(5) performing an initial comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events, quarterly targeted medication reviews for ongoing monitoring, and additional followup interventions on a schedule developed collaboratively with the prescriber;

“(6) documenting the care delivered and communicating essential information about such care, including a summary of the medication review, and the recommendations of the pharmacist to other appropriate health care providers of the patient in a timely fashion;

“(7) providing education and training designed to enhance the understanding and appropriate use of the medications by the patient, caregiver, and other authorized representative;

“(8) providing information, support services, and resources and strategies designed to enhance patient adherence with therapeutic regimens;

“(9) coordinating and integrating MTM services within the broader health care management services provided to the patient; and

“(10) such other patient care services allowed under pharmacist scopes of practice in use in other Federal programs that have implemented MTM services.

“(d) TARGETED INDIVIDUALS.—MTM services provided by licensed pharmacists under a grant or contract awarded under subsection (a) shall be offered to targeted individuals who—

“(1) take 4 or more prescribed medications (including over-the-counter medications and dietary supplements);

“(2) take any ‘high risk’ medications;

“(3) have 2 or more chronic diseases, as identified by the Secretary; or

“(4) have undergone a transition of care, or other factors, as determined by the Secretary, that are likely to create a high risk of medication-related problems.

“(e) CONSULTATION WITH EXPERTS.—In designing and implementing MTM services provided under grants or contracts awarded under subsection (a), the Secretary shall consult with Federal, State, private, public-private, and academic entities, pharmacy and pharmacist organizations, health care organizations, consumer advocates, chronic disease groups, and other stakeholders involved with the research, dissemination, and implementation of pharmacist-delivered MTM services, as the Secretary determines appropriate. The Secretary, in collaboration with this group, shall determine whether it is possible to incorporate rapid cycle process improvement concepts in use in other Federal programs that have implemented MTM services.

Determination.

“(f) REPORTING TO THE SECRETARY.—An entity that receives a grant or contract under subsection (a) shall submit to the Secretary a report that describes and evaluates, as requested by the Secretary, the activities carried out under subsection (c), including quality measures endorsed by the entity with a contract under section 1890 of the Social Security Act, as determined by the Secretary.

“(g) EVALUATION AND REPORT.—The Secretary shall submit to the relevant committees of Congress a report which shall—

“(1) assess the clinical effectiveness of pharmacist-provided services under the MTM services program, as compared to usual care, including an evaluation of whether enrollees maintained better health with fewer hospitalizations and emergency room visits than similar patients not enrolled in the program;

“(2) assess changes in overall health care resource use by targeted individuals;

“(3) assess patient and prescriber satisfaction with MTM services;

“(4) assess the impact of patient-cost sharing requirements on medication adherence and recommendations for modifications;

“(5) identify and evaluate other factors that may impact clinical and economic outcomes, including demographic characteristics, clinical characteristics, and health services use of the patient, as well as characteristics of the regimen, pharmacy benefit, and MTM services provided; and

“(6) evaluate the extent to which participating pharmacists who maintain a dispensing role have a conflict of interest in the provision of MTM services, and if such conflict is found, provide recommendations on how such a conflict might be appropriately addressed.

“(h) **GRANTS OR CONTRACTS TO FUND DEVELOPMENT OF PERFORMANCE MEASURES.**—The Secretary may, through the quality measure development program under section 931 of the Public Health Service Act, award grants or contracts to eligible entities for the purpose of funding the development of performance measures that assess the use and effectiveness of medication therapy management services.”.

SEC. 3504. DESIGN AND IMPLEMENTATION OF REGIONALIZED SYSTEMS FOR EMERGENCY CARE.

(a) **IN GENERAL.**—Title XII of the Public Health Service Act (42 U.S.C. 300d et seq.) is amended—

42 USC 300d-5.

(1) in section 1203—

(A) in the section heading, by inserting “**FOR TRAUMA SYSTEMS**” after “**GRANTS**”; and

(B) in subsection (a), by striking “Administrator of the Health Resources and Services Administration” and inserting “Assistant Secretary for Preparedness and Response”;

(2) by inserting after section 1203 the following:

Contracts.
42 USC 300d-6.

“SEC. 1204. COMPETITIVE GRANTS FOR REGIONALIZED SYSTEMS FOR EMERGENCY CARE RESPONSE.

“(a) **IN GENERAL.**—The Secretary, acting through the Assistant Secretary for Preparedness and Response, shall award not fewer than 4 multiyear contracts or competitive grants to eligible entities to support pilot projects that design, implement, and evaluate innovative models of regionalized, comprehensive, and accountable emergency care and trauma systems.

Definitions.

“(b) **ELIGIBLE ENTITY; REGION.**—In this section:

“(1) **ELIGIBLE ENTITY.**—The term ‘eligible entity’ means—

“(A) a State or a partnership of 1 or more States and 1 or more local governments; or

“(B) an Indian tribe (as defined in section 4 of the Indian Health Care Improvement Act) or a partnership of 1 or more Indian tribes.

“(2) **REGION.**—The term ‘region’ means an area within a State, an area that lies within multiple States, or a similar area (such as a multicounty area), as determined by the Secretary.

“(3) **EMERGENCY SERVICES.**—The term ‘emergency services’ includes acute, prehospital, and trauma care.

“(c) PILOT PROJECTS.—The Secretary shall award a contract or grant under subsection (a) to an eligible entity that proposes a pilot project to design, implement, and evaluate an emergency medical and trauma system that—

“(1) coordinates with public health and safety services, emergency medical services, medical facilities, trauma centers, and other entities in a region to develop an approach to emergency medical and trauma system access throughout the region, including 9-1-1 Public Safety Answering Points and emergency medical dispatch;

“(2) includes a mechanism, such as a regional medical direction or transport communications system, that operates throughout the region to ensure that the patient is taken to the medically appropriate facility (whether an initial facility or a higher-level facility) in a timely fashion;

“(3) allows for the tracking of prehospital and hospital resources, including inpatient bed capacity, emergency department capacity, trauma center capacity, on-call specialist coverage, ambulance diversion status, and the coordination of such tracking with regional communications and hospital destination decisions; and

“(4) includes a consistent region-wide prehospital, hospital, and interfacility data management system that—

“(A) submits data to the National EMS Information System, the National Trauma Data Bank, and others;

“(B) reports data to appropriate Federal and State databanks and registries; and

“(C) contains information sufficient to evaluate key elements of prehospital care, hospital destination decisions, including initial hospital and interfacility decisions, and relevant health outcomes of hospital care.

“(d) APPLICATION.—

“(1) IN GENERAL.—An eligible entity that seeks a contract or grant described in subsection (a) shall submit to the Secretary an application at such time and in such manner as the Secretary may require.

“(2) APPLICATION INFORMATION.—Each application shall include—

“(A) an assurance from the eligible entity that the proposed system—

“(i) has been coordinated with the applicable State Office of Emergency Medical Services (or equivalent State office);

“(ii) includes consistent indirect and direct medical oversight of prehospital, hospital, and interfacility transport throughout the region;

“(iii) coordinates prehospital treatment and triage, hospital destination, and interfacility transport throughout the region;

“(iv) includes a categorization or designation system for special medical facilities throughout the region that is integrated with transport and destination protocols;

“(v) includes a regional medical direction, patient tracking, and resource allocation system that supports day-to-day emergency care and surge capacity and is

integrated with other components of the national and State emergency preparedness system; and

“(vi) addresses pediatric concerns related to integration, planning, preparedness, and coordination of emergency medical services for infants, children and adolescents; and

“(B) such other information as the Secretary may require.

“(e) REQUIREMENT OF MATCHING FUNDS.—

“(1) IN GENERAL.—The Secretary may not make a grant under this section unless the State (or consortia of States) involved agrees, with respect to the costs to be incurred by the State (or consortia) in carrying out the purpose for which such grant was made, to make available non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than \$1 for each \$3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

“(2) NON-FEDERAL CONTRIBUTIONS.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

“(f) PRIORITY.—The Secretary shall give priority for the award of the contracts or grants described in subsection (a) to any eligible entity that serves a population in a medically underserved area (as defined in section 330(b)(3)).

“(g) REPORT.—Not later than 90 days after the completion of a pilot project under subsection (a), the recipient of such contract or grant described in shall submit to the Secretary a report containing the results of an evaluation of the program, including an identification of—

“(1) the impact of the regional, accountable emergency care and trauma system on patient health outcomes for various critical care categories, such as trauma, stroke, cardiac emergencies, neurological emergencies, and pediatric emergencies;

“(2) the system characteristics that contribute to the effectiveness and efficiency of the program (or lack thereof);

“(3) methods of assuring the long-term financial sustainability of the emergency care and trauma system;

“(4) the State and local legislation necessary to implement and to maintain the system;

“(5) the barriers to developing regionalized, accountable emergency care and trauma systems, as well as the methods to overcome such barriers; and

“(6) recommendations on the utilization of available funding for future regionalization efforts.

“(h) DISSEMINATION OF FINDINGS.—The Secretary shall, as appropriate, disseminate to the public and to the appropriate Committees of the Congress, the information contained in a report made under subsection (g).”; and

(3) in section 1232—

(A) in subsection (a), by striking “appropriated” and all that follows through the period at the end and inserting

Public
information.

42 USC 300d-32.

“appropriated \$24,000,000 for each of fiscal years 2010 through 2014.”; and

(B) by inserting after subsection (c) the following:

“(d) **AUTHORITY.**—For the purpose of carrying out parts A through C, beginning on the date of enactment of the Patient Protection and Affordable Care Act, the Secretary shall transfer authority in administering grants and related authorities under such parts from the Administrator of the Health Resources and Services Administration to the Assistant Secretary for Preparedness and Response.”.

Effective date.

(b) **SUPPORT FOR EMERGENCY MEDICINE RESEARCH.**—Part H of title IV of the Public Health Service Act (42 U.S.C. 289 et seq.) is amended by inserting after the section 498C the following:

“SEC. 498D. SUPPORT FOR EMERGENCY MEDICINE RESEARCH.

42 USC 289g-4.

“(a) **EMERGENCY MEDICAL RESEARCH.**—The Secretary shall support Federal programs administered by the National Institutes of Health, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, and other agencies involved in improving the emergency care system to expand and accelerate research in emergency medical care systems and emergency medicine, including—

“(1) the basic science of emergency medicine;

“(2) the model of service delivery and the components of such models that contribute to enhanced patient health outcomes;

“(3) the translation of basic scientific research into improved practice; and

“(4) the development of timely and efficient delivery of health services.

“(b) **PEDIATRIC EMERGENCY MEDICAL RESEARCH.**—The Secretary shall support Federal programs administered by the National Institutes of Health, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, and other agencies to coordinate and expand research in pediatric emergency medical care systems and pediatric emergency medicine, including—

“(1) an examination of the gaps and opportunities in pediatric emergency care research and a strategy for the optimal organization and funding of such research;

“(2) the role of pediatric emergency services as an integrated component of the overall health system;

“(3) system-wide pediatric emergency care planning, preparedness, coordination, and funding;

“(4) pediatric training in professional education; and

“(5) research in pediatric emergency care, specifically on the efficacy, safety, and health outcomes of medications used for infants, children, and adolescents in emergency care settings in order to improve patient safety.

“(c) **IMPACT RESEARCH.**—The Secretary shall support research to determine the estimated economic impact of, and savings that result from, the implementation of coordinated emergency care systems.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2014.”.

SEC. 3505. TRAUMA CARE CENTERS AND SERVICE AVAILABILITY.**(a) TRAUMA CARE CENTERS.—**

(1) GRANTS FOR TRAUMA CARE CENTERS.—Section 1241 of the Public Health Service Act (42 U.S.C. 300d-41) is amended by striking subsections (a) and (b) and inserting the following:

“(a) IN GENERAL.—The Secretary shall establish 3 programs to award grants to qualified public, nonprofit Indian Health Service, Indian tribal, and urban Indian trauma centers—

“(1) to assist in defraying substantial uncompensated care costs;

“(2) to further the core missions of such trauma centers, including by addressing costs associated with patient stabilization and transfer, trauma education and outreach, coordination with local and regional trauma systems, essential personnel and other fixed costs, and expenses associated with employee and non-employee physician services; and

“(3) to provide emergency relief to ensure the continued and future availability of trauma services.

“(b) MINIMUM QUALIFICATIONS OF TRAUMA CENTERS.—

“(1) PARTICIPATION IN TRAUMA CARE SYSTEM OPERATING UNDER CERTAIN PROFESSIONAL GUIDELINES.—Except as provided in paragraph (2), the Secretary may not award a grant to a trauma center under subsection (a) unless the trauma center is a participant in a trauma system that substantially complies with section 1213.

“(2) EXEMPTION.—Paragraph (1) shall not apply to trauma centers that are located in States with no existing trauma care system.

“(3) QUALIFICATION FOR SUBSTANTIAL UNCOMPENSATED CARE COSTS.—The Secretary shall award substantial uncompensated care grants under subsection (a)(1) only to trauma centers meeting at least 1 of the criteria in 1 of the following 3 categories:

“(A) CATEGORY A.—The criteria for category A are as follows:

“(i) At least 40 percent of the visits in the emergency department of the hospital in which the trauma center is located were charity or self-pay patients.

“(ii) At least 50 percent of the visits in such emergency department were Medicaid (under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)) and charity and self-pay patients combined.

“(B) CATEGORY B.—The criteria for category B are as follows:

“(i) At least 35 percent of the visits in the emergency department were charity or self-pay patients.

“(ii) At least 50 percent of the visits in the emergency department were Medicaid and charity and self-pay patients combined.

“(C) CATEGORY C.—The criteria for category C are as follows:

“(i) At least 20 percent of the visits in the emergency department were charity or self-pay patients.

“(ii) At least 30 percent of the visits in the emergency department were Medicaid and charity and self-pay patients combined.

“(4) TRAUMA CENTERS IN 1115 WAIVER STATES.—Notwithstanding paragraph (3), the Secretary may award a substantial uncompensated care grant to a trauma center under subsection (a)(1) if the trauma center qualifies for funds under a Low Income Pool or Safety Net Care Pool established through a waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315).

“(5) DESIGNATION.—The Secretary may not award a grant to a trauma center unless such trauma center is verified by the American College of Surgeons or designated by an equivalent State or local agency.

“(c) ADDITIONAL REQUIREMENTS.—The Secretary may not award a grant to a trauma center under subsection (a)(1) unless such trauma center—

“(1) submits to the Secretary a plan satisfactory to the Secretary that demonstrates a continued commitment to serving trauma patients regardless of their ability to pay; and Plans.

“(2) has policies in place to assist patients who cannot pay for part or all of the care they receive, including a sliding fee scale, and to ensure fair billing and collection practices.”.

(2) CONSIDERATIONS IN MAKING GRANTS.—Section 1242 of the Public Health Service Act (42 U.S.C. 300d-42) is amended by striking subsections (a) and (b) and inserting the following: “(a) SUBSTANTIAL UNCOMPENSATED CARE AWARDS.—

“(1) IN GENERAL.—The Secretary shall establish an award basis for each eligible trauma center for grants under section 1241(a)(1) according to the percentage described in paragraph (2), subject to the requirements of section 1241(b)(3).

“(2) PERCENTAGES.—The applicable percentages are as follows:

“(A) With respect to a category A trauma center, 100 percent of the uncompensated care costs.

“(B) With respect to a category B trauma center, not more than 75 percent of the uncompensated care costs.

“(C) With respect to a category C trauma center, not more than 50 percent of the uncompensated care costs.

“(b) CORE MISSION AWARDS.—

“(1) IN GENERAL.—In awarding grants under section 1241(a)(2), the Secretary shall—

“(A) reserve 25 percent of the amount allocated for core mission awards for Level III and Level IV trauma centers; and

“(B) reserve 25 percent of the amount allocated for core mission awards for large urban Level I and II trauma centers—

“(i) that have at least 1 graduate medical education fellowship in trauma or trauma related specialties for which demand is exceeding supply;

“(ii) for which—

“(I) annual uncompensated care costs exceed \$10,000,000; or

“(II) at least 20 percent of emergency department visits are charity or self-pay or Medicaid patients; and

“(iii) that are not eligible for substantial uncompensated care awards under section 1241(a)(1).

“(c) EMERGENCY AWARDS.—In awarding grants under section 1241(a)(3), the Secretary shall—

“(1) give preference to any application submitted by a trauma center that provides trauma care in a geographic area in which the availability of trauma care has significantly decreased or will significantly decrease if the center is forced to close or downgrade service or growth in demand for trauma services exceeds capacity; and

“(2) reallocate any emergency awards funds not obligated due to insufficient, or a lack of qualified, applications to the significant uncompensated care award program.”.

(3) CERTAIN AGREEMENTS.—Section 1243 of the Public Health Service Act (42 U.S.C. 300d-43) is amended by striking subsections (a), (b), and (c) and inserting the following:

“(a) MAINTENANCE OF FINANCIAL SUPPORT.—The Secretary may require a trauma center receiving a grant under section 1241(a) to maintain access to trauma services at comparable levels to the prior year during the grant period.

“(b) TRAUMA CARE REGISTRY.—The Secretary may require the trauma center receiving a grant under section 1241(a) to provide data to a national and centralized registry of trauma cases, in accordance with guidelines developed by the American College of Surgeons, and as the Secretary may otherwise require.”.

(4) GENERAL PROVISIONS.—Section 1244 of the Public Health Service Act (42 U.S.C. 300d-44) is amended by striking subsections (a), (b), and (c) and inserting the following:

“(a) APPLICATION.—The Secretary may not award a grant to a trauma center under section 1241(a) unless such center submits an application for the grant to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

Waiver authority.

“(b) LIMITATION ON DURATION OF SUPPORT.—The period during which a trauma center receives payments under a grant under section 1241(a)(3) shall be for 3 fiscal years, except that the Secretary may waive such requirement for a center and authorize such center to receive such payments for 1 additional fiscal year.

“(c) LIMITATION ON AMOUNT OF GRANT.—Notwithstanding section 1242(a), a grant under section 1241 may not be made in an amount exceeding \$2,000,000 for each fiscal year.

“(d) ELIGIBILITY.—Except as provided in section 1242(b)(1)(B)(iii), acquisition of, or eligibility for, a grant under section 1241(a) shall not preclude a trauma center from being eligible for other grants described in such section.

“(e) FUNDING DISTRIBUTION.—Of the total amount appropriated for a fiscal year under section 1245, 70 percent shall be used for substantial uncompensated care awards under section 1241(a)(1), 20 percent shall be used for core mission awards under section 1241(a)(2), and 10 percent shall be used for emergency awards under section 1241(a)(3).

“(f) MINIMUM ALLOWANCE.—Notwithstanding subsection (e), if the amount appropriated for a fiscal year under section 1245 is less than \$25,000,000, all available funding for such fiscal year shall be used for substantial uncompensated care awards under section 1241(a)(1).

“(g) SUBSTANTIAL UNCOMPENSATED CARE AWARD DISTRIBUTION AND PROPORTIONAL SHARE.—Notwithstanding section 1242(a), of

the amount appropriated for substantial uncompensated care grants for a fiscal year, the Secretary shall—

“(1) make available—

“(A) 50 percent of such funds for category A trauma center grantees;

“(B) 35 percent of such funds for category B trauma center grantees; and

“(C) 15 percent of such funds for category C trauma center grantees; and

“(2) provide available funds within each category in a manner proportional to the award basis specified in section 1242(a)(2) to each eligible trauma center.

“(h) REPORT.—Beginning 2 years after the date of enactment of the Patient Protection and Affordable Care Act, and every 2 years thereafter, the Secretary shall biennially report to Congress regarding the status of the grants made under section 1241 and on the overall financial stability of trauma centers.”.

(5) AUTHORIZATION OF APPROPRIATIONS.—Section 1245 of the Public Health Service Act (42 U.S.C. 300d–45) is amended to read as follows:

“SEC. 1245. AUTHORIZATION OF APPROPRIATIONS.

42 USC 300d–45.

“For the purpose of carrying out this part, there are authorized to be appropriated \$100,000,000 for fiscal year 2009, and such sums as may be necessary for each of fiscal years 2010 through 2015. Such authorization of appropriations is in addition to any other authorization of appropriations or amounts that are available for such purpose.”.

(6) DEFINITION.—Part D of title XII of the Public Health Service Act (42 U.S.C. 300d–41 et seq.) is amended by adding at the end the following:

“SEC. 1246. DEFINITION.

42 USC 300d–46.

“In this part, the term ‘uncompensated care costs’ means unreimbursed costs from serving self-pay, charity, or Medicaid patients, without regard to payment under section 1923 of the Social Security Act, all of which are attributable to emergency care and trauma care, including costs related to subsequent inpatient admissions to the hospital.”.

(b) TRAUMA SERVICE AVAILABILITY.—Title XII of the Public Health Service Act (42 U.S.C. 300d et seq.) is amended by adding at the end the following:

“PART H—TRAUMA SERVICE AVAILABILITY

“SEC. 1281. GRANTS TO STATES.

42 USC 300d–81.

“(a) ESTABLISHMENT.—To promote universal access to trauma care services provided by trauma centers and trauma-related physician specialties, the Secretary shall provide funding to States to enable such States to award grants to eligible entities for the purposes described in this section.

“(b) AWARDING OF GRANTS BY STATES.—Each State may award grants to eligible entities within the State for the purposes described in subparagraph (d).

“(c) ELIGIBILITY.—

“(1) IN GENERAL.—To be eligible to receive a grant under subsection (b) an entity shall—

“(A) be—

“(i) a public or nonprofit trauma center or consortium thereof that meets that requirements of paragraphs (1), (2), and (5) of section 1241(b);

“(ii) a safety net public or nonprofit trauma center that meets the requirements of paragraphs (1) through (5) of section 1241(b); or

“(iii) a hospital in an underserved area (as defined by the State) that seeks to establish new trauma services; and

“(B) submit to the State an application at such time, in such manner, and containing such information as the State may require.

“(2) LIMITATION.—A State shall use at least 40 percent of the amount available to the State under this part for a fiscal year to award grants to safety net trauma centers described in paragraph (1)(A)(ii).

“(d) USE OF FUNDS.—The recipient of a grant under subsection (b) shall carry out 1 or more of the following activities consistent with subsection (b):

“(1) Providing trauma centers with funding to support physician compensation in trauma-related physician specialties where shortages exist in the region involved, with priority provided to safety net trauma centers described in subsection (c)(1)(A)(ii).

“(2) Providing for individual safety net trauma center fiscal stability and costs related to having service that is available 24 hours a day, 7 days a week, with priority provided to safety net trauma centers described in subsection (c)(1)(A)(ii) located in urban, border, and rural areas.

“(3) Reducing trauma center overcrowding at specific trauma centers related to throughput of trauma patients.

“(4) Establishing new trauma services in underserved areas as defined by the State.

“(5) Enhancing collaboration between trauma centers and other hospitals and emergency medical services personnel related to trauma service availability.

“(6) Making capital improvements to enhance access and expedite trauma care, including providing helipads and associated safety infrastructure.

“(7) Enhancing trauma surge capacity at specific trauma centers.

“(8) Ensuring expedient receipt of trauma patients transported by ground or air to the appropriate trauma center.

“(9) Enhancing interstate trauma center collaboration.

“(e) LIMITATION.—

“(1) IN GENERAL.—A State may use not more than 20 percent of the amount available to the State under this part for a fiscal year for administrative costs associated with awarding grants and related costs.

“(2) MAINTENANCE OF EFFORT.—The Secretary may not provide funding to a State under this part unless the State agrees that such funds will be used to supplement and not supplant State funding otherwise available for the activities and costs described in this part.

“(f) DISTRIBUTION OF FUNDS.—The following shall apply with respect to grants provided in this part:

Applicability.

“(1) LESS THAN \$10,000,000.—If the amount of appropriations for this part in a fiscal year is less than \$10,000,000, the Secretary shall divide such funding evenly among only those States that have 1 or more trauma centers eligible for funding under section 1241(b)(3)(A).

“(2) LESS THAN \$20,000,000.—If the amount of appropriations in a fiscal year is less than \$20,000,000, the Secretary shall divide such funding evenly among only those States that have 1 or more trauma centers eligible for funding under subparagraphs (A) and (B) of section 1241(b)(3).

“(3) LESS THAN \$30,000,000.—If the amount of appropriations for this part in a fiscal year is less than \$30,000,000, the Secretary shall divide such funding evenly among only those States that have 1 or more trauma centers eligible for funding under section 1241(b)(3).

“(4) \$30,000,000 OR MORE.—If the amount of appropriations for this part in a fiscal year is \$30,000,000 or more, the Secretary shall divide such funding evenly among all States.

“SEC. 1282. AUTHORIZATION OF APPROPRIATIONS.

42 USC 300d-82.

“For the purpose of carrying out this part, there is authorized to be appropriated \$100,000,000 for each of fiscal years 2010 through 2015.”.

SEC. 3506. PROGRAM TO FACILITATE SHARED DECISIONMAKING.

Part D of title IX of the Public Health Service Act, as amended by section 3503, is further amended by adding at the end the following:

“SEC. 936. PROGRAM TO FACILITATE SHARED DECISIONMAKING.

42 USC 299b-36.

“(a) PURPOSE.—The purpose of this section is to facilitate collaborative processes between patients, caregivers or authorized representatives, and clinicians that engages the patient, caregiver or authorized representative in decisionmaking, provides patients, caregivers or authorized representatives with information about trade-offs among treatment options, and facilitates the incorporation of patient preferences and values into the medical plan.

“(b) DEFINITIONS.—In this section:

“(1) PATIENT DECISION AID.—The term ‘patient decision aid’ means an educational tool that helps patients, caregivers or authorized representatives understand and communicate their beliefs and preferences related to their treatment options, and to decide with their health care provider what treatments are best for them based on their treatment options, scientific evidence, circumstances, beliefs, and preferences.

“(2) PREFERENCE SENSITIVE CARE.—The term ‘preference sensitive care’ means medical care for which the clinical evidence does not clearly support one treatment option such that the appropriate course of treatment depends on the values of the patient or the preferences of the patient, caregivers or authorized representatives regarding the benefits, harms and scientific evidence for each treatment option, the use of such care should depend on the informed patient choice among clinically appropriate treatment options.

“(c) ESTABLISHMENT OF INDEPENDENT STANDARDS FOR PATIENT DECISION AIDS FOR PREFERENCE SENSITIVE CARE.—

“(1) CONTRACT WITH ENTITY TO ESTABLISH STANDARDS AND CERTIFY PATIENT DECISION AIDS.—

“(A) IN GENERAL.—For purposes of supporting consensus-based standards for patient decision aids for preference sensitive care and a certification process for patient decision aids for use in the Federal health programs and by other interested parties, the Secretary shall have in effect a contract with the entity with a contract under section 1890 of the Social Security Act. Such contract shall provide that the entity perform the duties described in paragraph (2).

“(B) TIMING FOR FIRST CONTRACT.—As soon as practicable after the date of the enactment of this section, the Secretary shall enter into the first contract under subparagraph (A).

“(C) PERIOD OF CONTRACT.—A contract under subparagraph (A) shall be for a period of 18 months (except such contract may be renewed after a subsequent bidding process).

“(2) DUTIES.—The following duties are described in this paragraph:

“(A) DEVELOP AND IDENTIFY STANDARDS FOR PATIENT DECISION AIDS.—The entity shall synthesize evidence and convene a broad range of experts and key stakeholders to develop and identify consensus-based standards to evaluate patient decision aids for preference sensitive care.

“(B) ENDORSE PATIENT DECISION AIDS.—The entity shall review patient decision aids and develop a certification process whether patient decision aids meet the standards developed and identified under subparagraph (A). The entity shall give priority to the review and certification of patient decision aids for preference sensitive care.

Grants.
Contracts.

“(d) PROGRAM TO DEVELOP, UPDATE AND PATIENT DECISION AIDS TO ASSIST HEALTH CARE PROVIDERS AND PATIENTS.—

“(1) IN GENERAL.—The Secretary, acting through the Director, and in coordination with heads of other relevant agencies, such as the Director of the Centers for Disease Control and Prevention and the Director of the National Institutes of Health, shall establish a program to award grants or contracts—

“(A) to develop, update, and produce patient decision aids for preference sensitive care to assist health care providers in educating patients, caregivers, and authorized representatives concerning the relative safety, relative effectiveness (including possible health outcomes and impact on functional status), and relative cost of treatment or, where appropriate, palliative care options;

“(B) to test such materials to ensure such materials are balanced and evidence based in aiding health care providers and patients, caregivers, and authorized representatives to make informed decisions about patient care and can be easily incorporated into a broad array of practice settings; and

“(C) to educate providers on the use of such materials, including through academic curricula.

“(2) REQUIREMENTS FOR PATIENT DECISION AIDS.—Patient decision aids developed and produced pursuant to a grant or contract under paragraph (1)—

“(A) shall be designed to engage patients, caregivers, and authorized representatives in informed decisionmaking with health care providers;

“(B) shall present up-to-date clinical evidence about the risks and benefits of treatment options in a form and manner that is age-appropriate and can be adapted for patients, caregivers, and authorized representatives from a variety of cultural and educational backgrounds to reflect the varying needs of consumers and diverse levels of health literacy;

“(C) shall, where appropriate, explain why there is a lack of evidence to support one treatment option over another; and

“(D) shall address health care decisions across the age span, including those affecting vulnerable populations including children.

“(3) DISTRIBUTION.—The Director shall ensure that patient decision aids produced with grants or contracts under this section are available to the public.

“(4) NONDUPLICATION OF EFFORTS.—The Director shall ensure that the activities under this section of the Agency and other agencies, including the Centers for Disease Control and Prevention and the National Institutes of Health, are free of unnecessary duplication of effort.

“(e) GRANTS TO SUPPORT SHARED DECISIONMAKING IMPLEMENTATION.—

“(1) IN GENERAL.—The Secretary shall establish a program to provide for the phased-in development, implementation, and evaluation of shared decisionmaking using patient decision aids to meet the objective of improving the understanding of patients of their medical treatment options.

“(2) SHARED DECISIONMAKING RESOURCE CENTERS.—

“(A) IN GENERAL.—The Secretary shall provide grants for the establishment and support of Shared Decision-making Resource Centers (referred to in this subsection as ‘Centers’) to provide technical assistance to providers and to develop and disseminate best practices and other information to support and accelerate adoption, implementation, and effective use of patient decision aids and shared decisionmaking by providers.

“(B) OBJECTIVES.—The objective of a Center is to enhance and promote the adoption of patient decision aids and shared decisionmaking through—

“(i) providing assistance to eligible providers with the implementation and effective use of, and training on, patient decision aids; and

“(ii) the dissemination of best practices and research on the implementation and effective use of patient decision aids.

“(3) SHARED DECISIONMAKING PARTICIPATION GRANTS.—

“(A) IN GENERAL.—The Secretary shall provide grants to health care providers for the development and implementation of shared decisionmaking techniques and to assess the use of such techniques.

“(B) PREFERENCE.—In order to facilitate the use of best practices, the Secretary shall provide a preference in making grants under this subsection to health care

providers who participate in training by Shared Decision-making Resource Centers or comparable training.

“(C) LIMITATION.—Funds under this paragraph shall not be used to purchase or implement use of patient decision aids other than those certified under the process identified in subsection (c).

“(4) GUIDANCE.—The Secretary may issue guidance to eligible grantees under this subsection on the use of patient decision aids.

“(f) FUNDING.—For purposes of carrying out this section there are authorized to be appropriated such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year.”.

21 USC 352 note.

SEC. 3507. PRESENTATION OF PRESCRIPTION DRUG BENEFIT AND RISK INFORMATION.

Determination.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Commissioner of Food and Drugs, shall determine whether the addition of quantitative summaries of the benefits and risks of prescription drugs in a standardized format (such as a table or drug facts box) to the promotional labeling or print advertising of such drugs would improve health care decisionmaking by clinicians and patients and consumers.

(b) REVIEW AND CONSULTATION.—In making the determination under subsection (a), the Secretary shall review all available scientific evidence and research on decisionmaking and social and cognitive psychology and consult with drug manufacturers, clinicians, patients and consumers, experts in health literacy, representatives of racial and ethnic minorities, and experts in women’s and pediatric health.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that provides—

(1) the determination by the Secretary under subsection (a); and

(2) the reasoning and analysis underlying that determination.

Deadline.
Regulations.

(d) AUTHORITY.—If the Secretary determines under subsection (a) that the addition of quantitative summaries of the benefits and risks of prescription drugs in a standardized format (such as a table or drug facts box) to the promotional labeling or print advertising of such drugs would improve health care decisionmaking by clinicians and patients and consumers, then the Secretary, not later than 3 years after the date of submission of the report under subsection (c), shall promulgate proposed regulations as necessary to implement such format.

(e) CLARIFICATION.—Nothing in this section shall be construed to restrict the existing authorities of the Secretary with respect to benefit and risk information.

42 USC 294j.

SEC. 3508. DEMONSTRATION PROGRAM TO INTEGRATE QUALITY IMPROVEMENT AND PATIENT SAFETY TRAINING INTO CLINICAL EDUCATION OF HEALTH PROFESSIONALS.

(a) IN GENERAL.—The Secretary may award grants to eligible entities or consortia under this section to carry out demonstration projects to develop and implement academic curricula that integrates quality improvement and patient safety in the clinical

education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity or consortium shall—

(1) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(2) be or include—

(A) a health professions school;

(B) a school of public health;

(C) a school of social work;

(D) a school of nursing;

(E) a school of pharmacy;

(F) an institution with a graduate medical education program; or

(G) a school of health care administration;

(3) collaborate in the development of curricula described in subsection (a) with an organization that accredits such school or institution;

(4) provide for the collection of data regarding the effectiveness of the demonstration project; and

(5) provide matching funds in accordance with subsection

(c).

(c) MATCHING FUNDS.—

(1) IN GENERAL.—The Secretary may award a grant to an entity or consortium under this section only if the entity or consortium agrees to make available non-Federal contributions toward the costs of the program to be funded under the grant in an amount that is not less than \$1 for each \$5 of Federal funds provided under the grant.

(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions under paragraph (1) may be in cash or in-kind, fairly evaluated, including equipment or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(d) EVALUATION.—The Secretary shall take such action as may be necessary to evaluate the projects funded under this section and publish, make publicly available, and disseminate the results of such evaluations on as wide a basis as is practicable.

Publication.
Public
information.

(e) REPORTS.—Not later than 2 years after the date of enactment of this section, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives a report that—

(1) describes the specific projects supported under this section; and

(2) contains recommendations for Congress based on the evaluation conducted under subsection (d).

SEC. 3509. IMPROVING WOMEN'S HEALTH.

(a) HEALTH AND HUMAN SERVICES OFFICE ON WOMEN'S HEALTH.—

(1) ESTABLISHMENT.—Part A of title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following:

42 USC 237a.

“SEC. 229. HEALTH AND HUMAN SERVICES OFFICE ON WOMEN’S HEALTH.

“(a) ESTABLISHMENT OF OFFICE.—There is established within the Office of the Secretary, an Office on Women’s Health (referred to in this section as the ‘Office’). The Office shall be headed by a Deputy Assistant Secretary for Women’s Health who may report to the Secretary.

“(b) DUTIES.—The Secretary, acting through the Office, with respect to the health concerns of women, shall—

“(1) establish short-range and long-range goals and objectives within the Department of Health and Human Services and, as relevant and appropriate, coordinate with other appropriate offices on activities within the Department that relate to disease prevention, health promotion, service delivery, research, and public and health care professional education, for issues of particular concern to women throughout their lifespan;

“(2) provide expert advice and consultation to the Secretary concerning scientific, legal, ethical, and policy issues relating to women’s health;

“(3) monitor the Department of Health and Human Services’ offices, agencies, and regional activities regarding women’s health and identify needs regarding the coordination of activities, including intramural and extramural multidisciplinary activities;

“(4) establish a Department of Health and Human Services Coordinating Committee on Women’s Health, which shall be chaired by the Deputy Assistant Secretary for Women’s Health and composed of senior level representatives from each of the agencies and offices of the Department of Health and Human Services;

Establishment.

“(5) establish a National Women’s Health Information Center to—

“(A) facilitate the exchange of information regarding matters relating to health information, health promotion, preventive health services, research advances, and education in the appropriate use of health care;

“(B) facilitate access to such information;

“(C) assist in the analysis of issues and problems relating to the matters described in this paragraph; and

“(D) provide technical assistance with respect to the exchange of information (including facilitating the development of materials for such technical assistance);

“(6) coordinate efforts to promote women’s health programs and policies with the private sector; and

“(7) through publications and any other means appropriate, provide for the exchange of information between the Office and recipients of grants, contracts, and agreements under subsection (c), and between the Office and health professionals and the general public.

“(c) GRANTS AND CONTRACTS REGARDING DUTIES.—

“(1) **AUTHORITY.**—In carrying out subsection (b), the Secretary may make grants to, and enter into cooperative agreements, contracts, and interagency agreements with, public and private entities, agencies, and organizations.

“(2) **EVALUATION AND DISSEMINATION.**—The Secretary shall directly or through contracts with public and private entities, agencies, and organizations, provide for evaluations of projects carried out with financial assistance provided under paragraph (1) and for the dissemination of information developed as a result of such projects.

“(d) **REPORTS.**—Not later than 1 year after the date of enactment of this section, and every second year thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress a report describing the activities carried out under this section during the period for which the report is being prepared.

“(e) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.”.

(2) **TRANSFER OF FUNCTIONS.**—There are transferred to the Office on Women’s Health (established under section 229 of the Public Health Service Act, as added by this section), all functions exercised by the Office on Women’s Health of the Public Health Service prior to the date of enactment of this section, including all personnel and compensation authority, all delegation and assignment authority, and all remaining appropriations. All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions that—

42 USC 237a
note.

(A) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions transferred under this paragraph; and

(B) are in effect at the time this section takes effect, or were final before the date of enactment of this section and are to become effective on or after such date, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) **CENTERS FOR DISEASE CONTROL AND PREVENTION OFFICE OF WOMEN’S HEALTH.**—Part A of title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

“SEC. 310A. CENTERS FOR DISEASE CONTROL AND PREVENTION OFFICE OF WOMEN’S HEALTH.

42 USC 242s.

“(a) **ESTABLISHMENT.**—There is established within the Office of the Director of the Centers for Disease Control and Prevention, an office to be known as the Office of Women’s Health (referred to in this section as the ‘Office’). The Office shall be headed by a director who shall be appointed by the Director of such Centers.

“(b) **PURPOSE.**—The Director of the Office shall—

“(1) report to the Director of the Centers for Disease Control and Prevention on the current level of the Centers’ activity regarding women’s health conditions across, where appropriate, age, biological, and sociocultural contexts, in all aspects of the Centers’ work, including prevention programs, public and professional education, services, and treatment;

“(2) establish short-range and long-range goals and objectives within the Centers for women’s health and, as relevant and appropriate, coordinate with other appropriate offices on activities within the Centers that relate to prevention, research, education and training, service delivery, and policy development, for issues of particular concern to women;

“(3) identify projects in women’s health that should be conducted or supported by the Centers;

“(4) consult with health professionals, nongovernmental organizations, consumer organizations, women’s health professionals, and other individuals and groups, as appropriate, on the policy of the Centers with regard to women; and

“(5) serve as a member of the Department of Health and Human Services Coordinating Committee on Women’s Health (established under section 229(b)(4)).

“(c) DEFINITION.—As used in this section, the term ‘women’s health conditions’, with respect to women of all age, ethnic, and racial groups, means diseases, disorders, and conditions—

“(1) unique to, significantly more serious for, or significantly more prevalent in women; and

“(2) for which the factors of medical risk or type of medical intervention are different for women, or for which there is reasonable evidence that indicates that such factors or types may be different for women.

“(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.”.

(c) OFFICE OF WOMEN’S HEALTH RESEARCH.—Section 486(a) of the Public Health Service Act (42 U.S.C. 287d(a)) is amended by inserting “and who shall report directly to the Director” before the period at the end thereof.

(d) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Section 501(f) of the Public Health Service Act (42 U.S.C. 290aa(f)) is amended—

(1) in paragraph (1), by inserting “who shall report directly to the Administrator” before the period;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3), the following:

“(4) OFFICE.—Nothing in this subsection shall be construed to preclude the Secretary from establishing within the Substance Abuse and Mental Health Administration an Office of Women’s Health.”.

(e) AGENCY FOR HEALTHCARE RESEARCH AND QUALITY ACTIVITIES REGARDING WOMEN’S HEALTH.—Part C of title IX of the Public Health Service Act (42 U.S.C. 299c et seq.) is amended—

(1) by redesignating sections 925 and 926 as sections 926 and 927, respectively; and

(2) by inserting after section 924 the following:

“SEC. 925. ACTIVITIES REGARDING WOMEN’S HEALTH.42 USC
299b-24a.

“(a) **ESTABLISHMENT.**—There is established within the Office of the Director, an Office of Women’s Health and Gender-Based Research (referred to in this section as the ‘Office’). The Office shall be headed by a director who shall be appointed by the Director of Healthcare and Research Quality.

“(b) **PURPOSE.**—The official designated under subsection (a) shall—

“(1) report to the Director on the current Agency level of activity regarding women’s health, across, where appropriate, age, biological, and sociocultural contexts, in all aspects of Agency work, including the development of evidence reports and clinical practice protocols and the conduct of research into patient outcomes, delivery of health care services, quality of care, and access to health care;

“(2) establish short-range and long-range goals and objectives within the Agency for research important to women’s health and, as relevant and appropriate, coordinate with other appropriate offices on activities within the Agency that relate to health services and medical effectiveness research, for issues of particular concern to women;

“(3) identify projects in women’s health that should be conducted or supported by the Agency;

“(4) consult with health professionals, nongovernmental organizations, consumer organizations, women’s health professionals, and other individuals and groups, as appropriate, on Agency policy with regard to women; and

“(5) serve as a member of the Department of Health and Human Services Coordinating Committee on Women’s Health (established under section 229(b)(4)).”.

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.”.

(f) **HEALTH RESOURCES AND SERVICES ADMINISTRATION OFFICE OF WOMEN’S HEALTH.**—Title VII of the Social Security Act (42 U.S.C. 901 et seq.) is amended by adding at the end the following:

“SEC. 713. OFFICE OF WOMEN’S HEALTH.

42 USC 914.

“(a) **ESTABLISHMENT.**—The Secretary shall establish within the Office of the Administrator of the Health Resources and Services Administration, an office to be known as the Office of Women’s Health. The Office shall be headed by a director who shall be appointed by the Administrator.

“(b) **PURPOSE.**—The Director of the Office shall—

“(1) report to the Administrator on the current Administration level of activity regarding women’s health across, where appropriate, age, biological, and sociocultural contexts;

“(2) establish short-range and long-range goals and objectives within the Health Resources and Services Administration for women’s health and, as relevant and appropriate, coordinate with other appropriate offices on activities within the Administration that relate to health care provider training, health service delivery, research, and demonstration projects, for issues of particular concern to women;

“(3) identify projects in women’s health that should be conducted or supported by the bureaus of the Administration;

“(4) consult with health professionals, nongovernmental organizations, consumer organizations, women’s health professionals, and other individuals and groups, as appropriate, on Administration policy with regard to women; and

“(5) serve as a member of the Department of Health and Human Services Coordinating Committee on Women’s Health (established under section 229(b)(4) of the Public Health Service Act).

“(c) CONTINUED ADMINISTRATION OF EXISTING PROGRAMS.—The Director of the Office shall assume the authority for the development, implementation, administration, and evaluation of any projects carried out through the Health Resources and Services Administration relating to women’s health on the date of enactment of this section.

“(d) DEFINITIONS.—For purposes of this section:

“(1) ADMINISTRATION.—The term ‘Administration’ means the Health Resources and Services Administration.

“(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Health Resources and Services Administration.

“(3) OFFICE.—The term ‘Office’ means the Office of Women’s Health established under this section in the Administration.

“(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.”.

(g) FOOD AND DRUG ADMINISTRATION OFFICE OF WOMEN’S HEALTH.—Chapter X of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

21 USC 399b.

“SEC. 1011. OFFICE OF WOMEN’S HEALTH.

“(a) ESTABLISHMENT.—There is established within the Office of the Commissioner, an office to be known as the Office of Women’s Health (referred to in this section as the ‘Office’). The Office shall be headed by a director who shall be appointed by the Commissioner of Food and Drugs.

“(b) PURPOSE.—The Director of the Office shall—

“(1) report to the Commissioner of Food and Drugs on current Food and Drug Administration (referred to in this section as the ‘Administration’) levels of activity regarding women’s participation in clinical trials and the analysis of data by sex in the testing of drugs, medical devices, and biological products across, where appropriate, age, biological, and sociocultural contexts;

“(2) establish short-range and long-range goals and objectives within the Administration for issues of particular concern to women’s health within the jurisdiction of the Administration, including, where relevant and appropriate, adequate inclusion of women and analysis of data by sex in Administration protocols and policies;

“(3) provide information to women and health care providers on those areas in which differences between men and women exist;

“(4) consult with pharmaceutical, biologics, and device manufacturers, health professionals with expertise in women’s

issues, consumer organizations, and women’s health professionals on Administration policy with regard to women;

“(5) make annual estimates of funds needed to monitor clinical trials and analysis of data by sex in accordance with needs that are identified; and

“(6) serve as a member of the Department of Health and Human Services Coordinating Committee on Women’s Health (established under section 229(b)(4) of the Public Health Service Act).

“(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.”.

(h) NO NEW REGULATORY AUTHORITY.—Nothing in this section and the amendments made by this section may be construed as establishing regulatory authority or modifying any existing regulatory authority. 42 USC 237a note.

(i) LIMITATION ON TERMINATION.—Notwithstanding any other provision of law, a Federal office of women’s health (including the Office of Research on Women’s Health of the National Institutes of Health) or Federal appointive position with primary responsibility over women’s health issues (including the Associate Administrator for Women’s Services under the Substance Abuse and Mental Health Services Administration) that is in existence on the date of enactment of this section shall not be terminated, reorganized, or have any of its powers or duties transferred unless such termination, reorganization, or transfer is approved by Congress through the adoption of a concurrent resolution of approval. 42 USC 237a note.

(j) RULE OF CONSTRUCTION.—Nothing in this section (or the amendments made by this section) shall be construed to limit the authority of the Secretary of Health and Human Services with respect to women’s health, or with respect to activities carried out through the Department of Health and Human Services on the date of enactment of this section. 42 USC 237a note.

SEC. 3510. PATIENT NAVIGATOR PROGRAM.

Section 340A of the Public Health Service Act (42 U.S.C. 256a) is amended—

(1) by striking subsection (d)(3) and inserting the following:

“(3) LIMITATIONS ON GRANT PERIOD.—In carrying out this section, the Secretary shall ensure that the total period of a grant does not exceed 4 years.”;

(2) in subsection (e), by adding at the end the following:

“(3) MINIMUM CORE PROFICIENCIES.—The Secretary shall not award a grant to an entity under this section unless such entity provides assurances that patient navigators recruited, assigned, trained, or employed using grant funds meet minimum core proficiencies, as defined by the entity that submits the application, that are tailored for the main focus or intervention of the navigator involved.”; and

(3) in subsection (m)—

(A) in paragraph (1), by striking “and \$3,500,000 for fiscal year 2010.” and inserting “\$3,500,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2015.”; and

(B) in paragraph (2), by striking “2010” and inserting “2015”.

SEC. 3511. AUTHORIZATION OF APPROPRIATIONS.

Except where otherwise provided in this subtitle (or an amendment made by this subtitle), there is authorized to be appropriated such sums as may be necessary to carry out this subtitle (and such amendments made by this subtitle).

Subtitle G—Protecting and Improving Guaranteed Medicare Benefits

42 USC 1395
note.

SEC. 3601. PROTECTING AND IMPROVING GUARANTEED MEDICARE BENEFITS.

(a) **PROTECTING GUARANTEED MEDICARE BENEFITS.**—Nothing in the provisions of, or amendments made by, this Act shall result in a reduction of guaranteed benefits under title XVIII of the Social Security Act.

(b) **ENSURING THAT MEDICARE SAVINGS BENEFIT THE MEDICARE PROGRAM AND MEDICARE BENEFICIARIES.**—Savings generated for the Medicare program under title XVIII of the Social Security Act under the provisions of, and amendments made by, this Act shall extend the solvency of the Medicare trust funds, reduce Medicare premiums and other cost-sharing for beneficiaries, and improve or expand guaranteed Medicare benefits and protect access to Medicare providers.

42 USC
1395w–21 note.

SEC. 3602. NO CUTS IN GUARANTEED BENEFITS.

Nothing in this Act shall result in the reduction or elimination of any benefits guaranteed by law to participants in Medicare Advantage plans.

TITLE IV—PREVENTION OF CHRONIC DISEASE AND IMPROVING PUBLIC HEALTH

Subtitle A—Modernizing Disease Prevention and Public Health Systems

42 USC 300u–10.

SEC. 4001. NATIONAL PREVENTION, HEALTH PROMOTION AND PUBLIC HEALTH COUNCIL.

President.

(a) **ESTABLISHMENT.**—The President shall establish, within the Department of Health and Human Services, a council to be known as the “National Prevention, Health Promotion and Public Health Council” (referred to in this section as the “Council”).

President.
Appointment.

(b) **CHAIRPERSON.**—The President shall appoint the Surgeon General to serve as the chairperson of the Council.

(c) **COMPOSITION.**—The Council shall be composed of—

- (1) the Secretary of Health and Human Services;
- (2) the Secretary of Agriculture;
- (3) the Secretary of Education;
- (4) the Chairman of the Federal Trade Commission;
- (5) the Secretary of Transportation;
- (6) the Secretary of Labor;
- (7) the Secretary of Homeland Security;

(8) the Administrator of the Environmental Protection Agency;

(9) the Director of the Office of National Drug Control Policy;

(10) the Director of the Domestic Policy Council;

(11) the Assistant Secretary for Indian Affairs;

(12) the Chairman of the Corporation for National and Community Service; and

(13) the head of any other Federal agency that the chairperson determines is appropriate.

(d) PURPOSES AND DUTIES.—The Council shall—

(1) provide coordination and leadership at the Federal level, and among all Federal departments and agencies, with respect to prevention, wellness and health promotion practices, the public health system, and integrative health care in the United States;

(2) after obtaining input from relevant stakeholders, develop a national prevention, health promotion, public health, and integrative health care strategy that incorporates the most effective and achievable means of improving the health status of Americans and reducing the incidence of preventable illness and disability in the United States;

(3) provide recommendations to the President and Congress concerning the most pressing health issues confronting the United States and changes in Federal policy to achieve national wellness, health promotion, and public health goals, including the reduction of tobacco use, sedentary behavior, and poor nutrition;

(4) consider and propose evidence-based models, policies, and innovative approaches for the promotion of transformative models of prevention, integrative health, and public health on individual and community levels across the United States;

(5) establish processes for continual public input, including input from State, regional, and local leadership communities and other relevant stakeholders, including Indian tribes and tribal organizations;

(6) submit the reports required under subsection (g); and

(7) carry out other activities determined appropriate by the President.

(e) MEETINGS.—The Council shall meet at the call of the Chairperson.

(f) ADVISORY GROUP.—

(1) IN GENERAL.—The President shall establish an Advisory Group to the Council to be known as the “Advisory Group on Prevention, Health Promotion, and Integrative and Public Health” (hereafter referred to in this section as the “Advisory Group”). The Advisory Group shall be within the Department of Health and Human Services and report to the Surgeon General.

(2) COMPOSITION.—

(A) IN GENERAL.—The Advisory Group shall be composed of not more than 25 non-Federal members to be appointed by the President.

(B) REPRESENTATION.—In appointing members under subparagraph (A), the President shall ensure that the Advisory Group includes a diverse group of licensed health

President.

Establishment.

professionals, including integrative health practitioners who have expertise in—

- (i) worksite health promotion;
- (ii) community services, including community health centers;
- (iii) preventive medicine;
- (iv) health coaching;
- (v) public health education;
- (vi) geriatrics; and
- (vii) rehabilitation medicine.

(3) PURPOSES AND DUTIES.—The Advisory Group shall develop policy and program recommendations and advise the Council on lifestyle-based chronic disease prevention and management, integrative health care practices, and health promotion.

Deadline.
Public
information.

(g) NATIONAL PREVENTION AND HEALTH PROMOTION STRATEGY.—Not later than 1 year after the date of enactment of this Act, the Chairperson, in consultation with the Council, shall develop and make public a national prevention, health promotion and public health strategy, and shall review and revise such strategy periodically. Such strategy shall—

(1) set specific goals and objectives for improving the health of the United States through federally-supported prevention, health promotion, and public health programs, consistent with ongoing goal setting efforts conducted by specific agencies;

(2) establish specific and measurable actions and timelines to carry out the strategy, and determine accountability for meeting those timelines, within and across Federal departments and agencies; and

(3) make recommendations to improve Federal efforts relating to prevention, health promotion, public health, and integrative health care practices to ensure Federal efforts are consistent with available standards and evidence.

(h) REPORT.—Not later than July 1, 2010, and annually thereafter through January 1, 2015, the Council shall submit to the President and the relevant committees of Congress, a report that—

(1) describes the activities and efforts on prevention, health promotion, and public health and activities to develop a national strategy conducted by the Council during the period for which the report is prepared;

(2) describes the national progress in meeting specific prevention, health promotion, and public health goals defined in the strategy and further describes corrective actions recommended by the Council and taken by relevant agencies and organizations to meet these goals;

(3) contains a list of national priorities on health promotion and disease prevention to address lifestyle behavior modification (smoking cessation, proper nutrition, appropriate exercise, mental health, behavioral health, substance use disorder, and domestic violence screenings) and the prevention measures for the 5 leading disease killers in the United States;

(4) contains specific science-based initiatives to achieve the measurable goals of Healthy People 2010 regarding nutrition, exercise, and smoking cessation, and targeting the 5 leading disease killers in the United States;

(5) contains specific plans for consolidating Federal health programs and Centers that exist to promote healthy behavior

and reduce disease risk (including eliminating programs and offices determined to be ineffective in meeting the priority goals of Healthy People 2010);

(6) contains specific plans to ensure that all Federal health care programs are fully coordinated with science-based prevention recommendations by the Director of the Centers for Disease Control and Prevention; and

(7) contains specific plans to ensure that all non-Department of Health and Human Services prevention programs are based on the science-based guidelines developed by the Centers for Disease Control and Prevention under paragraph (4).

(i) PERIODIC REVIEWS.—The Secretary and the Comptroller General of the United States shall jointly conduct periodic reviews, not less than every 5 years, and evaluations of every Federal disease prevention and health promotion initiative, program, and agency. Such reviews shall be evaluated based on effectiveness in meeting metrics-based goals with an analysis posted on such agencies' public Internet websites.

Deadlines.
Evaluations.

Web posting.

SEC. 4002. PREVENTION AND PUBLIC HEALTH FUND.

42 USC 300u–11.

(a) PURPOSE.—It is the purpose of this section to establish a Prevention and Public Health Fund (referred to in this section as the “Fund”), to be administered through the Department of Health and Human Services, Office of the Secretary, to provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.

(b) FUNDING.—There are hereby authorized to be appropriated, and appropriated, to the Fund, out of any monies in the Treasury not otherwise appropriated—

(1) for fiscal year 2010, \$500,000,000;

(2) for fiscal year 2011, \$750,000,000;

(3) for fiscal year 2012, \$1,000,000,000;

(4) for fiscal year 2013, \$1,250,000,000;

(5) for fiscal year 2014, \$1,500,000,000; and

(6) for fiscal year 2015, and each fiscal year thereafter, \$2,000,000,000.

(c) USE OF FUND.—The Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness, and public health activities including prevention research and health screenings, such as the Community Transformation grant program, the Education and Outreach Campaign for Preventive Benefits, and immunization programs.

(d) TRANSFER AUTHORITY.—The Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives may provide for the transfer of funds in the Fund to eligible activities under this section, subject to subsection (c).

SEC. 4003. CLINICAL AND COMMUNITY PREVENTIVE SERVICES.

(a) PREVENTIVE SERVICES TASK FORCE.—Section 915 of the Public Health Service Act (42 U.S.C. 299b–4) is amended by striking subsection (a) and inserting the following:

“(a) PREVENTIVE SERVICES TASK FORCE.—

“(1) ESTABLISHMENT AND PURPOSE.—The Director shall convene an independent Preventive Services Task Force (referred

to in this subsection as the “Task Force”) to be composed of individuals with appropriate expertise. Such Task Force shall review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of clinical preventive services for the purpose of developing recommendations for the health care community, and updating previous clinical preventive recommendations, to be published in the Guide to Clinical Preventive Services (referred to in this section as the ‘Guide’), for individuals and organizations delivering clinical services, including primary care professionals, health care systems, professional societies, employers, community organizations, non-profit organizations, Congress and other policy-makers, governmental public health agencies, health care quality organizations, and organizations developing national health objectives. Such recommendations shall consider clinical preventive best practice recommendations from the Agency for Healthcare Research and Quality, the National Institutes of Health, the Centers for Disease Control and Prevention, the Institute of Medicine, specialty medical associations, patient groups, and scientific societies.

“(2) DUTIES.—The duties of the Task Force shall include—

“(A) the development of additional topic areas for new recommendations and interventions related to those topic areas, including those related to specific sub-populations and age groups;

“(B) at least once during every 5-year period, review interventions and update recommendations related to existing topic areas, including new or improved techniques to assess the health effects of interventions;

“(C) improved integration with Federal Government health objectives and related target setting for health improvement;

“(D) the enhanced dissemination of recommendations;

“(E) the provision of technical assistance to those health care professionals, agencies and organizations that request help in implementing the Guide recommendations; and

“(F) the submission of yearly reports to Congress and related agencies identifying gaps in research, such as preventive services that receive an insufficient evidence statement, and recommending priority areas that deserve further examination, including areas related to populations and age groups not adequately addressed by current recommendations.

“(3) ROLE OF AGENCY.—The Agency shall provide ongoing administrative, research, and technical support for the operations of the Task Force, including coordinating and supporting the dissemination of the recommendations of the Task Force, ensuring adequate staff resources, and assistance to those organizations requesting it for implementation of the Guide’s recommendations.

“(4) COORDINATION WITH COMMUNITY PREVENTIVE SERVICES TASK FORCE.—The Task Force shall take appropriate steps to coordinate its work with the Community Preventive Services Task Force and the Advisory Committee on Immunization Practices, including the examination of how each task force’s recommendations interact at the nexus of clinic and community.

“(5) OPERATION.—Operation. In carrying out the duties under paragraph (2), the Task Force is not subject to the provisions of Appendix 2 of title 5, United States Code.

“(6) INDEPENDENCE.—All members of the Task Force convened under this subsection, and any recommendations made by such members, shall be independent and, to the extent practicable, not subject to political pressure.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out the activities of the Task Force.”.

(b) COMMUNITY PREVENTIVE SERVICES TASK FORCE.—

(1) IN GENERAL.—Part P of title III of the Public Health Service Act, as amended by paragraph (2), is amended by adding at the end the following:

“SEC. 399U. COMMUNITY PREVENTIVE SERVICES TASK FORCE.

42 USC 280g–10.

“(a) ESTABLISHMENT AND PURPOSE.—The Director of the Centers for Disease Control and Prevention shall convene an independent Community Preventive Services Task Force (referred to in this subsection as the ‘Task Force’) to be composed of individuals with appropriate expertise. Such Task Force shall review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of community preventive interventions for the purpose of developing recommendations, to be published in the Guide to Community Preventive Services (referred to in this section as the ‘Guide’), for individuals and organizations delivering population-based services, including primary care professionals, health care systems, professional societies, employers, community organizations, non-profit organizations, schools, governmental public health agencies, Indian tribes, tribal organizations and urban Indian organizations, medical groups, Congress and other policy-makers. Community preventive services include any policies, programs, processes or activities designed to affect or otherwise affecting health at the population level.

Review.
Recommendations.
Publication.

“(b) DUTIES.—The duties of the Task Force shall include—

“(1) the development of additional topic areas for new recommendations and interventions related to those topic areas, including those related to specific populations and age groups, as well as the social, economic and physical environments that can have broad effects on the health and disease of populations and health disparities among sub-populations and age groups;

“(2) at least once during every 5-year period, review interventions and update recommendations related to existing topic areas, including new or improved techniques to assess the health effects of interventions, including health impact assessment and population health modeling;

“(3) improved integration with Federal Government health objectives and related target setting for health improvement;

“(4) the enhanced dissemination of recommendations;

“(5) the provision of technical assistance to those health care professionals, agencies, and organizations that request help in implementing the Guide recommendations; and

“(6) providing yearly reports to Congress and related agencies identifying gaps in research and recommending priority areas that deserve further examination, including areas related

to populations and age groups not adequately addressed by current recommendations.

“(c) **ROLE OF AGENCY.**—The Director shall provide ongoing administrative, research, and technical support for the operations of the Task Force, including coordinating and supporting the dissemination of the recommendations of the Task Force, ensuring adequate staff resources, and assistance to those organizations requesting it for implementation of Guide recommendations.

“(d) **COORDINATION WITH PREVENTIVE SERVICES TASK FORCE.**—The Task Force shall take appropriate steps to coordinate its work with the U.S. Preventive Services Task Force and the Advisory Committee on Immunization Practices, including the examination of how each task force’s recommendations interact at the nexus of clinic and community.

“(e) **OPERATION.**—In carrying out the duties under subsection (b), the Task Force shall not be subject to the provisions of Appendix 2 of title 5, United States Code.

“(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out the activities of the Task Force.”.

(2) **TECHNICAL AMENDMENTS.**—

42 USC 280g–7. (A) Section 399R of the Public Health Service Act (as added by section 2 of the ALS Registry Act (Public Law 110–373; 122 Stat. 4047)) is redesignated as section 399S.

42 USC 280g–8. (B) Section 399R of such Act (as added by section 3 of the Prenatally and Postnatally Diagnosed Conditions Awareness Act (Public Law 110–374; 122 Stat. 4051)) is redesignated as section 399T.

42 USC 300u–12. **SEC. 4004. EDUCATION AND OUTREACH CAMPAIGN REGARDING PREVENTIVE BENEFITS.**

(a) **IN GENERAL.**—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall provide for the planning and implementation of a national public–private partnership for a prevention and health promotion outreach and education campaign to raise public awareness of health improvement across the life span. Such campaign shall include the dissemination of information that—

(1) describes the importance of utilizing preventive services to promote wellness, reduce health disparities, and mitigate chronic disease;

(2) promotes the use of preventive services recommended by the United States Preventive Services Task Force and the Community Preventive Services Task Force;

(3) encourages healthy behaviors linked to the prevention of chronic diseases;

(4) explains the preventive services covered under health plans offered through a Gateway;

(5) describes additional preventive care supported by the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Advisory Committee on Immunization Practices, and other appropriate agencies; and

(6) includes general health promotion information.

(b) CONSULTATION.—In coordinating the campaign under subsection (a), the Secretary shall consult with the Institute of Medicine to provide ongoing advice on evidence-based scientific information for policy, program development, and evaluation.

(c) MEDIA CAMPAIGN.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish and implement a national science-based media campaign on health promotion and disease prevention. Deadline.

(2) REQUIREMENT OF CAMPAIGN.—The campaign implemented under paragraph (1)—

(A) shall be designed to address proper nutrition, regular exercise, smoking cessation, obesity reduction, the 5 leading disease killers in the United States, and secondary prevention through disease screening promotion;

(B) shall be carried out through competitively bid contracts awarded to entities providing for the professional production and design of such campaign;

(C) may include the use of television, radio, Internet, and other commercial marketing venues and may be targeted to specific age groups based on peer-reviewed social research;

(D) shall not be duplicative of any other Federal efforts relating to health promotion and disease prevention; and

(E) may include the use of humor and nationally recognized positive role models.

(3) EVALUATION.—The Secretary shall ensure that the campaign implemented under paragraph (1) is subject to an independent evaluation every 2 years and shall report every 2 years to Congress on the effectiveness of such campaigns towards meeting science-based metrics. Deadlines.
Reports.

(d) WEBSITE.—The Secretary, in consultation with private-sector experts, shall maintain or enter into a contract to maintain an Internet website to provide science-based information on guidelines for nutrition, regular exercise, obesity reduction, smoking cessation, and specific chronic disease prevention. Such website shall be designed to provide information to health care providers and consumers.

(e) DISSEMINATION OF INFORMATION THROUGH PROVIDERS.—The Secretary, acting through the Centers for Disease Control and Prevention, shall develop and implement a plan for the dissemination of health promotion and disease prevention information consistent with national priorities, to health care providers who participate in Federal programs, including programs administered by the Indian Health Service, the Department of Veterans Affairs, the Department of Defense, and the Health Resources and Services Administration, and Medicare and Medicaid. Plan.

(f) PERSONALIZED PREVENTION PLANS.—

(1) CONTRACT.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enter into a contract with a qualified entity for the development and operation of a Federal Internet website personalized prevention plan tool. Web site.

(2) USE.—The website developed under paragraph (1) shall be designed to be used as a source of the most up-to-date scientific evidence relating to disease prevention for use by

individuals. Such website shall contain a component that enables an individual to determine their disease risk (based on personal health and family history, BMI, and other relevant information) relating to the 5 leading diseases in the United States, and obtain personalized suggestions for preventing such diseases.

(g) **INTERNET PORTAL.**—The Secretary shall establish an Internet portal for accessing risk-assessment tools developed and maintained by private and academic entities.

(h) **PRIORITY FUNDING.**—Funding for the activities authorized under this section shall take priority over funding provided through the Centers for Disease Control and Prevention for grants to States and other entities for similar purposes and goals as provided for in this section. Not to exceed \$500,000,000 shall be expended on the campaigns and activities required under this section.

(i) **PUBLIC AWARENESS OF PREVENTIVE AND OBESITY-RELATED SERVICES.**—

(1) **INFORMATION TO STATES.**—The Secretary of Health and Human Services shall provide guidance and relevant information to States and health care providers regarding preventive and obesity-related services that are available to Medicaid enrollees, including obesity screening and counseling for children and adults.

(2) **INFORMATION TO ENROLLEES.**—Each State shall design a public awareness campaign to educate Medicaid enrollees regarding availability and coverage of such services, with the goal of reducing incidences of obesity.

(3) **REPORT.**—Not later than January 1, 2011, and every 3 years thereafter through January 1, 2017, the Secretary of Health and Human Services shall report to Congress on the status and effectiveness of efforts under paragraphs (1) and (2), including summaries of the States' efforts to increase awareness of coverage of obesity-related services.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

Subtitle B—Increasing Access to Clinical Preventive Services

SEC. 4101. SCHOOL-BASED HEALTH CENTERS.

42 USC 280h–4.

(a) **GRANTS FOR THE ESTABLISHMENT OF SCHOOL-BASED HEALTH CENTERS.**—

(1) **PROGRAM.**—The Secretary of Health and Human Services (in this subsection referred to as the “Secretary”) shall establish a program to award grants to eligible entities to support the operation of school-based health centers.

(2) **ELIGIBILITY.**—To be eligible for a grant under this subsection, an entity shall—

(A) be a school-based health center or a sponsoring facility of a school-based health center; and

(B) submit an application at such time, in such manner, and containing such information as the Secretary may require, including at a minimum an assurance that funds awarded under the grant shall not be used to provide

any service that is not authorized or allowed by Federal, State, or local law.

(3) PREFERENCE.—In awarding grants under this section, the Secretary shall give preference to awarding grants for school-based health centers that serve a large population of children eligible for medical assistance under the State Medicaid plan under title XIX of the Social Security Act or under a waiver of such plan or children eligible for child health assistance under the State child health plan under title XXI of that Act (42 U.S.C. 1397aa et seq.).

(4) LIMITATION ON USE OF FUNDS.—An eligible entity shall use funds provided under a grant awarded under this subsection only for expenditures for facilities (including the acquisition or improvement of land, or the acquisition, construction, expansion, replacement, or other improvement of any building or other facility), equipment, or similar expenditures, as specified by the Secretary. No funds provided under a grant awarded under this section shall be used for expenditures for personnel or to provide health services.

(5) APPROPRIATIONS.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2010 through 2013, \$50,000,000 for the purpose of carrying out this subsection. Funds appropriated under this paragraph shall remain available until expended.

(6) DEFINITIONS.—In this subsection, the terms “school-based health center” and “sponsoring facility” have the meanings given those terms in section 2110(c)(9) of the Social Security Act (42 U.S.C. 1397jj(c)(9)).

(b) GRANTS FOR THE OPERATION OF SCHOOL-BASED HEALTH CENTERS.—Part Q of title III of the Public Health Service Act (42 U.S.C. 280h et seq.) is amended by adding at the end the following:

“SEC. 399Z-1. SCHOOL-BASED HEALTH CENTERS.

42 USC 280h-5.

“(a) DEFINITIONS; ESTABLISHMENT OF CRITERIA.—In this section:

“(1) COMPREHENSIVE PRIMARY HEALTH SERVICES.—The term ‘comprehensive primary health services’ means the core services offered by school-based health centers, which shall include the following:

“(A) PHYSICAL.—Comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, and referrals to, and follow-up for, specialty care and oral health services.

“(B) MENTAL HEALTH.—Mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs.

“(2) MEDICALLY UNDERSERVED CHILDREN AND ADOLESCENTS.—

“(A) IN GENERAL.—The term ‘medically underserved children and adolescents’ means a population of children and adolescents who are residents of an area designated as a medically underserved area or a health professional shortage area by the Secretary.

“(B) CRITERIA.—The Secretary shall prescribe criteria for determining the specific shortages of personal health

services for medically underserved children and adolescents under subparagraph (A) that shall—

“(i) take into account any comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

“(ii) include factors indicative of the health status of such children and adolescents of an area, including the ability of the residents of such area to pay for health services, the accessibility of such services, the availability of health professionals to such children and adolescents, and other factors as determined appropriate by the Secretary.

“(3) SCHOOL-BASED HEALTH CENTER.—The term ‘school-based health center’ means a health clinic that—

“(A) meets the definition of a school-based health center under section 2110(c)(9)(A) of the Social Security Act and is administered by a sponsoring facility (as defined in section 2110(c)(9)(B) of the Social Security Act);

“(B) provides, at a minimum, comprehensive primary health services during school hours to children and adolescents by health professionals in accordance with established standards, community practice, reporting laws, and other State laws, including parental consent and notification laws that are not inconsistent with Federal law; and

“(C) does not perform abortion services.

“(b) AUTHORITY TO AWARD GRANTS.—The Secretary shall award grants for the costs of the operation of school-based health centers (referred to in this section as ‘SBHCs’) that meet the requirements of this section.

“(c) APPLICATIONS.—To be eligible to receive a grant under this section, an entity shall—

“(1) be an SBHC (as defined in subsection (a)(3)); and

“(2) submit to the Secretary an application at such time, in such manner, and containing—

“(A) evidence that the applicant meets all criteria necessary to be designated an SBHC;

“(B) evidence of local need for the services to be provided by the SBHC;

“(C) an assurance that—

“(i) SBHC services will be provided to those children and adolescents for whom parental or guardian consent has been obtained in cooperation with Federal, State, and local laws governing health care service provision to children and adolescents;

“(ii) the SBHC has made and will continue to make every reasonable effort to establish and maintain collaborative relationships with other health care providers in the catchment area of the SBHC;

“(iii) the SBHC will provide on-site access during the academic day when school is in session and 24-hour coverage through an on-call system and through its backup health providers to ensure access to services on a year-round basis when the school or the SBHC is closed;

“(iv) the SBHC will be integrated into the school environment and will coordinate health services with school personnel, such as administrators, teachers,

nurses, counselors, and support personnel, as well as with other community providers co-located at the school;

“(v) the SBHC sponsoring facility assumes all responsibility for the SBHC administration, operations, and oversight; and

“(vi) the SBHC will comply with Federal, State, and local laws concerning patient privacy and student records, including regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 and section 444 of the General Education Provisions Act; and

“(D) such other information as the Secretary may require.

“(d) PREFERENCES AND CONSIDERATION.—In reviewing applications:

“(1) The Secretary may give preference to applicants who demonstrate an ability to serve the following:

“(A) Communities that have evidenced barriers to primary health care and mental health and substance use disorder prevention services for children and adolescents.

“(B) Communities with high per capita numbers of children and adolescents who are uninsured, underinsured, or enrolled in public health insurance programs.

“(C) Populations of children and adolescents that have historically demonstrated difficulty in accessing health and mental health and substance use disorder prevention services.

“(2) The Secretary may give consideration to whether an applicant has received a grant under subsection (a) of section 4101 of the Patient Protection and Affordable Care Act.

“(e) WAIVER OF REQUIREMENTS.—The Secretary may—

“(1) under appropriate circumstances, waive the application of all or part of the requirements of this subsection with respect to an SBHC for not to exceed 2 years; and

“(2) upon a showing of good cause, waive the requirement that the SBHC provide all required comprehensive primary health services for a designated period of time to be determined by the Secretary.

“(f) USE OF FUNDS.—

“(1) FUNDS.—Funds awarded under a grant under this section—

“(A) may be used for—

“(i) acquiring and leasing equipment (including the costs of amortizing the principle of, and paying interest on, loans for such equipment);

“(ii) providing training related to the provision of required comprehensive primary health services and additional health services;

“(iii) the management and operation of health center programs;

“(iv) the payment of salaries for physicians, nurses, and other personnel of the SBHC; and

“(B) may not be used to provide abortions.

“(2) CONSTRUCTION.—The Secretary may award grants which may be used to pay the costs associated with expanding and modernizing existing buildings for use as an SBHC,

including the purchase of trailers or manufactured buildings to install on the school property.

“(3) LIMITATIONS.—

“(A) IN GENERAL.—Any provider of services that is determined by a State to be in violation of a State law described in subsection (a)(3)(B) with respect to activities carried out at a SBHC shall not be eligible to receive additional funding under this section.

“(B) NO OVERLAPPING GRANT PERIOD.—No entity that has received funding under section 330 for a grant period shall be eligible for a grant under this section for with respect to the same grant period.

“(g) MATCHING REQUIREMENT.—

“(1) IN GENERAL.—Each eligible entity that receives a grant under this section shall provide, from non-Federal sources, an amount equal to 20 percent of the amount of the grant (which may be provided in cash or in-kind) to carry out the activities supported by the grant.

“(2) WAIVER.—The Secretary may waive all or part of the matching requirement described in paragraph (1) for any fiscal year for the SBHC if the Secretary determines that applying the matching requirement to the SBHC would result in serious hardship or an inability to carry out the purposes of this section.

“(h) SUPPLEMENT, NOT SUPPLANT.—Grant funds provided under this section shall be used to supplement, not supplant, other Federal or State funds.

“(i) EVALUATION.—The Secretary shall develop and implement a plan for evaluating SBHCs and monitoring quality performance under the awards made under this section.

“(j) AGE APPROPRIATE SERVICES.—An eligible entity receiving funds under this section shall only provide age appropriate services through a SBHC funded under this section to an individual.

“(k) PARENTAL CONSENT.—An eligible entity receiving funds under this section shall not provide services through a SBHC funded under this section to an individual without the consent of the parent or guardian of such individual if such individual is considered a minor under applicable State law.

“(l) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.”.

SEC. 4102. ORAL HEALTHCARE PREVENTION ACTIVITIES.

(a) IN GENERAL.—Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 3025, is amended by adding at the end the following:

“PART T—ORAL HEALTHCARE PREVENTION ACTIVITIES

42 USC 280k.

“SEC. 399LL. ORAL HEALTHCARE PREVENTION EDUCATION CAMPAIGN.

“(a) ESTABLISHMENT.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with professional oral health organizations, shall, subject to the availability of appropriations, establish a 5-year national, public education campaign (referred to in this section

as the ‘campaign’) that is focused on oral healthcare prevention and education, including prevention of oral disease such as early childhood and other caries, periodontal disease, and oral cancer.

“(b) REQUIREMENTS.—In establishing the campaign, the Secretary shall—

“(1) ensure that activities are targeted towards specific populations such as children, pregnant women, parents, the elderly, individuals with disabilities, and ethnic and racial minority populations, including Indians, Alaska Natives and Native Hawaiians (as defined in section 4(c) of the Indian Health Care Improvement Act) in a culturally and linguistically appropriate manner; and

“(2) utilize science-based strategies to convey oral health prevention messages that include, but are not limited to, community water fluoridation and dental sealants.

“(c) PLANNING AND IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall begin implementing the 5-year campaign. During the 2-year period referred to in the previous sentence, the Secretary shall conduct planning activities with respect to the campaign.

Deadline.

“SEC. 399LL-1. RESEARCH-BASED DENTAL CARIES DISEASE MANAGEMENT.

Grants.
42 USC 280k-1.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award demonstration grants to eligible entities to demonstrate the effectiveness of research-based dental caries disease management activities.

“(b) ELIGIBILITY.—To be eligible for a grant under this section, an entity shall—

“(1) be a community-based provider of dental services (as defined by the Secretary), including a Federally-qualified health center, a clinic of a hospital owned or operated by a State (or by an instrumentality or a unit of government within a State), a State or local department of health, a dental program of the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as such terms are defined in section 4 of the Indian Health Care Improvement Act), a health system provider, a private provider of dental services, medical, dental, public health, nursing, nutrition educational institutions, or national organizations involved in improving children’s oral health; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

Submission.

“(c) USE OF FUNDS.—A grantee shall use amounts received under a grant under this section to demonstrate the effectiveness of research-based dental caries disease management activities.

“(d) USE OF INFORMATION.—The Secretary shall utilize information generated from grantees under this section in planning and implementing the public education campaign under section 399LL.

“SEC. 399LL-2. AUTHORIZATION OF APPROPRIATIONS.

42 USC 280k-2.

“There is authorized to be appropriated to carry out this part, such sums as may be necessary.”

(b) SCHOOL-BASED SEALANT PROGRAMS.—Section 317M(c)(1) of the Public Health Service Act (42 U.S.C. 247b-14(c)(1)) is amended by striking “may award grants to States and Indian tribes” and

inserting “shall award a grant to each of the 50 States and territories and to Indians, Indian tribes, tribal organizations and urban Indian organizations (as such terms are defined in section 4 of the Indian Health Care Improvement Act)”.

(c) ORAL HEALTH INFRASTRUCTURE.—Section 317M of the Public Health Service Act (42 U.S.C. 247b-14) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c), the following:

“(d) ORAL HEALTH INFRASTRUCTURE.—

“(1) COOPERATIVE AGREEMENTS.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enter into cooperative agreements with State, territorial, and Indian tribes or tribal organizations (as those terms are defined in section 4 of the Indian Health Care Improvement Act) to establish oral health leadership and program guidance, oral health data collection and interpretation, (including determinants of poor oral health among vulnerable populations), a multi-dimensional delivery system for oral health, and to implement science-based programs (including dental sealants and community water fluoridation) to improve oral health.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as necessary to carry out this subsection for fiscal years 2010 through 2014.”.

42 USC 280k-3.

(d) UPDATING NATIONAL ORAL HEALTHCARE SURVEILLANCE ACTIVITIES.—

(1) PRAMS.—

(A) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall carry out activities to update and improve the Pregnancy Risk Assessment Monitoring System (referred to in this section as “PRAMS”) as it relates to oral healthcare.

(B) STATE REPORTS AND MANDATORY MEASUREMENTS.—

(i) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, a State shall submit to the Secretary a report concerning activities conducted within the State under PRAMS.

(ii) MEASUREMENTS.—The oral healthcare measurements developed by the Secretary for use under PRAMS shall be mandatory with respect to States for purposes of the State reports under clause (i).

(C) FUNDING.—There is authorized to be appropriated to carry out this paragraph, such sums as may be necessary.

(2) NATIONAL HEALTH AND NUTRITION EXAMINATION SURVEY.—The Secretary shall develop oral healthcare components that shall include tooth-level surveillance for inclusion in the National Health and Nutrition Examination Survey. Such components shall be updated by the Secretary at least every 6 years. For purposes of this paragraph, the term “tooth-level surveillance” means a clinical examination where an examiner looks at each dental surface, on each tooth in the mouth and as expanded by the Division of Oral Health of the Centers for Disease Control and Prevention.

Deadline.

Definition.

(3) MEDICAL EXPENDITURES PANEL SURVEY.—The Secretary shall ensure that the Medical Expenditures Panel Survey by the Agency for Healthcare Research and Quality includes the verification of dental utilization, expenditure, and coverage findings through conduct of a look-back analysis.

(4) NATIONAL ORAL HEALTH SURVEILLANCE SYSTEM.—

(A) APPROPRIATIONS.—There is authorized to be appropriated, such sums as may be necessary for each of fiscal years 2010 through 2014 to increase the participation of States in the National Oral Health Surveillance System from 16 States to all 50 States, territories, and District of Columbia.

(B) REQUIREMENTS.—The Secretary shall ensure that the National Oral Health Surveillance System include the measurement of early childhood caries.

SEC. 4103. MEDICARE COVERAGE OF ANNUAL WELLNESS VISIT PROVIDING A PERSONALIZED PREVENTION PLAN.

(a) COVERAGE OF PERSONALIZED PREVENTION PLAN SERVICES.—

(1) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) in subparagraph (DD), by striking “and” at the end;

(B) in subparagraph (EE), by adding “and” at the end; and

(C) by adding at the end the following new subparagraph:

“(FF) personalized prevention plan services (as defined in subsection (hhh)),”.

(2) CONFORMING AMENDMENTS.—Clauses (i) and (ii) of section 1861(s)(2)(K) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)) are each amended by striking “subsection (ww)(1)” and inserting “subsections (ww)(1) and (hhh)”.

(b) PERSONALIZED PREVENTION PLAN SERVICES DEFINED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

“Annual Wellness Visit

“(hhh)(1) The term ‘personalized prevention plan services’ means the creation of a plan for an individual—

“(A) that includes a health risk assessment (that meets the guidelines established by the Secretary under paragraph (4)(A)) of the individual that is completed prior to or as part of the same visit with a health professional described in paragraph (3); and

“(B) that—

“(i) takes into account the results of the health risk assessment; and

“(ii) may contain the elements described in paragraph (2).

“(2) Subject to paragraph (4)(H), the elements described in this paragraph are the following:

“(A) The establishment of, or an update to, the individual’s medical and family history.

“(B) A list of current providers and suppliers that are regularly involved in providing medical care to the individual (including a list of all prescribed medications).

“(C) A measurement of height, weight, body mass index (or waist circumference, if appropriate), blood pressure, and other routine measurements.

“(D) Detection of any cognitive impairment.

“(E) The establishment of, or an update to, the following:

“(i) A screening schedule for the next 5 to 10 years, as appropriate, based on recommendations of the United States Preventive Services Task Force and the Advisory Committee on Immunization Practices, and the individual’s health status, screening history, and age-appropriate preventive services covered under this title.

“(ii) A list of risk factors and conditions for which primary, secondary, or tertiary prevention interventions are recommended or are underway, including any mental health conditions or any such risk factors or conditions that have been identified through an initial preventive physical examination (as described under subsection (ww)(1)), and a list of treatment options and their associated risks and benefits.

“(F) The furnishing of personalized health advice and a referral, as appropriate, to health education or preventive counseling services or programs aimed at reducing identified risk factors and improving self-management, or community-based lifestyle interventions to reduce health risks and promote self-management and wellness, including weight loss, physical activity, smoking cessation, fall prevention, and nutrition.

“(G) Any other element determined appropriate by the Secretary.

“(3) A health professional described in this paragraph is—

“(A) a physician;

“(B) a practitioner described in clause (i) of section 1842(b)(18)(C); or

“(C) a medical professional (including a health educator, registered dietitian, or nutrition professional) or a team of medical professionals, as determined appropriate by the Secretary, under the supervision of a physician.

“(4)(A) For purposes of paragraph (1)(A), the Secretary, not later than 1 year after the date of enactment of this subsection, shall establish publicly available guidelines for health risk assessments. Such guidelines shall be developed in consultation with relevant groups and entities and shall provide that a health risk assessment—

“(i) identify chronic diseases, injury risks, modifiable risk factors, and urgent health needs of the individual; and

“(ii) may be furnished—

“(I) through an interactive telephonic or web-based program that meets the standards established under subparagraph (B);

“(II) during an encounter with a health care professional;

“(III) through community-based prevention programs; or

“(IV) through any other means the Secretary determines appropriate to maximize accessibility and ease of use by beneficiaries, while ensuring the privacy of such beneficiaries.

Deadline.
Public
information.
Guidelines.

“(B) Not later than 1 year after the date of enactment of this subsection, the Secretary shall establish standards for interactive telephonic or web-based programs used to furnish health risk assessments under subparagraph (A)(ii)(I). The Secretary may utilize any health risk assessment developed under section 4004(f) of the Patient Protection and Affordable Care Act as part of the requirement to develop a personalized prevention plan to comply with this subparagraph.

Deadline.
Standards.
Communications
and tele-
communications.
Web site.

“(C)(i) Not later than 18 months after the date of enactment of this subsection, the Secretary shall develop and make available to the public a health risk assessment model. Such model shall meet the guidelines under subparagraph (A) and may be used to meet the requirement under paragraph (1)(A).

Deadline.
Public
information.
Assessment
model.

“(ii) Any health risk assessment that meets the guidelines under subparagraph (A) and is approved by the Secretary may be used to meet the requirement under paragraph (1)(A).

“(D) The Secretary may coordinate with community-based entities (including State Health Insurance Programs, Area Agencies on Aging, Aging and Disability Resource Centers, and the Administration on Aging) to—

“(i) ensure that health risk assessments are accessible to beneficiaries; and

“(ii) provide appropriate support for the completion of health risk assessments by beneficiaries.

“(E) The Secretary shall establish procedures to make beneficiaries and providers aware of the requirement that a beneficiary complete a health risk assessment prior to or at the same time as receiving personalized prevention plan services.

Procedures.

“(F) To the extent practicable, the Secretary shall encourage the use of, integration with, and coordination of health information technology (including use of technology that is compatible with electronic medical records and personal health records) and may experiment with the use of personalized technology to aid in the development of self-management skills and management of and adherence to provider recommendations in order to improve the health status of beneficiaries.

“(G)(i) A beneficiary shall only be eligible to receive an initial preventive physical examination (as defined under subsection (ww)(1)) at any time during the 12-month period after the date that the beneficiary’s coverage begins under part B and shall be eligible to receive personalized prevention plan services under this subsection provided that the beneficiary has not received such services within the preceding 12-month period.

“(ii) The Secretary shall establish procedures to make beneficiaries aware of the option to select an initial preventive physical examination or personalized prevention plan services during the period of 12 months after the date that a beneficiary’s coverage begins under part B, which shall include information regarding any relevant differences between such services.

Procedures.

“(H) The Secretary shall issue guidance that—

Guidance.

“(i) identifies elements under paragraph (2) that are required to be provided to a beneficiary as part of their first visit for personalized prevention plan services; and

“(ii) establishes a yearly schedule for appropriate provision of such elements thereafter.”.

(c) PAYMENT AND ELIMINATION OF COST-SHARING.—

(1) PAYMENT AND ELIMINATION OF COINSURANCE.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

(A) in subparagraph (N), by inserting “other than personalized prevention plan services (as defined in section 1861(hhh)(1))” after “(as defined in section 1848(j)(3))”;

(B) by striking “and” before “(W)”;

(C) by inserting before the semicolon at the end the following: “, and (X) with respect to personalized prevention plan services (as defined in section 1861(hhh)(1)), the amount paid shall be 100 percent of the lesser of the actual charge for the services or the amount determined under the payment basis determined under section 1848”.

(2) PAYMENT UNDER PHYSICIAN FEE SCHEDULE.—Section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w-4(j)(3)) is amended by inserting “(2)(FF) (including administration of the health risk assessment),” after “(2)(EE),”.

(3) ELIMINATION OF COINSURANCE IN OUTPATIENT HOSPITAL SETTINGS.—

(A) EXCLUSION FROM OPD FEE SCHEDULE.—Section 1833(t)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is amended by striking “and diagnostic mammography” and inserting “, diagnostic mammography, or personalized prevention plan services (as defined in section 1861(hhh)(1))”.

(B) CONFORMING AMENDMENTS.—Section 1833(a)(2) of the Social Security Act (42 U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (F), by striking “and” at the end;

(ii) in subparagraph (G)(ii), by striking the comma at the end and inserting “, and”; and

(iii) by inserting after subparagraph (G)(ii) the following new subparagraph:

“(H) with respect to personalized prevention plan services (as defined in section 1861(hhh)(1)) furnished by an outpatient department of a hospital, the amount determined under paragraph (1)(X),”.

(4) WAIVER OF APPLICATION OF DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended—

(A) by striking “and” before “(9)”;

(B) by inserting before the period the following: “, and (10) such deductible shall not apply with respect to personalized prevention plan services (as defined in section 1861(hhh)(1))”.

(d) FREQUENCY LIMITATION.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (N), by striking “and” at the end;

(B) in subparagraph (O), by striking the semicolon at the end and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(P) in the case of personalized prevention plan services (as defined in section 1861(hhh)(1)), which are performed more frequently than is covered under such section;”;

(2) in paragraph (7), by striking “or (K)” and inserting “(K), or (P)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2011. 42 USC 1395l note.

SEC. 4104. REMOVAL OF BARRIERS TO PREVENTIVE SERVICES IN MEDICARE.

(a) DEFINITION OF PREVENTIVE SERVICES.—Section 1861(ddd) of the Social Security Act (42 U.S.C. 1395x(ddd)) is amended—

(1) in the heading, by inserting “; Preventive Services” after “Services”;

(2) in paragraph (1), by striking “not otherwise described in this title” and inserting “not described in subparagraph (A) or (C) of paragraph (3)”; and

(3) by adding at the end the following new paragraph: “(3) The term ‘preventive services’ means the following:

“(A) The screening and preventive services described in subsection (ww)(2) (other than the service described in subparagraph (M) of such subsection).

“(B) An initial preventive physical examination (as defined in subsection (ww)).

“(C) Personalized prevention plan services (as defined in subsection (hhh)(1)).”.

(b) COINSURANCE.—

(1) GENERAL APPLICATION.—

(A) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), as amended by section 4103(c)(1), is amended—

(i) in subparagraph (T), by inserting “(or 100 percent if such services are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population and are appropriate for the individual)” after “80 percent”;

(ii) in subparagraph (W)—

(I) in clause (i), by inserting “(if such subparagraph were applied, by substituting ‘100 percent’ for ‘80 percent’)” after “subparagraph (D)”; and

(II) in clause (ii), by striking “80 percent” and inserting “100 percent”;

(iii) by striking “and” before “(X)”; and

(iv) by inserting before the semicolon at the end the following: “, and (Y) with respect to preventive services described in subparagraphs (A) and (B) of section 1861(ddd)(3) that are appropriate for the individual and, in the case of such services described in subparagraph (A), are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population, the amount paid shall be 100 percent of the lesser of the actual charge for the services or the amount determined under the fee schedule that applies to such services under this part”.

(2) ELIMINATION OF COINSURANCE IN OUTPATIENT HOSPITAL SETTINGS.—

(A) EXCLUSION FROM OPD FEE SCHEDULE.—Section 1833(t)(1)(B)(iv) of the Social Security Act (42 U.S.C.

1395l(t)(1)(B)(iv)), as amended by section 4103(c)(3)(A), is amended—

(i) by striking “or” before “personalized prevention plan services”; and

(ii) by inserting before the period the following: “, or preventive services described in subparagraphs (A) and (B) of section 1861(ddd)(3) that are appropriate for the individual and, in the case of such services described in subparagraph (A), are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population”.

(B) CONFORMING AMENDMENTS.—Section 1833(a)(2) of the Social Security Act (42 U.S.C. 1395l(a)(2)), as amended by section 4103(c)(3)(B), is amended—

(i) in subparagraph (G)(ii), by striking “and” after the semicolon at the end;

(ii) in subparagraph (H), by striking the comma at the end and inserting “; and”; and

(iii) by inserting after subparagraph (H) the following new subparagraph:

“(I) with respect to preventive services described in subparagraphs (A) and (B) of section 1861(ddd)(3) that are appropriate for the individual and are furnished by an outpatient department of a hospital and, in the case of such services described in subparagraph (A), are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population, the amount determined under paragraph (1)(W) or (1)(Y).”.

(c) WAIVER OF APPLICATION OF DEDUCTIBLE FOR PREVENTIVE SERVICES AND COLORECTAL CANCER SCREENING TESTS.—Section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)), as amended by section 4103(c)(4), is amended—

(1) in paragraph (1), by striking “items and services described in section 1861(s)(10)(A)” and inserting “preventive services described in subparagraph (A) of section 1861(ddd)(3) that are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population and are appropriate for the individual.”; and

(2) by adding at the end the following new sentence: “Paragraph (1) of the first sentence of this subsection shall apply with respect to a colorectal cancer screening test regardless of the code that is billed for the establishment of a diagnosis as a result of the test, or for the removal of tissue or other matter or other procedure that is furnished in connection with, as a result of, and in the same clinical encounter as the screening test.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2011.

42 USC 1395l
note.

SEC. 4105. EVIDENCE-BASED COVERAGE OF PREVENTIVE SERVICES IN MEDICARE.

(a) AUTHORITY TO MODIFY OR ELIMINATE COVERAGE OF CERTAIN PREVENTIVE SERVICES.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

“(n) **AUTHORITY TO MODIFY OR ELIMINATE COVERAGE OF CERTAIN PREVENTIVE SERVICES.**—Notwithstanding any other provision of this title, effective beginning on January 1, 2010, if the Secretary determines appropriate, the Secretary may—

Effective date.

“(1) modify—

“(A) the coverage of any preventive service described in subparagraph (A) of section 1861(ddd)(3) to the extent that such modification is consistent with the recommendations of the United States Preventive Services Task Force; and

“(B) the services included in the initial preventive physical examination described in subparagraph (B) of such section; and

“(2) provide that no payment shall be made under this title for a preventive service described in subparagraph (A) of such section that has not received a grade of A, B, C, or I by such Task Force.”.

(b) **CONSTRUCTION.**—Nothing in the amendment made by paragraph (1) shall be construed to affect the coverage of diagnostic or treatment services under title XVIII of the Social Security Act.

42 USC 1395m
note.

SEC. 4106. IMPROVING ACCESS TO PREVENTIVE SERVICES FOR ELIGIBLE ADULTS IN MEDICAID.

(a) **CLARIFICATION OF INCLUSION OF SERVICES.**—Section 1905(a)(13) of the Social Security Act (42 U.S.C. 1396d(a)(13)) is amended to read as follows:

“(13) other diagnostic, screening, preventive, and rehabilitative services, including—

“(A) any clinical preventive services that are assigned a grade of A or B by the United States Preventive Services Task Force;

“(B) with respect to an adult individual, approved vaccines recommended by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention) and their administration; and

“(C) any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;”.

(b) **INCREASED FMAP.**—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), as amended by sections 2001(a)(3)(A) and 2004(c)(1), is amended in the first sentence—

(1) by striking “, and (4)” and inserting “, (4)”; and

(2) by inserting before the period the following: “, and (5) in the case of a State that provides medical assistance for services and vaccines described in subparagraphs (A) and (B) of subsection (a)(13), and prohibits cost-sharing for such services and vaccines, the Federal medical assistance percentage, as determined under this subsection and subsection (y) (without regard to paragraph (1)(C) of such subsection), shall be increased by 1 percentage point with respect to medical

42 USC 1396d
note.

assistance for such services and vaccines and for items and services described in subsection (a)(4)(D)”.

(c) EFFECTIVE DATE.—The amendments made under this section shall take effect on January 1, 2013.

SEC. 4107. COVERAGE OF COMPREHENSIVE TOBACCO CESSATION SERVICES FOR PREGNANT WOMEN IN MEDICAID.

(a) REQUIRING COVERAGE OF COUNSELING AND PHARMACOTHERAPY FOR CESSATION OF TOBACCO USE BY PREGNANT WOMEN.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3)(B) and 2303, is further amended—

(1) in subsection (a)(4)—

(A) by striking “and” before “(C)”; and

(B) by inserting before the semicolon at the end the following new subparagraph: “; and (D) counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in subsection (bb))”; and

(2) by adding at the end the following:

Definition.

“(bb)(1) For purposes of this title, the term ‘counseling and pharmacotherapy for cessation of tobacco use by pregnant women’ means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and non-prescription tobacco cessation agents approved by the Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished—

“(A) by or under the supervision of a physician; or

“(B) by any other health care professional who—

“(i) is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished; and

“(ii) is authorized to receive payment for other services under this title or is designated by the Secretary for this purpose.

“(2) Subject to paragraph (3), such term is limited to—

“(A) services recommended with respect to pregnant women in ‘Treating Tobacco Use and Dependence: 2008 Update: A Clinical Practice Guideline’, published by the Public Health Service in May 2008, or any subsequent modification of such Guideline; and

“(B) such other services that the Secretary recognizes to be effective for cessation of tobacco use by pregnant women.

“(3) Such term shall not include coverage for drugs or biologicals that are not otherwise covered under this title.”.

(b) EXCEPTION FROM OPTIONAL RESTRICTION UNDER MEDICAID PRESCRIPTION DRUG COVERAGE.—Section 1927(d)(2)(F) of the Social Security Act (42 U.S.C. 1396r–8(d)(2)(F)), as redesignated by section 2502(a), is amended by inserting before the period at the end the following: “, except, in the case of pregnant women when recommended in accordance with the Guideline referred to in section 1905(bb)(2)(A), agents approved by the Food and Drug Administration under the over-the-counter monograph process for purposes of promoting, and when used to promote, tobacco cessation”.

(c) REMOVAL OF COST-SHARING FOR COUNSELING AND PHARMACOTHERAPY FOR CESSATION OF TOBACCO USE BY PREGNANT WOMEN.—

(1) GENERAL COST-SHARING LIMITATIONS.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended in each of subsections (a)(2)(B) and (b)(2)(B) by inserting “, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1905(bb)) and covered outpatient drugs (as defined in subsection (k)(2) of section 1927 and including nonprescription drugs described in subsection (d)(2) of such section) that are prescribed for purposes of promoting, and when used to promote, tobacco cessation by pregnant women in accordance with the Guideline referred to in section 1905(bb)(2)(A)” after “complicate the pregnancy”.

(2) APPLICATION TO ALTERNATIVE COST-SHARING.—Section 1916A(b)(3)(B)(iii) of such Act (42 U.S.C. 1396o–1(b)(3)(B)(iii)) is amended by inserting “, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1905(bb))” after “complicate the pregnancy”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2010.

42 USC 1396d
note.

SEC. 4108. INCENTIVES FOR PREVENTION OF CHRONIC DISEASES IN MEDICAID.

Grants.
42 USC 1396a
note.

(a) INITIATIVES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall award grants to States to carry out initiatives to provide incentives to Medicaid beneficiaries who—

(i) successfully participate in a program described in paragraph (3); and

(ii) upon completion of such participation, demonstrate changes in health risk and outcomes, including the adoption and maintenance of healthy behaviors by meeting specific targets (as described in subsection (c)(2)).

(B) PURPOSE.—The purpose of the initiatives under this section is to test approaches that may encourage behavior modification and determine scalable solutions.

(2) DURATION.—

(A) INITIATION OF PROGRAM; RESOURCES.—The Secretary shall award grants to States beginning on January 1, 2011, or beginning on the date on which the Secretary develops program criteria, whichever is earlier. The Secretary shall develop program criteria for initiatives under this section using relevant evidence-based research and resources, including the Guide to Community Preventive Services, the Guide to Clinical Preventive Services, and the National Registry of Evidence-Based Programs and Practices.

Effective date.

Criteria.

(B) DURATION OF PROGRAM.—A State awarded a grant to carry out initiatives under this section shall carry out such initiatives within the 5-year period beginning on January 1, 2011, or beginning on the date on which the Secretary develops program criteria, whichever is earlier. Initiatives under this section shall be carried out by a State for a period of not less than 3 years.

Deadline.

(3) PROGRAM DESCRIBED.—

(A) IN GENERAL.—A program described in this paragraph is a comprehensive, evidence-based, widely available, and easily accessible program, proposed by the State and approved by the Secretary, that is designed and uniquely suited to address the needs of Medicaid beneficiaries and has demonstrated success in helping individuals achieve one or more of the following:

- (i) Ceasing use of tobacco products.
- (ii) Controlling or reducing their weight.
- (iii) Lowering their cholesterol.
- (iv) Lowering their blood pressure.
- (v) Avoiding the onset of diabetes or, in the case of a diabetic, improving the management of that condition.

(B) CO-MORBIDITIES.—A program under this section may also address co-morbidities (including depression) that are related to any of the conditions described in subparagraph (A).

(C) WAIVER AUTHORITY.—The Secretary may waive the requirements of section 1902(a)(1) (relating to statewideness) of the Social Security Act for a State awarded a grant to conduct an initiative under this section and shall ensure that a State makes any program described in subparagraph (A) available and accessible to Medicaid beneficiaries.

(D) FLEXIBILITY IN IMPLEMENTATION.—A State may enter into arrangements with providers participating in Medicaid, community-based organizations, faith-based organizations, public-private partnerships, Indian tribes, or similar entities or organizations to carry out programs described in subparagraph (A).

(4) APPLICATION.—Following the development of program criteria by the Secretary, a State may submit an application, in such manner and containing such information as the Secretary may require, that shall include a proposal for programs described in paragraph (3)(A) and a plan to make Medicaid beneficiaries and providers participating in Medicaid who reside in the State aware and informed about such programs.

(b) EDUCATION AND OUTREACH CAMPAIGN.—

(1) STATE AWARENESS.—The Secretary shall conduct an outreach and education campaign to make States aware of the grants under this section.

(2) PROVIDER AND BENEFICIARY EDUCATION.—A State awarded a grant to conduct an initiative under this section shall conduct an outreach and education campaign to make Medicaid beneficiaries and providers participating in Medicaid who reside in the State aware of the programs described in subsection (a)(3) that are to be carried out by the State under the grant.

(c) IMPACT.—A State awarded a grant to conduct an initiative under this section shall develop and implement a system to—

- (1) track Medicaid beneficiary participation in the program and validate changes in health risk and outcomes with clinical data, including the adoption and maintenance of health behaviors by such beneficiaries;

(2) to the extent practicable, establish standards and health status targets for Medicaid beneficiaries participating in the program and measure the degree to which such standards and targets are met;

(3) evaluate the effectiveness of the program and provide the Secretary with such evaluations;

(4) report to the Secretary on processes that have been developed and lessons learned from the program; and Reports.

(5) report on preventive services as part of reporting on quality measures for Medicaid managed care programs. Reports.

(d) EVALUATIONS AND REPORTS.—

(1) INDEPENDENT ASSESSMENT.—The Secretary shall enter into a contract with an independent entity or organization to conduct an evaluation and assessment of the initiatives carried out by States under this section, for the purpose of determining— Contracts.

(A) the effect of such initiatives on the use of health care services by Medicaid beneficiaries participating in the program;

(B) the extent to which special populations (including adults with disabilities, adults with chronic illnesses, and children with special health care needs) are able to participate in the program;

(C) the level of satisfaction of Medicaid beneficiaries with respect to the accessibility and quality of health care services provided through the program; and

(D) the administrative costs incurred by State agencies that are responsible for administration of the program.

(2) STATE REPORTING.—A State awarded a grant to carry out initiatives under this section shall submit reports to the Secretary, on a semi-annual basis, regarding the programs that are supported by the grant funds. Such report shall include information, as specified by the Secretary, regarding—

(A) the specific uses of the grant funds;

(B) an assessment of program implementation and lessons learned from the programs;

(C) an assessment of quality improvements and clinical outcomes under such programs; and

(D) estimates of cost savings resulting from such programs.

(3) INITIAL REPORT.—Not later than January 1, 2014, the Secretary shall submit to Congress an initial report on such initiatives based on information provided by States through reports required under paragraph (2). The initial report shall include an interim evaluation of the effectiveness of the initiatives carried out with grants awarded under this section and a recommendation regarding whether funding for expanding or extending the initiatives should be extended beyond January 1, 2016.

(4) FINAL REPORT.—Not later than July 1, 2016, the Secretary shall submit to Congress a final report on the program that includes the results of the independent assessment required under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(e) **NO EFFECT ON ELIGIBILITY FOR, OR AMOUNT OF, MEDICAID OR OTHER BENEFITS.**—Any incentives provided to a Medicaid beneficiary participating in a program described in subsection (a)(3) shall not be taken into account for purposes of determining the beneficiary’s eligibility for, or amount of, benefits under the Medicaid program or any program funded in whole or in part with Federal funds.

(f) **FUNDING.**—Out of any funds in the Treasury not otherwise appropriated, there are appropriated for the 5-year period beginning on January 1, 2011, \$100,000,000 to the Secretary to carry out this section. Amounts appropriated under this subsection shall remain available until expended.

(g) **DEFINITIONS.**—In this section:

(1) **MEDICAID BENEFICIARY.**—The term “Medicaid beneficiary” means an individual who is eligible for medical assistance under a State plan or waiver under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and is enrolled in such plan or waiver.

(2) **STATE.**—The term “State” has the meaning given that term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

Subtitle C—Creating Healthier Communities

42 USC 300u–13. **SEC. 4201. COMMUNITY TRANSFORMATION GRANTS.**

(a) **IN GENERAL.**—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Director of the Centers for Disease Control and Prevention (referred to in this section as the “Director”), shall award competitive grants to State and local governmental agencies and community-based organizations for the implementation, evaluation, and dissemination of evidence-based community preventive health activities in order to reduce chronic disease rates, prevent the development of secondary conditions, address health disparities, and develop a stronger evidence-base of effective prevention programming.

(b) **ELIGIBILITY.**—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be—

(A) a State governmental agency;

(B) a local governmental agency;

(C) a national network of community-based organizations;

(D) a State or local non-profit organization; or

(E) an Indian tribe; and

(2) submit to the Director an application at such time, in such a manner, and containing such information as the Director may require, including a description of the program to be carried out under the grant; and

(3) demonstrate a history or capacity, if funded, to develop relationships necessary to engage key stakeholders from multiple sectors within and beyond health care and across a community, such as healthy futures corps and health care providers.

(c) **USE OF FUNDS.**—

(1) IN GENERAL.—An eligible entity shall use amounts received under a grant under this section to carry out programs described in this subsection.

(2) COMMUNITY TRANSFORMATION PLAN.—

(A) IN GENERAL.—An eligible entity that receives a grant under this section shall submit to the Director (for approval) a detailed plan that includes the policy, environmental, programmatic, and as appropriate infrastructure changes needed to promote healthy living and reduce disparities.

(B) ACTIVITIES.—Activities within the plan may focus on (but not be limited to)—

(i) creating healthier school environments, including increasing healthy food options, physical activity opportunities, promotion of healthy lifestyle, emotional wellness, and prevention curricula, and activities to prevent chronic diseases;

(ii) creating the infrastructure to support active living and access to nutritious foods in a safe environment;

(iii) developing and promoting programs targeting a variety of age levels to increase access to nutrition, physical activity and smoking cessation, improve social and emotional wellness, enhance safety in a community, or address any other chronic disease priority area identified by the grantee;

(iv) assessing and implementing worksite wellness programming and incentives;

(v) working to highlight healthy options at restaurants and other food venues;

(vi) prioritizing strategies to reduce racial and ethnic disparities, including social, economic, and geographic determinants of health; and

(vii) addressing special populations needs, including all age groups and individuals with disabilities, and individuals in both urban and rural areas.

(3) COMMUNITY-BASED PREVENTION HEALTH ACTIVITIES.—

(A) IN GENERAL.—An eligible entity shall use amounts received under a grant under this section to implement a variety of programs, policies, and infrastructure improvements to promote healthier lifestyles.

(B) ACTIVITIES.—An eligible entity shall implement activities detailed in the community transformation plan under paragraph (2).

(C) IN-KIND SUPPORT.—An eligible entity may provide in-kind resources such as staff, equipment, or office space in carrying out activities under this section.

(4) EVALUATION.—

(A) IN GENERAL.—An eligible entity shall use amounts provided under a grant under this section to conduct activities to measure changes in the prevalence of chronic disease risk factors among community members participating in preventive health activities

(B) TYPES OF MEASURES.—In carrying out subparagraph (A), the eligible entity shall, with respect to residents in the community, measure—

(i) changes in weight;

- (ii) changes in proper nutrition;
- (iii) changes in physical activity;
- (iv) changes in tobacco use prevalence;
- (v) changes in emotional well-being and overall mental health;
- (vi) other factors using community-specific data from the Behavioral Risk Factor Surveillance Survey; and
- (vii) other factors as determined by the Secretary.

(C) REPORTING.—An eligible entity shall annually submit to the Director a report containing an evaluation of activities carried out under the grant.

(5) DISSEMINATION.—A grantee under this section shall—

(A) meet at least annually in regional or national meetings to discuss challenges, best practices, and lessons learned with respect to activities carried out under the grant; and

(B) develop models for the replication of successful programs and activities and the mentoring of other eligible entities.

(d) TRAINING.—

(1) IN GENERAL.—The Director shall develop a program to provide training for eligible entities on effective strategies for the prevention and control of chronic disease and the link between physical, emotional, and social well-being.

(2) COMMUNITY TRANSFORMATION PLAN.—The Director shall provide appropriate feedback and technical assistance to grantees to establish community transformation plans

(3) EVALUATION.—The Director shall provide a literature review and framework for the evaluation of programs conducted as part of the grant program under this section, in addition to working with academic institutions or other entities with expertise in outcome evaluation.

(e) PROHIBITION.—A grantee shall not use funds provided under a grant under this section to create video games or to carry out any other activities that may lead to higher rates of obesity or inactivity.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary for each fiscal years 2010 through 2014.

42 USC 300u-14. **SEC. 4202. HEALTHY AGING, LIVING WELL; EVALUATION OF COMMUNITY-BASED PREVENTION AND WELLNESS PROGRAMS FOR MEDICARE BENEFICIARIES.**

(a) HEALTHY AGING, LIVING WELL.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Director of the Centers for Disease Control and Prevention, shall award grants to State or local health departments and Indian tribes to carry out 5-year pilot programs to provide public health community interventions, screenings, and where necessary, clinical referrals for individuals who are between 55 and 64 years of age.

(2) ELIGIBILITY.—To be eligible to receive a grant under paragraph (1), an entity shall—

(A) be—

- (i) a State health department;

- (ii) a local health department; or
- (iii) an Indian tribe;

(B) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the program to be carried out under the grant;

(C) design a strategy for improving the health of the 55-to-64 year-old population through community-based public health interventions; and

(D) demonstrate the capacity, if funded, to develop the relationships necessary with relevant health agencies, health care providers, community-based organizations, and insurers to carry out the activities described in paragraph (3), such relationships to include the identification of a community-based clinical partner, such as a community health center or rural health clinic.

(3) USE OF FUNDS.—

(A) IN GENERAL.—A State or local health department shall use amounts received under a grant under this subsection to carry out a program to provide the services described in this paragraph to individuals who are between 55 and 64 years of age.

(B) PUBLIC HEALTH INTERVENTIONS.—

(i) IN GENERAL.—In developing and implementing such activities, a grantee shall collaborate with the Centers for Disease Control and Prevention and the Administration on Aging, and relevant local agencies and organizations.

(ii) TYPES OF INTERVENTION ACTIVITIES.—Intervention activities conducted under this subparagraph may include efforts to improve nutrition, increase physical activity, reduce tobacco use and substance abuse, improve mental health, and promote healthy lifestyles among the target population.

(C) COMMUNITY PREVENTIVE SCREENINGS.—

(i) IN GENERAL.—In addition to community-wide public health interventions, a State or local health department shall use amounts received under a grant under this subsection to conduct ongoing health screening to identify risk factors for cardiovascular disease, cancer, stroke, and diabetes among individuals in both urban and rural areas who are between 55 and 64 years of age.

(ii) TYPES OF SCREENING ACTIVITIES.—Screening activities conducted under this subparagraph may include—

(I) mental health/behavioral health and substance use disorders;

(II) physical activity, smoking, and nutrition; and

(III) any other measures deemed appropriate by the Secretary.

(iii) MONITORING.—Grantees under this section shall maintain records of screening results under this subparagraph to establish the baseline data for monitoring the targeted population

Records.

(D) CLINICAL REFERRAL/TREATMENT FOR CHRONIC DISEASES.—

(i) IN GENERAL.—A State or local health department shall use amounts received under a grant under this subsection to ensure that individuals between 55 and 64 years of age who are found to have chronic disease risk factors through the screening activities described in subparagraph (C)(ii), receive clinical referral/treatment for follow-up services to reduce such risk.

(ii) MECHANISM.—

(I) IDENTIFICATION AND DETERMINATION OF STATUS.—With respect to each individual with risk factors for or having heart disease, stroke, diabetes, or any other condition for which such individual was screened under subparagraph (C), a grantee under this section shall determine whether or not such individual is covered under any public or private health insurance program.

(II) INSURED INDIVIDUALS.—An individual determined to be covered under a health insurance program under subclause (I) shall be referred by the grantee to the existing providers under such program or, if such individual does not have a current provider, to a provider who is in-network with respect to the program involved.

(III) UNINSURED INDIVIDUALS.—With respect to an individual determined to be uninsured under subclause (I), the grantee's community-based clinical partner described in paragraph (4)(D) shall assist the individual in determining eligibility for available public coverage options and identify other appropriate community health care resources and assistance programs.

(iii) PUBLIC HEALTH INTERVENTION PROGRAM.—A State or local health department shall use amounts received under a grant under this subsection to enter into contracts with community health centers or rural health clinics and mental health and substance use disorder service providers to assist in the referral/treatment of at risk patients to community resources for clinical follow-up and help determine eligibility for other public programs.

(E) GRANTEE EVALUATION.—An eligible entity shall use amounts provided under a grant under this subsection to conduct activities to measure changes in the prevalence of chronic disease risk factors among participants.

(4) PILOT PROGRAM EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of the pilot program under this subsection. In determining such effectiveness, the Secretary shall consider changes in the prevalence of uncontrolled chronic disease risk factors among new Medicare enrollees (or individuals nearing enrollment, including those who are 63 and 64 years of age) who reside in States or localities receiving grants under this section as compared with national and historical data for those States and localities for the same population.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for each of fiscal years 2010 through 2014.

(b) EVALUATION AND PLAN FOR COMMUNITY-BASED PREVENTION AND WELLNESS PROGRAMS FOR MEDICARE BENEFICIARIES.—

(1) IN GENERAL.—The Secretary shall conduct an evaluation of community-based prevention and wellness programs and develop a plan for promoting healthy lifestyles and chronic disease self-management for Medicare beneficiaries.

(2) MEDICARE EVALUATION OF PREVENTION AND WELLNESS PROGRAMS.—

(A) IN GENERAL.—The Secretary shall evaluate community prevention and wellness programs including those that are sponsored by the Administration on Aging, are evidence-based, and have demonstrated potential to help Medicare beneficiaries (particularly beneficiaries that have attained 65 years of age) reduce their risk of disease, disability, and injury by making healthy lifestyle choices, including exercise, diet, and self-management of chronic diseases.

(B) EVALUATION.—The evaluation under subparagraph (A) shall consist of the following:

(i) EVIDENCE REVIEW.—The Secretary shall review available evidence, literature, best practices, and resources that are relevant to programs that promote healthy lifestyles and reduce risk factors for the Medicare population. The Secretary may determine the scope of the evidence review and such issues to be considered, which shall include, at a minimum—

- (I) physical activity, nutrition, and obesity;
- (II) falls;
- (III) chronic disease self-management; and
- (IV) mental health.

(ii) INDEPENDENT EVALUATION OF EVIDENCE-BASED COMMUNITY PREVENTION AND WELLNESS PROGRAMS.—The Administrator of the Centers for Medicare & Medicaid Services, in consultation with the Assistant Secretary for Aging, shall, to the extent feasible and practicable, conduct an evaluation of existing community prevention and wellness programs that are sponsored by the Administration on Aging to assess the extent to which Medicare beneficiaries who participate in such programs—

- (I) reduce their health risks, improve their health outcomes, and adopt and maintain healthy behaviors;
- (II) improve their ability to manage their chronic conditions; and
- (III) reduce their utilization of health services and associated costs under the Medicare program for conditions that are amenable to improvement under such programs.

(3) REPORT.—Not later than September 30, 2013, the Secretary shall submit to Congress a report that includes—

(A) recommendations for such legislation and administrative action as the Secretary determines appropriate to

promote healthy lifestyles and chronic disease self-management for Medicare beneficiaries;

(B) any relevant findings relating to the evidence review under paragraph (2)(B)(i); and

(C) the results of the evaluation under paragraph (2)(B)(ii).

(4) **FUNDING.**—For purposes of carrying out this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplemental Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in such proportion as the Secretary determines appropriate, of \$50,000,000 to the Centers for Medicare & Medicaid Services Program Management Account. Amounts transferred under the preceding sentence shall remain available until expended.

(5) **ADMINISTRATION.**—Chapter 35 of title 44, United States Code shall not apply to the this subsection.

Definition.

(6) **MEDICARE BENEFICIARY.**—In this subsection, the term “Medicare beneficiary” means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act and enrolled under part B of such title.

SEC. 4203. REMOVING BARRIERS AND IMPROVING ACCESS TO WELLNESS FOR INDIVIDUALS WITH DISABILITIES.

Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) is amended by adding at the end of the following:

29 USC 794f.

“SEC. 510. ESTABLISHMENT OF STANDARDS FOR ACCESSIBLE MEDICAL DIAGNOSTIC EQUIPMENT.

Deadline.

“(a) **STANDARDS.**—Not later than 24 months after the date of enactment of the Affordable Health Choices Act, the Architectural and Transportation Barriers Compliance Board shall, in consultation with the Commissioner of the Food and Drug Administration, promulgate regulatory standards in accordance with the Administrative Procedure Act (2 U.S.C. 551 et seq.) setting forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physician’s offices, clinics, emergency rooms, hospitals, and other medical settings. The standards shall ensure that such equipment is accessible to, and usable by, individuals with accessibility needs, and shall allow independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.

“(b) **MEDICAL DIAGNOSTIC EQUIPMENT COVERED.**—The standards issued under subsection (a) for medical diagnostic equipment shall apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.

“(c) **REVIEW AND AMENDMENT.**—The Architectural and Transportation Barriers Compliance Board, in consultation with the Commissioner of the Food and Drug Administration, shall periodically review and, as appropriate, amend the standards in accordance with the Administrative Procedure Act (2 U.S.C. 551 et seq.).”.

SEC. 4204. IMMUNIZATIONS.

(a) **STATE AUTHORITY TO PURCHASE RECOMMENDED VACCINES FOR ADULTS.**—Section 317 of the Public Health Service Act (42 U.S.C. 247b) is amended by adding at the end the following:

“(l) **AUTHORITY TO PURCHASE RECOMMENDED VACCINES FOR ADULTS.**—

“(1) **IN GENERAL.**—The Secretary may negotiate and enter into contracts with manufacturers of vaccines for the purchase and delivery of vaccines for adults as provided for under subsection (e).

“(2) **STATE PURCHASE.**—A State may obtain additional quantities of such adult vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through the purchase of vaccines from manufacturers at the applicable price negotiated by the Secretary under this subsection.”.

(b) **DEMONSTRATION PROGRAM TO IMPROVE IMMUNIZATION COVERAGE.**—Section 317 of the Public Health Service Act (42 U.S.C. 247b), as amended by subsection (a), is further amended by adding at the end the following:

“(m) **DEMONSTRATION PROGRAM TO IMPROVE IMMUNIZATION COVERAGE.**— Grants.

“(1) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a demonstration program to award grants to States to improve the provision of recommended immunizations for children, adolescents, and adults through the use of evidence-based, population-based interventions for high-risk populations.

“(2) **STATE PLAN.**—To be eligible for a grant under paragraph (1), a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a State plan that describes the interventions to be implemented under the grant and how such interventions match with local needs and capabilities, as determined through consultation with local authorities.

“(3) **USE OF FUNDS.**—Funds received under a grant under this subsection shall be used to implement interventions that are recommended by the Task Force on Community Preventive Services (as established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention) or other evidence-based interventions, including—

“(A) providing immunization reminders or recalls for target populations of clients, patients, and consumers;

“(B) educating targeted populations and health care providers concerning immunizations in combination with one or more other interventions;

“(C) reducing out-of-pocket costs for families for vaccines and their administration;

“(D) carrying out immunization-promoting strategies for participants or clients of public programs, including assessments of immunization status, referrals to health care providers, education, provision of on-site immunizations, or incentives for immunization;

“(E) providing for home visits that promote immunization through education, assessments of need, referrals, provision of immunizations, or other services;

“(F) providing reminders or recalls for immunization providers;

“(G) conducting assessments of, and providing feedback to, immunization providers;

“(H) any combination of one or more interventions described in this paragraph; or

“(I) immunization information systems to allow all States to have electronic databases for immunization records.

“(4) CONSIDERATION.—In awarding grants under this subsection, the Secretary shall consider any reviews or recommendations of the Task Force on Community Preventive Services.

Deadline.

“(5) EVALUATION.—Not later than 3 years after the date on which a State receives a grant under this subsection, the State shall submit to the Secretary an evaluation of progress made toward improving immunization coverage rates among high-risk populations within the State.

“(6) REPORT TO CONGRESS.—Not later than 4 years after the date of enactment of the Affordable Health Choices Act, the Secretary shall submit to Congress a report concerning the effectiveness of the demonstration program established under this subsection together with recommendations on whether to continue and expand such program.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, such sums as may be necessary for each of fiscal years 2010 through 2014.”.

(c) REAUTHORIZATION OF IMMUNIZATION PROGRAM.—Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)) is amended—

(1) in paragraph (1), by striking “for each of the fiscal years 1998 through 2005”; and

(2) in paragraph (2), by striking “after October 1, 1997,”.

42 USC 247b
note.

(d) RULE OF CONSTRUCTION REGARDING ACCESS TO IMMUNIZATIONS.—Nothing in this section (including the amendments made by this section), or any other provision of this Act (including any amendments made by this Act) shall be construed to decrease children’s access to immunizations.

(e) GAO STUDY AND REPORT ON MEDICARE BENEFICIARY ACCESS TO VACCINES.—

(1) STUDY.—The Comptroller General of the United States (in this section referred to as the “Comptroller General”) shall conduct a study on the ability of Medicare beneficiaries who were 65 years of age or older to access routinely recommended vaccines covered under the prescription drug program under part D of title XVIII of the Social Security Act over the period since the establishment of such program. Such study shall include the following:

(A) An analysis and determination of—

(i) the number of Medicare beneficiaries who were 65 years of age or older and were eligible for a routinely recommended vaccination that was covered under part D;

(ii) the number of such beneficiaries who actually received a routinely recommended vaccination that was covered under part D; and

(iii) any barriers to access by such beneficiaries to routinely recommended vaccinations that were covered under part D.

(B) A summary of the findings and recommendations by government agencies, departments, and advisory bodies (as well as relevant professional organizations) on the impact of coverage under part D of routinely recommended adult immunizations for access to such immunizations by Medicare beneficiaries.

(2) REPORT.—Not later than June 1, 2011, the Comptroller General shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report containing the results of the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(3) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated \$1,000,000 for fiscal year 2010 to carry out this subsection.

SEC. 4205. NUTRITION LABELING OF STANDARD MENU ITEMS AT CHAIN RESTAURANTS.

(a) TECHNICAL AMENDMENTS.—Section 403(q)(5)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(A)) is amended—

(1) in subitem (i), by inserting at the beginning “except as provided in clause (H)(ii)(III),”; and

(2) in subitem (ii), by inserting at the beginning “except as provided in clause (H)(ii)(III),”.

(b) LABELING REQUIREMENTS.—Section 403(q)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)) is amended by adding at the end the following:

“(H) RESTAURANTS, RETAIL FOOD ESTABLISHMENTS, AND VENDING MACHINES.—

“(i) GENERAL REQUIREMENTS FOR RESTAURANTS AND SIMILAR RETAIL FOOD ESTABLISHMENTS.—Except for food described in subclause (vii), in the case of food that is a standard menu item that is offered for sale in a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose the information described in subclauses (ii) and (iii).

“(ii) INFORMATION REQUIRED TO BE DISCLOSED BY RESTAURANTS AND RETAIL FOOD ESTABLISHMENTS.—Except as provided in subclause (vii), the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner—

“(I)(aa) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu listing the item for sale, the number of calories

contained in the standard menu item, as usually prepared and offered for sale; and

“(bb) a succinct statement concerning suggested daily caloric intake, as specified by the Secretary by regulation and posted prominently on the menu and designed to enable the public to understand, in the context of a total daily diet, the significance of the caloric information that is provided on the menu;

“(II)(aa) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu board, including a drive-through menu board, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

“(bb) a succinct statement concerning suggested daily caloric intake, as specified by the Secretary by regulation and posted prominently on the menu board, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided on the menu board;

“(III) in a written form, available on the premises of the restaurant or similar retail establishment and to the consumer upon request, the nutrition information required under clauses (C) and (D) of subparagraph (1); and

“(IV) on the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in item (III).

“(iii) SELF-SERVICE FOOD AND FOOD ON DISPLAY.—Except as provided in subclause (vii), in the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, and for self-service beverages or food that is on display and that is visible to customers, a restaurant or similar retail food establishment shall place adjacent to each food offered a sign that lists calories per displayed food item or per serving.

“(iv) REASONABLE BASIS.—For the purposes of this clause, a restaurant or similar retail food establishment shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in section 101.10 of title 21, Code of Federal Regulations (or any successor regulation) or in a related guidance of the Food and Drug Administration.

“(v) MENU VARIABILITY AND COMBINATION MEALS.—The Secretary shall establish by regulation standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children’s combination meals, through means determined by the Secretary, including ranges, averages, or other methods.

“(vi) ADDITIONAL INFORMATION.—If the Secretary determines that a nutrient, other than a nutrient required under subclause (ii)(III), should be disclosed for the purpose of providing information to assist consumers in maintaining healthy dietary practices, the Secretary may require, by regulation, disclosure of such nutrient in the written form required under subclause (ii)(III).

“(vii) NONAPPLICABILITY TO CERTAIN FOOD.—

“(I) IN GENERAL.—Subclauses (i) through (vi) do not apply to—

“(aa) items that are not listed on a menu or menu board (such as condiments and other items placed on the table or counter for general use);

“(bb) daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, or custom orders; or

“(cc) such other food that is part of a customary market test appearing on the menu for less than 90 days, under terms and conditions established by the Secretary.

“(II) WRITTEN FORMS.—Subparagraph (5)(C) shall apply to any regulations promulgated under subclauses (ii)(III) and (vi).

Applicability.

“(viii) VENDING MACHINES.—

“(I) IN GENERAL.—In the case of an article of food sold from a vending machine that—

“(aa) does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article or does not otherwise provide visible nutrition information at the point of purchase; and

“(bb) is operated by a person who is engaged in the business of owning or operating 20 or more vending machines,

the vending machine operator shall provide a sign in close proximity to each article of food or the selection button that includes a clear and conspicuous statement disclosing the number of calories contained in the article.

“(ix) VOLUNTARY PROVISION OF NUTRITION INFORMATION.—

“(I) IN GENERAL.—An authorized official of any restaurant or similar retail food establishment or vending machine operator not subject to the requirements of this clause may elect to be subject to the requirements of such clause, by registering biannually the name and address of such restaurant or similar retail food establishment or vending machine operator with the Secretary, as specified by the Secretary by regulation.

“(II) REGISTRATION.—Within 120 days of enactment of this clause, the Secretary shall publish a notice in the Federal Register specifying the terms and conditions for implementation of item (I), pending promulgation of regulations.

Deadline.
Notice.
Federal Register,
publication.

“(III) RULE OF CONSTRUCTION.—Nothing in this subclause shall be construed to authorize the Secretary to require an application, review, or licensing process for any entity to register with the Secretary, as described in such item.

“(x) REGULATIONS.—

“(I) PROPOSED REGULATION.—Not later than 1 year after the date of enactment of this clause, the Secretary shall promulgate proposed regulations to carry out this clause.

Deadline.

“(II) CONTENTS.—In promulgating regulations, the Secretary shall—

“(aa) consider standardization of recipes and methods of preparation, reasonable variation in serving

size and formulation of menu items, space on menus and menu boards, inadvertent human error, training of food service workers, variations in ingredients, and other factors, as the Secretary determines; and

“(bb) specify the format and manner of the nutrient content disclosure requirements under this subclause.

“(III) REPORTING.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a quarterly report that describes the Secretary’s progress toward promulgating final regulations under this subparagraph.

“(xi) DEFINITION.—In this clause, the term ‘menu’ or ‘menu board’ means the primary writing of the restaurant or other similar retail food establishment from which a consumer makes an order selection.”

(c) NATIONAL UNIFORMITY.—Section 403A(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–1(a)(4)) is amended by striking “except a requirement for nutrition labeling of food which is exempt under subclause (i) or (ii) of section 403(q)(5)(A)” and inserting “except that this paragraph does not apply to food that is offered for sale in a restaurant or similar retail food establishment that is not part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items unless such restaurant or similar retail food establishment complies with the voluntary provision of nutrition information requirements under section 403(q)(5)(H)(ix)”.

21 USC 343 note.

(d) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed—

(1) to preempt any provision of State or local law, unless such provision establishes or continues into effect nutrient content disclosures of the type required under section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (b)) and is expressly preempted under subsection (a)(4) of such section;

(2) to apply to any State or local requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food; or

(3) except as provided in section 403(q)(5)(H)(ix) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (b)), to apply to any restaurant or similar retail food establishment other than a restaurant or similar retail food establishment described in section 403(q)(5)(H)(i) of such Act.

SEC. 4206. DEMONSTRATION PROJECT CONCERNING INDIVIDUALIZED WELLNESS PLAN.

Section 330 of the Public Health Service Act (42 U.S.C. 245b) is amended by adding at the end the following:

“(s) DEMONSTRATION PROGRAM FOR INDIVIDUALIZED WELLNESS PLANS.—

“(1) IN GENERAL.—The Secretary shall establish a pilot program to test the impact of providing at-risk populations who utilize community health centers funded under this section an individualized wellness plan that is designed to reduce risk

factors for preventable conditions as identified by a comprehensive risk-factor assessment.

“(2) AGREEMENTS.—The Secretary shall enter into agreements with not more than 10 community health centers funded under this section to conduct activities under the pilot program under paragraph (1).

“(3) WELLNESS PLANS.—

“(A) IN GENERAL.—An individualized wellness plan prepared under the pilot program under this subsection may include one or more of the following as appropriate to the individual’s identified risk factors:

“(i) Nutritional counseling.

“(ii) A physical activity plan.

“(iii) Alcohol and smoking cessation counseling and services.

“(iv) Stress management.

“(v) Dietary supplements that have health claims approved by the Secretary.

“(vi) Compliance assistance provided by a community health center employee.

“(B) RISK FACTORS.—Wellness plan risk factors shall include—

“(i) weight;

“(ii) tobacco and alcohol use;

“(iii) exercise rates;

“(iv) nutritional status; and

“(v) blood pressure.

“(C) COMPARISONS.—Individualized wellness plans shall make comparisons between the individual involved and a control group of individuals with respect to the risk factors described in subparagraph (B).

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, such sums as may be necessary.”.

SEC. 4207. REASONABLE BREAK TIME FOR NURSING MOTHERS.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

“(r)(1) An employer shall provide—

“(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and

“(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

“(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

“(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.

“(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.”.

Subtitle D—Support for Prevention and Public Health Innovation

42 USC 300u–15. **SEC. 4301. RESEARCH ON OPTIMIZING THE DELIVERY OF PUBLIC HEALTH SERVICES.**

(a) **IN GENERAL.**—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Director of the Centers for Disease Control and Prevention, shall provide funding for research in the area of public health services and systems.

(b) **REQUIREMENTS OF RESEARCH.**—Research supported under this section shall include—

(1) examining evidence-based practices relating to prevention, with a particular focus on high priority areas as identified by the Secretary in the National Prevention Strategy or Healthy People 2020, and including comparing community-based public health interventions in terms of effectiveness and cost;

(2) analyzing the translation of interventions from academic settings to real world settings; and

(3) identifying effective strategies for organizing, financing, or delivering public health services in real world community settings, including comparing State and local health department structures and systems in terms of effectiveness and cost.

(c) **EXISTING PARTNERSHIPS.**—Research supported under this section shall be coordinated with the Community Preventive Services Task Force and carried out by building on existing partnerships within the Federal Government while also considering initiatives at the State and local levels and in the private sector.

(d) **ANNUAL REPORT.**—The Secretary shall, on an annual basis, submit to Congress a report concerning the activities and findings with respect to research supported under this section.

SEC. 4302. UNDERSTANDING HEALTH DISPARITIES: DATA COLLECTION AND ANALYSIS.

(a) **UNIFORM CATEGORIES AND COLLECTION REQUIREMENTS.**—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

“TITLE XXXI—DATA COLLECTION, ANALYSIS, AND QUALITY

42 USC 300kk. **“SEC. 3101. DATA COLLECTION, ANALYSIS, AND QUALITY.**

“(a) **DATA COLLECTION.**—

Deadline.

“(1) **IN GENERAL.**—The Secretary shall ensure that, by not later than 2 years after the date of enactment of this title, any federally conducted or supported health care or public health program, activity or survey (including Current Population Surveys and American Community Surveys conducted

by the Bureau of Labor Statistics and the Bureau of the Census) collects and reports, to the extent practicable—

“(A) data on race, ethnicity, sex, primary language, and disability status for applicants, recipients, or participants;

“(B) data at the smallest geographic level such as State, local, or institutional levels if such data can be aggregated;

“(C) sufficient data to generate statistically reliable estimates by racial, ethnic, sex, primary language, and disability status subgroups for applicants, recipients or participants using, if needed, statistical oversamples of these subpopulations; and

“(D) any other demographic data as deemed appropriate by the Secretary regarding health disparities.

“(2) COLLECTION STANDARDS.—In collecting data described in paragraph (1), the Secretary or designee shall—

“(A) use Office of Management and Budget standards, at a minimum, for race and ethnicity measures;

“(B) develop standards for the measurement of sex, primary language, and disability status;

“(C) develop standards for the collection of data described in paragraph (1) that, at a minimum—

“(i) collects self-reported data by the applicant, recipient, or participant; and

“(ii) collects data from a parent or legal guardian if the applicant, recipient, or participant is a minor or legally incapacitated;

“(D) survey health care providers and establish other procedures in order to assess access to care and treatment for individuals with disabilities and to identify—

“(i) locations where individuals with disabilities access primary, acute (including intensive), and long-term care;

“(ii) the number of providers with accessible facilities and equipment to meet the needs of the individuals with disabilities, including medical diagnostic equipment that meets the minimum technical criteria set forth in section 510 of the Rehabilitation Act of 1973; and

“(iii) the number of employees of health care providers trained in disability awareness and patient care of individuals with disabilities; and

“(E) require that any reporting requirement imposed for purposes of measuring quality under any ongoing or federally conducted or supported health care or public health program, activity, or survey includes requirements for the collection of data on individuals receiving health care items or services under such programs activities by race, ethnicity, sex, primary language, and disability status.

“(3) DATA MANAGEMENT.—In collecting data described in paragraph (1), the Secretary, acting through the National Coordinator for Health Information Technology shall—

“(A) develop national standards for the management of data collected; and Standards.

“(B) develop interoperability and security systems for data management.

“(b) DATA ANALYSIS.—

“(1) IN GENERAL.—For each federally conducted or supported health care or public health program or activity, the Secretary shall analyze data collected under paragraph (a) to detect and monitor trends in health disparities (as defined for purposes of section 485E) at the Federal and State levels.

“(c) DATA REPORTING AND DISSEMINATION.—

“(1) IN GENERAL.—The Secretary shall make the analyses described in (b) available to—

“(A) the Office of Minority Health;

“(B) the National Center on Minority Health and Health Disparities;

“(C) the Agency for Healthcare Research and Quality;

“(D) the Centers for Disease Control and Prevention;

“(E) the Centers for Medicare & Medicaid Services;

“(F) the Indian Health Service and epidemiology centers funded under the Indian Health Care Improvement Act;

“(G) the Office of Rural health;

“(H) other agencies within the Department of Health and Human Services; and

“(I) other entities as determined appropriate by the Secretary.

“(2) REPORTING OF DATA.—The Secretary shall report data and analyses described in (a) and (b) through—

“(A) public postings on the Internet websites of the Department of Health and Human Services; and

“(B) any other reporting or dissemination mechanisms determined appropriate by the Secretary.

“(3) AVAILABILITY OF DATA.—The Secretary may make data described in (a) and (b) available for additional research, analyses, and dissemination to other Federal agencies, non-governmental entities, and the public, in accordance with any Federal agency’s data user agreements.

“(d) LIMITATIONS ON USE OF DATA.—Nothing in this section shall be construed to permit the use of information collected under this section in a manner that would adversely affect any individual.

“(e) PROTECTION AND SHARING OF DATA.—

“(1) PRIVACY AND OTHER SAFEGUARDS.—The Secretary shall ensure (through the promulgation of regulations or otherwise) that—

“(A) all data collected pursuant to subsection (a) is protected—

“(i) under privacy protections that are at least as broad as those that the Secretary applies to other health data under the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033); and

“(ii) from all inappropriate internal use by any entity that collects, stores, or receives the data, including use of such data in determinations of eligibility (or continued eligibility) in health plans, and from other inappropriate uses, as defined by the Secretary; and

Public
information.
Web sites.

“(B) all appropriate information security safeguards are used in the collection, analysis, and sharing of data collected pursuant to subsection (a).

“(2) DATA SHARING.—The Secretary shall establish procedures for sharing data collected pursuant to subsection (a), measures relating to such data, and analyses of such data, with other relevant Federal and State agencies including the agencies, centers, and entities within the Department of Health and Human Services specified in subsection (c)(1)..

Procedures.

“(f) DATA ON RURAL UNDERSERVED POPULATIONS.—The Secretary shall ensure that any data collected in accordance with this section regarding racial and ethnic minority groups are also collected regarding underserved rural and frontier populations.

“(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.

“(h) REQUIREMENT FOR IMPLEMENTATION.—Notwithstanding any other provision of this section, data may not be collected under this section unless funds are directly appropriated for such purpose in an appropriations Act.

“(i) CONSULTATION.—The Secretary shall consult with the Director of the Office of Personnel Management, the Secretary of Defense, the Secretary of Veterans Affairs, the Director of the Bureau of the Census, the Commissioner of Social Security, and the head of other appropriate Federal agencies in carrying out this section.”.

(b) ADDRESSING HEALTH CARE DISPARITIES IN MEDICAID AND CHIP.—

(1) STANDARDIZED COLLECTION REQUIREMENTS INCLUDED IN STATE PLANS.—

(A) MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 2001(d), is amended—

- (i) in paragraph 4), by striking “and” at the end;
- (ii) in paragraph (75), by striking the period at the end and inserting “; and”; and
- (iii) by inserting after paragraph (75) the following new paragraph:

“(76) provide that any data collected under the State plan meets the requirements of section 3101 of the Public Health Service Act.”.

(B) CHIP.—Section 2108(e) of the Social Security Act (42 U.S.C. 1397hh(e)) is amended by adding at the end the following new paragraph:

“(7) Data collected and reported in accordance with section 3101 of the Public Health Service Act, with respect to individuals enrolled in the State child health plan (and, in the case of enrollees under 19 years of age, their parents or legal guardians), including data regarding the primary language of such individuals, parents, and legal guardians.”.

(2) EXTENDING MEDICARE REQUIREMENT TO ADDRESS HEALTH DISPARITIES DATA COLLECTION TO MEDICAID AND CHIP.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), as amended by section 2703 is amended by adding at the end the following new section:

42 USC 1396w–5. **“SEC. 1946. ADDRESSING HEALTH CARE DISPARITIES.**

“(a) **EVALUATING DATA COLLECTION APPROACHES.**—The Secretary shall evaluate approaches for the collection of data under this title and title XXI, to be performed in conjunction with existing quality reporting requirements and programs under this title and title XXI, that allow for the ongoing, accurate, and timely collection and evaluation of data on disparities in health care services and performance on the basis of race, ethnicity, sex, primary language, and disability status. In conducting such evaluation, the Secretary shall consider the following objectives:

“(1) Protecting patient privacy.

“(2) Minimizing the administrative burdens of data collection and reporting on States, providers, and health plans participating under this title or title XXI.

“(3) Improving program data under this title and title XXI on race, ethnicity, sex, primary language, and disability status.

“(b) **REPORTS TO CONGRESS.**—

“(1) **REPORT ON EVALUATION.**—Not later than 18 months after the date of the enactment of this section, the Secretary shall submit to Congress a report on the evaluation conducted under subsection (a). Such report shall, taking into consideration the results of such evaluation—

“(A) identify approaches (including defining methodologies) for identifying and collecting and evaluating data on health care disparities on the basis of race, ethnicity, sex, primary language, and disability status for the programs under this title and title XXI; and

“(B) include recommendations on the most effective strategies and approaches to reporting HEDIS quality measures as required under section 1852(e)(3) and other nationally recognized quality performance measures, as appropriate, on such bases.

“(2) **REPORTS ON DATA ANALYSES.**—Not later than 4 years after the date of the enactment of this section, and 4 years thereafter, the Secretary shall submit to Congress a report that includes recommendations for improving the identification of health care disparities for beneficiaries under this title and under title XXI based on analyses of the data collected under subsection (c).

Deadline.

“(c) **IMPLEMENTING EFFECTIVE APPROACHES.**—Not later than 24 months after the date of the enactment of this section, the Secretary shall implement the approaches identified in the report submitted under subsection (b)(1) for the ongoing, accurate, and timely collection and evaluation of data on health care disparities on the basis of race, ethnicity, sex, primary language, and disability status.”.

SEC. 4303. CDC AND EMPLOYER-BASED WELLNESS PROGRAMS.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), by section 4102, is further amended by adding at the end the following:

“PART U—EMPLOYER-BASED WELLNESS PROGRAM

“SEC. 399MM. TECHNICAL ASSISTANCE FOR EMPLOYER-BASED WELLNESS PROGRAMS. 42 USC 280l.

“In order to expand the utilization of evidence-based prevention and health promotion approaches in the workplace, the Director shall—

“(1) provide employers (including small, medium, and large employers, as determined by the Director) with technical assistance, consultation, tools, and other resources in evaluating such employers’ employer-based wellness programs, including—

“(A) measuring the participation and methods to increase participation of employees in such programs;

“(B) developing standardized measures that assess policy, environmental and systems changes necessary to have a positive health impact on employees’ health behaviors, health outcomes, and health care expenditures; and

“(C) evaluating such programs as they relate to changes in the health status of employees, the absenteeism of employees, the productivity of employees, the rate of workplace injury, and the medical costs incurred by employees; and

“(2) build evaluation capacity among workplace staff by training employers on how to evaluate employer-based wellness programs by ensuring evaluation resources, technical assistance, and consultation are available to workplace staff as needed through such mechanisms as web portals, call centers, or other means.

“SEC. 399MM–1. NATIONAL WORKSITE HEALTH POLICIES AND PROGRAMS STUDY. 42 USC 280l–1.

“(a) IN GENERAL.—In order to assess, analyze, and monitor over time data about workplace policies and programs, and to develop instruments to assess and evaluate comprehensive workplace chronic disease prevention and health promotion programs, policies and practices, not later than 2 years after the date of enactment of this part, and at regular intervals (to be determined by the Director) thereafter, the Director shall conduct a national worksite health policies and programs survey to assess employer-based health policies and programs.

Deadline.
Determination.

“(b) REPORT.—Upon the completion of each study under subsection (a), the Director shall submit to Congress a report that includes the recommendations of the Director for the implementation of effective employer-based health policies and programs.

“SEC. 399MM–2. PRIORITIZATION OF EVALUATION BY SECRETARY. 42 USC 280l–2.

“The Secretary shall evaluate, in accordance with this part, all programs funded through the Centers for Disease Control and Prevention before conducting such an evaluation of privately funded programs unless an entity with a privately funded wellness program requests such an evaluation.

“SEC. 399MM–3. PROHIBITION OF FEDERAL WORKPLACE WELLNESS REQUIREMENTS. 42 USC 280l–3.

“Notwithstanding any other provision of this part, any recommendations, data, or assessments carried out under this part

shall not be used to mandate requirements for workplace wellness programs.”.

SEC. 4304. EPIDEMIOLOGY-LABORATORY CAPACITY GRANTS.

Title XXVIII of the Public Health Service Act (42 U.S.C. 300hh et seq.) is amended by adding at the end the following:

“Subtitle C—Strengthening Public Health Surveillance Systems

42 USC
300hh–31.

“SEC. 2821. EPIDEMIOLOGY-LABORATORY CAPACITY GRANTS.

“(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish an Epidemiology and Laboratory Capacity Grant Program to award grants to State health departments as well as local health departments and tribal jurisdictions that meet such criteria as the Director determines appropriate. Academic centers that assist State and eligible local and tribal health departments may also be eligible for funding under this section as the Director determines appropriate. Grants shall be awarded under this section to assist public health agencies in improving surveillance for, and response to, infectious diseases and other conditions of public health importance by—

“(1) strengthening epidemiologic capacity to identify and monitor the occurrence of infectious diseases and other conditions of public health importance;

“(2) enhancing laboratory practice as well as systems to report test orders and results electronically;

“(3) improving information systems including developing and maintaining an information exchange using national guidelines and complying with capacities and functions determined by an advisory council established and appointed by the Director; and

“(4) developing and implementing prevention and control strategies.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$190,000,000 for each of fiscal years 2010 through 2013, of which—

“(1) not less than \$95,000,000 shall be made available each such fiscal year for activities under paragraphs (1) and (4) of subsection (a);

“(2) not less than \$60,000,000 shall be made available each such fiscal year for activities under subsection (a)(3); and

“(3) not less than \$32,000,000 shall be made available each such fiscal year for activities under subsection (a)(2).”.

SEC. 4305. ADVANCING RESEARCH AND TREATMENT FOR PAIN CARE MANAGEMENT.

(a) INSTITUTE OF MEDICINE CONFERENCE ON PAIN.—

(1) CONVENING.—Not later than 1 year after funds are appropriated to carry out this subsection, the Secretary of Health and Human Services shall seek to enter into an agreement with the Institute of Medicine of the National Academies to convene a Conference on Pain (in this subsection referred to as “the Conference”).

Deadline.
Contracts.

(2) PURPOSES.—The purposes of the Conference shall be to—

(A) increase the recognition of pain as a significant public health problem in the United States;

(B) evaluate the adequacy of assessment, diagnosis, treatment, and management of acute and chronic pain in the general population, and in identified racial, ethnic, gender, age, and other demographic groups that may be disproportionately affected by inadequacies in the assessment, diagnosis, treatment, and management of pain;

(C) identify barriers to appropriate pain care;

(D) establish an agenda for action in both the public and private sectors that will reduce such barriers and significantly improve the state of pain care research, education, and clinical care in the United States.

(3) OTHER APPROPRIATE ENTITY.—If the Institute of Medicine declines to enter into an agreement under paragraph (1), the Secretary of Health and Human Services may enter into such agreement with another appropriate entity.

(4) REPORT.—A report summarizing the Conference's findings and recommendations shall be submitted to the Congress not later than June 30, 2011.

(5) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 and 2011.

(b) PAIN RESEARCH AT NATIONAL INSTITUTES OF HEALTH.—Part B of title IV of the Public Health Service Act (42 U.S.C. 284 et seq.) is amended by adding at the end the following:

“SEC. 409J. PAIN RESEARCH.

42 USC 284q.

“(a) RESEARCH INITIATIVES.—

“(1) IN GENERAL.—The Director of NIH is encouraged to continue and expand, through the Pain Consortium, an aggressive program of basic and clinical research on the causes of and potential treatments for pain.

“(2) ANNUAL RECOMMENDATIONS.—Not less than annually, the Pain Consortium, in consultation with the Division of Program Coordination, Planning, and Strategic Initiatives, shall develop and submit to the Director of NIH recommendations on appropriate pain research initiatives that could be undertaken with funds reserved under section 402A(c)(1) for the Common Fund or otherwise available for such initiatives.

“(3) DEFINITION.—In this subsection, the term ‘Pain Consortium’ means the Pain Consortium of the National Institutes of Health or a similar trans-National Institutes of Health coordinating entity designated by the Secretary for purposes of this subsection.

“(b) INTERAGENCY PAIN RESEARCH COORDINATING COMMITTEE.—

“(1) ESTABLISHMENT.—The Secretary shall establish not later than 1 year after the date of the enactment of this section and as necessary maintain a committee, to be known as the Interagency Pain Research Coordinating Committee (in this section referred to as the ‘Committee’), to coordinate all efforts within the Department of Health and Human Services and other Federal agencies that relate to pain research.

Deadline.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Committee shall be composed of the following voting members:

“(i) Not more than 7 voting Federal representatives appoint by the Secretary from agencies that conduct pain care research and treatment.

“(ii) 12 additional voting members appointed under subparagraph (B).

“(B) ADDITIONAL MEMBERS.—The Committee shall include additional voting members appointed by the Secretary as follows:

“(i) 6 non-Federal members shall be appointed from among scientists, physicians, and other health professionals.

“(ii) 6 members shall be appointed from members of the general public, who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions.

“(C) NONVOTING MEMBERS.—The Committee shall include such nonvoting members as the Secretary determines to be appropriate.

“(3) CHAIRPERSON.—The voting members of the Committee shall select a chairperson from among such members. The selection of a chairperson shall be subject to the approval of the Director of NIH.

“(4) MEETINGS.—The Committee shall meet at the call of the chairperson of the Committee or upon the request of the Director of NIH, but in no case less often than once each year.

“(5) DUTIES.—The Committee shall—

“(A) develop a summary of advances in pain care research supported or conducted by the Federal agencies relevant to the diagnosis, prevention, and treatment of pain and diseases and disorders associated with pain;

“(B) identify critical gaps in basic and clinical research on the symptoms and causes of pain;

“(C) make recommendations to ensure that the activities of the National Institutes of Health and other Federal agencies are free of unnecessary duplication of effort;

“(D) make recommendations on how best to disseminate information on pain care; and

“(E) make recommendations on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

“(6) REVIEW.—The Secretary shall review the necessity of the Committee at least once every 2 years.”.

(c) PAIN CARE EDUCATION AND TRAINING.—Part D of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.) is amended by adding at the end the following new section:

42 USC 294i.

“SEC. 759. PROGRAM FOR EDUCATION AND TRAINING IN PAIN CARE.

“(a) IN GENERAL.—The Secretary may make awards of grants, cooperative agreements, and contracts to health professions schools, hospices, and other public and private entities for the development and implementation of programs to provide education and training to health care professionals in pain care.

“(b) CERTAIN TOPICS.—An award may be made under subsection (a) only if the applicant for the award agrees that the program carried out with the award will include information and education on—

“(1) recognized means for assessing, diagnosing, treating, and managing pain and related signs and symptoms, including the medically appropriate use of controlled substances;

“(2) applicable laws, regulations, rules, and policies on controlled substances, including the degree to which misconceptions and concerns regarding such laws, regulations, rules, and policies, or the enforcement thereof, may create barriers to patient access to appropriate and effective pain care;

“(3) interdisciplinary approaches to the delivery of pain care, including delivery through specialized centers providing comprehensive pain care treatment expertise;

“(4) cultural, linguistic, literacy, geographic, and other barriers to care in underserved populations; and

“(5) recent findings, developments, and improvements in the provision of pain care.

“(c) EVALUATION OF PROGRAMS.—The Secretary shall (directly or through grants or contracts) provide for the evaluation of programs implemented under subsection (a) in order to determine the effect of such programs on knowledge and practice of pain care.

Grants.
Contracts.

“(d) PAIN CARE DEFINED.—For purposes of this section the term ‘pain care’ means the assessment, diagnosis, treatment, or management of acute or chronic pain regardless of causation or body location.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 2010 through 2012. Amounts appropriated under this subsection shall remain available until expended.”.

SEC. 4306. FUNDING FOR CHILDHOOD OBESITY DEMONSTRATION PROJECT.

Section 1139A(e)(8) of the Social Security Act (42 U.S.C. 1320b–9a(e)(8)) is amended to read as follows:

“(8) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, \$25,000,000 for the period of fiscal years 2010 through 2014.”.

Subtitle E—Miscellaneous Provisions

SEC. 4401. SENSE OF THE SENATE CONCERNING CBO SCORING.

(a) FINDING.—The Senate finds that the costs of prevention programs are difficult to estimate due in part because prevention initiatives are hard to measure and results may occur outside the 5 and 10 year budget windows.

(b) SENSE OF CONGRESS.—It is the sense of the Senate that Congress should work with the Congressional Budget Office to develop better methodologies for scoring progress to be made in prevention and wellness programs.

SEC. 4402. EFFECTIVENESS OF FEDERAL HEALTH AND WELLNESS INITIATIVES.

To determine whether existing Federal health and wellness initiatives are effective in achieving their stated goals, the Secretary of Health and Human Services shall—

Evaluation.

(1) conduct an evaluation of such programs as they relate to changes in health status of the American public and specifically on the health status of the Federal workforce, including absenteeism of employees, the productivity of employees, the rate of workplace injury, and the medical costs incurred by employees, and health conditions, including workplace fitness, healthy food and beverages, and incentives in the Federal Employee Health Benefits Program; and

Reports.

(2) submit to Congress a report concerning such evaluation, which shall include conclusions concerning the reasons that such existing programs have proven successful or not successful and what factors contributed to such conclusions.

TITLE V—HEALTH CARE WORKFORCE**Subtitle A—Purpose and Definitions**

42 USC 294q
note.

SEC. 5001. PURPOSE.

The purpose of this title is to improve access to and the delivery of health care services for all individuals, particularly low income, underserved, uninsured, minority, health disparity, and rural populations by—

(1) gathering and assessing comprehensive data in order for the health care workforce to meet the health care needs of individuals, including research on the supply, demand, distribution, diversity, and skills needs of the health care workforce;

(2) increasing the supply of a qualified health care workforce to improve access to and the delivery of health care services for all individuals;

(3) enhancing health care workforce education and training to improve access to and the delivery of health care services for all individuals; and

(4) providing support to the existing health care workforce to improve access to and the delivery of health care services for all individuals.

42 USC 294q
note.

SEC. 5002. DEFINITIONS.

(a) **THIS TITLE.**—In this title:

(1) **ALLIED HEALTH PROFESSIONAL.**—The term “allied health professional” means an allied health professional as defined in section 799B(5) of the Public Health Service Act (42 U.S.C. 295p(5)) who—

(A) has graduated and received an allied health professions degree or certificate from an institution of higher education; and

(B) is employed with a Federal, State, local or tribal public health agency, or in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences, and other

settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.

(2) **HEALTH CARE CAREER PATHWAY.**—The term “healthcare career pathway” means a rigorous, engaging, and high quality set of courses and services that—

(A) includes an articulated sequence of academic and career courses, including 21st century skills;

(B) is aligned with the needs of healthcare industries in a region or State;

(C) prepares students for entry into the full range of postsecondary education options, including registered apprenticeships, and careers;

(D) provides academic and career counseling in student-to-counselor ratios that allow students to make informed decisions about academic and career options;

(E) meets State academic standards, State requirements for secondary school graduation and is aligned with requirements for entry into postsecondary education, and applicable industry standards; and

(F) leads to 2 or more credentials, including—

(i) a secondary school diploma; and

(ii) a postsecondary degree, an apprenticeship or other occupational certification, a certificate, or a license.

(3) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given the term in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002).

(4) **LOW INCOME INDIVIDUAL, STATE WORKFORCE INVESTMENT BOARD, AND LOCAL WORKFORCE INVESTMENT BOARD.**—

(A) **LOW-INCOME INDIVIDUAL.**—The term “low-income individual” has the meaning given that term in section 101 of the Workforce investment Act of 1998 (29 U.S.C. 2801).

(B) **STATE WORKFORCE INVESTMENT BOARD; LOCAL WORKFORCE INVESTMENT BOARD.**—The terms “State workforce investment board” and “local workforce investment board”, refer to a State workforce investment board established under section 111 of the Workforce Investment Act of 1998 (29 U.S.C. 2821) and a local workforce investment board established under section 117 of such Act (29 U.S.C. 2832), respectively.

(5) **POSTSECONDARY EDUCATION.**—The term “postsecondary education” means—

(A) a 4-year program of instruction, or not less than a 1-year program of instruction that is acceptable for credit toward an associate or a baccalaureate degree, offered by an institution of higher education; or

(B) a certificate or registered apprenticeship program at the postsecondary level offered by an institution of higher education or a non-profit educational institution.

(6) **REGISTERED APPRENTICESHIP PROGRAM.**—The term “registered apprenticeship program” means an industry skills training program at the postsecondary level that combines technical and theoretical training through structure on the job

learning with related instruction (in a classroom or through distance learning) while an individual is employed, working under the direction of qualified personnel or a mentor, and earning incremental wage increases aligned to enhance job proficiency, resulting in the acquisition of a nationally recognized and portable certificate, under a plan approved by the Office of Apprenticeship or a State agency recognized by the Department of Labor.

(b) TITLE VII OF THE PUBLIC HEALTH SERVICE ACT.—Section 799B of the Public Health Service Act (42 U.S.C. 295p) is amended—

(1) by striking paragraph (3) and inserting the following:

“(3) PHYSICIAN ASSISTANT EDUCATION PROGRAM.—The term ‘physician assistant education program’ means an educational program in a public or private institution in a State that—

“(A) has as its objective the education of individuals who, upon completion of their studies in the program, be qualified to provide primary care medical services with the supervision of a physician; and

“(B) is accredited by the Accreditation Review Commission on Education for the Physician Assistant.”; and

(2) by adding at the end the following:

“(12) AREA HEALTH EDUCATION CENTER.—The term ‘area health education center’ means a public or nonprofit private organization that has a cooperative agreement or contract in effect with an entity that has received an award under subsection (a)(1) or (a)(2) of section 751, satisfies the requirements in section 751(d)(1), and has as one of its principal functions the operation of an area health education center. Appropriate organizations may include hospitals, health organizations with accredited primary care training programs, accredited physician assistant educational programs associated with a college or university, and universities or colleges not operating a school of medicine or osteopathic medicine.

“(13) AREA HEALTH EDUCATION CENTER PROGRAM.—The term ‘area health education center program’ means cooperative program consisting of an entity that has received an award under subsection (a)(1) or (a)(2) of section 751 for the purpose of planning, developing, operating, and evaluating an area health education center program and one or more area health education centers, which carries out the required activities described in section 751(c), satisfies the program requirements in such section, has as one of its principal functions identifying and implementing strategies and activities that address health care workforce needs in its service area, in coordination with the local workforce investment boards.

“(14) CLINICAL SOCIAL WORKER.—The term ‘clinical social worker’ has the meaning given the term in section 1861(hh)(1) of the Social Security Act (42 U.S.C. 1395x(hh)(1)).

“(15) CULTURAL COMPETENCY.—The term ‘cultural competency’ shall be defined by the Secretary in a manner consistent with section 1707(d)(3).

“(16) DIRECT CARE WORKER.—The term ‘direct care worker’ has the meaning given that term in the 2010 Standard Occupational Classifications of the Department of Labor for Home Health Aides [31-1011], Psychiatric Aides [31-1013], Nursing Assistants [31-1014], and Personal Care Aides [39-9021].

“(17) **FEDERALLY QUALIFIED HEALTH CENTER.**—The term ‘federally qualified health center’ has the meaning given that term in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)).

“(18) **FRONTIER HEALTH PROFESSIONAL SHORTAGE AREA.**—The term ‘frontier health professional shortage area’ means an area—

“(A) with a population density less than 6 persons per square mile within the service area; and

“(B) with respect to which the distance or time for the population to access care is excessive.

“(19) **GRADUATE PSYCHOLOGY.**—The term ‘graduate psychology’ means an accredited program in professional psychology.

“(20) **HEALTH DISPARITY POPULATION.**—The term ‘health disparity population’ has the meaning given such term in section 903(d)(1).

“(21) **HEALTH LITERACY.**—The term ‘health literacy’ means the degree to which an individual has the capacity to obtain, communicate, process, and understand health information and services in order to make appropriate health decisions.

“(22) **MENTAL HEALTH SERVICE PROFESSIONAL.**—The term ‘mental health service professional’ means an individual with a graduate or postgraduate degree from an accredited institution of higher education in psychiatry, psychology, school psychology, behavioral pediatrics, psychiatric nursing, social work, school social work, substance abuse disorder prevention and treatment, marriage and family counseling, school counseling, or professional counseling.

“(23) **ONE-STOP DELIVERY SYSTEM CENTER.**—The term ‘one-stop delivery system’ means a one-stop delivery system described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)).

“(24) **PARAPROFESSIONAL CHILD AND ADOLESCENT MENTAL HEALTH WORKER.**—The term ‘paraprofessional child and adolescent mental health worker’ means an individual who is not a mental or behavioral health service professional, but who works at the first stage of contact with children and families who are seeking mental or behavioral health services, including substance abuse prevention and treatment services.

“(25) **RACIAL AND ETHNIC MINORITY GROUP; RACIAL AND ETHNIC MINORITY POPULATION.**—The terms ‘racial and ethnic minority group’ and ‘racial and ethnic minority population’ have the meaning given the term ‘racial and ethnic minority group’ in section 1707.

“(26) **RURAL HEALTH CLINIC.**—The term ‘rural health clinic’ has the meaning given that term in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)).”

(c) **TITLE VIII OF THE PUBLIC HEALTH SERVICE ACT.**—Section 801 of the Public Health Service Act (42 U.S.C. 296) is amended—

(1) in paragraph (2)—

(A) by striking “means a” and inserting “means an accredited (as defined in paragraph 6)”; and

(B) by striking the period as inserting the following: “where graduates are—

“(A) authorized to sit for the National Council Licensure EXamination-Registered Nurse (NCLEX-RN); or

“(B) licensed registered nurses who will receive a graduate or equivalent degree or training to become an advanced education nurse as defined by section 811(b).”; and

(2) by adding at the end the following:

“(16) ACCELERATED NURSING DEGREE PROGRAM.—The term ‘accelerated nursing degree program’ means a program of education in professional nursing offered by an accredited school of nursing in which an individual holding a bachelors degree in another discipline receives a BSN or MSN degree in an accelerated time frame as determined by the accredited school of nursing.

“(17) BRIDGE OR DEGREE COMPLETION PROGRAM.—The term ‘bridge or degree completion program’ means a program of education in professional nursing offered by an accredited school of nursing, as defined in paragraph (2), that leads to a baccalaureate degree in nursing. Such programs may include, Registered Nurse (RN) to Bachelor’s of Science of Nursing (BSN) programs, RN to MSN (Master of Science of Nursing) programs, or BSN to Doctoral programs.”.

Subtitle B—Innovations in the Health Care Workforce

42 USC 294q.

SEC. 5101. NATIONAL HEALTH CARE WORKFORCE COMMISSION.

(a) PURPOSE.—It is the purpose of this section to establish a National Health Care Workforce Commission that—

(1) serves as a national resource for Congress, the President, States, and localities;

(2) communicates and coordinates with the Departments of Health and Human Services, Labor, Veterans Affairs, Homeland Security, and Education on related activities administered by one or more of such Departments;

(3) develops and commissions evaluations of education and training activities to determine whether the demand for health care workers is being met;

(4) identifies barriers to improved coordination at the Federal, State, and local levels and recommend ways to address such barriers; and

(5) encourages innovations to address population needs, constant changes in technology, and other environmental factors.

(b) ESTABLISHMENT.—There is hereby established the National Health Care Workforce Commission (in this section referred to as the “Commission”).

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members to be appointed by the Comptroller General, without regard to section 5 of the Federal Advisory Committee Act (5 U.S.C. App.).

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The membership of the Commission shall include individuals—

(i) with national recognition for their expertise in health care labor market analysis, including health care workforce analysis; health care finance and

economics; health care facility management; health care plans and integrated delivery systems; health care workforce education and training; health care philanthropy; providers of health care services; and other related fields; and

(ii) who will provide a combination of professional perspectives, broad geographic representation, and a balance between urban, suburban, rural, and frontier representatives.

(B) INCLUSION.—

(i) IN GENERAL.—The membership of the Commission shall include no less than one representative of—

(I) the health care workforce and health professionals;

(II) employers;

(III) third-party payers;

(IV) individuals skilled in the conduct and interpretation of health care services and health economics research;

(V) representatives of consumers;

(VI) labor unions;

(VII) State or local workforce investment boards; and

(VIII) educational institutions (which may include elementary and secondary institutions, institutions of higher education, including 2 and 4 year institutions, or registered apprenticeship programs).

(ii) ADDITIONAL MEMBERS.—The remaining membership may include additional representatives from clause (i) and other individuals as determined appropriate by the Comptroller General of the United States.

(C) MAJORITY NON-PROVIDERS.—Individuals who are directly involved in health professions education or practice shall not constitute a majority of the membership of the Commission.

(D) ETHICAL DISCLOSURE.—The Comptroller General shall establish a system for public disclosure by members of the Commission of financial and other potential conflicts of interest relating to such members. Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978. Members of the Commission shall not be treated as special government employees under title 18, United States Code.

(3) TERMS.—

(A) IN GENERAL.—The terms of members of the Commission shall be for 3 years except that the Comptroller General shall designate staggered terms for the members first appointed.

(B) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission

Public
information.

- shall be filled in the manner in which the original appointment was made.
- Deadline. (C) INITIAL APPOINTMENTS.—The Comptroller General shall make initial appointments of members to the Commission not later than September 30, 2010.
- (4) COMPENSATION.—While serving on the business of the Commission (including travel time), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate. Personnel of the Commission shall not be treated as employees of the Government Accountability Office for any purpose.
- Applicability.
- Designation. (5) CHAIRMAN, VICE CHAIRMAN.—The Comptroller General shall designate a member of the Commission, at the time of appointment of the member, as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the chairmanship or vice chairmanship, the Comptroller General may designate another member for the remainder of that member's term.
- (6) MEETINGS.—The Commission shall meet at the call of the chairman, but no less frequently than on a quarterly basis.
- (d) DUTIES.—
- (1) RECOGNITION, DISSEMINATION, AND COMMUNICATION.—The Commission shall—
- (A) recognize efforts of Federal, State, and local partnerships to develop and offer health care career pathways of proven effectiveness;
- (B) disseminate information on promising retention practices for health care professionals; and
- (C) communicate information on important policies and practices that affect the recruitment, education and training, and retention of the health care workforce.
- (2) REVIEW OF HEALTH CARE WORKFORCE AND ANNUAL REPORTS.—In order to develop a fiscally sustainable integrated workforce that supports a high-quality, readily accessible health care delivery system that meets the needs of patients and populations, the Commission, in consultation with relevant Federal, State, and local agencies, shall—
- (A) review current and projected health care workforce supply and demand, including the topics described in paragraph (3);

(B) make recommendations to Congress and the Administration concerning national health care workforce priorities, goals, and policies;

(C) by not later than October 1 of each year (beginning with 2011), submit a report to Congress and the Administration containing the results of such reviews and recommendations concerning related policies; and

(D) by not later than April 1 of each year (beginning with 2011), submit a report to Congress and the Administration containing a review of, and recommendations on, at a minimum one high priority area as described in paragraph (4).

(3) SPECIFIC TOPICS TO BE REVIEWED.—The topics described in this paragraph include—

(A) current health care workforce supply and distribution, including demographics, skill sets, and demands, with projected demands during the subsequent 10 and 25 year periods;

(B) health care workforce education and training capacity, including the number of students who have completed education and training, including registered apprenticeships; the number of qualified faculty; the education and training infrastructure; and the education and training demands, with projected demands during the subsequent 10 and 25 year periods;

(C) the education loan and grant programs in titles VII and VIII of the Public Health Service Act (42 U.S.C. 292 et seq. and 296 et seq.), with recommendations on whether such programs should become part of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);

(D) the implications of new and existing Federal policies which affect the health care workforce, including Medicare and Medicaid graduate medical education policies, titles VII and VIII of the Public Health Service Act (42 U.S.C. 292 et seq. and 296 et seq.), the National Health Service Corps (with recommendations for aligning such programs with national health workforce priorities and goals), and other health care workforce programs, including those supported through the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), and any other Federal health care workforce programs;

(E) the health care workforce needs of special populations, such as minorities, rural populations, medically underserved populations, gender specific needs, individuals with disabilities, and geriatric and pediatric populations with recommendations for new and existing Federal policies to meet the needs of these special populations; and

(F) recommendations creating or revising national loan repayment programs and scholarship programs to require low-income, minority medical students to serve in their home communities, if designated as medical underserved community.

(4) HIGH PRIORITY AREAS.—

(A) IN GENERAL.—The initial high priority topics described in this paragraph include each of the following:

(i) Integrated health care workforce planning that identifies health care professional skills needed and maximizes the skill sets of health care professionals across disciplines.

(ii) An analysis of the nature, scopes of practice, and demands for health care workers in the enhanced information technology and management workplace.

(iii) An analysis of how to align Medicare and Medicaid graduate medical education policies with national workforce goals.

(iv) The education and training capacity, projected demands, and integration with the health care delivery system of each of the following:

(I) Nursing workforce capacity at all levels.

(II) Oral health care workforce capacity at all levels.

(III) Mental and behavioral health care workforce capacity at all levels.

(IV) Allied health and public health care workforce capacity at all levels.

(V) Emergency medical service workforce capacity, including the retention and recruitment of the volunteer workforce, at all levels.

(VI) The geographic distribution of health care providers as compared to the identified health care workforce needs of States and regions.

(B) FUTURE DETERMINATIONS.—The Commission may require that additional topics be included under subparagraph (A). The appropriate committees of Congress may recommend to the Commission the inclusion of other topics for health care workforce development areas that require special attention.

(5) GRANT PROGRAM.—The Commission shall—

(A) review implementation progress reports on, and report to Congress about, the State Health Care Workforce Development Grant program established in section 5102;

(B) in collaboration with the Department of Labor and in coordination with the Department of Education and other relevant Federal agencies, make recommendations to the fiscal and administrative agent under section 5102(b) for grant recipients under section 5102;

(C) assess the implementation of the grants under such section; and

(D) collect performance and report information, including identified models and best practices, on grants from the fiscal and administrative agent under such section and distribute this information to Congress, relevant Federal agencies, and to the public.

(6) STUDY.—The Commission shall study effective mechanisms for financing education and training for careers in health care, including public health and allied health.

(7) RECOMMENDATIONS.—The Commission shall submit recommendations to Congress, the Department of Labor, and the Department of Health and Human Services about improving

Review.
Reports.

safety, health, and worker protections in the workplace for the health care workforce.

(8) ASSESSMENT.—The Commission shall assess and receive reports from the National Center for Health Care Workforce Analysis established under section 761(b) of the Public Service Health Act (as amended by section 5103).

(e) CONSULTATION WITH FEDERAL, STATE, AND LOCAL AGENCIES, CONGRESS, AND OTHER ORGANIZATIONS.—

(1) IN GENERAL.—The Commission shall consult with Federal agencies (including the Departments of Health and Human Services, Labor, Education, Commerce, Agriculture, Defense, and Veterans Affairs and the Environmental Protection Agency), Congress, the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, and, to the extent practicable, with State and local agencies, Indian tribes, voluntary health care organizations, professional societies, and other relevant public-private health care partnerships.

(2) OBTAINING OFFICIAL DATA.—The Commission, consistent with established privacy rules, may secure directly from any department or agency of the Executive Branch information necessary to enable the Commission to carry out this section.

(3) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—An employee of the Federal Government may be detailed to the Commission without reimbursement. The detail of such an employee shall be without interruption or loss of civil service status.

(f) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—Subject to such review as the Comptroller General of the United States determines to be necessary to ensure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an executive director that shall not exceed the rate of basic pay payable for level V of the Executive Schedule and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

(4) make advance, progress, and other payments which relate to the work of the Commission;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as the Commission determines to be necessary with respect to the internal organization and operation of the Commission.

(g) POWERS.—

(1) DATA COLLECTION.—In order to carry out its functions under this section, the Commission shall—

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in

accordance with this section, including coordination with the Bureau of Labor Statistics;

(B) carry out, or award grants or contracts for the carrying out of, original research and development, where existing information is inadequate, and

(C) adopt procedures allowing interested parties to submit information for the Commission's use in making reports and recommendations.

(2) ACCESS OF THE GOVERNMENT ACCOUNTABILITY OFFICE TO INFORMATION.—The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon request.

(3) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by an independent public accountant under contract to the Commission.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) REQUEST FOR APPROPRIATIONS.—The Commission shall submit requests for appropriations in the same manner as the Comptroller General of the United States submits requests for appropriations. Amounts so appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

(2) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(3) GIFTS AND SERVICES.—The Commission may not accept gifts, bequeaths, or donations of property, but may accept and use donations of services for purposes of carrying out this section.

(i) DEFINITIONS.—In this section:

(1) HEALTH CARE WORKFORCE.—The term “health care workforce” includes all health care providers with direct patient care and support responsibilities, such as physicians, nurses, nurse practitioners, primary care providers, preventive medicine physicians, optometrists, ophthalmologists, physician assistants, pharmacists, dentists, dental hygienists, and other oral healthcare professionals, allied health professionals, doctors of chiropractic, community health workers, health care paraprofessionals, direct care workers, psychologists and other behavioral and mental health professionals (including substance abuse prevention and treatment providers), social workers, physical and occupational therapists, certified nurse midwives, podiatrists, the EMS workforce (including professional and volunteer ambulance personnel and firefighters who perform emergency medical services), licensed complementary and alternative medicine providers, integrative health practitioners, public health professionals, and any other health professional that the Comptroller General of the United States determines appropriate.

(2) HEALTH PROFESSIONALS.—The term “health professionals” includes—

(A) dentists, dental hygienists, primary care providers, specialty physicians, nurses, nurse practitioners, physician assistants, psychologists and other behavioral and mental health professionals (including substance abuse prevention and treatment providers), social workers, physical and occupational therapists, public health professionals, clinical

pharmacists, allied health professionals, doctors of chiropractic, community health workers, school nurses, certified nurse midwives, podiatrists, licensed complementary and alternative medicine providers, the EMS workforce (including professional and volunteer ambulance personnel and firefighters who perform emergency medical services), and integrative health practitioners;

(B) national representatives of health professionals;

(C) representatives of schools of medicine, osteopathy, nursing, dentistry, optometry, pharmacy, chiropractic, allied health, educational programs for public health professionals, behavioral and mental health professionals (as so defined), social workers, pharmacists, physical and occupational therapists, oral health care industry dentistry and dental hygiene, and physician assistants;

(D) representatives of public and private teaching hospitals, and ambulatory health facilities, including Federal medical facilities; and

(E) any other health professional the Comptroller General of the United States determines appropriate.

SEC. 5102. STATE HEALTH CARE WORKFORCE DEVELOPMENT GRANTS. 42 USC 294r.

(a) **ESTABLISHMENT.**—There is established a competitive health care workforce development grant program (referred to in this section as the “program”) for the purpose of enabling State partnerships to complete comprehensive planning and to carry out activities leading to coherent and comprehensive health care workforce development strategies at the State and local levels.

(b) **FISCAL AND ADMINISTRATIVE AGENT.**—The Health Resources and Services Administration of the Department of Health and Human Services (referred to in this section as the “Administration”) shall be the fiscal and administrative agent for the grants awarded under this section. The Administration is authorized to carry out the program, in consultation with the National Health Care Workforce Commission (referred to in this section as the “Commission”), which shall review reports on the development, implementation, and evaluation activities of the grant program, including—

Review.

(1) administering the grants;

(2) providing technical assistance to grantees; and

(3) reporting performance information to the Commission.

(c) **PLANNING GRANTS.**—

(1) **AMOUNT AND DURATION.**—A planning grant shall be awarded under this subsection for a period of not more than one year and the maximum award may not be more than \$150,000.

(2) **ELIGIBILITY.**—To be eligible to receive a planning grant, an entity shall be an eligible partnership. An eligible partnership shall be a State workforce investment board, if it includes or modifies the members to include at least one representative from each of the following: health care employer, labor organization, a public 2-year institution of higher education, a public 4-year institution of higher education, the recognized State federation of labor, the State public secondary education agency, the State P–16 or P–20 Council if such a council exists, and a philanthropic organization that is actively engaged in providing learning, mentoring, and work opportunities to recruit,

educate, and train individuals for, and retain individuals in, careers in health care and related industries.

(3) FISCAL AND ADMINISTRATIVE AGENT.—The Governor of the State receiving a planning grant has the authority to appoint a fiscal and an administrative agency for the partnership.

(4) APPLICATION.—Each State partnership desiring a planning grant shall submit an application to the Administrator of the Administration at such time and in such manner, and accompanied by such information as the Administrator may reasonable require. Each application submitted for a planning grant shall describe the members of the State partnership, the activities for which assistance is sought, the proposed performance benchmarks to be used to measure progress under the planning grant, a budget for use of the funds to complete the required activities described in paragraph (5), and such additional assurance and information as the Administrator determines to be essential to ensure compliance with the grant program requirements.

(5) REQUIRED ACTIVITIES.—A State partnership receiving a planning grant shall carry out the following:

(A) Analyze State labor market information in order to create health care career pathways for students and adults, including dislocated workers.

(B) Identify current and projected high demand State or regional health care sectors for purposes of planning career pathways.

(C) Identify existing Federal, State, and private resources to recruit, educate or train, and retain a skilled health care workforce and strengthen partnerships.

(D) Describe the academic and health care industry skill standards for high school graduation, for entry into postsecondary education, and for various credentials and licensure.

(E) Describe State secondary and postsecondary education and training policies, models, or practices for the health care sector, including career information and guidance counseling.

(F) Identify Federal or State policies or rules to developing a coherent and comprehensive health care workforce development strategy and barriers and a plan to resolve these barriers.

(G) Participate in the Administration's evaluation and reporting activities.

(6) PERFORMANCE AND EVALUATION.—Before the State partnership receives a planning grant, such partnership and the Administrator of the Administration shall jointly determine the performance benchmarks that will be established for the purposes of the planning grant.

(7) MATCH.—Each State partnership receiving a planning grant shall provide an amount, in cash or in kind, that is not less than 15 percent of the amount of the grant, to carry out the activities supported by the grant. The matching requirement may be provided from funds available under other Federal, State, local or private sources to carry out the activities.

(8) REPORT.—

(A) REPORT TO ADMINISTRATION.—Not later than 1 year after a State partnership receives a planning grant, the partnership shall submit a report to the Administration on the State's performance of the activities under the grant, including the use of funds, including matching funds, to carry out required activities, and a description of the progress of the State workforce investment board in meeting the performance benchmarks.

(B) REPORT TO CONGRESS.—The Administration shall submit a report to Congress analyzing the planning activities, performance, and fund utilization of each State grant recipient, including an identification of promising practices and a profile of the activities of each State grant recipient.

(d) IMPLEMENTATION GRANTS.—

(1) IN GENERAL.—The Administration shall—

(A) competitively award implementation grants to State partnerships to enable such partnerships to implement activities that will result in a coherent and comprehensive plan for health workforce development that will address current and projected workforce demands within the State; and

(B) inform the Commission and Congress about the awards made.

(2) DURATION.—An implementation grant shall be awarded for a period of no more than 2 years, except in those cases where the Administration determines that the grantee is high performing and the activities supported by the grant warrant up to 1 additional year of funding.

(3) ELIGIBILITY.—To be eligible for an implementation grant, a State partnership shall have—

(A) received a planning grant under subsection (c) and completed all requirements of such grant; or

(B) completed a satisfactory application, including a plan to coordinate with required partners and complete the required activities during the 2 year period of the implementation grant.

(4) FISCAL AND ADMINISTRATIVE AGENT.—A State partnership receiving an implementation grant shall appoint a fiscal and an administration agent for the implementation of such grant.

(5) APPLICATION.—Each eligible State partnership desiring an implementation grant shall submit an application to the Administration at such time, in such manner, and accompanied by such information as the Administration may reasonably require. Each application submitted shall include—

(A) a description of the members of the State partnership;

(B) a description of how the State partnership completed the required activities under the planning grant, if applicable;

(C) a description of the activities for which implementation grant funds are sought, including grants to regions by the State partnership to advance coherent and comprehensive regional health care workforce planning activities;

(D) a description of how the State partnership will coordinate with required partners and complete the

required partnership activities during the duration of an implementation grant;

(E) a budget proposal of the cost of the activities supported by the implementation grant and a timeline for the provision of matching funds required;

(F) proposed performance benchmarks to be used to assess and evaluate the progress of the partnership activities;

(G) a description of how the State partnership will collect data to report progress in grant activities; and

(H) such additional assurances as the Administration determines to be essential to ensure compliance with grant requirements.

(6) REQUIRED ACTIVITIES.—

(A) IN GENERAL.—A State partnership that receives an implementation grant may reserve not less than 60 percent of the grant funds to make grants to be competitively awarded by the State partnership, consistent with State procurement rules, to encourage regional partnerships to address health care workforce development needs and to promote innovative health care workforce career pathway activities, including career counseling, learning, and employment.

(B) ELIGIBLE PARTNERSHIP DUTIES.—An eligible State partnership receiving an implementation grant shall—

(i) identify and convene regional leadership to discuss opportunities to engage in statewide health care workforce development planning, including the potential use of competitive grants to improve the development, distribution, and diversity of the regional health care workforce; the alignment of curricula for health care careers; and the access to quality career information and guidance and education and training opportunities;

(ii) in consultation with key stakeholders and regional leaders, take appropriate steps to reduce Federal, State, or local barriers to a comprehensive and coherent strategy, including changes in State or local policies to foster coherent and comprehensive health care workforce development activities, including health care career pathways at the regional and State levels, career planning information, retraining for dislocated workers, and as appropriate, requests for Federal program or administrative waivers;

(iii) develop, disseminate, and review with key stakeholders a preliminary statewide strategy that addresses short- and long-term health care workforce development supply versus demand;

(iv) convene State partnership members on a regular basis, and at least on a semiannual basis;

(v) assist leaders at the regional level to form partnerships, including technical assistance and capacity building activities;

(vi) collect and assess data on and report on the performance benchmarks selected by the State partnership and the Administration for implementation activities carried out by regional and State partnerships; and

(vii) participate in the Administration's evaluation and reporting activities.

(7) **PERFORMANCE AND EVALUATION.**—Before the State partnership receives an implementation grant, it and the Administrator shall jointly determine the performance benchmarks that shall be established for the purposes of the implementation grant.

(8) **MATCH.**—Each State partnership receiving an implementation grant shall provide an amount, in cash or in kind that is not less than 25 percent of the amount of the grant, to carry out the activities supported by the grant. The matching funds may be provided from funds available from other Federal, State, local, or private sources to carry out such activities.

(9) **REPORTS.**—

(A) **REPORT TO ADMINISTRATION.**—For each year of the implementation grant, the State partnership receiving the implementation grant shall submit a report to the Administration on the performance of the State of the grant activities, including a description of the use of the funds, including matched funds, to complete activities, and a description of the performance of the State partnership in meeting the performance benchmarks.

(B) **REPORT TO CONGRESS.**—The Administration shall submit a report to Congress analyzing implementation activities, performance, and fund utilization of the State grantees, including an identification of promising practices and a profile of the activities of each State grantee.

(e) **AUTHORIZATION FOR APPROPRIATIONS.**—

(1) **PLANNING GRANTS.**—There are authorized to be appropriated to award planning grants under subsection (c) \$8,000,000 for fiscal year 2010, and such sums as may be necessary for each subsequent fiscal year.

(2) **IMPLEMENTATION GRANTS.**—There are authorized to be appropriated to award implementation grants under subsection (d), \$150,000,000 for fiscal year 2010, and such sums as may be necessary for each subsequent fiscal year.

SEC. 5103. HEALTH CARE WORKFORCE ASSESSMENT.

(a) **IN GENERAL.**—Section 761 of the Public Health Service Act (42 U.S.C. 294m) is amended—

(1) by redesignating subsection (c) as subsection (e);

(2) by striking subsection (b) and inserting the following:

“(b) **NATIONAL CENTER FOR HEALTH CARE WORKFORCE ANALYSIS.**—

“(1) **ESTABLISHMENT.**—The Secretary shall establish the National Center for Health Workforce Analysis (referred to in this section as the ‘National Center’).

“(2) **PURPOSES.**—The National Center, in coordination to the extent practicable with the National Health Care Workforce

Commission (established in section 5101 of the Patient Protection and Affordable Care Act), and relevant regional and State centers and agencies, shall—

“(A) provide for the development of information describing and analyzing the health care workforce and workforce related issues;

“(B) carry out the activities under section 792(a);

“(C) annually evaluate programs under this title;

“(D) develop and publish performance measures and benchmarks for programs under this title; and

Internet registry.

“(E) establish, maintain, and publicize a national Internet registry of each grant awarded under this title and a database to collect data from longitudinal evaluations (as described in subsection (d)(2)) on performance measures (as developed under sections 749(d)(3), 757(d)(3), and 762(a)(3)).

“(3) COLLABORATION AND DATA SHARING.—

“(A) IN GENERAL.—The National Center shall collaborate with Federal agencies and relevant professional and educational organizations or societies for the purpose of linking data regarding grants awarded under this title.

“(B) CONTRACTS FOR HEALTH WORKFORCE ANALYSIS.—For the purpose of carrying out the activities described in subparagraph (A), the National Center may enter into contracts with relevant professional and educational organizations or societies.

“(c) STATE AND REGIONAL CENTERS FOR HEALTH WORKFORCE ANALYSIS.—

Grants.
Contracts.

“(1) IN GENERAL.—The Secretary shall award grants to, or enter into contracts with, eligible entities for purposes of—

“(A) collecting, analyzing, and reporting data regarding programs under this title to the National Center and to the public; and

“(B) providing technical assistance to local and regional entities on the collection, analysis, and reporting of data.

“(2) ELIGIBLE ENTITIES.—To be eligible for a grant or contract under this subsection, an entity shall—

“(A) be a State, a State workforce investment board, a public health or health professions school, an academic health center, or an appropriate public or private nonprofit entity; and

“(B) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(d) INCREASE IN GRANTS FOR LONGITUDINAL EVALUATIONS.—

“(1) IN GENERAL.—The Secretary shall increase the amount awarded to an eligible entity under this title for a longitudinal evaluation of individuals who have received education, training, or financial assistance from programs under this title.

“(2) CAPABILITY.—A longitudinal evaluation shall be capable of—

“(A) studying practice patterns; and

“(B) collecting and reporting data on performance measures developed under sections 749(d)(3), 757(d)(3), and 762(a)(3).

“(3) GUIDELINES.—A longitudinal evaluation shall comply with guidelines issued under sections 749(d)(4), 757(d)(4), and 762(a)(4).

“(4) ELIGIBLE ENTITIES.—To be eligible to obtain an increase under this section, an entity shall be a recipient of a grant or contract under this title.”; and

(3) in subsection (e), as so redesignated—

(A) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—

“(A) NATIONAL CENTER.—To carry out subsection (b), there are authorized to be appropriated \$7,500,000 for each of fiscal years 2010 through 2014.

“(B) STATE AND REGIONAL CENTERS.—To carry out subsection (c), there are authorized to be appropriated \$4,500,000 for each of fiscal years 2010 through 2014.

“(C) GRANTS FOR LONGITUDINAL EVALUATIONS.—To carry out subsection (d), there are authorized to be appropriated such sums as may be necessary for fiscal years 2010 through 2014.”; and

(4) in paragraph (2), by striking “subsection (a)” and inserting “paragraph (1)”.

(b) TRANSFERS.—Not later than 180 days after the date of enactment of this Act, the responsibilities and resources of the National Center for Health Workforce Analysis, as in effect on the date before the date of enactment of this Act, shall be transferred to the National Center for Health Care Workforce Analysis established under section 761 of the Public Health Service Act, as amended by subsection (a).

(c) USE OF LONGITUDINAL EVALUATIONS.—Section 791(a)(1) of the Public Health Service Act (42 U.S.C. 295j(a)(1)) is amended—

(1) in subparagraph (A), by striking “or” at the end;

(2) in subparagraph (B), by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(C) utilizes a longitudinal evaluation (as described in section 761(d)(2)) and reports data from such system to the national workforce database (as established under section 761(b)(2)(E)).”.

(d) PERFORMANCE MEASURES; GUIDELINES FOR LONGITUDINAL EVALUATIONS.—

(1) ADVISORY COMMITTEE ON TRAINING IN PRIMARY CARE MEDICINE AND DENTISTRY.—Section 748(d) of the Public Health Service Act is amended—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(3) develop, publish, and implement performance measures for programs under this part;

“(4) develop and publish guidelines for longitudinal evaluations (as described in section 761(d)(2)) for programs under this part; and

“(5) recommend appropriation levels for programs under this part.”.

Appropriation
authorization.

Deadline.
42 USC 294n
note.

42 USC 293l.

42 USC 294f.

(2) ADVISORY COMMITTEE ON INTERDISCIPLINARY, COMMUNITY-BASED LINKAGES.—Section 756(d) of the Public Health Service Act is amended—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(3) develop, publish, and implement performance measures for programs under this part;

“(4) develop and publish guidelines for longitudinal evaluations (as described in section 761(d)(2)) for programs under this part; and

“(5) recommend appropriation levels for programs under this part.”.

(3) ADVISORY COUNCIL ON GRADUATE MEDICAL EDUCATION.—Section 762(a) of the Public Health Service Act (42 U.S.C. 294o(a)) is amended—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(3) develop, publish, and implement performance measures for programs under this title, except for programs under part C or D;

“(4) develop and publish guidelines for longitudinal evaluations (as described in section 761(d)(2)) for programs under this title, except for programs under part C or D; and

“(5) recommend appropriation levels for programs under this title, except for programs under part C or D.”.

Subtitle C—Increasing the Supply of the Health Care Workforce

SEC. 5201. FEDERALLY SUPPORTED STUDENT LOAN FUNDS.

(a) MEDICAL SCHOOLS AND PRIMARY HEALTH CARE.—Section 723 of the Public Health Service Act (42 U.S.C. 292s) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) to practice in such care for 10 years (including residency training in primary health care) or through the date on which the loan is repaid in full, whichever occurs first.”; and

(B) by striking paragraph (3) and inserting the following:

“(3) NONCOMPLIANCE BY STUDENT.—Each agreement entered into with a student pursuant to paragraph (1) shall provide that, if the student fails to comply with such agreement, the loan involved will begin to accrue interest at a rate of 2 percent per year greater than the rate at which the student would pay if compliant in such year.”; and

(2) by adding at the end the following:

“(d) SENSE OF CONGRESS.—It is the sense of Congress that funds repaid under the loan program under this section should not be transferred to the Treasury of the United States or otherwise used for any other purpose other than to carry out this section.”.

(b) **STUDENT LOAN GUIDELINES.**—The Secretary of Health and Human Services shall not require parental financial information for an independent student to determine financial need under section 723 of the Public Health Service Act (42 U.S.C. 292s) and the determination of need for such information shall be at the discretion of applicable school loan officer. The Secretary shall amend guidelines issued by the Health Resources and Services Administration in accordance with the preceding sentence.

42 USC 292s
note.

SEC. 5202. NURSING STUDENT LOAN PROGRAM.

(a) **LOAN AGREEMENTS.**—Section 836(a) of the Public Health Service Act (42 U.S.C. 297b(a)) is amended—

(1) by striking “\$2,500” and inserting “\$3,300”;

(2) by striking “\$4,000” and inserting “\$5,200”; and

(3) by striking “\$13,000” and all that follows through the period and inserting “\$17,000 in the case of any student during fiscal years 2010 and 2011. After fiscal year 2011, such amounts shall be adjusted to provide for a cost-of-attendance increase for the yearly loan rate and the aggregate of the loans.”.

(b) **LOAN PROVISIONS.**—Section 836(b) of the Public Health Service Act (42 U.S.C. 297b(b)) is amended—

(1) in paragraph (1)(C), by striking “1986” and inserting “2000”; and

(2) in paragraph (3), by striking “the date of enactment of the Nurse Training Amendments of 1979” and inserting “September 29, 1995”.

SEC. 5203. HEALTH CARE WORKFORCE LOAN REPAYMENT PROGRAMS.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.) is amended by adding at the end the following:

“Subpart 3—Recruitment and Retention Programs

“SEC. 775. INVESTMENT IN TOMORROW’S PEDIATRIC HEALTH CARE WORKFORCE.

42 USC 295f.

“(a) **ESTABLISHMENT.**—The Secretary shall establish and carry out a pediatric specialty loan repayment program under which the eligible individual agrees to be employed full-time for a specified period (which shall not be less than 2 years) in providing pediatric medical subspecialty, pediatric surgical specialty, or child and adolescent mental and behavioral health care, including substance abuse prevention and treatment services.

“(b) **PROGRAM ADMINISTRATION.**—Through the program established under this section, the Secretary shall enter into contracts with qualified health professionals under which—

Contracts.

“(1) such qualified health professionals will agree to provide pediatric medical subspecialty, pediatric surgical specialty, or child and adolescent mental and behavioral health care in an area with a shortage of the specified pediatric subspecialty that has a sufficient pediatric population to support such pediatric subspecialty, as determined by the Secretary; and

“(2) the Secretary agrees to make payments on the principal and interest of undergraduate, graduate, or graduate medical education loans of professionals described in paragraph (1) of not more than \$35,000 a year for each year of agreed upon service under such paragraph for a period of not more than 3 years during the qualified health professional’s—

“(A) participation in an accredited pediatric medical subspecialty, pediatric surgical specialty, or child and adolescent mental health subspecialty residency or fellowship; or

“(B) employment as a pediatric medical subspecialist, pediatric surgical specialist, or child and adolescent mental health professional serving an area or population described in such paragraph.

“(c) IN GENERAL.—

Definitions.

“(1) ELIGIBLE INDIVIDUALS.—

“(A) PEDIATRIC MEDICAL SPECIALISTS AND PEDIATRIC SURGICAL SPECIALISTS.—For purposes of contracts with respect to pediatric medical specialists and pediatric surgical specialists, the term ‘qualified health professional’ means a licensed physician who—

“(i) is entering or receiving training in an accredited pediatric medical subspecialty or pediatric surgical specialty residency or fellowship; or

“(ii) has completed (but not prior to the end of the calendar year in which this section is enacted) the training described in subparagraph (B).

“(B) CHILD AND ADOLESCENT MENTAL AND BEHAVIORAL HEALTH.—For purposes of contracts with respect to child and adolescent mental and behavioral health care, the term ‘qualified health professional’ means a health care professional who—

“(i) has received specialized training or clinical experience in child and adolescent mental health in psychiatry, psychology, school psychology, behavioral pediatrics, psychiatric nursing, social work, school social work, substance abuse disorder prevention and treatment, marriage and family therapy, school counseling, or professional counseling;

“(ii) has a license or certification in a State to practice allopathic medicine, osteopathic medicine, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; or

“(iii) is a mental health service professional who completed (but not before the end of the calendar year in which this section is enacted) specialized training or clinical experience in child and adolescent mental health described in clause (i).

“(2) ADDITIONAL ELIGIBILITY REQUIREMENTS.—The Secretary may not enter into a contract under this subsection with an eligible individual unless—

“(A) the individual agrees to work in, or for a provider serving, a health professional shortage area or medically underserved area, or to serve a medically underserved population;

“(B) the individual is a United States citizen or a permanent legal United States resident; and

“(C) if the individual is enrolled in a graduate program, the program is accredited, and the individual has an acceptable level of academic standing (as determined by the Secretary).

“(d) **PRIORITY.**—In entering into contracts under this subsection, the Secretary shall give priority to applicants who—

“(1) are or will be working in a school or other pre-kindergarten, elementary, or secondary education setting;

“(2) have familiarity with evidence-based methods and cultural and linguistic competence health care services; and

“(3) demonstrate financial need.

“(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$30,000,000 for each of fiscal years 2010 through 2014 to carry out subsection (c)(1)(A) and \$20,000,000 for each of fiscal years 2010 through 2013 to carry out subsection (c)(1)(B).”.

SEC. 5204. PUBLIC HEALTH WORKFORCE RECRUITMENT AND RETENTION PROGRAMS.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.), as amended by section 5203, is further amended by adding at the end the following:

“SEC. 776. PUBLIC HEALTH WORKFORCE LOAN REPAYMENT PROGRAM. 42 USC 295f–1.

“(a) **ESTABLISHMENT.**—The Secretary shall establish the Public Health Workforce Loan Repayment Program (referred to in this section as the ‘Program’) to assure an adequate supply of public health professionals to eliminate critical public health workforce shortages in Federal, State, local, and tribal public health agencies.

“(b) **ELIGIBILITY.**—To be eligible to participate in the Program, an individual shall—

“(1)(A) be accepted for enrollment, or be enrolled, as a student in an accredited academic educational institution in a State or territory in the final year of a course of study or program leading to a public health or health professions degree or certificate; and have accepted employment with a Federal, State, local, or tribal public health agency, or a related training fellowship, as recognized by the Secretary, to commence upon graduation;

“(B)(i) have graduated, during the preceding 10-year period, from an accredited educational institution in a State or territory and received a public health or health professions degree or certificate; and

“(ii) be employed by, or have accepted employment with, a Federal, State, local, or tribal public health agency or a related training fellowship, as recognized by the Secretary;

“(2) be a United States citizen; and

“(3)(A) submit an application to the Secretary to participate in the Program;

“(B) execute a written contract as required in subsection (c); and

“(4) not have received, for the same service, a reduction of loan obligations under section 455(m), 428J, 428K, 428L, or 460 of the Higher Education Act of 1965.

“(c) **CONTRACT.**—The written contract (referred to in this section as the ‘written contract’) between the Secretary and an individual shall contain—

“(1) an agreement on the part of the Secretary that the Secretary will repay on behalf of the individual loans incurred by the individual in the pursuit of the relevant degree or certificate in accordance with the terms of the contract;

“(2) an agreement on the part of the individual that the individual will serve in the full-time employment of a Federal,

State, local, or tribal public health agency or a related fellowship program in a position related to the course of study or program for which the contract was awarded for a period of time (referred to in this section as the ‘period of obligated service’) equal to the greater of—

“(A) 3 years; or

“(B) such longer period of time as determined appropriate by the Secretary and the individual;

“(3) an agreement, as appropriate, on the part of the individual to relocate to a priority service area (as determined by the Secretary) in exchange for an additional loan repayment incentive amount to be determined by the Secretary;

“(4) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual that is conditioned thereon, is contingent on funds being appropriated for loan repayments under this section;

“(5) a statement of the damages to which the United States is entitled, under this section for the individual’s breach of the contract; and

“(6) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

“(d) PAYMENTS.—

“(1) IN GENERAL.—A loan repayment provided for an individual under a written contract under the Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for tuition expenses incurred by the individual.

“(2) PAYMENTS FOR YEARS SERVED.—For each year of obligated service that an individual contracts to serve under subsection (c) the Secretary may pay up to \$35,000 on behalf of the individual for loans described in paragraph (1). With respect to participants under the Program whose total eligible loans are less than \$105,000, the Secretary shall pay an amount that does not exceed $\frac{1}{3}$ of the eligible loan balance for each year of obligated service of the individual.

“(3) TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary shall, in addition to such payments, make payments to the individual in an amount not to exceed 39 percent of the total amount of loan repayments made for the taxable year involved.

“(e) POSTPONING OBLIGATED SERVICE.—With respect to an individual receiving a degree or certificate from a health professions or other related school, the date of the initiation of the period of obligated service may be postponed as approved by the Secretary.

“(f) BREACH OF CONTRACT.—An individual who fails to comply with the contract entered into under subsection (c) shall be subject to the same financial penalties as provided for under section 338E for breaches of loan repayment contracts under section 338B.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$195,000,000 for fiscal

Penalty.

year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2015.”.

SEC. 5205. ALLIED HEALTH WORKFORCE RECRUITMENT AND RETENTION PROGRAMS.

(a) **PURPOSE.**—The purpose of this section is to assure an adequate supply of allied health professionals to eliminate critical allied health workforce shortages in Federal, State, local, and tribal public health agencies or in settings where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings, as recognized by the Secretary of Health and Human Services by authorizing an Allied Health Loan Forgiveness Program.

20 USC 1078–11
note.

(b) **ALLIED HEALTH WORKFORCE RECRUITMENT AND RETENTION PROGRAM.**—Section 428K of the Higher Education Act of 1965 (20 U.S.C. 1078–11) is amended—

(1) in subsection (b), by adding at the end the following:

“(18) **ALLIED HEALTH PROFESSIONALS.**—The individual is employed full-time as an allied health professional—

“(A) in a Federal, State, local, or tribal public health agency; or

“(B) in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.”; and

(2) in subsection (g)—

(A) by redesignating paragraphs (1) through (9) as paragraphs (2) through (10), respectively; and

(B) by inserting before paragraph (2) (as redesignated by subparagraph (A)) the following:

“(1) **ALLIED HEALTH PROFESSIONAL.**—The term ‘allied health professional’ means an allied health professional as defined in section 799B(5) of the Public Health Service Act (42 U.S.C. 295p(5)) who—

Definition.

“(A) has graduated and received an allied health professions degree or certificate from an institution of higher education; and

“(B) is employed with a Federal, State, local or tribal public health agency, or in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.”.

SEC. 5206. GRANTS FOR STATE AND LOCAL PROGRAMS.

(a) **IN GENERAL.**—Section 765(d) of the Public Health Service Act (42 U.S.C. 295(d)) is amended—

(1) in paragraph (7), by striking “; or” and inserting a semicolon;

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following:

“(8) public health workforce loan repayment programs; or”.

(b) TRAINING FOR MID-CAREER PUBLIC HEALTH PROFESSIONALS.—Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.), as amended by section 5204, is further amended by adding at the end the following:

42 USC 295f-2. **“SEC. 777. TRAINING FOR MID-CAREER PUBLIC AND ALLIED HEALTH PROFESSIONALS.**

“(a) IN GENERAL.—The Secretary may make grants to, or enter into contracts with, any eligible entity to award scholarships to eligible individuals to enroll in degree or professional training programs for the purpose of enabling mid-career professionals in the public health and allied health workforce to receive additional training in the field of public health and allied health.

Definitions.

“(b) ELIGIBILITY.—

“(1) ELIGIBLE ENTITY.—The term ‘eligible entity’ indicates an accredited educational institution that offers a course of study, certificate program, or professional training program in public or allied health or a related discipline, as determined by the Secretary

“(2) ELIGIBLE INDIVIDUALS.—The term ‘eligible individuals’ includes those individuals employed in public and allied health positions at the Federal, State, tribal, or local level who are interested in retaining or upgrading their education.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$60,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2015. Fifty percent of appropriated funds shall be allotted to public health mid-career professionals and 50 percent shall be allotted to allied health mid-career professionals.”.

SEC. 5207. FUNDING FOR NATIONAL HEALTH SERVICE CORPS.

Section 338H(a) of the Public Health Service Act (42 U.S.C. 254q(a)) is amended to read as follows:

“(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following:

“(1) For fiscal year 2010, \$320,461,632.

“(2) For fiscal year 2011, \$414,095,394.

“(3) For fiscal year 2012, \$535,087,442.

“(4) For fiscal year 2013, \$691,431,432.

“(5) For fiscal year 2014, \$893,456,433.

“(6) For fiscal year 2015, \$1,154,510,336.

“(7) For fiscal year 2016, and each subsequent fiscal year, the amount appropriated for the preceding fiscal year adjusted by the product of—

“(A) one plus the average percentage increase in the costs of health professions education during the prior fiscal year; and

“(B) one plus the average percentage change in the number of individuals residing in health professions shortage areas designated under section 333 during the prior fiscal year, relative to the number of individuals residing in such areas during the previous fiscal year.”.

SEC. 5208. NURSE-MANAGED HEALTH CLINICS.

(a) PURPOSE.—The purpose of this section is to fund the development and operation of nurse-managed health clinics.

42 USC 254c-1a
note.

(b) GRANTS.—Subpart 1 of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by inserting after section 330A the following:

“SEC. 330A-1. GRANTS TO NURSE-MANAGED HEALTH CLINICS.

42 USC 254c-1a.

“(a) DEFINITIONS.—

“(1) COMPREHENSIVE PRIMARY HEALTH CARE SERVICES.—

In this section, the term ‘comprehensive primary health care services’ means the primary health services described in section 330(b)(1).

“(2) NURSE-MANAGED HEALTH CLINIC.—The term ‘nurse-managed health clinic’ means a nurse-practice arrangement, managed by advanced practice nurses, that provides primary care or wellness services to underserved or vulnerable populations and that is associated with a school, college, university or department of nursing, federally qualified health center, or independent nonprofit health or social services agency.

“(b) AUTHORITY TO AWARD GRANTS.—The Secretary shall award grants for the cost of the operation of nurse-managed health clinics that meet the requirements of this section.

“(c) APPLICATIONS.—To be eligible to receive a grant under this section, an entity shall—

“(1) be an NMHC; and

“(2) submit to the Secretary an application at such time, in such manner, and containing—

“(A) assurances that nurses are the major providers of services at the NMHC and that at least 1 advanced practice nurse holds an executive management position within the organizational structure of the NMHC;

“(B) an assurance that the NMHC will continue providing comprehensive primary health care services or wellness services without regard to income or insurance status of the patient for the duration of the grant period; and

“(C) an assurance that, not later than 90 days of receiving a grant under this section, the NMHC will establish a community advisory committee, for which a majority of the members shall be individuals who are served by the NMHC.

“(d) GRANT AMOUNT.—The amount of any grant made under this section for any fiscal year shall be determined by the Secretary, taking into account—

Determination.

“(1) the financial need of the NMHC, considering State, local, and other operational funding provided to the NMHC; and

“(2) other factors, as the Secretary determines appropriate.

“(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated \$50,000,000 for the fiscal year 2010 and such sums as may be necessary for each of the fiscal years 2011 through 2014.”.

SEC. 5209. ELIMINATION OF CAP ON COMMISSIONED CORPS.

42 USC 238f note.

Section 202 of the Department of Health and Human Services Appropriations Act, 1993 (Public Law 102-394) is amended by striking “not to exceed 2,800”.

SEC. 5210. ESTABLISHING A READY RESERVE CORPS.

Section 203 of the Public Health Service Act (42 U.S.C. 204) is amended to read as follows:

“SEC. 203. COMMISSIONED CORPS AND READY RESERVE CORPS.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There shall be in the Service a commissioned Regular Corps and a Ready Reserve Corps for service in time of national emergency.

“(2) REQUIREMENT.—All commissioned officers shall be citizens of the United States and shall be appointed without regard to the civil-service laws and compensated without regard to the Classification Act of 1923, as amended.

President.

“(3) APPOINTMENT.—Commissioned officers of the Ready Reserve Corps shall be appointed by the President and commissioned officers of the Regular Corps shall be appointed by the President with the advice and consent of the Senate.

“(4) ACTIVE DUTY.—Commissioned officers of the Ready Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training.

“(5) WARRANT OFFICERS.—Warrant officers may be appointed to the Service for the purpose of providing support to the health and delivery systems maintained by the Service and any warrant officer appointed to the Service shall be considered for purposes of this Act and title 37, United States Code, to be a commissioned officer within the Commissioned Corps of the Service.

Effective date.

“(b) ASSIMILATING RESERVE CORP OFFICERS INTO THE REGULAR CORPS.—Effective on the date of enactment of the Patient Protection and Affordable Care Act, all individuals classified as officers in the Reserve Corps under this section (as such section existed on the day before the date of enactment of such Act) and serving on active duty shall be deemed to be commissioned officers of the Regular Corps.

“(c) PURPOSE AND USE OF READY RESEARCH.—

“(1) PURPOSE.—The purpose of the Ready Reserve Corps is to fulfill the need to have additional Commissioned Corps personnel available on short notice (similar to the uniformed service’s reserve program) to assist regular Commissioned Corps personnel to meet both routine public health and emergency response missions.

“(2) USES.—The Ready Reserve Corps shall—

“(A) participate in routine training to meet the general and specific needs of the Commissioned Corps;

“(B) be available and ready for involuntary calls to active duty during national emergencies and public health crises, similar to the uniformed service reserve personnel;

“(C) be available for backfilling critical positions left vacant during deployment of active duty Commissioned Corps members, as well as for deployment to respond to public health emergencies, both foreign and domestic; and

“(D) be available for service assignment in isolated, hardship, and medically underserved communities (as defined in section 799B) to improve access to health services.

“(d) FUNDING.—For the purpose of carrying out the duties and responsibilities of the Commissioned Corps under this section, there are authorized to be appropriated \$5,000,000 for each of fiscal years 2010 through 2014 for recruitment and training and \$12,500,000 for each of fiscal years 2010 through 2014 for the Ready Reserve Corps.”.

Subtitle D—Enhancing Health Care Workforce Education and Training

SEC. 5301. TRAINING IN FAMILY MEDICINE, GENERAL INTERNAL MEDICINE, GENERAL PEDIATRICS, AND PHYSICIAN ASSISTANTSHIP.

Part C of title VII (42 U.S.C. 293k et seq.) is amended by striking section 747 and inserting the following:

“SEC. 747. PRIMARY CARE TRAINING AND ENHANCEMENT.

42 USC 293k.

“(a) SUPPORT AND DEVELOPMENT OF PRIMARY CARE TRAINING PROGRAMS.—

“(1) IN GENERAL.—The Secretary may make grants to, or enter into contracts with, an accredited public or nonprofit private hospital, school of medicine or osteopathic medicine, academically affiliated physician assistant training program, or a public or private nonprofit entity which the Secretary has determined is capable of carrying out such grant or contract—

“(A) to plan, develop, operate, or participate in an accredited professional training program, including an accredited residency or internship program in the field of family medicine, general internal medicine, or general pediatrics for medical students, interns, residents, or practicing physicians as defined by the Secretary;

“(B) to provide need-based financial assistance in the form of traineeships and fellowships to medical students, interns, residents, practicing physicians, or other medical personnel, who are participants in any such program, and who plan to specialize or work in the practice of the fields defined in subparagraph (A);

“(C) to plan, develop, and operate a program for the training of physicians who plan to teach in family medicine, general internal medicine, or general pediatrics training programs;

“(D) to plan, develop, and operate a program for the training of physicians teaching in community-based settings;

“(E) to provide financial assistance in the form of traineeships and fellowships to physicians who are participants in any such programs and who plan to teach or conduct research in a family medicine, general internal medicine, or general pediatrics training program;

“(F) to plan, develop, and operate a physician assistant education program, and for the training of individuals who will teach in programs to provide such training;

“(G) to plan, develop, and operate a demonstration program that provides training in new competencies, as recommended by the Advisory Committee on Training in

Primary Care Medicine and Dentistry and the National Health Care Workforce Commission established in section 5101 of the Patient Protection and Affordable Care Act, which may include—

“(i) providing training to primary care physicians relevant to providing care through patient-centered medical homes (as defined by the Secretary for purposes of this section);

“(ii) developing tools and curricula relevant to patient-centered medical homes; and

“(iii) providing continuing education to primary care physicians relevant to patient-centered medical homes; and

“(H) to plan, develop, and operate joint degree programs to provide interdisciplinary and interprofessional graduate training in public health and other health professions to provide training in environmental health, infectious disease control, disease prevention and health promotion, epidemiological studies and injury control.

“(2) DURATION OF AWARDS.—The period during which payments are made to an entity from an award of a grant or contract under this subsection shall be 5 years.

“(b) CAPACITY BUILDING IN PRIMARY CARE.—

“(1) IN GENERAL.—The Secretary may make grants to or enter into contracts with accredited schools of medicine or osteopathic medicine to establish, maintain, or improve—

“(A) academic units or programs that improve clinical teaching and research in fields defined in subsection (a)(1)(A); or

“(B) programs that integrate academic administrative units in fields defined in subsection (a)(1)(A) to enhance interdisciplinary recruitment, training, and faculty development.

“(2) PREFERENCE IN MAKING AWARDS UNDER THIS SUBSECTION.—In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

“(A) establishing academic units or programs in fields defined in subsection (a)(1)(A); or

“(B) substantially expanding such units or programs.

“(3) PRIORITIES IN MAKING AWARDS.—In awarding grants or contracts under paragraph (1), the Secretary shall give priority to qualified applicants that—

“(A) proposes a collaborative project between academic administrative units of primary care;

“(B) proposes innovative approaches to clinical teaching using models of primary care, such as the patient centered medical home, team management of chronic disease, and interprofessional integrated models of health care that incorporate transitions in health care settings and integration physical and mental health provision;

“(C) have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers trained, who enter and remain in primary care practice;

“(D) have a record of training individuals who are from underrepresented minority groups or from a rural or disadvantaged background;

“(E) provide training in the care of vulnerable populations such as children, older adults, homeless individuals, victims of abuse or trauma, individuals with mental health or substance-related disorders, individuals with HIV/AIDS, and individuals with disabilities;

“(F) establish formal relationships and submit joint applications with federally qualified health centers, rural health clinics, area health education centers, or clinics located in underserved areas or that serve underserved populations;

“(G) teach trainees the skills to provide interprofessional, integrated care through collaboration among health professionals;

“(H) provide training in enhanced communication with patients, evidence-based practice, chronic disease management, preventive care, health information technology, or other competencies as recommended by the Advisory Committee on Training in Primary Care Medicine and Dentistry and the National Health Care Workforce Commission established in section 5101 of the Patient Protection and Affordable Care Act; or

“(I) provide training in cultural competency and health literacy.

“(4) DURATION OF AWARDS.—The period during which payments are made to an entity from an award of a grant or contract under this subsection shall be 5 years.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—For purposes of carrying out this section (other than subsection (b)(1)(B)), there are authorized to be appropriated \$125,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.

“(2) TRAINING PROGRAMS.—Fifteen percent of the amount appropriated pursuant to paragraph (1) in each such fiscal year shall be allocated to the physician assistant training programs described in subsection (a)(1)(F), which prepare students for practice in primary care.

“(3) INTEGRATING ACADEMIC ADMINISTRATIVE UNITS.—For purposes of carrying out subsection (b)(1)(B), there are authorized to be appropriated \$750,000 for each of fiscal years 2010 through 2014.”.

SEC. 5302. TRAINING OPPORTUNITIES FOR DIRECT CARE WORKERS.

Part C of title VII of the Public Health Service Act (42 U.S.C. 293k et seq.) is amended by inserting after section 747, as amended by section 5301, the following:

“SEC. 747A. TRAINING OPPORTUNITIES FOR DIRECT CARE WORKERS. 42 USC 293k–1.

“(a) IN GENERAL.—The Secretary shall award grants to eligible entities to enable such entities to provide new training opportunities for direct care workers who are employed in long-term care settings such as nursing homes (as defined in section 1908(e)(1) of the Social Security Act (42 U.S.C. 1396g(e)(1))), assisted living facilities Grants.

and skilled nursing facilities, intermediate care facilities for individuals with mental retardation, home and community based settings, and any other setting the Secretary determines to be appropriate.

“(b) **ELIGIBILITY.**—To be eligible to receive a grant under this section, an entity shall—

“(1) be an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) that—

“(A) is accredited by a nationally recognized accrediting agency or association listed under section 101(c) of the Higher Education Act of 1965 (20 U.S.C. 1001(c)); and

“(B) has established a public-private educational partnership with a nursing home or skilled nursing facility, agency or entity providing home and community based services to individuals with disabilities, or other long-term care provider; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(c) **USE OF FUNDS.**—An eligible entity shall use amounts awarded under a grant under this section to provide assistance to eligible individuals to offset the cost of tuition and required fees for enrollment in academic programs provided by such entity.

“(d) **ELIGIBLE INDIVIDUAL.**—

“(1) **ELIGIBILITY.**—To be eligible for assistance under this section, an individual shall be enrolled in courses provided by a grantee under this subsection and maintain satisfactory academic progress in such courses.

“(2) **CONDITION OF ASSISTANCE.**—As a condition of receiving assistance under this section, an individual shall agree that, following completion of the assistance period, the individual will work in the field of geriatrics, disability services, long term services and supports, or chronic care management for a minimum of 2 years under guidelines set by the Secretary.

“(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section, \$10,000,000 for the period of fiscal years 2011 through 2013.”.

SEC. 5303. TRAINING IN GENERAL, PEDIATRIC, AND PUBLIC HEALTH DENTISTRY.

Part C of Title VII of the Public Health Service Act (42 U.S.C. 293k et seq.) is amended by—

42 USC 293l.

(1) redesignating section 748, as amended by section 5103 of this Act, as section 749; and

(2) inserting after section 747A, as added by section 5302, the following:

42 USC 293k-2.

“SEC. 748. TRAINING IN GENERAL, PEDIATRIC, AND PUBLIC HEALTH DENTISTRY.

“(a) **SUPPORT AND DEVELOPMENT OF DENTAL TRAINING PROGRAMS.**—

“(1) **IN GENERAL.**—The Secretary may make grants to, or enter into contracts with, a school of dentistry, public or non-profit private hospital, or a public or private nonprofit entity which the Secretary has determined is capable of carrying out such grant or contract—

“(A) to plan, develop, and operate, or participate in, an approved professional training program in the field

of general dentistry, pediatric dentistry, or public health dentistry for dental students, residents, practicing dentists, dental hygienists, or other approved primary care dental trainees, that emphasizes training for general, pediatric, or public health dentistry;

“(B) to provide financial assistance to dental students, residents, practicing dentists, and dental hygiene students who are in need thereof, who are participants in any such program, and who plan to work in the practice of general, pediatric, public health dentistry, or dental hygiene;

“(C) to plan, develop, and operate a program for the training of oral health care providers who plan to teach in general, pediatric, public health dentistry, or dental hygiene;

“(D) to provide financial assistance in the form of traineeships and fellowships to dentists who plan to teach or are teaching in general, pediatric, or public health dentistry;

“(E) to meet the costs of projects to establish, maintain, or improve dental faculty development programs in primary care (which may be departments, divisions or other units);

“(F) to meet the costs of projects to establish, maintain, or improve predoctoral and postdoctoral training in primary care programs;

“(G) to create a loan repayment program for faculty in dental programs; and

“(H) to provide technical assistance to pediatric training programs in developing and implementing instruction regarding the oral health status, dental care needs, and risk-based clinical disease management of all pediatric populations with an emphasis on underserved children.

“(2) FACULTY LOAN REPAYMENT.—

“(A) IN GENERAL.—A grant or contract under subsection (a)(1)(G) may be awarded to a program of general, pediatric, or public health dentistry described in such subsection to plan, develop, and operate a loan repayment program under which—

“(i) individuals agree to serve full-time as faculty members; and

“(ii) the program of general, pediatric or public health dentistry agrees to pay the principal and interest on the outstanding student loans of the individuals.

“(B) MANNER OF PAYMENTS.—With respect to the payments described in subparagraph (A)(ii), upon completion by an individual of each of the first, second, third, fourth, and fifth years of service, the program shall pay an amount equal to 10, 15, 20, 25, and 30 percent, respectively, of the individual's student loan balance as calculated based on principal and interest owed at the initiation of the agreement.

“(b) ELIGIBLE ENTITY.—For purposes of this subsection, entities eligible for such grants or contracts in general, pediatric, or public health dentistry shall include entities that have programs in dental or dental hygiene schools, or approved residency or advanced education programs in the practice of general, pediatric, or public health dentistry. Eligible entities may partner with schools of public

health to permit the education of dental students, residents, and dental hygiene students for a master's year in public health at a school of public health.

“(c) PRIORITIES IN MAKING AWARDS.—With respect to training provided for under this section, the Secretary shall give priority in awarding grants or contracts to the following:

“(1) Qualified applicants that propose collaborative projects between departments of primary care medicine and departments of general, pediatric, or public health dentistry.

“(2) Qualified applicants that have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers, who enter and remain in general, pediatric, or public health dentistry.

“(3) Qualified applicants that have a record of training individuals who are from a rural or disadvantaged background, or from underrepresented minorities.

“(4) Qualified applicants that establish formal relationships with Federally qualified health centers, rural health centers, or accredited teaching facilities and that conduct training of students, residents, fellows, or faculty at the center or facility.

“(5) Qualified applicants that conduct teaching programs targeting vulnerable populations such as older adults, homeless individuals, victims of abuse or trauma, individuals with mental health or substance-related disorders, individuals with disabilities, and individuals with HIV/AIDS, and in the risk-based clinical disease management of all populations.

“(6) Qualified applicants that include educational activities in cultural competency and health literacy.

“(7) Qualified applicants that have a high rate for placing graduates in practice settings that serve underserved areas or health disparity populations, or who achieve a significant increase in the rate of placing graduates in such settings.

“(8) Qualified applicants that intend to establish a special populations oral health care education center or training program for the didactic and clinical education of dentists, dental health professionals, and dental hygienists who plan to teach oral health care for people with developmental disabilities, cognitive impairment, complex medical problems, significant physical limitations, and vulnerable elderly.

“(d) APPLICATION.—An eligible entity desiring a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(e) DURATION OF AWARD.—The period during which payments are made to an entity from an award of a grant or contract under subsection (a) shall be 5 years. The provision of such payments shall be subject to annual approval by the Secretary and subject to the availability of appropriations for the fiscal year involved to make the payments.

“(f) AUTHORIZATIONS OF APPROPRIATIONS.—For the purpose of carrying out subsections (a) and (b), there is authorized to be appropriated \$30,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2015.

“(g) CARRYOVER FUNDS.—An entity that receives an award under this section may carry over funds from 1 fiscal year to another without obtaining approval from the Secretary. In no case

may any funds be carried over pursuant to the preceding sentence for more than 3 years.”.

SEC. 5304. ALTERNATIVE DENTAL HEALTH CARE PROVIDERS DEMONSTRATION PROJECT.

Subpart X of part D of title III of the Public Health Service Act (42 U.S.C. 256f et seq.) is amended by adding at the end the following:

“SEC. 340G-1. DEMONSTRATION PROGRAM.

42 USC 256g-1.

“(a) IN GENERAL.—

Grants.

“(1) AUTHORIZATION.—The Secretary is authorized to award grants to 15 eligible entities to enable such entities to establish a demonstration program to establish training programs to train, or to employ, alternative dental health care providers in order to increase access to dental health care services in rural and other underserved communities.

“(2) DEFINITION.—The term ‘alternative dental health care providers’ includes community dental health coordinators, advance practice dental hygienists, independent dental hygienists, supervised dental hygienists, primary care physicians, dental therapists, dental health aides, and any other health professional that the Secretary determines appropriate.

“(b) TIMEFRAME.—The demonstration projects funded under this section shall begin not later than 2 years after the date of enactment of this section, and shall conclude not later than 7 years after such date of enactment.

“(c) ELIGIBLE ENTITIES.—To be eligible to receive a grant under subsection (a), an entity shall—

“(1) be—

“(A) an institution of higher education, including a community college;

“(B) a public-private partnership;

“(C) a federally qualified health center;

“(D) an Indian Health Service facility or a tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act);

“(E) a State or county public health clinic, a health facility operated by an Indian tribe or tribal organization, or urban Indian organization providing dental services; or

“(F) a public hospital or health system;

“(2) be within a program accredited by the Commission on Dental Accreditation or within a dental education program in an accredited institution; and

“(3) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(d) ADMINISTRATIVE PROVISIONS.—

“(1) AMOUNT OF GRANT.—Each grant under this section shall be in an amount that is not less than \$4,000,000 for the 5-year period during which the demonstration project being conducted.

“(2) DISBURSEMENT OF FUNDS.—

“(A) PRELIMINARY DISBURSEMENTS.—Beginning 1 year after the enactment of this section, the Secretary may disperse to any entity receiving a grant under this section

Effective date.

not more than 20 percent of the total funding awarded to such entity under such grant, for the purpose of enabling the entity to plan the demonstration project to be conducted under such grant.

“(B) SUBSEQUENT DISBURSEMENTS.—The remaining amount of grant funds not dispersed under subparagraph (A) shall be dispersed such that not less than 15 percent of such remaining amount is dispersed each subsequent year.

“(e) COMPLIANCE WITH STATE REQUIREMENTS.—Each entity receiving a grant under this section shall certify that it is in compliance with all applicable State licensing requirements.

Contracts.

“(f) EVALUATION.—The Secretary shall contract with the Director of the Institute of Medicine to conduct a study of the demonstration programs conducted under this section that shall provide analysis, based upon quantitative and qualitative data, regarding access to dental health care in the United States.

“(g) CLARIFICATION REGARDING DENTAL HEALTH AIDE PROGRAM.—Nothing in this section shall prohibit a dental health aide training program approved by the Indian Health Service from being eligible for a grant under this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.”.

SEC. 5305. GERIATRIC EDUCATION AND TRAINING; CAREER AWARDS; COMPREHENSIVE GERIATRIC EDUCATION.

(a) WORKFORCE DEVELOPMENT; CAREER AWARDS.—Section 753 of the Public Health Service Act (42 U.S.C. 294c) is amended by adding at the end the following:

Grants.
Contracts.

“(d) GERIATRIC WORKFORCE DEVELOPMENT.—

“(1) IN GENERAL.—The Secretary shall award grants or contracts under this subsection to entities that operate a geriatric education center pursuant to subsection (a)(1).

“(2) APPLICATION.—To be eligible for an award under paragraph (1), an entity described in such paragraph shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(3) USE OF FUNDS.—Amounts awarded under a grant or contract under paragraph (1) shall be used to—

“(A) carry out the fellowship program described in paragraph (4); and

“(B) carry out 1 of the 2 activities described in paragraph (5).

“(4) FELLOWSHIP PROGRAM.—

“(A) IN GENERAL.—Pursuant to paragraph (3), a geriatric education center that receives an award under this subsection shall use such funds to offer short-term intensive courses (referred to in this subsection as a ‘fellowship’) that focus on geriatrics, chronic care management, and long-term care that provide supplemental training for faculty members in medical schools and other health professions schools with programs in psychology, pharmacy, nursing, social work, dentistry, public health, allied health, or other health disciplines, as approved by the Secretary. Such a fellowship shall be open to current faculty, and

appropriately credentialed volunteer faculty and practitioners, who do not have formal training in geriatrics, to upgrade their knowledge and clinical skills for the care of older adults and adults with functional limitations and to enhance their interdisciplinary teaching skills.

“(B) LOCATION.—A fellowship shall be offered either at the geriatric education center that is sponsoring the course, in collaboration with other geriatric education centers, or at medical schools, schools of dentistry, schools of nursing, schools of pharmacy, schools of social work, graduate programs in psychology, or allied health and other health professions schools approved by the Secretary with which the geriatric education centers are affiliated.

“(C) CME CREDIT.—Participation in a fellowship under this paragraph shall be accepted with respect to complying with continuing health profession education requirements. As a condition of such acceptance, the recipient shall agree to subsequently provide a minimum of 18 hours of voluntary instructional support through a geriatric education center that is providing clinical training to students or trainees in long-term care settings.

“(5) ADDITIONAL REQUIRED ACTIVITIES DESCRIBED.—Pursuant to paragraph (3), a geriatric education center that receives an award under this subsection shall use such funds to carry out 1 of the following 2 activities.

“(A) FAMILY CAREGIVER AND DIRECT CARE PROVIDER TRAINING.—A geriatric education center that receives an award under this subsection shall offer at least 2 courses each year, at no charge or nominal cost, to family caregivers and direct care providers that are designed to provide practical training for supporting frail elders and individuals with disabilities. The Secretary shall require such Centers to work with appropriate community partners to develop training program content and to publicize the availability of training courses in their service areas. All family caregiver and direct care provider training programs shall include instruction on the management of psychological and behavioral aspects of dementia, communication techniques for working with individuals who have dementia, and the appropriate, safe, and effective use of medications for older adults.

Requirements.

“(B) INCORPORATION OF BEST PRACTICES.—A geriatric education center that receives an award under this subsection shall develop and include material on depression and other mental disorders common among older adults, medication safety issues for older adults, and management of the psychological and behavioral aspects of dementia and communication techniques with individuals who have dementia in all training courses, where appropriate.

“(6) TARGETS.—A geriatric education center that receives an award under this subsection shall meet targets approved by the Secretary for providing geriatric training to a certain number of faculty or practitioners during the term of the award, as well as other parameters established by the Secretary.

“(7) AMOUNT OF AWARD.—An award under this subsection shall be in an amount of \$150,000. Not more than 24 geriatric education centers may receive an award under this subsection.

“(8) MAINTENANCE OF EFFORT.—A geriatric education center that receives an award under this subsection shall provide assurances to the Secretary that funds provided to the geriatric education center under this subsection will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended by the geriatric education center.

“(9) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other funding available to carry out this section, there is authorized to be appropriated to carry out this subsection, \$10,800,000 for the period of fiscal year 2011 through 2014.

“(e) GERIATRIC CAREER INCENTIVE AWARDS.—

Grants.
Contracts.

“(1) IN GENERAL.—The Secretary shall award grants or contracts under this section to individuals described in paragraph (2) to foster greater interest among a variety of health professionals in entering the field of geriatrics, long-term care, and chronic care management.

“(2) ELIGIBLE INDIVIDUALS.—To be eligible to received an award under paragraph (1), an individual shall—

“(A) be an advanced practice nurse, a clinical social worker, a pharmacist, or student of psychology who is pursuing a doctorate or other advanced degree in geriatrics or related fields in an accredited health professions school; and

“(B) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(3) CONDITION OF AWARD.—As a condition of receiving an award under this subsection, an individual shall agree that, following completion of the award period, the individual will teach or practice in the field of geriatrics, long-term care, or chronic care management for a minimum of 5 years under guidelines set by the Secretary.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, \$10,000,000 for the period of fiscal years 2011 through 2013.”.

(b) EXPANSION OF ELIGIBILITY FOR GERIATRIC ACADEMIC CAREER AWARDS; PAYMENT TO INSTITUTION.—Section 753(c) of the Public Health Service Act 294(c)) is amended—

42 USC 294c.

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively;

(2) by striking paragraph (2) through paragraph (3) and inserting the following:

“(2) ELIGIBLE INDIVIDUALS.—To be eligible to receive an Award under paragraph (1), an individual shall—

“(A) be board certified or board eligible in internal medicine, family practice, psychiatry, or licensed dentistry, or have completed any required training in a discipline and employed in an accredited health professions school that is approved by the Secretary;

“(B) have completed an approved fellowship program in geriatrics or have completed specialty training in geriatrics as required by the discipline and any addition geriatrics training as required by the Secretary; and

“(C) have a junior (non-tenured) faculty appointment at an accredited (as determined by the Secretary) school of medicine, osteopathic medicine, nursing, social work,

psychology, dentistry, pharmacy, or other allied health disciplines in an accredited health professions school that is approved by the Secretary.

“(3) LIMITATIONS.—No Award under paragraph (1) may be made to an eligible individual unless the individual—

“(A) has submitted to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, and the Secretary has approved such application;

“(B) provides, in such form and manner as the Secretary may require, assurances that the individual will meet the service requirement described in paragraph (6); and

“(C) provides, in such form and manner as the Secretary may require, assurances that the individual has a full-time faculty appointment in a health professions institution and documented commitment from such institution to spend 75 percent of the total time of such individual on teaching and developing skills in interdisciplinary education in geriatrics.

“(4) MAINTENANCE OF EFFORT.—An eligible individual that receives an Award under paragraph (1) shall provide assurances to the Secretary that funds provided to the eligible individual under this subsection will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended by the eligible individual.”; and

(3) in paragraph (5), as so designated—

(A) in subparagraph (A)—

(i) by inserting “for individuals who are physicians” after “this section”; and

(ii) by inserting after the period at the end the following: “The Secretary shall determine the amount of an Award under this section for individuals who are not physicians.”; and

(B) by adding at the end the following:

“(C) PAYMENT TO INSTITUTION.—The Secretary shall make payments to institutions which include schools of medicine, osteopathic medicine, nursing, social work, psychology, dentistry, and pharmacy, or other allied health discipline in an accredited health professions school that is approved by the Secretary.”.

Determination.

(c) COMPREHENSIVE GERIATRIC EDUCATION.—Section 855 of the Public Health Service Act (42 U.S.C. 298) is amended—

(1) in subsection (b)—

(A) in paragraph (3), by striking “or” at the end;

(B) in paragraph (4), by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(5) establish traineeships for individuals who are preparing for advanced education nursing degrees in geriatric nursing, long-term care, gero-psychiatric nursing or other nursing areas that specialize in the care of the elderly population.”; and

(2) in subsection (e), by striking “2003 through 2007” and inserting “2010 through 2014”.

SEC. 5306. MENTAL AND BEHAVIORAL HEALTH EDUCATION AND TRAINING GRANTS.

(a) IN GENERAL.—Part D of title VII (42 U.S.C. 294 et seq.) is amended by—

42 USC 294g.

(1) striking section 757;

42 USC 294f.

(2) redesignating section 756 (as amended by section 5103) as section 757; and

(3) inserting after section 755 the following:

42 USC 294e-1.

“SEC. 756. MENTAL AND BEHAVIORAL HEALTH EDUCATION AND TRAINING GRANTS.

“(a) GRANTS AUTHORIZED.—The Secretary may award grants to eligible institutions of higher education to support the recruitment of students for, and education and clinical experience of the students in—

“(1) baccalaureate, master’s, and doctoral degree programs of social work, as well as the development of faculty in social work;

“(2) accredited master’s, doctoral, internship, and post-doctoral residency programs of psychology for the development and implementation of interdisciplinary training of psychology graduate students for providing behavioral and mental health services, including substance abuse prevention and treatment services;

“(3) accredited institutions of higher education or accredited professional training programs that are establishing or expanding internships or other field placement programs in child and adolescent mental health in psychiatry, psychology, school psychology, behavioral pediatrics, psychiatric nursing, social work, school social work, substance abuse prevention and treatment, marriage and family therapy, school counseling, or professional counseling; and

“(4) State-licensed mental health nonprofit and for-profit organizations to enable such organizations to pay for programs for preservice or in-service training of paraprofessional child and adolescent mental health workers.

“(b) ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, an institution shall demonstrate—

“(1) participation in the institutions’ programs of individuals and groups from different racial, ethnic, cultural, geographic, religious, linguistic, and class backgrounds, and different genders and sexual orientations;

“(2) knowledge and understanding of the concerns of the individuals and groups described in subsection (a);

“(3) any internship or other field placement program assisted under the grant will prioritize cultural and linguistic competency;

“(4) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

“(5) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

“(c) INSTITUTIONAL REQUIREMENT.—For grants authorized under subsection (a)(1), at least 4 of the grant recipients shall

be historically black colleges or universities or other minority-serving institutions.

“(d) PRIORITY.—

“(1) In selecting the grant recipients in social work under subsection (a)(1), the Secretary shall give priority to applicants that—

“(A) are accredited by the Council on Social Work Education;

“(B) have a graduation rate of not less than 80 percent for social work students; and

“(C) exhibit an ability to recruit social workers from and place social workers in areas with a high need and high demand population.

“(2) In selecting the grant recipients in graduate psychology under subsection (a)(2), the Secretary shall give priority to institutions in which training focuses on the needs of vulnerable groups such as older adults and children, individuals with mental health or substance-related disorders, victims of abuse or trauma and of combat stress disorders such as posttraumatic stress disorder and traumatic brain injuries, homeless individuals, chronically ill persons, and their families.

“(3) In selecting the grant recipients in training programs in child and adolescent mental health under subsections (a)(3) and (a)(4), the Secretary shall give priority to applicants that—

“(A) have demonstrated the ability to collect data on the number of students trained in child and adolescent mental health and the populations served by such students after graduation or completion of preservice or in-service training;

“(B) have demonstrated familiarity with evidence-based methods in child and adolescent mental health services, including substance abuse prevention and treatment services;

“(C) have programs designed to increase the number of professionals and paraprofessionals serving high-priority populations and to applicants who come from high-priority communities and plan to serve medically underserved populations, in health professional shortage areas, or in medically underserved areas;

“(D) offer curriculum taught collaboratively with a family on the consumer and family lived experience or the importance of family-professional or family-paraprofessional partnerships; and

“(E) provide services through a community mental health program described in section 1913(b)(1).

“(e) AUTHORIZATION OF APPROPRIATION.—For the fiscal years 2010 through 2013, there is authorized to be appropriated to carry out this section—

“(1) \$8,000,000 for training in social work in subsection (a)(1);

“(2) \$12,000,000 for training in graduate psychology in subsection (a)(2), of which not less than \$10,000,000 shall be allocated for doctoral, postdoctoral, and internship level training;

“(3) \$10,000,000 for training in professional child and adolescent mental health in subsection (a)(3); and

“(4) \$5,000,000 for training in paraprofessional child and adolescent work in subsection (a)(4).”

42 USC 294f.

(b) CONFORMING AMENDMENTS.—Section 757(b)(2) of the Public Health Service Act, as redesignated by subsection (a), is amended by striking “sections 751(a)(1)(A), 751(a)(1)(B), 753(b), 754(3)(A), and 755(b)” and inserting “sections 751(b)(1)(A), 753(b), and 755(b)”.

SEC. 5307. CULTURAL COMPETENCY, PREVENTION, AND PUBLIC HEALTH AND INDIVIDUALS WITH DISABILITIES TRAINING.

(a) TITLE VII.—Section 741 of the Public Health Service Act (42 U.S.C. 293e) is amended—

(1) in subsection (a)—

(A) by striking the subsection heading and inserting “CULTURAL COMPETENCY, PREVENTION, AND PUBLIC HEALTH AND INDIVIDUALS WITH DISABILITY GRANTS”; and

(B) in paragraph (1), by striking “for the purpose of” and all that follows through the period at the end and inserting “for the development, evaluation, and dissemination of research, demonstration projects, and model curricula for cultural competency, prevention, public health proficiency, reducing health disparities, and aptitude for working with individuals with disabilities training for use in health professions schools and continuing education programs, and for other purposes determined as appropriate by the Secretary.”; and

(2) by striking subsection (b) and inserting the following:

“(b) COLLABORATION.—In carrying out subsection (a), the Secretary shall collaborate with health professional societies, licensing and accreditation entities, health professions schools, and experts in minority health and cultural competency, prevention, and public health and disability groups, community-based organizations, and other organizations as determined appropriate by the Secretary. The Secretary shall coordinate with curricula and research and demonstration projects developed under section 807.

“(c) DISSEMINATION.—

“(1) IN GENERAL.—Model curricula developed under this section shall be disseminated through the Internet Clearinghouse under section 270 and such other means as determined appropriate by the Secretary.

“(2) EVALUATION.—The Secretary shall evaluate the adoption and the implementation of cultural competency, prevention, and public health, and working with individuals with a disability training curricula, and the facilitate inclusion of these competency measures in quality measurement systems as appropriate.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2015.”.

(b) TITLE VIII.—Section 807 of the Public Health Service Act (42 U.S.C. 296e–1) is amended—

(1) in subsection (a)—

(A) by striking the subsection heading and inserting “CULTURAL COMPETENCY, PREVENTION, AND PUBLIC HEALTH AND INDIVIDUALS WITH DISABILITY GRANTS”; and

(B) by striking “for the purpose of” and all that follows through “health care.” and inserting “for the development,

evaluation, and dissemination of research, demonstration projects, and model curricula for cultural competency, prevention, public health proficiency, reducing health disparities, and aptitude for working with individuals with disabilities training for use in health professions schools and continuing education programs, and for other purposes determined as appropriate by the Secretary.”; and

(2) by redesignating subsection (b) as subsection (d);

(3) by inserting after subsection (a) the following:

“(b) **COLLABORATION.**—In carrying out subsection (a), the Secretary shall collaborate with the entities described in section 741(b). The Secretary shall coordinate with curricula and research and demonstration projects developed under such section 741.

“(c) **DISSEMINATION.**—Model curricula developed under this section shall be disseminated and evaluated in the same manner as model curricula developed under section 741, as described in subsection (c) of such section.”; and

(4) in subsection (d), as so redesignated—

(A) by striking “subsection (a)” and inserting “this section”; and

(B) by striking “2001 through 2004” and inserting “2010 through 2015”.

SEC. 5308. ADVANCED NURSING EDUCATION GRANTS.

Section 811 of the Public Health Service Act (42 U.S.C. 296j) is amended—

(1) in subsection (c)—

(A) in the subsection heading, by striking “AND NURSE MIDWIFERY PROGRAMS”; and

(B) by striking “and nurse midwifery”;

(2) in subsection (f)—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2);

and

(3) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(4) by inserting after subsection (c), the following:

“(d) **AUTHORIZED NURSE-MIDWIFERY PROGRAMS.**—Midwifery programs that are eligible for support under this section are educational programs that—

“(1) have as their objective the education of midwives; and

“(2) are accredited by the American College of Nurse-Midwives Accreditation Commission for Midwifery Education.”.

SEC. 5309. NURSE EDUCATION, PRACTICE, AND RETENTION GRANTS.

(a) **IN GENERAL.**—Section 831 of the Public Health Service Act (42 U.S.C. 296p) is amended—

(1) in the section heading, by striking “**RETENTION**” and inserting “**QUALITY**”;

(2) in subsection (a)—

(A) in paragraph (1), by adding “or” after the semicolon;

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2);

(3) in subsection (b)(3), by striking “managed care, quality improvement” and inserting “coordinated care”;

(4) in subsection (g), by inserting “, as defined in section 801(2),” after “school of nursing”; and

(5) in subsection (h), by striking “2003 through 2007” and inserting “2010 through 2014”.

(b) NURSE RETENTION GRANTS.—Title VIII of the Public Health Service Act is amended by inserting after section 831 (42 U.S.C. 296b) the following:

42 USC 296p–1.

“SEC. 831A. NURSE RETENTION GRANTS.

“(a) RETENTION PRIORITY AREAS.—The Secretary may award grants to, and enter into contracts with, eligible entities to enhance the nursing workforce by initiating and maintaining nurse retention programs pursuant to subsection (b) or (c).

“(b) GRANTS FOR CAREER LADDER PROGRAM.—The Secretary may award grants to, and enter into contracts with, eligible entities for programs—

“(1) to promote career advancement for individuals including licensed practical nurses, licensed vocational nurses, certified nurse assistants, home health aides, diploma degree or associate degree nurses, to become baccalaureate prepared registered nurses or advanced education nurses in order to meet the needs of the registered nurse workforce;

“(2) developing and implementing internships and residency programs in collaboration with an accredited school of nursing, as defined by section 801(2), to encourage mentoring and the development of specialties; or

“(3) to assist individuals in obtaining education and training required to enter the nursing profession and advance within such profession.

“(c) ENHANCING PATIENT CARE DELIVERY SYSTEMS.—

“(1) GRANTS.—The Secretary may award grants to eligible entities to improve the retention of nurses and enhance patient care that is directly related to nursing activities by enhancing collaboration and communication among nurses and other health care professionals, and by promoting nurse involvement in the organizational and clinical decision-making processes of a health care facility.

“(2) PRIORITY.—In making awards of grants under this subsection, the Secretary shall give preference to applicants that have not previously received an award under this subsection (or section 831(c) as such section existed on the day before the date of enactment of this section).

“(3) CONTINUATION OF AN AWARD.—The Secretary shall make continuation of any award under this subsection beyond the second year of such award contingent on the recipient of such award having demonstrated to the Secretary measurable and substantive improvement in nurse retention or patient care.

“(d) OTHER PRIORITY AREAS.—The Secretary may award grants to, or enter into contracts with, eligible entities to address other areas that are of high priority to nurse retention, as determined by the Secretary.

“(e) REPORT.—The Secretary shall submit to the Congress before the end of each fiscal year a report on the grants awarded and the contracts entered into under this section. Each such report shall identify the overall number of such grants and contracts and provide an explanation of why each such grant or contract will meet the priority need of the nursing workforce.

“(f) **ELIGIBLE ENTITY.**—For purposes of this section, the term ‘eligible entity’ includes an accredited school of nursing, as defined by section 801(2), a health care facility, or a partnership of such a school and facility.

“(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2012.”.

SEC. 5310. LOAN REPAYMENT AND SCHOLARSHIP PROGRAM.

(a) **LOAN REPAYMENTS AND SCHOLARSHIPS.**—Section 846(a)(3) of the Public Health Service Act (42 U.S.C. 297n(a)(3)) is amended by inserting before the semicolon the following: “, or in a accredited school of nursing, as defined by section 801(2), as nurse faculty”.

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—Title VIII (42 U.S.C. 296 et seq.) is amended—

(1) by redesignating section 810 (relating to prohibition against discrimination by schools on the basis of sex) as section 809 and moving such section so that it follows section 808;

(2) in sections 835, 836, 838, 840, and 842, by striking the term “this subpart” each place it appears and inserting “this part”;

(3) in section 836(h), by striking the last sentence;

(4) in section 836, by redesignating subsection (l) as subsection (k);

(5) in section 839, by striking “839” and all that follows through “(a)” and inserting “839. (a)”;

(6) in section 835(b), by striking “841” each place it appears and inserting “871”;

(7) by redesignating section 841 as section 871, moving part F to the end of the title, and redesignating such part as part I;

(8) in part G—

(A) by redesignating section 845 as section 851; and

(B) by redesignating part G as part F;

(9) in part H—

(A) by redesignating sections 851 and 852 as sections 861 and 862, respectively; and

(B) by redesignating part H as part G; and

(10) in part I—

(A) by redesignating section 855, as amended by section 5305, as section 865; and

(B) by redesignating part I as part H.

SEC. 5311. NURSE FACULTY LOAN PROGRAM.

(a) **IN GENERAL.**—Section 846A of the Public Health Service Act (42 U.S.C. 297n–1) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking “ESTABLISHMENT” and inserting “SCHOOL OF NURSING STUDENT LOAN FUND”; and

(B) by inserting “accredited” after “agreement with any”;

(2) in subsection (c)—

(A) in paragraph (2), by striking “\$30,000” and all that follows through the semicolon and inserting “\$35,500, during fiscal years 2010 and 2011 fiscal years (after fiscal year 2011, such amounts shall be adjusted to provide for

a cost-of-attendance increase for the yearly loan rate and the aggregate loan;” and

(B) in paragraph (3)(A), by inserting “an accredited” after “faculty member in”;

(3) in subsection (e), by striking “a school” and inserting “an accredited school”; and

(4) in subsection (f), by striking “2003 through 2007” and inserting “2010 through 2014”.

(b) **ELIGIBLE INDIVIDUAL STUDENT LOAN REPAYMENT.**—Title VIII of the Public Health Service Act is amended by inserting after section 846A (42 U.S.C. 297n-1) the following:

42 USC 297o.

“SEC. 847. ELIGIBLE INDIVIDUAL STUDENT LOAN REPAYMENT.

“(a) **IN GENERAL.**—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with eligible individuals for the repayment of education loans, in accordance with this section, to increase the number of qualified nursing faculty.

“(b) **AGREEMENTS.**—Each agreement entered into under this subsection shall require that the eligible individual shall serve as a full-time member of the faculty of an accredited school of nursing, for a total period, in the aggregate, of at least 4 years during the 6-year period beginning on the later of—

“(1) the date on which the individual receives a master’s or doctorate nursing degree from an accredited school of nursing; or

“(2) the date on which the individual enters into an agreement under this subsection.

“(c) **AGREEMENT PROVISIONS.**—Agreements entered into pursuant to subsection (b) shall be entered into on such terms and conditions as the Secretary may determine, except that—

Deadline.

“(1) not more than 10 months after the date on which the 6-year period described under subsection (b) begins, but in no case before the individual starts as a full-time member of the faculty of an accredited school of nursing the Secretary shall begin making payments, for and on behalf of that individual, on the outstanding principal of, and interest on, any loan of that individual obtained to pay for such degree;

“(2) for an individual who has completed a master’s in nursing or equivalent degree in nursing—

“(A) payments may not exceed \$10,000 per calendar year; and

“(B) total payments may not exceed \$40,000 during the 2010 and 2011 fiscal years (after fiscal year 2011, such amounts shall be adjusted to provide for a cost-of-attendance increase for the yearly loan rate and the aggregate loan); and

“(3) for an individual who has completed a doctorate or equivalent degree in nursing—

“(A) payments may not exceed \$20,000 per calendar year; and

“(B) total payments may not exceed \$80,000 during the 2010 and 2011 fiscal years (adjusted for subsequent fiscal years as provided for in the same manner as in paragraph (2)(B)).

“(d) **BREACH OF AGREEMENT.**—

“(1) IN GENERAL.—In the case of any agreement made under subsection (b), the individual is liable to the Federal Government for the total amount paid by the Secretary under such agreement, and for interest on such amount at the maximum legal prevailing rate, if the individual fails to meet the agreement terms required under such subsection.

“(2) WAIVER OR SUSPENSION OF LIABILITY.—In the case of an individual making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such paragraph if compliance by the individual with the agreement involved is impossible or would involve extreme hardship to the individual or if enforcement of the agreement with respect to the individual would be unconscionable.

“(3) DATE CERTAIN FOR RECOVERY.—Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

“(4) AVAILABILITY.—Amounts recovered under paragraph (1) shall be available to the Secretary for making loan repayments under this section and shall remain available for such purpose until expended.

“(e) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section, the term ‘eligible individual’ means an individual who—

“(1) is a United States citizen, national, or lawful permanent resident;

“(2) holds an unencumbered license as a registered nurse; and

“(3) has either already completed a master’s or doctorate nursing program at an accredited school of nursing or is currently enrolled on a full-time or part-time basis in such a program.

“(f) PRIORITY.—For the purposes of this section and section 846A, funding priority will be awarded to School of Nursing Student Loans that support doctoral nursing students or Individual Student Loan Repayment that support doctoral nursing students.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2014.”.

SEC. 5312. AUTHORIZATION OF APPROPRIATIONS FOR PARTS B THROUGH D OF TITLE VIII.

Section 871 of the Public Health Service Act, as redesignated and moved by section 5310, is amended to read as follows:

“SEC. 871. AUTHORIZATION OF APPROPRIATIONS.

42 USC 298d.

“For the purpose of carrying out parts B, C, and D (subject to section 851(g)), there are authorized to be appropriated \$338,000,000 for fiscal year 2010, and such sums as may be necessary for each of the fiscal years 2011 through 2016.”.

SEC. 5313. GRANTS TO PROMOTE THE COMMUNITY HEALTH WORKFORCE.

(a) IN GENERAL.—Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

42 USC 280g–11. **“SEC. 399V. GRANTS TO PROMOTE POSITIVE HEALTH BEHAVIORS AND OUTCOMES.**

“(a) **GRANTS AUTHORIZED.**—The Director of the Centers for Disease Control and Prevention, in collaboration with the Secretary, shall award grants to eligible entities to promote positive health behaviors and outcomes for populations in medically underserved communities through the use of community health workers.

“(b) **USE OF FUNDS.**—Grants awarded under subsection (a) shall be used to support community health workers—

“(1) to educate, guide, and provide outreach in a community setting regarding health problems prevalent in medically underserved communities, particularly racial and ethnic minority populations;

“(2) to educate and provide guidance regarding effective strategies to promote positive health behaviors and discourage risky health behaviors;

“(3) to educate and provide outreach regarding enrollment in health insurance including the Children’s Health Insurance Program under title XXI of the Social Security Act, Medicare under title XVIII of such Act and Medicaid under title XIX of such Act;

“(4) to identify, educate, refer, and enroll underserved populations to appropriate healthcare agencies and community-based programs and organizations in order to increase access to quality healthcare services and to eliminate duplicative care; or

“(5) to educate, guide, and provide home visitation services regarding maternal health and prenatal care.

“(c) **APPLICATION.**—Each eligible entity that desires to receive a grant under subsection (a) shall submit an application to the Secretary, at such time, in such manner, and accompanied by such information as the Secretary may require.

“(d) **PRIORITY.**—In awarding grants under subsection (a), the Secretary shall give priority to applicants that—

“(1) propose to target geographic areas—

“(A) with a high percentage of residents who are eligible for health insurance but are uninsured or underinsured;

“(B) with a high percentage of residents who suffer from chronic diseases; or

“(C) with a high infant mortality rate;

“(2) have experience in providing health or health-related social services to individuals who are underserved with respect to such services; and

“(3) have documented community activity and experience with community health workers.

“(e) **COLLABORATION WITH ACADEMIC INSTITUTIONS AND THE ONE-STOP DELIVERY SYSTEM.**—The Secretary shall encourage community health worker programs receiving funds under this section to collaborate with academic institutions and one-stop delivery systems under section 134(c) of the Workforce Investment Act of 1998. Nothing in this section shall be construed to require such collaboration.

“(f) **EVIDENCE-BASED INTERVENTIONS.**—The Secretary shall encourage community health worker programs receiving funding under this section to implement a process or an outcome-based

payment system that rewards community health workers for connecting underserved populations with the most appropriate services at the most appropriate time. Nothing in this section shall be construed to require such a payment.

“(g) **QUALITY ASSURANCE AND COST EFFECTIVENESS.**—The Secretary shall establish guidelines for assuring the quality of the training and supervision of community health workers under the programs funded under this section and for assuring the cost-effectiveness of such programs. Guidelines.

“(h) **MONITORING.**—The Secretary shall monitor community health worker programs identified in approved applications under this section and shall determine whether such programs are in compliance with the guidelines established under subsection (g).

“(i) **TECHNICAL ASSISTANCE.**—The Secretary may provide technical assistance to community health worker programs identified in approved applications under this section with respect to planning, developing, and operating programs under the grant.

“(j) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated, such sums as may be necessary to carry out this section for each of fiscal years 2010 through 2014.

“(k) **DEFINITIONS.**—In this section:

“(1) **COMMUNITY HEALTH WORKER.**—The term ‘community health worker’, as defined by the Department of Labor as Standard Occupational Classification [21-1094] means an individual who promotes health or nutrition within the community in which the individual resides—

“(A) by serving as a liaison between communities and healthcare agencies;

“(B) by providing guidance and social assistance to community residents;

“(C) by enhancing community residents’ ability to effectively communicate with healthcare providers;

“(D) by providing culturally and linguistically appropriate health or nutrition education;

“(E) by advocating for individual and community health;

“(F) by providing referral and follow-up services or otherwise coordinating care; and

“(G) by proactively identifying and enrolling eligible individuals in Federal, State, local, private or nonprofit health and human services programs.

“(2) **COMMUNITY SETTING.**—The term ‘community setting’ means a home or a community organization located in the neighborhood in which a participant in the program under this section resides.

“(3) **ELIGIBLE ENTITY.**—The term ‘eligible entity’ means a public or nonprofit private entity (including a State or public subdivision of a State, a public health department, a free health clinic, a hospital, or a Federally-qualified health center (as defined in section 1861(aa) of the Social Security Act)), or a consortium of any such entities.

“(4) **MEDICALLY UNDERSERVED COMMUNITY.**—The term ‘medically underserved community’ means a community identified by a State—

“(A) that has a substantial number of individuals who are members of a medically underserved population, as defined by section 330(b)(3); and

“(B) a significant portion of which is a health professional shortage area as designated under section 332.”.

SEC. 5314. FELLOWSHIP TRAINING IN PUBLIC HEALTH.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.), as amended by section 5206, is further amended by adding at the end the following:

42 USC 295f-3. **“SEC. 778. FELLOWSHIP TRAINING IN APPLIED PUBLIC HEALTH EPIDEMIOLOGY, PUBLIC HEALTH LABORATORY SCIENCE, PUBLIC HEALTH INFORMATICS, AND EXPANSION OF THE EPIDEMIC INTELLIGENCE SERVICE.**

“(a) IN GENERAL.—The Secretary may carry out activities to address documented workforce shortages in State and local health departments in the critical areas of applied public health epidemiology and public health laboratory science and informatics and may expand the Epidemic Intelligence Service.

“(b) SPECIFIC USES.—In carrying out subsection (a), the Secretary shall provide for the expansion of existing fellowship programs operated through the Centers for Disease Control and Prevention in a manner that is designed to alleviate shortages of the type described in subsection (a).

“(c) OTHER PROGRAMS.—The Secretary may provide for the expansion of other applied epidemiology training programs that meet objectives similar to the objectives of the programs described in subsection (b).

“(d) WORK OBLIGATION.—Participation in fellowship training programs under this section shall be deemed to be service for purposes of satisfying work obligations stipulated in contracts under section 338I(j).

“(e) GENERAL SUPPORT.—Amounts may be used from grants awarded under this section to expand the Public Health Informatics Fellowship Program at the Centers for Disease Control and Prevention to better support all public health systems at all levels of government.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$39,500,000 for each of fiscal years 2010 through 2013, of which—

“(1) \$5,000,000 shall be made available in each such fiscal year for epidemiology fellowship training program activities under subsections (b) and (c);

“(2) \$5,000,000 shall be made available in each such fiscal year for laboratory fellowship training programs under subsection (b);

“(3) \$5,000,000 shall be made available in each such fiscal year for the Public Health Informatics Fellowship Program under subsection (e); and

“(4) \$24,500,000 shall be made available for expanding the Epidemic Intelligence Service under subsection (a).”.

SEC. 5315. UNITED STATES PUBLIC HEALTH SCIENCES TRACK.

Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following:

“PART D—UNITED STATES PUBLIC HEALTH SCIENCES TRACK

“SEC. 271. ESTABLISHMENT.

42 USC 239l.

“(a) UNITED STATES PUBLIC HEALTH SERVICES TRACK.—

“(1) IN GENERAL.—There is hereby authorized to be established a United States Public Health Sciences Track (referred to in this part as the ‘Track’), at sites to be selected by the Secretary, with authority to grant appropriate advanced degrees in a manner that uniquely emphasizes team-based service, public health, epidemiology, and emergency preparedness and response. It shall be so organized as to graduate not less than—

“(A) 150 medical students annually, 10 of whom shall be awarded studentships to the Uniformed Services University of Health Sciences;

“(B) 100 dental students annually;

“(C) 250 nursing students annually;

“(D) 100 public health students annually;

“(E) 100 behavioral and mental health professional students annually;

“(F) 100 physician assistant or nurse practitioner students annually; and

“(G) 50 pharmacy students annually.

“(2) LOCATIONS.—The Track shall be located at existing and accredited, affiliated health professions education training programs at academic health centers located in regions of the United States determined appropriate by the Surgeon General, in consultation with the National Health Care Workforce Commission established in section 5101 of the Patient Protection and Affordable Care Act.

“(b) NUMBER OF GRADUATES.—Except as provided in subsection (a), the number of persons to be graduated from the Track shall be prescribed by the Secretary. In so prescribing the number of persons to be graduated from the Track, the Secretary shall institute actions necessary to ensure the maximum number of first-year enrollments in the Track consistent with the academic capacity of the affiliated sites and the needs of the United States for medical, dental, and nursing personnel.

“(c) DEVELOPMENT.—The development of the Track may be by such phases as the Secretary may prescribe subject to the requirements of subsection (a).

“(d) INTEGRATED LONGITUDINAL PLAN.—The Surgeon General shall develop an integrated longitudinal plan for health professions continuing education throughout the continuum of health-related education, training, and practice. Training under such plan shall emphasize patient-centered, interdisciplinary, and care coordination skills. Experience with deployment of emergency response teams shall be included during the clinical experiences.

“(e) FACULTY DEVELOPMENT.—The Surgeon General shall develop faculty development programs and curricula in decentralized venues of health care, to balance urban, tertiary, and inpatient venues.

“SEC. 272. ADMINISTRATION.

42 USC 239l–1.

“(a) IN GENERAL.—The business of the Track shall be conducted by the Surgeon General with funds appropriated for and provided

by the Department of Health and Human Services. The National Health Care Workforce Commission shall assist the Surgeon General in an advisory capacity.

“(b) FACULTY.—

“(1) IN GENERAL.—The Surgeon General, after considering the recommendations of the National Health Care Workforce Commission, shall obtain the services of such professors, instructors, and administrative and other employees as may be necessary to operate the Track, but utilize when possible, existing affiliated health professions training institutions. Members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary so as to place the employees of the Track faculty on a comparable basis with the employees of fully accredited schools of the health professions within the United States.

“(2) TITLES.—The Surgeon General may confer academic titles, as appropriate, upon the members of the faculty.

“(3) NONAPPLICATION OF PROVISIONS.—The limitations in section 5373 of title 5, United States Code, shall not apply to the authority of the Surgeon General under paragraph (1) to prescribe salary schedules and other related benefits.

“(c) AGREEMENTS.—The Surgeon General may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources located in the United States (or locations selected in accordance with section 271(a)(2)). Under such agreements the facilities concerned will retain their identities and basic missions. The Surgeon General may negotiate affiliation agreements with accredited universities and health professions training institutions in the United States. Such agreements may include provisions for payments for educational services provided students participating in Department of Health and Human Services educational programs.

“(d) PROGRAMS.—The Surgeon General may establish the following educational programs for Track students:

“(1) Postdoctoral, postgraduate, and technological programs.

“(2) A cooperative program for medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students.

“(3) Other programs that the Surgeon General determines necessary in order to operate the Track in a cost-effective manner.

“(e) CONTINUING MEDICAL EDUCATION.—The Surgeon General shall establish programs in continuing medical education for members of the health professions to the end that high standards of health care may be maintained within the United States.

“(f) AUTHORITY OF THE SURGEON GENERAL.—

“(1) IN GENERAL.—The Surgeon General is authorized—

“(A) to enter into contracts with, accept grants from, and make grants to any nonprofit entity for the purpose of carrying out cooperative enterprises in medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing research, consultation, and education;

“(B) to enter into contracts with entities under which the Surgeon General may furnish the services of such

Contracts.
Grants.

professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by the Track;

“(C) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the Track, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

“(D) to enter into agreements with entities that may be utilized by the Track for the purpose of enhancing the activities of the Track in education, research, and technological applications of knowledge; and

“(E) to accept the voluntary services of guest scholars and other persons.

“(2) LIMITATION.—The Surgeon General may not enter into any contract with an entity if the contract would obligate the Track to make outlays in advance of the enactment of budget authority for such outlays.

“(3) SCIENTISTS.—Scientists or other medical, dental, or nursing personnel utilized by the Track under an agreement described in paragraph (1) may be appointed to any position within the Track and may be permitted to perform such duties within the Track as the Surgeon General may approve.

“(4) VOLUNTEER SERVICES.—A person who provides voluntary services under the authority of subparagraph (E) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

“SEC. 273. STUDENTS; SELECTION; OBLIGATION.

42 USC 239l-2.

“(a) STUDENT SELECTION.—

“(1) IN GENERAL.—Medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students at the Track shall be selected under procedures prescribed by the Surgeon General. In so prescribing, the Surgeon General shall consider the recommendations of the National Health Care Workforce Commission.

“(2) PRIORITY.—In developing admissions procedures under paragraph (1), the Surgeon General shall ensure that such procedures give priority to applicant medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students from rural communities and underrepresented minorities.

“(b) CONTRACT AND SERVICE OBLIGATION.—

“(1) CONTRACT.—Upon being admitted to the Track, a medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student shall enter into a written contract with the Surgeon General that shall contain—

“(A) an agreement under which—

“(i) subject to subparagraph (B), the Surgeon General agrees to provide the student with tuition (or

tuition remission) and a student stipend (described in paragraph (2)) in each school year for a period of years (not to exceed 4 school years) determined by the student, during which period the student is enrolled in the Track at an affiliated or other participating health professions institution pursuant to an agreement between the Track and such institution; and

“(ii) subject to subparagraph (B), the student agrees—

“(I) to accept the provision of such tuition and student stipend to the student;

“(II) to maintain enrollment at the Track until the student completes the course of study involved;

“(III) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined by the Surgeon General);

“(IV) if pursuing a degree from a school of medicine or osteopathic medicine, dental, public health, or nursing school or a physician assistant, pharmacy, or behavioral and mental health professional program, to complete a residency or internship in a specialty that the Surgeon General determines is appropriate; and

“(V) to serve for a period of time (referred to in this part as the ‘period of obligated service’) within the Commissioned Corps of the Public Health Service equal to 2 years for each school year during which such individual was enrolled at the College, reduced as provided for in paragraph (3);

“(B) a provision that any financial obligation of the United States arising out of a contract entered into under this part and any obligation of the student which is conditioned thereon, is contingent upon funds being appropriated to carry out this part;

“(C) a statement of the damages to which the United States is entitled for the student’s breach of the contract; and

“(D) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this part.

“(2) TUITION AND STUDENT STIPEND.—

“(A) TUITION REMISSION RATES.—The Surgeon General, based on the recommendations of the National Health Care Workforce Commission, shall establish Federal tuition remission rates to be used by the Track to provide reimbursement to affiliated and other participating health professions institutions for the cost of educational services provided by such institutions to Track students. The agreement entered into by such participating institutions under paragraph (1)(A)(i) shall contain an agreement to accept as payment in full the established remission rate under this subparagraph.

“(B) STIPEND.—The Surgeon General, based on the recommendations of the National Health Care Workforce

Commission, shall establish and update Federal stipend rates for payment to students under this part.

“(3) REDUCTIONS IN THE PERIOD OF OBLIGATED SERVICE.—

The period of obligated service under paragraph (1)(A)(ii)(V) shall be reduced—

“(A) in the case of a student who elects to participate in a high-needs speciality residency (as determined by the National Health Care Workforce Commission), by 3 months for each year of such participation (not to exceed a total of 12 months); and

“(B) in the case of a student who, upon completion of their residency, elects to practice in a Federal medical facility (as defined in section 781(e)) that is located in a health professional shortage area (as defined in section 332), by 3 months for year of full-time practice in such a facility (not to exceed a total of 12 months).

“(c) SECOND 2 YEARS OF SERVICE.—During the third and fourth years in which a medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student is enrolled in the Track, training should be designed to prioritize clinical rotations in Federal medical facilities in health professional shortage areas, and emphasize a balance of hospital and community-based experiences, and training within interdisciplinary teams.

“(d) DENTIST, PHYSICIAN ASSISTANT, PHARMACIST, BEHAVIORAL AND MENTAL HEALTH PROFESSIONAL, PUBLIC HEALTH PROFESSIONAL, AND NURSE TRAINING.—The Surgeon General shall establish provisions applicable with respect to dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students that are comparable to those for medical students under this section, including service obligations, tuition support, and stipend support. The Surgeon General shall give priority to health professions training institutions that train medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students for some significant period of time together, but at a minimum have a discrete and shared core curriculum.

“(e) ELITE FEDERAL DISASTER TEAMS.—The Surgeon General, in consultation with the Secretary, the Director of the Centers for Disease Control and Prevention, and other appropriate military and Federal government agencies, shall develop criteria for the appointment of highly qualified Track faculty, medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students, and graduates to elite Federal disaster preparedness teams to train and to respond to public health emergencies, natural disasters, bioterrorism events, and other emergencies. Criteria.

“(f) STUDENT DROPPED FROM TRACK IN AFFILIATE SCHOOL.—A medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student who, under regulations prescribed by the Surgeon General, is dropped from the Track in an affiliated school for deficiency in conduct or studies, or for other reasons, shall be liable to the United States for all tuition and stipend support provided to the student. Regulations.

42 USC 239l–3.

“SEC. 274. FUNDING.

Effective date.

“Beginning with fiscal year 2010, the Secretary shall transfer from the Public Health and Social Services Emergency Fund such sums as may be necessary to carry out this part.”.

Subtitle E—Supporting the Existing Health Care Workforce

SEC. 5401. CENTERS OF EXCELLENCE.

Section 736 of the Public Health Service Act (42 U.S.C. 293) is amended by striking subsection (h) and inserting the following:

Grants.

“(h) FORMULA FOR ALLOCATIONS.—

Applicability.

“(1) ALLOCATIONS.—Based on the amount appropriated under subsection (i) for a fiscal year, the following subparagraphs shall apply as appropriate:

“(A) IN GENERAL.—If the amounts appropriated under subsection (i) for a fiscal year are \$24,000,000 or less—

“(i) the Secretary shall make available \$12,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(2)(A); and

“(ii) and available after grants are made with funds under clause (i), the Secretary shall make available—

“(I) 60 percent of such amount for grants under subsection (a) to health professions schools that meet the conditions described in paragraph (3) or (4) of subsection (c) (including meeting the conditions under subsection (e)); and

“(II) 40 percent of such amount for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(5).

“(B) FUNDING IN EXCESS OF \$24,000,000.—If amounts appropriated under subsection (i) for a fiscal year exceed \$24,000,000 but are less than \$30,000,000—

“(i) 80 percent of such excess amounts shall be made available for grants under subsection (a) to health professions schools that meet the requirements described in paragraph (3) or (4) of subsection (c) (including meeting conditions pursuant to subsection (e)); and

“(ii) 20 percent of such excess amount shall be made available for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(5).

“(C) FUNDING IN EXCESS OF \$30,000,000.—If amounts appropriated under subsection (i) for a fiscal year exceed \$30,000,000 but are less than \$40,000,000, the Secretary shall make available—

“(i) not less than \$12,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(2)(A);

“(ii) not less than \$12,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in paragraph (3) or (4) of

subsection (c) (including meeting conditions pursuant to subsection (e));

“(iii) not less than \$6,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(5); and

“(iv) after grants are made with funds under clauses (i) through (iii), any remaining excess amount for grants under subsection (a) to health professions schools that meet the conditions described in paragraph (2)(A), (3), (4), or (5) of subsection (c).

“(D) FUNDING IN EXCESS OF \$40,000,000.—If amounts appropriated under subsection (i) for a fiscal year are \$40,000,000 or more, the Secretary shall make available—

“(i) not less than \$16,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(2)(A);

“(ii) not less than \$16,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in paragraph (3) or (4) of subsection (c) (including meeting conditions pursuant to subsection (e));

“(iii) not less than \$8,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(5); and

“(iv) after grants are made with funds under clauses (i) through (iii), any remaining funds for grants under subsection (a) to health professions schools that meet the conditions described in paragraph (2)(A), (3), (4), or (5) of subsection (c).

“(2) NO LIMITATION.—Nothing in this subsection shall be construed as limiting the centers of excellence referred to in this section to the designated amount, or to preclude such entities from competing for grants under this section.

“(3) MAINTENANCE OF EFFORT.—

“(A) IN GENERAL.—With respect to activities for which a grant made under this part are authorized to be expended, the Secretary may not make such a grant to a center of excellence for any fiscal year unless the center agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the school receives such a grant.

“(B) USE OF FEDERAL FUNDS.—With respect to any Federal amounts received by a center of excellence and available for carrying out activities for which a grant under this part is authorized to be expended, the center shall, before expending the grant, expend the Federal amounts obtained from sources other than the grant, unless given prior approval from the Secretary.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) \$50,000,000 for each of the fiscal years 2010 through 2015; and

“(2) and such sums as are necessary for each subsequent fiscal year.”.

SEC. 5402. HEALTH CARE PROFESSIONALS TRAINING FOR DIVERSITY.

(a) **LOAN REPAYMENTS AND FELLOWSHIPS REGARDING FACULTY POSITIONS.**—Section 738(a)(1) of the Public Health Service Act (42 U.S.C. 293b(a)(1)) is amended by striking “\$20,000 of the principal and interest of the educational loans of such individuals.” and inserting “\$30,000 of the principal and interest of the educational loans of such individuals.”

(b) **SCHOLARSHIPS FOR DISADVANTAGED STUDENTS.**—Section 740(a) of such Act (42 U.S.C. 293d(a)) is amended by striking “\$37,000,000” and all that follows through “2002” and inserting “\$51,000,000 for fiscal year 2010, and such sums as may be necessary for each of the fiscal years 2011 through 2014”.

(c) **REAUTHORIZATION FOR LOAN REPAYMENTS AND FELLOWSHIPS REGARDING FACULTY POSITIONS.**—Section 740(b) of such Act (42 U.S.C. 293d(b)) is amended by striking “appropriated” and all that follows through the period at the end and inserting “appropriated, \$5,000,000 for each of the fiscal years 2010 through 2014.”

(d) **REAUTHORIZATION FOR EDUCATIONAL ASSISTANCE IN THE HEALTH PROFESSIONS REGARDING INDIVIDUALS FROM A DISADVANTAGED BACKGROUND.**—Section 740(c) of such Act (42 U.S.C. 293d(c)) is amended by striking the first sentence and inserting the following: “For the purpose of grants and contracts under section 739(a)(1), there is authorized to be appropriated \$60,000,000 for fiscal year 2010 and such sums as may be necessary for each of the fiscal years 2011 through 2014.”

SEC. 5403. INTERDISCIPLINARY, COMMUNITY-BASED LINKAGES.

(a) **AREA HEALTH EDUCATION CENTERS.**—Section 751 of the Public Health Service Act (42 U.S.C. 294a) is amended to read as follows:

“SEC. 751. AREA HEALTH EDUCATION CENTERS.

“(a) **ESTABLISHMENT OF AWARDS.**—The Secretary shall make the following 2 types of awards in accordance with this section:

“(1) **INFRASTRUCTURE DEVELOPMENT AWARD.**—The Secretary shall make awards to eligible entities to enable such entities to initiate health care workforce educational programs or to continue to carry out comparable programs that are operating at the time the award is made by planning, developing, operating, and evaluating an area health education center program.

“(2) **POINT OF SERVICE MAINTENANCE AND ENHANCEMENT AWARD.**—The Secretary shall make awards to eligible entities to maintain and improve the effectiveness and capabilities of an existing area health education center program, and make other modifications to the program that are appropriate due to changes in demographics, needs of the populations served, or other similar issues affecting the area health education center program. For the purposes of this section, the term ‘Program’ refers to the area health education center program.

“(b) **ELIGIBLE ENTITIES; APPLICATION.**—

“(1) **ELIGIBLE ENTITIES.**—

“(A) **INFRASTRUCTURE DEVELOPMENT.**—For purposes of subsection (a)(1), the term ‘eligible entity’ means a school of medicine or osteopathic medicine, an incorporated consortium of such schools, or the parent institutions of such a school. With respect to a State in which no area

Definitions.

health education center program is in operation, the Secretary may award a grant or contract under subsection (a)(1) to a school of nursing.

“(B) POINT OF SERVICE MAINTENANCE AND ENHANCEMENT.—For purposes of subsection (a)(2), the term ‘eligible entity’ means an entity that has received funds under this section, is operating an area health education center program, including an area health education center or centers, and has a center or centers that are no longer eligible to receive financial assistance under subsection (a)(1).

“(2) APPLICATION.—An eligible entity desiring to receive an award under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(c) USE OF FUNDS.—

“(1) REQUIRED ACTIVITIES.—An eligible entity shall use amounts awarded under a grant under subsection (a)(1) or (a)(2) to carry out the following activities:

“(A) Develop and implement strategies, in coordination with the applicable one-stop delivery system under section 134(c) of the Workforce Investment Act of 1998, to recruit individuals from underrepresented minority populations or from disadvantaged or rural backgrounds into health professions, and support such individuals in attaining such careers.

“(B) Develop and implement strategies to foster and provide community-based training and education to individuals seeking careers in health professions within underserved areas for the purpose of developing and maintaining a diverse health care workforce that is prepared to deliver high-quality care, with an emphasis on primary care, in underserved areas or for health disparity populations, in collaboration with other Federal and State health care workforce development programs, the State workforce agency, and local workforce investment boards, and in health care safety net sites.

“(C) Prepare individuals to more effectively provide health services to underserved areas and health disparity populations through field placements or preceptorships in conjunction with community-based organizations, accredited primary care residency training programs, Federally qualified health centers, rural health clinics, public health departments, or other appropriate facilities.

“(D) Conduct and participate in interdisciplinary training that involves physicians, physician assistants, nurse practitioners, nurse midwives, dentists, psychologists, pharmacists, optometrists, community health workers, public and allied health professionals, or other health professionals, as practicable.

“(E) Deliver or facilitate continuing education and information dissemination programs for health care professionals, with an emphasis on individuals providing care in underserved areas and for health disparity populations.

“(F) Propose and implement effective program and outcomes measurement and evaluation strategies.

Grants.

“(G) Establish a youth public health program to expose and recruit high school students into health careers, with a focus on careers in public health.

“(2) INNOVATIVE OPPORTUNITIES.—An eligible entity may use amounts awarded under a grant under subsection (a)(1) or subsection (a)(2) to carry out any of the following activities:

“(A) Develop and implement innovative curricula in collaboration with community-based accredited primary care residency training programs, Federally qualified health centers, rural health clinics, behavioral and mental health facilities, public health departments, or other appropriate facilities, with the goal of increasing the number of primary care physicians and other primary care providers prepared to serve in underserved areas and health disparity populations.

“(B) Coordinate community-based participatory research with academic health centers, and facilitate rapid flow and dissemination of evidence-based health care information, research results, and best practices to improve quality, efficiency, and effectiveness of health care and health care systems within community settings.

“(C) Develop and implement other strategies to address identified workforce needs and increase and enhance the health care workforce in the area served by the area health education center program.

“(d) REQUIREMENTS.—

“(1) AREA HEALTH EDUCATION CENTER PROGRAM.—In carrying out this section, the Secretary shall ensure the following:

“(A) An entity that receives an award under this section shall conduct at least 10 percent of clinical education required for medical students in community settings that are removed from the primary teaching facility of the contracting institution for grantees that operate a school of medicine or osteopathic medicine. In States in which an entity that receives an award under this section is a nursing school or its parent institution, the Secretary shall alternatively ensure that—

“(i) the nursing school conducts at least 10 percent of clinical education required for nursing students in community settings that are remote from the primary teaching facility of the school; and

“(ii) the entity receiving the award maintains a written agreement with a school of medicine or osteopathic medicine to place students from that school in training sites in the area health education center program area.

“(B) An entity receiving funds under subsection (a)(2) does not distribute such funding to a center that is eligible to receive funding under subsection (a)(1).

“(2) AREA HEALTH EDUCATION CENTER.—The Secretary shall ensure that each area health education center program includes at least 1 area health education center, and that each such center—

“(A) is a public or private organization whose structure, governance, and operation is independent from the awardee and the parent institution of the awardee;

“(B) is not a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities;

“(C) designates an underserved area or population to be served by the center which is in a location removed from the main location of the teaching facilities of the schools participating in the program with such center and does not duplicate, in whole or in part, the geographic area or population served by any other center;

“(D) fosters networking and collaboration among communities and between academic health centers and community-based centers;

“(E) serves communities with a demonstrated need of health professionals in partnership with academic medical centers;

“(F) addresses the health care workforce needs of the communities served in coordination with the public workforce investment system; and

“(G) has a community-based governing or advisory board that reflects the diversity of the communities involved.

“(e) MATCHING FUNDS.—With respect to the costs of operating a program through a grant under this section, to be eligible for financial assistance under this section, an entity shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash or in kind, toward such costs in an amount that is equal to not less than 50 percent of such costs. At least 25 percent of the total required non-Federal contributions shall be in cash. An entity may apply to the Secretary for a waiver of not more than 75 percent of the matching fund amount required by the entity for each of the first 3 years the entity is funded through a grant under subsection (a)(1).

“(f) LIMITATION.—Not less than 75 percent of the total amount provided to an area health education center program under subsection (a)(1) or (a)(2) shall be allocated to the area health education centers participating in the program under this section. To provide needed flexibility to newly funded area health education center programs, the Secretary may waive the requirement in the sentence for the first 2 years of a new area health education center program funded under subsection (a)(1).

Waiver authority.

“(g) AWARD.—An award to an entity under this section shall be not less than \$250,000 annually per area health education center included in the program involved. If amounts appropriated to carry out this section are not sufficient to comply with the preceding sentence, the Secretary may reduce the per center amount provided for in such sentence as necessary, provided the distribution established in subsection (j)(2) is maintained.

“(h) PROJECT TERMS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the period during which payments may be made under an award under subsection (a)(1) may not exceed—

“(A) in the case of a program, 12 years; or

“(B) in the case of a center within a program, 6 years.

“(2) EXCEPTION.—The periods described in paragraph (1) shall not apply to programs receiving point of service maintenance and enhancement awards under subsection (a)(2) to maintain existing centers and activities.

“(i) INAPPLICABILITY OF PROVISION.—Notwithstanding any other provision of this title, section 791(a) shall not apply to an area health education center funded under this section.

“(j) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$125,000,000 for each of the fiscal years 2010 through 2014.

“(2) REQUIREMENTS.—Of the amounts appropriated for a fiscal year under paragraph (1)—

“(A) not more than 35 percent shall be used for awards under subsection (a)(1);

“(B) not less than 60 percent shall be used for awards under subsection (a)(2);

“(C) not more than 1 percent shall be used for grants and contracts to implement outcomes evaluation for the area health education centers; and

“(D) not more than 4 percent shall be used for grants and contracts to provide technical assistance to entities receiving awards under this section.

“(3) CARRYOVER FUNDS.—An entity that receives an award under this section may carry over funds from 1 fiscal year to another without obtaining approval from the Secretary. In no case may any funds be carried over pursuant to the preceding sentence for more than 3 years.

“(k) SENSE OF CONGRESS.—It is the sense of the Congress that every State have an area health education center program in effect under this section.”.

(b) CONTINUING EDUCATIONAL SUPPORT FOR HEALTH PROFESSIONALS SERVING IN UNDERSERVED COMMUNITIES.—Part D of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.) is amended by striking section 752 and inserting the following:

42 USC 294b.

“SEC. 752. CONTINUING EDUCATIONAL SUPPORT FOR HEALTH PROFESSIONALS SERVING IN UNDERSERVED COMMUNITIES.

Grants.
Contracts.

“(a) IN GENERAL.—The Secretary shall make grants to, and enter into contracts with, eligible entities to improve health care, increase retention, increase representation of minority faculty members, enhance the practice environment, and provide information dissemination and educational support to reduce professional isolation through the timely dissemination of research findings using relevant resources.

Definition.

“(b) ELIGIBLE ENTITIES.—For purposes of this section, the term ‘eligible entity’ means an entity described in section 799(b).

“(c) APPLICATION.—An eligible entity desiring to receive an award under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(d) USE OF FUNDS.—An eligible entity shall use amounts awarded under a grant or contract under this section to provide

innovative supportive activities to enhance education through distance learning, continuing educational activities, collaborative conferences, and electronic and telelearning activities, with priority for primary care.

“(e) AUTHORIZATION.—There is authorized to be appropriated to carry out this section \$5,000,000 for each of the fiscal years 2010 through 2014, and such sums as may be necessary for each subsequent fiscal year.”.

SEC. 5404. WORKFORCE DIVERSITY GRANTS.

Section 821 of the Public Health Service Act (42 U.S.C. 296m) is amended—

(1) in subsection (a)—

(A) by striking “The Secretary may” and inserting the following:

“(1) AUTHORITY.—The Secretary may”;

(B) by striking “pre-entry preparation, and retention activities” and inserting the following: “stipends for diploma or associate degree nurses to enter a bridge or degree completion program, student scholarships or stipends for accelerated nursing degree programs, pre-entry preparation, advanced education preparation, and retention activities”; and

(2) in subsection (b)—

(A) by striking “First” and all that follows through “including the” and inserting “National Advisory Council on Nurse Education and Practice and consult with nursing associations including the National Coalition of Ethnic Minority Nurse Associations,”; and

(B) by inserting before the period the following: “, and other organizations determined appropriate by the Secretary”.

SEC. 5405. PRIMARY CARE EXTENSION PROGRAM.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.), as amended by section 5313, is further amended by adding at the end the following:

“SEC. 399W. PRIMARY CARE EXTENSION PROGRAM.

42 USC 280g–12.

“(a) ESTABLISHMENT, PURPOSE AND DEFINITION.—

“(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall establish a Primary Care Extension Program.

“(2) PURPOSE.—The Primary Care Extension Program shall provide support and assistance to primary care providers to educate providers about preventive medicine, health promotion, chronic disease management, mental and behavioral health services (including substance abuse prevention and treatment services), and evidence-based and evidence-informed therapies and techniques, in order to enable providers to incorporate such matters into their practice and to improve community health by working with community-based health connectors (referred to in this section as ‘Health Extension Agents’).

“(3) DEFINITIONS.—In this section:

“(A) HEALTH EXTENSION AGENT.—The term ‘Health Extension Agent’ means any local, community-based health worker who facilitates and provides assistance to primary care practices by implementing quality improvement or

system redesign, incorporating the principles of the patient-centered medical home to provide high-quality, effective, efficient, and safe primary care and to provide guidance to patients in culturally and linguistically appropriate ways, and linking practices to diverse health system resources.

“(B) PRIMARY CARE PROVIDER.—The term ‘primary care provider’ means a clinician who provides integrated, accessible health care services and who is accountable for addressing a large majority of personal health care needs, including providing preventive and health promotion services for men, women, and children of all ages, developing a sustained partnership with patients, and practicing in the context of family and community, as recognized by a State licensing or regulatory authority, unless otherwise specified in this section.

“(b) GRANTS TO ESTABLISH STATE HUBS AND LOCAL PRIMARY CARE EXTENSION AGENCIES.—

“(1) GRANTS.—The Secretary shall award competitive grants to States for the establishment of State- or multistate-level primary care Primary Care Extension Program State Hubs (referred to in this section as ‘Hubs’).

“(2) COMPOSITION OF HUBS.—A Hub established by a State pursuant to paragraph (1)—

“(A) shall consist of, at a minimum, the State health department, the entity responsible for administering the State Medicaid program (if other than the State health department), the State-level entity administering the Medicare program, and the departments of 1 or more health professions schools in the State that train providers in primary care; and

“(B) may include entities such as hospital associations, primary care practice-based research networks, health professional societies, State primary care associations, State licensing boards, organizations with a contract with the Secretary under section 1153 of the Social Security Act, consumer groups, and other appropriate entities.

“(c) STATE AND LOCAL ACTIVITIES.—

“(1) HUB ACTIVITIES.—Hubs established under a grant under subsection (b) shall—

Plan.

“(A) submit to the Secretary a plan to coordinate functions with quality improvement organizations and area health education centers if such entities are members of the Hub not described in subsection (b)(2)(A);

Contracts.

“(B) contract with a county- or local-level entity that shall serve as the Primary Care Extension Agency to administer the services described in paragraph (2);

“(C) organize and administer grant funds to county- or local-level Primary Care Extension Agencies that serve a catchment area, as determined by the State; and

“(D) organize State-wide or multistate networks of local-level Primary Care Extension Agencies to share and disseminate information and practices.

“(2) LOCAL PRIMARY CARE EXTENSION AGENCY ACTIVITIES.—

“(A) REQUIRED ACTIVITIES.—Primary Care Extension Agencies established by a Hub under paragraph (1) shall—

“(i) assist primary care providers to implement a patient-centered medical home to improve the accessibility, quality, and efficiency of primary care services, including health homes;

“(ii) develop and support primary care learning communities to enhance the dissemination of research findings for evidence-based practice, assess implementation of practice improvement, share best practices, and involve community clinicians in the generation of new knowledge and identification of important questions for research;

“(iii) participate in a national network of Primary Care Extension Hubs and propose how the Primary Care Extension Agency will share and disseminate lessons learned and best practices; and

“(iv) develop a plan for financial sustainability involving State, local, and private contributions, to provide for the reduction in Federal funds that is expected after an initial 6-year period of program establishment, infrastructure development, and planning. Plan.

“(B) DISCRETIONARY ACTIVITIES.—Primary Care Extension Agencies established by a Hub under paragraph (1) may—

“(i) provide technical assistance, training, and organizational support for community health teams established under section 3602 of the Patient Protection and Affordable Care Act;

“(ii) collect data and provision of primary care provider feedback from standardized measurements of processes and outcomes to aid in continuous performance improvement;

“(iii) collaborate with local health departments, community health centers, tribes and tribal entities, and other community agencies to identify community health priorities and local health workforce needs, and participate in community-based efforts to address the social and primary determinants of health, strengthen the local primary care workforce, and eliminate health disparities;

“(iv) develop measures to monitor the impact of the proposed program on the health of practice enrollees and of the wider community served; and

“(v) participate in other activities, as determined appropriate by the Secretary.

“(d) FEDERAL PROGRAM ADMINISTRATION.—

“(1) GRANTS; TYPES.—Grants awarded under subsection (b) shall be—

“(A) program grants, that are awarded to State or multistate entities that submit fully-developed plans for the implementation of a Hub, for a period of 6 years; or

“(B) planning grants, that are awarded to State or multistate entities with the goal of developing a plan for a Hub, for a period of 2 years.

“(2) APPLICATIONS.—To be eligible for a grant under subsection (b), a State or multistate entity shall submit to the

- Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.
- Appointment. “(3) EVALUATION.—A State that receives a grant under subsection (b) shall be evaluated at the end of the grant period by an evaluation panel appointed by the Secretary.
- “ (4) CONTINUING SUPPORT.—After the sixth year in which assistance is provided to a State under a grant awarded under subsection (b), the State may receive additional support under this section if the State program has received satisfactory evaluations with respect to program performance and the merits of the State sustainability plan, as determined by the Secretary.
- “ (5) LIMITATION.—A State shall not use in excess of 10 percent of the amount received under a grant to carry out administrative activities under this section. Funds awarded pursuant to this section shall not be used for funding direct patient care.
- Consultation. “ (e) REQUIREMENTS ON THE SECRETARY.—In carrying out this section, the Secretary shall consult with the heads of other Federal agencies with demonstrated experience and expertise in health care and preventive medicine, such as the Centers for Disease Control and Prevention, the Substance Abuse and Mental Health Administration, the Health Resources and Services Administration, the National Institutes of Health, the Office of the National Coordinator for Health Information Technology, the Indian Health Service, the Agricultural Cooperative Extension Service of the Department of Agriculture, and other entities, as the Secretary determines appropriate.
- “ (f) AUTHORIZATION OF APPROPRIATIONS.—To awards grants as provided in subsection (d), there are authorized to be appropriated \$120,000,000 for each of fiscal years 2011 and 2012, and such sums as may be necessary to carry out this section for each of fiscal years 2013 through 2014.”.

Subtitle F—Strengthening Primary Care and Other Workforce Improvements

SEC. 5501. EXPANDING ACCESS TO PRIMARY CARE SERVICES AND GENERAL SURGERY SERVICES.

- (a) INCENTIVE PAYMENT PROGRAM FOR PRIMARY CARE SERVICES.—
- (1) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:
- “(x) INCENTIVE PAYMENTS FOR PRIMARY CARE SERVICES.—
- Time period. “ (1) IN GENERAL.—In the case of primary care services furnished on or after January 1, 2011, and before January 1, 2016, by a primary care practitioner, in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid (on a monthly or quarterly basis) an amount equal to 10 percent of the payment amount for the service under this part.
- “ (2) DEFINITIONS.—In this subsection:
- “ (A) PRIMARY CARE PRACTITIONER.—The term ‘primary care practitioner’ means an individual—
- “ (i) who—

“(I) is a physician (as described in section 1861(r)(1)) who has a primary specialty designation of family medicine, internal medicine, geriatric medicine, or pediatric medicine; or

“(II) is a nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in section 1861(aa)(5)); and

“(ii) for whom primary care services accounted for at least 60 percent of the allowed charges under this part for such physician or practitioner in a prior period as determined appropriate by the Secretary.

“(B) PRIMARY CARE SERVICES.—The term ‘primary care services’ means services identified, as of January 1, 2009, by the following HCPCS codes (and as subsequently modified by the Secretary):

“(i) 99201 through 99215.

“(ii) 99304 through 99340.

“(iii) 99341 through 99350.

“(3) COORDINATION WITH OTHER PAYMENTS.—The amount of the additional payment for a service under this subsection and subsection (m) shall be determined without regard to any additional payment for the service under subsection (m) and this subsection, respectively.

Determination.

“(4) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, respecting the identification of primary care practitioners under this subsection.”

(2) CONFORMING AMENDMENT.—Section 1834(g)(2)(B) of the Social Security Act (42 U.S.C. 1395m(g)(2)(B)) is amended by adding at the end the following sentence: “Section 1833(x) shall not be taken into account in determining the amounts that would otherwise be paid pursuant to the preceding sentence.”

(b) INCENTIVE PAYMENT PROGRAM FOR MAJOR SURGICAL PROCEDURES FURNISHED IN HEALTH PROFESSIONAL SHORTAGE AREAS.—

(1) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l), as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

Time period.

“(y) INCENTIVE PAYMENTS FOR MAJOR SURGICAL PROCEDURES FURNISHED IN HEALTH PROFESSIONAL SHORTAGE AREAS.—

“(1) IN GENERAL.—In the case of major surgical procedures furnished on or after January 1, 2011, and before January 1, 2016, by a general surgeon in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act) as a health professional shortage area as identified by the Secretary prior to the beginning of the year involved, in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid (on a monthly or quarterly basis) an amount equal to 10 percent of the payment amount for the service under this part.

“(2) DEFINITIONS.—In this subsection:

“(A) GENERAL SURGEON.—In this subsection, the term ‘general surgeon’ means a physician (as described in section 1861(r)(1)) who has designated CMS specialty code 02—General Surgery as their primary specialty code in the physician’s enrollment under section 1866(j).

“(B) MAJOR SURGICAL PROCEDURES.—The term ‘major surgical procedures’ means physicians’ services which are

surgical procedures for which a 10-day or 90-day global period is used for payment under the fee schedule under section 1848(b).

“(3) COORDINATION WITH OTHER PAYMENTS.—The amount of the additional payment for a service under this subsection and subsection (m) shall be determined without regard to any additional payment for the service under subsection (m) and this subsection, respectively.

“(4) APPLICATION.—The provisions of paragraph (2) and (4) of subsection (m) shall apply to the determination of additional payments under this subsection in the same manner as such provisions apply to the determination of additional payments under subsection (m).”.

(2) CONFORMING AMENDMENT.—Section 1834(g)(2)(B) of the Social Security Act (42 U.S.C. 1395m(g)(2)(B)), as amended by subsection (a)(2), is amended by striking “Section 1833(x)” and inserting “Subsections (x) and (y) of section 1833” in the last sentence.

(c) BUDGET-NEUTRALITY ADJUSTMENT.—Section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w-4(c)(2)(B)) is amended by adding at the end the following new clause:

Applicability.

“(vii) ADJUSTMENT FOR CERTAIN PHYSICIAN INCENTIVE PAYMENTS.—Fifty percent of the additional expenditures under this part attributable to subsections (x) and (y) of section 1833 for a year (as estimated by the Secretary) shall be taken into account in applying clause (ii)(II) for 2011 and subsequent years. In lieu of applying the budget-neutrality adjustments required under clause (ii)(II) to relative value units to account for such costs for the year, the Secretary shall apply such budget-neutrality adjustments to the conversion factor otherwise determined for the year. For 2011 and subsequent years, the Secretary shall increase the incentive payment otherwise applicable under section 1833(m) by a percent estimated to be equal to the additional expenditures estimated under the first sentence of this clause for such year that is applicable to physicians who primarily furnish services in areas designated (under section 332(a)(1)(A) of the Public Health Service Act) as health professional shortage areas.”.

SEC. 5502. MEDICARE FEDERALLY QUALIFIED HEALTH CENTER IMPROVEMENTS.

(a) EXPANSION OF MEDICARE-COVERED PREVENTIVE SERVICES AT FEDERALLY QUALIFIED HEALTH CENTERS.—

42 USC 1395x.

(1) IN GENERAL.—Section 1861(aa)(3)(A) of the Social Security Act (42 U.S.C. 1395w (aa)(3)(A)) is amended to read as follows:

“(A) services of the type described subparagraphs (A) through (C) of paragraph (1) and preventive services (as defined in section 1861(ddd)(3)); and”.

Applicability.
42 USC 1395x
note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after January 1, 2011.

(b) PROSPECTIVE PAYMENT SYSTEM FOR FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1834 of the Social Security Act (42

U.S.C. 1395m) is amended by adding at the end the following new subsection:

“(n) DEVELOPMENT AND IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—

“(1) DEVELOPMENT.—

“(A) IN GENERAL.—The Secretary shall develop a prospective payment system for payment for Federally qualified health services furnished by Federally qualified health centers under this title. Such system shall include a process for appropriately describing the services furnished by Federally qualified health centers.

“(B) COLLECTION OF DATA AND EVALUATION.—The Secretary shall require Federally qualified health centers to submit to the Secretary such information as the Secretary may require in order to develop and implement the prospective payment system under this paragraph and paragraph (2), respectively, including the reporting of services using HCPCS codes.

“(2) IMPLEMENTATION.—

“(A) IN GENERAL.—Notwithstanding section 1833(a)(3)(B), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2014, for payments for Federally qualified health services furnished by Federally qualified health centers under this title in accordance with the prospective payment system developed by the Secretary under paragraph (1).

Effective date.

“(B) PAYMENTS.—

“(i) INITIAL PAYMENTS.—The Secretary shall implement such prospective payment system so that the estimated amount of expenditures under this title for Federally qualified health services in the first year that the prospective payment system is implemented is equal to 103 percent of the estimated amount of expenditures under this title that would have occurred for such services in such year if the system had not been implemented.

“(ii) PAYMENTS IN SUBSEQUENT YEARS.—In the year after the first year of implementation of such system, and in each subsequent year, the payment rate for Federally qualified health services furnished in the year shall be equal to the payment rate established for such services furnished in the preceding year under this subparagraph increased by the percentage increase in the MEI (as defined in 1842(i)(3)) for the year involved.”.

SEC. 5503. DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (4)(F)(i), by striking “paragraph (7)” and inserting “paragraphs (7) and (8)”;

(2) in paragraph (4)(H)(i), by striking “paragraph (7)” and inserting “paragraphs (7) and (8)”;

(3) in paragraph (7)(E), by inserting “or paragraph (8)” before the period at the end; and

(4) by adding at the end the following new paragraph:

“(8) DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.—

“(A) REDUCTIONS IN LIMIT BASED ON UNUSED POSITIONS.—

Effective date.

“(i) IN GENERAL.—Except as provided in clause (ii), if a hospital’s reference resident level (as defined in subparagraph (H)(i)) is less than the otherwise applicable resident limit (as defined in subparagraph (H)(iii)), effective for portions of cost reporting periods occurring on or after July 1, 2011, the otherwise applicable resident limit shall be reduced by 65 percent of the difference between such otherwise applicable resident limit and such reference resident level.

“(ii) EXCEPTIONS.—This subparagraph shall not apply to—

“(I) a hospital located in a rural area (as defined in subsection (d)(2)(D)(ii)) with fewer than 250 acute care inpatient beds;

Deadline.

“(II) a hospital that was part of a qualifying entity which had a voluntary residency reduction plan approved under paragraph (6)(B) or under the authority of section 402 of Public Law 90–248, if the hospital demonstrates to the Secretary that it has a specified plan in place for filling the unused positions by not later than 2 years after the date of enactment of this paragraph; or

“(III) a hospital described in paragraph (4)(H)(v).

“(B) DISTRIBUTION.—

“(i) IN GENERAL.—The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2011. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the aggregate reduction in such limits attributable to subparagraph (A) (as estimated by the Secretary).

“(ii) REQUIREMENTS.—Subject to clause (iii), a hospital that receives an increase in the otherwise applicable resident limit under this subparagraph shall ensure, during the 5-year period beginning on the date of such increase, that—

“(I) the number of full-time equivalent primary care residents, as defined in paragraph (5)(H) (as determined by the Secretary), excluding any additional positions under subclause (II), is not less than the average number of full-time equivalent primary care residents (as so determined) during the 3 most recent cost reporting periods ending prior to the date of enactment of this paragraph; and

“(II) not less than 75 percent of the positions attributable to such increase are in a primary care or general surgery residency (as determined by the Secretary).

The Secretary may determine whether a hospital has met the requirements under this clause during such 5-year period in such manner and at such time as the Secretary determines appropriate, including at the end of such 5-year period.

“(iii) REDISTRIBUTION OF POSITIONS IF HOSPITAL NO LONGER MEETS CERTAIN REQUIREMENTS.—In the case where the Secretary determines that a hospital described in clause (ii) does not meet either of the requirements under subclause (I) or (II) of such clause, the Secretary shall—

“(I) reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this paragraph; and

“(II) provide for the distribution of positions attributable to such reduction in accordance with the requirements of this paragraph.

“(C) CONSIDERATIONS IN REDISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B), the Secretary shall take into account—

“(i) the demonstration likelihood of the hospital filling the positions made available under this paragraph within the first 3 cost reporting periods beginning on or after July 1, 2011, as determined by the Secretary; and

“(ii) whether the hospital has an accredited rural training track (as described in paragraph (4)(H)(iv)).

“(D) PRIORITY FOR CERTAIN AREAS.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B), subject to subparagraph (E), the Secretary shall distribute the increase to hospitals based on the following factors:

“(i) Whether the hospital is located in a State with a resident-to-population ratio in the lowest quartile (as determined by the Secretary).

“(ii) Whether the hospital is located in a State, a territory of the United States, or the District of Columbia that is among the top 10 States, territories, or Districts in terms of the ratio of—

“(I) the total population of the State, territory, or District living in an area designated (under such section 332(a)(1)(A)) as a health professional shortage area (as of the date of enactment of this paragraph); to

“(II) the total population of the State, territory, or District (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census).

“(iii) Whether the hospital is located in a rural area (as defined in subsection (d)(2)(D)(ii)).

“(E) RESERVATION OF POSITIONS FOR CERTAIN HOSPITALS.—

“(i) IN GENERAL.—Subject to clause (ii), the Secretary shall reserve the positions available for distribution under this paragraph as follows:

Effective date.

“(I) 70 percent of such positions for distribution to hospitals described in clause (i) of subparagraph (D).

“(II) 30 percent of such positions for distribution to hospitals described in clause (ii) and (iii) of such subparagraph.

Deadline.

“(ii) EXCEPTION IF POSITIONS NOT REDISTRIBUTED BY JULY 1, 2011.—In the case where the Secretary does not distribute positions to hospitals in accordance with clause (i) by July 1, 2011, the Secretary shall distribute such positions to other hospitals in accordance with the considerations described in subparagraph (C) and the priority described in subparagraph (D).

“(F) LIMITATION.—A hospital may not receive more than 75 full-time equivalent additional residency positions under this paragraph.

“(G) APPLICATION OF PER RESIDENT AMOUNTS FOR PRIMARY CARE AND NONPRIMARY CARE.—With respect to additional residency positions in a hospital attributable to the increase provided under this paragraph, the approved FTE per resident amounts are deemed to be equal to the hospital per resident amounts for primary care and nonprimary care computed under paragraph (2)(D) for that hospital.

“(H) DEFINITIONS.—In this paragraph:

“(i) REFERENCE RESIDENT LEVEL.—The term ‘reference resident level’ means, with respect to a hospital, the highest resident level for any of the 3 most recent cost reporting periods (ending before the date of the enactment of this paragraph) of the hospital for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

“(ii) RESIDENT LEVEL.—The term ‘resident level’ has the meaning given such term in paragraph (7)(C)(i).

“(iii) OTHERWISE APPLICABLE RESIDENT LIMIT.—The term ‘otherwise applicable resident limit’ means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph but taking into account paragraph (7)(A).”.

(b) IME.—

(1) IN GENERAL.—Section 1886(d)(5)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second sentence, is amended—

(A) by striking “subsection (h)(7)” and inserting “subsections (h)(7) and (h)(8)”; and

(B) by striking “it applies” and inserting “they apply”.

(2) CONFORMING AMENDMENT.—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by adding at the end the following clause:

Effective date.

“(x) For discharges occurring on or after July 1, 2011, insofar as an additional payment amount under this subparagraph is attributable to resident positions distributed to a hospital under subsection (h)(8)(B), the indirect teaching adjustment factor shall be computed in the same manner as provided under clause (ii) with respect to such resident positions.”.

(c) CONFORMING AMENDMENT.—Section 422(b)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) is amended by striking “section 1886(h)(7)” and all that follows and inserting “paragraphs (7) and (8) of subsection (h) of section 1886 of the Social Security Act”.

42 USC 1395ww
note.

SEC. 5504. COUNTING RESIDENT TIME IN NONPROVIDER SETTINGS.

Effective dates.

(a) GME.—Section 1886(h)(4)(E) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)) is amended—

(1) by striking “shall be counted and that all the time” and inserting “shall be counted and that—

“(i) effective for cost reporting periods beginning before July 1, 2010, all the time;”;

(2) in clause (i), as inserted by paragraph (1), by striking the period at the end and inserting “; and”;

(3) by inserting after clause (i), as so inserted, the following new clause:

“(ii) effective for cost reporting periods beginning on or after July 1, 2010, all the time so spent by a resident shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if a hospital incurs the costs of the stipends and fringe benefits of the resident during the time the resident spends in that setting. If more than one hospital incurs these costs, either directly or through a third party, such hospitals shall count a proportional share of the time, as determined by written agreement between the hospitals, that a resident spends training in that setting.”; and

(4) by adding at the end the following flush sentence: “Any hospital claiming under this subparagraph for time spent in a nonprovider setting shall maintain and make available to the Secretary records regarding the amount of such time and such amount in comparison with amounts of such time in such base year as the Secretary shall specify.”.

Records.

(b) IME.—Section 1886(d)(5)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(5)) is amended—

(1) by striking “(iv) Effective for discharges occurring on or after October 1, 1997” and inserting “(iv)(I) Effective for discharges occurring on or after October 1, 1997, and before July 1, 2010”; and

Time period.

(2) by inserting after clause (I), as inserted by paragraph (1), the following new subparagraph:

“(II) Effective for discharges occurring on or after July 1, 2010, all the time spent by an intern or resident in patient care activities in a nonprovider setting shall be counted towards the determination of full-time equivalency if a hospital incurs the costs of the stipends and fringe benefits of the intern or resident during the time the intern or resident spends in that setting. If more than one hospital incurs these costs, either directly or through a third party, such hospitals shall count a proportional share of the time, as determined by written agreement between the hospitals, that a resident spends training in that setting.”.

42 USC 1395ww
note.

(c) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. 1395ww(h)).

SEC. 5505. RULES FOR COUNTING RESIDENT TIME FOR DIDACTIC AND SCHOLARLY ACTIVITIES AND OTHER ACTIVITIES.

(a) GME.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)), as amended by section 5504, is amended—

(1) in paragraph (4)—

(A) in subparagraph (E), by striking “Such rules” and inserting “Subject to subparagraphs (J) and (K), such rules”; and

(B) by adding at the end the following new subparagraphs:

“(J) TREATMENT OF CERTAIN NONPROVIDER AND DIDACTIC ACTIVITIES.—Such rules shall provide that all time spent by an intern or resident in an approved medical residency training program in a nonprovider setting that is primarily engaged in furnishing patient care (as defined in paragraph (5)(K)) in non-patient care activities, such as didactic conferences and seminars, but not including research not associated with the treatment or diagnosis of a particular patient, as such time and activities are defined by the Secretary, shall be counted toward the determination of full-time equivalency.

Definition.

“(K) TREATMENT OF CERTAIN OTHER ACTIVITIES.—In determining the hospital’s number of full-time equivalent residents for purposes of this subsection, all the time that is spent by an intern or resident in an approved medical residency training program on vacation, sick leave, or other approved leave, as such time is defined by the Secretary, and that does not prolong the total time the resident is participating in the approved program beyond the normal duration of the program shall be counted toward the determination of full-time equivalency.”; and

(2) in paragraph (5), by adding at the end the following new subparagraph:

“(K) NONPROVIDER SETTING THAT IS PRIMARILY ENGAGED IN FURNISHING PATIENT CARE.—The term ‘nonprovider setting that is primarily engaged in furnishing patient care’ means a nonprovider setting in which the primary activity is the care and treatment of patients, as defined by the Secretary.”.

(b) IME DETERMINATIONS.—Section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by adding at the end the following new clause:

Applicability.

“(x)(I) The provisions of subparagraph (K) of subsection (h)(4) shall apply under this subparagraph in the same manner as they apply under such subsection.

“(II) In determining the hospital’s number of full-time equivalent residents for purposes of this subparagraph, all the time spent by an intern or resident

in an approved medical residency training program in non-patient care activities, such as didactic conferences and seminars, as such time and activities are defined by the Secretary, that occurs in the hospital shall be counted toward the determination of full-time equivalency if the hospital—

- “(aa) is recognized as a subsection (d) hospital;
- “(bb) is recognized as a subsection (d) Puerto Rico hospital;
- “(cc) is reimbursed under a reimbursement system authorized under section 1814(b)(3); or
- “(dd) is a provider-based hospital outpatient department.

“(III) In determining the hospital’s number of full-time equivalent residents for purposes of this subparagraph, all the time spent by an intern or resident in an approved medical residency training program in research activities that are not associated with the treatment or diagnosis of a particular patient, as such time and activities are defined by the Secretary, shall not be counted toward the determination of full-time equivalency.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided, the Secretary of Health and Human Services shall implement the amendments made by this section in a manner so as to apply to cost reporting periods beginning on or after January 1, 1983.

(2) GME.—Section 1886(h)(4)(J) of the Social Security Act, as added by subsection (a)(1)(B), shall apply to cost reporting periods beginning on or after July 1, 2009.

(3) IME.—Section 1886(d)(5)(B)(x)(III) of the Social Security Act, as added by subsection (b), shall apply to cost reporting periods beginning on or after October 1, 2001. Such section, as so added, shall not give rise to any inference as to how the law in effect prior to such date should be interpreted.

Applicability.
42 USC 1395ww
note.

SEC. 5506. PRESERVATION OF RESIDENT CAP POSITIONS FROM CLOSED HOSPITALS.

(a) GME.—Section 1886(h)(4)(H) of the Social Security Act (42 U.S.C. Section 1395ww(h)(4)(H)) is amended by adding at the end the following new clause:

“(vi) REDISTRIBUTION OF RESIDENCY SLOTS AFTER A HOSPITAL CLOSES.—

“(I) IN GENERAL.—Subject to the succeeding provisions of this clause, the Secretary shall, by regulation, establish a process under which, in the case where a hospital (other than a hospital described in clause (v)) with an approved medical residency program closes on or after a date that is 2 years before the date of enactment of this clause, the Secretary shall increase the otherwise applicable resident limit under this paragraph for other hospitals in accordance with this clause.

“(II) PRIORITY FOR HOSPITALS IN CERTAIN AREAS.—Subject to the succeeding provisions of this clause, in determining for which hospitals the

Regulations.

increase in the otherwise applicable resident limit is provided under such process, the Secretary shall distribute the increase to hospitals in the following priority order (with preference given within each category to hospitals that are members of the same affiliated group (as defined by the Secretary under clause (ii)) as the closed hospital):

“(aa) First, to hospitals located in the same core-based statistical area as, or a core-based statistical area contiguous to, the hospital that closed.

“(bb) Second, to hospitals located in the same State as the hospital that closed.

“(cc) Third, to hospitals located in the same region of the country as the hospital that closed.

“(dd) Fourth, only if the Secretary is not able to distribute the increase to hospitals described in item (cc), to qualifying hospitals in accordance with the provisions of paragraph (8).

Determination.

“(III) REQUIREMENT HOSPITAL LIKELY TO FILL POSITION WITHIN CERTAIN TIME PERIOD.—The Secretary may only increase the otherwise applicable resident limit of a hospital under such process if the Secretary determines the hospital has demonstrated a likelihood of filling the positions made available under this clause within 3 years.

“(IV) LIMITATION.—The aggregate number of increases in the otherwise applicable resident limits for hospitals under this clause shall be equal to the number of resident positions in the approved medical residency programs that closed on or after the date described in subclause (I).

“(V) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to the implementation of this clause.”.

(b) IME.—Section 1886(d)(5)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second sentence, as amended by section 5503, is amended by striking “subsections (h)(7) and (h)(8)” and inserting “subsections (h)(4)(H)(vi), (h)(7), and (h)(8)”.

42 USC 1395ww
note.

(c) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. Section 1395ww(h)).

42 USC 1395ww
note.

(d) EFFECT ON TEMPORARY FTE CAP ADJUSTMENTS.—The Secretary of Health and Human Services shall give consideration to the effect of the amendments made by this section on any temporary adjustment to a hospital’s FTE cap under section 413.79(h) of title 42, Code of Federal Regulations (as in effect on the date of enactment of this Act) in order to ensure that there is no duplication of FTE slots. Such amendments shall not affect the

application of section 1886(h)(4)(H)(v) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(H)(v)).

(e) CONFORMING AMENDMENT.—Section 1886(h)(7)(E) of the Social Security Act (42 U.S.C. 1395ww(h)(7)(E)), as amended by section 5503(a), is amended by striking “paragraph or paragraph (8)” and inserting “this paragraph, paragraph (8), or paragraph (4)(H)(vi)”.

SEC. 5507. DEMONSTRATION PROJECTS TO ADDRESS HEALTH PROFESSIONS WORKFORCE NEEDS; EXTENSION OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.

(a) AUTHORITY TO CONDUCT DEMONSTRATION PROJECTS.—Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended by adding at the end the following:

“SEC. 2008. DEMONSTRATION PROJECTS TO ADDRESS HEALTH PROFESSIONS WORKFORCE NEEDS. 42 USC 1397g.

“(a) DEMONSTRATION PROJECTS TO PROVIDE LOW-INCOME INDIVIDUALS WITH OPPORTUNITIES FOR EDUCATION, TRAINING, AND CAREER ADVANCEMENT TO ADDRESS HEALTH PROFESSIONS WORKFORCE NEEDS.—

“(1) AUTHORITY TO AWARD GRANTS.—The Secretary, in consultation with the Secretary of Labor, shall award grants to eligible entities to conduct demonstration projects that are designed to provide eligible individuals with the opportunity to obtain education and training for occupations in the health care field that pay well and are expected to either experience labor shortages or be in high demand.

“(2) REQUIREMENTS.—

“(A) AID AND SUPPORTIVE SERVICES.—

“(i) IN GENERAL.—A demonstration project conducted by an eligible entity awarded a grant under this section shall, if appropriate, provide eligible individuals participating in the project with financial aid, child care, case management, and other supportive services.

“(ii) TREATMENT.—Any aid, services, or incentives provided to an eligible beneficiary participating in a demonstration project under this section shall not be considered income, and shall not be taken into account for purposes of determining the individual’s eligibility for, or amount of, benefits under any means-tested program.

“(B) CONSULTATION AND COORDINATION.—An eligible entity applying for a grant to carry out a demonstration project under this section shall demonstrate in the application that the entity has consulted with the State agency responsible for administering the State TANF program, the local workforce investment board in the area in which the project is to be conducted (unless the applicant is such board), the State workforce investment board established under section 111 of the Workforce Investment Act of 1998, and the State Apprenticeship Agency recognized under the Act of August 16, 1937 (commonly known as the ‘National Apprenticeship Act’) (or if no agency has been recognized in the State, the Office of Apprenticeship of the Department of Labor) and that the project will be carried out in coordination with such entities.

Grants.

“(C) ASSURANCE OF OPPORTUNITIES FOR INDIAN POPULATIONS.—The Secretary shall award at least 3 grants under this subsection to an eligible entity that is an Indian tribe, tribal organization, or Tribal College or University.”

“(3) REPORTS AND EVALUATION.—

“(A) ELIGIBLE ENTITIES.—An eligible entity awarded a grant to conduct a demonstration project under this subsection shall submit interim reports to the Secretary on the activities carried out under the project and a final report on such activities upon the conclusion of the entities’ participation in the project. Such reports shall include assessments of the effectiveness of such activities with respect to improving outcomes for the eligible individuals participating in the project and with respect to addressing health professions workforce needs in the areas in which the project is conducted.

Grants.
Contracts.

“(B) EVALUATION.—The Secretary shall, by grant, contract, or interagency agreement, evaluate the demonstration projects conducted under this subsection. Such evaluation shall include identification of successful activities for creating opportunities for developing and sustaining, particularly with respect to low-income individuals and other entry-level workers, a health professions workforce that has accessible entry points, that meets high standards for education, training, certification, and professional development, and that provides increased wages and affordable benefits, including health care coverage, that are responsive to the workforce’s needs.

“(C) REPORT TO CONGRESS.—The Secretary shall submit interim reports and, based on the evaluation conducted under subparagraph (B), a final report to Congress on the demonstration projects conducted under this subsection.

“(4) DEFINITIONS.—In this subsection:

“(A) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a State, an Indian tribe or tribal organization, an institution of higher education, a local workforce investment board established under section 117 of the Workforce Investment Act of 1998, a sponsor of an apprenticeship program registered under the National Apprenticeship Act or a community-based organization.

“(B) ELIGIBLE INDIVIDUAL.—

“(i) IN GENERAL.—The term ‘eligible individual’ means a individual receiving assistance under the State TANF program.

“(ii) OTHER LOW-INCOME INDIVIDUALS.—Such term may include other low-income individuals described by the eligible entity in its application for a grant under this section.

“(C) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ‘Indian tribe’ and ‘tribal organization’ have the meaning given such terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(D) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

“(E) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

“(F) STATE TANF PROGRAM.—The term ‘State TANF program’ means the temporary assistance for needy families program funded under part A of title IV.

“(G) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘Tribal College or University’ has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

“(b) DEMONSTRATION PROJECT TO DEVELOP TRAINING AND CERTIFICATION PROGRAMS FOR PERSONAL OR HOME CARE AIDES.—

“(1) AUTHORITY TO AWARD GRANTS.—Not later than 18 months after the date of enactment of this section, the Secretary shall award grants to eligible entities that are States to conduct demonstration projects for purposes of developing core training competencies and certification programs for personal or home care aides. The Secretary shall—

Deadline.

“(A) evaluate the efficacy of the core training competencies described in paragraph (3)(A) for newly hired personal or home care aides and the methods used by States to implement such core training competencies in accordance with the issues specified in paragraph (3)(B); and

Evaluation.

“(B) ensure that the number of hours of training provided by States under the demonstration project with respect to such core training competencies are not less than the number of hours of training required under any applicable State or Federal law or regulation.

“(2) DURATION.—A demonstration project shall be conducted under this subsection for not less than 3 years.

“(3) CORE TRAINING COMPETENCIES FOR PERSONAL OR HOME CARE AIDES.—

“(A) IN GENERAL.—The core training competencies for personal or home care aides described in this subparagraph include competencies with respect to the following areas:

“(i) The role of the personal or home care aide (including differences between a personal or home care aide employed by an agency and a personal or home care aide employed directly by the health care consumer or an independent provider).

“(ii) Consumer rights, ethics, and confidentiality (including the role of proxy decision-makers in the case where a health care consumer has impaired decision-making capacity).

“(iii) Communication, cultural and linguistic competence and sensitivity, problem solving, behavior management, and relationship skills.

“(iv) Personal care skills.

“(v) Health care support.

“(vi) Nutritional support.

“(vii) Infection control.

“(viii) Safety and emergency training.

“(ix) Training specific to an individual consumer’s needs (including older individuals, younger individuals with disabilities, individuals with developmental

disabilities, individuals with dementia, and individuals with mental and behavioral health needs).

“(x) Self-Care.

“(B) IMPLEMENTATION.—The implementation issues specified in this subparagraph include the following:

“(i) The length of the training.

“(ii) The appropriate trainer to student ratio.

“(iii) The amount of instruction time spent in the classroom as compared to on-site in the home or a facility.

“(iv) Trainer qualifications.

“(v) Content for a ‘hands-on’ and written certification exam.

“(vi) Continuing education requirements.

“(4) APPLICATION AND SELECTION CRITERIA.—

“(A) IN GENERAL.—

Contracts.

“(i) NUMBER OF STATES.—The Secretary shall enter into agreements with not more than 6 States to conduct demonstration projects under this subsection.

“(ii) REQUIREMENTS FOR STATES.—An agreement entered into under clause (i) shall require that a participating State—

“(I) implement the core training competencies described in paragraph (3)(A); and

“(II) develop written materials and protocols for such core training competencies, including the development of a certification test for personal or home care aides who have completed such training competencies.

“(iii) CONSULTATION AND COLLABORATION WITH COMMUNITY AND VOCATIONAL COLLEGES.—The Secretary shall encourage participating States to consult with community and vocational colleges regarding the development of curricula to implement the project with respect to activities, as applicable, which may include consideration of such colleges as partners in such implementation.

“(B) APPLICATION AND ELIGIBILITY.—A State seeking to participate in the project shall—

“(i) submit an application to the Secretary containing such information and at such time as the Secretary may specify;

“(ii) meet the selection criteria established under subparagraph (C); and

“(iii) meet such additional criteria as the Secretary may specify.

“(C) SELECTION CRITERIA.—In selecting States to participate in the program, the Secretary shall establish criteria to ensure (if applicable with respect to the activities involved)—

“(i) geographic and demographic diversity;

“(ii) that participating States offer medical assistance for personal care services under the State Medicaid plan;

“(iii) that the existing training standards for personal or home care aides in each participating State—

“(I) are different from such standards in the other participating States; and

“(II) are different from the core training competencies described in paragraph (3)(A);

“(iv) that participating States do not reduce the number of hours of training required under applicable State law or regulation after being selected to participate in the project; and

“(v) that participating States recruit a minimum number of eligible health and long-term care providers to participate in the project.

“(D) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States in developing written materials and protocols for such core training competencies.

“(5) EVALUATION AND REPORT.—

“(A) EVALUATION.—The Secretary shall develop an experimental or control group testing protocol in consultation with an independent evaluation contractor selected by the Secretary. Such contractor shall evaluate—

Contracts.

“(i) the impact of core training competencies described in paragraph (3)(A), including curricula developed to implement such core training competencies, for personal or home care aides within each participating State on job satisfaction, mastery of job skills, beneficiary and family caregiver satisfaction with services, and additional measures determined by the Secretary in consultation with the expert panel;

“(ii) the impact of providing such core training competencies on the existing training infrastructure and resources of States; and

“(iii) whether a minimum number of hours of initial training should be required for personal or home care aides and, if so, what minimum number of hours should be required.

“(B) REPORTS.—

“(i) REPORT ON INITIAL IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to Congress a report on the initial implementation of activities conducted under the demonstration project, including any available results of the evaluation conducted under subparagraph (A) with respect to such activities, together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

“(ii) FINAL REPORT.—Not later than 1 year after the completion of the demonstration project, the Secretary shall submit to Congress a report containing the results of the evaluation conducted under subparagraph (A), together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

“(6) DEFINITIONS.—In this subsection:

“(A) ELIGIBLE HEALTH AND LONG-TERM CARE PROVIDER.—The term ‘eligible health and long-term care provider’ means a personal or home care agency (including personal or home care public authorities), a nursing home, a home health agency (as defined in section 1861(o)), or

any other health care provider the Secretary determines appropriate which—

“(i) is licensed or authorized to provide services in a participating State; and

“(ii) receives payment for services under title XIX.

“(B) PERSONAL CARE SERVICES.—The term ‘personal care services’ has the meaning given such term for purposes of title XIX.

“(C) PERSONAL OR HOME CARE AIDE.—The term ‘personal or home care aide’ means an individual who helps individuals who are elderly, disabled, ill, or mentally disabled (including an individual with Alzheimer’s disease or other dementia) to live in their own home or a residential care facility (such as a nursing home, assisted living facility, or any other facility the Secretary determines appropriate) by providing routine personal care services and other appropriate services to the individual.

“(D) STATE.—The term ‘State’ has the meaning given that term for purposes of title XIX.

“(c) FUNDING.—

“(1) IN GENERAL.—Subject to paragraph (2), out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out subsections (a) and (b), \$85,000,000 for each of fiscal years 2010 through 2014.

“(2) TRAINING AND CERTIFICATION PROGRAMS FOR PERSONAL AND HOME CARE AIDES.—With respect to the demonstration projects under subsection (b), the Secretary shall use \$5,000,000 of the amount appropriated under paragraph (1) for each of fiscal years 2010 through 2012 to carry out such projects. No funds appropriated under paragraph (1) shall be used to carry out demonstration projects under subsection (b) after fiscal year 2012.

“(d) NONAPPLICATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the preceding sections of this title shall not apply to grant awarded under this section.

“(2) LIMITATIONS ON USE OF GRANTS.—Section 2005(a) (other than paragraph (6)) shall apply to a grant awarded under this section to the same extent and in the same manner as such section applies to payments to States under this title.”.

(b) EXTENSION OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.—Section 501(c)(1)(A)(iii) of the Social Security Act (42 U.S.C. 701(c)(1)(A)(iii)) is amended by striking “fiscal year 2009” and inserting “each of fiscal years 2009 through 2012”.

SEC. 5508. INCREASING TEACHING CAPACITY.

(a) TEACHING HEALTH CENTERS TRAINING AND ENHANCEMENT.—Part C of title VII of the Public Health Service Act (42 U.S.C. 293k et. seq.), as amended by section 5303, is further amended by inserting after section 749 the following:

“SEC. 749A. TEACHING HEALTH CENTERS DEVELOPMENT GRANTS.

“(a) PROGRAM AUTHORIZED.—The Secretary may award grants under this section to teaching health centers for the purpose of establishing new accredited or expanded primary care residency programs.

Applicability.

42 USC 239l–1.

“(b) AMOUNT AND DURATION.—Grants awarded under this section shall be for a term of not more than 3 years and the maximum award may not be more than \$500,000.

“(c) USE OF FUNDS.—Amounts provided under a grant under this section shall be used to cover the costs of—

“(1) establishing or expanding a primary care residency training program described in subsection (a), including costs associated with—

“(A) curriculum development;

“(B) recruitment, training and retention of residents and faculty;

“(C) accreditation by the Accreditation Council for Graduate Medical Education (ACGME), the American Dental Association (ADA), or the American Osteopathic Association (AOA); and

“(D) faculty salaries during the development phase; and

“(2) technical assistance provided by an eligible entity.

“(d) APPLICATION.—A teaching health center seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(e) PREFERENCE FOR CERTAIN APPLICATIONS.—In selecting recipients for grants under this section, the Secretary shall give preference to any such application that documents an existing affiliation agreement with an area health education center program as defined in sections 751 and 799B.

“(f) DEFINITIONS.—In this section:

“(1) ELIGIBLE ENTITY.—The term ‘eligible entity’ means an organization capable of providing technical assistance including an area health education center program as defined in sections 751 and 799B.

“(2) PRIMARY CARE RESIDENCY PROGRAM.—The term ‘primary care residency program’ means an approved graduate medical residency training program (as defined in section 340H) in family medicine, internal medicine, pediatrics, internal medicine-pediatrics, obstetrics and gynecology, psychiatry, general dentistry, pediatric dentistry, and geriatrics.

“(3) TEACHING HEALTH CENTER.—

“(A) IN GENERAL.—The term ‘teaching health center’ means an entity that—

“(i) is a community based, ambulatory patient care center; and

“(ii) operates a primary care residency program.

“(B) INCLUSION OF CERTAIN ENTITIES.—Such term includes the following:

“(i) A Federally qualified health center (as defined in section 1905(l)(2)(B), of the Social Security Act).

“(ii) A community mental health center (as defined in section 1861(ff)(3)(B) of the Social Security Act).

“(iii) A rural health clinic, as defined in section 1861(aa) of the Social Security Act.

“(iv) A health center operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act).

“(v) An entity receiving funds under title X of the Public Health Service Act.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, \$25,000,000 for fiscal year 2010, \$50,000,000 for fiscal year 2011, \$50,000,000 for fiscal year 2012, and such sums as may be necessary for each fiscal year thereafter to carry out this section. Not to exceed \$5,000,000 annually may be used for technical assistance program grants.”.

(b) NATIONAL HEALTH SERVICE CORPS TEACHING CAPACITY.—Section 338C(a) of the Public Health Service Act (42 U.S.C. 254m(a)) is amended to read as follows:

Contracts.

“(a) SERVICE IN FULL-TIME CLINICAL PRACTICE.—Except as provided in section 338D, each individual who has entered into a written contract with the Secretary under section 338A or 338B shall provide service in the full-time clinical practice of such individual’s profession as a member of the Corps for the period of obligated service provided in such contract. For the purpose of calculating time spent in full-time clinical practice under this subsection, up to 50 percent of time spent teaching by a member of the Corps may be counted toward his or her service obligation.”.

(c) PAYMENTS TO QUALIFIED TEACHING HEALTH CENTERS.—Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following:

“Subpart XI—Support of Graduate Medical Education in Qualified Teaching Health Centers

42 USC 256h.

“SEC. 340H. PROGRAM OF PAYMENTS TO TEACHING HEALTH CENTERS THAT OPERATE GRADUATE MEDICAL EDUCATION PROGRAMS.

“(a) PAYMENTS.—Subject to subsection (h)(2), the Secretary shall make payments under this section for direct expenses and for indirect expenses to qualified teaching health centers that are listed as sponsoring institutions by the relevant accrediting body for expansion of existing or establishment of new approved graduate medical residency training programs.

“(b) AMOUNT OF PAYMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amounts payable under this section to qualified teaching health centers for an approved graduate medical residency training program for a fiscal year are each of the following amounts:

“(A) DIRECT EXPENSE AMOUNT.—The amount determined under subsection (c) for direct expenses associated with sponsoring approved graduate medical residency training programs.

“(B) INDIRECT EXPENSE AMOUNT.—The amount determined under subsection (d) for indirect expenses associated with the additional costs relating to teaching residents in such programs.

“(2) CAPPED AMOUNT.—

“(A) IN GENERAL.—The total of the payments made to qualified teaching health centers under paragraph (1)(A) or paragraph (1)(B) in a fiscal year shall not exceed the amount of funds appropriated under subsection (g) for such payments for that fiscal year.

“(B) LIMITATION.—The Secretary shall limit the funding of full-time equivalent residents in order to ensure

the direct and indirect payments as determined under subsection (c) and (d) do not exceed the total amount of funds appropriated in a fiscal year under subsection (g).

“(c) AMOUNT OF PAYMENT FOR DIRECT GRADUATE MEDICAL EDUCATION.—

“(1) IN GENERAL.—The amount determined under this subsection for payments to qualified teaching health centers for direct graduate expenses relating to approved graduate medical residency training programs for a fiscal year is equal to the product of—

“(A) the updated national per resident amount for direct graduate medical education, as determined under paragraph (2); and

“(B) the average number of full-time equivalent residents in the teaching health center’s graduate approved medical residency training programs as determined under section 1886(h)(4) of the Social Security Act (without regard to the limitation under subparagraph (F) of such section) during the fiscal year.

“(2) UPDATED NATIONAL PER RESIDENT AMOUNT FOR DIRECT GRADUATE MEDICAL EDUCATION.—The updated per resident amount for direct graduate medical education for a qualified teaching health center for a fiscal year is an amount determined as follows:

“(A) DETERMINATION OF QUALIFIED TEACHING HEALTH CENTER PER RESIDENT AMOUNT.—The Secretary shall compute for each individual qualified teaching health center a per resident amount—

“(i) by dividing the national average per resident amount computed under section 340E(c)(2)(D) into a wage-related portion and a non-wage related portion by applying the proportion determined under subparagraph (B);

“(ii) by multiplying the wage-related portion by the factor applied under section 1886(d)(3)(E) of the Social Security Act (but without application of section 4410 of the Balanced Budget Act of 1997 (42 U.S.C. 1395ww note)) during the preceding fiscal year for the teaching health center’s area; and

“(iii) by adding the non-wage-related portion to the amount computed under clause (ii).

“(B) UPDATING RATE.—The Secretary shall update such per resident amount for each such qualified teaching health center as determined appropriate by the Secretary.

“(d) AMOUNT OF PAYMENT FOR INDIRECT MEDICAL EDUCATION.—

“(1) IN GENERAL.—The amount determined under this subsection for payments to qualified teaching health centers for indirect expenses associated with the additional costs of teaching residents for a fiscal year is equal to an amount determined appropriate by the Secretary.

“(2) FACTORS.—In determining the amount under paragraph (1), the Secretary shall—

“(A) evaluate indirect training costs relative to supporting a primary care residency program in qualified teaching health centers; and

“(B) based on this evaluation, assure that the aggregate of the payments for indirect expenses under this section

Determination.

and the payments for direct graduate medical education as determined under subsection (c) in a fiscal year do not exceed the amount appropriated for such expenses as determined in subsection (g).

“(3) INTERIM PAYMENT.—Before the Secretary makes a payment under this subsection pursuant to a determination of indirect expenses under paragraph (1), the Secretary may provide to qualified teaching health centers a payment, in addition to any payment made under subsection (c), for expected indirect expenses associated with the additional costs of teaching residents for a fiscal year, based on an estimate by the Secretary.

“(e) CLARIFICATION REGARDING RELATIONSHIP TO OTHER PAYMENTS FOR GRADUATE MEDICAL EDUCATION.—Payments under this section—

“(1) shall be in addition to any payments—

“(A) for the indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act;

“(B) for direct graduate medical education costs under section 1886(h) of such Act; and

“(C) for direct costs of medical education under section 1886(k) of such Act;

“(2) shall not be taken into account in applying the limitation on the number of total full-time equivalent residents under subparagraphs (F) and (G) of section 1886(h)(4) of such Act and clauses (v), (vi)(I), and (vi)(II) of section 1886(d)(5)(B) of such Act for the portion of time that a resident rotates to a hospital; and

“(3) shall not include the time in which a resident is counted toward full-time equivalency by a hospital under paragraph (2) or under section 1886(d)(5)(B)(iv) of the Social Security Act, section 1886(h)(4)(E) of such Act, or section 340E of this Act.

Determination.

“(f) RECONCILIATION.—The Secretary shall determine any changes to the number of residents reported by a hospital in the application of the hospital for the current fiscal year to determine the final amount payable to the hospital for the current fiscal year for both direct expense and indirect expense amounts. Based on such determination, the Secretary shall recoup any overpayments made to pay any balance due to the extent possible. The final amount so determined shall be considered a final intermediary determination for the purposes of section 1878 of the Social Security Act and shall be subject to administrative and judicial review under that section in the same manner as the amount of payment under section 1186(d) of such Act is subject to review under such section.

“(g) FUNDING.—To carry out this section, there are appropriated such sums as may be necessary, not to exceed \$230,000,000, for the period of fiscal years 2011 through 2015.

“(h) ANNUAL REPORTING REQUIRED.—

“(1) ANNUAL REPORT.—The report required under this paragraph for a qualified teaching health center for a fiscal year is a report that includes (in a form and manner specified by the Secretary) the following information for the residency academic year completed immediately prior to such fiscal year:

“(A) The types of primary care resident approved training programs that the qualified teaching health center provided for residents.

“(B) The number of approved training positions for residents described in paragraph (4).

“(C) The number of residents described in paragraph (4) who completed their residency training at the end of such residency academic year and care for vulnerable populations living in underserved areas.

“(D) Other information as deemed appropriate by the Secretary.

“(2) AUDIT AUTHORITY; LIMITATION ON PAYMENT.—

“(A) AUDIT AUTHORITY.—The Secretary may audit a qualified teaching health center to ensure the accuracy and completeness of the information submitted in a report under paragraph (1).

“(B) LIMITATION ON PAYMENT.—A teaching health center may only receive payment in a cost reporting period for a number of such resident positions that is greater than the base level of primary care resident positions, as determined by the Secretary. For purposes of this subparagraph, the ‘base level of primary care residents’ for a teaching health center is the level of such residents as of a base period.

“(3) REDUCTION IN PAYMENT FOR FAILURE TO REPORT.—

“(A) IN GENERAL.—The amount payable under this section to a qualified teaching health center for a fiscal year shall be reduced by at least 25 percent if the Secretary determines that—

Determination.

“(i) the qualified teaching health center has failed to provide the Secretary, as an addendum to the qualified teaching health center’s application under this section for such fiscal year, the report required under paragraph (1) for the previous fiscal year; or

“(ii) such report fails to provide complete and accurate information required under any subparagraph of such paragraph.

“(B) NOTICE AND OPPORTUNITY TO PROVIDE ACCURATE AND MISSING INFORMATION.—Before imposing a reduction under subparagraph (A) on the basis of a qualified teaching health center’s failure to provide complete and accurate information described in subparagraph (A)(ii), the Secretary shall provide notice to the teaching health center of such failure and the Secretary’s intention to impose such reduction and shall provide the teaching health center with the opportunity to provide the required information within the period of 30 days beginning on the date of such notice. If the teaching health center provides such information within such period, no reduction shall be made under subparagraph (A) on the basis of the previous failure to provide such information.

Deadline.

“(4) RESIDENTS.—The residents described in this paragraph are those who are in part-time or full-time equivalent resident training positions at a qualified teaching health center in any approved graduate medical residency training program.

“(i) REGULATIONS.—The Secretary shall promulgate regulations to carry out this section.

“(j) DEFINITIONS.—In this section:

“(1) APPROVED GRADUATE MEDICAL RESIDENCY TRAINING PROGRAM.—The term ‘approved graduate medical residency

training program’ means a residency or other postgraduate medical training program—

“(A) participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary; and

“(B) that meets criteria for accreditation (as established by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the American Dental Association).

“(2) PRIMARY CARE RESIDENCY PROGRAM.—The term ‘primary care residency program’ has the meaning given that term in section 749A.

“(3) QUALIFIED TEACHING HEALTH CENTER.—The term ‘qualified teaching health center’ has the meaning given the term ‘teaching health center’ in section 749A.”.

42 USC 1395ww
note.

SEC. 5509. GRADUATE NURSE EDUCATION DEMONSTRATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall establish a graduate nurse education demonstration under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) under which an eligible hospital may receive payment for the hospital’s reasonable costs (described in paragraph (2)) for the provision of qualified clinical training to advance practice nurses.

(B) NUMBER.—The demonstration shall include up to 5 eligible hospitals.

(C) WRITTEN AGREEMENTS.—Eligible hospitals selected to participate in the demonstration shall enter into written agreements pursuant to subsection (b) in order to reimburse the eligible partners of the hospital the share of the costs attributable to each partner.

(2) COSTS DESCRIBED.—

(A) IN GENERAL.—Subject to subparagraph (B) and subsection (d), the costs described in this paragraph are the reasonable costs (as described in section 1861(v) of the Social Security Act (42 U.S.C. 1395x(v))) of each eligible hospital for the clinical training costs (as determined by the Secretary) that are attributable to providing advanced practice registered nurses with qualified training.

Time period.

(B) LIMITATION.—With respect to a year, the amount reimbursed under subparagraph (A) may not exceed the amount of costs described in subparagraph (A) that are attributable to an increase in the number of advanced practice registered nurses enrolled in a program that provides qualified training during the year and for which the hospital is being reimbursed under the demonstration, as compared to the average number of advanced practice registered nurses who graduated in each year during the period beginning on January 1, 2006, and ending on December 31, 2010 (as determined by the Secretary) from the graduate nursing education program operated by the applicable school of nursing that is an eligible partner of the hospital for purposes of the demonstration.

(3) **WAIVER AUTHORITY.**—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary to carry out the demonstration.

(4) **ADMINISTRATION.**—Chapter 35 of title 44, United States Code, shall not apply to the implementation of this section.

(b) **WRITTEN AGREEMENTS WITH ELIGIBLE PARTNERS.**—No payment shall be made under this section to an eligible hospital unless such hospital has in effect a written agreement with the eligible partners of the hospital. Such written agreement shall describe, at a minimum—

(1) the obligations of the eligible partners with respect to the provision of qualified training; and

(2) the obligation of the eligible hospital to reimburse such eligible partners applicable (in a timely manner) for the costs of such qualified training attributable to partner.

(c) **EVALUATION.**—Not later than October 17, 2017, the Secretary shall submit to Congress a report on the demonstration. Such report shall include an analysis of the following:

Deadline.
Reports.

(1) The growth in the number of advanced practice registered nurses with respect to a specific base year as a result of the demonstration.

(2) The growth for each of the specialties described in subparagraphs (A) through (D) of subsection (e)(1).

(3) The costs to the Medicare program under title XVIII of the Social Security Act as a result of the demonstration.

(4) Other items the Secretary determines appropriate and relevant.

(d) **FUNDING.**—

(1) **IN GENERAL.**—There is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, \$50,000,000 for each of fiscal years 2012 through 2015 to carry out this section, including the design, implementation, monitoring, and evaluation of the demonstration.

(2) **PRORATION.**—If the aggregate payments to eligible hospitals under the demonstration exceed \$50,000,000 for a fiscal year described in paragraph (1), the Secretary shall prorate the payment amounts to each eligible hospital in order to ensure that the aggregate payments do not exceed such amount.

(3) **WITHOUT FISCAL YEAR LIMITATION.**—Amounts appropriated under this subsection shall remain available without fiscal year limitation.

(e) **DEFINITIONS.**—In this section:

(1) **ADVANCED PRACTICE REGISTERED NURSE.**—The term “advanced practice registered nurse” includes the following:

(A) A clinical nurse specialist (as defined in subsection (aa)(5) of section 1861 of the Social Security Act (42 U.S.C. 1395x)).

(B) A nurse practitioner (as defined in such subsection).

(C) A certified registered nurse anesthetist (as defined in subsection (bb)(2) of such section).

(D) A certified nurse-midwife (as defined in subsection (gg)(2) of such section).

(2) **APPLICABLE NON-HOSPITAL COMMUNITY-BASED CARE SETTING.**—The term “applicable non-hospital community-based care setting” means a non-hospital community-based care setting which has entered into a written agreement (as described in subsection (b)) with the eligible hospital participating in the

demonstration. Such settings include Federally qualified health centers, rural health clinics, and other non-hospital settings as determined appropriate by the Secretary.

(3) **APPLICABLE SCHOOL OF NURSING.**—The term “applicable school of nursing” means an accredited school of nursing (as defined in section 801 of the Public Health Service Act) which has entered into a written agreement (as described in subsection (b)) with the eligible hospital participating in the demonstration.

(4) **DEMONSTRATION.**—The term “demonstration” means the graduate nurse education demonstration established under subsection (a).

(5) **ELIGIBLE HOSPITAL.**—The term “eligible hospital” means a hospital (as defined in subsection (e) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) or a critical access hospital (as defined in subsection (mm)(1) of such section) that has a written agreement in place with—

(A) 1 or more applicable schools of nursing; and

(B) 2 or more applicable non-hospital community-based care settings.

(6) **ELIGIBLE PARTNERS.**—The term “eligible partners” includes the following:

(A) An applicable non-hospital community-based care setting.

(B) An applicable school of nursing.

(7) **QUALIFIED TRAINING.**—

(A) **IN GENERAL.**—The term “qualified training” means training—

(i) that provides an advanced practice registered nurse with the clinical skills necessary to provide primary care, preventive care, transitional care, chronic care management, and other services appropriate for individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act, or enrolled under part B of such title; and

(ii) subject to subparagraph (B), at least half of which is provided in a non-hospital community-based care setting.

(B) **WAIVER OF REQUIREMENT HALF OF TRAINING BE PROVIDED IN NON-HOSPITAL COMMUNITY-BASED CARE SETTING IN CERTAIN AREAS.**—The Secretary may waive the requirement under subparagraph (A)(ii) with respect to eligible hospitals located in rural or medically underserved areas.

(8) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

Subtitle G—Improving Access to Health Care Services

SEC. 5601. SPENDING FOR FEDERALLY QUALIFIED HEALTH CENTERS (FQHCS).

(a) **IN GENERAL.**—Section 330(r) of the Public Health Service Act (42 U.S.C. 254b(r)) is amended by striking paragraph (1) and inserting the following:

“(1) GENERAL AMOUNTS FOR GRANTS.—For the purpose of carrying out this section, in addition to the amounts authorized to be appropriated under subsection (d), there is authorized to be appropriated the following:

“(A) For fiscal year 2010, \$2,988,821,592.

“(B) For fiscal year 2011, \$3,862,107,440.

“(C) For fiscal year 2012, \$4,990,553,440.

“(D) For fiscal year 2013, \$6,448,713,307.

“(E) For fiscal year 2014, \$7,332,924,155.

“(F) For fiscal year 2015, \$8,332,924,155.

“(G) For fiscal year 2016, and each subsequent fiscal year, the amount appropriated for the preceding fiscal year adjusted by the product of—

“(i) one plus the average percentage increase in costs incurred per patient served; and

“(ii) one plus the average percentage increase in the total number of patients served.”.

(b) RULE OF CONSTRUCTION.—Section 330(r) of the Public Health Service Act (42 U.S.C. 254b(r)) is amended by adding at the end the following:

“(4) RULE OF CONSTRUCTION WITH RESPECT TO RURAL HEALTH CLINICS.—

“(A) IN GENERAL.—Nothing in this section shall be construed to prevent a community health center from contracting with a Federally certified rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), a low-volume hospital (as defined for purposes of section 1886 of such Act), a critical access hospital, a sole community hospital (as defined for purposes of section 1886(d)(5)(D)(iii) of such Act), or a medicare-dependent share hospital (as defined for purposes of section 1886(d)(5)(G)(iv) of such Act) for the delivery of primary health care services that are available at the clinic or hospital to individuals who would otherwise be eligible for free or reduced cost care if that individual were able to obtain that care at the community health center. Such services may be limited in scope to those primary health care services available in that clinic or hospitals.

“(B) ASSURANCES.—In order for a clinic or hospital to receive funds under this section through a contract with a community health center under subparagraph (A), such clinic or hospital shall establish policies to ensure—

“(i) nondiscrimination based on the ability of a patient to pay; and

“(ii) the establishment of a sliding fee scale for low-income patients.”.

SEC. 5602. NEGOTIATED RULEMAKING FOR DEVELOPMENT OF METHODOLOGY AND CRITERIA FOR DESIGNATING MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONS SHORTAGE AREAS.

Deadlines.
42 USC 254b
note.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish, through a negotiated rulemaking process under subchapter 3 of chapter 5 of title 5, United States Code, a comprehensive methodology and criteria for designation of—

(A) medically underserved populations in accordance with section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3));

(B) health professions shortage areas under section 332 of the Public Health Service Act (42 U.S.C. 254e).

(2) FACTORS TO CONSIDER.—In establishing the methodology and criteria under paragraph (1), the Secretary—

(A) shall consult with relevant stakeholders who will be significantly affected by a rule (such as national, State and regional organizations representing affected entities), State health offices, community organizations, health centers and other affected entities, and other interested parties; and

(B) shall take into account—

(i) the timely availability and appropriateness of data used to determine a designation to potential applicants for such designations;

(ii) the impact of the methodology and criteria on communities of various types and on health centers and other safety net providers;

(iii) the degree of ease or difficulty that will face potential applicants for such designations in securing the necessary data; and

(iv) the extent to which the methodology accurately measures various barriers that confront individuals and population groups in seeking health care services.

Deadline.

(b) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this Act.

(c) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under subsection (b), and for purposes of this subsection, the “target date for publication”, as referred to in section 564(a)(5) of title 5, United States Code, shall be July 1, 2010.

Deadlines.

(d) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

(1) the appointment of a negotiated rulemaking committee under section 565(a) of title 5, United States Code, by not later than 30 days after the end of the comment period provided for under section 564(c) of such title; and

(2) the nomination of a facilitator under section 566(c) of such title 5 by not later than 10 days after the date of appointment of the committee.

(e) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under subsection (d) shall report to the Secretary, by not later than April 1, 2010, regarding the committee’s progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress toward such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this section through such other methods as the Secretary may provide.

(f) **FINAL COMMITTEE REPORT.**—If the committee is not terminated under subsection (e), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

(g) **INTERIM FINAL EFFECT.**—The Secretary shall publish a rule under this section in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 90 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications for such designations pursuant to such rules and consistent with this section.

Regulations.
Federal Register,
publication.
Effective date.
Public
information.

(h) **PUBLICATION OF RULE AFTER PUBLIC COMMENT.**—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.

SEC. 5603. REAUTHORIZATION OF THE WAKEFIELD EMERGENCY MEDICAL SERVICES FOR CHILDREN PROGRAM.

Section 1910 of the Public Health Service Act (42 U.S.C. 300w–9) is amended—

(1) in subsection (a), by striking “3-year period (with an optional 4th year” and inserting “4-year period (with an optional 5th year”; and

(2) in subsection (d)—

(A) by striking “and such sums” and inserting “such sums”; and

(B) by inserting before the period the following: “, \$25,000,000 for fiscal year 2010, \$26,250,000 for fiscal year 2011, \$27,562,500 for fiscal year 2012, \$28,940,625 for fiscal year 2013, and \$30,387,656 for fiscal year 2014”.

SEC. 5604. CO-LOCATING PRIMARY AND SPECIALTY CARE IN COMMUNITY-BASED MENTAL HEALTH SETTINGS.

Subpart 3 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb–31 et seq.) is amended by adding at the end the following:

“SEC. 520K. AWARDS FOR CO-LOCATING PRIMARY AND SPECIALTY CARE IN COMMUNITY-BASED MENTAL HEALTH SETTINGS.

42 USC
290bb–42.

“(a) **DEFINITIONS.**—In this section:

“(1) **ELIGIBLE ENTITY.**—The term ‘eligible entity’ means a qualified community mental health program defined under section 1913(b)(1).

“(2) **SPECIAL POPULATIONS.**—The term ‘special populations’ means adults with mental illnesses who have co-occurring primary care conditions and chronic diseases.

“(b) **PROGRAM AUTHORIZED.**—The Secretary, acting through the Administrator shall award grants and cooperative agreements to eligible entities to establish demonstration projects for the provision of coordinated and integrated services to special populations through the co-location of primary and specialty care services in community-based mental and behavioral health settings.

Grants.
Contracts.

“(c) **APPLICATION.**—To be eligible to receive a grant or cooperative agreement under this section, an eligible entity shall submit an application to the Administrator at such time, in such manner,

and accompanied by such information as the Administrator may require, including a description of partnerships, or other arrangements with local primary care providers, including community health centers, to provide services to special populations.

“(d) USE OF FUNDS.—

“(1) IN GENERAL.—For the benefit of special populations, an eligible entity shall use funds awarded under this section for—

“(A) the provision, by qualified primary care professionals, of on site primary care services;

“(B) reasonable costs associated with medically necessary referrals to qualified specialty care professionals, other coordinators of care or, if permitted by the terms of the grant or cooperative agreement, by qualified specialty care professionals on a reasonable cost basis on site at the eligible entity;

“(C) information technology required to accommodate the clinical needs of primary and specialty care professionals; or

“(D) facility modifications needed to bring primary and specialty care professionals on site at the eligible entity.

“(2) LIMITATION.—Not to exceed 15 percent of grant or cooperative agreement funds may be used for activities described in subparagraphs (C) and (D) of paragraph (1).

Deadline.

“(e) EVALUATION.—Not later than 90 days after a grant or cooperative agreement awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant or agreement.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$50,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2014.”.

36 USC 150303
note.

SEC. 5605. KEY NATIONAL INDICATORS.

(a) DEFINITIONS.—In this section:

(1) ACADEMY.—The term “Academy” means the National Academy of Sciences.

(2) COMMISSION.—The term “Commission” means the Commission on Key National Indicators established under subsection (b).

(3) INSTITUTE.—The term “Institute” means a Key National Indicators Institute as designated under subsection (c)(3).

(b) COMMISSION ON KEY NATIONAL INDICATORS.—

(1) ESTABLISHMENT.—There is established a “Commission on Key National Indicators”.

(2) MEMBERSHIP.—

(A) NUMBER AND APPOINTMENT.—The Commission shall be composed of 8 members, to be appointed equally by the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives.

(B) PROHIBITED APPOINTMENTS.—Members of the Commission shall not include Members of Congress or other elected Federal, State, or local government officials.

(C) QUALIFICATIONS.—In making appointments under subparagraph (A), the majority and minority leaders of

the Senate and the Speaker and minority leader of the House of Representatives shall appoint individuals who have shown a dedication to improving civic dialogue and decision-making through the wide use of scientific evidence and factual information.

(D) PERIOD OF APPOINTMENT.—Each member of the Commission shall be appointed for a 2-year term, except that 1 initial appointment shall be for 3 years. Any vacancies shall not affect the power and duties of the Commission but shall be filled in the same manner as the original appointment and shall last only for the remainder of that term.

(E) DATE.—Members of the Commission shall be appointed by not later than 30 days after the date of enactment of this Act.

(F) INITIAL ORGANIZING PERIOD.—Not later than 60 days after the date of enactment of this Act, the Commission shall develop and implement a schedule for completion of the review and reports required under subsection (d).

(G) CO-CHAIRPERSONS.—The Commission shall select 2 Co-Chairpersons from among its members.

(c) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall—

(A) conduct comprehensive oversight of a newly established key national indicators system consistent with the purpose described in this subsection;

(B) make recommendations on how to improve the key national indicators system;

(C) coordinate with Federal Government users and information providers to assure access to relevant and quality data; and

(D) enter into contracts with the Academy.

Contracts.

(2) REPORTS.—

(A) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the selection of the 2 Co-Chairpersons of the Commission, and each subsequent year thereafter, the Commission shall prepare and submit to the appropriate Committees of Congress and the President a report that contains a detailed statement of the recommendations, findings, and conclusions of the Commission on the activities of the Academy and a designated Institute related to the establishment of a Key National Indicator System.

(B) ANNUAL REPORT TO THE ACADEMY.—

(i) IN GENERAL.—Not later than 6 months after the selection of the 2 Co-Chairpersons of the Commission, and each subsequent year thereafter, the Commission shall prepare and submit to the Academy and a designated Institute a report making recommendations concerning potential issue areas and key indicators to be included in the Key National Indicators.

(ii) LIMITATION.—The Commission shall not have the authority to direct the Academy or, if established, the Institute, to adopt, modify, or delete any key indicators.

(3) CONTRACT WITH THE NATIONAL ACADEMY OF SCIENCES.—

(A) IN GENERAL.—As soon as practicable after the selection of the 2 Co-Chairpersons of the Commission, the

Co-Chairpersons shall enter into an arrangement with the National Academy of Sciences under which the Academy shall—

(i) review available public and private sector research on the selection of a set of key national indicators;

(ii) determine how best to establish a key national indicator system for the United States, by either creating its own institutional capability or designating an independent private nonprofit organization as an Institute to implement a key national indicator system;

(iii) if the Academy designates an independent Institute under clause (ii), provide scientific and technical advice to the Institute and create an appropriate governance mechanism that balances Academy involvement and the independence of the Institute; and

Reports.

(iv) provide an annual report to the Commission addressing scientific and technical issues related to the key national indicator system and, if established, the Institute, and governance of the Institute's budget and operations.

(B) PARTICIPATION.—In executing the arrangement under subparagraph (A), the National Academy of Sciences shall convene a multi-sector, multi-disciplinary process to define major scientific and technical issues associated with developing, maintaining, and evolving a Key National Indicator System and, if an Institute is established, to provide it with scientific and technical advice.

(C) ESTABLISHMENT OF A KEY NATIONAL INDICATOR SYSTEM.—

(i) IN GENERAL.—In executing the arrangement under subparagraph (A), the National Academy of Sciences shall enable the establishment of a key national indicator system by—

(I) creating its own institutional capability;

or

(II) partnering with an independent private nonprofit organization as an Institute to implement a key national indicator system.

(ii) INSTITUTE.—If the Academy designates an Institute under clause (i)(II), such Institute shall be a non-profit entity (as defined for purposes of section 501(c)(3) of the Internal Revenue Code of 1986) with an educational mission, a governance structure that emphasizes independence, and characteristics that make such entity appropriate for establishing a key national indicator system.

(iii) RESPONSIBILITIES.—Either the Academy or the Institute designated under clause (i)(II) shall be responsible for the following:

(I) Identifying and selecting issue areas to be represented by the key national indicators.

(II) Identifying and selecting the measures used for key national indicators within the issue areas under subclause (I).

(III) Identifying and selecting data to populate the key national indicators described under subclause (II).

(IV) Designing, publishing, and maintaining a public website that contains a freely accessible database allowing public access to the key national indicators.

(V) Developing a quality assurance framework to ensure rigorous and independent processes and the selection of quality data.

(VI) Developing a budget for the construction and management of a sustainable, adaptable, and evolving key national indicator system that reflects all Commission funding of Academy and, if an Institute is established, Institute activities.

(VII) Reporting annually to the Commission regarding its selection of issue areas, key indicators, data, and progress toward establishing a web-accessible database. Reports.

(VIII) Responding directly to the Commission in response to any Commission recommendations and to the Academy regarding any inquiries by the Academy.

(iv) GOVERNANCE.—Upon the establishment of a key national indicator system, the Academy shall create an appropriate governance mechanism that incorporates advisory and control functions. If an Institute is designated under clause (i)(II), the governance mechanism shall balance appropriate Academy involvement and the independence of the Institute.

(v) MODIFICATION AND CHANGES.—The Academy shall retain the sole discretion, at any time, to alter its approach to the establishment of a key national indicator system or, if an Institute is designated under clause (i)(II), to alter any aspect of its relationship with the Institute or to designate a different non-profit entity to serve as the Institute.

(vi) CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of the Academy or the Institute designated under clause (i)(II) to receive private funding for activities related to the establishment of a key national indicator system.

(D) ANNUAL REPORT.—As part of the arrangement under subparagraph (A), the National Academy of Sciences shall, not later than 270 days after the date of enactment of this Act, and annually thereafter, submit to the Co-Chairpersons of the Commission a report that contains the findings and recommendations of the Academy.

(d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY AND REPORT.—

(1) GAO STUDY.—The Comptroller General of the United States shall conduct a study of previous work conducted by all public agencies, private organizations, or foreign countries with respect to best practices for a key national indicator system. The study shall be submitted to the appropriate authorizing committees of Congress.

(2) GAO FINANCIAL AUDIT.—If an Institute is established under this section, the Comptroller General shall conduct an annual audit of the financial statements of the Institute, in accordance with generally accepted government auditing standards and submit a report on such audit to the Commission and the appropriate authorizing committees of Congress.

(3) GAO PROGRAMMATIC REVIEW.—The Comptroller General of the United States shall conduct programmatic assessments of the Institute established under this section as determined necessary by the Comptroller General and report the findings to the Commission and to the appropriate authorizing committees of Congress.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out the purposes of this section, \$10,000,000 for fiscal year 2010, and \$7,500,000 for each of fiscal year 2011 through 2018.

(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available until expended.

Subtitle H—General Provisions

42 USC 204 note. **SEC. 5701. REPORTS.**

(a) REPORTS BY SECRETARY OF HEALTH AND HUMAN SERVICES.—On an annual basis, the Secretary of Health and Human Services shall submit to the appropriate Committees of Congress a report on the activities carried out under the amendments made by this title, and the effectiveness of such activities.

(b) REPORTS BY RECIPIENTS OF FUNDS.—The Secretary of Health and Human Services may require, as a condition of receiving funds under the amendments made by this title, that the entity receiving such award submit to such Secretary such reports as the such Secretary may require on activities carried out with such award, and the effectiveness of such activities.

TITLE VI—TRANSPARENCY AND PROGRAM INTEGRITY

Subtitle A—Physician Ownership and Other Transparency

SEC. 6001. LIMITATION ON MEDICARE EXCEPTION TO THE PROHIBITION ON CERTAIN PHYSICIAN REFERRALS FOR HOSPITALS.

(a) IN GENERAL.—Section 1877 of the Social Security Act (42 U.S.C. 1395nn) is amended—

(1) in subsection (d)(2)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(C) in the case where the entity is a hospital, the hospital meets the requirements of paragraph (3)(D).”;

(2) in subsection (d)(3)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(D) the hospital meets the requirements described in subsection (i)(1) not later than 18 months after the date of the enactment of this subparagraph.”; and

(3) by adding at the end the following new subsection:

“(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY FOR RURAL PROVIDER AND HOSPITAL EXCEPTION TO OWNERSHIP OR INVESTMENT PROHIBITION.—

“(1) REQUIREMENTS DESCRIBED.—For purposes of subsection (d)(3)(D), the requirements described in this paragraph for a hospital are as follows:

“(A) PROVIDER AGREEMENT.—The hospital had—

“(i) physician ownership or investment on February 1, 2010; and

“(ii) a provider agreement under section 1866 in effect on such date.

“(B) LIMITATION ON EXPANSION OF FACILITY CAPACITY.—

Except as provided in paragraph (3), the number of operating rooms, procedure rooms, and beds for which the hospital is licensed at any time on or after the date of the enactment of this subsection is no greater than the number of operating rooms, procedure rooms, and beds for which the hospital is licensed as of such date.

“(C) PREVENTING CONFLICTS OF INTEREST.—

“(i) The hospital submits to the Secretary an annual report containing a detailed description of—

“(I) the identity of each physician owner or investor and any other owners or investors of the hospital; and

“(II) the nature and extent of all ownership and investment interests in the hospital.

“(ii) The hospital has procedures in place to require that any referring physician owner or investor discloses to the patient being referred, by a time that permits the patient to make a meaningful decision regarding the receipt of care, as determined by the Secretary—

“(I) the ownership or investment interest, as applicable, of such referring physician in the hospital; and

“(II) if applicable, any such ownership or investment interest of the treating physician.

“(iii) The hospital does not condition any physician ownership or investment interests either directly or indirectly on the physician owner or investor making or influencing referrals to the hospital or otherwise generating business for the hospital.

“(iv) The hospital discloses the fact that the hospital is partially owned or invested in by physicians—

“(I) on any public website for the hospital; and

“(II) in any public advertising for the hospital.

“(D) ENSURING BONA FIDE INVESTMENT.—

Deadline.

Reports.

“(i) The percentage of the total value of the ownership or investment interests held in the hospital, or in an entity whose assets include the hospital, by physician owners or investors in the aggregate does not exceed such percentage as of the date of enactment of this subsection.

“(ii) Any ownership or investment interests that the hospital offers to a physician owner or investor are not offered on more favorable terms than the terms offered to a person who is not a physician owner or investor.

“(iii) The hospital (or any owner or investor in the hospital) does not directly or indirectly provide loans or financing for any investment in the hospital by a physician owner or investor.

“(iv) The hospital (or any owner or investor in the hospital) does not directly or indirectly guarantee a loan, make a payment toward a loan, or otherwise subsidize a loan, for any individual physician owner or investor or group of physician owners or investors that is related to acquiring any ownership or investment interest in the hospital.

“(v) Ownership or investment returns are distributed to each owner or investor in the hospital in an amount that is directly proportional to the ownership or investment interest of such owner or investor in the hospital.

“(vi) Physician owners and investors do not receive, directly or indirectly, any guaranteed receipt of or right to purchase other business interests related to the hospital, including the purchase or lease of any property under the control of other owners or investors in the hospital or located near the premises of the hospital.

“(vii) The hospital does not offer a physician owner or investor the opportunity to purchase or lease any property under the control of the hospital or any other owner or investor in the hospital on more favorable terms than the terms offered to an individual who is not a physician owner or investor.

“(E) PATIENT SAFETY.—

“(i) Insofar as the hospital admits a patient and does not have any physician available on the premises to provide services during all hours in which the hospital is providing services to such patient, before admitting the patient—

“(I) the hospital discloses such fact to a patient; and

“(II) following such disclosure, the hospital receives from the patient a signed acknowledgment that the patient understands such fact.

“(ii) The hospital has the capacity to—

“(I) provide assessment and initial treatment for patients; and

“(II) refer and transfer patients to hospitals with the capability to treat the needs of the patient involved.

“(F) LIMITATION ON APPLICATION TO CERTAIN CONVERTED FACILITIES.—The hospital was not converted from an ambulatory surgical center to a hospital on or after the date of enactment of this subsection.

“(2) PUBLICATION OF INFORMATION REPORTED.—The Secretary shall publish, and update on an annual basis, the information submitted by hospitals under paragraph (1)(C)(i) on the public Internet website of the Centers for Medicare & Medicaid Services.

Deadline.
Web posting.

“(3) EXCEPTION TO PROHIBITION ON EXPANSION OF FACILITY CAPACITY.—

“(A) PROCESS.—

“(i) ESTABLISHMENT.—The Secretary shall establish and implement a process under which an applicable hospital (as defined in subparagraph (E)) may apply for an exception from the requirement under paragraph (1)(B).

“(ii) OPPORTUNITY FOR COMMUNITY INPUT.—The process under clause (i) shall provide individuals and entities in the community in which the applicable hospital applying for an exception is located with the opportunity to provide input with respect to the application.

“(iii) TIMING FOR IMPLEMENTATION.—The Secretary shall implement the process under clause (i) on August 1, 2011.

“(iv) REGULATIONS.—Not later than July 1, 2011, the Secretary shall promulgate regulations to carry out the process under clause (i).

Deadline.

“(B) FREQUENCY.—The process described in subparagraph (A) shall permit an applicable hospital to apply for an exception up to once every 2 years.

“(C) PERMITTED INCREASE.—

“(i) IN GENERAL.—Subject to clause (ii) and subparagraph (D), an applicable hospital granted an exception under the process described in subparagraph (A) may increase the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed above the baseline number of operating rooms, procedure rooms, and beds of the applicable hospital (or, if the applicable hospital has been granted a previous exception under this paragraph, above the number of operating rooms, procedure rooms, and beds for which the hospital is licensed after the application of the most recent increase under such an exception).

“(ii) 100 PERCENT INCREASE LIMITATION.—The Secretary shall not permit an increase in the number of operating rooms, procedure rooms, and beds for which an applicable hospital is licensed under clause (i) to the extent such increase would result in the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed exceeding 200 percent of the baseline number of operating rooms, procedure rooms, and beds of the applicable hospital.

“(iii) BASELINE NUMBER OF OPERATING ROOMS, PROCEDURE ROOMS, AND BEDS.—In this paragraph, the term ‘baseline number of operating rooms, procedure

rooms, and beds' means the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed as of the date of enactment of this subsection.

“(D) INCREASE LIMITED TO FACILITIES ON THE MAIN CAMPUS OF THE HOSPITAL.—Any increase in the number of operating rooms, procedure rooms, and beds for which an applicable hospital is licensed pursuant to this paragraph may only occur in facilities on the main campus of the applicable hospital.

“(E) APPLICABLE HOSPITAL.—In this paragraph, the term ‘applicable hospital’ means a hospital—

“(i) that is located in a county in which the percentage increase in the population during the most recent 5-year period (as of the date of the application under subparagraph (A)) is at least 150 percent of the percentage increase in the population growth of the State in which the hospital is located during that period, as estimated by Bureau of the Census;

“(ii) whose annual percent of total inpatient admissions that represent inpatient admissions under the program under title XIX is equal to or greater than the average percent with respect to such admissions for all hospitals located in the county in which the hospital is located;

“(iii) that does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries;

“(iv) that is located in a State in which the average bed capacity in the State is less than the national average bed capacity; and

“(v) that has an average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located.

“(F) PROCEDURE ROOMS.—In this subsection, the term ‘procedure rooms’ includes rooms in which catheterizations, angiographies, angiograms, and endoscopies are performed, except such term shall not include emergency rooms or departments (exclusive of rooms in which catheterizations, angiographies, angiograms, and endoscopies are performed).

“(G) PUBLICATION OF FINAL DECISIONS.—Not later than 60 days after receiving a complete application under this paragraph, the Secretary shall publish in the Federal Register the final decision with respect to such application.

“(H) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the process under this paragraph (including the establishment of such process).

“(4) COLLECTION OF OWNERSHIP AND INVESTMENT INFORMATION.—For purposes of subparagraphs (A)(i) and (D)(i) of paragraph (1), the Secretary shall collect physician ownership and investment information for each hospital.

“(5) PHYSICIAN OWNER OR INVESTOR DEFINED.—For purposes of this subsection, the term ‘physician owner or investor’ means a physician (or an immediate family member of such

Deadline.
Federal Register,
publication.

physician) with a direct or an indirect ownership or investment interest in the hospital.

“(6) CLARIFICATION.—Nothing in this subsection shall be construed as preventing the Secretary from revoking a hospital’s provider agreement if not in compliance with regulations implementing section 1866.”.

(b) ENFORCEMENT.—

(1) ENSURING COMPLIANCE.—The Secretary of Health and Human Services shall establish policies and procedures to ensure compliance with the requirements described in subsection (i)(1) of section 1877 of the Social Security Act, as added by subsection (a)(3), beginning on the date such requirements first apply. Such policies and procedures may include unannounced site reviews of hospitals.

Procedures.
42 USC 1395nn
note.

(2) AUDITS.—Beginning not later than November 1, 2011, the Secretary of Health and Human Services shall conduct audits to determine if hospitals violate the requirements referred to in paragraph (1).

Deadline.

SEC. 6002. TRANSPARENCY REPORTS AND REPORTING OF PHYSICIAN OWNERSHIP OR INVESTMENT INTERESTS.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1128F the following new section:

“SEC. 1128G. TRANSPARENCY REPORTS AND REPORTING OF PHYSICIAN OWNERSHIP OR INVESTMENT INTERESTS.

Electronic
format.
42 USC
1320a-7h.

“(a) TRANSPARENCY REPORTS.—

“(1) PAYMENTS OR OTHER TRANSFERS OF VALUE.—

“(A) IN GENERAL.—On March 31, 2013, and on the 90th day of each calendar year beginning thereafter, any applicable manufacturer that provides a payment or other transfer of value to a covered recipient (or to an entity or individual at the request of or designated on behalf of a covered recipient), shall submit to the Secretary, in such electronic form as the Secretary shall require, the following information with respect to the preceding calendar year:

“(i) The name of the covered recipient.

“(ii) The business address of the covered recipient and, in the case of a covered recipient who is a physician, the specialty and National Provider Identifier of the covered recipient.

“(iii) The amount of the payment or other transfer of value.

“(iv) The dates on which the payment or other transfer of value was provided to the covered recipient.

“(v) A description of the form of the payment or other transfer of value, indicated (as appropriate for all that apply) as—

“(I) cash or a cash equivalent;

“(II) in-kind items or services;

“(III) stock, a stock option, or any other ownership interest, dividend, profit, or other return on investment; or

“(IV) any other form of payment or other transfer of value (as defined by the Secretary).

“(vi) A description of the nature of the payment or other transfer of value, indicated (as appropriate for all that apply) as—

- “(I) consulting fees;
- “(II) compensation for services other than consulting;
- “(III) honoraria;
- “(IV) gift;
- “(V) entertainment;
- “(VI) food;
- “(VII) travel (including the specified destinations);
- “(VIII) education;
- “(IX) research;
- “(X) charitable contribution;
- “(XI) royalty or license;
- “(XII) current or prospective ownership or investment interest;
- “(XIII) direct compensation for serving as faculty or as a speaker for a medical education program;
- “(XIV) grant; or
- “(XV) any other nature of the payment or other transfer of value (as defined by the Secretary).

“(vii) If the payment or other transfer of value is related to marketing, education, or research specific to a covered drug, device, biological, or medical supply, the name of that covered drug, device, biological, or medical supply.

“(viii) Any other categories of information regarding the payment or other transfer of value the Secretary determines appropriate.

“(B) SPECIAL RULE FOR CERTAIN PAYMENTS OR OTHER TRANSFERS OF VALUE.—In the case where an applicable manufacturer provides a payment or other transfer of value to an entity or individual at the request of or designated on behalf of a covered recipient, the applicable manufacturer shall disclose that payment or other transfer of value under the name of the covered recipient.

“(2) PHYSICIAN OWNERSHIP.—In addition to the requirement under paragraph (1)(A), on March 31, 2013, and on the 90th day of each calendar year beginning thereafter, any applicable manufacturer or applicable group purchasing organization shall submit to the Secretary, in such electronic form as the Secretary shall require, the following information regarding any ownership or investment interest (other than an ownership or investment interest in a publicly traded security and mutual fund, as described in section 1877(c)) held by a physician (or an immediate family member of such physician (as defined for purposes of section 1877(a))) in the applicable manufacturer or applicable group purchasing organization during the preceding year:

“(A) The dollar amount invested by each physician holding such an ownership or investment interest.

“(B) The value and terms of each such ownership or investment interest.

“(C) Any payment or other transfer of value provided to a physician holding such an ownership or investment interest (or to an entity or individual at the request of or designated on behalf of a physician holding such an ownership or investment interest), including the information described in clauses (i) through (viii) of paragraph (1)(A), except that in applying such clauses, ‘physician’ shall be substituted for ‘covered recipient’ each place it appears.

“(D) Any other information regarding the ownership or investment interest the Secretary determines appropriate.

“(b) PENALTIES FOR NONCOMPLIANCE.—

“(1) FAILURE TO REPORT.—

“(A) IN GENERAL.—Subject to subparagraph (B) except as provided in paragraph (2), any applicable manufacturer or applicable group purchasing organization that fails to submit information required under subsection (a) in a timely manner in accordance with rules or regulations promulgated to carry out such subsection, shall be subject to a civil money penalty of not less than \$1,000, but not more than \$10,000, for each payment or other transfer of value or ownership or investment interest not reported as required under such subsection. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A are imposed and collected under that section.

“(B) LIMITATION.—The total amount of civil money penalties imposed under subparagraph (A) with respect to each annual submission of information under subsection (a) by an applicable manufacturer or applicable group purchasing organization shall not exceed \$150,000.

“(2) KNOWING FAILURE TO REPORT.—

“(A) IN GENERAL.—Subject to subparagraph (B), any applicable manufacturer or applicable group purchasing organization that knowingly fails to submit information required under subsection (a) in a timely manner in accordance with rules or regulations promulgated to carry out such subsection, shall be subject to a civil money penalty of not less than \$10,000, but not more than \$100,000, for each payment or other transfer of value or ownership or investment interest not reported as required under such subsection. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A are imposed and collected under that section.

“(B) LIMITATION.—The total amount of civil money penalties imposed under subparagraph (A) with respect to each annual submission of information under subsection (a) by an applicable manufacturer or applicable group purchasing organization shall not exceed \$1,000,000.

“(3) USE OF FUNDS.—Funds collected by the Secretary as a result of the imposition of a civil money penalty under this subsection shall be used to carry out this section.

“(c) PROCEDURES FOR SUBMISSION OF INFORMATION AND PUBLIC AVAILABILITY.—

“(1) IN GENERAL.—

Deadline.

“(A) ESTABLISHMENT.—Not later than October 1, 2011, the Secretary shall establish procedures—

“(i) for applicable manufacturers and applicable group purchasing organizations to submit information to the Secretary under subsection (a); and

“(ii) for the Secretary to make such information submitted available to the public.

“(B) DEFINITION OF TERMS.—The procedures established under subparagraph (A) shall provide for the definition of terms (other than those terms defined in subsection (e)), as appropriate, for purposes of this section.

Deadlines.
Web posting.

“(C) PUBLIC AVAILABILITY.—Except as provided in subparagraph (E), the procedures established under subparagraph (A)(ii) shall ensure that, not later than September 30, 2013, and on June 30 of each calendar year beginning thereafter, the information submitted under subsection (a) with respect to the preceding calendar year is made available through an Internet website that—

“(i) is searchable and is in a format that is clear and understandable;

“(ii) contains information that is presented by the name of the applicable manufacturer or applicable group purchasing organization, the name of the covered recipient, the business address of the covered recipient, the specialty of the covered recipient, the value of the payment or other transfer of value, the date on which the payment or other transfer of value was provided to the covered recipient, the form of the payment or other transfer of value, indicated (as appropriate) under subsection (a)(1)(A)(v), the nature of the payment or other transfer of value, indicated (as appropriate) under subsection (a)(1)(A)(vi), and the name of the covered drug, device, biological, or medical supply, as applicable;

“(iii) contains information that is able to be easily aggregated and downloaded;

“(iv) contains a description of any enforcement actions taken to carry out this section, including any penalties imposed under subsection (b), during the preceding year;

“(v) contains background information on industry-physician relationships;

“(vi) in the case of information submitted with respect to a payment or other transfer of value described in subparagraph (E)(i), lists such information separately from the other information submitted under subsection (a) and designates such separately listed information as funding for clinical research;

“(vii) contains any other information the Secretary determines would be helpful to the average consumer;

“(viii) does not contain the National Provider Identifier of the covered recipient, and

“(ix) subject to subparagraph (D), provides the applicable manufacturer, applicable group purchasing organization, or covered recipient an opportunity to review and submit corrections to the information submitted with respect to the applicable manufacturer,

applicable group purchasing organization, or covered recipient, respectively, for a period of not less than 45 days prior to such information being made available to the public.

“(D) CLARIFICATION OF TIME PERIOD FOR REVIEW AND CORRECTIONS.—In no case may the 45-day period for review and submission of corrections to information under subparagraph (C)(ix) prevent such information from being made available to the public in accordance with the dates described in the matter preceding clause (i) in subparagraph (C).

“(E) DELAYED PUBLICATION FOR PAYMENTS MADE PURSUANT TO PRODUCT RESEARCH OR DEVELOPMENT AGREEMENTS AND CLINICAL INVESTIGATIONS.—

“(i) IN GENERAL.—In the case of information submitted under subsection (a) with respect to a payment or other transfer of value made to a covered recipient by an applicable manufacturer pursuant to a product research or development agreement for services furnished in connection with research on a potential new medical technology or a new application of an existing medical technology or the development of a new drug, device, biological, or medical supply, or by an applicable manufacturer in connection with a clinical investigation regarding a new drug, device, biological, or medical supply, the procedures established under subparagraph (A)(ii) shall provide that such information is made available to the public on the first date described in the matter preceding clause (i) in subparagraph (C) after the earlier of the following:

“(I) The date of the approval or clearance of the covered drug, device, biological, or medical supply by the Food and Drug Administration.

“(II) Four calendar years after the date such payment or other transfer of value was made.

“(ii) CONFIDENTIALITY OF INFORMATION PRIOR TO PUBLICATION.—Information described in clause (i) shall be considered confidential and shall not be subject to disclosure under section 552 of title 5, United States Code, or any other similar Federal, State, or local law, until on or after the date on which the information is made available to the public under such clause.

“(2) CONSULTATION.—In establishing the procedures under paragraph (1), the Secretary shall consult with the Inspector General of the Department of Health and Human Services, affected industry, consumers, consumer advocates, and other interested parties in order to ensure that the information made available to the public under such paragraph is presented in the appropriate overall context.

“(d) ANNUAL REPORTS AND RELATION TO STATE LAWS.—

“(1) ANNUAL REPORT TO CONGRESS.—Not later than April 1 of each year beginning with 2013, the Secretary shall submit to Congress a report that includes the following:

“(A) The information submitted under subsection (a) during the preceding year, aggregated for each applicable manufacturer and applicable group purchasing organization that submitted such information during such year

(except, in the case of information submitted with respect to a payment or other transfer of value described in subsection (c)(1)(E)(i), such information shall be included in the first report submitted to Congress after the date on which such information is made available to the public under such subsection).

“(B) A description of any enforcement actions taken to carry out this section, including any penalties imposed under subsection (b), during the preceding year.

“(2) ANNUAL REPORTS TO STATES.—Not later than September 30, 2013 and on June 30 of each calendar year thereafter, the Secretary shall submit to States a report that includes a summary of the information submitted under subsection (a) during the preceding year with respect to covered recipients in the State (except, in the case of information submitted with respect to a payment or other transfer of value described in subsection (c)(1)(E)(i), such information shall be included in the first report submitted to States after the date on which such information is made available to the public under such subsection).

“(3) RELATION TO STATE LAWS.—

“(A) IN GENERAL.—In the case of a payment or other transfer of value provided by an applicable manufacturer that is received by a covered recipient (as defined in subsection (e)) on or after January 1, 2012, subject to subparagraph (B), the provisions of this section shall preempt any statute or regulation of a State or of a political subdivision of a State that requires an applicable manufacturer (as so defined) to disclose or report, in any format, the type of information (as described in subsection (a)) regarding such payment or other transfer of value.

“(B) NO PREEMPTION OF ADDITIONAL REQUIREMENTS.—Subparagraph (A) shall not preempt any statute or regulation of a State or of a political subdivision of a State that requires the disclosure or reporting of information—

“(i) not of the type required to be disclosed or reported under this section;

“(ii) described in subsection (e)(10)(B), except in the case of information described in clause (i) of such subsection;

“(iii) by any person or entity other than an applicable manufacturer (as so defined) or a covered recipient (as defined in subsection (e)); or

“(iv) to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes.

“(C) Nothing in subparagraph (A) shall be construed to limit the discovery or admissibility of information described in such subparagraph in a criminal, civil, or administrative proceeding.

“(4) CONSULTATION.—The Secretary shall consult with the Inspector General of the Department of Health and Human Services on the implementation of this section.

“(e) DEFINITIONS.—In this section:

“(1) APPLICABLE GROUP PURCHASING ORGANIZATION.—The term ‘applicable group purchasing organization’ means a group

purchasing organization (as defined by the Secretary) that purchases, arranges for, or negotiates the purchase of a covered drug, device, biological, or medical supply which is operating in the United States, or in a territory, possession, or commonwealth of the United States.

“(2) APPLICABLE MANUFACTURER.—The term ‘applicable manufacturer’ means a manufacturer of a covered drug, device, biological, or medical supply which is operating in the United States, or in a territory, possession, or commonwealth of the United States.

“(3) CLINICAL INVESTIGATION.—The term ‘clinical investigation’ means any experiment involving 1 or more human subjects, or materials derived from human subjects, in which a drug or device is administered, dispensed, or used.

“(4) COVERED DEVICE.—The term ‘covered device’ means any device for which payment is available under title XVIII or a State plan under title XIX or XXI (or a waiver of such a plan).

“(5) COVERED DRUG, DEVICE, BIOLOGICAL, OR MEDICAL SUPPLY.—The term ‘covered drug, device, biological, or medical supply’ means any drug, biological product, device, or medical supply for which payment is available under title XVIII or a State plan under title XIX or XXI (or a waiver of such a plan).

“(6) COVERED RECIPIENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘covered recipient’ means the following:

“(i) A physician.

“(ii) A teaching hospital.

“(B) EXCLUSION.—Such term does not include a physician who is an employee of the applicable manufacturer that is required to submit information under subsection (a).

“(7) EMPLOYEE.—The term ‘employee’ has the meaning given such term in section 1877(h)(2).

“(8) KNOWINGLY.—The term ‘knowingly’ has the meaning given such term in section 3729(b) of title 31, United States Code.

“(9) MANUFACTURER OF A COVERED DRUG, DEVICE, BIOLOGICAL, OR MEDICAL SUPPLY.—The term ‘manufacturer of a covered drug, device, biological, or medical supply’ means any entity which is engaged in the production, preparation, propagation, compounding, or conversion of a covered drug, device, biological, or medical supply (or any entity under common ownership with such entity which provides assistance or support to such entity with respect to the production, preparation, propagation, compounding, conversion, marketing, promotion, sale, or distribution of a covered drug, device, biological, or medical supply).

“(10) PAYMENT OR OTHER TRANSFER OF VALUE.—

“(A) IN GENERAL.—The term ‘payment or other transfer of value’ means a transfer of anything of value. Such term does not include a transfer of anything of value that is made indirectly to a covered recipient through a third party in connection with an activity or service in the case where the applicable manufacturer is unaware of the identity of the covered recipient.

“(B) EXCLUSIONS.—An applicable manufacturer shall not be required to submit information under subsection (a) with respect to the following:

“(i) A transfer of anything the value of which is less than \$10, unless the aggregate amount transferred to, requested by, or designated on behalf of the covered recipient by the applicable manufacturer during the calendar year exceeds \$100. For calendar years after 2012, the dollar amounts specified in the preceding sentence shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) for the 12-month period ending with June of the previous year.

“(ii) Product samples that are not intended to be sold and are intended for patient use.

“(iii) Educational materials that directly benefit patients or are intended for patient use.

“(iv) The loan of a covered device for a short-term trial period, not to exceed 90 days, to permit evaluation of the covered device by the covered recipient.

“(v) Items or services provided under a contractual warranty, including the replacement of a covered device, where the terms of the warranty are set forth in the purchase or lease agreement for the covered device.

“(vi) A transfer of anything of value to a covered recipient when the covered recipient is a patient and not acting in the professional capacity of a covered recipient.

“(vii) Discounts (including rebates).

“(viii) In-kind items used for the provision of charity care.

“(ix) A dividend or other profit distribution from, or ownership or investment interest in, a publicly traded security and mutual fund (as described in section 1877(c)).

“(x) In the case of an applicable manufacturer who offers a self-insured plan, payments for the provision of health care to employees under the plan.

“(xi) In the case of a covered recipient who is a licensed non-medical professional, a transfer of anything of value to the covered recipient if the transfer is payment solely for the non-medical professional services of such licensed non-medical professional.

“(xii) In the case of a covered recipient who is a physician, a transfer of anything of value to the covered recipient if the transfer is payment solely for the services of the covered recipient with respect to a civil or criminal action or an administrative proceeding.

“(11) PHYSICIAN.—The term ‘physician’ has the meaning given that term in section 1861(r).”.

SEC. 6003. DISCLOSURE REQUIREMENTS FOR IN-OFFICE ANCILLARY SERVICES EXCEPTION TO THE PROHIBITION ON PHYSICIAN SELF-REFERRAL FOR CERTAIN IMAGING SERVICES.

(a) IN GENERAL.—Section 1877(b)(2) of the Social Security Act (42 U.S.C. 1395nn(b)(2)) is amended by adding at the end the following new sentence: “Such requirements shall, with respect to magnetic resonance imaging, computed tomography, positron emission tomography, and any other designated health services specified under subsection (h)(6)(D) that the Secretary determines appropriate, include a requirement that the referring physician inform the individual in writing at the time of the referral that the individual may obtain the services for which the individual is being referred from a person other than a person described in subparagraph (A)(i) and provide such individual with a written list of suppliers (as defined in section 1861(d)) who furnish such services in the area in which such individual resides.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to services furnished on or after January 1, 2010.

42 USC 1395nn
note.

SEC. 6004. PRESCRIPTION DRUG SAMPLE TRANSPARENCY.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by section 6002, is amended by inserting after section 1128G the following new section:

“SEC. 1128H. REPORTING OF INFORMATION RELATING TO DRUG SAMPLES.

42 USC
1320a–7i.

“(a) IN GENERAL.—Not later than April 1 of each year (beginning with 2012), each manufacturer and authorized distributor of record of an applicable drug shall submit to the Secretary (in a form and manner specified by the Secretary) the following information with respect to the preceding year:

“(1) In the case of a manufacturer or authorized distributor of record which makes distributions by mail or common carrier under subsection (d)(2) of section 503 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353), the identity and quantity of drug samples requested and the identity and quantity of drug samples distributed under such subsection during that year, aggregated by—

“(A) the name, address, professional designation, and signature of the practitioner making the request under subparagraph (A)(i) of such subsection, or of any individual who makes or signs for the request on behalf of the practitioner; and

“(B) any other category of information determined appropriate by the Secretary.

“(2) In the case of a manufacturer or authorized distributor of record which makes distributions by means other than mail or common carrier under subsection (d)(3) of such section 503, the identity and quantity of drug samples requested and the identity and quantity of drug samples distributed under such subsection during that year, aggregated by—

“(A) the name, address, professional designation, and signature of the practitioner making the request under subparagraph (A)(i) of such subsection, or of any individual who makes or signs for the request on behalf of the practitioner; and

“(B) any other category of information determined appropriate by the Secretary.

“(b) DEFINITIONS.—In this section:

“(1) APPLICABLE DRUG.—The term ‘applicable drug’ means a drug—

“(A) which is subject to subsection (b) of such section 503; and

“(B) for which payment is available under title XVIII or a State plan under title XIX or XXI (or a waiver of such a plan).

“(2) AUTHORIZED DISTRIBUTOR OF RECORD.—The term ‘authorized distributor of record’ has the meaning given that term in subsection (e)(3)(A) of such section.

“(3) MANUFACTURER.—The term ‘manufacturer’ has the meaning given that term for purposes of subsection (d) of such section.”.

42 USC
1320b-23.

SEC. 6005. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1150 the following new section:

“SEC. 1150A. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

“(a) PROVISION OF INFORMATION.—A health benefits plan or any entity that provides pharmacy benefits management services on behalf of a health benefits plan (in this section referred to as a ‘PBM’) that manages prescription drug coverage under a contract with—

“(1) a PDP sponsor of a prescription drug plan or an MA organization offering an MA-PD plan under part D of title XVIII; or

“(2) a qualified health benefits plan offered through an exchange established by a State under section 1311 of the Patient Protection and Affordable Care Act, shall provide the information described in subsection (b) to the Secretary and, in the case of a PBM, to the plan with which the PBM is under contract with, at such times, and in such form and manner, as the Secretary shall specify.

“(b) INFORMATION DESCRIBED.—The information described in this subsection is the following with respect to services provided by a health benefits plan or PBM for a contract year:

“(1) The percentage of all prescriptions that were provided through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed (generic dispensing rate), by pharmacy type (which includes an independent pharmacy, chain pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public), that is paid by the health benefits plan or PBM under the contract.

“(2) The aggregate amount, and the type of rebates, discounts, or price concessions (excluding bona fide service fees, which include but are not limited to distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs

and patient education programs)) that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed.

“(3) The aggregate amount of the difference between the amount the health benefits plan pays the PBM and the amount that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed.

“(c) CONFIDENTIALITY.—Information disclosed by a health benefits plan or PBM under this section is confidential and shall not be disclosed by the Secretary or by a plan receiving the information, except that the Secretary may disclose the information in a form which does not disclose the identity of a specific PBM, plan, or prices charged for drugs, for the following purposes:

“(1) As the Secretary determines to be necessary to carry out this section or part D of title XVIII.

“(2) To permit the Comptroller General to review the information provided.

“(3) To permit the Director of the Congressional Budget Office to review the information provided.

“(4) To States to carry out section 1311 of the Patient Protection and Affordable Care Act.

“(d) PENALTIES.—The provisions of subsection (b)(3)(C) of section 1927 shall apply to a health benefits plan or PBM that fails to provide information required under subsection (a) on a timely basis or that knowingly provides false information in the same manner as such provisions apply to a manufacturer with an agreement under that section.”.

Applicability.

Subtitle B—Nursing Home Transparency and Improvement

PART I—IMPROVING TRANSPARENCY OF INFORMATION

SEC. 6101. REQUIRED DISCLOSURE OF OWNERSHIP AND ADDITIONAL DISCLOSABLE PARTIES INFORMATION.

(a) IN GENERAL.—Section 1124 of the Social Security Act (42 U.S.C. 1320a–3) is amended by adding at the end the following new subsection:

“(c) REQUIRED DISCLOSURE OF OWNERSHIP AND ADDITIONAL DISCLOSABLE PARTIES INFORMATION.—

“(1) DISCLOSURE.—A facility shall have the information described in paragraph (2) available—

“(A) during the period beginning on the date of the enactment of this subsection and ending on the date such information is made available to the public under section 6101(b) of the Patient Protection and Affordable Care Act for submission to the Secretary, the Inspector General of the Department of Health and Human Services, the State in which the facility is located, and the State long-term care ombudsman in the case where the Secretary, the

Time period.

Inspector General, the State, or the State long-term care ombudsman requests such information; and

“(B) beginning on the effective date of the final regulations promulgated under paragraph (3)(A), for reporting such information in accordance with such final regulations. Nothing in subparagraph (A) shall be construed as authorizing a facility to dispose of or delete information described in such subparagraph after the effective date of the final regulations promulgated under paragraph (3)(A).

“(2) INFORMATION DESCRIBED.—

“(A) IN GENERAL.—The following information is described in this paragraph:

“(i) The information described in subsections (a) and (b), subject to subparagraph (C).

“(ii) The identity of and information on—

“(I) each member of the governing body of the facility, including the name, title, and period of service of each such member;

“(II) each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity; and

“(III) each person or entity who is an additional disclosable party of the facility.

“(iii) The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

“(B) SPECIAL RULE WHERE INFORMATION IS ALREADY REPORTED OR SUBMITTED.—To the extent that information reported by a facility to the Internal Revenue Service on Form 990, information submitted by a facility to the Securities and Exchange Commission, or information otherwise submitted to the Secretary or any other Federal agency contains the information described in clauses (i), (ii), or (iii) of subparagraph (A), the facility may provide such Form or such information submitted to meet the requirements of paragraph (1).

“(C) SPECIAL RULE.—In applying subparagraph (A)(i)—

“(i) with respect to subsections (a) and (b), ‘ownership or control interest’ shall include direct or indirect interests, including such interests in intermediate entities; and

“(ii) subsection (a)(3)(A)(ii) shall include the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the entity or any of the property or assets thereof, if the interest is equal to or exceeds 5 percent of the total property or assets of the entirety.

“(3) REPORTING.—

“(A) IN GENERAL.—Not later than the date that is 2 years after the date of the enactment of this subsection, the Secretary shall promulgate final regulations requiring, effective on the date that is 90 days after the date on which such final regulations are published in the Federal Register, a facility to report the information described in

Regulations.
Effective date.
Federal Register,
publication.

paragraph (2) to the Secretary in a standardized format, and such other regulations as are necessary to carry out this subsection. Such final regulations shall ensure that the facility certifies, as a condition of participation and payment under the program under title XVIII or XIX, that the information reported by the facility in accordance with such final regulations is, to the best of the facility's knowledge, accurate and current.

Certification.

“(B) GUIDANCE.—The Secretary shall provide guidance and technical assistance to States on how to adopt the standardized format under subparagraph (A).

“(4) NO EFFECT ON EXISTING REPORTING REQUIREMENTS.—Nothing in this subsection shall reduce, diminish, or alter any reporting requirement for a facility that is in effect as of the date of the enactment of this subsection.

“(5) DEFINITIONS.—In this subsection:

“(A) ADDITIONAL DISCLOSABLE PARTY.—The term ‘additional disclosable party’ means, with respect to a facility, any person or entity who—

“(i) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;

“(ii) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

“(iii) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

“(B) FACILITY.—The term ‘facility’ means a disclosing entity which is—

“(i) a skilled nursing facility (as defined in section 1819(a)); or

“(ii) a nursing facility (as defined in section 1919(a)).

“(C) MANAGING EMPLOYEE.—The term ‘managing employee’ means, with respect to a facility, an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

“(D) ORGANIZATIONAL STRUCTURE.—The term ‘organizational structure’ means, in the case of—

“(i) a corporation, the officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent;

“(ii) a limited liability company, the members and managers of the limited liability company (including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company);

“(iii) a general partnership, the partners of the general partnership;

“(iv) a limited partnership, the general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent;

“(v) a trust, the trustees of the trust;

“(vi) an individual, contact information for the individual; and

“(vii) any other person or entity, such information as the Secretary determines appropriate.”

Deadline.
Procedures.
42 USC
1320a-3 note.

(b) **PUBLIC AVAILABILITY OF INFORMATION.**—Not later than the date that is 1 year after the date on which the final regulations promulgated under section 1124(c)(3)(A) of the Social Security Act, as added by subsection (a), are published in the Federal Register, the Secretary of Health and Human Services shall make the information reported in accordance with such final regulations available to the public in accordance with procedures established by the Secretary.

(c) **CONFORMING AMENDMENTS.**—

(1) **IN GENERAL.**—

(A) **SKILLED NURSING FACILITIES.**—Section 1819(d)(1) of the Social Security Act (42 U.S.C. 1395i-3(d)(1)) is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(B) **NURSING FACILITIES.**—Section 1919(d)(1) of the Social Security Act (42 U.S.C. 1396r(d)(1)) is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

42 USC
1395i-3 note.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall take effect on the date on which the Secretary makes the information described in subsection (b)(1) available to the public under such subsection.

SEC. 6102. ACCOUNTABILITY REQUIREMENTS FOR SKILLED NURSING FACILITIES AND NURSING FACILITIES.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by sections 6002 and 6004, is amended by inserting after section 1128H the following new section:

42 USC
1320a-7j.

“SEC. 1128I. ACCOUNTABILITY REQUIREMENTS FOR FACILITIES.

“(a) **DEFINITION OF FACILITY.**—In this section, the term ‘facility’ means—

“(1) a skilled nursing facility (as defined in section 1819(a));

or

“(2) a nursing facility (as defined in section 1919(a)).

“(b) **EFFECTIVE COMPLIANCE AND ETHICS PROGRAMS.**—

Effective date.

“(1) **REQUIREMENT.**—On or after the date that is 36 months after the date of the enactment of this section, a facility shall, with respect to the entity that operates the facility (in this subparagraph referred to as the ‘operating organization’ or ‘organization’), have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations under this Act and in promoting quality of care consistent with regulations developed under paragraph (2).

Deadlines.

“(2) **DEVELOPMENT OF REGULATIONS.**—

“(A) **IN GENERAL.**—Not later than the date that is 2 years after such date of the enactment, the Secretary,

working jointly with the Inspector General of the Department of Health and Human Services, shall promulgate regulations for an effective compliance and ethics program for operating organizations, which may include a model compliance program.

“(B) DESIGN OF REGULATIONS.—Such regulations with respect to specific elements or formality of a program shall, in the case of an organization that operates 5 or more facilities, vary with the size of the organization, such that larger organizations should have a more formal program and include established written policies defining the standards and procedures to be followed by its employees. Such requirements may specifically apply to the corporate level management of multi unit nursing home chains.

“(C) EVALUATION.—Not later than 3 years after the date of the promulgation of regulations under this paragraph, the Secretary shall complete an evaluation of the compliance and ethics programs required to be established under this subsection. Such evaluation shall determine if such programs led to changes in deficiency citations, changes in quality performance, or changes in other metrics of patient quality of care. The Secretary shall submit to Congress a report on such evaluation and shall include in such report such recommendations regarding changes in the requirements for such programs as the Secretary determines appropriate.

Reports.

“(3) REQUIREMENTS FOR COMPLIANCE AND ETHICS PROGRAMS.—In this subsection, the term ‘compliance and ethics program’ means, with respect to a facility, a program of the operating organization that—

Definition.

“(A) has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal, civil, and administrative violations under this Act and in promoting quality of care; and

“(B) includes at least the required components specified in paragraph (4).

“(4) REQUIRED COMPONENTS OF PROGRAM.—The required components of a compliance and ethics program of an operating organization are the following:

“(A) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under this Act.

“(B) Specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures and have sufficient resources and authority to assure such compliance.

“(C) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under this Act.

“(D) The organization must have taken steps to communicate effectively its standards and procedures to all

employees and other agents, such as by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

“(E) The organization must have taken reasonable steps to achieve compliance with its standards, such as by utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under this Act by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report violations by others within the organization without fear of retribution.

“(F) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense.

“(G) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including any necessary modification to its program to prevent and detect criminal, civil, and administrative violations under this Act.

“(H) The organization must periodically undertake reassessment of its compliance program to identify changes necessary to reflect changes within the organization and its facilities.

“(c) **QUALITY ASSURANCE AND PERFORMANCE IMPROVEMENT PROGRAM.**—

Deadlines.

Standards.

Plan.

“(1) **IN GENERAL.**—Not later than December 31, 2011, the Secretary shall establish and implement a quality assurance and performance improvement program (in this subparagraph referred to as the ‘QAPI program’) for facilities, including multi unit chains of facilities. Under the QAPI program, the Secretary shall establish standards relating to quality assurance and performance improvement with respect to facilities and provide technical assistance to facilities on the development of best practices in order to meet such standards. Not later than 1 year after the date on which the regulations are promulgated under paragraph (2), a facility must submit to the Secretary a plan for the facility to meet such standards and implement such best practices, including how to coordinate the implementation of such plan with quality assessment and assurance activities conducted under sections 1819(b)(1)(B) and 1919(b)(1)(B), as applicable.

“(2) **REGULATIONS.**—The Secretary shall promulgate regulations to carry out this subsection.”.

SEC. 6103. NURSING HOME COMPARE MEDICARE WEBSITE.

(a) **SKILLED NURSING FACILITIES.**—

(1) **IN GENERAL.**—Section 1819 of the Social Security Act (42 U.S.C. 1395i–3) is amended—

(A) by redesignating subsection (i) as subsection (j); and

(B) by inserting after subsection (h) the following new subsection:

“(i) **NURSING HOME COMPARE WEBSITE.**—

“(1) **INCLUSION OF ADDITIONAL INFORMATION.**—

“(A) IN GENERAL.—The Secretary shall ensure that the Department of Health and Human Services includes, as part of the information provided for comparison of nursing homes on the official Internet website of the Federal Government for Medicare beneficiaries (commonly referred to as the ‘Nursing Home Compare’ Medicare website) (or a successor website), the following information in a manner that is prominent, updated on a timely basis, easily accessible, readily understandable to consumers of long-term care services, and searchable:

“(i) Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1128I(g), including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include—

“(I) concise explanations of how to interpret the data (such as a plain English explanation of data reflecting ‘nursing home staff hours per resident day’);

“(II) differences in types of staff (such as training associated with different categories of staff);

“(III) the relationship between nurse staffing levels and quality of care; and

“(IV) an explanation that appropriate staffing levels vary based on patient case mix.

“(ii) Links to State Internet websites with information regarding State survey and certification programs, links to Form 2567 State inspection reports (or a successor form) on such websites, information to guide consumers in how to interpret and understand such reports, and the facility plan of correction or other response to such report. Any such links shall be posted on a timely basis.

“(iii) The standardized complaint form developed under section 1128I(f), including explanatory material on what complaint forms are, how they are used, and how to file a complaint with the State survey and certification program and the State long-term care ombudsman program.

“(iv) Summary information on the number, type, severity, and outcome of substantiated complaints.

“(v) The number of adjudicated instances of criminal violations by a facility or the employees of a facility—

“(I) that were committed inside the facility;

“(II) with respect to such instances of violations or crimes committed inside of the facility that were the violations or crimes of abuse, neglect, and exploitation, criminal sexual abuse, or other violations or crimes that resulted in serious bodily injury; and

“(III) the number of civil monetary penalties levied against the facility, employees, contractors, and other agents.

“(B) DEADLINE FOR PROVISION OF INFORMATION.—

“(i) IN GENERAL.—Except as provided in clause (ii), the Secretary shall ensure that the information described in subparagraph (A) is included on such website (or a successor website) not later than 1 year after the date of the enactment of this subsection.

“(ii) EXCEPTION.—The Secretary shall ensure that the information described in subparagraph (A)(i) is included on such website (or a successor website) not later than the date on which the requirements under section 1128I(g) are implemented.

“(2) REVIEW AND MODIFICATION OF WEBSITE.—

Procedures.

“(A) IN GENERAL.—The Secretary shall establish a process—

“(i) to review the accuracy, clarity of presentation, timeliness, and comprehensiveness of information reported on such website as of the day before the date of the enactment of this subsection; and

Deadline.

“(ii) not later than 1 year after the date of the enactment of this subsection, to modify or revamp such website in accordance with the review conducted under clause (i).

“(B) CONSULTATION.—In conducting the review under subparagraph (A)(i), the Secretary shall consult with—

“(i) State long-term care ombudsman programs;

“(ii) consumer advocacy groups;

“(iii) provider stakeholder groups; and

“(iv) any other representatives of programs or groups the Secretary determines appropriate.”.

(2) TIMELINESS OF SUBMISSION OF SURVEY AND CERTIFICATION INFORMATION.—

(A) IN GENERAL.—Section 1819(g)(5) of the Social Security Act (42 U.S.C. 1395i-3(g)(5)) is amended by adding at the end the following new subparagraph:

“(E) SUBMISSION OF SURVEY AND CERTIFICATION INFORMATION TO THE SECRETARY.—In order to improve the timeliness of information made available to the public under subparagraph (A) and provided on the Nursing Home Compare Medicare website under subsection (i), each State shall submit information respecting any survey or certification made respecting a skilled nursing facility (including any enforcement actions taken by the State) to the Secretary not later than the date on which the State sends such information to the facility. The Secretary shall use the information submitted under the preceding sentence to update the information provided on the Nursing Home Compare Medicare website as expeditiously as practicable but not less frequently than quarterly.”.

42 USC
1395i-3 note.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect 1 year after the date of the enactment of this Act.

(3) SPECIAL FOCUS FACILITY PROGRAM.—Section 1819(f) of the Social Security Act (42 U.S.C. 1395i-3(f)) is amended by adding at the end the following new paragraph:

“(8) SPECIAL FOCUS FACILITY PROGRAM.—

“(A) IN GENERAL.—The Secretary shall conduct a special focus facility program for enforcement of requirements for skilled nursing facilities that the Secretary has identified as having substantially failed to meet applicable requirement of this Act.

“(B) PERIODIC SURVEYS.—Under such program the Secretary shall conduct surveys of each facility in the program not less than once every 6 months.”.

(b) NURSING FACILITIES.—

(1) IN GENERAL.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(A) by redesignating subsection (i) as subsection (j); and

(B) by inserting after subsection (h) the following new subsection:

“(i) NURSING HOME COMPARE WEBSITE.—

“(1) INCLUSION OF ADDITIONAL INFORMATION.—

“(A) IN GENERAL.—The Secretary shall ensure that the Department of Health and Human Services includes, as part of the information provided for comparison of nursing homes on the official Internet website of the Federal Government for Medicare beneficiaries (commonly referred to as the ‘Nursing Home Compare’ Medicare website) (or a successor website), the following information in a manner that is prominent, updated on a timely basis, easily accessible, readily understandable to consumers of long-term care services, and searchable:

“(i) Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1128I(g), including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include—

“(I) concise explanations of how to interpret the data (such as plain English explanation of data reflecting ‘nursing home staff hours per resident day’);

“(II) differences in types of staff (such as training associated with different categories of staff);

“(III) the relationship between nurse staffing levels and quality of care; and

“(IV) an explanation that appropriate staffing levels vary based on patient case mix.

“(ii) Links to State Internet websites with information regarding State survey and certification programs, links to Form 2567 State inspection reports (or a successor form) on such websites, information to guide consumers in how to interpret and understand such reports, and the facility plan of correction or other response to such report. Any such links shall be posted on a timely basis.

“(iii) The standardized complaint form developed under section 1128I(f), including explanatory material on what complaint forms are, how they are used, and how to file a complaint with the State survey and certification program and the State long-term care ombudsman program.

“(iv) Summary information on the number, type, severity, and outcome of substantiated complaints.

“(v) The number of adjudicated instances of criminal violations by a facility or the employees of a facility—

“(I) that were committed inside of the facility; and

“(II) with respect to such instances of violations or crimes committed outside of the facility, that were violations or crimes that resulted in the serious bodily injury of an elder.

“(B) DEADLINE FOR PROVISION OF INFORMATION.—

“(i) IN GENERAL.—Except as provided in clause (ii), the Secretary shall ensure that the information described in subparagraph (A) is included on such website (or a successor website) not later than 1 year after the date of the enactment of this subsection.

“(ii) EXCEPTION.—The Secretary shall ensure that the information described in subparagraph (A)(i) is included on such website (or a successor website) not later than the date on which the requirements under section 1128I(g) are implemented.

“(2) REVIEW AND MODIFICATION OF WEBSITE.—

Procedures.

“(A) IN GENERAL.—The Secretary shall establish a process—

“(i) to review the accuracy, clarity of presentation, timeliness, and comprehensiveness of information reported on such website as of the day before the date of the enactment of this subsection; and

Deadline.

“(ii) not later than 1 year after the date of the enactment of this subsection, to modify or revamp such website in accordance with the review conducted under clause (i).

“(B) CONSULTATION.—In conducting the review under subparagraph (A)(i), the Secretary shall consult with—

“(i) State long-term care ombudsman programs;

“(ii) consumer advocacy groups;

“(iii) provider stakeholder groups;

“(iv) skilled nursing facility employees and their representatives; and

“(v) any other representatives of programs or groups the Secretary determines appropriate.”.

(2) TIMELINESS OF SUBMISSION OF SURVEY AND CERTIFICATION INFORMATION.—

(A) IN GENERAL.—Section 1919(g)(5) of the Social Security Act (42 U.S.C. 1396r(g)(5)) is amended by adding at the end the following new subparagraph:

Deadline.

“(E) SUBMISSION OF SURVEY AND CERTIFICATION INFORMATION TO THE SECRETARY.—In order to improve the timeliness of information made available to the public under subparagraph (A) and provided on the Nursing Home

Compare Medicare website under subsection (i), each State shall submit information respecting any survey or certification made respecting a nursing facility (including any enforcement actions taken by the State) to the Secretary not later than the date on which the State sends such information to the facility. The Secretary shall use the information submitted under the preceding sentence to update the information provided on the Nursing Home Compare Medicare website as expeditiously as practicable but not less frequently than quarterly.”

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect 1 year after the date of the enactment of this Act. 42 USC 1396r note.

(3) SPECIAL FOCUS FACILITY PROGRAM.—Section 1919(f) of the Social Security Act (42 U.S.C. 1396r(f)) is amended by adding at the end of the following new paragraph:

“(10) SPECIAL FOCUS FACILITY PROGRAM.—

“(A) IN GENERAL.—The Secretary shall conduct a special focus facility program for enforcement of requirements for nursing facilities that the Secretary has identified as having substantially failed to meet applicable requirements of this Act.

“(B) PERIODIC SURVEYS.—Under such program the Secretary shall conduct surveys of each facility in the program not less often than once every 6 months.”

(c) AVAILABILITY OF REPORTS ON SURVEYS, CERTIFICATIONS, AND COMPLAINT INVESTIGATIONS.—

(1) SKILLED NURSING FACILITIES.—Section 1819(d)(1) of the Social Security Act (42 U.S.C. 1395i–3(d)(1)), as amended by section 6101, is amended by adding at the end the following new subparagraph:

“(C) AVAILABILITY OF SURVEY, CERTIFICATION, AND COMPLAINT INVESTIGATION REPORTS.—A skilled nursing facility must—

“(i) have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years available for any individual to review upon request; and

“(ii) post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

The facility shall not make available under clause (i) identifying information about complainants or residents.”

(2) NURSING FACILITIES.—Section 1919(d)(1) of the Social Security Act (42 U.S.C. 1396r(d)(1)), as amended by section 6101, is amended by adding at the end the following new subparagraph:

“(V) AVAILABILITY OF SURVEY, CERTIFICATION, AND COMPLAINT INVESTIGATION REPORTS.—A nursing facility must—

“(i) have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years available for any individual to review upon request; and

Public
information.

Public
information.

“(ii) post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

The facility shall not make available under clause (i) identifying information about complainants or residents.”.

42 USC
1395i-3 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect 1 year after the date of the enactment of this Act.

(d) GUIDANCE TO STATES ON FORM 2567 STATE INSPECTION REPORTS AND COMPLAINT INVESTIGATION REPORTS.—

42 USC
1395i-3 note.
Web posting.

(1) GUIDANCE.—The Secretary of Health and Human Services (in this subtitle referred to as the “Secretary”) shall provide guidance to States on how States can establish electronic links to Form 2567 State inspection reports (or a successor form), complaint investigation reports, and a facility’s plan of correction or other response to such Form 2567 State inspection reports (or a successor form) on the Internet website of the State that provides information on skilled nursing facilities and nursing facilities and the Secretary shall, if possible, include such information on Nursing Home Compare.

(2) REQUIREMENT.—Section 1902(a)(9) of the Social Security Act (42 U.S.C. 1396a(a)(9)) is amended—

(A) by striking “and” at the end of subparagraph (B);

(B) by striking the semicolon at the end of subparagraph (C) and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(D) that the State maintain a consumer-oriented website providing useful information to consumers regarding all skilled nursing facilities and all nursing facilities in the State, including for each facility, Form 2567 State inspection reports (or a successor form), complaint investigation reports, the facility’s plan of correction, and such other information that the State or the Secretary considers useful in assisting the public to assess the quality of long term care options and the quality of care provided by individual facilities;”.

42 USC
1395i-3 note.

(3) DEFINITIONS.—In this subsection:

(A) NURSING FACILITY.—The term “nursing facility” has the meaning given such term in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a)).

(B) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(C) SKILLED NURSING FACILITY.—The term “skilled nursing facility” has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3(a)).

42 USC
1395i-3 note.
Deadline.

(e) DEVELOPMENT OF CONSUMER RIGHTS INFORMATION PAGE ON NURSING HOME COMPARE WEBSITE.—Not later than 1 year after the date of enactment of this Act, the Secretary shall ensure that the Department of Health and Human Services, as part of the information provided for comparison of nursing facilities on the Nursing Home Compare Medicare website develops and includes a consumer rights information page that contains links to descriptions of, and information with respect to, the following:

(1) The documentation on nursing facilities that is available to the public.

(2) General information and tips on choosing a nursing facility that meets the needs of the individual.

(3) General information on consumer rights with respect to nursing facilities.

(4) The nursing facility survey process (on a national and State-specific basis).

(5) On a State-specific basis, the services available through the State long-term care ombudsman for such State.

SEC. 6104. REPORTING OF EXPENDITURES.

Section 1888 of the Social Security Act (42 U.S.C. 1395yy) is amended by adding at the end the following new subsection:

“(f) REPORTING OF DIRECT CARE EXPENDITURES.—

“(1) IN GENERAL.—For cost reports submitted under this title for cost reporting periods beginning on or after the date that is 2 years after the date of the enactment of this subsection, skilled nursing facilities shall separately report expenditures for wages and benefits for direct care staff (breaking out (at a minimum) registered nurses, licensed professional nurses, certified nurse assistants, and other medical and therapy staff).

“(2) MODIFICATION OF FORM.—The Secretary, in consultation with private sector accountants experienced with Medicare and Medicaid nursing facility home cost reports, shall redesign such reports to meet the requirement of paragraph (1) not later than 1 year after the date of the enactment of this subsection.

“(3) CATEGORIZATION BY FUNCTIONAL ACCOUNTS.—Not later than 30 months after the date of the enactment of this subsection, the Secretary, working in consultation with the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, the Inspector General of the Department of Health and Human Services, and other expert parties the Secretary determines appropriate, shall take the expenditures listed on cost reports, as modified under paragraph (1), submitted by skilled nursing facilities and categorize such expenditures, regardless of any source of payment for such expenditures, for each skilled nursing facility into the following functional accounts on an annual basis:

“(A) Spending on direct care services (including nursing, therapy, and medical services).

“(B) Spending on indirect care (including housekeeping and dietary services).

“(C) Capital assets (including building and land costs).

“(D) Administrative services costs.

“(4) AVAILABILITY OF INFORMATION SUBMITTED.—The Secretary shall establish procedures to make information on expenditures submitted under this subsection readily available to interested parties upon request, subject to such requirements as the Secretary may specify under the procedures established under this paragraph.”.

Procedures.

SEC. 6105. STANDARDIZED COMPLAINT FORM.

(a) IN GENERAL.—Section 1128I of the Social Security Act, as added and amended by this Act, is amended by adding at the end the following new subsection:

“(f) STANDARDIZED COMPLAINT FORM.—

“(1) DEVELOPMENT BY THE SECRETARY.—The Secretary shall develop a standardized complaint form for use by a resident

42 USC
1320a-7j.

(or a person acting on the resident's behalf) in filing a complaint with a State survey and certification agency and a State long-term care ombudsman program with respect to a facility.

“(2) COMPLAINT FORMS AND RESOLUTION PROCESSES.—

“(A) COMPLAINT FORMS.—The State must make the standardized complaint form developed under paragraph (1) available upon request to—

“(i) a resident of a facility; and

“(ii) any person acting on the resident's behalf.

“(B) COMPLAINT RESOLUTION PROCESS.—The State must establish a complaint resolution process in order to ensure that the legal representative of a resident of a facility or other responsible party is not denied access to such resident or otherwise retaliated against if they have complained about the quality of care provided by the facility or other issues relating to the facility. Such complaint resolution process shall include—

“(i) procedures to assure accurate tracking of complaints received, including notification to the complainant that a complaint has been received;

“(ii) procedures to determine the likely severity of a complaint and for the investigation of the complaint; and

“(iii) deadlines for responding to a complaint and for notifying the complainant of the outcome of the investigation.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as preventing a resident of a facility (or a person acting on the resident's behalf) from submitting a complaint in a manner or format other than by using the standardized complaint form developed under paragraph (1) (including submitting a complaint orally).”.

42 USC
1320a-7j note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 6106. ENSURING STAFFING ACCOUNTABILITY.

42 USC
1320a-7j.

Section 1128I of the Social Security Act, as added and amended by this Act, is amended by adding at the end the following new subsection:

Deadline.

“(g) SUBMISSION OF STAFFING INFORMATION BASED ON PAYROLL DATA IN A UNIFORM FORMAT.—Beginning not later than 2 years after the date of the enactment of this subsection, and after consulting with State long-term care ombudsman programs, consumer advocacy groups, provider stakeholder groups, employees and their representatives, and other parties the Secretary deems appropriate, the Secretary shall require a facility to electronically submit to the Secretary direct care staffing information (including information with respect to agency and contract staff) based on payroll and other verifiable and auditable data in a uniform format (according to specifications established by the Secretary in consultation with such programs, groups, and parties). Such specifications shall require that the information submitted under the preceding sentence—

“(1) specify the category of work a certified employee performs (such as whether the employee is a registered nurse,

licensed practical nurse, licensed vocational nurse, certified nursing assistant, therapist, or other medical personnel);

“(2) include resident census data and information on resident case mix;

“(3) include a regular reporting schedule; and

“(4) include information on employee turnover and tenure and on the hours of care provided by each category of certified employees referenced in paragraph (1) per resident per day.

Nothing in this subsection shall be construed as preventing the Secretary from requiring submission of such information with respect to specific categories, such as nursing staff, before other categories of certified employees. Information under this subsection with respect to agency and contract staff shall be kept separate from information on employee staffing.”.

SEC. 6107. GAO STUDY AND REPORT ON FIVE-STAR QUALITY RATING SYSTEM.

(a) **STUDY.**—The Comptroller General of the United States (in this section referred to as the “Comptroller General”) shall conduct a study on the Five-Star Quality Rating System for nursing homes of the Centers for Medicare & Medicaid Services. Such study shall include an analysis of—

(1) how such system is being implemented;

(2) any problems associated with such system or its implementation; and

(3) how such system could be improved.

(b) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

PART II—TARGETING ENFORCEMENT

SEC. 6111. CIVIL MONEY PENALTIES.

(a) **SKILLED NURSING FACILITIES.**—

(1) **IN GENERAL.**—Section 1819(h)(2)(B)(ii) of the Social Security Act (42 U.S.C. 1395i-3(h)(2)(B)(ii)) is amended—

(A) by striking “PENALTIES.—The Secretary” and inserting “PENALTIES.—

“(I) **IN GENERAL.**—Subject to subclause (II), the Secretary”; and

(B) by adding at the end the following new subclauses:

“(II) **REDUCTION OF CIVIL MONEY PENALTIES IN CERTAIN CIRCUMSTANCES.**—Subject to subclause (III), in the case where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by not more than 50 percent.

Deadline.

“(III) **PROHIBITIONS ON REDUCTION FOR CERTAIN DEFICIENCIES.**—

“(aa) **REPEAT DEFICIENCIES.**—The Secretary may not reduce the amount of a penalty under subclause (II) if the Secretary had

reduced a penalty imposed on the facility in the preceding year under such subclause with respect to a repeat deficiency.

“(bb) CERTAIN OTHER DEFICIENCIES.—The Secretary may not reduce the amount of a penalty under subclause (II) if the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents of the facility, or results in the death of a resident of the facility.

Regulations.

“(IV) COLLECTION OF CIVIL MONEY PENALTIES.—In the case of a civil money penalty imposed under this clause, the Secretary shall issue regulations that—

Deadline.

“(aa) subject to item (cc), not later than 30 days after the imposition of the penalty, provide for the facility to have the opportunity to participate in an independent informal dispute resolution process which generates a written record prior to the collection of such penalty;

Time period.

“(bb) in the case where the penalty is imposed for each day of noncompliance, provide that a penalty may not be imposed for any day during the period beginning on the initial day of the imposition of the penalty and ending on the day on which the informal dispute resolution process under item (aa) is completed;

“(cc) may provide for the collection of such civil money penalty and the placement of such amounts collected in an escrow account under the direction of the Secretary on the earlier of the date on which the informal dispute resolution process under item (aa) is completed or the date that is 90 days after the date of the imposition of the penalty;

“(dd) may provide that such amounts collected are kept in such account pending the resolution of any subsequent appeals;

“(ee) in the case where the facility successfully appeals the penalty, may provide for the return of such amounts collected (plus interest) to the facility; and

“(ff) in the case where all such appeals are unsuccessful, may provide that some portion of such amounts collected may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and

family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).”.

(2) CONFORMING AMENDMENT.—The second sentence of section 1819(h)(5) of the Social Security Act (42 U.S.C. 1395i-3(h)(5)) is amended by inserting “(ii)(IV),” after “(i),”.

(b) NURSING FACILITIES.—

(1) IN GENERAL.—Section 1919(h)(3)(C)(ii) of the Social Security Act (42 U.S.C. 1396r(h)(3)(C)) is amended—

(A) by striking “PENALTIES.—The Secretary” and inserting “PENALTIES.—

“(I) IN GENERAL.—Subject to subclause (II), the Secretary”; and

(B) by adding at the end the following new subclauses:

“(II) REDUCTION OF CIVIL MONEY PENALTIES IN CERTAIN CIRCUMSTANCES.—Subject to subclause (III), in the case where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by not more than 50 percent.

Deadline.

“(III) PROHIBITIONS ON REDUCTION FOR CERTAIN DEFICIENCIES.—

“(aa) REPEAT DEFICIENCIES.—The Secretary may not reduce the amount of a penalty under subclause (II) if the Secretary had reduced a penalty imposed on the facility in the preceding year under such subclause with respect to a repeat deficiency.

“(bb) CERTAIN OTHER DEFICIENCIES.—The Secretary may not reduce the amount of a penalty under subclause (II) if the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents of the facility, or results in the death of a resident of the facility.

“(IV) COLLECTION OF CIVIL MONEY PENALTIES.—In the case of a civil money penalty imposed under this clause, the Secretary shall issue regulations that—

Regulations.

“(aa) subject to item (cc), not later than 30 days after the imposition of the penalty, provide for the facility to have the opportunity to participate in an independent informal dispute resolution process which generates a written record prior to the collection of such penalty;

Deadline.

Time period.

“(bb) in the case where the penalty is imposed for each day of noncompliance, provide that a penalty may not be imposed for any day during the period beginning on the initial day of the imposition of the penalty and ending on the day on which the informal dispute resolution process under item (aa) is completed;

“(cc) may provide for the collection of such civil money penalty and the placement of such amounts collected in an escrow account under the direction of the Secretary on the earlier of the date on which the informal dispute resolution process under item (aa) is completed or the date that is 90 days after the date of the imposition of the penalty;

“(dd) may provide that such amounts collected are kept in such account pending the resolution of any subsequent appeals;

“(ee) in the case where the facility successfully appeals the penalty, may provide for the return of such amounts collected (plus interest) to the facility; and

“(ff) in the case where all such appeals are unsuccessful, may provide that some portion of such amounts collected may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).”.

(2) CONFORMING AMENDMENT.—Section 1919(h)(5)(8) of the Social Security Act (42 U.S.C. 1396r(h)(5)(8)) is amended by inserting “(ii)(IV),” after “(i),”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

42 USC
1395i-3 note.

42 USC
1320a-7j note.

SEC. 6112. NATIONAL INDEPENDENT MONITOR DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall conduct a demonstration project to develop, test, and implement an independent monitor program to oversee

interstate and large intrastate chains of skilled nursing facilities and nursing facilities.

(2) **SELECTION.**—The Secretary shall select chains of skilled nursing facilities and nursing facilities described in paragraph (1) to participate in the demonstration project under this section from among those chains that submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(3) **DURATION.**—The Secretary shall conduct the demonstration project under this section for a 2-year period.

(4) **IMPLEMENTATION.**—The Secretary shall implement the demonstration project under this section not later than 1 year after the date of the enactment of this Act.

Deadline.

(b) **REQUIREMENTS.**—The Secretary shall evaluate chains selected to participate in the demonstration project under this section based on criteria selected by the Secretary, including where evidence suggests that a number of the facilities of the chain are experiencing serious safety and quality of care problems. Such criteria may include the evaluation of a chain that includes a number of facilities participating in the “Special Focus Facility” program (or a successor program) or multiple facilities with a record of repeated serious safety and quality of care deficiencies.

Evaluation.

(c) **RESPONSIBILITIES.**—An independent monitor that enters into a contract with the Secretary to participate in the conduct of the demonstration project under this section shall—

Contracts.

(1) conduct periodic reviews and prepare root-cause quality and deficiency analyses of a chain to assess if facilities of the chain are in compliance with State and Federal laws and regulations applicable to the facilities;

Review.

(2) conduct sustained oversight of the efforts of the chain, whether publicly or privately held, to achieve compliance by facilities of the chain with State and Federal laws and regulations applicable to the facilities;

(3) analyze the management structure, distribution of expenditures, and nurse staffing levels of facilities of the chain in relation to resident census, staff turnover rates, and tenure;

(4) report findings and recommendations with respect to such reviews, analyses, and oversight to the chain and facilities of the chain, to the Secretary, and to relevant States; and

Reports.

(5) publish the results of such reviews, analyses, and oversight.

Publication.

(d) **IMPLEMENTATION OF RECOMMENDATIONS.**—

(1) **RECEIPT OF FINDING BY CHAIN.**—Not later than 10 days after receipt of a finding of an independent monitor under subsection (c)(4), a chain participating in the demonstration project shall submit to the independent monitor a report—

Deadline.

(A) outlining corrective actions the chain will take to implement the recommendations in such report; or

Reports.

(B) indicating that the chain will not implement such recommendations, and why it will not do so.

(2) **RECEIPT OF REPORT BY INDEPENDENT MONITOR.**—Not later than 10 days after receipt of a report submitted by a chain under paragraph (1), an independent monitor shall finalize its recommendations and submit a report to the chain and facilities of the chain, the Secretary, and the State or States, as appropriate, containing such final recommendations.

Payment.
Procedures.

(e) **COST OF APPOINTMENT.**—A chain shall be responsible for a portion of the costs associated with the appointment of independent monitors under the demonstration project under this section. The chain shall pay such portion to the Secretary (in an amount and in accordance with procedures established by the Secretary).

(f) **WAIVER AUTHORITY.**—The Secretary may waive such requirements of titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as may be necessary for the purpose of carrying out the demonstration project under this section.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(h) **DEFINITIONS.**—In this section:

(1) **ADDITIONAL DISCLOSABLE PARTY.**—The term “additional disclosable party” has the meaning given such term in section 1124(c)(5)(A) of the Social Security Act, as added by section 4201(a).

(2) **FACILITY.**—The term “facility” means a skilled nursing facility or a nursing facility.

(3) **NURSING FACILITY.**—The term “nursing facility” has the meaning given such term in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a)).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services, acting through the Assistant Secretary for Planning and Evaluation.

(5) **SKILLED NURSING FACILITY.**—The term “skilled nursing facility” has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395(a)).

(i) **EVALUATION AND REPORT.**—

(1) **EVALUATION.**—The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall evaluate the demonstration project conducted under this section.

(2) **REPORT.**—Not later than 180 days after the completion of the demonstration project under this section, the Secretary shall submit to Congress a report containing the results of the evaluation conducted under paragraph (1), together with recommendations—

(A) as to whether the independent monitor program should be established on a permanent basis;

(B) if the Secretary recommends that such program be so established, on appropriate procedures and mechanisms for such establishment; and

(C) for such legislation and administrative action as the Secretary determines appropriate.

SEC. 6113. NOTIFICATION OF FACILITY CLOSURE.

(a) **IN GENERAL.**—Section 1128I of the Social Security Act, as added and amended by this Act, is amended by adding at the end the following new subsection:

“(h) **NOTIFICATION OF FACILITY CLOSURE.**—

“(1) **IN GENERAL.**—Any individual who is the administrator of a facility must—

42 USC
1320a-7j.

“(A) submit to the Secretary, the State long-term care ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure—

Notification.
Deadlines.

“(i) subject to clause (ii), not later than the date that is 60 days prior to the date of such closure; and

“(ii) in the case of a facility where the Secretary terminates the facility’s participation under this title, not later than the date that the Secretary determines appropriate;

“(B) ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and

“(C) include in the notice a plan for the transfer and adequate relocation of the residents of the facility by a specified date prior to closure that has been approved by the State, including assurances that the residents will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

Plans.

“(2) RELOCATION.—

“(A) IN GENERAL.—The State shall ensure that, before a facility closes, all residents of the facility have been successfully relocated to another facility or an alternative home and community-based setting.

“(B) CONTINUATION OF PAYMENTS UNTIL RESIDENTS RELOCATED.—The Secretary may, as the Secretary determines appropriate, continue to make payments under this title with respect to residents of a facility that has submitted a notification under paragraph (1) during the period beginning on the date such notification is submitted and ending on the date on which the resident is successfully relocated.

Time period.

“(3) SANCTIONS.—Any individual who is the administrator of a facility that fails to comply with the requirements of paragraph (1)—

“(A) shall be subject to a civil monetary penalty of up to \$100,000;

“(B) may be subject to exclusion from participation in any Federal health care program (as defined in section 1128B(f)); and

“(C) shall be subject to any other penalties that may be prescribed by law.

“(4) PROCEDURE.—The provisions of section 1128A (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under paragraph (3) in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”.

Applicability.

(b) CONFORMING AMENDMENTS.—Section 1819(h)(4) of the Social Security Act (42 U.S.C. 1395i-3(h)(4)) is amended—

(1) in the first sentence, by striking “the Secretary shall terminate” and inserting “the Secretary, subject to section 1128I(h), shall terminate”; and

(2) in the second sentence, by striking “subsection (c)(2)” and inserting “subsection (c)(2) and section 1128I(h)”.

42 USC 1320a–7j
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

42 USC 1395i–3
note.

SEC. 6114. NATIONAL DEMONSTRATION PROJECTS ON CULTURE CHANGE AND USE OF INFORMATION TECHNOLOGY IN NURSING HOMES.

(a) **IN GENERAL.**—The Secretary shall conduct 2 demonstration projects, 1 for the development of best practices in skilled nursing facilities and nursing facilities that are involved in the culture change movement (including the development of resources for facilities to find and access funding in order to undertake culture change) and 1 for the development of best practices in skilled nursing facilities and nursing facilities for the use of information technology to improve resident care.

(b) **CONDUCT OF DEMONSTRATION PROJECTS.**—

(1) **GRANT AWARD.**—Under each demonstration project conducted under this section, the Secretary shall award 1 or more grants to facility-based settings for the development of best practices described in subsection (a) with respect to the demonstration project involved. Such award shall be made on a competitive basis and may be allocated in 1 lump-sum payment.

(2) **CONSIDERATION OF SPECIAL NEEDS OF RESIDENTS.**—Each demonstration project conducted under this section shall take into consideration the special needs of residents of skilled nursing facilities and nursing facilities who have cognitive impairment, including dementia.

(c) **DURATION AND IMPLEMENTATION.**—

(1) **DURATION.**—The demonstration projects shall each be conducted for a period not to exceed 3 years.

(2) **IMPLEMENTATION.**—The demonstration projects shall each be implemented not later than 1 year after the date of the enactment of this Act.

(d) **DEFINITIONS.**—In this section:

(1) **NURSING FACILITY.**—The term “nursing facility” has the meaning given such term in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a)).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(3) **SKILLED NURSING FACILITY.**—The term “skilled nursing facility” has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395(a)).

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(f) **REPORT.**—Not later than 9 months after the completion of the demonstration project, the Secretary shall submit to Congress a report on such project, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

Deadline.

Recommendations.

PART III—IMPROVING STAFF TRAINING

SEC. 6121. DEMENTIA AND ABUSE PREVENTION TRAINING.

(a) **SKILLED NURSING FACILITIES.**—

(1) **IN GENERAL.**—Section 1819(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C. 1395i–3(f)(2)(A)(i)(I)) is amended by

inserting “(including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training” before “, (II)”.

(2) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1819(b)(5)(F) of the Social Security Act (42 U.S.C. 1395i–3(b)(5)(F)) is amended by adding at the end the following flush sentence:

“Such term includes an individual who provides such services through an agency or under a contract with the facility.”.

(b) NURSING FACILITIES.—

(1) IN GENERAL.—Section 1919(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C. 1396r(f)(2)(A)(i)(I)) is amended by inserting “(including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training” before “, (II)”.

(2) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1919(b)(5)(F) of the Social Security Act (42 U.S.C. 1396r(b)(5)(F)) is amended by adding at the end the following flush sentence:

“Such term includes an individual who provides such services through an agency or under a contract with the facility.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

42 USC 1395i–3
note.

Subtitle C—Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-term Care Facilities and Providers

SEC. 6201. NATIONWIDE PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-TERM CARE FACILITIES AND PROVIDERS.

42 USC
1320a–7l.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”), shall establish a program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis (in this subsection, such program shall be referred to as the “nationwide program”). Except for the following modifications, the Secretary shall carry out the nationwide program under similar terms and conditions as the pilot program under section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2257), including the prohibition on hiring abusive workers and the authorization of the imposition of penalties by a participating State under subsection (b)(3)(A) and (b)(6), respectively, of such section 307:

(1) AGREEMENTS.—

(A) NEWLY PARTICIPATING STATES.—The Secretary shall enter into agreements with each State—

(i) that the Secretary has not entered into an agreement with under subsection (c)(1) of such section 307;

(ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and

(iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(B) CERTAIN PREVIOUSLY PARTICIPATING STATES.—The Secretary shall enter into agreements with each State—

(i) that the Secretary has entered into an agreement with under such subsection (c)(1), but only in the case where such agreement did not require the State to conduct background checks under the program established under subsection (a) of such section 307 on a Statewide basis;

(ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and

(iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(2) NONAPPLICATION OF SELECTION CRITERIA.—The selection criteria required under subsection (c)(3)(B) of such section 307 shall not apply.

(3) REQUIRED FINGERPRINT CHECK AS PART OF CRIMINAL HISTORY BACKGROUND CHECK.—The procedures established under subsection (b)(1) of such section 307 shall—

(A) require that the long-term care facility or provider (or the designated agent of the long-term care facility or provider) obtain State and national criminal history background checks on the prospective employee through such means as the Secretary determines appropriate, efficient, and effective that utilize a search of State-based abuse and neglect registries and databases, including the abuse and neglect registries of another State in the case where a prospective employee previously resided in that State, State criminal history records, the records of any proceedings in the State that may contain disqualifying information about prospective employees (such as proceedings conducted by State professional licensing and disciplinary boards and State Medicaid Fraud Control Units), and Federal criminal history records, including a fingerprint check using the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation;

(B) require States to describe and test methods that reduce duplicative fingerprinting, including providing for the development of “rap back” capability by the State such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted

with respect to such employee, and the employee's fingerprints match the prints on file with the State law enforcement department, the department will immediately inform the State and the State will immediately inform the long-term care facility or provider which employs the direct patient access employee of such conviction; and

(C) require that criminal history background checks conducted under the nationwide program remain valid for a period of time specified by the Secretary.

(4) STATE REQUIREMENTS.—An agreement entered into under paragraph (1) shall require that a participating State—

(A) be responsible for monitoring compliance with the requirements of the nationwide program;

(B) have procedures in place to—

Procedures.

(i) conduct screening and criminal history background checks under the nationwide program in accordance with the requirements of this section;

(ii) monitor compliance by long-term care facilities and providers with the procedures and requirements of the nationwide program;

(iii) as appropriate, provide for a provisional period of employment by a long-term care facility or provider of a direct patient access employee, not to exceed 60 days, pending completion of the required criminal history background check and, in the case where the employee has appealed the results of such background check, pending completion of the appeals process, during which the employee shall be subject to direct on-site supervision (in accordance with procedures established by the State to ensure that a long-term care facility or provider furnishes such direct on-site supervision);

(iv) provide an independent process by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the nationwide program, including the specification of criteria for appeals for direct patient access employees found to have disqualifying information which shall include consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current employment of the individual;

(v) provide for the designation of a single State agency as responsible for—

(I) overseeing the coordination of any State and national criminal history background checks requested by a long-term care facility or provider (or the designated agent of the long-term care facility or provider) utilizing a search of State and Federal criminal history records, including a fingerprint check of such records;

(II) overseeing the design of appropriate privacy and security safeguards for use in the review of the results of any State or national criminal history background checks conducted regarding a

prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

(III) immediately reporting to the long-term care facility or provider that requested the criminal history background check the results of such review; and

(IV) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act (42 U.S.C. 1320a–7e), reporting the existence of such conviction to the database established under that section;

(vi) determine which individuals are direct patient access employees (as defined in paragraph (6)(B)) for purposes of the nationwide program;

(vii) as appropriate, specify offenses, including convictions for violent crimes, for purposes of the nationwide program; and

(viii) describe and test methods that reduce duplicative fingerprinting, including providing for the development of “rap back” capability such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted with respect to such employee, and the employee’s fingerprints match the prints on file with the State law enforcement department—

(I) the department will immediately inform the State agency designated under clause (v) and such agency will immediately inform the facility or provider which employs the direct patient access employee of such conviction; and

(II) the State will provide, or will require the facility to provide, to the employee a copy of the results of the criminal history background check conducted with respect to the employee at no charge in the case where the individual requests such a copy.

(5) PAYMENTS.—

(A) NEWLY PARTICIPATING STATES.—

(i) IN GENERAL.—As part of the application submitted by a State under paragraph (1)(A)(iii), the State shall guarantee, with respect to the costs to be incurred by the State in carrying out the nationwide program, that the State will make available (directly or through donations from public or private entities) a particular amount of non-Federal contributions, as a condition of receiving the Federal match under clause (ii).

(ii) FEDERAL MATCH.—The payment amount to each State that the Secretary enters into an agreement with under paragraph (1)(A) shall be 3 times the amount that the State guarantees to make available under clause (i), except that in no case may the payment amount exceed \$3,000,000.

(B) PREVIOUSLY PARTICIPATING STATES.—

(i) **IN GENERAL.**—As part of the application submitted by a State under paragraph (1)(B)(iii), the State shall guarantee, with respect to the costs to be incurred by the State in carrying out the nationwide program, that the State will make available (directly or through donations from public or private entities) a particular amount of non-Federal contributions, as a condition of receiving the Federal match under clause (ii).

(ii) **FEDERAL MATCH.**—The payment amount to each State that the Secretary enters into an agreement with under paragraph (1)(B) shall be 3 times the amount that the State guarantees to make available under clause (i), except that in no case may the payment amount exceed \$1,500,000.

(6) **DEFINITIONS.**—Under the nationwide program:

(A) **CONVICTION FOR A RELEVANT CRIME.**—The term “conviction for a relevant crime” means any Federal or State criminal conviction for—

(i) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7); or

(ii) such other types of offenses as a participating State may specify for purposes of conducting the program in such State.

(B) **DISQUALIFYING INFORMATION.**—The term “disqualifying information” means a conviction for a relevant crime or a finding of patient or resident abuse.

(C) **FINDING OF PATIENT OR RESIDENT ABUSE.**—The term “finding of patient or resident abuse” means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed—

(i) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

(ii) such other types of acts as a participating State may specify for purposes of conducting the program in such State.

(D) **DIRECT PATIENT ACCESS EMPLOYEE.**—The term “direct patient access employee” means any individual who has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the nationwide program. Such term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient access employee and those duties involve (or may involve) one-on-one contact with a patient or resident of the long-term care facility or provider.

(E) **LONG-TERM CARE FACILITY OR PROVIDER.**—The term “long-term care facility or provider” means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act:

(i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3(a))).

(ii) A nursing facility (as defined in section 1919(a) of such Act (42 U.S.C. 1396r(a))).

(iii) A home health agency.

(iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act (42 U.S.C. 1395x(dd)(1))).

(v) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act (42 U.S.C. 1395ww(d)(1)(B)(iv))).

(vi) A provider of personal care services.

(vii) A provider of adult day care.

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility that provides a level of care established by the Secretary.

(ix) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act (42 U.S.C. 1396d(d))).

(x) Any other facility or provider of long-term care services under such titles as the participating State determines appropriate.

(7) EVALUATION AND REPORT.—

(A) EVALUATION.—

(i) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct an evaluation of the nationwide program.

(ii) INCLUSION OF SPECIFIC TOPICS.—The evaluation conducted under clause (i) shall include the following:

(I) A review of the various procedures implemented by participating States for long-term care facilities or providers, including staffing agencies, to conduct background checks of direct patient access employees under the nationwide program and identification of the most appropriate, efficient, and effective procedures for conducting such background checks.

(II) An assessment of the costs of conducting such background checks (including start up and administrative costs).

(III) A determination of the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for long-term care facilities or providers.

(IV) An assessment of the impact of the nationwide program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable.

(V) An evaluation of other aspects of the nationwide program, as determined appropriate by the Secretary.

(B) REPORT.—Not later than 180 days after the completion of the nationwide program, the Inspector General of the Department of Health and Human Services shall

submit a report to Congress containing the results of the evaluation conducted under subparagraph (A).

(b) FUNDING.—

(1) NOTIFICATION.—The Secretary of Health and Human Services shall notify the Secretary of the Treasury of the amount necessary to carry out the nationwide program under this section for the period of fiscal years 2010 through 2012, except that in no case shall such amount exceed \$160,000,000.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide for the transfer to the Secretary of Health and Human Services of the amount specified as necessary to carry out the nationwide program under paragraph (1). Such amount shall remain available until expended.

(B) RESERVATION OF FUNDS FOR CONDUCT OF EVALUATION.—The Secretary may reserve not more than \$3,000,000 of the amount transferred under subparagraph (A) to provide for the conduct of the evaluation under subsection (a)(7)(A).

Subtitle D—Patient-Centered Outcomes Research

SEC. 6301. PATIENT-CENTERED OUTCOMES RESEARCH.

(a) IN GENERAL.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new part:

“PART D—COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH

“COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH

“SEC. 1181. (a) DEFINITIONS.—In this section:

42 USC 1320e.

“(1) BOARD.—The term ‘Board’ means the Board of Governors established under subsection (f).

“(2) COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH; RESEARCH.—

“(A) IN GENERAL.—The terms ‘comparative clinical effectiveness research’ and ‘research’ mean research evaluating and comparing health outcomes and the clinical effectiveness, risks, and benefits of 2 or more medical treatments, services, and items described in subparagraph (B).

“(B) MEDICAL TREATMENTS, SERVICES, AND ITEMS DESCRIBED.—The medical treatments, services, and items described in this subparagraph are health care interventions, protocols for treatment, care management, and delivery, procedures, medical devices, diagnostic tools, pharmaceuticals (including drugs and biologicals), integrative health practices, and any other strategies or items being used in the treatment, management, and diagnosis of, or prevention of illness or injury in, individuals.

“(3) CONFLICT OF INTEREST.—The term ‘conflict of interest’ means an association, including a financial or personal association, that have the potential to bias or have the appearance

of biasing an individual's decisions in matters related to the Institute or the conduct of activities under this section.

“(4) REAL CONFLICT OF INTEREST.—The term ‘real conflict of interest’ means any instance where a member of the Board, the methodology committee established under subsection (d)(6), or an advisory panel appointed under subsection (d)(4), or a close relative of such member, has received or could receive either of the following:

“(A) A direct financial benefit of any amount deriving from the result or findings of a study conducted under this section.

“(B) A financial benefit from individuals or companies that own or manufacture medical treatments, services, or items to be studied under this section that in the aggregate exceeds \$10,000 per year. For purposes of the preceding sentence, a financial benefit includes honoraria, fees, stock, or other financial benefit and the current value of the member or close relative's already existing stock holdings, in addition to any direct financial benefit deriving from the results or findings of a study conducted under this section.

“(b) PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE.—

“(1) ESTABLISHMENT.—There is authorized to be established a nonprofit corporation, to be known as the ‘Patient-Centered Outcomes Research Institute’ (referred to in this section as the ‘Institute’) which is neither an agency nor establishment of the United States Government.

“(2) APPLICATION OF PROVISIONS.—The Institute shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Non-profit Corporation Act.

“(3) FUNDING OF COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.—For fiscal year 2010 and each subsequent fiscal year, amounts in the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the ‘PCORTF’) under section 9511 of the Internal Revenue Code of 1986 shall be available, without further appropriation, to the Institute to carry out this section.

“(c) PURPOSE.—The purpose of the Institute is to assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence concerning the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, monitored, and managed through research and evidence synthesis that considers variations in patient subpopulations, and the dissemination of research findings with respect to the relative health outcomes, clinical effectiveness, and appropriateness of the medical treatments, services, and items described in subsection (a)(2)(B).

“(d) DUTIES.—

“(1) IDENTIFYING RESEARCH PRIORITIES AND ESTABLISHING RESEARCH PROJECT AGENDA.—

“(A) IDENTIFYING RESEARCH PRIORITIES.—The Institute shall identify national priorities for research, taking into account factors of disease incidence, prevalence, and burden in the United States (with emphasis on chronic conditions), gaps in evidence in terms of clinical outcomes, practice

District of
Columbia.

variations and health disparities in terms of delivery and outcomes of care, the potential for new evidence to improve patient health, well-being, and the quality of care, the effect on national expenditures associated with a health care treatment, strategy, or health conditions, as well as patient needs, outcomes, and preferences, the relevance to patients and clinicians in making informed health decisions, and priorities in the National Strategy for quality care established under section 399H of the Public Health Service Act that are consistent with this section.

“(B) ESTABLISHING RESEARCH PROJECT AGENDA.—The Institute shall establish and update a research project agenda for research to address the priorities identified under subparagraph (A), taking into consideration the types of research that might address each priority and the relative value (determined based on the cost of conducting research compared to the potential usefulness of the information produced by research) associated with the different types of research, and such other factors as the Institute determines appropriate.

“(2) CARRYING OUT RESEARCH PROJECT AGENDA.—

“(A) RESEARCH.—The Institute shall carry out the research project agenda established under paragraph (1)(B) in accordance with the methodological standards adopted under paragraph (9) using methods, including the following:

“(i) Systematic reviews and assessments of existing and future research and evidence including original research conducted subsequent to the date of the enactment of this section.

“(ii) Primary research, such as randomized clinical trials, molecularly informed trials, and observational studies.

“(iii) Any other methodologies recommended by the methodology committee established under paragraph (6) that are adopted by the Board under paragraph (9).

“(B) CONTRACTS FOR THE MANAGEMENT OF FUNDING AND CONDUCT OF RESEARCH.—

“(i) CONTRACTS.—

“(I) IN GENERAL.—In accordance with the research project agenda established under paragraph (1)(B), the Institute shall enter into contracts for the management of funding and conduct of research in accordance with the following:

“(aa) Appropriate agencies and instrumentalities of the Federal Government.

“(bb) Appropriate academic research, private sector research, or study-conducting entities.

“(II) PREFERENCE.—In entering into contracts under subclause (I), the Institute shall give preference to the Agency for Healthcare Research and Quality and the National Institutes of Health, but only if the research to be conducted or managed under such contract is authorized by the governing statutes of such Agency or Institutes.

“(ii) CONDITIONS FOR CONTRACTS.—A contract entered into under this subparagraph shall require that the agency, instrumentality, or other entity—

“(I) abide by the transparency and conflicts of interest requirements under subsection (h) that apply to the Institute with respect to the research managed or conducted under such contract;

“(II) comply with the methodological standards adopted under paragraph (9) with respect to such research;

“(III) consult with the expert advisory panels for clinical trials and rare disease appointed under clauses (ii) and (iii), respectively, of paragraph (4)(A);

“(IV) subject to clause (iv), permit a researcher who conducts original research under the contract for the agency, instrumentality, or other entity to have such research published in a peer-reviewed journal or other publication;

“(V) have appropriate processes in place to manage data privacy and meet ethical standards for the research;

“(VI) comply with the requirements of the Institute for making the information available to the public under paragraph (8); and

“(VII) comply with other terms and conditions determined necessary by the Institute to carry out the research agenda adopted under paragraph (2).

“(iii) COVERAGE OF COPAYMENTS OR COINSURANCE.—A contract entered into under this subparagraph may allow for the coverage of copayments or coinsurance, or allow for other appropriate measures, to the extent that such coverage or other measures are necessary to preserve the validity of a research project, such as in the case where the research project must be blinded.

“(iv) REQUIREMENTS FOR PUBLICATION OF RESEARCH.—Any research published under clause (ii)(IV) shall be within the bounds of and entirely consistent with the evidence and findings produced under the contract with the Institute under this subparagraph. If the Institute determines that those requirements are not met, the Institute shall not enter into another contract with the agency, instrumentality, or entity which managed or conducted such research for a period determined appropriate by the Institute (but not less than 5 years).

“(C) REVIEW AND UPDATE OF EVIDENCE.—The Institute shall review and update evidence on a periodic basis as appropriate.

“(D) TAKING INTO ACCOUNT POTENTIAL DIFFERENCES.—Research shall be designed, as appropriate, to take into account the potential for differences in the effectiveness of health care treatments, services, and items as used with various subpopulations, such as racial and ethnic minorities, women, age, and groups of individuals with different comorbidities, genetic and molecular sub-types,

or quality of life preferences and include members of such subpopulations as subjects in the research as feasible and appropriate.

“(E) DIFFERENCES IN TREATMENT MODALITIES.—Research shall be designed, as appropriate, to take into account different characteristics of treatment modalities that may affect research outcomes, such as the phase of the treatment modality in the innovation cycle and the impact of the skill of the operator of the treatment modality.

“(3) DATA COLLECTION.—

“(A) IN GENERAL.—The Secretary shall, with appropriate safeguards for privacy, make available to the Institute such data collected by the Centers for Medicare & Medicaid Services under the programs under titles XVIII, XIX, and XXI, as well as provide access to the data networks developed under section 937(f) of the Public Health Service Act, as the Institute and its contractors may require to carry out this section. The Institute may also request and obtain data from Federal, State, or private entities, including data from clinical databases and registries.

“(B) USE OF DATA.—The Institute shall only use data provided to the Institute under subparagraph (A) in accordance with laws and regulations governing the release and use of such data, including applicable confidentiality and privacy standards.

“(4) APPOINTING EXPERT ADVISORY PANELS.—

“(A) APPOINTMENT.—

“(i) IN GENERAL.—The Institute may appoint permanent or ad hoc expert advisory panels as determined appropriate to assist in identifying research priorities and establishing the research project agenda under paragraph (1) and for other purposes.

“(ii) EXPERT ADVISORY PANELS FOR CLINICAL TRIALS.—The Institute shall appoint expert advisory panels in carrying out randomized clinical trials under the research project agenda under paragraph (2)(A)(ii). Such expert advisory panels shall advise the Institute and the agency, instrumentality, or entity conducting the research on the research question involved and the research design or protocol, including important patient subgroups and other parameters of the research. Such panels shall be available as a resource for technical questions that may arise during the conduct of such research.

“(iii) EXPERT ADVISORY PANEL FOR RARE DISEASE.—In the case of a research study for rare disease, the Institute shall appoint an expert advisory panel for purposes of assisting in the design of the research study and determining the relative value and feasibility of conducting the research study.

“(B) COMPOSITION.—An expert advisory panel appointed under subparagraph (A) shall include representatives of practicing and research clinicians, patients, and experts in scientific and health services research, health services delivery, and evidence-based medicine who have experience in the relevant topic, and as appropriate, experts

in integrative health and primary prevention strategies. The Institute may include a technical expert of each manufacturer or each medical technology that is included under the relevant topic, project, or category for which the panel is established.

“(5) SUPPORTING PATIENT AND CONSUMER REPRESENTATIVES.—The Institute shall provide support and resources to help patient and consumer representatives effectively participate on the Board and expert advisory panels appointed by the Institute under paragraph (4).

“(6) ESTABLISHING METHODOLOGY COMMITTEE.—

“(A) IN GENERAL.—The Institute shall establish a standing methodology committee to carry out the functions described in subparagraph (C).

“(B) APPOINTMENT AND COMPOSITION.—The methodology committee established under subparagraph (A) shall be composed of not more than 15 members appointed by the Comptroller General of the United States. Members appointed to the methodology committee shall be experts in their scientific field, such as health services research, clinical research, comparative clinical effectiveness research, biostatistics, genomics, and research methodologies. Stakeholders with such expertise may be appointed to the methodology committee. In addition to the members appointed under the first sentence, the Directors of the National Institutes of Health and the Agency for Healthcare Research and Quality (or their designees) shall each be included as members of the methodology committee.

Deadline.

“(C) FUNCTIONS.—Subject to subparagraph (D), the methodology committee shall work to develop and improve the science and methods of comparative clinical effectiveness research by, not later than 18 months after the establishment of the Institute, directly or through subcontract, developing and periodically updating the following:

“(i) Methodological standards for research. Such methodological standards shall provide specific criteria for internal validity, generalizability, feasibility, and timeliness of research and for health outcomes measures, risk adjustment, and other relevant aspects of research and assessment with respect to the design of research. Any methodological standards developed and updated under this subclause shall be scientifically based and include methods by which new information, data, or advances in technology are considered and incorporated into ongoing research projects by the Institute, as appropriate. The process for developing and updating such standards shall include input from relevant experts, stakeholders, and decisionmakers, and shall provide opportunities for public comment. Such standards shall also include methods by which patient subpopulations can be accounted for and evaluated in different types of research. As appropriate, such standards shall build on existing work on methodological standards for defined categories of health interventions and for each of the major categories of

comparative clinical effectiveness research methods (determined as of the date of enactment of the Patient Protection and Affordable Care Act).

“(ii) A translation table that is designed to provide guidance and act as a reference for the Board to determine research methods that are most likely to address each specific research question.

“(D) CONSULTATION AND CONDUCT OF EXAMINATIONS.—

The methodology committee may consult and contract with the Institute of Medicine of the National Academies and academic, nonprofit, or other private and governmental entities with relevant expertise to carry out activities described in subparagraph (C) and may consult with relevant stakeholders to carry out such activities.

“(E) REPORTS.—The methodology committee shall submit reports to the Board on the committee’s performance of the functions described in subparagraph (C). Reports shall contain recommendations for the Institute to adopt methodological standards developed and updated by the methodology committee as well as other actions deemed necessary to comply with such methodological standards.

Recommendations.

“(7) PROVIDING FOR A PEER-REVIEW PROCESS FOR PRIMARY RESEARCH.—

“(A) IN GENERAL.—The Institute shall ensure that there is a process for peer review of primary research described in subparagraph (A)(ii) of paragraph (2) that is conducted under such paragraph. Under such process—

“(i) evidence from such primary research shall be reviewed to assess scientific integrity and adherence to methodological standards adopted under paragraph (9); and

“(ii) a list of the names of individuals contributing to any peer-review process during the preceding year or years shall be made public and included in annual reports in accordance with paragraph (10)(D).

Lists.
Public
information.

“(B) COMPOSITION.—Such peer-review process shall be designed in a manner so as to avoid bias and conflicts of interest on the part of the reviewers and shall be composed of experts in the scientific field relevant to the research under review.

“(C) USE OF EXISTING PROCESSES.—

“(i) PROCESSES OF ANOTHER ENTITY.—In the case where the Institute enters into a contract or other agreement with another entity for the conduct or management of research under this section, the Institute may utilize the peer-review process of such entity if such process meets the requirements under subparagraphs (A) and (B).

“(ii) PROCESSES OF APPROPRIATE MEDICAL JOURNALS.—The Institute may utilize the peer-review process of appropriate medical journals if such process meets the requirements under subparagraphs (A) and (B).

“(8) RELEASE OF RESEARCH FINDINGS.—

“(A) IN GENERAL.—The Institute shall, not later than 90 days after the conduct or receipt of research findings under this part, make such research findings available

Deadline.

to clinicians, patients, and the general public. The Institute shall ensure that the research findings—

“(i) convey the findings of research in a manner that is comprehensible and useful to patients and providers in making health care decisions;

“(ii) fully convey findings and discuss considerations specific to certain subpopulations, risk factors, and comorbidities, as appropriate;

“(iii) include limitations of the research and what further research may be needed as appropriate;

“(iv) not be construed as mandates for practice guidelines, coverage recommendations, payment, or policy recommendations; and

“(v) not include any data which would violate the privacy of research participants or any confidentiality agreements made with respect to the use of data under this section.

“(B) DEFINITION OF RESEARCH FINDINGS.—In this paragraph, the term ‘research findings’ means the results of a study or assessment.

“(9) ADOPTION.—Subject to subsection (h)(1), the Institute shall adopt the national priorities identified under paragraph (1)(A), the research project agenda established under paragraph (1)(B), the methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i), and any peer-review process provided under paragraph (7) by majority vote. In the case where the Institute does not adopt such processes in accordance with the preceding sentence, the processes shall be referred to the appropriate staff or entity within the Institute (or, in the case of the methodological standards, the methodology committee) for further review.

“(10) ANNUAL REPORTS.—The Institute shall submit an annual report to Congress and the President, and shall make the annual report available to the public. Such report shall contain—

“(A) a description of the activities conducted under this section, research priorities identified under paragraph (1)(A) and methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i) that are adopted under paragraph (9) during the preceding year;

“(B) the research project agenda and budget of the Institute for the following year;

“(C) any administrative activities conducted by the Institute during the preceding year;

“(D) the names of individuals contributing to any peer-review process under paragraph (7), without identifying them with a particular research project; and

“(E) any other relevant information (including information on the membership of the Board, expert advisory panels, methodology committee, and the executive staff of the Institute, any conflicts of interest with respect to these individuals, and any bylaws adopted by the Board during the preceding year).

“(e) ADMINISTRATION.—

“(1) IN GENERAL.—Subject to paragraph (2), the Board shall carry out the duties of the Institute.

Public
information.

“(2) NONDELEGABLE DUTIES.—The activities described in subsections (d)(1) and (d)(9) are nondelegable.

“(f) BOARD OF GOVERNORS.—

“(1) IN GENERAL.—The Institute shall have a Board of Establishment.
Governors, which shall consist of the following members:

“(A) The Director of Agency for Healthcare Research and Quality (or the Director’s designee).

“(B) The Director of the National Institutes of Health (or the Director’s designee).

“(C) Seventeen members appointed, not later than 6 Deadline.
months after the date of enactment of this section, by the Comptroller General of the United States as follows:

“(i) 3 members representing patients and health care consumers.

“(ii) 5 members representing physicians and providers, including at least 1 surgeon, nurse, State-licensed integrative health care practitioner, and representative of a hospital.

“(iii) 3 members representing private payers, of whom at least 1 member shall represent health insurance issuers and at least 1 member shall represent employers who self-insure employee benefits.

“(iv) 3 members representing pharmaceutical, device, and diagnostic manufacturers or developers.

“(v) 1 member representing quality improvement or independent health service researchers.

“(vi) 2 members representing the Federal Government or the States, including at least 1 member representing a Federal health program or agency.

“(2) QUALIFICATIONS.—The Board shall represent a broad range of perspectives and collectively have scientific expertise in clinical health sciences research, including epidemiology, decisions sciences, health economics, and statistics. In appointing the Board, the Comptroller General of the United States shall consider and disclose any conflicts of interest in accordance with subsection (h)(4)(B). Members of the Board shall be recused from relevant Institute activities in the case where the member (or an immediate family member of such member) has a real conflict of interest directly related to the research project or the matter that could affect or be affected by such participation.

“(3) TERMS; VACANCIES.—A member of the Board shall be appointed for a term of 6 years, except with respect to the members first appointed, whose terms of appointment shall be staggered evenly over 2-year increments. No individual shall be appointed to the Board for more than 2 terms. Vacancies shall be filled in the same manner as the original appointment was made.

“(4) CHAIRPERSON AND VICE-CHAIRPERSON.—The Comp- Designation.
troller General of the United States shall designate a Chairperson and Vice Chairperson of the Board from among the members of the Board. Such members shall serve as Chairperson or Vice Chairperson for a period of 3 years.

“(5) COMPENSATION.—Each member of the Board who is not an officer or employee of the Federal Government shall be entitled to compensation (equivalent to the rate provided for level IV of the Executive Schedule under section 5315 of

title 5, United States Code) and expenses incurred while performing the duties of the Board. An officer or employee of the Federal government who is a member of the Board shall be exempt from compensation.

“(6) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—The Board may employ and fix the compensation of an Executive Director and such other personnel as may be necessary to carry out the duties of the Institute and may seek such assistance and support of, or contract with, experts and consultants that may be necessary for the performance of the duties of the Institute.

“(7) MEETINGS AND HEARINGS.—The Board shall meet and hold hearings at the call of the Chairperson or a majority of its members. Meetings not solely concerning matters of personnel shall be advertised at least 7 days in advance and open to the public. A majority of the Board members shall constitute a quorum, but a lesser number of members may meet and hold hearings.

“(g) FINANCIAL AND GOVERNMENTAL OVERSIGHT.—

“(1) CONTRACT FOR AUDIT.—The Institute shall provide for the conduct of financial audits of the Institute on an annual basis by a private entity with expertise in conducting financial audits.

“(2) REVIEW AND ANNUAL REPORTS.—

“(A) REVIEW.—The Comptroller General of the United States shall review the following:

“(i) Not less frequently than on an annual basis, the financial audits conducted under paragraph (1).

“(ii) Not less frequently than every 5 years, the processes established by the Institute, including the research priorities and the conduct of research projects, in order to determine whether information produced by such research projects is objective and credible, is produced in a manner consistent with the requirements under this section, and is developed through a transparent process.

“(iii) Not less frequently than every 5 years, the dissemination and training activities and data networks established under section 937 of the Public Health Service Act, including the methods and products used to disseminate research, the types of training conducted and supported, and the types and functions of the data networks established, in order to determine whether the activities and data are produced in a manner consistent with the requirements under such section.

“(iv) Not less frequently than every 5 years, the overall effectiveness of activities conducted under this section and the dissemination, training, and capacity building activities conducted under section 937 of the Public Health Service Act. Such review shall include an analysis of the extent to which research findings are used by health care decision-makers, the effect of the dissemination of such findings on reducing practice variation and disparities in health care, and the effect of the research conducted and disseminated on

innovation and the health care economy of the United States.

“(v) Not later than 8 years after the date of enactment of this section, the adequacy and use of the funding for the Institute and the activities conducted under section 937 of the Public Health Service Act, including a determination as to whether, based on the utilization of research findings by public and private payers, funding sources for the Patient-Centered Outcomes Research Trust Fund under section 9511 of the Internal Revenue Code of 1986 are appropriate and whether such sources of funding should be continued or adjusted.

“(B) ANNUAL REPORTS.—Not later than April 1 of each year, the Comptroller General of the United States shall submit to Congress a report containing the results of the review conducted under subparagraph (A) with respect to the preceding year (or years, if applicable), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

Recommendations.

“(h) ENSURING TRANSPARENCY, CREDIBILITY, AND ACCESS.—The Institute shall establish procedures to ensure that the following requirements for ensuring transparency, credibility, and access are met:

Procedures.

“(1) PUBLIC COMMENT PERIODS.—The Institute shall provide for a public comment period of not less than 45 days and not more than 60 days prior to the adoption under subsection (d)(9) of the national priorities identified under subsection (d)(1)(A), the research project agenda established under subsection (d)(1)(B), the methodological standards developed and updated by the methodology committee under subsection (d)(6)(C)(i), and the peer-review process provided under paragraph (7), and after the release of draft findings with respect to systematic reviews of existing research and evidence.

“(2) ADDITIONAL FORUMS.—The Institute shall support forums to increase public awareness and obtain and incorporate public input and feedback through media (such as an Internet website) on research priorities, research findings, and other duties, activities, or processes the Institute determines appropriate.

“(3) PUBLIC AVAILABILITY.—The Institute shall make available to the public and disclose through the official public Internet website of the Institute the following:

Web posting.

“(A) Information contained in research findings as specified in subsection (d)(9).

“(B) The process and methods for the conduct of research, including the identity of the entity and the investigators conducting such research and any conflicts of interests of such parties, any direct or indirect links the entity has to industry, and research protocols, including measures taken, methods of research and analysis, research results, and such other information the Institute determines appropriate) concurrent with the release of research findings.

“(C) Notice of public comment periods under paragraph (1), including deadlines for public comments.

Notice.

“(D) Subsequent comments received during each of the public comment periods.

“(E) In accordance with applicable laws and processes and as the Institute determines appropriate, proceedings of the Institute.

“(4) DISCLOSURE OF CONFLICTS OF INTEREST.—

“(A) IN GENERAL.—A conflict of interest shall be disclosed in the following manner:

“(i) By the Institute in appointing members to an expert advisory panel under subsection (d)(4), in selecting individuals to contribute to any peer-review process under subsection (d)(7), and for employment as executive staff of the Institute.

“(ii) By the Comptroller General in appointing members of the methodology committee under subsection (d)(6);

“(iii) By the Institute in the annual report under subsection (d)(10), except that, in the case of individuals contributing to any such peer review process, such description shall be in a manner such that those individuals cannot be identified with a particular research project.

“(B) MANNER OF DISCLOSURE.—Conflicts of interest shall be disclosed as described in subparagraph (A) as soon as practicable on the Internet web site of the Institute and of the Government Accountability Office. The information disclosed under the preceding sentence shall include the type, nature, and magnitude of the interests of the individual involved, except to the extent that the individual recuses himself or herself from participating in the consideration of or any other activity with respect to the study as to which the potential conflict exists.

“(i) RULES.—The Institute, its Board or staff, shall be prohibited from accepting gifts, bequeaths, or donations of services or property. In addition, the Institute shall be prohibited from establishing a corporation or generating revenues from activities other than as provided under this section.

“(j) RULES OF CONSTRUCTION.—

“(1) COVERAGE.—Nothing in this section shall be construed—

“(A) to permit the Institute to mandate coverage, reimbursement, or other policies for any public or private payer; or

“(B) as preventing the Secretary from covering the routine costs of clinical care received by an individual entitled to, or enrolled for, benefits under title XVIII, XIX, or XXI in the case where such individual is participating in a clinical trial and such costs would otherwise be covered under such title with respect to the beneficiary.”.

(b) DISSEMINATION AND BUILDING CAPACITY FOR RESEARCH.—Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.), as amended by section 3606, is further amended by inserting after section 936 the following:

42 USC 299b-37.

“SEC. 937. DISSEMINATION AND BUILDING CAPACITY FOR RESEARCH.

“(a) IN GENERAL.—

Web posting.

“(1) DISSEMINATION.—The Office of Communication and Knowledge Transfer (referred to in this section as the ‘Office’) at the Agency for Healthcare Research and Quality (or any other relevant office designated by Agency for Healthcare Research and Quality), in consultation with the National Institutes of Health, shall broadly disseminate the research findings that are published by the Patient Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act (referred to in this section as the ‘Institute’) and other government-funded research relevant to comparative clinical effectiveness research. The Office shall create informational tools that organize and disseminate research findings for physicians, health care providers, patients, payers, and policy makers. The Office shall also develop a publicly available resource database that collects and contains government-funded evidence and research from public, private, not-for profit, and academic sources.

Public
information.

“(2) REQUIREMENTS.—The Office shall provide for the dissemination of the Institute’s research findings and government-funded research relevant to comparative clinical effectiveness research to physicians, health care providers, patients, vendors of health information technology focused on clinical decision support, appropriate professional associations, and Federal and private health plans. Materials, forums, and media used to disseminate the findings, informational tools, and resource databases shall—

“(A) include a description of considerations for specific subpopulations, the research methodology, and the limitations of the research, and the names of the entities, agencies, instrumentalities, and individuals who conducted any research which was published by the Institute; and

“(B) not be construed as mandates, guidelines, or recommendations for payment, coverage, or treatment.

“(b) INCORPORATION OF RESEARCH FINDINGS.—The Office, in consultation with relevant medical and clinical associations, shall assist users of health information technology focused on clinical decision support to promote the timely incorporation of research findings disseminated under subsection (a) into clinical practices and to promote the ease of use of such incorporation.

“(c) FEEDBACK.—The Office shall establish a process to receive feedback from physicians, health care providers, patients, and vendors of health information technology focused on clinical decision support, appropriate professional associations, and Federal and private health plans about the value of the information disseminated and the assistance provided under this section.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall preclude the Institute from making its research findings publicly available as required under section 1181(d)(8) of the Social Security Act.

“(e) TRAINING OF RESEARCHERS.—The Agency for Health Care Research and Quality, in consultation with the National Institutes of Health, shall build capacity for comparative clinical effectiveness research by establishing a grant program that provides for the training of researchers in the methods used to conduct such research, including systematic reviews of existing research and primary research such as clinical trials. At a minimum, such

training shall be in methods that meet the methodological standards adopted under section 1181(d)(9) of the Social Security Act.

“(f) BUILDING DATA FOR RESEARCH.—The Secretary shall provide for the coordination of relevant Federal health programs to build data capacity for comparative clinical effectiveness research, including the development and use of clinical registries and health outcomes research data networks, in order to develop and maintain a comprehensive, interoperable data network to collect, link, and analyze data on outcomes and effectiveness from multiple sources, including electronic health records.

“(g) AUTHORITY TO CONTRACT WITH THE INSTITUTE.—Agencies and instrumentalities of the Federal Government may enter into agreements with the Institute, and accept and retain funds, for the conduct and support of research described in this part, provided that the research to be conducted or supported under such agreements is authorized under the governing statutes of such agencies and instrumentalities.”.

(c) IN GENERAL.—Part D of title XI of the Social Security Act, as added by subsection (a), is amended by adding at the end the following new section:

“LIMITATIONS ON CERTAIN USES OF COMPARATIVE CLINICAL
EFFECTIVENESS RESEARCH

42 USC 1320e–1.

“SEC. 1182. (a) The Secretary may only use evidence and findings from research conducted under section 1181 to make a determination regarding coverage under title XVIII if such use is through an iterative and transparent process which includes public comment and considers the effect on subpopulations.

“(b) Nothing in section 1181 shall be construed as—

“(1) superceding or modifying the coverage of items or services under title XVIII that the Secretary determines are reasonable and necessary under section 1862(l)(1); or

“(2) authorizing the Secretary to deny coverage of items or services under such title solely on the basis of comparative clinical effectiveness research.

“(c)(1) The Secretary shall not use evidence or findings from comparative clinical effectiveness research conducted under section 1181 in determining coverage, reimbursement, or incentive programs under title XVIII in a manner that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled, or not terminally ill.

“(2) Paragraph (1) shall not be construed as preventing the Secretary from using evidence or findings from such comparative clinical effectiveness research in determining coverage, reimbursement, or incentive programs under title XVIII based upon a comparison of the difference in the effectiveness of alternative treatments in extending an individual's life due to the individual's age, disability, or terminal illness.

“(d)(1) The Secretary shall not use evidence or findings from comparative clinical effectiveness research conducted under section 1181 in determining coverage, reimbursement, or incentive programs under title XVIII in a manner that precludes, or with the intent to discourage, an individual from choosing a health care treatment based on how the individual values the tradeoff between extending the length of their life and the risk of disability.

“(2)(A) Paragraph (1) shall not be construed to—

“(i) limit the application of differential copayments under title XVIII based on factors such as cost or type of service; or

“(ii) prevent the Secretary from using evidence or findings from such comparative clinical effectiveness research in determining coverage, reimbursement, or incentive programs under such title based upon a comparison of the difference in the effectiveness of alternative health care treatments in extending an individual’s life due to that individual’s age, disability, or terminal illness.

“(3) Nothing in the provisions of, or amendments made by the Patient Protection and Affordable Care Act, shall be construed to limit comparative clinical effectiveness research or any other research, evaluation, or dissemination of information concerning the likelihood that a health care treatment will result in disability.

“(e) The Patient-Centered Outcomes Research Institute established under section 1181(b)(1) shall not develop or employ a dollars-per-quality adjusted life year (or similar measure that discounts the value of a life because of an individual’s disability) as a threshold to establish what type of health care is cost effective or recommended. The Secretary shall not utilize such an adjusted life year (or such a similar measure) as a threshold to determine coverage, reimbursement, or incentive programs under title XVIII.”.

(d) IN GENERAL.—Part D of title XI of the Social Security Act, as added by subsection (a) and amended by subsection (c), is amended by adding at the end the following new section:

“TRUST FUND TRANSFERS TO PATIENT-CENTERED OUTCOMES
RESEARCH TRUST FUND

“SEC. 1183. (a) IN GENERAL.—The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841, in proportion (as estimated by the Secretary) to the total expenditures during such fiscal year that are made under title XVIII from the respective trust fund, to the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the ‘PCORTF’) under section 9511 of the Internal Revenue Code of 1986, of the following:

42 USC 1320e-2.

“(1) For fiscal year 2013, an amount equal to \$1 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of title XVIII during such fiscal year.

“(2) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019, an amount equal to \$2 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of title XVIII during such fiscal year.

“(b) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a)(2) for such fiscal year shall be equal to the sum of such dollar amount for the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

“(1) such dollar amount for the previous fiscal year, multiplied by

“(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.”.

(e) PATIENT-CENTERED OUTCOMES RESEARCH TRUST FUND; FINANCING FOR TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—

(A) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding at the end the following new section:

26 USC 9511.

“SEC. 9511. PATIENT-CENTERED OUTCOMES RESEARCH TRUST FUND.

“(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘Patient-Centered Outcomes Research Trust Fund’ (hereafter in this section referred to as the ‘PCORTF’), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).

“(b) TRANSFERS TO FUND.—

“(1) APPROPRIATION.—There are hereby appropriated to the Trust Fund the following:

“(A) For fiscal year 2010, \$10,000,000.

“(B) For fiscal year 2011, \$50,000,000.

“(C) For fiscal year 2012, \$150,000,000.

“(D) For fiscal year 2013—

“(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

“(ii) \$150,000,000.

“(E) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019—

“(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

“(ii) \$150,000,000.

The amounts appropriated under subparagraphs (A), (B), (C), (D)(ii), and (E)(ii) shall be transferred from the general fund of the Treasury, from funds not otherwise appropriated.

“(2) TRUST FUND TRANSFERS.—In addition to the amounts appropriated under paragraph (1), there shall be credited to the PCORTF the amounts transferred under section 1183 of the Social Security Act.

“(3) LIMITATION ON TRANSFERS TO PCORTF.—No amount may be appropriated or transferred to the PCORTF on and after the date of any expenditure from the PCORTF which is not an expenditure permitted under this section. The determination of whether an expenditure is so permitted shall be made without regard to—

“(A) any provision of law which is not contained or referenced in this chapter or in a revenue Act, and

“(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

“(c) TRUSTEE.—The Secretary of the Treasury shall be a trustee of the PCORTF.

“(d) EXPENDITURES FROM FUND.—

“(1) AMOUNTS AVAILABLE TO THE PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE.—Subject to paragraph (2), amounts in the PCORTF are available, without further appropriation, to the Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act for carrying out part D of title XI of the Social Security Act (as in effect on the date of enactment of such Act).

“(2) TRANSFER OF FUNDS.—

“(A) IN GENERAL.—The trustee of the PCORTF shall provide for the transfer from the PCORTF of 20 percent of the amounts appropriated or credited to the PCORTF for each of fiscal years 2011 through 2019 to the Secretary of Health and Human Services to carry out section 937 of the Public Health Service Act.

“(B) AVAILABILITY.—Amounts transferred under subparagraph (A) shall remain available until expended.

“(C) REQUIREMENTS.—Of the amounts transferred under subparagraph (A) with respect to a fiscal year, the Secretary of Health and Human Services shall distribute—

“(i) 80 percent to the Office of Communication and Knowledge Transfer of the Agency for Healthcare Research and Quality (or any other relevant office designated by Agency for Healthcare Research and Quality) to carry out the activities described in section 937 of the Public Health Service Act; and

“(ii) 20 percent to the Secretary to carry out the activities described in such section 937.

“(e) NET REVENUES.—For purposes of this section, the term ‘net revenues’ means the amount estimated by the Secretary of the Treasury based on the excess of—

Definition.

“(1) the fees received in the Treasury under subchapter B of chapter 34, over

“(2) the decrease in the tax imposed by chapter 1 resulting from the fees imposed by such subchapter.

“(f) TERMINATION.—No amounts shall be available for expenditure from the PCORTF after September 30, 2019, and any amounts in such Trust Fund after such date shall be transferred to the general fund of the Treasury.”

(B) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

“Sec. 9511. Patient-centered outcomes research trust fund.”

(2) FINANCING FOR FUND FROM FEES ON INSURED AND SELF-INSURED HEALTH PLANS.—

(A) GENERAL RULE.—Chapter 34 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

“Subchapter B—Insured and Self-Insured Health Plans

“Sec. 4375. Health insurance.

“Sec. 4376. Self-insured health plans.

“Sec. 4377. Definitions and special rules.

“SEC. 4375. HEALTH INSURANCE.

26 USC 4375.

“(a) IMPOSITION OF FEE.—There is hereby imposed on each specified health insurance policy for each policy year ending after

September 30, 2012, a fee equal to the product of \$2 (\$1 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy.

“(b) LIABILITY FOR FEE.—The fee imposed by subsection (a) shall be paid by the issuer of the policy.

“(c) SPECIFIED HEALTH INSURANCE POLICY.—For purposes of this section:

Definition.

“(1) IN GENERAL.—Except as otherwise provided in this section, the term ‘specified health insurance policy’ means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States.

“(2) EXEMPTION FOR CERTAIN POLICIES.—The term ‘specified health insurance policy’ does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

“(3) TREATMENT OF PREPAID HEALTH COVERAGE ARRANGEMENTS.—

“(A) IN GENERAL.—In the case of any arrangement described in subparagraph (B), such arrangement shall be treated as a specified health insurance policy, and the person referred to in such subparagraph shall be treated as the issuer.

“(B) DESCRIPTION OF ARRANGEMENTS.—An arrangement is described in this subparagraph if under such arrangement fixed payments or premiums are received as consideration for any person’s agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided.

“(d) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any policy year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such policy year shall be equal to the sum of such dollar amount for policy years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

“(1) such dollar amount for policy years ending in the previous fiscal year, multiplied by

“(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

“(e) TERMINATION.—This section shall not apply to policy years ending after September 30, 2019.

26 USC 4376.

“SEC. 4376. SELF-INSURED HEALTH PLANS.

“(a) IMPOSITION OF FEE.—In the case of any applicable self-insured health plan for each plan year ending after September 30, 2012, there is hereby imposed a fee equal to \$2 (\$1 in the case of plan years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan.

“(b) LIABILITY FOR FEE.—

“(1) IN GENERAL.—The fee imposed by subsection (a) shall be paid by the plan sponsor.

Definition.

“(2) PLAN SPONSOR.—For purposes of paragraph (1) the term ‘plan sponsor’ means—

“(A) the employer in the case of a plan established or maintained by a single employer,

“(B) the employee organization in the case of a plan established or maintained by an employee organization,

“(C) in the case of—

“(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

“(ii) a multiple employer welfare arrangement, or

“(iii) a voluntary employees’ beneficiary association described in section 501(c)(9), the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

“(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

“(c) APPLICABLE SELF-INSURED HEALTH PLAN.—For purposes of this section, the term ‘applicable self-insured health plan’ means any plan for providing accident or health coverage if—

Definition.

“(1) any portion of such coverage is provided other than through an insurance policy, and

“(2) such plan is established or maintained—

“(A) by 1 or more employers for the benefit of their employees or former employees,

“(B) by 1 or more employee organizations for the benefit of their members or former members,

“(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

“(D) by a voluntary employees’ beneficiary association described in section 501(c)(9),

“(E) by any organization described in section 501(c)(6), or

“(F) in the case of a plan not described in the preceding subparagraphs, by a multiple employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

“(d) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any plan year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such plan year shall be equal to the sum of such dollar amount for plan years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

“(1) such dollar amount for plan years ending in the previous fiscal year, multiplied by

“(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

“(e) TERMINATION.—This section shall not apply to plan years ending after September 30, 2019.

26 USC 4377.

“SEC. 4377. DEFINITIONS AND SPECIAL RULES.

“(a) **DEFINITIONS.**—For purposes of this subchapter—

“(1) **ACCIDENT AND HEALTH COVERAGE.**—The term ‘accident and health coverage’ means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

“(2) **INSURANCE POLICY.**—The term ‘insurance policy’ means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

“(3) **UNITED STATES.**—The term ‘United States’ includes any possession of the United States.

“(b) **TREATMENT OF GOVERNMENTAL ENTITIES.**—

“(1) **IN GENERAL.**—For purposes of this subchapter—

“(A) the term ‘person’ includes any governmental entity, and

“(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the fees imposed by this subchapter except as provided in paragraph (2).

“(2) **TREATMENT OF EXEMPT GOVERNMENTAL PROGRAMS.**—

In the case of an exempt governmental program, no fee shall be imposed under section 4375 or section 4376 on any covered life under such program.

“(3) **EXEMPT GOVERNMENTAL PROGRAM DEFINED.**—For purposes of this subchapter, the term ‘exempt governmental program’ means—

“(A) any insurance program established under title XVIII of the Social Security Act,

“(B) the medical assistance program established by title XIX or XXI of the Social Security Act,

“(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being members of the Armed Forces of the United States or veterans, and

“(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

“(c) **TREATMENT AS TAX.**—For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

“(d) **NO COVER OVER TO POSSESSIONS.**—Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.”.

(B) **CLERICAL AMENDMENTS.**—

(i) Chapter 34 of such Code is amended by striking the chapter heading and inserting the following:

“CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

“SUBCHAPTER A. POLICIES ISSUED BY FOREIGN INSURERS

“SUBCHAPTER B. INSURED AND SELF-INSURED HEALTH PLANS

“Subchapter A—Policies Issued By Foreign Insurers”.

(ii) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 34 and inserting the following new item:

“CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES”.

(f) TAX-EXEMPT STATUS OF THE PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE.—Subsection 501(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

26 USC 501.

“(4) The Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act.”.

SEC. 6302. FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH.

42 USC 2996–8
note.

Notwithstanding any other provision of law, the Federal Coordinating Council for Comparative Effectiveness Research established under section 804 of Division A of the American Recovery and Reinvestment Act of 2009 (42 U.S.C. 299b–8), including the requirement under subsection (e)(2) of such section, shall terminate on the date of enactment of this Act.

Termination
date.

Subtitle E—Medicare, Medicaid, and CHIP Program Integrity Provisions

SEC. 6401. PROVIDER SCREENING AND OTHER ENROLLMENT REQUIREMENTS UNDER MEDICARE, MEDICAID, AND CHIP.

(a) MEDICARE.—Section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)) is amended—

(1) in paragraph (1)(A), by adding at the end the following: “Such process shall include screening of providers and suppliers in accordance with paragraph (2), a provisional period of enhanced oversight in accordance with paragraph (3), disclosure requirements in accordance with paragraph (4), the imposition of temporary enrollment moratoria in accordance with paragraph (5), and the establishment of compliance programs in accordance with paragraph (6).”;

(2) by redesignating paragraph (2) as paragraph (7); and
(3) by inserting after paragraph (1) the following:

“(2) PROVIDER SCREENING.—

“(A) PROCEDURES.—Not later than 180 days after the date of enactment of this paragraph, the Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall establish procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under the program under this title, the Medicaid program under title XIX, and the CHIP program under title XXI.

Deadline.

Determination.

“(B) LEVEL OF SCREENING.—The Secretary shall determine the level of screening conducted under this paragraph according to the risk of fraud, waste, and abuse, as determined by the Secretary, with respect to the category of provider of medical or other items or services or supplier. Such screening—

“(i) shall include a licensure check, which may include such checks across States; and

“(ii) may, as the Secretary determines appropriate based on the risk of fraud, waste, and abuse described in the preceding sentence, include—

“(I) a criminal background check;

“(II) fingerprinting;

“(III) unscheduled and unannounced site visits, including pre-enrollment site visits;

“(IV) database checks (including such checks across States); and

“(V) such other screening as the Secretary determines appropriate.

“(C) APPLICATION FEES.—

“(i) INDIVIDUAL PROVIDERS.—Except as provided in clause (iii), the Secretary shall impose a fee on each individual provider of medical or other items or services or supplier (such as a physician, physician assistant, nurse practitioner, or clinical nurse specialist) with respect to which screening is conducted under this paragraph in an amount equal to—

“(I) for 2010, \$200; and

“(II) for 2011 and each subsequent year, the amount determined under this clause for the preceding year, adjusted by the percentage change in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with June of the previous year.

“(ii) INSTITUTIONAL PROVIDERS.—Except as provided in clause (iii), the Secretary shall impose a fee on each institutional provider of medical or other items or services or supplier (such as a hospital or skilled nursing facility) with respect to which screening is conducted under this paragraph in an amount equal to—

“(I) for 2010, \$500; and

“(II) for 2011 and each subsequent year, the amount determined under this clause for the preceding year, adjusted by the percentage change in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with June of the previous year.

“(iii) HARDSHIP EXCEPTION; WAIVER FOR CERTAIN MEDICAID PROVIDERS.—The Secretary may, on a case-by-case basis, exempt a provider of medical or other items or services or supplier from the imposition of an application fee under this subparagraph if the Secretary determines that the imposition of the application fee would result in a hardship. The Secretary may

Determination.

waive the application fee under this subparagraph for providers enrolled in a State Medicaid program for whom the State demonstrates that imposition of the fee would impede beneficiary access to care.

“(iv) USE OF FUNDS.—Amounts collected as a result of the imposition of a fee under this subparagraph shall be used by the Secretary for program integrity efforts, including to cover the costs of conducting screening under this paragraph and to carry out this subsection and section 1128J.

“(D) APPLICATION AND ENFORCEMENT.—

“(i) NEW PROVIDERS OF SERVICES AND SUPPLIERS.—The screening under this paragraph shall apply, in the case of a provider of medical or other items or services or supplier who is not enrolled in the program under this title, title XIX, or title XXI as of the date of enactment of this paragraph, on or after the date that is 1 year after such date of enactment.

“(ii) CURRENT PROVIDERS OF SERVICES AND SUPPLIERS.—The screening under this paragraph shall apply, in the case of a provider of medical or other items or services or supplier who is enrolled in the program under this title, title XIX, or title XXI as of such date of enactment, on or after the date that is 2 years after such date of enactment.

“(iii) REVALIDATION OF ENROLLMENT.—Effective beginning on the date that is 180 days after such date of enactment, the screening under this paragraph shall apply with respect to the revalidation of enrollment of a provider of medical or other items or services or supplier in the program under this title, title XIX, or title XXI.

Effective date.

“(iv) LIMITATION ON ENROLLMENT AND REVALIDATION OF ENROLLMENT.—In no case may a provider of medical or other items or services or supplier who has not been screened under this paragraph be initially enrolled or reenrolled in the program under this title, title XIX, or title XXI on or after the date that is 3 years after such date of enactment.

“(E) EXPEDITED RULEMAKING.—The Secretary may promulgate an interim final rule to carry out this paragraph.

“(3) PROVISIONAL PERIOD OF ENHANCED OVERSIGHT FOR NEW PROVIDERS OF SERVICES AND SUPPLIERS.—

“(A) IN GENERAL.—The Secretary shall establish procedures to provide for a provisional period of not less than 30 days and not more than 1 year during which new providers of medical or other items or services and suppliers, as the Secretary determines appropriate, including categories of providers or suppliers, would be subject to enhanced oversight, such as prepayment review and payment caps, under the program under this title, the Medicaid program under title XIX, and the CHIP program under title XXI.

Procedures.

“(B) IMPLEMENTATION.—The Secretary may establish by program instruction or otherwise the procedures under this paragraph.

“(4) INCREASED DISCLOSURE REQUIREMENTS.—

“(A) DISCLOSURE.—A provider of medical or other items or services or supplier who submits an application for enrollment or revalidation of enrollment in the program under this title, title XIX, or title XXI on or after the date that is 1 year after the date of enactment of this paragraph shall disclose (in a form and manner and at such time as determined by the Secretary) any current or previous affiliation (directly or indirectly) with a provider of medical or other items or services or supplier that has uncollected debt, has been or is subject to a payment suspension under a Federal health care program (as defined in section 1128B(f)), has been excluded from participation under the program under this title, the Medicaid program under title XIX, or the CHIP program under title XXI, or has had its billing privileges denied or revoked.

Determination.

“(B) AUTHORITY TO DENY ENROLLMENT.—If the Secretary determines that such previous affiliation poses an undue risk of fraud, waste, or abuse, the Secretary may deny such application. Such a denial shall be subject to appeal in accordance with paragraph (7).

“(5) AUTHORITY TO ADJUST PAYMENTS OF PROVIDERS OF SERVICES AND SUPPLIERS WITH THE SAME TAX IDENTIFICATION NUMBER FOR PAST-DUE OBLIGATIONS.—

“(A) IN GENERAL.—Notwithstanding any other provision of this title, in the case of an applicable provider of services or supplier, the Secretary may make any necessary adjustments to payments to the applicable provider of services or supplier under the program under this title in order to satisfy any past-due obligations described in subparagraph (B)(ii) of an obligated provider of services or supplier.

“(B) DEFINITIONS.—In this paragraph:

“(i) IN GENERAL.—The term ‘applicable provider of services or supplier’ means a provider of services or supplier that has the same taxpayer identification number assigned under section 6109 of the Internal Revenue Code of 1986 as is assigned to the obligated provider of services or supplier under such section, regardless of whether the applicable provider of services or supplier is assigned a different billing number or national provider identification number under the program under this title than is assigned to the obligated provider of services or supplier.

“(ii) OBLIGATED PROVIDER OF SERVICES OR SUPPLIER.—The term ‘obligated provider of services or supplier’ means a provider of services or supplier that owes a past-due obligation under the program under this title (as determined by the Secretary).

“(6) TEMPORARY MORATORIUM ON ENROLLMENT OF NEW PROVIDERS.—

Determination.

“(A) IN GENERAL.—The Secretary may impose a temporary moratorium on the enrollment of new providers of services and suppliers, including categories of providers of services and suppliers, in the program under this title, under the Medicaid program under title XIX, or under

the CHIP program under title XXI if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either such program.

“(B) LIMITATION ON REVIEW.—There shall be no judicial review under section 1869, section 1878, or otherwise, of a temporary moratorium imposed under subparagraph (A).

“(7) COMPLIANCE PROGRAMS.—

“(A) IN GENERAL.—On or after the date of implementation determined by the Secretary under subparagraph (C), a provider of medical or other items or services or supplier within a particular industry sector or category shall, as a condition of enrollment in the program under this title, title XIX, or title XXI, establish a compliance program that contains the core elements established under subparagraph (B) with respect to that provider or supplier and industry or category.

“(B) ESTABLISHMENT OF CORE ELEMENTS.—The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall establish core elements for a compliance program under subparagraph (A) for providers or suppliers within a particular industry or category.

“(C) TIMELINE FOR IMPLEMENTATION.—The Secretary shall determine the timeline for the establishment of the core elements under subparagraph (B) and the date of the implementation of subparagraph (A) for providers or suppliers within a particular industry or category. The Secretary shall, in determining such date of implementation, consider the extent to which the adoption of compliance programs by a provider of medical or other items or services or supplier is widespread in a particular industry sector or with respect to a particular provider or supplier category.”.

Determination.

(b) MEDICAID.—

(1) STATE PLAN AMENDMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 4302(b), is amended—

(A) in subsection (a)—

(i) by striking “and” at the end of paragraph (75);

(ii) by striking the period at the end of paragraph

(76) and inserting a semicolon; and

(iii) by inserting after paragraph (76) the following:

“(77) provide that the State shall comply with provider and supplier screening, oversight, and reporting requirements in accordance with subsection (ii);”;

(B) by adding at the end the following:

“(ii) PROVIDER AND SUPPLIER SCREENING, OVERSIGHT, AND REPORTING REQUIREMENTS.—For purposes of subsection (a)(77), the requirements of this subsection are the following:

“(1) SCREENING.—The State complies with the process for screening providers and suppliers under this title, as established by the Secretary under section 1886(j)(2).

“(2) PROVISIONAL PERIOD OF ENHANCED OVERSIGHT FOR NEW PROVIDERS AND SUPPLIERS.—The State complies with procedures to provide for a provisional period of enhanced oversight for new providers and suppliers under this title, as established by the Secretary under section 1886(j)(3).

“(3) DISCLOSURE REQUIREMENTS.—The State requires providers and suppliers under the State plan or under a waiver of the plan to comply with the disclosure requirements established by the Secretary under section 1886(j)(4).

“(4) TEMPORARY MORATORIUM ON ENROLLMENT OF NEW PROVIDERS OR SUPPLIERS.—

“(A) TEMPORARY MORATORIUM IMPOSED BY THE SECRETARY.—

“(i) IN GENERAL.—Subject to clause (ii), the State complies with any temporary moratorium on the enrollment of new providers or suppliers imposed by the Secretary under section 1886(j)(6).

Determination.

“(ii) EXCEPTION.—A State shall not be required to comply with a temporary moratorium described in clause (i) if the State determines that the imposition of such temporary moratorium would adversely impact beneficiaries’ access to medical assistance.

Determination.

“(B) MORATORIUM ON ENROLLMENT OF PROVIDERS AND SUPPLIERS.—At the option of the State, the State imposes, for purposes of entering into participation agreements with providers or suppliers under the State plan or under a waiver of the plan, periods of enrollment moratoria, or numerical caps or other limits, for providers or suppliers identified by the Secretary as being at high-risk for fraud, waste, or abuse as necessary to combat fraud, waste, or abuse, but only if the State determines that the imposition of any such period, cap, or other limits would not adversely impact beneficiaries’ access to medical assistance.

“(5) COMPLIANCE PROGRAMS.—The State requires providers and suppliers under the State plan or under a waiver of the plan to establish, in accordance with the requirements of section 1866(j)(7), a compliance program that contains the core elements established under subparagraph (B) of that section 1866(j)(7) for providers or suppliers within a particular industry or category.

“(6) REPORTING OF ADVERSE PROVIDER ACTIONS.—The State complies with the national system for reporting criminal and civil convictions, sanctions, negative licensure actions, and other adverse provider actions to the Secretary, through the Administrator of the Centers for Medicare & Medicaid Services, in accordance with regulations of the Secretary.

“(7) ENROLLMENT AND NPI OF ORDERING OR REFERRING PROVIDERS.—The State requires—

“(A) all ordering or referring physicians or other professionals to be enrolled under the State plan or under a waiver of the plan as a participating provider; and

“(B) the national provider identifier of any ordering or referring physician or other professional to be specified on any claim for payment that is based on an order or referral of the physician or other professional.

“(8) OTHER STATE OVERSIGHT.—Nothing in this subsection shall be interpreted to preclude or limit the ability of a State to engage in provider and supplier screening or enhanced provider and supplier oversight activities beyond those required by the Secretary.”.

42 USC 1395cc
note.

(2) DISCLOSURE OF MEDICARE TERMINATED PROVIDERS AND SUPPLIERS TO STATES.—The Administrator of the Centers for

Medicare & Medicaid Services shall establish a process for making available to the each State agency with responsibility for administering a State Medicaid plan (or a waiver of such plan) under title XIX of the Social Security Act or a child health plan under title XXI the name, national provider identifier, and other identifying information for any provider of medical or other items or services or supplier under the Medicare program under title XVIII or under the CHIP program under title XXI that is terminated from participation under that program within 30 days of the termination (and, with respect to all such providers or suppliers who are terminated from the Medicare program on the date of enactment of this Act, within 90 days of such date).

(3) CONFORMING AMENDMENT.—Section 1902(a)(23) of the Social Security Act (42 U.S.C. 1396a), is amended by inserting before the semicolon at the end the following: “or by a provider or supplier to which a moratorium under subsection (ii)(4) is applied during the period of such moratorium”.

(c) CHIP.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)), as amended by section 2101(d), is amended—

(1) by redesignating subparagraphs (D) through (M) as subparagraphs (E) through (N), respectively; and

(2) by inserting after subparagraph (C), the following:

“(D) Subsections (a)(77) and (ii) of section 1902 (relating to provider and supplier screening, oversight, and reporting requirements).”.

SEC. 6402. ENHANCED MEDICARE AND MEDICAID PROGRAM INTEGRITY PROVISIONS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by sections 6002, 6004, and 6102, is amended by inserting after section 1128I the following new section:

“SEC. 1128J. MEDICARE AND MEDICAID PROGRAM INTEGRITY PROVISIONS.

42 USC
1320a-7k.

“(a) DATA MATCHING.—

“(1) INTEGRATED DATA REPOSITORY.—

“(A) INCLUSION OF CERTAIN DATA.—

“(i) IN GENERAL.—The Integrated Data Repository of the Centers for Medicare & Medicaid Services shall include, at a minimum, claims and payment data from the following:

“(I) The programs under titles XVIII and XIX (including parts A, B, C, and D of title XVIII).

“(II) The program under title XXI.

“(III) Health-related programs administered by the Secretary of Veterans Affairs.

“(IV) Health-related programs administered by the Secretary of Defense.

“(V) The program of old-age, survivors, and disability insurance benefits established under title II.

“(VI) The Indian Health Service and the Contract Health Service program.

“(ii) PRIORITY FOR INCLUSION OF CERTAIN DATA.—Inclusion of the data described in subclause (I) of such clause in the Integrated Data Repository shall be a

Contracts.

priority. Data described in subclauses (II) through (VI) of such clause shall be included in the Integrated Data Repository as appropriate.

“(B) DATA SHARING AND MATCHING.—

“(i) IN GENERAL.—The Secretary shall enter into agreements with the individuals described in clause (ii) under which such individuals share and match data in the system of records of the respective agencies of such individuals with data in the system of records of the Department of Health and Human Services for the purpose of identifying potential fraud, waste, and abuse under the programs under titles XVIII and XIX.

“(ii) INDIVIDUALS DESCRIBED.—The following individuals are described in this clause:

“(I) The Commissioner of Social Security.

“(II) The Secretary of Veterans Affairs.

“(III) The Secretary of Defense.

“(IV) The Director of the Indian Health Service.

“(iii) DEFINITION OF SYSTEM OF RECORDS.—For purposes of this paragraph, the term ‘system of records’ has the meaning given such term in section 552a(a)(5) of title 5, United States Code.

“(2) ACCESS TO CLAIMS AND PAYMENT DATABASES.—For purposes of conducting law enforcement and oversight activities and to the extent consistent with applicable information, privacy, security, and disclosure laws, including the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 and section 552a of title 5, United States Code, and subject to any information systems security requirements under such laws or otherwise required by the Secretary, the Inspector General of the Department of Health and Human Services and the Attorney General shall have access to claims and payment data of the Department of Health and Human Services and its contractors related to titles XVIII, XIX, and XXI.

“(b) OIG AUTHORITY TO OBTAIN INFORMATION.—

“(1) IN GENERAL.—Notwithstanding and in addition to any other provision of law, the Inspector General of the Department of Health and Human Services may, for purposes of protecting the integrity of the programs under titles XVIII and XIX, obtain information from any individual (including a beneficiary provided all applicable privacy protections are followed) or entity that—

“(A) is a provider of medical or other items or services, supplier, grant recipient, contractor, or subcontractor; or

“(B) directly or indirectly provides, orders, manufactures, distributes, arranges for, prescribes, supplies, or receives medical or other items or services payable by any Federal health care program (as defined in section 1128B(f)) regardless of how the item or service is paid for, or to whom such payment is made.

“(2) INCLUSION OF CERTAIN INFORMATION.—Information which the Inspector General may obtain under paragraph (1) includes any supporting documentation necessary to validate claims for payment or payments under title XVIII or XIX,

including a prescribing physician's medical records for an individual who is prescribed an item or service which is covered under part B of title XVIII, a covered part D drug (as defined in section 1860D-2(e)) for which payment is made under an MA-PD plan under part C of such title, or a prescription drug plan under part D of such title, and any records necessary for evaluation of the economy, efficiency, and effectiveness of the programs under titles XVIII and XIX.

“(c) ADMINISTRATIVE REMEDY FOR KNOWING PARTICIPATION BY BENEFICIARY IN HEALTH CARE FRAUD SCHEME.—

“(1) IN GENERAL.—In addition to any other applicable remedies, if an applicable individual has knowingly participated in a Federal health care fraud offense or a conspiracy to commit a Federal health care fraud offense, the Secretary shall impose an appropriate administrative penalty commensurate with the offense or conspiracy. Penalty.

“(2) APPLICABLE INDIVIDUAL.—For purposes of paragraph (1), the term ‘applicable individual’ means an individual— Definition.

“(A) entitled to, or enrolled for, benefits under part A of title XVIII or enrolled under part B of such title;

“(B) eligible for medical assistance under a State plan under title XIX or under a waiver of such plan; or

“(C) eligible for child health assistance under a child health plan under title XXI.

“(d) REPORTING AND RETURNING OF OVERPAYMENTS.—

“(1) IN GENERAL.—If a person has received an overpayment, the person shall—

“(A) report and return the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address; and

“(B) notify the Secretary, State, intermediary, carrier, or contractor to whom the overpayment was returned in writing of the reason for the overpayment. Notification.

“(2) DEADLINE FOR REPORTING AND RETURNING OVERPAYMENTS.—An overpayment must be reported and returned under paragraph (1) by the later of—

“(A) the date which is 60 days after the date on which the overpayment was identified; or

“(B) the date any corresponding cost report is due, if applicable.

“(3) ENFORCEMENT.—Any overpayment retained by a person after the deadline for reporting and returning the overpayment under paragraph (2) is an obligation (as defined in section 3729(b)(3) of title 31, United States Code) for purposes of section 3729 of such title.

“(4) DEFINITIONS.—In this subsection:

“(A) KNOWING AND KNOWINGLY.—The terms ‘knowing’ and ‘knowingly’ have the meaning given those terms in section 3729(b) of title 31, United States Code.

“(B) OVERPAYMENT.—The term ‘overpayment’ means any funds that a person receives or retains under title XVIII or XIX to which the person, after applicable reconciliation, is not entitled under such title.

“(C) PERSON.—

“(i) IN GENERAL.—The term ‘person’ means a provider of services, supplier, medicaid managed care organization (as defined in section 1903(m)(1)(A)),

Medicare Advantage organization (as defined in section 1859(a)(1)), or PDP sponsor (as defined in section 1860D-41(a)(13)).

“(ii) EXCLUSION.—Such term does not include a beneficiary.

Regulations.
Deadline.

“(e) INCLUSION OF NATIONAL PROVIDER IDENTIFIER ON ALL APPLICATIONS AND CLAIMS.—The Secretary shall promulgate a regulation that requires, not later than January 1, 2011, all providers of medical or other items or services and suppliers under the programs under titles XVIII and XIX that qualify for a national provider identifier to include their national provider identifier on all applications to enroll in such programs and on all claims for payment submitted under such programs.”.

(b) ACCESS TO DATA.—

42 USC
1395w-115.

(1) MEDICARE PART D.—Section 1860D-15(f)(2) of the Social Security Act (42 U.S.C. 1395w-116(f)(2)) is amended by striking “may be used by” and all that follows through the period at the end and inserting “may be used—

“(A) by officers, employees, and contractors of the Department of Health and Human Services for the purposes of, and to the extent necessary in—

“(i) carrying out this section; and

“(ii) conducting oversight, evaluation, and enforcement under this title; and

“(B) by the Attorney General and the Comptroller General of the United States for the purposes of, and to the extent necessary in, carrying out health oversight activities.”.

(2) DATA MATCHING.—Section 552a(a)(8)(B) of title 5, United States Code, is amended—

(A) in clause (vii), by striking “or” at the end;

(B) in clause (viii), by inserting “or” after the semicolon; and

(C) by adding at the end the following new clause:
“(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records;”.

(3) MATCHING AGREEMENTS WITH THE COMMISSIONER OF SOCIAL SECURITY.—Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:

“(9)(A) The Commissioner of Social Security shall, upon the request of the Secretary or the Inspector General of the Department of Health and Human Services—

Contracts.

“(i) enter into an agreement with the Secretary or such Inspector General for the purpose of matching data in the system of records of the Social Security Administration and the system of records of the Department of Health and Human Services; and

“(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any information disclosed.

“(B) For purposes of this paragraph, the term ‘system of records’ has the meaning given such term in section 552a(a)(5) of title 5, United States Code.”.

(c) WITHHOLDING OF FEDERAL MATCHING PAYMENTS FOR STATES THAT FAIL TO REPORT ENROLLEE ENCOUNTER DATA IN THE MEDICAID STATISTICAL INFORMATION SYSTEM.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

(1) in paragraph (23), by striking “or” at the end;

(2) in paragraph (24), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new paragraph:

“(25) with respect to any amounts expended for medical assistance for individuals for whom the State does not report enrollee encounter data (as defined by the Secretary) to the Medicaid Statistical Information System (MSIS) in a timely manner (as determined by the Secretary).”.

(d) PERMISSIVE EXCLUSIONS AND CIVIL MONETARY PENALTIES.—

(1) PERMISSIVE EXCLUSIONS.—Section 1128(b) of the Social Security Act (42 U.S.C. 1320a-7(b)) is amended by adding at the end the following new paragraph:

“(16) MAKING FALSE STATEMENTS OR MISREPRESENTATION OF MATERIAL FACTS.—Any individual or entity that knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, agreement, bid, or contract to participate or enroll as a provider of services or supplier under a Federal health care program (as defined in section 1128B(f)), including Medicare Advantage organizations under part C of title XVIII, prescription drug plan sponsors under part D of title XVIII, medicaid managed care organizations under title XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans.”.

(2) CIVIL MONETARY PENALTIES.—

(A) IN GENERAL.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)) is amended—

(i) in paragraph (1)(D), by striking “was excluded” and all that follows through the period at the end and inserting “was excluded from the Federal health care program (as defined in section 1128B(f)) under which the claim was made pursuant to Federal law.”;

(ii) in paragraph (6), by striking “or” at the end;

(iii) by inserting after paragraph (7), the following new paragraphs:

“(8) orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim for such medical or other item or service will be made under such a program;

“(9) knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program (as so defined), including Medicare Advantage organizations under part C of title XVIII, prescription drug plan sponsors under part D of title XVIII, medicaid managed care organizations under title XIX, and entities that apply to participate

as providers of services or suppliers in such managed care organizations and such plans;

“(10) knows of an overpayment (as defined in paragraph (4) of section 1128J(d)) and does not report and return the overpayment in accordance with such section;”;

(iv) in the first sentence—

(I) by striking the “or” after “prohibited relationship occurs;”; and

(II) by striking “act)” and inserting “act; or in cases under paragraph (9), \$50,000 for each false statement or misrepresentation of a material fact)”;

(v) in the second sentence, by striking “purpose)” and inserting “purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact)”.

(B) CLARIFICATION OF TREATMENT OF CERTAIN CHARITABLE AND OTHER INNOCUOUS PROGRAMS.—Section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a-7a(i)(6)) is amended—

(i) in subparagraph (C), by striking “or” at the end;

(ii) in subparagraph (D), as redesignated by section 4331(e) of the Balanced Budget Act of 1997 (Public Law 105-33), by striking the period at the end and inserting a semicolon;

(iii) by redesignating subparagraph (D), as added by section 4523(c) of such Act, as subparagraph (E) and striking the period at the end and inserting “; or”; and

(iv) by adding at the end the following new subparagraphs:

“(F) any other remuneration which promotes access to care and poses a low risk of harm to patients and Federal health care programs (as defined in section 1128B(f) and designated by the Secretary under regulations);

“(G) the offer or transfer of items or services for free or less than fair market value by a person, if—

“(i) the items or services consist of coupons, rebates, or other rewards from a retailer;

“(ii) the items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

“(iii) the offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under title XVIII or a State health care program (as defined in section 1128(h));

“(H) the offer or transfer of items or services for free or less than fair market value by a person, if—

“(i) the items or services are not offered as part of any advertisement or solicitation;

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“(ii) the items or services are not tied to the provision of other services reimbursed in whole or in part by the program under title XVIII or a State health care program (as so defined);

“(iii) there is a reasonable connection between the items or services and the medical care of the individual; and

“(iv) the person provides the items or services after determining in good faith that the individual is in financial need; or

“(I) effective on a date specified by the Secretary (but not earlier than January 1, 2011), the waiver by a PDP sponsor of a prescription drug plan under part D of title XVIII or an MA organization offering an MA-PD plan under part C of such title of any copayment for the first fill of a covered part D drug (as defined in section 1860D-2(e)) that is a generic drug for individuals enrolled in the prescription drug plan or MA-PD plan, respectively.”.

(e) TESTIMONIAL SUBPOENA AUTHORITY IN EXCLUSION-ONLY CASES.—Section 1128(f) of the Social Security Act (42 U.S.C. 1320a-7(f)) is amended by adding at the end the following new paragraph:

“(4) The provisions of subsections (d) and (e) of section 205 shall apply with respect to this section to the same extent as they are applicable with respect to title II. The Secretary may delegate the authority granted by section 205(d) (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.”.

Applicability.

(f) HEALTH CARE FRAUD.—

(1) KICKBACKS.—Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended by adding at the end the following new subsection:

“(g) In addition to the penalties provided for in this section or section 1128A, a claim that includes items or services resulting from a violation of this section constitutes a false or fraudulent claim for purposes of subchapter III of chapter 37 of title 31, United States Code.”.

(2) REVISING THE INTENT REQUIREMENT.—Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b), as amended by paragraph (1), is amended by adding at the end the following new subsection:

“(h) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.”.

(g) SURETY BOND REQUIREMENTS.—

(1) DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(16)(B) of the Social Security Act (42 U.S.C. 1395m(a)(16)(B)) is amended by inserting “that the Secretary determines is commensurate with the volume of the billing of the supplier” before the period at the end.

(2) HOME HEALTH AGENCIES.—Section 1861(o)(7)(C) of the Social Security Act (42 U.S.C. 1395x(o)(7)(C)) is amended by inserting “that the Secretary determines is commensurate with the volume of the billing of the home health agency” before the semicolon at the end.

(3) REQUIREMENTS FOR CERTAIN OTHER PROVIDERS OF SERVICES AND SUPPLIERS.—Section 1862 of the Social Security Act

(42 U.S.C. 1395y) is amended by adding at the end the following new subsection:

“(n) REQUIREMENT OF A SURETY BOND FOR CERTAIN PROVIDERS OF SERVICES AND SUPPLIERS.—

Waiver authority.

“(1) IN GENERAL.—The Secretary may require a provider of services or supplier described in paragraph (2) to provide the Secretary on a continuing basis with a surety bond in a form specified by the Secretary in an amount (not less than \$50,000) that the Secretary determines is commensurate with the volume of the billing of the provider of services or supplier. The Secretary may waive the requirement of a bond under the preceding sentence in the case of a provider of services or supplier that provides a comparable surety bond under State law.

“(2) PROVIDER OF SERVICES OR SUPPLIER DESCRIBED.—A provider of services or supplier described in this paragraph is a provider of services or supplier the Secretary determines appropriate based on the level of risk involved with respect to the provider of services or supplier, and consistent with the surety bond requirements under sections 1834(a)(16)(B) and 1861(o)(7)(C).”.

(h) SUSPENSION OF MEDICARE AND MEDICAID PAYMENTS PENDING INVESTIGATION OF CREDIBLE ALLEGATIONS OF FRAUD.—

(1) MEDICARE.—Section 1862 of the Social Security Act (42 U.S.C. 1395y), as amended by subsection (g)(3), is amended by adding at the end the following new subsection:

“(o) SUSPENSION OF PAYMENTS PENDING INVESTIGATION OF CREDIBLE ALLEGATIONS OF FRAUD.—

Determination.

“(1) IN GENERAL.—The Secretary may suspend payments to a provider of services or supplier under this title pending an investigation of a credible allegation of fraud against the provider of services or supplier, unless the Secretary determines there is good cause not to suspend such payments.

“(2) CONSULTATION.—The Secretary shall consult with the Inspector General of the Department of Health and Human Services in determining whether there is a credible allegation of fraud against a provider of services or supplier.

“(3) PROMULGATION OF REGULATIONS.—The Secretary shall promulgate regulations to carry out this subsection and section 1903(i)(2)(C).”.

(2) MEDICAID.—Section 1903(i)(2) of such Act (42 U.S.C. 1396b(i)(2)) is amended—

(A) in subparagraph (A), by striking “or” at the end; and

Determination.

(B) by inserting after subparagraph (B), the following:

“(C) by any individual or entity to whom the State has failed to suspend payments under the plan during any period when there is pending an investigation of a credible allegation of fraud against the individual or entity, as determined by the State in accordance with regulations promulgated by the Secretary for purposes of section 1862(o) and this subparagraph, unless the State determines in accordance with such regulations there is good cause not to suspend such payments; or”.

(i) INCREASED FUNDING TO FIGHT FRAUD AND ABUSE.—

(1) IN GENERAL.—Section 1817(k) of the Social Security Act (42 U.S.C. 1395i(k)) is amended—

(A) by adding at the end the following new paragraph:

“(7) ADDITIONAL FUNDING.—In addition to the funds otherwise appropriated to the Account from the Trust Fund under paragraphs (3) and (4) and for purposes described in paragraphs (3)(C) and (4)(A), there are hereby appropriated an additional \$10,000,000 to such Account from such Trust Fund for each of fiscal years 2011 through 2020. The funds appropriated under this paragraph shall be allocated in the same proportion as the total funding appropriated with respect to paragraphs (3)(A) and (4)(A) was allocated with respect to fiscal year 2010, and shall be available without further appropriation until expended.”; and

(B) in paragraph (4)(A), by inserting “until expended” after “appropriation”.

(2) INDEXING OF AMOUNTS APPROPRIATED.—

(A) DEPARTMENTS OF HEALTH AND HUMAN SERVICES AND JUSTICE.—Section 1817(k)(3)(A)(i) of the Social Security Act (42 U.S.C. 1395i(k)(3)(A)(i)) is amended—

(i) in subclause (III), by inserting “and” at the end;

(ii) in subclause (IV)—

(I) by striking “for each of fiscal years 2007, 2008, 2009, and 2010” and inserting “for each fiscal year after fiscal year 2006”; and

(II) by striking “; and” and inserting a period; and

(iii) by striking subclause (V).

(B) OFFICE OF THE INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Section 1817(k)(3)(A)(ii) of such Act (42 U.S.C. 1395i(k)(3)(A)(ii)) is amended—

(i) in subclause (VIII), by inserting “and” at the end;

(ii) in subclause (IX)—

(I) by striking “for each of fiscal years 2008, 2009, and 2010” and inserting “for each fiscal year after fiscal year 2007”; and

(II) by striking “; and” and inserting a period; and

(iii) by striking subclause (X).

(C) FEDERAL BUREAU OF INVESTIGATION.—Section 1817(k)(3)(B) of the Social Security Act (42 U.S.C. 1395i(k)(3)(B)) is amended—

(i) in clause (vii), by inserting “and” at the end;

(ii) in clause (viii)—

(I) by striking “for each of fiscal years 2007, 2008, 2009, and 2010” and inserting “for each fiscal year after fiscal year 2006”; and

(II) by striking “; and” and inserting a period; and

(iii) by striking clause (ix).

(D) MEDICARE INTEGRITY PROGRAM.—Section 1817(k)(4)(C) of the Social Security Act (42 U.S.C. 1395i(k)(4)(C)) is amended by adding at the end the following new clause:

“(ii) For each fiscal year after 2010, by the percentage increase in the consumer price index for all urban

consumers (all items; United States city average) over the previous year.”.

(j) MEDICARE INTEGRITY PROGRAM AND MEDICAID INTEGRITY PROGRAM.—

(1) MEDICARE INTEGRITY PROGRAM.—

(A) REQUIREMENT TO PROVIDE PERFORMANCE STATISTICS.—Section 1893(c) of the Social Security Act (42 U.S.C. 1395ddd(c)) is amended—

- (i) in paragraph (3), by striking “and” at the end;
- (ii) by redesignating paragraph (4) as paragraph (5); and
- (iii) by inserting after paragraph (3) the following new paragraph:

“(4) the entity agrees to provide the Secretary and the Inspector General of the Department of Health and Human Services with such performance statistics (including the number and amount of overpayments recovered, the number of fraud referrals, and the return on investment of such activities by the entity) as the Secretary or the Inspector General may request; and”.

(B) EVALUATIONS AND ANNUAL REPORT.—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended by adding at the end the following new subsection:

“(i) EVALUATIONS AND ANNUAL REPORT.—

“(1) EVALUATIONS.—The Secretary shall conduct evaluations of eligible entities which the Secretary contracts with under the Program not less frequently than every 3 years.

“(2) ANNUAL REPORT.—Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2011), the Secretary shall submit a report to Congress which identifies—

“(A) the use of funds, including funds transferred from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Insurance Trust Fund under section 1841, to carry out this section; and

“(B) the effectiveness of the use of such funds.”.

(C) FLEXIBILITY IN PURSUING FRAUD AND ABUSE.—Section 1893(a) of the Social Security Act (42 U.S.C. 1395ddd(a)) is amended by inserting “, or otherwise,” after “entities”.

(2) MEDICAID INTEGRITY PROGRAM.—

(A) REQUIREMENT TO PROVIDE PERFORMANCE STATISTICS.—Section 1936(c)(2) of the Social Security Act (42 U.S.C. 1396u-6(c)(2)) is amended—

- (i) by redesignating subparagraph (D) as subparagraph (E); and
- (ii) by inserting after subparagraph (C) the following new subparagraph:

“(D) The entity agrees to provide the Secretary and the Inspector General of the Department of Health and Human Services with such performance statistics (including the number and amount of overpayments recovered, the number of fraud referrals, and the return on investment of such activities by the entity) as the Secretary or the Inspector General may request.”.

(B) EVALUATIONS AND ANNUAL REPORT.—Section 1936(e) of the Social Security Act (42 U.S.C. 1396u-7(e)) is amended—

- (i) by redesignating paragraph (4) as paragraph (5); and

- (ii) by inserting after paragraph (3) the following new paragraph:

“(4) EVALUATIONS.—The Secretary shall conduct evaluations of eligible entities which the Secretary contracts with under the Program not less frequently than every 3 years.”.

(k) EXPANDED APPLICATION OF HARDSHIP WAIVERS FOR EXCLUSIONS.—Section 1128(c)(3)(B) of the Social Security Act (42 U.S.C. 1320a-7(c)(3)(B)) is amended by striking “individuals entitled to benefits under part A of title XVIII or enrolled under part B of such title, or both” and inserting “beneficiaries (as defined in section 1128A(i)(5)) of that program”.

SEC. 6403. ELIMINATION OF DUPLICATION BETWEEN THE HEALTHCARE INTEGRITY AND PROTECTION DATA BANK AND THE NATIONAL PRACTITIONER DATA BANK.

(a) INFORMATION REPORTED BY FEDERAL AGENCIES AND HEALTH PLANS.—Section 1128E of the Social Security Act (42 U.S.C. 1320a-7e) is amended—

- (1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—The Secretary shall maintain a national health care fraud and abuse data collection program under this section for the reporting of certain final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (d), and shall furnish the information collected under this section to the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).”;

- (2) by striking subsection (d) and inserting the following:

“(d) ACCESS TO REPORTED INFORMATION.—

“(1) AVAILABILITY.—The information collected under this section shall be available from the National Practitioner Data Bank to the agencies, authorities, and officials which are provided under section 1921(b) information reported under section 1921(a).

“(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information under this section. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary to cover such costs.”;

- (3) by striking subsection (f) and inserting the following:

“(f) APPROPRIATE COORDINATION.—In implementing this section, the Secretary shall provide for the maximum appropriate coordination with part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) and section 1921.”; and

- (4) in subsection (g)—

(A) in paragraph (1)(A)—

- (i) in clause (iii)—

(I) by striking “or State” each place it appears;

(II) by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively; and

(III) by inserting after subclause (I) the following new subclause:

“(II) any dismissal or closure of the proceedings by reason of the provider, supplier, or practitioner surrendering their license or leaving the State or jurisdiction”; and

(ii) by striking clause (iv) and inserting the following:

“(iv) Exclusion from participation in a Federal health care program (as defined in section 1128B(f)).”; (B) in paragraph (3)—

(i) by striking subparagraphs (D) and (E); and

(ii) by redesignating subparagraph (F) as subparagraph (D); and

(C) in subparagraph (D) (as so redesignated), by striking “or State”.

(b) INFORMATION REPORTED BY STATE LAW OR FRAUD ENFORCEMENT AGENCIES.—Section 1921 of the Social Security Act (42 U.S.C. 1396r-2) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “SYSTEM.—The State” and all that follows through the semicolon and inserting SYSTEM.—

“(A) LICENSING OR CERTIFICATION ACTIONS.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by a State licensing or certification agency.”;

(ii) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and indenting appropriately;

(iii) in subparagraph (A)(iii) (as so redesignated)—

(I) by striking “the license of” and inserting “license or the right to apply for, or renew, a license by”; and

(II) by inserting “nonrenewability,” after “voluntary surrender,”; and

(iv) by adding at the end the following new subparagraph:

“(B) OTHER FINAL ADVERSE ACTIONS.—The State must have in effect a system of reporting information with respect to any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner by a State law or fraud enforcement agency.”; and

(B) in paragraph (2), by striking “the authority described in paragraph (1)” and inserting “a State licensing or certification agency or State law or fraud enforcement agency”;

(2) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

“(2) to State licensing or certification agencies and Federal agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners.”;

Reports.
Regulations.

Reports.

(B) in each of paragraphs (4) and (6), by inserting “, but only with respect to information provided pursuant to subsection (a)(1)(A)” before the comma at the end;

(C) by striking paragraph (5) and inserting the following:

“(5) to State law or fraud enforcement agencies,”;

(D) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

(E) by inserting after paragraph (6) the following new paragraph:

“(7) to health plans (as defined in section 1128C(c));”;

(3) by redesignating subsection (d) as subsection (h), and by inserting after subsection (c) the following new subsections:

“(d) DISCLOSURE AND CORRECTION OF INFORMATION.—

“(1) DISCLOSURE.—With respect to information reported pursuant to subsection (a)(1), the Secretary shall—

“(A) provide for disclosure of the information, upon request, to the health care practitioner who, or the entity that, is the subject of the information reported; and

“(B) establish procedures for the case where the health care practitioner or entity disputes the accuracy of the information reported.

Procedures.

“(2) CORRECTIONS.—Each State licensing or certification agency and State law or fraud enforcement agency shall report corrections of information already reported about any formal proceeding or final adverse action described in subsection (a), in such form and manner as the Secretary prescribes by regulation.

Reports.
Regulations.

“(e) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information under this section. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary to cover such costs.

“(f) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity, including any agency designated by the Secretary in subsection (b), shall be held liable in any civil action with respect to any reporting of information as required under this section, without knowledge of the falsity of the information contained in the report.

“(g) REFERENCES.—For purposes of this section:

“(1) STATE LICENSING OR CERTIFICATION AGENCY.—The term ‘State licensing or certification agency’ includes any authority of a State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities.

“(2) STATE LAW OR FRAUD ENFORCEMENT AGENCY.—The term ‘State law or fraud enforcement agency’ includes—

“(A) a State law enforcement agency; and

“(B) a State medicaid fraud control unit (as defined in section 1903(q)).

“(3) FINAL ADVERSE ACTION.—

“(A) IN GENERAL.—Subject to subparagraph (B), the term ‘final adverse action’ includes—

“(i) civil judgments against a health care provider, supplier, or practitioner in State court related to the delivery of a health care item or service;

“(ii) State criminal convictions related to the delivery of a health care item or service;

“(iii) exclusion from participation in State health care programs (as defined in section 1128(h));

“(iv) any licensing or certification action described in subsection (a)(1)(A) taken against a supplier by a State licensing or certification agency; and

“(v) any other adjudicated actions or decisions that the Secretary shall establish by regulation.

“(B) EXCEPTION.—Such term does not include any action with respect to a malpractice claim.”; and

(4) in subsection (h), as so redesignated, by striking “The Secretary” and all that follows through the period at the end and inserting “In implementing this section, the Secretary shall provide for the maximum appropriate coordination with part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) and section 1128E.”.

(c) CONFORMING AMENDMENT.—Section 1128C(a)(1) of the Social Security Act (42 U.S.C. 1320a-7c(a)(1)) is amended—

(1) in subparagraph (C), by adding “and” after the comma at the end;

(2) in subparagraph (D), by striking “, and” and inserting a period; and

(3) by striking subparagraph (E).

(d) TRANSITION PROCESS; EFFECTIVE DATE.—

(1) IN GENERAL.—Effective on the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall implement a transition process under which, by not later than the end of the transition period described in paragraph (5), the Secretary shall cease operating the Healthcare Integrity and Protection Data Bank established under section 1128E of the Social Security Act (as in effect before the effective date specified in paragraph (6)) and shall transfer all data collected in the Healthcare Integrity and Protection Data Bank to the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.). During such transition process, the Secretary shall have in effect appropriate procedures to ensure that data collection and access to the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank are not disrupted.

(2) REGULATIONS.—The Secretary shall promulgate regulations to carry out the amendments made by subsections (a) and (b).

(3) FUNDING.—

(A) AVAILABILITY OF FEES.—Fees collected pursuant to section 1128E(d)(2) of the Social Security Act prior to the effective date specified in paragraph (6) for the disclosure of information in the Healthcare Integrity and Protection Data Bank shall be available to the Secretary, without fiscal year limitation, for payment of costs related to the transition process described in paragraph (1). Any such fees remaining after the transition period is complete shall

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note.

Procedures.

be available to the Secretary, without fiscal year limitation, for payment of the costs of operating the National Practitioner Data Bank.

(B) AVAILABILITY OF ADDITIONAL FUNDS.—In addition to the fees described in subparagraph (A), any funds available to the Secretary or to the Inspector General of the Department of Health and Human Services for a purpose related to combating health care fraud, waste, or abuse shall be available to the extent necessary for operating the Healthcare Integrity and Protection Data Bank during the transition period, including systems testing and other activities necessary to ensure that information formerly reported to the Healthcare Integrity and Protection Data Bank will be accessible through the National Practitioner Data Bank after the end of such transition period.

(4) SPECIAL PROVISION FOR ACCESS TO THE NATIONAL PRACTITIONER DATA BANK BY THE DEPARTMENT OF VETERANS AFFAIRS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, during the 1-year period that begins on the effective date specified in paragraph (6), the information described in subparagraph (B) shall be available from the National Practitioner Data Bank to the Secretary of Veterans Affairs without charge.

Time period.

(B) INFORMATION DESCRIBED.—For purposes of subparagraph (A), the information described in this subparagraph is the information that would, but for the amendments made by this section, have been available to the Secretary of Veterans Affairs from the Healthcare Integrity and Protection Data Bank.

(5) TRANSITION PERIOD DEFINED.—For purposes of this subsection, the term “transition period” means the period that begins on the date of enactment of this Act and ends on the later of—

- (A) the date that is 1 year after such date of enactment;
- or
- (B) the effective date of the regulations promulgated under paragraph (2).

(6) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on the first day after the final day of the transition period.

SEC. 6404. MAXIMUM PERIOD FOR SUBMISSION OF MEDICARE CLAIMS REDUCED TO NOT MORE THAN 12 MONTHS.

(a) REDUCING MAXIMUM PERIOD FOR SUBMISSION.—

(1) PART A.—Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)(1)) is amended—

(A) in paragraph (1), by striking “period of 3 calendar years” and all that follows through the semicolon and inserting “period ending 1 calendar year after the date of service;” and

(B) by adding at the end the following new sentence: “In applying paragraph (1), the Secretary may specify exceptions to the 1 calendar year period specified in such paragraph.”

(2) PART B.—

(A) Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)(B)) is amended—

(i) in subparagraph (B), in the flush language following clause (ii), by striking “close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year)” and inserting “period ending 1 calendar year after the date of service”; and

(ii) by adding at the end the following new sentence: “In applying subparagraph (B), the Secretary may specify exceptions to the 1 calendar year period specified in such subparagraph.”

(B) Section 1835(a) of such Act (42 U.S.C. 1395n(a)) is amended—

(i) in paragraph (1), by striking “period of 3 calendar years” and all that follows through the semicolon and inserting “period ending 1 calendar year after the date of service;”; and

(ii) by adding at the end the following new sentence: “In applying paragraph (1), the Secretary may specify exceptions to the 1 calendar year period specified in such paragraph.”

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note.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 2010.

Deadline.

(2) SERVICES FURNISHED BEFORE 2010.—In the case of services furnished before January 1, 2010, a bill or request for payment under section 1814(a)(1), 1842(b)(3)(B), or 1835(a) shall be filed not later than December 31, 2010.

SEC. 6405. PHYSICIANS WHO ORDER ITEMS OR SERVICES REQUIRED TO BE MEDICARE ENROLLED PHYSICIANS OR ELIGIBLE PROFESSIONALS.

(a) DME.—Section 1834(a)(11)(B) of the Social Security Act (42 U.S.C. 1395m(a)(11)(B)) is amended by striking “physician” and inserting “physician enrolled under section 1866(j) or an eligible professional under section 1848(k)(3)(B) that is enrolled under section 1866(j)”.

(b) HOME HEALTH SERVICES.—

42 USC 1395f.

(1) PART A.—Section 1814(a)(2) of such Act (42 U.S.C. 1395(a)(2)) is amended in the matter preceding subparagraph (A) by inserting “in the case of services described in subparagraph (C), a physician enrolled under section 1866(j) or an eligible professional under section 1848(k)(3)(B),” before “or, in the case of services”.

(2) PART B.—Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)) is amended in the matter preceding subparagraph (A) by inserting “, or in the case of services described in subparagraph (A), a physician enrolled under section 1866(j) or an eligible professional under section 1848(k)(3)(B),” after “a physician”.

42 USC 1395f
note.

(c) APPLICATION TO OTHER ITEMS OR SERVICES.—The Secretary may extend the requirement applied by the amendments made by subsections (a) and (b) to durable medical equipment and home health services (relating to requiring certifications and written

orders to be made by enrolled physicians and health professions) to all other categories of items or services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), including covered part D drugs as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w-102), that are ordered, prescribed, or referred by a physician enrolled under section 1866(j) of such Act (42 U.S.C. 1395cc(j)) or an eligible professional under section 1848(k)(3)(B) of such Act (42 U.S.C. 1395w-4(k)(3)(B)).

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to written orders and certifications made on or after July 1, 2010. 42 USC 1395f note.

SEC. 6406. REQUIREMENT FOR PHYSICIANS TO PROVIDE DOCUMENTATION ON REFERRALS TO PROGRAMS AT HIGH RISK OF WASTE AND ABUSE.

(a) **PHYSICIANS AND OTHER SUPPLIERS.**—Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)) is amended by adding at the end the following new paragraph:

“(9) The Secretary may revoke enrollment, for a period of not more than one year for each act, for a physician or supplier under section 1866(j) if such physician or supplier fails to maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by such physician or supplier under this title, as specified by the Secretary.”.

(b) **PROVIDERS OF SERVICES.**—Section 1866(a)(1) of such Act (42 U.S.C. 1395cc) is further amended—

(1) in subparagraph (U), by striking at the end “and”;

(2) in subparagraph (V), by striking the period at the end and adding “; and”; and

(3) by adding at the end the following new subparagraph:

“(W) maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by the provider under this title, as specified by the Secretary.”.

(c) **OIG PERMISSIVE EXCLUSION AUTHORITY.**—Section 1128(b)(11) of the Social Security Act (42 U.S.C. 1320a-7(b)(11)) is amended by inserting “, ordering, referring for furnishing, or certifying the need for” after “furnishing”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to orders, certifications, and referrals made on or after January 1, 2010. 42 USC 1320a-7 note.

SEC. 6407. FACE TO FACE ENCOUNTER WITH PATIENT REQUIRED BEFORE PHYSICIANS MAY CERTIFY ELIGIBILITY FOR HOME HEALTH SERVICES OR DURABLE MEDICAL EQUIPMENT UNDER MEDICARE.

(a) **CONDITION OF PAYMENT FOR HOME HEALTH SERVICES.**—

(1) **PART A.**—Section 1814(a)(2)(C) of such Act is amended—

(A) by striking “and such services” and inserting “such services”; and

(B) by inserting after “care of a physician” the following: “, and, in the case of a certification made by a physician after January 1, 2010, prior to making such

42 USC 1395f.

certification the physician must document that the physician himself or herself has had a face-to-face encounter (including through use of telehealth, subject to the requirements in section 1834(m), and other than with respect to encounters that are incident to services involved) with the individual within a reasonable timeframe as determined by the Secretary”.

42 USC 1395n. (2) PART B.—Section 1835(a)(2)(A) of the Social Security Act is amended—

(A) by striking “and” before “(iii)”; and

(B) by inserting after “care of a physician” the following: “, and (iv) in the case of a certification after January 1, 2010, prior to making such certification the physician must document that the physician has had a face-to-face encounter (including through use of telehealth and other than with respect to encounters that are incident to services involved) with the individual during the 6-month period preceding such certification, or other reasonable timeframe as determined by the Secretary”.

(b) CONDITION OF PAYMENT FOR DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(11)(B) of the Social Security Act (42 U.S.C. 1395m(a)(11)(B)) is amended—

(1) by striking “ORDER.—The Secretary” and inserting “ORDER.—

“(i) IN GENERAL.—The Secretary”; and

(2) by adding at the end the following new clause:

“(ii) REQUIREMENT FOR FACE TO FACE ENCOUNTER.—The Secretary shall require that such an order be written pursuant to the physician documenting that a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) has had a face-to-face encounter (including through use of telehealth under subsection (m) and other than with respect to encounters that are incident to services involved) with the individual involved during the 6-month period preceding such written order, or other reasonable timeframe as determined by the Secretary.”.

42 USC 1395f note.

(c) APPLICATION TO OTHER AREAS UNDER MEDICARE.—The Secretary may apply the face-to-face encounter requirement described in the amendments made by subsections (a) and (b) to other items and services for which payment is provided under title XVIII of the Social Security Act based upon a finding that such a decision would reduce the risk of waste, fraud, or abuse.

42 USC 1395f note.

(d) APPLICATION TO MEDICAID.—The requirements pursuant to the amendments made by subsections (a) and (b) shall apply in the case of physicians making certifications for home health services under title XIX of the Social Security Act in the same manner and to the same extent as such requirements apply in the case of physicians making such certifications under title XVIII of such Act.

SEC. 6408. ENHANCED PENALTIES.

(a) CIVIL MONETARY PENALTIES FOR FALSE STATEMENTS OR DELAYING INSPECTIONS.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)), as amended by section 5002(d)(2)(A), is amended—

(1) in paragraph (6), by striking “or” at the end; and

(2) by inserting after paragraph (7) the following new paragraphs:

“(8) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or

“(9) fails to grant timely access, upon reasonable request (as defined by the Secretary in regulations), to the Inspector General of the Department of Health and Human Services, for the purpose of audits, investigations, evaluations, or other statutory functions of the Inspector General of the Department of Health and Human Services;” and

(3) in the first sentence—

(A) by striking “or in cases under paragraph (7)” and inserting “in cases under paragraph (7)”; and

(B) by striking “act)” and inserting “act, in cases under paragraph (8), \$50,000 for each false record or statement, or in cases under paragraph (9), \$15,000 for each day of the failure described in such paragraph)”.

(b) MEDICARE ADVANTAGE AND PART D PLANS.—

(1) ENSURING TIMELY INSPECTIONS RELATING TO CONTRACTS WITH MA ORGANIZATIONS.—Section 1857(d)(2) of such Act (42 U.S.C. 1395w-27(d)(2)) is amended—

(A) in subparagraph (A), by inserting “timely” before “inspect”; and

(B) in subparagraph (B), by inserting “timely” before “audit and inspect”.

(2) MARKETING VIOLATIONS.—Section 1857(g)(1) of the Social Security Act (42 U.S.C. 1395w-27(g)(1)) is amended—

(A) in subparagraph (F), by striking “or” at the end;

(B) by inserting after subparagraph (G) the following new subparagraphs:

“(H) except as provided under subparagraph (C) or (D) of section 1860D-1(b)(1), enrolls an individual in any plan under this part without the prior consent of the individual or the designee of the individual;

“(I) transfers an individual enrolled under this part from one plan to another without the prior consent of the individual or the designee of the individual or solely for the purpose of earning a commission;

“(J) fails to comply with marketing restrictions described in subsections (h) and (j) of section 1851 or applicable implementing regulations or guidance; or

“(K) employs or contracts with any individual or entity who engages in the conduct described in subparagraphs (A) through (J) of this paragraph;” and

(C) by adding at the end the following new sentence: “The Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2), if the Secretary determines that any employee or agent of such organization, or any provider or supplier who contracts with such organization, has engaged in any conduct described in subparagraphs (A) through (K) of this paragraph.”.

(3) PROVISION OF FALSE INFORMATION.—Section 1857(g)(2)(A) of the Social Security Act (42 U.S.C. 1395w-

Determination.

27(g)(2)(A)) is amended by inserting “except with respect to a determination under subparagraph (E), an assessment of not more than the amount claimed by such plan or plan sponsor based upon the misrepresentation or falsified information involved,” after “for each such determination,”.

(c) OBSTRUCTION OF PROGRAM AUDITS.—Section 1128(b)(2) of the Social Security Act (42 U.S.C. 1320a–7(b)(2)) is amended—

(1) in the heading, by inserting “OR AUDIT” after “INVESTIGATION”; and

(2) by striking “investigation into” and all that follows through the period and inserting “investigation or audit related to—”

“(i) any offense described in paragraph (1) or in subsection (a); or

“(ii) the use of funds received, directly or indirectly, from any Federal health care program (as defined in section 1128B(f)).”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to acts committed on or after January 1, 2010.

(2) EXCEPTION.—The amendments made by subsection (b)(1) take effect on the date of enactment of this Act.

42 USC 1320a–7
note.

42 USC 1395nn
note.

Deadline.

SEC. 6409. MEDICARE SELF-REFERRAL DISCLOSURE PROTOCOL.

(a) DEVELOPMENT OF SELF-REFERRAL DISCLOSURE PROTOCOL.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in cooperation with the Inspector General of the Department of Health and Human Services, shall establish, not later than 6 months after the date of the enactment of this Act, a protocol to enable health care providers of services and suppliers to disclose an actual or potential violation of section 1877 of the Social Security Act (42 U.S.C. 1395nn) pursuant to a self-referral disclosure protocol (in this section referred to as an “SRDP”). The SRDP shall include direction to health care providers of services and suppliers on—

(A) a specific person, official, or office to whom such disclosures shall be made; and

(B) instruction on the implication of the SRDP on corporate integrity agreements and corporate compliance agreements.

(2) PUBLICATION ON INTERNET WEBSITE OF SRDP INFORMATION.—The Secretary of Health and Human Services shall post information on the public Internet website of the Centers for Medicare & Medicaid Services to inform relevant stakeholders of how to disclose actual or potential violations pursuant to an SRDP.

(3) RELATION TO ADVISORY OPINIONS.—The SRDP shall be separate from the advisory opinion process set forth in regulations implementing section 1877(g) of the Social Security Act.

(b) REDUCTION IN AMOUNTS OWED.—The Secretary of Health and Human Services is authorized to reduce the amount due and owing for all violations under section 1877 of the Social Security Act to an amount less than that specified in subsection (g) of such section. In establishing such amount for a violation, the Secretary may consider the following factors:

(1) The nature and extent of the improper or illegal practice.

(2) The timeliness of such self-disclosure.

(3) The cooperation in providing additional information related to the disclosure.

(4) Such other factors as the Secretary considers appropriate.

(c) **REPORT.**—Not later than 18 months after the date on which the SRDP protocol is established under subsection (a)(1), the Secretary shall submit to Congress a report on the implementation of this section. Such report shall include—

(1) the number of health care providers of services and suppliers making disclosures pursuant to the SRDP;

(2) the amounts collected pursuant to the SRDP;

(3) the types of violations reported under the SRDP; and

(4) such other information as may be necessary to evaluate the impact of this section.

SEC. 6410. ADJUSTMENTS TO THE MEDICARE DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES COMPETITIVE ACQUISITION PROGRAM.

(a) **EXPANSION OF ROUND 2 OF THE DME COMPETITIVE BIDDING PROGRAM.**—Section 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w–3(a)(1)) is amended—

(1) in subparagraph (B)(i)(II), by striking “70” and inserting “91”; and

(2) in subparagraph (D)(ii)—

(A) in subclause (I), by striking “and” at the end;

(B) by redesignating subclause (II) as subclause (III);

and

(C) by inserting after subclause (I) the following new subclause:

“(II) the Secretary shall include the next 21 largest metropolitan statistical areas by total population (after those selected under subclause (I)) for such round; and”.

(b) **REQUIREMENT TO EITHER COMPETITIVELY BID AREAS OR USE COMPETITIVE BID PRICES BY 2016.**—Section 1834(a)(1)(F) of the Social Security Act (42 U.S.C. 1395m(a)(1)(F)) is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii)—

(A) by inserting “(and, in the case of covered items furnished on or after January 1, 2016, subject to clause (iii), shall)” after “may”; and

(B) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new clause:

“(iii) in the case of covered items furnished on or after January 1, 2016, the Secretary shall continue to make such adjustments described in clause (ii) as, under such competitive acquisition programs, additional covered items are phased in or information is updated as contracts under section 1847 are recomputed in accordance with section 1847(b)(3)(B).”.

SEC. 6411. EXPANSION OF THE RECOVERY AUDIT CONTRACTOR (RAC) PROGRAM.

(a) **EXPANSION TO MEDICAID.**—

(1) STATE PLAN AMENDMENT.—Section 1902(a)(42) of the Social Security Act (42 U.S.C. 1396a(a)(42)) is amended—

(A) by striking “that the records” and inserting “that—
“(A) the records”;

(B) by inserting “and” after the semicolon; and

(C) by adding at the end the following:

Deadline.

“(B) not later than December 31, 2010, the State shall—

“(i) establish a program under which the State contracts (consistent with State law and in the same manner as the Secretary enters into contracts with recovery audit contractors under section 1893(h), subject to such exceptions or requirements as the Secretary may require for purposes of this title or a particular State) with 1 or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver; and

“(ii) provide assurances satisfactory to the Secretary that—

“(I) under such contracts, payment shall be made to such a contractor only from amounts recovered;

“(II) from such amounts recovered, payment—

“(aa) shall be made on a contingent basis for collecting overpayments; and

“(bb) may be made in such amounts as the State may specify for identifying underpayments;

“(III) the State has an adequate process for entities to appeal any adverse determination made by such contractors; and

“(IV) such program is carried out in accordance with such requirements as the Secretary shall specify, including—

“(aa) for purposes of section 1903(a)(7), that amounts expended by the State to carry out the program shall be considered amounts expended as necessary for the proper and efficient administration of the State plan or a waiver of the plan;

“(bb) that section 1903(d) shall apply to amounts recovered under the program; and

“(cc) that the State and any such contractors under contract with the State shall coordinate such recovery audit efforts with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State, including efforts with Federal and State law enforcement with respect to the Department of Justice, including the Federal Bureau of Investigations, the Inspector General of the Department of Health and Human Services, and the State medicaid fraud control unit; and”.

(2) COORDINATION; REGULATIONS.—

42 USC 1396a
note.

(A) IN GENERAL.—The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall coordinate the expansion of the Recovery Audit Contractor program to Medicaid with States, particularly with respect to each State that enters into a contract with a recovery audit contractor for purposes of the State's Medicaid program prior to December 31, 2010.

(B) REGULATIONS.—The Secretary of Health and Human Services shall promulgate regulations to carry out this subsection and the amendments made by this subsection, including with respect to conditions of Federal financial participation, as specified by the Secretary.

(b) EXPANSION TO MEDICARE PARTS C AND D.—Section 1893(h) of the Social Security Act (42 U.S.C. 1395ddd(h)) is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking “part A or B” and inserting “this title”;

(2) in paragraph (2), by striking “parts A and B” and inserting “this title”;

(3) in paragraph (3), by inserting “(not later than December 31, 2010, in the case of contracts relating to payments made under part C or D)” after “2010”;

(4) in paragraph (4), in the matter preceding subparagraph (A), by striking “part A or B” and inserting “this title”; and

(5) by adding at the end the following:

“(9) SPECIAL RULES RELATING TO PARTS C AND D.—The Secretary shall enter into contracts under paragraph (1) to require recovery audit contractors to—

“(A) ensure that each MA plan under part C has an anti-fraud plan in effect and to review the effectiveness of each such anti-fraud plan;

“(B) ensure that each prescription drug plan under part D has an anti-fraud plan in effect and to review the effectiveness of each such anti-fraud plan;

“(C) examine claims for reinsurance payments under section 1860D-15(b) to determine whether prescription drug plans submitting such claims incurred costs in excess of the allowable reinsurance costs permitted under paragraph (2) of that section; and

“(D) review estimates submitted by prescription drug plans by private plans with respect to the enrollment of high cost beneficiaries (as defined by the Secretary) and to compare such estimates with the numbers of such beneficiaries actually enrolled by such plans.”.

(c) ANNUAL REPORT.—The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall submit an annual report to Congress concerning the effectiveness of the Recovery Audit Contractor program under Medicaid and Medicare and shall include such reports recommendations for expanding or improving the program.

42 USC 1396a
note.

Subtitle F—Additional Medicaid Program Integrity Provisions

SEC. 6501. TERMINATION OF PROVIDER PARTICIPATION UNDER MEDICAID IF TERMINATED UNDER MEDICARE OR OTHER STATE PLAN.

Section 1902(a)(39) of the Social Security Act (42 U.S.C. 42 U.S.C. 1396a(a)) is amended by inserting after “1128A,” the following: “terminate the participation of any individual or entity in such program if (subject to such exceptions as are permitted with respect to exclusion under sections 1128(c)(3)(B) and 1128(d)(3)(B)) participation of such individual or entity is terminated under title XVIII or any other State plan under this title.”.

SEC. 6502. MEDICAID EXCLUSION FROM PARTICIPATION RELATING TO CERTAIN OWNERSHIP, CONTROL, AND MANAGEMENT AFFILIATIONS.

Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 6401(b), is amended by inserting after paragraph (77) the following:

“(78) provide that the State agency described in paragraph (9) exclude, with respect to a period, any individual or entity from participation in the program under the State plan if such individual or entity owns, controls, or manages an entity that (or if such entity is owned, controlled, or managed by an individual or entity that)—

“(A) has unpaid overpayments (as defined by the Secretary) under this title during such period determined by the Secretary or the State agency to be delinquent;

“(B) is suspended or excluded from participation under or whose participation is terminated under this title during such period; or

“(C) is affiliated with an individual or entity that has been suspended or excluded from participation under this title or whose participation is terminated under this title during such period;”.

SEC. 6503. BILLING AGENTS, CLEARINGHOUSES, OR OTHER ALTERNATE PAYEES REQUIRED TO REGISTER UNDER MEDICAID.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 42 U.S.C. 1396a(a)), as amended by section 6502(a), is amended by inserting after paragraph (78), the following:

“(79) provide that any agent, clearinghouse, or other alternate payee (as defined by the Secretary) that submits claims on behalf of a health care provider must register with the State and the Secretary in a form and manner specified by the Secretary;”.

SEC. 6504. REQUIREMENT TO REPORT EXPANDED SET OF DATA ELEMENTS UNDER MMIS TO DETECT FRAUD AND ABUSE.

Determination.

(a) IN GENERAL.—Section 1903(r)(1)(F) of the Social Security Act (42 U.S.C. 1396b(r)(1)(F)) is amended by inserting after “necessary” the following: “and including, for data submitted to the Secretary on or after January 1, 2010, data elements from the

automated data system that the Secretary determines to be necessary for program integrity, program oversight, and administration, at such frequency as the Secretary shall determine”.

(b) **MANAGED CARE ORGANIZATIONS.**—

(1) **IN GENERAL.**—Section 1903(m)(2)(A)(xi) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(xi)) is amended by inserting “and for the provision of such data to the State at a frequency and level of detail to be specified by the Secretary” after “patients”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply with respect to contract years beginning on or after January 1, 2010.

42 USC 1396b
note.

SEC. 6505. PROHIBITION ON PAYMENTS TO INSTITUTIONS OR ENTITIES LOCATED OUTSIDE OF THE UNITED STATES.

Section 1902(a) of the Social Security Act (42 U.S.C. 1396b(a)), as amended by section 6503, is amended by inserting after paragraph (79) the following new paragraph:

42 USC 1396a.

“(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States;”.

SEC. 6506. OVERPAYMENTS.

(a) **EXTENSION OF PERIOD FOR COLLECTION OF OVERPAYMENTS DUE TO FRAUD.**—

(1) **IN GENERAL.**—Section 1903(d)(2) of the Social Security Act (42 U.S.C. 1396b(d)(2)) is amended—

(A) in subparagraph (C)—

(i) in the first sentence, by striking “60 days” and inserting “1 year”; and

(ii) in the second sentence, by striking “60 days” and inserting “1-year period”; and

(B) in subparagraph (D)—

(i) in inserting “(i)” after “(D)”; and

(ii) by adding at the end the following:

“(ii) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity due to fraud within 1 year of discovery because there is not a final determination of the amount of the overpayment under an administrative or judicial process (as applicable), including as a result of a judgment being under appeal, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof) before the date that is 30 days after the date on which a final judgment (including, if applicable, a final determination on an appeal) is made.”.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection take effect on the date of enactment of this Act and apply to overpayments discovered on or after that date.

42 USC 1396b
note.

(b) **CORRECTIVE ACTION.**—The Secretary shall promulgate regulations that require States to correct Federally identified claims overpayments, of an ongoing or recurring nature, with new Medicaid Management Information System (MMIS) edits, audits, or other appropriate corrective action.

Regulations.
42 USC 1396b
note.

SEC. 6507. MANDATORY STATE USE OF NATIONAL CORRECT CODING INITIATIVE.

Section 1903(r) of the Social Security Act (42 U.S.C. 1396b(r)) is amended—

- (1) in paragraph (1)(B)—
- (A) in clause (ii), by striking “and” at the end;
 - (B) in clause (iii), by adding “and” after the semicolon; and
 - (C) by adding at the end the following new clause:

Effective date. “(iv) effective for claims filed on or after October 1, 2010, incorporate compatible methodologies of the National Correct Coding Initiative administered by the Secretary (or any successor initiative to promote correct coding and to control improper coding leading to inappropriate payment) and such other methodologies of that Initiative (or such other national correct coding methodologies) as the Secretary identifies in accordance with paragraph (4);”;
- (2) by adding at the end the following new paragraph:
- Deadlines. “(4) For purposes of paragraph (1)(B)(iv), the Secretary shall do the following:
- “(A) Not later than September 1, 2010:
 - “(i) Identify those methodologies of the National Correct Coding Initiative administered by the Secretary (or any successor initiative to promote correct coding and to control improper coding leading to inappropriate payment) which are compatible to claims filed under this title.
 - “(ii) Identify those methodologies of such Initiative (or such other national correct coding methodologies) that should be incorporated into claims filed under this title with respect to items or services for which States provide medical assistance under this title and no national correct coding methodologies have been established under such Initiative with respect to title XVIII.
 - “(iii) Notify States of—
 - “(I) the methodologies identified under subparagraphs (A) and (B) (and of any other national correct coding methodologies identified under subparagraph (B)); and
 - “(II) how States are to incorporate such methodologies into claims filed under this title.
 - “(B) Not later than March 1, 2011, submit a report to Congress that includes the notice to States under clause (iii) of subparagraph (A) and an analysis supporting the identification of the methodologies made under clauses (i) and (ii) of subparagraph (A).”.
- Notification.
- 42 USC 1396a note. **SEC. 6508. GENERAL EFFECTIVE DATE.**
- (a) **IN GENERAL.**—Except as otherwise provided in this subtitle, this subtitle and the amendments made by this subtitle take effect on January 1, 2011, without regard to whether final regulations to carry out such amendments and subtitle have been promulgated by that date.
 - (b) **DELAY IF STATE LEGISLATION REQUIRED.**—In the case of a State plan for medical assistance under title XIX of the Social Security Act or a child health plan under title XXI of such Act which the Secretary of Health and Human Services determines
- Determination. Plan.

requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by this subtitle, the State plan or child health plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Subtitle G—Additional Program Integrity Provisions

SEC. 6601. PROHIBITION ON FALSE STATEMENTS AND REPRESENTATIONS.

(a) PROHIBITION.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following:

“SEC. 519. PROHIBITION ON FALSE STATEMENTS AND REPRESENTATIONS.”

29 USC 1149.

“No person, in connection with a plan or other arrangement that is multiple employer welfare arrangement described in section 3(40), shall make a false statement or false representation of fact, knowing it to be false, in connection with the marketing or sale of such plan or arrangement, to any employee, any member of an employee organization, any beneficiary, any employer, any employee organization, the Secretary, or any State, or the representative or agent of any such person, State, or the Secretary, concerning—

“(1) the financial condition or solvency of such plan or arrangement;

“(2) the benefits provided by such plan or arrangement;

“(3) the regulatory status of such plan or other arrangement under any Federal or State law governing collective bargaining, labor management relations, or intern union affairs; or

“(4) the regulatory status of such plan or other arrangement regarding exemption from state regulatory authority under this Act.

This section shall not apply to any plan or arrangement that does not fall within the meaning of the term ‘multiple employer welfare arrangement’ under section 3(40)(A).”.

(b) CRIMINAL PENALTIES.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting “(a)” before “Any person”; and

(2) by adding at the end the following:

“(b) Any person that violates section 519 shall upon conviction be imprisoned not more than 10 years or fined under title 18, United States Code, or both.”.

(c) CONFORMING AMENDMENT.—The table of sections for part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“Sec. 519. Prohibition on false statement and representations.”.

SEC. 6602. CLARIFYING DEFINITION.

Section 24(a)(2) of title 18, United States Code, is amended by inserting “or section 411, 518, or 511 of the Employee Retirement Income Security Act of 1974,” after “1954 of this title”.

SEC. 6603. DEVELOPMENT OF MODEL UNIFORM REPORT FORM.

Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–91 et seq.) is amended by adding at the end the following:

42 USC
300gg–95.

“SEC. 2794. UNIFORM FRAUD AND ABUSE REFERRAL FORMAT.

“The Secretary shall request the National Association of Insurance Commissioners to develop a model uniform report form for private health insurance issuer seeking to refer suspected fraud and abuse to State insurance departments or other responsible State agencies for investigation. The Secretary shall request that the National Association of Insurance Commissioners develop recommendations for uniform reporting standards for such referrals.”.

SEC. 6604. APPLICABILITY OF STATE LAW TO COMBAT FRAUD AND ABUSE.

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.), as amended by section 6601, is further amended by adding at the end the following:

29 USC 1150.

“SEC. 520. APPLICABILITY OF STATE LAW TO COMBAT FRAUD AND ABUSE.

“The Secretary may, for the purpose of identifying, preventing, or prosecuting fraud and abuse, adopt regulatory standards establishing, or issue an order relating to a specific person establishing, that a person engaged in the business of providing insurance through a multiple employer welfare arrangement described in section 3(40) is subject to the laws of the States in which such person operates which regulate insurance in such State, notwithstanding section 514(b)(6) of this Act or the Liability Risk Retention Act of 1986, and regardless of whether the law of the State is otherwise preempted under any of such provisions. This section shall not apply to any plan or arrangement that does not fall within the meaning of the term ‘multiple employer welfare arrangement’ under section 3(40)(A).”.

(b) CONFORMING AMENDMENT.—The table of sections for part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by section 6601, is further amended by adding at the end the following:

“Sec. 520. Applicability of State law to combat fraud and abuse.”.

SEC. 6605. ENABLING THE DEPARTMENT OF LABOR TO ISSUE ADMINISTRATIVE SUMMARY CEASE AND DESIST ORDERS AND SUMMARY SEIZURES ORDERS AGAINST PLANS THAT ARE IN FINANCIALLY HAZARDOUS CONDITION.

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.), as amended by section 6604, is further amended by adding at the end the following:

“SEC. 521. ADMINISTRATIVE SUMMARY CEASE AND DESIST ORDERS AND SUMMARY SEIZURE ORDERS AGAINST MULTIPLE EMPLOYER WELFARE ARRANGEMENTS IN FINANCIALLY HAZARDOUS CONDITION. 29 USC 1151.

“(a) **IN GENERAL.**—The Secretary may issue a cease and desist (ex parte) order under this title if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement described in section 3(40), other than a plan or arrangement described in subsection (g), is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

“(b) **HEARING.**—A person that is adversely affected by the issuance of a cease and desist order under subsection (a) may request a hearing by the Secretary regarding such order. The Secretary may require that a proceeding under this section, including all related information and evidence, be conducted in a confidential manner.

“(c) **BURDEN OF PROOF.**—The burden of proof in any hearing conducted under subsection (b) shall be on the party requesting the hearing to show cause why the cease and desist order should be set aside.

“(d) **DETERMINATION.**—Based upon the evidence presented at a hearing under subsection (b), the cease and desist order involved may be affirmed, modified, or set aside by the Secretary in whole or in part.

“(e) **SEIZURE.**—The Secretary may issue a summary seizure order under this title if it appears that a multiple employer welfare arrangement is in a financially hazardous condition.

“(f) **REGULATIONS.**—The Secretary may promulgate such regulations or other guidance as may be necessary or appropriate to carry out this section.

“(g) **EXCEPTION.**—This section shall not apply to any plan or arrangement that does not fall within the meaning of the term ‘multiple employer welfare arrangement’ under section 3(40)(A).”.

(b) **CONFORMING AMENDMENT.**—The table of sections for part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by section 6604, is further amended by adding at the end the following:

“Sec. 521. Administrative summary cease and desist orders and summary seizure orders against health plans in financially hazardous condition.”.

SEC. 6606. MEWA PLAN REGISTRATION WITH DEPARTMENT OF LABOR.

Section 101(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(g)) is amended—

(1) by striking “Secretary may” and inserting “Secretary shall”; and

(2) by inserting “to register with the Secretary prior to operating in a State and may, by regulation, require such multiple employer welfare arrangements” after “not group health plans”.

SEC. 6607. PERMITTING EVIDENTIARY PRIVILEGE AND CONFIDENTIAL COMMUNICATIONS.

Section 504 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1134) is amended by adding at the end the following:

“(d) The Secretary may promulgate a regulation that provides an evidentiary privilege for, and provides for the confidentiality of communications between or among, any of the following entities or their agents, consultants, or employees:

“(1) A State insurance department.

“(2) A State attorney general.

“(3) The National Association of Insurance Commissioners.

“(4) The Department of Labor.

“(5) The Department of the Treasury.

“(6) The Department of Justice.

“(7) The Department of Health and Human Services.

“(8) Any other Federal or State authority that the Secretary determines is appropriate for the purposes of enforcing the provisions of this title.

Applicability.

“(e) The privilege established under subsection (d) shall apply to communications related to any investigation, audit, examination, or inquiry conducted or coordinated by any of the agencies. A communication that is privileged under subsection (d) shall not waive any privilege otherwise available to the communicating agency or to any person who provided the information that is communicated.”.

Elder Justice Act
of 2009.

42 USC 1305
note.

42 USC 1395i–3a
note.

Subtitle H—Elder Justice Act

SEC. 6701. SHORT TITLE OF SUBTITLE.

This subtitle may be cited as the “Elder Justice Act of 2009”.

SEC. 6702. DEFINITIONS.

Except as otherwise specifically provided, any term that is defined in section 2011 of the Social Security Act (as added by section 6703(a)) and is used in this subtitle has the meaning given such term by such section.

SEC. 6703. ELDER JUSTICE.

(a) ELDER JUSTICE.—

(1) IN GENERAL.—Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended—

(A) in the heading, by inserting “**AND ELDER JUSTICE**” after “**SOCIAL SERVICES**”;

(B) by inserting before section 2001 the following:

“Subtitle A—Block Grants to States for Social Services”;

and

(C) by adding at the end the following:

“Subtitle B—Elder Justice

42 USC 1397j.

“SEC. 2011. DEFINITIONS.

“In this subtitle:

“(1) ABUSE.—The term ‘abuse’ means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

“(2) ADULT PROTECTIVE SERVICES.—The term ‘adult protective services’ means such services provided to adults as the Secretary may specify and includes services such as—

“(A) receiving reports of adult abuse, neglect, or exploitation;

“(B) investigating the reports described in subparagraph (A);

“(C) case planning, monitoring, evaluation, and other case work and services; and

“(D) providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

“(3) CAREGIVER.—The term ‘caregiver’ means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an elder who needs supportive services in any setting.

“(4) DIRECT CARE.—The term ‘direct care’ means care by an employee or contractor who provides assistance or long-term care services to a recipient.

“(5) ELDER.—The term ‘elder’ means an individual age 60 or older.

“(6) ELDER JUSTICE.—The term ‘elder justice’ means—

“(A) from a societal perspective, efforts to—

“(i) prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and

“(ii) protect elders with diminished capacity while maximizing their autonomy; and

“(B) from an individual perspective, the recognition of an elder’s rights, including the right to be free of abuse, neglect, and exploitation.

“(7) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a State or local government agency, Indian tribe or tribal organization, or any other public or private entity that is engaged in and has expertise in issues relating to elder justice or in a field necessary to promote elder justice efforts.

“(8) EXPLOITATION.—The term ‘exploitation’ means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.

“(9) FIDUCIARY.—The term ‘fiduciary’—

“(A) means a person or entity with the legal responsibility—

“(i) to make decisions on behalf of and for the benefit of another person; and

“(ii) to act in good faith and with fairness; and

“(B) includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

“(10) GRANT.—The term ‘grant’ includes a contract, cooperative agreement, or other mechanism for providing financial assistance.

“(11) GUARDIANSHIP.—The term ‘guardianship’ means—

“(A) the process by which a State court determines that an adult individual lacks capacity to make decisions about self-care or property, and appoints another individual or entity known as a guardian, as a conservator, or by a similar term, as a surrogate decisionmaker;

“(B) the manner in which the court-appointed surrogate decisionmaker carries out duties to the individual and the court; or

“(C) the manner in which the court exercises oversight of the surrogate decisionmaker.

“(12) INDIAN TRIBE.—

“(A) IN GENERAL.—The term ‘Indian tribe’ has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(B) INCLUSION OF PUEBLO AND RANCHERIA.—The term ‘Indian tribe’ includes any Pueblo or Rancheria.

“(13) LAW ENFORCEMENT.—The term ‘law enforcement’ means the full range of potential responders to elder abuse, neglect, and exploitation including—

“(A) police, sheriffs, detectives, public safety officers, and corrections personnel;

“(B) prosecutors;

“(C) medical examiners;

“(D) investigators; and

“(E) coroners.

“(14) LONG-TERM CARE.—

“(A) IN GENERAL.—The term ‘long-term care’ means supportive and health services specified by the Secretary for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability.

“(B) LOSS OF CAPACITY FOR SELF-CARE.—For purposes of subparagraph (A), the term ‘loss of capacity for self-care’ means an inability to engage in 1 or more activities of daily living, including eating, dressing, bathing, management of one’s financial affairs, and other activities the Secretary determines appropriate.

“(15) LONG-TERM CARE FACILITY.—The term ‘long-term care facility’ means a residential care provider that arranges for, or directly provides, long-term care.

“(16) NEGLECT.—The term ‘neglect’ means—

“(A) the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder; or

“(B) self-neglect.

“(17) NURSING FACILITY.—

“(A) IN GENERAL.—The term ‘nursing facility’ has the meaning given such term under section 1919(a).

“(B) INCLUSION OF SKILLED NURSING FACILITY.—The term ‘nursing facility’ includes a skilled nursing facility (as defined in section 1819(a)).

“(18) SELF-NEGLECT.—The term ‘self-neglect’ means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—

“(A) obtaining essential food, clothing, shelter, and medical care;

“(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

“(C) managing one’s own financial affairs.

“(19) SERIOUS BODILY INJURY.—

“(A) IN GENERAL.—The term ‘serious bodily injury’ means an injury—

“(i) involving extreme physical pain;

“(ii) involving substantial risk of death;

“(iii) involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or

“(iv) requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

“(B) CRIMINAL SEXUAL ABUSE.—Serious bodily injury shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or 2242 (relating to sexual abuse) of title 18, United States Code, or any similar offense under State law.

“(20) SOCIAL.—The term ‘social’, when used with respect to a service, includes adult protective services.

“(21) STATE LEGAL ASSISTANCE DEVELOPER.—The term ‘State legal assistance developer’ means an individual described in section 731 of the Older Americans Act of 1965.

“(22) STATE LONG-TERM CARE OMBUDSMAN.—The term ‘State Long-Term Care Ombudsman’ means the State Long-Term Care Ombudsman described in section 712(a)(2) of the Older Americans Act of 1965.

“SEC. 2012. GENERAL PROVISIONS.

42 USC
1397j-1.

“(a) PROTECTION OF PRIVACY.—In pursuing activities under this subtitle, the Secretary shall ensure the protection of individual health privacy consistent with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and applicable State and local privacy regulations.

“(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to interfere with or abridge an elder’s right to practice his or her religion through reliance on prayer alone for healing when this choice—

“(1) is contemporaneously expressed, either orally or in writing, with respect to a specific illness or injury which the elder has at the time of the decision by an elder who is competent at the time of the decision;

“(2) is previously set forth in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or

“(3) may be unambiguously deduced from the elder’s life history.

**“PART I—NATIONAL COORDINATION OF
ELDER JUSTICE ACTIVITIES AND RESEARCH**

**“Subpart A—Elder Justice Coordinating Council
and Advisory Board on Elder Abuse, Neglect,
and Exploitation**

42 USC 1397k.

“SEC. 2021. ELDER JUSTICE COORDINATING COUNCIL.

“(a) **ESTABLISHMENT.**—There is established within the Office of the Secretary an Elder Justice Coordinating Council (in this section referred to as the ‘Council’).

“(b) **MEMBERSHIP.**—

“(1) **IN GENERAL.**—The Council shall be composed of the following members:

“(A) The Secretary (or the Secretary’s designee).

“(B) The Attorney General (or the Attorney General’s designee).

“(C) The head of each Federal department or agency or other governmental entity identified by the Chair referred to in subsection (d) as having responsibilities, or administering programs, relating to elder abuse, neglect, and exploitation.

“(2) **REQUIREMENT.**—Each member of the Council shall be an officer or employee of the Federal Government.

“(c) **VACANCIES.**—Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

“(d) **CHAIR.**—The member described in subsection (b)(1)(A) shall be Chair of the Council.

“(e) **MEETINGS.**—The Council shall meet at least 2 times per year, as determined by the Chair.

“(f) **DUTIES.**—

“(1) **IN GENERAL.**—The Council shall make recommendations to the Secretary for the coordination of activities of the Department of Health and Human Services, the Department of Justice, and other relevant Federal, State, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders.

“(2) **REPORT.**—Not later than the date that is 2 years after the date of enactment of the Elder Justice Act of 2009 and every 2 years thereafter, the Council shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report that—

“(A) describes the activities and accomplishments of, and challenges faced by—

“(i) the Council; and

“(ii) the entities represented on the Council; and

“(B) makes such recommendations for legislation, model laws, or other action as the Council determines to be appropriate.

“(g) **POWERS OF THE COUNCIL.**—

“(1) **INFORMATION FROM FEDERAL AGENCIES.**—Subject to the requirements of section 2012(a), the Council may secure directly from any Federal department or agency such information as the Council considers necessary to carry out this section. Upon

Recommendations.

request of the Chair of the Council, the head of such department or agency shall furnish such information to the Council.

“(2) POSTAL SERVICES.—The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

“(h) TRAVEL EXPENSES.—The members of the Council shall not receive compensation for the performance of services for the Council. The members shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Council. Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of the members of the Council.

“(i) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

“(j) STATUS AS PERMANENT COUNCIL.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

“(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

“SEC. 2022. ADVISORY BOARD ON ELDER ABUSE, NEGLECT, AND EXPLOITATION. 42 USC 1397k-1.

“(a) ESTABLISHMENT.—There is established a board to be known as the ‘Advisory Board on Elder Abuse, Neglect, and Exploitation’ (in this section referred to as the ‘Advisory Board’) to create short- and long-term multidisciplinary strategic plans for the development of the field of elder justice and to make recommendations to the Elder Justice Coordinating Council established under section 2021.

“(b) COMPOSITION.—The Advisory Board shall be composed of 27 members appointed by the Secretary from among members of the general public who are individuals with experience and expertise in elder abuse, neglect, and exploitation prevention, detection, treatment, intervention, or prosecution.

“(c) SOLICITATION OF NOMINATIONS.—The Secretary shall publish a notice in the Federal Register soliciting nominations for the appointment of members of the Advisory Board under subsection (b).

Notice.
Federal Register,
publication.

“(d) TERMS.—

“(1) IN GENERAL.—Each member of the Advisory Board shall be appointed for a term of 3 years, except that, of the members first appointed—

“(A) 9 shall be appointed for a term of 3 years;

“(B) 9 shall be appointed for a term of 2 years; and

“(C) 9 shall be appointed for a term of 1 year.

“(2) VACANCIES.—

“(A) IN GENERAL.—Any vacancy on the Advisory Board shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

“(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

“(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the member’s successor takes office.

“(e) ELECTION OF OFFICERS.—The Advisory Board shall elect a Chair and Vice Chair from among its members. The Advisory Board shall elect its initial Chair and Vice Chair at its initial meeting.

“(f) DUTIES.—

“(1) ENHANCE COMMUNICATION ON PROMOTING QUALITY OF, AND PREVENTING ABUSE, NEGLECT, AND EXPLOITATION IN, LONG-TERM CARE.—The Advisory Board shall develop collaborative and innovative approaches to improve the quality of, including preventing abuse, neglect, and exploitation in, long-term care.

“(2) COLLABORATIVE EFFORTS TO DEVELOP CONSENSUS AROUND THE MANAGEMENT OF CERTAIN QUALITY-RELATED FACTORS.—

Panels.

“(A) IN GENERAL.—The Advisory Board shall establish multidisciplinary panels to address, and develop consensus on, subjects relating to improving the quality of long-term care. At least 1 such panel shall address, and develop consensus on, methods for managing resident-to-resident abuse in long-term care.

“(B) ACTIVITIES CONDUCTED.—The multidisciplinary panels established under subparagraph (A) shall examine relevant research and data, identify best practices with respect to the subject of the panel, determine the best way to carry out those best practices in a practical and feasible manner, and determine an effective manner of distributing information on such subject.

“(3) REPORT.—Not later than the date that is 18 months after the date of enactment of the Elder Justice Act of 2009, and annually thereafter, the Advisory Board shall prepare and submit to the Elder Justice Coordinating Council, the Committee on Finance of the Senate, and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing—

“(A) information on the status of Federal, State, and local public and private elder justice activities;

“(B) recommendations (including recommended priorities) regarding—

“(i) elder justice programs, research, training, services, practice, enforcement, and coordination;

“(ii) coordination between entities pursuing elder justice efforts and those involved in related areas that may inform or overlap with elder justice efforts, such as activities to combat violence against women and child abuse and neglect; and

“(iii) activities relating to adult fiduciary systems, including guardianship and other fiduciary arrangements;

“(C) recommendations for specific modifications needed in Federal and State laws (including regulations) or for programs, research, and training to enhance prevention, detection, and treatment (including diagnosis) of, intervention in (including investigation of), and prosecution of elder abuse, neglect, and exploitation;

“(D) recommendations on methods for the most effective coordinated national data collection with respect to elder justice, and elder abuse, neglect, and exploitation; and

“(E) recommendations for a multidisciplinary strategic plan to guide the effective and efficient development of the field of elder justice.

“(g) POWERS OF THE ADVISORY BOARD.—

“(1) INFORMATION FROM FEDERAL AGENCIES.—Subject to the requirements of section 2012(a), the Advisory Board may secure directly from any Federal department or agency such information as the Advisory Board considers necessary to carry out this section. Upon request of the Chair of the Advisory Board, the head of such department or agency shall furnish such information to the Advisory Board.

“(2) SHARING OF DATA AND REPORTS.—The Advisory Board may request from any entity pursuing elder justice activities under the Elder Justice Act of 2009 or an amendment made by that Act, any data, reports, or recommendations generated in connection with such activities.

“(3) POSTAL SERVICES.—The Advisory Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

“(h) TRAVEL EXPENSES.—The members of the Advisory Board shall not receive compensation for the performance of services for the Advisory Board. The members shall be allowed travel expenses for up to 4 meetings per year, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Advisory Board. Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of the members of the Advisory Board.

“(i) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Advisory Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

“(j) STATUS AS PERMANENT ADVISORY COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.

“(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

“SEC. 2023. RESEARCH PROTECTIONS.

42 USC 1397k-2.

“(a) GUIDELINES.—The Secretary shall promulgate guidelines to assist researchers working in the area of elder abuse, neglect, and exploitation, with issues relating to human subject protections.

“(b) DEFINITION OF LEGALLY AUTHORIZED REPRESENTATIVE FOR APPLICATION OF REGULATIONS.—For purposes of the application of subpart A of part 46 of title 45, Code of Federal Regulations, to research conducted under this subpart, the term ‘legally authorized representative’ means, unless otherwise provided by law, the individual or judicial or other body authorized under the applicable law to consent to medical treatment on behalf of another person.

42 USC 1397k–3. **“SEC. 2024. AUTHORIZATION OF APPROPRIATIONS.**

“There are authorized to be appropriated to carry out this subpart—

“(1) for fiscal year 2011, \$6,500,000; and

“(2) for each of fiscal years 2012 through 2014, \$7,000,000.

“Subpart B—Elder Abuse, Neglect, and Exploitation Forensic Centers

Grants.
42 USC 1397l.

**“SEC. 2031. ESTABLISHMENT AND SUPPORT OF ELDER ABUSE,
NEGLECT, AND EXPLOITATION FORENSIC CENTERS.**

“(a) IN GENERAL.—The Secretary, in consultation with the Attorney General, shall make grants to eligible entities to establish and operate stationary and mobile forensic centers, to develop forensic expertise regarding, and provide services relating to, elder abuse, neglect, and exploitation.

“(b) STATIONARY FORENSIC CENTERS.—The Secretary shall make 4 of the grants described in subsection (a) to institutions of higher education with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation, to establish and operate stationary forensic centers.

“(c) MOBILE CENTERS.—The Secretary shall make 6 of the grants described in subsection (a) to appropriate entities to establish and operate mobile forensic centers.

“(d) AUTHORIZED ACTIVITIES.—

“(1) DEVELOPMENT OF FORENSIC MARKERS AND METHODOLOGIES.—An eligible entity that receives a grant under this section shall use funds made available through the grant to assist in determining whether abuse, neglect, or exploitation occurred and whether a crime was committed and to conduct research to describe and disseminate information on—

“(A) forensic markers that indicate a case in which elder abuse, neglect, or exploitation may have occurred; and

“(B) methodologies for determining, in such a case, when and how health care, emergency service, social and protective services, and legal service providers should intervene and when the providers should report the case to law enforcement authorities.

“(2) DEVELOPMENT OF FORENSIC EXPERTISE.—An eligible entity that receives a grant under this section shall use funds made available through the grant to develop forensic expertise regarding elder abuse, neglect, and exploitation in order to provide medical and forensic evaluation, therapeutic intervention, victim support and advocacy, case review, and case tracking.

“(3) COLLECTION OF EVIDENCE.—The Secretary, in coordination with the Attorney General, shall use data made available by grant recipients under this section to develop the capacity of geriatric health care professionals and law enforcement to collect forensic evidence, including collecting forensic evidence relating to a potential determination of elder abuse, neglect, or exploitation.

“(e) APPLICATION.—To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary

at such time, in such manner, and containing such information as the Secretary may require.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) for fiscal year 2011, \$4,000,000;

“(2) for fiscal year 2012, \$6,000,000; and

“(3) for each of fiscal years 2013 and 2014, \$8,000,000.

“PART II—PROGRAMS TO PROMOTE ELDER JUSTICE

“SEC. 2041. ENHANCEMENT OF LONG-TERM CARE.

42 USC 1397m.

“(a) GRANTS AND INCENTIVES FOR LONG-TERM CARE STAFFING.—

“(1) IN GENERAL.—The Secretary shall carry out activities, including activities described in paragraphs (2) and (3), to provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care.

“(2) SPECIFIC PROGRAMS TO ENHANCE TRAINING, RECRUITMENT, AND RETENTION OF STAFF.—

“(A) COORDINATION WITH SECRETARY OF LABOR TO RECRUIT AND TRAIN LONG-TERM CARE STAFF.—The Secretary shall coordinate activities under this subsection with the Secretary of Labor in order to provide incentives for individuals to train for and seek employment providing direct care in long-term care.

“(B) CAREER LADDERS AND WAGE OR BENEFIT INCREASES TO INCREASE STAFFING IN LONG-TERM CARE.—

Grants.

“(i) IN GENERAL.—The Secretary shall make grants to eligible entities to carry out programs through which the entities—

“(I) offer, to employees who provide direct care to residents of an eligible entity or individuals receiving community-based long-term care from an eligible entity, continuing training and varying levels of certification, based on observed clinical care practices and the amount of time the employees spend providing direct care; and

“(II) provide, or make arrangements to provide, bonuses or other increased compensation or benefits to employees who achieve certification under such a program.

“(ii) APPLICATION.—To be eligible to receive a grant under this subparagraph, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the eligible entity is located with respect to carrying out activities funded under the grant).

“(iii) AUTHORITY TO LIMIT NUMBER OF APPLICANTS.—Nothing in this subparagraph shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this subparagraph.

“(3) SPECIFIC PROGRAMS TO IMPROVE MANAGEMENT PRACTICES.—

Grants.

“(A) IN GENERAL.—The Secretary shall make grants to eligible entities to enable the entities to provide training and technical assistance.

“(B) AUTHORIZED ACTIVITIES.—An eligible entity that receives a grant under subparagraph (A) shall use funds made available through the grant to provide training and technical assistance regarding management practices using methods that are demonstrated to promote retention of individuals who provide direct care, such as—

“(i) the establishment of standard human resource policies that reward high performance, including policies that provide for improved wages and benefits on the basis of job reviews;

“(ii) the establishment of motivational and thoughtful work organization practices;

“(iii) the creation of a workplace culture that respects and values caregivers and their needs;

“(iv) the promotion of a workplace culture that respects the rights of residents of an eligible entity or individuals receiving community-based long-term care from an eligible entity and results in improved care for the residents or the individuals; and

“(v) the establishment of other programs that promote the provision of high quality care, such as a continuing education program that provides additional hours of training, including on-the-job training, for employees who are certified nurse aides.

“(C) APPLICATION.—To be eligible to receive a grant under this paragraph, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the eligible entity is located with respect to carrying out activities funded under the grant).

“(D) AUTHORITY TO LIMIT NUMBER OF APPLICANTS.—Nothing in this paragraph shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this paragraph.

“(4) ACCOUNTABILITY MEASURES.—The Secretary shall develop accountability measures to ensure that the activities conducted using funds made available under this subsection benefit individuals who provide direct care and increase the stability of the long-term care workforce.

“(5) DEFINITIONS.—In this subsection:

“(A) COMMUNITY-BASED LONG-TERM CARE.—The term ‘community-based long-term care’ has the meaning given such term by the Secretary.

“(B) ELIGIBLE ENTITY.—The term ‘eligible entity’ means the following:

“(i) A long-term care facility.

“(ii) A community-based long-term care entity (as defined by the Secretary).

“(b) CERTIFIED EHR TECHNOLOGY GRANT PROGRAM.—

“(1) GRANTS AUTHORIZED.—The Secretary is authorized to make grants to long-term care facilities for the purpose of assisting such entities in offsetting the costs related to purchasing, leasing, developing, and implementing certified EHR

technology (as defined in section 1848(o)(4)) designed to improve patient safety and reduce adverse events and health care complications resulting from medication errors.

“(2) USE OF GRANT FUNDS.—Funds provided under grants under this subsection may be used for any of the following:

“(A) Purchasing, leasing, and installing computer software and hardware, including handheld computer technologies.

“(B) Making improvements to existing computer software and hardware.

“(C) Making upgrades and other improvements to existing computer software and hardware to enable e-prescribing.

“(D) Providing education and training to eligible long-term care facility staff on the use of such technology to implement the electronic transmission of prescription and patient information.

“(3) APPLICATION.—

“(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a long-term care facility shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the long-term care facility is located with respect to carrying out activities funded under the grant).

“(B) AUTHORITY TO LIMIT NUMBER OF APPLICANTS.—Nothing in this subsection shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this subsection.

“(4) PARTICIPATION IN STATE HEALTH EXCHANGES.—A long-term care facility that receives a grant under this subsection shall, where available, participate in activities conducted by a State or a qualified State-designated entity (as defined in section 3013(f) of the Public Health Service Act) under a grant under section 3013 of the Public Health Service Act to coordinate care and for other purposes determined appropriate by the Secretary.

“(5) ACCOUNTABILITY MEASURES.—The Secretary shall develop accountability measures to ensure that the activities conducted using funds made available under this subsection help improve patient safety and reduce adverse events and health care complications resulting from medication errors.

“(c) ADOPTION OF STANDARDS FOR TRANSACTIONS INVOLVING CLINICAL DATA BY LONG-TERM CARE FACILITIES.—

“(1) STANDARDS AND COMPATIBILITY.—The Secretary shall adopt electronic standards for the exchange of clinical data by long-term care facilities, including, where available, standards for messaging and nomenclature. Standards adopted by the Secretary under the preceding sentence shall be compatible with standards established under part C of title XI, standards established under subsections (b)(2)(B)(i) and (e)(4) of section 1860D-4, standards adopted under section 3004 of the Public Health Service Act, and general health information technology standards.

“(2) ELECTRONIC SUBMISSION OF DATA TO THE SECRETARY.—

Deadline.
Procedures.

“(A) IN GENERAL.—Not later than 10 years after the date of enactment of the Elder Justice Act of 2009, the Secretary shall have procedures in place to accept the optional electronic submission of clinical data by long-term care facilities pursuant to the standards adopted under paragraph (1).

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a long-term care facility to submit clinical data electronically to the Secretary.

“(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out this subsection. Such regulations shall require a State, as a condition of the receipt of funds under this part, to conduct such data collection and reporting as the Secretary determines are necessary to satisfy the requirements of this subsection.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) for fiscal year 2011, \$20,000,000;

“(2) for fiscal year 2012, \$17,500,000; and

“(3) for each of fiscal years 2013 and 2014, \$15,000,000.

42 USC
1397m-1.

“SEC. 2042. ADULT PROTECTIVE SERVICES FUNCTIONS AND GRANT PROGRAMS.

“(a) SECRETARIAL RESPONSIBILITIES.—

“(1) IN GENERAL.—The Secretary shall ensure that the Department of Health and Human Services—

“(A) provides funding authorized by this part to State and local adult protective services offices that investigate reports of the abuse, neglect, and exploitation of elders;

“(B) collects and disseminates data annually relating to the abuse, exploitation, and neglect of elders in coordination with the Department of Justice;

“(C) develops and disseminates information on best practices regarding, and provides training on, carrying out adult protective services;

“(D) conducts research related to the provision of adult protective services; and

“(E) provides technical assistance to States and other entities that provide or fund the provision of adult protective services, including through grants made under subsections (b) and (c).

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, \$3,000,000 for fiscal year 2011 and \$4,000,000 for each of fiscal years 2012 through 2014.

“(b) GRANTS TO ENHANCE THE PROVISION OF ADULT PROTECTIVE SERVICES.—

“(1) ESTABLISHMENT.—There is established an adult protective services grant program under which the Secretary shall annually award grants to States in the amounts calculated under paragraph (2) for the purposes of enhancing adult protective services provided by States and local units of government.

“(2) AMOUNT OF PAYMENT.—

“(A) IN GENERAL.—Subject to the availability of appropriations and subparagraphs (B) and (C), the amount paid to a State for a fiscal year under the program under this

subsection shall equal the amount appropriated for that year to carry out this subsection multiplied by the percentage of the total number of elders who reside in the United States who reside in that State.

“(B) GUARANTEED MINIMUM PAYMENT AMOUNT.—

“(i) 50 STATES.—Subject to clause (ii), if the amount determined under subparagraph (A) for a State for a fiscal year is less than 0.75 percent of the amount appropriated for such year, the Secretary shall increase such determined amount so that the total amount paid under this subsection to the State for the year is equal to 0.75 percent of the amount so appropriated.

“(ii) TERRITORIES.—In the case of a State other than 1 of the 50 States, clause (i) shall be applied as if each reference to ‘0.75’ were a reference to ‘0.1’.

Applicability.

“(C) PRO RATA REDUCTIONS.—The Secretary shall make such pro rata reductions to the amounts described in subparagraph (A) as are necessary to comply with the requirements of subparagraph (B).

“(3) AUTHORIZED ACTIVITIES.—

“(A) ADULT PROTECTIVE SERVICES.—Funds made available pursuant to this subsection may only be used by States and local units of government to provide adult protective services and may not be used for any other purpose.

“(B) USE BY AGENCY.—Each State receiving funds pursuant to this subsection shall provide such funds to the agency or unit of State government having legal responsibility for providing adult protective services within the State.

“(C) SUPPLEMENT NOT SUPPLANT.—Each State or local unit of government shall use funds made available pursuant to this subsection to supplement and not supplant other Federal, State, and local public funds expended to provide adult protective services in the State.

“(4) STATE REPORTS.—Each State receiving funds under this subsection shall submit to the Secretary, at such time and in such manner as the Secretary may require, a report on the number of elders served by the grants awarded under this subsection.

“(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, \$100,000,000 for each of fiscal years 2011 through 2014.

“(c) STATE DEMONSTRATION PROGRAMS.—

“(1) ESTABLISHMENT.—The Secretary shall award grants to States for the purposes of conducting demonstration programs in accordance with paragraph (2).

“(2) DEMONSTRATION PROGRAMS.—Funds made available pursuant to this subsection may be used by States and local units of government to conduct demonstration programs that test—

“(A) training modules developed for the purpose of detecting or preventing elder abuse;

“(B) methods to detect or prevent financial exploitation of elders;

“(C) methods to detect elder abuse;

“(D) whether training on elder abuse forensics enhances the detection of elder abuse by employees of the State or local unit of government; or

“(E) other matters relating to the detection or prevention of elder abuse.

“(3) APPLICATION.—To be eligible to receive a grant under this subsection, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(4) STATE REPORTS.—Each State that receives funds under this subsection shall submit to the Secretary a report at such time, in such manner, and containing such information as the Secretary may require on the results of the demonstration program conducted by the State using funds made available under this subsection.

“(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, \$25,000,000 for each of fiscal years 2011 through 2014.

42 USC
1397m-2.

“SEC. 2043. LONG-TERM CARE OMBUDSMAN PROGRAM GRANTS AND TRAINING.

“(a) GRANTS TO SUPPORT THE LONG-TERM CARE OMBUDSMAN PROGRAM.—

“(1) IN GENERAL.—The Secretary shall make grants to eligible entities with relevant expertise and experience in abuse and neglect in long-term care facilities or long-term care ombudsman programs and responsibilities, for the purpose of—

“(A) improving the capacity of State long-term care ombudsman programs to respond to and resolve complaints about abuse and neglect;

“(B) conducting pilot programs with State long-term care ombudsman offices or local ombudsman entities; and

“(C) providing support for such State long-term care ombudsman programs and such pilot programs (such as through the establishment of a national long-term care ombudsman resource center).

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection—

“(A) for fiscal year 2011, \$5,000,000;

“(B) for fiscal year 2012, \$7,500,000; and

“(C) for each of fiscal years 2013 and 2014, \$10,000,000.

“(b) OMBUDSMAN TRAINING PROGRAMS.—

“(1) IN GENERAL.—The Secretary shall establish programs to provide and improve ombudsman training with respect to elder abuse, neglect, and exploitation for national organizations and State long-term care ombudsman programs.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, for each of fiscal years 2011 through 2014, \$10,000,000.

42 USC
1397m-3.

“SEC. 2044. PROVISION OF INFORMATION REGARDING, AND EVALUATIONS OF, ELDER JUSTICE PROGRAMS.

“(a) PROVISION OF INFORMATION.—To be eligible to receive a grant under this part, an applicant shall agree—

“(1) except as provided in paragraph (2), to provide the eligible entity conducting an evaluation under subsection (b) of the activities funded through the grant with such information

as the eligible entity may require in order to conduct such evaluation; or

“(2) in the case of an applicant for a grant under section 2041(b), to provide the Secretary with such information as the Secretary may require to conduct an evaluation or audit under subsection (c).

“(b) USE OF ELIGIBLE ENTITIES TO CONDUCT EVALUATIONS.—

“(1) EVALUATIONS REQUIRED.—Except as provided in paragraph (2), the Secretary shall—

“(A) reserve a portion (not less than 2 percent) of the funds appropriated with respect to each program carried out under this part; and

“(B) use the funds reserved under subparagraph (A) to provide assistance to eligible entities to conduct evaluations of the activities funded under each program carried out under this part.

“(2) CERTIFIED EHR TECHNOLOGY GRANT PROGRAM NOT INCLUDED.—The provisions of this subsection shall not apply to the certified EHR technology grant program under section 2041(b).

“(3) AUTHORIZED ACTIVITIES.—A recipient of assistance described in paragraph (1)(B) shall use the funds made available through the assistance to conduct a validated evaluation of the effectiveness of the activities funded under a program carried out under this part.

“(4) APPLICATIONS.—To be eligible to receive assistance under paragraph (1)(B), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a proposal for the evaluation.

“(5) REPORTS.—Not later than a date specified by the Secretary, an eligible entity receiving assistance under paragraph (1)(B) shall submit to the Secretary, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate a report containing the results of the evaluation conducted using such assistance together with such recommendations as the entity determines to be appropriate.

“(c) EVALUATIONS AND AUDITS OF CERTIFIED EHR TECHNOLOGY GRANT PROGRAM BY THE SECRETARY.—

“(1) EVALUATIONS.—The Secretary shall conduct an evaluation of the activities funded under the certified EHR technology grant program under section 2041(b). Such evaluation shall include an evaluation of whether the funding provided under the grant is expended only for the purposes for which it is made.

“(2) AUDITS.—The Secretary shall conduct appropriate audits of grants made under section 2041(b).

“SEC. 2045. REPORT.

“Not later than October 1, 2014, the Secretary shall submit to the Elder Justice Coordinating Council established under section 2021, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate a report—

42 USC
1397m-4.

“(1) compiling, summarizing, and analyzing the information contained in the State reports submitted under subsections (b)(4) and (c)(4) of section 2042; and

“(2) containing such recommendations for legislative or administrative action as the Secretary determines to be appropriate.

42 USC
1397m-5.

“SEC. 2046. RULE OF CONSTRUCTION.

“Nothing in this subtitle shall be construed as—

“(1) limiting any cause of action or other relief related to obligations under this subtitle that is available under the law of any State, or political subdivision thereof; or

“(2) creating a private cause of action for a violation of this subtitle.”.

(2) OPTION FOR STATE PLAN UNDER PROGRAM FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.—

(A) IN GENERAL.—Section 402(a)(1)(B) of the Social Security Act (42 U.S.C. 602(a)(1)(B)) is amended by adding at the end the following new clause:

“(v) The document shall indicate whether the State intends to assist individuals to train for, seek, and maintain employment—

“(I) providing direct care in a long-term care facility (as such terms are defined under section 2011); or

“(II) in other occupations related to elder care determined appropriate by the State for which the State identifies an unmet need for service personnel,

and, if so, shall include an overview of such assistance.”.

42 USC 602 note.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on January 1, 2011.

42 USC
1395i-3a.

(b) PROTECTING RESIDENTS OF LONG-TERM CARE FACILITIES.—

(1) NATIONAL TRAINING INSTITUTE FOR SURVEYORS.—

Contracts.

(A) IN GENERAL.—The Secretary of Health and Human Services shall enter into a contract with an entity for the purpose of establishing and operating a National Training Institute for Federal and State surveyors. Such Institute shall provide and improve the training of surveyors with respect to investigating allegations of abuse, neglect, and misappropriation of property in programs and long-term care facilities that receive payments under title XVIII or XIX of the Social Security Act.

(B) ACTIVITIES CARRIED OUT BY THE INSTITUTE.—The contract entered into under subparagraph (A) shall require the Institute established and operated under such contract to carry out the following activities:

(i) Assess the extent to which State agencies use specialized surveyors for the investigation of reported allegations of abuse, neglect, and misappropriation of property in such programs and long-term care facilities.

(ii) Evaluate how the competencies of surveyors may be improved to more effectively investigate reported allegations of such abuse, neglect, and misappropriation of property, and provide feedback to Federal and State agencies on the evaluations conducted.

(iii) Provide a national program of training, tools, and technical assistance to Federal and State surveyors on investigating reports of such abuse, neglect, and misappropriation of property.

(iv) Develop and disseminate information on best practices for the investigation of such abuse, neglect, and misappropriation of property.

(v) Assess the performance of State complaint intake systems, in order to ensure that the intake of complaints occurs 24 hours per day, 7 days a week (including holidays).

(vi) To the extent approved by the Secretary of Health and Human Services, provide a national 24 hours per day, 7 days a week (including holidays), back-up system to State complaint intake systems in order to ensure optimum national responsiveness to complaints of such abuse, neglect, and misappropriation of property.

(vii) Analyze and report annually on the following:

(I) The total number and sources of complaints of such abuse, neglect, and misappropriation of property.

(II) The extent to which such complaints are referred to law enforcement agencies.

(III) General results of Federal and State investigations of such complaints.

(viii) Conduct a national study of the cost to State agencies of conducting complaint investigations of skilled nursing facilities and nursing facilities under sections 1819 and 1919, respectively, of the Social Security Act (42 U.S.C. 1395i-3; 1396r), and making recommendations to the Secretary of Health and Human Services with respect to options to increase the efficiency and cost-effectiveness of such investigations.

(C) AUTHORIZATION.—There are authorized to be appropriated to carry out this paragraph, for the period of fiscal years 2011 through 2014, \$12,000,000.

(2) GRANTS TO STATE SURVEY AGENCIES.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall make grants to State agencies that perform surveys of skilled nursing facilities or nursing facilities under sections 1819 or 1919, respectively, of the Social Security Act (42 U.S.C. 1395i-3; 1395r).

(B) USE OF FUNDS.—A grant awarded under subparagraph (A) shall be used for the purpose of designing and implementing complaint investigations systems that—

(i) promptly prioritize complaints in order to ensure a rapid response to the most serious and urgent complaints;

(ii) respond to complaints with optimum effectiveness and timeliness; and

(iii) optimize the collaboration between local authorities, consumers, and providers, including—

(I) such State agency;

(II) the State Long-Term Care Ombudsman;

(III) local law enforcement agencies;

(IV) advocacy and consumer organizations;

- (V) State aging units;
- (VI) Area Agencies on Aging; and
- (VII) other appropriate entities.

(C) AUTHORIZATION.—There are authorized to be appropriated to carry out this paragraph, for each of fiscal years 2011 through 2014, \$5,000,000.

(3) REPORTING OF CRIMES IN FEDERALLY FUNDED LONG-TERM CARE FACILITIES.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by section 6005, is amended by inserting after section 1150A the following new section:

“REPORTING TO LAW ENFORCEMENT OF CRIMES OCCURRING IN
FEDERALLY FUNDED LONG-TERM CARE FACILITIES

“SEC. 1150B. (a) DETERMINATION AND NOTIFICATION.—

“(1) DETERMINATION.—The owner or operator of each long-term care facility that receives Federal funds under this Act shall annually determine whether the facility received at least \$10,000 in such Federal funds during the preceding year.

“(2) NOTIFICATION.—If the owner or operator determines under paragraph (1) that the facility received at least \$10,000 in such Federal funds during the preceding year, such owner or operator shall annually notify each covered individual (as defined in paragraph (3)) of that individual’s obligation to comply with the reporting requirements described in subsection (b).

“(3) COVERED INDIVIDUAL DEFINED.—In this section, the term ‘covered individual’ means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that is the subject of a determination described in paragraph (1).

“(b) REPORTING REQUIREMENTS.—

“(1) IN GENERAL.—Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

“(2) TIMING.—If the events that cause the suspicion—

“(A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and

“(B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

“(c) PENALTIES.—

“(1) IN GENERAL.—If a covered individual violates subsection (b)—

“(A) the covered individual shall be subject to a civil money penalty of not more than \$200,000; and

“(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

“(2) INCREASED HARM.—If a covered individual violates subsection (b) and the violation exacerbates the harm to the victim of the crime or results in harm to another individual—

42 USC
1320b-25.

“(A) the covered individual shall be subject to a civil money penalty of not more than \$300,000; and

“(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

“(3) EXCLUDED INDIVIDUAL.—During any period for which a covered individual is classified as an excluded individual under paragraph (1)(B) or (2)(B), a long-term care facility that employs such individual shall be ineligible to receive Federal funds under this Act.

“(4) EXTENUATING CIRCUMSTANCES.—

“(A) IN GENERAL.—The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this subsection.

“(B) UNDERSERVED POPULATION DEFINED.—In this paragraph, the term ‘underserved population’ means the population of an area designated by the Secretary as an area with a shortage of elder justice programs or a population group designated by the Secretary as having a shortage of such programs. Such areas or groups designated by the Secretary may include—

“(i) areas or groups that are geographically isolated (such as isolated in a rural area);

“(ii) racial and ethnic minority populations; and

“(iii) populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

“(d) ADDITIONAL PENALTIES FOR RETALIATION.—

“(1) IN GENERAL.—A long-term care facility may not—

“(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or

“(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee,

for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

“(2) PENALTIES FOR RETALIATION.—If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility shall be subject to a civil money penalty of not more than \$200,000 or the Secretary may classify the entity as an excluded entity for a period of 2 years pursuant to section 1128(b), or both.

“(3) REQUIREMENT TO POST NOTICE.—Each long-term care facility shall post conspicuously in an appropriate location a sign (in a form specified by the Secretary) specifying the rights of employees under this section. Such sign shall include a statement that an employee may file a complaint with the Secretary against a long-term care facility that violates the provisions of this subsection and information with respect to the manner of filing such a complaint.

Applicability.

“(e) PROCEDURE.—The provisions of section 1128A (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under this section in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

“(f) DEFINITIONS.—In this section, the terms ‘elder justice’, ‘long-term care facility’, and ‘law enforcement’ have the meanings given those terms in section 2011.”.

(c) NATIONAL NURSE AIDE REGISTRY.—

(1) DEFINITION OF NURSE AIDE.—In this subsection, the term “nurse aide” has the meaning given that term in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Social Security Act (42 U.S.C. 1395i-3(b)(5)(F); 1396r(b)(5)(F)).

(2) STUDY AND REPORT.—

(A) IN GENERAL.—The Secretary, in consultation with appropriate government agencies and private sector organizations, shall conduct a study on establishing a national nurse aide registry.

(B) AREAS EVALUATED.—The study conducted under this subsection shall include an evaluation of—

- (i) who should be included in the registry;
- (ii) how such a registry would comply with Federal and State privacy laws and regulations;
- (iii) how data would be collected for the registry;
- (iv) what entities and individuals would have access to the data collected;
- (v) how the registry would provide appropriate information regarding violations of Federal and State law by individuals included in the registry;
- (vi) how the functions of a national nurse aide registry would be coordinated with the nationwide program for national and State background checks on direct patient access employees of long-term care facilities and providers under section 4301; and
- (vii) how the information included in State nurse aide registries developed and maintained under sections 1819(e)(2) and 1919(e)(2) of the Social Security Act (42 U.S.C. 1395i-3(e)(2); 1396r(e)(2)(2)) would be provided as part of a national nurse aide registry.

(C) CONSIDERATIONS.—In conducting the study and preparing the report required under this subsection, the Secretary shall take into consideration the findings and conclusions of relevant reports and other relevant resources, including the following:

- (i) The Department of Health and Human Services Office of Inspector General Report, Nurse Aide Registries: State Compliance and Practices (February 2005).
- (ii) The General Accounting Office (now known as the Government Accountability Office) Report, Nursing Homes: More Can Be Done to Protect Residents from Abuse (March 2002).
- (iii) The Department of Health and Human Services Office of the Inspector General Report, Nurse Aide Registries: Long-Term Care Facility Compliance and Practices (July 2005).

(iv) The Department of Health and Human Services Health Resources and Services Administration Report, Nursing Aides, Home Health Aides, and Related Health Care Occupations—National and Local Workforce Shortages and Associated Data Needs (2004) (in particular with respect to chapter 7 and appendix F).

(v) The 2001 Report to CMS from the School of Rural Public Health, Texas A&M University, Preventing Abuse and Neglect in Nursing Homes: The Role of Nurse Aide Registries.

(vi) Information included in State nurse aide registries developed and maintained under sections 1819(e)(2) and 1919(e)(2) of the Social Security Act (42 U.S.C. 1395i–3(e)(2); 1396r(e)(2)(2)).

(D) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Elder Justice Coordinating Council established under section 2021 of the Social Security Act, as added by section 1805(a), the Committee on Finance of the Senate, and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the findings and recommendations of the study conducted under this paragraph.

(E) FUNDING LIMITATION.—Funding for the study conducted under this subsection shall not exceed \$500,000.

(3) CONGRESSIONAL ACTION.—After receiving the report submitted by the Secretary under paragraph (2)(D), the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives shall, as they deem appropriate, take action based on the recommendations contained in the report.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary for the purpose of carrying out this subsection.

(d) CONFORMING AMENDMENTS.—

(1) TITLE XX.—Title XX of the Social Security Act (42 U.S.C. 1397 et seq.), as amended by section 6703(a), is amended—

(A) in the heading of section 2001, by striking “TITLE” and inserting “SUBTITLE”; and 42 USC 1397.

(B) in subtitle 1, by striking “this title” each place it appears and inserting “this subtitle”. 42 USC 1397, 1397a, 1397c–1397e, 1397g.

(2) TITLE IV.—Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended—

(A) in section 404(d)— 42 USC 604.

(i) in paragraphs (1)(A), (2)(A), and (3)(B), by inserting “subtitle 1 of” before “title XX” each place it appears;

(ii) in the heading of paragraph (2), by inserting “SUBTITLE 1 OF” before “TITLE XX”; and

(iii) in the heading of paragraph (3)(B), by inserting “SUBTITLE 1 OF” before “TITLE XX”; and

(B) in sections 422(b), 471(a)(4), 472(h)(1), and 473(b)(2), by inserting “subtitle 1 of” before “title XX” each place it appears. 42 USC 622, 671–673.

(3) TITLE XI.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended—

42 USC 1320a–7.

(A) in section 1128(h)(3)—

(i) by inserting “subtitle 1 of” before “title XX”; and

(ii) by striking “such title” and inserting “such subtitle”; and

42 USC
1320a–7a.

(B) in section 1128A(i)(1), by inserting “subtitle 1 of” before “title XX”.

Subtitle I—Sense of the Senate Regarding Medical Malpractice

SEC. 6801. SENSE OF THE SENATE REGARDING MEDICAL MALPRACTICE.

It is the sense of the Senate that—

(1) health care reform presents an opportunity to address issues related to medical malpractice and medical liability insurance;

(2) States should be encouraged to develop and test alternatives to the existing civil litigation system as a way of improving patient safety, reducing medical errors, encouraging the efficient resolution of disputes, increasing the availability of prompt and fair resolution of disputes, and improving access to liability insurance, while preserving an individual’s right to seek redress in court; and

(3) Congress should consider establishing a State demonstration program to evaluate alternatives to the existing civil litigation system with respect to the resolution of medical malpractice claims.

TITLE VII—IMPROVING ACCESS TO INNOVATIVE MEDICAL THERAPIES

Subtitle A—Biologics Price Competition and Innovation

Biologics Price
Competition and
Innovation Act of
2009.

42 USC 201 note.

SEC. 7001. SHORT TITLE.

(a) IN GENERAL.—This subtitle may be cited as the “Biologics Price Competition and Innovation Act of 2009”.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that a biosimilars pathway balancing innovation and consumer interests should be established.

SEC. 7002. APPROVAL PATHWAY FOR BIOSIMILAR BIOLOGICAL PRODUCTS.

(a) LICENSURE OF BIOLOGICAL PRODUCTS AS BIOSIMILAR OR INTERCHANGEABLE.—Section 351 of the Public Health Service Act (42 U.S.C. 262) is amended—

(1) in subsection (a)(1)(A), by inserting “under this subsection or subsection (k)” after “biologics license”; and

(2) by adding at the end the following:

“(k) LICENSURE OF BIOLOGICAL PRODUCTS AS BIOSIMILAR OR INTERCHANGEABLE.—

“(1) IN GENERAL.—Any person may submit an application for licensure of a biological product under this subsection.

“(2) CONTENT.—

“(A) IN GENERAL.—

“(i) REQUIRED INFORMATION.—An application submitted under this subsection shall include information demonstrating that—

“(I) the biological product is biosimilar to a reference product based upon data derived from—

“(aa) analytical studies that demonstrate that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components;

“(bb) animal studies (including the assessment of toxicity); and

“(cc) a clinical study or studies (including the assessment of immunogenicity and pharmacokinetics or pharmacodynamics) that are sufficient to demonstrate safety, purity, and potency in 1 or more appropriate conditions of use for which the reference product is licensed and intended to be used and for which licensure is sought for the biological product;

“(II) the biological product and reference product utilize the same mechanism or mechanisms of action for the condition or conditions of use prescribed, recommended, or suggested in the proposed labeling, but only to the extent the mechanism or mechanisms of action are known for the reference product;

“(III) the condition or conditions of use prescribed, recommended, or suggested in the labeling proposed for the biological product have been previously approved for the reference product;

“(IV) the route of administration, the dosage form, and the strength of the biological product are the same as those of the reference product; and

“(V) the facility in which the biological product is manufactured, processed, packed, or held meets standards designed to assure that the biological product continues to be safe, pure, and potent.

“(ii) DETERMINATION BY SECRETARY.—The Secretary may determine, in the Secretary’s discretion, that an element described in clause (i)(I) is unnecessary in an application submitted under this subsection.

“(iii) ADDITIONAL INFORMATION.—An application submitted under this subsection—

“(I) shall include publicly-available information regarding the Secretary’s previous determination that the reference product is safe, pure, and potent; and

Public
information.

“(II) may include any additional information in support of the application, including publicly-available information with respect to the reference product or another biological product.

“(B) INTERCHANGEABILITY.—An application (or a supplement to an application) submitted under this subsection may include information demonstrating that the biological product meets the standards described in paragraph (4).

“(3) EVALUATION BY SECRETARY.—Upon review of an application (or a supplement to an application) submitted under this subsection, the Secretary shall license the biological product under this subsection if—

Determination.

“(A) the Secretary determines that the information submitted in the application (or the supplement) is sufficient to show that the biological product—

“(i) is biosimilar to the reference product; or

“(ii) meets the standards described in paragraph (4), and therefore is interchangeable with the reference product; and

“(B) the applicant (or other appropriate person) consents to the inspection of the facility that is the subject of the application, in accordance with subsection (c).

“(4) SAFETY STANDARDS FOR DETERMINING INTERCHANGEABILITY.—Upon review of an application submitted under this subsection or any supplement to such application, the Secretary shall determine the biological product to be interchangeable with the reference product if the Secretary determines that the information submitted in the application (or a supplement to such application) is sufficient to show that—

“(A) the biological product—

“(i) is biosimilar to the reference product; and

“(ii) can be expected to produce the same clinical result as the reference product in any given patient; and

“(B) for a biological product that is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch.

“(5) GENERAL RULES.—

“(A) ONE REFERENCE PRODUCT PER APPLICATION.—A biological product, in an application submitted under this subsection, may not be evaluated against more than 1 reference product.

“(B) REVIEW.—An application submitted under this subsection shall be reviewed by the division within the Food and Drug Administration that is responsible for the review and approval of the application under which the reference product is licensed.

Applicability.

“(C) RISK EVALUATION AND MITIGATION STRATEGIES.—The authority of the Secretary with respect to risk evaluation and mitigation strategies under the Federal Food, Drug, and Cosmetic Act shall apply to biological products licensed under this subsection in the same manner as

such authority applies to biological products licensed under subsection (a).

“(6) EXCLUSIVITY FOR FIRST INTERCHANGEABLE BIOLOGICAL PRODUCT.—Upon review of an application submitted under this subsection relying on the same reference product for which a prior biological product has received a determination of interchangeability for any condition of use, the Secretary shall not make a determination under paragraph (4) that the second or subsequent biological product is interchangeable for any condition of use until the earlier of—

“(A) 1 year after the first commercial marketing of the first interchangeable biosimilar biological product to be approved as interchangeable for that reference product;

“(B) 18 months after—

“(i) a final court decision on all patents in suit in an action instituted under subsection (1)(6) against the applicant that submitted the application for the first approved interchangeable biosimilar biological product; or

“(ii) the dismissal with or without prejudice of an action instituted under subsection (1)(6) against the applicant that submitted the application for the first approved interchangeable biosimilar biological product; or

“(C)(i) 42 months after approval of the first interchangeable biosimilar biological product if the applicant that submitted such application has been sued under subsection (1)(6) and such litigation is still ongoing within such 42-month period; or

“(ii) 18 months after approval of the first interchangeable biosimilar biological product if the applicant that submitted such application has not been sued under subsection (1)(6).

For purposes of this paragraph, the term ‘final court decision’ means a final decision of a court from which no appeal (other than a petition to the United States Supreme Court for a writ of certiorari) has been or can be taken.

Definition.

“(7) EXCLUSIVITY FOR REFERENCE PRODUCT.—

“(A) EFFECTIVE DATE OF BIOSIMILAR APPLICATION APPROVAL.—Approval of an application under this subsection may not be made effective by the Secretary until the date that is 12 years after the date on which the reference product was first licensed under subsection (a).

“(B) FILING PERIOD.—An application under this subsection may not be submitted to the Secretary until the date that is 4 years after the date on which the reference product was first licensed under subsection (a).

“(C) FIRST LICENSURE.—Subparagraphs (A) and (B) shall not apply to a license for or approval of—

“(i) a supplement for the biological product that is the reference product; or

“(ii) a subsequent application filed by the same sponsor or manufacturer of the biological product that is the reference product (or a licensor, predecessor in interest, or other related entity) for—

“(I) a change (not including a modification to the structure of the biological product) that results

in a new indication, route of administration, dosing schedule, dosage form, delivery system, delivery device, or strength; or

“(II) a modification to the structure of the biological product that does not result in a change in safety, purity, or potency.

“(8) GUIDANCE DOCUMENTS.—

“(A) IN GENERAL.—The Secretary may, after opportunity for public comment, issue guidance in accordance, except as provided in subparagraph (B)(i), with section 701(h) of the Federal Food, Drug, and Cosmetic Act with respect to the licensure of a biological product under this subsection. Any such guidance may be general or specific.

“(B) PUBLIC COMMENT.—

“(i) IN GENERAL.—The Secretary shall provide the public an opportunity to comment on any proposed guidance issued under subparagraph (A) before issuing final guidance.

“(ii) INPUT REGARDING MOST VALUABLE GUIDANCE.—The Secretary shall establish a process through which the public may provide the Secretary with input regarding priorities for issuing guidance.

“(C) NO REQUIREMENT FOR APPLICATION CONSIDERATION.—The issuance (or non-issuance) of guidance under subparagraph (A) shall not preclude the review of, or action on, an application submitted under this subsection.

“(D) REQUIREMENT FOR PRODUCT CLASS-SPECIFIC GUIDANCE.—If the Secretary issues product class-specific guidance under subparagraph (A), such guidance shall include a description of—

Criteria.

“(i) the criteria that the Secretary will use to determine whether a biological product is highly similar to a reference product in such product class; and

“(ii) the criteria, if available, that the Secretary will use to determine whether a biological product meets the standards described in paragraph (4).

“(E) CERTAIN PRODUCT CLASSES.—

“(i) GUIDANCE.—The Secretary may indicate in a guidance document that the science and experience, as of the date of such guidance, with respect to a product or product class (not including any recombinant protein) does not allow approval of an application for a license as provided under this subsection for such product or product class.

“(ii) MODIFICATION OR REVERSAL.—The Secretary may issue a subsequent guidance document under subparagraph (A) to modify or reverse a guidance document under clause (i).

“(iii) NO EFFECT ON ABILITY TO DENY LICENSE.—Clause (i) shall not be construed to require the Secretary to approve a product with respect to which the Secretary has not indicated in a guidance document that the science and experience, as described in clause (i), does not allow approval of such an application.

“(I) PATENTS.—

“(1) CONFIDENTIAL ACCESS TO SUBSECTION (k) APPLICATION.—

“(A) APPLICATION OF PARAGRAPH.—Unless otherwise agreed to by a person that submits an application under subsection (k) (referred to in this subsection as the ‘subsection (k) applicant’) and the sponsor of the application for the reference product (referred to in this subsection as the ‘reference product sponsor’), the provisions of this paragraph shall apply to the exchange of information described in this subsection.

“(B) IN GENERAL.—

“(i) PROVISION OF CONFIDENTIAL INFORMATION.—

When a subsection (k) applicant submits an application under subsection (k), such applicant shall provide to the persons described in clause (ii), subject to the terms of this paragraph, confidential access to the information required to be produced pursuant to paragraph (2) and any other information that the subsection (k) applicant determines, in its sole discretion, to be appropriate (referred to in this subsection as the ‘confidential information’).

“(ii) RECIPIENTS OF INFORMATION.—The persons described in this clause are the following:

“(I) OUTSIDE COUNSEL.—One or more attorneys designated by the reference product sponsor who are employees of an entity other than the reference product sponsor (referred to in this paragraph as the ‘outside counsel’), provided that such attorneys do not engage, formally or informally, in patent prosecution relevant or related to the reference product.

“(II) IN-HOUSE COUNSEL.—One attorney that represents the reference product sponsor who is an employee of the reference product sponsor, provided that such attorney does not engage, formally or informally, in patent prosecution relevant or related to the reference product.

“(iii) PATENT OWNER ACCESS.—A representative of the owner of a patent exclusively licensed to a reference product sponsor with respect to the reference product and who has retained a right to assert the patent or participate in litigation concerning the patent may be provided the confidential information, provided that the representative informs the reference product sponsor and the subsection (k) applicant of his or her agreement to be subject to the confidentiality provisions set forth in this paragraph, including those under clause (ii).

“(C) LIMITATION ON DISCLOSURE.—No person that receives confidential information pursuant to subparagraph (B) shall disclose any confidential information to any other person or entity, including the reference product sponsor employees, outside scientific consultants, or other outside counsel retained by the reference product sponsor, without the prior written consent of the subsection (k) applicant, which shall not be unreasonably withheld.

“(D) USE OF CONFIDENTIAL INFORMATION.—Confidential information shall be used for the sole and exclusive purpose of determining, with respect to each patent assigned to

or exclusively licensed by the reference product sponsor, whether a claim of patent infringement could reasonably be asserted if the subsection (k) applicant engaged in the manufacture, use, offering for sale, sale, or importation into the United States of the biological product that is the subject of the application under subsection (k).

“(E) OWNERSHIP OF CONFIDENTIAL INFORMATION.—The confidential information disclosed under this paragraph is, and shall remain, the property of the subsection (k) applicant. By providing the confidential information pursuant to this paragraph, the subsection (k) applicant does not provide the reference product sponsor or the outside counsel any interest in or license to use the confidential information, for purposes other than those specified in subparagraph (D).

“(F) EFFECT OF INFRINGEMENT ACTION.—In the event that the reference product sponsor files a patent infringement suit, the use of confidential information shall continue to be governed by the terms of this paragraph until such time as a court enters a protective order regarding the information. Upon entry of such order, the subsection (k) applicant may redesignate confidential information in accordance with the terms of that order. No confidential information shall be included in any publicly-available complaint or other pleading. In the event that the reference product sponsor does not file an infringement action by the date specified in paragraph (6), the reference product sponsor shall return or destroy all confidential information received under this paragraph, provided that if the reference product sponsor opts to destroy such information, it will confirm destruction in writing to the subsection (k) applicant.

“(G) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed—

“(i) as an admission by the subsection (k) applicant regarding the validity, enforceability, or infringement of any patent; or

“(ii) as an agreement or admission by the subsection (k) applicant with respect to the competency, relevance, or materiality of any confidential information.

“(H) EFFECT OF VIOLATION.—The disclosure of any confidential information in violation of this paragraph shall be deemed to cause the subsection (k) applicant to suffer irreparable harm for which there is no adequate legal remedy and the court shall consider immediate injunctive relief to be an appropriate and necessary remedy for any violation or threatened violation of this paragraph.

“(2) SUBSECTION (k) APPLICATION INFORMATION.—Not later than 20 days after the Secretary notifies the subsection (k) applicant that the application has been accepted for review, the subsection (k) applicant—

“(A) shall provide to the reference product sponsor a copy of the application submitted to the Secretary under subsection (k), and such other information that describes the process or processes used to manufacture the biological product that is the subject of such application; and

Deadline.
Notification.

“(B) may provide to the reference product sponsor additional information requested by or on behalf of the reference product sponsor.

“(3) LIST AND DESCRIPTION OF PATENTS.—

Deadlines.

“(A) LIST BY REFERENCE PRODUCT SPONSOR.—Not later than 60 days after the receipt of the application and information under paragraph (2), the reference product sponsor shall provide to the subsection (k) applicant—

“(i) a list of patents for which the reference product sponsor believes a claim of patent infringement could reasonably be asserted by the reference product sponsor, or by a patent owner that has granted an exclusive license to the reference product sponsor with respect to the reference product, if a person not licensed by the reference product sponsor engaged in the making, using, offering to sell, selling, or importing into the United States of the biological product that is the subject of the subsection (k) application; and

“(ii) an identification of the patents on such list that the reference product sponsor would be prepared to license to the subsection (k) applicant.

“(B) LIST AND DESCRIPTION BY SUBSECTION (k) APPLICANT.—Not later than 60 days after receipt of the list under subparagraph (A), the subsection (k) applicant—

“(i) may provide to the reference product sponsor a list of patents to which the subsection (k) applicant believes a claim of patent infringement could reasonably be asserted by the reference product sponsor if a person not licensed by the reference product sponsor engaged in the making, using, offering to sell, selling, or importing into the United States of the biological product that is the subject of the subsection (k) application;

“(ii) shall provide to the reference product sponsor, with respect to each patent listed by the reference product sponsor under subparagraph (A) or listed by the subsection (k) applicant under clause (i)—

“(I) a detailed statement that describes, on a claim by claim basis, the factual and legal basis of the opinion of the subsection (k) applicant that such patent is invalid, unenforceable, or will not be infringed by the commercial marketing of the biological product that is the subject of the subsection (k) application; or

“(II) a statement that the subsection (k) applicant does not intend to begin commercial marketing of the biological product before the date that such patent expires; and

“(iii) shall provide to the reference product sponsor a response regarding each patent identified by the reference product sponsor under subparagraph (A)(ii).

“(C) DESCRIPTION BY REFERENCE PRODUCT SPONSOR.—Not later than 60 days after receipt of the list and statement under subparagraph (B), the reference product sponsor shall provide to the subsection (k) applicant a detailed statement that describes, with respect to each patent described in subparagraph (B)(ii)(I), on a claim by

claim basis, the factual and legal basis of the opinion of the reference product sponsor that such patent will be infringed by the commercial marketing of the biological product that is the subject of the subsection (k) application and a response to the statement concerning validity and enforceability provided under subparagraph (B)(ii)(I).

“(4) PATENT RESOLUTION NEGOTIATIONS.—

“(A) IN GENERAL.—After receipt by the subsection (k) applicant of the statement under paragraph (3)(C), the reference product sponsor and the subsection (k) applicant shall engage in good faith negotiations to agree on which, if any, patents listed under paragraph (3) by the subsection (k) applicant or the reference product sponsor shall be the subject of an action for patent infringement under paragraph (6).

Time period.
Applicability.

“(B) FAILURE TO REACH AGREEMENT.—If, within 15 days of beginning negotiations under subparagraph (A), the subsection (k) applicant and the reference product sponsor fail to agree on a final and complete list of which, if any, patents listed under paragraph (3) by the subsection (k) applicant or the reference product sponsor shall be the subject of an action for patent infringement under paragraph (6), the provisions of paragraph (5) shall apply to the parties.

Notification.

“(5) PATENT RESOLUTION IF NO AGREEMENT.—

“(A) NUMBER OF PATENTS.—The subsection (k) applicant shall notify the reference product sponsor of the number of patents that such applicant will provide to the reference product sponsor under subparagraph (B)(i)(I).

Deadline.

“(B) EXCHANGE OF PATENT LISTS.—

“(i) IN GENERAL.—On a date agreed to by the subsection (k) applicant and the reference product sponsor, but in no case later than 5 days after the subsection (k) applicant notifies the reference product sponsor under subparagraph (A), the subsection (k) applicant and the reference product sponsor shall simultaneously exchange—

“(I) the list of patents that the subsection (k) applicant believes should be the subject of an action for patent infringement under paragraph (6); and

“(II) the list of patents, in accordance with clause (ii), that the reference product sponsor believes should be the subject of an action for patent infringement under paragraph (6).

“(ii) NUMBER OF PATENTS LISTED BY REFERENCE PRODUCT SPONSOR.—

“(I) IN GENERAL.—Subject to subclause (II), the number of patents listed by the reference product sponsor under clause (i)(II) may not exceed the number of patents listed by the subsection (k) applicant under clause (i)(I).

“(II) EXCEPTION.—If a subsection (k) applicant does not list any patent under clause (i)(I), the reference product sponsor may list 1 patent under clause (i)(II).

Deadlines.

“(6) IMMEDIATE PATENT INFRINGEMENT ACTION.—

“(A) ACTION IF AGREEMENT ON PATENT LIST.—If the subsection (k) applicant and the reference product sponsor agree on patents as described in paragraph (4), not later than 30 days after such agreement, the reference product sponsor shall bring an action for patent infringement with respect to each such patent.

“(B) ACTION IF NO AGREEMENT ON PATENT LIST.—If the provisions of paragraph (5) apply to the parties as described in paragraph (4)(B), not later than 30 days after the exchange of lists under paragraph (5)(B), the reference product sponsor shall bring an action for patent infringement with respect to each patent that is included on such lists.

“(C) NOTIFICATION AND PUBLICATION OF COMPLAINT.—

“(i) NOTIFICATION TO SECRETARY.—Not later than 30 days after a complaint is served to a subsection (k) applicant in an action for patent infringement described under this paragraph, the subsection (k) applicant shall provide the Secretary with notice and a copy of such complaint.

“(ii) PUBLICATION BY SECRETARY.—The Secretary shall publish in the Federal Register notice of a complaint received under clause (i).

Federal Register,
publication.
Notice.

“(7) NEWLY ISSUED OR LICENSED PATENTS.—In the case of a patent that—

“(A) is issued to, or exclusively licensed by, the reference product sponsor after the date that the reference product sponsor provided the list to the subsection (k) applicant under paragraph (3)(A); and

“(B) the reference product sponsor reasonably believes that, due to the issuance of such patent, a claim of patent infringement could reasonably be asserted by the reference product sponsor if a person not licensed by the reference product sponsor engaged in the making, using, offering to sell, selling, or importing into the United States of the biological product that is the subject of the subsection (k) application,

Deadlines.

not later than 30 days after such issuance or licensing, the reference product sponsor shall provide to the subsection (k) applicant a supplement to the list provided by the reference product sponsor under paragraph (3)(A) that includes such patent, not later than 30 days after such supplement is provided, the subsection (k) applicant shall provide a statement to the reference product sponsor in accordance with paragraph (3)(B), and such patent shall be subject to paragraph (8).

“(8) NOTICE OF COMMERCIAL MARKETING AND PRELIMINARY INJUNCTION.—

“(A) NOTICE OF COMMERCIAL MARKETING.—The subsection (k) applicant shall provide notice to the reference product sponsor not later than 180 days before the date of the first commercial marketing of the biological product licensed under subsection (k).

Deadline.

“(B) PRELIMINARY INJUNCTION.—After receiving the notice under subparagraph (A) and before such date of the first commercial marketing of such biological product, the reference product sponsor may seek a preliminary injunction prohibiting the subsection (k) applicant from

engaging in the commercial manufacture or sale of such biological product until the court decides the issue of patent validity, enforcement, and infringement with respect to any patent that is—

“(i) included in the list provided by the reference product sponsor under paragraph (3)(A) or in the list provided by the subsection (k) applicant under paragraph (3)(B); and

“(ii) not included, as applicable, on—

“(I) the list of patents described in paragraph (4); or

“(II) the lists of patents described in paragraph (5)(B).

“(C) REASONABLE COOPERATION.—If the reference product sponsor has sought a preliminary injunction under subparagraph (B), the reference product sponsor and the subsection (k) applicant shall reasonably cooperate to expedite such further discovery as is needed in connection with the preliminary injunction motion.

“(9) LIMITATION ON DECLARATORY JUDGMENT ACTION.—

“(A) SUBSECTION (k) APPLICATION PROVIDED.—If a subsection (k) applicant provides the application and information required under paragraph (2)(A), neither the reference product sponsor nor the subsection (k) applicant may, prior to the date notice is received under paragraph (8)(A), bring any action under section 2201 of title 28, United States Code, for a declaration of infringement, validity, or enforceability of any patent that is described in clauses (i) and (ii) of paragraph (8)(B).

“(B) SUBSEQUENT FAILURE TO ACT BY SUBSECTION (k) APPLICANT.—If a subsection (k) applicant fails to complete an action required of the subsection (k) applicant under paragraph (3)(B)(ii), paragraph (5), paragraph (6)(C)(i), paragraph (7), or paragraph (8)(A), the reference product sponsor, but not the subsection (k) applicant, may bring an action under section 2201 of title 28, United States Code, for a declaration of infringement, validity, or enforceability of any patent included in the list described in paragraph (3)(A), including as provided under paragraph (7).

“(C) SUBSECTION (k) APPLICATION NOT PROVIDED.—If a subsection (k) applicant fails to provide the application and information required under paragraph (2)(A), the reference product sponsor, but not the subsection (k) applicant, may bring an action under section 2201 of title 28, United States Code, for a declaration of infringement, validity, or enforceability of any patent that claims the biological product or a use of the biological product.”.

(b) DEFINITIONS.—Section 351(i) of the Public Health Service Act (42 U.S.C. 262(i)) is amended—

(1) by striking “In this section, the term ‘biological product’ means” and inserting the following: “In this section:

“(1) The term ‘biological product’ means”;

(2) in paragraph (1), as so designated, by inserting “protein (except any chemically synthesized polypeptide),” after “allergic product,”; and

(3) by adding at the end the following:

“(2) The term ‘biosimilar’ or ‘biosimilarity’, in reference to a biological product that is the subject of an application under subsection (k), means—

“(A) that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components; and

“(B) there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product.

“(3) The term ‘interchangeable’ or ‘interchangeability’, in reference to a biological product that is shown to meet the standards described in subsection (k)(4), means that the biological product may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product.

“(4) The term ‘reference product’ means the single biological product licensed under subsection (a) against which a biological product is evaluated in an application submitted under subsection (k).”.

(c) CONFORMING AMENDMENTS RELATING TO PATENTS.—

(1) PATENTS.—Section 271(e) of title 35, United States Code, is amended—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking “or” at the end;

(ii) in subparagraph (B), by adding “or” at the end; and

(iii) by inserting after subparagraph (B) the following:

“(C)(i) with respect to a patent that is identified in the list of patents described in section 351(l)(3) of the Public Health Service Act (including as provided under section 351(l)(7) of such Act), an application seeking approval of a biological product, or

“(ii) if the applicant for the application fails to provide the application and information required under section 351(l)(2)(A) of such Act, an application seeking approval of a biological product for a patent that could be identified pursuant to section 351(l)(3)(A)(i) of such Act,”; and

(iv) in the matter following subparagraph (C) (as added by clause (iii)), by striking “or veterinary biological product” and inserting “, veterinary biological product, or biological product”;

(B) in paragraph (4)—

(i) in subparagraph (B), by—

(I) striking “or veterinary biological product” and inserting “, veterinary biological product, or biological product”; and

(II) striking “and” at the end;

(ii) in subparagraph (C), by—

(I) striking “or veterinary biological product” and inserting “, veterinary biological product, or biological product”; and

(II) striking the period and inserting “, and”;

(iii) by inserting after subparagraph (C) the following:

Courts.

“(D) the court shall order a permanent injunction prohibiting any infringement of the patent by the biological product involved in the infringement until a date which is not earlier than the date of the expiration of the patent that has been infringed under paragraph (2)(C), provided the patent is the subject of a final court decision, as defined in section 351(k)(6) of the Public Health Service Act, in an action for infringement of the patent under section 351(l)(6) of such Act, and the biological product has not yet been approved because of section 351(k)(7) of such Act.”; and

(iv) in the matter following subparagraph (D) (as added by clause (iii)), by striking “and (C)” and inserting “(C), and (D)”;

(C) by adding at the end the following:

Applicability.

“(6)(A) Subparagraph (B) applies, in lieu of paragraph (4), in the case of a patent—

“(i) that is identified, as applicable, in the list of patents described in section 351(l)(4) of the Public Health Service Act or the lists of patents described in section 351(l)(5)(B) of such Act with respect to a biological product; and

“(ii) for which an action for infringement of the patent with respect to the biological product—

“(I) was brought after the expiration of the 30-day period described in subparagraph (A) or (B), as applicable, of section 351(l)(6) of such Act; or

“(II) was brought before the expiration of the 30-day period described in subclause (I), but which was dismissed without prejudice or was not prosecuted to judgment in good faith.

“(B) In an action for infringement of a patent described in subparagraph (A), the sole and exclusive remedy that may be granted by a court, upon a finding that the making, using, offering to sell, selling, or importation into the United States of the biological product that is the subject of the action infringed the patent, shall be a reasonable royalty.

“(C) The owner of a patent that should have been included in the list described in section 351(l)(3)(A) of the Public Health Service Act, including as provided under section 351(l)(7) of such Act for a biological product, but was not timely included in such list, may not bring an action under this section for infringement of the patent with respect to the biological product.”.

(2) CONFORMING AMENDMENT UNDER TITLE 28.—Section 2201(b) of title 28, United States Code, is amended by inserting before the period the following: “, or section 351 of the Public Health Service Act”.

(d) CONFORMING AMENDMENTS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.—

(1) CONTENT AND REVIEW OF APPLICATIONS.—Section 505(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(5)(B)) is amended by inserting before the period at the end of the first sentence the following: “or, with respect to an applicant for approval of a biological product under section 351(k) of the Public Health Service Act, any necessary clinical study or studies”.

(2) NEW ACTIVE INGREDIENT.—Section 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355c) is amended by adding at the end the following:

“(n) NEW ACTIVE INGREDIENT.—

“(1) NON-INTERCHANGEABLE BIOSIMILAR BIOLOGICAL PRODUCT.—A biological product that is biosimilar to a reference product under section 351 of the Public Health Service Act, and that the Secretary has not determined to meet the standards described in subsection (k)(4) of such section for interchangeability with the reference product, shall be considered to have a new active ingredient under this section.

“(2) INTERCHANGEABLE BIOSIMILAR BIOLOGICAL PRODUCT.—A biological product that is interchangeable with a reference product under section 351 of the Public Health Service Act shall not be considered to have a new active ingredient under this section.”.

(e) PRODUCTS PREVIOUSLY APPROVED UNDER SECTION 505.— 42 USC 262 note.

(1) REQUIREMENT TO FOLLOW SECTION 351.—Except as provided in paragraph (2), an application for a biological product shall be submitted under section 351 of the Public Health Service Act (42 U.S.C. 262) (as amended by this Act).

(2) EXCEPTION.—An application for a biological product may be submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) if—

(A) such biological product is in a product class for which a biological product in such product class is the subject of an application approved under such section 505 not later than the date of enactment of this Act; and

(B) such application—

(i) has been submitted to the Secretary of Health and Human Services (referred to in this subtitle as the “Secretary”) before the date of enactment of this Act; or

(ii) is submitted to the Secretary not later than the date that is 10 years after the date of enactment of this Act.

(3) LIMITATION.—Notwithstanding paragraph (2), an application for a biological product may not be submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) if there is another biological product approved under subsection (a) of section 351 of the Public Health Service Act that could be a reference product with respect to such application (within the meaning of such section 351) if such application were submitted under subsection (k) of such section 351.

(4) DEEMED APPROVED UNDER SECTION 351.—An approved application for a biological product under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be deemed to be a license for the biological product under such section 351 on the date that is 10 years after the date of enactment of this Act.

(5) DEFINITIONS.—For purposes of this subsection, the term “biological product” has the meaning given such term under section 351 of the Public Health Service Act (42 U.S.C. 262) (as amended by this Act).

(f) FOLLOW-ON BIOLOGICS USER FEES.—

(1) DEVELOPMENT OF USER FEES FOR BIOSIMILAR BIOLOGICAL PRODUCTS.—

(A) IN GENERAL.—Beginning not later than October 1, 2010, the Secretary shall develop recommendations to

Deadlines.

Effective date.

Deadline.
Recommendations.

Consultation.	<p>present to Congress with respect to the goals, and plans for meeting the goals, for the process for the review of biosimilar biological product applications submitted under section 351(k) of the Public Health Service Act (as added by this Act) for the first 5 fiscal years after fiscal year 2012. In developing such recommendations, the Secretary shall consult with—</p>
	<ul style="list-style-type: none"> (i) the Committee on Health, Education, Labor, and Pensions of the Senate; (ii) the Committee on Energy and Commerce of the House of Representatives; (iii) scientific and academic experts; (iv) health care professionals; (v) representatives of patient and consumer advocacy groups; and (vi) the regulated industry.
Federal Register, publication. Time period.	<p>(B) PUBLIC REVIEW OF RECOMMENDATIONS.—After negotiations with the regulated industry, the Secretary shall—</p> <ul style="list-style-type: none"> (i) present the recommendations developed under subparagraph (A) to the Congressional committees specified in such subparagraph; (ii) publish such recommendations in the Federal Register; (iii) provide for a period of 30 days for the public to provide written comments on such recommendations; (iv) hold a meeting at which the public may present its views on such recommendations; and (v) after consideration of such public views and comments, revise such recommendations as necessary.
Deadline.	<p>(C) TRANSMITTAL OF RECOMMENDATIONS.—Not later than January 15, 2012, the Secretary shall transmit to Congress the revised recommendations under subparagraph (B), a summary of the views and comments received under such subparagraph, and any changes made to the recommendations in response to such views and comments.</p>
Effective date.	<p>(2) ESTABLISHMENT OF USER FEE PROGRAM.—It is the sense of the Senate that, based on the recommendations transmitted to Congress by the Secretary pursuant to paragraph (1)(C), Congress should authorize a program, effective on October 1, 2012, for the collection of user fees relating to the submission of biosimilar biological product applications under section 351(k) of the Public Health Service Act (as added by this Act).</p>
	<p>(3) TRANSITIONAL PROVISIONS FOR USER FEES FOR BIOSIMILAR BIOLOGICAL PRODUCTS.—</p>
	<p>(A) APPLICATION OF THE PRESCRIPTION DRUG USER FEE PROVISIONS.—Section 735(1)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(1)(B)) is amended by striking “section 351” and inserting “subsection (a) or (k) of section 351”.</p>
42 USC 262 note. Time period.	<p>(B) EVALUATION OF COSTS OF REVIEWING BIOSIMILAR BIOLOGICAL PRODUCT APPLICATIONS.—During the period beginning on the date of enactment of this Act and ending on October 1, 2010, the Secretary shall collect and evaluate data regarding the costs of reviewing applications for biological products submitted under section 351(k) of the</p>

Public Health Service Act (as added by this Act) during such period.

(C) AUDIT.—

(i) IN GENERAL.—On the date that is 2 years after first receiving a user fee applicable to an application for a biological product under section 351(k) of the Public Health Service Act (as added by this Act), and on a biennial basis thereafter until October 1, 2013, the Secretary shall perform an audit of the costs of reviewing such applications under such section 351(k). Such an audit shall compare—

Time period.

(I) the costs of reviewing such applications under such section 351(k) to the amount of the user fee applicable to such applications; and

(II)(aa) such ratio determined under subclause (I); to

(bb) the ratio of the costs of reviewing applications for biological products under section 351(a) of such Act (as amended by this Act) to the amount of the user fee applicable to such applications under such section 351(a).

(ii) ALTERATION OF USER FEE.—If the audit performed under clause (i) indicates that the ratios compared under subclause (II) of such clause differ by more than 5 percent, then the Secretary shall alter the user fee applicable to applications submitted under such section 351(k) to more appropriately account for the costs of reviewing such applications.

(iii) ACCOUNTING STANDARDS.—The Secretary shall perform an audit under clause (i) in conformance with the accounting principles, standards, and requirements prescribed by the Comptroller General of the United States under section 3511 of title 31, United States Code, to ensure the validity of any potential variability.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal years 2010 through 2012.

(g) PEDIATRIC STUDIES OF BIOLOGICAL PRODUCTS.—

(1) IN GENERAL.—Section 351 of the Public Health Service Act (42 U.S.C. 262) is amended by adding at the end the following:

“(m) PEDIATRIC STUDIES.—

“(1) APPLICATION OF CERTAIN PROVISIONS.—The provisions of subsections (a), (d), (e), (f), (i), (j), (k), (l), (p), and (q) of section 505A of the Federal Food, Drug, and Cosmetic Act shall apply with respect to the extension of a period under paragraphs (2) and (3) to the same extent and in the same manner as such provisions apply with respect to the extension of a period under subsection (b) or (c) of section 505A of the Federal Food, Drug, and Cosmetic Act.

“(2) MARKET EXCLUSIVITY FOR NEW BIOLOGICAL PRODUCTS.—If, prior to approval of an application that is submitted under subsection (a), the Secretary determines that information relating to the use of a new biological product in the pediatric population may produce health benefits in that population, the Secretary makes a written request for pediatric studies

Determination.

(which shall include a timeframe for completing such studies), the applicant agrees to the request, such studies are completed using appropriate formulations for each age group for which the study is requested within any such timeframe, and the reports thereof are submitted and accepted in accordance with section 505A(d)(3) of the Federal Food, Drug, and Cosmetic Act—

“(A) the periods for such biological product referred to in subsection (k)(7) are deemed to be 4 years and 6 months rather than 4 years and 12 years and 6 months rather than 12 years; and

“(B) if the biological product is designated under section 526 for a rare disease or condition, the period for such biological product referred to in section 527(a) is deemed to be 7 years and 6 months rather than 7 years.

Determination.

“(3) MARKET EXCLUSIVITY FOR ALREADY-MARKETED BIOLOGICAL PRODUCTS.—If the Secretary determines that information relating to the use of a licensed biological product in the pediatric population may produce health benefits in that population and makes a written request to the holder of an approved application under subsection (a) for pediatric studies (which shall include a timeframe for completing such studies), the holder agrees to the request, such studies are completed using appropriate formulations for each age group for which the study is requested within any such timeframe, and the reports thereof are submitted and accepted in accordance with section 505A(d)(3) of the Federal Food, Drug, and Cosmetic Act—

“(A) the periods for such biological product referred to in subsection (k)(7) are deemed to be 4 years and 6 months rather than 4 years and 12 years and 6 months rather than 12 years; and

“(B) if the biological product is designated under section 526 for a rare disease or condition, the period for such biological product referred to in section 527(a) is deemed to be 7 years and 6 months rather than 7 years.

“(4) EXCEPTION.—The Secretary shall not extend a period referred to in paragraph (2)(A), (2)(B), (3)(A), or (3)(B) if the determination under section 505A(d)(3) is made later than 9 months prior to the expiration of such period.”

(2) STUDIES REGARDING PEDIATRIC RESEARCH.—

(A) PROGRAM FOR PEDIATRIC STUDY OF DRUGS.—Subsection (a)(1) of section 409I of the Public Health Service Act (42 U.S.C. 284m) is amended by inserting “, biological products,” after “including drugs”.

21 USC 355a.

(B) INSTITUTE OF MEDICINE STUDY.—Section 505A(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355b(p)) is amended by striking paragraphs (4) and (5) and inserting the following:

“(4) review and assess the number and importance of biological products for children that are being tested as a result of the amendments made by the Biologics Price Competition and Innovation Act of 2009 and the importance for children, health care providers, parents, and others of labeling changes made as a result of such testing;

“(5) review and assess the number, importance, and prioritization of any biological products that are not being tested for pediatric use; and

“(6) offer recommendations for ensuring pediatric testing of biological products, including consideration of any incentives, such as those provided under this section or section 351(m) of the Public Health Service Act.”.

(h) ORPHAN PRODUCTS.—If a reference product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262) (as amended by this Act) has been designated under section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb) for a rare disease or condition, a biological product seeking approval for such disease or condition under subsection (k) of such section 351 as biosimilar to, or interchangeable with, such reference product may be licensed by the Secretary only after the expiration for such reference product of the later of—

Time periods.
42 USC 262 note.

(1) the 7-year period described in section 527(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc(a)); and

(2) the 12-year period described in subsection (k)(7) of such section 351.

SEC. 7003. SAVINGS.

42 USC 262 note.

(a) DETERMINATION.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall for each fiscal year determine the amount of savings to the Federal Government as a result of the enactment of this subtitle.

(b) USE.—Notwithstanding any other provision of this subtitle (or an amendment made by this subtitle), the savings to the Federal Government generated as a result of the enactment of this subtitle shall be used for deficit reduction.

Subtitle B—More Affordable Medicines for Children and Underserved Communities

SEC. 7101. EXPANDED PARTICIPATION IN 340B PROGRAM.

(a) EXPANSION OF COVERED ENTITIES RECEIVING DISCOUNTED PRICES.—Section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)) is amended by adding at the end the following:

“(M) A children’s hospital excluded from the Medicare prospective payment system pursuant to section 1886(d)(1)(B)(iii) of the Social Security Act, or a free-standing cancer hospital excluded from the Medicare prospective payment system pursuant to section 1886(d)(1)(B)(v) of the Social Security Act, that would meet the requirements of subparagraph (L), including the disproportionate share adjustment percentage requirement under clause (ii) of such subparagraph, if the hospital were a subsection (d) hospital as defined by section 1886(d)(1)(B) of the Social Security Act.

“(N) An entity that is a critical access hospital (as determined under section 1820(c)(2) of the Social Security Act), and that meets the requirements of subparagraph (L)(i).

“(O) An entity that is a rural referral center, as defined by section 1886(d)(5)(C)(i) of the Social Security Act, or

a sole community hospital, as defined by section 1886(d)(5)(C)(iii) of such Act, and that both meets the requirements of subparagraph (L)(i) and has a disproportionate share adjustment percentage equal to or greater than 8 percent.”.

(b) EXTENSION OF DISCOUNT TO INPATIENT DRUGS.—Section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended—

(1) in paragraphs (2), (5), (7), and (9) of subsection (a), by striking “outpatient” each place it appears; and

(2) in subsection (b)—

(A) by striking “OTHER DEFINITION” and all that follows through “In this section” and inserting the following: “OTHER DEFINITIONS.—

“(1) IN GENERAL.—In this section”; and

(B) by adding at the end the following new paragraph:

“(2) COVERED DRUG.—In this section, the term ‘covered drug’—

“(A) means a covered outpatient drug (as defined in section 1927(k)(2) of the Social Security Act); and

“(B) includes, notwithstanding paragraph (3)(A) of section 1927(k) of such Act, a drug used in connection with an inpatient or outpatient service provided by a hospital described in subparagraph (L), (M), (N), or (O) of subsection (a)(4) that is enrolled to participate in the drug discount program under this section.”.

(c) PROHIBITION ON GROUP PURCHASING ARRANGEMENTS.—Section 340B(a) of the Public Health Service Act (42 U.S.C. 256b(a)) is amended—

(1) in paragraph (4)(L)—

(A) in clause (i), by adding “and” at the end;

(B) in clause (ii), by striking “; and” and inserting a period; and

(C) by striking clause (iii); and

(2) in paragraph (5), as amended by subsection (b)—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E); respectively; and

(B) by inserting after subparagraph (B), the following:

“(C) PROHIBITION ON GROUP PURCHASING ARRANGEMENTS.—

“(i) IN GENERAL.—A hospital described in subparagraph (L), (M), (N), or (O) of paragraph (4) shall not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement, except as permitted or provided for pursuant to clauses (ii) or (iii).

“(ii) INPATIENT DRUGS.—Clause (i) shall not apply to drugs purchased for inpatient use.

“(iii) EXCEPTIONS.—The Secretary shall establish reasonable exceptions to clause (i)—

“(I) with respect to a covered outpatient drug that is unavailable to be purchased through the program under this section due to a drug shortage problem, manufacturer noncompliance, or any other circumstance beyond the hospital’s control;

“(II) to facilitate generic substitution when a generic covered outpatient drug is available at a lower price; or

“(III) to reduce in other ways the administrative burdens of managing both inventories of drugs subject to this section and inventories of drugs that are not subject to this section, so long as the exceptions do not create a duplicate discount problem in violation of subparagraph (A) or a diversion problem in violation of subparagraph (B).

“(iv) PURCHASING ARRANGEMENTS FOR INPATIENT DRUGS.—The Secretary shall ensure that a hospital described in subparagraph (L), (M), (N), or (O) of subsection (a)(4) that is enrolled to participate in the drug discount program under this section shall have multiple options for purchasing covered drugs for inpatients, including by utilizing a group purchasing organization or other group purchasing arrangement, establishing and utilizing its own group purchasing program, purchasing directly from a manufacturer, and any other purchasing arrangements that the Secretary determines is appropriate to ensure access to drug discount pricing under this section for inpatient drugs taking into account the particular needs of small and rural hospitals.”.

(d) MEDICAID CREDITS ON INPATIENT DRUGS.—Section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended by striking subsection (c) and inserting the following:

“(c) MEDICAID CREDIT.—Not later than 90 days after the date of filing of the hospital’s most recently filed Medicare cost report, the hospital shall issue a credit as determined by the Secretary to the State Medicaid program for inpatient covered drugs provided to Medicaid recipients.”.

Deadline.
Determination.

(e) EFFECTIVE DATES.—

42 USC 256b.

(1) IN GENERAL.—The amendments made by this section and section 7102 shall take effect on January 1, 2010, and shall apply to drugs purchased on or after January 1, 2010.

(2) EFFECTIVENESS.—The amendments made by this section and section 7102 shall be effective and shall be taken into account in determining whether a manufacturer is deemed to meet the requirements of section 340B(a) of the Public Health Service Act (42 U.S.C. 256b(a)), notwithstanding any other provision of law.

SEC. 7102. IMPROVEMENTS TO 340B PROGRAM INTEGRITY.

(a) INTEGRITY IMPROVEMENTS.—Subsection (d) of section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended to read as follows:

“(d) IMPROVEMENTS IN PROGRAM INTEGRITY.—

“(1) MANUFACTURER COMPLIANCE.—

“(A) IN GENERAL.—From amounts appropriated under paragraph (4), the Secretary shall provide for improvements in compliance by manufacturers with the requirements of this section in order to prevent overcharges and other violations of the discounted pricing requirements specified in this section.

“(B) IMPROVEMENTS.—The improvements described in subparagraph (A) shall include the following:

“(i) The development of a system to enable the Secretary to verify the accuracy of ceiling prices calculated by manufacturers under subsection (a)(1) and charged to covered entities, which shall include the following:

“(I) Developing and publishing through an appropriate policy or regulatory issuance, precisely defined standards and methodology for the calculation of ceiling prices under such subsection.

“(II) Comparing regularly the ceiling prices calculated by the Secretary with the quarterly pricing data that is reported by manufacturers to the Secretary.

“(III) Performing spot checks of sales transactions by covered entities.

“(IV) Inquiring into the cause of any pricing discrepancies that may be identified and either taking, or requiring manufacturers to take, such corrective action as is appropriate in response to such price discrepancies.

Procedures.

“(ii) The establishment of procedures for manufacturers to issue refunds to covered entities in the event that there is an overcharge by the manufacturers, including the following:

“(I) Providing the Secretary with an explanation of why and how the overcharge occurred, how the refunds will be calculated, and to whom the refunds will be issued.

“(II) Oversight by the Secretary to ensure that the refunds are issued accurately and within a reasonable period of time, both in routine instances of retroactive adjustment to relevant pricing data and exceptional circumstances such as erroneous or intentional overcharging for covered drugs.

“(iii) The provision of access through the Internet website of the Department of Health and Human Services to the applicable ceiling prices for covered drugs as calculated and verified by the Secretary in accordance with this section, in a manner (such as through the use of password protection) that limits such access to covered entities and adequately assures security and protection of privileged pricing data from unauthorized re-disclosure.

“(iv) The development of a mechanism by which—

“(I) rebates and other discounts provided by manufacturers to other purchasers subsequent to the sale of covered drugs to covered entities are reported to the Secretary; and

“(II) appropriate credits and refunds are issued to covered entities if such discounts or rebates have the effect of lowering the applicable ceiling price for the relevant quarter for the drugs involved.

“(v) Selective auditing of manufacturers and wholesalers to ensure the integrity of the drug discount program under this section.

“(vi) The imposition of sanctions in the form of civil monetary penalties, which—

“(I) shall be assessed according to standards established in regulations to be promulgated by the Secretary not later than 180 days after the date of enactment of the Patient Protection and Affordable Care Act;

“(II) shall not exceed \$5,000 for each instance of overcharging a covered entity that may have occurred; and

“(III) shall apply to any manufacturer with an agreement under this section that knowingly and intentionally charges a covered entity a price for purchase of a drug that exceeds the maximum applicable price under subsection (a)(1).

Applicability.

“(2) COVERED ENTITY COMPLIANCE.—

“(A) IN GENERAL.—From amounts appropriated under paragraph (4), the Secretary shall provide for improvements in compliance by covered entities with the requirements of this section in order to prevent diversion and violations of the duplicate discount provision and other requirements specified under subsection (a)(5).

“(B) IMPROVEMENTS.—The improvements described in subparagraph (A) shall include the following:

“(i) The development of procedures to enable and require covered entities to regularly update (at least annually) the information on the Internet website of the Department of Health and Human Services relating to this section.

Procedures.

“(ii) The development of a system for the Secretary to verify the accuracy of information regarding covered entities that is listed on the website described in clause (i).

“(iii) The development of more detailed guidance describing methodologies and options available to covered entities for billing covered drugs to State Medicaid agencies in a manner that avoids duplicate discounts pursuant to subsection (a)(5)(A).

Guidance.

“(iv) The establishment of a single, universal, and standardized identification system by which each covered entity site can be identified by manufacturers, distributors, covered entities, and the Secretary for purposes of facilitating the ordering, purchasing, and delivery of covered drugs under this section, including the processing of chargebacks for such drugs.

“(v) The imposition of sanctions, in appropriate cases as determined by the Secretary, additional to those to which covered entities are subject under subsection (a)(5)(E), through one or more of the following actions:

Sanctions.
Determination.

“(I) Where a covered entity knowingly and intentionally violates subsection (a)(5)(B), the covered entity shall be required to pay a monetary penalty to a manufacturer or manufacturers in the form of interest on sums for which the covered entity is found liable under subsection (a)(5)(E), such interest to be compounded monthly and equal

to the current short term interest rate as determined by the Federal Reserve for the time period for which the covered entity is liable.

“(II) Where the Secretary determines a violation of subsection (a)(5)(B) was systematic and egregious as well as knowing and intentional, removing the covered entity from the drug discount program under this section and disqualifying the entity from re-entry into such program for a reasonable period of time to be determined by the Secretary.

“(III) Referring matters to appropriate Federal authorities within the Food and Drug Administration, the Office of Inspector General of Department of Health and Human Services, or other Federal agencies for consideration of appropriate action under other Federal statutes, such as the Prescription Drug Marketing Act (21 U.S.C. 353).

“(3) ADMINISTRATIVE DISPUTE RESOLUTION PROCESS.—

Deadline.
Regulations.

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Patient Protection and Affordable Care Act, the Secretary shall promulgate regulations to establish and implement an administrative process for the resolution of claims by covered entities that they have been overcharged for drugs purchased under this section, and claims by manufacturers, after the conduct of audits as authorized by subsection (a)(5)(D), of violations of subsections (a)(5)(A) or (a)(5)(B), including appropriate procedures for the provision of remedies and enforcement of determinations made pursuant to such process through mechanisms and sanctions described in paragraphs (1)(B) and (2)(B).

“(B) DEADLINES AND PROCEDURES.—Regulations promulgated by the Secretary under subparagraph (A) shall—

“(i) designate or establish a decision-making official or decision-making body within the Department of Health and Human Services to be responsible for reviewing and finally resolving claims by covered entities that they have been charged prices for covered drugs in excess of the ceiling price described in subsection (a)(1), and claims by manufacturers that violations of subsection (a)(5)(A) or (a)(5)(B) have occurred;

“(ii) establish such deadlines and procedures as may be necessary to ensure that claims shall be resolved fairly, efficiently, and expeditiously;

“(iii) establish procedures by which a covered entity may discover and obtain such information and documents from manufacturers and third parties as may be relevant to demonstrate the merits of a claim that charges for a manufacturer’s product have exceeded the applicable ceiling price under this section, and may submit such documents and information to the administrative official or body responsible for adjudicating such claim;

Audits.

“(iv) require that a manufacturer conduct an audit of a covered entity pursuant to subsection (a)(5)(D)

as a prerequisite to initiating administrative dispute resolution proceedings against a covered entity;

“(v) permit the official or body designated under clause (i), at the request of a manufacturer or manufacturers, to consolidate claims brought by more than one manufacturer against the same covered entity where, in the judgment of such official or body, consolidation is appropriate and consistent with the goals of fairness and economy of resources; and

“(vi) include provisions and procedures to permit multiple covered entities to jointly assert claims of overcharges by the same manufacturer for the same drug or drugs in one administrative proceeding, and permit such claims to be asserted on behalf of covered entities by associations or organizations representing the interests of such covered entities and of which the covered entities are members.

“(C) FINALITY OF ADMINISTRATIVE RESOLUTION.—The administrative resolution of a claim or claims under the regulations promulgated under subparagraph (A) shall be a final agency decision and shall be binding upon the parties involved, unless invalidated by an order of a court of competent jurisdiction.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for fiscal year 2010 and each succeeding fiscal year.”.

(b) CONFORMING AMENDMENTS.—Section 340B(a) of the Public Health Service Act (42 U.S.C. 256b(a)) is amended—

(1) in subsection (a)(1), by adding at the end the following: “Each such agreement shall require that the manufacturer furnish the Secretary with reports, on a quarterly basis, of the price for each covered drug subject to the agreement that, according to the manufacturer, represents the maximum price that covered entities may permissibly be required to pay for the drug (referred to in this section as the ‘ceiling price’), and shall require that the manufacturer offer each covered entity covered drugs for purchase at or below the applicable ceiling price if such drug is made available to any other purchaser at any price.”; and

(2) in the first sentence of subsection (a)(5)(E), as redesignated by section 7101(c), by inserting “after audit as described in subparagraph (D) and” after “finds,”.

Contracts.
Reports.
Deadlines.

SEC. 7103. GAO STUDY TO MAKE RECOMMENDATIONS ON IMPROVING THE 340B PROGRAM.

(a) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that examines whether those individuals served by the covered entities under the program under section 340B of the Public Health Service Act (42 U.S.C. 256b) (referred to in this section as the “340B program”) are receiving optimal health care services.

(b) RECOMMENDATIONS.—The report under subsection (a) shall include recommendations on the following:

(1) Whether the 340B program should be expanded since it is anticipated that the 47,000,000 individuals who are uninsured as of the date of enactment of this Act will have health care coverage once this Act is implemented.

(2) Whether mandatory sales of certain products by the 340B program could hinder patients access to those therapies through any provider.

(3) Whether income from the 340B program is being used by the covered entities under the program to further the program objectives.

Community
Living Assistance
Services and
Supports Act.
42 USC 201 note.

TITLE VIII—CLASS ACT

SEC. 8001. SHORT TITLE OF TITLE.

This title may be cited as the “Community Living Assistance Services and Supports Act” or the “CLASS Act”.

SEC. 8002. ESTABLISHMENT OF NATIONAL VOLUNTARY INSURANCE PROGRAM FOR PURCHASING COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORT.

(a) ESTABLISHMENT OF CLASS PROGRAM.—

(1) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 4302(a), is amended by adding at the end the following:

“TITLE XXXII—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

42 USC 300*ll*.

“SEC. 3201. PURPOSE.

“The purpose of this title is to establish a national voluntary insurance program for purchasing community living assistance services and supports in order to—

“(1) provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports;

“(2) establish an infrastructure that will help address the Nation’s community living assistance services and supports needs;

“(3) alleviate burdens on family caregivers; and

“(4) address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.

42 USC 300*ll*–1.

“SEC. 3202. DEFINITIONS.

“In this title:

“(1) ACTIVE ENROLLEE.—The term ‘active enrollee’ means an individual who is enrolled in the CLASS program in accordance with section 3204 and who has paid any premiums due to maintain such enrollment.

“(2) ACTIVELY EMPLOYED.—The term ‘actively employed’ means an individual who—

“(A) is reporting for work at the individual’s usual place of employment or at another location to which the

individual is required to travel because of the individual's employment (or in the case of an individual who is a member of the uniformed services, is on active duty and is physically able to perform the duties of the individual's position); and

“(B) is able to perform all the usual and customary duties of the individual's employment on the individual's regular work schedule.

“(3) ACTIVITIES OF DAILY LIVING.—The term ‘activities of daily living’ means each of the following activities specified in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986:

“(A) Eating.

“(B) Toileting.

“(C) Transferring.

“(D) Bathing.

“(E) Dressing.

“(F) Continence.

“(4) CLASS PROGRAM.—The term ‘CLASS program’ means the program established under this title.

“(5) ELIGIBILITY ASSESSMENT SYSTEM.—The term ‘Eligibility Assessment System’ means the entity established by the Secretary under section 3205(a)(2) to make functional eligibility determinations for the CLASS program.

“(6) ELIGIBLE BENEFICIARY.—

“(A) IN GENERAL.—The term ‘eligible beneficiary’ means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

“(i) has paid premiums for enrollment in such program for at least 60 months;

“(ii) has earned, with respect to at least 3 calendar years that occur during the first 60 months for which the individual has paid premiums for enrollment in the program, at least an amount equal to the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213(d) of the Social Security Act for the year; and

“(iii) has paid premiums for enrollment in such program for at least 24 consecutive months, if a lapse in premium payments of more than 3 months has occurred during the period that begins on the date of the individual's enrollment and ends on the date of such determination.

“(B) DATE DESCRIBED.—For purposes of subparagraph (A), the date described in this subparagraph is the date on which the individual is determined to have a functional limitation described in section 3203(a)(1)(C) that is expected to last for a continuous period of more than 90 days.

“(C) REGULATIONS.—The Secretary shall promulgate regulations specifying exceptions to the minimum earnings requirements under subparagraph (A)(ii) for purposes of being considered an eligible beneficiary for certain populations.

“(7) HOSPITAL; NURSING FACILITY; INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; INSTITUTION FOR

MENTAL DISEASES.—The terms ‘hospital’, ‘nursing facility’, ‘intermediate care facility for the mentally retarded’, and ‘institution for mental diseases’ have the meanings given such terms for purposes of Medicaid.

“(8) CLASS INDEPENDENCE ADVISORY COUNCIL.—The term ‘CLASS Independence Advisory Council’ or ‘Council’ means the Advisory Council established under section 3207 to advise the Secretary.

“(9) CLASS INDEPENDENCE BENEFIT PLAN.—The term ‘CLASS Independence Benefit Plan’ means the benefit plan developed and designated by the Secretary in accordance with section 3203.

“(10) CLASS INDEPENDENCE FUND.—The term ‘CLASS Independence Fund’ or ‘Fund’ means the fund established under section 3206.

“(11) MEDICAID.—The term ‘Medicaid’ means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

“(12) POVERTY LINE.—The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

“(13) PROTECTION AND ADVOCACY SYSTEM.—The term ‘Protection and Advocacy System’ means the system for each State established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

42 USC 300ll–2. **“SEC. 3203. CLASS INDEPENDENCE BENEFIT PLAN.**

“(a) PROCESS FOR DEVELOPMENT.—

“(1) IN GENERAL.—The Secretary, in consultation with appropriate actuaries and other experts, shall develop at least 3 actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan under which eligible beneficiaries shall receive benefits under this title. Each of the plan alternatives developed shall be designed to provide eligible beneficiaries with the benefits described in section 3205 consistent with the following requirements:

“(A) PREMIUMS.—

“(i) IN GENERAL.—Beginning with the first year of the CLASS program, and for each year thereafter, subject to clauses (ii) and (iii), the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis of the 75-year costs of the program that ensures solvency throughout such 75-year period.

“(ii) NOMINAL PREMIUM FOR POOREST INDIVIDUALS AND FULL-TIME STUDENTS.—

“(I) IN GENERAL.—The monthly premium for enrollment in the CLASS program shall not exceed the applicable dollar amount per month determined under subclause (II) for—

“(aa) any individual whose income does not exceed the poverty line; and

“(bb) any individual who has not attained age 22, and is actively employed during any

period in which the individual is a full-time student (as determined by the Secretary).

“(II) APPLICABLE DOLLAR AMOUNT.—The applicable dollar amount described in this subclause is the amount equal to \$5, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for each year occurring after 2009 and before such year.

“(iii) CLASS INDEPENDENCE FUND RESERVES.—At such time as the CLASS program has been in operation for 10 years, the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis that accumulated reserves in the CLASS Independence Fund would not decrease in that year. At such time as the Secretary determines the CLASS program demonstrates a sustained ability to finance expected yearly expenses with expected yearly premiums and interest credited to the CLASS Independence Fund, the Secretary may decrease the required amount of CLASS Independence Fund reserves.

Determination.

“(B) VESTING PERIOD.—A 5-year vesting period for eligibility for benefits.

“(C) BENEFIT TRIGGERS.—A benefit trigger for provision of benefits that requires a determination that an individual has a functional limitation, as certified by a licensed health care practitioner, described in any of the following clauses that is expected to last for a continuous period of more than 90 days:

“(i) The individual is determined to be unable to perform at least the minimum number (which may be 2 or 3) of activities of daily living as are required under the plan for the provision of benefits without substantial assistance (as defined by the Secretary) from another individual.

“(ii) The individual requires substantial supervision to protect the individual from threats to health and safety due to substantial cognitive impairment.

“(iii) The individual has a level of functional limitation similar (as determined under regulations prescribed by the Secretary) to the level of functional limitation described in clause (i) or (ii).

Regulations.

“(D) CASH BENEFIT.—Payment of a cash benefit that satisfies the following requirements:

“(i) MINIMUM REQUIRED AMOUNT.—The benefit amount provides an eligible beneficiary with not less than an average of \$50 per day (as determined based on the reasonably expected distribution of beneficiaries receiving benefits at various benefit levels).

“(ii) AMOUNT SCALED TO FUNCTIONAL ABILITY.—The benefit amount is varied based on a scale of functional ability, with not less than 2, and not more than 6, benefit level amounts.

“(iii) DAILY OR WEEKLY.—The benefit is paid on a daily or weekly basis.

“(iv) NO LIFETIME OR AGGREGATE LIMIT.—The benefit is not subject to any lifetime or aggregate limit.

“(E) COORDINATION WITH SUPPLEMENTAL COVERAGE OBTAINED THROUGH THE EXCHANGE.—The benefits allow for coordination with any supplemental coverage purchased through an Exchange established under section 1311 of the Patient Protection and Affordable Care Act.

“(2) REVIEW AND RECOMMENDATION BY THE CLASS INDEPENDENCE ADVISORY COUNCIL.—The CLASS Independence Advisory Council shall—

“(A) evaluate the alternative benefit plans developed under paragraph (1); and

“(B) recommend for designation as the CLASS Independence Benefit Plan for offering to the public the plan that the Council determines best balances price and benefits to meet enrollees’ needs in an actuarially sound manner, while optimizing the probability of the long-term sustainability of the CLASS program.

Deadline.

“(3) DESIGNATION BY THE SECRETARY.—Not later than October 1, 2012, the Secretary, taking into consideration the recommendation of the CLASS Independence Advisory Council under paragraph (2)(B), shall designate a benefit plan as the CLASS Independence Benefit Plan. The Secretary shall publish such designation, along with details of the plan and the reasons for the selection by the Secretary, in a final rule that allows for a period of public comment.

Publication.
Regulations.
Public
information.

“(b) ADDITIONAL PREMIUM REQUIREMENTS.—

“(1) ADJUSTMENT OF PREMIUMS.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), (D), and (E), the amount of the monthly premium determined for an individual upon such individual’s enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.

“(B) RECALCULATED PREMIUM IF REQUIRED FOR PROGRAM SOLVENCY.—

Determination.

“(i) IN GENERAL.—Subject to clause (ii), if the Secretary determines, based on the most recent report of the Board of Trustees of the CLASS Independence Fund, the advice of the CLASS Independence Advisory Council, and the annual report of the Inspector General of the Department of Health and Human Services, and waste, fraud, and abuse, or such other information as the Secretary determines appropriate, that the monthly premiums and income to the CLASS Independence Fund for a year are projected to be insufficient with respect to the 20-year period that begins with that year, the Secretary shall adjust the monthly premiums for individuals enrolled in the CLASS program as necessary (but maintaining a nominal premium for enrollees whose income is below the poverty line or who are full-time students actively employed).

“(ii) EXEMPTION FROM INCREASE.—Any increase in a monthly premium imposed as result of a determination described in clause (i) shall not apply with respect to the monthly premium of any active enrollee who—

“(I) has attained age 65;

“(II) has paid premiums for enrollment in the program for at least 20 years; and

“(III) is not actively employed.

“(C) RECALCULATED PREMIUM IF REENROLLMENT AFTER MORE THAN A 3-MONTH LAPSE.—

“(i) IN GENERAL.—The reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for enrollment in the program.

“(ii) CREDIT FOR PRIOR MONTHS IF REENROLLED WITHIN 5 YEARS.—An individual who reenrolls in the CLASS program after such a 90-day period and before the end of the 5-year period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the program shall be—

“(I) credited with any months of paid premiums that accrued prior to the individual’s lapse in enrollment; and

“(II) notwithstanding the total amount of any such credited months, required to satisfy section 3202(6)(A)(ii) before being eligible to receive benefits.

“(D) NO LONGER STATUS AS A FULL-TIME STUDENT.—An individual subject to a nominal premium on the basis of being described in subsection (a)(1)(A)(ii)(I)(bb) who ceases to be described in that subsection, beginning with the first month following the month in which the individual ceases to be so described, shall be subject to the same monthly premium as the monthly premium that applies to an individual of the same age who first enrolls in the program under the most similar circumstances as the individual (such as the first year of eligibility for enrollment in the program or in a subsequent year).

“(E) PENALTY FOR REENROLLMENT AFTER 5-YEAR LAPSE.—In the case of an individual who reenrolls in the CLASS program after the end of the 5-year period described in subparagraph (C)(ii), the monthly premium required for the individual shall be the age-adjusted premium that would be applicable to an initially enrolling individual who is the same age as the reenrolling individual, increased by the greater of—

“(i) an amount that the Secretary determines is actuarially sound for each month that occurs during the period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program and ends with the month preceding the month in which the reenrollment is effective; or

“(ii) 1 percent of the applicable age-adjusted premium for each such month occurring in such period.

“(2) ADMINISTRATIVE EXPENSES.—In determining the monthly premiums for the CLASS program the Secretary may

factor in costs for administering the program, not to exceed for any year in which the program is in effect under this title, an amount equal to 3 percent of all premiums paid during the year.

“(3) NO UNDERWRITING REQUIREMENTS.—No underwriting (other than on the basis of age in accordance with subparagraphs (D) and (E) of paragraph (1)) shall be used to—

“(A) determine the monthly premium for enrollment in the CLASS program; or

“(B) prevent an individual from enrolling in the program.

Procedures.

“(c) SELF-ATTESTATION AND VERIFICATION OF INCOME.—The Secretary shall establish procedures to—

“(1) permit an individual who is eligible for the nominal premium required under subsection (a)(1)(A)(ii), as part of their automatic enrollment in the CLASS program, to self-attest that their income does not exceed the poverty line or that their status as a full-time student who is actively employed;

“(2) verify, using procedures similar to the procedures used by the Commissioner of Social Security under section 1631(e)(1)(B)(ii) of the Social Security Act and consistent with the requirements applicable to the conveyance of data and information under section 1942 of such Act, the validity of such self-attestation; and

“(3) require an individual to confirm, on at least an annual basis, that their income does not exceed the poverty line or that they continue to maintain such status.

42 USC 30011-3.

“SEC. 3204. ENROLLMENT AND DISENROLLMENT REQUIREMENTS.

Procedures.

“(a) AUTOMATIC ENROLLMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which each individual described in subsection (c) may be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986.

“(2) ALTERNATIVE ENROLLMENT PROCEDURES.—The procedures established under paragraph (1) shall provide for an alternative enrollment process for an individual described in subsection (c) in the case of such an individual—

“(A) who is self-employed;

“(B) who has more than 1 employer; or

“(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary.

“(3) ADMINISTRATION.—

Regulations.

“(A) IN GENERAL.—The Secretary and the Secretary of the Treasury shall, by regulation, establish procedures to ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer.

“(B) FORM.—Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

“(b) ELECTION TO OPT-OUT.—An individual described in subsection (c) may elect to waive enrollment in the CLASS program

at any time in such form and manner as the Secretary and the Secretary of the Treasury shall prescribe.

“(c) INDIVIDUAL DESCRIBED.—For purposes of enrolling in the CLASS program, an individual described in this paragraph is an individual—

“(1) who has attained age 18;

“(2) who—

“(A) receives wages on which there is imposed a tax under section 3201(a) of the Internal Revenue Code of 1986; or

“(B) derives self-employment income on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986;

“(3) who is actively employed; and

“(4) who is not—

“(A) a patient in a hospital or nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases and receiving medical assistance under Medicaid; or

“(B) confined in a jail, prison, other penal institution or correctional facility, or by court order pursuant to conviction of a criminal offense or in connection with a verdict or finding described in section 202(x)(1)(A)(ii) of the Social Security Act (42 U.S.C. 402(x)(1)(A)(ii)).

“(d) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as requiring an active enrollee to continue to satisfy subparagraph (B) or (C) of subsection (c)(1) in order to maintain enrollment in the CLASS program.

“(e) PAYMENT.—

“(1) PAYROLL DEDUCTION.—An amount equal to the monthly premium for the enrollment in the CLASS program of an individual shall be deducted from the wages or self-employment income of such individual in accordance with such procedures as the Secretary, in coordination with the Secretary of the Treasury, shall establish for employers who elect to deduct and withhold such premiums on behalf of enrolled employees.

“(2) ALTERNATIVE PAYMENT MECHANISM.—The Secretary, in coordination with the Secretary of the Treasury, shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

“(A) who does not have an employer who elects to deduct and withhold premiums in accordance with subparagraph (A); or

“(B) who does not earn wages or derive self-employment income.

“(f) TRANSFER OF PREMIUMS COLLECTED.—

“(1) IN GENERAL.—During each calendar year the Secretary of the Treasury shall deposit into the CLASS Independence Fund a total amount equal, in the aggregate, to 100 percent of the premiums collected during that year.

“(2) TRANSFERS BASED ON ESTIMATES.—The amount deposited pursuant to paragraph (1) shall be transferred in at least monthly payments to the CLASS Independence Fund on the basis of estimates by the Secretary and certified to the Secretary of the Treasury of the amounts collected in accordance with subparagraphs (A) and (B) of paragraph (5). Proper adjustments shall be made in amounts subsequently transferred to

the Fund to the extent prior estimates were in excess of, or were less than, actual amounts collected.

Procedures.

“(g) OTHER ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.—The Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which—

“(1) an individual who, in the year of the individual’s initial eligibility to enroll in the CLASS program, has elected to waive enrollment in the program, is eligible to elect to enroll in the program, in such form and manner as the Secretaries shall establish, only during an open enrollment period established by the Secretaries that is specific to the individual and that may not occur more frequently than biennially after the date on which the individual first elected to waive enrollment in the program; and

“(2) an individual shall only be permitted to disenroll from the program (other than for nonpayment of premiums) during an annual disenrollment period established by the Secretaries and in such form and manner as the Secretaries shall establish.

42 USC 30011–4.

“SEC. 3205. BENEFITS.

“(a) DETERMINATION OF ELIGIBILITY.—

“(1) APPLICATION FOR RECEIPT OF BENEFITS.—The Secretary shall establish procedures under which an active enrollee shall apply for receipt of benefits under the CLASS Independence Benefit Plan.

“(2) ELIGIBILITY ASSESSMENTS.—

Deadline.
Contracts.

“(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall—

“(i) establish an Eligibility Assessment System (other than a service with which the Commissioner of Social Security has entered into an agreement, with respect to any State, to make disability determinations for purposes of title II or XVI of the Social Security Act) to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

“(ii) enter into an agreement with the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (d); and

“(iii) enter into an agreement with public and private entities to provide advice and assistance counseling in accordance with subsection (e).

“(B) REGULATIONS.—The Secretary shall promulgate regulations to develop an expedited nationally equitable eligibility determination process, as certified by a licensed health care practitioner, an appeals process, and a redetermination process, as certified by a licensed health care practitioner, including whether an active enrollee is eligible for a cash benefit under the program and if so, the amount of the cash benefit (in accordance the sliding scale established under the plan).

“(C) PRESUMPTIVE ELIGIBILITY FOR CERTAIN INSTITUTIONALIZED ENROLLEES PLANNING TO DISCHARGE.—An active enrollee shall be deemed presumptively eligible if the enrollee—

“(i) has applied for, and attests is eligible for, the maximum cash benefit available under the sliding

scale established under the CLASS Independence Benefit Plan;

“(ii) is a patient in a hospital (but only if the hospitalization is for long-term care), nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

“(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution, or within 60 days from the date of discharge from the hospital, facility, or institution.

Deadline.

“(D) APPEALS.—The Secretary shall establish procedures under which an applicant for benefits under the CLASS Independence Benefit Plan shall be guaranteed the right to appeal an adverse determination.

Procedures.

“(b) BENEFITS.—An eligible beneficiary shall receive the following benefits under the CLASS Independence Benefit Plan:

“(1) CASH BENEFIT.—A cash benefit established by the Secretary in accordance with the requirements of section 3203(a)(1)(D) that—

“(A) the first year in which beneficiaries receive the benefits under the plan, is not less than the average dollar amount specified in clause (i) of such section; and

“(B) for any subsequent year, is not less than the average per day dollar limit applicable under this subparagraph for the preceding year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over the previous year.

“(2) ADVOCACY SERVICES.—Advocacy services in accordance with subsection (d).

“(3) ADVICE AND ASSISTANCE COUNSELING.—Advice and assistance counseling in accordance with subsection (e).

“(4) ADMINISTRATIVE EXPENSES.—Advocacy services and advice and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3203(b)(3).

“(c) PAYMENT OF BENEFITS.—

“(1) LIFE INDEPENDENCE ACCOUNT.—

“(A) IN GENERAL.—The Secretary shall establish procedures for administering the provision of benefits to eligible beneficiaries under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary into a Life Independence Account established by the Secretary on behalf of each eligible beneficiary.

Procedures.

“(B) USE OF CASH BENEFITS.—Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the

right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

Procedures.

“(C) ELECTRONIC MANAGEMENT OF FUNDS.—The Secretary shall establish procedures for—

“(i) crediting an account established on behalf of a beneficiary with the beneficiary’s cash daily benefit;

“(ii) allowing the beneficiary to access such account through debit cards; and

“(iii) accounting for withdrawals by the beneficiary from such account.

“(D) PRIMARY PAYOR RULES FOR BENEFICIARIES WHO ARE ENROLLED IN MEDICAID.—In the case of an eligible beneficiary who is enrolled in Medicaid, the following payment rules shall apply:

“(i) INSTITUTIONALIZED BENEFICIARY.—If the beneficiary is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall retain an amount equal to 5 percent of the beneficiary’s daily or weekly cash benefit (as applicable) (which shall be in addition to the amount of the beneficiary’s personal needs allowance provided under Medicaid), and the remainder of such benefit shall be applied toward the facility’s cost of providing the beneficiary’s care, and Medicaid shall provide secondary coverage for such care.

“(ii) BENEFICIARIES RECEIVING HOME AND COMMUNITY-BASED SERVICES.—

“(I) 50 PERCENT OF BENEFIT RETAINED BY BENEFICIARY.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for home and community based services, the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

“(II) REQUIREMENT FOR STATE OFFSET.—A State shall be paid the remainder of a beneficiary’s daily or weekly cash benefit under subclause (I) only if the State home and community-based waiver under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n), or the State plan amendment under subsection (i) of such section does not include a waiver of the requirements of section 1902(a)(1) of the Social Security Act (relating to statewideness) or of section 1902(a)(10)(B) of such Act (relating to comparability) and the State offers at a minimum

case management services, personal care services, habilitation services, and respite care under such a waiver or State plan amendment.

“(III) DEFINITION OF HOME AND COMMUNITY-BASED SERVICES.—In this clause, the term ‘home and community-based services’ means any services which may be offered under a home and community-based waiver authorized for a State under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n) or under a State plan amendment under subsection (i) of such section.

“(iii) BENEFICIARIES ENROLLED IN PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE).—

“(I) IN GENERAL.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for PACE program services under section 1934 of the Social Security Act (42 U.S.C. 1396u-4), the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

“(II) INSTITUTIONALIZED RECIPIENTS OF PACE PROGRAM SERVICES.—If a beneficiary receiving assistance under Medicaid for PACE program services is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall be treated as in institutionalized beneficiary under clause (i).

“(2) AUTHORIZED REPRESENTATIVES.—

“(A) IN GENERAL.—The Secretary shall establish procedures to allow access to a beneficiary’s cash benefits by an authorized representative of the eligible beneficiary on whose behalf such benefits are paid.

Procedures.

“(B) QUALITY ASSURANCE AND PROTECTION AGAINST FRAUD AND ABUSE.—The procedures established under subparagraph (A) shall ensure that authorized representatives of eligible beneficiaries comply with standards of conduct established by the Secretary, including standards requiring that such representatives provide quality services on behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

“(3) COMMENCEMENT OF BENEFITS.—Benefits shall be paid to, or on behalf of, an eligible beneficiary beginning with the first month in which an application for such benefits is approved.

“(4) ROLLOVER OPTION FOR LUMP-SUM PAYMENT.—An eligible beneficiary may elect to—

“(A) defer payment of their daily or weekly benefit and to rollover any such deferred benefits from month-to-month, but not from year-to-year; and

“(B) receive a lump-sum payment of such deferred benefits in an amount that may not exceed the lesser of—

“(i) the total amount of the accrued deferred benefits; or

“(ii) the applicable annual benefit.

“(5) PERIOD FOR DETERMINATION OF ANNUAL BENEFITS.—

“(A) IN GENERAL.—The applicable period for determining with respect to an eligible beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.

“(B) INCLUSION OF INCREASED BENEFITS.—The Secretary shall establish procedures under which cash benefits paid to an eligible beneficiary that increase or decrease as a result of a change in the functional status of the beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible beneficiary.

“(C) RECOUPMENT OF UNPAID, ACCRUED BENEFITS.—

“(i) IN GENERAL.—The Secretary, in coordination with the Secretary of the Treasury, shall recoup any accrued benefits in the event of—

“(I) the death of a beneficiary; or

“(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

“(ii) PAYMENT INTO CLASS INDEPENDENCE FUND.—

Any benefits recouped in accordance with clause (i) shall be paid into the CLASS Independence Fund and used in accordance with section 3206.

“(6) REQUIREMENT TO RECERTIFY ELIGIBILITY FOR RECEIPT OF BENEFITS.—An eligible beneficiary shall periodically, as determined by the Secretary—

“(A) recertify by submission of medical evidence the beneficiary’s continued eligibility for receipt of benefits; and

“(B) submit records of expenditures attributable to the aggregate cash benefit received by the beneficiary during the preceding year.

“(7) SUPPLEMENT, NOT SUPPLANT OTHER HEALTH CARE BENEFITS.—Subject to the Medicaid payment rules under paragraph (1)(D), benefits received by an eligible beneficiary shall supplement, but not supplant, other health care benefits for which the beneficiary is eligible under Medicaid or any other Federally funded program that provides health care benefits or assistance.

“(d) ADVOCACY SERVICES.—An agreement entered into under subsection (a)(2)(A)(ii) shall require the Protection and Advocacy System for the State to—

“(1) assign, as needed, an advocacy counselor to each eligible beneficiary that is covered by such agreement and who shall provide an eligible beneficiary with—

Contracts.

“(A) information regarding how to access the appeals process established for the program;

“(B) assistance with respect to the annual recertification and notification required under subsection (c)(6); and

“(C) such other assistance with obtaining services as the Secretary, by regulation, shall require; and Regulations.

“(2) ensure that the System and such counselors comply with the requirements of subsection (h).

“(e) ADVICE AND ASSISTANCE COUNSELING.—An agreement entered into under subsection (a)(2)(A)(iii) shall require the entity to assign, as requested by an eligible beneficiary that is covered by such agreement, an advice and assistance counselor who shall provide an eligible beneficiary with information regarding— Contracts.

“(1) accessing and coordinating long-term services and supports in the most integrated setting;

“(2) possible eligibility for other benefits and services;

“(3) development of a service and support plan;

“(4) information about programs established under the Assistive Technology Act of 1998 and the services offered under such programs;

“(5) available assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions; and

“(6) such other services as the Secretary, by regulation, may require.

“(f) NO EFFECT ON ELIGIBILITY FOR OTHER BENEFITS.—Benefits paid to an eligible beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary’s eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.), under the laws administered by the Secretary of Veterans Affairs, under low-income housing assistance programs, or under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

“(g) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as prohibiting benefits paid under the CLASS Independence Benefit Plan from being used to compensate a family caregiver for providing community living assistance services and supports to an eligible beneficiary.

“(h) PROTECTION AGAINST CONFLICT OF INTERESTS.—The Secretary shall establish procedures to ensure that the Eligibility Assessment System, the Protection and Advocacy System for a State, advocacy counselors for eligible beneficiaries, and any other entities that provide services to active enrollees and eligible beneficiaries under the CLASS program comply with the following: Procedures.

“(1) If the entity provides counseling or planning services, such services are provided in a manner that fosters the best interests of the active enrollee or beneficiary.

“(2) The entity has established operating procedures that are designed to avoid or minimize conflicts of interest between the entity and an active enrollee or beneficiary.

“(3) The entity provides information about all services and options available to the active enrollee or beneficiary, to the best of its knowledge, including services available through other entities or providers.

“(4) The entity assists the active enrollee or beneficiary to access desired services, regardless of the provider.

“(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

“(6) If the entity provides counseling or planning services, the entity ensures that an active enrollee or beneficiary is informed of any financial interest that the entity has in a service provider.

“(7) The entity provides an active enrollee or beneficiary with a list of available service providers that can meet the needs of the active enrollee or beneficiary.

42 USC 30011–5.

“SEC. 3206. CLASS INDEPENDENCE FUND.

“(a) ESTABLISHMENT OF CLASS INDEPENDENCE FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘CLASS Independence Fund’. The Secretary of the Treasury shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 3204(f) and 3205(c)(5)(C)(ii), and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

“(1) to be held for investment on behalf of individuals enrolled in the CLASS program;

“(2) to pay the administrative expenses related to the Fund and to investment under subsection (b); and

“(3) to pay cash benefits to eligible beneficiaries under the CLASS Independence Benefit Plan.

“(b) INVESTMENT OF FUND BALANCE.—The Secretary of the Treasury shall invest and manage the CLASS Independence Fund in the same manner, and to the same extent, as the Federal Supplementary Medical Insurance Trust Fund may be invested and managed under subsections (c), (d), and (e) of section 1841(d) of the Social Security Act (42 U.S.C. 1395t).

“(c) BOARD OF TRUSTEES.—

Establishment.

“(1) IN GENERAL.—With respect to the CLASS Independence Fund, there is hereby created a body to be known as the Board of Trustees of the CLASS Independence Fund (hereinafter in this section referred to as the ‘Board of Trustees’) composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of 4 years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall

be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

“(2) DUTIES.—

“(A) IN GENERAL.—It shall be the duty of the Board of Trustees to do the following:

“(i) Hold the CLASS Independence Fund.

“(ii) Report to the Congress not later than the first day of April of each year on the operation and status of the CLASS Independence Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years.

Reports.
Deadline.

“(iii) Report immediately to the Congress whenever the Board is of the opinion that the amount of the CLASS Independence Fund is not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i).

Reports.

“(iv) Review the general policies followed in managing the CLASS Independence Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the CLASS Independence Fund is to be managed.

“(B) REPORT.—The report provided for in subparagraph (A)(ii) shall—

“(i) include—

“(I) a statement of the assets of, and the disbursements made from, the CLASS Independence Fund during the preceding fiscal year;

“(II) an estimate of the expected income to, and disbursements to be made from, the CLASS Independence Fund during the current fiscal year and each of the next 2 fiscal years;

“(III) a statement of the actuarial status of the CLASS Independence Fund for the current fiscal year, each of the next 2 fiscal years, and as projected over the 75-year period beginning with the current fiscal year; and

“(IV) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable; and

“(ii) be printed as a House document of the session of the Congress to which the report is made.

Publication.

Determination.

“(C) RECOMMENDATIONS.—If the Board of Trustees determines that enrollment trends and expected future benefit claims on the CLASS Independence Fund are not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i) and are unlikely to be resolved with reasonable premium increases or through other means, the Board of Trustees shall include in the report provided for in subparagraph (A)(ii) recommendations for such legislative action as the Board of Trustees determine to be appropriate, including whether to adjust monthly premiums or impose a temporary moratorium on new enrollments.

42 USC 30011-6.

“SEC. 3207. CLASS INDEPENDENCE ADVISORY COUNCIL.

“(a) ESTABLISHMENT.—There is hereby created an Advisory Committee to be known as the ‘CLASS Independence Advisory Council’.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

Appointment.
President.

“(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

“(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

“(2) TERMS.—

“(A) IN GENERAL.—The members of the CLASS Independence Advisory Council shall serve overlapping terms of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

“(B) LIMITATION.—A member shall not be eligible to serve for more than 2 consecutive terms.

President.
Appointment.

“(3) CHAIR.—The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

“(c) DUTIES.—The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this title and in the formulation of regulations under this title including with respect to—

“(1) the development of the CLASS Independence Benefit Plan under section 3203;

“(2) the determination of monthly premiums under such plan; and

“(3) the financial solvency of the program.

“(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall apply to the CLASS Independence Advisory Council.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to the CLASS Independence Advisory Council to carry out its duties under this section, such sums as may be necessary for fiscal year 2011 and for each fiscal year thereafter.

“(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

“SEC. 3208. SOLVENCY AND FISCAL INDEPENDENCE; REGULATIONS; ANNUAL REPORT. 42 USC 300ll–7.

“(a) SOLVENCY.—The Secretary shall regularly consult with the Board of Trustees of the CLASS Independence Fund and the CLASS Independence Advisory Council, for purposes of ensuring that enrollees premiums are adequate to ensure the financial solvency of the CLASS program, both with respect to fiscal years occurring in the near-term and fiscal years occurring over 20- and 75-year periods, taking into account the projections required for such periods under subsections (a)(1)(A)(i) and (b)(1)(B)(i) of section 3202. Consultation.

“(b) NO TAXPAYER FUNDS USED TO PAY BENEFITS.—No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan. For purposes of this subsection, the term ‘taxpayer funds’ means any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings. Definitions.

“(c) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.

“(d) ANNUAL REPORT.—Beginning January 1, 2014, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following: Effective date.

“(1) The total number of enrollees in the program.

“(2) The total number of eligible beneficiaries during the fiscal year.

“(3) The total amount of cash benefits provided during the fiscal year.

“(4) A description of instances of fraud or abuse identified during the fiscal year.

“(5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the program, ensure the solvency of the program, or to prevent the occurrence of fraud or abuse.

“SEC. 3209. INSPECTOR GENERAL’S REPORT. 42 USC 300ll–8.

“The Inspector General of the Department of Health and Human Services shall submit an annual report to the Secretary and Congress relating to the overall progress of the CLASS program and of the existence of waste, fraud, and abuse in the CLASS program. Each such report shall include findings in the following areas:

“(1) The eligibility determination process.

“(2) The provision of cash benefits.

“(3) Quality assurance and protection against waste, fraud, and abuse.

“(4) Recouping of unpaid and accrued benefits.

42 USC 300ll–9. **“SEC. 3210. TAX TREATMENT OF PROGRAM.**

“The CLASS program shall be treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term care insurance contract for qualified long-term care services.”.

(2) CONFORMING AMENDMENTS TO MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 6505, is amended by inserting after paragraph (80) the following:

Regulations.

“(81) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this title and are eligible beneficiaries under the CLASS program established under title XXXII of the Public Health Service Act as the Secretary shall establish; and”.

(b) ASSURANCE OF ADEQUATE INFRASTRUCTURE FOR THE PROVISION OF PERSONAL CARE ATTENDANT WORKERS.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by subsection (a)(2), is amended by inserting after paragraph (81) the following:

Deadline.

“(82) provide that, not later than 2 years after the date of enactment of the Community Living Assistance Services and Supports Act, each State shall—

“(A) assess the extent to which entities such as providers of home care, home health services, home and community service providers, public authorities created to provide personal care services to individuals eligible for medical assistance under the State plan, and nonprofit organizations, are serving or have the capacity to serve as fiscal agents for, employers of, and providers of employment-related benefits for, personal care attendant workers who provide personal care services to individuals receiving benefits under the CLASS program established under title XXXII of the Public Health Service Act, including in rural and underserved areas;

Designation.

“(B) designate or create such entities to serve as fiscal agents for, employers of, and providers of employment-related benefits for, such workers to ensure an adequate supply of the workers for individuals receiving benefits under the CLASS program, including in rural and underserved areas; and

“(C) ensure that the designation or creation of such entities will not negatively alter or impede existing programs, models, methods, or administration of service delivery that provide for consumer controlled or self-directed home and community services and further ensure that such entities will not impede the ability of individuals to direct and control their home and community services, including the ability to select, manage, dismiss, co-employ, or employ such workers or inhibit such individuals from relying on family members for the provision of personal care services.”.

42 USC 300ll note.

(c) PERSONAL CARE ATTENDANTS WORKFORCE ADVISORY PANEL.—

Deadline.

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services shall establish a Personal Care Attendants Workforce

Advisory Panel for the purpose of examining and advising the Secretary and Congress on workforce issues related to personal care attendant workers, including with respect to the adequacy of the number of such workers, the salaries, wages, and benefits of such workers, and access to the services provided by such workers.

(2) **MEMBERSHIP.**—In appointing members to the Personal Care Attendants Workforce Advisory Panel, the Secretary shall ensure that such members include the following:

- (A) Individuals with disabilities of all ages.
- (B) Senior individuals.
- (C) Representatives of individuals with disabilities.
- (D) Representatives of senior individuals.
- (E) Representatives of workforce and labor organizations.

(F) Representatives of home and community-based service providers.

(G) Representatives of assisted living providers.

(d) **INCLUSION OF INFORMATION ON SUPPLEMENTAL COVERAGE IN THE NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION; EXTENSION OF FUNDING.**—Section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended—

(1) in paragraph (2)(A)—

(A) in clause (ii), by striking “and” at the end;

(B) in clause (iii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(iv) include information regarding the CLASS program established under title XXXII of the Public Health Service Act and coverage available for purchase through a Exchange established under section 1311 of the Patient Protection and Affordable Care Act that is supplemental coverage to the benefits provided under a CLASS Independence Benefit Plan under that program, and information regarding how benefits provided under a CLASS Independence Benefit Plan differ from disability insurance benefits.”; and

(2) in paragraph (3), by striking “2010” and inserting “2015”.

(e) **EFFECTIVE DATE.**—The amendments made by subsections (a), (b), and (d) take effect on January 1, 2011.

(f) **RULE OF CONSTRUCTION.**—Nothing in this title or the amendments made by this title are intended to replace or displace public or private disability insurance benefits, including such benefits that are for income replacement.

42 USC 300ll
note.

42 USC 300ll
note.

TITLE IX—REVENUE PROVISIONS

Subtitle A—Revenue Offset Provisions

SEC. 9001. EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE.

(a) **IN GENERAL.**—Chapter 43 of the Internal Revenue Code of 1986, as amended by section 1513, is amended by adding at the end the following:

26 USC 4980I.

“SEC. 4980I. EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE.**“(a) IMPOSITION OF TAX.—If—****“(1) an employee is covered under any applicable employer-sponsored coverage of an employer at any time during a taxable period, and****“(2) there is any excess benefit with respect to the coverage, there is hereby imposed a tax equal to 40 percent of the excess benefit.****“(b) EXCESS BENEFIT.—For purposes of this section—**

Definition.

“(1) IN GENERAL.—The term ‘excess benefit’ means, with respect to any applicable employer-sponsored coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined under paragraph (2) for months during the taxable period.**“(2) MONTHLY EXCESS AMOUNT.—The excess amount determined under this paragraph for any month is the excess (if any) of—****“(A) the aggregate cost of the applicable employer-sponsored coverage of the employee for the month, over****“(B) an amount equal to $\frac{1}{12}$ of the annual limitation under paragraph (3) for the calendar year in which the month occurs.****“(3) ANNUAL LIMITATION.—For purposes of this subsection—****“(A) IN GENERAL.—The annual limitation under this paragraph for any calendar year is the dollar limit determined under subparagraph (C) for the calendar year.****“(B) APPLICABLE ANNUAL LIMITATION.—The annual limitation which applies for any month shall be determined on the basis of the type of coverage (as determined under subsection (f)(1)) provided to the employee by the employer as of the beginning of the month.****“(C) APPLICABLE DOLLAR LIMIT.—Except as provided in subparagraph (D)—****“(i) 2013.—In the case of 2013, the dollar limit under this subparagraph is—****“(I) in the case of an employee with self-only coverage, \$8,500, and****“(II) in the case of an employee with coverage other than self-only coverage, \$23,000.****“(ii) EXCEPTION FOR CERTAIN INDIVIDUALS.—In the case of an individual who is a qualified retiree or who participates in a plan sponsored by an employer the majority of whose employees are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines—****“(I) the dollar amount in clause (i)(I) (determined after the application of subparagraph (D)) shall be increased by \$1,350, and****“(II) the dollar amount in clause (i)(II) (determined after the application of subparagraph (D)) shall be increased by \$3,000.****“(iii) SUBSEQUENT YEARS.—In the case of any calendar year after 2013, each of the dollar amounts under clauses (i) and (ii) shall be increased to the amount equal to such amount as in effect for the**

calendar year preceding such year, increased by an amount equal to the product of—

“(I) such amount as so in effect, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such year (determined by substituting the calendar year that is 2 years before such year for ‘1992’ in subparagraph (B) thereof), increased by 1 percentage point.

If any amount determined under this clause is not a multiple of \$50, such amount shall be rounded to the nearest multiple of \$50.

“(D) TRANSITION RULE FOR STATES WITH HIGHEST COVERAGE COSTS.—

“(i) IN GENERAL.—If an employee is a resident of a high cost State on the first day of any month beginning in 2013, 2014, or 2015, the annual limitation under this paragraph for such month with respect to such employee shall be an amount equal to the applicable percentage of the annual limitation (determined without regard to this subparagraph or subparagraph (C)(ii)).

“(ii) APPLICABLE PERCENTAGE.—The applicable percentage is 120 percent for 2013, 110 percent for 2014, and 105 percent for 2015.

“(iii) HIGH COST STATE.—The term ‘high cost State’ means each of the 17 States which the Secretary of Health and Human Services, in consultation with the Secretary, estimates had the highest average cost during 2012 for employer-sponsored coverage under health plans. The Secretary’s estimate shall be made on the basis of aggregate premiums paid in the State for such health plans, determined using the most recent data available as of August 31, 2012.

Definition.

“(c) LIABILITY TO PAY TAX.—

“(1) IN GENERAL.—Each coverage provider shall pay the tax imposed by subsection (a) on its applicable share of the excess benefit with respect to an employee for any taxable period.

“(2) COVERAGE PROVIDER.—For purposes of this subsection, the term ‘coverage provider’ means each of the following:

Definitions.

“(A) HEALTH INSURANCE COVERAGE.—If the applicable employer-sponsored coverage consists of coverage under a group health plan which provides health insurance coverage, the health insurance issuer.

“(B) HSA AND MSA CONTRIBUTIONS.—If the applicable employer-sponsored coverage consists of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the employer.

“(C) OTHER COVERAGE.—In the case of any other applicable employer-sponsored coverage, the person that administers the plan benefits.

“(3) APPLICABLE SHARE.—For purposes of this subsection, a coverage provider’s applicable share of an excess benefit for any taxable period is the amount which bears the same ratio to the amount of such excess benefit as—

“(A) the cost of the applicable employer-sponsored coverage provided by the provider to the employee during such period, bears to

“(B) the aggregate cost of all applicable employer-sponsored coverage provided to the employee by all coverage providers during such period.

“(4) RESPONSIBILITY TO CALCULATE TAX AND APPLICABLE SHARES.—

“(A) IN GENERAL.—Each employer shall—

“(i) calculate for each taxable period the amount of the excess benefit subject to the tax imposed by subsection (a) and the applicable share of such excess benefit for each coverage provider, and

Notification.

“(ii) notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

“(B) SPECIAL RULE FOR MULTIEMPLOYER PLANS.—In the case of applicable employer-sponsored coverage made available to employees through a multiemployer plan (as defined in section 414(f)), the plan sponsor shall make the calculations, and provide the notice, required under subparagraph (A).

“(d) APPLICABLE EMPLOYER-SPONSORED COVERAGE; COST.—For purposes of this section—

Definitions.

“(1) APPLICABLE EMPLOYER-SPONSORED COVERAGE.—

“(A) IN GENERAL.—The term ‘applicable employer-sponsored coverage’ means, with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee’s gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).

“(B) EXCEPTIONS.—The term ‘applicable employer-sponsored coverage’ shall not include—

“(i) any coverage (whether through insurance or otherwise) described in section 9832(c)(1)(A) or for long-term care, or

“(ii) any coverage described in section 9832(c)(3) the payment for which is not excludable from gross income and for which a deduction under section 162(l) is not allowable.

“(C) COVERAGE INCLUDES EMPLOYEE PAID PORTION.—Coverage shall be treated as applicable employer-sponsored coverage without regard to whether the employer or employee pays for the coverage.

“(D) SELF-EMPLOYED INDIVIDUAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), coverage under any group health plan providing health insurance coverage shall be treated as applicable employer-sponsored coverage if a deduction is allowable under section 162(l) with respect to all or any portion of the cost of the coverage.

“(E) GOVERNMENTAL PLANS INCLUDED.—Applicable employer-sponsored coverage shall include coverage under any group health plan established and maintained primarily for its civilian employees by the Government of

the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.

“(2) DETERMINATION OF COST.—

“(A) IN GENERAL.—The cost of applicable employer-sponsored coverage shall be determined under rules similar to the rules of section 4980B(f)(4), except that in determining such cost, any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account and the amount of such cost shall be calculated separately for self-only coverage and other coverage. In the case of applicable employer-sponsored coverage which provides coverage to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.

“(B) HEALTH FSAS.—In the case of applicable employer-sponsored coverage consisting of coverage under a flexible spending arrangement (as defined in section 106(c)(2)), the cost of the coverage shall be equal to the sum of—

“(i) the amount of employer contributions under any salary reduction election under the arrangement, plus

“(ii) the amount determined under subparagraph (A) with respect to any reimbursement under the arrangement in excess of the contributions described in clause (i).

“(C) ARCHER MSAS AND HSAS.—In the case of applicable employer-sponsored coverage consisting of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the cost of the coverage shall be equal to the amount of employer contributions under the arrangement.

“(D) ALLOCATION ON A MONTHLY BASIS.—If cost is determined on other than a monthly basis, the cost shall be allocated to months in a taxable period on such basis as the Secretary may prescribe.

“(e) PENALTY FOR FAILURE TO PROPERLY CALCULATE EXCESS BENEFIT.—

“(1) IN GENERAL.—If, for any taxable period, the tax imposed by subsection (a) exceeds the tax determined under such subsection with respect to the total excess benefit calculated by the employer or plan sponsor under subsection (c)(4)—

“(A) each coverage provider shall pay the tax on its applicable share (determined in the same manner as under subsection (c)(4)) of the excess, but no penalty shall be imposed on the provider with respect to such amount, and

“(B) the employer or plan sponsor shall, in addition to any tax imposed by subsection (a), pay a penalty in an amount equal to such excess, plus interest at the underpayment rate determined under section 6621 for the period beginning on the due date for the payment of tax imposed by subsection (a) to which the excess relates and ending on the date of payment of the penalty.

“(2) LIMITATIONS ON PENALTY.—

“(A) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by paragraph (1)(B) on any failure to properly calculate the excess benefit during any period for which it is established to the satisfaction of the Secretary that the employer or plan sponsor neither knew, nor exercising reasonable diligence would have known, that such failure existed.

“(B) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No penalty shall be imposed by paragraph (1)(B) on any such failure if—

“(i) such failure was due to reasonable cause and not to willful neglect, and

“(ii) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

“(C) WAIVER BY SECRETARY.—In the case of any such failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by paragraph (1), to the extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

“(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) COVERAGE DETERMINATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an employee shall be treated as having self-only coverage with respect to any applicable employer-sponsored coverage of an employer.

“(B) MINIMUM ESSENTIAL COVERAGE.—An employee shall be treated as having coverage other than self-only coverage only if the employee is enrolled in coverage other than self-only coverage in a group health plan which provides minimum essential coverage (as defined in section 5000A(f)) to the employee and at least one other beneficiary, and the benefits provided under such minimum essential coverage do not vary based on whether any individual covered under such coverage is the employee or another beneficiary.

“(2) QUALIFIED RETIREE.—The term ‘qualified retiree’ means any individual who—

“(A) is receiving coverage by reason of being a retiree,

“(B) has attained age 55, and

“(C) is not entitled to benefits or eligible for enrollment under the Medicare program under title XVIII of the Social Security Act.

“(3) EMPLOYEES ENGAGED IN HIGH-RISK PROFESSION.—The term ‘employees engaged in a high-risk profession’ means law enforcement officers (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), employees in fire protection activities (as such term is defined in section 3(y) of the Fair Labor Standards Act of 1938), individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders), and individuals engaged in the construction,

mining, agriculture (not including food processing), forestry, and fishing industries. Such term includes an employee who is retired from a high-risk profession described in the preceding sentence, if such employee satisfied the requirements of such sentence for a period of not less than 20 years during the employee's employment.

“(4) GROUP HEALTH PLAN.—The term ‘group health plan’ has the meaning given such term by section 5000(b)(1).

“(5) HEALTH INSURANCE COVERAGE; HEALTH INSURANCE ISSUER.—

“(A) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning given such term by section 9832(b)(1) (applied without regard to subparagraph (B) thereof, except as provided by the Secretary in regulations).

“(B) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning given such term by section 9832(b)(2).

“(6) PERSON THAT ADMINISTERS THE PLAN BENEFITS.—The term ‘person that administers the plan benefits’ shall include the plan sponsor if the plan sponsor administers benefits under the plan.

“(7) PLAN SPONSOR.—The term ‘plan sponsor’ has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

“(8) TAXABLE PERIOD.—The term ‘taxable period’ means the calendar year or such shorter period as the Secretary may prescribe. The Secretary may have different taxable periods for employers of varying sizes.

“(9) AGGREGATION RULES.—All employers treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

“(10) DENIAL OF DEDUCTION.—For denial of a deduction for the tax imposed by this section, see section 275(a)(6).

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out this section.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code, as amended by section 1513, is amended by adding at the end the following new item:

“Sec. 4980I. Excise tax on high cost employer-sponsored health coverage.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012. 26 USC 4980I note.

SEC. 9002. INCLUSION OF COST OF EMPLOYER-SPONSORED HEALTH COVERAGE ON W-2.

(a) IN GENERAL.—Section 6051(a) of the Internal Revenue Code of 1986 (relating to receipts for employees) is amended by striking “and” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “, and”, and by adding after paragraph (13) the following new paragraph: 26 USC 6051.

“(14) the aggregate cost (determined under rules similar to the rules of section 4980B(f)(4)) of applicable employer-sponsored coverage (as defined in section 4980I(d)(1)), except that this paragraph shall not apply to—

“(A) coverage to which paragraphs (11) and (12) apply,

or

“(B) the amount of any salary reduction contributions to a flexible spending arrangement (within the meaning of section 125).”.

26 USC 6051
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 9003. DISTRIBUTIONS FOR MEDICINE QUALIFIED ONLY IF FOR PRESCRIBED DRUG OR INSULIN.

26 USC 223.

(a) **HSAs.**—Subparagraph (A) of section 223(d)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following: “Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”.

26 USC 220.

(b) **ARCHER MSAs.**—Subparagraph (A) of section 220(d)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following: “Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”.

26 USC 106.

(c) **HEALTH FLEXIBLE SPENDING ARRANGEMENTS AND HEALTH REIMBURSEMENT ARRANGEMENTS.**—Section 106 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) **REIMBURSEMENTS FOR MEDICINE RESTRICTED TO PRESCRIBED DRUGS AND INSULIN.**—For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”.

26 USC 220 note.

(d) **EFFECTIVE DATES.**—

(1) **DISTRIBUTIONS FROM SAVINGS ACCOUNTS.**—The amendments made by subsections (a) and (b) shall apply to amounts paid with respect to taxable years beginning after December 31, 2010.

26 USC 106 note.

(2) **REIMBURSEMENTS.**—The amendment made by subsection (c) shall apply to expenses incurred with respect to taxable years beginning after December 31, 2010.

SEC. 9004. INCREASE IN ADDITIONAL TAX ON DISTRIBUTIONS FROM HSAS AND ARCHER MSAS NOT USED FOR QUALIFIED MEDICAL EXPENSES.

(a) **HSAs.**—Section 223(f)(4)(A) of the Internal Revenue Code of 1986 is amended by striking “10 percent” and inserting “20 percent”.

(b) **ARCHER MSAs.**—Section 220(f)(4)(A) of the Internal Revenue Code of 1986 is amended by striking “15 percent” and inserting “20 percent”.

26 USC 220 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions made after December 31, 2010.

SEC. 9005. LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.

26 USC 125.

(a) **IN GENERAL.**—Section 125 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and

(2) by inserting after subsection (h) the following new subsection:

“(i) **LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS.**—For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of \$2,500 made to such arrangement.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2010. 26 USC 125 note.

SEC. 9006. EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

(a) **IN GENERAL.**—Section 6041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsections: 26 USC 6041.

“(h) **APPLICATION TO CORPORATIONS.**—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this subsection, for purposes of this section the term ‘person’ includes any corporation that is not an organization exempt from tax under section 501(a).

“(i) **REGULATIONS.**—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions.”.

(b) **PAYMENTS FOR PROPERTY AND OTHER GROSS PROCEEDS.**—Subsection (a) of section 6041 of the Internal Revenue Code of 1986 is amended—

(1) by inserting “amounts in consideration for property,” after “wages,”

(2) by inserting “gross proceeds,” after “emoluments, or other”, and

(3) by inserting “gross proceeds,” after “setting forth the amount of such”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments made after December 31, 2011.

SEC. 9007. ADDITIONAL REQUIREMENTS FOR CHARITABLE HOSPITALS.

(a) **REQUIREMENTS TO QUALIFY AS SECTION 501(C)(3) CHARITABLE HOSPITAL ORGANIZATION.**—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following new subsection: 26 USC 501.

“(r) **ADDITIONAL REQUIREMENTS FOR CERTAIN HOSPITALS.**—

“(1) **IN GENERAL.**—A hospital organization to which this subsection applies shall not be treated as described in subsection (c)(3) unless the organization—

“(A) meets the community health needs assessment requirements described in paragraph (3),

“(B) meets the financial assistance policy requirements described in paragraph (4),

“(C) meets the requirements on charges described in paragraph (5), and

“(D) meets the billing and collection requirement described in paragraph (6).

“(2) **HOSPITAL ORGANIZATIONS TO WHICH SUBSECTION APPLIES.**—

Applicability.

“(A) IN GENERAL.—This subsection shall apply to—

“(i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

“(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under subsection (c)(3) (determined without regard to this subsection).

“(B) ORGANIZATIONS WITH MORE THAN 1 HOSPITAL FACILITY.—If a hospital organization operates more than 1 hospital facility—

“(i) the organization shall meet the requirements of this subsection separately with respect to each such facility, and

“(ii) the organization shall not be treated as described in subsection (c)(3) with respect to any such facility for which such requirements are not separately met.

“(3) COMMUNITY HEALTH NEEDS ASSESSMENTS.—

“(A) IN GENERAL.—An organization meets the requirements of this paragraph with respect to any taxable year only if the organization—

“(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable year or in either of the 2 taxable years immediately preceding such taxable year, and

“(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment.

“(B) COMMUNITY HEALTH NEEDS ASSESSMENT.—A community health needs assessment meets the requirements of this paragraph if such community health needs assessment—

“(i) takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and

“(ii) is made widely available to the public.

“(4) FINANCIAL ASSISTANCE POLICY.—An organization meets the requirements of this paragraph if the organization establishes the following policies:

“(A) FINANCIAL ASSISTANCE POLICY.—A written financial assistance policy which includes—

“(i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,

“(ii) the basis for calculating amounts charged to patients,

“(iii) the method for applying for financial assistance,

“(iv) in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of non-payment, including collections action and reporting to credit agencies, and

“(v) measures to widely publicize the policy within the community to be served by the organization.

“(B) POLICY RELATING TO EMERGENCY MEDICAL CARE.—

A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their eligibility under the financial assistance policy described in subparagraph (A).

“(5) LIMITATION ON CHARGES.—An organization meets the requirements of this paragraph if the organization—

“(A) limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in paragraph (4)(A) to not more than the lowest amounts charged to individuals who have insurance covering such care, and

“(B) prohibits the use of gross charges.

“(6) BILLING AND COLLECTION REQUIREMENTS.—An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy described in paragraph (4)(A).

“(7) REGULATORY AUTHORITY.—The Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of this subsection, including guidance relating to what constitutes reasonable efforts to determine the eligibility of a patient under a financial assistance policy for purposes of paragraph (6).”

Regulations.
Guidelines.

(b) EXCISE TAX FOR FAILURES TO MEET HOSPITAL EXEMPTION REQUIREMENTS.—

(1) IN GENERAL.—Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

“SEC. 4959. TAXES ON FAILURES BY HOSPITAL ORGANIZATIONS.

26 USC 4959.

“If a hospital organization to which section 501(r) applies fails to meet the requirement of section 501(r)(3) for any taxable year, there is imposed on the organization a tax equal to \$50,000.”

(2) CONFORMING AMENDMENT.—The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

“Sec. 4959. Taxes on failures by hospital organizations.”

(c) MANDATORY REVIEW OF TAX EXEMPTION FOR HOSPITALS.—The Secretary of the Treasury or the Secretary’s delegate shall review at least once every 3 years the community benefit activities of each hospital organization to which section 501(r) of the Internal Revenue Code of 1986 (as added by this section) applies.

26 USC 501 note.
Deadline.

(d) ADDITIONAL REPORTING REQUIREMENTS.—

(1) COMMUNITY HEALTH NEEDS ASSESSMENTS AND AUDITED FINANCIAL STATEMENTS.—Section 6033(b) of the Internal Revenue Code of 1986 (relating to certain organizations described in section 501(c)(3)) is amended by striking “and” at the end

26 USC 6033.

of paragraph (14), by redesignating paragraph (15) as paragraph (16), and by inserting after paragraph (14) the following new paragraph:

“(15) in the case of an organization to which the requirements of section 501(r) apply for the taxable year—

“(A) a description of how the organization is addressing the needs identified in each community health needs assessment conducted under section 501(r)(3) and a description of any such needs that are not being addressed together with the reasons why such needs are not being addressed, and

“(B) the audited financial statements of such organization (or, in the case of an organization the financial statements of which are included in a consolidated financial statement with other organizations, such consolidated financial statement).”.

(2) TAXES.—Section 6033(b)(10) of such Code is amended by striking “and” at the end of subparagraph (B), by inserting “and” at the end of subparagraph (C), and by adding at the end the following new subparagraph:

“(D) section 4959 (relating to taxes on failures by hospital organizations),”.

26 USC 501 note.

(e) REPORTS.—

(1) REPORT ON LEVELS OF CHARITY CARE.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit to the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate an annual report on the following:

(A) Information with respect to private tax-exempt, taxable, and government-owned hospitals regarding—

(i) levels of charity care provided,

(ii) bad debt expenses,

(iii) unreimbursed costs for services provided with respect to means-tested government programs, and

(iv) unreimbursed costs for services provided with respect to non-means tested government programs.

(B) Information with respect to private tax-exempt hospitals regarding costs incurred for community benefit activities.

(2) REPORT ON TRENDS.—

(A) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study on trends in the information required to be reported under paragraph (1).

(B) REPORT.—Not later than 5 years after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit a report on the study conducted under subparagraph (A) to the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.

(f) EFFECTIVE DATES.—

Applicability.
26 USC 501 note.

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) **COMMUNITY HEALTH NEEDS ASSESSMENT.**—The requirements of section 501(r)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to taxable years beginning after the date which is 2 years after the date of the enactment of this Act.

(3) **EXCISE TAX.**—The amendments made by subsection (b) shall apply to failures occurring after the date of the enactment of this Act.

SEC. 9008. IMPOSITION OF ANNUAL FEE ON BRANDED PRESCRIPTION PHARMACEUTICAL MANUFACTURERS AND IMPORTERS.

26 USC 4001
note prec.

(a) IMPOSITION OF FEE.—

Deadlines.

(1) **IN GENERAL.**—Each covered entity engaged in the business of manufacturing or importing branded prescription drugs shall pay to the Secretary of the Treasury not later than the annual payment date of each calendar year beginning after 2009 a fee in an amount determined under subsection (b).

(2) **ANNUAL PAYMENT DATE.**—For purposes of this section, the term “annual payment date” means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

Definition.

(b) DETERMINATION OF FEE AMOUNT.—

(1) **IN GENERAL.**—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to \$2,300,000,000 as—

(A) the covered entity’s branded prescription drug sales taken into account during the preceding calendar year, bear to

(B) the aggregate branded prescription drug sales of all covered entities taken into account during such preceding calendar year.

(2) **SALES TAKEN INTO ACCOUNT.**—For purposes of paragraph (1), the branded prescription drug sales taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

With respect to a covered entity’s aggregate branded prescription drug sales during the calendar year that are:	The percentage of such sales taken into account is:
Not more than \$5,000,000	0 percent
More than \$5,000,000 but not more than \$125,000,000.	10 percent
More than \$125,000,000 but not more than \$225,000,000.	40 percent
More than \$225,000,000 but not more than \$400,000,000.	75 percent
More than \$400,000,000	100 percent.

(3) SECRETARIAL DETERMINATION.—The Secretary of the Treasury shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary of the Treasury shall determine such covered entity's branded prescription drug sales on the basis of reports submitted under subsection (g) and through the use of any other source of information available to the Secretary of the Treasury.

(c) TRANSFER OF FEES TO MEDICARE PART B TRUST FUND.—There is hereby appropriated to the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act an amount equal to the fees received by the Secretary of the Treasury under subsection (a).

(d) COVERED ENTITY.—

Definition.

(1) IN GENERAL.—For purposes of this section, the term “covered entity” means any manufacturer or importer with gross receipts from branded prescription drug sales.

(2) CONTROLLED GROUPS.—

(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity.

Applicability.

(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

Definitions.

(e) BRANDED PRESCRIPTION DRUG SALES.—For purposes of this section—

(1) IN GENERAL.—The term “branded prescription drug sales” means sales of branded prescription drugs to any specified government program or pursuant to coverage under any such program.

(2) BRANDED PRESCRIPTION DRUGS.—

(A) IN GENERAL.—The term “branded prescription drug” means—

(i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or

(ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

(B) PRESCRIPTION DRUG.—For purposes of subparagraph (A)(i), the term “prescription drug” means any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(3) EXCLUSION OF ORPHAN DRUG SALES.—The term “branded prescription drug sales” shall not include sales of any drug or biological product with respect to which a credit was allowed for any taxable year under section 45C of the Internal Revenue Code of 1986. The preceding sentence shall not apply with respect to any such drug or biological product after the date on which such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the treatment of the rare disease or condition with respect to which such credit was allowed.

(4) SPECIFIED GOVERNMENT PROGRAM.—The term “specified government program” means—

(A) the Medicare Part D program under part D of title XVIII of the Social Security Act,

(B) the Medicare Part B program under part B of title XVIII of the Social Security Act,

(C) the Medicaid program under title XIX of the Social Security Act,

(D) any program under which branded prescription drugs are procured by the Department of Veterans Affairs,

(E) any program under which branded prescription drugs are procured by the Department of Defense, or

(F) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

Applicability.

(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

(g) REPORTING REQUIREMENT.—Not later than the date determined by the Secretary of the Treasury following the end of any calendar year, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Secretary of Defense shall report to the Secretary of the Treasury, in such manner as the Secretary of the Treasury prescribes, the total branded prescription drug sales for each covered entity with respect to each specified government program under such Secretary’s jurisdiction using the following methodology:

(1) MEDICARE PART D PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part D program, the product of—

(A) the per-unit ingredient cost, as reported to the Secretary of Health and Human Services by prescription drug plans and Medicare Advantage prescription drug plans, minus any per-unit rebate, discount, or other price concession provided by the covered entity, as reported to the Secretary of Health and Human Services by the prescription drug plans and Medicare Advantage prescription drug plans, and

(B) the number of units of the branded prescription drug paid for under the Medicare Part D program.

(2) MEDICARE PART B PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part B program under section 1862(a) of the Social Security Act, the product of—

(A) the per-unit average sales price (as defined in section 1847A(c) of the Social Security Act) or the per-unit Part B payment rate for a separately paid branded prescription drug without a reported average sales price, and

(B) the number of units of the branded prescription drug paid for under the Medicare Part B program.

Process.

The Centers for Medicare and Medicaid Services shall establish a process for determining the units and the allocated price for purposes of this section for those branded prescription drugs that are not separately payable or for which National Drug Codes are not reported.

(3) **MEDICAID PROGRAM.**—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered under the Medicaid program, the product of—

(A) the per-unit ingredient cost paid to pharmacies by States for the branded prescription drug dispensed to Medicaid beneficiaries, minus any per-unit rebate paid by the covered entity under section 1927 of the Social Security Act and any State supplemental rebate, and

(B) the number of units of the branded prescription drug paid for under the Medicaid program.

(4) **DEPARTMENT OF VETERANS AFFAIRS PROGRAMS.**—The Secretary of Veterans Affairs shall report, for each covered entity and for each branded prescription drug of the covered entity the total amount paid for each such branded prescription drug procured by the Department of Veterans Affairs for its beneficiaries.

(5) **DEPARTMENT OF DEFENSE PROGRAMS AND TRICARE.**—The Secretary of Defense shall report, for each covered entity and for each branded prescription drug of the covered entity, the sum of—

(A) the total amount paid for each such branded prescription drug procured by the Department of Defense for its beneficiaries, and

(B) for each such branded prescription drug dispensed under the TRICARE retail pharmacy program, the product of—

(i) the per-unit ingredient cost, minus any per-unit rebate paid by the covered entity, and

(ii) the number of units of the branded prescription drug dispensed under such program.

(h) **SECRETARY.**—For purposes of this section, the term “Secretary” includes the Secretary’s delegate.

Publication.

(i) **GUIDANCE.**—The Secretary of the Treasury shall publish guidance necessary to carry out the purposes of this section.

(j) **APPLICATION OF SECTION.**—This section shall apply to any branded prescription drug sales after December 31, 2008.

42 USC 1395t.

(k) **CONFORMING AMENDMENT.**—Section 1841(a) of the Social Security Act is amended by inserting “or section 9008(c) of the Patient Protection and Affordable Care Act of 2009” after “this part”.

26 USC 4001
note prec.
Definitions.
Deadlines.

SEC. 9009. IMPOSITION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS.

(a) **IMPOSITION OF FEE.**—

(1) **IN GENERAL.**—Each covered entity engaged in the business of manufacturing or importing medical devices shall pay to the Secretary not later than the annual payment date of each calendar year beginning after 2009 a fee in an amount determined under subsection (b).

(2) **ANNUAL PAYMENT DATE.**—For purposes of this section, the term “annual payment date” means with respect to any

calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

(b) DETERMINATION OF FEE AMOUNT.—

(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to \$2,000,000,000 as—

(A) the covered entity's gross receipts from medical device sales taken into account during the preceding calendar year, bear to

(B) the aggregate gross receipts of all covered entities from medical device sales taken into account during such preceding calendar year.

(2) GROSS RECEIPTS FROM SALES TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the gross receipts from medical device sales taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

With respect to a covered entity's aggregate gross receipts from medical device sales during the calendar year that are:	The percentage of gross receipts taken into account is:
Not more than \$5,000,000	0 percent
More than \$5,000,000 but not more than \$25,000,000.	50 percent
More than \$25,000,000	100 percent.

(3) SECRETARIAL DETERMINATION.—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity's gross receipts from medical device sales on the basis of reports submitted by the covered entity under subsection (f) and through the use of any other source of information available to the Secretary.

(c) COVERED ENTITY.—

(1) IN GENERAL.—For purposes of this section, the term “covered entity” means any manufacturer or importer with gross receipts from medical device sales.

(2) CONTROLLED GROUPS.—

(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity.

(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

Applicability.

(d) MEDICAL DEVICE SALES.—For purposes of this section—
(1) IN GENERAL.—The term “medical device sales” means sales for use in the United States of any medical device, other than the sales of a medical device that—

(A) has been classified in class II under section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

360c) and is primarily sold to consumers at retail for not more than \$100 per unit, or

(B) has been classified in class I under such section.

(2) UNITED STATES.—For purposes of paragraph (1), the term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(3) MEDICAL DEVICE.—For purposes of paragraph (1), the term “medical device” means any device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) intended for humans.

(e) TAX TREATMENT OF FEES.—The fees imposed by this section—

(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

(f) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Not later than the date determined by the Secretary following the end of any calendar year, each covered entity shall report to the Secretary, in such manner as the Secretary prescribes, the gross receipts from medical device sales of such covered entity during such calendar year.

(2) PENALTY FOR FAILURE TO REPORT.—

(A) IN GENERAL.—In the case of any failure to make a report containing the information required by paragraph (1) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the covered entity failing to file such report, an amount equal to—

(i) \$10,000, plus

(ii) the lesser of—

(I) an amount equal to \$1,000, multiplied by the number of days during which such failure continues, or

(II) the amount of the fee imposed by this section for which such report was required.

(B) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A)—

(i) shall be treated as a penalty for purposes of subtitle F of the Internal Revenue Code of 1986,

Notice.

(ii) shall be paid on notice and demand by the Secretary and in the same manner as tax under such Code, and

Applicability.

(iii) with respect to which only civil actions for refund under procedures of such subtitle F shall apply.

(g) SECRETARY.—For purposes of this section, the term “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

Publication.

(h) GUIDANCE.—The Secretary shall publish guidance necessary to carry out the purposes of this section, including identification of medical devices described in subsection (d)(1)(A) and with respect to the treatment of gross receipts from sales of medical devices

to another covered entity or to another entity by reason of the application of subsection (c)(2).

(i) APPLICATION OF SECTION.—This section shall apply to any medical device sales after December 31, 2008.

SEC. 9010. IMPOSITION OF ANNUAL FEE ON HEALTH INSURANCE PROVIDERS.

26 USC 4001
note prec.

(a) IMPOSITION OF FEE.—

Deadline.

(1) IN GENERAL.—Each covered entity engaged in the business of providing health insurance shall pay to the Secretary not later than the annual payment date of each calendar year beginning after 2009 a fee in an amount determined under subsection (b).

(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term “annual payment date” means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

Definition.

(b) DETERMINATION OF FEE AMOUNT.—

(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to \$6,700,000,000 as—

(A) the sum of—

(i) the covered entity’s net premiums written with respect to health insurance for any United States health risk that are taken into account during the preceding calendar year, plus

(ii) 200 percent of the covered entity’s third party administration agreement fees that are taken into account during the preceding calendar year, bears to (B) the sum of—

(i) the aggregate net premiums written with respect to such health insurance of all covered entities that are taken into account during such preceding calendar year, plus

(ii) 200 percent of the aggregate third party administration agreement fees of all covered entities that are taken into account during such preceding calendar year.

(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)—

(A) NET PREMIUMS WRITTEN.—The net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

With respect to a covered entity’s net premiums written during the calendar year that are:

The percentage of net premiums written that are taken into account is:

Not more than \$25,000,000	0 percent
More than \$25,000,000 but not more than \$50,000,000.	50 percent
More than \$50,000,000	100 percent.

(B) **THIRD PARTY ADMINISTRATION AGREEMENT FEES.**—The third party administration agreement fees that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

With respect to a covered entity's third party administration agreement fees during the calendar year that are:	The percentage of third party administration agreement fees that are taken into account is:
Not more than \$5,000,000	0 percent
More than \$5,000,000 but not more than \$10,000,000.	50 percent
More than \$10,000,000	100 percent.

(3) **SECRETARIAL DETERMINATION.**—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity's net premiums written with respect to any United States health risk and third party administration agreement fees on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.

(c) **COVERED ENTITY.**—

Definition.

(1) **IN GENERAL.**—For purposes of this section, the term “covered entity” means any entity which provides health insurance for any United States health risk.

(2) **EXCLUSION.**—Such term does not include—

(A) any employer to the extent that such employer self-insures its employees' health risks, or

(B) any governmental entity (except to the extent such an entity provides health insurance coverage through the community health insurance option under section 1323).

(3) **CONTROLLED GROUPS.**—

(A) **IN GENERAL.**—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity (or employer for purposes of paragraph (2)).

Applicability.

(B) **INCLUSION OF FOREIGN CORPORATIONS.**—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

Definition.

(d) **UNITED STATES HEALTH RISK.**—For purposes of this section, the term “United States health risk” means the health risk of any individual who is—

(1) a United States citizen,

(2) a resident of the United States (within the meaning of section 7701(b)(1)(A) of the Internal Revenue Code of 1986), or

(3) located in the United States, with respect to the period such individual is so located.

(e) **THIRD PARTY ADMINISTRATION AGREEMENT FEES.**—For purposes of this section, the term “third party administration agreement fees” means, with respect to any covered entity, amounts received from an employer which are in excess of payments made by such covered entity for health benefits under an arrangement under which such employer self-insures the United States health risk of its employees.

Definition.

(f) **TAX TREATMENT OF FEES.**—The fees imposed by this section—

(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

Applicability.

(2) for purposes of section 275 of such Code shall be considered to be a tax described in section 275(a)(6).

(g) **REPORTING REQUIREMENT.**—

(1) **IN GENERAL.**—Not later than the date determined by the Secretary following the end of any calendar year, each covered entity shall report to the Secretary, in such manner as the Secretary prescribes, the covered entity’s net premiums written with respect to health insurance for any United States health risk and third party administration agreement fees for such calendar year.

(2) **PENALTY FOR FAILURE TO REPORT.**—

(A) **IN GENERAL.**—In the case of any failure to make a report containing the information required by paragraph (1) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the covered entity failing to file such report, an amount equal to—

(i) \$10,000, plus

(ii) the lesser of—

(I) an amount equal to \$1,000, multiplied by the number of days during which such failure continues, or

(II) the amount of the fee imposed by this section for which such report was required.

(B) **TREATMENT OF PENALTY.**—The penalty imposed under subparagraph (A)—

(i) shall be treated as a penalty for purposes of subtitle F of the Internal Revenue Code of 1986,

(ii) shall be paid on notice and demand by the Secretary and in the same manner as tax under such Code, and

Notice.

(iii) with respect to which only civil actions for refund under procedures of such subtitle F shall apply.

(h) **ADDITIONAL DEFINITIONS.**—For purposes of this section—

(1) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

(2) **UNITED STATES.**—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(3) **HEALTH INSURANCE.**—The term “health insurance” shall not include insurance for long-term care or disability.

(i) **GUIDANCE.**—The Secretary shall publish guidance necessary to carry out the purposes of this section.

Publication.

(j) APPLICATION OF SECTION.—This section shall apply to any net premiums written after December 31, 2008, with respect to health insurance for any United States health risk, and any third party administration agreement fees received after such date.

SEC. 9011. STUDY AND REPORT OF EFFECT ON VETERANS HEALTH CARE.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall conduct a study on the effect (if any) of the provisions of sections 9008, 9009, and 9010 on—

- (1) the cost of medical care provided to veterans, and
- (2) veterans' access to medical devices and branded prescription drugs.

(b) REPORT.—The Secretary of Veterans Affairs shall report the results of the study under subsection (a) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate not later than December 31, 2012.

SEC. 9012. ELIMINATION OF DEDUCTION FOR EXPENSES ALLOCABLE TO MEDICARE PART D SUBSIDY.

(a) IN GENERAL.—Section 139A of the Internal Revenue Code of 1986 is amended by striking the second sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 9013. MODIFICATION OF ITEMIZED DEDUCTION FOR MEDICAL EXPENSES.

(a) IN GENERAL.—Subsection (a) of section 213 of the Internal Revenue Code of 1986 is amended by striking “7.5 percent” and inserting “10 percent”.

(b) TEMPORARY WAIVER OF INCREASE FOR CERTAIN SENIORS.—Section 213 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) SPECIAL RULE FOR 2013, 2014, 2015, AND 2016.—In the case of any taxable year beginning after December 31, 2012, and ending before January 1, 2017, subsection (a) shall be applied with respect to a taxpayer by substituting ‘7.5 percent’ for ‘10 percent’ if such taxpayer or such taxpayer’s spouse has attained age 65 before the close of such taxable year.”

(c) CONFORMING AMENDMENT.—Section 56(b)(1)(B) of the Internal Revenue Code of 1986 is amended by striking “by substituting ‘10 percent’ for ‘7.5 percent’” and inserting “without regard to subsection (f) of such section”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

SEC. 9014. LIMITATION ON EXCESSIVE REMUNERATION PAID BY CERTAIN HEALTH INSURANCE PROVIDERS.

(a) IN GENERAL.—Section 162(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(6) SPECIAL RULE FOR APPLICATION TO CERTAIN HEALTH INSURANCE PROVIDERS.—

“(A) IN GENERAL.—No deduction shall be allowed under this chapter—

26 USC 139A.
26 USC 139A
note.

26 USC 213.

Time period.
Applicability.

26 USC 56.

26 USC 56 note.

26 USC 162.

Definitions.

“(i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

“(ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—

“(I) the applicable individual remuneration for such disqualified taxable year, plus

“(II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting ‘December 31, 2009’ for ‘December 31, 2012’ in the matter preceding subclause (I)).

“(B) DISQUALIFIED TAXABLE YEAR.—For purposes of this paragraph, the term ‘disqualified taxable year’ means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.

“(C) COVERED HEALTH INSURANCE PROVIDER.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘covered health insurance provider’ means—

“(I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and

“(II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

“(ii) AGGREGATION RULES.—Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

“(D) APPLICABLE INDIVIDUAL REMUNERATION.—For purposes of this paragraph, the term ‘applicable individual

remuneration’ means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof) for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

“(E) DEFERRED DEDUCTION REMUNERATION.—For purposes of this paragraph, the term ‘deferred deduction remuneration’ means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

“(F) APPLICABLE INDIVIDUAL.—For purposes of this paragraph, the term ‘applicable individual’ means, with respect to any covered health insurance provider for any disqualified taxable year, any individual—

“(i) who is an officer, director, or employee in such taxable year, or

“(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

“(G) COORDINATION.—Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

“(H) REGULATORY AUTHORITY.—The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.”.

26 USC 162 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009, with respect to services performed after such date.

SEC. 9015. ADDITIONAL HOSPITAL INSURANCE TAX ON HIGH-INCOME TAXPAYERS.

(a) FICA.—

26 USC 3101.

(1) IN GENERAL.—Section 3101(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking “In addition” and inserting the following:

“(1) IN GENERAL.—In addition”,

(B) by striking “the following percentages of the” and inserting “1.45 percent of the”,

(C) by striking “(as defined in section 3121(b))—” and all that follows and inserting “(as defined in section 3121(b)).”, and

(D) by adding at the end the following new paragraph:

“(2) ADDITIONAL TAX.—In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) a tax equal to 0.5 percent of wages which are received with respect to employment (as defined in section 3121(b))

during any taxable year beginning after December 31, 2012, and which are in excess of—

“(A) in the case of a joint return, \$250,000, and

“(B) in any other case, \$200,000.”.

(2) COLLECTION OF TAX.—Section 3102 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection: 26 USC 3102.

“(f) SPECIAL RULES FOR ADDITIONAL TAX.—

“(1) IN GENERAL.—In the case of any tax imposed by section 3101(b)(2), subsection (a) shall only apply to the extent to which the taxpayer receives wages from the employer in excess of \$200,000, and the employer may disregard the amount of wages received by such taxpayer’s spouse.

“(2) COLLECTION OF AMOUNTS NOT WITHHELD.—To the extent that the amount of any tax imposed by section 3101(b)(2) is not collected by the employer, such tax shall be paid by the employee.

“(3) TAX PAID BY RECIPIENT.—If an employer, in violation of this chapter, fails to deduct and withhold the tax imposed by section 3101(b)(2) and thereafter the tax is paid by the employee, the tax so required to be deducted and withheld shall not be collected from the employer, but this paragraph shall in no case relieve the employer from liability for any penalties or additions to tax otherwise applicable in respect of such failure to deduct and withhold.”.

(b) SECA.—

(1) IN GENERAL.—Section 1401(b) of the Internal Revenue Code of 1986 is amended— 26 USC 1401.

(A) by striking “In addition” and inserting the following:

“(1) IN GENERAL.—In addition”, and

(B) by adding at the end the following new paragraph:

“(2) ADDITIONAL TAX.—

“(A) IN GENERAL.—In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) for each taxable year beginning after December 31, 2012, a tax equal to 0.5 percent of the self-employment income for such taxable year which is in excess of—

“(i) in the case of a joint return, \$250,000, and

“(ii) in any other case, \$200,000.

“(B) COORDINATION WITH FICA.—The amounts under clauses (i) and (ii) of subparagraph (A) shall be reduced (but not below zero) by the amount of wages taken into account in determining the tax imposed under section 3121(b)(2) with respect to the taxpayer.”.

(2) NO DEDUCTION FOR ADDITIONAL TAX.—

(A) IN GENERAL.—Section 164(f) of such Code is amended by inserting “(other than the taxes imposed by section 1401(b)(2))” after “section 1401”.

(B) DEDUCTION FOR NET EARNINGS FROM SELF-EMPLOYMENT.—Subparagraph (B) of section 1402(a)(12) is amended by inserting “(determined without regard to the rate imposed under paragraph (2) of section 1401(b))” after “for such year”. 26 USC 1402.

26 USC 164 note. (c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012.

SEC. 9016. MODIFICATION OF SECTION 833 TREATMENT OF CERTAIN HEALTH ORGANIZATIONS.

26 USC 833. (a) **IN GENERAL.**—Subsection (c) of section 833 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(5) **NONAPPLICATION OF SECTION IN CASE OF LOW MEDICAL LOSS RATIO.**—Notwithstanding the preceding paragraphs, this section shall not apply to any organization unless such organization’s percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees under its policies during such taxable year (as reported under section 2718 of the Public Health Service Act) is not less than 85 percent.”.

26 USC 853 note. (b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 9017. EXCISE TAX ON ELECTIVE COSMETIC MEDICAL PROCEDURES.

(a) **IN GENERAL.**—Subtitle D of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new chapter:

“CHAPTER 49—ELECTIVE COSMETIC MEDICAL PROCEDURES

“Sec. 5000B. Imposition of tax on elective cosmetic medical procedures.

26 USC 5000B. **“SEC. 5000B. IMPOSITION OF TAX ON ELECTIVE COSMETIC MEDICAL PROCEDURES.**

“(a) **IN GENERAL.**—There is hereby imposed on any cosmetic surgery and medical procedure a tax equal to 5 percent of the amount paid for such procedure (determined without regard to this section), whether paid by insurance or otherwise.

“(b) **COSMETIC SURGERY AND MEDICAL PROCEDURE.**—For purposes of this section, the term ‘cosmetic surgery and medical procedure’ means any cosmetic surgery (as defined in section 213(d)(9)(B)) or other similar procedure which—

“(1) is performed by a licensed medical professional, and

“(2) is not necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

“(c) **PAYMENT OF TAX.**—

“(1) **IN GENERAL.**—The tax imposed by this section shall be paid by the individual on whom the procedure is performed.

“(2) **COLLECTION.**—Every person receiving a payment for procedures on which a tax is imposed under subsection (a) shall collect the amount of the tax from the individual on whom the procedure is performed and remit such tax quarterly to the Secretary at such time and in such manner as provided by the Secretary.

“(3) **SECONDARY LIABILITY.**—Where any tax imposed by subsection (a) is not paid at the time payments for cosmetic surgery and medical procedures are made, then to the extent that

such tax is not collected, such tax shall be paid by the person who performs the procedure.”.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D of the Internal Revenue Code of 1986, as amended by this Act, is amended by inserting after the item relating to chapter 48 the following new item:

“CHAPTER 49—ELECTIVE COSMETIC MEDICAL PROCEDURES”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to procedures performed on or after January 1, 2010. 26 USC 5000B note.

Subtitle B—Other Provisions

SEC. 9021. EXCLUSION OF HEALTH BENEFITS PROVIDED BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139C the following new section:

“SEC. 139D. INDIAN HEALTH CARE BENEFITS.

26 USC 139D.

“(a) GENERAL RULE.—Except as otherwise provided in this section, gross income does not include the value of any qualified Indian health care benefit.

“(b) QUALIFIED INDIAN HEALTH CARE BENEFIT.—For purposes of this section, the term ‘qualified Indian health care benefit’ means—

Definition.

“(1) any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service through a grant to or a contract or compact with an Indian tribe or tribal organization, or through a third-party program funded by the Indian Health Service,

“(2) medical care provided or purchased by, or amounts to reimburse for such medical care provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, including a spouse or dependent of such a member,

“(3) coverage under accident or health insurance (or an arrangement having the effect of accident or health insurance), or an accident or health plan, provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe, include a spouse or dependent of such a member, and

“(4) any other medical care provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to medical care provided by the Federal government to Indian tribes or members of such a tribe.

“(c) DEFINITIONS.—For purposes of this section—

“(1) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given such term by section 45A(c)(6).

“(2) TRIBAL ORGANIZATION.—The term ‘tribal organization’ has the meaning given such term by section 4(l) of the Indian Self-Determination and Education Assistance Act.

“(3) MEDICAL CARE.—The term ‘medical care’ has the same meaning as when used in section 213.

“(4) ACCIDENT OR HEALTH INSURANCE; ACCIDENT OR HEALTH PLAN.—The terms ‘accident or health insurance’ and ‘accident

or health plan' have the same meaning as when used in section 105.

“(5) DEPENDENT.—The term ‘dependent’ has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.

“(d) DENIAL OF DOUBLE BENEFIT.—Subsection (a) shall not apply to the amount of any qualified Indian health care benefit which is not includible in gross income of the beneficiary of such benefit under any other provision of this chapter, or to the amount of any such benefit for which a deduction is allowed to such beneficiary under any other provision of this chapter.”.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 139C the following new item:

“Sec. 139D. Indian health care benefits.”.

26 USC 139D
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits and coverage provided after the date of the enactment of this Act.

26 USC 139D
note.

(d) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create an inference with respect to the exclusion from gross income of—

(1) benefits provided by an Indian tribe or tribal organization that are not within the scope of this section, and

(2) benefits provided prior to the date of the enactment of this Act.

SEC. 9022. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.

26 USC 125.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans), as amended by this Act, is amended by redesignating subsections (j) and (k) as subsections (k) and (l), respectively, and by inserting after subsection (i) the following new subsection:

“(j) SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.—

“(1) IN GENERAL.—An eligible employer maintaining a simple cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirement during such year.

“(2) SIMPLE CAFETERIA PLAN.—For purposes of this subsection, the term ‘simple cafeteria plan’ means a cafeteria plan—

“(A) which is established and maintained by an eligible employer, and

“(B) with respect to which the contribution requirements of paragraph (3), and the eligibility and participation requirements of paragraph (4), are met.

“(3) CONTRIBUTION REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this paragraph are met if, under the plan the employer is required, without regard to whether a qualified employee makes any salary reduction contribution, to make a contribution to provide qualified benefits under the plan on behalf of each qualified employee in an amount equal to—

“(i) a uniform percentage (not less than 2 percent) of the employee’s compensation for the plan year, or

“(ii) an amount which is not less than the lesser of—

“(I) 6 percent of the employee’s compensation for the plan year, or

“(II) twice the amount of the salary reduction contributions of each qualified employee.

“(B) MATCHING CONTRIBUTIONS ON BEHALF OF HIGHLY COMPENSATED AND KEY EMPLOYEES.—The requirements of subparagraph (A)(ii) shall not be treated as met if, under the plan, the rate of contributions with respect to any salary reduction contribution of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

“(C) ADDITIONAL CONTRIBUTIONS.—Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to provide qualified benefits under the plan in addition to contributions required under subparagraph (A).

“(D) DEFINITIONS.—For purposes of this paragraph—

“(i) SALARY REDUCTION CONTRIBUTION.—The term ‘salary reduction contribution’ means, with respect to a cafeteria plan, any amount which is contributed to the plan at the election of the employee and which is not includible in gross income by reason of this section.

“(ii) QUALIFIED EMPLOYEE.—The term ‘qualified employee’ means, with respect to a cafeteria plan, any employee who is not a highly compensated or key employee and who is eligible to participate in the plan.

“(iii) HIGHLY COMPENSATED EMPLOYEE.—The term ‘highly compensated employee’ has the meaning given such term by section 414(q).

“(iv) KEY EMPLOYEE.—The term ‘key employee’ has the meaning given such term by section 416(i).

“(4) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

“(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

“(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

“(B) CERTAIN EMPLOYEES MAY BE EXCLUDED.—For purposes of subparagraph (A)(i), an employer may elect to exclude under the plan employees—

“(i) who have not attained the age of 21 before the close of a plan year,

“(ii) who have less than 1 year of service with the employer as of any day during the plan year,

“(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits

covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

“(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

“(5) ELIGIBLE EMPLOYER.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘eligible employer’ means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the year.

“(B) EMPLOYERS NOT IN EXISTENCE DURING PRECEDING YEAR.—If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

“(C) GROWING EMPLOYERS RETAIN TREATMENT AS SMALL EMPLOYER.—

“(i) IN GENERAL.—If—

“(I) an employer was an eligible employer for any year (a ‘qualified year’), and

“(II) such employer establishes a simple cafeteria plan for its employees for such year, then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year.

“(ii) EXCEPTION.—This subparagraph shall cease to apply if the employer employs an average of 200 or more employees on business days during any year preceding any such subsequent year.

“(D) SPECIAL RULES.—

“(i) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

“(ii) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (o) of section 414, shall be treated as one person.

“(6) APPLICABLE NONDISCRIMINATION REQUIREMENT.—For purposes of this subsection, the term ‘applicable nondiscrimination requirement’ means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

“(7) COMPENSATION.—The term ‘compensation’ has the meaning given such term by section 414(s).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2010.

SEC. 9023. QUALIFYING THERAPEUTIC DISCOVERY PROJECT CREDIT.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 48C the following new section:

“SEC. 48D. QUALIFYING THERAPEUTIC DISCOVERY PROJECT CREDIT. 26 USC 48D.

“(a) IN GENERAL.—For purposes of section 46, the qualifying therapeutic discovery project credit for any taxable year is an amount equal to 50 percent of the qualified investment for such taxable year with respect to any qualifying therapeutic discovery project of an eligible taxpayer.

“(b) QUALIFIED INVESTMENT.—

“(1) IN GENERAL.—For purposes of subsection (a), the qualified investment for any taxable year is the aggregate amount of the costs paid or incurred in such taxable year for expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project.

“(2) LIMITATION.—The amount which is treated as qualified investment for all taxable years with respect to any qualifying therapeutic discovery project shall not exceed the amount certified by the Secretary as eligible for the credit under this section.

“(3) EXCLUSIONS.—The qualified investment for any taxable year with respect to any qualifying therapeutic discovery project shall not take into account any cost—

“(A) for remuneration for an employee described in section 162(m)(3),

“(B) for interest expenses,

“(C) for facility maintenance expenses,

“(D) which is identified as a service cost under section 1.263A-1(e)(4) of title 26, Code of Federal Regulations, or

“(E) for any other expense as determined by the Secretary as appropriate to carry out the purposes of this section.

“(4) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—In the case of costs described in paragraph (1) that are paid for property of a character subject to an allowance for depreciation, rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

“(5) APPLICATION OF SUBSECTION.—An investment shall be considered a qualified investment under this subsection only if such investment is made in a taxable year beginning in 2009 or 2010.

“(c) DEFINITIONS.—

“(1) QUALIFYING THERAPEUTIC DISCOVERY PROJECT.—The term ‘qualifying therapeutic discovery project’ means a project which is designed—

“(A) to treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act,

“(B) to diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or

“(C) to develop a product, process, or technology to further the delivery or administration of therapeutics.

“(2) ELIGIBLE TAXPAYER.—

“(A) IN GENERAL.—The term ‘eligible taxpayer’ means a taxpayer which employs not more than 250 employees in all businesses of the taxpayer at the time of the submission of the application under subsection (d)(2).

“(B) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be so treated for purposes of this paragraph.

“(3) FACILITY MAINTENANCE EXPENSES.—The term ‘facility maintenance expenses’ means costs paid or incurred to maintain a facility, including—

“(A) mortgage or rent payments,

“(B) insurance payments,

“(C) utility and maintenance costs, and

“(D) costs of employment of maintenance personnel.

“(d) QUALIFYING THERAPEUTIC DISCOVERY PROJECT PROGRAM.—

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—Not later than 60 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall establish a qualifying therapeutic discovery project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying therapeutic discovery project sponsors.

“(B) LIMITATION.—The total amount of credits that may be allocated under the program shall not exceed \$1,000,000,000 for the 2-year period beginning with 2009.

“(2) CERTIFICATION.—

“(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the period beginning on the date the Secretary establishes the program under paragraph (1).

“(B) TIME FOR REVIEW OF APPLICATIONS.—The Secretary shall take action to approve or deny any application under subparagraph (A) within 30 days of the submission of such application.

“(C) MULTI-YEAR APPLICATIONS.—An application for certification under subparagraph (A) may include a request for an allocation of credits for more than 1 of the years described in paragraph (1)(B).

“(3) SELECTION CRITERIA.—In determining the qualifying therapeutic discovery projects with respect to which qualified investments may be certified under this section, the Secretary—

“(A) shall take into consideration only those projects that show reasonable potential—

“(i) to result in new therapies—

“(I) to treat areas of unmet medical need, or

“(II) to prevent, detect, or treat chronic or acute diseases and conditions,

Deadline.

“(ii) to reduce long-term health care costs in the United States, or

“(iii) to significantly advance the goal of curing cancer within the 30-year period beginning on the date the Secretary establishes the program under paragraph (1), and

“(B) shall take into consideration which projects have the greatest potential—

“(i) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and

“(ii) to advance United States competitiveness in the fields of life, biological, and medical sciences.

“(4) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

Certification.
Public
information.

“(e) SPECIAL RULES.—

“(1) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for an expenditure related to property of a character subject to an allowance for depreciation, the basis of such property shall be reduced by the amount of such credit.

“(2) DENIAL OF DOUBLE BENEFIT.—

“(A) BONUS DEPRECIATION.—A credit shall not be allowed under this section for any investment for which bonus depreciation is allowed under section 168(k), 1400L(b)(1), or 1400N(d)(1).

“(B) DEDUCTIONS.—No deduction under this subtitle shall be allowed for the portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under this section for the taxable year which is equal to the amount of the credit determined for such taxable year under subsection (a) attributable to such portion. This subparagraph shall not apply to expenses related to property of a character subject to an allowance for depreciation the basis of which is reduced under paragraph (1), or which are described in section 280C(g).

“(C) CREDIT FOR RESEARCH ACTIVITIES.—

“(i) IN GENERAL.—Except as provided in clause (ii), any expenses taken into account under this section for a taxable year shall not be taken into account for purposes of determining the credit allowable under section 41 or 45C for such taxable year.

“(ii) EXPENSES INCLUDED IN DETERMINING BASE PERIOD RESEARCH EXPENSES.—Any expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

“(f) COORDINATION WITH DEPARTMENT OF TREASURY GRANTS.—In the case of any investment with respect to which the Secretary makes a grant under section 9023(e) of the Patient Protection and Affordable Care Act of 2009—

“(1) DENIAL OF CREDIT.—No credit shall be determined under this section with respect to such investment for the

taxable year in which such grant is made or any subsequent taxable year.

“(2) RECAPTURE OF CREDITS FOR PROGRESS EXPENDITURES MADE BEFORE GRANT.—If a credit was determined under this section with respect to such investment for any taxable year ending before such grant is made—

“(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

“(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

“(C) the amount of such grant shall be determined without regard to any reduction in the basis of any property of a character subject to an allowance for depreciation by reason of such credit.

“(3) TREATMENT OF GRANTS.—Any such grant shall not be includible in the gross income of the taxpayer.”.

26 USC 46. (b) INCLUSION AS PART OF INVESTMENT CREDIT.—Section 46 of the Internal Revenue Code of 1986 is amended—

(1) by adding a comma at the end of paragraph (2),

(2) by striking the period at the end of paragraph (5) and inserting “, and”, and

(3) by adding at the end the following new paragraph:

“(6) the qualifying therapeutic discovery project credit.”.

(c) CONFORMING AMENDMENTS.—

26 USC 49. (1) Section 49(a)(1)(C) of the Internal Revenue Code of 1986 is amended—

(A) by striking “and” at the end of clause (iv),

(B) by striking the period at the end of clause (v) and inserting “, and”, and

(C) by adding at the end the following new clause:

“(vi) the basis of any property to which paragraph (1) of section 48D(e) applies which is part of a qualifying therapeutic discovery project under such section 48D.”.

26 USC 280C. (2) Section 280C of such Code is amended by adding at the end the following new subsection:

“(g) QUALIFYING THERAPEUTIC DISCOVERY PROJECT CREDIT.—

“(1) IN GENERAL.—No deduction shall be allowed for that portion of the qualified investment (as defined in section 48D(b)) otherwise allowable as a deduction for the taxable year which—

“(A) would be qualified research expenses (as defined in section 41(b)), basic research expenses (as defined in section 41(e)(2)), or qualified clinical testing expenses (as defined in section 45C(b)) if the credit under section 41 or section 45C were allowed with respect to such expenses for such taxable year, and

“(B) is equal to the amount of the credit determined for such taxable year under section 48D(a), reduced by—

“(i) the amount disallowed as a deduction by reason of section 48D(e)(2)(B), and

“(ii) the amount of any basis reduction under section 48D(e)(1).

“(2) SIMILAR RULE WHERE TAXPAYER CAPITALIZES RATHER THAN DEDUCTS EXPENSES.—In the case of expenses described

in paragraph (1)(A) taken into account in determining the credit under section 48D for the taxable year, if—

“(A) the amount of the portion of the credit determined under such section with respect to such expenses, exceeds

“(B) the amount allowable as a deduction for such taxable year for such expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

“(3) CONTROLLED GROUPS.—Paragraph (3) of subsection (b) shall apply for purposes of this subsection.”. Applicability.

(d) CLERICAL AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 48C the following new item:

“Sec. 48D. Qualifying therapeutic discovery project credit.”.

(e) GRANTS FOR QUALIFIED INVESTMENTS IN THERAPEUTIC DISCOVERY PROJECTS IN LIEU OF TAX CREDITS.— 26 USC 48D
note.

(1) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this subsection, provide a grant to each person who makes a qualified investment in a qualifying therapeutic discovery project in the amount of 50 percent of such investment. No grant shall be made under this subsection with respect to any investment unless such investment is made during a taxable year beginning in 2009 or 2010.

(2) APPLICATION.—

(A) IN GENERAL.—At the stated election of the applicant, an application for certification under section 48D(d)(2) of the Internal Revenue Code of 1986 for a credit under such section for the taxable year of the applicant which begins in 2009 shall be considered to be an application for a grant under paragraph (1) for such taxable year.

(B) TAXABLE YEARS BEGINNING IN 2010.—An application for a grant under paragraph (1) for a taxable year beginning in 2010 shall be submitted—

(i) not earlier than the day after the last day of such taxable year, and

(ii) not later than the due date (including extensions) for filing the return of tax for such taxable year.

(C) INFORMATION TO BE SUBMITTED.—An application for a grant under paragraph (1) shall include such information and be in such form as the Secretary may require to state the amount of the credit allowable (but for the receipt of a grant under this subsection) under section 48D for the taxable year for the qualified investment with respect to which such application is made.

(3) TIME FOR PAYMENT OF GRANT.—

(A) IN GENERAL.—The Secretary of the Treasury shall make payment of the amount of any grant under paragraph (1) during the 30-day period beginning on the later of—

(i) the date of the application for such grant, or

(ii) the date the qualified investment for which the grant is being made is made.

(B) REGULATIONS.—In the case of investments of an ongoing nature, the Secretary shall issue regulations to determine the date on which a qualified investment shall be deemed to have been made for purposes of this paragraph.

Definition.

(4) QUALIFIED INVESTMENT.—For purposes of this subsection, the term “qualified investment” means a qualified investment that is certified under section 48D(d) of the Internal Revenue Code of 1986 for purposes of the credit under such section 48D.

(5) APPLICATION OF CERTAIN RULES.—

(A) IN GENERAL.—In making grants under this subsection, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, any increase in tax under chapter 1 of such Code by reason of an investment ceasing to be a qualified investment shall be imposed on the person to whom the grant was made.

(B) SPECIAL RULES.—

(i) RECAPTURE OF EXCESSIVE GRANT AMOUNTS.—If the amount of a grant made under this subsection exceeds the amount allowable as a grant under this subsection, such excess shall be recaptured under subparagraph (A) as if the investment to which such excess portion of the grant relates had ceased to be a qualified investment immediately after such grant was made.

(ii) GRANT INFORMATION NOT TREATED AS RETURN INFORMATION.—In no event shall the amount of a grant made under paragraph (1), the identity of the person to whom such grant was made, or a description of the investment with respect to which such grant was made be treated as return information for purposes of section 6103 of the Internal Revenue Code of 1986.

(6) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this subsection to—

(A) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

(B) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

(C) any entity referred to in paragraph (4) of section 54(j) of such Code, or

(D) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in subparagraph (A), (B) or (C).

In the case of a partnership or other pass-thru entity described in subparagraph (D), partners and other holders of any equity or profits interest shall provide to such partnership or entity such information as the Secretary of the Treasury may require to carry out the purposes of this paragraph.

(7) SECRETARY.—Any reference in this subsection to the Secretary of the Treasury shall be treated as including the Secretary’s delegate.

(8) OTHER TERMS.—Any term used in this subsection which is also used in section 48D of the Internal Revenue Code

of 1986 shall have the same meaning for purposes of this subsection as when used in such section.

(9) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under section 46(6) of the Internal Revenue Code of 1986 by reason of section 48D of such Code for any investment for which a grant is awarded under this subsection.

(10) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this subsection.

(11) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this subsection unless the application of such person for such grant is received before January 1, 2013.

(12) PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.—It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

(f) EFFECTIVE DATE.—The amendments made by subsections (a) through (d) of this section shall apply to amounts paid or incurred after December 31, 2008, in taxable years beginning after such date.

26 USC 46 note.

TITLE X—STRENGTHENING QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Subtitle A—Provisions Relating to Title I

SEC. 10101. AMENDMENTS TO SUBTITLE A.

(a) Section 2711 of the Public Health Service Act, as added by section 1001(5) of this Act, is amended to read as follows:

“SEC. 2711. NO LIFETIME OR ANNUAL LIMITS.

42 USC
300gg–11.

“(a) PROHIBITION.—

“(1) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish—

“(A) lifetime limits on the dollar value of benefits for any participant or beneficiary; or

“(B) except as provided in paragraph (2), annual limits on the dollar value of benefits for any participant or beneficiary.

“(2) ANNUAL LIMITS PRIOR TO 2014.—With respect to plan years beginning prior to January 1, 2014, a group health plan and a health insurance issuer offering group or individual health insurance coverage may only establish a restricted annual limit on the dollar value of benefits for any participant or beneficiary with respect to the scope of benefits that are essential health benefits under section 1302(b) of the Patient

Protection and Affordable Care Act, as determined by the Secretary. In defining the term ‘restricted annual limit’ for purposes of the preceding sentence, the Secretary shall ensure that access to needed services is made available with a minimal impact on premiums.

“(b) PER BENEFICIARY LIMITS.—Subsection (a) shall not be construed to prevent a group health plan or health insurance coverage from placing annual or lifetime per beneficiary limits on specific covered benefits that are not essential health benefits under section 1302(b) of the Patient Protection and Affordable Care Act, to the extent that such limits are otherwise permitted under Federal or State law.”.

42 USC
300gg-15.

(b) Section 2715(a) of the Public Health Service Act, as added by section 1001(5) of this Act, is amended by striking “and providing to enrollees” and inserting “and providing to applicants, enrollees, and policyholders or certificate holders”.

(c) Subpart II of part A of title XXVII of the Public Health Service Act, as added by section 1001(5), is amended by inserting after section 2715, the following:

Public
information.
42 USC
300gg-15a.

“SEC. 2715A. PROVISION OF ADDITIONAL INFORMATION.

“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall comply with the provisions of section 1311(e)(3) of the Patient Protection and Affordable Care Act, except that a plan or coverage that is not offered through an Exchange shall only be required to submit the information required to the Secretary and the State insurance commissioner, and make such information available to the public.”.

(d) Section 2716 of the Public Health Service Act, as added by section 1001(5) of this Act, is amended to read as follows:

42 USC
300gg-16.

“SEC. 2716. PROHIBITION ON DISCRIMINATION IN FAVOR OF HIGHLY COMPENSATED INDIVIDUALS.

“(a) IN GENERAL.—A group health plan (other than a self-insured plan) shall satisfy the requirements of section 105(h)(2) of the Internal Revenue Code of 1986 (relating to prohibition on discrimination in favor of highly compensated individuals).

“(b) RULES AND DEFINITIONS.—For purposes of this section—

“(1) CERTAIN RULES TO APPLY.—Rules similar to the rules contained in paragraphs (3), (4), and (8) of section 105(h) of such Code shall apply.

“(2) HIGHLY COMPENSATED INDIVIDUAL.—The term ‘highly compensated individual’ has the meaning given such term by section 105(h)(5) of such Code.”.

42 USC
300gg-17.

(e) Section 2717 of the Public Health Service Act, as added by section 1001(5) of this Act, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b), the following:

“(c) PROTECTION OF SECOND AMENDMENT GUN RIGHTS.—

“(1) WELLNESS AND PREVENTION PROGRAMS.—A wellness and health promotion activity implemented under subsection (a)(1)(D) may not require the disclosure or collection of any information relating to—

“(A) the presence or storage of a lawfully-possessioned firearm or ammunition in the residence or on the property of an individual; or

“(B) the lawful use, possession, or storage of a firearm or ammunition by an individual.

“(2) LIMITATION ON DATA COLLECTION.—None of the authorities provided to the Secretary under the Patient Protection and Affordable Care Act or an amendment made by that Act shall be construed to authorize or may be used for the collection of any information relating to—

“(A) the lawful ownership or possession of a firearm or ammunition;

“(B) the lawful use of a firearm or ammunition; or

“(C) the lawful storage of a firearm or ammunition.

“(3) LIMITATION ON DATABASES OR DATA BANKS.—None of the authorities provided to the Secretary under the Patient Protection and Affordable Care Act or an amendment made by that Act shall be construed to authorize or may be used to maintain records of individual ownership or possession of a firearm or ammunition.

“(4) LIMITATION ON DETERMINATION OF PREMIUM RATES OR ELIGIBILITY FOR HEALTH INSURANCE.—A premium rate may not be increased, health insurance coverage may not be denied, and a discount, rebate, or reward offered for participation in a wellness program may not be reduced or withheld under any health benefit plan issued pursuant to or in accordance with the Patient Protection and Affordable Care Act or an amendment made by that Act on the basis of, or on reliance upon—

“(A) the lawful ownership or possession of a firearm or ammunition; or

“(B) the lawful use or storage of a firearm or ammunition.

“(5) LIMITATION ON DATA COLLECTION REQUIREMENTS FOR INDIVIDUALS.—No individual shall be required to disclose any information under any data collection activity authorized under the Patient Protection and Affordable Care Act or an amendment made by that Act relating to—

“(A) the lawful ownership or possession of a firearm or ammunition; or

“(B) the lawful use, possession, or storage of a firearm or ammunition.”.

(f) Section 2718 of the Public Health Service Act, as added by section 1001(5), is amended to read as follows:

“SEC. 2718. BRINGING DOWN THE COST OF HEALTH CARE COVERAGE.

“(a) CLEAR ACCOUNTING FOR COSTS.—A health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan) shall, with respect to each plan year, submit to the Secretary a report concerning the ratio of the incurred loss (or incurred claims) plus the loss adjustment expense (or change in contract reserves) to earned premiums. Such report shall include the percentage of total premium revenue, after accounting for collections or receipts for risk adjustment and risk corridors and payments of reinsurance, that such coverage expends—

“(1) on reimbursement for clinical services provided to enrollees under such coverage;

“(2) for activities that improve health care quality; and

42 USC
300gg-18.
Reports.

Public information. Web posting.	<p>“(3) on all other non-claims costs, including an explanation of the nature of such costs, and excluding Federal and State taxes and licensing or regulatory fees.</p> <p>The Secretary shall make reports received under this section available to the public on the Internet website of the Department of Health and Human Services.</p>
Deadline.	<p>“(b) ENSURING THAT CONSUMERS RECEIVE VALUE FOR THEIR PREMIUM PAYMENTS.—</p> <p>“(1) REQUIREMENT TO PROVIDE VALUE FOR PREMIUM PAYMENTS.—</p> <p>“(A) REQUIREMENT.—Beginning not later than January 1, 2011, a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan) shall, with respect to each plan year, provide an annual rebate to each enrollee under such coverage, on a pro rata basis, if the ratio of the amount of premium revenue expended by the issuer on costs described in paragraphs (1) and (2) of subsection (a) to the total amount of premium revenue (excluding Federal and State taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act) for the plan year (except as provided in subparagraph (B)(ii)), is less than—</p> <p>“(i) with respect to a health insurance issuer offering coverage in the large group market, 85 percent, or such higher percentage as a State may by regulation determine; or</p> <p>“(ii) with respect to a health insurance issuer offering coverage in the small group market or in the individual market, 80 percent, or such higher percentage as a State may by regulation determine, except that the Secretary may adjust such percentage with respect to a State if the Secretary determines that the application of such 80 percent may destabilize the individual market in such State.</p> <p>“(B) REBATE AMOUNT.—</p> <p>“(i) CALCULATION OF AMOUNT.—The total amount of an annual rebate required under this paragraph shall be in an amount equal to the product of—</p> <p>“(I) the amount by which the percentage described in clause (i) or (ii) of subparagraph (A) exceeds the ratio described in such subparagraph; and</p> <p>“(II) the total amount of premium revenue (excluding Federal and State taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act) for such plan year.</p> <p>“(ii) CALCULATION BASED ON AVERAGE RATIO.—Beginning on January 1, 2014, the determination made under subparagraph (A) for the year involved shall be based on the averages of the premiums expended on the costs described in such subparagraph and total</p>
Effective date.	

premium revenue for each of the previous 3 years for the plan.

“(2) CONSIDERATION IN SETTING PERCENTAGES.—In determining the percentages under paragraph (1), a State shall seek to ensure adequate participation by health insurance issuers, competition in the health insurance market in the State, and value for consumers so that premiums are used for clinical services and quality improvements.

“(3) ENFORCEMENT.—The Secretary shall promulgate regulations for enforcing the provisions of this section and may provide for appropriate penalties.

Regulations.

“(c) DEFINITIONS.—Not later than December 31, 2010, and subject to the certification of the Secretary, the National Association of Insurance Commissioners shall establish uniform definitions of the activities reported under subsection (a) and standardized methodologies for calculating measures of such activities, including definitions of which activities, and in what regard such activities, constitute activities described in subsection (a)(2). Such methodologies shall be designed to take into account the special circumstances of smaller plans, different types of plans, and newer plans.

Deadline.
Certification.

“(d) ADJUSTMENTS.—The Secretary may adjust the rates described in subsection (b) if the Secretary determines appropriate on account of the volatility of the individual market due to the establishment of State Exchanges.

“(e) STANDARD HOSPITAL CHARGES.—Each hospital operating within the United States shall for each year establish (and update) and make public (in accordance with guidelines developed by the Secretary) a list of the hospital’s standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Social Security Act.”.

(g) Section 2719 of the Public Health Service Act, as added by section 1001(4) of this Act, is amended to read as follows:

“SEC. 2719. APPEALS PROCESS.

42 USC
300gg-19.

“(a) INTERNAL CLAIMS APPEALS.—

“(1) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall implement an effective appeals process for appeals of coverage determinations and claims, under which the plan or issuer shall, at a minimum—

“(A) have in effect an internal claims appeal process;

“(B) provide notice to enrollees, in a culturally and linguistically appropriate manner, of available internal and external appeals processes, and the availability of any applicable office of health insurance consumer assistance or ombudsman established under section 2793 to assist such enrollees with the appeals processes; and

“(C) allow an enrollee to review their file, to present evidence and testimony as part of the appeals process, and to receive continued coverage pending the outcome of the appeals process.

“(2) ESTABLISHED PROCESSES.—To comply with paragraph (1)—

“(A) a group health plan and a health insurance issuer offering group health coverage shall provide an internal claims and appeals process that initially incorporates the

claims and appeals procedures (including urgent claims) set forth at section 2560.503-1 of title 29, Code of Federal Regulations, as published on November 21, 2000 (65 Fed. Reg. 70256), and shall update such process in accordance with any standards established by the Secretary of Labor for such plans and issuers; and

“(B) a health insurance issuer offering individual health coverage, and any other issuer not subject to subparagraph (A), shall provide an internal claims and appeals process that initially incorporates the claims and appeals procedures set forth under applicable law (as in existence on the date of enactment of this section), and shall update such process in accordance with any standards established by the Secretary of Health and Human Services for such issuers.

“(b) **EXTERNAL REVIEW.**—A group health plan and a health insurance issuer offering group or individual health insurance coverage—

“(1) shall comply with the applicable State external review process for such plans and issuers that, at a minimum, includes the consumer protections set forth in the Uniform External Review Model Act promulgated by the National Association of Insurance Commissioners and is binding on such plans; or

“(2) shall implement an effective external review process that meets minimum standards established by the Secretary through guidance and that is similar to the process described under paragraph (1)—

“(A) if the applicable State has not established an external review process that meets the requirements of paragraph (1); or

“(B) if the plan is a self-insured plan that is not subject to State insurance regulation (including a State law that establishes an external review process described in paragraph (1)).

“(c) **SECRETARY AUTHORITY.**—The Secretary may deem the external review process of a group health plan or health insurance issuer, in operation as of the date of enactment of this section, to be in compliance with the applicable process established under subsection (b), as determined appropriate by the Secretary.”.

(h) Subpart II of part A of title XVIII of the Public Health Service Act, as added by section 1001(5) of this Act, is amended by inserting after section 2719 the following:

“SEC. 2719A. PATIENT PROTECTIONS.

“(a) **CHOICE OF HEALTH CARE PROFESSIONAL.**—If a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer shall permit each participant, beneficiary, and enrollee to designate any participating primary care provider who is available to accept such individual.

“(b) **COVERAGE OF EMERGENCY SERVICES.**—

“(1) **IN GENERAL.**—If a group health plan, or a health insurance issuer offering group or individual health insurance issuer, provides or covers any benefits with respect to services in an emergency department of a hospital, the plan or issuer

shall cover emergency services (as defined in paragraph (2)(B))—

“(A) without the need for any prior authorization determination;

“(B) whether the health care provider furnishing such services is a participating provider with respect to such services;

“(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee—

“(i) by a nonparticipating health care provider with or without prior authorization; or

“(ii)(I) such services will be provided without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services does not have a contractual relationship with the plan for the providing of services that is more restrictive than the requirements or limitations that apply to emergency department services received from providers who do have such a contractual relationship with the plan; and

“(II) if such services are provided out-of-network, the cost-sharing requirement (expressed as a copayment amount or coinsurance rate) is the same requirement that would apply if such services were provided in-network;

“(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of this Act, section 701 of the Employee Retirement Income Security Act of 1974, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

“(2) DEFINITIONS.—In this subsection:

“(A) EMERGENCY MEDICAL CONDITION.—The term ‘emergency medical condition’ means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act.

“(B) EMERGENCY SERVICES.—The term ‘emergency services’ means, with respect to an emergency medical condition—

“(i) a medical screening examination (as required under section 1867 of the Social Security Act) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition, and

“(ii) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as are required under section 1867 of such Act to stabilize the patient.

“(C) STABILIZE.—The term ‘to stabilize’, with respect to an emergency medical condition (as defined in subparagraph (A)), has the meaning give in section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)).

“(c) ACCESS TO PEDIATRIC CARE.—

“(1) PEDIATRIC CARE.—In the case of a person who has a child who is a participant, beneficiary, or enrollee under a group health plan, or health insurance coverage offered by a health insurance issuer in the group or individual market, if the plan or issuer requires or provides for the designation of a participating primary care provider for the child, the plan or issuer shall permit such person to designate a physician (allopathic or osteopathic) who specializes in pediatrics as the child’s primary care provider if such provider participates in the network of the plan or issuer.

“(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to waive any exclusions of coverage under the terms and conditions of the plan or health insurance coverage with respect to coverage of pediatric care.

“(d) PATIENT ACCESS TO OBSTETRICAL AND GYNECOLOGICAL CARE.—

“(1) GENERAL RIGHTS.—

“(A) DIRECT ACCESS.—A group health plan, or health insurance issuer offering group or individual health insurance coverage, described in paragraph (2) may not require authorization or referral by the plan, issuer, or any person (including a primary care provider described in paragraph (2)(B)) in the case of a female participant, beneficiary, or enrollee who seeks coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in obstetrics or gynecology. Such professional shall agree to otherwise adhere to such plan’s or issuer’s policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

“(B) OBSTETRICAL AND GYNECOLOGICAL CARE.—A group health plan or health insurance issuer described in paragraph (2) shall treat the provision of obstetrical and gynecological care, and the ordering of related obstetrical and gynecological items and services, pursuant to the direct access described under subparagraph (A), by a participating health care professional who specializes in obstetrics or gynecology as the authorization of the primary care provider.

“(2) APPLICATION OF PARAGRAPH.—A group health plan, or health insurance issuer offering group or individual health insurance coverage, described in this paragraph is a group health plan or coverage that—

“(A) provides coverage for obstetric or gynecologic care; and

“(B) requires the designation by a participant, beneficiary, or enrollee of a participating primary care provider.

“(3) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to—

“(A) waive any exclusions of coverage under the terms and conditions of the plan or health insurance coverage

with respect to coverage of obstetrical or gynecological care;
or

“(B) preclude the group health plan or health insurance issuer involved from requiring that the obstetrical or gynecological provider notify the primary care health care professional or the plan or issuer of treatment decisions.”.

(i) Section 2794 of the Public Health Service Act, as added by section 1003 of this Act, is amended—

42 USC
300gg-94.

(1) in subsection (c)(1)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(C) in establishing centers (consistent with subsection (d)) at academic or other nonprofit institutions to collect medical reimbursement information from health insurance issuers, to analyze and organize such information, and to make such information available to such issuers, health care providers, health researchers, health care policy makers, and the general public.”; and

(2) by adding at the end the following:

“(d) MEDICAL REIMBURSEMENT DATA CENTERS.—

“(1) FUNCTIONS.—A center established under subsection (c)(1)(C) shall—

“(A) develop fee schedules and other database tools that fairly and accurately reflect market rates for medical services and the geographic differences in those rates;

“(B) use the best available statistical methods and data processing technology to develop such fee schedules and other database tools;

“(C) regularly update such fee schedules and other database tools to reflect changes in charges for medical services;

“(D) make health care cost information readily available to the public through an Internet website that allows consumers to understand the amounts that health care providers in their area charge for particular medical services; and

Public
information.
Web posting.

“(E) regularly publish information concerning the statistical methodologies used by the center to analyze health charge data and make such data available to researchers and policy makers.

Publication.

“(2) CONFLICTS OF INTEREST.—A center established under subsection (c)(1)(C) shall adopt by-laws that ensures that the center (and all members of the governing board of the center) is independent and free from all conflicts of interest. Such by-laws shall ensure that the center is not controlled or influenced by, and does not have any corporate relation to, any individual or entity that may make or receive payments for health care services based on the center’s analysis of health care costs.

By-laws.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to permit a center established under subsection (c)(1)(C) to compel health insurance issuers to provide data to the center.”.

SEC. 10102. AMENDMENTS TO SUBTITLE B.

- 42 USC 18002. (a) Section 1102(a)(2)(B) of this Act is amended—
 (1) in the matter preceding clause (i), by striking “group health benefits plan” and inserting “group benefits plan providing health benefits”; and
 (2) in clause (i)(I), by inserting “or any agency or instrumentality of any of the foregoing” before the closed parenthetical.
- 42 USC 18003. (b) Section 1103(a) of this Act is amended—
 (1) in paragraph (1), by inserting “, or small business in,” after “residents of any”; and
 (2) by striking paragraph (2) and inserting the following:
 “(2) CONNECTING TO AFFORDABLE COVERAGE.—An Internet website established under paragraph (1) shall, to the extent practicable, provide ways for residents of, and small businesses in, any State to receive information on at least the following coverage options:
 “(A) Health insurance coverage offered by health insurance issuers, other than coverage that provides reimbursement only for the treatment or mitigation of—
 “(i) a single disease or condition; or
 “(ii) an unreasonably limited set of diseases or conditions (as determined by the Secretary).
 “(B) Medicaid coverage under title XIX of the Social Security Act.
 “(C) Coverage under title XXI of the Social Security Act.
 “(D) A State health benefits high risk pool, to the extent that such high risk pool is offered in such State; and
 “(E) Coverage under a high risk pool under section 1101.
 “(F) Coverage within the small group market for small businesses and their employees, including reinsurance for early retirees under section 1102, tax credits available under section 45R of the Internal Revenue Code of 1986 (as added by section 1421), and other information specifically for small businesses regarding affordable health care options.”.

SEC. 10103. AMENDMENTS TO SUBTITLE C.

- 42 USC 300gg. (a) Section 2701(a)(5) of the Public Health Service Act, as added by section 1201(4) of this Act, is amended by inserting “(other than self-insured group health plans offered in such market)” after “such market”.
- 42 USC 300gg–7. (b) Section 2708 of the Public Health Service Act, as added by section 1201(4) of this Act, is amended by striking “or individual”.
- (c) Subpart I of part A of title XXVII of the Public Health Service Act, as added by section 1201(4) of this Act, is amended by inserting after section 2708, the following:

42 USC 300gg–8. **“SEC. 2709. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.**

“(a) COVERAGE.—

“(1) IN GENERAL.—If a group health plan or a health insurance issuer offering group or individual health insurance coverage provides coverage to a qualified individual, then such plan or issuer—

“(A) may not deny the individual participation in the clinical trial referred to in subsection (b)(2);

“(B) subject to subsection (c), may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

“(C) may not discriminate against the individual on the basis of the individual’s participation in such trial.

“(2) ROUTINE PATIENT COSTS.—

“(A) INCLUSION.—For purposes of paragraph (1)(B), subject to subparagraph (B), routine patient costs include all items and services consistent with the coverage provided in the plan (or coverage) that is typically covered for a qualified individual who is not enrolled in a clinical trial.

“(B) EXCLUSION.—For purposes of paragraph (1)(B), routine patient costs does not include—

“(i) the investigational item, device, or service, itself;

“(ii) items and services that are provided solely to satisfy data collection and analysis needs and that are not used in the direct clinical management of the patient; or

“(iii) a service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis.

“(3) USE OF IN-NETWORK PROVIDERS.—If one or more participating providers is participating in a clinical trial, nothing in paragraph (1) shall be construed as preventing a plan or issuer from requiring that a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

“(4) USE OF OUT-OF-NETWORK.—Notwithstanding paragraph (3), paragraph (1) shall apply to a qualified individual participating in an approved clinical trial that is conducted outside the State in which the qualified individual resides.

Applicability.

“(b) QUALIFIED INDIVIDUAL DEFINED.—For purposes of subsection (a), the term ‘qualified individual’ means an individual who is a participant or beneficiary in a health plan or with coverage described in subsection (a)(1) and who meets the following conditions:

“(1) The individual is eligible to participate in an approved clinical trial according to the trial protocol with respect to treatment of cancer or other life-threatening disease or condition.

“(2) Either—

“(A) the referring health care professional is a participating health care provider and has concluded that the individual’s participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1); or

“(B) the participant or beneficiary provides medical and scientific information establishing that the individual’s participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1).

“(c) LIMITATIONS ON COVERAGE.—This section shall not be construed to require a group health plan, or a health insurance issuer

offering group or individual health insurance coverage, to provide benefits for routine patient care services provided outside of the plan's (or coverage's) health care provider network unless out-of-network benefits are otherwise provided under the plan (or coverage).

“(d) APPROVED CLINICAL TRIAL DEFINED.—

“(1) IN GENERAL.—In this section, the term ‘approved clinical trial’ means a phase I, phase II, phase III, or phase IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition and is described in any of the following subparagraphs:

“(A) FEDERALLY FUNDED TRIALS.—The study or investigation is approved or funded (which may include funding through in-kind contributions) by one or more of the following:

“(i) The National Institutes of Health.

“(ii) The Centers for Disease Control and Prevention.

“(iii) The Agency for Health Care Research and Quality.

“(iv) The Centers for Medicare & Medicaid Services.

“(v) cooperative group or center of any of the entities described in clauses (i) through (iv) or the Department of Defense or the Department of Veterans Affairs.

“(vi) A qualified non-governmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants.

“(vii) Any of the following if the conditions described in paragraph (2) are met:

“(I) The Department of Veterans Affairs.

“(II) The Department of Defense.

“(III) The Department of Energy.

“(B) The study or investigation is conducted under an investigational new drug application reviewed by the Food and Drug Administration.

“(C) The study or investigation is a drug trial that is exempt from having such an investigational new drug application.

Determination.

“(2) CONDITIONS FOR DEPARTMENTS.—The conditions described in this paragraph, for a study or investigation conducted by a Department, are that the study or investigation has been reviewed and approved through a system of peer review that the Secretary determines—

“(A) to be comparable to the system of peer review of studies and investigations used by the National Institutes of Health, and

“(B) assures unbiased review of the highest scientific standards by qualified individuals who have no interest in the outcome of the review.

“(e) LIFE-THREATENING CONDITION DEFINED.—In this section, the term ‘life-threatening condition’ means any disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

“(f) CONSTRUCTION.—Nothing in this section shall be construed to limit a plan's or issuer's coverage with respect to clinical trials.

“(g) APPLICATION TO FEHBP.—Notwithstanding any provision of chapter 89 of title 5, United States Code, this section shall apply to health plans offered under the program under such chapter.

“(h) PREEMPTION.—Notwithstanding any other provision of this Act, nothing in this section shall preempt State laws that require a clinical trials policy for State regulated health insurance plans that is in addition to the policy required under this section.”.

(d) Section 1251(a) of this Act is amended—

42 USC 18011.

(1) in paragraph (2), by striking “With” and inserting “Except as provided in paragraph (3), with”; and

(2) by adding at the end the following:

“(3) APPLICATION OF CERTAIN PROVISIONS.—The provisions of sections 2715 and 2718 of the Public Health Service Act (as added by subtitle A) shall apply to grandfathered health plans for plan years beginning on or after the date of enactment of this Act.”.

(e) Section 1253 of this Act is amended insert before the period the following: “, except that—

Effective date.
42 USC 300gg
note.

“(1) section 1251 shall take effect on the date of enactment of this Act; and

“(2) the provisions of section 2704 of the Public Health Service Act (as amended by section 1201), as they apply to enrollees who are under 19 years of age, shall become effective for plan years beginning on or after the date that is 6 months after the date of enactment of this Act.”.

(f) Subtitle C of title I of this Act is amended—

(1) by redesignating section 1253 as section 1255; and

(2) by inserting after section 1252, the following:

“SEC. 1253. ANNUAL REPORT ON SELF-INSURED PLANS.

42 USC 18013.

“Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Labor shall prepare an aggregate annual report, using data collected from the Annual Return/Report of Employee Benefit Plan (Department of Labor Form 5500), that shall include general information on self-insured group health plans (including plan type, number of participants, benefits offered, funding arrangements, and benefit arrangements) as well as data from the financial filings of self-insured employers (including information on assets, liabilities, contributions, investments, and expenses). The Secretary shall submit such reports to the appropriate committees of Congress.

“SEC. 1254. STUDY OF LARGE GROUP MARKET.

“(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the fully-insured and self-insured group health plan markets to—

“(1) compare the characteristics of employers (including industry, size, and other characteristics as determined appropriate by the Secretary), health plan benefits, financial solvency, capital reserve levels, and the risks of becoming insolvent; and

“(2) determine the extent to which new insurance market reforms are likely to cause adverse selection in the large group market or to encourage small and midsize employers to self-insure.

“(b) COLLECTION OF INFORMATION.—In conducting the study under subsection (a), the Secretary, in coordination with the Secretary of Labor, shall collect information and analyze—

“(1) the extent to which self-insured group health plans can offer less costly coverage and, if so, whether lower costs are due to more efficient plan administration and lower overhead or to the denial of claims and the offering very limited benefit packages;

“(2) claim denial rates, plan benefit fluctuations (to evaluate the extent that plans scale back health benefits during economic downturns), and the impact of the limited recourse options on consumers; and

“(3) any potential conflict of interest as it relates to the health care needs of self-insured enrollees and self-insured employer’s financial contribution or profit margin, and the impact of such conflict on administration of the health plan.

“(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report concerning the results of the study conducted under subsection (a).”.

SEC. 10104. AMENDMENTS TO SUBTITLE D.

42 USC 18021.

(a) Section 1301(a) of this Act is amended by striking paragraph (2) and inserting the following:

“(2) INCLUSION OF CO-OP PLANS AND MULTI-STATE QUALIFIED HEALTH PLANS.—Any reference in this title to a qualified health plan shall be deemed to include a qualified health plan offered through the CO-OP program under section 1322, and a multi-State plan under section 1334, unless specifically provided for otherwise.

Criteria.

“(3) TREATMENT OF QUALIFIED DIRECT PRIMARY CARE MEDICAL HOME PLANS.—The Secretary of Health and Human Services shall permit a qualified health plan to provide coverage through a qualified direct primary care medical home plan that meets criteria established by the Secretary, so long as the qualified health plan meets all requirements that are otherwise applicable and the services covered by the medical home plan are coordinated with the entity offering the qualified health plan.

“(4) VARIATION BASED ON RATING AREA.—A qualified health plan, including a multi-State qualified health plan, may as appropriate vary premiums by rating area (as defined in section 2701(a)(2) of the Public Health Service Act).”.

42 USC 18022.

(b) Section 1302 of this Act is amended—

(1) in subsection (d)(2)(B), by striking “may issue” and inserting “shall issue”; and

(2) by adding at the end the following:

“(g) PAYMENTS TO FEDERALLY-QUALIFIED HEALTH CENTERS.—If any item or service covered by a qualified health plan is provided by a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))) to an enrollee of the plan, the offeror of the plan shall pay to the center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of such Act (42 U.S.C. 1396a(bb)) for such item or service.”.

(c) Section 1303 of this Act is amended to read as follows:

42 USC 18023.

“SEC. 1303. SPECIAL RULES.

“(a) STATE OPT-OUT OF ABORTION COVERAGE.—

“(1) IN GENERAL.—A State may elect to prohibit abortion coverage in qualified health plans offered through an Exchange in such State if such State enacts a law to provide for such prohibition.

“(2) TERMINATION OF OPT OUT.—A State may repeal a law described in paragraph (1) and provide for the offering of such services through the Exchange.

“(b) SPECIAL RULES RELATING TO COVERAGE OF ABORTION SERVICES.—

“(1) VOLUNTARY CHOICE OF COVERAGE OF ABORTION SERVICES.—

“(A) IN GENERAL.—Notwithstanding any other provision of this title (or any amendment made by this title)—

“(i) nothing in this title (or any amendment made by this title), shall be construed to require a qualified health plan to provide coverage of services described in subparagraph (B)(i) or (B)(ii) as part of its essential health benefits for any plan year; and

“(ii) subject to subsection (a), the issuer of a qualified health plan shall determine whether or not the plan provides coverage of services described in subparagraph (B)(i) or (B)(ii) as part of such benefits for the plan year.

“(B) ABORTION SERVICES.—

“(i) ABORTIONS FOR WHICH PUBLIC FUNDING IS PROHIBITED.—The services described in this clause are abortions for which the expenditure of Federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.

“(ii) ABORTIONS FOR WHICH PUBLIC FUNDING IS ALLOWED.—The services described in this clause are abortions for which the expenditure of Federal funds appropriated for the Department of Health and Human Services is permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.

“(2) PROHIBITION ON THE USE OF FEDERAL FUNDS.—

“(A) IN GENERAL.—If a qualified health plan provides coverage of services described in paragraph (1)(B)(i), the issuer of the plan shall not use any amount attributable to any of the following for purposes of paying for such services:

“(i) The credit under section 36B of the Internal Revenue Code of 1986 (and the amount (if any) of the advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act).

“(ii) Any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act (and the amount (if any) of the advance payment of the reduction under section 1412 of the Patient Protection and Affordable Care Act).

“(B) ESTABLISHMENT OF ALLOCATION ACCOUNTS.—In the case of a plan to which subparagraph (A) applies, the issuer of the plan shall—

“(i) collect from each enrollee in the plan (without regard to the enrollee’s age, sex, or family status) a separate payment for each of the following:

“(I) an amount equal to the portion of the premium to be paid directly by the enrollee for coverage under the plan of services other than services described in paragraph (1)(B)(i) (after reduction for credits and cost-sharing reductions described in subparagraph (A)); and

“(II) an amount equal to the actuarial value of the coverage of services described in paragraph (1)(B)(i), and

“(ii) shall deposit all such separate payments into separate allocation accounts as provided in subparagraph (C).

In the case of an enrollee whose premium for coverage under the plan is paid through employee payroll deposit, the separate payments required under this subparagraph shall each be paid by a separate deposit.

“(C) SEGREGATION OF FUNDS.—

“(i) IN GENERAL.—The issuer of a plan to which subparagraph (A) applies shall establish allocation accounts described in clause (ii) for enrollees receiving amounts described in subparagraph (A).

“(ii) ALLOCATION ACCOUNTS.—The issuer of a plan to which subparagraph (A) applies shall deposit—

“(I) all payments described in subparagraph (B)(i)(I) into a separate account that consists solely of such payments and that is used exclusively to pay for services other than services described in paragraph (1)(B)(i); and

“(II) all payments described in subparagraph (B)(i)(II) into a separate account that consists solely of such payments and that is used exclusively to pay for services described in paragraph (1)(B)(i).

“(D) ACTUARIAL VALUE.—

“(i) IN GENERAL.—The issuer of a qualified health plan shall estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage under the qualified health plan of the services described in paragraph (1)(B)(i).

“(ii) CONSIDERATIONS.—In making such estimate, the issuer—

“(I) may take into account the impact on overall costs of the inclusion of such coverage, but may not take into account any cost reduction estimated to result from such services, including prenatal care, delivery, or postnatal care;

“(II) shall estimate such costs as if such coverage were included for the entire population covered; and

“(III) may not estimate such a cost at less than \$1 per enrollee, per month.

“(E) ENSURING COMPLIANCE WITH SEGREGATION REQUIREMENTS.—

“(i) IN GENERAL.—Subject to clause (ii), State health insurance commissioners shall ensure that health plans comply with the segregation requirements in this subsection through the segregation of plan funds in accordance with applicable provisions of generally accepted accounting requirements, circulars on funds management of the Office of Management and Budget, and guidance on accounting of the Government Accountability Office.

“(ii) CLARIFICATION.—Nothing in clause (i) shall prohibit the right of an individual or health plan to appeal such action in courts of competent jurisdiction.

“(3) RULES RELATING TO NOTICE.—

“(A) NOTICE.—A qualified health plan that provides for coverage of the services described in paragraph (1)(B)(i) shall provide a notice to enrollees, only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage.

“(B) RULES RELATING TO PAYMENTS.—The notice described in subparagraph (A), any advertising used by the issuer with respect to the plan, any information provided by the Exchange, and any other information specified by the Secretary shall provide information only with respect to the total amount of the combined payments for services described in paragraph (1)(B)(i) and other services covered by the plan.

“(4) NO DISCRIMINATION ON BASIS OF PROVISION OF ABORTION.—No qualified health plan offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions

“(c) APPLICATION OF STATE AND FEDERAL LAWS REGARDING ABORTION.—

“(1) NO PREEMPTION OF STATE LAWS REGARDING ABORTION.—Nothing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.

“(2) NO EFFECT ON FEDERAL LAWS REGARDING ABORTION.—

“(A) IN GENERAL.—Nothing in this Act shall be construed to have any effect on Federal laws regarding—

“(i) conscience protection;

“(ii) willingness or refusal to provide abortion; and

“(iii) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

“(3) NO EFFECT ON FEDERAL CIVIL RIGHTS LAW.—Nothing in this subsection shall alter the rights and obligations of employees and employers under title VII of the Civil Rights Act of 1964.

“(d) APPLICATION OF EMERGENCY SERVICES LAWS.—Nothing in this Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including section 1867 of the Social Security Act (popularly known as ‘EMTALA’).”.

42 USC 18024.	(d) Section 1304 of this Act is amended by adding at the end the following:
Definition.	<p>“(e) EDUCATED HEALTH CARE CONSUMERS.—The term ‘educated health care consumer’ means an individual who is knowledgeable about the health care system, and has background or experience in making informed decisions regarding health, medical, and scientific matters.”.</p>
42 USC 18031.	<p>(e) Section 1311(d) of this Act is amended—</p> <p>(1) in paragraph (3)(B), by striking clause (ii) and inserting the following:</p> <p>“(ii) STATE MUST ASSUME COST.—A State shall make payments—</p> <p>“(I) to an individual enrolled in a qualified health plan offered in such State; or</p> <p>“(II) on behalf of an individual described in subclause (I) directly to the qualified health plan in which such individual is enrolled;</p> <p>to defray the cost of any additional benefits described in clause (i).”; and</p> <p>(2) in paragraph (6)(A), by inserting “educated” before “health care”.</p> <p>(f) Section 1311(e) of this Act is amended—</p> <p>(1) in paragraph (2), by striking “may” in the second sentence and inserting “shall”; and</p> <p>(2) by adding at the end the following:</p> <p>“(3) TRANSPARENCY IN COVERAGE.—</p> <p>“(A) IN GENERAL.—The Exchange shall require health plans seeking certification as qualified health plans to submit to the Exchange, the Secretary, the State insurance commissioner, and make available to the public, accurate and timely disclosure of the following information:</p> <p>“(i) Claims payment policies and practices.</p> <p>“(ii) Periodic financial disclosures.</p> <p>“(iii) Data on enrollment.</p> <p>“(iv) Data on disenrollment.</p> <p>“(v) Data on the number of claims that are denied.</p> <p>“(vi) Data on rating practices.</p> <p>“(vii) Information on cost-sharing and payments with respect to any out-of-network coverage.</p> <p>“(viii) Information on enrollee and participant rights under this title.</p> <p>“(ix) Other information as determined appropriate by the Secretary.</p> <p>“(B) USE OF PLAIN LANGUAGE.—The information required to be submitted under subparagraph (A) shall be provided in plain language. The term ‘plain language’ means language that the intended audience, including individuals with limited English proficiency, can readily understand and use because that language is concise, well-organized, and follows other best practices of plain language writing. The Secretary and the Secretary of Labor shall jointly develop and issue guidance on best practices of plain language writing.</p> <p>“(C) COST SHARING TRANSPARENCY.—The Exchange shall require health plans seeking certification as qualified health plans to permit individuals to learn the amount of cost-sharing (including deductibles, copayments, and</p>
Public information.	
Definition.	
Guidance.	

coinsurance) under the individual’s plan or coverage that the individual would be responsible for paying with respect to the furnishing of a specific item or service by a participating provider in a timely manner upon the request of the individual. At a minimum, such information shall be made available to such individual through an Internet website and such other means for individuals without access to the Internet.

Web posting.

“(D) GROUP HEALTH PLANS.—The Secretary of Labor shall update and harmonize the Secretary’s rules concerning the accurate and timely disclosure to participants by group health plans of plan disclosure, plan terms and conditions, and periodic financial disclosure with the standards established by the Secretary under subparagraph (A).”.

(g) Section 1311(g)(1) of this Act is amended—

42 USC 18031.

(1) in subparagraph (C), by striking “; and” and inserting a semicolon;

(2) in subparagraph (D), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(E) the implementation of activities to reduce health and health care disparities, including through the use of language services, community outreach, and cultural competency trainings.”.

(h) Section 1311(i)(2)(B) of this Act is amended by striking “small business development centers” and inserting “resource partners of the Small Business Administration”.

(i) Section 1312 of this Act is amended—

42 USC 18032.

(1) in subsection (a)(1), by inserting “and for which such individual is eligible” before the period;

(2) in subsection (e)—

(A) in paragraph (1), by inserting “and employers” after “enroll individuals”; and

(B) by striking the flush sentence at the end; and

(3) in subsection (f)(1)(A)(ii), by striking the parenthetical.

(j)(1) Subparagraph (B) of section 1313(a)(6) of this Act is hereby deemed null, void, and of no effect.

42 USC 18033 note.

(2) Section 3730(e) of title 31, United States Code, is amended by striking paragraph (4) and inserting the following:

“(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

Courts.

“(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

“(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

“(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

“(B) For purposes of this paragraph, “original source” means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the

Definition.

Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.”

42 USC 18033.

(k) Section 1313(b) of this Act is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) a survey of the cost and affordability of health care insurance provided under the Exchanges for owners and employees of small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), including data on enrollees in Exchanges and individuals purchasing health insurance coverage outside of Exchanges; and”.

42 USC 18042.

(l) Section 1322(b) of this Act is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2), the following:

Deadlines.
Regulations.

“(3) REPAYMENT OF LOANS AND GRANTS.—Not later than July 1, 2013, and prior to awarding loans and grants under the CO-OP program, the Secretary shall promulgate regulations with respect to the repayment of such loans and grants in a manner that is consistent with State solvency regulations and other similar State laws that may apply. In promulgating such regulations, the Secretary shall provide that such loans shall be repaid within 5 years and such grants shall be repaid within 15 years, taking into consideration any appropriate State reserve requirements, solvency regulations, and requisite surplus note arrangements that must be constructed in a State to provide for such repayment prior to awarding such loans and grants.”.

42 USC 18043.

(m) Part III of subtitle D of title I of this Act is amended by striking section 1323.

42 USC 18044.

(n) Section 1324(a) of this Act is amended by striking “, a community health” and all that follows through “1333(b)” and inserting “, or a multi-State qualified health plan under section 1334”.

42 USC 18051.

(o) Section 1331 of this Act is amended—

(1) in subsection (d)(3)(A)(i), by striking “85” and inserting “95”; and

(2) in subsection (e)(1)(B), by inserting before the semicolon the following: “, or, in the case of an alien lawfully present in the United States, whose income is not greater than 133 percent of the poverty line for the size of the family involved but who is not eligible for the Medicaid program under title XIX of the Social Security Act by reason of such alien status”.

42 USC 18053.

(p) Section 1333 of this Act is amended by striking subsection

(b).

(q) Part IV of subtitle D of title I of this Act is amended by adding at the end the following:

Contracts.
42 USC 18054.

“SEC. 1334. MULTI-STATE PLANS.

“(a) OVERSIGHT BY THE OFFICE OF PERSONNEL MANAGEMENT.—

“(1) IN GENERAL.—The Director of the Office of Personnel Management (referred to in this section as the ‘Director’) shall enter into contracts with health insurance issuers (which may

include a group of health insurance issuers affiliated either by common ownership and control or by the common use of a nationally licensed service mark), without regard to section 5 of title 41, United States Code, or other statutes requiring competitive bidding, to offer at least 2 multi-State qualified health plans through each Exchange in each State. Such plans shall provide individual, or in the case of small employers, group coverage.

“(2) TERMS.—Each contract entered into under paragraph (1) shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party. In entering into such contracts, the Director shall ensure that health benefits coverage is provided in accordance with the types of coverage provided for under section 2701(a)(1)(A)(i) of the Public Health Service Act.

“(3) NON-PROFIT ENTITIES.—In entering into contracts under paragraph (1), the Director shall ensure that at least one contract is entered into with a non-profit entity.

“(4) ADMINISTRATION.—The Director shall implement this subsection in a manner similar to the manner in which the Director implements the contracting provisions with respect to carriers under the Federal employees health benefit program under chapter 89 of title 5, United States Code, including (through negotiating with each multi-state plan)—

“(A) a medical loss ratio;

“(B) a profit margin;

“(C) the premiums to be charged; and

“(D) such other terms and conditions of coverage as are in the interests of enrollees in such plans.

“(5) AUTHORITY TO PROTECT CONSUMERS.—The Director may prohibit the offering of any multi-State health plan that does not meet the terms and conditions defined by the Director with respect to the elements described in subparagraphs (A) through (D) of paragraph (4).

“(6) ASSURED AVAILABILITY OF VARIED COVERAGE.—In entering into contracts under this subsection, the Director shall ensure that with respect to multi-State qualified health plans offered in an Exchange, there is at least one such plan that does not provide coverage of services described in section 1303(b)(1)(B)(i).

“(7) WITHDRAWAL.—Approval of a contract under this subsection may be withdrawn by the Director only after notice and opportunity for hearing to the issuer concerned without regard to subchapter II of chapter 5 and chapter 7 of title 5, United States Code.

“(b) ELIGIBILITY.—A health insurance issuer shall be eligible to enter into a contract under subsection (a)(1) if such issuer—

“(1) agrees to offer a multi-State qualified health plan that meets the requirements of subsection (c) in each Exchange in each State;

“(2) is licensed in each State and is subject to all requirements of State law not inconsistent with this section, including the standards and requirements that a State imposes that do not prevent the application of a requirement of part A of title XXVII of the Public Health Service Act or a requirement of this title;

“(3) otherwise complies with the minimum standards prescribed for carriers offering health benefits plans under section 8902(e) of title 5, United States Code, to the extent that such standards do not conflict with a provision of this title; and

“(4) meets such other requirements as determined appropriate by the Director, in consultation with the Secretary.

“(c) REQUIREMENTS FOR MULTI-STATE QUALIFIED HEALTH PLAN.—

“(1) IN GENERAL.—A multi-State qualified health plan meets the requirements of this subsection if, in the determination of the Director—

“(A) the plan offers a benefits package that is uniform in each State and consists of the essential benefits described in section 1302;

“(B) the plan meets all requirements of this title with respect to a qualified health plan, including requirements relating to the offering of the bronze, silver, and gold levels of coverage and catastrophic coverage in each State Exchange;

“(C) except as provided in paragraph (5), the issuer provides for determinations of premiums for coverage under the plan on the basis of the rating requirements of part A of title XXVII of the Public Health Service Act; and

“(D) the issuer offers the plan in all geographic regions, and in all States that have adopted adjusted community rating before the date of enactment of this Act.

“(2) STATES MAY OFFER ADDITIONAL BENEFITS.—Nothing in paragraph (1)(A) shall preclude a State from requiring that benefits in addition to the essential health benefits required under such paragraph be provided to enrollees of a multi-State qualified health plan offered in such State.

“(3) CREDITS.—

“(A) IN GENERAL.—An individual enrolled in a multi-State qualified health plan under this section shall be eligible for credits under section 36B of the Internal Revenue Code of 1986 and cost sharing assistance under section 1402 in the same manner as an individual who is enrolled in a qualified health plan.

“(B) NO ADDITIONAL FEDERAL COST.—A requirement by a State under paragraph (2) that benefits in addition to the essential health benefits required under paragraph (1)(A) be provided to enrollees of a multi-State qualified health plan shall not affect the amount of a premium tax credit provided under section 36B of the Internal Revenue Code of 1986 with respect to such plan.

“(4) STATE MUST ASSUME COST.—A State shall make payments—

“(A) to an individual enrolled in a multi-State qualified health plan offered in such State; or

“(B) on behalf of an individual described in subparagraph (A) directly to the multi-State qualified health plan in which such individual is enrolled;

to defray the cost of any additional benefits described in paragraph (2).

“(5) APPLICATION OF CERTAIN STATE RATING REQUIREMENTS.—With respect to a multi-State qualified health plan that is offered in a State with age rating requirements that

are lower than 3:1, the State may require that Exchanges operating in such State only permit the offering of such multi-State qualified health plans if such plans comply with the State's more protective age rating requirements.

“(d) PLANS DEEMED TO BE CERTIFIED.—A multi-State qualified health plan that is offered under a contract under subsection (a) shall be deemed to be certified by an Exchange for purposes of section 1311(d)(4)(A).

“(e) PHASE-IN.—Notwithstanding paragraphs (1) and (2) of subsection (b), the Director shall enter into a contract with a health insurance issuer for the offering of a multi-State qualified health plan under subsection (a) if—

Contracts.

“(1) with respect to the first year for which the issuer offers such plan, such issuer offers the plan in at least 60 percent of the States;

“(2) with respect to the second such year, such issuer offers the plan in at least 70 percent of the States;

“(3) with respect to the third such year, such issuer offers the plan in at least 85 percent of the States; and

“(4) with respect to each subsequent year, such issuer offers the plan in all States.

“(f) APPLICABILITY.—The requirements under chapter 89 of title 5, United States Code, applicable to health benefits plans under such chapter shall apply to multi-State qualified health plans provided for under this section to the extent that such requirements do not conflict with a provision of this title.

“(g) CONTINUED SUPPORT FOR FEHBP.—

“(1) MAINTENANCE OF EFFORT.—Nothing in this section shall be construed to permit the Director to allocate fewer financial or personnel resources to the functions of the Office of Personnel Management related to the administration of the Federal Employees Health Benefit Program under chapter 89 of title 5, United States Code.

“(2) SEPARATE RISK POOL.—Enrollees in multi-State qualified health plans under this section shall be treated as a separate risk pool apart from enrollees in the Federal Employees Health Benefit Program under chapter 89 of title 5, United States Code.

“(3) AUTHORITY TO ESTABLISH SEPARATE ENTITIES.—The Director may establish such separate units or offices within the Office of Personnel Management as the Director determines to be appropriate to ensure that the administration of multi-State qualified health plans under this section does not interfere with the effective administration of the Federal Employees Health Benefit Program under chapter 89 of title 5, United States Code.

“(4) EFFECTIVE OVERSIGHT.—The Director may appoint such additional personnel as may be necessary to enable the Director to carry out activities under this section.

“(5) ASSURANCE OF SEPARATE PROGRAM.—In carrying out this section, the Director shall ensure that the program under this section is separate from the Federal Employees Health Benefit Program under chapter 89 of title 5, United States Code. Premiums paid for coverage under a multi-State qualified health plan under this section shall not be considered to be Federal funds for any purposes.

- “(6) FEHBP PLANS NOT REQUIRED TO PARTICIPATE.—Nothing in this section shall require that a carrier offering coverage under the Federal Employees Health Benefit Program under chapter 89 of title 5, United States Code, also offer a multi-State qualified health plan under this section.
- Establishment. “(h) ADVISORY BOARD.—The Director shall establish an advisory board to provide recommendations on the activities described in this section. A significant percentage of the members of such board shall be comprised of enrollees in a multi-State qualified health plan, or representatives of such enrollees.
- “(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, such sums as may be necessary to carry out this section.”.
- 42 USC 18061. (r) Section 1341 of this Act is amended—
- (1) in the section heading, by striking “AND SMALL GROUP MARKETS” and inserting “MARKET”;
 - (2) in subsection (b)(2)(B), by striking “paragraph (1)(A)” and inserting “paragraph (1)(B)”;
 - (3) in subsection (c)(1)(A), by striking “and small group markets” and inserting “market”.
- SEC. 10105. AMENDMENTS TO SUBTITLE E.**
- 26 USC 36B. (a) Section 36B(b)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by section 1401(a) of this Act, is amended by striking “is in excess of” and inserting “equals or exceeds”.
- (b) Section 36B(c)(1)(A) of the Internal Revenue Code of 1986, as added by section 1401(a) of this Act, is amended by inserting “equals or” before “exceeds”.
- (c) Section 36B(c)(2)(C)(iv) of the Internal Revenue Code of 1986, as added by section 1401(a) of this Act, is amended by striking “subsection (b)(3)(A)(ii)” and inserting “subsection (b)(3)(A)(iii)”.
- 26 USC 6211. (d) Section 1401(d) of this Act is amended by adding at the end the following:
- “(3) Section 6211(b)(4)(A) of the Internal Revenue Code of 1986 is amended by inserting ‘36B,’ after ‘36A,’.”.
- 26 USC 45R. (e)(1) Subparagraph (B) of section 45R(d)(3) of the Internal Revenue Code of 1986, as added by section 1421(a) of this Act, is amended to read as follows:
- “(B) DOLLAR AMOUNT.—For purposes of paragraph (1)(B) and subsection (c)(2)—
- “(i) 2010, 2011, 2012, AND 2013.—The dollar amount in effect under this paragraph for taxable years beginning in 2010, 2011, 2012, or 2013 is \$25,000.
 - “(ii) SUBSEQUENT YEARS.—In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to \$25,000, multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2012’ for ‘calendar year 1992’ in subparagraph (B) thereof.”.
- (2) Subsection (g) of section 45R of the Internal Revenue Code of 1986, as added by section 1421(a) of this Act, is amended by striking “2011” both places it appears and inserting “2010, 2011”.
- 26 USC 280C. (3) Section 280C(h) of the Internal Revenue Code of 1986, as added by section 1421(d)(1) of this Act, is amended by striking “2011” and inserting “2010, 2011”.

(4) Section 1421(f) of this Act is amended by striking “2010” both places it appears and inserting “2009”. 26 USC 38 note.

(5) The amendments made by this subsection shall take effect as if included in the enactment of section 1421 of this Act. 26 USC 45R note.

(f) Part I of subtitle E of title I of this Act is amended by adding at the end of subpart B, the following:

“SEC. 1416. STUDY OF GEOGRAPHIC VARIATION IN APPLICATION OF FPL.

“(a) IN GENERAL.—The Secretary shall conduct a study to examine the feasibility and implication of adjusting the application of the Federal poverty level under this subtitle (and the amendments made by this subtitle) for different geographic areas so as to reflect the variations in cost-of-living among different areas within the United States. If the Secretary determines that an adjustment is feasible, the study should include a methodology to make such an adjustment. Not later than January 1, 2013, the Secretary shall submit to Congress a report on such study and shall include such recommendations as the Secretary determines appropriate.

Determination.

Deadline.
Reports.
Recommendations.

“(b) INCLUSION OF TERRITORIES.—

“(1) IN GENERAL.—The Secretary shall ensure that the study under subsection (a) covers the territories of the United States and that special attention is paid to the disparity that exists among poverty levels and the cost of living in such territories and to the impact of such disparity on efforts to expand health coverage and ensure health care.

“(2) TERRITORIES DEFINED.—In this subsection, the term ‘territories of the United States’ includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other territory or possession of the United States.”.

SEC. 10106. AMENDMENTS TO SUBTITLE F.

(a) Section 1501(a)(2) of this Act is amended to read as follows: 42 USC 18091.

“(2) EFFECTS ON THE NATIONAL ECONOMY AND INTERSTATE COMMERCE.—The effects described in this paragraph are the following:

“(A) The requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased. In the absence of the requirement, some individuals would make an economic and financial decision to forego health insurance coverage and attempt to self-insure, which increases financial risks to households and medical providers.

“(B) Health insurance and health care services are a significant part of the national economy. National health spending is projected to increase from \$2,500,000,000,000, or 17.6 percent of the economy, in 2009 to \$4,700,000,000,000 in 2019. Private health insurance spending is projected to be \$854,000,000,000 in 2009, and pays for medical supplies, drugs, and equipment that are shipped in interstate commerce. Since most health insurance is sold by national or regional health insurance companies, health insurance is sold in interstate commerce and claims payments flow through interstate commerce.

“(C) The requirement, together with the other provisions of this Act, will add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services, and will increase the number and share of Americans who are insured.

“(D) The requirement achieves near-universal coverage by building upon and strengthening the private employer-based health insurance system, which covers 176,000,000 Americans nationwide. In Massachusetts, a similar requirement has strengthened private employer-based coverage: despite the economic downturn, the number of workers offered employer-based coverage has actually increased.

“(E) The economy loses up to \$207,000,000,000 a year because of the poorer health and shorter lifespan of the uninsured. By significantly reducing the number of the uninsured, the requirement, together with the other provisions of this Act, will significantly reduce this economic cost.

“(F) The cost of providing uncompensated care to the uninsured was \$43,000,000,000 in 2008. To pay for this cost, health care providers pass on the cost to private insurers, which pass on the cost to families. This cost-shifting increases family premiums by on average over \$1,000 a year. By significantly reducing the number of the uninsured, the requirement, together with the other provisions of this Act, will lower health insurance premiums.

“(G) 62 percent of all personal bankruptcies are caused in part by medical expenses. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will improve financial security for families.

“(H) Under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), the Public Health Service Act (42 U.S.C. 201 et seq.), and this Act, the Federal Government has a significant role in regulating health insurance. The requirement is an essential part of this larger regulation of economic activity, and the absence of the requirement would undercut Federal regulation of the health insurance market.

“(I) Under sections 2704 and 2705 of the Public Health Service Act (as added by section 1201 of this Act), if there were no requirement, many individuals would wait to purchase health insurance until they needed care. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums. The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.

“(J) Administrative costs for private health insurance, which were \$90,000,000,000 in 2006, are 26 to 30 percent of premiums in the current individual and small group

markets. By significantly increasing health insurance coverage and the size of purchasing pools, which will increase economies of scale, the requirement, together with the other provisions of this Act, will significantly reduce administrative costs and lower health insurance premiums. The requirement is essential to creating effective health insurance markets that do not require underwriting and eliminate its associated administrative costs.”.

(b)(1) Section 5000A(b)(1) of the Internal Revenue Code of 1986, as added by section 1501(b) of this Act, is amended to read as follows: 26 USC 5000A.

“(1) IN GENERAL.—If a taxpayer who is an applicable individual, or an applicable individual for whom the taxpayer is liable under paragraph (3), fails to meet the requirement of subsection (a) for 1 or more months, then, except as provided in subsection (e), there is hereby imposed on the taxpayer a penalty with respect to such failures in the amount determined under subsection (c).”.

(2) Paragraphs (1) and (2) of section 5000A(c) of the Internal Revenue Code of 1986, as so added, are amended to read as follows:

“(1) IN GENERAL.—The amount of the penalty imposed by this section on any taxpayer for any taxable year with respect to failures described in subsection (b)(1) shall be equal to the lesser of—

“(A) the sum of the monthly penalty amounts determined under paragraph (2) for months in the taxable year during which 1 or more such failures occurred, or

“(B) an amount equal to the national average premium for qualified health plans which have a bronze level of coverage, provide coverage for the applicable family size involved, and are offered through Exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

“(2) MONTHLY PENALTY AMOUNTS.—For purposes of paragraph (1)(A), the monthly penalty amount with respect to any taxpayer for any month during which any failure described in subsection (b)(1) occurred is an amount equal to $\frac{1}{12}$ of the greater of the following amounts:

“(A) FLAT DOLLAR AMOUNT.—An amount equal to the lesser of—

“(i) the sum of the applicable dollar amounts for all individuals with respect to whom such failure occurred during such month, or

“(ii) 300 percent of the applicable dollar amount (determined without regard to paragraph (3)(C)) for the calendar year with or within which the taxable year ends.

“(B) PERCENTAGE OF INCOME.—An amount equal to the following percentage of the taxpayer’s household income for the taxable year:

“(i) 0.5 percent for taxable years beginning in 2014.

“(ii) 1.0 percent for taxable years beginning in 2015.

“(iii) 2.0 percent for taxable years beginning after 2015.”.

26 USC 5000A. (3) Section 5000A(c)(3) of the Internal Revenue Code of 1986, as added by section 1501(b) of this Act, is amended by striking “\$350” and inserting “\$495”.

(c) Section 5000A(d)(2)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of this Act, is amended to read as follows:

“(A) RELIGIOUS CONSCIENCE EXEMPTION.—Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is—

“(i) a member of a recognized religious sect or division thereof which is described in section 1402(g)(1), and

“(ii) an adherent of established tenets or teachings of such sect or division as described in such section.”.

(d) Section 5000A(e)(1)(C) of the Internal Revenue Code of 1986, as added by section 1501(b) of this Act, is amended to read as follows:

“(C) SPECIAL RULES FOR INDIVIDUALS RELATED TO EMPLOYEES.—For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under subparagraph (A) shall be made by reference to required contribution of the employee.”.

26 USC 4980H. (e) Section 4980H(b) of the Internal Revenue Code of 1986, as added by section 1513(a) of this Act, is amended to read as follows:

“(b) LARGE EMPLOYERS WITH WAITING PERIODS EXCEEDING 60 DAYS.—

“(1) IN GENERAL.—In the case of any applicable large employer which requires an extended waiting period to enroll in any minimum essential coverage under an employer-sponsored plan (as defined in section 5000A(f)(2)), there is hereby imposed on the employer an assessable payment of \$600 for each full-time employee of the employer to whom the extended waiting period applies.

Definition. “(2) EXTENDED WAITING PERIOD.—The term ‘extended waiting period’ means any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act) which exceeds 60 days.”.

(f)(1) Subparagraph (A) of section 4980H(d)(4) of the Internal Revenue Code of 1986, as added by section 1513(a) of this Act, is amended by inserting “, with respect to any month,” after “means”.

(2) Section 4980H(d)(2) of the Internal Revenue Code of 1986, as added by section 1513(a) of this Act, is amended by adding at the end the following:

“(D) APPLICATION TO CONSTRUCTION INDUSTRY EMPLOYERS.—In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

“(i) subparagraph (A) shall be applied by substituting ‘who employed an average of at least 5 full-time employees on business days during the preceding calendar year and whose annual payroll expenses

exceed \$250,000 for such preceding calendar year’ for ‘who employed an average of at least 50 full-time employees on business days during the preceding calendar year’, and

“(ii) subparagraph (B) shall be applied by substituting ‘5’ for ‘50’.”.

(3) The amendment made by paragraph (2) shall apply to months beginning after December 31, 2013.

(g) Section 6056(b) of the Internal Revenue Code of 1986, as added by section 1514(a) of the Act, is amended by adding at the end the following new flush sentence:

“The Secretary shall have the authority to review the accuracy of the information provided under this subsection, including the applicable large employer’s share under paragraph (2)(C)(iv).”.

Applicability.
26 USC 4980H
note.

26 USC 6056.

SEC. 10107. AMENDMENTS TO SUBTITLE G.

(a) Section 1562 of this Act is amended, in the amendment made by subsection (a)(2)(B)(iii), by striking “subpart 1” and inserting “subparts I and II”; and

42 USC
300gg–21.

(b) Subtitle G of title I of this Act is amended—

(1) by redesignating section 1562 (as amended) as section 1563; and

(2) by inserting after section 1561 the following:

26 USC 9815; 29
USC 1185d; 42
USC 300gg–1—
300gg–3,
300gg–9,
300gg–11,
300gg–12,
300gg–21—
300gg–23,
300gg–25—
300gg–28,
300gg–62,
300gg–91, 18120.

“SEC. 1562. GAO STUDY REGARDING THE RATE OF DENIAL OF COVERAGE AND ENROLLMENT BY HEALTH INSURANCE ISSUERS AND GROUP HEALTH PLANS.

“(a) IN GENERAL.—The Comptroller General of the United States (referred to in this section as the ‘Comptroller General’) shall conduct a study of the incidence of denials of coverage for medical services and denials of applications to enroll in health insurance plans, as described in subsection (b), by group health plans and health insurance issuers.

“(b) DATA.—

“(1) IN GENERAL.—In conducting the study described in subsection (a), the Comptroller General shall consider samples of data concerning the following:

“(A)(i) denials of coverage for medical services to a plan enrollees, by the types of services for which such coverage was denied; and

“(ii) the reasons such coverage was denied; and

“(B)(i) incidents in which group health plans and health insurance issuers deny the application of an individual to enroll in a health insurance plan offered by such group health plan or issuer; and

“(ii) the reasons such applications are denied.

“(2) SCOPE OF DATA.—

“(A) FAVORABLY RESOLVED DISPUTES.—The data that the Comptroller General considers under paragraph (1) shall include data concerning denials of coverage for medical services and denials of applications for enrollment in a plan by a group health plan or health insurance issuer, where such group health plan or health insurance issuer later approves such coverage or application.

“(B) ALL HEALTH PLANS.—The study under this section shall consider data from varied group health plans and health insurance plans offered by health insurance issuers,

including qualified health plans and health plans that are not qualified health plans.

“(c) REPORT.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to the Secretaries of Health and Human Services and Labor a report describing the results of the study conducted under this section.

“(d) PUBLICATION OF REPORT.—The Secretaries of Health and Human Services and Labor shall make the report described in subsection (c) available to the public on an Internet website.

Public
information.
Web posting.

42 USC 18119.

“SEC. 1563. SMALL BUSINESS PROCUREMENT.

“Part 19 of the Federal Acquisition Regulation, section 15 of the Small Business Act (15 U.S.C. 644), and any other applicable laws or regulations establishing procurement requirements relating to small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) may not be waived with respect to any contract awarded under any program or other authority under this Act or an amendment made by this Act.”.

42 USC 18101.

SEC. 10108. FREE CHOICE VOUCHERS.

(a) IN GENERAL.—An offering employer shall provide free choice vouchers to each qualified employee of such employer.

(b) OFFERING EMPLOYER.—For purposes of this section, the term “offering employer” means any employer who—

(1) offers minimum essential coverage to its employees consisting of coverage through an eligible employer-sponsored plan; and

(2) pays any portion of the costs of such plan.

(c) QUALIFIED EMPLOYEE.—For purposes of this section—

(1) IN GENERAL.—The term “qualified employee” means, with respect to any plan year of an offering employer, any employee—

(A) whose required contribution (as determined under section 5000A(e)(1)(B)) for minimum essential coverage through an eligible employer-sponsored plan—

(i) exceeds 8 percent of such employee’s household income for the taxable year described in section 1412(b)(1)(B) which ends with or within in the plan year; and

(ii) does not exceed 9.8 percent of such employee’s household income for such taxable year;

(B) whose household income for such taxable year is not greater than 400 percent of the poverty line for a family of the size involved; and

(C) who does not participate in a health plan offered by the offering employer.

(2) INDEXING.—In the case of any calendar year beginning after 2014, the Secretary shall adjust the 8 percent under paragraph (1)(A)(i) and 9.8 percent under paragraph (1)(A)(ii) for the calendar year to reflect the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

(d) FREE CHOICE VOUCHER.—

(1) AMOUNT.—

(A) IN GENERAL.—The amount of any free choice voucher provided under subsection (a) shall be equal to the monthly portion of the cost of the eligible employer-sponsored plan which would have been paid by the

Definition.

employer if the employee were covered under the plan with respect to which the employer pays the largest portion of the cost of the plan. Such amount shall be equal to the amount the employer would pay for an employee with self-only coverage unless such employee elects family coverage (in which case such amount shall be the amount the employer would pay for family coverage).

(B) DETERMINATION OF COST.—The cost of any health plan shall be determined under the rules similar to the rules of section 2204 of the Public Health Service Act, except that such amount shall be adjusted for age and category of enrollment in accordance with regulations established by the Secretary.

Regulations.

(2) USE OF VOUCHERS.—An Exchange shall credit the amount of any free choice voucher provided under subsection (a) to the monthly premium of any qualified health plan in the Exchange in which the qualified employee is enrolled and the offering employer shall pay any amounts so credited to the Exchange.

(3) PAYMENT OF EXCESS AMOUNTS.—If the amount of the free choice voucher exceeds the amount of the premium of the qualified health plan in which the qualified employee is enrolled for such month, such excess shall be paid to the employee.

(e) OTHER DEFINITIONS.—Any term used in this section which is also used in section 5000A of the Internal Revenue Code of 1986 shall have the meaning given such term under such section 5000A.

(f) EXCLUSION FROM INCOME FOR EMPLOYEE.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139C the following new section:

“SEC. 139D. FREE CHOICE VOUCHERS.

26 USC 139D.

“Gross income shall not include the amount of any free choice voucher provided by an employer under section 10108 of the Patient Protection and Affordable Care Act to the extent that the amount of such voucher does not exceed the amount paid for a qualified health plan (as defined in section 1301 of such Act) by the taxpayer.”.

(2) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139C the following new item:

“Sec. 139D. Free choice vouchers.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

26 USC 139D note.

(g) DEDUCTION ALLOWED TO EMPLOYER.—

(1) IN GENERAL.—Section 162(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: “For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered.”.

26 USC 162.

26 USC 162 note.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(h) **VOUCHER TAKEN INTO ACCOUNT IN DETERMINING PREMIUM CREDIT.**—

26 USC 36B.

(1) **IN GENERAL.**—Subsection (c)(2) of section 36B of the Internal Revenue Code of 1986, as added by section 1401, is amended by adding at the end the following new subparagraph:

“(D) **EXCEPTION FOR INDIVIDUAL RECEIVING FREE CHOICE VOUCHERS.**—The term ‘coverage month’ shall not include any month in which such individual has a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act.”.

26 USC 36B note.

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2013.

(i) **COORDINATION WITH EMPLOYER RESPONSIBILITIES.**—

(1) **SHARED RESPONSIBILITY PENALTY.**—

26 USC 4980H.

(A) **IN GENERAL.**—Subsection (c) of section 4980H of the Internal Revenue Code of 1986, as added by section 1513, is amended by adding at the end the following new paragraph:

“(3) **SPECIAL RULES FOR EMPLOYERS PROVIDING FREE CHOICE VOUCHERS.**—No assessable payment shall be imposed under paragraph (1) for any month with respect to any employee to whom the employer provides a free choice voucher under section 10108 of the Patient Protection and Affordable Care Act for such month.”.

26 USC 4980H note.

(B) **EFFECTIVE DATE.**—The amendment made by this paragraph shall apply to months beginning after December 31, 2013.

29 USC 218b.

(2) **NOTIFICATION REQUIREMENT.**—Section 18B(a)(3) of the Fair Labor Standards Act of 1938, as added by section 1512, is amended—

(A) by inserting “and the employer does not offer a free choice voucher” after “Exchange”; and

(B) by striking “will lose” and inserting “may lose”.

(j) **EMPLOYER REPORTING.**—

26 USC 6056.

(1) **IN GENERAL.**—Subsection (a) of section 6056 of the Internal Revenue Code of 1986, as added by section 1514, is amended by inserting “and every offering employer” before “shall”.

(2) **OFFERING EMPLOYERS.**—Subsection (f) of section 6056 of such Code, as added by section 1514, is amended to read as follows:

“(f) **DEFINITIONS.**—For purposes of this section—

“(1) **OFFERING EMPLOYER.**—

“(A) **IN GENERAL.**—The term ‘offering employer’ means any offering employer (as defined in section 10108(b) of the Patient Protection and Affordable Care Act) if the required contribution (within the meaning of section 5000A(e)(1)(B)(i)) of any employee exceeds 8 percent of the wages (as defined in section 3121(a)) paid to such employee by such employer.

“(B) **INDEXING.**—In the case of any calendar year beginning after 2014, the 8 percent under subparagraph (A)

shall be adjusted for the calendar year to reflect the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

“(2) OTHER DEFINITIONS.—Any term used in this section which is also used in section 4980H shall have the meaning given such term by section 4980H.”.

(3) CONFORMING AMENDMENTS.—

(A) The heading of section 6056 of such Code, as added by section 1514, is amended by striking “**LARGE**” and inserting “**CERTAIN**”. 26 USC 6056.

(B) Section 6056(b)(2)(C) of such Code is amended—

(i) by inserting “in the case of an applicable large employer,” before “the length” in clause (i);

(ii) by striking “and” at the end of clause (iii);

(iii) by striking “applicable large employer” in clause (iv) and inserting “employer”;

(iv) by inserting “and” at the end of clause (iv); and

(v) by inserting at the end the following new clause:

“(v) in the case of an offering employer, the option for which the employer pays the largest portion of the cost of the plan and the portion of the cost paid by the employer in each of the enrollment categories under such option.”.

(C) Section 6056(d)(2) of such Code is amended by inserting “or offering employer” after “applicable large employer”.

(D) Section 6056(e) of such Code is amended by inserting “or offering employer” after “applicable large employer”.

(E) Section 6724(d)(1)(B)(xxv) of such Code, as added by section 1514, is amended by striking “large” and inserting “certain”.

(F) Section 6724(d)(2)(HH) of such Code, as added by section 1514, is amended by striking “large” and inserting “certain”.

(G) The table of sections for subpart D of part III of subchapter A of chapter 1 of such Code, as amended by section 1514, is amended by striking “Large employers” in the item relating to section 6056 and inserting “Certain employers”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods beginning after December 31, 2013. 26 USC 6056 note.

SEC. 10109. DEVELOPMENT OF STANDARDS FOR FINANCIAL AND ADMINISTRATIVE TRANSACTIONS.

(a) ADDITIONAL TRANSACTION STANDARDS AND OPERATING RULES.—

(1) DEVELOPMENT OF ADDITIONAL TRANSACTION STANDARDS AND OPERATING RULES.—Section 1173(a) of the Social Security Act (42 U.S.C. 1320d-2(a)), as amended by section 1104(b)(2), is amended—

(A) in paragraph (1)(B), by inserting before the period the following: “, and subject to the requirements under paragraph (5)”; and

	(B) by adding at the end the following new paragraph: “(5) CONSIDERATION OF STANDARDIZATION OF ACTIVITIES AND ITEMS.—
Deadlines.	“(A) IN GENERAL.—For purposes of carrying out paragraph (1)(B), the Secretary shall solicit, not later than January 1, 2012, and not less than every 3 years thereafter, input from entities described in subparagraph (B) on— “(i) whether there could be greater uniformity in financial and administrative activities and items, as determined appropriate by the Secretary; and “(ii) whether such activities should be considered financial and administrative transactions (as described in paragraph (1)(B)) for which the adoption of standards and operating rules would improve the operation of the health care system and reduce administrative costs. “(B) SOLICITATION OF INPUT.—For purposes of subparagraph (A), the Secretary shall seek input from— “(i) the National Committee on Vital and Health Statistics, the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee; and “(ii) standard setting organizations and stakeholders, as determined appropriate by the Secretary.”.
Deadline.	(b) ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION.—For purposes of section 1173(a)(5) of the Social Security Act, as added by subsection (a), the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall, not later than January 1, 2012, seek input on activities and items relating to the following areas: (1) Whether the application process, including the use of a uniform application form, for enrollment of health care providers by health plans could be made electronic and standardized. (2) Whether standards and operating rules described in section 1173 of the Social Security Act should apply to the health care transactions of automobile insurance, worker’s compensation, and other programs or persons not described in section 1172(a) of such Act (42 U.S.C. 1320d–1(a)). (3) Whether standardized forms could apply to financial audits required by health plans, Federal and State agencies (including State auditors, the Office of the Inspector General of the Department of Health and Human Services, and the Centers for Medicare & Medicaid Services), and other relevant entities as determined appropriate by the Secretary. (4) Whether there could be greater transparency and consistency of methodologies and processes used to establish claim edits used by health plans (as described in section 1171(5) of the Social Security Act (42 U.S.C. 1320d(5))). (5) Whether health plans should be required to publish their timeliness of payment rules. (c) ICD CODING CROSSWALKS.— (1) ICD–9 TO ICD–10 CROSSWALK.—The Secretary shall task the ICD–9–CM Coordination and Maintenance Committee to convene a meeting, not later than January 1, 2011, to receive input from appropriate stakeholders (including health plans, health care providers, and clinicians) regarding the crosswalk
Meeting. Deadline.	

between the Ninth and Tenth Revisions of the International Classification of Diseases (ICD–9 and ICD–10, respectively) that is posted on the website of the Centers for Medicare & Medicaid Services, and make recommendations about appropriate revisions to such crosswalk.

(2) REVISION OF CROSSWALK.—For purposes of the crosswalk described in paragraph (1), the Secretary shall make appropriate revisions and post any such revised crosswalk on the website of the Centers for Medicare & Medicaid Services.

(3) USE OF REVISED CROSSWALK.—For purposes of paragraph (2), any revised crosswalk shall be treated as a code set for which a standard has been adopted by the Secretary for purposes of section 1173(c)(1)(B) of the Social Security Act (42 U.S.C. 1320d–2(c)(1)(B)).

(4) SUBSEQUENT CROSSWALKS.—For subsequent revisions of the International Classification of Diseases that are adopted by the Secretary as a standard code set under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)), the Secretary shall, after consultation with the appropriate stakeholders, post on the website of the Centers for Medicare & Medicaid Services a crosswalk between the previous and subsequent version of the International Classification of Diseases not later than the date of implementation of such subsequent revision.

Deadline.

Subtitle B—Provisions Relating to Title II

PART I—MEDICAID AND CHIP

SEC. 10201. AMENDMENTS TO THE SOCIAL SECURITY ACT AND TITLE II OF THIS ACT.

(a)(1) Section 1902(a)(10)(A)(i)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(IX)), as added by section 2004(a), is amended to read as follows:

“(IX) who—

“(aa) are under 26 years of age;

“(bb) are not described in or enrolled under any of subclauses (I) through (VII) of this clause or are described in any of such subclauses but have income that exceeds the level of income applicable under the State plan for eligibility to enroll for medical assistance under such subclause;

“(cc) were in foster care under the responsibility of the State on the date of attaining 18 years of age or such higher age as the State has elected under section 475(8)(B)(iii); and

“(dd) were enrolled in the State plan under this title or under a waiver of the plan while in such foster care;”.

(2) Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)), as amended by section 2001(a)(5)(A), is amended in the matter following subparagraph (G), by striking “and (XV)” and inserting “(XV)”, and by inserting “and (XVI) if an individual is described in subclause (IX) of subparagraph (A)(i) and is also described in subclause (VIII) of that subparagraph, the medical

42 USC 1396a
note.

assistance shall be made available to the individual through subclause (IX) instead of through subclause (VIII)” before the semicolon.

(3) Section 2004(d) of this Act is amended by striking “2019” and inserting “2014”.

(b) Section 1902(k)(2) of the Social Security Act (42 U.S.C. 1396a(k)(2)), as added by section 2001(a)(4)(A), is amended by striking “January 1, 2011” and inserting “April 1, 2010”.

(c) Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3), 2001(a)(5)(C), 2006, and 4107(a)(2), is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting in clause (xiv), “or 1902(a)(10)(A)(i)(IX)” before the comma;

(2) in subsection (b), in the first sentence, by inserting “, (z),” before “and (aa)”;

(3) in subsection (y)—

(A) in paragraph (1)(B)(ii)(II), in the first sentence, by inserting “includes inpatient hospital services,” after “100 percent of the poverty line, that”; and

(B) in paragraph (2)(A), by striking “on the date of enactment of the Patient Protection and Affordable Care Act” and inserting “as of December 1, 2009”;

(4) by inserting after subsection (y) the following:

“(z) EQUITABLE SUPPORT FOR CERTAIN STATES.—

“(1)(A) During the period that begins on January 1, 2014, and ends on September 30, 2019, notwithstanding subsection (b), the Federal medical assistance percentage otherwise determined under subsection (b) with respect to a fiscal year occurring during that period shall be increased by 2.2 percentage points for any State described in subparagraph (B) for amounts expended for medical assistance for individuals who are not newly eligible (as defined in subsection (y)(2)) individuals described in subclause (VIII) of section 1902(a)(10)(A)(i).

“(B) For purposes of subparagraph (A), a State described in this subparagraph is a State that—

“(i) is an expansion State described in subsection (y)(1)(B)(ii)(II);

“(ii) the Secretary determines will not receive any payments under this title on the basis of an increased Federal medical assistance percentage under subsection (y) for expenditures for medical assistance for newly eligible individuals (as so defined); and

“(iii) has not been approved by the Secretary to divert a portion of the DSH allotment for a State to the costs of providing medical assistance or other health benefits coverage under a waiver that is in effect on July 2009.

“(2)(A) During the period that begins on January 1, 2014, and ends on December 31, 2016, notwithstanding subsection (b), the Federal medical assistance percentage otherwise determined under subsection (b) with respect to all or any portion of a fiscal year occurring during that period shall be increased by .5 percentage point for a State described in subparagraph (B) for amounts expended for medical assistance under the State plan under this title or under a waiver of that plan during that period.

“(B) For purposes of subparagraph (A), a State described in this subparagraph is a State that—

Time period.

Time period.

“(i) is described in clauses (i) and (ii) of paragraph (1)(B); and

“(ii) is the State with the highest percentage of its population insured during 2008, based on the Current Population Survey.

“(3) Notwithstanding subsection (b) and paragraphs (1) and (2) of this subsection, the Federal medical assistance percentage otherwise determined under subsection (b) with respect to all or any portion of a fiscal year that begins on or after January 1, 2017, for the State of Nebraska, with respect to amounts expended for newly eligible individuals described in subclause (VIII) of section 1902(a)(10)(A)(i), shall be determined as provided for under subsection (y)(1)(A) (notwithstanding the period provided for in such paragraph).

Nebraska.
Determination.

“(4) The increase in the Federal medical assistance percentage for a State under paragraphs (1), (2), or (3) shall apply only for purposes of this title and shall not apply with respect to—

Applicability.

“(A) disproportionate share hospital payments described in section 1923;

“(B) payments under title IV;

“(C) payments under title XXI; and

“(D) payments under this title that are based on the enhanced FMAP described in section 2105(b).”;

(5) in subsection (aa), is amended by striking “without regard to this subsection and subsection (y)” and inserting “without regard to this subsection, subsection (y), subsection (z), and section 10202 of the Patient Protection and Affordable Care Act” each place it appears;

(6) by adding after subsection (bb), the following:

“(cc) REQUIREMENT FOR CERTAIN STATES.—Notwithstanding subsections (y), (z), and (aa), in the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures required under the State plan under section 1902(a)(2), the State shall not be eligible for an increase in its Federal medical assistance percentage under such subsections if it requires that political subdivisions pay a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923, than the respective percentages that would have been required by the State under the State plan under this title, State law, or both, as in effect on December 31, 2009, and without regard to any such increase. Voluntary contributions by a political subdivision to the non-Federal share of expenditures under the State plan under this title or to the non-Federal share of payments under section 1923, shall not be considered to be required contributions for purposes of this subsection. The treatment of voluntary contributions, and the treatment of contributions required by a State under the State plan under this title, or State law, as provided by this subsection, shall also apply to the increases in the Federal medical assistance percentage under section 5001 of the American Recovery and Reinvestment Act of 2009.”.

(d) Section 1108(g)(4)(B) of the Social Security Act (42 U.S.C. 1308(g)(4)(B)), as added by section 2005(b), is amended by striking “income eligibility level in effect for that population under title XIX or under a waiver” and inserting “the highest income eligibility level in effect for parents under the commonwealth’s or territory’s State plan under title XIX or under a waiver of the plan”.

(e)(1) Section 1923(f) of the Social Security Act (42 U.S.C. 1396r-4(f)), as amended by section 2551, is amended—

(A) in paragraph (6)—

(i) by striking the paragraph heading and inserting the following: “ALLOTMENT ADJUSTMENTS”; and

(ii) in subparagraph (B), by adding at the end the following:

Hawaii.

“(iii) ALLOTMENT FOR 2D, 3RD, AND 4TH QUARTER OF FISCAL YEAR 2012, FISCAL YEAR 2013, AND SUCCEEDING FISCAL YEARS.—Notwithstanding the table set forth in paragraph (2) or paragraph (7):

“(I) 2D, 3RD, AND 4TH QUARTER OF FISCAL YEAR 2012.—The DSH allotment for Hawaii for the 2d, 3rd, and 4th quarters of fiscal year 2012 shall be \$7,500,000.

“(II) TREATMENT AS A LOW-DSH STATE FOR FISCAL YEAR 2013 AND SUCCEEDING FISCAL YEARS.—With respect to fiscal year 2013, and each fiscal year thereafter, the DSH allotment for Hawaii shall be increased in the same manner as allotments for low DSH States are increased for such fiscal year under clause (iii) of paragraph (5)(B).

“(III) CERTAIN HOSPITAL PAYMENTS.—The Secretary may not impose a limitation on the total amount of payments made to hospitals under the QUEST section 1115 Demonstration Project except to the extent that such limitation is necessary to ensure that a hospital does not receive payments in excess of the amounts described in subsection (g), or as necessary to ensure that such payments under the waiver and such payments pursuant to the allotment provided in this clause do not, in the aggregate in any year, exceed the amount that the Secretary determines is equal to the Federal medical assistance percentage component attributable to disproportionate share hospital payment adjustments for such year that is reflected in the budget neutrality provision of the QUEST Demonstration Project.”; and

(B) in paragraph (7)—

(i) in subparagraph (A), in the matter preceding clause (i), by striking “subparagraph (E)” and inserting “subparagraphs (E) and (G)”; and

(ii) in subparagraph (B)—

(I) in clause (i), by striking subclauses (I) and (II), and inserting the following:

“(I) if the State is a low DSH State described in paragraph (5)(B) and has spent not more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to 25 percent;

“(II) if the State is a low DSH State described in paragraph (5)(B) and has spent more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through

2008, as of September 30, 2009, the applicable percentage is equal to 17.5 percent;

“(III) if the State is not a low DSH State described in paragraph (5)(B) and has spent not more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to 50 percent; and

“(IV) if the State is not a low DSH State described in paragraph (5)(B) and has spent more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to 35 percent.”;

(II) in clause (ii), by striking subclauses (I) and (II), and inserting the following:

“(I) if the State is a low DSH State described in paragraph (5)(B) and has spent not more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 27.5 percent;

“(II) if the State is a low DSH State described in paragraph (5)(B) and has spent more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 20 percent;

“(III) if the State is not a low DSH State described in paragraph (5)(B) and has spent not more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 55 percent; and

“(IV) if the State is not a low DSH State described in paragraph (5)(B) and has spent more than 99.90 percent of the DSH allotments for the State on average for the period of fiscal years 2004 through 2008, as of September 30, 2009, the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 40 percent.”;

(III) in subparagraph (E), by striking “35 percent” and inserting “50 percent”; and

(IV) by adding at the end the following:

“(G) NONAPPLICATION.—The preceding provisions of this paragraph shall not apply to the DSH allotment determined for the State of Hawaii for a fiscal year under paragraph (6).”.

42 USC 1396r–4
note.

(f) Section 2551 of this Act is amended by striking subsection (b).

(g) Section 2105(d)(3)(B) of the Social Security Act (42 U.S.C. 1397ee(d)(3)(B)), as added by section 2101(b)(1), is amended by adding at the end the following: “For purposes of eligibility for premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 and reduced cost-sharing under section 1402 of the Patient Protection and Affordable Care Act, children described in the preceding sentence shall be deemed to be ineligible for coverage under the State child health plan.”.

42 USC 713.

(h) Clause (i) of subparagraph (C) of section 513(b)(2) of the Social Security Act, as added by section 2953 of this Act, is amended to read as follows:

“(i) Healthy relationships, including marriage and family interactions.”.

(i) Section 1115 of the Social Security Act (42 U.S.C. 1315) is amended by inserting after subsection (c) the following:

“(d)(1) An application or renewal of any experimental, pilot, or demonstration project undertaken under subsection (a) to promote the objectives of title XIX or XXI in a State that would result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing with respect to a State program under title XIX or XXI (in this subsection referred to as a ‘demonstration project’) shall be considered by the Secretary in accordance with the regulations required to be promulgated under paragraph (2).

Deadline.
Regulations.

“(2) Not later than 180 days after the date of enactment of this subsection, the Secretary shall promulgate regulations relating to applications for, and renewals of, a demonstration project that provide for—

“(A) a process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input;

“(B) requirements relating to—

“(i) the goals of the program to be implemented or renewed under the demonstration project;

“(ii) the expected State and Federal costs and coverage projections of the demonstration project; and

“(iii) the specific plans of the State to ensure that the demonstration project will be in compliance with title XIX or XXI;

“(C) a process for providing public notice and comment after the application is received by the Secretary, that is sufficient to ensure a meaningful level of public input;

“(D) a process for the submission to the Secretary of periodic reports by the State concerning the implementation of the demonstration project; and

“(E) a process for the periodic evaluation by the Secretary of the demonstration project.

Deadline.
Reports.

“(3) The Secretary shall annually report to Congress concerning actions taken by the Secretary with respect to applications for demonstration projects under this section.”.

(j) Subtitle F of title III of this Act is amended by adding at the end the following:

“SEC. 3512. GAO STUDY AND REPORT ON CAUSES OF ACTION.

“(a) STUDY.—

“(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of whether the development, recognition, or implementation of any guideline or other standards under a provision described in paragraph (2) would result in the establishment of a new cause of action or claim.

“(2) PROVISIONS DESCRIBED.—The provisions described in this paragraph include the following:

“(A) Section 2701 (adult health quality measures).

“(B) Section 2702 (payment adjustments for health care acquired conditions).

“(C) Section 3001 (Hospital Value-Based Purchase Program).

“(D) Section 3002 (improvements to the Physician Quality Reporting Initiative).

“(E) Section 3003 (improvements to the Physician Feedback Program).

“(F) Section 3007 (value based payment modifier under physician fee schedule).

“(G) Section 3008 (payment adjustment for conditions acquired in hospitals).

“(H) Section 3013 (quality measure development).

“(I) Section 3014 (quality measurement).

“(J) Section 3021 (Establishment of Center for Medicare and Medicaid Innovation).

“(K) Section 3025 (hospital readmission reduction program).

“(L) Section 3501 (health care delivery system research, quality improvement).

“(M) Section 4003 (Task Force on Clinical and Preventive Services).

“(N) Section 4301 (research to optimize delivery of public health services).

“(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress, a report containing the findings made by the Comptroller General under the study under subsection (a).”.

SEC. 10202. INCENTIVES FOR STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES AS A LONG-TERM CARE ALTERNATIVE TO NURSING HOMES.

42 USC 1396d
note.

(a) STATE BALANCING INCENTIVE PAYMENTS PROGRAM.—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), in the case of a balancing incentive payment State, as defined in subsection (b), that meets the conditions described in subsection (c), during the balancing incentive period, the Federal medical assistance percentage determined for the State under section 1905(b) of such Act and, if applicable, increased under subsection (z) or (aa) shall be increased by the applicable percentage points determined under subsection (d) with respect to eligible medical assistance expenditures described in subsection (e).

(b) BALANCING INCENTIVE PAYMENT STATE.—A balancing incentive payment State is a State—

(1) in which less than 50 percent of the total expenditures for medical assistance under the State Medicaid program for a fiscal year for long-term services and supports (as defined by the Secretary under subsection (f)(1)) are for non-institutionally-based long-term services and supports described in subsection (f)(1)(B);

(2) that submits an application and meets the conditions described in subsection (c); and

(3) that is selected by the Secretary to participate in the State balancing incentive payment program established under this section.

(c) CONDITIONS.—The conditions described in this subsection are the following:

(1) APPLICATION.—The State submits an application to the Secretary that includes, in addition to such other information as the Secretary shall require—

(A) a proposed budget that details the State's plan to expand and diversify medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program during the balancing incentive period and achieve the target spending percentage applicable to the State under paragraph (2), including through structural changes to how the State furnishes such assistance, such as through the establishment of a “no wrong door—single entry point system”, optional presumptive eligibility, case management services, and the use of core standardized assessment instruments, and that includes a description of the new or expanded offerings of such services that the State will provide and the projected costs of such services; and

(B) in the case of a State that proposes to expand the provision of home and community-based services under its State Medicaid program through a State plan amendment under section 1915(i) of the Social Security Act, at the option of the State, an election to increase the income eligibility for such services from 150 percent of the poverty line to such higher percentage as the State may establish for such purpose, not to exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1) of the Social Security Act (42 U.S.C. 1382(b)(1)).

(2) TARGET SPENDING PERCENTAGES.—

(A) In the case of a balancing incentive payment State in which less than 25 percent of the total expenditures for long-term services and supports under the State Medicaid program for fiscal year 2009 are for home and community-based services, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 25 percent of the total expenditures for long-term services and supports under the State Medicaid program are for home and community-based services.

(B) In the case of any other balancing incentive payment State, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 50 percent of the total expenditures for long-term services and supports under the State Medicaid program are for home and community-based services.

Deadlines.

(3) MAINTENANCE OF ELIGIBILITY REQUIREMENTS.—The State does not apply eligibility standards, methodologies, or procedures for determining eligibility for medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program that are more restrictive than the eligibility standards, methodologies, or procedures in effect for such purposes on December 31, 2010.

(4) USE OF ADDITIONAL FUNDS.—The State agrees to use the additional Federal funds paid to the State as a result of this section only for purposes of providing new or expanded offerings of non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program.

(5) STRUCTURAL CHANGES.—The State agrees to make, not later than the end of the 6-month period that begins on the date the State submits an application under this section, the following changes:

(A) “NO WRONG DOOR—SINGLE ENTRY POINT SYSTEM”.—Development of a statewide system to enable consumers to access all long-term services and supports through an agency, organization, coordinated network, or portal, in accordance with such standards as the State shall establish and that shall provide information regarding the availability of such services, how to apply for such services, referral services for services and supports otherwise available in the community, and determinations of financial and functional eligibility for such services and supports, or assistance with assessment processes for financial and functional eligibility.

(B) CONFLICT-FREE CASE MANAGEMENT SERVICES.—Conflict-free case management services to develop a service plan, arrange for services and supports, support the beneficiary (and, if appropriate, the beneficiary’s caregivers) in directing the provision of services and supports for the beneficiary, and conduct ongoing monitoring to assure that services and supports are delivered to meet the beneficiary’s needs and achieve intended outcomes.

(C) CORE STANDARDIZED ASSESSMENT INSTRUMENTS.—Development of core standardized assessment instruments for determining eligibility for non-institutionally-based long-term services and supports described in subsection (f)(1)(B), which shall be used in a uniform manner throughout the State, to determine a beneficiary’s needs for training, support services, medical care, transportation, and other services, and develop an individual service plan to address such needs.

(6) DATA COLLECTION.—The State agrees to collect from providers of services and through such other means as the State determines appropriate the following data:

(A) SERVICES DATA.—Services data from providers of non-institutionally-based long-term services and supports described in subsection (f)(1)(B) on a per-beneficiary basis and in accordance with such standardized coding procedures as the State shall establish in consultation with the Secretary.

(B) **QUALITY DATA.**—Quality data on a selected set of core quality measures agreed upon by the Secretary and the State that are linked to population-specific outcomes measures and accessible to providers.

(C) **OUTCOMES MEASURES.**—Outcomes measures data on a selected set of core population-specific outcomes measures agreed upon by the Secretary and the State that are accessible to providers and include—

(i) measures of beneficiary and family caregiver experience with providers;

(ii) measures of beneficiary and family caregiver satisfaction with services; and

(iii) measures for achieving desired outcomes appropriate to a specific beneficiary, including employment, participation in community life, health stability, and prevention of loss in function.

(d) **APPLICABLE PERCENTAGE POINTS INCREASE IN FMAP.**—The applicable percentage points increase is—

(1) in the case of a balancing incentive payment State subject to the target spending percentage described in subsection (c)(2)(A), 5 percentage points; and

(2) in the case of any other balancing incentive payment State, 2 percentage points.

(e) **ELIGIBLE MEDICAL ASSISTANCE EXPENDITURES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), medical assistance described in this subsection is medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) that is provided by a balancing incentive payment State under its State Medicaid program during the balancing incentive payment period.

(2) **LIMITATION ON PAYMENTS.**—In no case may the aggregate amount of payments made by the Secretary to balancing incentive payment States under this section during the balancing incentive period exceed \$3,000,000,000.

(f) **DEFINITIONS.**—In this section:

(1) **LONG-TERM SERVICES AND SUPPORTS DEFINED.**—The term “long-term services and supports” has the meaning given that term by Secretary and may include any of the following (as defined for purposes of State Medicaid programs):

(A) **INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.**—Services provided in an institution, including the following:

(i) Nursing facility services.

(ii) Services in an intermediate care facility for the mentally retarded described in subsection (a)(15) of section 1905 of such Act.

(B) **NON-INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.**—Services not provided in an institution, including the following:

(i) Home and community-based services provided under subsection (c), (d), or (i) of section 1915 of such Act or under a waiver under section 1115 of such Act.

(ii) Home health care services.

(iii) Personal care services.

(iv) Services described in subsection (a)(26) of section 1905 of such Act (relating to PACE program services).

(v) Self-directed personal assistance services described in section 1915(j) of such Act.

(2) **BALANCING INCENTIVE PERIOD.**—The term “balancing incentive period” means the period that begins on October 1, 2011, and ends on September 30, 2015.

(3) **POVERTY LINE.**—The term “poverty line” has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

(4) **STATE MEDICAID PROGRAM.**—The term “State Medicaid program” means the State program for medical assistance provided under a State plan under title XIX of the Social Security Act and under any waiver approved with respect to such State plan.

SEC. 10203. EXTENSION OF FUNDING FOR CHIP THROUGH FISCAL YEAR 2015 AND OTHER CHIP-RELATED PROVISIONS.

(a) Section 1311(c)(1) of this Act is amended by striking “and” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting “; and”, and by adding at the end the following:

42 USC 18031.

“(I) report to the Secretary at least annually and in such manner as the Secretary shall require, pediatric quality reporting measures consistent with the pediatric quality reporting measures established under section 1139A of the Social Security Act.”.

Reports.
Deadline.

(b) Effective as if included in the enactment of the Children’s Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3):

Effective date.
42 USC 1396e
note.

(1) Section 1906(e)(2) of the Social Security Act (42 U.S.C. 1396e(e)(2)) is amended by striking “means” and all that follows through the period and inserting “has the meaning given that term in section 2105(c)(3)(A).”.

(2)(A) Section 1906A(a) of the Social Security Act (42 U.S.C. 1396e–1(a)), is amended by inserting before the period the following: “and the offering of such a subsidy is cost-effective, as defined for purposes of section 2105(c)(3)(A).”.

(B) This Act shall be applied without regard to subparagraph (A) of section 2003(a)(1) of this Act and that subparagraph and the amendment made by that subparagraph are hereby deemed null, void, and of no effect.

Applicability.
42 USC 1396e–1
and note.

(3) Section 2105(c)(10) of the Social Security Act (42 U.S.C. 1397ee(c)(10)) is amended—

(A) in subparagraph (A), in the first sentence, by inserting before the period the following: “if the offering of such a subsidy is cost-effective, as defined for purposes of paragraph (3)(A).”;

(B) by striking subparagraph (M); and

(C) by redesignating subparagraph (N) as subparagraph (M).

(4) Section 2105(c)(3)(A) of the Social Security Act (42 U.S.C. 1397ee(c)(3)(A)) is amended—

(A) in the matter preceding clause (i), by striking “to” and inserting “to—”; and

(B) in clause (ii), by striking the period and inserting a semicolon.

(c) Section 2105 of the Social Security Act (42 U.S.C. 1397ee), as amended by section 2101, is amended—

(1) in subsection (b), in the second sentence, by striking “2013” and inserting “2015”; and

(2) in subsection (d)(3)—

(A) in subparagraph (A)—

(i) in the first sentence, by inserting “as a condition of receiving payments under section 1903(a),” after “2019,”;

(ii) in clause (i), by striking “or” at the end;

(iii) by redesignating clause (ii) as clause (iii); and

(iv) by inserting after clause (i), the following:

“(ii) after September 30, 2015, enrolling children eligible to be targeted low-income children under the State child health plan in a qualified health plan that has been certified by the Secretary under subparagraph (C); or”;

Procedures.

(B) in subparagraph (B), by striking “provided coverage” and inserting “screened for eligibility for medical assistance under the State plan under title XIX or a waiver of that plan and, if found eligible, enrolled in such plan or a waiver. In the case of such children who, as a result of such screening, are determined to not be eligible for medical assistance under the State plan or a waiver under title XIX, the State shall establish procedures to ensure that the children are enrolled in a qualified health plan that has been certified by the Secretary under subparagraph (C) and is offered”; and

(C) by adding at the end the following:

Deadline.
Review.
Determination.

“(C) CERTIFICATION OF COMPARABILITY OF PEDIATRIC COVERAGE OFFERED BY QUALIFIED HEALTH PLANS.—With respect to each State, the Secretary, not later than April 1, 2015, shall review the benefits offered for children and the cost-sharing imposed with respect to such benefits by qualified health plans offered through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act and shall certify those plans that offer benefits for children and impose cost-sharing with respect to such benefits that the Secretary determines are at least comparable to the benefits offered and cost-sharing protections provided under the State child health plan.”.

(d)(1) Section 2104(a) of such Act (42 U.S.C. 1397dd(a)) is amended—

(A) in paragraph (15), by striking “and” at the end; and

(B) by striking paragraph (16) and inserting the following:

“(16) for fiscal year 2013, \$17,406,000,000;

“(17) for fiscal year 2014, \$19,147,000,000; and

“(18) for fiscal year 2015, for purposes of making 2 semi-annual allotments—

“(A) \$2,850,000,000 for the period beginning on October 1, 2014, and ending on March 31, 2015, and

“(B) \$2,850,000,000 for the period beginning on April 1, 2015, and ending on September 30, 2015.”.

(2)(A) Section 2104(m) of such Act (42 U.S.C. 1397dd(m)), as amended by section 2102(a)(1), is amended—

(i) in the subsection heading, by striking “2013” and inserting “2015”;

(ii) in paragraph (2)—

(I) in the paragraph heading, by striking “2012” and inserting “2014”; and

(II) by adding at the end the following:

“(B) FISCAL YEARS 2013 AND 2014.—Subject to paragraphs (4) and (6), from the amount made available under paragraphs (16) and (17) of subsection (a) for fiscal years 2013 and 2014, respectively, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for each such fiscal year as follows:

“(i) REBASING IN FISCAL YEAR 2013.—For fiscal year 2013, the allotment of the State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State in fiscal year 2012 (including payments made to the State under subsection (n) for fiscal year 2012 as well as amounts redistributed to the State in fiscal year 2012), multiplied by the allotment increase factor under paragraph (5) for fiscal year 2013.

“(ii) GROWTH FACTOR UPDATE FOR FISCAL YEAR 2014.—For fiscal year 2014, the allotment of the State is equal to the sum of—

“(I) the amount of the State allotment under clause (i) for fiscal year 2013; and

“(II) the amount of any payments made to the State under subsection (n) for fiscal year 2013, multiplied by the allotment increase factor under paragraph (5) for fiscal year 2014.”;

(iii) in paragraph (3)—

(I) in the paragraph heading, by striking “2013” and inserting “2015”;

(II) in subparagraphs (A) and (B), by striking “paragraph (16)” each place it appears and inserting “paragraph (18)”;

(III) in subparagraph (C)—

(aa) by striking “2012” each place it appears and inserting “2014”; and

(bb) by striking “2013” and inserting “2015”; and

(IV) in subparagraph (D)—

(aa) in clause (i)(I), by striking “subsection (a)(16)(A)” and inserting “subsection (a)(18)(A)”;

and

(bb) in clause (ii)(II), by striking “subsection (a)(16)(B)” and inserting “subsection (a)(18)(B)”;

(iv) in paragraph (4), by striking “2013” and inserting “2015”;

(v) in paragraph (6)—

(I) in subparagraph (A), by striking “2013” and inserting “2015”; and

(II) in the flush language after and below subparagraph (B)(ii), by striking “or fiscal year 2012” and inserting “, fiscal year 2012, or fiscal year 2014”; and (vi) in paragraph (8)—

(I) in the paragraph heading, by striking “2013” and inserting “2015”; and

(II) by striking “2013” and inserting “2015”.

(B) Section 2104(n) of such Act (42 U.S.C. 1397dd(n)) is amended—

(i) in paragraph (2)—

(I) in subparagraph (A)(ii)—

(aa) by striking “2012” and inserting “2014”; and

(bb) by striking “2013” and inserting “2015”; and

(II) in subparagraph (B)—

(aa) by striking “2012” and inserting “2014”; and

(bb) by striking “2013” and inserting “2015”; and

(ii) in paragraph (3)(A), by striking “or a semi-annual allotment period for fiscal year 2013” and inserting “fiscal year 2013, fiscal year 2014, or a semi-annual allotment period for fiscal year 2015”.

(C) Section 2105(g)(4) of such Act (42 U.S.C. 1397ee(g)(4)) is amended—

(i) in the paragraph heading, by striking “2013” and inserting “2015”; and

(ii) in subparagraph (A), by striking “2013” and inserting “2015”.

(D) Section 2110(b) of such Act (42 U.S.C. 1397jj(b)) is amended—

(i) in paragraph (2)(B), by inserting “except as provided in paragraph (6),” before “a child”; and

(ii) by adding at the end the following new paragraph:
“(6) EXCEPTIONS TO EXCLUSION OF CHILDREN OF EMPLOYEES OF A PUBLIC AGENCY IN THE STATE.—

“(A) IN GENERAL.—A child shall not be considered to be described in paragraph (2)(B) if—

“(i) the public agency that employs a member of the child’s family to which such paragraph applies satisfies subparagraph (B); or

“(ii) subparagraph (C) applies to such child.

Applicability.

“(B) MAINTENANCE OF EFFORT WITH RESPECT TO PER PERSON AGENCY CONTRIBUTION FOR FAMILY COVERAGE.—For purposes of subparagraph (A)(i), a public agency satisfies this subparagraph if the amount of annual agency expenditures made on behalf of each employee enrolled in health coverage paid for by the agency that includes dependent coverage for the most recent State fiscal year is not less than the amount of such expenditures made by the agency for the 1997 State fiscal year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for All-Urban Consumers (all items: U.S. City Average) for such preceding fiscal year.

Applicability.

“(C) HARDSHIP EXCEPTION.—For purposes of subparagraph (A)(ii), this subparagraph applies to a child if the State determines, on a case-by-case basis, that the annual aggregate amount of premiums and cost-sharing imposed

for coverage of the family of the child would exceed 5 percent of such family's income for the year involved.”.

(E) Section 2113 of such Act (42 U.S.C. 1397mm) is amended—

(i) in subsection (a)(1), by striking “2013” and inserting “2015”; and

(ii) in subsection (g), by striking “\$100,000,000 for the period of fiscal years 2009 through 2013” and inserting “\$140,000,000 for the period of fiscal years 2009 through 2015”.

(F) Section 108 of Public Law 111–3 is amended by striking “\$11,706,000,000” and all that follows through the second sentence and inserting “\$15,361,000,000 to accompany the allotment made for the period beginning on October 1, 2014, and ending on March 31, 2015, under section 2104(a)(18)(A) of the Social Security Act (42 U.S.C. 1397dd(a)(18)(A)), to remain available until expended. Such amount shall be used to provide allotments to States under paragraph (3) of section 2104(m) of the Social Security Act (42 U.S.C. 1397dd(m)) for the first 6 months of fiscal year 2015 in the same manner as allotments are provided under subsection (a)(18)(A) of such section 2104 and subject to the same terms and conditions as apply to the allotments provided from such subsection (a)(18)(A).”.

Time period.
123 Stat. 25.

Applicability.

PART II—SUPPORT FOR PREGNANT AND PARENTING TEENS AND WOMEN

SEC. 10211. DEFINITIONS.

42 USC 18201.

In this part:

(1) ACCOMPANIMENT.—The term “accompaniment” means assisting, representing, and accompanying a woman in seeking judicial relief for child support, child custody, restraining orders, and restitution for harm to persons and property, and in filing criminal charges, and may include the payment of court costs and reasonable attorney and witness fees associated therewith.

(2) ELIGIBLE INSTITUTION OF HIGHER EDUCATION.—The term “eligible institution of higher education” means an institution of higher education (as such term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that has established and operates, or agrees to establish and operate upon the receipt of a grant under this part, a pregnant and parenting student services office.

(3) COMMUNITY SERVICE CENTER.—The term “community service center” means a non-profit organization that provides social services to residents of a specific geographical area via direct service or by contract with a local governmental agency.

(4) HIGH SCHOOL.—The term “high school” means any public or private school that operates grades 10 through 12, inclusive, grades 9 through 12, inclusive or grades 7 through 12, inclusive.

(5) INTERVENTION SERVICES.—The term “intervention services” means, with respect to domestic violence, sexual violence, sexual assault, or stalking, 24-hour telephone hotline services for police protection and referral to shelters.

(6) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(7) STATE.—The term “State” includes the District of Columbia, any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.

(8) SUPPORTIVE SOCIAL SERVICES.—The term “supportive social services” means transitional and permanent housing, vocational counseling, and individual and group counseling aimed at preventing domestic violence, sexual violence, sexual assault, or stalking.

(9) VIOLENCE.—The term “violence” means actual violence and the risk or threat of violence.

Grants.
42 USC 18202.

SEC. 10212. ESTABLISHMENT OF PREGNANCY ASSISTANCE FUND.

(a) IN GENERAL.—The Secretary, in collaboration and coordination with the Secretary of Education (as appropriate), shall establish a Pregnancy Assistance Fund to be administered by the Secretary, for the purpose of awarding competitive grants to States to assist pregnant and parenting teens and women.

(b) USE OF FUND.—A State may apply for a grant under subsection (a) to carry out any activities provided for in section 10213.

(c) APPLICATIONS.—To be eligible to receive a grant under subsection (a), a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the purposes for which the grant is being requested and the designation of a State agency for receipt and administration of funding received under this part.

Grants.
42 USC 18203.

SEC. 10213. PERMISSIBLE USES OF FUND.

(a) IN GENERAL.—A State shall use amounts received under a grant under section 10212 for the purposes described in this section to assist pregnant and parenting teens and women.

(b) INSTITUTIONS OF HIGHER EDUCATION.—

(1) IN GENERAL.—A State may use amounts received under a grant under section 10212 to make funding available to eligible institutions of higher education to enable the eligible institutions to establish, maintain, or operate pregnant and parenting student services. Such funding shall be used to supplement, not supplant, existing funding for such services.

(2) APPLICATION.—An eligible institution of higher education that desires to receive funding under this subsection shall submit an application to the designated State agency at such time, in such manner, and containing such information as the State agency may require.

(3) MATCHING REQUIREMENT.—An eligible institution of higher education that receives funding under this subsection shall contribute to the conduct of the pregnant and parenting student services office supported by the funding an amount from non-Federal funds equal to 25 percent of the amount of the funding provided. The non-Federal share may be in cash or in-kind, fairly evaluated, including services, facilities, supplies, or equipment.

(4) USE OF FUNDS FOR ASSISTING PREGNANT AND PARENTING COLLEGE STUDENTS.—An eligible institution of higher education that receives funding under this subsection shall use such funds to establish, maintain or operate pregnant and parenting student services and may use such funding for the following programs and activities:

(A) Conduct a needs assessment on campus and within the local community—

(i) to assess pregnancy and parenting resources, located on the campus or within the local community, that are available to meet the needs described in subparagraph (B); and

(ii) to set goals for—

(I) improving such resources for pregnant, parenting, and prospective parenting students; and

(II) improving access to such resources.

(B) Annually assess the performance of the eligible institution in meeting the following needs of students enrolled in the eligible institution who are pregnant or are parents:

(i) The inclusion of maternity coverage and the availability of riders for additional family members in student health care.

(ii) Family housing.

(iii) Child care.

(iv) Flexible or alternative academic scheduling, such as telecommuting programs, to enable pregnant or parenting students to continue their education or stay in school.

(v) Education to improve parenting skills for mothers and fathers and to strengthen marriages.

(vi) Maternity and baby clothing, baby food (including formula), baby furniture, and similar items to assist parents and prospective parents in meeting the material needs of their children.

(vii) Post-partum counseling.

(C) Identify public and private service providers, located on the campus of the eligible institution or within the local community, that are qualified to meet the needs described in subparagraph (B), and establishes programs with qualified providers to meet such needs.

(D) Assist pregnant and parenting students, fathers or spouses in locating and obtaining services that meet the needs described in subparagraph (B).

(E) If appropriate, provide referrals for prenatal care and delivery, infant or foster care, or adoption, to a student who requests such information. An office shall make such referrals only to service providers that serve the following types of individuals:

(i) Parents.

(ii) Prospective parents awaiting adoption.

(iii) Women who are pregnant and plan on parenting or placing the child for adoption.

(iv) Parenting or prospective parenting couples.

(5) REPORTING.—

(A) ANNUAL REPORT BY INSTITUTIONS.—

(i) IN GENERAL.—For each fiscal year that an eligible institution of higher education receives funds under this subsection, the eligible institution shall prepare and submit to the State, by the date determined by the State, a report that—

(I) itemizes the pregnant and parenting student services office's expenditures for the fiscal year;

(II) contains a review and evaluation of the performance of the office in fulfilling the requirements of this section, using the specific performance criteria or standards established under subparagraph (B)(i); and

(III) describes the achievement of the office in meeting the needs listed in paragraph (4)(B) of the students served by the eligible institution, and the frequency of use of the office by such students.

Deadline.

(ii) **PERFORMANCE CRITERIA.**—Not later than 180 days before the date the annual report described in clause (i) is submitted, the State—

(I) shall identify the specific performance criteria or standards that shall be used to prepare the report; and

(II) may establish the form or format of the report.

(B) **REPORT BY STATE.**—The State shall annually prepare and submit a report on the findings under this subsection, including the number of eligible institutions of higher education that were awarded funds and the number of students served by each pregnant and parenting student services office receiving funds under this section, to the Secretary.

(c) **SUPPORT FOR PREGNANT AND PARENTING TEENS.**—A State may use amounts received under a grant under section 10212 to make funding available to eligible high schools and community service centers to establish, maintain or operate pregnant and parenting services in the same general manner and in accordance with all conditions and requirements described in subsection (b), except that paragraph (3) of such subsection shall not apply for purposes of this subsection.

(d) **IMPROVING SERVICES FOR PREGNANT WOMEN WHO ARE VICTIMS OF DOMESTIC VIOLENCE, SEXUAL VIOLENCE, SEXUAL ASSAULT, AND STALKING.**—

(1) **IN GENERAL.**—A State may use amounts received under a grant under section 10212 to make funding available to its State Attorney General to assist Statewide offices in providing—

(A) intervention services, accompaniment, and supportive social services for eligible pregnant women who are victims of domestic violence, sexual violence, sexual assault, or stalking.

(B) technical assistance and training (as described in subsection (c)) relating to violence against eligible pregnant women to be made available to the following:

(i) Federal, State, tribal, territorial, and local governments, law enforcement agencies, and courts.

(ii) Professionals working in legal, social service, and health care settings.

(iii) Nonprofit organizations.

(iv) Faith-based organizations.

(2) **ELIGIBILITY.**—To be eligible for a grant under paragraph (1), a State Attorney General shall submit an application to the designated State agency at such time, in such manner, and containing such information, as specified by the State.

(3) **TECHNICAL ASSISTANCE AND TRAINING DESCRIBED.**—For purposes of paragraph (1)(B), technical assistance and training is—

(A) the identification of eligible pregnant women experiencing domestic violence, sexual violence, sexual assault, or stalking;

(B) the assessment of the immediate and short-term safety of such a pregnant woman, the evaluation of the impact of the violence or stalking on the pregnant woman's health, and the assistance of the pregnant woman in developing a plan aimed at preventing further domestic violence, sexual violence, sexual assault, or stalking, as appropriate;

(C) the maintenance of complete medical or forensic records that include the documentation of any examination, treatment given, and referrals made, recording the location and nature of the pregnant woman's injuries, and the establishment of mechanisms to ensure the privacy and confidentiality of those medical records; and

(D) the identification and referral of the pregnant woman to appropriate public and private nonprofit entities that provide intervention services, accompaniment, and supportive social services.

(4) **ELIGIBLE PREGNANT WOMAN.**—In this subsection, the term “eligible pregnant woman” means any woman who is pregnant on the date on which such woman becomes a victim of domestic violence, sexual violence, sexual assault, or stalking or who was pregnant during the one-year period before such date.

Definition.

(e) **PUBLIC AWARENESS AND EDUCATION.**—A State may use amounts received under a grant under section 10212 to make funding available to increase public awareness and education concerning any services available to pregnant and parenting teens and women under this part, or any other resources available to pregnant and parenting women in keeping with the intent and purposes of this part. The State shall be responsible for setting guidelines or limits as to how much of funding may be utilized for public awareness and education in any funding award.

Guidelines.

SEC. 10214. APPROPRIATIONS.

42 USC 18204.

There is authorized to be appropriated, and there are appropriated, \$25,000,000 for each of fiscal years 2010 through 2019, to carry out this part.

PART III—INDIAN HEALTH CARE IMPROVEMENT

SEC. 10221. INDIAN HEALTH CARE IMPROVEMENT.

(a) **IN GENERAL.**—Except as provided in subsection (b), S. 1790 entitled “A bill to amend the Indian Health Care Improvement Act to revise and extend that Act, and for other purposes.”, as reported by the Committee on Indian Affairs of the Senate in December 2009, is enacted into law.

Incorporation by
reference.
25 USC 1601
et seq.

(b) **AMENDMENTS.**—

- (1) Section 119 of the Indian Health Care Improvement Act (as amended by section 111 of the bill referred to in subsection (a)) is amended—
- 25 USC 1616l.
- (A) in subsection (d)—
- (i) in paragraph (2), by striking “In establishing” and inserting “Subject to paragraphs (3) and (4), in establishing”; and
- (ii) by adding at the end the following:
- “(3) ELECTION OF INDIAN TRIBE OR TRIBAL ORGANIZATION.—
- “(A) IN GENERAL.—Subparagraph (B) of paragraph (2) shall not apply in the case of an election made by an Indian tribe or tribal organization located in a State (other than Alaska) in which the use of dental health aide therapist services or midlevel dental health provider services is authorized under State law to supply such services in accordance with State law.
- “(B) ACTION BY SECRETARY.—On an election by an Indian tribe or tribal organization under subparagraph (A), the Secretary, acting through the Service, shall facilitate implementation of the services elected.
- “(4) VACANCIES.—The Secretary shall not fill any vacancy for a certified dentist in a program operated by the Service with a dental health aide therapist.”; and
- (B) by adding at the end the following:
- “(e) EFFECT OF SECTION.—Nothing in this section shall restrict the ability of the Service, an Indian tribe, or a tribal organization to participate in any program or to provide any service authorized by any other Federal law.”.
- (2) The Indian Health Care Improvement Act (as amended by section 134(b) of the bill referred to in subsection (a)) is amended by striking section 125 (relating to treatment of scholarships for certain purposes).
- 25 USC 1616r.
- (3) Section 806 of the Indian Health Care Improvement Act (25 U.S.C. 1676) is amended—
- (A) by striking “Any limitation” and inserting the following:
- “(a) HHS APPROPRIATIONS.—Any limitation”; and
- (B) by adding at the end the following:
- “(b) LIMITATIONS PURSUANT TO OTHER FEDERAL LAW.—Any limitation pursuant to other Federal laws on the use of Federal funds appropriated to the Service shall apply with respect to the performance or coverage of abortions.”.
- Applicability.
Abortions.
- (4) The bill referred to in subsection (a) is amended by striking section 201.
- 42 USC 1395l,
1395qq.

Subtitle C—Provisions Relating to Title III

SEC. 10301. PLANS FOR A VALUE-BASED PURCHASING PROGRAM FOR AMBULATORY SURGICAL CENTERS.

(a) IN GENERAL.—Section 3006 is amended by adding at the end the following new subsection:

“(f) AMBULATORY SURGICAL CENTERS.—

“(1) IN GENERAL.—The Secretary shall develop a plan to implement a value-based purchasing program for payments under the Medicare program under title XVIII of the Social

Security Act for ambulatory surgical centers (as described in section 1833(i) of the Social Security Act (42 U.S.C. 1395l(i))).

“(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall consider the following issues:

“(A) The ongoing development, selection, and modification process for measures (including under section 1890 of the Social Security Act (42 U.S.C. 1395aaa) and section 1890A of such Act, as added by section 3014), to the extent feasible and practicable, of all dimensions of quality and efficiency in ambulatory surgical centers.

“(B) The reporting, collection, and validation of quality data.

“(C) The structure of value-based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value-based bonus payments.

“(D) Methods for the public disclosure of information on the performance of ambulatory surgical centers.

“(E) Any other issues determined appropriate by the Secretary.

“(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall—

“(A) consult with relevant affected parties; and

“(B) consider experience with such demonstrations that the Secretary determines are relevant to the value-based purchasing program described in paragraph (1).

“(4) REPORT TO CONGRESS.—Not later than January 1, 2011, the Secretary shall submit to Congress a report containing the plan developed under paragraph (1).”.

(b) TECHNICAL.—Section 3006(a)(2)(A) is amended by striking clauses (i) and (ii).

SEC. 10302. REVISION TO NATIONAL STRATEGY FOR QUALITY IMPROVEMENT IN HEALTH CARE.

Section 399HH(a)(2)(B)(iii) of the Public Health Service Act, as added by section 3011, is amended by inserting “(taking into consideration the limitations set forth in subsections (c) and (d) of section 1182 of the Social Security Act)” after “information”.

42 USC 280j.

SEC. 10303. DEVELOPMENT OF OUTCOME MEASURES.

(a) DEVELOPMENT.—Section 931 of the Public Health Service Act, as added by section 3013(a), is amended by adding at the end the following new subsection:

42 USC 299b–31.

“(f) DEVELOPMENT OF OUTCOME MEASURES.—

“(1) IN GENERAL.—The Secretary shall develop, and periodically update (not less than every 3 years), provider-level outcome measures for hospitals and physicians, as well as other providers as determined appropriate by the Secretary.

Deadline.

“(2) CATEGORIES OF MEASURES.—The measures developed under this subsection shall include, to the extent determined appropriate by the Secretary—

“(A) outcome measurement for acute and chronic diseases, including, to the extent feasible, the 5 most prevalent and resource-intensive acute and chronic medical conditions; and

“(B) outcome measurement for primary and preventative care, including, to the extent feasible, measurements

that cover provision of such care for distinct patient populations (such as healthy children, chronically ill adults, or infirm elderly individuals).

“(3) GOALS.—In developing such measures, the Secretary shall seek to—

“(A) address issues regarding risk adjustment, accountability, and sample size;

“(B) include the full scope of services that comprise a cycle of care; and

“(C) include multiple dimensions.

“(4) TIMEFRAME.—

“(A) ACUTE AND CHRONIC DISEASES.—Not later than 24 months after the date of enactment of this Act, the Secretary shall develop not less than 10 measures described in paragraph (2)(A).

“(B) PRIMARY AND PREVENTIVE CARE.—Not later than 36 months after the date of enactment of this Act, the Secretary shall develop not less than 10 measures described in paragraph (2)(B).”.

(b) HOSPITAL-ACQUIRED CONDITIONS.—Section 1890A of the Social Security Act, as amended by section 3013(b), is amended by adding at the end the following new subsection:

“(f) HOSPITAL ACQUIRED CONDITIONS.—The Secretary shall, to the extent practicable, publicly report on measures for hospital-acquired conditions that are currently utilized by the Centers for Medicare & Medicaid Services for the adjustment of the amount of payment to hospitals based on rates of hospital-acquired infections.”.

(c) CLINICAL PRACTICE GUIDELINES.—Section 304(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275) is amended by adding at the end the following new paragraph:

“(4) IDENTIFICATION.—

“(A) IN GENERAL.—Following receipt of the report submitted under paragraph (2), and not less than every 3 years thereafter, the Secretary shall contract with the Institute to employ the results of the study performed under paragraph (1) and the best methods identified by the Institute for the purpose of identifying existing and new clinical practice guidelines that were developed using such best methods, including guidelines listed in the National Guideline Clearinghouse.

“(B) CONSULTATION.—In carrying out the identification process under subparagraph (A), the Secretary shall allow for consultation with professional societies, voluntary health care organizations, and expert panels.”.

SEC. 10304. SELECTION OF EFFICIENCY MEASURES.

Sections 1890(b)(7) and 1890A of the Social Security Act, as added by section 3014, are amended by striking “quality” each place it appears and inserting “quality and efficiency”.

SEC. 10305. DATA COLLECTION; PUBLIC REPORTING.

Section 399II(a) of the Public Health Service Act, as added by section 3015, is amended to read as follows:

“(a) IN GENERAL.—

42 USC
1395aaa-1.
Public
information.

42 USC 299 note.

Deadline.
Contracts.

42 USC 1395aaa,
1395aaa-1.

42 USC 280j-1.

“(1) ESTABLISHMENT OF STRATEGIC FRAMEWORK.—The Secretary shall establish and implement an overall strategic framework to carry out the public reporting of performance information, as described in section 399JJ. Such strategic framework may include methods and related timelines for implementing nationally consistent data collection, data aggregation, and analysis methods.

“(2) COLLECTION AND AGGREGATION OF DATA.—The Secretary shall collect and aggregate consistent data on quality and resource use measures from information systems used to support health care delivery, and may award grants or contracts for this purpose. The Secretary shall align such collection and aggregation efforts with the requirements and assistance regarding the expansion of health information technology systems, the interoperability of such technology systems, and related standards that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

“(3) SCOPE.—The Secretary shall ensure that the data collection, data aggregation, and analysis systems described in paragraph (1) involve an increasingly broad range of patient populations, providers, and geographic areas over time.”.

SEC. 10306. IMPROVEMENTS UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.

Section 1115A of the Social Security Act, as added by section 3021, is amended—

42 USC 1315a.

(1) in subsection (a), by inserting at the end the following new paragraph:

“(5) TESTING WITHIN CERTAIN GEOGRAPHIC AREAS.—For purposes of testing payment and service delivery models under this section, the Secretary may elect to limit testing of a model to certain geographic areas.”;

(2) in subsection (b)(2)—

(A) in subparagraph (A)—

(i) in the second sentence, by striking “the preceding sentence may include” and inserting “this subparagraph may include, but are not limited to,”; and

(ii) by inserting after the first sentence the following new sentence: “The Secretary shall focus on models expected to reduce program costs under the applicable title while preserving or enhancing the quality of care received by individuals receiving benefits under such title.”;

(B) in subparagraph (B), by adding at the end the following new clauses:

“(xix) Utilizing, in particular in entities located in medically underserved areas and facilities of the Indian Health Service (whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act)), telehealth services—

“(I) in treating behavioral health issues (such as post-traumatic stress disorder) and stroke; and

“(II) to improve the capacity of non-medical providers and non-specialized medical providers to

provide health services for patients with chronic complex conditions.

“(xx) Utilizing a diverse network of providers of services and suppliers to improve care coordination for applicable individuals described in subsection (a)(4)(A)(i) with 2 or more chronic conditions and a history of prior-year hospitalization through interventions developed under the Medicare Coordinated Care Demonstration Project under section 4016 of the Balanced Budget Act of 1997 (42 U.S.C. 1395b–1 note).”; and

(C) in subparagraph (C), by adding at the end the following new clause:

“(viii) Whether the model demonstrates effective linkage with other public sector or private sector payers.”;

(3) in subsection (b)(4), by adding at the end the following new subparagraph:

“(C) MEASURE SELECTION.—To the extent feasible, the Secretary shall select measures under this paragraph that reflect national priorities for quality improvement and patient-centered care consistent with the measures described in 1890(b)(7)(B).”; and

(4) in subsection (c)—

(A) in paragraph (1)(B), by striking “care and reduce spending; and” and inserting “patient care without increasing spending.”;

(B) in paragraph (2), by striking “reduce program spending under applicable titles.” and inserting “reduce (or would not result in any increase in) net program spending under applicable titles; and”; and

(C) by adding at the end the following:

Determination.

“(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under the applicable title for applicable individuals.

In determining which models or demonstration projects to expand under the preceding sentence, the Secretary shall focus on models and demonstration projects that improve the quality of patient care and reduce spending.”.

SEC. 10307. IMPROVEMENTS TO THE MEDICARE SHARED SAVINGS PROGRAM.

42 USC 1395jjj. Section 1899 of the Social Security Act, as added by section 3022, is amended by adding at the end the following new subsections:

“(i) OPTION TO USE OTHER PAYMENT MODELS.—

Determination.

“(1) IN GENERAL.—If the Secretary determines appropriate, the Secretary may use any of the payment models described in paragraph (2) or (3) for making payments under the program rather than the payment model described in subsection (d).

“(2) PARTIAL CAPITATION MODEL.—

“(A) IN GENERAL.—Subject to subparagraph (B), a model described in this paragraph is a partial capitation model in which an ACO is at financial risk for some, but not all, of the items and services covered under parts A and B, such as at risk for some or all physicians’ services or all items and services under part B. The Secretary

may limit a partial capitation model to ACOs that are highly integrated systems of care and to ACOs capable of bearing risk, as determined to be appropriate by the Secretary.

“(B) NO ADDITIONAL PROGRAM EXPENDITURES.—Payments to an ACO for items and services under this title for beneficiaries for a year under the partial capitation model shall be established in a manner that does not result in spending more for such ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented, as estimated by the Secretary. Estimate.

“(3) OTHER PAYMENT MODELS.—

“(A) IN GENERAL.—Subject to subparagraph (B), a model described in this paragraph is any payment model that the Secretary determines will improve the quality and efficiency of items and services furnished under this title. Determination.

“(B) NO ADDITIONAL PROGRAM EXPENDITURES.—Subparagraph (B) of paragraph (2) shall apply to a payment model under subparagraph (A) in a similar manner as such subparagraph (B) applies to the payment model under paragraph (2). Applicability.

“(j) INVOLVEMENT IN PRIVATE PAYER AND OTHER THIRD PARTY ARRANGEMENTS.—The Secretary may give preference to ACOs who are participating in similar arrangements with other payers.

“(k) TREATMENT OF PHYSICIAN GROUP PRACTICE DEMONSTRATION.—During the period beginning on the date of the enactment of this section and ending on the date the program is established, the Secretary may enter into an agreement with an ACO under the demonstration under section 1866A, subject to rebasing and other modifications deemed appropriate by the Secretary.”. Time period. Contracts.

SEC. 10308. REVISIONS TO NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING.

(a) IN GENERAL.—Section 1866D of the Social Security Act, as added by section 3023, is amended—

(1) in paragraph (a)(2)(B), in the matter preceding clause

(i), by striking “8 conditions” and inserting “10 conditions”;

(2) by striking subsection (c)(1)(B) and inserting the following:

“(B) EXPANSION.—The Secretary may, at any point after January 1, 2016, expand the duration and scope of the pilot program, to the extent determined appropriate by the Secretary, if— Determinations.

“(i) the Secretary determines that such expansion is expected to—

“(I) reduce spending under title XVIII of the Social Security Act without reducing the quality of care; or

“(II) improve the quality of care and reduce spending;

“(ii) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and Certification.

42 USC
1395cc-4.

“(iii) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under this title for individuals.”; and

(3) by striking subsection (g) and inserting the following new subsection:

“(g) APPLICATION OF PILOT PROGRAM TO CONTINUING CARE HOSPITALS.—

“(1) IN GENERAL.—In conducting the pilot program, the Secretary shall apply the provisions of the program so as to separately pilot test the continuing care hospital model.

“(2) SPECIAL RULES.—In pilot testing the continuing care hospital model under paragraph (1), the following rules shall apply:

“(A) Such model shall be tested without the limitation to the conditions selected under subsection (a)(2)(B).

Definition.

“(B) Notwithstanding subsection (a)(2)(D), an episode of care shall be defined as the full period that a patient stays in the continuing care hospital plus the first 30 days following discharge from such hospital.

“(3) CONTINUING CARE HOSPITAL DEFINED.—In this subsection, the term ‘continuing care hospital’ means an entity that has demonstrated the ability to meet patient care and patient safety standards and that provides under common management the medical and rehabilitation services provided in inpatient rehabilitation hospitals and units (as defined in section 1886(d)(1)(B)(ii)), long term care hospitals (as defined in section 1886(d)(1)(B)(iv)(I)), and skilled nursing facilities (as defined in section 1819(a)) that are located in a hospital described in section 1886(d).”.

(b) TECHNICAL AMENDMENTS.—

42 USC
1395cc–4.

(1) Section 3023 is amended by striking “1886C” and inserting “1866C”.

42 USC
1395cc–5.

(2) Title XVIII of the Social Security Act is amended by redesignating section 1866D, as added by section 3024, as section 1866E.

SEC. 10309. REVISIONS TO HOSPITAL READMISSIONS REDUCTION PROGRAM.

42 USC 1395ww.

Section 1886(q)(1) of the Social Security Act, as added by section 3025, in the matter preceding subparagraph (A), is amended by striking “the Secretary shall reduce the payments” and all that follows through “the product of” and inserting “the Secretary shall make payments (in addition to the payments described in paragraph (2)(A)(ii)) for such a discharge to such hospital under subsection (d) (or section 1814(b)(3), as the case may be) in an amount equal to the product of”.

SEC. 10310. REPEAL OF PHYSICIAN PAYMENT UPDATE.

42 USC 1395w–4.

The provisions of, and the amendment made by, section 3101 are repealed.

SEC. 10311. REVISIONS TO EXTENSION OF AMBULANCE ADD-ONS.

(a) GROUND AMBULANCE.—Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)), as amended by section 3105(a), is further amended—

(1) in the matter preceding clause (i)—

(A) by striking “2007, for” and inserting “2007, and for”; and

(B) by striking “2010, and for such services furnished on or after April 1, 2010, and before January 1, 2011” and inserting “2011”; and

(2) in each of clauses (i) and (ii)—

(A) by striking “, and on or after April 1, 2010, and before January 1, 2011” each place it appears; and

(B) by striking “January 1, 2010” and inserting “January 1, 2011” each place it appears.

(b) AIR AMBULANCE.—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), as amended by section 3105(b), is further amended by striking “December 31, 2009, and during the period beginning on April 1, 2010, and ending on January 1, 2011” and inserting “December 31, 2010”.

42 USC 1395m
note.

(c) SUPER RURAL AMBULANCE.—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)), as amended by section 3105(c), is further amended by striking “2010, and on or after April 1, 2010, and before January 1, 2011” and inserting “2011”.

SEC. 10312. CERTAIN PAYMENT RULES FOR LONG-TERM CARE HOSPITAL SERVICES AND MORATORIUM ON THE ESTABLISHMENT OF CERTAIN HOSPITALS AND FACILITIES.

(a) CERTAIN PAYMENT RULES.—Section 114(c) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395ww note), as amended by section 4302(a) of the American Recovery and Reinvestment Act (Public Law 111-5) and section 3106(a) of this Act, is further amended by striking “4-year period” each place it appears and inserting “5-year period”.

(b) MORATORIUM.—Section 114(d) of such Act (42 U.S.C. 1395ww note), as amended by section 3106(b) of this Act, in the matter preceding subparagraph (A), is amended by striking “4-year period” and inserting “5-year period”.

SEC. 10313. REVISIONS TO THE EXTENSION FOR THE RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Subsection (g) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2272), as added by section 3123(a) of this Act, is amended to read as follows:

“(g) FIVE-YEAR EXTENSION OF DEMONSTRATION PROGRAM.—

42 USC 1395ww
note.

“(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall conduct the demonstration program under this section for an additional 5-year period (in this section referred to as the ‘5-year extension period’) that begins on the date immediately following the last day of the initial 5-year period under subsection (a)(5).

“(2) EXPANSION OF DEMONSTRATION STATES.—Notwithstanding subsection (a)(2), during the 5-year extension period, the Secretary shall expand the number of States with low population densities determined by the Secretary under such subsection to 20. In determining which States to include in such expansion, the Secretary shall use the same criteria and data that the Secretary used to determine the States under such subsection for purposes of the initial 5-year period.

Determination.

“(3) INCREASE IN MAXIMUM NUMBER OF HOSPITALS PARTICIPATING IN THE DEMONSTRATION PROGRAM.—Notwithstanding subsection (a)(4), during the 5-year extension period, not more

Criteria.

than 30 rural community hospitals may participate in the demonstration program under this section.

“(4) HOSPITALS IN DEMONSTRATION PROGRAM ON DATE OF ENACTMENT.—In the case of a rural community hospital that is participating in the demonstration program under this section as of the last day of the initial 5-year period, the Secretary—

“(A) shall provide for the continued participation of such rural community hospital in the demonstration program during the 5-year extension period unless the rural community hospital makes an election, in such form and manner as the Secretary may specify, to discontinue such participation; and

“(B) in calculating the amount of payment under subsection (b) to the rural community hospital for covered inpatient hospital services furnished by the hospital during such 5-year extension period, shall substitute, under paragraph (1)(A) of such subsection—

“(i) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the first day of the 5-year extension period, for

“(ii) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program.”.

(b) CONFORMING AMENDMENTS.—Subsection (a)(5) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2272), as amended by section 3123(b) of this Act, is amended by striking “1-year extension” and inserting “5-year extension”.

SEC. 10314. ADJUSTMENT TO LOW-VOLUME HOSPITAL PROVISION.

Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12)), as amended by section 3125, is amended—

(1) in subparagraph (C)(i), by striking “1,500 discharges” and inserting “1,600 discharges”; and

(2) in subparagraph (D), by striking “1,500 discharges” and inserting “1,600 discharges”.

SEC. 10315. REVISIONS TO HOME HEALTH CARE PROVISIONS.

42 USC 1395fff. (a) REBASING.—Section 1895(b)(3)(A)(iii) of the Social Security Act, as added by section 3131, is amended—

(1) in the clause heading, by striking “2013” and inserting “2014”;

(2) in subclause (I), by striking “2013” and inserting “2014”; and

(3) in subclause (II), by striking “2016” and inserting “2017”.

42 USC 1395fff
note.

(b) REVISION OF HOME HEALTH STUDY AND REPORT.—Section 3131(d) is amended to read as follows:

“(d) STUDY AND REPORT ON THE DEVELOPMENT OF HOME HEALTH PAYMENT REVISIONS IN ORDER TO ENSURE ACCESS TO CARE AND PAYMENT FOR SEVERITY OF ILLNESS.—

“(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall conduct a study on home health agency costs involved with

providing ongoing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness. In conducting the study, the Secretary may analyze items such as the following:

“(A) Methods to potentially revise the home health prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1395fff) to account for costs related to patient severity of illness or to improving beneficiary access to care, such as—

“(i) payment adjustments for services that may involve additional or fewer resources;

“(ii) changes to reflect resources involved with providing home health services to low-income Medicare beneficiaries or Medicare beneficiaries residing in medically underserved areas;

“(iii) ways outlier payments might be revised to reflect costs of treating Medicare beneficiaries with high levels of severity of illness; and

“(iv) other issues determined appropriate by the Secretary.

“(B) Operational issues involved with potential implementation of potential revisions to the home health payment system, including impacts for both home health agencies and administrative and systems issues for the Centers for Medicare & Medicaid Services, and any possible payment vulnerabilities associated with implementing potential revisions.

“(C) Whether additional research might be needed.

“(D) Other items determined appropriate by the Secretary.

“(2) CONSIDERATIONS.—In conducting the study under paragraph (1), the Secretary may consider whether patient severity of illness and access to care could be measured by factors, such as—

“(A) population density and relative patient access to care;

“(B) variations in service costs for providing care to individuals who are dually eligible under the Medicare and Medicaid programs;

“(C) the presence of severe or chronic diseases, which might be measured by multiple, discontinuous home health episodes;

“(D) poverty status, such as evidenced by the receipt of Supplemental Security Income under title XVI of the Social Security Act; and

“(E) other factors determined appropriate by the Secretary.

“(3) REPORT.—Not later than March 1, 2014, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

“(4) CONSULTATIONS.—In conducting the study under paragraph (1), the Secretary shall consult with appropriate stakeholders, such as groups representing home health agencies and groups representing Medicare beneficiaries.

“(5) MEDICARE DEMONSTRATION PROJECT BASED ON THE RESULTS OF THE STUDY.—

“(A) IN GENERAL.—Subject to subparagraph (D), taking into account the results of the study conducted under paragraph (1), the Secretary may, as determined appropriate, provide for a demonstration project to test whether making payment adjustments for home health services under the Medicare program would substantially improve access to care for patients with high severity levels of illness or for low-income or underserved Medicare beneficiaries.

“(B) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset any increase in payments during such period resulting from the application of the payment adjustments under subparagraph (A).

“(C) NO EFFECT ON SUBSEQUENT PERIODS.—A payment adjustment resulting from the application of subparagraph (A) for a period—

“(i) shall not apply to payments for home health services under title XVIII after such period; and

“(ii) shall not be taken into account in calculating the payment amounts applicable for such services after such period.

Determination.

“(D) DURATION.—If the Secretary determines it appropriate to conduct the demonstration project under this subsection, the Secretary shall conduct the project for a four year period beginning not later than January 1, 2015.

“(E) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), in such proportion as the Secretary determines appropriate, of \$500,000,000 for the period of fiscal years 2015 through 2018. Such funds shall be made available for the study described in paragraph (1) and the design, implementation and evaluation of the demonstration described in this paragraph. Amounts available under this subparagraph shall be available until expended.

“(F) EVALUATION AND REPORT.—If the Secretary determines it appropriate to conduct the demonstration project under this subsection, the Secretary shall—

“(i) provide for an evaluation of the project; and

“(ii) submit to Congress, by a date specified by the Secretary, a report on the project.

“(G) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply with respect to this subsection.”.

SEC. 10316. MEDICARE DSH.

42 USC 1395ww. Section 1886(r)(2)(B) of the Social Security Act, as added by section 3133, is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I), by striking “(divided by 100)”;

(B) in subclause (I), by striking “2012” and inserting “2013”;

(C) in subclause (II), by striking the period at the end and inserting a comma; and

(D) by adding at the end the following flush matter: “minus 1.5 percentage points.”.

(2) in clause (ii)—

(A) in the matter preceding subclause (I), by striking “(divided by 100)”;

(B) in subclause (I), by striking “2012” and inserting “2013”;

(C) in subclause (II), by striking the period at the end and inserting a comma; and

(D) by adding at the end the following flush matter: “and, for each of 2018 and 2019, minus 1.5 percentage points.”.

SEC. 10317. REVISIONS TO EXTENSION OF SECTION 508 HOSPITAL PROVISIONS.

42 USC 1395ww
note.

Section 3137(a) is amended to read as follows:

“(a) EXTENSION.—

“(1) IN GENERAL.—Subsection (a) of section 106 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173) and section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), is amended by striking ‘September 30, 2009’ and inserting ‘September 30, 2010’.

“(2) SPECIAL RULE FOR FISCAL YEAR 2010.—

“(A) IN GENERAL.—Subject to subparagraph (B), for purposes of implementation of the amendment made by paragraph (1), including (notwithstanding paragraph (3) of section 117(a) of the Medicare, Medicaid and SCHIP Extension Act of 2007 (Public Law 110-173), as amended by section 124(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275)) for purposes of the implementation of paragraph (2) of such section 117(a), during fiscal year 2010, the Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall use the hospital wage index that was promulgated by the Secretary in the Federal Register on August 27, 2009 (74 Fed. Reg. 43754), and any subsequent corrections.

“(B) EXCEPTION.—Beginning on April 1, 2010, in determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by paragraph (1) only if including such data results in a higher applicable reclassified wage index.

Effective date.

“(3) ADJUSTMENT FOR CERTAIN HOSPITALS IN FISCAL YEAR

2010.—

“(A) IN GENERAL.—In the case of a subsection (d) hospital (as defined in subsection (d)(1)(B) of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which—

Time period.

“(i) a reclassification of its wage index for purposes of such section was extended pursuant to the amendment made by paragraph (1); and

“(ii) the wage index applicable for such hospital for the period beginning on October 1, 2009, and ending on March 31, 2010, was lower than for the period beginning on April 1, 2010, and ending on September 30, 2010, by reason of the application of paragraph (2)(B);

the Secretary shall pay such hospital an additional payment that reflects the difference between the wage index for such periods.

“(B) TIMEFRAME FOR PAYMENTS.—The Secretary shall make payments required under subparagraph by not later than December 31, 2010.”.

SEC. 10318. REVISIONS TO TRANSITIONAL EXTRA BENEFITS UNDER MEDICARE ADVANTAGE.

42 USC
1395w–23.

Section 1853(p)(3)(A) of the Social Security Act, as added by section 3201(h), is amended by inserting “in 2009” before the period at the end.

SEC. 10319. REVISIONS TO MARKET BASKET ADJUSTMENTS.

42 USC 1395ww.

(a) INPATIENT ACUTE HOSPITALS.—Section 1886(b)(3)(B)(xii) of the Social Security Act, as added by section 3401(a), is amended—

(1) in subclause (I), by striking “and” at the end;

(2) by redesignating subclause (II) as subclause (III);

(3) by inserting after subclause (II) the following new subclause:

“(II) for each of fiscal years 2012 and 2013, by 0.1 percentage point; and”; and

(4) in subclause (III), as redesignated by paragraph (2), by striking “2012” and inserting “2014”.

(b) LONG-TERM CARE HOSPITALS.—Section 1886(m)(4) of the Social Security Act, as added by section 3401(c), is amended—

(1) in subparagraph (A)—

(A) in clause (i)—

(i) by striking “each of rate years 2010 and 2011” and inserting “rate year 2010”; and

(ii) by striking “and” at the end;

(B) by redesignating clause (ii) as clause (iv);

(C) by inserting after clause (i) the following new clauses:

“(ii) for rate year 2011, 0.50 percentage point;

“(iii) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point; and”; and

(D) in clause (iv), as redesignated by subparagraph (B), by striking “2012” and inserting “2014”; and

(2) in subparagraph (B), by striking “(A)(ii)” and inserting “(A)(iv)”.

(c) INPATIENT REHABILITATION FACILITIES.—Section 1886(j)(3)(D)(i) of the Social Security Act, as added by section 3401(d), is amended—

(1) in subclause (I), by striking “and” at the end;

(2) by redesignating subclause (II) as subclause (III);

(3) by inserting after subclause (II) the following new subclause:

“(II) for each of fiscal years 2012 and 2013, 0.1 percentage point; and”; and

(4) in subclause (III), as redesignated by paragraph (2), by striking “2012” and inserting “2014”.

(d) HOME HEALTH AGENCIES.—Section 1895(b)(3)(B)(vi)(II) of such Act, as added by section 3401(e), is amended by striking “and 2012” and inserting “, 2012, and 2013”. 42 USC 1395fff.

(e) PSYCHIATRIC HOSPITALS.—Section 1886(s)(3)(A) of the Social Security Act, as added by section 3401(f), is amended— 42 USC 1395ww.

(1) in clause (i), by striking “and” at the end;

(2) by redesignating clause (ii) as clause (iii);

(3) by inserting after clause (ii) the following new clause:

“(ii) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point; and”; and

(4) in clause (iii), as redesignated by paragraph (2), by striking “2012” and inserting “2014”.

(f) HOSPICE CARE.—Section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)), as amended by section 3401(g), is amended—

(1) in clause (iv)(II), by striking “0.5” and inserting “0.3”; and

(2) in clause (v), in the matter preceding subclause (I), by striking “0.5” and inserting “0.3”.

(g) OUTPATIENT HOSPITALS.—Section 1833(t)(3)(G)(i) of the Social Security Act, as added by section 3401(i), is amended— 42 USC 1395l.

(1) in subclause (I), by striking “and” at the end;

(2) by redesignating subclause (II) as subclause (III);

(3) by inserting after subclause (II) the following new subclause:

“(II) for each of 2012 and 2013, 0.1 percentage point; and”; and

(4) in subclause (III), as redesignated by paragraph (2), by striking “2012” and inserting “2014”.

SEC. 10320. EXPANSION OF THE SCOPE OF, AND ADDITIONAL IMPROVEMENTS TO, THE INDEPENDENT MEDICARE ADVISORY BOARD.

(a) IN GENERAL.—Section 1899A of the Social Security Act, as added by section 3403, is amended— 42 USC 1395kkk.

(1) in subsection (c)—

(A) in paragraph (1)(B), by adding at the end the following new sentence: “In any year (beginning with 2014) that the Board is not required to submit a proposal under this section, the Board shall submit to Congress an advisory report on matters related to the Medicare program.”; Reports.

(B) in paragraph (2)(A)—

(i) in clause (iv), by inserting “or the full premium subsidy under section 1860D–14(a)” before the period at the end of the last sentence; and

(ii) by adding at the end the following new clause:

“(vii) If the Chief Actuary of the Centers for Medicare & Medicaid Services has made a determination described in subsection (e)(3)(B)(i)(II) in the determination year, the proposal shall be designed to help reduce the growth rate described in paragraph (8) while maintaining or enhancing beneficiary access to quality care under this title.”; Determination.

- (C) in paragraph (2)(B)—
 - (i) in clause (v), by striking “and” at the end;
 - (ii) in clause (vi), by striking the period at the end and inserting “; and”; and
 - (iii) by adding at the end the following new clause:
 - “(vii) take into account the data and findings contained in the annual reports under subsection (n) in order to develop proposals that can most effectively promote the delivery of efficient, high quality care to Medicare beneficiaries.”;
- (D) in paragraph (3)—
 - (i) in the heading, by striking “TRANSMISSION OF BOARD PROPOSAL TO PRESIDENT” and inserting “SUBMISSION OF BOARD PROPOSAL TO CONGRESS AND THE PRESIDENT”;
 - (ii) in subparagraph (A)(i), by striking “transmit a proposal under this section to the President” and insert “submit a proposal under this section to Congress and the President”; and
 - (iii) in subparagraph (A)(ii)—
 - (I) in subclause (I), by inserting “or” at the end;
 - (II) in subclause (II), by striking “; or” and inserting a period; and
 - (III) by striking subclause (III);
- (E) in paragraph (4)—
 - (i) by striking “the Board under paragraph (3)(A)(i) or”; and
 - (ii) by striking “immediately” and inserting “within 2 days”;
- (F) in paragraph (5)—
 - (i) by striking “to but” and inserting “but”; and
 - (ii) by inserting “Congress and” after “submit a proposal to”; and
- (G) in paragraph (6)(B)(i), by striking “per unduplicated enrollee” and inserting “(calculated as the sum of per capita spending under each of parts A, B, and D)”;
- (2) in subsection (d)—
 - (A) in paragraph (1)(A)—
 - (i) by inserting “the Board or” after “a proposal is submitted by”; and
 - (ii) by inserting “subsection (c)(3)(A)(i) or” after “the Senate under”; and
 - (B) in paragraph (2)(A), by inserting “the Board or” after “a proposal is submitted by”;
- (3) in subsection (e)—
 - (A) in paragraph (1), by inserting “the Board or” after “a proposal submitted by”; and
 - (B) in paragraph (3)—
 - (i) by striking “EXCEPTION.—The Secretary shall not be required to implement the recommendations contained in a proposal submitted in a proposal year by” and inserting “EXCEPTIONS.—
 - “(A) IN GENERAL.—The Secretary shall not implement the recommendations contained in a proposal submitted in a proposal year by the Board or”;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting appropriately; and

(iii) by adding at the end the following new subparagraph:

“(B) LIMITED ADDITIONAL EXCEPTION.—

“(i) IN GENERAL.—Subject to clause (ii), the Secretary shall not implement the recommendations contained in a proposal submitted by the Board or the President to Congress pursuant to this section in a proposal year (beginning with proposal year 2019) if—

“(I) the Board was required to submit a proposal to Congress under this section in the year preceding the proposal year; and

“(II) the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year that the growth rate described in subsection (c)(8) exceeds the growth rate described in subsection (c)(6)(A)(i).

Determination.

“(ii) LIMITED ADDITIONAL EXCEPTION MAY NOT BE APPLIED IN TWO CONSECUTIVE YEARS.—This subparagraph shall not apply if the recommendations contained in a proposal submitted by the Board or the President to Congress pursuant to this section in the year preceding the proposal year were not required to be implemented by reason of this subparagraph.

“(iii) NO AFFECT ON REQUIREMENT TO SUBMIT PROPOSALS OR FOR CONGRESSIONAL CONSIDERATION OF PROPOSALS.—Clause (i) and (ii) shall not affect—

“(I) the requirement of the Board or the President to submit a proposal to Congress in a proposal year in accordance with the provisions of this section; or

“(II) Congressional consideration of a legislative proposal (described in subsection (c)(3)(B)(iv)) contained such a proposal in accordance with subsection (d).”;

(4) in subsection (f)(3)(B)—

(A) by striking “or advisory reports to Congress” and inserting “, advisory reports, or advisory recommendations”; and

(B) by inserting “or produce the public report under subsection (n)” after “this section”; and

(5) by adding at the end the following new subsections:

“(n) ANNUAL PUBLIC REPORT.—

“(1) IN GENERAL.—Not later than July 1, 2014, and annually thereafter, the Board shall produce a public report containing standardized information on system-wide health care costs, patient access to care, utilization, and quality-of-care that allows for comparison by region, types of services, types of providers, and both private payers and the program under this title.

“(2) REQUIREMENTS.—Each report produced pursuant to paragraph (1) shall include information with respect to the following areas:

“(A) The quality and costs of care for the population at the most local level determined practical by the Board

(with quality and costs compared to national benchmarks and reflecting rates of change, taking into account quality measures described in section 1890(b)(7)(B)).

“(B) Beneficiary and consumer access to care, patient and caregiver experience of care, and the cost-sharing or out-of-pocket burden on patients.

“(C) Epidemiological shifts and demographic changes.

“(D) The proliferation, effectiveness, and utilization of health care technologies, including variation in provider practice patterns and costs.

“(E) Any other areas that the Board determines affect overall spending and quality of care in the private sector.

“(o) **ADVISORY RECOMMENDATIONS FOR NON-FEDERAL HEALTH CARE PROGRAMS.**—

Deadlines.

“(1) **IN GENERAL.**—Not later than January 15, 2015, and at least once every two years thereafter, the Board shall submit to Congress and the President recommendations to slow the growth in national health expenditures (excluding expenditures under this title and in other Federal health care programs) while preserving or enhancing quality of care, such as recommendations—

“(A) that the Secretary or other Federal agencies can implement administratively;

“(B) that may require legislation to be enacted by Congress in order to be implemented;

“(C) that may require legislation to be enacted by State or local governments in order to be implemented;

“(D) that private sector entities can voluntarily implement; and

“(E) with respect to other areas determined appropriate by the Board.

“(2) **COORDINATION.**—In making recommendations under paragraph (1), the Board shall coordinate such recommendations with recommendations contained in proposals and advisory reports produced by the Board under subsection (c).

“(3) **AVAILABLE TO PUBLIC.**—The Board shall make recommendations submitted to Congress and the President under this subsection available to the public.”.

42 USC 1395kkk and note.

(b) **NAME CHANGE.**—Any reference in the provisions of, or amendments made by, section 3403 to the “Independent Medicare Advisory Board” shall be deemed to be a reference to the “Independent Payment Advisory Board”.

42 USC 1395kkk note.

(c) **RULE OF CONSTRUCTION.**—Nothing in the amendments made by this section shall preclude the Independent Medicare Advisory Board, as established under section 1899A of the Social Security Act (as added by section 3403), from solely using data from public or private sources to carry out the amendments made by subsection (a)(4).

SEC. 10321. REVISION TO COMMUNITY HEALTH TEAMS.

42 USC 256a–1.

Section 3502(c)(2)(A) is amended by inserting “or other primary care providers” after “physicians”.

SEC. 10322. QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.

42 USC 1395ww.

(a) **IN GENERAL.**—Section 1886(s) of the Social Security Act, as added by section 3401(f), is amended by adding at the end the following new paragraph:

“(4) **QUALITY REPORTING.**—

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

“(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and

Procedures.

Reports.

psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.”.

42 USC 1395aaa. (b) CONFORMING AMENDMENT.—Section 1890(b)(7)(B)(i)(I) of the Social Security Act, as added by section 3014, is amended by inserting “1886(s)(4)(D),” after “1886(o)(2),”.

SEC. 10323. MEDICARE COVERAGE FOR INDIVIDUALS EXPOSED TO ENVIRONMENTAL HEALTH HAZARDS.

(a) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1881 the following new section:

42 USC
1395rr–1.

“SEC. 1881A. MEDICARE COVERAGE FOR INDIVIDUALS EXPOSED TO ENVIRONMENTAL HEALTH HAZARDS.

“(a) DEEMING OF INDIVIDUALS AS ELIGIBLE FOR MEDICARE BENEFITS.—

“(1) IN GENERAL.—For purposes of eligibility for benefits under this title, an individual determined under subsection (c) to be an environmental exposure affected individual described in subsection (e)(2) shall be deemed to meet the conditions specified in section 226(a).

“(2) DISCRETIONARY DEEMING.—For purposes of eligibility for benefits under this title, the Secretary may deem an individual determined under subsection (c) to be an environmental exposure affected individual described in subsection (e)(3) to meet the conditions specified in section 226(a).

“(3) EFFECTIVE DATE OF COVERAGE.—An Individual who is deemed eligible for benefits under this title under paragraph (1) or (2) shall be—

“(A) entitled to benefits under the program under Part A as of the date of such deeming; and

“(B) eligible to enroll in the program under Part B beginning with the month in which such deeming occurs.

“(b) PILOT PROGRAM FOR CARE OF CERTAIN INDIVIDUALS RESIDING IN EMERGENCY DECLARATION AREAS.—

“(1) PROGRAM; PURPOSE.—

“(A) PRIMARY PILOT PROGRAM.—The Secretary shall establish a pilot program in accordance with this subsection to provide innovative approaches to furnishing comprehensive, coordinated, and cost-effective care under this title to individuals described in paragraph (2)(A).

“(B) OPTIONAL PILOT PROGRAMS.—The Secretary may establish a separate pilot program, in accordance with this subsection, with respect to each geographic area subject to an emergency declaration (other than the declaration of June 17, 2009), in order to furnish such comprehensive, coordinated and cost-effective care to individuals described in subparagraph (2)(B) who reside in each such area.

“(2) INDIVIDUAL DESCRIBED.—For purposes of paragraph (1), an individual described in this paragraph is an individual who enrolls in part B, submits to the Secretary an application to participate in the applicable pilot program under this subsection, and—

“(A) is an environmental exposure affected individual described in subsection (e)(2) who resides in or around the geographic area subject to an emergency declaration made as of June 17, 2009; or

“(B) is an environmental exposure affected individual described in subsection (e)(3) who—

“(i) is deemed under subsection (a)(2); and

“(ii) meets such other criteria or conditions for participation in a pilot program under paragraph (1)(B) as the Secretary specifies.

“(3) FLEXIBLE BENEFITS AND SERVICES.—A pilot program under this subsection may provide for the furnishing of benefits, items, or services not otherwise covered or authorized under this title, if the Secretary determines that furnishing such benefits, items, or services will further the purposes of such pilot program (as described in paragraph (1)).

“(4) INNOVATIVE REIMBURSEMENT METHODOLOGIES.—For purposes of the pilot program under this subsection, the Secretary—

“(A) shall develop and implement appropriate methodologies to reimburse providers for furnishing benefits, items, or services for which payment is not otherwise covered or authorized under this title, if such benefits, items, or services are furnished pursuant to paragraph (3); and

“(B) may develop and implement innovative approaches to reimbursing providers for any benefits, items, or services furnished under this subsection.

“(5) LIMITATION.—Consistent with section 1862(b), no payment shall be made under the pilot program under this subsection with respect to benefits, items, or services furnished to an environmental exposure affected individual (as defined in subsection (e)) to the extent that such individual is eligible to receive such benefits, items, or services through any other public or private benefits plan or legal agreement.

“(6) WAIVER AUTHORITY.—The Secretary may waive such provisions of this title and title XI as are necessary to carry out pilot programs under this subsection.

“(7) FUNDING.—For purposes of carrying out pilot programs under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841, in such proportion as the Secretary determines appropriate, of such sums as the Secretary determines necessary, to the Centers for Medicare & Medicaid Services Program Management Account.

“(8) WAIVER OF BUDGET NEUTRALITY.—The Secretary shall not require that pilot programs under this subsection be budget neutral with respect to expenditures under this title.

“(c) DETERMINATIONS.—

“(1) BY THE COMMISSIONER OF SOCIAL SECURITY.—For purposes of this section, the Commissioner of Social Security, in consultation with the Secretary, and using the cost allocation method prescribed in section 201(g), shall determine whether individuals are environmental exposure affected individuals.

“(2) BY THE SECRETARY.—The Secretary shall determine eligibility for pilot programs under subsection (b).

“(d) EMERGENCY DECLARATION DEFINED.—For purposes of this section, the term ‘emergency declaration’ means a declaration of a public health emergency under section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“(e) ENVIRONMENTAL EXPOSURE AFFECTED INDIVIDUAL
DEFINED.—

“(1) IN GENERAL.—For purposes of this section, the term
‘environmental exposure affected individual’ means—

“(A) an individual described in paragraph (2); and

“(B) an individual described in paragraph (3).

“(2) INDIVIDUAL DESCRIBED.—

“(A) IN GENERAL.—An individual described in this para-
graph is any individual who—

“(i) is diagnosed with 1 or more conditions
described in subparagraph (B);

“(ii) as demonstrated in such manner as the Sec-
retary determines appropriate, has been present for
an aggregate total of 6 months in the geographic area
subject to an emergency declaration specified in sub-
section (b)(2)(A), during a period ending—

“(I) not less than 10 years prior to such diag-
nosis; and

“(II) prior to the implementation of all the
remedial and removal actions specified in the
Record of Decision for Operating Unit 4 and the
Record of Decision for Operating Unit 7;

“(iii) files an application for benefits under this
title (or has an application filed on behalf of the indi-
vidual), including pursuant to this section; and

“(iv) is determined under this section to meet the
criteria in this subparagraph.

“(B) CONDITIONS DESCRIBED.—For purposes of subpara-
graph (A), the following conditions are described in this
subparagraph:

“(i) Asbestosis, pleural thickening, or pleural
plaques as established by—

“(I) interpretation by a ‘B Reader’ qualified
physician of a plain chest x-ray or interpretation
of a computed tomographic radiograph of the chest
by a qualified physician, as determined by the
Secretary; or

“(II) such other diagnostic standards as the
Secretary specifies,
except that this clause shall not apply to pleural thick-
ening or pleural plaques unless there are symptoms
or conditions requiring medical treatment as a result
of these diagnoses.

“(ii) Mesothelioma, or malignancies of the lung,
colon, rectum, larynx, stomach, esophagus, pharynx,
or ovary, as established by—

“(I) pathologic examination of biopsy tissue;

“(II) cytology from bronchioalveolar lavage; or

“(III) such other diagnostic standards as the
Secretary specifies.

“(iii) Any other diagnosis which the Secretary, in
consultation with the Commissioner of Social Security,
determines is an asbestos-related medical condition,
as established by such diagnostic standards as the
Secretary specifies.

“(3) OTHER INDIVIDUAL DESCRIBED.—An individual
described in this paragraph is any individual who—

“(A) is not an individual described in paragraph (2);

“(B) is diagnosed with a medical condition caused by the exposure of the individual to a public health hazard to which an emergency declaration applies, based on such medical conditions, diagnostic standards, and other criteria as the Secretary specifies;

“(C) as demonstrated in such manner as the Secretary determines appropriate, has been present for an aggregate total of 6 months in the geographic area subject to the emergency declaration involved, during a period determined appropriate by the Secretary;

“(D) files an application for benefits under this title (or has an application filed on behalf of the individual), including pursuant to this section; and

“(E) is determined under this section to meet the criteria in this paragraph.”.

(b) PROGRAM FOR EARLY DETECTION OF CERTAIN MEDICAL CONDITIONS RELATED TO ENVIRONMENTAL HEALTH HAZARDS.—Title XX of the Social Security Act (42 U.S.C. 1397 et seq.), as amended by section 5507, is amended by adding at the end the following:

“SEC. 2009. PROGRAM FOR EARLY DETECTION OF CERTAIN MEDICAL CONDITIONS RELATED TO ENVIRONMENTAL HEALTH HAZARDS.

42 USC 1397h.

“(a) PROGRAM ESTABLISHMENT.—The Secretary shall establish a program in accordance with this section to make competitive grants to eligible entities specified in subsection (b) for the purpose of—

“(1) screening at-risk individuals (as defined in subsection (c)(1)) for environmental health conditions (as defined in subsection (c)(3)); and

“(2) developing and disseminating public information and education concerning—

“(A) the availability of screening under the program under this section;

“(B) the detection, prevention, and treatment of environmental health conditions; and

“(C) the availability of Medicare benefits for certain individuals diagnosed with environmental health conditions under section 1881A.

“(b) ELIGIBLE ENTITIES.—

“(1) IN GENERAL.—For purposes of this section, an eligible entity is an entity described in paragraph (2) which submits an application to the Secretary in such form and manner, and containing such information and assurances, as the Secretary determines appropriate.

“(2) TYPES OF ELIGIBLE ENTITIES.—The entities described in this paragraph are the following:

“(A) A hospital or community health center.

“(B) A Federally qualified health center.

“(C) A facility of the Indian Health Service.

“(D) A National Cancer Institute-designated cancer center.

“(E) An agency of any State or local government.

“(F) A nonprofit organization.

“(G) Any other entity the Secretary determines appropriate.

“(c) DEFINITIONS.—In this section:

“(1) AT-RISK INDIVIDUAL.—The term ‘at-risk individual’ means an individual who—

“(A)(i) as demonstrated in such manner as the Secretary determines appropriate, has been present for an aggregate total of 6 months in the geographic area subject to an emergency declaration specified under paragraph (2), during a period ending—

“(I) not less than 10 years prior to the date of such individual’s application under subparagraph (B); and

“(II) prior to the implementation of all the remedial and removal actions specified in the Record of Decision for Operating Unit 4 and the Record of Decision for Operating Unit 7; or

“(ii) meets such other criteria as the Secretary determines appropriate considering the type of environmental health condition at issue; and

“(B) has submitted an application (or has an application submitted on the individual’s behalf), to an eligible entity receiving a grant under this section, for screening under the program under this section.

“(2) EMERGENCY DECLARATION.—The term ‘emergency declaration’ means a declaration of a public health emergency under section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“(3) ENVIRONMENTAL HEALTH CONDITION.—The term ‘environmental health condition’ means—

“(A) asbestosis, pleural thickening, or pleural plaques, as established by—

“(i) interpretation by a ‘B Reader’ qualified physician of a plain chest x-ray or interpretation of a computed tomographic radiograph of the chest by a qualified physician, as determined by the Secretary; or

“(ii) such other diagnostic standards as the Secretary specifies;

“(B) mesothelioma, or malignancies of the lung, colon, rectum, larynx, stomach, esophagus, pharynx, or ovary, as established by—

“(i) pathologic examination of biopsy tissue;

“(ii) cytology from bronchioalveolar lavage; or

“(iii) such other diagnostic standards as the Secretary specifies; and

“(C) any other medical condition which the Secretary determines is caused by exposure to a hazardous substance or pollutant or contaminant at a Superfund site to which an emergency declaration applies, based on such criteria and as established by such diagnostic standards as the Secretary specifies.

“(4) HAZARDOUS SUBSTANCE; POLLUTANT; CONTAMINANT.—The terms ‘hazardous substance’, ‘pollutant’, and ‘contaminant’ have the meanings given those terms in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(5) SUPERFUND SITE.—The term ‘Superfund site’ means a site included on the National Priorities List developed by the President in accordance with section 105(a)(8)(B) of the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)(8)(B)).

“(d) HEALTH COVERAGE UNAFFECTED.—Nothing in this section shall be construed to affect any coverage obligation of a governmental or private health plan or program relating to an at-risk individual.

“(e) FUNDING.—

“(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary, to carry out the program under this section—

“(A) \$23,000,000 for the period of fiscal years 2010 through 2014; and

“(B) \$20,000,000 for each 5-fiscal year period thereafter.

“(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available until expended.

“(f) NONAPPLICATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the preceding sections of this title shall not apply to grants awarded under this section.

“(2) LIMITATIONS ON USE OF GRANTS.—Section 2005(a) shall apply to a grant awarded under this section to the same extent and in the same manner as such section applies to payments to States under this title, except that paragraph (4) of such section shall not be construed to prohibit grantees from conducting screening for environmental health conditions as authorized under this section.”.

SEC. 10324. PROTECTIONS FOR FRONTIER STATES.

(a) FLOOR ON AREA WAGE INDEX FOR HOSPITALS IN FRONTIER STATES.—

(1) IN GENERAL.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) is amended—

(A) in clause (i), by striking “clause (ii)” and inserting “clause (ii) or (iii)”; and

(B) by adding at the end the following new clause:

“(iii) FLOOR ON AREA WAGE INDEX FOR HOSPITALS IN FRONTIER STATES.—

“(I) IN GENERAL.—Subject to subclause (IV), for discharges occurring on or after October 1, 2010, the area wage index applicable under this subparagraph to any hospital which is located in a frontier State (as defined in subclause (II)) may not be less than 1.00.

“(II) FRONTIER STATE DEFINED.—In this clause, the term ‘frontier State’ means a State in which at least 50 percent of the counties in the State are frontier counties.

“(III) FRONTIER COUNTY DEFINED.—In this clause, the term ‘frontier county’ means a county in which the population per square mile is less than 6.

“(IV) LIMITATION.—This clause shall not apply to any hospital located in a State that receives a non-labor related share adjustment under paragraph (5)(H).”.

(2) **WAIVING BUDGET NEUTRALITY.**—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)), as amended by subsection (a), is amended in the third sentence by inserting “and the amendments made by section 10324(a)(1) of the Patient Protection and Affordable Care Act” after “2003”.

(b) **FLOOR ON AREA WAGE ADJUSTMENT FACTOR FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES IN FRONTIER STATES.**—Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)), as amended by section 3138, is amended—

(1) in paragraph (2)(D), by striking “the Secretary” and inserting “subject to paragraph (19), the Secretary”; and

(2) by adding at the end the following new paragraph:

“(19) **FLOOR ON AREA WAGE ADJUSTMENT FACTOR FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES IN FRONTIER STATES.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), with respect to covered OPD services furnished on or after January 1, 2011, the area wage adjustment factor applicable under the payment system established under this subsection to any hospital outpatient department which is located in a frontier State (as defined in section 1886(d)(3)(E)(iii)(II)) may not be less than 1.00. The preceding sentence shall not be applied in a budget neutral manner.

“(B) **LIMITATION.**—This paragraph shall not apply to any hospital outpatient department located in a State that receives a non-labor related share adjustment under section 1886(d)(5)(H).”

(c) **FLOOR FOR PRACTICE EXPENSE INDEX FOR PHYSICIANS’ SERVICES FURNISHED IN FRONTIER STATES.**—Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)), as amended by section 3102, is amended—

(1) in subparagraph (A), by striking “and (H)” and inserting “(H), and (I)”; and

(2) by adding at the end the following new subparagraph:

“(I) **FLOOR FOR PRACTICE EXPENSE INDEX FOR SERVICES FURNISHED IN FRONTIER STATES.**—

“(i) **IN GENERAL.**—Subject to clause (ii), for purposes of payment for services furnished in a frontier State (as defined in section 1886(d)(3)(E)(iii)(II)) on or after January 1, 2011, after calculating the practice expense index in subparagraph (A)(i), the Secretary shall increase any such index to 1.00 if such index would otherwise be less than 1.00. The preceding sentence shall not be applied in a budget neutral manner.

“(ii) **LIMITATION.**—This subparagraph shall not apply to services furnished in a State that receives a non-labor related share adjustment under section 1886(d)(5)(H).”

SEC. 10325. REVISION TO SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.

(a) **TEMPORARY DELAY OF RUG–IV.**—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not, prior to October 1, 2011, implement Version 4 of the Resource Utilization Groups (in this subsection referred to as “RUG–IV”) published in the Federal Register on August 11, 2009, entitled “Prospective Payment System and Consolidated Billing for

Implementation
dates.

Skilled Nursing Facilities for FY 2010; Minimum Data Set, Version 3.0 for Skilled Nursing Facilities and Medicaid Nursing Facilities” (74 Fed. Reg. 40288). Beginning on October 1, 2010, the Secretary of Health and Human Services shall implement the change specific to therapy furnished on a concurrent basis that is a component of RUG–IV and changes to the lookback period to ensure that only those services furnished after admission to a skilled nursing facility are used as factors in determining a case mix classification under the skilled nursing facility prospective payment system under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)).

(b) CONSTRUCTION.—Nothing in this section shall be interpreted as delaying the implementation of Version 3.0 of the Minimum Data Sets (MDS 3.0) beyond the planned implementation date of October 1, 2010.

SEC. 10326. PILOT TESTING PAY-FOR-PERFORMANCE PROGRAMS FOR CERTAIN MEDICARE PROVIDERS.

42 USC 1395b–1
note.

(a) IN GENERAL.—Not later than January 1, 2016, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall, for each provider described in subsection (b), conduct a separate pilot program under title XVIII of the Social Security Act to test the implementation of a value-based purchasing program for payments under such title for the provider.

Deadline.

(b) PROVIDERS DESCRIBED.—The providers described in this paragraph are the following:

(1) Psychiatric hospitals (as described in clause (i) of section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B))) and psychiatric units (as described in the matter following clause (v) of such section).

(2) Long-term care hospitals (as described in clause (iv) of such section).

(3) Rehabilitation hospitals (as described in clause (ii) of such section).

(4) PPS-exempt cancer hospitals (as described in clause (v) of such section).

(5) Hospice programs (as defined in section 1861(dd)(2) of such Act (42 U.S.C. 1395x(dd)(2))).

(c) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary solely for purposes of carrying out the pilot programs under this section.

(d) NO ADDITIONAL PROGRAM EXPENDITURES.—Payments under this section under the separate pilot program for value based purchasing (as described in subsection (a)) for each provider type described in paragraphs (1) through (5) of subsection (b) for applicable items and services under title XVIII of the Social Security Act for a year shall be established in a manner that does not result in spending more under each such value based purchasing program for such year than would otherwise be expended for such provider type for such year if the pilot program were not implemented, as estimated by the Secretary.

(e) EXPANSION OF PILOT PROGRAM.—The Secretary may, at any point after January 1, 2018, expand the duration and scope of a pilot program conducted under this subsection, to the extent determined appropriate by the Secretary, if—

Determinations.

(1) the Secretary determines that such expansion is expected to—

Certification.

(A) reduce spending under title XVIII of the Social Security Act without reducing the quality of care; or
 (B) improve the quality of care and reduce spending;
 (2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and
 (3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under such title XIII for Medicare beneficiaries.

SEC. 10327. IMPROVEMENTS TO THE PHYSICIAN QUALITY REPORTING SYSTEM.

(a) IN GENERAL.—Section 1848(m) of the Social Security Act (42 U.S.C. 1395w–4(m)) is amended by adding at the end the following new paragraph:

Time period.

“(7) ADDITIONAL INCENTIVE PAYMENT.—
 “(A) IN GENERAL.—For 2011 through 2014, if an eligible professional meets the requirements described in subparagraph (B), the applicable quality percent for such year, as described in clauses (iii) and (iv) of paragraph (1)(B), shall be increased by 0.5 percentage points.

“(B) REQUIREMENTS DESCRIBED.—In order to qualify for the additional incentive payment described in subparagraph (A), an eligible professional shall meet the following requirements:

“(i) The eligible professional shall—

“(I) satisfactorily submit data on quality measures for purposes of paragraph (1) for a year; and

“(II) have such data submitted on their behalf through a Maintenance of Certification Program (as defined in subparagraph (C)(i)) that meets—

“(aa) the criteria for a registry (as described in subsection (k)(4)); or

“(bb) an alternative form and manner determined appropriate by the Secretary.

“(ii) The eligible professional, more frequently than is required to qualify for or maintain board certification status—

“(I) participates in such a Maintenance of Certification program for a year; and

“(II) successfully completes a qualified Maintenance of Certification Program practice assessment (as defined in subparagraph (C)(ii)) for such year.

“(iii) A Maintenance of Certification program submits to the Secretary, on behalf of the eligible professional, information—

“(I) in a form and manner specified by the Secretary, that the eligible professional has successfully met the requirements of clause (ii) (which may be in the form of a structural measure);

“(II) if requested by the Secretary, on the survey of patient experience with care (as described in subparagraph (C)(ii)(II)); and

“(III) as the Secretary may require, on the methods, measures, and data used under the Maintenance of Certification Program and the

qualified Maintenance of Certification Program practice assessment.

“(C) DEFINITIONS.—For purposes of this paragraph:

“(i) The term ‘Maintenance of Certification Program’ means a continuous assessment program, such as qualified American Board of Medical Specialties Maintenance of Certification program or an equivalent program (as determined by the Secretary), that advances quality and the lifelong learning and self-assessment of board certified specialty physicians by focusing on the competencies of patient care, medical knowledge, practice-based learning, interpersonal and communication skills and professionalism. Such a program shall include the following:

“(I) The program requires the physician to maintain a valid, unrestricted medical license in the United States.

“(II) The program requires a physician to participate in educational and self-assessment programs that require an assessment of what was learned.

“(III) The program requires a physician to demonstrate, through a formalized, secure examination, that the physician has the fundamental diagnostic skills, medical knowledge, and clinical judgment to provide quality care in their respective specialty.

“(IV) The program requires successful completion of a qualified Maintenance of Certification Program practice assessment as described in clause (ii).

“(ii) The term ‘qualified Maintenance of Certification Program practice assessment’ means an assessment of a physician’s practice that—

“(I) includes an initial assessment of an eligible professional’s practice that is designed to demonstrate the physician’s use of evidence-based medicine;

“(II) includes a survey of patient experience with care; and

“(III) requires a physician to implement a quality improvement intervention to address a practice weakness identified in the initial assessment under subclause (I) and then to remeasure to assess performance improvement after such intervention.”.

(b) AUTHORITY.—Section 3002(c) of this Act is amended by adding at the end the following new paragraph:

“(3) AUTHORITY.—For years after 2014, if the Secretary of Health and Human Services determines it to be appropriate, the Secretary may incorporate participation in a Maintenance of Certification Program and successful completion of a qualified Maintenance of Certification Program practice assessment into the composite of measures of quality of care furnished pursuant to the physician fee schedule payment modifier, as described in section 1848(p)(2) of the Social Security Act (42 U.S.C. 1395w-4(p)(2)).”.

42 USC 1395w-4 note.

Determination.

(c) **ELIMINATION OF MA REGIONAL PLAN STABILIZATION FUND.**—

(1) **IN GENERAL.**—Section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is amended by striking subsection (e).

42 USC
1395w–27a note.

(2) **TRANSITION.**—Any amount contained in the MA Regional Plan Stabilization Fund as of the date of the enactment of this Act shall be transferred to the Federal Supplementary Medical Insurance Trust Fund.

SEC. 10328. IMPROVEMENT IN PART D MEDICATION THERAPY MANAGEMENT (MTM) PROGRAMS.

(a) **IN GENERAL.**—Section 1860D–4(c)(2) of the Social Security Act (42 U.S.C. 1395w–104(c)(2)) is amended—

(1) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (E), (F), and (G), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraphs:

“(C) **REQUIRED INTERVENTIONS.**—For plan years beginning on or after the date that is 2 years after the date of the enactment of the Patient Protection and Affordable Care Act, prescription drug plan sponsors shall offer medication therapy management services to targeted beneficiaries described in subparagraph (A)(ii) that include, at a minimum, the following to increase adherence to prescription medications or other goals deemed necessary by the Secretary:

“(i) An annual comprehensive medication review furnished person-to-person or using telehealth technologies (as defined by the Secretary) by a licensed pharmacist or other qualified provider. The comprehensive medication review—

“(I) shall include a review of the individual’s medications and may result in the creation of a recommended medication action plan or other actions in consultation with the individual and with input from the prescriber to the extent necessary and practicable; and

“(II) shall include providing the individual with a written or printed summary of the results of the review.

The Secretary, in consultation with relevant stakeholders, shall develop a standardized format for the action plan under subclause (I) and the summary under subclause (II).

“(ii) Follow-up interventions as warranted based on the findings of the annual medication review or the targeted medication enrollment and which may be provided person-to-person or using telehealth technologies (as defined by the Secretary).

“(D) **ASSESSMENT.**—The prescription drug plan sponsor shall have in place a process to assess, at least on a quarterly basis, the medication use of individuals who are at risk but not enrolled in the medication therapy management program, including individuals who have experienced a transition in care, if the prescription drug plan sponsor has access to that information.

“(E) AUTOMATIC ENROLLMENT WITH ABILITY TO OPT-OUT.—The prescription drug plan sponsor shall have in place a process to—

“(i) subject to clause (ii), automatically enroll targeted beneficiaries described in subparagraph (A)(ii), including beneficiaries identified under subparagraph (D), in the medication therapy management program required under this subsection; and

“(ii) permit such beneficiaries to opt-out of enrollment in such program.”.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall limit the authority of the Secretary of Health and Human Services to modify or broaden requirements for a medication therapy management program under part D of title XVIII of the Social Security Act or to study new models for medication therapy management through the Center for Medicare and Medicaid Innovation under section 1115A of such Act, as added by section 3021.

42 USC
1395w–104 note.

SEC. 10329. DEVELOPING METHODOLOGY TO ASSESS HEALTH PLAN VALUE.

(a) DEVELOPMENT.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), in consultation with relevant stakeholders including health insurance issuers, health care consumers, employers, health care providers, and other entities determined appropriate by the Secretary, shall develop a methodology to measure health plan value. Such methodology shall take into consideration, where applicable—

- (1) the overall cost to enrollees under the plan;
- (2) the quality of the care provided for under the plan;
- (3) the efficiency of the plan in providing care;
- (4) the relative risk of the plan’s enrollees as compared to other plans;
- (5) the actuarial value or other comparative measure of the benefits covered under the plan; and
- (6) other factors determined relevant by the Secretary.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report concerning the methodology developed under subsection (a).

SEC. 10330. MODERNIZING COMPUTER AND DATA SYSTEMS OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES TO SUPPORT IMPROVEMENTS IN CARE DELIVERY.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall develop a plan (and detailed budget for the resources needed to implement such plan) to modernize the computer and data systems of the Centers for Medicare & Medicaid Services (in this section referred to as “CMS”).

Plan.

(b) CONSIDERATIONS.—In developing the plan, the Secretary shall consider how such modernized computer system could—

- (1) in accordance with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, make available data in a reliable and timely manner to providers of services and suppliers to support their efforts to better manage and coordinate care furnished to beneficiaries of CMS programs; and

- (2) support consistent evaluations of payment and delivery system reforms under CMS programs.

Deadline. (c) POSTING OF PLAN.—By not later than 9 months after the
 Web posting. date of the enactment of this Act, the Secretary shall post on the website of the Centers for Medicare & Medicaid Services the plan described in subsection (a).

42 USC 1395w-5. **SEC. 10331. PUBLIC REPORTING OF PERFORMANCE INFORMATION.**

Deadline. (a) IN GENERAL.—

Web site. (1) DEVELOPMENT.—Not later than January 1, 2011, the Secretary shall develop a Physician Compare Internet website with information on physicians enrolled in the Medicare program under section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)) and other eligible professionals who participate in the Physician Quality Reporting Initiative under section 1848 of such Act (42 U.S.C. 1395w-4).

Time period. (2) PLAN.—Not later than January 1, 2013, and with respect to reporting periods that begin no earlier than January 1, 2012, the Secretary shall also implement a plan for making publicly available through Physician Compare, consistent with subsection (c), information on physician performance that provides comparable information for the public on quality and patient experience measures with respect to physicians enrolled in the Medicare program under such section 1866(j). To the extent scientifically sound measures that are developed consistent with the requirements of this section are available, such information, to the extent practicable, shall include—

(A) measures collected under the Physician Quality Reporting Initiative;

(B) an assessment of patient health outcomes and the functional status of patients;

(C) an assessment of the continuity and coordination of care and care transitions, including episodes of care and risk-adjusted resource use;

(D) an assessment of efficiency;

(E) an assessment of patient experience and patient, caregiver, and family engagement;

(F) an assessment of the safety, effectiveness, and timeliness of care; and

(G) other information as determined appropriate by the Secretary.

(b) OTHER REQUIRED CONSIDERATIONS.—In developing and implementing the plan described in subsection (a)(2), the Secretary shall, to the extent practicable, include—

(1) processes to assure that data made public, either by the Centers for Medicare & Medicaid Services or by other entities, is statistically valid and reliable, including risk adjustment mechanisms used by the Secretary;

(2) processes by which a physician or other eligible professional whose performance on measures is being publicly reported has a reasonable opportunity, as determined by the Secretary, to review his or her individual results before they are made public;

(3) processes by the Secretary to assure that the implementation of the plan and the data made available on Physician Compare provide a robust and accurate portrayal of a physician's performance;

(4) data that reflects the care provided to all patients seen by physicians, under both the Medicare program and,

to the extent practicable, other payers, to the extent such information would provide a more accurate portrayal of physician performance;

(5) processes to ensure appropriate attribution of care when multiple physicians and other providers are involved in the care of a patient;

(6) processes to ensure timely statistical performance feedback is provided to physicians concerning the data reported under any program subject to public reporting under this section; and

(7) implementation of computer and data systems of the Centers for Medicare & Medicaid Services that support valid, reliable, and accurate public reporting activities authorized under this section.

(c) ENSURING PATIENT PRIVACY.—The Secretary shall ensure that information on physician performance and patient experience is not disclosed under this section in a manner that violates sections 552 or 552a of title 5, United States Code, with regard to the privacy of individually identifiable health information.

(d) FEEDBACK FROM MULTI-STAKEHOLDER GROUPS.—The Secretary shall take into consideration input provided by multi-stakeholder groups, consistent with sections 1890(b)(7) and 1890A of the Social Security Act, as added by section 3014 of this Act, in selecting quality measures for use under this section.

(e) CONSIDERATION OF TRANSITION TO VALUE-BASED PURCHASING.—In developing the plan under this subsection (a)(2), the Secretary shall, as the Secretary determines appropriate, consider the plan to transition to a value-based purchasing program for physicians and other practitioners developed under section 131 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275).

(f) REPORT TO CONGRESS.—Not later than January 1, 2015, the Secretary shall submit to Congress a report on the Physician Compare Internet website developed under subsection (a)(1). Such report shall include information on the efforts of and plans made by the Secretary to collect and publish data on physician quality and efficiency and on patient experience of care in support of value-based purchasing and consumer choice, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(g) EXPANSION.—At any time before the date on which the report is submitted under subsection (f), the Secretary may expand (including expansion to other providers of services and suppliers under title XVIII of the Social Security Act) the information made available on such website.

(h) FINANCIAL INCENTIVES TO ENCOURAGE CONSUMERS TO CHOOSE HIGH QUALITY PROVIDERS.—The Secretary may establish a demonstration program, not later than January 1, 2019, to provide financial incentives to Medicare beneficiaries who are furnished services by high quality physicians, as determined by the Secretary based on factors in subparagraphs (A) through (G) of subsection (a)(2). In no case may Medicare beneficiaries be required to pay increased premiums or cost sharing or be subject to a reduction in benefits under title XVIII of the Social Security Act as a result of such demonstration program. The Secretary shall ensure that

Deadline.

any such demonstration program does not disadvantage those beneficiaries without reasonable access to high performing physicians or create financial inequities under such title.

(i) DEFINITIONS.—In this section:

(1) ELIGIBLE PROFESSIONAL.—The term “eligible professional” has the meaning given that term for purposes of the Physician Quality Reporting Initiative under section 1848 of the Social Security Act (42 U.S.C. 1395w-4).

(2) PHYSICIAN.—The term “physician” has the meaning given that term in section 1861(r) of such Act (42 U.S.C. 1395x(r)).

(3) PHYSICIAN COMPARE.—The term “Physician Compare” means the Internet website developed under subsection (a)(1).

(4) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

SEC. 10332. AVAILABILITY OF MEDICARE DATA FOR PERFORMANCE MEASUREMENT.

(a) IN GENERAL.—Section 1874 of the Social Security Act (42 U.S.C. 1395kk) is amended by adding at the end the following new subsection:

“(e) AVAILABILITY OF MEDICARE DATA.—

“(1) IN GENERAL.—Subject to paragraph (4), the Secretary shall make available to qualified entities (as defined in paragraph (2)) data described in paragraph (3) for the evaluation of the performance of providers of services and suppliers.

“(2) QUALIFIED ENTITIES.—For purposes of this subsection, the term ‘qualified entity’ means a public or private entity that—

“(A) is qualified (as determined by the Secretary) to use claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use; and

“(B) agrees to meet the requirements described in paragraph (4) and meets such other requirements as the Secretary may specify, such as ensuring security of data.

“(3) DATA DESCRIBED.—The data described in this paragraph are standardized extracts (as determined by the Secretary) of claims data under parts A, B, and D for items and services furnished under such parts for one or more specified geographic areas and time periods requested by a qualified entity. The Secretary shall take such actions as the Secretary deems necessary to protect the identity of individuals entitled to or enrolled for benefits under such parts.

“(4) REQUIREMENTS.—

“(A) FEE.—Data described in paragraph (3) shall be made available to a qualified entity under this subsection at a fee equal to the cost of making such data available. Any fee collected pursuant to the preceding sentence shall be deposited into the Federal Supplementary Medical Insurance Trust Fund under section 1841.

“(B) SPECIFICATION OF USES AND METHODOLOGIES.—A qualified entity requesting data under this subsection shall—

“(i) submit to the Secretary a description of the methodologies that such qualified entity will use to

evaluate the performance of providers of services and suppliers using such data;

“(ii)(I) except as provided in subclause (II), if available, use standard measures, such as measures endorsed by the entity with a contract under section 1890(a) and measures developed pursuant to section 931 of the Public Health Service Act; or

“(II) use alternative measures if the Secretary, in consultation with appropriate stakeholders, determines that use of such alternative measures would be more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by such standard measures;

“(iii) include data made available under this subsection with claims data from sources other than claims data under this title in the evaluation of performance of providers of services and suppliers;

“(iv) only include information on the evaluation of performance of providers and suppliers in reports described in subparagraph (C);

“(v) make available to providers of services and suppliers, upon their request, data made available under this subsection; and

“(vi) prior to their release, submit to the Secretary the format of reports under subparagraph (C).

“(C) REPORTS.—Any report by a qualified entity evaluating the performance of providers of services and suppliers using data made available under this subsection shall—

“(i) include an understandable description of the measures, which shall include quality measures and the rationale for use of other measures described in subparagraph (B)(ii)(II), risk adjustment methods, physician attribution methods, other applicable methods, data specifications and limitations, and the sponsors, so that consumers, providers of services and suppliers, health plans, researchers, and other stakeholders can assess such reports;

“(ii) be made available confidentially, to any provider of services or supplier to be identified in such report, prior to the public release of such report, and provide an opportunity to appeal and correct errors;

“(iii) only include information on a provider of services or supplier in an aggregate form as determined appropriate by the Secretary; and

“(iv) except as described in clause (ii), be made available to the public.

Public
information.

“(D) APPROVAL AND LIMITATION OF USES.—The Secretary shall not make data described in paragraph (3) available to a qualified entity unless the qualified entity agrees to release the information on the evaluation of performance of providers of services and suppliers. Such entity shall only use such data, and information derived from such evaluation, for the reports under subparagraph (C). Data released to a qualified entity under this subsection shall not be subject to discovery or admission as

42 USC 1395kk
note.

evidence in judicial or administrative proceedings without consent of the applicable provider of services or supplier.”.
(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2012.

SEC. 10333. COMMUNITY-BASED COLLABORATIVE CARE NETWORKS.

Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following new subpart:

**“Subpart XI—Community-Based Collaborative
Care Network Program**

42 USC 256i.

“SEC. 340H. COMMUNITY-BASED COLLABORATIVE CARE NETWORK PROGRAM.

“(a) IN GENERAL.—The Secretary may award grants to eligible entities to support community-based collaborative care networks that meet the requirements of subsection (b).

“(b) COMMUNITY-BASED COLLABORATIVE CARE NETWORKS.—

“(1) DESCRIPTION.—A community-based collaborative care network (referred to in this section as a ‘network’) shall be a consortium of health care providers with a joint governance structure (including providers within a single entity) that provides comprehensive coordinated and integrated health care services (as defined by the Secretary) for low-income populations.

“(2) REQUIRED INCLUSION.—A network shall include the following providers (unless such provider does not exist within the community, declines or refuses to participate, or places unreasonable conditions on their participation):

“(A) A hospital that meets the criteria in section 1923(b)(1) of the Social Security Act; and

“(B) All Federally qualified health centers (as defined in section 1861(aa) of the Social Security Act located in the community.

“(3) PRIORITY.—In awarding grants, the Secretary shall give priority to networks that include—

“(A) the capability to provide the broadest range of services to low-income individuals;

“(B) the broadest range of providers that currently serve a high volume of low-income individuals; and

“(C) a county or municipal department of health.

“(c) APPLICATION.—

“(1) APPLICATION.—A network described in subsection (b) shall submit an application to the Secretary.

“(2) RENEWAL.—In subsequent years, based on the performance of grantees, the Secretary may provide renewal grants to prior year grant recipients.

“(d) USE OF FUNDS.—

“(1) USE BY GRANTEES.—Grant funds may be used for the following activities:

“(A) Assist low-income individuals to—

“(i) access and appropriately use health services;

“(ii) enroll in health coverage programs; and

“(iii) obtain a regular primary care provider or a medical home.

“(B) Provide case management and care management.

“(C) Perform health outreach using neighborhood health workers or through other means.

“(D) Provide transportation.

“(E) Expand capacity, including through telehealth, after-hours services or urgent care.

“(F) Provide direct patient care services.

“(2) GRANT FUNDS TO HRSA GRANTEEES.—The Secretary may limit the percent of grant funding that may be spent on direct care services provided by grantees of programs administered by the Health Resources and Services Administration or impose other requirements on such grantees deemed necessary.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2011 through 2015.”.

SEC. 10334. MINORITY HEALTH.

(a) OFFICE OF MINORITY HEALTH.—

(1) IN GENERAL.—Section 1707 of the Public Health Service Act (42 U.S.C. 300u-6) is amended—

(A) in subsection (a), by striking “within the Office of Public Health and Science” and all that follows through the end and inserting “. The Office of Minority Health as existing on the date of enactment of the Patient Protection and Affordable Care Act shall be transferred to the Office of the Secretary in such manner that there is established in the Office of the Secretary, the Office of Minority Health, which shall be headed by the Deputy Assistant Secretary for Minority Health who shall report directly to the Secretary, and shall retain and strengthen authorities (as in existence on such date of enactment) for the purpose of improving minority health and the quality of health care minorities receive, and eliminating racial and ethnic disparities. In carrying out this subsection, the Secretary, acting through the Deputy Assistant Secretary, shall award grants, contracts, enter into memoranda of understanding, cooperative, interagency, intra-agency and other agreements with public and nonprofit private entities, agencies, as well as Departmental and Cabinet agencies and organizations, and with organizations that are indigenous human resource providers in communities of color to assure improved health status of racial and ethnic minorities, and shall develop measures to evaluate the effectiveness of activities aimed at reducing health disparities and supporting the local community. Such measures shall evaluate community outreach activities, language services, workforce cultural competence, and other areas as determined by the Secretary.”; and

Establishment.

Grants.
Contracts.
Memorandum.

(B) by striking subsection (h) and inserting the following:

“(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2011 through 2016.”.

(2) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Minority Health in the office of the Secretary of Health and Human Services, all duties, responsibilities, authorities, accountabilities, functions, staff, funds, award

42 USC 300u-6
note.

mechanisms, and other entities under the authority of the Office of Minority Health of the Public Health Service as in effect on the date before the date of enactment of this Act, which shall continue in effect according to the terms in effect on the date before such date of enactment, until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, a court of competent jurisdiction, or by operation of law.

42 USC 300u-6
note.

(3) **REPORTS.**—Not later than 1 year after the date of enactment of this section, and biennially thereafter, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report describing the activities carried out under section 1707 of the Public Health Service Act (as amended by this subsection) during the period for which the report is being prepared. Not later than 1 year after the date of enactment of this section, and biennially thereafter, the heads of each of the agencies of the Department of Health and Human Services shall submit to the Deputy Assistant Secretary for Minority Health a report summarizing the minority health activities of each of the respective agencies.

(b) ESTABLISHMENT OF INDIVIDUAL OFFICES OF MINORITY HEALTH WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

(1) **IN GENERAL.**—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended by inserting after section 1707 the following section:

42 USC 300u-6a.

“SEC. 1707A. INDIVIDUAL OFFICES OF MINORITY HEALTH WITHIN THE DEPARTMENT.

Appointment.

“(a) **IN GENERAL.**—The head of each agency specified in subsection (b)(1) shall establish within the agency an office to be known as the Office of Minority Health. The head of each such Office shall be appointed by the head of the agency within which the Office is established, and shall report directly to the head of the agency. The head of such agency shall carry out this section (as this section relates to the agency) acting through such Director.

“(b) **SPECIFIED AGENCIES.**—The agencies referred to in subsection (a) are the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Agency for Healthcare Research and Quality, the Food and Drug Administration, and the Centers for Medicare & Medicaid Services.

“(c) **DIRECTOR; APPOINTMENT.**—Each Office of Minority Health established in an agency listed in subsection (a) shall be headed by a director, with documented experience and expertise in minority health services research and health disparities elimination.

“(d) **REFERENCES.**—Except as otherwise specified, any reference in Federal law to an Office of Minority Health (in the Department of Health and Human Services) is deemed to be a reference to the Office of Minority Health in the Office of the Secretary.

“(e) **FUNDING.**—

“(1) **ALLOCATIONS.**—Of the amounts appropriated for a specified agency for a fiscal year, the Secretary must designate an appropriate amount of funds for the purpose of carrying out activities under this section through the minority health office of the agency. In reserving an amount under the preceding

sentence for a minority health office for a fiscal year, the Secretary shall reduce, by substantially the same percentage, the amount that otherwise would be available for each of the programs of the designated agency involved.

“(2) AVAILABILITY OF FUNDS FOR STAFFING.—The purposes for which amounts made available under paragraph may be expended by a minority health office include the costs of employing staff for such office.”.

(2) NO NEW REGULATORY AUTHORITY.—Nothing in this subsection and the amendments made by this subsection may be construed as establishing regulatory authority or modifying any existing regulatory authority.

42 USC 300u-6a
note.

(3) LIMITATION ON TERMINATION.—Notwithstanding any other provision of law, a Federal office of minority health or Federal appointive position with primary responsibility over minority health issues that is in existence in an office of agency of the Department of Health and Human Services on the date of enactment of this section shall not be terminated, reorganized, or have any of its power or duties transferred unless such termination, reorganization, or transfer is approved by an Act of Congress.

42 USC 300u-6a
note.

(c) REDESIGNATION OF NATIONAL CENTER ON MINORITY HEALTH AND HEALTH DISPARITIES.—

(1) REDESIGNATION.—Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(A) by redesignating subpart 6 of part E as subpart 20;

(B) by transferring subpart 20, as so redesignated, to part C of such title IV;

(C) by inserting subpart 20, as so redesignated, after subpart 19 of such part C; and

(D) in subpart 20, as so redesignated—

(i) by redesignating sections 485E through 485H as sections 464z-3 through 464z-6, respectively;

42 USC
285t-285t-3.

(ii) by striking “National Center on Minority Health and Health Disparities” each place such term appears and inserting “National Institute on Minority Health and Health Disparities”; and

42 USC 285t.

(iii) by striking “Center” each place such term appears and inserting “Institute”.

42 USC
285t-285t-3.

(2) PURPOSE OF INSTITUTE; DUTIES.—Section 464z-3 of the Public Health Service Act, as so redesignated, is amended—

42 USC 285t.

(A) in subsection (h)(1), by striking “research endowments at centers of excellence under section 736.” and inserting the following: “research endowments—

“(1) at centers of excellence under section 736; and

“(2) at centers of excellence under section 464z-4.”;

(B) in subsection (h)(2)(A), by striking “average” and inserting “median”; and

(C) by adding at the end the following:

“(h) INTERAGENCY COORDINATION.—The Director of the Institute, as the primary Federal officials with responsibility for coordinating all research and activities conducted or supported by the National Institutes of Health on minority health and health disparities, shall plan, coordinate, review and evaluate research and other activities conducted or supported by the Institutes and Centers of the National Institutes of Health.”.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 401(b)(24) of the Public Health Service Act (42 U.S.C. 281(b)(24)) is amended by striking “Center” and inserting “Institute”.

(B) Subsection (d)(1) of section 903 of the Public Health Service Act (42 U.S.C. 299a–1(d)(1)) is amended by striking “section 485E” and inserting “section 464z–3”.

SEC. 10335. TECHNICAL CORRECTION TO THE HOSPITAL VALUE-BASED PURCHASING PROGRAM.

42 USC 1395ww. Section 1886(o)(2)(A) of the Social Security Act, as added by section 3001, is amended, in the first sentence, by inserting “, other than measures of readmissions,” after “shall select measures”.

SEC. 10336. GAO STUDY AND REPORT ON MEDICARE BENEFICIARY ACCESS TO HIGH-QUALITY DIALYSIS SERVICES.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the impact on Medicare beneficiary access to high-quality dialysis services of including specified oral drugs that are furnished to such beneficiaries for the treatment of end stage renal disease in the bundled prospective payment system under section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)) (pursuant to the proposed rule published by the Secretary of Health and Human Services in the Federal Register on September 29, 2009 (74 Fed. Reg. 49922 et seq.)). Such study shall include an analysis of—

(A) the ability of providers of services and renal dialysis facilities to furnish specified oral drugs or arrange for the provision of such drugs;

(B) the ability of providers of services and renal dialysis facilities to comply, if necessary, with applicable State laws (such as State pharmacy licensure requirements) in order to furnish specified oral drugs;

(C) whether appropriate quality measures exist to safeguard care for Medicare beneficiaries being furnished specified oral drugs by providers of services and renal dialysis facilities; and

(D) other areas determined appropriate by the Comptroller General.

(2) SPECIFIED ORAL DRUG DEFINED.—For purposes of paragraph (1), the term “specified oral drug” means a drug or biological for which there is no injectable equivalent (or other non-oral form of administration).

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

Subtitle D—Provisions Relating to Title IV**SEC. 10401. AMENDMENTS TO SUBTITLE A.**

42 USC 300u–10. (a) Section 4001(h)(4) and (5) of this Act is amended by striking “2010” each place such appears and inserting “2020”.

42 USC 300u–11. (b) Section 4002(c) of this Act is amended—

(1) by striking “research and health screenings” and inserting “research, health screenings, and initiatives”; and

(2) by striking “for Preventive” and inserting “Regarding Preventive”.

(c) Section 4004(a)(4) of this Act is amended by striking “a Gateway” and inserting “an Exchange”. 42 USC 300u–12.

SEC. 10402. AMENDMENTS TO SUBTITLE B.

(a) Section 399Z–1(a)(1(A) of the Public Health Service Act, as added by section 4101(b) of this Act, is amended by inserting “and vision” after “oral”. 42 USC 280n–5.

(b) Section 1861(hhh)(4)(G) of the Social Security Act, as added by section 4103(b), is amended to read as follows: 42 USC 1395k.

“(G) A beneficiary shall be eligible to receive only an initial preventive physical examination (as defined under subsection (ww)(1)) during the 12-month period after the date that the beneficiary’s coverage begins under part B and shall be eligible to receive personalized prevention plan services under this subsection each year thereafter provided that the beneficiary has not received either an initial preventive physical examination or personalized prevention plan services within the preceding 12-month period.”.

SEC. 10403. AMENDMENTS TO SUBTITLE C.

Section 4201 of this Act is amended— 42 USC 300u–13.

(1) in subsection (a), by adding before the period the following: “, with not less than 20 percent of such grants being awarded to rural and frontier areas”;

(2) in subsection (c)(2)(B)(vii), by striking “both urban and rural areas” and inserting “urban, rural, and frontier areas”; and

(3) in subsection (f), by striking “each fiscal years” and inserting “each of fiscal year”.

SEC. 10404. AMENDMENTS TO SUBTITLE D.

Section 399MM(2) of the Public Health Service Act, as added by section 4303 of this Act, is amended by striking “by ensuring” and inserting “and ensuring”. 42 USC 280l.

SEC. 10405. AMENDMENTS TO SUBTITLE E.

Subtitle E of title IV of this Act is amended by striking section 4401.

SEC. 10406. AMENDMENT RELATING TO WAIVING COINSURANCE FOR PREVENTIVE SERVICES.

Section 4104(b) of this Act is amended to read as follows:

“(b) PAYMENT AND ELIMINATION OF COINSURANCE IN ALL SETTINGS.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), as amended by section 4103(c)(1), is amended—

“(1) in subparagraph (T), by inserting ‘(or 100 percent if such services are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population and are appropriate for the individual)’ after ‘80 percent’;

“(2) in subparagraph (W)—

“(A) in clause (i), by inserting ‘(if such subparagraph were applied, by substituting “100 percent” for “80 percent”)’ after ‘subparagraph (D)’; and

“(B) in clause (ii), by striking ‘80 percent’ and inserting ‘100 percent’;

“(3) by striking ‘and’ before ‘(X)’; and

“(4) by inserting before the semicolon at the end the following: ‘, and (Y) with respect to preventive services described in subparagraphs (A) and (B) of section 1861(ddd)(3) that are appropriate for the individual and, in the case of such services described in subparagraph (A), are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population, the amount paid shall be 100 percent of (i) except as provided in clause (ii), the lesser of the actual charge for the services or the amount determined under the fee schedule that applies to such services under this part, and (ii) in the case of such services that are covered OPD services (as defined in subsection (t)(1)(B)), the amount determined under subsection (t)’.”.

Catalyst to
Better Diabetes
Care Act of 2009.
42 USC 247b-9g.

SEC. 10407. BETTER DIABETES CARE.

(a) **SHORT TITLE.**—This section may be cited as the “Catalyst to Better Diabetes Care Act of 2009”.

(b) **NATIONAL DIABETES REPORT CARD.**—

(1) **IN GENERAL.**—The Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention (referred to in this section as the “Director”), shall prepare on a biennial basis a national diabetes report card (referred to in this section as a “Report Card”) and, to the extent possible, for each State.

(2) **CONTENTS.**—

(A) **IN GENERAL.**—Each Report Card shall include aggregate health outcomes related to individuals diagnosed with diabetes and prediabetes including—

- (i) preventative care practices and quality of care;
- (ii) risk factors; and
- (iii) outcomes.

(B) **UPDATED REPORTS.**—Each Report Card that is prepared after the initial Report Card shall include trend analysis for the Nation and, to the extent possible, for each State, for the purpose of—

- (i) tracking progress in meeting established national goals and objectives for improving diabetes care, costs, and prevalence (including Healthy People 2010); and
- (ii) informing policy and program development.

(3) **AVAILABILITY.**—The Secretary, in collaboration with the Director, shall make each Report Card publicly available, including by posting the Report Card on the Internet.

(c) **IMPROVEMENT OF VITAL STATISTICS COLLECTION.**—

(1) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with appropriate agencies and States, shall—

- (A) promote the education and training of physicians on the importance of birth and death certificate data and how to properly complete these documents, including the

Public
information.
Web posting.

collection of such data for diabetes and other chronic diseases;

(B) encourage State adoption of the latest standard revisions of birth and death certificates; and

(C) work with States to re-engineer their vital statistics systems in order to provide cost-effective, timely, and accurate vital systems data.

(2) DEATH CERTIFICATE ADDITIONAL LANGUAGE.—In carrying out this subsection, the Secretary may promote improvements to the collection of diabetes mortality data, including the addition of a question for the individual certifying the cause of death regarding whether the deceased had diabetes.

(d) STUDY ON APPROPRIATE LEVEL OF DIABETES MEDICAL EDUCATION.—

(1) IN GENERAL.—The Secretary shall, in collaboration with the Institute of Medicine and appropriate associations and councils, conduct a study of the impact of diabetes on the practice of medicine in the United States and the appropriateness of the level of diabetes medical education that should be required prior to licensure, board certification, and board recertification.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the study under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 10408. GRANTS FOR SMALL BUSINESSES TO PROVIDE COMPREHENSIVE WORKPLACE WELLNESS PROGRAMS.

(a) ESTABLISHMENT.—The Secretary shall award grants to eligible employers to provide their employees with access to comprehensive workplace wellness programs (as described under subsection (c)).

(b) SCOPE.—

(1) DURATION.—The grant program established under this section shall be conducted for a 5-year period.

(2) ELIGIBLE EMPLOYER.—The term “eligible employer” means an employer (including a non-profit employer) that—

Definition.

(A) employs less than 100 employees who work 25 hours or greater per week; and

(B) does not provide a workplace wellness program as of the date of enactment of this Act.

(c) COMPREHENSIVE WORKPLACE WELLNESS PROGRAMS.—

(1) CRITERIA.—The Secretary shall develop program criteria for comprehensive workplace wellness programs under this section that are based on and consistent with evidence-based research and best practices, including research and practices as provided in the Guide to Community Preventive Services, the Guide to Clinical Preventive Services, and the National Registry for Effective Programs.

(2) REQUIREMENTS.—A comprehensive workplace wellness program shall be made available by an eligible employer to all employees and include the following components:

(A) Health awareness initiatives (including health education, preventive screenings, and health risk assessments).

(B) Efforts to maximize employee engagement (including mechanisms to encourage employee participation).

(C) Initiatives to change unhealthy behaviors and lifestyle choices (including counseling, seminars, online programs, and self-help materials).

(D) Supportive environment efforts (including workplace policies to encourage healthy lifestyles, healthy eating, increased physical activity, and improved mental health).

(d) APPLICATION.—An eligible employer desiring to participate in the grant program under this section shall submit an application to the Secretary, in such manner and containing such information as the Secretary may require, which shall include a proposal for a comprehensive workplace wellness program that meet the criteria and requirements described under subsection (c).

(e) AUTHORIZATION OF APPROPRIATION.—For purposes of carrying out the grant program under this section, there is authorized to be appropriated \$200,000,000 for the period of fiscal years 2011 through 2015. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 10409. CURES ACCELERATION NETWORK.

(a) SHORT TITLE.—This section may be cited as the “Cures Acceleration Network Act of 2009”.

(b) REQUIREMENT FOR THE DIRECTOR OF NIH TO ESTABLISH A CURES ACCELERATION NETWORK.—Section 402(b) of the Public Health Service Act (42 U.S.C. 282(b)) is amended—

(1) in paragraph (22), by striking “and” at the end;

(2) in paragraph (23), by striking the period and inserting “; and”; and

(3) by inserting after paragraph (23), the following:

“(24) implement the Cures Acceleration Network described in section 402C.”.

(c) ACCEPTING GIFTS TO SUPPORT THE CURES ACCELERATION NETWORK.—Section 499(c)(1) of the Public Health Service Act (42 U.S.C. 290b(c)(1)) is amended by adding at the end the following:

“(E) The Cures Acceleration Network described in section 402C.”.

(d) ESTABLISHMENT OF THE CURES ACCELERATION NETWORK.—Part A of title IV of the Public Health Service Act is amended by inserting after section 402B (42 U.S.C. 282b) the following:

“SEC. 402C. CURES ACCELERATION NETWORK.

“(a) DEFINITIONS.—In this section:

“(1) BIOLOGICAL PRODUCT.—The term ‘biological product’ has the meaning given such term in section 351 of the Public Health Service Act.

“(2) DRUG; DEVICE.—The terms ‘drug’ and ‘device’ have the meanings given such terms in section 201 of the Federal Food, Drug, and Cosmetic Act.

“(3) HIGH NEED CURE.—The term ‘high need cure’ means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, biological product (as that term is defined by section 262(i)), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and

Cures
Acceleration
Network Act
of 2009.
42 USC 201 note.

42 USC 282d.

Cosmetic Act) that, in the determination of the Director of NIH—

“(A) is a priority to diagnose, mitigate, prevent, or treat harm from any disease or condition; and

“(B) for which the incentives of the commercial market are unlikely to result in its adequate or timely development.

“(4) MEDICAL PRODUCT.—The term ‘medical product’ means a drug, device, biological product, or product that is a combination of drugs, devices, and biological products.

“(b) ESTABLISHMENT OF THE CURES ACCELERATION NETWORK.—Subject to the appropriation of funds as described in subsection (g), there is established within the Office of the Director of NIH a program to be known as the Cures Acceleration Network (referred to in this section as ‘CAN’), which shall—

“(1) be under the direction of the Director of NIH, taking into account the recommendations of a CAN Review Board (referred to in this section as the ‘Board’), described in subsection (d); and

“(2) award grants and contracts to eligible entities, as described in subsection (e), to accelerate the development of high need cures, including through the development of medical products and behavioral therapies.

Grants.
Contracts.

“(c) FUNCTIONS.—The functions of the CAN are to—

“(1) conduct and support revolutionary advances in basic research, translating scientific discoveries from bench to bedside;

“(2) award grants and contracts to eligible entities to accelerate the development of high need cures;

“(3) provide the resources necessary for government agencies, independent investigators, research organizations, biotechnology companies, academic research institutions, and other entities to develop high need cures;

“(4) reduce the barriers between laboratory discoveries and clinical trials for new therapies; and

“(5) facilitate review in the Food and Drug Administration for the high need cures funded by the CAN, through activities that may include—

“(A) the facilitation of regular and ongoing communication with the Food and Drug Administration regarding the status of activities conducted under this section;

“(B) ensuring that such activities are coordinated with the approval requirements of the Food and Drug Administration, with the goal of expediting the development and approval of countermeasures and products; and

“(C) connecting interested persons with additional technical assistance made available under section 565 of the Federal Food, Drug, and Cosmetic Act.

“(d) CAN BOARD.—

“(1) ESTABLISHMENT.—There is established a Cures Acceleration Network Review Board (referred to in this section as the ‘Board’), which shall advise the Director of NIH on the conduct of the activities of the Cures Acceleration Network.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—

“(i) APPOINTMENT.—The Board shall be comprised of 24 members who are appointed by the Secretary and who serve at the pleasure of the Secretary.

“(ii) CHAIRPERSON AND VICE CHAIRPERSON.—The Secretary shall designate, from among the 24 members appointed under clause (i), one Chairperson of the Board (referred to in this section as the ‘Chairperson’) and one Vice Chairperson.

“(B) TERMS.—

“(i) IN GENERAL.—Each member shall be appointed to serve a 4-year term, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of such term.

“(ii) CONSECUTIVE APPOINTMENTS; MAXIMUM TERMS.—A member may be appointed to serve not more than 3 terms on the Board, and may not serve more than 2 such terms consecutively.

“(C) QUALIFICATIONS.—

“(i) IN GENERAL.—The Secretary shall appoint individuals to the Board based solely upon the individual’s established record of distinguished service in one of the areas of expertise described in clause (ii). Each individual appointed to the Board shall be of distinguished achievement and have a broad range of disciplinary interests.

“(ii) EXPERTISE.—The Secretary shall select individuals based upon the following requirements:

“(I) For each of the fields of—

“(aa) basic research;

“(bb) medicine;

“(cc) biopharmaceuticals;

“(dd) discovery and delivery of medical products;

“(ee) bioinformatics and gene therapy;

“(ff) medical instrumentation; and

“(gg) regulatory review and approval of medical products,

the Secretary shall select at least 1 individual who is eminent in such fields.

“(II) At least 4 individuals shall be recognized leaders in professional venture capital or private equity organizations and have demonstrated experience in private equity investing.

“(III) At least 8 individuals shall represent disease advocacy organizations.

“(3) EX-OFFICIO MEMBERS.—

“(A) APPOINTMENT.—In addition to the 24 Board members described in paragraph (2), the Secretary shall appoint as ex-officio members of the Board—

“(i) a representative of the National Institutes of Health, recommended by the Secretary of the Department of Health and Human Services;

“(ii) a representative of the Office of the Assistant Secretary of Defense for Health Affairs, recommended by the Secretary of Defense;

“(iii) a representative of the Office of the Under Secretary for Health for the Veterans Health Administration, recommended by the Secretary of Veterans Affairs;

“(iv) a representative of the National Science Foundation, recommended by the Chair of the National Science Board; and

“(v) a representative of the Food and Drug Administration, recommended by the Commissioner of Food and Drugs.

“(B) TERMS.—Each ex-officio member shall serve a 3-year term on the Board, except that the Chairperson may adjust the terms of the initial ex-officio members in order to provide for a staggered term of appointment for all such members.

“(4) RESPONSIBILITIES OF THE BOARD AND THE DIRECTOR OF NIH.—

“(A) RESPONSIBILITIES OF THE BOARD.—

“(i) IN GENERAL.—The Board shall advise, and provide recommendations to, the Director of NIH with respect to—

Recommendations.

“(I) policies, programs, and procedures for carrying out the duties of the Director of NIH under this section; and

“(II) significant barriers to successful translation of basic science into clinical application (including issues under the purview of other agencies and departments).

“(ii) REPORT.—In the case that the Board identifies a significant barrier, as described in clause (i)(II), the Board shall submit to the Secretary a report regarding such barrier.

“(B) RESPONSIBILITIES OF THE DIRECTOR OF NIH.—With respect to each recommendation provided by the Board under subparagraph (A)(i), the Director of NIH shall respond in writing to the Board, indicating whether such Director will implement such recommendation. In the case that the Director of NIH indicates a recommendation of the Board will not be implemented, such Director shall provide an explanation of the reasons for not implementing such recommendation.

“(5) MEETINGS.—

“(A) IN GENERAL.—The Board shall meet 4 times per calendar year, at the call of the Chairperson.

“(B) QUORUM; REQUIREMENTS; LIMITATIONS.—

“(i) QUORUM.—A quorum shall consist of a total of 13 members of the Board, excluding ex-officio members, with diverse representation as described in clause (iii).

“(ii) CHAIRPERSON OR VICE CHAIRPERSON.—Each meeting of the Board shall be attended by either the Chairperson or the Vice Chairperson.

“(iii) DIVERSE REPRESENTATION.—At each meeting of the Board, there shall be not less than one scientist, one representative of a disease advocacy organization, and one representative of a professional venture capital or private equity organization.

“(6) COMPENSATION AND TRAVEL EXPENSES.—

“(A) COMPENSATION.—Members shall receive compensation at a rate to be fixed by the Chairperson but not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

“(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for persons employed intermittently by the Federal Government under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

“(e) GRANT PROGRAM.—

Contracts.

“(1) SUPPORTING INNOVATION.—To carry out the purposes described in this section, the Director of NIH shall award contracts, grants, or cooperative agreements to the entities described in paragraph (2), to—

“(A) promote innovation in technologies supporting the advanced research and development and production of high need cures, including through the development of medical products and behavioral therapies.

“(B) accelerate the development of high need cures, including through the development of medical products, behavioral therapies, and biomarkers that demonstrate the safety or effectiveness of medical products; or

“(C) help the award recipient establish protocols that comply with Food and Drug Administration standards and otherwise permit the recipient to meet regulatory requirements at all stages of development, manufacturing, review, approval, and safety surveillance of a medical product.

“(2) ELIGIBLE ENTITIES.—To receive assistance under paragraph (1), an entity shall—

“(A) be a public or private entity, which may include a private or public research institution, an institution of higher education, a medical center, a biotechnology company, a pharmaceutical company, a disease advocacy organization, a patient advocacy organization, or an academic research institution;

“(B) submit an application containing—

“(i) a detailed description of the project for which the entity seeks such grant or contract;

“(ii) a timetable for such project;

“(iii) an assurance that the entity will submit—

“(I) interim reports describing the entity’s—

“(aa) progress in carrying out the project;

and

“(bb) compliance with all provisions of this section and conditions of receipt of such grant or contract; and

“(II) a final report at the conclusion of the grant period, describing the outcomes of the project; and

“(iv) a description of the protocols the entity will follow to comply with Food and Drug Administration standards and regulatory requirements at all stages of development, manufacturing, review, approval, and safety surveillance of a medical product; and

“(C) provide such additional information as the Director of NIH may require.

“(3) AWARDS.—

“(A) THE CURES ACCELERATION PARTNERSHIP AWARDS.—

“(i) INITIAL AWARD AMOUNT.—Each award under this subparagraph shall be not more than \$15,000,000 per project for the first fiscal year for which the project is funded, which shall be payable in one payment.

“(ii) FUNDING IN SUBSEQUENT FISCAL YEARS.—An eligible entity receiving an award under clause (i) may apply for additional funding for such project by submitting to the Director of NIH the information required under subparagraphs (B) and (C) of paragraph (2). The Director may fund a project of such eligible entity in an amount not to exceed \$15,000,000 for a fiscal year subsequent to the initial award under clause (i).

“(iii) MATCHING FUNDS.—As a condition for receiving an award under this subsection, an eligible entity shall contribute to the project non-Federal funds in the amount of \$1 for every \$3 awarded under clauses (i) and (ii), except that the Director of NIH may waive or modify such matching requirement in any case where the Director determines that the goals and objectives of this section cannot adequately be carried out unless such requirement is waived.

Waiver authority.

“(B) THE CURES ACCELERATION GRANT AWARDS.—

“(i) INITIAL AWARD AMOUNT.—Each award under this subparagraph shall be not more than \$15,000,000 per project for the first fiscal year for which the project is funded, which shall be payable in one payment.

“(ii) FUNDING IN SUBSEQUENT FISCAL YEARS.—An eligible entity receiving an award under clause (i) may apply for additional funding for such project by submitting to the Board the information required under subparagraphs (B) and (C) of paragraph (2). The Director of NIH may fund a project of such eligible entity in an amount not to exceed \$15,000,000 for a fiscal year subsequent to the initial award under clause (i).

“(C) THE CURES ACCELERATION FLEXIBLE RESEARCH AWARDS.—If the Director of NIH determines that the goals and objectives of this section cannot adequately be carried out through a contract, grant, or cooperative agreement, the Director of NIH shall have flexible research authority to use other transactions to fund projects in accordance with the terms and conditions of this section. Awards made under such flexible research authority for a fiscal year shall not exceed 20 percent of the total funds appropriated under subsection (g)(1) for such fiscal year.

Determination.

“(4) SUSPENSION OF AWARDS FOR DEFAULTS, NONCOMPLIANCE WITH PROVISIONS AND PLANS, AND DIVERSION OF FUNDS; REPAYMENT OF FUNDS.—The Director of NIH may suspend the award to any entity upon noncompliance by such entity with provisions and plans under this section or diversion of funds.

“(5) AUDITS.—The Director of NIH may enter into agreements with other entities to conduct periodic audits of the projects funded by grants or contracts awarded under this subsection.

“(6) CLOSEOUT PROCEDURES.—At the end of a grant or contract period, a recipient shall follow the closeout procedures under section 74.71 of title 45, Code of Federal Regulations (or any successor regulation).

“(7) REVIEW.—A determination by the Director of NIH as to whether a drug, device, or biological product is a high need cure (for purposes of subsection (a)(3)) shall not be subject to judicial review.

“(f) COMPETITIVE BASIS OF AWARDS.—Any grant, cooperative agreement, or contract awarded under this section shall be awarded on a competitive basis.

“(g) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—For purposes of carrying out this section, there are authorized to be appropriated \$500,000,000 for fiscal year 2010, and such sums as may be necessary for subsequent fiscal years. Funds appropriated under this section shall be available until expended.

“(2) LIMITATION ON USE OF FUNDS OTHERWISE APPROPRIATED.—No funds appropriated under this Act, other than funds appropriated under paragraph (1), may be allocated to the Cures Acceleration Network.”.

Establishing a
Network of
Health-
Advancing
National Centers
of Excellence for
Depression Act
of 2009.
42 USC 201 note.

SEC. 10410. CENTERS OF EXCELLENCE FOR DEPRESSION.

(a) SHORT TITLE.—This section may be cited as the “Establishing a Network of Health-Advancing National Centers of Excellence for Depression Act of 2009” or the “ENHANCED Act of 2009”.

(b) CENTERS OF EXCELLENCE FOR DEPRESSION.—Subpart 3 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb et seq.) is amended by inserting after section 520A the following:

42 USC
290bb–33.

“SEC. 520B. NATIONAL CENTERS OF EXCELLENCE FOR DEPRESSION.

“(a) DEPRESSIVE DISORDER DEFINED.—In this section, the term ‘depressive disorder’ means a mental or brain disorder relating to depression, including major depression, bipolar disorder, and related mood disorders.

“(b) GRANT PROGRAM.—

“(1) IN GENERAL.—The Secretary, acting through the Administrator, shall award grants on a competitive basis to eligible entities to establish national centers of excellence for depression (referred to in this section as ‘Centers’), which shall engage in activities related to the treatment of depressive disorders.

Deadlines.

“(2) ALLOCATION OF AWARDS.—If the funds authorized under subsection (f) are appropriated in the amounts provided for under such subsection, the Secretary shall allocate such amounts so that—

“(A) not later than 1 year after the date of enactment of the ENHANCED Act of 2009, not more than 20 Centers may be established; and

“(B) not later than September 30, 2016, not more than 30 Centers may be established.

“(3) GRANT PERIOD.—

“(A) IN GENERAL.—A grant awarded under this section shall be for a period of 5 years.

“(B) RENEWAL.—A grant awarded under subparagraph (A) may be renewed, on a competitive basis, for 1 additional 5-year period, at the discretion of the Secretary. In determining whether to renew a grant, the Secretary shall consider the report cards issued under subsection (e)(2).

“(4) USE OF FUNDS.—Grant funds awarded under this subsection shall be used for the establishment and ongoing activities of the recipient of such funds.

“(5) ELIGIBLE ENTITIES.—

“(A) REQUIREMENTS.—To be eligible to receive a grant under this section, an entity shall—

“(i) be an institution of higher education or a public or private nonprofit research institution; and

“(ii) submit an application to the Secretary at such time and in such manner as the Secretary may require, as described in subparagraph (B).

“(B) APPLICATION.—An application described in subparagraph (A)(ii) shall include—

“(i) evidence that such entity—

“(I) provides, or is capable of coordinating with other entities to provide, comprehensive health services with a focus on mental health services and subspecialty expertise for depressive disorders;

“(II) collaborates with other mental health providers, as necessary, to address co-occurring mental illnesses;

“(III) is capable of training health professionals about mental health; and

“(ii) such other information, as the Secretary may require.

“(C) PRIORITIES.—In awarding grants under this section, the Secretary shall give priority to eligible entities that meet 1 or more of the following criteria:

“(i) Demonstrated capacity and expertise to serve the targeted population.

“(ii) Existing infrastructure or expertise to provide appropriate, evidence-based and culturally and linguistically competent services.

“(iii) A location in a geographic area with disproportionate numbers of underserved and at-risk populations in medically underserved areas and health professional shortage areas.

“(iv) Proposed innovative approaches for outreach to initiate or expand services.

“(v) Use of the most up-to-date science, practices, and interventions available.

“(vi) Demonstrated capacity to establish cooperative and collaborative agreements with community mental health centers and other community entities

Designation.

to provide mental health, social, and human services to individuals with depressive disorders.

“(6) NATIONAL COORDINATING CENTER.—

“(A) IN GENERAL.—The Secretary, acting through the Administrator, shall designate 1 recipient of a grant under this section to be the coordinating center of excellence for depression (referred to in this section as the ‘coordinating center’). The Secretary shall select such coordinating center on a competitive basis, based upon the demonstrated capacity of such center to perform the duties described in subparagraph (C).

“(B) APPLICATION.—A Center that has been awarded a grant under paragraph (1) may apply for designation as the coordinating center by submitting an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(C) DUTIES.—The coordinating center shall—

“(i) develop, administer, and coordinate the network of Centers under this section;

“(ii) oversee and coordinate the national database described in subsection (d);

“(iii) lead a strategy to disseminate the findings and activities of the Centers through such database; and

“(iv) serve as a liaison with the Administration, the National Registry of Evidence-based Programs and Practices of the Administration, and any Federal inter-agency or interagency forum on mental health.

“(7) MATCHING FUNDS.—The Secretary may not award a grant or contract under this section to an entity unless the entity agrees that it will make available (directly or through contributions from other public or private entities) non-Federal contributions toward the activities to be carried out under the grant or contract in an amount equal to \$1 for each \$5 of Federal funds provided under the grant or contract. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

“(c) ACTIVITIES OF THE CENTERS.—Each Center shall carry out the following activities:

“(1) GENERAL ACTIVITIES.—Each Center shall—

“(A) integrate basic, clinical, or health services interdisciplinary research and practice in the development, implementation, and dissemination of evidence-based interventions;

“(B) involve a broad cross-section of stakeholders, such as researchers, clinicians, consumers, families of consumers, and voluntary health organizations, to develop a research agenda and disseminate findings, and to provide support in the implementation of evidence-based practices;

“(C) provide training and technical assistance to mental health professionals, and engage in and disseminate translational research with a focus on meeting the needs of individuals with depressive disorders; and

“(D) educate policy makers, employers, community leaders, and the public about depressive disorders to reduce stigma and raise awareness of treatments.

“(2) IMPROVED TREATMENT STANDARDS, CLINICAL GUIDELINES, DIAGNOSTIC PROTOCOLS, AND CARE COORDINATION PRACTICE.—Each Center shall collaborate with other Centers in the network to—

“(A) develop and implement treatment standards, clinical guidelines, and protocols that emphasize primary prevention, early intervention, treatment for, and recovery from, depressive disorders;

“(B) foster communication with other providers attending to co-occurring physical health conditions such as cardiovascular, diabetes, cancer, and substance abuse disorders;

“(C) leverage available community resources, develop and implement improved self-management programs, and, when appropriate, involve family and other providers of social support in the development and implementation of care plans; and

“(D) use electronic health records and telehealth technology to better coordinate and manage, and improve access to, care, as determined by the coordinating center.

“(3) TRANSLATIONAL RESEARCH THROUGH COLLABORATION OF CENTERS AND COMMUNITY-BASED ORGANIZATIONS.—Each Center shall—

“(A) demonstrate effective use of a public-private partnership to foster collaborations among members of the network and community-based organizations such as community mental health centers and other social and human services providers;

“(B) expand interdisciplinary, translational, and patient-oriented research and treatment; and

“(C) coordinate with accredited academic programs to provide ongoing opportunities for the professional and continuing education of mental health providers.

“(d) NATIONAL DATABASE.—

“(1) IN GENERAL.—The coordinating center shall establish and maintain a national, publicly available database to improve prevention programs, evidence-based interventions, and disease management programs for depressive disorders, using data collected from the Centers, as described in paragraph (2).

“(2) DATA COLLECTION.—Each Center shall submit data gathered at such center, as appropriate, to the coordinating center regarding—

“(A) the prevalence and incidence of depressive disorders;

“(B) the health and social outcomes of individuals with depressive disorders;

“(C) the effectiveness of interventions designed, tested, and evaluated;

“(D) other information, as the Secretary may require.

“(3) SUBMISSION OF DATA TO THE ADMINISTRATOR.—The coordinating center shall submit to the Administrator the data and financial information gathered under paragraph (2).

“(4) PUBLICATION USING DATA FROM THE DATABASE.—A Center, or an individual affiliated with a Center, may publish

findings using the data described in paragraph (2) only if such center submits such data to the coordinating center, as required under such paragraph.

“(e) ESTABLISHMENT OF STANDARDS; REPORT CARDS AND RECOMMENDATIONS; THIRD PARTY REVIEW.—

“(1) ESTABLISHMENT OF STANDARDS.—The Secretary, acting through the Administrator, shall establish performance standards for—

“(A) each Center; and

“(B) the network of Centers as a whole.

“(2) REPORT CARDS.—The Secretary, acting through the Administrator, shall—

“(A) for each Center, not later than 3 years after the date on which such center of excellence is established and annually thereafter, issue a report card to the coordinating center to rate the performance of such Center; and

“(B) not later than 3 years after the date on which the first grant is awarded under subsection (b)(1) and annually thereafter, issue a report card to Congress to rate the performance of the network of centers of excellence as a whole.

“(3) RECOMMENDATIONS.—Based upon the report cards described in paragraph (2), the Secretary shall, not later than September 30, 2015—

“(A) make recommendations to the Centers regarding improvements such centers shall make; and

“(B) make recommendations to Congress for expanding the Centers to serve individuals with other types of mental disorders.

“(4) THIRD PARTY REVIEW.—Not later than 3 years after the date on which the first grant is awarded under subsection (b)(1) and annually thereafter, the Secretary shall arrange for an independent third party to conduct an evaluation of the network of Centers to ensure that such centers are meeting the goals of this section.

“(f) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—To carry out this section, there are authorized to be appropriated—

“(A) \$100,000,000 for each of the fiscal years 2011 through 2015; and

“(B) \$150,000,000 for each of the fiscal years 2016 through 2020.

Determination.

“(2) ALLOCATION OF FUNDS AUTHORIZED.—Of the amount appropriated under paragraph (1) for a fiscal year, the Secretary shall determine the allocation of each Center receiving a grant under this section, but in no case may the allocation be more than \$5,000,000, except that the Secretary may allocate not more than \$10,000,000 to the coordinating center.”.

Congenital Heart
Futures Act.
42 USC 201 note.

SEC. 10411. PROGRAMS RELATING TO CONGENITAL HEART DISEASE.

(a) SHORT TITLE.—This subtitle may be cited as the “Congenital Heart Futures Act”.

(b) PROGRAMS RELATING TO CONGENITAL HEART DISEASE.—

(1) NATIONAL CONGENITAL HEART DISEASE SURVEILLANCE SYSTEM.—Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.), as amended by section 5405, is further amended by adding at the end the following:

“SEC. 399V-2. NATIONAL CONGENITAL HEART DISEASE SURVEILLANCE SYSTEM. 42 USC 280g-13.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may—

“(1) enhance and expand infrastructure to track the epidemiology of congenital heart disease and to organize such information into a nationally-representative, population-based surveillance system that compiles data concerning actual occurrences of congenital heart disease, to be known as the ‘National Congenital Heart Disease Surveillance System’; or

“(2) award a grant to one eligible entity to undertake the activities described in paragraph (1).

“(b) PURPOSE.—The purpose of the Congenital Heart Disease Surveillance System shall be to facilitate further research into the types of health services patients use and to identify possible areas for educational outreach and prevention in accordance with standard practices of the Centers for Disease Control and Prevention.

“(c) CONTENT.—The Congenital Heart Disease Surveillance System—

“(1) may include information concerning the incidence and prevalence of congenital heart disease in the United States;

“(2) may be used to collect and store data on congenital heart disease, including data concerning—

“(A) demographic factors associated with congenital heart disease, such as age, race, ethnicity, sex, and family history of individuals who are diagnosed with the disease;

“(B) risk factors associated with the disease;

“(C) causation of the disease;

“(D) treatment approaches; and

“(E) outcome measures, such that analysis of the outcome measures will allow derivation of evidence-based best practices and guidelines for congenital heart disease patients; and

“(3) may ensure the collection and analysis of longitudinal data related to individuals of all ages with congenital heart disease, including infants, young children, adolescents, and adults of all ages.

“(d) PUBLIC ACCESS.—The Congenital Heart Disease Surveillance System shall be made available to the public, as appropriate, including congenital heart disease researchers.

“(e) PATIENT PRIVACY.—The Secretary shall ensure that the Congenital Heart Disease Surveillance System is maintained in a manner that complies with the regulations promulgated under section 264 of the Health Insurance Portability and Accountability Act of 1996.

“(f) ELIGIBILITY FOR GRANT.—To be eligible to receive a grant under subsection (a)(2), an entity shall—

“(1) be a public or private nonprofit entity with specialized experience in congenital heart disease; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.”.

(2) CONGENITAL HEART DISEASE RESEARCH.—Subpart 2 of part C of title IV of the Public Health Service Act (42 U.S.C. 285b et seq.) is amended by adding at the end the following:

42 USC 285b–8.

“SEC. 425. CONGENITAL HEART DISEASE.

“(a) IN GENERAL.—The Director of the Institute may expand, intensify, and coordinate research and related activities of the Institute with respect to congenital heart disease, which may include congenital heart disease research with respect to—

“(1) causation of congenital heart disease, including genetic causes;

“(2) long-term outcomes in individuals with congenital heart disease, including infants, children, teenagers, adults, and elderly individuals;

“(3) diagnosis, treatment, and prevention;

“(4) studies using longitudinal data and retrospective analysis to identify effective treatments and outcomes for individuals with congenital heart disease; and

“(5) identifying barriers to life-long care for individuals with congenital heart disease.

“(b) COORDINATION OF RESEARCH ACTIVITIES.—The Director of the Institute may coordinate research efforts related to congenital heart disease among multiple research institutions and may develop research networks.

“(c) MINORITY AND MEDICALLY UNDERSERVED COMMUNITIES.—In carrying out the activities described in this section, the Director of the Institute shall consider the application of such research and other activities to minority and medically underserved communities.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the amendments made by this section such sums as may be necessary for each of fiscal years 2011 through 2015.

SEC. 10412. AUTOMATED DEFIBRILLATION IN ADAM’S MEMORY ACT.

Section 312 of the Public Health Service Act (42 U.S.C. 244) is amended—

(1) in subsection (c)(6), after “clearinghouse” insert “, that shall be administered by an organization that has substantial expertise in pediatric education, pediatric medicine, and electrophysiology and sudden death,”; and

(2) in the first sentence of subsection (e), by striking “fiscal year 2003” and all that follows through “2006” and inserting “for each of fiscal years 2003 through 2014”.

Young Women’s
Breast Health
Education and
Awareness
Requires
Learning Young
Act of 2009.
42 USC 201 note.

SEC. 10413. YOUNG WOMEN’S BREAST HEALTH AWARENESS AND SUPPORT OF YOUNG WOMEN DIAGNOSED WITH BREAST CANCER.

(a) SHORT TITLE.—This section may be cited as the “Young Women’s Breast Health Education and Awareness Requires Learning Young Act of 2009” or the “EARLY Act”.

(b) AMENDMENT.—Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by this Act, is further amended by adding at the end the following:

“PART V—PROGRAMS RELATING TO BREAST HEALTH AND CANCER

“SEC. 399NN. YOUNG WOMEN’S BREAST HEALTH AWARENESS AND SUP- PORT OF YOUNG WOMEN DIAGNOSED WITH BREAST CANCER.

42 USC 280m.

“(a) PUBLIC EDUCATION CAMPAIGN.—

“(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall conduct a national evidence-based education campaign to increase awareness of young women’s knowledge regarding—

“(A) breast health in young women of all racial, ethnic, and cultural backgrounds;

“(B) breast awareness and good breast health habits;

“(C) the occurrence of breast cancer and the general and specific risk factors in women who may be at high risk for breast cancer based on familial, racial, ethnic, and cultural backgrounds such as Ashkenazi Jewish populations;

“(D) evidence-based information that would encourage young women and their health care professional to increase early detection of breast cancers; and

“(E) the availability of health information and other resources for young women diagnosed with breast cancer.

“(2) EVIDENCE-BASED, AGE APPROPRIATE MESSAGES.—The campaign shall provide evidence-based, age-appropriate messages and materials as developed by the Centers for Disease Control and Prevention and the Advisory Committee established under paragraph (4).

“(3) MEDIA CAMPAIGN.—In conducting the education campaign under paragraph (1), the Secretary shall award grants to entities to establish national multimedia campaigns oriented to young women that may include advertising through television, radio, print media, billboards, posters, all forms of existing and especially emerging social networking media, other Internet media, and any other medium determined appropriate by the Secretary.

Grants.

“(4) ADVISORY COMMITTEE.—

“(A) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this section, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish an advisory committee to assist in creating and conducting the education campaigns under paragraph (1) and subsection (b)(1).

Deadline.

“(B) MEMBERSHIP.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall appoint to the advisory committee under subparagraph (A) such members as deemed necessary to properly advise the Secretary, and shall include organizations and individuals with expertise in breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women.

Appointment.

“(b) HEALTH CARE PROFESSIONAL EDUCATION CAMPAIGN.—The Secretary, acting through the Director of the Centers for Disease

Control and Prevention, and in consultation with the Administrator of the Health Resources and Services Administration, shall conduct an education campaign among physicians and other health care professionals to increase awareness—

“(1) of breast health, symptoms, and early diagnosis and treatment of breast cancer in young women, including specific risk factors such as family history of cancer and women that may be at high risk for breast cancer, such as Ashkenazi Jewish population;

“(2) on how to provide counseling to young women about their breast health, including knowledge of their family cancer history and importance of providing regular clinical breast examinations;

“(3) concerning the importance of discussing healthy behaviors, and increasing awareness of services and programs available to address overall health and wellness, and making patient referrals to address tobacco cessation, good nutrition, and physical activity;

“(4) on when to refer patients to a health care provider with genetics expertise;

“(5) on how to provide counseling that addresses long-term survivorship and health concerns of young women diagnosed with breast cancer; and

“(6) on when to provide referrals to organizations and institutions that provide credible health information and substantive assistance and support to young women diagnosed with breast cancer.

“(c) PREVENTION RESEARCH ACTIVITIES.—The Secretary, acting through—

“(1) the Director of the Centers for Disease Control and Prevention, shall conduct prevention research on breast cancer in younger women, including—

“(A) behavioral, survivorship studies, and other research on the impact of breast cancer diagnosis on young women;

“(B) formative research to assist with the development of educational messages and information for the public, targeted populations, and their families about breast health, breast cancer, and healthy lifestyles;

“(C) testing and evaluating existing and new social marketing strategies targeted at young women; and

“(D) surveys of health care providers and the public regarding knowledge, attitudes, and practices related to breast health and breast cancer prevention and control in high-risk populations; and

“(2) the Director of the National Institutes of Health, shall conduct research to develop and validate new screening tests and methods for prevention and early detection of breast cancer in young women.

“(d) SUPPORT FOR YOUNG WOMEN DIAGNOSED WITH BREAST CANCER.—

Grants.

“(1) IN GENERAL.—The Secretary shall award grants to organizations and institutions to provide health information from credible sources and substantive assistance directed to young women diagnosed with breast cancer and pre-neoplastic breast diseases.

“(2) PRIORITY.—In making grants under paragraph (1), the Secretary shall give priority to applicants that deal specifically with young women diagnosed with breast cancer and pre-neoplastic breast disease.

“(e) NO DUPLICATION OF EFFORT.—In conducting an education campaign or other program under subsections (a), (b), (c), or (d), the Secretary shall avoid duplicating other existing Federal breast cancer education efforts.

“(f) MEASUREMENT; REPORTING.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

“(1) measure—

“(A) young women’s awareness regarding breast health, including knowledge of family cancer history, specific risk factors and early warning signs, and young women’s proactive efforts at early detection;

“(B) the number or percentage of young women utilizing information regarding lifestyle interventions that foster healthy behaviors;

“(C) the number or percentage of young women receiving regular clinical breast exams; and

“(D) the number or percentage of young women who perform breast self exams, and the frequency of such exams, before the implementation of this section;

“(2) not less than every 3 years, measure the impact of such activities; and

“(3) submit reports to the Congress on the results of such measurements.

“(g) DEFINITION.—In this section, the term ‘young women’ means women 15 to 44 years of age.

“(h) AUTHORIZATION OF APPROPRIATIONS.—To carry out subsections (a), (b), (c)(1), and (d), there are authorized to be appropriated \$9,000,000 for each of the fiscal years 2010 through 2014.”.

Subtitle E—Provisions Relating to Title V

SEC. 10501. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT, THE SOCIAL SECURITY ACT, AND TITLE V OF THIS ACT.

(a) Section 5101 of this Act is amended—

42 USC 294q.

(1) in subsection (c)(2)(B)(i)(II), by inserting “, including representatives of small business and self-employed individuals” after “employers”;

(2) in subsection (d)(4)(A)—

(A) by redesignating clause (iv) as clause (v); and

(B) by inserting after clause (iii) the following:

“(iv) An analysis of, and recommendations for, eliminating the barriers to entering and staying in primary care, including provider compensation.”; and

(3) in subsection (i)(2)(B), by inserting “optometrists, ophthalmologists,” after “occupational therapists,”.

(b) Subtitle B of title V of this Act is amended by adding at the end the following:

“SEC. 5104. INTERAGENCY TASK FORCE TO ASSESS AND IMPROVE ACCESS TO HEALTH CARE IN THE STATE OF ALASKA.

“(a) **ESTABLISHMENT.**—There is established a task force to be known as the ‘Interagency Access to Health Care in Alaska Task Force’ (referred to in this section as the ‘Task Force’).

“(b) **DUTIES.**—The Task Force shall—

“(1) assess access to health care for beneficiaries of Federal health care systems in Alaska; and

“(2) develop a strategy for the Federal Government to improve delivery of health care to Federal beneficiaries in the State of Alaska.

Deadline.

“(c) **MEMBERSHIP.**—The Task Force shall be comprised of Federal members who shall be appointed, not later than 45 days after the date of enactment of this Act, as follows:

“(1) The Secretary of Health and Human Services shall appoint one representative of each of the following:

“(A) The Department of Health and Human Services.

“(B) The Centers for Medicare and Medicaid Services.

“(C) The Indian Health Service.

“(2) The Secretary of Defense shall appoint one representative of the TRICARE Management Activity.

“(3) The Secretary of the Army shall appoint one representative of the Army Medical Department.

“(4) The Secretary of the Air Force shall appoint one representative of the Air Force, from among officers at the Air Force performing medical service functions.

“(5) The Secretary of Veterans Affairs shall appoint one representative of each of the following:

“(A) The Department of Veterans Affairs.

“(B) The Veterans Health Administration.

“(6) The Secretary of Homeland Security shall appoint one representative of the United States Coast Guard.

“(d) **CHAIRPERSON.**—One chairperson of the Task Force shall be appointed by the Secretary at the time of appointment of members under subsection (c), selected from among the members appointed under paragraph (1).

“(e) **MEETINGS.**—The Task Force shall meet at the call of the chairperson.

“(f) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Task Force shall submit to Congress a report detailing the activities of the Task Force and containing the findings, strategies, recommendations, policies, and initiatives developed pursuant to the duty described in subsection (b)(2). In preparing such report, the Task Force shall consider completed and ongoing efforts by Federal agencies to improve access to health care in the State of Alaska.

“(g) **TERMINATION.**—The Task Force shall be terminated on the date of submission of the report described in subsection (f).”.

42 USC 280g-11. (c) Section 399V of the Public Health Service Act, as added by section 5313, is amended—

(1) in subsection (b)(4), by striking “identify, educate, refer, and enroll” and inserting “identify and refer”; and

(2) in subsection (k)(1), by striking “, as defined by the Department of Labor as Standard Occupational Classification [21-1094]”.

(d) Section 738(a)(3) of the Public Health Service Act (42 U.S.C. 293b(a)(3)) is amended by inserting “schools offering physician assistant education programs,” after “public health,”.

(e) Subtitle D of title V of this Act is amended by adding at the end the following:

“SEC. 5316. DEMONSTRATION GRANTS FOR FAMILY NURSE PRACTITIONER TRAINING PROGRAMS. 42 USC 296j-1.

“(a) **ESTABLISHMENT OF PROGRAM.**—The Secretary of Health and Human Services (referred to in this section as the ‘Secretary’) shall establish a training demonstration program for family nurse practitioners (referred to in this section as the ‘program’) to employ and provide 1-year training for nurse practitioners who have graduated from a nurse practitioner program for careers as primary care providers in Federally qualified health centers (referred to in this section as ‘FQHCs’) and nurse-managed health clinics (referred to in this section as ‘NMHCs’).

“(b) **PURPOSE.**—The purpose of the program is to enable each grant recipient to—

“(1) provide new nurse practitioners with clinical training to enable them to serve as primary care providers in FQHCs and NMHCs;

“(2) train new nurse practitioners to work under a model of primary care that is consistent with the principles set forth by the Institute of Medicine and the needs of vulnerable populations; and

“(3) create a model of FQHC and NMHC training for nurse practitioners that may be replicated nationwide.

“(c) **GRANTS.**—The Secretary shall award 3-year grants to eligible entities that meet the requirements established by the Secretary, for the purpose of operating the nurse practitioner primary care programs described in subsection (a) in such entities.

“(d) **ELIGIBLE ENTITIES.**—To be eligible to receive a grant under this section, an entity shall—

“(1)(A) be a FQHC as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)); or

“(B) be a nurse-managed health clinic, as defined in section 330A-1 of the Public Health Service Act (as added by section 5208 of this Act); and

“(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(e) **PRIORITY IN AWARDING GRANTS.**—In awarding grants under this section, the Secretary shall give priority to eligible entities that—

“(1) demonstrate sufficient infrastructure in size, scope, and capacity to undertake the requisite training of a minimum of 3 nurse practitioners per year, and to provide to each awardee 12 full months of full-time, paid employment and benefits consistent with the benefits offered to other full-time employees of such entity;

“(2) will assign not less than 1 staff nurse practitioner or physician to each of 4 precepted clinics;

“(3) will provide to each awardee specialty rotations, including specialty training in prenatal care and women’s health, adult and child psychiatry, orthopedics, geriatrics, and at least 3 other high-volume, high-burden specialty areas;

“(4) provide sessions on high-volume, high-risk health problems and have a record of training health care professionals in the care of children, older adults, and underserved populations; and

“(5) collaborate with other safety net providers, schools, colleges, and universities that provide health professions training.

“(f) ELIGIBILITY OF NURSE PRACTITIONERS.—

“(1) IN GENERAL.—To be eligible for acceptance to a program funded through a grant awarded under this section, an individual shall—

“(A) be licensed or eligible for licensure in the State in which the program is located as an advanced practice registered nurse or advanced practice nurse and be eligible or board-certified as a family nurse practitioner; and

“(B) demonstrate commitment to a career as a primary care provider in a FQHC or in a NMHC.

“(2) PREFERENCE.—In selecting awardees under the program, each grant recipient shall give preference to bilingual candidates that meet the requirements described in paragraph (1).

“(3) DEFERRAL OF CERTAIN SERVICE.—The starting date of required service of individuals in the National Health Service Corps Service program under title II of the Public Health Service Act (42 U.S.C. 202 et seq.) who receive training under this section shall be deferred until the date that is 22 days after the date of completion of the program.

“(g) GRANT AMOUNT.—Each grant awarded under this section shall be in an amount not to exceed \$600,000 per year. A grant recipient may carry over funds from 1 fiscal year to another without obtaining approval from the Secretary.

“(h) TECHNICAL ASSISTANCE GRANTS.—The Secretary may award technical assistance grants to 1 or more FQHCs or NMHCs that have demonstrated expertise in establishing a nurse practitioner residency training program. Such technical assistance grants shall be for the purpose of providing technical assistance to other recipients of grants under subsection (c).

“(i) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there is authorized to be appropriated such sums as may be necessary for each of fiscal years 2011 through 2014.”.

42 USC 280g-12. (f)(1) Section 399W of the Public Health Service Act, as added by section 5405, is redesignated as section 399V-1.

(2) Section 399V-1 of the Public Health Service Act, as so redesignated, is amended in subsection (b)(2)(A) by striking “and the departments of 1 or more health professions schools in the State that train providers in primary care” and inserting “and the departments that train providers in primary care in 1 or more health professions schools in the State”.

42 USC 299b-34. (3) Section 934 of the Public Health Service Act, as added by section 3501, is amended by striking “399W” each place such term appears and inserting “399V-1”.

42 USC 299b-35. (4) Section 935(b) of the Public Health Service Act, as added by section 3503, is amended by striking “399W” and inserting “399V-1”.

(g) Part P of title III of the Public Health Service Act 42 U.S.C. 280g et seq.), as amended by section 10411, is amended by adding at the end the following:

“SEC. 399V-3. NATIONAL DIABETES PREVENTION PROGRAM.

42 USC 280g-14.

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a national diabetes prevention program (referred to in this section as the ‘program’) targeted at adults at high risk for diabetes in order to eliminate the preventable burden of diabetes.

“(b) **PROGRAM ACTIVITIES.**—The program described in subsection (a) shall include—

“(1) a grant program for community-based diabetes prevention program model sites;

“(2) a program within the Centers for Disease Control and Prevention to determine eligibility of entities to deliver community-based diabetes prevention services;

“(3) a training and outreach program for lifestyle intervention instructors; and

“(4) evaluation, monitoring and technical assistance, and applied research carried out by the Centers for Disease Control and Prevention.

“(c) **ELIGIBLE ENTITIES.**—To be eligible for a grant under subsection (b)(1), an entity shall be a State or local health department, a tribal organization, a national network of community-based nonprofits focused on health and wellbeing, an academic institution, or other entity, as the Secretary determines.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.”

(h) The provisions of, and amendment made by, section 5501(c) of this Act are repealed.

(i)(1) The provisions of, and amendments made by, section 5502 of this Act are repealed.

(2)(A) Section 1861(aa)(3)(A) of the Social Security Act (42 U.S.C. 1395w(aa)(3)(A)) is amended to read as follows:

“(A) services of the type described in subparagraphs (A) through (C) of paragraph (1) and preventive services (as defined in section 1861(ddd)(3)); and”.

(B) The amendment made by subparagraph (A) shall apply to services furnished on or after January 1, 2011.

(3)(A) Section 1834 of the Social Security Act (42 U.S.C. 1395m), as amended by section 4105, is amended by adding at the end the following new subsection:

“(o) **DEVELOPMENT AND IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.**—

“(1) **DEVELOPMENT.**—

“(A) **IN GENERAL.**—The Secretary shall develop a prospective payment system for payment for Federally qualified health center services furnished by Federally qualified health centers under this title. Such system shall include a process for appropriately describing the services furnished by Federally qualified health centers and shall establish payment rates for specific payment codes based on such appropriate descriptions of services. Such system shall be established to take into account the type, intensity, and duration of services furnished by Federally qualified health centers. Such system may include adjustments, including geographic adjustments, determined appropriate by the Secretary.

Repeals.
42 USC 1395w-4.
42 USC 1395m,
1395x and note.
42 USC 1395x.

Applicability.
42 USC 1395x
note.

Deadline.

“(B) COLLECTION OF DATA AND EVALUATION.—By not later than January 1, 2011, the Secretary shall require Federally qualified health centers to submit to the Secretary such information as the Secretary may require in order to develop and implement the prospective payment system under this subsection, including the reporting of services using HCPCS codes.

“(2) IMPLEMENTATION.—

“(A) IN GENERAL.—Notwithstanding section 1833(a)(3)(A), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2014, for payments of prospective payment rates for Federally qualified health center services furnished by Federally qualified health centers under this title in accordance with the prospective payment system developed by the Secretary under paragraph (1).

“(B) PAYMENTS.—

“(i) INITIAL PAYMENTS.—The Secretary shall implement such prospective payment system so that the estimated aggregate amount of prospective payment rates (determined prior to the application of section 1833(a)(1)(Z)) under this title for Federally qualified health center services in the first year that such system is implemented is equal to 100 percent of the estimated amount of reasonable costs (determined without the application of a per visit payment limit or productivity screen and prior to the application of section 1866(a)(2)(A)(ii)) that would have occurred for such services under this title in such year if the system had not been implemented.

“(ii) PAYMENTS IN SUBSEQUENT YEARS.—Payment rates in years after the year of implementation of such system shall be the payment rates in the previous year increased—

“(I) in the first year after implementation of such system, by the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved; and

“(II) in subsequent years, by the percentage increase in a market basket of Federally qualified health center goods and services as promulgated through regulations, or if such an index is not available, by the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved.

“(C) PREPARATION FOR PPS IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may establish and implement by program instruction or otherwise the payment codes to be used under the prospective payment system under this section.”.

(B) Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), as amended by section 4104, is amended—

(i) by striking “and” before “(Y)”; and

(ii) by inserting before the semicolon at the end the following: “, and (Z) with respect to Federally qualified health center services for which payment is made under section 1834(o), the amounts paid shall be 80 percent of the lesser

of the actual charge or the amount determined under such section”.

(C) Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(i) in paragraph (3)(B)(i)—

(I) by inserting “(I)” after “otherwise been provided”; and

(II) by inserting “, or (II) in the case of such services furnished on or after the implementation date of the prospective payment system under section 1834(o), under such section (calculated as if ‘100 percent’ were substituted for ‘80 percent’ in such section) for such services if the individual had not been so enrolled” after “been so enrolled”; and

(ii) by adding at the end the following flush sentence: “Paragraph (3)(A) shall not apply to Federally qualified health center services furnished on or after the implementation date of the prospective payment system under section 1834(0).”.

(j) Section 5505 is amended by adding at the end the following new subsection:

42 USC 1395ww
note.

“(d) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. 1395ww(h)).”.

(k) Subtitle G of title V of this Act is amended by adding at the end the following:

“SEC. 5606. STATE GRANTS TO HEALTH CARE PROVIDERS WHO PROVIDE SERVICES TO A HIGH PERCENTAGE OF MEDICALLY UNDERSERVED POPULATIONS OR OTHER SPECIAL POPULATIONS.

42 USC 254b–1.

“(a) IN GENERAL.—A State may award grants to health care providers who treat a high percentage, as determined by such State, of medically underserved populations or other special populations in such State.

“(b) SOURCE OF FUNDS.—A grant program established by a State under subsection (a) may not be established within a department, agency, or other entity of such State that administers the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), and no Federal or State funds allocated to such Medicaid program, the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), or the TRICARE program under chapter 55 of title 10, United States Code, may be used to award grants or to pay administrative costs associated with a grant program established under subsection (a).”.

(l) Part C of title VII of the Public Health Service Act (42 U.S.C. 293k et seq.) is amended—

(1) after the part heading, by inserting the following:

“Subpart I—Medical Training Generally”;

and

(2) by inserting at the end the following:

“Subpart II—Training in Underserved Communities

42 USC 293m.

“SEC. 749B. RURAL PHYSICIAN TRAINING GRANTS.

“(a) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a grant program for the purposes of assisting eligible entities in recruiting students most likely to practice medicine in underserved rural communities, providing rural-focused training and experience, and increasing the number of recent allopathic and osteopathic medical school graduates who practice in underserved rural communities.

“(b) ELIGIBLE ENTITIES.—In order to be eligible to receive a grant under this section, an entity shall—

“(1) be a school of allopathic or osteopathic medicine accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, or any combination or consortium of such schools; and

“(2) submit an application to the Secretary that includes a certification that such entity will use amounts provided to the institution as described in subsection (d)(1).

“(c) PRIORITY.—In awarding grant funds under this section, the Secretary shall give priority to eligible entities that—

“(1) demonstrate a record of successfully training students, as determined by the Secretary, who practice medicine in underserved rural communities;

“(2) demonstrate that an existing academic program of the eligible entity produces a high percentage, as determined by the Secretary, of graduates from such program who practice medicine in underserved rural communities;

“(3) demonstrate rural community institutional partnerships, through such mechanisms as matching or contributory funding, documented in-kind services for implementation, or existence of training partners with interprofessional expertise in community health center training locations or other similar facilities; or

“(4) submit, as part of the application of the entity under subsection (b), a plan for the long-term tracking of where the graduates of such entity practice medicine.

“(d) USE OF FUNDS.—

“(1) ESTABLISHMENT.—An eligible entity receiving a grant under this section shall use the funds made available under such grant to establish, improve, or expand a rural-focused training program (referred to in this section as the ‘Program’) meeting the requirements described in this subsection and to carry out such program.

“(2) STRUCTURE OF PROGRAM.—An eligible entity shall—

“(A) enroll no fewer than 10 students per class year into the Program; and

“(B) develop criteria for admission to the Program that gives priority to students—

“(i) who have originated from or lived for a period of 2 or more years in an underserved rural community; and

“(ii) who express a commitment to practice medicine in an underserved rural community.

“(3) CURRICULA.—The Program shall require students to enroll in didactic coursework and clinical experience particularly applicable to medical practice in underserved rural communities, including—

“(A) clinical rotations in underserved rural communities, and in applicable specialties, or other coursework or clinical experience deemed appropriate by the Secretary; and

“(B) in addition to core school curricula, additional coursework or training experiences focused on medical issues prevalent in underserved rural communities.

“(4) RESIDENCY PLACEMENT ASSISTANCE.—Where available, the Program shall assist all students of the Program in obtaining clinical training experiences in locations with post-graduate programs offering residency training opportunities in underserved rural communities, or in local residency training programs that support and train physicians to practice in underserved rural communities.

“(5) PROGRAM STUDENT COHORT SUPPORT.—The Program shall provide and require all students of the Program to participate in group activities designed to further develop, maintain, and reinforce the original commitment of such students to practice in an underserved rural community.

“(e) ANNUAL REPORTING.—An eligible entity receiving a grant under this section shall submit an annual report to the Secretary on the success of the Program, based on criteria the Secretary determines appropriate, including the residency program selection of graduating students who participated in the Program.

“(f) REGULATIONS.—Not later than 60 days after the date of enactment of this section, the Secretary shall by regulation define ‘underserved rural community’ for purposes of this section. Deadline.

“(g) SUPPLEMENT NOT SUPPLANT.—Any eligible entity receiving funds under this section shall use such funds to supplement, not supplant, any other Federal, State, and local funds that would otherwise be expended by such entity to carry out the activities described in this section.

“(h) MAINTENANCE OF EFFORT.—With respect to activities for which funds awarded under this section are to be expended, the entity shall agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives a grant under this section.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$4,000,000 for each of the fiscal years 2010 through 2013.”.

(m)(1) Section 768 of the Public Health Service Act (42 U.S.C. 295c) is amended to read as follows:

“SEC. 768. PREVENTIVE MEDICINE AND PUBLIC HEALTH TRAINING GRANT PROGRAM.

“(a) GRANTS.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and in consultation with the Director of the Centers for Disease Control and Prevention, shall award grants to, or enter into contracts with, eligible entities to provide training to graduate medical residents in preventive medicine specialties. Contracts.

“(b) ELIGIBILITY.—To be eligible for a grant or contract under subsection (a), an entity shall be—

- “(1) an accredited school of public health or school of medicine or osteopathic medicine;
- “(2) an accredited public or private nonprofit hospital;
- “(3) a State, local, or tribal health department; or
- “(4) a consortium of 2 or more entities described in paragraphs (1) through (3).

“(c) USE OF FUNDS.—Amounts received under a grant or contract under this section shall be used to—

- “(1) plan, develop (including the development of curricula), operate, or participate in an accredited residency or internship program in preventive medicine or public health;
- “(2) defray the costs of practicum experiences, as required in such a program; and

“(3) establish, maintain, or improve—

“(A) academic administrative units (including departments, divisions, or other appropriate units) in preventive medicine and public health; or

“(B) programs that improve clinical teaching in preventive medicine and public health.

“(d) REPORT.—The Secretary shall submit to the Congress an annual report on the program carried out under this section.”.

(2) Section 770(a) of the Public Health Service Act (42 U.S.C. 295e(a)) is amended to read as follows:

“(a) IN GENERAL.—For the purpose of carrying out this subpart, there is authorized to be appropriated \$43,000,000 for fiscal year 2011, and such sums as may be necessary for each of the fiscal years 2012 through 2015.”.

(n)(1) Subsection (i) of section 331 of the Public Health Service Act (42 U.S.C. 254d) of the Public Health Service Act is amended—

(A) in paragraph (1), by striking “In carrying out subpart III” and all that follows through the period and inserting “In carrying out subpart III, the Secretary may, in accordance with this subsection, issue waivers to individuals who have entered into a contract for obligated service under the Scholarship Program or the Loan Repayment Program under which the individuals are authorized to satisfy the requirement of obligated service through providing clinical practice that is half time.”;

(B) in paragraph (2)—

(i) in subparagraphs (A)(ii) and (B), by striking “less than full time” each place it appears and inserting “half time”;

(ii) in subparagraphs (C) and (F), by striking “less than full-time service” each place it appears and inserting “half-time service”; and

(iii) by amending subparagraphs (D) and (E) to read as follows:

“(D) the entity and the Corps member agree in writing that the Corps member will perform half-time clinical practice;

“(E) the Corps member agrees in writing to fulfill all of the service obligations under section 338C through half-time clinical practice and either—

“(i) double the period of obligated service that would otherwise be required; or

“(ii) in the case of contracts entered into under section 338B, accept a minimum service obligation of 2 years with an award amount equal to 50 percent of the amount that would otherwise be payable for full-time service; and”; and (C) in paragraph (3), by striking “In evaluating a demonstration project described in paragraph (1)” and inserting “In evaluating waivers issued under paragraph (1)”.

(2) Subsection (j) of section 331 of the Public Health Service Act (42 U.S.C. 254d) is amended by adding at the end the following:

“(5) The terms ‘full time’ and ‘full-time’ mean a minimum of 40 hours per week in a clinical practice, for a minimum of 45 weeks per year.

Definitions.

“(6) The terms ‘half time’ and ‘half-time’ mean a minimum of 20 hours per week (not to exceed 39 hours per week) in a clinical practice, for a minimum of 45 weeks per year.”.

(3) Section 337(b)(1) of the Public Health Service Act (42 U.S.C. 254j(b)(1)) is amended by striking “Members may not be reappointed to the Council.”.

(4) Section 338B(g)(2)(A) of the Public Health Service Act (42 U.S.C. 254l-1(g)(2)(A)) is amended by striking “\$35,000” and inserting “\$50,000, plus, beginning with fiscal year 2012, an amount determined by the Secretary on an annual basis to reflect inflation.”.

(5) Subsection (a) of section 338C of the Public Health Service Act (42 U.S.C. 254m), as amended by section 5508, is amended—

(A) by striking the second sentence and inserting the following: “The Secretary may treat teaching as clinical practice for up to 20 percent of such period of obligated service.”; and

(B) by adding at the end the following: “Notwithstanding the preceding sentence, with respect to a member of the Corps participating in the teaching health centers graduate medical education program under section 340H, for the purpose of calculating time spent in full-time clinical practice under this section, up to 50 percent of time spent teaching by such member may be counted toward his or her service obligation.”.

SEC. 10502. INFRASTRUCTURE TO EXPAND ACCESS TO CARE.

(a) APPROPRIATION.—There are authorized to be appropriated, and there are appropriated to the Department of Health and Human Services, \$100,000,000 for fiscal year 2010, to remain available for obligation until September 30, 2011, to be used for debt service on, or direct construction or renovation of, a health care facility that provides research, inpatient tertiary care, or outpatient clinical services. Such facility shall be affiliated with an academic health center at a public research university in the United States that contains a State’s sole public academic medical and dental school.

(b) REQUIREMENT.—Amount appropriated under subsection (a) may only be made available by the Secretary of Health and Human Services upon the receipt of an application from the Governor of a State that certifies that—

Certification.

(1) the new health care facility is critical for the provision of greater access to health care within the State;

(2) such facility is essential for the continued financial viability of the State’s sole public medical and dental school and its academic health center;

(3) the request for Federal support represents not more than 40 percent of the total cost of the proposed new facility; and

(4) the State has established a dedicated funding mechanism to provide all remaining funds necessary to complete the construction or renovation of the proposed facility.

42 USC 254b-2.

SEC. 10503. COMMUNITY HEALTH CENTERS AND THE NATIONAL HEALTH SERVICE CORPS FUND.

(a) **PURPOSE.**—It is the purpose of this section to establish a Community Health Center Fund (referred to in this section as the “CHC Fund”), to be administered through the Office of the Secretary of the Department of Health and Human Services to provide for expanded and sustained national investment in community health centers under section 330 of the Public Health Service Act and the National Health Service Corps.

(b) **FUNDING.**—There is authorized to be appropriated, and there is appropriated, out of any monies in the Treasury not otherwise appropriated, to the CHC Fund—

(1) to be transferred to the Secretary of Health and Human Services to provide enhanced funding for the community health center program under section 330 of the Public Health Service Act—

- (A) \$700,000,000 for fiscal year 2011;
- (B) \$800,000,000 for fiscal year 2012;
- (C) \$1,000,000,000 for fiscal year 2013;
- (D) \$1,600,000,000 for fiscal year 2014; and
- (E) \$2,900,000,000 for fiscal year 2015; and

(2) to be transferred to the Secretary of Health and Human Services to provide enhanced funding for the National Health Service Corps—

- (A) \$290,000,000 for fiscal year 2011;
- (B) \$295,000,000 for fiscal year 2012;
- (C) \$300,000,000 for fiscal year 2013;
- (D) \$305,000,000 for fiscal year 2014; and
- (E) \$310,000,000 for fiscal year 2015.

Appropriation
authorization.

(c) **CONSTRUCTION.**—There is authorized to be appropriated, and there is appropriated, out of any monies in the Treasury not otherwise appropriated, \$1,500,000,000 to be available for fiscal years 2011 through 2015 to be used by the Secretary of Health and Human Services for the construction and renovation of community health centers.

(d) **USE OF FUND.**—The Secretary of Health and Human Services shall transfer amounts in the CHC Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for community health centers and the National Health Service Corps.

(e) **AVAILABILITY.**—Amounts appropriated under subsections (b) and (c) shall remain available until expended.

42 USC 256 note.

SEC. 10504. DEMONSTRATION PROJECT TO PROVIDE ACCESS TO AFFORDABLE CARE.

Deadline.

(a) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Health Resources and Services Administration, shall establish a 3 year demonstration project in up to 10 States to provide access to comprehensive health care services to the uninsured at reduced fees. The Secretary shall evaluate the feasibility of expanding the project to additional States.

Evaluation.

(b) **ELIGIBILITY.**—To be eligible to participate in the demonstration project, an entity shall be a State-based, nonprofit, public-private partnership that provides access to comprehensive health care services to the uninsured at reduced fees. Each State in which a participant selected by the Secretary is located shall receive not more than \$2,000,000 to establish and carry out the project for the 3-year demonstration period.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out this section.

Subtitle F—Provisions Relating to Title VI

SEC. 10601. REVISIONS TO LIMITATION ON MEDICARE EXCEPTION TO THE PROHIBITION ON CERTAIN PHYSICIAN REFERRALS FOR HOSPITALS.

(a) **IN GENERAL.**—Section 1877(i) of the Social Security Act, as added by section 6001(a), is amended—

42 USC 1395nn.

(1) in paragraph (1)(A)(i), by striking “February 1, 2010” and inserting “August 1, 2010”; and

(2) in paragraph (3)(A)—

(A) in clause (iii), by striking “August 1, 2011” and inserting “February 1, 2012”; and

(B) in clause (iv), by striking “July 1, 2011” and inserting “January 1, 2012”.

(b) **CONFORMING AMENDMENT.**—Section 6001(b)(2) of this Act is amended by striking “November 1, 2011” and inserting “May 1, 2012”.

42 USC 1395nn
note.

SEC. 10602. CLARIFICATIONS TO PATIENT-CENTERED OUTCOMES RESEARCH.

Section 1181 of the Social Security Act (as added by section 6301) is amended—

42 USC 1320e.

(1) in subsection (d)(2)(B)—

(A) in clause (ii)(IV)—

(i) by inserting “, as described in subparagraph (A)(ii),” after “original research”; and

(ii) by inserting “, as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate” after “publication”; and

(B) by amending clause (iv) to read as follows:

“(iv) **SUBSEQUENT USE OF THE DATA.**—The Institute shall not allow the subsequent use of data from original research in work-for-hire contracts with individuals, entities, or instrumentalities that have a financial interest in the results, unless approved under a data use agreement with the Institute.”;

(2) in subsection (d)(8)(A)(iv), by striking “not be construed as mandates for” and inserting “do not include”; and

(3) in subsection (f)(1)(C), by amending clause (ii) to read as follows:

“(ii) 7 members representing physicians and providers, including 4 members representing physicians (at least 1 of whom is a surgeon), 1 nurse, 1 State-licensed integrative health care practitioner, and 1 representative of a hospital.”.

SEC. 10603. STRIKING PROVISIONS RELATING TO INDIVIDUAL PROVIDER APPLICATION FEES.

42 USC 1395cc. (a) IN GENERAL.—Section 1866(j)(2)(C) of the Social Security Act, as added by section 6401(a), is amended—

- (1) by striking clause (i);
- (2) by redesignating clauses (ii) through (iv), respectively, as clauses (i) through (iii); and
- (3) in clause (i), as redesignated by paragraph (2), by striking “clause (iii)” and inserting “clause (ii)”.

(b) TECHNICAL CORRECTION.—Section 6401(a)(2) of this Act is amended to read as follows:

“(2) by redesignating paragraph (2) as paragraph (8); and”.

SEC. 10604. TECHNICAL CORRECTION TO SECTION 6405.

Paragraphs (1) and (2) of section 6405(b) are amended to read as follows:

42 USC 1395f. “(1) PART A.—Section 1814(a)(2) of the Social Security Act (42 U.S.C. 1395(a)(2)) is amended in the matter preceding subparagraph (A) by inserting ‘, or, in the case of services described in subparagraph (C), a physician enrolled under section 1866(j),’ after ‘in collaboration with a physician,’.

“(2) PART B.—Section 1835(a)(2) of the Social Security Act (42 U.S.C. 1395n(a)(2)) is amended in the matter preceding subparagraph (A) by inserting ‘, or, in the case of services described in subparagraph (A), a physician enrolled under section 1866(j),’ after ‘a physician.’.”.

SEC. 10605. CERTAIN OTHER PROVIDERS PERMITTED TO CONDUCT FACE TO FACE ENCOUNTER FOR HOME HEALTH SERVICES.

(a) PART A.—Section 1814(a)(2)(C) of the Social Security Act (42 U.S.C. 1395f(a)(2)(C)), as amended by section 6407(a)(1), is amended by inserting “, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5)) under the supervision of the physician,” after “himself or herself”.

(b) PART B.—Section 1835(a)(2)(A)(iv) of the Social Security Act, as added by section 6407(a)(2), is amended by inserting “, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5)) under the supervision of the physician,” after “must document that the physician”.

SEC. 10606. HEALTH CARE FRAUD ENFORCEMENT.

28 USC 994 note. (a) FRAUD SENTENCING GUIDELINES.—

(1) DEFINITION.—In this subsection, the term “Federal health care offense” has the meaning given that term in section 24 of title 18, United States Code, as amended by this Act.

(2) REVIEW AND AMENDMENTS.—Pursuant to the authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall—

(A) review the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses;

(B) amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs to provide that the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss by the defendant; and

(C) amend the Federal Sentencing Guidelines to provide—

(i) a 2-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than \$1,000,000 and less than \$7,000,000;

(ii) a 3-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than \$7,000,000 and less than \$20,000,000;

(iii) a 4-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than \$20,000,000; and

(iv) if appropriate, otherwise amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs.

(3) REQUIREMENTS.—In carrying this subsection, the United States Sentencing Commission shall—

(A) ensure that the Federal Sentencing Guidelines and policy statements—

(i) reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud; and

(ii) provide increased penalties for persons convicted of health care fraud offenses in appropriate circumstances;

(B) consult with individuals or groups representing health care fraud victims, law enforcement officials, the health care industry, and the Federal judiciary as part of the review described in paragraph (2);

(C) ensure reasonable consistency with other relevant directives and with other guidelines under the Federal Sentencing Guidelines;

(D) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal Sentencing Guidelines, as in effect on the date of enactment of this Act, provide sentencing enhancements;

(E) make any necessary conforming changes to the Federal Sentencing Guidelines; and

(F) ensure that the Federal Sentencing Guidelines adequately meet the purposes of sentencing.

(b) **INTENT REQUIREMENT FOR HEALTH CARE FRAUD.**—Section 1347 of title 18, United States Code, is amended—

(1) by inserting “(a)” before “Whoever knowingly”; and

(2) by adding at the end the following:

“(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.”

(c) **HEALTH CARE FRAUD OFFENSE.**—Section 24(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking the semicolon and inserting “or section 1128B of the Social Security Act (42 U.S.C. 1320a-7b); or”; and

(2) in paragraph (2)—

(A) by inserting “1349,” after “1343,”; and

(B) by inserting “section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331), or section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131),” after “title,”.

(d) **SUBPOENA AUTHORITY RELATING TO HEALTH CARE.**—

(1) **SUBPOENAS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.**—Section 1510(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by striking “to the grand jury”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “grand jury subpoena” and inserting “subpoena for records”; and

(ii) in the matter following subparagraph (B), by striking “to the grand jury”.

(2) **SUBPOENAS UNDER THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.**—The Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997 et seq.) is amended by inserting after section 3 the following:

42 USC 1997a-1. **“SEC. 3A. SUBPOENA AUTHORITY.**

“(a) **AUTHORITY.**—The Attorney General, or at the direction of the Attorney General, any officer or employee of the Department of Justice may require by subpoena access to any institution that is the subject of an investigation under this Act and to any document, record, material, file, report, memorandum, policy, procedure, investigation, video or audio recording, or quality assurance report relating to any institution that is the subject of an investigation under this Act to determine whether there are conditions which deprive persons residing in or confined to the institution of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

“(b) **ISSUANCE AND ENFORCEMENT OF SUBPOENAS.**—

“(1) **ISSUANCE.**—Subpoenas issued under this section—

“(A) shall bear the signature of the Attorney General or any officer or employee of the Department of Justice as designated by the Attorney General; and

“(B) shall be served by any person or class of persons designated by the Attorney General or a designated officer or employee for that purpose.

“(2) **ENFORCEMENT.**—In the case of contumacy or failure to obey a subpoena issued under this section, the United States district court for the judicial district in which the institution

is located may issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt that court.

“(c) PROTECTION OF SUBPOENAED RECORDS AND INFORMATION.—Any document, record, material, file, report, memorandum, policy, procedure, investigation, video or audio recording, or quality assurance report or other information obtained under a subpoena issued under this section—

“(1) may not be used for any purpose other than to protect the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States of persons who reside, have resided, or will reside in an institution;

“(2) may not be transmitted by or within the Department of Justice for any purpose other than to protect the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States of persons who reside, have resided, or will reside in an institution; and

“(3) shall be redacted, obscured, or otherwise altered if used in any publicly available manner so as to prevent the disclosure of any personally identifiable information.”.

SEC. 10607. STATE DEMONSTRATION PROGRAMS TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.), as amended by this Act, is further amended by adding at the end the following:

“SEC. 399V-4. STATE DEMONSTRATION PROGRAMS TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

Grants.
42 USC 280g-15.

“(a) IN GENERAL.—The Secretary is authorized to award demonstration grants to States for the development, implementation, and evaluation of alternatives to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations. In awarding such grants, the Secretary shall ensure the diversity of the alternatives so funded.

“(b) DURATION.—The Secretary may award grants under subsection (a) for a period not to exceed 5 years.

“(c) CONDITIONS FOR DEMONSTRATION GRANTS.—

“(1) REQUIREMENTS.—Each State desiring a grant under subsection (a) shall develop an alternative to current tort litigation that—

“(A) allows for the resolution of disputes over injuries allegedly caused by health care providers or health care organizations; and

“(B) promotes a reduction of health care errors by encouraging the collection and analysis of patient safety data related to disputes resolved under subparagraph (A) by organizations that engage in efforts to improve patient safety and the quality of health care.

“(2) ALTERNATIVE TO CURRENT TORT LITIGATION.—Each State desiring a grant under subsection (a) shall demonstrate how the proposed alternative described in paragraph (1)(A)—

“(A) makes the medical liability system more reliable by increasing the availability of prompt and fair resolution of disputes;

“(B) encourages the efficient resolution of disputes;

“(C) encourages the disclosure of health care errors;

“(D) enhances patient safety by detecting, analyzing, and helping to reduce medical errors and adverse events;

“(E) improves access to liability insurance;

“(F) fully informs patients about the differences in the alternative and current tort litigation;

“(G) provides patients the ability to opt out of or voluntarily withdraw from participating in the alternative at any time and to pursue other options, including litigation, outside the alternative;

“(H) would not conflict with State law at the time of the application in a way that would prohibit the adoption of an alternative to current tort litigation; and

“(I) would not limit or curtail a patient’s existing legal rights, ability to file a claim in or access a State’s legal system, or otherwise abrogate a patient’s ability to file a medical malpractice claim.

“(3) SOURCES OF COMPENSATION.—Each State desiring a grant under subsection (a) shall identify the sources from and methods by which compensation would be paid for claims resolved under the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods shall to the extent practicable provide financial incentives for activities that improve patient safety.

“(4) SCOPE.—

“(A) IN GENERAL.—Each State desiring a grant under subsection (a) shall establish a scope of jurisdiction (such as Statewide, designated geographic region, a designated area of health care practice, or a designated group of health care providers or health care organizations) for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative. No scope of jurisdiction shall be established under this paragraph that is based on a health care payer or patient population.

“(B) NOTIFICATION OF PATIENTS.—A State shall demonstrate how patients would be notified that they are receiving health care services that fall within such scope, and the process by which they may opt out of or voluntarily withdraw from participating in the alternative. The decision of the patient whether to participate or continue participating in the alternative process shall be made at any time and shall not be limited in any way.

“(5) PREFERENCE IN AWARDING DEMONSTRATION GRANTS.—In awarding grants under subsection (a), the Secretary shall give preference to States—

“(A) that have developed the proposed alternative through substantive consultation with relevant stakeholders, including patient advocates, health care providers and health care organizations, attorneys with expertise in representing patients and health care providers, medical malpractice insurers, and patient safety experts;

“(B) that make proposals that are likely to enhance patient safety by detecting, analyzing, and helping to reduce medical errors and adverse events; and

“(C) that make proposals that are likely to improve access to liability insurance.

“(d) APPLICATION.—

“(1) IN GENERAL.—Each State desiring a grant under subsection (a) shall submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.

“(2) REVIEW PANEL.—

“(A) IN GENERAL.—In reviewing applications under paragraph (1), the Secretary shall consult with a review panel composed of relevant experts appointed by the Comptroller General. Establishment.

“(B) COMPOSITION.—

“(i) NOMINATIONS.—The Comptroller General shall solicit nominations from the public for individuals to serve on the review panel.

“(ii) APPOINTMENT.—The Comptroller General shall appoint, at least 9 but not more than 13, highly qualified and knowledgeable individuals to serve on the review panel and shall ensure that the following entities receive fair representation on such panel:

“(I) Patient advocates.

“(II) Health care providers and health care organizations.

“(III) Attorneys with expertise in representing patients and health care providers.

“(IV) Medical malpractice insurers.

“(V) State officials.

“(VI) Patient safety experts.

“(C) CHAIRPERSON.—The Comptroller General, or an individual within the Government Accountability Office designated by the Comptroller General, shall be the chairperson of the review panel.

“(D) AVAILABILITY OF INFORMATION.—The Comptroller General shall make available to the review panel such information, personnel, and administrative services and assistance as the review panel may reasonably require to carry out its duties.

“(E) INFORMATION FROM AGENCIES.—The review panel may request directly from any department or agency of the United States any information that such panel considers necessary to carry out its duties. To the extent consistent with applicable laws and regulations, the head of such department or agency shall furnish the requested information to the review panel.

“(e) REPORTS.—

“(1) BY STATE.—Each State receiving a grant under subsection (a) shall submit to the Secretary an annual report evaluating the effectiveness of activities funded with grants awarded under such subsection. Such report shall, at a minimum, include the impact of the activities funded on patient safety and on the availability and price of medical liability insurance.

“(2) BY SECRETARY.—The Secretary shall submit to Congress an annual compendium of the reports submitted under paragraph (1) and an analysis of the activities funded under subsection (a) that examines any differences that result from such activities in terms of the quality of care, number and nature of medical errors, medical resources used, length of

time for dispute resolution, and the availability and price of liability insurance.

“(f) TECHNICAL ASSISTANCE.—

“(1) IN GENERAL.—The Secretary shall provide technical assistance to the States applying for or awarded grants under subsection (a).

“(2) REQUIREMENTS.—Technical assistance under paragraph (1) shall include—

“(A) guidance on non-economic damages, including the consideration of individual facts and circumstances in determining appropriate payment, guidance on identifying avoidable injuries, and guidance on disclosure to patients of health care errors and adverse events; and

“(B) the development, in consultation with States, of common definitions, formats, and data collection infrastructure for States receiving grants under this section to use in reporting to facilitate aggregation and analysis of data both within and between States.

“(3) USE OF COMMON DEFINITIONS, FORMATS, AND DATA COLLECTION INFRASTRUCTURE.—States not receiving grants under this section may also use the common definitions, formats, and data collection infrastructure developed under paragraph (2)(B).

“(g) EVALUATION.—

“(1) IN GENERAL.—The Secretary, in consultation with the review panel established under subsection (d)(2), shall enter into a contract with an appropriate research organization to conduct an overall evaluation of the effectiveness of grants awarded under subsection (a) and to annually prepare and submit a report to Congress. Such an evaluation shall begin not later than 18 months following the date of implementation of the first program funded by a grant under subsection (a).

“(2) CONTENTS.—The evaluation under paragraph (1) shall include—

“(A) an analysis of the effects of the grants awarded under subsection (a) with regard to the measures described in paragraph (3);

“(B) for each State, an analysis of the extent to which the alternative developed under subsection (c)(1) is effective in meeting the elements described in subsection (c)(2);

“(C) a comparison among the States receiving grants under subsection (a) of the effectiveness of the various alternatives developed by such States under subsection (c)(1);

“(D) a comparison, considering the measures described in paragraph (3), of States receiving grants approved under subsection (a) and similar States not receiving such grants; and

“(E) a comparison, with regard to the measures described in paragraph (3), of—

“(i) States receiving grants under subsection (a);

“(ii) States that enacted, prior to the date of enactment of the Patient Protection and Affordable Care Act, any cap on non-economic damages; and

“(iii) States that have enacted, prior to the date of enactment of the Patient Protection and Affordable Care Act, a requirement that the complainant obtain

Contracts.
Deadlines.
Reports.

an opinion regarding the merit of the claim, although the substance of such opinion may have no bearing on whether the complainant may proceed with a case.

“(3) MEASURES.—The evaluations under paragraph (2) shall analyze and make comparisons on the basis of—

“(A) the nature and number of disputes over injuries allegedly caused by health care providers or health care organizations;

“(B) the nature and number of claims in which tort litigation was pursued despite the existence of an alternative under subsection (a);

“(C) the disposition of disputes and claims, including the length of time and estimated costs to all parties;

“(D) the medical liability environment;

“(E) health care quality;

“(F) patient safety in terms of detecting, analyzing, and helping to reduce medical errors and adverse events;

“(G) patient and health care provider and organization satisfaction with the alternative under subsection (a) and with the medical liability environment; and

“(H) impact on utilization of medical services, appropriately adjusted for risk.

“(4) FUNDING.—The Secretary shall reserve 5 percent of the amount appropriated in each fiscal year under subsection (k) to carry out this subsection.

“(h) MEDPAC AND MACPAC REPORTS.—

“(1) MEDPAC.—The Medicare Payment Advisory Commission shall conduct an independent review of the alternatives to current tort litigation that are implemented under grants under subsection (a) to determine the impact of such alternatives on the Medicare program under title XVIII of the Social Security Act, and its beneficiaries.

“(2) MACPAC.—The Medicaid and CHIP Payment and Access Commission shall conduct an independent review of the alternatives to current tort litigation that are implemented under grants under subsection (a) to determine the impact of such alternatives on the Medicaid or CHIP programs under titles XIX and XXI of the Social Security Act, and their beneficiaries.

“(3) REPORTS.—Not later than December 31, 2016, the Medicare Payment Advisory Commission and the Medicaid and CHIP Payment and Access Commission shall each submit to Congress a report that includes the findings and recommendations of each respective Commission based on independent reviews conducted under paragraphs (1) and (2), including an analysis of the impact of the alternatives reviewed on the efficiency and effectiveness of the respective programs.

“(i) OPTION TO PROVIDE FOR INITIAL PLANNING GRANTS.—Of the funds appropriated pursuant to subsection (k), the Secretary may use a portion not to exceed \$500,000 per State to provide planning grants to such States for the development of demonstration project applications meeting the criteria described in subsection (c). In selecting States to receive such planning grants, the Secretary shall give preference to those States in which State law at the time of the application would not prohibit the adoption of an alternative to current tort litigation.

“(j) DEFINITIONS.—In this section:

“(1) **HEALTH CARE SERVICES.**—The term ‘health care services’ means any services provided by a health care provider, or by any individual working under the supervision of a health care provider, that relate to—

“(A) the diagnosis, prevention, or treatment of any human disease or impairment; or

“(B) the assessment of the health of human beings.

“(2) **HEALTH CARE ORGANIZATION.**—The term ‘health care organization’ means any individual or entity which is obligated to provide, pay for, or administer health benefits under any health plan.

“(3) **HEALTH CARE PROVIDER.**—The term ‘health care provider’ means any individual or entity—

“(A) licensed, registered, or certified under Federal or State laws or regulations to provide health care services; or

“(B) required to be so licensed, registered, or certified but that is exempted by other statute or regulation.

“(k) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section, \$50,000,000 for the 5-fiscal year period beginning with fiscal year 2011.

“(l) **CURRENT STATE EFFORTS TO ESTABLISH ALTERNATIVE TO TORT LITIGATION.**—Nothing in this section shall be construed to limit any prior, current, or future efforts of any State to establish any alternative to tort litigation.

“(m) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as limiting states’ authority over or responsibility for their state justice systems.”.

SEC. 10608. EXTENSION OF MEDICAL MALPRACTICE COVERAGE TO FREE CLINICS.

(a) **IN GENERAL.**—Section 224(o)(1) of the Public Health Service Act (42 U.S.C. 233(o)(1)) is amended by inserting after “to an individual” the following: “, or an officer, governing board member, employee, or contractor of a free clinic shall in providing services for the free clinic,”.

42 USC 233 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of enactment of this Act and apply to any act or omission which occurs on or after that date.

Drugs and drug abuse.

SEC. 10609. LABELING CHANGES.

Section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) is amended by adding at the end the following:

Deadlines.

“(10)(A) If the proposed labeling of a drug that is the subject of an application under this subsection differs from the listed drug due to a labeling revision described under clause (i), the drug that is the subject of such application shall, notwithstanding any other provision of this Act, be eligible for approval and shall not be considered misbranded under section 502 if—

“(i) the application is otherwise eligible for approval under this subsection but for expiration of patent, an exclusivity period, or of a delay in approval described in paragraph (5)(B)(iii), and a revision to the labeling of the listed drug has been approved by the Secretary within 60 days of such expiration;

“(ii) the labeling revision described under clause (i) does not include a change to the ‘Warnings’ section of the labeling;

“(iii) the sponsor of the application under this subsection agrees to submit revised labeling of the drug that is the subject of such application not later than 60 days after the notification of any changes to such labeling required by the Secretary; and

“(iv) such application otherwise meets the applicable requirements for approval under this subsection.

“(B) If, after a labeling revision described in subparagraph (A)(i), the Secretary determines that the continued presence in interstate commerce of the labeling of the listed drug (as in effect before the revision described in subparagraph (A)(i)) adversely impacts the safe use of the drug, no application under this subsection shall be eligible for approval with such labeling.” Determination.

Subtitle G—Provisions Relating to Title VIII

SEC. 10801. PROVISIONS RELATING TO TITLE VIII.

(a) Title XXXII of the Public Health Service Act, as added by section 8002(a)(1), is amended—

(1) in section 3203—

(A) in subsection (a)(1), by striking subparagraph (E);

(B) in subsection (b)(1)(C)(i), by striking “for enrollment” and inserting “for reenrollment”; and

(C) in subsection (c)(1), by striking “, as part of their automatic enrollment in the CLASS program,”; and

(2) in section 3204—

(A) in subsection (c)(2), by striking subparagraph (A) and inserting the following:

“(A) receives wages or income on which there is imposed a tax under section 3101(a) or 3201(a) of the Internal Revenue Code of 1986; or”;

(B) in subsection (d), by striking “subparagraph (B) or (C) of subsection (c)(1)” and inserting “subparagraph (A) or (B) of subsection (c)(2)”;

(C) in subsection (e)(2)(A), by striking “subparagraph (A)” and inserting “paragraph (1)”;

(D) in subsection (g)(1), by striking “has elected to waive enrollment” and inserting “has not enrolled”.

(b) Section 8002 of this Act is amended in the heading for subsection (d), by striking “INFORMATION ON SUPPLEMENTAL COVERAGE” and inserting “CLASS PROGRAM INFORMATION”.

(c) Section 6021(d)(2)(A)(iv) of the Deficit Reduction Act of 2005, as added by section 8002(d) of this Act, is amended by striking “and coverage available” and all that follows through “that program,”.

42 USC 300ll–2.

42 USC 300ll–3.

42 USC 1396p note.

Subtitle H—Provisions Relating to Title IX

SEC. 10901. MODIFICATIONS TO EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE.

(a) LONGSHORE WORKERS TREATED AS EMPLOYEES ENGAGED IN HIGH-RISK PROFESSIONS.—Paragraph (3) of section 4980I(f) of the Internal Revenue Code of 1986, as added by section 9001 of this Act, is amended by inserting “individuals whose primary

26 USC 4980I.

work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof,” before “and individuals engaged in the construction, mining”.

(b) EXEMPTION FROM HIGH-COST INSURANCE TAX INCLUDES CERTAIN ADDITIONAL EXCEPTED BENEFITS.—Clause (i) of section 4980I(d)(1)(B) of the Internal Revenue Code of 1986, as added by section 9001 of this Act, is amended by striking “section 9832(c)(1)(A)” and inserting “section 9832(c)(1) (other than subparagraph (G) thereof)”.

26 USC 4980I
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

SEC. 10902. INFLATION ADJUSTMENT OF LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.

(a) IN GENERAL.—Subsection (i) of section 125 of the Internal Revenue Code of 1986, as added by section 9005 of this Act, is amended to read as follows:

26 USC 125.

“(i) LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—

“(1) IN GENERAL.—For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of \$2,500 made to such arrangement.

Effective date.

“(2) ADJUSTMENT FOR INFLATION.—In the case of any taxable year beginning after December 31, 2011, the dollar amount in paragraph (1) shall be increased by an amount equal to—

“(A) such amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ‘calendar year 2010’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any increase determined under this paragraph is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.”

26 USC 125 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 10903. MODIFICATION OF LIMITATION ON CHARGES BY CHARITABLE HOSPITALS.

(a) IN GENERAL.—Subparagraph (A) of section 501(r)(5) of the Internal Revenue Code of 1986, as added by section 9007 of this Act, is amended by striking “the lowest amounts charged” and inserting “the amounts generally billed”.

26 USC 501.

26 USC 501 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10904. MODIFICATION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS.

26 USC 4001
note prec.

(a) IN GENERAL.—Section 9009 of this Act is amended—

(1) by striking “2009” in subsection (a)(1) and inserting “2010”,

(2) by inserting “(\$3,000,000,000 after 2017)” after “\$2,000,000,000”, and

(3) by striking “2008” in subsection (i) and inserting “2009”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 9009.

26 USC 4001
note prec.

SEC. 10905. MODIFICATION OF ANNUAL FEE ON HEALTH INSURANCE PROVIDERS.

26 USC 4001
note prec.

(a) DETERMINATION OF FEE AMOUNT.—Subsection (b) of section 9010 of this Act is amended to read as follows:

“(b) DETERMINATION OF FEE AMOUNT.—

“(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

“(A) the covered entity’s net premiums written with respect to health insurance for any United States health risk that are taken into account during the preceding calendar year, bears to

“(B) the aggregate net premiums written with respect to such health insurance of all covered entities that are taken into account during such preceding calendar year.

“(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

“With respect to a covered entity’s net premiums written during the calendar year that are:

The percentage of net premiums written that are taken into account is:

Not more than \$25,000,000	0 percent
More than \$25,000,000 but not more than \$50,000,000.	50 percent
More than \$50,000,000	100 percent.

“(3) SECRETARIAL DETERMINATION.—The Secretary shall calculate the amount of each covered entity’s fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity’s net premiums written with respect to any United States health risk on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.”.

(b) APPLICABLE AMOUNT.—Subsection (e) of section 9010 of this Act is amended to read as follows:

“(e) APPLICABLE AMOUNT.—For purposes of subsection (b)(1), the applicable amount shall be determined in accordance with the following table:

“Calendar year	Applicable amount
2011	\$2,000,000,000
2012	\$4,000,000,000

2013	\$7,000,000,000
2014, 2015 and 2016	\$9,000,000,000
2017 and thereafter	\$10,000,000,000.”.

(c) EXEMPTION FROM ANNUAL FEE ON HEALTH INSURANCE FOR CERTAIN NONPROFIT ENTITIES.—Section 9010(c)(2) of this Act is amended by striking “or” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting a comma, and by adding at the end the following new subparagraphs:

“(C) any entity—

“(i)(I) which is incorporated as, is a wholly owned subsidiary of, or is a wholly owned affiliate of, a non-profit corporation under a State law, or

“(II) which is described in section 501(c)(4) of the Internal Revenue Code of 1986 and the activities of which consist of providing commercial-type insurance (within the meaning of section 501(m) of such Code),

“(ii) the premium rate increases of which are regulated by a State authority,

“(iii) which, as of the date of the enactment of this section, acts as the insurer of last resort in the State and is subject to State guarantee issue requirements, and

“(iv) for which the medical loss ratio (determined in a manner consistent with the determination of such ratio under section 2718(b)(1)(A) of the Public Health Service Act) with respect to the individual insurance market for such entity for the calendar year is not less than 100 percent,

“(D) any entity—

“(i)(I) which is incorporated as a nonprofit corporation under a State law, or

“(II) which is described in section 501(c)(4) of the Internal Revenue Code of 1986 and the activities of which consist of providing commercial-type insurance (within the meaning of section 501(m) of such Code), and

“(ii) for which the medical loss ratio (as so determined)—

“(I) with respect to each of the individual, small group, and large group insurance markets for such entity for the calendar year is not less than 90 percent, and

“(II) with respect to all such markets for such entity for the calendar year is not less than 92 percent, or

“(E) any entity—

“(i) which is a mutual insurance company,

“(ii) which for the period reported on the 2008 Accident and Health Policy Experience Exhibit of the National Association of Insurance Commissioners had—

“(I) a market share of the insured population of a State of at least 40 but not more than 60 percent, and

“(II) with respect to all markets described in subparagraph (D)(ii)(I), a medical loss ratio of not less than 90 percent, and

“(iii) with respect to annual payment dates in calendar years after 2011, for which the medical loss ratio (determined in a manner consistent with the determination of such ratio under section 2718(b)(1)(A) of the Public Health Service Act) with respect to all such markets for such entity for the preceding calendar year is not less than 89 percent (except that with respect to such annual payment date for 2012, the calculation under 2718(b)(1)(B)(ii) of such Act is determined by reference to the previous year, and with respect to such annual payment date for 2013, such calculation is determined by reference to the average for the previous 2 years).”.

(d) CERTAIN INSURANCE EXEMPTED FROM FEE.—Paragraph (3) of section 9010(h) of this Act is amended to read as follows:

“(3) HEALTH INSURANCE.—The term ‘health insurance’ shall not include—

“(A) any insurance coverage described in paragraph (1)(A) or (3) of section 9832(c) of the Internal Revenue Code of 1986,

“(B) any insurance for long-term care, or

“(C) any medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act).”.

(e) ANTI-AVOIDANCE GUIDANCE.—Subsection (i) of section 9010 of this Act is amended by inserting “and shall prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this section, including inappropriate actions taken to qualify as an exempt entity under subsection (c)(2)” after “section”.

(f) CONFORMING AMENDMENTS.—

(1) Section 9010(a)(1) of this Act is amended by striking “2009” and inserting “2010”.

(2) Section 9010(c)(2)(B) of this Act is amended by striking “(except” and all that follows through “1323”.

(3) Section 9010(c)(3) of this Act is amended by adding at the end the following new sentence: “If any entity described in subparagraph (C)(i)(I), (D)(i)(I), or (E)(i) of paragraph (2) is treated as a covered entity by reason of the application of the preceding sentence, the net premiums written with respect to health insurance for any United States health risk of such entity shall not be taken into account for purposes of this section.”.

(4) Section 9010(g)(1) of this Act is amended by striking “and third party administration agreement fees”.

(5) Section 9010(j) of this Act is amended—

(A) by striking “2008” and inserting “2009”, and

(B) by striking “, and any third party administration agreement fees received after such date”.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 9010.

SEC. 10906. MODIFICATIONS TO ADDITIONAL HOSPITAL INSURANCE TAX ON HIGH-INCOME TAXPAYERS.

26 USC 3101. (a) FICA.—Section 3101(b)(2) of the Internal Revenue Code of 1986, as added by section 9015(a)(1) of this Act, is amended by striking “0.5 percent” and inserting “0.9 percent”.

26 USC 1401. (b) SECA.—Section 1401(b)(2)(A) of the Internal Revenue Code of 1986, as added by section 9015(b)(1) of this Act, is amended by striking “0.5 percent” and inserting “0.9 percent”.

26 USC 1401 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012.

SEC. 10907. EXCISE TAX ON INDOOR TANNING SERVICES IN LIEU OF ELECTIVE COSMETIC MEDICAL PROCEDURES.

26 USC 5000B and note. (a) IN GENERAL.—The provisions of, and amendments made by, section 9017 of this Act are hereby deemed null, void, and of no effect.

(b) EXCISE TAX ON INDOOR TANNING SERVICES.—Subtitle D of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new chapter:

“CHAPTER 49—COSMETIC SERVICES

“Sec. 5000B. Imposition of tax on indoor tanning services.

26 USC 5000B. **“SEC. 5000B. IMPOSITION OF TAX ON INDOOR TANNING SERVICES.**

“(a) IN GENERAL.—There is hereby imposed on any indoor tanning service a tax equal to 10 percent of the amount paid for such service (determined without regard to this section), whether paid by insurance or otherwise.

Definitions. “(b) INDOOR TANNING SERVICE.—For purposes of this section—

“(1) IN GENERAL.—The term ‘indoor tanning service’ means a service employing any electronic product designed to incorporate 1 or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

“(2) EXCLUSION OF PHOTOTHERAPY SERVICES.—Such term does not include any phototherapy service performed by a licensed medical professional.

“(c) PAYMENT OF TAX.—

“(1) IN GENERAL.—The tax imposed by this section shall be paid by the individual on whom the service is performed.

Deadline. “(2) COLLECTION.—Every person receiving a payment for services on which a tax is imposed under subsection (a) shall collect the amount of the tax from the individual on whom the service is performed and remit such tax quarterly to the Secretary at such time and in such manner as provided by the Secretary.

“(3) SECONDARY LIABILITY.—Where any tax imposed by subsection (a) is not paid at the time payments for indoor tanning services are made, then to the extent that such tax is not collected, such tax shall be paid by the person who performs the service.”.

(c) CLERICAL AMENDMENT.—The table of chapter for subtitle D of the Internal Revenue Code of 1986, as amended by this Act, is amended by inserting after the item relating to chapter 48 the following new item:

“CHAPTER 49—COSMETIC SERVICES”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to services performed on or after July 1, 2010. 26 USC 5000B note.

SEC. 10908. EXCLUSION FOR ASSISTANCE PROVIDED TO PARTICIPANTS IN STATE STUDENT LOAN REPAYMENT PROGRAMS FOR CERTAIN HEALTH PROFESSIONALS.

(a) **IN GENERAL.**—Paragraph (4) of section 108(f) of the Internal Revenue Code of 1986 is amended to read as follows:

26 USC 108.

“(4) **PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.**—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to amounts received by an individual in taxable years beginning after December 31, 2008. 26 USC 108 note.

SEC. 10909. EXPANSION OF ADOPTION CREDIT AND ADOPTION ASSISTANCE PROGRAMS.

(a) **INCREASE IN DOLLAR LIMITATION.**—

(1) **ADOPTION CREDIT.**—

(A) **IN GENERAL.**—Paragraph (1) of section 23(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking “\$10,000” and inserting “\$13,170”. 26 USC 23.

(B) **CHILD WITH SPECIAL NEEDS.**—Paragraph (3) of section 23(a) of such Code (relating to \$10,000 credit for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking “\$10,000” and inserting “\$13,170”, and

(ii) in the heading by striking “\$10,000” and inserting “\$13,170”.

(C) **CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.**—Subsection (h) of section 23 of such Code (relating to adjustments for inflation) is amended to read as follows:

“(h) **ADJUSTMENTS FOR INFLATION.**—

Effective dates.

“(1) **DOLLAR LIMITATIONS.**—In the case of a taxable year beginning after December 31, 2010, each of the dollar amounts in subsections (a)(3) and (b)(1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof. If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

“(2) **INCOME LIMITATION.**—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A)(i) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph (B) thereof. If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”.

(2) ADOPTION ASSISTANCE PROGRAMS.—

26 USC 137.

(A) IN GENERAL.—Paragraph (1) of section 137(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking “\$10,000” and inserting “\$13,170”.

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (2) of section 137(a) of such Code (relating to \$10,000 exclusion for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking “\$10,000” and inserting “\$13,170”, and

(ii) in the heading by striking “\$10,000” and inserting “\$13,170”.

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (f) of section 137 of such Code (relating to adjustments for inflation) is amended to read as follows:

Effective dates.

“(f) ADJUSTMENTS FOR INFLATION.—

“(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2010, each of the dollar amounts in subsections (a)(2) and (b)(1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof. If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

“(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph thereof. If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”.

(b) CREDIT MADE REFUNDABLE.—

(1) CREDIT MOVED TO SUBPART RELATING TO REFUNDABLE CREDITS.—The Internal Revenue Code of 1986 is amended—

26 USC 36C.

(A) by redesignating section 23, as amended by subsection (a), as section 36C, and

(B) by moving section 36C (as so redesignated) from subpart A of part IV of subchapter A of chapter 1 to the location immediately before section 37 in subpart C of part IV of subchapter A of chapter 1.

(2) CONFORMING AMENDMENTS.—

(A) Section 24(b)(3)(B) of such Code is amended by striking “23,”. 26 USC 24.

(B) Section 25(e)(1)(C) of such Code is amended by striking “23,” both places it appears. 26 USC 25.

(C) Section 25A(i)(5)(B) of such Code is amended by striking “23, 25D,” and inserting “25D”. 26 USC 25A.

(D) Section 25B(g)(2) of such Code is amended by striking “23,”. 26 USC 25B.

(E) Section 26(a)(1) of such Code is amended by striking “23,”. 26 USC 26.

(F) Section 30(c)(2)(B)(ii) of such Code is amended by striking “23, 25D,” and inserting “25D”. 26 USC 30.

(G) Section 30B(g)(2)(B)(ii) of such Code is amended by striking “23,”. 26 USC 30B.

(H) Section 30D(c)(2)(B)(ii) of such Code is amended by striking “sections 23 and” and inserting “section”. 26 USC 30D.

(I) Section 36C of such Code, as so redesignated, is amended— 26 USC 36C.

- (i) by striking paragraph (4) of subsection (b), and
- (ii) by striking subsection (c).

(J) Section 137 of such Code is amended— 26 USC 137.

- (i) by striking “section 23(d)” in subsection (d) and inserting “section 36C(d),” and

- (ii) by striking “section 23” in subsection (e) and inserting “section 36C”.

(K) Section 904(i) of such Code is amended by striking “23,”. 26 USC 904.

(L) Section 1016(a)(26) is amended by striking “23(g)” and inserting “36C(g)”. 26 USC 1016.

(M) Section 1400C(d) of such Code is amended by striking “23,”. 26 USC 1400C.

(N) Section 6211(b)(4)(A) of such Code is amended by inserting “36C,” before “53(e)”. 26 USC 6211.

(O) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code of 1986 is amended by striking the item relating to section 23.

(P) Paragraph (2) of section 1324(b) of title 31, United States Code, as amended by this Act, is amended by inserting “36C,” after “36B,”.

(Q) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by this Act, is amended by inserting after the item relating to section 36B the following new item:

“Sec. 36C. Adoption expenses.”.

(c) APPLICATION AND EXTENSION OF EGTRRA SUNSET.—Notwithstanding section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001, such section shall apply to the amendments made by this section and the amendments made by section 202 of such Act by substituting “December 31, 2011” for “December 31, 2010” in subsection (a)(1) thereof. 26 USC 1 note.

26 USC 1 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

Approved March 23, 2010.

LEGISLATIVE HISTORY—H.R. 3590:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 7, 8, considered and passed House.

Nov. 21, 30, Dec. 1–10, 13, 15, 16, 19–24, considered and passed Senate, amended.

Vol. 156 (2010): Mar. 21, House concurred in Senate amendments.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Mar. 23, Presidential remarks.



Public Law 111–149
111th Congress

An Act

To amend the North American Wetlands Conservation Act to establish requirements regarding payment of the non-Federal share of the costs of wetlands conservation projects in Canada that are funded under that Act, and for other purposes.

Mar. 25, 2010
[H.R. 3433]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAYMENT OF NON-FEDERAL SHARE OF PROJECTS IN MEXICO AND CANADA UNDER NORTH AMERICAN WETLANDS CONSERVATION ACT.

(a) IN GENERAL.—Section 8(b)(3) of the North American Wetlands Conservation Act (16 U.S.C. 4407(b)(3)) is amended to read as follows:

“(3) The non-Federal share of the United States contribution to the costs of such projects may not be derived from Federal grant programs. In the case of a project carried out in Canada or Mexico, the non-Federal share of the costs of the project may include cash contributions from non-United States sources that are used to pay costs of the project. In the case of a project carried out in Canada, funds from Canadian sources may comprise up to 50 percent of the non-Federal share of the costs of the project.”.

(b) APPLICATION.—The amendment made by subsection (a) shall apply with respect to any approved and active wetlands conservation project (as that term is used in section 8(b)(1) of such Act) carried out with assistance provided under such Act, including such a project approved before the date of the enactment of this Act.

16 USC 4407
note.

Approved March 25, 2010.

LEGISLATIVE HISTORY—H.R. 3433:

HOUSE REPORTS: No. 111–296 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–158 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 13, considered and passed House.

Vol. 156 (2010): Mar. 9, considered and passed Senate.



Public Law 111–150
111th Congress

An Act

Mar. 26, 2010
[H.R. 4938]

To permit the use of previously appropriated funds to extend the Small Business Loan Guarantee Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF SMALL BUSINESS LOAN GUARANTEE PROGRAM.

(a) **AUTHORITY TO USE FUNDS.**—Up to \$40,000,000 of the amount made available under the heading “Small Business Administration—Business Loans Program Account” in title V of division C of the Consolidated Appropriations Act, 2010 (Public Law 111–117) also may be utilized for fee reductions and eliminations under section 501 of title V of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) and for the cost of guaranteed loans under section 502 of such title. Such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

(b) **EXTENSION OF SUNSET DATE.**—Section 502(f) of title V of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) is amended by striking “March 28, 2010” and inserting “April 30, 2010”.

123 Stat. 153.

Approved March 26, 2010.

LEGISLATIVE HISTORY—H.R. 4938:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 25, considered and passed House and Senate.



Public Law 111–151
111th Congress

An Act

To reauthorize the Satellite Home Viewer Extension and Reauthorization Act of 2004 through April 30, 2010, and for other purposes.

Mar. 26, 2010
[S. 3186]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the “Satellite Television Extension Act of 2010”.

Satellite
Television
Extension Act of
2010.
17 USC 101 note.

SEC. 2. SATELLITE TELEVISION EXTENSION.

(a) AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.—

(1) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(A) in subsection (c)(1)(E), by striking “March 28, 2010” and inserting “April 30, 2010”; and

(B) in subsection (e), by striking “March 28, 2010” and inserting “April 30, 2010”.

(2) TERMINATION OF LICENSE.—Section 1003(a)(2)(A) of Public Law 111–118 is amended by striking “March 28, 2010”, and inserting “April 30, 2010”.

17 USC 119 note.

(b) AMENDMENTS TO COMMUNICATIONS ACT OF 1934.—Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) in paragraph (2)(C), by striking “March 28, 2010” and inserting “April 30, 2010”; and

(2) in paragraph (3)(C), by striking “March 29, 2010” each place it appears in clauses (ii) and (iii) and inserting “May 1, 2010”.

Approved March 26, 2010.

LEGISLATIVE HISTORY—S. 3186:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 25, considered and passed Senate and House.



Public Law 111–152
111th Congress

An Act

To provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

Mar. 30, 2010
[H.R. 4872]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Health Care and Education Reconciliation Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Health Care and
Education
Reconciliation
Act of 2010.
42 USC 1305
note.

Sec. 1. Short title; table of contents.

TITLE I—COVERAGE, MEDICARE, MEDICAID, AND REVENUES

Subtitle A—Coverage

- Sec. 1001. Tax credits.
- Sec. 1002. Individual responsibility.
- Sec. 1003. Employer responsibility.
- Sec. 1004. Income definitions.
- Sec. 1005. Implementation funding.

Subtitle B—Medicare

- Sec. 1101. Closing the medicare prescription drug “donut hole”.
- Sec. 1102. Medicare Advantage payments.
- Sec. 1103. Savings from limits on MA plan administrative costs.
- Sec. 1104. Disproportionate share hospital (DSH) payments.
- Sec. 1105. Market basket updates.
- Sec. 1106. Physician ownership-referral.
- Sec. 1107. Payment for imaging services.
- Sec. 1108. PE GPCI adjustment for 2010.
- Sec. 1109. Payment for qualifying hospitals.

Subtitle C—Medicaid

- Sec. 1201. Federal funding for States.
- Sec. 1202. Payments to primary care physicians.
- Sec. 1203. Disproportionate share hospital payments.
- Sec. 1204. Funding for the territories.
- Sec. 1205. Delay in Community First Choice option.
- Sec. 1206. Drug rebates for new formulations of existing drugs.

Subtitle D—Reducing Fraud, Waste, and Abuse

- Sec. 1301. Community mental health centers.
- Sec. 1302. Medicare prepayment medical review limitations.
- Sec. 1303. Funding to fight fraud, waste, and abuse.
- Sec. 1304. 90-day period of enhanced oversight for initial claims of DME suppliers.

Subtitle E—Provisions Relating to Revenue

- Sec. 1401. High-cost plan excise tax.
- Sec. 1402. Unearned income Medicare contribution.
- Sec. 1403. Delay of limitation on health flexible spending arrangements under cafeteria plans.

- Sec. 1404. Brand name pharmaceuticals.
- Sec. 1405. Excise tax on medical device manufacturers.
- Sec. 1406. Health insurance providers.
- Sec. 1407. Delay of elimination of deduction for expenses allocable to medicare part D subsidy.
- Sec. 1408. Elimination of unintended application of cellulosic biofuel producer credit.
- Sec. 1409. Codification of economic substance doctrine and penalties.
- Sec. 1410. Time for payment of corporate estimated taxes.

Subtitle F—Other Provisions

- Sec. 1501. Community college and career training grant program.

TITLE II—EDUCATION AND HEALTH

Subtitle A—Education

- Sec. 2001. Short title; references.

PART I—INVESTING IN STUDENTS AND FAMILIES

- Sec. 2101. Federal Pell Grants.
- Sec. 2102. College access challenge grant program.
- Sec. 2103. Investment in historically black colleges and universities and minority-serving institutions.

PART II—STUDENT LOAN REFORM

- Sec. 2201. Termination of Federal Family Education Loan appropriations.
- Sec. 2202. Termination of Federal loan insurance program.
- Sec. 2203. Termination of applicable interest rates.
- Sec. 2204. Termination of Federal payments to reduce student interest costs.
- Sec. 2205. Termination of FFEL PLUS Loans.
- Sec. 2206. Federal Consolidation Loans.
- Sec. 2207. Termination of Unsubsidized Stafford Loans for middle-income borrowers.
- Sec. 2208. Termination of special allowances.
- Sec. 2209. Origination of Direct Loans at institutions outside the United States.
- Sec. 2210. Conforming amendments.
- Sec. 2211. Terms and conditions of loans.
- Sec. 2212. Contracts; mandatory funds.
- Sec. 2213. Income-based repayment.

Subtitle B—Health

- Sec. 2301. Insurance reforms.
- Sec. 2302. Drugs purchased by covered entities.
- Sec. 2303. Community health centers.

TITLE I—COVERAGE, MEDICARE, MEDICAID, AND REVENUES

Subtitle A—Coverage

SEC. 1001. TAX CREDITS.

(a) PREMIUM TAX CREDITS.—Section 36B of the Internal Revenue Code of 1986, as added by section 1401 of the Patient Protection and Affordable Care Act and amended by section 10105 of such Act, is amended—

Ante, p. 213, 906.

(1) in subsection (b)(3)(A)—

(A) in clause (i), by striking “with respect to any taxpayer” and all that follows up to the end period and inserting: “for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to

the final premium percentage specified in such table for such income tier:

“In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%”; and

(B) by striking clauses (ii) and (iii), and inserting the following:

“(ii) INDEXING.—

“(I) IN GENERAL.—Subject to subclause (II), in the case of taxable years beginning in any calendar year after 2014, the initial and final applicable percentages under clause (i) (as in effect for the preceding calendar year after application of this clause) shall be adjusted to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year.

“(II) ADDITIONAL ADJUSTMENT.—Except as provided in subclause (III), in the case of any calendar year after 2018, the percentages described in subclause (I) shall, in addition to the adjustment under subclause (I), be adjusted to reflect the excess (if any) of the rate of premium growth estimated under subclause (I) for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar year.

“(III) FAILSAFE.—Subclause (II) shall apply for any calendar year only if the aggregate amount of premium tax credits under this section and cost-sharing reductions under section 1402 of the Patient Protection and Affordable Care Act for the preceding calendar year exceeds an amount equal to 0.504 percent of the gross domestic product for the preceding calendar year.”; and

Applicability.

(2) in subsection (c)(2)(C)—

(A) by striking “9.8 percent” in clauses (i)(II) and (iv) and inserting “9.5 percent”; and

(B) by striking “(b)(3)(A)(iii)” in clause (iv) and inserting “(b)(3)(A)(ii)”.

(b) COST SHARING.—Section 1402(c) of the Patient Protection and Affordable Care Act is amended—

Ante, p. 221.

(1) in paragraph (1)(B)(i)—

(A) in subclause (I), by striking “90” and inserting “94”;

(B) in subclause (II)—

(i) by striking “80” and inserting “87”; and

(ii) by striking “and”; and

(C) by striking subclause (III) and inserting the following:

“(III) 73 percent in the case of an eligible insured whose household income is more than 200 percent but not more than 250 percent of the poverty line for a family of the size involved; and

“(IV) 70 percent in the case of an eligible insured whose household income is more than 250 percent but not more than 400 percent of the poverty line for a family of the size involved.”; and

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking “90” and inserting “94”; and

(ii) by striking “and”;

(B) in subparagraph (B)—

(i) by striking “80” and inserting “87”; and

(ii) by striking the period and inserting “; and”;

and

(C) by inserting after subparagraph (B) the following new subparagraph:

“(C) in the case of an eligible insured whose household income is more than 200 percent but not more than 250 percent of the poverty line for a family of the size involved, increase the plan’s share of the total allowed costs of benefits provided under the plan to 73 percent of such costs.”.

SEC. 1002. INDIVIDUAL RESPONSIBILITY.

(a) AMOUNTS.—Section 5000A(c) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended—

(1) in paragraph (2)(B)—

(A) in the matter preceding clause (i), by—

(i) inserting “the excess of” before “the taxpayer’s household income”; and

(ii) inserting “for the taxable year over the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer” before “for the taxable year”;

(B) in clause (i), by striking “0.5” and inserting “1.0”;

(C) in clause (ii), by striking “1.0” and inserting “2.0”;

and

(D) in clause (iii), by striking “2.0” and inserting “2.5”;

and

(2) in paragraph (3)—

(A) in subparagraph (A), by striking “\$750” and inserting “\$695”;

(B) in subparagraph (B), by striking “\$495” and inserting “\$325”; and

(C) in subparagraph (D)—

(i) in the matter preceding clause (i), by striking “\$750” and inserting “\$695”; and

(ii) in clause (i), by striking “\$750” and inserting “\$695”.

(b) THRESHOLD.—Section 5000A of such Code, as so added and amended, is amended—

(1) by striking subsection (c)(4)(D); and

(2) in subsection (e)(2)—

(A) by striking “UNDER 100 PERCENT OF POVERTY LINE” and inserting “BELOW FILING THRESHOLD”; and

(B) by striking all that follows “less than” and inserting “the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer.”.

SEC. 1003. EMPLOYER RESPONSIBILITY.

(a) **PAYMENT CALCULATION.**—Subparagraph (D) of subsection (d)(2) of section 4980H of the Internal Revenue Code of 1986, as added by section 1513 of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended to read as follows:

Ante, p. 253, 907.

“(D) **APPLICATION OF EMPLOYER SIZE TO ASSESSABLE PENALTIES.**—

“(i) **IN GENERAL.**—The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

“(I) the assessable payment under subsection (a), or

“(II) the overall limitation under subsection (b)(2).

“(ii) **AGGREGATION.**—In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.”.

(b) **APPLICABLE PAYMENT AMOUNT.**—Section 4980H of such Code, as so added and amended, is amended—

(1) in the flush text following subsection (c)(1)(B), by striking “400 percent of the applicable payment amount” and inserting “an amount equal to $\frac{1}{12}$ of \$3,000”;

(2) in subsection (d)(1), by striking “\$750” and inserting “\$2,000”; and

(3) in subsection (d)(5)(A), in the matter preceding clause (i), by striking “subsection (b)(2) and (d)(1)” and inserting “subsection (b) and paragraph (1)”.

(c) **COUNTING PART-TIME WORKERS IN SETTING THE THRESHOLD FOR EMPLOYER RESPONSIBILITY.**—Section 4980H(d)(2) of such Code, as so added and amended and as amended by subsection (a), is amended by adding at the end the following new subparagraph:

“(E) **FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.**—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.”.

(d) **ELIMINATING WAITING PERIOD ASSESSMENT.**—Section 4980H of such Code, as so added and amended and as amended by the preceding subsections, is amended by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

SEC. 1004. INCOME DEFINITIONS.**(a) MODIFIED ADJUSTED GROSS INCOME.—**

(1) **IN GENERAL.**—The following provisions of the Internal Revenue Code of 1986 are each amended by striking “modified gross” each place it appears and inserting “modified adjusted gross”:

Ante, p. 213. (A) Clauses (i) and (ii) of section 36B(d)(2)(A), as added by section 1401 of the Patient Protection and Affordable Care Act.

Ante, p. 236. (B) Section 6103(l)(21)(A)(iv), as added by section 1414 of such Act.

Ante, p. 244. (C) Clauses (i) and (ii) of section 5000A(c)(4), as added by section 1501(b) of such Act.

(2) DEFINITION.—

(A) Section 36B(d)(2)(B) of such Code, as so added, is amended to read as follows:

“(B) **MODIFIED ADJUSTED GROSS INCOME.**—The term ‘modified adjusted gross income’ means adjusted gross income increased by—

“(i) any amount excluded from gross income under section 911, and

“(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.”.

(B) Section 5000A(c)(4)(C) of such Code, as so added, is amended to read as follows:

“(C) **MODIFIED ADJUSTED GROSS INCOME.**—The term ‘modified adjusted gross income’ means adjusted gross income increased by—

“(i) any amount excluded from gross income under section 911, and

“(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.”.

(b) MODIFIED ADJUSTED GROSS INCOME DEFINITION.—

(1) **MEDICAID.**—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by striking “modified gross income” each place it appears in the text and headings of the following provisions and inserting “modified adjusted gross income”:

(A) Paragraph (14) of subsection (e), as added by section 2002(a) of the Patient Protection and Affordable Care Act.

(B) Subsection (gg)(4)(A), as added by section 2001(b) of such Act.

(2) CHIP.—

(A) **STATE PLAN REQUIREMENTS.**—Section 2102(b)(1)(B)(v) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)(v)), as added by section 2101(d)(1) of the Patient Protection and Affordable Care Act, is amended by striking “modified gross income” and inserting “modified adjusted gross income”.

(B) **PLAN ADMINISTRATION.**—Section 2107(e)(1)(E) of the Social Security Act (42 U.S.C. 1397gg(e)(1)(E)), as added by section 2101(d)(2) of the Patient Protection and Affordable Care Act, is amended by striking “modified gross income” and inserting “modified adjusted gross income”.

(c) NO EXCESS PAYMENTS.—Section 36B(f) of the Internal Revenue Code of 1986, as added by section 1401(a) of the Patient Protection and Affordable Care Act, is amended by adding at the end the following new paragraph: *Ante*, p. 213.

“(3) INFORMATION REQUIREMENT.—Each Exchange (or any person carrying out 1 or more responsibilities of an Exchange under section 1311(f)(3) or 1321(c) of the Patient Protection and Affordable Care Act) shall provide the following information to the Secretary and to the taxpayer with respect to any health plan provided through the Exchange:

“(A) The level of coverage described in section 1302(d) of the Patient Protection and Affordable Care Act and the period such coverage was in effect.

“(B) The total premium for the coverage without regard to the credit under this section or cost-sharing reductions under section 1402 of such Act.

“(C) The aggregate amount of any advance payment of such credit or reductions under section 1412 of such Act.

“(D) The name, address, and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy.

“(E) Any information provided to the Exchange, including any change of circumstances, necessary to determine eligibility for, and the amount of, such credit.

“(F) Information necessary to determine whether a taxpayer has received excess advance payments.”.

(d) ADULT DEPENDENTS.—

(1) EXCLUSION OF AMOUNTS EXPENDED FOR MEDICAL CARE.—The first sentence of section 105(b) of the Internal Revenue Code of 1986 (relating to amounts expended for medical care) is amended— 26 USC 105.

(A) by striking “and his dependents” and inserting “his dependents”; and

(B) by inserting before the period the following: “, and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27”.

(2) SELF-EMPLOYED HEALTH INSURANCE DEDUCTION.—Section 162(l)(1) of such Code is amended to read as follows: 26 USC 162.

“(1) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

“(A) the taxpayer,

“(B) the taxpayer’s spouse,

“(C) the taxpayer’s dependents, and

“(D) any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.”.

(3) COVERAGE UNDER SELF-EMPLOYED DEDUCTION.—Section 162(l)(2)(B) of such Code is amended by inserting “, or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to,” after “spouse of”.

(4) SICK AND ACCIDENT BENEFITS PROVIDED TO MEMBERS OF A VOLUNTARY EMPLOYEES’ BENEFICIARY ASSOCIATION AND

26 USC 501.

THEIR DEPENDENTS.—Section 501(c)(9) of such Code is amended by adding at the end the following new sentence: “For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term ‘dependent’ shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.”.

26 USC 401.

(5) MEDICAL AND OTHER BENEFITS FOR RETIRED EMPLOYEES.—Section 401(h) of such Code is amended by adding at the end the following: “For purposes of this subsection, the term ‘dependent’ shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.”.

(e) FIVE PERCENT INCOME DISREGARD FOR CERTAIN INDIVIDUALS.—Section 1902(e)(14) of the Social Security Act (42 U.S.C. 1396a(e)(14)), as amended by subsection (b)(1), is further amended—

(1) in subparagraph (B), by striking “No type” and inserting “Subject to subparagraph (I), no type”; and

(2) by adding at the end the following new subparagraph:

“(I) TREATMENT OF PORTION OF MODIFIED ADJUSTED GROSS INCOME.—For purposes of determining the income eligibility of an individual for medical assistance whose eligibility is determined based on the application of modified adjusted gross income under subparagraph (A), the State shall—

Determination.

“(i) determine the dollar equivalent of the difference between the upper income limit on eligibility for such an individual (expressed as a percentage of the poverty line) and such upper income limit increased by 5 percentage points; and

“(ii) notwithstanding the requirement in subparagraph (A) with respect to use of modified adjusted gross income, utilize as the applicable income of such individual, in determining such income eligibility, an amount equal to the modified adjusted gross income applicable to such individual reduced by such dollar equivalent amount.”.

42 USC 18121.

SEC. 1005. IMPLEMENTATION FUNDING.

(a) IN GENERAL.—There is hereby established a Health Insurance Reform Implementation Fund (referred to in this section as the “Fund”) within the Department of Health and Human Services to carry out the Patient Protection and Affordable Care Act and this Act (and the amendments made by such Acts).

(b) FUNDING.—There is appropriated to the Fund, out of any funds in the Treasury not otherwise appropriated, \$1,000,000,000 for Federal administrative expenses to carry out such Act (and the amendments made by such Acts).

Subtitle B—Medicare

SEC. 1101. CLOSING THE MEDICARE PRESCRIPTION DRUG “DONUT HOLE”.

(a) COVERAGE GAP REBATE FOR 2010.—

(1) IN GENERAL.—Section 1860D–42 of the Social Security Act (42 U.S.C. 1395w–152) is amended by adding at the end the following new subsection:

“(c) COVERAGE GAP REBATE FOR 2010.—

Payments.

Deadline.

“(1) IN GENERAL.—In the case of an individual described in subparagraphs (A) through (D) of section 1860D–14A(g)(1) who as of the last day of a calendar quarter in 2010 has incurred costs for covered part D drugs so that the individual has exceeded the initial coverage limit under section 1860D–2(b)(3) for 2010, the Secretary shall provide for payment from the Medicare Prescription Drug Account of \$250 to the individual by not later than the 15th day of the third month following the end of such quarter.

“(2) LIMITATION.—The Secretary shall provide only 1 payment under this subsection with respect to any individual.”.

(2) REPEAL OF PROVISION.—Section 3315 of the Patient Protection and Affordable Care Act (including the amendments made by such section) is repealed, and any provision of law amended or repealed by such sections is hereby restored or revived as if such section had not been enacted into law.

Ante, p. 479.

(b) CLOSING THE DONUT HOLE.—Part D of title XVIII of the Social Security Act (42 U.S.C. 1395w–101 et seq.), as amended by section 3301 of the Patient Protection and Affordable Care Act, is further amended—

(1) in section 1860D–43—

Ante, p. 461.

(A) in subsection (b), by striking “July 1, 2010” and inserting “January 1, 2011”; and

(B) in subsection (c)(2), by striking “July 1, 2010, and ending on December 31, 2010,” and inserting “January 1, 2011, and December 31, 2011,”;

(2) in section 1860D–14A—

Ante, p. 462.

(A) in subsection (a)—

(i) by striking “July 1, 2010” and inserting “January 1, 2011”; and

(ii) by striking “April 1, 2010” and inserting “180 days after the date of the enactment of this section”;

(B) in subsection (b)(1)(C)—

(i) in the heading, by striking “2010 AND”;

(ii) by striking “July 1, 2010” and inserting “January 1, 2011”; and

(iii) by striking “May 1, 2010” and inserting “not later than 30 days after the date of the establishment of a model agreement under subsection (a)”;

(C) in subsection (c)—

(i) in paragraph (1)(A)(iii), by striking “July 1, 2010, and ending on December 31, 2011” and inserting “January 1, 2011, and ending on December 31, 2011”; and

(ii) in paragraph (2), by striking “2010” and inserting “2011”;

(D) in subsection (d)(2)(B), by striking “July 1, 2010, and ending on December 31, 2010” and inserting “January 1, 2011, and ending on December 31, 2011”; and

(E) in subsection (g)(1)—

(i) in the matter before subparagraph (A), by striking “an applicable drug” and inserting “a covered part D drug”;

42 USC
1395w–102.

(ii) by adding “and” at the end of subparagraph (C);

(iii) by striking subparagraph (D); and

(iv) by redesignating subparagraph (E) as subparagraph (D); and

(3) in section 1860D–2(b)—

(A) in paragraph (2)(A), by striking “The coverage” and inserting “Subject to subparagraphs (C) and (D), the coverage”;

(B) in paragraph (2)(B), by striking “subparagraph (A)(ii)” and inserting “subparagraphs (A)(ii), (C), and (D)”;

(C) by adding at the end of paragraph (2) the following new subparagraphs:

“(C) COVERAGE FOR GENERIC DRUGS IN COVERAGE GAP.—

“(i) IN GENERAL.—Except as provided in paragraph (4), the coverage for an applicable beneficiary (as defined in section 1860D–14A(g)(1)) has coinsurance (for costs above the initial coverage limit under paragraph (3) and below the out-of-pocket threshold) for covered part D drugs that are not applicable drugs under section 1860D–14A(g)(2) that is—

“(I) equal to the generic-gap coinsurance percentage (specified in clause (ii)) for the year; or

“(II) actuarially equivalent (using processes and methods established under section 1860D–11(c)) to an average expected payment of such percentage of such costs for covered part D drugs that are not applicable drugs under section 1860D–14A(g)(2).

“(ii) GENERIC-GAP COINSURANCE PERCENTAGE.—The generic-gap coinsurance percentage specified in this clause for—

“(I) 2011 is 93 percent;

“(II) 2012 and each succeeding year before 2020 is the generic-gap coinsurance percentage under this clause for the previous year decreased by 7 percentage points; and

“(III) 2020 and each subsequent year is 25 percent.

“(D) COVERAGE FOR APPLICABLE DRUGS IN COVERAGE GAP.—

“(i) IN GENERAL.—Except as provided in paragraph (4), the coverage for an applicable beneficiary (as defined in section 1860D–14A(g)(1)) has coinsurance (for costs above the initial coverage limit under paragraph (3) and below the out-of-pocket threshold) for the negotiated price (as defined in section 1860D–14A(g)(6)) of covered part D drugs that are applicable drugs under section 1860D–14A(g)(2) that is—

“(I) equal to the difference between the applicable gap percentage (specified in clause (ii) for the year) and the discount percentage specified in section 1860D–14A(g)(4)(A) for such applicable drugs; or

“(II) actuarially equivalent (using processes and methods established under section 1860D–11(c)) to an average expected payment of such percentage of such costs, for covered part D drugs that are applicable drugs under section 1860D–14A(g)(2).

“(ii) APPLICABLE GAP PERCENTAGE.—The applicable gap percentage specified in this clause for—

“(I) 2013 and 2014 is 97.5 percent;

“(II) 2015 and 2016 is 95 percent;

“(III) 2017 is 90 percent;

“(IV) 2018 is 85 percent;

“(V) 2019 is 80 percent; and

“(VI) 2020 and each subsequent year is 75 percent.”;

(D) in paragraph (3)(A), as restored under subsection (a)(2), by striking “paragraph (4)” and inserting “paragraphs (2)(C), (2)(D), and (4)”;

(E) in paragraph (4)(E), by inserting before the period at the end the following: “, except that incurred costs shall not include the portion of the negotiated price that represents the reduction in coinsurance resulting from the application of paragraph (2)(D)”;

(4) in section 1860D–22(a)(2)(A), by inserting before the period at the end the following: “, not taking into account the value of any discount or coverage provided during the gap in prescription drug coverage that occurs between the initial coverage limit under section 1860D–2(b)(3) during the year and the out-of-pocket threshold specified in section 1860D–2(b)(4)(B)”.

42 USC
1395w–132.

(c) CONFORMING AMENDMENT TO AMP UNDER MEDICAID.—Section 1927(k)(1)(B)(i) of the Social Security Act (42 U.S.C. 1396r–8(k)(1)(B)(i)), as amended by section 2503(a)(2)(B) of the Patient Protection and Affordable Care Act, is amended—

(1) by striking “and” at the end of subclause (III);

(2) by striking the period at the end of subclause (IV);

and

(3) by adding at the end the following new subclause:
“(V) discounts provided by manufacturers under section 1860D–14A.”.

(d) REDUCING GROWTH RATE OF OUT-OF-POCKET COST THRESHOLD.—Section 1860D–2(b) of the Social Security Act (42 U.S.C. 1395w–102(b)) is amended—

(1) in paragraph (4)(B)(i)—

(A) in subclause (I), by striking “or” at the end;

(B) by redesignating subclause (II) as subclause (VI);

and

(C) by inserting after subclause (I) the following new subclauses:

“(II) for each of years 2007 through 2013, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved;

“(III) for 2014 and 2015, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase

described in paragraph (6) for the year involved, minus 0.25 percentage point;

“(IV) for each of years 2016 through 2019, is equal to the amount specified in this subparagraph for the previous year, increased by the lesser of—

“(aa) the annual percentage increase described in paragraph (7) for the year involved, plus 2 percentage points; or

“(bb) the annual percentage increase described in paragraph (6) for the year;

“(V) for 2020, is equal to the amount that would have been applied under this subparagraph for 2020 if the amendments made by section 1101(d)(1) of the Health Care and Education Reconciliation Act of 2010 had not been enacted; or”; and

(2) by adding at the end the following new paragraph:

“(7) **ADDITIONAL ANNUAL PERCENTAGE INCREASE.**—The annual percentage increase specified in this paragraph for a year is equal to the annual percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending in July of the previous year.”.

SEC. 1102. MEDICARE ADVANTAGE PAYMENTS.

Effective date.
42 USC
1395w–21 *et seq.*
and note.

(a) **REPEAL.**—Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3201 and 3203 of such Act (and the amendments made by such sections) are repealed.

(b) **PHASE-IN OF MODIFIED BENCHMARKS.**—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (j)(1)(A), by striking “(or, beginning with 2007, $\frac{1}{12}$ of the applicable amount determined under subsection (k)(1)) for the area for the year” and inserting “for the area for the year (or, for 2007, 2008, 2009, and 2010, $\frac{1}{12}$ of the applicable amount determined under subsection (k)(1) for the area for the year; for 2011, $\frac{1}{12}$ of the applicable amount determined under subsection (k)(1) for the area for 2010; and, beginning with 2012, $\frac{1}{12}$ of the blended benchmark amount determined under subsection (n)(1) for the area for the year”); and

(2) by adding at the end the following new subsection:
“(n) **DETERMINATION OF BLENDED BENCHMARK AMOUNT.**—

Definition.

“(1) **IN GENERAL.**—For purposes of subsection (j), subject to paragraphs (3), (4), and (5), the term ‘blended benchmark amount’ means for an area—

“(A) for 2012 the sum of—

“(i) $\frac{1}{2}$ of the applicable amount for the area and year; and

“(ii) $\frac{1}{2}$ of the amount specified in paragraph (2)(A) for the area and year; and

“(B) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

“(2) **SPECIFIED AMOUNT.**—

“(A) **IN GENERAL.**—The amount specified in this subparagraph for an area and year is the product of—

“(i) the base payment amount specified in subparagraph (E) for the area and year adjusted to take into

account the phase-out in the indirect costs of medical education from capitation rates described in subsection (k)(4); and

“(ii) the applicable percentage for the area for the year specified under subparagraph (B).

“(B) APPLICABLE PERCENTAGE.—Subject to subparagraph (D), the applicable percentage specified in this subparagraph for an area for a year in the case of an area that is ranked—

“(i) in the highest quartile under subparagraph (C) for the previous year is 95 percent;

“(ii) in the second highest quartile under such subparagraph for the previous year is 100 percent;

“(iii) in the third highest quartile under such subparagraph for the previous year is 107.5 percent; or

“(iv) in the lowest quartile under such subparagraph for the previous year is 115 percent.

“(C) PERIODIC RANKING.—For purposes of this paragraph in the case of an area located—

“(i) in 1 of the 50 States or the District of Columbia, the Secretary shall rank such area in each year specified under subsection (c)(1)(D)(ii) based upon the level of the amount specified in subparagraph (A)(i) for such areas; or

“(ii) in a territory, the Secretary shall rank such areas in each such year based upon the level of the amount specified in subparagraph (A)(i) for such area relative to quartile rankings computed under clause (i).

“(D) 1-YEAR TRANSITION FOR CHANGES IN APPLICABLE PERCENTAGE.—If, for a year after 2012, there is a change in the quartile in which an area is ranked compared to the previous year, the applicable percentage for the area in the year shall be the average of—

“(i) the applicable percentage for the area for the previous year; and

“(ii) the applicable percentage that would otherwise apply for the area for the year.

“(E) BASE PAYMENT AMOUNT.—Subject to subparagraph (F), the base payment amount specified in this subparagraph—

“(i) for 2012 is the amount specified in subsection (c)(1)(D) for the area for the year; or

“(ii) for a subsequent year that—

“(I) is not specified under subsection (c)(1)(D)(ii), is the base amount specified in this subparagraph for the area for the previous year, increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

“(II) is specified under subsection (c)(1)(D)(ii), is the amount specified in subsection (c)(1)(D) for the area for the year.

“(F) APPLICATION OF INDIRECT MEDICAL EDUCATION PHASE-OUT.—The base payment amount specified in subparagraph (E) for a year shall be adjusted in the same manner under paragraph (4) of subsection (k) as the applicable amount is adjusted under such subsection.

“(3) ALTERNATIVE PHASE-INS.—

“(A) 4-YEAR PHASE-IN FOR CERTAIN AREAS.—If the difference between the applicable amount (as defined in subsection (k)) for an area for 2010 and the projected 2010 benchmark amount (as defined in subparagraph (C)) for the area is at least \$30 but less than \$50, the blended benchmark amount for the area is—

“(i) for 2012 the sum of—

“(I) $\frac{3}{4}$ of the applicable amount for the area and year; and

“(II) $\frac{1}{4}$ of the amount specified in paragraph (2)(A) for the area and year;

“(ii) for 2013 the sum of—

“(I) $\frac{1}{2}$ of the applicable amount for the area and year; and

“(II) $\frac{1}{2}$ of the amount specified in paragraph (2)(A) for the area and year;

“(iii) for 2014 the sum of—

“(I) $\frac{1}{4}$ of the applicable amount for the area and year; and

“(II) $\frac{3}{4}$ of the amount specified in paragraph (2)(A) for the area and year; and

“(iv) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

“(B) 6-YEAR PHASE-IN FOR CERTAIN AREAS.—If the difference between the applicable amount (as defined in subsection (k)) for an area for 2010 and the projected 2010 benchmark amount (as defined in subparagraph (C)) for the area is at least \$50, the blended benchmark amount for the area is—

“(i) for 2012 the sum of—

“(I) $\frac{5}{6}$ of the applicable amount for the area and year; and

“(II) $\frac{1}{6}$ of the amount specified in paragraph (2)(A) for the area and year;

“(ii) for 2013 the sum of—

“(I) $\frac{2}{3}$ of the applicable amount for the area and year; and

“(II) $\frac{1}{3}$ of the amount specified in paragraph (2)(A) for the area and year;

“(iii) for 2014 the sum of—

“(I) $\frac{1}{2}$ of the applicable amount for the area and year; and

“(II) $\frac{1}{2}$ of the amount specified in paragraph (2)(A) for the area and year;

“(iv) for 2015 the sum of—

“(I) $\frac{1}{3}$ of the applicable amount for the area and year; and

“(II) $\frac{2}{3}$ of the amount specified in paragraph (2)(A) for the area and year; and

“(v) for 2016 the sum of—

“(I) $\frac{1}{6}$ of the applicable amount for the area and year; and

“(II) $\frac{5}{6}$ of the amount specified in paragraph (2)(A) for the area and year; and

“(vi) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

“(C) PROJECTED 2010 BENCHMARK AMOUNT.—The projected 2010 benchmark amount described in this subparagraph for an area is equal to the sum of—

“(i) $\frac{1}{2}$ of the applicable amount (as defined in subsection (k)) for the area for 2010; and

“(ii) $\frac{1}{2}$ of the amount specified in paragraph (2)(A) for the area for 2010 but determined as if there were substituted for the applicable percentage specified in clause (ii) of such paragraph the sum of—

“(I) the applicable percent that would be specified under subparagraph (B) of paragraph (2) (determined without regard to subparagraph (D) of such paragraph) for the area for 2010 if any reference in such paragraph to ‘the previous year’ were deemed a reference to 2010; and

“(II) the applicable percentage increase that would apply to a qualifying plan in the area under subsection (o) as if any reference in such subsection to 2012 were deemed a reference to 2010 and as if the determination of a qualifying county under paragraph (3)(B) of such subsection were made for 2010.

“(4) CAP ON BENCHMARK AMOUNT.—In no case shall the blended benchmark amount for an area for a year (determined taking into account subsection (o)) be greater than the applicable amount that would (but for the application of this subsection) be determined under subsection (k)(1) for the area for the year.

“(5) NON-APPLICATION TO PACE PLANS.—This subsection shall not apply to payments to a PACE program under section 1894.”

(c) APPLICABLE PERCENTAGE QUALITY INCREASES.—Section 1853 of such Act (42 U.S.C. 1395w–23), as amended by subsection (b), is amended—

(1) in subsection (j), by inserting “subject to subsection (o),” after “For purposes of this part,”;

(2) in subsection (n)(2)(B), as added by subsection (b), by inserting “, subject to subsection (o)” after “as follows”; and

(3) by adding at the end the following new subsection:

“(o) APPLICABLE PERCENTAGE QUALITY INCREASES.—

“(1) IN GENERAL.—Subject to the succeeding paragraphs, in the case of a qualifying plan with respect to a year beginning with 2012, the applicable percentage under subsection (n)(2)(B) shall be increased on a plan or contract level, as determined by the Secretary—

“(A) for 2012, by 1.5 percentage points;

“(B) for 2013, by 3.0 percentage points; and

“(C) for 2014 or a subsequent year, by 5.0 percentage points.

Determination.

“(2) INCREASE FOR QUALIFYING PLANS IN QUALIFYING COUNTIES.—The increase applied under paragraph (1) for a qualifying plan located in a qualifying county for a year shall be doubled.

“(3) QUALIFYING PLANS AND QUALIFYING COUNTY DEFINED; APPLICATION OF INCREASES TO LOW ENROLLMENT AND NEW PLANS.—For purposes of this subsection:

“(A) QUALIFYING PLAN.—

“(i) IN GENERAL.—The term ‘qualifying plan’ means, for a year and subject to paragraph (4), a plan that had a quality rating under paragraph (4) of 4 stars or higher based on the most recent data available for such year.

“(ii) APPLICATION OF INCREASES TO LOW ENROLLMENT PLANS.—

Determination.

“(I) 2012.—For 2012, the term ‘qualifying plan’ includes an MA plan that the Secretary determines is not able to have a quality rating under paragraph (4) because of low enrollment.

“(II) 2013 AND SUBSEQUENT YEARS.—For 2013 and subsequent years, for purposes of determining whether an MA plan with low enrollment (as defined by the Secretary) is included as a qualifying plan, the Secretary shall establish a method to apply to MA plans with low enrollment (as defined by the Secretary) the computation of quality rating and the rating system under paragraph (4).

“(iii) APPLICATION OF INCREASES TO NEW PLANS.—

“(I) IN GENERAL.—A new MA plan that meets criteria specified by the Secretary shall be treated as a qualifying plan, except that in applying paragraph (1), the applicable percentage under subsection (n)(2)(B) shall be increased—

“(aa) for 2012, by 1.5 percentage points;

“(bb) for 2013, by 2.5 percentage points;

and

“(cc) for 2014 or a subsequent year, by 3.5 percentage points.

“(II) NEW MA PLAN DEFINED.—The term ‘new MA plan’ means, with respect to a year, a plan offered by an organization or sponsor that has not had a contract as a Medicare Advantage organization in the preceding 3-year period.

“(B) QUALIFYING COUNTY.—The term ‘qualifying county’ means, for a year, a county—

“(i) that has an MA capitation rate that, in 2004, was based on the amount specified in subsection (c)(1)(B) for a Metropolitan Statistical Area with a population of more than 250,000;

“(ii) for which, as of December 2009, of the Medicare Advantage eligible individuals residing in the county at least 25 percent of such individuals were enrolled in Medicare Advantage plans; and

“(iii) that has per capita fee-for-service spending that is lower than the national monthly per capita cost for expenditures for individuals enrolled under

the original medicare fee-for-service program for the year.

“(4) QUALITY DETERMINATIONS FOR APPLICATION OF INCREASE.—

“(A) QUALITY DETERMINATION.—The quality rating for a plan shall be determined according to a 5-star rating system (based on the data collected under section 1852(e)).

“(B) PLANS THAT FAILED TO REPORT.—An MA plan which does not report data that enables the Secretary to rate the plan for purposes of this paragraph shall be counted as having a rating of fewer than 3.5 stars.

“(5) EXCEPTION FOR PACE PLANS.—This subsection shall not apply to payments to a PACE program under section 1894.”.

(4) DETERMINATION OF MEDICARE PART D LOW-INCOME BENCHMARK PREMIUM.—Section 1860D-14(b)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395w-114(b)(2)(B)(iii)) as amended by section 3302 of the Patient Protection and Affordable Care Act, is amended by striking “, determined without regard to any reduction in such premium as a result of any beneficiary rebate under section 1854(b)(1)(C) or bonus payment under section 1853(n)” and inserting the following: “and determined before the application of the monthly rebate computed under section 1854(b)(1)(C)(i) for that plan and year involved and, in the case of a qualifying plan, before the application of the increase under section 1853(o) for that plan and year involved”.

(d) BENEFICIARY REBATES.—Section 1854(b)(1)(C) of such Act (42 U.S.C. 1395w-24(b)(1)(C)), as amended by section 3202(b) of the Patient Protection and Affordable Care Act, is further amended—

(1) in clause (i), by inserting “(or the applicable rebate percentage specified in clause (iii) in the case of plan years beginning on or after January 1, 2012)” after “75 percent”; and

(2) by striking clause (iii), by redesignating clauses (iv) and (v) as clauses (vii) and (viii), respectively, and by inserting after clause (ii) the following new clauses:

“(iii) APPLICABLE REBATE PERCENTAGE.—The applicable rebate percentage specified in this clause for a plan for a year, based on the system under section 1853(o)(4)(A), is the sum of—

“(I) the product of the old phase-in proportion for the year under clause (iv) and 75 percent; and

“(II) the product of the new phase-in proportion for the year under clause (iv) and the final applicable rebate percentage under clause (v).

“(iv) OLD AND NEW PHASE-IN PROPORTIONS.—For purposes of clause (iv)—

“(I) for 2012, the old phase-in proportion is $\frac{2}{3}$ and the new phase-in proportion is $\frac{1}{3}$;

“(II) for 2013, the old phase-in proportion is $\frac{1}{3}$ and the new phase-in proportion is $\frac{2}{3}$; and

“(III) for 2014 and any subsequent year, the old phase-in proportion is 0 and the new phase-in proportion is 1.

“(v) FINAL APPLICABLE REBATE PERCENTAGE.—Subject to clause (vi), the final applicable rebate percentage under this clause is—

“(I) in the case of a plan with a quality rating under such system of at least 4.5 stars, 70 percent;

“(II) in the case of a plan with a quality rating under such system of at least 3.5 stars and less than 4.5 stars, 65 percent; and

“(III) in the case of a plan with a quality rating under such system of less than 3.5 stars, 50 percent.

“(vi) TREATMENT OF LOW ENROLLMENT AND NEW PLANS.—For purposes of clause (v)—

“(I) for 2012, in the case of a plan described in subclause (I) of subsection (o)(3)(A)(ii), the plan shall be treated as having a rating of 4.5 stars; and

“(II) for 2012 or a subsequent year, in the case of a new MA plan (as defined under subclause (III) of subsection (o)(3)(A)(iii)) that is treated as a qualifying plan pursuant to subclause (I) of such subsection, the plan shall be treated as having a rating of 3.5 stars.”.

(e) CODING INTENSITY ADJUSTMENT.—Section 1853(a)(1)(C)(ii) of such Act (42 U.S.C. 1395w–23(a)(1)(C)(ii)) is amended—

(1) in the heading, by striking “DURING PHASEOUT OF BUDGET NEUTRALITY FACTOR” and inserting “OF CODING ADJUSTMENT”;

(2) in the matter before subclause (I), by striking “through 2010” and inserting “and each subsequent year”; and

(3) in subclause (II)—

(A) in the first sentence, by inserting “annually” before “conduct an analysis”;

(B) in the second sentence—

(i) by inserting “on a timely basis” after “are incorporated”; and

(ii) by striking “only for 2008, 2009, and 2010” and inserting “for 2008 and subsequent years”;

(C) in the third sentence, by inserting “and updated as appropriate” before the period at the end; and

(D) by adding at the end the following new subclauses:

“(III) In calculating each year’s adjustment, the adjustment factor shall be for 2014, not less than the adjustment factor applied for 2010, plus 1.3 percentage points; for each of years 2015 through 2018, not less than the adjustment factor applied for the previous year, plus 0.25 percentage point; and for 2019 and each subsequent year, not less than 5.7 percent.

“(IV) Such adjustment shall be applied to risk scores until the Secretary implements risk adjustment using Medicare Advantage diagnostic, cost, and use data.”.

(f) REPEAL OF COMPARATIVE COST ADJUSTMENT PROGRAM.—Section 1860C–1 of the Social Security Act (42 U.S.C. 1395w–29), as added by section 241(a) of the Medicare Prescription Drug,

Applicability.

Improvement, and Modernization Act of 2003 (Public Law 108–173), is repealed.

SEC. 1103. SAVINGS FROM LIMITS ON MA PLAN ADMINISTRATIVE COSTS.

Section 1857(e) of the Social Security Act (42 U.S.C. 1395w–27(e)) is amended by adding at the end the following new paragraph:

“(4) REQUIREMENT FOR MINIMUM MEDICAL LOSS RATIO.—

Time periods.
Determination.

If the Secretary determines for a contract year (beginning with 2014) that an MA plan has failed to have a medical loss ratio of at least .85—

“(A) the MA plan shall remit to the Secretary an amount equal to the product of—

Payments.

“(i) the total revenue of the MA plan under this part for the contract year; and

“(ii) the difference between .85 and the medical loss ratio;

“(B) for 3 consecutive contract years, the Secretary shall not permit the enrollment of new enrollees under the plan for coverage during the second succeeding contract year; and

“(C) the Secretary shall terminate the plan contract if the plan fails to have such a medical loss ratio for 5 consecutive contract years.”.

SEC. 1104. DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS.

Section 1886(r) of the Social Security Act (42 U.S.C. 1395ww(r)), as added by section 3133 of the Patient Protection and Affordable Care Act and as amended by section 10316 of such Act, is amended—

(1) in paragraph (1), by striking “2015” and inserting “2014”; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking “2015” and inserting “2014”;

(B) in subparagraph (B)(i)—

(i) in the heading, by inserting “2014,” after “YEARS”;

(ii) in the matter preceding subclause (I), by inserting “2014,” after “each of fiscal years”;

(iii) in subclause (I), by striking “on such Act” and inserting “on the Health Care and Education Reconciliation Act of 2010”; and

(iv) in the matter following subclause (II), by striking “minus 1.5 percentage points” and inserting “minus 0.1 percentage points for fiscal year 2014 and minus 0.2 percentage points for each of fiscal years 2015, 2016, and 2017”; and

(C) in subparagraph (B)(ii), in the matter following subclause (II), by striking “and, for each of 2018 and 2019, minus 1.5 percentage points” and inserting “minus 0.2 percentage points for each of fiscal years 2018 and 2019”.

SEC. 1105. MARKET BASKET UPDATES.

(a) IPPS.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by sections 3401(a)(4) and 10319(a) of the Patient Protection and Affordable Care Act, is amended—

(1) in clause (xii)—

(A) by placing the subclause (II) (inserted by section 10319(a)(3) of the Patient Protection and Affordable Care Act) immediately after subclause (I) and, in such subclause (II), by striking “and” at the end; and

(B) by striking subclause (III) and inserting the following:

“(III) for fiscal year 2014, by 0.3 percentage point;

“(IV) for each of fiscal years 2015 and 2016, by 0.2 percentage point; and

“(V) for each of fiscal years 2017, 2018, and 2019, by 0.75 percentage point.”; and

(2) by striking clause (xiii).

(b) LONG-TERM CARE HOSPITALS.—Section 1886(m)(4) of the Social Security Act (42 U.S.C. 1395ww(m)(4)), as added by section 3401(c) of the Patient Protection and Affordable Care Act and amended by section 10319(b) of such Act, is amended—

(1) in subparagraph (A)—

(A) in clause (iii), by striking “and” at the end; and

(B) by striking clause (iv) and inserting the following:

“(iv) for rate year 2014, 0.3 percentage point;

“(v) for each of rate years 2015 and 2016, 0.2 percentage point; and

“(vi) for each of rate years 2017, 2018, and 2019, 0.75 percentage point.”;

(2) by striking subparagraph (B); and

(3) by striking “(4) OTHER ADJUSTMENT.—” and all that follows through “For purposes” and inserting “(4) OTHER ADJUSTMENT.—For purposes” (and redesignating clauses (i) through (vi) as subparagraphs (A) through (F), respectively, with appropriate indentation).

(c) INPATIENT REHABILITATION FACILITIES.—Section 1886(j)(3)(D) of the Social Security Act (42 U.S.C. 1395ww(j)(3)(D)), as added by section 3401(d)(2) of the Patient Protection and Affordable Care Act and amended by section 10319(c) of such Act, is amended—

(1) in clause (i)—

(A) by placing the subclause (II) (inserted by section 10319(c)(3) of the Patient Protection and Affordable Care Act) immediately after subclause (I) and, in such subclause (II), by striking “and” at the end; and

(B) by striking subclause (III) and inserting the following:

“(III) for fiscal year 2014, 0.3 percentage point;

“(IV) for each of fiscal years 2015 and 2016, 0.2 percentage point; and

“(V) for each of fiscal years 2017, 2018, and 2019, 0.75 percentage point.”;

(2) by striking clause (ii); and

(3) by striking “(D) OTHER ADJUSTMENT.—” and all that follows through “For purposes” and inserting “(D) OTHER ADJUSTMENT.—For purposes” (and redesignating subclauses (I) through (V) as clauses (i) through (v), respectively, with appropriate indentation).

(d) PSYCHIATRIC HOSPITALS.—Section 1886(s)(3) of the Social Security Act, as added by section 3401(f) of the Patient Protection

and Affordable Care Act and amended by section 10319(e) of such Act, is amended—

Ante, p. 484, 949.

(1) in subparagraph (A)—

(A) by placing the clause (ii) (inserted by section 10319(e)(3) of the Patient Protection and Affordable Care Act) immediately after clause (i) and, in such clause (ii), by striking “and” at the end; and

(B) by striking clause (iii) and inserting the following:

“(iii) for the rate year beginning in 2014, 0.3 percentage point;

“(iv) for each of the rate years beginning in 2015 and 2016, 0.2 percentage point; and

“(v) for each of the rate years beginning in 2017, 2018, and 2019, 0.75 percentage point.”;

(2) by striking subparagraph (B); and

(3) by striking “(3) OTHER ADJUSTMENT.—” and all that follows through “For purposes” and inserting “(3) OTHER ADJUSTMENT.—For purposes” (and redesignating clauses (i) through (v) as subparagraphs (A) through (E), respectively, with appropriate indentation).

(e) **OUTPATIENT HOSPITALS.**—Section 1833(t)(3)(G) of the Social Security Act (42 U.S.C. 1395l(t)(3)(G)), as added by section 3401(i)(2) of the Patient Protection and Affordable Care Act and amended by section 10319(g) of such Act, is amended—

(1) in clause (i)—

(A) by placing the subclause (II) (inserted by section 10319(g)(3) of the Patient Protection and Affordable Care Act) immediately after subclause (I) and, in such subclause (II), by striking “and” at the end; and

(B) by striking subclause (III) and inserting the following:

“(III) for 2014, 0.3 percentage point;

“(IV) for each of 2015 and 2016, 0.2 percentage point; and

“(V) for each of 2017, 2018, and 2019, 0.75 percentage point.”;

(2) by striking clause (ii); and

(3) by striking “(G) OTHER ADJUSTMENT.—” and all that follows through “For purposes” and inserting “(G) OTHER ADJUSTMENT.—For purposes” (and redesignating subclauses (I) through (V) as clauses (i) through (v), respectively, with appropriate indentation).

SEC. 1106. PHYSICIAN OWNERSHIP-REFERRAL.

Section 1877(i) of the Social Security Act (42 U.S.C. 1395nn(i)), as added by section 6001(a)(3) of the Patient Protection and Affordable Care Act and as amended by section 10601(a) of such Act, is amended—

(1) in paragraph (1)(A)(i), by striking “August 1, 2010” and inserting “December 31, 2010”; and

(2) in paragraph (3)—

(A) in subparagraph (A)(i), by striking “an applicable hospital (as defined in subparagraph (E))” and inserting “a hospital that is an applicable hospital (as defined in subparagraph (E)) or is a high Medicaid facility described in subparagraph (F)”;

(B) in subparagraph (C)(iii), by inserting after “date of enactment of this subsection” the following: “(or, in the case of a hospital that did not have a provider agreement in effect as of such date but does have such an agreement in effect on December 31, 2010, the effective date of such provider agreement)”;

(C) by redesignating subparagraphs (F) through (H) as subparagraphs (G) through (I), respectively; and

(D) by inserting after subparagraph (E) the following new subparagraph:

“(F) HIGH MEDICAID FACILITY DESCRIBED.—A high Medicaid facility described in this subparagraph is a hospital that—

“(i) is not the sole hospital in a county;

“(ii) with respect to each of the 3 most recent years for which data are available, has an annual percent of total inpatient admissions that represent inpatient admissions under title XIX that is estimated to be greater than such percent with respect to such admissions for any other hospital located in the county in which the hospital is located; and

“(iii) meets the conditions described in subparagraph (E)(iii).”.

SEC. 1107. PAYMENT FOR IMAGING SERVICES.

Section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as amended by section 3135(a) of the Patient Protection and Affordable Care Act, is amended—

(1) in subsection (b)(4)—

(A) in subparagraph (B), by striking “this paragraph” and inserting “subparagraph (A)”; and

(B) by amending subparagraph (C) to read as follows:

“(C) ADJUSTMENT IN IMAGING UTILIZATION RATE.—With respect to fee schedules established for 2011 and subsequent years, in the methodology for determining practice expense relative value units for expensive diagnostic imaging equipment under the final rule published by the Secretary in the Federal Register on November 25, 2009 (42 CFR 410 et al.), the Secretary shall use a 75 percent assumption instead of the utilization rates otherwise established in such final rule.”; and

(2) in subsection (c)(2)(B)(v), by striking subclauses (III), (IV), and (V) and inserting the following new subclause:

“(III) CHANGE IN UTILIZATION RATE FOR CERTAIN IMAGING SERVICES.—Effective for fee schedules established beginning with 2011, reduced expenditures attributable to the change in the utilization rate applicable to 2011, as described in subsection (b)(4)(C).”.

Effective date.

42 USC 1395w–4
note.
Effective date.

SEC. 1108. PE GPCI ADJUSTMENT FOR 2010.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, section 1848(e)(1)(H)(i) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(H)(i)), as added by section 3102(b)(2) of the Patient Protection and Affordable Care Act, is amended by striking “ $\frac{3}{4}$ ” and inserting “ $\frac{1}{2}$ ”.

SEC. 1109. PAYMENT FOR QUALIFYING HOSPITALS.42 USC 1395ww
note.

(a) **IN GENERAL.**—From the amount available under subsection (b), the Secretary of Health and Human Services shall provide for a payment to qualifying hospitals (as defined in subsection (d)) for fiscal years 2011 and 2012 of the amount determined under subsection (c).

(b) **AMOUNTS AVAILABLE.**—There shall be available from the Federal Hospital Insurance Trust Fund \$400,000,000 for payments under this section for fiscal years 2011 and 2012.

(c) **PAYMENT AMOUNT.**—The amount of payment under this section for a qualifying hospital shall be determined, in a manner consistent with the amount available under subsection (b), in proportion to the portion of the amount of the aggregate payments under section 1886(d) of the Social Security Act to the hospital for fiscal year 2009 bears to the sum of all such payments to all qualifying hospitals for such fiscal year.

(d) **QUALIFYING HOSPITAL DEFINED.**—In this section, the term “qualifying hospital” means a subsection (d) hospital (as defined for purposes of section 1886(d) of the Social Security Act) that is located in a county that ranks, based upon its ranking in age, sex, and race adjusted spending for benefits under parts A and B under title XVIII of such Act per enrollee, within the lowest quartile of such counties in the United States.

Subtitle C—Medicaid

SEC. 1201. FEDERAL FUNDING FOR STATES.

Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3) and 10201(c) of the Patient Protection and Affordable Care Act, is amended—

(1) in subsection (y)—

(A) by redesignating subclause (II) of paragraph (1)(B)(ii) as paragraph (5) of subsection (z) and realigning the left margins accordingly; and

(B) by striking paragraph (1) and inserting the following:

“(1) **AMOUNT OF INCREASE.**—Notwithstanding subsection (b), the Federal medical assistance percentage for a State that is one of the 50 States or the District of Columbia, with respect to amounts expended by such State for medical assistance for newly eligible individuals described in subclause (VIII) of section 1902(a)(10)(A)(i), shall be equal to—

“(A) 100 percent for calendar quarters in 2014, 2015, and 2016;

“(B) 95 percent for calendar quarters in 2017;

“(C) 94 percent for calendar quarters in 2018;

“(D) 93 percent for calendar quarters in 2019; and

“(E) 90 percent for calendar quarters in 2020 and each year thereafter.”; and

(2) in subsection (z)—

(A) in paragraph (1), by striking “September 30, 2019” and inserting “December 31, 2015” and by striking “subsection (y)(1)(B)(ii)(II)” and inserting “paragraph (3)”; and

(B) by striking paragraphs (2) through (4) and inserting the following:

“(2)(A) For calendar quarters in 2014 and each year thereafter, the Federal medical assistance percentage otherwise determined under subsection (b) for an expansion State described in paragraph (3) with respect to medical assistance for individuals described in section 1902(a)(10)(A)(i)(VIII) who are nonpregnant childless adults with respect to whom the State may require enrollment in benchmark coverage under section 1937 shall be equal to the percent specified in subparagraph (B)(i) for such year.

“(B)(i) The percent specified in this subparagraph for a State for a year is equal to the Federal medical assistance percentage (as defined in the first sentence of subsection (b)) for the State increased by a number of percentage points equal to the transition percentage (specified in clause (ii) for the year) of the number of percentage points by which—

“(I) such Federal medical assistance percentage for the State, is less than

“(II) the percent specified in subsection (y)(1) for the year.

“(ii) The transition percentage specified in this clause for—

“(I) 2014 is 50 percent;

“(II) 2015 is 60 percent;

“(III) 2016 is 70 percent;

“(IV) 2017 is 80 percent;

“(V) 2018 is 90 percent; and

“(VI) 2019 and each subsequent year is 100 percent.”;

and

(C) by redesignating paragraph (5) (as added by paragraph (1)(A) of this section) as paragraph (3), realigning the left margins to align with paragraph (2), and striking the heading and all that follows through “a State is” and inserting “A State is”.

SEC. 1202. PAYMENTS TO PRIMARY CARE PHYSICIANS.

(a) IN GENERAL.—

(1) FEE-FOR-SERVICE PAYMENTS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 2303(a)(2) of the Patient Protection and Affordable Care Act, is amended—

(A) in subsection (a)(13)—

(i) by striking “and” at the end of subparagraph

(A);

(ii) by adding “and” at the end of subparagraph

(B); and

(iii) by adding at the end the following new subparagraph:

“(C) payment for primary care services (as defined in subsection (jj)) furnished in 2013 and 2014 by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine at a rate not less than 100 percent of the payment rate that applies to such services and physician under part B of title XVIII (or, if greater, the payment rate that would be applicable under such part if the conversion factor under section 1848(d) for the year involved were the conversion factor under such section for 2009);”;

(B) by adding at the end the following new subsection:

“(jj) PRIMARY CARE SERVICES DEFINED.—For purposes of subsection (a)(13)(C), the term ‘primary care services’ means—

“(1) evaluation and management services that are procedure codes (for services covered under title XVIII) for services in the category designated Evaluation and Management in the Healthcare Common Procedure Coding System (established by the Secretary under section 1848(c)(5) as of December 31, 2009, and as subsequently modified); and

“(2) services related to immunization administration for vaccines and toxoids for which CPT codes 90465, 90466, 90467, 90468, 90471, 90472, 90473, or 90474 (as subsequently modified) apply under such System.”.

(2) UNDER MEDICAID MANAGED CARE PLANS.—Section 1932(f) of such Act (42 U.S.C. 1396u–2(f)) is amended—

(A) in the heading, by adding at the end the following: “; ADEQUACY OF PAYMENT FOR PRIMARY CARE SERVICES”; and

(B) by inserting before the period at the end the following: “and, in the case of primary care services described in section 1902(a)(13)(C), consistent with the minimum payment rates specified in such section (regardless of the manner in which such payments are made, including in the form of capitation or partial capitation)”.

(b) INCREASE IN PAYMENT USING INCREASED FMAP.—Section 1905 of the Social Security Act, as amended by section 1004(b) of this Act and section 10201(c)(6) of the Patient Protection and Affordable Care Act, is amended by adding at the end the following new subsection:

“(dd) INCREASED FMAP FOR ADDITIONAL EXPENDITURES FOR PRIMARY CARE SERVICES.—Notwithstanding subsection (b), with respect to the portion of the amounts expended for medical assistance for services described in section 1902(a)(13)(C) furnished on or after January 1, 2013, and before January 1, 2015, that is attributable to the amount by which the minimum payment rate required under such section (or, by application, section 1932(f)) exceeds the payment rate applicable to such services under the State plan as of July 1, 2009, the Federal medical assistance percentage for a State that is one of the 50 States or the District of Columbia shall be equal to 100 percent. The preceding sentence does not prohibit the payment of Federal financial participation based on the Federal medical assistance percentage for amounts in excess of those specified in such sentence.”.

SEC. 1203. DISPROPORTIONATE SHARE HOSPITAL PAYMENTS.

(a) IN GENERAL.—Section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)), as amended by sections 2551(a)(4) and 10201(e)(1) of the Patient Protection and Affordable Care Act, is amended—

(1) in paragraph (6)(B)(iii), in the matter preceding subclause (I), by striking “or paragraph (7)”; and

(2) by striking paragraph (7) and inserting the following:

“(7) MEDICAID DSH REDUCTIONS.—

“(A) REDUCTIONS.—

“(i) IN GENERAL.—For each of fiscal years 2014 through 2020 the Secretary shall effect the following reductions:

“(I) REDUCTION IN DSH ALLOTMENTS.—The Secretary shall reduce DSH allotments to States in the amount specified under the DSH health reform methodology under subparagraph (B) for the State for the fiscal year.

“(II) REDUCTIONS IN PAYMENTS.—The Secretary shall reduce payments to States under section 1903(a) for each calendar quarter in the fiscal year, in the manner specified in clause (iii), in an amount equal to $\frac{1}{4}$ of the DSH allotment reduction under subclause (I) for the State for the fiscal year.

“(ii) AGGREGATE REDUCTIONS.—The aggregate reductions in DSH allotments for all States under clause (i)(I) shall be equal to—

“(I) \$500,000,000 for fiscal year 2014;

“(II) \$600,000,000 for fiscal year 2015;

“(III) \$600,000,000 for fiscal year 2016;

“(IV) \$1,800,000,000 for fiscal year 2017;

“(V) \$5,000,000,000 for fiscal year 2018;

“(VI) \$5,600,000,000 for fiscal year 2019; and

“(VII) \$4,000,000,000 for fiscal year 2020.

The Secretary shall distribute such aggregate reductions among States in accordance with subparagraph (B).

“(iii) MANNER OF PAYMENT REDUCTION.—The amount of the payment reduction under clause (i)(II) for a State for a quarter shall be deemed an overpayment to the State under this title to be disallowed against the State’s regular quarterly draw for all spending under section 1903(d)(2). Such a disallowance is not subject to a reconsideration under subsections (d) and (e) of section 1116.

“(iv) DEFINITION.—In this paragraph, the term ‘State’ means the 50 States and the District of Columbia.

“(B) DSH HEALTH REFORM METHODOLOGY.—The Secretary shall carry out subparagraph (A) through use of a DSH Health Reform methodology that meets the following requirements:

“(i) The methodology imposes the largest percentage reductions on the States that—

“(I) have the lowest percentages of uninsured individuals (determined on the basis of data from the Bureau of the Census, audited hospital cost reports, and other information likely to yield accurate data) during the most recent year for which such data are available; or

“(II) do not target their DSH payments on—

“(aa) hospitals with high volumes of Medicaid inpatients (as defined in subsection (b)(1)(A)); and

“(bb) hospitals that have high levels of uncompensated care (excluding bad debt).

“(ii) The methodology imposes a smaller percentage reduction on low DSH States described in paragraph (5)(B).

“(iii) The methodology takes into account the extent to which the DSH allotment for a State was included in the budget neutrality calculation for a coverage expansion approved under section 1115 as of July 31, 2009.”.

(b) **EXTENSION OF DSH ALLOTMENT.**—Section 1923(f)(6)(A) of the Social Security Act (42 U.S.C. 1396r–4(f)(6)(A)) is amended by adding at the end the following:

“(v) **ALLOTMENT FOR 2D, 3RD, AND 4TH QUARTERS OF FISCAL YEAR 2012 AND FOR FISCAL YEAR 2013.**—Notwithstanding the table set forth in paragraph (2):

“(I) **2D, 3RD, AND 4TH QUARTERS OF FISCAL YEAR 2012.**—In the case of a State that has a DSH allotment of \$0 for the 2d, 3rd, and 4th quarters of fiscal year 2012, the DSH allotment shall be \$47,200,000 for such quarters.

“(II) **FISCAL YEAR 2013.**—In the case of a State that has a DSH allotment of \$0 for fiscal year 2013, the DSH allotment shall be \$53,100,000 for such fiscal year.”.

SEC. 1204. FUNDING FOR THE TERRITORIES.

(a) **IN GENERAL.**—Part III of subtitle D of title I of the Patient Protection and Affordable Care Act, as amended by section 10104(m) of such Act, is amended by inserting after section 1322 the following section:

“SEC. 1323. FUNDING FOR THE TERRITORIES.

42 USC 18043.

“(a) **IN GENERAL.**—A territory that—

“(1) elects consistent with subsection (b) to establish an Exchange in accordance with part II of this subtitle and establishes such an Exchange in accordance with such part shall be treated as a State for purposes of such part and shall be entitled to payment from the amount allocated to the territory under subsection (c); or

“(2) does not make such election shall be entitled to an increase in the dollar limitation applicable to the territory under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) for such period in such amount for such territory and such increase shall not be taken into account in computing any other amount under such subsections.

“(b) **TERMS AND CONDITIONS.**—An election under subsection (a)(1) shall—

“(1) not be effective unless the election is consistent with section 1321 and is received not later than October 1, 2013; and

Deadline.

“(2) be contingent upon entering into an agreement between the territory and the Secretary that requires that—

Contracts.

“(A) funds provided under the agreement shall be used only to provide premium and cost-sharing assistance to residents of the territory obtaining health insurance coverage through the Exchange; and

“(B) the premium and cost-sharing assistance provided under such agreement shall be structured in such a manner so as to prevent any gap in assistance for individuals between the income level at which medical assistance is available through the territory’s Medicaid plan under title XIX of the Social Security Act and the income level at

which premium and cost-sharing assistance is available under the agreement.

“(c) APPROPRIATION AND ALLOCATION.—

Time period.

“(1) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated for purposes of payment pursuant to subsection (a) \$1,000,000,000, to be available during the period beginning with 2014 and ending with 2019.

“(2) ALLOCATION.—The Secretary shall allocate the amount appropriated under paragraph (1) among the territories for purposes of carrying out this section as follows:

“(A) For Puerto Rico, \$925,000,000.

“(B) For another territory, the portion of \$75,000,000 specified by the Secretary.”.

(b) MEDICAID FUNDING.—

(1) INCREASE IN FUNDING CAPS.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)), as amended by section 2005(a) of the Patient Protection and Affordable Care Act, is amended—

(A) in paragraph (2), by inserting “and section 1323(a)(2) of the Patient Protection and Affordable Care Act” after “subject to”; and

(B) by striking paragraph (5) and inserting the following:

Time period.

“(5) ADDITIONAL INCREASE.—The Secretary shall increase the amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa (after the application of subsection (f) and the preceding paragraphs of this subsection) for the period beginning July 1, 2011, and ending on September 30, 2019, by such amounts that the total additional payments under title XIX to such territories equals \$6,300,000,000 for such period. The Secretary shall increase such amounts in proportion to the amounts applicable to such territories under this subsection and subsection (f) on the date of enactment of this paragraph.”.

Ante, p. 283.

(2) DISREGARD OF PAYMENTS; INCREASED FMAP.—Section 2005 of the Patient Protection and Affordable Care Act is amended—

Applicability.

(A) by repealing subsection (b) (and the amendments made by that subsection) and section 1108(g)(4) of the Social Security Act shall be applied as if such amendments had never been enacted; and

(B) in subsection (c)(2), by striking “January” and inserting “July”.

SEC. 1205. DELAY IN COMMUNITY FIRST CHOICE OPTION.

Section 1915(k)(1) of the Social Security Act (42 U.S.C. 1396n(k)), as added by section 2401 of the Patient Protection and Affordable Care Act, is amended by striking “October 1, 2010” and inserting “October 1, 2011”.

SEC. 1206. DRUG REBATES FOR NEW FORMULATIONS OF EXISTING DRUGS.

(a) TREATMENT OF NEW FORMULATIONS.—Subparagraph (C) of section 1927(c)(2) of the Social Security Act (42 U.S.C. 1396r–8(c)(2)), as added by section 2501(d) of the Patient Protection and Affordable Care Act, is amended to read as follows:

“(C) TREATMENT OF NEW FORMULATIONS.—In the case of a drug that is a line extension of a single source drug or an innovator multiple source drug that is an oral solid dosage form, the rebate obligation with respect to such drug under this section shall be the amount computed under this section for such new drug or, if greater, the product of—

“(i) the average manufacturer price of the line extension of a single source drug or an innovator multiple source drug that is an oral solid dosage form;

“(ii) the highest additional rebate (calculated as a percentage of average manufacturer price) under this section for any strength of the original single source drug or innovator multiple source drug; and

“(iii) the total number of units of each dosage form and strength of the line extension product paid for under the State plan in the rebate period (as reported by the State).

In this subparagraph, the term ‘line extension’ means, with respect to a drug, a new formulation of the drug, such as an extended release formulation.”.

Definition.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Patient Protection and Affordable Care Act.

42 USC 1396r–8 note.

Subtitle D—Reducing Fraud, Waste, and Abuse

SEC. 1301. COMMUNITY MENTAL HEALTH CENTERS.

(a) IN GENERAL.—Section 1861(ff)(3)(B) of the Social Security Act (42 U.S.C. 1395x(ff)(3)(B)) is amended—

(1) in clause (ii), by striking “and” at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following:

“(iii) provides at least 40 percent of its services to individuals who are not eligible for benefits under this title; and”.

(b) RESTRICTION.—Section 1861(ff)(3)(A) of such Act (42 U.S.C. 1395x(ff)(3)(A)) is amended by inserting “other than in an individual’s home or in an inpatient or residential setting” before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after the first day of the first calendar quarter that begins at least 12 months after the date of the enactment of this Act.

Applicability.
42 USC 1395x
note.

SEC. 1302. MEDICARE PREPAYMENT MEDICAL REVIEW LIMITATIONS.

Section 1874A(h) of the Social Security Act (42 U.S.C. 1395w–3a(h)) is repealed.

42 USC
1395kk–1.

SEC. 1303. FUNDING TO FIGHT FRAUD, WASTE, AND ABUSE.

(a) FUNDING TO FIGHT FRAUD, WASTE, AND ABUSE.—

(1) IN GENERAL.—Section 1817(k) of the Social Security Act (42 U.S.C. 1395i(k)), as amended by section 6402(i) of the Patient Protection and Affordable Care Act, is further amended—

(A) by adding at the end the following new paragraph:

“(8) ADDITIONAL FUNDING.—

“(A) IN GENERAL.—In addition to the funds otherwise appropriated to the Account from the Trust Fund under paragraphs (3)(C) and (4)(A) and for purposes described in paragraphs (3)(C) and (4)(A), there are hereby appropriated to such Account from such Trust Fund the following additional amounts:

“(i) For fiscal year 2011, \$95,000,000.

“(ii) For fiscal year 2012, \$55,000,000.

“(iii) For each of fiscal years 2013 and 2014, \$30,000,000.

“(iv) For each of fiscal years 2015 and 2016, \$20,000,000.

“(B) ALLOCATION.—The funds appropriated under this paragraph shall be allocated in the same proportion as the total funding appropriated with respect to paragraphs (3)(A) and (4)(A) was allocated with respect to fiscal year 2010, and shall be available without further appropriation until expended.”; and

(B) in paragraph (4)(A), by inserting “for activities described in paragraph (3)(C) and” after “necessary”.

42 USC 1396u–6. Act (42 U.S.C. 1396–u6(e)(1)) is amended—

(1) in subparagraph (B), by striking at the end “and”;

(2) in subparagraph (C)—

(A) by striking “for each fiscal year thereafter” and inserting “for each of fiscal years 2009 and 2010”; and

(B) by striking the period and inserting “; and”; and

(3) by adding at the end the following new subparagraph: “(D) for each fiscal year after fiscal year 2010, the amount appropriated under this paragraph for the previous fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year.”.

SEC. 1304. 90-DAY PERIOD OF ENHANCED OVERSIGHT FOR INITIAL CLAIMS OF DME SUPPLIERS.

42 USC 1395cc. Section 1866(j), as amended by section 6401 of the Patient Protection and Affordable Care Act, is further amended—

(1) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8), respectively; and

(2) by inserting after paragraph (3) the following new paragraph:

Determination. “(4) 90-DAY PERIOD OF ENHANCED OVERSIGHT FOR INITIAL CLAIMS OF DME SUPPLIERS.—For periods beginning after January 1, 2011, if the Secretary determines that there is a significant risk of fraudulent activity among suppliers of durable medical equipment, in the case of a supplier of durable medical equipment who is within a category or geographic area under title XVIII identified pursuant to such determination and who is initially enrolling under such title, the Secretary shall, notwithstanding sections 1816(c), 1842(c), and 1869(a)(2), withhold payment under such title with respect to durable medical equipment furnished by such supplier during the 90-day period beginning on the date of the first submission of a claim under such title for durable medical equipment furnished by such supplier.”.

Subtitle E—Provisions Relating to Revenue

SEC. 1401. HIGH-COST PLAN EXCISE TAX.

(a) IN GENERAL.—Section 4980I of the Internal Revenue Code of 1986, as added by section 9001 of the Patient Protection and Affordable Care Act and amended by section 10901 of such Act, is amended—

Ante, p. 848,
1015.

(1) in subsection (b)(3)(B)—

(A) by striking “The annual” and inserting the following:

“(i) IN GENERAL.—Except as provided in clause

(ii), the annual”; and

(B) by adding at the end the following new clause:

“(ii) MULTIEMPLOYER PLAN COVERAGE.—Any coverage provided under a multiemployer plan (as defined in section 414(f)) shall be treated as coverage other than self-only coverage.”;

(2) in subsection (b)(3)(C)—

(A) by striking “Except as provided in subparagraph

(D)—”;

(B) in clause (i)—

(i) by striking “2013” each place it appears in the heading and the text and inserting “2018”;

(ii) by striking “\$8,500” in subclause (I) and inserting “\$10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage)”; and

(iii) by striking “\$23,000” in subclause (II) and inserting “\$27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage)”;

(C) by redesignating clauses (ii) and (iii) as clauses (iv) and (v), respectively, and by inserting after clause (i) the following new clauses:

“(ii) HEALTH COST ADJUSTMENT PERCENTAGE.—For purposes of clause (i), the health cost adjustment percentage is equal to 100 percent plus the excess (if any) of—

“(I) the percentage by which the per employee cost for providing coverage under the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for plan year 2018 (determined by using the benefit package for such coverage in 2010) exceeds such cost for plan year 2010, over

“(II) 55 percent.

“(iii) AGE AND GENDER ADJUSTMENT.—

“(I) IN GENERAL.—The amount determined under subclause (I) or (II) of clause (i), whichever is applicable, for any taxable period shall be increased by the amount determined under subclause (II).

“(II) AMOUNT DETERMINED.—The amount determined under this subclause is an amount equal to the excess (if any) of—

“(aa) the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for the type of coverage provided such individual in such taxable period if priced for the age and gender characteristics of all employees of the individual’s employer, over

“(bb) that premium cost for the provision of such coverage under such option in such taxable period if priced for the age and gender characteristics of the national workforce.”.

(D) in clause (iv), as redesignated by subparagraph (C)—

(i) by inserting “covered by the plan” after “whose employees”; and

(ii) by striking subclauses (I) and (II) and inserting the following:

“(I) the dollar amount in clause (i)(I) shall be increased by \$1,650, and

“(II) the dollar amount in clause (i)(II) shall be increased by \$3,450,” and

(E) in clause (v), as redesignated by subparagraph (C)—

(i) by striking “2013” and inserting “2018”;

(ii) by striking “clauses (i) and (ii)” and inserting “clauses (i) (after the application of clause (ii)) and (iv)”; and

(iii) by inserting “in the case of determinations for calendar years beginning before 2020” after “1 percentage point” in subclause (II) thereof;

(3) by striking subparagraph (D) of subsection (b)(3);

(4) in subsection (d)(1)(B), by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

“(ii) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye, or”; and

(5) in subsection (d), by adding at the end the following new paragraph:

“(3) EMPLOYEE.—The term ‘employee’ includes any former employee, surviving spouse, or other primary insured individual.”.

(b) EFFECTIVE DATES.—

(1) Section 9001(c) of the Patient Protection and Affordable Care Act is amended by striking “2012” and inserting “2017”.

(2) Section 10901(c) of the Patient Protection and Affordable Care Act is amended by striking “2012” and inserting “2017”.

Ante, p. 853.

Ante, p. 1016.

SEC. 1402. UNEARNED INCOME MEDICARE CONTRIBUTION.

(a) INVESTMENT INCOME.—

(1) IN GENERAL.—Subtitle A of the Internal Revenue Code of 1986 is amended by inserting after chapter 2 the following new chapter:

**“CHAPTER 2A—UNEARNED INCOME MEDICARE
CONTRIBUTION**

“Sec. 1411. Imposition of tax.

“SEC. 1411. IMPOSITION OF TAX.

Definitions.
26 USC 1411.

“(a) IN GENERAL.—Except as provided in subsection (e)—

“(1) APPLICATION TO INDIVIDUALS.—In the case of an individual, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax equal to 3.8 percent of the lesser of—

“(A) net investment income for such taxable year, or

“(B) the excess (if any) of—

“(i) the modified adjusted gross income for such taxable year, over

“(ii) the threshold amount.

“(2) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax of 3.8 percent of the lesser of—

“(A) the undistributed net investment income for such taxable year, or

“(B) the excess (if any) of—

“(i) the adjusted gross income (as defined in section 67(e)) for such taxable year, over

“(ii) the dollar amount at which the highest tax bracket in section 1(e) begins for such taxable year.

“(b) THRESHOLD AMOUNT.—For purposes of this chapter, the term ‘threshold amount’ means—

“(1) in the case of a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), \$250,000,

“(2) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under paragraph (1), and

“(3) in any other case, \$200,000.

“(c) NET INVESTMENT INCOME.—For purposes of this chapter—

“(1) IN GENERAL.—The term ‘net investment income’ means the excess (if any) of—

“(A) the sum of—

“(i) gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of a trade or business not described in paragraph (2),

“(ii) other gross income derived from a trade or business described in paragraph (2), and

“(iii) net gain (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business not described in paragraph (2), over

“(B) the deductions allowed by this subtitle which are properly allocable to such gross income or net gain.

“(2) TRADES AND BUSINESSES TO WHICH TAX APPLIES.—A trade or business is described in this paragraph if such trade or business is—

“(A) a passive activity (within the meaning of section 469) with respect to the taxpayer, or

“(B) a trade or business of trading in financial instruments or commodities (as defined in section 475(e)(2)).

Applicability. “(3) INCOME ON INVESTMENT OF WORKING CAPITAL SUBJECT TO TAX.—A rule similar to the rule of section 469(e)(1)(B) shall apply for purposes of this subsection.

“(4) EXCEPTION FOR CERTAIN ACTIVE INTERESTS IN PARTNERSHIPS AND S CORPORATIONS.—In the case of a disposition of an interest in a partnership or S corporation—

“(A) gain from such disposition shall be taken into account under clause (iii) of paragraph (1)(A) only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest, and

Applicability. “(B) a rule similar to the rule of subparagraph (A) shall apply to a loss from such disposition.

“(5) EXCEPTION FOR DISTRIBUTIONS FROM QUALIFIED PLANS.—The term ‘net investment income’ shall not include any distribution from a plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

“(6) SPECIAL RULE.—Net investment income shall not include any item taken into account in determining self-employment income for such taxable year on which a tax is imposed by section 1401(b).

“(d) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this chapter, the term ‘modified adjusted gross income’ means adjusted gross income increased by the excess of—

“(1) the amount excluded from gross income under section 911(a)(1), over

“(2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).

“(e) NONAPPLICATION OF SECTION.—This section shall not apply to—

“(1) a nonresident alien, or

“(2) a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).”.

26 USC 6654. (2) ESTIMATED TAXES.—Section 6654 of the Internal Revenue Code of 1986 is amended—

(A) in subsection (a), by striking “and the tax under chapter 2” and inserting “the tax under chapter 2, and the tax under chapter 2A”; and

(B) in subsection (f)—

(i) by striking “minus” at the end of paragraph (2) and inserting “plus”; and

(ii) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

“(3) the taxes imposed by chapter 2A, minus”.

(3) CLERICAL AMENDMENT.—The table of chapters for subtitle A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to chapter 2 the following new item:

“CHAPTER 2A—UNEARNED INCOME MEDICARE CONTRIBUTION”.

(4) **EFFECTIVE DATES.**—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2012. 26 USC 1411 note.

(b) **EARNED INCOME.**—(1) **THRESHOLD.**—

(A) **FICA.**—Paragraph (2) of section 3101(b) of the Internal Revenue Code of 1986, as added by section 9015 of the Patient Protection and Affordable Care Act and amended by section 10906 of such Act, is amended by striking “and” at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph: 26 USC 3101.

“(B) in the case of a married taxpayer (as defined in section 7703) filing a separate return, $\frac{1}{2}$ of the dollar amount determined under subparagraph (A), and”.

(B) **SECA.**—Section 1401(b)(2) of the Internal Revenue Code of 1986, as added by section 9015 of the Patient Protection and Affordable Care Act and amended by section 10906 of such Act, is amended— 26 USC 1401.

(i) in subparagraph (A), by striking “and” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) in the case of a married taxpayer (as defined in section 7703) filing a separate return, $\frac{1}{2}$ of the dollar amount determined under clause (i), and”; and

(ii) in subparagraph (B), by striking “under clauses (i) and (ii)” and inserting “under clause (i), (ii), or (iii) (whichever is applicable)”.

(2) **ESTIMATED TAXES.**—Section 6654 of the Internal Revenue Code of 1986 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection: 26 USC 6654.

“(m) **SPECIAL RULE FOR MEDICARE TAX.**—For purposes of this section, the tax imposed under section 3101(b)(2) (to the extent not withheld) shall be treated as a tax imposed under chapter 2.”.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply with respect to remuneration received, and taxable years beginning after, December 31, 2012. Applicability. 26 USC 1401 note.

SEC. 1403. DELAY OF LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.

(a) **IN GENERAL.**—Section 10902(b) of the Patient Protection and Affordable Care Act is amended by striking “December 31, 2010” and inserting “December 31, 2012”. Ante, p. 1016.

(b) **INFLATION ADJUSTMENT.**—Paragraph (2) of section 125(i) of the Internal Revenue Code of 1986, as added by section 9005 of the Patient Protection and Affordable Care Act and amended by section 10902 of such Act, is amended—

(1) in the matter preceding subparagraph (A), by striking “December 31, 2011” and inserting “December 31, 2013”; and

(2) in subparagraph (B), by striking “2010” and inserting “2012”. Ante, p. 855, 1016.

SEC. 1404. BRAND NAME PHARMACEUTICALS.

Ante, p. 859. (a) IN GENERAL.—Section 9008 of the Patient Protection and Affordable Care Act is amended—

(1) in subsection (a)(1), by striking “2009” and inserting “2010”;

(2) in subsection (b)—

(A) by striking “\$2,300,000,000” in paragraph (1) and inserting “the applicable amount”; and

(B) by adding at the end the following new paragraph:

“(4) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined in accordance with the following table:

“Calendar year	Applicable amount
2011	\$2,500,000,000
2012	\$2,800,000,000
2013	\$2,800,000,000
2014	\$3,000,000,000
2015	\$3,000,000,000
2016	\$3,000,000,000
2017	\$4,000,000,000
2018	\$4,100,000,000
2019 and thereafter	\$2,800,000,000.”;

(3) in subsection (d), by adding at the end the following new paragraph:

“(3) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (2), all such persons shall be jointly and severally liable for payment of such fee.”; and

(4) by striking subsection (j) and inserting the following new subsection:

“(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2010.”.

26 USC 4001
note prec.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 9008 of the Patient Protection and Affordable Care Act.

SEC. 1405. EXCISE TAX ON MEDICAL DEVICE MANUFACTURERS.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 is amended—

(1) by inserting after subchapter D the following new subchapter:

“Subchapter E—Medical Devices

26 USC 4191.

“Sec. 4191. Medical devices.**“SEC. 4191. MEDICAL DEVICES.**

“(a) IN GENERAL.—There is hereby imposed on the sale of any taxable medical device by the manufacturer, producer, or importer a tax equal to 2.3 percent of the price for which so sold.

Definition.

“(b) TAXABLE MEDICAL DEVICE.—For purposes of this section—

“(1) IN GENERAL.—The term ‘taxable medical device’ means any device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans.

“(2) EXEMPTIONS.—Such term shall not include—

- “(A) eyeglasses,
- “(B) contact lenses,
- “(C) hearing aids, and

“(D) any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.”, and

(2) by inserting after the item relating to subchapter D in the table of subchapters for such chapter the following new item:

“SUBCHAPTER E. MEDICAL DEVICES”.

(b) CERTAIN EXEMPTIONS NOT TO APPLY.—

(1) Section 4221(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: “In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.”. 26 USC 4221.

(2) Section 6416(b)(2) of such Code is amended by adding at the end the following: “In the case of the tax imposed by section 4191, subparagraphs (B), (C), (D), and (E) shall not apply.”. 26 USC 6416.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2012. 26 USC 4191 note.

(d) REPEAL OF SECTION 9009 OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT.—Section 9009 of the Patient Protection and Affordable Care Act, as amended by section 10904 of such Act, is repealed effective as of the date of enactment of that Act. Effective date. *Ante*, p. 862, 1016.

SEC. 1406. HEALTH INSURANCE PROVIDERS.

(a) IN GENERAL.—Section 9010 of the Patient Protection and Affordable Care Act, as amended by section 10905 of such Act, is amended—

(1) in subsection (a)(1), by striking “2010” and inserting “2013”;

(2) in subsection (b)(2)—

(A) by striking “For purposes of paragraph (1), the net premiums” and inserting “For purposes of paragraph (1)—

“(A) IN GENERAL.—The net premiums”; and

(B) by adding at the end the following subparagraph:

“(B) PARTIAL EXCLUSION FOR CERTAIN EXEMPT ACTIVITIES.—After the application of subparagraph (A), only 50 percent of the remaining net premiums written with respect to health insurance for any United States health risk that are attributable to the activities (other than activities of an unrelated trade or business as defined in section 513 of the Internal Revenue Code of 1986) of any covered entity qualifying under paragraph (3), (4), (26), or (29) of section 501(c) of such Code and exempt from tax under section 501(a) of such Code shall be taken into account.”;

(3) in subsection (c)—

(A) by inserting “during the calendar year in which the fee under this section is due” in paragraph (1) after “risk”;

(B) in paragraph (2), by striking subparagraphs (C), (D), and (E) and inserting the following new subparagraphs:

“(C) any entity—

Ante, p. 865, 1017.

“(i) which is incorporated as a nonprofit corporation under a State law,

“(ii) no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

“(iii) more than 80 percent of the gross revenues of which is received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act, and

“(D) any entity which is described in section 501(c)(9) of such Code and which is established by an entity (other than by an employer or employers) for purposes of providing health care benefits.”;

(C) in paragraph (3)(A), by striking “subparagraph (C)(i)(I), (D)(i)(I), or (E)(i)” and inserting “subparagraph (C) or (D)”;

(D) by adding at the end the following new paragraph:

“(4) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (3), all such persons shall be jointly and severally liable for payment of such fee.”;

(4) by striking subsection (e) and inserting the following:

“(e) APPLICABLE AMOUNT.—For purposes of subsection (b)(1)—

“(1) YEARS BEFORE 2019.—In the case of calendar years beginning before 2019, the applicable amount shall be determined in accordance with the following table:

“Calendar year	Applicable amount
2014	\$8,000,000,000
2015	\$11,300,000,000
2016	\$11,300,000,000
2017	\$13,900,000,000
2018	\$14,300,000,000.

“(2) YEARS AFTER 2018.—In the case of any calendar year beginning after 2018, the applicable amount shall be the applicable amount for the preceding calendar year increased by the rate of premium growth (within the meaning of section 36B(b)(3)(A)(ii) of the Internal Revenue Code of 1986) for such preceding calendar year.”;

(5) in subsection (g), by adding at the end the following new paragraphs:

“(3) ACCURACY-RELATED PENALTY.—

“(A) IN GENERAL.—In the case of any understatement of a covered entity’s net premiums written with respect to health insurance for any United States health risk for any calendar year, there shall be paid by the covered entity making such understatement, an amount equal to the excess of—

Determination.

“(i) the amount of the covered entity’s fee under this section for the calendar year the Secretary determines should have been paid in the absence of any such understatement, over

“(ii) the amount of such fee the Secretary determined based on such understatement.

“(B) UNDERSTATEMENT.—For purposes of this paragraph, an understatement of a covered entity’s net premiums written with respect to health insurance for any United States health risk for any calendar year is the difference between the amount of such net premiums written as reported on the return filed by the covered entity under paragraph (1) and the amount of such net premiums written that should have been reported on such return.

“(C) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A) shall be subject to the provisions of subtitle F of the Internal Revenue Code of 1986 that apply to assessable penalties imposed under chapter 68 of such Code.

“(4) TREATMENT OF INFORMATION.—Section 6103 of the Internal Revenue Code of 1986 shall not apply to any information reported under this subsection.”; and

(6) by striking subsection (j) and inserting the following new subsection:

“(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2013.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 9010 of the Patient Protection and Affordable Care Act.

26 USC 4001
note prec.

SEC. 1407. DELAY OF ELIMINATION OF DEDUCTION FOR EXPENSES ALLOCABLE TO MEDICARE PART D SUBSIDY.

Section 9012(b) of the Patient Protection and Affordable Care Act is amended by striking “2010” and inserting “2012”.

Ante, p. 868.

SEC. 1408. ELIMINATION OF UNINTENDED APPLICATION OF CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) IN GENERAL.—Section 40(b)(6)(E) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

26 USC 40.

“(iii) EXCLUSION OF UNPROCESSED FUELS.—The term ‘cellulosic biofuel’ shall not include any fuel if—

“(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment, or

“(II) the ash content of such fuel is more than 1 percent (determined by weight).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold or used on or after January 1, 2010.

26 USC 40 note.

SEC. 1409. CODIFICATION OF ECONOMIC SUBSTANCE DOCTRINE AND PENALTIES.

(a) IN GENERAL.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

26 USC 7701.

“(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.—

“(1) APPLICATION OF DOCTRINE.—In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

“(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and

“(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

“(2) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—

“(A) IN GENERAL.—The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

Regulations.

“(B) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

“(3) STATE AND LOCAL TAX BENEFITS.—For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

“(4) FINANCIAL ACCOUNTING BENEFITS.—For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

“(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

Applicability.

“(B) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(C) DETERMINATION OF APPLICATION OF DOCTRINE NOT AFFECTED.—The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

“(D) TRANSACTION.—The term ‘transaction’ includes a series of transactions.”.

(b) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

(1) IN GENERAL.—Subsection (b) of section 6662 is amended by inserting after paragraph (5) the following new paragraph: 26 USC 6662.

“(6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.”.

(2) INCREASED PENALTY FOR NONDISCLOSED TRANSACTIONS.—Section 6662 is amended by adding at the end the following new subsection:

“(i) INCREASE IN PENALTY IN CASE OF NONDISCLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

“(1) IN GENERAL.—In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.” Applicability.

“(2) NONDISCLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—For purposes of this subsection, the term ‘nondisclosed noneconomic substance transaction’ means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.” Definition.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—In no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.”.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6662A(e)(2) is amended—

26 USC 6662A.

(A) by striking “section 6662(h)” and inserting “subsections (h) or (i) of section 6662”; and

(B) by striking “GROSS VALUATION MISSTATEMENT PENALTY” in the heading and inserting “CERTAIN INCREASED UNDERPAYMENT PENALTIES”.

(c) REASONABLE CAUSE EXCEPTION NOT APPLICABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.—

(1) REASONABLE CAUSE EXCEPTION FOR UNDERPAYMENTS.—Subsection (c) of section 6664 is amended—

26 USC 6664.

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking “paragraph (2)” in paragraph (4)(A), as so redesignated, and inserting “paragraph (3)”; and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of an underpayment which is attributable to one or more transactions described in section 6662(b)(6).”.

(2) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—Subsection (d) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking “paragraph (2)(C)” in paragraph (4), as so redesignated, and inserting “paragraph (3)(C)”; and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of a reportable transaction understatement which is attributable to one or more transactions described in section 6662(b)(6).”.

(d) APPLICATION OF PENALTY FOR ERRONEOUS CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUBSTANCE TRANSACTIONS.—Section 6676 is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

26 USC 6676.

“(c) NONECONOMIC SUBSTANCE TRANSACTIONS TREATED AS LACKING REASONABLE BASIS.—For purposes of this section, any excessive amount which is attributable to any transaction described in section 6662(b)(6) shall not be treated as having a reasonable basis.”.

Applicability.
26 USC 6662
note.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

(2) UNDERPAYMENTS.—The amendments made by subsections (b) and (c)(1) shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

(3) UNDERSTATEMENTS.—The amendments made by subsection (c)(2) shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

(4) REFUNDS AND CREDITS.—The amendment made by subsection (d) shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act.

26 USC 6655
note.

SEC. 1410. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 15.75 percentage points.

Subtitle F—Other Provisions

SEC. 1501. COMMUNITY COLLEGE AND CAREER TRAINING GRANT PROGRAM.

Section 279(b) of the Trade Act of 1974 (19 U.S.C. 2372a(b)) is amended by striking “SUPPLEMENT” and all that follows through “Funds” and inserting “There are” and by striking “pursuant” and all that follows and inserting “\$500,000,000 for each of fiscal years 2011, 2012, 2013, and 2014 to carry out this subchapter, except that the limitations contained in section 278(a)(2) shall not apply to such funds and each State shall receive not less than 0.5 percent of the amount appropriated pursuant to this subsection for each such fiscal year.”.

TITLE II—EDUCATION AND HEALTH

Subtitle A—Education

SAFRA Act.

SEC. 2001. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This subtitle may be cited as the “SAFRA Act”. 20 USC 1001 note.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

PART I—INVESTING IN STUDENTS AND FAMILIES

SEC. 2101. FEDERAL PELL GRANTS.

(a) AMOUNT OF GRANTS.—Section 401(b) (20 U.S.C. 1070a(b)) is amended—

(1) by amending paragraph (2)(A) to read as follows:

“(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

“(i) the maximum Federal Pell Grant, as specified in the last enacted appropriation Act applicable to that award year, plus

“(ii) the amount of the increase calculated under paragraph (8)(B) for that year, less

“(iii) an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.”; and

(2) in paragraph (8)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking “, to carry out subparagraph (B) of this paragraph”; and

(ii) by striking clauses (iii) through (x) and inserting the following:

“(iii) to carry out subparagraph (B) of this paragraph, such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year to provide the amount of increase of the maximum Federal Pell Grant required by clauses (ii) and (iii) of subparagraph (B); and

“(iv) to carry out this section, \$13,500,000,000 for fiscal year 2011.”;

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking “subparagraph (A)” and inserting “clauses (i) through (iii) of subparagraph (A)”;

(ii) in clause (ii), by striking “and 2011–2012” and inserting “, 2011–2012, and 2012–2013”; and

(iii) by striking clause (iii) and inserting the following:

“(iii) the amount determined under subparagraph (C) for each succeeding award year.”; and
(C) by striking subparagraph (C) and inserting the following:

“(C) ADJUSTMENT AMOUNTS.—

“(i) AWARD YEAR 2013–2014.—For award year 2013–2014, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

“(I) \$5,550 or the total maximum Federal Pell Grant for the preceding award year (as determined under clause (v)(II)), whichever is greater, increased by a percentage equal to the annual adjustment percentage for award year 2013–2014, reduced by

“(II) \$4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

“(III) rounded to the nearest \$5.

“(ii) AWARD YEARS 2014–2015 THROUGH 2017–2018.—For each of the award years 2014–2015 through 2017–2018, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

“(I) the total maximum Federal Pell Grant for the preceding award year (as determined under clause (v)(II)), increased by a percentage equal to the annual adjustment percentage for the award year for which the amount under this subparagraph is being determined, reduced by

“(II) \$4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

“(III) rounded to the nearest \$5.

“(iii) SUBSEQUENT AWARD YEARS.—For award year 2018–2019 and each subsequent award year, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to the amount determined under clause (ii) for award year 2017–2018.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) the term ‘annual adjustment percentage’ as applied to an award year, is equal to the estimated percentage change in the Consumer Price Index (as determined by the Secretary, using the definition in section 478(f)) for the most recent calendar year ending prior to the beginning of that award year; and

“(II) the term ‘total maximum Federal Pell Grant’ as applied to a preceding award year, is equal to the sum of—

“(aa) the maximum Federal Pell Grant for which a student is eligible during an award year, as specified in the last enacted appropriation Act applicable to that preceding award year; and

“(bb) the amount of the increase in the maximum Federal Pell Grant required by this paragraph for that preceding award year.”.

(b) CONFORMING AMENDMENTS.—Title IV (20 U.S.C. 1070 et seq.) is further amended—

(1) in section 401(b) (20 U.S.C. 1070a(b))—

(A) in paragraph (4)—

(i) by striking “maximum basic grant level specified in the appropriate appropriation Act” and inserting “maximum amount of a Federal Pell Grant award determined under paragraph (2)(A)”; and

(ii) by striking “such level” each place it appears and inserting “such Federal Pell Grant amount” in each such place; and

(B) in paragraph (6), by striking “the grant level specified in the appropriate Appropriation Act for this subpart for such year” and inserting “the maximum amount of a Federal Pell Grant award determined under paragraph (2)(A), for which a student is eligible during such award year”;

(2) in section 402D(d)(1) (20 U.S.C. 1070a–14(d)(1)), by striking “exceed the maximum” and all that follows through “Grant, for” and inserting “exceed the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student is eligible, or be less than the minimum Federal Pell Grant amount described in section 401(b)(4), for”;

(3) in section 435(a)(5)(A)(i)(I) (20 U.S.C. 1085(a)(5)(A)(i)(I)), by striking “one-half the maximum Federal Pell Grant award for which a student would be eligible” and inserting “one-half the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student would be eligible”;

(4) in section 483(e)(3)(A)(ii) (20 U.S.C. 1090(e)(3)(A)(ii)), by striking “based on the maximum Federal Pell Grant award at the time of application” and inserting “based on the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student is eligible at the time of application”;

(5) in section 485E(b)(1)(A) (20 U.S.C. 1092f(b)(1)(A)), by striking “of such students’ potential eligibility for a maximum Federal Pell Grant under subpart 1 of part A” and inserting “of such students’ potential eligibility for the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which the student would be eligible”; and

(6) in section 894(f)(2)(C)(ii)(I) (20 U.S.C. 1161y(f)(2)(C)(ii)(I)), by striking “the maximum Federal Pell Grant for each award year” and inserting “the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student may be eligible for each award year”.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on July 1, 2010.

20 USC 1070a
note.

SEC. 2102. COLLEGE ACCESS CHALLENGE GRANT PROGRAM.

Section 781 (20 U.S.C. 1141) is amended—

(1) in the first sentence of subsection (a), by striking “\$66,000,000” and all that follows through the period and inserting “\$150,000,000 for each of the fiscal years 2010 through 2014. The authority to award grants under this section shall expire at the end of fiscal year 2014.”; and

(2) in subsection (c)(2), by striking “0.5 percent” and inserting “1.0 percent”.

SEC. 2103. INVESTMENT IN HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY-SERVING INSTITUTIONS.

Section 371(b)(1)(A) (20 U.S.C. 1067q(b)(1)(A)) is amended by striking “and 2009.” and all that follows and inserting “through 2019. The authority to award grants under this section shall expire at the end of fiscal year 2019.”.

PART II—STUDENT LOAN REFORM

SEC. 2201. TERMINATION OF FEDERAL FAMILY EDUCATION LOAN APPROPRIATIONS.

Section 421 (20 U.S.C. 1071) is amended—

(1) in subsection (b), in the first sentence of the matter following paragraph (6), by inserting “, except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date” after “expended”; and

(2) by adding at the end the following new subsection:
“(d) TERMINATION OF AUTHORITY TO MAKE OR INSURE NEW LOANS.—Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—

“(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010; and

“(2) no funds are authorized to be appropriated, or may be expended, under this Act or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement is after June 30, 2010, except as expressly authorized by an Act of Congress enacted after the date of enactment of the SAFRA Act.”.

SEC. 2202. TERMINATION OF FEDERAL LOAN INSURANCE PROGRAM.

Section 424(a) (20 U.S.C. 1074(a)) is amended by striking “September 30, 1976,” and all that follows and inserting “September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010.”.

SEC. 2203. TERMINATION OF APPLICABLE INTEREST RATES.

Section 427A(l) (20 U.S.C. 1077a(l)) is amended—

(1) in the subsection heading, by inserting “AND BEFORE JULY 1, 2010” after “2006”;

(2) in paragraph (1), by inserting “and before July 1, 2010,” after “July 1, 2006,”;

(3) in paragraph (2), by inserting “and before July 1, 2010,” after “July 1, 2006,”;

(4) in paragraph (3), by inserting “and that was disbursed before July 1, 2010,” after “July 1, 2006,”; and

(5) in paragraph (4)—

(A) in the matter preceding subparagraph (A), by striking “July 1, 2012” and inserting “July 1, 2010”; and

(B) by repealing subparagraphs (D) and (E).

SEC. 2204. TERMINATION OF FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.

(a) HIGHER EDUCATION ACT OF 1965.—Section 428 (20 U.S.C. 1078) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting “for which the first disbursement is made before July 1, 2010, and” after “eligible institution”; and

(B) in paragraph (5), by striking “September 30, 2014,” and all that follows through the period and inserting “June 30, 2010.”;

(2) in subsection (b)(1)—

(A) in subparagraph (G)(ii), by inserting “and before July 1, 2010,” after “July 1, 2006,”; and

(B) in subparagraph (H)(ii), by inserting “and that are first disbursed before July 1, 2010,” after “July 1, 2006,”;

(3) in subsection (f)(1)(A)(ii)—

(A) by striking “during fiscal years beginning”; and

(B) by inserting “and first disbursed before July 1, 2010,” after “October 1, 2003,”; and

(4) in subsection (j)(1), by inserting “, before July 1, 2010,” after “section 435(d)(1)(D) of this Act shall”.

(b) COLLEGE COST REDUCTION AND ACCESS ACT.—Section 303 of the College Cost Reduction and Access Act (Public Law 110–84) is repealed.

20 USC 1078 and note.

SEC. 2205. TERMINATION OF FFEL PLUS LOANS.

Section 428B(a)(1) (20 U.S.C. 1078–2(a)(1)) is amended by striking “A graduate” and inserting “Prior to July 1, 2010, a graduate”.

SEC. 2206. FEDERAL CONSOLIDATION LOANS.

(a) IN GENERAL.—Section 428C (20 U.S.C. 1078–3) is amended—

(1) in subsection (a)(4)(A), by inserting “, and first disbursed before July 1, 2010” after “under this part”;

(2) in subsection (b)—

(A) in paragraph (1)(E), by inserting before the semicolon “, and before July 1, 2010”; and

(B) in paragraph (5), by striking “In the event that” and inserting “If, before July 1, 2010,”;

(3) in subsection (c)(1)—

(A) in subparagraph (A)(ii), by inserting “and that is disbursed before July 1, 2010,” after “2006,”; and

(B) in subparagraph (C), by inserting “and disbursed before July 1, 2010,” after “1994,”; and

(4) in subsection (e), by striking “September 30, 2014.” and inserting “June 30, 2010. No loan may be made under this section for which the disbursement is on or after July 1, 2010.”.

(b) TEMPORARY LOAN CONSOLIDATION AUTHORITY.—Part D of title IV (20 U.S.C. 1087a et seq.) is amended by inserting after section 459A (20 U.S.C. 1087i) the following:

20 USC 1087i–2. **“SEC. 459B. TEMPORARY LOAN CONSOLIDATION AUTHORITY.**

“(a) TEMPORARY LOAN CONSOLIDATION AUTHORITY.—

“(1) IN GENERAL.—A borrower who has 1 or more loans in 2 or more of the categories described in paragraph (2), and who has not yet entered repayment on 1 or more of those loans in any of the categories, may consolidate all of the loans of the borrower that are described in paragraph (2) into a Federal Direct Consolidation Loan during the period described in paragraph (3).

“(2) CATEGORIES OF LOANS THAT MAY BE CONSOLIDATED.—The categories of loans that may be consolidated under paragraph (1) are—

“(A) loans made under this part;

“(B) loans purchased by the Secretary pursuant to section 459A; and

“(C) loans made under part B that are held by an eligible lender, as such term is defined in section 435(d).

“(3) TIME PERIOD IN WHICH LOANS MAY BE CONSOLIDATED.—The Secretary may make a Federal Direct Consolidation Loan under this section to a borrower whose application for such Federal Direct Consolidation Loan is received on or after July 1, 2010, and before July 1, 2011.

“(b) TERMS OF LOANS.—A Federal Direct Consolidation Loan made under this section shall have the same terms and conditions as a Federal Direct Consolidation Loan made under section 455(g), except that—

Applicability.

“(1) in determining the applicable rate of interest on the Federal Direct Consolidation Loan made under this section (other than on a Federal Direct Consolidation Loan described in paragraph (2)), section 427A(l)(3) shall be applied without rounding the weighted average of the interest rate on the loans consolidated to the nearest higher one-eighth of 1 percent as described in subparagraph (A) of section 427A(l)(3); and

“(2) if a Federal Direct Consolidation Loan made under this section that repays a loan which is subject to an interest rate determined under section 427A(g)(2), (j)(2), or (k)(2), then the interest rate for such Federal Direct Consolidation Loan shall be calculated—

“(A) by using the applicable rate of interest described in section 427A(g)(2), (j)(2), or (k)(2), respectively; and

“(B) in accordance with section 427A(l)(3).”.

SEC. 2207. TERMINATION OF UNSUBSIDIZED STAFFORD LOANS FOR MIDDLE-INCOME BORROWERS.

Section 428H (20 U.S.C. 1078–8) is amended—

(1) in subsection (a), by inserting “that are first disbursed before July 1, 2010,” after “under this part”;

(2) in subsection (b)—

(A) by striking “Any student” and inserting “Prior to July 1, 2010, any student”; and

(B) by inserting “for which the first disbursement is made before such date” after “unsubsidized Federal Stafford Loan”; and

(3) in subsection (h), by inserting “and that are first disbursed before July 1, 2010,” after “July 1, 2006,”.

SEC. 2208. TERMINATION OF SPECIAL ALLOWANCES.

Section 438 (20 U.S.C. 1087–1) is amended—

(1) in subsection (b)(2)(I)—

(A) in the subclause heading, by inserting “, AND BEFORE JULY 1, 2010” after “2000”;

(B) in clause (i), by inserting “and before July 1, 2010,” after “2000,”;

(C) in clause (ii)(II), by inserting “and before July 1, 2010,” after “2006,”;

(D) in clause (iii), by inserting “and before July 1, 2010,” after “2000,”;

(E) in clause (iv), by inserting “and that is disbursed before July 1, 2010,” after “2000,”;

(F) in clause (v)(I), by inserting “and before July 1, 2010,” after “2006,”; and

(G) in clause (vi)—

(i) in the clause heading, by inserting “, AND BEFORE JULY 1, 2010” after “2007”; and

(ii) in the matter preceding subclause (I), by inserting “and before July 1, 2010,” after “2007,”;

(2) in subsection (c)—

(A) in paragraph (2)(B)—

(i) in clause (iii), by inserting “and” after the semicolon;

(ii) in clause (iv), by striking “; and” and inserting a period; and

(iii) by striking clause (v); and

(B) in paragraph (6), by inserting “and first disbursed before July 1, 2010,” after “1992,”; and

(3) in subsection (d)(2)(B), by inserting “, and before July 1, 2010” after “2007”.

SEC. 2209. ORIGINATION OF DIRECT LOANS AT INSTITUTIONS OUTSIDE THE UNITED STATES.

(a) LOANS FOR STUDENTS ATTENDING INSTITUTIONS OUTSIDE THE UNITED STATES.—Section 452 (20 U.S.C. 1087b) is amended by adding at the end the following:

“(d) INSTITUTIONS OUTSIDE THE UNITED STATES.—Loan funds for students (and parents of students) attending institutions outside the United States shall be disbursed through a financial institution located or operating in the United States and designated by the Secretary to serve as the agent of such institutions with respect to the receipt of the disbursements of such loan funds and the transfer of such funds to such institutions. To be eligible to receive funds under this part, an institution outside the United States shall make arrangements with the agent designated by the Secretary under this subsection to receive funds under this part.”.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—Section 102 (20 U.S.C. 1002), as amended by section 102 of the Higher Education Opportunity Act (Public Law 110–315) and section 101 of Public Law 111–39, is amended—

(A) by striking “part B” each place the term appears and inserting “part D”;

(B) in subsection (a)(1)(C), by inserting “, consistent with the requirements of section 452(d)” before the period at the end; and

(C) in subsection (a)(2)(A)—

(i) in the second sentence of the matter preceding clause (i), by striking “made, insured, or guaranteed” and inserting “made”; and

(ii) in clause (iii)—

(I) in subclause (III), by striking “only Federal Stafford” and all that follows through “section 428B” and inserting “only Federal Direct Stafford Loans under section 455(a)(2)(A), Federal Direct Unsubsidized Stafford Loans under section 455(a)(2)(D), or Federal Direct PLUS Loans under section 455(a)(2)(B)”; and

(II) in subclause (V), by striking “a Federal Stafford” and all that follows through “section 428B” and inserting “a Federal Direct Stafford Loan under section 455(a)(2)(A), a Federal Direct Unsubsidized Stafford Loan under section 455(a)(2)(D), or a Federal Direct PLUS Loan under section 455(a)(2)(B)”.

20 USC 1002
note.

(2) **EFFECTIVE DATE.**—The amendments made by subparagraph (C) of paragraph (1) shall be effective on July 1, 2010, as if enacted as part of section 102(a)(1) of the Higher Education Opportunity Act (Public Law 110–315) and subject to section 102(e) of such Act as amended by section 101(a)(2) of Public Law 111–39 (20 U.S.C. 1002 note).

SEC. 2210. CONFORMING AMENDMENTS.

(a) **AMENDMENTS.**—Section 454 (20 U.S.C. 1087d) is amended—

(1) in subsection (a)—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) through (7) as paragraphs (4) through (6), respectively; and

(2) in subsection (b)(2), by striking “(5), (6), and (7)” and inserting “(5), and (6)”.

20 USC 1087d
note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on July 1, 2010.

SEC. 2211. TERMS AND CONDITIONS OF LOANS.

(a) **IN GENERAL.**—Section 455 (20 U.S.C. 1087e) is amended—

(1) in subsection (a)(1), by inserting “, and first disbursed on June 30, 2010,” before “under sections 428”; and

(2) in subsection (g)—

(A) by inserting “, including any loan made under part B and first disbursed before July 1, 2010” after “section 428C(a)(4)”; and

(B) by striking the third sentence.

Applicability.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a)(1) shall apply with respect to loans first disbursed under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.) on or after July 1, 2010.

SEC. 2212. CONTRACTS; MANDATORY FUNDS.

(a) **CONTRACTS.**—Section 456 (20 U.S.C. 1087f) is amended—

(1) in subsection (a)—

(A) by inserting after paragraph (3) the following new paragraph:

“(4) **SERVICING BY ELIGIBLE NOT-FOR-PROFIT SERVICERS.**—

“(A) **SERVICING CONTRACTS.**—

“(i) IN GENERAL.—The Secretary shall contract with each eligible not-for-profit servicer to service loans originated under this part, if the servicer—

“(I) meets the standards for servicing Federal assets that apply to contracts awarded pursuant to paragraph (1); and

“(II) has the capacity to service the applicable loan volume allocation described in subparagraph (B).

“(ii) COMPETITIVE MARKET RATE DETERMINATION FOR FIRST 100,000 BORROWER ACCOUNTS.—The Secretary shall establish a separate pricing tier for each of the first 100,000 borrower loan accounts at a competitive market rate.

“(iii) INELIGIBILITY.—An eligible not-for-profit servicer shall no longer be eligible for a contract under this paragraph after July 1, 2014, if—

“(I) the servicer has not been awarded such a contract before that date; or

“(II) the servicer’s contract was terminated, and the servicer had not reapplied for, and been awarded, a contract under this paragraph.

“(B) ALLOCATIONS.—

“(i) IN GENERAL.—The Secretary shall (except as provided in clause (ii)) allocate to an eligible not-for-profit servicer, subject to the contract of such servicer described in subparagraph (A), the servicing rights for the loan accounts of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer).

“(ii) SERVICER ALLOCATION.—The Secretary may reallocate, increase, reduce, or terminate an eligible not-for-profit servicer’s allocation of servicing rights under clause (i) based on the performance of such servicer, on the same terms as loan allocations provided by contracts awarded pursuant to paragraph (1).”; and

(2) by adding at the end the following:

“(c) DEFINITION OF ELIGIBLE NOT-FOR-PROFIT SERVICER.—In this section:

“(1) IN GENERAL.—The term ‘eligible not-for-profit servicer’ means an entity—

“(A) that is not owned or controlled in whole or in part by—

“(i) a for-profit entity; or

“(ii) a nonprofit entity having its principal place of business in another State; and

“(B) that—

“(i) as of July 1, 2009—

“(I) meets the definition of an eligible not-for-profit holder under section 435(p), except that such term does not include eligible lenders described in paragraph (1)(D) of such section; and

“(II) was performing, or had entered into a contract with a third party servicer (as such term is defined in section 481(c)) who was performing, student loan servicing functions for loans made under part B of this title;

“(ii) notwithstanding clause (i), as of July 1, 2009—

“(I) is the sole beneficial owner of a loan for which the special allowance rate is calculated under section 438(b)(2)(I)(vi)(II) because the loan is held by an eligible lender trustee that is an eligible not-for-profit holder as defined under section 435(p)(1)(D); and

“(II) was performing, or had entered into a contract with a third party servicer (as such term is defined in section 481(c)) who was performing, student loan servicing functions for loans made under part B of this title; or

“(iii) is an affiliated entity of an eligible not-for-profit servicer described in clause (i) or (ii) that—

“(I) directly employs, or will directly employ (on or before the date the entity begins servicing loans under a contract awarded by the Secretary pursuant to subsection (a)(3)(A)), the majority of individuals who perform borrower-specific student loan servicing functions; and

“(II) as of July 1, 2009, was performing, or had entered into a contract with a third party servicer (as such term is defined in section 481(c)) who was performing, student loan servicing functions for loans made under part B of this title.

“(2) AFFILIATED ENTITY.—For the purposes of paragraph (1), the term ‘affiliated entity’—

“(A) means an entity contracted to perform services for an eligible not-for-profit servicer that—

“(i) is a nonprofit entity or is wholly owned by a nonprofit entity; and

“(ii) is not owned or controlled, in whole or in part, by—

“(I) a for-profit entity; or

“(II) an entity having its principal place of business in another State; and

“(B) may include an affiliated entity that is established by an eligible not-for-profit servicer after the date of enactment of the SAFRA Act, if such affiliated entity is otherwise described in paragraph (1)(B)(iii)(I) and subparagraph (A) of this paragraph.”.

(b) MANDATORY FUNDS.—

(1) AMENDMENTS.—Section 458(a) (20 U.S.C. 1087h(a)) is amended—

(A) by redesignating paragraph (5) as paragraph (8);

(B) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

“(2) MANDATORY FUNDS FOR ELIGIBLE NOT-FOR-PROFIT SERVICERS.—For fiscal years 2010 through 2019, there shall be available to the Secretary, in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated, funds to be obligated for administrative costs of servicing contracts with eligible not-for-profit servicers as described in section 456.”; and

(D) by inserting after paragraph (5), as redesignated by subparagraph (B) of this paragraph, the following:

“(6) TECHNICAL ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION.—

“(A) PROVISION OF ASSISTANCE.—The Secretary shall provide institutions of higher education participating, or seeking to participate, in the loan programs under this part with technical assistance in establishing and administering such programs.

“(B) FUNDS.—There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), \$50,000,000 for fiscal year 2010.

“(C) DEFINITION.—In this paragraph, the term ‘assistance’ means the provision of technical support, training, materials, technical assistance, and financial assistance.

“(7) ADDITIONAL PAYMENTS.—

“(A) PROVISION OF ASSISTANCE.—The Secretary shall provide payments to loan servicers for retaining jobs at locations in the United States where such servicers were operating under part B on January 1, 2010.

“(B) FUNDS.—There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), \$25,000,000 for each of the fiscal years 2010 and 2011.”.

(2) CONFORMING AMENDMENT.—Section 458 (20 U.S.C. 1087h) is further amended by striking “subsection (a)(3)” in subsection (b) and inserting “subsection (a)(4)”.

SEC. 2213. INCOME-BASED REPAYMENT.

Section 493C (20 U.S.C. 1098e) is amended by adding at the end the following new subsection:

“(e) SPECIAL TERMS FOR NEW BORROWERS ON AND AFTER JULY 1, 2014.—With respect to any loan made to a new borrower on or after July 1, 2014—

Effective date.

“(1) subsection (a)(3)(B) shall be applied by substituting ‘10 percent’ for ‘15 percent’; and

“(2) subsection (b)(7)(B) shall be applied by substituting ‘20 years’ for ‘25 years’.”.

Subtitle B—Health

SEC. 2301. INSURANCE REFORMS.

(a) EXTENDING CERTAIN INSURANCE REFORMS TO GRANDFATHERED PLANS.—Section 1251(a) of the Patient Protection and Affordable Care Act, as added by section 10103(d) of such Act, is amended by adding at the end the following:

Ante, p. 161, 894.

“(4) APPLICATION OF CERTAIN PROVISIONS.—

“(A) IN GENERAL.—The following provisions of the Public Health Service Act (as added by this title) shall

apply to grandfathered health plans for plan years beginning with the first plan year to which such provisions would otherwise apply:

“(i) Section 2708 (relating to excessive waiting periods).

“(ii) Those provisions of section 2711 relating to lifetime limits.

“(iii) Section 2712 (relating to rescissions).

“(iv) Section 2714 (relating to extension of dependent coverage).

“(B) PROVISIONS APPLICABLE ONLY TO GROUP HEALTH PLANS.—

“(i) PROVISIONS DESCRIBED.—Those provisions of section 2711 relating to annual limits and the provisions of section 2704 (relating to pre-existing condition exclusions) of the Public Health Service Act (as added by this subtitle) shall apply to grandfathered health plans that are group health plans for plan years beginning with the first plan year to which such provisions otherwise apply.

“(ii) ADULT CHILD COVERAGE.—For plan years beginning before January 1, 2014, the provisions of section 2714 of the Public Health Service Act (as added by this subtitle) shall apply in the case of an adult child with respect to a grandfathered health plan that is a group health plan only if such adult child is not eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986) other than such grandfathered health plan.”

(b) CLARIFICATION REGARDING DEPENDENT COVERAGE.—Section 2714(a) of the Public Health Service Act, as added by section 1001(5) of the Patient Protection and Affordable Care Act, is amended by striking “(who is not married)”.

Ante, p. 130.

SEC. 2302. DRUGS PURCHASED BY COVERED ENTITIES.

Section 340B of the Public Health Service Act (42 U.S.C. 256b), as amended by sections 7101 and 7102 of the Patient Protection and Affordable Care Act, is amended—

(1) in subsection (a)—

(A) in paragraphs (1), (2), (5), (7), and (9), by striking the terms “covered drug” and “covered drugs” each place either term appears and inserting “covered outpatient drug” or “covered outpatient drugs”, respectively;

(B) in paragraph (4)(L)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking the period and inserting “; and”; and

(iii) by inserting after clause (ii), the following:

“(iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.”; and

(C) in paragraph (5)—

(i) by striking subparagraph (C);

(ii) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

- (iii) in subparagraph (D), as so redesignated, by striking “subparagraph (D)” and inserting “subparagraph (C)”;
- (2) by striking subsection (c);
- (3) in subsection (d)—
 - (A) by striking “covered drugs” each place it appears and inserting “covered outpatient drugs”;
 - (B) by striking “(a)(5)(D)” each place it appears and inserting “(a)(5)(C)”;
 - (C) by striking “(a)(5)(E)” each place it appears and inserting “(a)(5)(D)”;
- (4) by inserting after subsection (d) the following:

“(e) **EXCLUSION OF ORPHAN DRUGS FOR CERTAIN COVERED ENTITIES.**—For covered entities described in subparagraph (M), (N), or (O) of subsection (a)(4), the term ‘covered outpatient drug’ shall not include a drug designated by the Secretary under section 526 of the Federal Food, Drug, and Cosmetic Act for a rare disease or condition.”.

SEC. 2303. COMMUNITY HEALTH CENTERS.

Section 10503(b)(1) of the Patient Protection and Affordable Care Act is amended—

- (1) in subparagraph (A), by striking “700,000,000” and inserting “1,000,000,000”;
- (2) in subparagraph (B), by striking “800,000,000” and inserting “1,200,000,000”;
- (3) in subparagraph (C), by striking “1,000,000,000” and inserting “1,500,000,000”;
- (4) in subparagraph (D), by striking “1,600,000,000” and inserting “2,200,000,000”; and
- (5) in subparagraph (E), by striking “2,900,000,000” and inserting “3,600,000,000”.

Ante, p. 1004.

Approved March 30, 2010.

LEGISLATIVE HISTORY—H.R. 4872:

HOUSE REPORTS: No. 111–443 (Comm. on the Budget).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 21, considered and passed House.

Mar. 23, 24, considered in Senate.

Mar. 25, considered and passed Senate, amended. House concurred in Senate amendments.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Mar. 30, Presidential remarks.



Public Law 111–153
111th Congress

An Act

Mar. 31, 2010
[H.R. 4957]

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

Federal Aviation
Administration
Extension Act of
2010.
26 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Aviation Administration Extension Act of 2010”.

SEC. 2. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

26 USC 4081.

(a) **FUEL TAXES.**—Subparagraph (B) of section 4081(d)(2) of the Internal Revenue Code of 1986 is amended by striking “March 31, 2010” and inserting “April 30, 2010”.

(b) **TICKET TAXES.**—

(1) **PERSONS.**—Clause (ii) of section 4261(j)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “March 31, 2010” and inserting “April 30, 2010”.

(2) **PROPERTY.**—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking “March 31, 2010” and inserting “April 30, 2010”.

26 USC 4081
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on April 1, 2010.

SEC. 3. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 is amended—

(1) by striking “April 1, 2010” and inserting “May 1, 2010”; and

(2) by inserting “or the Federal Aviation Administration Extension Act of 2010” before the semicolon at the end of subparagraph (A).

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 9502(e) of such Code is amended by striking “April 1, 2010” and inserting “May 1, 2010”.

26 USC 9502
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on April 1, 2010.

SEC. 4. EXTENSION OF AIRPORT IMPROVEMENT PROGRAM.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Section 48103(7) of title 49, United States Code, is amended to read as follows:

“(7) \$2,333,333,333 for the 7-month period beginning on October 1, 2009.”.

(2) OBLIGATION OF AMOUNTS.—Sums made available pursuant to the amendment made by paragraph (1) may be obligated at any time through September 30, 2010, and shall remain available until expended.

Time period.

(3) PROGRAM IMPLEMENTATION.—For purposes of calculating funding apportionments and meeting other requirements under sections 47114, 47115, 47116, and 47117 of title 49, United States Code, for the 7-month period beginning on October 1, 2009, the Administrator of the Federal Aviation Administration shall—

Time period.

(A) first calculate funding apportionments on an annualized basis as if the total amount available under section 48103 of such title for fiscal year 2010 were \$4,000,000,000; and

(B) then reduce by 42 percent—

(i) all funding apportionments calculated under subparagraph (A); and

(ii) amounts available pursuant to sections 47117(b) and 47117(f)(2) of such title.

(b) PROJECT GRANT AUTHORITY.—Section 47104(c) of such title is amended by striking “March 31, 2010,” and inserting “April 30, 2010,”.

SEC. 5. EXTENSION OF EXPIRING AUTHORITIES.

(a) Section 40117(l)(7) of title 49, United States Code, is amended by striking “April 1, 2010.” and inserting “May 1, 2010.”.

(b) Section 44302(f)(1) of such title is amended—

(1) by striking “March 31, 2010,” and inserting “April 30, 2010,”; and

(2) by striking “June 30, 2010,” and inserting “July 31, 2010,”.

(c) Section 44303(b) of such title is amended by striking “June 30, 2010,” and inserting “July 31, 2010,”.

(d) Section 47107(s)(3) of such title is amended by striking “April 1, 2010.” and inserting “May 1, 2010.”.

(e) Section 47115(j) of such title is amended by striking “April 1, 2010,” and inserting “May 1, 2010,”.

(f) Section 47141(f) of such title is amended by striking “March 31, 2010.” and inserting “April 30, 2010.”.

(g) Section 49108 of such title is amended by striking “March 31, 2010,” and inserting “April 30, 2010,”.

(h) Section 161 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 47109 note) is amended by striking “April 1, 2010,” and inserting “May 1, 2010,”.

(i) Section 186(d) of such Act (117 Stat. 2518) is amended by striking “April 1, 2010,” and inserting “May 1, 2010,”.

(j) The amendments made by this section shall take effect on April 1, 2010.

Effective date.
49 USC 40117
note.

SEC. 6. FEDERAL AVIATION ADMINISTRATION OPERATIONS.

Section 106(k)(1)(F) of title 49, United States Code, is amended to read as follows:

“(F) \$5,454,183,000 for the 7-month period beginning on October 1, 2009.”.

SEC. 7. AIR NAVIGATION FACILITIES AND EQUIPMENT.

Section 48101(a)(6) of title 49, United States Code, is amended to read as follows:

“(6) \$1,712,785,083 for the 7-month period beginning on October 1, 2009.”.

SEC. 8. RESEARCH, ENGINEERING, AND DEVELOPMENT.

Section 48102(a)(14) of title 49, United States Code, is amended to read as follows:

“(14) \$111,125,000 for the 7-month period beginning on October 1, 2009.”.

Approved March 31, 2010.

LEGISLATIVE HISTORY—H.R. 4957:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 25, considered and passed House.

Mar. 26, considered and passed Senate.



Public Law 111–154
111th Congress

An Act

To prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

Mar. 31, 2010
[S. 1147]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.

(a) **SHORT TITLE.**—This Act may be cited as the “Prevent All Cigarette Trafficking Act of 2009” or “PACT Act”.

Prevent All
Cigarette
Trafficking Act of
2009.
15 USC 375 note.

(b) **FINDINGS.**—Congress finds that—

15 USC 375 note.

(1) the sale of illegal cigarettes and smokeless tobacco products significantly reduces Federal, State, and local government revenues, with Internet sales alone accounting for billions of dollars of lost Federal, State, and local tobacco tax revenue each year;

(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from trafficking in illegal cigarettes or counterfeit cigarette tax stamps;

(3) terrorist involvement in illicit cigarette trafficking will continue to grow because of the large profits such organizations can earn;

(4) the sale of illegal cigarettes and smokeless tobacco over the Internet, and through mail, fax, or phone orders, makes it cheaper and easier for children to obtain tobacco products;

(5) the majority of Internet and other remote sales of cigarettes and smokeless tobacco are being made without adequate precautions to protect against sales to children, without the payment of applicable taxes, and without complying with the nominal registration and reporting requirements in existing Federal law;

(6) unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States;

(7) with rising State and local tobacco tax rates, the incentives for the illegal sale of cigarettes and smokeless tobacco have increased;

(8) the number of active tobacco investigations being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives rose to 452 in 2005;

(9) the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005; and

(10) the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.

(c) PURPOSES.—It is the purpose of this Act to—

(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;

(2) create strong disincentives to illegal smuggling of tobacco products;

(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;

(4) make it more difficult for cigarette and smokeless tobacco traffickers to engage in and profit from their illegal activities;

(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and

(6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal Internet or contraband sales.

SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—The Act of October 19, 1949 (15 U.S.C. 375 et seq.; commonly referred to as the “Jenkins Act”) (referred to in this Act as the “Jenkins Act”), is amended by striking the first section and inserting the following:

15 USC 375.

“SECTION 1. DEFINITIONS.

“As used in this Act, the following definitions apply:

“(1) ATTORNEY GENERAL.—The term ‘attorney general’, with respect to a State, means the attorney general or other chief law enforcement officer of the State.

“(2) CIGARETTE.—

“(A) IN GENERAL.—The term ‘cigarette’—

“(i) has the meaning given that term in section 2341 of title 18, United States Code; and

“(ii) includes roll-your-own tobacco (as defined in section 5702 of the Internal Revenue Code of 1986).

“(B) EXCEPTION.—The term ‘cigarette’ does not include a cigar (as defined in section 5702 of the Internal Revenue Code of 1986).

“(3) COMMON CARRIER.—The term ‘common carrier’ means any person (other than a local messenger service or the United States Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the United States.

“(4) CONSUMER.—The term ‘consumer’—

“(A) means any person that purchases cigarettes or smokeless tobacco; and

“(B) does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

“(5) DELIVERY SALE.—The term ‘delivery sale’ means any sale of cigarettes or smokeless tobacco to a consumer if—

“(A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

“(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

“(6) DELIVERY SELLER.—The term ‘delivery seller’ means a person who makes a delivery sale.

“(7) INDIAN COUNTRY.—The term ‘Indian country’—

“(A) has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

“(B) includes any other land held by the United States in trust or restricted status for one or more Indian tribes.

“(8) INDIAN TRIBE.—The term ‘Indian tribe’, ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

“(9) INTERSTATE COMMERCE.—

“(A) IN GENERAL.—The term ‘interstate commerce’ means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

“(B) INTO A STATE, PLACE, OR LOCALITY.—A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined in this paragraph, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.

“(10) PERSON.—The term ‘person’ means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.

“(11) STATE.—The term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

“(12) SMOKELESS TOBACCO.—The term ‘smokeless tobacco’ means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

“(13) TOBACCO TAX ADMINISTRATOR.—The term ‘tobacco tax administrator’ means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

“(14) USE.—The term ‘use’ includes the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.”.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is amended—

(1) by striking “cigarettes” each place it appears and inserting “cigarettes or smokeless tobacco”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “CONTENTS.—” after “(a)”;

(ii) by striking “or transfers” and inserting “, transfers, or ships”;

(iii) by inserting “, locality, or Indian country of an Indian tribe” after “a State”;

(iv) by striking “to other than a distributor licensed by or located in such State,”; and

(v) by striking “or transfer and shipment” and inserting “, transfer, or shipment”;

(B) in paragraph (1)—

(i) by striking “with the tobacco tax administrator of the State” and inserting “with the Attorney General of the United States and with the tobacco tax administrators of the State and place”; and

(ii) by striking “, and” and inserting the following: “, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person,”;

(C) in paragraph (2), by striking “and the quantity thereof.” and inserting “the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and”; and

(D) by adding at the end the following:

“(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.”;

(3) in subsection (b)—

(A) by inserting “PRESUMPTIVE EVIDENCE.—” after “(b)”;

(B) by striking “(1) that” and inserting “that”; and

(C) by striking “, and (2)” and all that follows and inserting a period; and

(4) by adding at the end the following:

“(c) USE OF INFORMATION.—A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use the memorandum or invoice solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential

any personal information in the memorandum or invoice except as required for such purposes.”

(c) REQUIREMENTS FOR DELIVERY SALES.—The Jenkins Act is amended by inserting after section 2 the following:

“SEC. 2A. DELIVERY SALES.

15 USC 376a.

“(a) IN GENERAL.—With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

“(1) the shipping requirements set forth in subsection (b);

“(2) the recordkeeping requirements set forth in subsection

(c);

“(3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific State and place, including laws imposing—

“(A) excise taxes;

“(B) licensing and tax-stamping requirements;

“(C) restrictions on sales to minors; and

“(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

“(4) the tax collection requirements set forth in subsection

(d).

“(b) SHIPPING AND PACKAGING.—

“(1) REQUIRED STATEMENT.—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: ‘CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.

“(2) FAILURE TO LABEL.—Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

“(3) WEIGHT RESTRICTION.—A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

“(4) AGE VERIFICATION.—

“(A) IN GENERAL.—A delivery seller who mails or ships tobacco products—

“(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco

products, as determined by the applicable law at the place of delivery;

“(ii) shall use a method of mailing or shipping that requires—

“(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

“(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery; and

“(iii) shall not accept a delivery sale order from a person without—

“(I) obtaining the full name, birth date, and residential address of that person; and

“(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

“(B) LIMITATION.—No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

“(c) RECORDS.—

“(1) IN GENERAL.—Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 2(a)(2), organized by the State, and within the State, by the city or town and by zip code, into which the delivery sale is so made.

“(2) RECORD RETENTION.—Records of a delivery sale shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

“(3) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of the local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) DELIVERY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

“(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

“(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

“(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

“(2) EXCEPTION.—Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

“(e) LIST OF UNREGISTERED OR NONCOMPLIANT DELIVERY SELLERS.—

“(1) IN GENERAL.—

“(A) INITIAL LIST.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General of the United States pursuant to section 2(a), or that are otherwise not in compliance with this Act, and—

Deadline.

“(i) distribute the list to—

“(I) the attorney general and tax administrator of every State;

“(II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

“(III) any other person that the Attorney General of the United States determines can promote the effective enforcement of this Act; and

“(ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

“(B) LIST CONTENTS.—To the extent known, the Attorney General of the United States shall include, for each delivery seller on the list described in subparagraph (A)—

“(i) all names the delivery seller uses or has used in the transaction of its business or on packages delivered to customers;

“(ii) all addresses from which the delivery seller does or has done business, or ships or has shipped cigarettes or smokeless tobacco;

“(iii) the website addresses, primary e-mail address, and phone number of the delivery seller; and

“(iv) any other information that the Attorney General of the United States determines would facilitate compliance with this subsection by recipients of the list.

Deadlines.

“(C) UPDATING.—The Attorney General of the United States shall update and distribute the list described in subparagraph (A) at least once every 4 months, and may distribute the list and any updates by regular mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

Distribution.

“(D) STATE, LOCAL, OR TRIBAL ADDITIONS.—The Attorney General of the United States shall include in the list described in subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (6), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information, and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (6).

“(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—In preparing and revising the list described in subparagraph (A), the Attorney General of the United States shall—

“(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that a delivery seller is not in compliance with this Act;

Deadline.
Notice.

“(ii) not later than 14 days before including a delivery seller on the list, make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, which shall cite the relevant provisions of this Act and the specific reasons for which the delivery seller is being placed on the list;

“(iii) provide an opportunity to the delivery seller to challenge placement on the list;

Deadline.

“(iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and

Determination.
Notification.

“(v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify

each appropriate Federal, State, tribal, and local authority of the determination.

“(F) CONFIDENTIALITY.—The list described in subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list and may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with a listed delivery seller the inclusion of the delivery seller on the list and the resulting effects on any services requested by the listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

Effective dates.

“(A) IN GENERAL.—Commencing on the date that is 60 days after the date of the initial distribution or availability of the list described in paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

“(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;

“(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

“(B) IMPLEMENTATION OF UPDATES.—Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to the corrections or updates.

“(3) EXEMPTIONS.—

“(A) IN GENERAL.—Subsection (b)(2) and any requirements or restrictions placed directly on common carriers under this subsection, including subparagraphs (A) and (B) of paragraph (2), shall not apply to a common carrier that—

“(i) is subject to a settlement agreement described in subparagraph (B); or

“(ii) if a settlement agreement described in subparagraph (B) to which the common carrier is a party is terminated or otherwise becomes inactive, is administering and enforcing policies and practices throughout the United States that are at least as stringent as the agreement.

“(B) SETTLEMENT AGREEMENT.—A settlement agreement described in this subparagraph—

“(i) is a settlement agreement relating to tobacco product deliveries to consumers; and

“(ii) includes—

“(I) the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and FedEx Ground Package Systems, Inc. on or about February 3, 2006, if each of those agreements is honored throughout the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

“(II) any other active agreement between a common carrier and a State that operates throughout the United States to ensure that no deliveries of cigarettes or smokeless tobacco shall be made to consumers or illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the States and localities where the consumers are located of all taxes on the tobacco products.

“(4) SHIPMENTS FROM PERSONS ON LIST.—

“(A) IN GENERAL.—If a common carrier or other delivery service delays or interrupts the delivery of a package in the possession of the common carrier or delivery service because the common carrier or delivery service determines or has reason to believe that the person ordering the delivery is on a list described in paragraph (1)(A) and that clauses (i), (ii), and (iii) of paragraph (2)(A) do not apply—

“(i) the person ordering the delivery shall be obligated to pay—

“(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

“(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover any extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

“(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall offer to provide the package and its contents to a Federal, State, or local law enforcement agency.

“(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted under this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law

Time period.

enforcement official or tax administrator of any State, local, or tribal government.

“(C) CONFIDENTIALITY.—Any person receiving records under subparagraph (B) shall—

“(i) use the records solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco; and

“(ii) keep confidential any personal information in the records not otherwise required for such purposes.

“(5) PREEMPTION.—

“(A) IN GENERAL.—No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

“(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

“(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

“(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

“(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

“(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

“(B) RELATIONSHIP TO OTHER LAWS.—Except as provided in subparagraph (C), nothing in this paragraph shall be construed to nullify, expand, restrict, or otherwise amend or modify—

“(i) section 14501(c)(1) or 41713(b)(4) of title 49, United States Code;

“(ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers; or

“(iii) any provision of State, local, or tribal law regulating common carriers that is described in section 14501(c)(2) or 41713(b)(4)(B) of title 49 of the United States Code.

“(C) STATE LAWS PROHIBITING DELIVERY SALES.—

“(i) IN GENERAL.—Except as provided in clause (ii), nothing in the Prevent All Cigarette Trafficking Act of 2009, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences.

“(ii) EXEMPTIONS.—No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier is not exempt under paragraph (3) of this subsection.

“(6) STATE, LOCAL, AND TRIBAL ADDITIONS.—

“(A) IN GENERAL.—Any State, local, or tribal government shall provide the Attorney General of the United States with—

“(i) all known names, addresses, website addresses, and other primary contact information of any delivery seller that—

“(I) offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land; and

“(II) has failed to register with or make reports to the respective tax administrator as required by this Act, or that has been found in a legal proceeding to have otherwise failed to comply with this Act; and

Lists.

“(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

Deadlines.
Notification.

“(B) UPDATES.—Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

“(C) REMOVAL AFTER WITHDRAWAL.—Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list described in paragraph (1)(A) any persons that are on the list solely because of the prior submissions of the government of the list of the government of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

“(7) DEADLINE TO INCORPORATE ADDITIONS.—The Attorney General of the United States shall—

“(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (6) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is

received by the Attorney General of the United States; and

“(B) distribute any list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

“(8) NOTICE TO DELIVERY SELLERS.—Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list or update, with that notice citing the relevant provisions of this Act. Deadline.

“(9) LIMITATIONS.—

“(A) IN GENERAL.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

“(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

“(ii) determine whether a person ordering a delivery is in compliance with this Act; or

“(iii) open or inspect, pursuant to this Act, any package being delivered to determine its contents.

“(B) ALTERNATE NAMES.—Any common carrier or other person making a delivery subject to this subsection—

“(i) shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the related delivery restrictions; and

“(ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is on the list and is using a different name or address to evade the delivery restrictions of paragraph (2).

“(C) PENALTIES.—Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49, United States Code, or any other provision of law for—

“(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list described in paragraph (1)(A);

“(ii) refusing, as a matter of regular practice and procedure, to make any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this Act.

“(D) OTHER LIMITS.—Section 2 and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

“(f) PRESUMPTION.—For purposes of this Act, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.”.

15 USC 377. (d) PENALTIES.—The Jenkins Act is amended by striking section 3 and inserting the following:

“SEC. 3. PENALTIES.

“(a) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), whoever knowingly violates this Act shall be imprisoned for not more than 3 years, fined under title 18, United States Code, or both.

“(2) EXCEPTIONS.—

“(A) GOVERNMENTS.—Paragraph (1) shall not apply to a State, local, or tribal government.

“(B) DELIVERY VIOLATIONS.—A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed knowingly—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(b) CIVIL PENALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (3), whoever violates this Act shall be subject to a civil penalty in an amount not to exceed—

“(A) in the case of a delivery seller, the greater of—

“(i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or

“(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of the delivery seller during the 1-year period ending on the date of the violation.

“(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$5,000 for any violation within 1 year of a prior violation.

“(2) RELATION TO OTHER PENALTIES.—A civil penalty imposed under paragraph (1) for a violation of this Act shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

“(3) EXCEPTIONS.—

“(A) DELIVERY VIOLATIONS.—An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of

section 2A(e) only if the violation is committed intentionally—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(B) OTHER LIMITATIONS.—No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) if—

“(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

“(ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).”.

(e) ENFORCEMENT.—The Jenkins Act is amended by striking section 4 and inserting the following:

15 USC 378.

“SEC. 4. ENFORCEMENT.

“(a) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of this Act and to provide other appropriate injunctive or equitable relief, including money damages, for the violations.

Courts.

“(b) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General of the United States shall administer and enforce this Act.

“(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

“(1) IN GENERAL.—

“(A) STANDING.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer, may bring an action in a United States district court to prevent and restrain violations of this Act by any person or to obtain any other appropriate relief from any person for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

“(B) SOVEREIGN IMMUNITY.—Nothing in this Act shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under this Act, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

“(2) PROVISION OF INFORMATION.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer, may provide evidence of a violation of this Act by any person not subject to State, local, or tribal government enforcement actions for violations of this Act to the Attorney General of the United States or a United States

attorney, who shall take appropriate actions to enforce this Act.

“(3) USE OF PENALTIES COLLECTED.—

“(A) IN GENERAL.—There is established a separate account in the Treasury known as the ‘PACT Anti-Trafficking Fund’. Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the Federal Government in enforcing this Act shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing this Act and other laws relating to contraband tobacco products.

“(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

“(4) NONEXCLUSIVITY OF REMEDY.—

“(A) IN GENERAL.—The remedies available under this section and section 3 are in addition to any other remedies available under Federal, State, local, tribal, or other law.

“(B) STATE COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(C) TRIBAL COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

“(D) LOCAL GOVERNMENT ENFORCEMENT.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

“(d) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this Act by any person other than a State, local, or tribal government.

“(e) NOTICE.—

“(1) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

“(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

“(f) PUBLIC NOTICE.—

“(1) IN GENERAL.—The Attorney General of the United States shall make available to the public, by posting information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States, under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

“(2) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, and every year thereafter until the date that is 5 years after such date of enactment, the Attorney General of the United States shall submit to Congress a report containing the information described in paragraph (1).”.

SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

(a) IN GENERAL.—Chapter 83 of title 18, United States Code, is amended by inserting after section 1716D the following:

“§ 1716E. Tobacco products as nonmailable

“(a) PROHIBITION.—

“(1) IN GENERAL.—All cigarettes and smokeless tobacco (as those terms are defined in section 1 of the Act of October 19, 1949, commonly referred to as the Jenkins Act) are non-mailable and shall not be deposited in or carried through the mails. The United States Postal Service shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes or smokeless tobacco made nonmailable by this paragraph.

“(2) REASONABLE CAUSE.—For the purposes of this subsection reasonable cause includes—

“(A) a statement on a publicly available website, or an advertisement, by any person that the person will mail matter which is nonmailable under this section in return for payment; or

“(B) the fact that the person is on the list created under section 2A(e) of the Jenkins Act.

“(b) EXCEPTIONS.—

“(1) CIGARS.—Subsection (a) shall not apply to cigars (as defined in section 5702(a) of the Internal Revenue Code of 1986).

“(2) GEOGRAPHIC EXCEPTION.—Subsection (a) shall not apply to mailings within the State of Alaska or within the State of Hawaii.

Alaska.
Hawaii.

“(3) BUSINESS PURPOSES.—

“(A) IN GENERAL.—Subsection (a) shall not apply to tobacco products mailed only—

“(i) for business purposes between legally operating businesses that have all applicable State and Federal Government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research; or

“(ii) for regulatory purposes between any business described in clause (i) and an agency of the Federal Government or a State government.

Deadline.

“(B) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting an otherwise non-mailable tobacco product into the mails as authorized under this paragraph is a business or government agency permitted to make a mailing under this paragraph;

“(II) the United States Postal Service to ensure that any recipient of an otherwise nonmailable tobacco product sent through the mails under this paragraph is a business or government agency that may lawfully receive the product;

“(III) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(IV) that the identity of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the identity of the business or government entity receiving the mailing are clearly set forth on the package;

“(V) the United States Postal Service to maintain identifying information described in subclause (IV) during the 3-year period beginning on the date of the mailing and make the information available to the Postal Service, the Attorney General of the United States, and to persons eligible to bring enforcement actions under section 3(d) of the Prevent All Cigarette Trafficking Act of 2009;

“(VI) that any mailing described in subparagraph (A) be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to a permitted government agency or business and may not be delivered to any residence or individual person; and

“(VII) that any mailing described in subparagraph (A) be delivered only to a verified employee of the recipient business or government agency, who is not a minor and who shall be required to sign for the mailing.

“(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale or purchase of tobacco products

Time period.

as determined by applicable law at the place the individual is located.

“(4) CERTAIN INDIVIDUALS.—

“(A) IN GENERAL.—Subsection (a) shall not apply to tobacco products mailed by individuals who are not minors for noncommercial purposes, including the return of a damaged or unacceptable tobacco product to the manufacturer.

“(B) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A). Deadline.

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting an otherwise non-mailable tobacco product into the mails as authorized under this paragraph is the individual identified on the return address label of the package and is not a minor;

“(II) for a mailing to an individual, the United States Postal Service to require the person submitting the otherwise nonmailable tobacco product into the mails as authorized by this paragraph to affirm that the recipient is not a minor;

“(III) that any package mailed under this paragraph shall weigh not more than 10 ounces;

“(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(V) that a mailing described in subparagraph (A) shall not be delivered or placed in the possession of any individual who has not been verified as not being a minor;

“(VI) for a mailing described in subparagraph (A) to an individual, that the United States Postal Service shall deliver the package only to a recipient who is verified not to be a minor at the recipient address or transfer it for delivery to an Air/Army Postal Office or Fleet Postal Office number designated in the recipient address; and

“(VII) that no person may initiate more than 10 mailings described in subparagraph (A) during any 30-day period.

“(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale or purchase of tobacco products as determined by applicable law at the place the individual is located.

“(5) EXCEPTION FOR MAILINGS FOR CONSUMER TESTING BY MANUFACTURERS.—

“(A) IN GENERAL.—Subject to subparagraph (B), subsection (a) shall not preclude a legally operating cigarette manufacturer or a legally authorized agent of a legally

operating cigarette manufacturer from using the United States Postal Service to mail cigarettes to verified adult smoker solely for consumer testing purposes, if—

“(i) the cigarette manufacturer has a permit, in good standing, issued under section 5713 of the Internal Revenue Code of 1986;

“(ii) the package of cigarettes mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes);

“(iii) the recipient does not receive more than 1 package of cigarettes from any 1 cigarette manufacturer under this paragraph during any 30-day period;

“(iv) all taxes on the cigarettes mailed under this paragraph levied by the State and locality of delivery are paid to the State and locality before delivery, and tax stamps or other tax-payment indicia are affixed to the cigarettes as required by law; and

“(v)(I) the recipient has not made any payments of any kind in exchange for receiving the cigarettes;

“(II) the recipient is paid a fee by the manufacturer or agent of the manufacturer for participation in consumer product tests; and

“(III) the recipient, in connection with the tests, evaluates the cigarettes and provides feedback to the manufacturer or agent.

“(B) LIMITATIONS.—Subparagraph (A) shall not—

“(i) permit a mailing of cigarettes to an individual located in any State that prohibits the delivery or shipment of cigarettes to individuals in the State, or preempt, limit, or otherwise affect any related State laws; or

“(ii) permit a manufacturer, directly or through a legally authorized agent, to mail cigarettes in any calendar year in a total amount greater than 1 percent of the total cigarette sales of the manufacturer in the United States during the calendar year before the date of the mailing.

“(C) RULES.—

Deadline.

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

Verification.

“(I) the United States Postal Service to verify that any person submitting a tobacco product into the mails under this paragraph is a legally operating cigarette manufacturer permitted to make a mailing under this paragraph, or an agent legally authorized by the legally operating cigarette manufacturer to submit the tobacco product into the mails on behalf of the manufacturer;

“(II) the legally operating cigarette manufacturer submitting the cigarettes into the mails under this paragraph to affirm that—

“(aa) the manufacturer or the legally authorized agent of the manufacturer has verified that the recipient is an adult established smoker;

“(bb) the recipient has not made any payment for the cigarettes;

“(cc) the recipient has signed a written statement that is in effect indicating that the recipient wishes to receive the mailings; and

“(dd) the manufacturer or the legally authorized agent of the manufacturer has offered the opportunity for the recipient to withdraw the written statement described in item (cc) not less frequently than once in every 3-month period;

“(III) the legally operating cigarette manufacturer or the legally authorized agent of the manufacturer submitting the cigarettes into the mails under this paragraph to affirm that any package mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes) on which all taxes levied on the cigarettes by the State and locality of delivery have been paid and all related State tax stamps or other tax-payment indicia have been applied;

“(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(V) the United States Postal Service to maintain records relating to a mailing described in subparagraph (A) during the 3-year period beginning on the date of the mailing and make the information available to persons enforcing this section;

Records.
Time period.

“(VI) that any mailing described in subparagraph (A) be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to the named recipient after verifying that the recipient is an adult; and

“(VII) the United States Postal Service shall deliver a mailing described in subparagraph (A) only to the named recipient and only after verifying that the recipient is an adult.

“(D) DEFINITIONS.—In this paragraph—

“(i) the term ‘adult’ means an individual who is not less than 21 years of age; and

“(ii) the term ‘consumer testing’ means testing limited to formal data collection and analysis for the specific purpose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

“(6) FEDERAL GOVERNMENT AGENCIES.—An agency of the Federal Government involved in the consumer testing of tobacco

products solely for public health purposes may mail cigarettes under the same requirements, restrictions, and rules and procedures that apply to consumer testing mailings of cigarettes by manufacturers under paragraph (5), except that the agency shall not be required to pay the recipients for participating in the consumer testing.

“(c) SEIZURE AND FORFEITURE.—Any cigarettes or smokeless tobacco made nonmailable by this subsection that are deposited in the mails shall be subject to seizure and forfeiture, pursuant to the procedures set forth in chapter 46 of this title. Any tobacco products seized and forfeited under this subsection shall be destroyed or retained by the Federal Government for the detection or prosecution of crimes or related investigations and then destroyed.

“(d) ADDITIONAL PENALTIES.—In addition to any other fines and penalties under this title for violations of this section, any person violating this section shall be subject to an additional civil penalty in the amount equal to 10 times the retail value of the nonmailable cigarettes or smokeless tobacco, including all Federal, State, and local taxes.

“(e) CRIMINAL PENALTY.—Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything that is nonmailable matter under this section shall be fined under this title, imprisoned not more than 1 year, or both.

“(f) USE OF PENALTIES.—There is established a separate account in the Treasury, to be known as the ‘PACT Postal Service Fund’. Notwithstanding any other provision of law, an amount equal to 50 percent of any criminal fines, civil penalties, or other monetary penalties collected by the Federal Government in enforcing this section shall be transferred into the PACT Postal Service Fund and shall be available to the Postmaster General for the purpose of enforcing this subsection.

“(g) COORDINATION OF EFFORTS.—The Postmaster General shall cooperate and coordinate efforts to enforce this section with related enforcement activities of any other Federal agency or agency of any State, local, or tribal government, whenever appropriate.

“(h) ACTIONS BY STATE, LOCAL, OR TRIBAL GOVERNMENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

“(1) IN GENERAL.—A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer, may in a civil action in a United States district court obtain appropriate relief with respect to a violation of this section. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on tobacco products mailed in violation of this section to addressees in that State, locality, or tribal land.

“(2) SOVEREIGN IMMUNITY.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under paragraph (1), or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

“(3) ATTORNEY GENERAL REFERRAL.—A State, through its attorney general, or a local government or Indian tribe that

levies an excise tax on tobacco products, through its chief law enforcement officer, may provide evidence of a violation of this section for commercial purposes by any person not subject to State, local, or tribal government enforcement actions for violations of this section to the Attorney General of the United States, who shall take appropriate actions to enforce this section.

“(4) NONEXCLUSIVITY OF REMEDIES.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, tribal, or other law. Nothing in this subsection shall be construed to expand, restrict, or otherwise modify any right of an authorized State, local, or tribal government official to proceed in a State, tribal, or other appropriate court, or take other enforcement actions, on the basis of an alleged violation of State, local, tribal, or other law.

“(5) OTHER ENFORCEMENT ACTIONS.—Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of the State.

“(i) DEFINITION.—In this section, the term ‘State’ has the meaning given that term in section 1716(k).”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 83 of title 18 is amended by inserting after the item relating to section 1716D the following:

“1716E. Tobacco products as nonmailable.”.

SEC. 4. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS; CIVIL PENALTY.

Section 2343(c) of title 18, United States Code, is amended to read as follows:

“(c)(1) Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (a) or (b) for the purposes of inspecting—

“(A) any records or information required to be maintained by the person under this chapter; or

“(B) any cigarettes or smokeless tobacco kept or stored by the person at the premises.

“(2) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by paragraph (1). Courts.

“(3) Whoever denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed \$10,000.”.

SEC. 5. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS. 15 USC 375 note.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act shall be construed to amend, modify, or otherwise affect—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education

Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian country;

(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian tribes, tribal members, tribal enterprises, or in Indian country;

(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; or

(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws.

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Nothing in this Act or the amendments made by this Act shall be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act shall prohibit, limit, or restrict enforcement by the Attorney General of the United States of this Act or an amendment made by this Act within Indian country.

(e) AMBIGUITY.—Any ambiguity between the language of this section or its application and any other provision of this Act shall be resolved in favor of this section.

(f) DEFINITIONS.—In this section—

(1) the term “Indian country” has the meaning given that term in section 1 of the Jenkins Act, as amended by this Act; and

(2) the term “tribal enterprise” means any business enterprise, regardless of whether incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribes.

15 USC 375 note. **SEC. 6. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect on the date that is 90 days after the date of enactment of this Act.

(b) BATFE AUTHORITY.—The amendments made by section 4 shall take effect on the date of enactment of this Act.

SEC. 7. SEVERABILITY.

15 USC 375 note.

If any provision of this Act, or any amendment made by this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of the Act to any other person or circumstance shall not be affected thereby.

SEC. 8. SENSE OF CONGRESS CONCERNING THE PRECEDENTIAL EFFECT OF THIS ACT.

It is the sense of Congress that unique harms are associated with online cigarette sales, including problems with verifying the ages of consumers in the digital market and the long-term health problems associated with the use of certain tobacco products. This Act was enacted recognizing the longstanding interest of Congress in urging compliance with States' laws regulating remote sales of certain tobacco products to citizens of those States, including the passage of the Jenkins Act over 50 years ago, which established reporting requirements for out-of-State companies that sell certain tobacco products to citizens of the taxing States, and which gave authority to the Department of Justice and the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the Jenkins Act. In light of the unique harms and circumstances surrounding the online sale of certain tobacco products, this Act is intended to help collect cigarette excise taxes, to stop tobacco sales to underage youth, and to help the States enforce their laws that target the online sales of certain tobacco products only. This Act is in no way meant to create a precedent regarding the collection of State sales or use taxes by, or the validity of efforts to impose other types of taxes on, out-of-State entities that do not have a physical presence within the taxing State.

Approved March 31, 2010.

LEGISLATIVE HISTORY—S. 1147:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 11, considered and passed Senate.

Mar. 17, considered and passed House.



Public Law 111–155
111th Congress

An Act

Apr. 7, 2010
[H.R. 4621]

Prevent
Deceptive Census
Look Alike
Mailings Act.
39 USC 101 note.

To protect the integrity of the constitutionally mandated United States census and prohibit deceptive mail practices that attempt to exploit the decennial census.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prevent Deceptive Census Look Alike Mailings Act”.

SEC. 2. REQUIREMENTS FOR MAIL BEARING THE TERM “CENSUS” ON THE ENVELOPE OR OUTSIDE COVER OR WRAPPER.

(a) MATTER SOLICITING PURCHASE OF A PRODUCT OR SERVICE.—Section 3001(h) of title 39, United States Code, is amended—

(1) by inserting, in the matter preceding paragraph (1), “; or which bears the term ‘census’ on the envelope or outside cover or wrapper” after “such matter by the Federal Government”;

(2) in paragraph (2), by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(4) by inserting “(1)” after “(h)”; and

(5) by adding at the end the following new paragraph:

“(2) In the case of matter bearing the term ‘census’ on the envelope or outside cover or wrapper, in addition to satisfying one of the exceptions contained in paragraphs (1)(A), (1)(B), or (1)(C), such envelope or outside cover or wrapper bears on its face an accurate return address including the name of the entity that sent such matter.”.

(b) MATTER SOLICITING INFORMATION OR CONTRIBUTION OF FUNDS.—Section 3001(i) of title 39, United States Code, is amended—

(1) by inserting, in the matter preceding paragraph (1), “; or which bears the term ‘census’ on the envelope or outside cover or wrapper” after “such matter by the Federal Government”;

(2) in paragraph (2), by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(4) by inserting “(1)” after “(i)”; and

(5) by adding at the end the following new paragraph:

“(2) In the case of matter bearing the term ‘census’ on the envelope or outside cover or wrapper, in addition to satisfying

one of the exceptions contained in paragraphs (1)(A), (1)(B), or (1)(C), such envelope or outside cover or wrapper bears on its face an accurate return address including the name of the entity that sent such matter.”.

Approved April 7, 2010.

LEGISLATIVE HISTORY—H.R. 4621:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 9, 10, considered and passed House.

Mar. 26, considered and passed Senate.



Public Law 111–156
111th Congress

Joint Resolution

Apr. 7, 2010
[H.J. Res. 80]

Recognizing and honoring the Blinded Veterans Association on its 65th anniversary of representing blinded veterans and their families.

Whereas, at 8:45 a.m. on March 28, 1945, 100 blinded members of the Armed Forces who served in World War II formed the Blinded Veterans Association at Avon “Old Farms” Army Convalescent Hospital in Connecticut;

Whereas the founders of the Blinded Veterans Association were a cross-section of heroes and pioneers who not only shaped the rich history, philosophy, and knowledge of education and rehabilitation of the blind, but also provided insight into current and future challenges facing the blind and engaged in continual advocacy efforts to ensure that services for all blinded persons would be unique and specialized;

Whereas, on March 28, 2010, the Blinded Veterans Association will mark its 65th anniversary of dedication to blinded members of the Armed Forces, veterans, and their families;

Whereas in 1946, General Omar Bradley, of the Veterans Administration, appointed the Blinded Veterans Association as the first official representative for blinded veterans for the filing of claims and appeals to the Veterans Administration, making the Blinded Veterans Association only the eighth veterans service organization to receive such authorization;

Whereas the Blinded Veterans Association was originally incorporated in New York State as a nonprofit association, and then moved to Washington, DC, in 1947;

Whereas in 1958, the 58th Congress approved the Congressional Charter for the Blinded Veterans Association;

Whereas from its early beginnings, the Blinded Veterans Association encouraged the blinded veterans it served “to take their rightful place in the community with their fellow men and work with them toward the creation of a peaceful world”, and it has continued to advocate for the war-blinded to regain independence, confidence, and self-esteem through rehabilitation and training; and

Whereas many people of the United States recognize March 28 of each year as Blinded Veterans Day: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) expresses appreciation for the efforts of the Blinded Veterans Association in improving the rehabilitation services,

education, and benefits for blinded veterans of the United States;

(2) supports the goals and ideals of Blinded Veterans Day; and

(3) calls upon the people of the United States to observe Blinded Veterans Day with appropriate programs and activities.

Approved April 7, 2010.

LEGISLATIVE HISTORY—H.J. Res. 80:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 22, 23, considered and passed House.

Mar. 26, considered and passed Senate.



Public Law 111–157
111th Congress

An Act

Apr. 15, 2010
[H.R. 4851]

Continuing
Extension Act of
2010.
26 USC 1 note.

To provide a temporary extension of certain programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Continuing Extension Act of 2010”.

SEC. 2. EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) IN GENERAL.—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking “April 5, 2010” each place it appears and inserting “June 2, 2010”;

(B) in the heading for subsection (b)(2), by striking “APRIL 5, 2010” and inserting “JUNE 2, 2010”; and

(C) in subsection (b)(3), by striking “September 4, 2010” and inserting “November 6, 2010”.

(2) Section 2002(e) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438), is amended—

(A) in paragraph (1)(B), by striking “April 5, 2010” and inserting “June 2, 2010”;

(B) in the heading for paragraph (2), by striking “APRIL 5, 2010” and inserting “JUNE 2, 2010”; and

(C) in paragraph (3), by striking “October 5, 2010” and inserting “December 7, 2010”.

(3) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking “April 5, 2010” each place it appears and inserting “June 2, 2010”; and

(B) in subsection (c), by striking “September 4, 2010” and inserting “November 6, 2010”.

(4) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “September 4, 2010” and inserting “November 6, 2010”.

(b) FUNDING.—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (C), by striking “and” at the end;

(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) the amendments made by section 2(a)(1) of the Continuing Extension Act of 2010; and”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Temporary Extension Act of 2010 (Public Law 111–144). 26 USC 3304 note.

SEC. 3. EXTENSION AND IMPROVEMENT OF PREMIUM ASSISTANCE FOR COBRA BENEFITS.

(a) **EXTENSION OF ELIGIBILITY PERIOD.**—Subsection (a)(3)(A) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), as amended by section 3(a) of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by striking “March 31, 2010” and inserting “May 31, 2010”. 26 USC 6432 note.

(b) **RULES RELATING TO 2010 EXTENSION.**—Subsection (a) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), as amended by section 3(b) of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by adding at the end the following:

“(18) **RULES RELATED TO APRIL AND MAY 2010 EXTENSION.**—In the case of an individual who, with regard to coverage described in paragraph (10)(B), experiences a qualifying event related to a termination of employment on or after April 1, 2010 and prior to the date of the enactment of this paragraph, rules similar to those in paragraphs (4)(A) and (7)(C) shall apply with respect to all continuation coverage, including State continuation coverage programs.”.

Applicability.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009.

SEC. 4. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE.

Paragraph (10) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111–118) and as amended by section 5 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended— 42 USC 1395w–4.

(1) in subparagraph (A), by striking “March 31, 2010” and inserting “May 31, 2010”; and

(2) in subparagraph (B), by striking “April 1, 2010” and inserting “June 1, 2010”.

SEC. 5. EHR CLARIFICATION.

(a) **QUALIFICATION FOR CLINIC-BASED PHYSICIANS.**—

(1) **MEDICARE.**—Section 1848(o)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(o)(1)(C)(ii)) is amended by striking “setting (whether inpatient or outpatient)” and inserting “inpatient or emergency room setting”.

(2) **MEDICAID.**—Section 1903(t)(3)(D) of the Social Security Act (42 U.S.C. 1396b(t)(3)(D)) is amended by striking “setting (whether inpatient or outpatient)” and inserting “inpatient or emergency room setting”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall be effective as if included in the enactment of the HITECH Act (included in the American Recovery and Reinvestment Act of 2009 (Public Law 111–5)). 42 USC 1395w–4 note.

42 USC
1395w–4 note.

(c) **IMPLEMENTATION.**—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

SEC. 6. EXTENSION OF USE OF 2009 POVERTY GUIDELINES.

123 Stat. 3474.

Section 1012 of the Department of Defense Appropriations Act, 2010 (Public Law 111–118), as amended by section 7 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by striking “March 31, 2010” and inserting “May 31, 2010”.

SEC. 7. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

123 Stat. 2047.

(a) **EXTENSION.**—Section 129 of the Continuing Appropriations Resolution, 2010 (Public Law 111–68), as amended by section 8 of Public Law 111–144, is amended by striking “by substituting” and all that follows through the period at the end and inserting “by substituting May 31, 2010, for the date specified in each such section.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall be considered to have taken effect on February 28, 2010.

Time period.

SEC. 8. COMPENSATION AND RATIFICATION OF AUTHORITY RELATED TO LAPSE IN HIGHWAY PROGRAMS.

(a) **COMPENSATION FOR FEDERAL EMPLOYEES.**—Any Federal employees furloughed as a result of the lapse in expenditure authority from the Highway Trust Fund after 11:59 p.m. on February 28, 2010, through March 2, 2010, shall be compensated for the period of that lapse at their standard rates of compensation, as determined under policies established by the Secretary of Transportation.

(b) **RATIFICATION OF ESSENTIAL ACTIONS.**—All actions taken by Federal employees, contractors, and grantees for the purposes of maintaining the essential level of Government operations, services, and activities to protect life and property and to bring about orderly termination of Government functions during the lapse in expenditure authority from the Highway Trust Fund after 11:59 p.m. on February 28, 2010, through March 2, 2010, are hereby ratified and approved if otherwise in accord with the provisions of the Continuing Appropriations Resolution, 2010 (division B of Public Law 111–68).

(c) **FUNDING.**—Funds used by the Secretary to compensate employees described in subsection (a) shall be derived from funds previously authorized out of the Highway Trust Fund and made available or limited to the Department of Transportation by the Consolidated Appropriations Act, 2010 (Public Law 111–117) and shall be subject to the obligation limitations established in such Act.

Effective date.

(d) **EXPENDITURES FROM HIGHWAY TRUST FUND.**—To permit expenditures from the Highway Trust Fund to effectuate the purposes of this section, this section shall be deemed to be a section of the Continuing Appropriations Resolution, 2010 (division B of Public Law 111–68), as in effect on the date of the enactment of the last amendment to such Resolution.

SEC. 9. SATELLITE TELEVISION EXTENSION.

(a) **AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.**—

(1) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(A) in subsection (c)(1)(E), by striking “April 30, 2010” and inserting “May 31, 2010”; and

(B) in subsection (e), by striking “April 30, 2010” and inserting “May 31, 2010”.

(2) TERMINATION OF LICENSE.—Section 1003(a)(2)(A) of Public Law 111–118 is amended by striking “April 30, 2010”, and inserting “May 31, 2010”. 17 USC 119 note.

(b) AMENDMENTS TO COMMUNICATIONS ACT OF 1934.—Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) in paragraph (2)(C), by striking “April 30, 2010” and inserting “May 31, 2010”; and

(2) in paragraph (3)(C), by striking “May 1, 2010” each place it appears in clauses (ii) and (iii) and inserting “June 1, 2010”.

SEC. 10. EXTENSION OF SMALL BUSINESS LOAN GUARANTEE PROGRAM.

(a) APPROPRIATION.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, \$80,000,000, for an additional amount for “Small Business Administration—Business Loans Program Account”, to remain available until expended, for the cost of fee reductions and eliminations under section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151) and loan guarantees under section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 152), as amended by this section: *Provided*, That such costs shall be as defined in section 502 of the Congressional Budget Act of 1974.

(b) EXTENSION OF SUNSET DATE.—Section 502(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 153) is amended by striking “April 30, 2010” and inserting “May 31, 2010”.

SEC. 11. SENSE OF THE SENATE REGARDING A VALUE ADDED TAX.

It is the sense of the Senate that the Value Added Tax is a massive tax increase that will cripple families on fixed income and only further push back America’s economic recovery and the Senate opposes a Value Added Tax.

SEC. 12. DETERMINATION OF BUDGETARY EFFECTS.

(a) IN GENERAL.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—This Act, with the exception of section 4, is designated as an emergency for purposes of pay-as-you-go principles. In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(c) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—This Act, with the exception of section 4, is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

Approved April 15, 2010.

LEGISLATIVE HISTORY—H.R. 4851 (S. 3153):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 17, considered and passed House.

Apr. 13, 14, considered in Senate.

Apr. 15, considered and passed Senate, amended. House concurred in Senate amendment.



Public Law 111–158
111th Congress

An Act

To urge the Secretary of the Treasury to instruct the United States Executive Directors at the International Monetary Fund, the World Bank, the Inter-American Development Bank, and other multilateral development institutions to use the voice, vote, and influence of the United States to cancel immediately and completely Haiti's debts to such institutions, and for other purposes.

Apr. 26, 2010

[H.R. 4573]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Haiti Debt Relief and Earthquake Recovery Act of 2010”.

Haiti Debt Relief
and Earthquake
Recovery Act of
2010.
22 USC 261 note.

SEC. 2. DEBT RELIEF FOR HAITI.

Title XVI of the International Financial Institutions Act (22 U.S.C. 262p et seq.) is amended by adding at the end the following new section:

“SEC. 1628. CANCELLATION OF HAITI’S DEBTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.

22 USC 262p–12.

“(a) IN GENERAL.—The Secretary of the Treasury should direct the United States Executive Director at the International Monetary Fund, the International Development Association, the Inter-American Development Bank, the International Fund for Agricultural Development, and other multilateral development institutions (as defined in section 1701(c)(3)) to use the voice, vote and influence of the United States at each such institution to seek to achieve—

“(1) the immediate and complete cancellation of any and all remaining debts owed by Haiti to such institutions;

“(2) the suspension of Haiti’s debt service payments to such institutions until such time as the debts are canceled completely; and

“(3) the provision, before February 1, 2015, of emergency, humanitarian and reconstruction assistance from such institutions to Haiti in the form of grants or other assistance such that Haiti does not accumulate debt.

Deadline.

“(b) USE OF CERTAIN FUNDS FOR ASSISTANCE TO HAITI.—The Secretary of the Treasury should instruct the United States Executive Director of the International Monetary Fund to advocate the use of some of the realized windfall profits that exceed the required contribution to the Poverty Reduction and Growth Trust (as referenced in the IMF Reforms Financial Facilities for Low-Income Countries Public Information Notice (PIN) No. 09/94) from the ongoing sale of 12,965,649 ounces of gold acquired since the second Amendment of the Fund’s Article of Agreement, to provide debt

stock relief and debt service relief for Haiti and, before February 1, 2015, to provide grants for Haiti.

“(c) SECURING OTHER RELIEF FOR HAITI.—The Secretary of the Treasury and the Secretary of State should use all appropriate diplomatic influence to secure cancellation of any and all remaining bilateral, multilateral and private creditor debt owed by Haiti.”.

SEC. 3. INFRASTRUCTURE INVESTMENT.

(a) TRUST FUND.—The Secretary of the Treasury should support the creation and utilization of a multilateral trust fund for Haiti that would leverage potential United States contributions and promote bilateral donations to such a fund for the purpose of making investments in Haiti’s future and future generations, including efforts to combat soil degradation and promote reforestation and infrastructure investments such as electric grids, roads, water and sanitation facilities, and other critical infrastructure projects.

(b) INCREASE IN TRANSFER OF EARNINGS.—The Secretary of the Treasury should direct the United States Executive Director of the Inter-American Development Bank to seek to increase the transfer of its earnings to the Fund for Special Operations and to a trust fund or grant facility for Haiti.

Approved April 26, 2010.

LEGISLATIVE HISTORY—H.R. 4573:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 10, considered and passed House.

Mar. 26, considered and passed Senate, amended.

Apr. 14, House concurred in Senate amendments.



Public Law 111–159
111th Congress

An Act

To amend the Internal Revenue Code of 1986 to ensure that health coverage provided by the Department of Defense is treated as minimal essential coverage.

Apr. 26, 2010

[H.R. 4887]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TRICARE
Affirmation Act.
26 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “TRICARE Affirmation Act”.

SEC. 2. TREATMENT OF DEPARTMENT OF DEFENSE HEALTH COVERAGE AS MINIMAL ESSENTIAL COVERAGE.

(a) IN GENERAL.—Section 5000A(f)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended—

Ante, p. 244.

(1) by striking clause (iv) and inserting the following new clause:

“(iv) medical coverage under chapter 55 of title 10, United States Code, including coverage under the TRICARE program;”;

(2) by striking “or” at the end of clause (v);

(3) by striking the period at the end of clause (vi) and inserting “; or”; and

(4) by inserting after clause (vi) the following new clause:

“(vii) the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act and shall be executed immediately after the amendments made by such section 1501(b).

26 USC 5000A
note.

Approved April 26, 2010.

LEGISLATIVE HISTORY—H.R. 4887:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 20, considered and passed House.

Apr. 12, considered and passed Senate.

Public Law 111–160
111th Congress

Joint Resolution

Apr. 26, 2010
[S.J. Res. 25]

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact.

Whereas the State of Maryland, the Commonwealth of Virginia, and the District of Columbia entered into the Washington Metropolitan Area Transit Regulation Compact in 1960 with the consent of Congress in Public Law No. 86–794, 74 Stat. 1031;

Whereas the State of Maryland, the Commonwealth of Virginia, and the District of Columbia amended titles I and II of the Compact in 1962 and 1990 with the consent of Congress in Public Law No. 87–767, 76 Stat. 764, and Public Law No. 101–505, 104 Stat. 1300, respectively;

Whereas legislation enacted by the State of Maryland (2008 Md. Laws c. 32 and 2009 Md. Laws c. 76) the Commonwealth of Virginia (2007 Va. Acts c. 378 and 2009 Va. Acts c. 540) and the District of Columbia (D.C. Act 17–622) contain amendments to article III of title I of the Compact regarding appointment of members to the Washington Metropolitan Area Transit Commission; and

Whereas the consent of Congress is required in order to implement such amendments: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS TO COMPACT AMENDMENTS.

(a) CONSENT.—Consent of Congress is given to the amendments of the State of Maryland, the amendments of the Commonwealth of Virginia, and the amendments of the District of Columbia to article III of title I of the Washington Metropolitan Area Transit Regulation Compact.

(b) AMENDMENTS.—The amendments referred to in subsection (a) are substantially as follows:

(1) Section 1(a) is amended to read as follows:

“(a) The Commission shall be composed of 3 members, 1 member appointed by the Governor of Virginia from the Department of Motor Vehicles of the Commonwealth of Virginia, 1 member appointed by the Governor of Maryland from the Maryland Public Service Commission, and 1 member appointed by the Mayor of the District of Columbia from a District of Columbia agency with oversight of matters relating to the Commission.”.

(2) Section 1 is amended by inserting at the end the following:

“(d) An amendment to section 1(a) of this article shall not affect any member in office on the amendment’s effective date.”.

SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.

The right to alter, amend, or repeal this Act is expressly reserved.

SEC. 3. CONSTRUCTION AND SEVERABILITY.

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. If any part or application of this compact, or legislation enabling the compact, is held invalid, the remainder of the compact or its application to other situations or persons shall not be affected.

SEC. 4. INCONSISTENCY OF LANGUAGE.

The validity of these amendments to the compact shall not be affected by any insubstantial differences in its form or language as adopted by the State of Maryland, Commonwealth of Virginia and District of Columbia.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act.

Approved April 26, 2010.

LEGISLATIVE HISTORY—S.J. Res. 25:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 21, considered and passed Senate.

Apr. 14, considered and passed House.



Public Law 111–161
111th Congress

An Act

Apr. 30, 2010
[H.R. 5147]

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

Airport and
Airway
Extension Act of
2010.
26 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Airport and Airway Extension Act of 2010”.

SEC. 2. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

26 USC 4081.

(a) **FUEL TAXES.**—Subparagraph (B) of section 4081(d)(2) of the Internal Revenue Code of 1986 is amended by striking “April 30, 2010” and inserting “July 3, 2010”.

(b) **TICKET TAXES.**—

(1) **PERSONS.**—Clause (ii) of section 4261(j)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “April 30, 2010” and inserting “July 3, 2010”.

(2) **PROPERTY.**—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking “April 30, 2010” and inserting “July 3, 2010”.

26 USC 4081
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on May 1, 2010.

SEC. 3. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 is amended—

(1) by striking “May 1, 2010” and inserting “July 4, 2010”; and

(2) by inserting “or the Airport and Airway Extension Act of 2010” before the semicolon at the end of subparagraph (A).

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 9502(e) of such Code is amended by striking “May 1, 2010” and inserting “July 4, 2010”.

26 USC 9502
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on May 1, 2010.

SEC. 4. EXTENSION OF AIRPORT IMPROVEMENT PROGRAM.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Section 48103(7) of title 49, United States Code, is amended to read as follows:

“(7) \$3,024,657,534 for the period beginning on October 1, 2009, and ending on July 3, 2010.”.

(2) AVAILABILITY OF AMOUNTS.—Sums made available pursuant to the amendment made by paragraph (1) shall remain available until expended.

(3) PROGRAM IMPLEMENTATION.—For purposes of calculating funding apportionments and meeting other requirements under sections 47114, 47115, 47116, and 47117 of title 49, United States Code, for the period beginning on October 1, 2009, and ending on July 3, 2010, the Administrator of the Federal Aviation Administration shall—

(A) first calculate funding apportionments on an annualized basis as if the total amount available under section 48103 of such title for fiscal year 2010 were \$4,000,000,000; and

(B) then reduce by 17 percent—

(i) all funding apportionments calculated under subparagraph (A); and

(ii) amounts available pursuant to sections 47117(b) and 47117(f)(2) of such title.

(b) PROJECT GRANT AUTHORITY.—Section 47104(c) of such title is amended by striking “April 30, 2010,” and inserting “July 3, 2010,”.

SEC. 5. EXTENSION OF EXPIRING AUTHORITIES.

(a) Section 40117(l)(7) of title 49, United States Code, is amended by striking “May 1, 2010.” and inserting “July 4, 2010.”.

(b) Section 44302(f)(1) of such title is amended—

(1) by striking “April 30, 2010,” and inserting “July 3, 2010,”; and

(2) by striking “July 31, 2010,” and inserting “September 30, 2010,”.

(c) Section 44303(b) of such title is amended by striking “July 31, 2010,” and inserting “September 30, 2010,”.

(d) Section 47107(s)(3) of such title is amended by striking “May 1, 2010.” and inserting “July 4, 2010.”.

(e) Section 47115(j) of such title is amended by striking “May 1, 2010,” and inserting “July 4, 2010,”.

(f) Section 47141(f) of such title is amended by striking “April 30, 2010.” and inserting “July 3, 2010.”.

(g) Section 49108 of such title is amended by striking “April 30, 2010,” and inserting “July 3, 2010,”.

(h) Section 161 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 47109 note) is amended by striking “May 1, 2010,” and inserting “July 4, 2010,”.

(i) Section 186(d) of such Act (117 Stat. 2518) is amended by striking “May 1, 2010,” and inserting “July 4, 2010,”.

(j) The amendments made by this section shall take effect on May 1, 2010.

49 USC 40117
note.

SEC. 6. FEDERAL AVIATION ADMINISTRATION OPERATIONS.

Section 106(k)(1)(F) of title 49, United States Code, is amended to read as follows:

“(F) \$7,070,158,159 for the period beginning on October 1, 2009, and ending on July 3, 2010.”.

SEC. 7. AIR NAVIGATION FACILITIES AND EQUIPMENT.

Section 48101(a)(6) of title 49, United States Code, is amended to read as follows:

“(6) \$2,220,252,132 for the period beginning on October 1, 2009, and ending on July 3, 2010.”.

SEC. 8. RESEARCH, ENGINEERING, AND DEVELOPMENT.

Section 48102(a)(14) of title 49, United States Code, is amended to read as follows:

“(14) \$144,049,315 for the period beginning on October 1, 2009, and ending on July 3, 2010.”.

Approved April 30, 2010.

LEGISLATIVE HISTORY—H.R. 5147:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 28, considered and passed House and Senate.



Public Law 111–162
111th Congress

An Act

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

Apr. 30, 2010
[S. 3253]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) **IN GENERAL.**—Section 1 of the Act entitled “An Act to extend temporarily certain authorities of the Small Business Administration”, approved October 10, 2006 (Public Law 109–316; 120 Stat. 1742), as most recently amended by section 1 of Public Law 111–136 (124 Stat. 6), is amended by striking “April 30, 2010” each place it appears and inserting “July 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on April 29, 2010.

Approved April 30, 2010.

LEGISLATIVE HISTORY—S. 3253:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 22, considered and passed Senate.

Apr. 27, considered and passed House.



Public Law 111–163
111th Congress

An Act

May 5, 2010
[S. 1963]

Caregivers and
Veterans
Omnibus Health
Services Act of
2010.
38 USC 101 note.

To amend title 38, United States Code, to provide assistance to caregivers of veterans, to improve the provision of health care to veterans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Caregivers and Veterans Omnibus Health Services Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to title 38, United States Code.

TITLE I—CAREGIVER SUPPORT

- Sec. 101. Assistance and support services for caregivers.
- Sec. 102. Medical care for family caregivers.
- Sec. 103. Counseling and mental health services for caregivers.
- Sec. 104. Lodging and subsistence for attendants.

TITLE II—WOMEN VETERANS HEALTH CARE MATTERS

- Sec. 201. Study of barriers for women veterans to health care from the Department of Veterans Affairs.
- Sec. 202. Training and certification for mental health care providers of the Department of Veterans Affairs on care for veterans suffering from sexual trauma and post-traumatic stress disorder.
- Sec. 203. Pilot program on counseling in retreat settings for women veterans newly separated from service in the Armed Forces.
- Sec. 204. Service on certain advisory committees of women recently separated from service in the Armed Forces.
- Sec. 205. Pilot program on assistance for child care for certain veterans receiving health care.
- Sec. 206. Care for newborn children of women veterans receiving maternity care.

TITLE III—RURAL HEALTH IMPROVEMENTS

- Sec. 301. Improvements to the Education Debt Reduction Program.
- Sec. 302. Visual impairment and orientation and mobility professionals education assistance program.
- Sec. 303. Demonstration projects on alternatives for expanding care for veterans in rural areas.
- Sec. 304. Program on readjustment and mental health care services for veterans who served in Operation Enduring Freedom and Operation Iraqi Freedom.
- Sec. 305. Travel reimbursement for veterans receiving treatment at facilities of the Department of Veterans Affairs.
- Sec. 306. Pilot program on incentives for physicians who assume inpatient responsibilities at community hospitals in health professional shortage areas.
- Sec. 307. Grants for veterans service organizations for transportation of highly rural veterans.
- Sec. 308. Modification of eligibility for participation in pilot program of enhanced contract care authority for health care needs of certain veterans.

TITLE IV—MENTAL HEALTH CARE MATTERS

- Sec. 401. Eligibility of members of the Armed Forces who serve in Operation Enduring Freedom or Operation Iraqi Freedom for counseling and services through Readjustment Counseling Service.
- Sec. 402. Restoration of authority of Readjustment Counseling Service to provide referral and other assistance upon request to former members of the Armed Forces not authorized counseling.
- Sec. 403. Study on suicides among veterans.

TITLE V—OTHER HEALTH CARE MATTERS

- Sec. 501. Repeal of certain annual reporting requirements.
- Sec. 502. Submittal date of annual report on Gulf War research.
- Sec. 503. Payment for care furnished to CHAMPVA beneficiaries.
- Sec. 504. Disclosure of patient treatment information from medical records of patients lacking decisionmaking capacity.
- Sec. 505. Enhancement of quality management.
- Sec. 506. Pilot program on use of community-based organizations and local and State government entities to ensure that veterans receive care and benefits for which they are eligible.
- Sec. 507. Specialized residential care and rehabilitation for certain veterans.
- Sec. 508. Expanded study on the health impact of Project Shipboard Hazard and Defense.
- Sec. 509. Use of non-Department facilities for rehabilitation of individuals with traumatic brain injury.
- Sec. 510. Pilot program on provision of dental insurance plans to veterans and survivors and dependents of veterans.
- Sec. 511. Prohibition on collection of copayments from veterans who are catastrophically disabled.
- Sec. 512. Higher priority status for certain veterans who are medal of honor recipients.
- Sec. 513. Hospital care, medical services, and nursing home care for certain Vietnam-era veterans exposed to herbicide and veterans of the Persian Gulf War.
- Sec. 514. Establishment of Director of Physician Assistant Services in Veterans Health Administration.
- Sec. 515. Committee on Care of Veterans with Traumatic Brain Injury.
- Sec. 516. Increase in amount available to disabled veterans for improvements and structural alterations furnished as part of home health services.
- Sec. 517. Extension of statutorily defined copayments for certain veterans for hospital care and nursing home care.
- Sec. 518. Extension of authority to recover cost of certain care and services from disabled veterans with health-plan contracts.

TITLE VI—DEPARTMENT PERSONNEL MATTERS

- Sec. 601. Enhancement of authorities for retention of medical professionals.
- Sec. 602. Limitations on overtime duty, weekend duty, and alternative work schedules for nurses.
- Sec. 603. Reauthorization of health professionals educational assistance scholarship program.
- Sec. 604. Loan repayment program for clinical researchers from disadvantaged backgrounds.

TITLE VII—HOMELESS VETERANS MATTERS

- Sec. 701. Per diem grant payments to nonconforming entities.

TITLE VIII—NONPROFIT RESEARCH AND EDUCATION CORPORATIONS

- Sec. 801. General authorities on establishment of corporations.
- Sec. 802. Clarification of purposes of corporations.
- Sec. 803. Modification of requirements for boards of directors of corporations.
- Sec. 804. Clarification of powers of corporations.
- Sec. 805. Redesignation of section 7364A of title 38, United States Code.
- Sec. 806. Improved accountability and oversight of corporations.

TITLE IX—CONSTRUCTION AND NAMING MATTERS

- Sec. 901. Authorization of medical facility projects.
- Sec. 902. Designation of Merrill Lundman Department of Veterans Affairs Outpatient Clinic, Havre, Montana.
- Sec. 903. Designation of William C. Tallent Department of Veterans Affairs Outpatient Clinic, Knoxville, Tennessee.
- Sec. 904. Designation of Max J. Beilke Department of Veterans Affairs Outpatient Clinic, Alexandria, Minnesota.

TITLE X—OTHER MATTERS

- Sec. 1001. Expansion of authority for Department of Veterans Affairs police officers.
- Sec. 1002. Uniform allowance for Department of Veterans Affairs police officers.
- Sec. 1003. Submission of reports to Congress by Secretary of Veterans Affairs in electronic form.
- Sec. 1004. Determination of budgetary effects for purposes of compliance with Statutory Pay-As-You-Go Act of 2010.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—CAREGIVER SUPPORT**SEC. 101. ASSISTANCE AND SUPPORT SERVICES FOR CAREGIVERS.**

(a) ASSISTANCE AND SUPPORT SERVICES.—

(1) IN GENERAL.—Subchapter II of chapter 17 is amended by adding at the end the following new section:

“§ 1720G. Assistance and support services for caregivers

“(a) PROGRAM OF COMPREHENSIVE ASSISTANCE FOR FAMILY CAREGIVERS.—(1)(A) The Secretary shall establish a program of comprehensive assistance for family caregivers of eligible veterans.

Determination.

“(B) The Secretary shall only provide support under the program required by subparagraph (A) to a family caregiver of an eligible veteran if the Secretary determines it is in the best interest of the eligible veteran to do so.

“(2) For purposes of this subsection, an eligible veteran is any individual who—

“(A) is a veteran or member of the Armed Forces undergoing medical discharge from the Armed Forces;

“(B) has a serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001; and

“(C) is in need of personal care services because of—

“(i) an inability to perform one or more activities of daily living;

“(ii) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or

“(iii) such other matters as the Secretary considers appropriate.

“(3)(A) As part of the program required by paragraph (1), the Secretary shall provide to family caregivers of eligible veterans the following assistance:

“(i) To each family caregiver who is approved as a provider of personal care services for an eligible veteran under paragraph (6)—

“(I) such instruction, preparation, and training as the Secretary considers appropriate for the family caregiver to provide personal care services to the eligible veteran;

“(II) ongoing technical support consisting of information and assistance to address, in a timely manner, the

routine, emergency, and specialized caregiving needs of the family caregiver in providing personal care services to the eligible veteran;

“(III) counseling; and

“(IV) lodging and subsistence under section 111(e) of this title.

“(ii) To each family caregiver who is designated as the primary provider of personal care services for an eligible veteran under paragraph (7)—

“(I) the assistance described in clause (i);

“(II) such mental health services as the Secretary determines appropriate;

“(III) respite care of not less than 30 days annually, including 24-hour per day care of the veteran commensurate with the care provided by the family caregiver to permit extended respite;

“(IV) medical care under section 1781 of this title; and

“(V) a monthly personal caregiver stipend.

“(B) Respite care provided under subparagraph (A)(ii)(III) shall be medically and age-appropriate and include in-home care.

“(C)(i) The amount of the monthly personal caregiver stipend provided under subparagraph (A)(ii)(V) shall be determined in accordance with a schedule established by the Secretary that specifies stipends based upon the amount and degree of personal care services provided.

Determinations.

“(ii) The Secretary shall ensure, to the extent practicable, that the schedule required by clause (i) specifies that the amount of the monthly personal caregiver stipend provided to a primary provider of personal care services for the provision of personal care services to an eligible veteran is not less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran to provide equivalent personal care services to the eligible veteran.

“(iii) If personal care services are not available from a commercial home health entity in the geographic area of an eligible veteran, the amount of the monthly personal caregiver stipend payable under the schedule required by clause (i) with respect to the eligible veteran shall be determined by taking into consideration the costs of commercial providers of personal care services in providing personal care services in geographic areas other than the geographic area of the eligible veteran with similar costs of living.

“(4) An eligible veteran and a family member of the eligible veteran seeking to participate in the program required by paragraph (1) shall jointly submit to the Secretary an application therefor in such form and in such manner as the Secretary considers appropriate.

Application.

“(5) For each application submitted jointly by an eligible veteran and family member, the Secretary shall evaluate—

“(A) the eligible veteran—

“(i) to identify the personal care services required by the eligible veteran; and

“(ii) to determine whether such requirements could be significantly or substantially satisfied through the provision of personal care services from a family member; and

“(B) the family member to determine the amount of instruction, preparation, and training, if any, the family member

requires to provide the personal care services required by the eligible veteran—

“(i) as a provider of personal care services for the eligible veteran; and

“(ii) as the primary provider of personal care services for the eligible veteran.

“(6)(A) The Secretary shall provide each family member of an eligible veteran who makes a joint application under paragraph (4) the instruction, preparation, and training determined to be required by such family member under paragraph (5)(B).

Regulations.

“(B) Upon the successful completion by a family member of an eligible veteran of instruction, preparation, and training under subparagraph (A), the Secretary shall approve the family member as a provider of personal care services for the eligible veteran.

“(C) The Secretary shall, subject to regulations the Secretary shall prescribe, provide for necessary travel, lodging, and per diem expenses incurred by a family member of an eligible veteran in undergoing instruction, preparation, and training under subparagraph (A).

Regulations.

“(D) If the participation of a family member of an eligible veteran in instruction, preparation, and training under subparagraph (A) would interfere with the provision of personal care services to the eligible veteran, the Secretary shall, subject to regulations as the Secretary shall prescribe and in consultation with the veteran, provide respite care to the eligible veteran during the provision of such instruction, preparation, and training to the family member so that the family member can participate in such instruction, preparation, and training without interfering with the provision of such services to the eligible veteran.

Designation.

“(7)(A) For each eligible veteran with at least one family member who is described by subparagraph (B), the Secretary shall designate one family member of such eligible veteran as the primary provider of personal care services for such eligible veteran.

“(B) A primary provider of personal care services designated for an eligible veteran under subparagraph (A) shall be selected from among family members of the eligible veteran who—

“(i) are approved under paragraph (6) as a provider of personal care services for the eligible veteran;

Determination.

“(ii) elect to provide the personal care services to the eligible veteran that the Secretary determines the eligible veteran requires under paragraph (5)(A)(i);

“(iii) has the consent of the eligible veteran to be the primary provider of personal care services for the eligible veteran; and

“(iv) are considered by the Secretary as competent to be the primary provider of personal care services for the eligible veteran.

Procedures.

“(C) An eligible veteran receiving personal care services from a family member designated as the primary provider of personal care services for the eligible veteran under subparagraph (A) may, in accordance with procedures the Secretary shall establish for such purposes, revoke consent with respect to such family member under subparagraph (B)(iii).

“(D) If a family member designated as the primary provider of personal care services for an eligible veteran under subparagraph (A) subsequently fails to meet any requirement set forth in subparagraph (B), the Secretary—

“(i) shall immediately revoke the family member’s designation under subparagraph (A); and

“(ii) may designate, in consultation with the eligible veteran, a new primary provider of personal care services for the eligible veteran under such subparagraph.

“(E) The Secretary shall take such actions as may be necessary to ensure that the revocation of a designation under subparagraph (A) with respect to an eligible veteran does not interfere with the provision of personal care services required by the eligible veteran.

“(8) If an eligible veteran lacks the capacity to make a decision under this subsection, the Secretary may, in accordance with regulations and policies of the Department regarding appointment of guardians or the use of powers of attorney, appoint a surrogate for the eligible veteran who may make decisions and take action under this subsection on behalf of the eligible veteran.

“(9)(A) The Secretary shall monitor the well-being of each eligible veteran receiving personal care services under the program required by paragraph (1).

“(B) The Secretary shall document each finding the Secretary considers pertinent to the appropriate delivery of personal care services to an eligible veteran under the program.

“(C) The Secretary shall establish procedures to ensure appropriate follow-up regarding findings described in subparagraph (B). Such procedures may include the following:

Procedures.

“(i) Visiting an eligible veteran in the eligible veteran’s home to review directly the quality of personal care services provided to the eligible veteran.

“(ii) Taking such corrective action with respect to the findings of any review of the quality of personal care services provided an eligible veteran as the Secretary considers appropriate, which may include—

“(I) providing additional training to a family caregiver;

and

“(II) suspending or revoking the approval of a family caregiver under paragraph (6) or the designation of a family caregiver under paragraph (7).

“(10) The Secretary shall carry out outreach to inform eligible veterans and family members of eligible veterans of the program required by paragraph (1) and the benefits of participating in the program.

“(b) PROGRAM OF GENERAL CAREGIVER SUPPORT SERVICES.—

(1) The Secretary shall establish a program of support services for caregivers of covered veterans who are enrolled in the health care system established under section 1705(a) of this title (including caregivers who do not reside with such veterans).

“(2) For purposes of this subsection, a covered veteran is any individual who needs personal care services because of—

“(A) an inability to perform one or more activities of daily living;

“(B) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or

“(C) such other matters as the Secretary shall specify.

“(3)(A) The support services furnished to caregivers of covered veterans under the program required by paragraph (1) shall include the following:

“(i) Services regarding the administering of personal care services, which, subject to subparagraph (B), shall include—

“(I) educational sessions made available both in person and on an Internet website;

“(II) use of telehealth and other available technologies; and

“(III) teaching techniques, strategies, and skills for caring for a disabled veteran;

“(ii) Counseling and other services under section 1782 of this title.

“(iii) Respite care under section 1720B of this title that is medically and age appropriate for the veteran (including 24-hour per day in-home care).

“(iv) Information concerning the supportive services available to caregivers under this subsection and other public, private, and nonprofit agencies that offer support to caregivers.

Certification.
Time period.

“(B) If the Secretary certifies to the Committees on Veterans’ Affairs of the Senate and the House of Representatives that funding available for a fiscal year is insufficient to fund the provision of services specified in one or more subclauses of subparagraph (A)(i), the Secretary shall not be required under subparagraph (A) to provide the services so specified in the certification during the period beginning on the date that is 180 days after the date the certification is received by the Committees and ending on the last day of the fiscal year.

“(4) In providing information under paragraph (3)(A)(iv), the Secretary shall collaborate with the Assistant Secretary for Aging of the Department of Health and Human Services in order to provide caregivers access to aging and disability resource centers under the Administration on Aging of the Department of Health and Human Services.

“(5) In carrying out the program required by paragraph (1), the Secretary shall conduct outreach to inform covered veterans and caregivers of covered veterans about the program. The outreach shall include an emphasis on covered veterans and caregivers of covered veterans living in rural areas.

“(c) CONSTRUCTION.—(1) A decision by the Secretary under this section affecting the furnishing of assistance or support shall be considered a medical determination.

“(2) Nothing in this section shall be construed to create—

“(A) an employment relationship between the Secretary and an individual in receipt of assistance or support under this section; or

“(B) any entitlement to any assistance or support provided under this section.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘caregiver’, with respect to an eligible veteran under subsection (a) or a covered veteran under subsection (b), means an individual who provides personal care services to the veteran.

“(2) The term ‘family caregiver’, with respect to an eligible veteran under subsection (a), means a family member who is a caregiver of the veteran.

“(3) The term ‘family member’, with respect to an eligible veteran under subsection (a), means an individual who—

“(A) is a member of the family of the veteran, including—

- “(i) a parent;
- “(ii) a spouse;
- “(iii) a child;
- “(iv) a step-family member; and
- “(v) an extended family member; or

“(B) lives with the veteran but is not a member of the family of the veteran.

“(4) The term ‘personal care services’, with respect to an eligible veteran under subsection (a) or a covered veteran under subsection (b), means services that provide the veteran the following:

“(A) Assistance with one or more independent activities of daily living.

“(B) Any other non-institutional extended care (as such term is used in section 1701(6)(E) of this title).

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the programs required by subsections (a) and (b)—

“(1) \$60,000,000 for fiscal year 2010; and

“(2) \$1,542,000,000 for the period of fiscal years 2011 through 2015.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item related to section 1720F the following new item:

“1720G. Assistance and support services for caregivers.”.

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall take effect on the date that is 270 days after the date of the enactment of this Act.

(B) IMPLEMENTATION.—The Secretary of Veterans Affairs shall commence the programs required by subsections (a) and (b) of section 1720G of title 38, United States Code, as added by paragraph (1) of this subsection, on the date on which the amendments made by this subsection take effect.

(b) IMPLEMENTATION PLAN AND REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall—

(A) develop a plan for the implementation of the program of comprehensive assistance for family caregivers required by section 1720G(a)(1) of title 38, United States Code, as added by subsection (a)(1) of this section; and

(B) submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on such plan.

(2) CONSULTATION.—In developing the plan required by paragraph (1)(A), the Secretary shall consult with the following:

(A) Individuals described in section 1720G(a)(2) of title 38, United States Code, as added by subsection (a)(1) of this section.

(B) Family members of such individuals who provide personal care services to such individuals.

(C) The Secretary of Defense with respect to matters concerning personal care services for members of the Armed Forces undergoing medical discharge from the Armed

38 USC
1720G note.

Forces who are eligible to benefit from personal care services furnished under the program of comprehensive assistance required by section 1720G(a)(1) of such title, as so added.

(D) Veterans service organizations, as recognized by the Secretary for the representation of veterans under section 5902 of such title.

(E) National organizations that specialize in the provision of assistance to individuals with the types of disabilities that family caregivers will encounter while providing personal care services under the program of comprehensive assistance required by section 1720G(a)(1) of such title, as so added.

(F) National organizations that specialize in provision of assistance to family members of veterans who provide personal care services to such veterans.

(G) Such other organizations with an interest in the provision of care to veterans and assistance to family caregivers as the Secretary considers appropriate.

(3) REPORT CONTENTS.—The report required by paragraph (1)(B) shall contain the following:

(A) The plan required by paragraph (1)(A).

(B) A description of the individuals, caregivers, and organizations consulted by the Secretary of Veterans Affairs under paragraph (2).

(C) A description of such consultations.

(D) The recommendations of such individuals, caregivers, and organizations, if any, that were not adopted and incorporated into the plan required by paragraph (1)(A), and the reasons the Secretary did not adopt such recommendations.

(c) ANNUAL EVALUATION REPORT.—

(1) IN GENERAL.—Not later than 2 years after the date described in subsection (a)(3)(A) and annually thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a comprehensive report on the implementation of section 1720G of title 38, United States Code, as added by subsection (a)(1).

(2) CONTENTS.—The report required by paragraph (1) shall include the following:

(A) With respect to the program of comprehensive assistance for family caregivers required by subsection (a)(1) of such section 1720G and the program of general caregiver support services required by subsection (b)(1) of such section—

(i) the number of caregivers that received assistance under such programs;

(ii) the cost to the Department of providing assistance under such programs;

(iii) a description of the outcomes achieved by, and any measurable benefits of, carrying out such programs;

(iv) an assessment of the effectiveness and the efficiency of the implementation of such programs; and

(v) such recommendations, including recommendations for legislative or administrative action, as the

Secretary considers appropriate in light of carrying out such programs.

(B) With respect to the program of comprehensive assistance for family caregivers required by such subsection (a)(1)—

(i) a description of the outreach activities carried out by the Secretary under such program; and

(ii) an assessment of the manner in which resources are expended by the Secretary under such program, particularly with respect to the provision of monthly personal caregiver stipends under paragraph (3)(A)(ii)(v) of such subsection (a).

(C) With respect to the provision of general caregiver support services required by such subsection (b)(1)—

(i) a summary of the support services made available under the program;

(ii) the number of caregivers who received support services under the program;

(iii) the cost to the Department of providing each support service provided under the program; and

(iv) such other information as the Secretary considers appropriate.

(d) REPORT ON EXPANSION OF FAMILY CAREGIVER ASSISTANCE.—

(1) IN GENERAL.—Not later than 2 years after the date described in subsection (a)(3)(A), the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the feasibility and advisability of expanding the provision of assistance under section 1720G(a) of title 38, United States Code, as added by subsection (a)(1), to family caregivers of veterans who have a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service before September 11, 2001.

(2) RECOMMENDATIONS.—The report required by paragraph (1) shall include such recommendations as the Secretary considers appropriate with respect to the expansion described in such paragraph.

SEC. 102. MEDICAL CARE FOR FAMILY CAREGIVERS.

Section 1781(a) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by inserting “and” at the end; and

(3) by inserting after paragraph (3), the following new paragraph:

“(4) an individual designated as a primary provider of personal care services under section 1720G(a)(7)(A) of this title who is not entitled to care or services under a health-plan contract (as defined in section 1725(f) of this title);”.

SEC. 103. COUNSELING AND MENTAL HEALTH SERVICES FOR CAREGIVERS.

(a) IN GENERAL.—Section 1782(c) is amended—

(1) in paragraph (1), by striking “; or” and inserting a semicolon;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph (2):

“(2) a family caregiver of an eligible veteran or a caregiver of a covered veteran (as those terms are defined in section 1720G of this title); or”.

(b) CONFORMING AMENDMENT.—The section heading of section 1782 is amended by adding at the end, the following: **“and caregivers”**.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by striking the item relating to section 1782 and inserting the following new item:

“1782. Counseling, training, and mental health services for immediate family members and caregivers.”.

SEC. 104. LODGING AND SUBSISTENCE FOR ATTENDANTS.

Section 111(e) is amended—

(1) by striking “When” and inserting the following: “(1) Except as provided in paragraph (2), when”; and

(2) by adding at the end the following new paragraphs:

“(2)(A) Without regard to whether an eligible veteran entitled to mileage under this section for travel to a Department facility for the purpose of medical examination, treatment, or care requires an attendant in order to perform such travel, an attendant of such veteran described in subparagraph (B) may be allowed expenses of travel (including lodging and subsistence) upon the same basis as such veteran during—

“(i) the period of time in which such veteran is traveling to and from a Department facility for the purpose of medical examination, treatment, or care; and

“(ii) the duration of the medical examination, treatment, or care episode for such veteran.

“(B) An attendant of a veteran described in this subparagraph is a provider of personal care services for such veteran who is approved under paragraph (6) of section 1720G(a) of this title or designated under paragraph (7) of such section 1720G(a).

“(C) The Secretary may prescribe regulations to carry out this paragraph. Such regulations may include provisions—

“(i) to limit the number of attendants that may receive expenses of travel under this paragraph for a single medical examination, treatment, or care episode of an eligible veteran; and

“(ii) to require such attendants to use certain travel services.

“(D) In this subsection, the term ‘eligible veteran’ has the meaning given that term in section 1720G(a)(2) of this title.”.

TITLE II—WOMEN VETERANS HEALTH CARE MATTERS

SEC. 201. STUDY OF BARRIERS FOR WOMEN VETERANS TO HEALTH CARE FROM THE DEPARTMENT OF VETERANS AFFAIRS.

(a) STUDY REQUIRED.—The Secretary of Veterans Affairs shall conduct a comprehensive study of the barriers to the provision of comprehensive health care by the Department of Veterans Affairs encountered by women who are veterans. In conducting the study, the Secretary shall—

(1) survey women veterans who seek or receive hospital care or medical services provided by the Department of Veterans Affairs as well as women veterans who do not seek or receive such care or services;

(2) administer the survey to a representative sample of women veterans from each Veterans Integrated Service Network; and

(3) ensure that the sample of women veterans surveyed is of sufficient size for the study results to be statistically significant and is a larger sample than that of the study referred to in subsection (b).

(b) USE OF PREVIOUS STUDY.—In conducting the study required by subsection (a), the Secretary shall build on the work of the study of the Department of Veterans Affairs titled “National Survey of Women Veterans in Fiscal Year 2007–2008”.

(c) ELEMENTS OF STUDY.—In conducting the study required by subsection (a), the Secretary shall conduct research on the effects of the following on the women veterans surveyed in the study:

(1) The perceived stigma associated with seeking mental health care services.

(2) The effect of driving distance or availability of other forms of transportation to the nearest medical facility on access to care.

(3) The availability of child care.

(4) The acceptability of integrated primary care, women’s health clinics, or both.

(5) The comprehension of eligibility requirements for, and the scope of services available under, hospital care and medical services.

(6) The perception of personal safety and comfort in inpatient, outpatient, and behavioral health facilities.

(7) The gender sensitivity of health care providers and staff to issues that particularly affect women.

(8) The effectiveness of outreach for health care services available to women veterans.

(9) The location and operating hours of health care facilities that provide services to women veterans.

(10) Such other significant barriers as the Secretary considers appropriate.

(d) DISCHARGE BY CONTRACT.—The Secretary shall enter into a contract with a qualified independent entity or organization to carry out the study and research required under this section.

(e) MANDATORY REVIEW OF DATA BY CERTAIN DEPARTMENT DIVISIONS.—

(1) IN GENERAL.—The Secretary shall ensure that the head of each division of the Department of Veterans Affairs specified in paragraph (2) reviews the results of the study conducted under this section. The head of each such division shall submit findings with respect to the study to the Under Secretary for Health and to other pertinent program offices within the Department of Veterans Affairs with responsibilities relating to health care services for women veterans.

Submission.

(2) SPECIFIED DIVISIONS.—The divisions of the Department of Veterans Affairs specified in this paragraph are the following:

(A) The Center for Women Veterans established under section 318 of title 38, United States Code.

(B) The Advisory Committee on Women Veterans established under section 542 of such title.

(f) REPORTS.—

(1) REPORT ON IMPLEMENTATION.—Not later than 6 months after the date on which the Department of Veterans Affairs publishes a final report on the study titled “National Survey of Women Veterans in Fiscal Year 2007–2008”, the Secretary shall submit to Congress a report on the status of the implementation of this section.

(2) REPORT ON STUDY.—Not later than 30 months after the date on which the Department publishes such final report, the Secretary shall submit to Congress a report on the study required under this section. The report shall include recommendations for such administrative and legislative action as the Secretary considers appropriate. The report shall also include the findings of the head of each division of the Department specified under subsection (e)(2) and of the Under Secretary for Health.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Veterans Affairs \$4,000,000 to carry out this section.

SEC. 202. TRAINING AND CERTIFICATION FOR MENTAL HEALTH CARE PROVIDERS OF THE DEPARTMENT OF VETERANS AFFAIRS ON CARE FOR VETERANS SUFFERING FROM SEXUAL TRAUMA AND POST-TRAUMATIC STRESS DISORDER.

Section 1720D is amended—

(1) by redesignating subsection (d) as subsection (f); and

(2) by inserting after subsection (c) the following new subsections:

“(d)(1) The Secretary shall carry out a program to provide graduate medical education, training, certification, and continuing medical education for mental health professionals who provide counseling, care, and services under subsection (a).

“(2) In carrying out the program required by paragraph (1), the Secretary shall ensure that—

“(A) all mental health professionals described in such paragraph have been trained in a consistent manner; and

“(B) training described in such paragraph includes principles of evidence-based treatment and care for sexual trauma and post-traumatic stress disorder.

“(e) Each year, the Secretary shall submit to Congress an annual report on the counseling, care, and services provided to veterans pursuant to this section. Each report shall include data for the year covered by the report with respect to each of the following:

“(1) The number of mental health professionals, graduate medical education trainees, and primary care providers who have been certified under the program required by subsection (d) and the amount and nature of continuing medical education provided under such program to such professionals, trainees, and providers who are so certified.

“(2) The number of women veterans who received counseling and care and services under subsection (a) from professionals and providers who received training under subsection (d).

Deadline.
Reports.

“(3) The number of graduate medical education, training, certification, and continuing medical education courses provided by reason of subsection (d).

“(4) The number of trained full-time equivalent employees required in each facility of the Department to meet the needs of veterans requiring treatment and care for sexual trauma and post-traumatic stress disorder.

“(5) Such recommendations for improvements in the treatment of women veterans with sexual trauma and post-traumatic stress disorder as the Secretary considers appropriate.

“(6) Such other information as the Secretary considers appropriate.”.

**SEC. 203. PILOT PROGRAM ON COUNSELING IN RETREAT SETTINGS
FOR WOMEN VETERANS NEWLY SEPARATED FROM
SERVICE IN THE ARMED FORCES.**

38 USC
1712A note.

(a) PILOT PROGRAM REQUIRED.—

(1) **IN GENERAL.**—Commencing not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall carry out, through the Readjustment Counseling Service of the Veterans Health Administration, a pilot program to evaluate the feasibility and advisability of providing reintegration and readjustment services described in subsection (b) in group retreat settings to women veterans who are recently separated from service in the Armed Forces after a prolonged deployment.

Deadline.

(2) **PARTICIPATION AT ELECTION OF VETERAN.**—The participation of a veteran in the pilot program under this section shall be at the election of the veteran.

(b) **COVERED SERVICES.**—The services provided to a woman veteran under the pilot program shall include the following:

(1) Information on reintegration into the veteran’s family, employment, and community.

(2) Financial counseling.

(3) Occupational counseling.

(4) Information and counseling on stress reduction.

(5) Information and counseling on conflict resolution.

(6) Such other information and counseling as the Secretary considers appropriate to assist a woman veteran under the pilot program in reintegration into the veteran’s family, employment, and community.

(c) **LOCATIONS.**—The Secretary shall carry out the pilot program at not fewer than three locations selected by the Secretary for purposes of the pilot program.

(d) **DURATION.**—The pilot program shall be carried out during the 2-year period beginning on the date of the commencement of the pilot program.

(e) **REPORT.**—Not later than 180 days after the completion of the pilot program, the Secretary shall submit to Congress a report on the pilot program. The report shall contain the findings and conclusions of the Secretary as a result of the pilot program, and shall include such recommendations for the continuation or expansion of the pilot program as the Secretary considers appropriate.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Veterans Affairs for each

of fiscal years 2010 and 2011, \$2,000,000 to carry out the pilot program.

SEC. 204. SERVICE ON CERTAIN ADVISORY COMMITTEES OF WOMEN RECENTLY SEPARATED FROM SERVICE IN THE ARMED FORCES.

(a) **ADVISORY COMMITTEE ON WOMEN VETERANS.**—Section 542(a)(2)(A) is amended—

- (1) in clause (ii), by striking “and” at the end;
- (2) in clause (iii), by striking the period at the end and inserting “; and”; and
- (3) by inserting after clause (iii) the following new clause: “(iv) women veterans who are recently separated from service in the Armed Forces.”.

(b) **ADVISORY COMMITTEE ON MINORITY VETERANS.**—Section 544(a)(2)(A) is amended—

- (1) in clause (iii), by striking “and” at the end;
- (2) in clause (iv), by striking the period at the end and inserting “; and”; and
- (3) by inserting after clause (iv) the following new clause: “(v) women veterans who are minority group members and are recently separated from service in the Armed Forces.”.

38 USC 542 note.

(c) **APPLICABILITY.**—The amendments made by this section shall apply to appointments made on or after the date of the enactment of this Act.

38 USC 1710 note.

SEC. 205. PILOT PROGRAM ON ASSISTANCE FOR CHILD CARE FOR CERTAIN VETERANS RECEIVING HEALTH CARE.

(a) **PILOT PROGRAM REQUIRED.**—The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of providing, subject to subsection (b), assistance to qualified veterans described in subsection (c) to obtain child care so that such veterans can receive health care services described in subsection (c).

(b) **LIMITATION ON PERIOD OF PAYMENTS.**—Assistance may only be provided to a qualified veteran under the pilot program for receipt of child care during the period that the qualified veteran—

- (1) receives the types of health care services described in subsection (c) at a facility of the Department; and
- (2) requires travel to and return from such facility for the receipt of such health care services.

(c) **QUALIFIED VETERANS.**—For purposes of this section, a qualified veteran is a veteran who is—

- (1) the primary caretaker of a child or children; and
- (2)(A) receiving from the Department—
 - (i) regular mental health care services;
 - (ii) intensive mental health care services; or
 - (iii) such other intensive health care services that the Secretary determines that provision of assistance to the veteran to obtain child care would improve access to such health care services by the veteran; or

(B) in need of regular or intensive mental health care services from the Department, and but for lack of child care services, would receive such health care services from the Department.

(d) **LOCATIONS.**—The Secretary shall carry out the pilot program in no fewer than three Veterans Integrated Service Networks selected by the Secretary for purposes of the pilot program.

(e) DURATION.—The pilot program shall be carried out during the 2-year period beginning on the date of the commencement of the pilot program.

(f) FORMS OF CHILD CARE ASSISTANCE.—

(1) IN GENERAL.—Child care assistance under this section may include the following:

(A) Stipends for the payment of child care offered by licensed child care centers (either directly or through a voucher program) which shall be, to the extent practicable, modeled after the Department of Veterans Affairs Child Care Subsidy Program established pursuant to section 630 of the Treasury and General Government Appropriations Act, 2002 (Public Law 107-67; 115 Stat. 552).

(B) Direct provision of child care at an on-site facility of the Department of Veterans Affairs.

(C) Payments to private child care agencies.

(D) Collaboration with facilities or programs of other Federal departments or agencies.

(E) Such other forms of assistance as the Secretary considers appropriate.

(2) AMOUNTS OF STIPENDS.—In the case that child care assistance under this section is provided as a stipend under paragraph (1)(A), such stipend shall cover the full cost of such child care.

(g) REPORT.—Not later than 6 months after the completion of the pilot program, the Secretary shall submit to Congress a report on the pilot program. The report shall include the findings and conclusions of the Secretary as a result of the pilot program, and shall include such recommendations for the continuation or expansion of the pilot program as the Secretary considers appropriate.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Veterans Affairs to carry out the pilot program \$1,500,000 for each of fiscal years 2010 and 2011.

SEC. 206. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE.

(a) IN GENERAL.—Subchapter VIII of chapter 17 is amended by adding at the end the following new section:

“§ 1786. Care for newborn children of women veterans receiving maternity care

“(a) IN GENERAL.—The Secretary may furnish health care services described in subsection (b) to a newborn child of a woman veteran who is receiving maternity care furnished by the Department for not more than seven days after the birth of the child if the veteran delivered the child in—

“(1) a facility of the Department; or

“(2) another facility pursuant to a Department contract for services relating to such delivery.

“(b) COVERED HEALTH CARE SERVICES.—Health care services described in this subsection are all post-delivery care services, including routine care services, that a newborn child requires.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1785 the following new item:

“1786. Care for newborn children of women veterans receiving maternity care.”.

TITLE III—RURAL HEALTH IMPROVEMENTS

SEC. 301. IMPROVEMENTS TO THE EDUCATION DEBT REDUCTION PROGRAM.

(a) INCLUSION OF EMPLOYEE RETENTION AS PURPOSE OF PROGRAM.—Section 7681(a)(2) is amended by inserting “and retention” after “recruitment” the first time it appears.

(b) EXPANSION OF ELIGIBILITY.—Section 7682 is amended—

(1) in subsection (a)(1), by striking “a recently appointed” and inserting “an”; and

(2) by striking subsection (c).

(c) INCREASE IN MAXIMUM ANNUAL AMOUNT OF PAYMENTS.—Paragraph (1) of subsection (d) of section 7683 is amended—

(1) by striking “\$44,000” and inserting “\$60,000”; and

(2) by striking “\$10,000” and inserting “\$12,000”.

(d) EXCEPTION TO LIMITATION ON AMOUNT FOR CERTAIN PARTICIPANTS.—Such subsection is further amended by adding at the end the following new paragraph:

Waiver authority.

“(3)(A) The Secretary may waive the limitations under paragraphs (1) and (2) in the case of a participant described in subparagraph (B). In the case of such a waiver, the total amount of education debt repayments payable to that participant is the total amount of the principal and the interest on the participant’s loans referred to in subsection (a).

Determination.

“(B) A participant described in this subparagraph is a participant in the Program who the Secretary determines serves in a position for which there is a shortage of qualified employees by reason of either the location or the requirements of the position.”.

SEC. 302. VISUAL IMPAIRMENT AND ORIENTATION AND MOBILITY PROFESSIONALS EDUCATION ASSISTANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Part V is amended by inserting after chapter 74 the following new chapter:

“CHAPTER 75—VISUAL IMPAIRMENT AND ORIENTATION AND MOBILITY PROFESSIONALS EDUCATIONAL AS- SISTANCE PROGRAM

“Sec.

“7501. Establishment of scholarship program; purpose.

“7502. Application and acceptance.

“7503. Amount of assistance; duration.

“7504. Agreement.

“7505. Repayment for failure to satisfy requirements of agreement.

“§ 7501. Establishment of scholarship program; purpose

“(a) ESTABLISHMENT.—Subject to the availability of appropriations, the Secretary shall establish and carry out a scholarship program to provide financial assistance in accordance with this chapter to individuals who—

“(1) are accepted for enrollment or currently enrolled in a program of study leading to a degree or certificate in visual impairment or orientation and mobility, or a dual degree or certification in both such areas, at an accredited (as determined by the Secretary) educational institution that is in a State; and

“(2) enter into an agreement with the Secretary as described in section 7504 of this title. Contracts.

“(b) PURPOSE.—The purpose of the scholarship program is to increase the supply of qualified blind rehabilitation specialists for the Department and the Nation.

“(c) OUTREACH.—The Secretary shall publicize the scholarship program to educational institutions throughout the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to Historically Black Colleges and Universities.

“§ 7502. Application and acceptance

“(a) APPLICATION.—(1) To apply and participate in the scholarship program under this chapter, an individual shall submit to the Secretary an application for such participation together with an agreement described in section 7504 of this title under which the participant agrees to serve a period of obligated service in the Department as provided in the agreement in return for payment of educational assistance as provided in the agreement.

“(2) In distributing application forms and agreement forms to individuals desiring to participate in the scholarship program, the Secretary shall include with such forms the following:

“(A) A fair summary of the rights and liabilities of an individual whose application is approved (and whose agreement is accepted) by the Secretary.

“(B) A full description of the terms and conditions that apply to participation in the scholarship program and service in the Department.

“(b) APPROVAL.—(1) Upon the Secretary’s approval of an individual’s participation in the scholarship program, the Secretary shall, in writing, promptly notify the individual of that acceptance. Notification.

“(2) An individual becomes a participant in the scholarship program upon such approval by the Secretary.

“§ 7503. Amount of assistance; duration

“(a) AMOUNT OF ASSISTANCE.—The amount of the financial assistance provided an individual under the scholarship program under this chapter shall be the amount determined by the Secretary as being necessary to pay the tuition and fees of the individual. Determination.

In the case of an individual enrolled in a program of study leading to a dual degree or certification in both the areas of study described in section 7501(a)(1) of this title, the tuition and fees shall not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree or certification.

“(b) RELATIONSHIP TO OTHER ASSISTANCE.—Financial assistance may be provided to an individual under the scholarship program to supplement other educational assistance to the extent that the total amount of educational assistance received by the individual during an academic year does not exceed the total tuition and fees for such academic year.

“(c) **MAXIMUM AMOUNT OF ASSISTANCE.**—(1) The total amount of assistance provided under the scholarship program for an academic year to an individual who is a full-time student may not exceed \$15,000.

“(2) In the case of an individual who is a part-time student, the total amount of assistance provided under the scholarship program shall bear the same ratio to the amount that would be paid under paragraph (1) if the participant were a full-time student in the program of study being pursued by the individual as the coursework carried by the individual to full-time coursework in that program of study.

“(3) The total amount of assistance provided to an individual under the scholarship program may not exceed \$45,000.

“(d) **MAXIMUM DURATION OF ASSISTANCE.**—Financial assistance may not be provided to an individual under the scholarship program for more than six academic years.

“§ 7504. Agreement

“An agreement between the Secretary and a participant in the scholarship program under this chapter shall be in writing, shall be signed by the participant, and shall include—

“(1) the Secretary’s agreement to provide the participant with financial assistance as authorized under this chapter;

“(2) the participant’s agreement—

“(A) to accept such financial assistance;

“(B) to maintain enrollment and attendance in the program of study described in section 7501(a)(1) of this title;

“(C) while enrolled in such program, to maintain an acceptable level of academic standing (as determined by the educational institution offering such program under regulations prescribed by the Secretary); and

“(D) after completion of the program, to serve as a full-time employee in the Department for a period of three years, to be served within the first six years after the participant has completed such program and received a degree or certificate described in section 7501(a)(1) of this title; and

“(3) any other terms and conditions that the Secretary considers appropriate for carrying out this chapter.

“§ 7505. Repayment for failure to satisfy requirements of agreement

“(a) **IN GENERAL.**—An individual who receives educational assistance under the scholarship program under this chapter shall repay to the Secretary an amount equal to the unearned portion of such assistance if the individual fails to satisfy the requirements of the agreement entered into under section 7504 of this title, except in circumstances authorized by the Secretary.

Regulations.
Procedures.

“(b) **AMOUNT OF REPAYMENT.**—The Secretary shall establish, by regulations, procedures for determining the amount of the repayment required under this section and the circumstances under which an exception to the required repayment may be granted.

Regulations.

“(c) **WAIVER OR SUSPENSION OF COMPLIANCE.**—The Secretary shall prescribe regulations providing for the waiver or suspension of any obligation of an individual for service or payment under this chapter (or an agreement under this chapter) whenever—

“(1) noncompliance by the individual is due to circumstances beyond the control of the individual; or

“(2) the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.

Determination.

“(d) OBLIGATION AS DEBT TO UNITED STATES.—An obligation to repay the Secretary under this section is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after the date of the termination of the agreement or contract on which the debt is based.”.

(b) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of title 38, and of part V, are each amended by inserting after the item relating to chapter 74 the following new item:

“75. Visual Impairment and Orientation and Mobility Professionals Educational Assistance Program 7501”.

(c) IMPLEMENTATION.—The Secretary of Veterans Affairs shall implement chapter 75 of title 38, United States Code, as added by subsection (a), not later than 6 months after the date of the enactment of this Act.

Deadline.
38 USC 7501
note.

SEC. 303. DEMONSTRATION PROJECTS ON ALTERNATIVES FOR EXPANDING CARE FOR VETERANS IN RURAL AREAS.

38 USC 1703
note.

(a) IN GENERAL.—The Secretary of Veterans Affairs may, through the Director of the Office of Rural Health, carry out demonstration projects to examine the feasibility and advisability of alternatives for expanding care for veterans in rural areas, which may include the following:

(1) Establishing a partnership between the Department of Veterans Affairs and the Centers for Medicare and Medicaid Services of the Department of Health and Human Services to coordinate care for veterans in rural areas at critical access hospitals (as designated or certified under section 1820 of the Social Security Act (42 U.S.C. 1395i–4)).

(2) Establishing a partnership between the Department of Veterans Affairs and the Department of Health and Human Services to coordinate care for veterans in rural areas at community health centers.

(3) Expanding coordination between the Department of Veterans Affairs and the Indian Health Service to expand care for Indian veterans.

(b) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that the demonstration projects carried out under subsection (a) are located at facilities that are geographically distributed throughout the United States.

(c) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the results of the demonstration projects carried out under subsection (a) to—

(1) the Committee on Veterans Affairs and the Committee on Appropriations of the Senate; and

(2) the Committee on Veterans Affairs and the Committee on Appropriations of the House of Representatives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 2010 and each fiscal year thereafter.

38 USC
1712A note.

**SEC. 304. PROGRAM ON READJUSTMENT AND MENTAL HEALTH CARE
SERVICES FOR VETERANS WHO SERVED IN OPERATION
ENDURING FREEDOM AND OPERATION IRAQI FREEDOM.**

Deadline.

(a) **PROGRAM REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall establish a program to provide—

(1) to veterans of Operation Enduring Freedom and Operation Iraqi Freedom, particularly veterans who served in such operations while in the National Guard and the Reserves—

(A) peer outreach services;

(B) peer support services;

(C) readjustment counseling and services described in section 1712A of title 38, United States Code; and

(D) mental health services; and

Time period.

(2) to members of the immediate family of veterans described in paragraph (1), during the 3-year period beginning on the date of the return of such veterans from deployment in Operation Enduring Freedom or Operation Iraqi Freedom, education, support, counseling, and mental health services to assist in—

(A) the readjustment of such veterans to civilian life;

(B) in the case such veterans have an injury or illness incurred during such deployment, the recovery of such veterans from such injury or illness; and

(C) the readjustment of the family following the return of such veterans.

Determination.

(b) **CONTRACTS WITH COMMUNITY MENTAL HEALTH CENTERS AND OTHER QUALIFIED ENTITIES.**—In carrying out the program required by subsection (a), the Secretary may contract with community mental health centers and other qualified entities to provide the services required by such subsection only in areas the Secretary determines are not adequately served by other health care facilities or vet centers of the Department of Veterans Affairs. Such contracts shall require each contracting community health center or entity—

(1) to the extent practicable, to use telehealth services for the delivery of services required by subsection (a);

(2) to the extent practicable, to employ veterans trained under subsection (c) in the provision of services covered by that subsection;

(3) to participate in the training program conducted in accordance with subsection (d);

(4) to comply with applicable protocols of the Department before incurring any liability on behalf of the Department for the provision of services required by subsection (a);

(5) for each veteran for whom a community mental health center or other qualified entity provides mental health services under such contract, to provide the Department with such clinical summary information as the Secretary shall require;

Deadline.
Reports.

(6) to submit annual reports to the Secretary containing, with respect to the program required by subsection (a) and for the last full calendar year ending before the submittal of such report—

(A) the number of the veterans served, veterans diagnosed, and courses of treatment provided to veterans as part of the program required by subsection (a); and

(B) demographic information for such services, diagnoses, and courses of treatment; and

(7) to meet such other requirements as the Secretary shall require.

(c) **TRAINING OF VETERANS FOR PROVISION OF PEER-OUTREACH AND PEER-SUPPORT SERVICES.**—In carrying out the program required by subsection (a), the Secretary shall contract with a national not-for-profit mental health organization to carry out a national program of training for veterans described in subsection (a) to provide the services described in subparagraphs (A) and (B) of paragraph (1) of such subsection.

Contracts.

(d) **TRAINING OF CLINICIANS FOR PROVISION OF SERVICES.**—The Secretary shall conduct a training program for clinicians of community mental health centers or entities that have contracts with the Secretary under subsection (b) to ensure that such clinicians can provide the services required by subsection (a) in a manner that—

(1) recognizes factors that are unique to the experience of veterans who served on active duty in Operation Enduring Freedom or Operation Iraqi Freedom (including their combat and military training experiences); and

(2) uses best practices and technologies.

(e) **VET CENTER DEFINED.**—In this section, the term “vet center” means a center for readjustment counseling and related mental health services for veterans under section 1712A of title 38, United States Code.

SEC. 305. TRAVEL REIMBURSEMENT FOR VETERANS RECEIVING TREATMENT AT FACILITIES OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) **ENHANCEMENT OF ALLOWANCE BASED UPON MILEAGE TRAVELED.**—Section 111 is amended—

(1) in subsection (a), by striking “traveled,” and inserting “(at a rate of 41.5 cents per mile);” and

(2) by amending subsection (g) to read as follows:

“(g)(1) Beginning one year after the date of the enactment of the Caregivers and Veterans Omnibus Health Services Act of 2010, the Secretary may adjust the mileage rate described in subsection (a) to be equal to the mileage reimbursement rate for the use of privately owned vehicles by Government employees on official business (when a Government vehicle is available), as prescribed by the Administrator of General Services under section 5707(b) of title 5.

Effective date.

“(2) If an adjustment in the mileage rate under paragraph (1) results in a lower mileage rate than the mileage rate otherwise specified in subsection (a), the Secretary shall, not later than 60 days before the date of the implementation of the mileage rate as so adjusted, submit to Congress a written report setting forth the adjustment in the mileage rate under this subsection, together with a justification for the decision to make the adjustment in the mileage rate under this subsection.”

Deadline.
Reports.

(b) **COVERAGE OF COST OF TRANSPORTATION BY AIR.**—Subsection (a) of section 111, as amended by subsection (a)(1), is further amended by inserting after the first sentence the following new sentence: “Actual necessary expense of travel includes the reasonable costs of airfare if travel by air is the only practical way to reach a Department facility.”

(c) **ELIMINATION OF LIMITATION BASED ON MAXIMUM ANNUAL RATE OF PENSION.**—Subsection (b)(1)(D)(i) of such section is

amended by inserting “who is not traveling by air and” before “whose annual”.

(d) DETERMINATION OF PRACTICALITY.—Subsection (b) of such section is amended by adding at the end the following new paragraph:

“(4) In determining for purposes of subsection (a) whether travel by air is the only practical way for a veteran to reach a Department facility, the Secretary shall consider the medical condition of the veteran and any other impediments to the use of ground transportation by the veteran.”.

38 USC 111 note.

(e) NO EXPANSION OF ELIGIBILITY FOR BENEFICIARY TRAVEL.—The amendments made by subsections (b) and (d) of this section may not be construed as expanding or otherwise modifying eligibility for payments or allowances for beneficiary travel under section 111 of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

38 USC 111 note.
Deadline.

(f) CLARIFICATION OF RELATION TO PUBLIC TRANSPORTATION IN VETERANS HEALTH ADMINISTRATION HANDBOOK.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall revise the Veterans Health Administration Handbook to clarify that an allowance for travel based on mileage paid under section 111(a) of title 38, United States Code, may exceed the cost of such travel by public transportation regardless of medical necessity.

38 USC 7431
note.

SEC. 306. PILOT PROGRAM ON INCENTIVES FOR PHYSICIANS WHO ASSUME INPATIENT RESPONSIBILITIES AT COMMUNITY HOSPITALS IN HEALTH PROFESSIONAL SHORTAGE AREAS.

(a) PILOT PROGRAM REQUIRED.—The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of each of the following:

(1) The provision of financial incentives to eligible physicians who obtain and maintain inpatient privileges at community hospitals in health professional shortage areas in order to facilitate the provision by such physicians of primary care and mental health services to veterans at such hospitals.

(2) The collection of payments from third-party providers for care provided by eligible physicians to nonveterans while discharging inpatient responsibilities at community hospitals in the course of exercising the privileges described in paragraph (1).

Definition.

(b) ELIGIBLE PHYSICIANS.—For purposes of this section, an eligible physician is a primary care or mental health physician employed by the Department of Veterans Affairs on a full-time basis.

(c) DURATION OF PROGRAM.—The pilot program shall be carried out during the 3-year period beginning on the date of the commencement of the pilot program.

(d) LOCATIONS.—

(1) IN GENERAL.—The pilot program shall be carried out at not less than five community hospitals in each of not less than two Veterans Integrated Services Networks. The hospitals shall be selected by the Secretary using the results of the survey required under subsection (e).

(2) QUALIFYING COMMUNITY HOSPITALS.—A community hospital may be selected by the Secretary as a location for the pilot program if—

(A) the hospital is located in a health professional shortage area; and

(B) the number of eligible physicians willing to assume inpatient responsibilities at the hospital (as determined using the result of the survey) is sufficient for purposes of the pilot program.

(e) SURVEY OF PHYSICIAN INTEREST IN PARTICIPATION.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall conduct a survey of eligible physicians to determine the extent of the interest of such physicians in participating in the pilot program. Deadline.

(2) ELEMENTS.—The survey shall disclose the type, amount, and nature of the financial incentives to be provided under subsection (h) to physicians participating in the pilot program.

(f) PHYSICIAN PARTICIPATION.—

(1) IN GENERAL.—The Secretary shall select physicians for participation in the pilot program from among eligible physicians who—

(A) express interest in participating in the pilot program in the survey conducted under subsection (e);

(B) are in good standing with the Department; and

(C) primarily have clinical responsibilities with the Department.

(2) VOLUNTARY PARTICIPATION.—Participation in the pilot program shall be voluntary. Nothing in this section shall be construed to require a physician working for the Department to assume inpatient responsibilities at a community hospital unless otherwise required as a term or condition of employment with the Department.

(g) ASSUMPTION OF INPATIENT PHYSICIAN RESPONSIBILITIES.—

(1) IN GENERAL.—Each eligible physician selected for participation in the pilot program shall assume and maintain inpatient responsibilities, including inpatient responsibilities with respect to nonveterans, at one or more community hospitals selected by the Secretary for participation in the pilot program under subsection (d).

(2) COVERAGE UNDER FEDERAL TORT CLAIMS ACT.—If an eligible physician participating in the pilot program carries out on-call responsibilities at a community hospital where privileges to practice at such hospital are conditioned upon the provision of services to individuals who are not veterans while the physician is on call for such hospital, the provision of such services by the physician shall be considered an action within the scope of the physician's office or employment for purposes of chapter 171 of title 28, United States Code (commonly referred to as the "Federal Tort Claims Act").

(h) COMPENSATION.—

(1) IN GENERAL.—The Secretary shall provide each eligible physician participating in the pilot program with such compensation (including pay and other appropriate compensation) as the Secretary considers appropriate to compensate such physician for the discharge of any inpatient responsibilities by such physician at a community hospital for which such physician would not otherwise be compensated by the Department as a full-time employee of the Department.

(2) WRITTEN AGREEMENT.—The amount of any compensation to be provided a physician under the pilot program shall

- be specified in a written agreement entered into by the Secretary and the physician for purposes of the pilot program.
- Consultation. (3) TREATMENT OF COMPENSATION.—The Secretary shall consult with the Director of the Office of Personnel Management on the inclusion of a provision in the written agreement required under paragraph (2) that describes the treatment under Federal law of any compensation provided a physician under the pilot program, including treatment for purposes of retirement under the civil service laws.
- Implementation. (i) COLLECTIONS FROM THIRD PARTIES.—In carrying out the pilot program for the purpose described in subsection (a)(2), the Secretary shall implement a variety and range of requirements and mechanisms for the collection from third-party payors of amounts to reimburse the Department for health care services provided to nonveterans under the pilot program by eligible physicians discharging inpatient responsibilities under the pilot program.
- (j) REPORT.—Not later than 1 year after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to Congress a report on the pilot program, including the following:
- (1) The findings of the Secretary with respect to the pilot program.
 - (2) The number of veterans and nonveterans provided inpatient care by physicians participating in the pilot program.
 - (3) The amounts payable and collected under subsection (i).
- (k) DEFINITIONS.—In this section:
- (1) HEALTH PROFESSIONAL SHORTAGE AREA.—The term “health professional shortage area” has the meaning given the term in section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).
 - (2) INPATIENT RESPONSIBILITIES.—The term “inpatient responsibilities” means on-call responsibilities customarily required of a physician by a community hospital as a condition of granting privileges to the physician to practice in the hospital.
- 38 USC 1710 note. **SEC. 307. GRANTS FOR VETERANS SERVICE ORGANIZATIONS FOR TRANSPORTATION OF HIGHLY RURAL VETERANS.**
- (a) GRANTS AUTHORIZED.—
- (1) IN GENERAL.—The Secretary of Veterans Affairs shall establish a grant program to provide innovative transportation options to veterans in highly rural areas.
 - (2) ELIGIBLE RECIPIENTS.—The following may be awarded a grant under this section:
 - (A) State veterans service agencies.
 - (B) Veterans service organizations.
 - (3) USE OF FUNDS.—A State veterans service agency or veterans service organization awarded a grant under this section may use the grant amount to—
 - (A) assist veterans in highly rural areas to travel to Department of Veterans Affairs medical centers; and
 - (B) otherwise assist in providing transportation in connection with the provision of medical care to veterans in highly rural areas.
 - (4) MAXIMUM AMOUNT.—The amount of a grant under this section may not exceed \$50,000.

(5) NO MATCHING REQUIREMENT.—The recipient of a grant under this section shall not be required to provide matching funds as a condition for receiving such grant.

(b) REGULATIONS.—The Secretary shall prescribe regulations for—

(1) evaluating grant applications under this section; and

(2) otherwise administering the program established by this section.

(c) DEFINITIONS.—In this section:

(1) HIGHLY RURAL.—The term “highly rural”, in the case of an area, means that the area consists of a county or counties having a population of less than seven persons per square mile.

(2) VETERANS SERVICE ORGANIZATION.—The term “veterans service organization” means any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38, United States Code.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$3,000,000 for each of fiscal years 2010 through 2014 to carry out this section.

SEC. 308. MODIFICATION OF ELIGIBILITY FOR PARTICIPATION IN PILOT PROGRAM OF ENHANCED CONTRACT CARE AUTHORITY FOR HEALTH CARE NEEDS OF CERTAIN VETERANS.

Subsection (b) of section 403 of the Veterans’ Mental Health and other Care Improvements Act of 2008 (Public Law 110–387; 122 Stat. 4125; 38 U.S.C. 1703 note) is amended to read as follows:

“(b) COVERED VETERANS.—For purposes of the pilot program under this section, a covered veteran is any veteran who—

“(1) is—

“(A) enrolled in the system of patient enrollment established under section 1705(a) of title 38, United States Code, as of the date of the commencement of the pilot program under subsection (a)(2); or

“(B) eligible for health care under section 1710(e)(3) of such title; and

“(2) resides in a location that is—

“(A) more than 60 minutes driving distance from the nearest Department health care facility providing primary care services, if the veteran is seeking such services;

“(B) more than 120 minutes driving distance from the nearest Department health care facility providing acute hospital care, if the veteran is seeking such care; or

“(C) more than 240 minutes driving distance from the nearest Department health care facility providing tertiary care, if the veteran is seeking such care.”.

TITLE IV—MENTAL HEALTH CARE MATTERS

38 USC
1712A note.

SEC. 401. ELIGIBILITY OF MEMBERS OF THE ARMED FORCES WHO SERVE IN OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM FOR COUNSELING AND SERVICES THROUGH READJUSTMENT COUNSELING SERVICE.

(a) **IN GENERAL.**—Any member of the Armed Forces, including a member of the National Guard or Reserve, who serves on active duty in the Armed Forces in Operation Enduring Freedom or Operation Iraqi Freedom is eligible for readjustment counseling and related mental health services under section 1712A of title 38, United States Code, through the Readjustment Counseling Service of the Veterans Health Administration.

(b) **NO REQUIREMENT FOR CURRENT ACTIVE DUTY SERVICE.**—A member of the Armed Forces who meets the requirements for eligibility for counseling and services under subsection (a) is entitled to counseling and services under that subsection regardless of whether or not the member is currently on active duty in the Armed Forces at the time of receipt of counseling and services under that subsection.

(c) **REGULATIONS.**—The eligibility of members of the Armed Forces for counseling and services under subsection (a) shall be subject to such regulations as the Secretary of Defense and the Secretary of Veterans Affairs shall jointly prescribe for purposes of this section.

(d) **SUBJECT TO AVAILABILITY OF APPROPRIATIONS.**—The provision of counseling and services under subsection (a) shall be subject to the availability of appropriations for such purpose.

SEC. 402. RESTORATION OF AUTHORITY OF READJUSTMENT COUNSELING SERVICE TO PROVIDE REFERRAL AND OTHER ASSISTANCE UPON REQUEST TO FORMER MEMBERS OF THE ARMED FORCES NOT AUTHORIZED COUNSELING.

Section 1712A is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) Upon receipt of a request for counseling under this section from any individual who has been discharged or released from active military, naval, or air service but who is not otherwise eligible for such counseling, the Secretary shall—

“(1) provide referral services to assist such individual, to the maximum extent practicable, in obtaining mental health care and services from sources outside the Department; and

“(2) if pertinent, advise such individual of such individual’s rights to apply to the appropriate military, naval, or air service, and to the Department, for review of such individual’s discharge or release from such service.”.

SEC. 403. STUDY ON SUICIDES AMONG VETERANS.

(a) **STUDY REQUIRED.**—The Secretary of Veterans Affairs shall conduct a study to determine the number of veterans who died by suicide between January 1, 1999, and the date of the enactment of this Act.

- (b) **COORDINATION.**—In carrying out the study under subsection (a) the Secretary of Veterans Affairs shall coordinate with—
- (1) the Secretary of Defense;
 - (2) veterans service organizations;
 - (3) the Centers for Disease Control and Prevention; and
 - (4) State public health offices and veterans agencies.
- (c) **REPORT TO CONGRESS.**—The Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the study required under subsection (a) and the findings of the Secretary.
- (d) **VETERANS SERVICE ORGANIZATION DEFINED.**—In this section, the term “veterans service organization” means any organization recognized by the Secretary for the representation of veterans under section 5902 of title 38, United States Code.

TITLE V—OTHER HEALTH CARE MATTERS

SEC. 501. REPEAL OF CERTAIN ANNUAL REPORTING REQUIREMENTS.

- (a) **NURSE PAY REPORT.**—Section 7451 is amended—
- (1) by striking subsection (f); and
 - (2) by redesignating subsection (g) as subsection (f).
- (b) **LONG-TERM PLANNING REPORT.**—
- (1) **IN GENERAL.**—Section 8107 is repealed.
 - (2) **CONFORMING AMENDMENT.**—The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8107.

SEC. 502. SUBMITTAL DATE OF ANNUAL REPORT ON GULF WAR RESEARCH.

Section 707(c)(1) of the Persian Gulf War Veterans' Health Status Act (title VII of Public Law 102–585; 38 U.S.C. 527 note) is amended by striking “Not later than March 1 of each year” and inserting “Not later than July 1, 2010, and July 1 of each of the five following years”.

SEC. 503. PAYMENT FOR CARE FURNISHED TO CHAMPVA BENEFICIARIES.

Section 1781 is amended by adding at the end the following new subsection:

“(e) Payment by the Secretary under this section on behalf of a covered beneficiary for medical care shall constitute payment in full and extinguish any liability on the part of the beneficiary for that care.”.

SEC. 504. DISCLOSURE OF PATIENT TREATMENT INFORMATION FROM MEDICAL RECORDS OF PATIENTS LACKING DECISION-MAKING CAPACITY.

Section 7332(b)(2) is amended by adding at the end the following new subparagraph:

“(F)(i) To a representative of a patient who lacks decision-making capacity, when a practitioner deems the content of the given record necessary for that representative to make an informed decision regarding the patient's treatment.

“(ii) In this subparagraph, the term ‘representative’ means an individual, organization, or other body authorized under section 7331 of this title and its implementing regulations to give informed consent on behalf of a patient who lacks decision-making capacity.”.

SEC. 505. ENHANCEMENT OF QUALITY MANAGEMENT.

(a) ENHANCEMENT OF QUALITY MANAGEMENT THROUGH QUALITY MANAGEMENT OFFICERS.—

(1) IN GENERAL.—Subchapter II of chapter 73 is amended by inserting after section 7311 the following new section:

“§ 7311A. Quality management officers

Designation.

“(a) NATIONAL QUALITY MANAGEMENT OFFICER.—(1) The Under Secretary for Health shall designate an official of the Veterans Health Administration to act as the principal quality management officer for the quality-assurance program required by section 7311 of this title. The official so designated may be known as the ‘National Quality Management Officer of the Veterans Health Administration’ (in this section referred to as the ‘National Quality Management Officer’).

“(2) The National Quality Management Officer shall report directly to the Under Secretary for Health in the discharge of responsibilities and duties of the Officer under this section.

“(3) The National Quality Management Officer shall be the official within the Veterans Health Administration who is principally responsible for the quality-assurance program referred to in paragraph (1). In carrying out that responsibility, the Officer shall be responsible for the following:

“(A) Establishing and enforcing the requirements of the program referred to in paragraph (1).

“(B) Developing an aggregate quality metric from existing data sources, such as the Inpatient Evaluation Center of the Department, the National Surgical Quality Improvement Program, and the External Peer Review Program of the Veterans Health Administration, that could be used to assess reliably the quality of care provided at individual Department medical centers and associated community based outpatient clinics.

“(C) Ensuring that existing measures of quality, including measures from the Inpatient Evaluation Center, the National Surgical Quality Improvement Program, System-Wide Ongoing Assessment and Review reports of the Department, and Combined Assessment Program reviews of the Office of Inspector General of the Department, are monitored routinely and analyzed in a manner that ensures the timely detection of quality of care issues.

“(D) Encouraging research and development in the area of quality metrics for the purposes of improving how the Department measures quality in individual facilities.

“(E) Carrying out such other responsibilities and duties relating to quality management in the Veterans Health Administration as the Under Secretary for Health shall specify.

“(4) The requirements under paragraph (3) shall include requirements regarding the following:

“(A) A confidential system for the submittal of reports by Veterans Health Administration personnel regarding quality management at Department facilities.

“(B) Mechanisms for the peer review of the actions of individuals appointed in the Veterans Health Administration in the position of physician.

“(b) QUALITY MANAGEMENT OFFICERS FOR VISNs.—(1) The Regional Director of each Veterans Integrated Services Network shall appoint an official of the Network to act as the quality management officer of the Network. Appointment.

“(2) The quality management officer for a Veterans Integrated Services Network shall report to the Regional Director of the Veterans Integrated Services Network, and to the National Quality Management Officer, regarding the discharge of the responsibilities and duties of the officer under this section.

“(3) The quality management officer for a Veterans Integrated Services Network shall—

“(A) direct the quality management office in the Network; and

“(B) coordinate, monitor, and oversee the quality management programs and activities of the Administration medical facilities in the Network in order to ensure the thorough and uniform discharge of quality management requirements under such programs and activities throughout such facilities.

“(c) QUALITY MANAGEMENT OFFICERS FOR MEDICAL FACILITIES.—(1) The director of each Veterans Health Administration medical facility shall appoint a quality management officer for that facility. Appointment.

“(2) The quality management officer for a facility shall report directly to the director of the facility, and to the quality management officer of the Veterans Integrated Services Network in which the facility is located, regarding the discharge of the responsibilities and duties of the quality management officer under this section.

“(3) The quality management officer for a facility shall be responsible for designing, disseminating, and implementing quality management programs and activities for the facility that meet the requirements established by the National Quality Management Officer under subsection (a).

“(d) AUTHORIZATION OF APPROPRIATIONS.—(1) Except as provided in paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section.

“(2) There is authorized to be appropriated to carry out the provisions of subparagraphs (B), (C), and (D) of subsection (a)(3), \$25,000,000 for the two-year period of fiscal years beginning after the date of the enactment of this section.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7311 the following new item:

“7311A. Quality management officers.”.

(b) REPORTS ON QUALITY CONCERNS UNDER QUALITY-ASSURANCE PROGRAM.—Section 7311(b) is amended by adding at the end the following new paragraph:

“(4) As part of the quality-assurance program, the Under Secretary for Health shall establish mechanisms through which employees of Veterans Health Administration facilities may submit reports, on a confidential basis, on matters relating to quality of care in Veterans Health Administration facilities to the quality management officers of such facilities under section 7311A(c) of

this title. The mechanisms shall provide for the prompt and thorough review of any reports so submitted by the receiving officials.”.

(c) REVIEW OF CURRENT HEALTH CARE QUALITY SAFEGUARDS.—

(1) IN GENERAL.—The Secretary of Veterans Affairs shall conduct a comprehensive review of all current policies and protocols of the Department of Veterans Affairs for maintaining health care quality and patient safety at Department medical facilities. The review shall include a review and assessment of the National Surgical Quality Improvement Program, including an assessment of—

(A) the efficacy of the quality indicators under the program;

(B) the efficacy of the data collection methods under the program;

(C) the efficacy of the frequency with which regular data analyses are performed under the program; and

(D) the extent to which the resources allocated to the program are adequate to fulfill the stated function of the program.

(2) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the review conducted under paragraph (1), including the findings of the Secretary as a result of the review and such recommendations as the Secretary considers appropriate in light of the review.

38 USC 523 note.

SEC. 506. PILOT PROGRAM ON USE OF COMMUNITY-BASED ORGANIZATIONS AND LOCAL AND STATE GOVERNMENT ENTITIES TO ENSURE THAT VETERANS RECEIVE CARE AND BENEFITS FOR WHICH THEY ARE ELIGIBLE.

(a) PILOT PROGRAM REQUIRED.—The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of using community-based organizations and local and State government entities—

(1) to increase the coordination of community, local, State, and Federal providers of health care and benefits for veterans to assist veterans who are transitioning from military service to civilian life in such transition;

(2) to increase the availability of high quality medical and mental health services to veterans transitioning from military service to civilian life;

(3) to provide assistance to families of veterans who are transitioning from military service to civilian life to help such families adjust to such transition; and

(4) to provide outreach to veterans and their families to inform them about the availability of benefits and connect them with appropriate care and benefit programs.

(b) DURATION OF PROGRAM.—The pilot program shall be carried out during the 2-year period beginning on the date that is 180 days after the date of the enactment of this Act.

(c) PROGRAM LOCATIONS.—

(1) IN GENERAL.—The pilot program shall be carried out at five locations selected by the Secretary for purposes of the pilot program.

(2) CONSIDERATIONS.—In selecting locations for the pilot program, the Secretary shall consider the advisability of selecting locations in—

- (A) rural areas;
 - (B) areas with populations that have a high proportion of minority group representation;
 - (C) areas with populations that have a high proportion of individuals who have limited access to health care; and
 - (D) areas that are not in close proximity to an active duty military installation.
- (d) GRANTS.—The Secretary shall carry out the pilot program through the award of grants to community-based organizations and local and State government entities.
- (e) SELECTION OF GRANT RECIPIENTS.—
- (1) IN GENERAL.—A community-based organization or local or State government entity seeking a grant under the pilot program shall submit to the Secretary an application therefor in such form and in such manner as the Secretary considers appropriate.
 - (2) ELEMENTS.—Each application submitted under paragraph (1) shall include the following:
 - (A) A description of the consultations, if any, with the Department of Veterans Affairs in the development of the proposal under the application.
 - (B) A plan to coordinate activities under the pilot program, to the greatest extent possible, with the local, State, and Federal providers of services for veterans to reduce duplication of services and to enhance the effect of such services.
- (f) USE OF GRANT FUNDS.—The Secretary shall prescribe appropriate uses of grant funds received under the pilot program.
- (g) REPORT ON PROGRAM.—
- (1) IN GENERAL.—Not later than 180 days after the completion of the pilot program, the Secretary shall submit to Congress a report on the pilot program.
 - (2) ELEMENTS.—The report required by paragraph (1) shall include the following:
 - (A) The findings and conclusions of the Secretary with respect to the pilot program.
 - (B) An assessment of the benefits to veterans of the pilot program.
 - (C) The recommendations of the Secretary as to the advisability of continuing the pilot program.

SEC. 507. SPECIALIZED RESIDENTIAL CARE AND REHABILITATION FOR CERTAIN VETERANS.

Section 1720 is amended by adding at the end the following new subsection:

“(g) The Secretary may contract with appropriate entities to provide specialized residential care and rehabilitation services to a veteran of Operation Enduring Freedom or Operation Iraqi Freedom who the Secretary determines suffers from a traumatic brain injury, has an accumulation of deficits in activities of daily living and instrumental activities of daily living, and because of these deficits, would otherwise require admission to a nursing home even though such care would generally exceed the veteran’s nursing needs.”.

SEC. 508. EXPANDED STUDY ON THE HEALTH IMPACT OF PROJECT SHIPBOARD HAZARD AND DEFENSE.

Deadline.

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into a contract with the Institute of Medicine of the National Academies to conduct an expanded study on the health impact of Project Shipboard Hazard and Defense (Project SHAD).

(b) **COVERED VETERANS.**—The study required by subsection (a) shall include, to the extent practicable, all veterans who participated in Project Shipboard Hazard and Defense.

(c) **USE OF EXISTING STUDIES.**—The study required by subsection (a) may use results from the study covered in the report titled “Long-Term Health Effects of Participation in Project SHAD” of the Institute of Medicine of the National Academies.

SEC. 509. USE OF NON-DEPARTMENT FACILITIES FOR REHABILITATION OF INDIVIDUALS WITH TRAUMATIC BRAIN INJURY.

Section 1710E is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by inserting after subsection (a) the following new subsection (b):

“(b) **COVERED INDIVIDUALS.**—The care and services provided under subsection (a) shall be made available to an individual—

“(1) who is described in section 1710C(a) of this title; and

“(2)(A) to whom the Secretary is unable to provide such treatment or services at the frequency or for the duration prescribed in such plan; or

“(B) for whom the Secretary determines that it is optimal with respect to the recovery and rehabilitation for such individual.”; and

(3) by adding at the end the following new subsection:

“(d) **STANDARDS.**—The Secretary may not provide treatment or services as described in subsection (a) at a non-Department facility under such subsection unless such facility maintains standards for the provision of such treatment or services established by an independent, peer-reviewed organization that accredits specialized rehabilitation programs for adults with traumatic brain injury.”.

38 USC 1712
note.**SEC. 510. PILOT PROGRAM ON PROVISION OF DENTAL INSURANCE PLANS TO VETERANS AND SURVIVORS AND DEPENDENTS OF VETERANS.**

(a) **PILOT PROGRAM REQUIRED.**—The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of providing a dental insurance plan to veterans and survivors and dependents of veterans described in subsection (b).

(b) **COVERED VETERANS AND SURVIVORS AND DEPENDENTS.**—The veterans and survivors and dependents of veterans described in this subsection are as follows:

(1) Any veteran who is enrolled in the system of annual patient enrollment under section 1705 of title 38, United States Code.

(2) Any survivor or dependent of a veteran who is eligible for medical care under section 1781 of such title.

(c) DURATION OF PROGRAM.—The pilot program shall be carried out during the 3-year period beginning on the date that is 270 days after the date of the enactment of this Act.

(d) LOCATIONS.—The pilot program shall be carried out in such Veterans Integrated Services Networks as the Secretary considers appropriate for purposes of the pilot program.

(e) ADMINISTRATION.—The Secretary shall contract with a dental insurer to administer the dental insurance plan provided under the pilot program.

(f) BENEFITS.—The dental insurance plan under the pilot program shall provide such benefits for dental care and treatment as the Secretary considers appropriate for the dental insurance plan, including diagnostic services, preventative services, endodontics and other restorative services, surgical services, and emergency services.

(g) ENROLLMENT.—

(1) VOLUNTARY.—Enrollment in the dental insurance plan under the pilot program shall be voluntary.

(2) MINIMUM PERIOD.—Enrollment in the dental insurance plan shall be for such minimum period as the Secretary shall prescribe for purposes of this section.

(h) PREMIUMS.—

(1) IN GENERAL.—Premiums for coverage under the dental insurance plan under the pilot program shall be in such amount or amounts as the Secretary shall prescribe to cover all costs associated with the pilot program.

(2) ANNUAL ADJUSTMENT.—The Secretary shall adjust the premiums payable under the pilot program for coverage under the dental insurance plan on an annual basis. Each individual covered by the dental insurance plan at the time of such an adjustment shall be notified of the amount and effective date of such adjustment.

(3) RESPONSIBILITY FOR PAYMENT.—Each individual covered by the dental insurance plan shall pay the entire premium for coverage under the dental insurance plan, in addition to the full cost of any copayments.

(i) VOLUNTARY DISENROLLMENT.—

(1) IN GENERAL.—With respect to enrollment in the dental insurance plan under the pilot program, the Secretary shall—

(A) permit the voluntary disenrollment of an individual in the dental insurance plan if the disenrollment occurs during the 30-day period beginning on the date of the enrollment of the individual in the dental insurance plan; and

(B) permit the voluntary disenrollment of an individual in the dental insurance plan for such circumstances as the Secretary shall prescribe for purposes of this subsection, but only to the extent such disenrollment does not jeopardize the fiscal integrity of the dental insurance plan.

(2) ALLOWABLE CIRCUMSTANCES.—The circumstances prescribed under paragraph (1)(B) shall include the following:

(A) If an individual enrolled in the dental insurance plan relocates to a location outside the jurisdiction of the dental insurance plan that prevents use of the benefits under the dental insurance plan.

Time period.

(B) If an individual enrolled in the dental insurance plan is prevented by a serious medical condition from being able to obtain benefits under the dental insurance plan.

(C) Such other circumstances as the Secretary shall prescribe for purposes of this subsection.

(3) ESTABLISHMENT OF PROCEDURES.—The Secretary shall establish procedures for determinations on the permissibility of voluntary disenrollments under paragraph (1)(B). Such procedures shall ensure timely determinations on the permissibility of such disenrollments.

(j) RELATIONSHIP TO DENTAL CARE PROVIDED BY SECRETARY.—Nothing in this section shall affect the responsibility of the Secretary to provide dental care under section 1712 of title 38, United States Code, and the participation of an individual in the dental insurance plan under the pilot program shall not affect the individual's entitlement to outpatient dental services and treatment, and related dental appliances, under that section.

(k) REGULATIONS.—The dental insurance plan under the pilot program shall be administered under such regulations as the Secretary shall prescribe.

SEC. 511. PROHIBITION ON COLLECTION OF COPAYMENTS FROM VETERANS WHO ARE CATASTROPHICALLY DISABLED.

(a) IN GENERAL.—Subchapter III of chapter 17 is amended by adding at the end the following new section:

“§ 1730A. Prohibition on collection of copayments from catastrophically disabled veterans

“Notwithstanding subsections (f) and (g) of section 1710 and section 1722A(a) of this title or any other provision of law, the Secretary may not require a veteran who is catastrophically disabled, as defined by the Secretary, to make any copayment for the receipt of hospital care or medical services under the laws administered by the Secretary.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1730 the following new item:

“1730A. Prohibition on collection of copayments from catastrophically disabled veterans.”.

SEC. 512. HIGHER PRIORITY STATUS FOR CERTAIN VETERANS WHO ARE MEDAL OF HONOR RECIPIENTS.

Section 1705(a)(3) is amended by inserting “veterans who were awarded the medal of honor under section 3741, 6241, or 8741 of title 10 or section 491 of title 14,” after “the Purple Heart,”.

SEC. 513. HOSPITAL CARE, MEDICAL SERVICES, AND NURSING HOME CARE FOR CERTAIN VIETNAM-ERA VETERANS EXPOSED TO HERBICIDE AND VETERANS OF THE PERSIAN GULF WAR.

Section 1710(e) is amended—

(1) in paragraph (3)—

(A) by striking “subsection (a)(2)(F)—” and all that follows through “(C) in the case” and inserting “subsection (a)(2)(F) in the case”; and

(B) by redesignating clauses (i) and (ii) of the former subparagraph (C) as subparagraphs (A) and (B) of such paragraph (3) and by realigning the margin of such new subparagraphs two ems to the left; and

(2) in paragraph (1)(C)—

(A) by striking “paragraphs (2) and (3)” and inserting “paragraph (2)”; and

(B) by inserting after “on active duty” the following: “between August 2, 1990, and November 11, 1998,”.

SEC. 514. ESTABLISHMENT OF DIRECTOR OF PHYSICIAN ASSISTANT SERVICES IN VETERANS HEALTH ADMINISTRATION.

(a) **IN GENERAL.**—Section 7306(a) is amended by striking paragraph (9) and inserting the following new paragraph (9):

“(9) The Director of Physician Assistant Services, who shall—

“(A) serve in a full-time capacity at the Central Office of the Department;

“(B) be a qualified physician assistant; and

“(C) be responsible and report directly to the Chief Patient Care Services Officer of the Veterans Health Administration on all matters relating to the education and training, employment, appropriate use, and optimal participation of physician assistants within the programs and initiatives of the Administration.”.

(b) **DEADLINE FOR IMPLEMENTATION.**—The Secretary of Veterans Affairs shall ensure that an individual is serving as the Director of Physician Assistant Services under paragraph (9) of section 7306(a) of title 38, United States Code, as amended by subsection (a), by not later than 120 days after the date of the enactment of this Act.

38 USC 7306
note.

SEC. 515. COMMITTEE ON CARE OF VETERANS WITH TRAUMATIC BRAIN INJURY.

(a) **ESTABLISHMENT OF COMMITTEE.**—Subchapter II of chapter 73 is amended by inserting after section 7321 the following new section:

“§ 7321A. Committee on Care of Veterans with Traumatic Brain Injury

“(a) **ESTABLISHMENT.**—The Secretary shall establish in the Veterans Health Administration a committee to be known as the ‘Committee on Care of Veterans with Traumatic Brain Injury’. The Under Secretary for Health shall appoint employees of the Department with expertise in the care of veterans with traumatic brain injury to serve on the committee.

“(b) **RESPONSIBILITIES OF COMMITTEE.**—The committee shall assess, and carry out a continuing assessment of, the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of veterans with traumatic brain injury. In carrying out that responsibility, the committee shall—

“(1) evaluate the care provided to such veterans through the Veterans Health Administration;

“(2) identify systemwide problems in caring for such veterans in facilities of the Veterans Health Administration;

“(3) identify specific facilities within the Veterans Health Administration at which program enrichment is needed to improve treatment and rehabilitation of such veterans; and

“(4) identify model programs which the committee considers to have been successful in the treatment and rehabilitation of such veterans and which should be implemented more widely in or through facilities of the Veterans Health Administration.

“(c) ADVICE AND RECOMMENDATIONS.—The committee shall—

“(1) advise the Under Secretary regarding the development of policies for the care and rehabilitation of veterans with traumatic brain injury; and

“(2) make recommendations to the Under Secretary—

“(A) for improving programs of care of such veterans at specific facilities and throughout the Veterans Health Administration;

“(B) for establishing special programs of education and training relevant to the care of such veterans for employees of the Veterans Health Administration;

“(C) regarding research needs and priorities relevant to the care of such veterans; and

“(D) regarding the appropriate allocation of resources for all such activities.

“(d) ANNUAL REPORT.—Not later than June 1, 2010, and each year thereafter, the Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on the implementation of this section. Each such report shall include the following for the calendar year preceding the year in which the report is submitted:

“(1) A list of the members of the committee.

“(2) The assessment of the Under Secretary for Health, after review of the findings of the committee, regarding the capability of the Veterans Health Administration, on a system-wide and facility-by-facility basis, to meet effectively the treatment and rehabilitation needs of veterans with traumatic brain injury.

“(3) The plans of the committee for further assessments.

“(4) The findings and recommendations made by the committee to the Under Secretary for Health and the views of the Under Secretary on such findings and recommendations.

“(5) A description of the steps taken, plans made (and a timetable for the execution of such plans), and resources to be applied toward improving the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of veterans with traumatic brain injury.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7321 the following new item:

“7321A. Committee on Care of Veterans with Traumatic Brain Injury.”.

SEC. 516. INCREASE IN AMOUNT AVAILABLE TO DISABLED VETERANS FOR IMPROVEMENTS AND STRUCTURAL ALTERATIONS FURNISHED AS PART OF HOME HEALTH SERVICES.

(a) INCREASE.—Section 1717(a)(2) is amended by striking subparagraphs (A) and (B) and inserting the following:

“(A) in the case of medical services furnished under section 1710(a)(1) of this title, or for a disability described in section 1710(a)(2)(C) of this title—

“(i) in the case of a veteran who first applies for benefits under this paragraph before the date of the Caregivers and Veterans Omnibus Health Services Act of 2010, \$4,100; or

“(ii) in the case of a veteran who first applies for benefits under this paragraph on or after the date of the

Caregivers and Veterans Omnibus Health Services Act of 2010, \$6,800; and

“(B) in the case of medical services furnished under any other provision of section 1710(a) of this title—

“(i) in the case of a veteran who first applies for benefits under this paragraph before the date of the Caregivers and Veterans Omnibus Health Services Act of 2010, \$1,200; or

“(ii) in the case of a veteran who first applies for benefits under this paragraph on or after the date of the Caregivers and Veterans Omnibus Health Services Act of 2010, \$2,000.”.

(b) CONSTRUCTION.—A veteran who exhausts such veteran’s eligibility for benefits under section 1717(a)(2) of such title before the date of the enactment of this Act, is not entitled to additional benefits under such section by reason of the amendments made by subsection (a).

38 USC 1717
note.

SEC. 517. EXTENSION OF STATUTORILY DEFINED COPAYMENTS FOR CERTAIN VETERANS FOR HOSPITAL CARE AND NURSING HOME CARE.

Subparagraph (B) of section 1710(f)(2) is amended to read as follows:

“(B) before September 30, 2012, an amount equal to \$10 for every day the veteran receives hospital care and \$5 for every day the veteran receives nursing home care.”.

SEC. 518. EXTENSION OF AUTHORITY TO RECOVER COST OF CERTAIN CARE AND SERVICES FROM DISABLED VETERANS WITH HEALTH-PLAN CONTRACTS.

Subparagraph (E) of section 1729(a)(2) is amended to read as follows:

“(E) for which care and services are furnished before October 1, 2012, under this chapter to a veteran who—

“(i) has a service-connected disability; and

“(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.”.

TITLE VI—DEPARTMENT PERSONNEL MATTERS

SEC. 601. ENHANCEMENT OF AUTHORITIES FOR RETENTION OF MEDICAL PROFESSIONALS.

(a) SECRETARIAL AUTHORITY TO EXTEND TITLE 38 STATUS TO ADDITIONAL POSITIONS.—

(1) IN GENERAL.—Paragraph (3) of section 7401 is amended by striking “and blind rehabilitation outpatient specialists.” and inserting the following: “blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:

“(A) Such other classes of health care occupations—

“(i) are not occupations relating to administrative, clerical, or physical plant maintenance and protective services;

Deadline.
Notification.

“(ii) that would otherwise receive basic pay in accordance with the General Schedule under section 5332 of title 5;

“(iii) provide, as determined by the Secretary, direct patient care services or services incident to direct patient services; and

“(iv) would not otherwise be available to provide medical care or treatment for veterans.

“(B) Not later than 45 days before the Secretary appoints any personnel for a class of health care occupations that is not specifically listed in this paragraph, the Secretary shall submit to the Committee on Veterans’ Affairs of the Senate, the Committee on Veterans’ Affairs of the House of Representatives, and the Office of Management and Budget notice of such appointment.

“(C) Before submitting notice under subparagraph (B), the Secretary shall solicit comments from any labor organization representing employees in such class and include such comments in such notice.”.

(2) APPOINTMENT OF NURSE ASSISTANTS.—Such paragraph is further amended by inserting “nurse assistants,” after “licensed practical or vocational nurses,”.

(b) PROBATIONARY PERIODS FOR REGISTERED NURSES.—Section 7403(b) is amended—

(1) in paragraph (1), by striking “Appointments” and inserting “Except as otherwise provided in this subsection, appointments”;

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) With respect to the appointment of a registered nurse under this chapter, paragraph (1) shall apply with respect to such appointment regardless of whether such appointment is on a full-time basis or a part-time basis.

“(3) An appointment described in subsection (a) on a part-time basis of a person who has previously served on a full-time basis for the probationary period for the position concerned shall be without a probationary period.”.

(c) PROHIBITION ON TEMPORARY PART-TIME REGISTERED NURSE APPOINTMENTS IN EXCESS OF 2 YEARS.—Section 7405 is amended by adding at the end the following new subsection:

“(g)(1) Except as provided in paragraph (3), employment of a registered nurse on a temporary part-time basis under subsection (a)(1) shall be for a probationary period of two years.

“(2) Except as provided in paragraph (3), upon completion by a registered nurse of the probationary period described in paragraph (1)—

“(A) the employment of such nurse shall—

“(i) no longer be considered temporary; and

“(ii) be considered an appointment described in section 7403(a) of this title; and

“(B) the nurse shall be considered to have served the probationary period required by section 7403(b).

“(3) This subsection shall not apply to appointments made on a term limited basis of less than or equal to three years of—

“(A) nurses with a part-time appointment resulting from an academic affiliation or teaching position in a nursing academy of the Department;

“(B) nurses appointed as a result of a specific research proposal or grant; or

“(C) nurses who are not citizens of the United States and appointed under section 7407(a) of this title.”.

(d) RATE OF BASIC PAY FOR APPOINTEES TO THE OFFICE OF THE UNDER SECRETARY FOR HEALTH SET TO RATE OF BASIC PAY FOR SENIOR EXECUTIVE SERVICE POSITIONS.—

(1) IN GENERAL.—Section 7404(a) is amended—

(A) by striking “The annual” and inserting “(1) The annual”;

(B) by striking “The pay” and inserting the following: “(2) The pay”;

(C) by striking “under the preceding sentence” and inserting “under paragraph (1)”; and

(D) by adding at the end the following new paragraph:

“(3)(A) The rate of basic pay for a position to which an Executive order applies under paragraph (1) and is not described by paragraph (2) shall be set in accordance with section 5382 of title 5 as if such position were a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

“(B) A rate of basic pay for a position may not be set under subparagraph (A) in excess of—

“(i) in the case the position is not described in clause (ii), the rate of basic pay payable for level III of the Executive Schedule; or

“(ii) in the case that the position is covered by a performance appraisal system that meets the certification criteria established by regulation under section 5307(d) of title 5, the rate of basic pay payable for level II of the Executive Schedule.

“(C) Notwithstanding the provisions of subsection (d) of section 5307 of title 5, the Secretary may make any certification under that subsection instead of the Office of Personnel Management and without concurrence of the Office of Management and Budget.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the first day of the first pay period beginning after the day that is 180 days after the date of the enactment of this Act.

(e) SPECIAL INCENTIVE PAY FOR DEPARTMENT PHARMACIST EXECUTIVES.—Section 7410 is amended—

(1) by striking “The Secretary may” and inserting the following:

“(a) IN GENERAL.—The Secretary may”; and

(2) by adding at the end the following new subsection:

“(b) SPECIAL INCENTIVE PAY FOR DEPARTMENT PHARMACIST EXECUTIVES.—(1) In order to recruit and retain highly qualified Department pharmacist executives, the Secretary may authorize the Under Secretary for Health to pay special incentive pay of not more than \$40,000 per year to an individual of the Veterans Health Administration who is a pharmacist executive.

“(2) In determining whether and how much special pay to provide to such individual, the Under Secretary shall consider the following:

“(A) The grade and step of the position of the individual.

38 USC 7404
note.

“(B) The scope and complexity of the position of the individual.

“(C) The personal qualifications of the individual.

“(D) The characteristics of the labor market concerned.

“(E) Such other factors as the Secretary considers appropriate.

“(3) Special incentive pay under paragraph (1) for an individual is in addition to all other pay (including basic pay) and allowances to which the individual is entitled.

“(4) Except as provided in paragraph (5), special incentive pay under paragraph (1) for an individual shall be considered basic pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits.

“(5) Special incentive pay under paragraph (1) for an individual shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

“(6) Special incentive pay under paragraph (1) may not be awarded to an individual in an amount that would result in an aggregate amount of pay (including bonuses and awards) received by such individual in a year under this title that is greater than the annual pay of the President.”.

(f) PAY FOR PHYSICIANS AND DENTISTS.—

(1) NON-FOREIGN COST OF LIVING ADJUSTMENT ALLOWANCE.—Section 7431(b) is amended by adding at the end the following new paragraph:

“(5) The non-foreign cost of living adjustment allowance authorized under section 5941 of title 5 for physicians and dentists whose pay is set under this section shall be determined as a percentage of base pay only.”.

(2) MARKET PAY DETERMINATIONS FOR PHYSICIANS AND DENTISTS IN ADMINISTRATIVE OR EXECUTIVE LEADERSHIP POSITIONS.—Section 7431(c)(4)(B)(i) is amended by adding at the end the following: “The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence.”.

(3) EXCEPTION TO PROHIBITION ON REDUCTION OF MARKET PAY.—Section 7431(c)(7) is amended by striking “concerned.” and inserting “concerned, unless there is a change in board certification or reduction of privileges.”.

(g) ADJUSTMENT OF PAY CAP FOR NURSES.—Section 7451(c)(2) is amended by striking “level V” and inserting “level IV”.

(h) EXEMPTION FOR CERTIFIED REGISTERED NURSE ANESTHETISTS FROM LIMITATION ON AUTHORIZED COMPETITIVE PAY.—Section 7451(c)(2) is further amended by adding at the end the following new sentence: “The maximum rate of basic pay for a grade for the position of certified registered nurse anesthetist pursuant to an adjustment under subsection (d) may exceed the maximum rate otherwise provided in the preceding sentence.”.

(i) INCREASED LIMITATION ON SPECIAL PAY FOR NURSE EXECUTIVES.—Section 7452(g)(2) is amended by striking “\$25,000” and inserting “\$100,000”.

(j) LOCALITY PAY SCALE COMPUTATIONS.—

(1) EDUCATION, TRAINING, AND SUPPORT FOR FACILITY DIRECTORS IN WAGE SURVEYS.—Section 7451(d)(3) is amended by adding at the end the following new subparagraph:

“(F) The Under Secretary for Health shall provide appropriate education, training, and support to directors of Department health

care facilities in the conduct and use of surveys, including the use of third-party surveys, under this paragraph.”.

(2) INFORMATION ON METHODOLOGY USED IN WAGE SURVEYS.—Section 7451(e)(4) is amended—

(A) by redesignating subparagraph (D) as subparagraph (E); and

(B) by inserting after subparagraph (C) the following new subparagraph (D):

“(D) In any case in which the director conducts such a wage survey during the period covered by the report and makes adjustment in rates of basic pay applicable to one or more covered positions at the facility, information on the methodology used in making such adjustment or adjustments.”.

(3) DISCLOSURE OF INFORMATION TO PERSONS IN COVERED POSITIONS.—Section 7451(e), as amended by paragraph (2) of this subsection, is further amended by adding at the end the following new paragraph:

“(6)(A) Upon the request of an individual described in subparagraph (B) for a report provided under paragraph (4) with respect to a Department health-care facility, the Under Secretary for Health or the director of such facility shall provide to the individual the most current report for such facility provided under such paragraph.

Reports.

“(B) An individual described in this subparagraph is—

“(i) an individual in a covered position at a Department health-care facility; or

“(ii) a representative of the labor organization representing that individual who is designated by that individual to make the request.”.

(k) ELIGIBILITY OF PART-TIME NURSES FOR ADDITIONAL NURSE PAY.—

(1) IN GENERAL.—Section 7453 is amended—

(A) in subsection (a), by striking “a nurse” and inserting “a full-time nurse or part-time nurse”;

(B) in subsection (b)—

(i) in the first sentence—

(I) by striking “on a tour of duty”;

(II) by striking “service on such tour” and inserting “such service”; and

(III) by striking “of such tour” and inserting “of such service”; and

(ii) in the second sentence, by striking “of such tour” and inserting “of such service”;

(C) in subsection (c)—

(i) by striking “on a tour of duty”; and

(ii) by striking “service on such tour” and inserting “such service”; and

(D) in subsection (e)—

(i) in paragraph (1), by striking “eight hours in a day” and inserting “eight consecutive hours”; and

(ii) in paragraph (5)(A), by striking “tour of duty” and inserting “period of service”.

(2) EXCLUSION OF APPLICATION OF ADDITIONAL NURSE PAY PROVISIONS TO CERTAIN ADDITIONAL EMPLOYEES.—Paragraph (3) of section 7454(b) is amended to read as follows:

“(3) Employees appointed under section 7408 of this title performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight

Time period.

Sunday, shall receive additional pay in addition to the rate of basic pay provided such employees for each hour of service on such tour at a rate equal to 25 percent of such employee's hourly rate of basic pay.”.

(1) ENHANCED AUTHORITY TO INCREASE RATES OF BASIC PAY TO OBTAIN OR RETAIN SERVICES OF CERTAIN PERSONS.—Section 7455(c) is amended to read as follows:

“(c)(1) Subject to paragraph (2), the amount of any increase under subsection (a) in the minimum rate for any grade may not (except in the case of nurse anesthetists, licensed practical nurses, licensed vocational nurses, nursing positions otherwise covered by title 5, pharmacists, and licensed physical therapists) exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 of title 5 or similar provision of law) for the grade or level by more than 30 percent.

“(2) No rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule.”.

SEC. 602. LIMITATIONS ON OVERTIME DUTY, WEEKEND DUTY, AND ALTERNATIVE WORK SCHEDULES FOR NURSES.

(a) OVERTIME DUTY.—

(1) IN GENERAL.—Subchapter IV of chapter 74 is amended by adding at the end the following new section:

“§ 7459. Nursing staff: special rules for overtime duty

“(a) LIMITATION.—Except as provided in subsection (c), the Secretary may not require nursing staff to work more than 40 hours (or 24 hours if such staff is covered under section 7456 of this title) in an administrative work week or more than eight consecutive hours (or 12 hours if such staff is covered under section 7456 or 7456A of this title).

“(b) VOLUNTARY OVERTIME.—(1) Nursing staff may on a voluntary basis elect to work hours otherwise prohibited by subsection (a).

“(2) The refusal of nursing staff to work hours prohibited by subsection (a) shall not be grounds—

“(A) to discriminate (within the meaning of section 704(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(a))) against the staff;

“(B) to dismiss or discharge the staff; or

“(C) for any other adverse personnel action against the staff.

“(c) OVERTIME UNDER EMERGENCY CIRCUMSTANCES.—(1) Subject to paragraph (2), the Secretary may require nursing staff to work hours otherwise prohibited by subsection (a) if—

“(A) the work is a consequence of an emergency that could not have been reasonably anticipated;

“(B) the emergency is non-recurring and is not caused by or aggravated by the inattention of the Secretary or lack of reasonable contingency planning by the Secretary;

“(C) the Secretary has exhausted all good faith, reasonable attempts to obtain voluntary workers;

“(D) the nurse staff have critical skills and expertise that are required for the work; and

“(E) the work involves work for which the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure.

“(2) Nursing staff may not be required to work hours under this subsection after the requirement for a direct role by the staff in responding to medical needs resulting from the emergency ends.

“(d) NURSING STAFF DEFINED.—In this section, the term ‘nursing staff’ includes the following:

“(1) A registered nurse.

“(2) A licensed practical or vocational nurse.

“(3) A nurse assistant appointed under this chapter or title 5.

“(4) Any other nurse position designated by the Secretary for purposes of this section.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 74 is amended by inserting after the item relating to section 7458 the following new item:

“7459. Nursing staff: special rules for overtime duty.”.

(b) WEEKEND DUTY.—Section 7456 is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(c) ALTERNATE WORK SCHEDULES.—

(1) IN GENERAL.—Section 7456A(b)(1)(A) is amended by striking “three regularly scheduled” and all that follows through the period at the end and inserting “six regularly scheduled 12-hour tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period.”.

(2) CONFORMING AMENDMENTS.—Section 7456A(b) is amended—

(A) in the subsection heading, by striking “36/40” and inserting “72/80”;

(B) in paragraph (2)(A), by striking “40-hour basic work week” and inserting “80-hour pay period”; and

(C) in paragraph (3), by striking “regularly”.

SEC. 603. REAUTHORIZATION OF HEALTH PROFESSIONALS EDUCATIONAL ASSISTANCE SCHOLARSHIP PROGRAM.

(a) IN GENERAL.—Section 7618 is amended by striking “December 31, 1998” and inserting “December 31, 2014”.

(b) EXPANSION OF ELIGIBILITY REQUIREMENTS.—Section 7612(b)(2) is amended by striking “(under section” and all that follows through “or vocational nurse.” and inserting the following: “as an appointee under paragraph (1) or (3) of section 7401 of this title.”.

(c) ADDITIONAL PROGRAM REQUIREMENTS.—Subchapter II of chapter 76, as amended by subsections (a) and (b), is further amended—

(1) by redesignating section 7618 as section 7619; and

(2) by inserting after section 7617 the following new section:

“§ 7618. Additional program requirements

“(a) PROGRAM MODIFICATION.—Notwithstanding any provision of this subchapter, the Secretary shall carry out this subchapter after the date of the enactment of this section by modifying the Scholarship Program in such a manner that the program and hiring

processes are designed to fully employ Scholarship Program graduates as soon as possible, if not immediately, upon graduation and completion of necessary certifications, and to actively assist and monitor graduates to ensure certifications are obtained in a minimal amount of time following graduation.

“(b) CLINICAL TOURS.—The Secretary shall require participants in the Scholarship Program to perform clinical tours in assignments or locations determined by the Secretary while the participants are enrolled in the course of education or training for which the scholarship is provided.

“(c) MENTORS.—The Secretary shall ensure that at the commencement of the period of obligated service of a participant in the Scholarship Program, the participant is assigned to a mentor who is employed in the same facility where the participant performs such service.”.

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 76 is amended by striking the item relating to section 7618 and inserting the following new items:

“7618. Additional program requirements.

“7619. Expiration of program.”.

38 USC 7681
note.

**SEC. 604. LOAN REPAYMENT PROGRAM FOR CLINICAL RESEARCHERS
FROM DISADVANTAGED BACKGROUNDS.**

(a) IN GENERAL.—The Secretary of Veterans Affairs may, in consultation with the Secretary of Health and Human Services, use the authorities available in section 487E of the Public Health Service Act (42 U.S.C. 288–5) for the repayment of the principal and interest of educational loans of appropriately qualified health professionals who are from disadvantaged backgrounds in order to secure clinical research by such professionals for the Veterans Health Administration.

(b) LIMITATIONS.—The exercise by the Secretary of Veterans Affairs of the authorities referred to in subsection (a) shall be subject to the conditions and limitations specified in paragraphs (2) and (3) of section 487E(a) of the Public Health Service Act (42 U.S.C. 288–5(a)(2) and (3)).

(c) FUNDING.—Amounts for the repayment of principal and interest of educational loans under this section shall be derived from amounts available to the Secretary of Veterans Affairs for the Veterans Health Administration for Medical Services.

TITLE VII—HOMELESS VETERANS MATTERS

SEC. 701. PER DIEM GRANT PAYMENTS TO NONCONFORMING ENTITIES.

Section 2012 is amended by adding at the end the following new subsection:

“(d) PER DIEM PAYMENTS TO NONCONFORMING ENTITIES.—(1) The Secretary may make funds available for per diem payments under this section to the following grant recipients or eligible entities:

“(A) Grant recipients or eligible entities that—

“(i) meet each of the transitional and supportive services criteria prescribed by the Secretary pursuant to subsection (a)(1); and

“(ii) furnish services to homeless individuals, of which less than 75 percent are veterans.

“(B) Grant recipients or eligible entities that—

“(i) meet at least one, but not all, of the transitional and supportive services criteria prescribed by the Secretary pursuant to subsection (a)(1); and

“(ii) furnish services to homeless individuals, of which not less than 75 percent are veterans.

“(C) Grant recipients or eligible entities that—

“(i) meet at least one, but not all, of the transitional and supportive services criteria prescribed by the Secretary pursuant to subsection (a)(1); and

“(ii) furnish services to homeless individuals, of which less than 75 percent are veterans.

“(2) Notwithstanding subsection (a)(2), in providing per diem payments under this subsection, the Secretary shall determine the rate of such per diem payments in accordance with the following order of priority:

“(A) Grant recipients or eligible entities described by paragraph (1)(A).

“(B) Grant recipients or eligible entities described by paragraph (1)(B).

“(C) Grant recipients or eligible entities described by paragraph (1)(C).

“(3) For purposes of this subsection, an eligible entity is a nonprofit entity and may be an entity that is ineligible to receive a grant under section 2011 of this title, but whom the Secretary determines carries out the purposes described in that section.”.

TITLE VIII—NONPROFIT RESEARCH AND EDUCATION CORPORATIONS

SEC. 801. GENERAL AUTHORITIES ON ESTABLISHMENT OF CORPORATIONS.

(a) AUTHORIZATION OF MULTI-MEDICAL CENTER RESEARCH CORPORATIONS.—

(1) IN GENERAL.—Section 7361 is amended—

(A) by redesignating subsection (b) as subsection (e); and

(B) by inserting after subsection (a) the following new subsection (b):

“(b)(1) Subject to paragraph (2), a corporation established under this subchapter may facilitate the conduct of research, education, or both at more than one medical center. Such a corporation shall be known as a ‘multi-medical center research corporation’.

“(2) The board of directors of a multi-medical center research corporation under this subsection shall include the official at each Department medical center concerned who is, or who carries out the responsibilities of, the medical center director of such center as specified in section 7363(a)(1)(A)(i) of this title.

“(3) In facilitating the conduct of research, education, or both at more than one Department medical center under this subchapter, a multi-medical center research corporation may administer receipts and expenditures relating to such research, education, or both, as applicable, performed at the Department medical centers concerned.”.

(2) EXPANSION OF EXISTING CORPORATIONS TO MULTI-MEDICAL CENTER RESEARCH CORPORATIONS.—Such section is further amended by adding at the end the following new subsection:

“(f) A corporation established under this subchapter may act as a multi-medical center research corporation under this subchapter in accordance with subsection (b) if—

“(1) the board of directors of the corporation approves a resolution permitting facilitation by the corporation of the conduct of research, education, or both at the other Department medical center or medical centers concerned; and

“(2) the Secretary approves the resolution of the corporation under paragraph (1).”.

(b) RESTATEMENT AND MODIFICATION OF AUTHORITIES ON APPLICABILITY OF STATE LAW.—

(1) IN GENERAL.—Section 7361 as amended by subsection (a) of this section, is further amended by inserting after subsection (b) the following new subsection (c):

“(c) Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State in which the applicable Department medical center is located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State. In the case of any multi-medical center research corporation that facilitates the conduct of research, education, or both at Department medical centers located in different States, the corporation shall be established in accordance with the nonprofit corporation laws of the State in which one of such Department medical centers is located.”.

(2) CONFORMING AMENDMENT.—Section 7365 is repealed.

(c) CLARIFICATION OF STATUS OF CORPORATIONS.—Section 7361, as amended by this section, is further amended—

(1) in subsection (a), by striking the second sentence; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d)(1) Except as otherwise provided in this subchapter or under regulations prescribed by the Secretary, any corporation established under this subchapter, and its officers, directors, and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives that apply generally to private nonprofit corporations.

“(2) A corporation under this subchapter is not—

“(A) owned or controlled by the United States; or

“(B) an agency or instrumentality of the United States.”.

(d) REINSTATEMENT OF REQUIREMENT FOR 501(C)(3) STATUS OF CORPORATIONS.—Subsection (e) of section 7361, as redesignated by subsection (a)(1), is further amended by inserting “section 501(c)(3) of” after “exempt from taxation under”.

SEC. 802. CLARIFICATION OF PURPOSES OF CORPORATIONS.

(a) CLARIFICATION OF PURPOSES.—Subsection (a) of section 7362 is amended in the first sentence—

(1) by striking “Any corporation” and all that follows through “facilitate” and inserting “A corporation established under this subchapter shall be established to provide a flexible funding mechanism for the conduct of approved research and education at one or more Department medical centers and to facilitate functions related to the conduct of”; and

Repeal.

(2) by inserting before the period at the end the following:
“or centers”.

(b) **MODIFICATION OF DEFINED TERM RELATING TO EDUCATION AND TRAINING.**—Subsection (b) of such section is amended in the matter preceding paragraph (1) by striking “the term ‘education and training’” and inserting “the term ‘education’ includes education and training and”.

(c) **REPEAL OF ROLE OF CORPORATIONS WITH RESPECT TO FELLOWSHIPS.**—Paragraph (1) of subsection (b) of such section is amended by striking the flush matter following subparagraph (C).

(d) **AVAILABILITY OF EDUCATION FOR FAMILIES OF VETERAN PATIENTS.**—Paragraph (2) of subsection (b) of such section is amended by striking “to patients and to the families” and inserting “and includes education and training for patients and families”.

SEC. 803. MODIFICATION OF REQUIREMENTS FOR BOARDS OF DIRECTORS OF CORPORATIONS.

(a) **REQUIREMENTS FOR DEPARTMENT BOARD MEMBERS.**—Paragraph (1) of section 7363(a) is amended to read as follows:

“(1) with respect to the Department medical center—

“(A)(i) the director (or directors of each Department medical center, in the case of a multi-medical center research corporation);

“(ii) the chief of staff; and

“(iii) as appropriate for the activities of such corporation, the associate chief of staff for research and the associate chief of staff for education; or

“(B) in the case of a Department medical center at which one or more of the positions referred to in subparagraph (A) do not exist, the official or officials who are responsible for carrying out the responsibilities of such position or positions at the Department medical center; and”.

(b) **REQUIREMENTS FOR NON-DEPARTMENT BOARD MEMBERS.**—Paragraph (2) of such section is amended—

(1) by inserting “not less than two” before “members”; and

(2) by striking “and who” and all that follows through the period at the end and inserting “and who have backgrounds, or business, legal, financial, medical, or scientific expertise, of benefit to the operations of the corporation.”.

(c) **CONFLICTS OF INTEREST.**—Subsection (c) of section 7363 is amended by striking “, employed by, or have any other financial relationship with” and inserting “or employed by”.

SEC. 804. CLARIFICATION OF POWERS OF CORPORATIONS.

(a) **IN GENERAL.**—Section 7364 is amended to read as follows:

“§ 7364. General powers

“(a) **IN GENERAL.**—(1) A corporation established under this subchapter may, solely to carry out the purposes of this subchapter—

“(A) accept, administer, retain, and spend funds derived from gifts, contributions, grants, fees, reimbursements, and bequests from individuals and public and private entities;

“(B) enter into contracts and agreements with individuals and public and private entities;

“(C) subject to paragraph (2), set fees for education and training facilitated under section 7362 of this title, and receive, retain, administer, and spend funds in furtherance of such education and training;

“(D) reimburse amounts to the applicable appropriation account of the Department for the Office of General Counsel for any expenses of that Office in providing legal services attributable to research and education agreements under this subchapter; and

“(E) employ such employees as the corporation considers necessary for such purposes and fix the compensation of such employees.

“(2) Fees charged pursuant to paragraph (1)(C) for education and training described in that paragraph to individuals who are officers or employees of the Department may not be paid for by any funds appropriated to the Department.

“(3) Amounts reimbursed to the Office of General Counsel under paragraph (1)(D) shall be available for use by the Office of the General Counsel only for staff and training, and related travel, for the provision of legal services described in that paragraph and shall remain available for such use without fiscal year limitation.

“(b) TRANSFER AND ADMINISTRATION OF FUNDS.—(1) Except as provided in paragraph (2), any funds received by the Secretary for the conduct of research or education at a Department medical center or centers, other than funds appropriated to the Department, may be transferred to and administered by a corporation established under this subchapter for such purposes.

“(2) A Department medical center may reimburse the corporation for all or a portion of the pay, benefits, or both of an employee of the corporation who is assigned to the Department medical center if the assignment is carried out pursuant to subchapter VI of chapter 33 of title 5.

“(3) A Department medical center may retain and use funds provided to it by a corporation established under this subchapter. Such funds shall be credited to the applicable appropriation account of the Department and shall be available, without fiscal year limitation, for the purposes of that account.

“(c) RESEARCH PROJECTS.—Except for reasonable and usual preliminary costs for project planning before its approval, a corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Under Secretary for Health for research carried out with Department funds. Such procedures shall include a scientific review process.

“(d) EDUCATION ACTIVITIES.—Except for reasonable and usual preliminary costs for activity planning before its approval, a corporation established under this subchapter may not spend funds for an education activity unless the activity is approved in accordance with procedures prescribed by the Under Secretary for Health.

“(e) POLICIES AND PROCEDURES.—The Under Secretary for Health may prescribe policies and procedures to guide the spending of funds by corporations established under this subchapter that are consistent with the purpose of such corporations as flexible funding mechanisms and with Federal and State laws and regulations, and executive orders, circulars, and directives that apply generally to the receipt and expenditure of funds by nonprofit

organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.”.

(b) CONFORMING AMENDMENT.—Section 7362(a), as amended by section 802(a)(1) of this Act, is further amended by striking the last sentence.

SEC. 805. REDESIGNATION OF SECTION 7364A OF TITLE 38, UNITED STATES CODE.

(a) REDESIGNATION.—Section 7364A is redesignated as section 7365.

(b) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 73 is amended—

- (1) by striking the item relating to section 7364A; and
- (2) by striking the item relating to section 7365 and inserting the following new item:

“7365. Coverage of employees under certain Federal tort claims laws.”.

SEC. 806. IMPROVED ACCOUNTABILITY AND OVERSIGHT OF CORPORATIONS.

(a) ADDITIONAL INFORMATION IN ANNUAL REPORTS.—Subsection (b) of section 7366 is amended to read as follows:

“(b)(1) Each corporation shall submit to the Secretary each year a report providing a detailed statement of the operations, activities, and accomplishments of the corporation during that year.

“(2)(A) A corporation with revenues in excess of \$500,000 for any year shall obtain an audit of the corporation for that year.

“(B) A corporation with annual revenues between \$100,000 and \$500,000 shall obtain an audit of the corporation at least once every three years.

“(C) Any audit under this paragraph shall be performed by an independent auditor.

“(3) The corporation shall include in each report to the Secretary under paragraph (1) the following:

“(A) The most recent audit of the corporation under paragraph (2).

“(B) The most recent Internal Revenue Service Form 990 ‘Return of Organization Exempt from Income Tax’ or equivalent and the applicable schedules under such form.”.

(b) CONFLICT OF INTEREST POLICIES.—Subsection (c) of such section is amended to read as follows:

“(c) Each director, officer, and employee of a corporation established under this subchapter shall be subject to a conflict of interest policy adopted by that corporation.”.

(c) ESTABLISHMENT OF APPROPRIATE PAYEE REPORTING THRESHOLD.—Subsection (d)(3)(C) of such section is amended by striking “\$35,000” and inserting “\$50,000”.

TITLE IX—CONSTRUCTION AND NAMING MATTERS

SEC. 901. AUTHORIZATION OF MEDICAL FACILITY PROJECTS.

(a) AUTHORIZATION OF FISCAL YEAR 2010 MAJOR MEDICAL FACILITY PROJECTS.—The Secretary of Veterans Affairs may carry out the following major medical facility projects in fiscal year 2010, with each project to be carried out in the amount specified for such project:

(1) Construction (including acquisition of land) for the realignment of services and closure projects at the Department of Veterans Affairs Medical Center in Livermore, California, in an amount not to exceed \$55,430,000.

(2) Construction (including acquisition of land) for a new medical facility at the Department of Veterans Affairs Medical Center in Louisville, Kentucky, in an amount not to exceed \$75,000,000.

(3) Construction (including acquisition of land) for a clinical expansion for a Mental Health Facility at the Department of Veterans Affairs Medical Center in Dallas, Texas, in an amount not to exceed \$15,640,000.

(4) Construction (including acquisition of land) for a replacement bed tower and clinical expansion at the Department of Veterans Affairs Medical Center in St. Louis, Missouri, in an amount not to exceed \$43,340,000.

(b) EXTENSION OF AUTHORIZATION FOR MAJOR MEDICAL FACILITY CONSTRUCTION PROJECTS PREVIOUSLY AUTHORIZED.—The Secretary of Veterans Affairs may carry out the following major medical facility projects in fiscal year 2010, as follows with each project to be carried out in the amount specified for such project:

(1) Replacement of the existing Department of Veterans Affairs Medical Center in Denver, Colorado, in an amount not to exceed \$800,000,000.

(2) Construction of Outpatient and Inpatient Improvements in Bay Pines, Florida, in an amount not to exceed \$194,400,000.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS FOR CONSTRUCTION.—There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2010, or the year in which funds are appropriated, for the Construction, Major Projects account—

(A) \$189,410,000 for the projects authorized in subsection (a); and

(B) \$994,400,000 for the projects authorized in subsection (b).

(2) LIMITATION.—The projects authorized in subsections (a) and (b) may only be carried out using—

(A) funds appropriated for fiscal year 2010 pursuant to the authorization of appropriations in paragraph (1);

(B) funds available for Construction, Major Projects for a fiscal year before fiscal year 2010 that remain available for obligation;

(C) funds available for Construction, Major Projects for a fiscal year after fiscal year 2010 that remain available for obligation;

(D) funds appropriated for Construction, Major Projects for fiscal year 2010 for a category of activity not specific to a project;

(E) funds appropriated for Construction, Major Projects for a fiscal year before 2010 for a category of activity not specific to a project; and

(F) funds appropriated for Construction, Major Projects for a fiscal year after 2010 for a category of activity not specific to a project.

SEC. 902. DESIGNATION OF MERRIL LUNDMAN DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, HAVRE, MONTANA.

(a) DESIGNATION.—The Department of Veterans Affairs outpatient clinic in Havre, Montana, shall after the date of the enactment of this Act be known and designated as the “Merril Lundman Department of Veterans Affairs Outpatient Clinic”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Merrill Lundman Department of Veterans Affairs Outpatient Clinic.

SEC. 903. DESIGNATION OF WILLIAM C. TALLENT DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, KNOXVILLE, TENNESSEE.

(a) DESIGNATION.—The Department of Veterans Affairs Outpatient Clinic in Knoxville, Tennessee, shall after the date of the enactment of this Act be known and designated as the “William C. Tallent Department of Veterans Affairs Outpatient Clinic”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the William C. Tallent Department of Veterans Affairs Outpatient Clinic.

SEC. 904. DESIGNATION OF MAX J. BEILKE DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, ALEXANDRIA, MINNESOTA.

(a) DESIGNATION.—The Department of Veterans Affairs outpatient clinic in Alexandria, Minnesota, shall after the date of the enactment of this Act be known and designated as the “Max J. Beilke Department of Veterans Affairs Outpatient Clinic”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Max J. Beilke Department of Veterans Affairs Outpatient Clinic.

TITLE X—OTHER MATTERS

SEC. 1001. EXPANSION OF AUTHORITY FOR DEPARTMENT OF VETERANS AFFAIRS POLICE OFFICERS.

Section 902 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) Employees of the Department who are Department police officers shall, with respect to acts occurring on Department property—

“(A) enforce Federal laws;

“(B) enforce the rules prescribed under section 901 of this title;

“(C) enforce traffic and motor vehicle laws of a State or local government (by issuance of a citation for violation of such laws) within the jurisdiction of which such Department property is located as authorized by an express grant of authority under applicable State or local law;

“(D) carry the appropriate Department-issued weapons, including firearms, while off Department property in an official capacity or while in an official travel status;

“(E) conduct investigations, on and off Department property, of offenses that may have been committed on property under the original jurisdiction of Department, consistent with agreements or other consultation with affected Federal, State, or local law enforcement agencies; and

“(F) carry out, as needed and appropriate, the duties described in subparagraphs (A) through (E) when engaged in duties authorized by other Federal statutes.”;

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by inserting “, and on any arrest warrant issued by competent judicial authority” before the period; and

(2) by amending subsection (c) to read as follows:

“(c) The powers granted to Department police officers designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.”.

SEC. 1002. UNIFORM ALLOWANCE FOR DEPARTMENT OF VETERANS AFFAIRS POLICE OFFICERS.

Section 903 is amended—

(1) by striking subsection (b) and inserting the following new subsection (b):

“(b)(1) The amount of the allowance that the Secretary may pay under this section is the lesser of—

“(A) the amount currently allowed as prescribed by the Office of Personnel Management; or

“(B) estimated costs or actual costs as determined by periodic surveys conducted by the Department.

“(2) During any fiscal year no officer shall receive more for the purchase of a uniform described in subsection (a) than the amount established under this subsection.”; and

(2) by striking subsection (c) and inserting the following new subsection (c):

“(c) The allowance established under subsection (b) shall be paid at the beginning of a Department police officer’s employment for those appointed on or after October 1, 2010. In the case of any other Department police officer, an allowance in the amount established under subsection (b) shall be paid upon the request of the officer.”.

SEC. 1003. SUBMISSION OF REPORTS TO CONGRESS BY SECRETARY OF VETERANS AFFAIRS IN ELECTRONIC FORM.

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following new section:

“§ 118. Submission of reports to Congress in electronic form

“(a) IN GENERAL.—Whenever the Secretary or any other official of the Department is required by law to submit to Congress (or any committee of either chamber of Congress) a report, the Secretary or other official shall submit to Congress (or such committee) a copy of the report in an electronic format.

“(b) TREATMENT.—The submission of a copy of a report in accordance with this section shall be treated as meeting any requirement of law to submit such report to Congress (or any committee of either chamber of Congress).

“(c) REPORT DEFINED.—For purposes of this section, the term ‘report’ includes any certification, notification, or other communication in writing.”.

(b) TECHNICAL AND CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 1 is amended—

- (1) by striking the item relating to section 117; and
- (2) by adding at the end the following new items:

“117. Advance appropriations for certain medical care accounts.

“118. Reports to Congress: submission in electronic form.”.

**SEC. 1004. DETERMINATION OF BUDGETARY EFFECTS FOR PURPOSES
OF COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT
OF 2010.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Incorporation
by reference.

Approved May 5, 2010.

LEGISLATIVE HISTORY—S. 1963:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Nov. 19, considered and passed Senate.

Vol. 156 (2010): Apr. 21, considered and passed House, amended.

Apr. 22, Senate concurred in House amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

May 5, Presidential remarks.



Public Law 111–164
111th Congress

An Act

May 7, 2010
[H.R. 4360]

To designate the Department of Veterans Affairs blind rehabilitation center in Long Beach, California, as the “Major Charles Robert Soltes, Jr., O.D. Department of Veterans Affairs Blind Rehabilitation Center”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NAME OF DEPARTMENT OF VETERANS AFFAIRS BLIND REHABILITATION CENTER, LONG BEACH, CALIFORNIA.

The Department of Veterans Affairs blind rehabilitation center in Long Beach, California, shall after the date of the enactment of this Act be known and designated as the “Major Charles Robert Soltes, Jr., O.D. Department of Veterans Affairs Blind Rehabilitation Center”. Any reference to such blind rehabilitation center in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the “Major Charles Robert Soltes, Jr., O.D. Department of Veterans Affairs Blind Rehabilitation Center”.

Approved May 7, 2010.

LEGISLATIVE HISTORY—H.R. 4360:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 24, 25, considered and passed House.

Apr. 19, considered and passed Senate.



Public Law 111–165
111th Congress

An Act

To provide that Members of Congress shall not receive a cost of living adjustment
in pay during fiscal year 2011

May 14, 2010
[H.R. 5146]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

**SECTION 1. NO COST OF LIVING ADJUSTMENT IN PAY OF MEMBERS
OF CONGRESS.** 2 USC 31 note.

Notwithstanding any other provision of law, no adjustment
shall be made under section 601(a) of the Legislative Reorganization
Act of 1946 (2 U.S.C. 31) (relating to cost of living adjustments
for Members of Congress) during fiscal year 2011.

Approved May 14, 2010.

LEGISLATIVE HISTORY—H.R. 5146 (S. 3244):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 27, considered and passed House.

Apr. 28, considered and passed Senate.



Public Law 111–166
111th Congress

An Act

May 17, 2010
[H.R. 3714]

To amend the Foreign Assistance Act of 1961 to include in the Annual Country Reports on Human Rights Practices information about freedom of the press in foreign countries, and for other purposes.

Daniel Pearl
Freedom of the
Press Act of
2009.
22 USC 2151
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Daniel Pearl Freedom of the Press Act of 2009”.

SEC. 2. INCLUSION OF ADDITIONAL INFORMATION RELATING TO FREEDOM OF THE PRESS WORLDWIDE IN ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

The Foreign Assistance Act of 1961 is amended—

(1) in section 116(d) (22 U.S.C. 2151n(d)), as amended by section 333(c) of this division—

(A) in paragraph (10), by striking “and” at the end;

(B) in paragraph (11)—

(i) in subparagraph (B), by striking “and” at the end; and

(ii) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(12) wherever applicable—

“(A) a description of the status of freedom of the press, including initiatives in favor of freedom of the press and efforts to improve or preserve, as appropriate, the independence of the media, together with an assessment of progress made as a result of those efforts;

“(B) an identification of countries in which there were violations of freedom of the press, including direct physical attacks, imprisonment, indirect sources of pressure, and censorship by governments, military, intelligence, or police forces, criminal groups, or armed extremist or rebel groups; and

“(C) in countries where there are particularly severe violations of freedom of the press—

“(i) whether government authorities of each such country participate in, facilitate, or condone such violations of the freedom of the press; and

“(ii) what steps the government of each such country has taken to preserve the safety and independence of the media, and to ensure the prosecution of

those individuals who attack or murder journalists.”;
and

(2) in section 502B (22 U.S.C. 2304), by adding at the end the following new subsection:

“(i) The report required by subsection (b) shall include, wherever applicable—

“(1) a description of the status of freedom of the press, including initiatives in favor of freedom of the press and efforts to improve or preserve, as appropriate, the independence of the media, together with an assessment of progress made as a result of those efforts;

“(2) an identification of countries in which there were violations of freedom of the press, including direct physical attacks, imprisonment, indirect sources of pressure, and censorship by governments, military, intelligence, or police forces, criminal groups, or armed extremist or rebel groups; and

“(3) in countries where there are particularly severe violations of freedom of the press—

“(A) whether government authorities of each such country participate in, facilitate, or condone such violations of the freedom of the press; and

“(B) what steps the government of each such country has taken to preserve the safety and independence of the media, and to ensure the prosecution of those individuals who attack or murder journalists.”.

Approved May 17, 2010.

LEGISLATIVE HISTORY—H.R. 3714:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 15, 16, considered and passed House.

Vol. 156 (2010): April 29, considered and passed Senate.



Public Law 111–167
111th Congress

An Act

May 24, 2010
[H.R. 1121]

To authorize a land exchange to acquire lands for the Blue Ridge Parkway from the Town of Blowing Rock, North Carolina, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Blue Ridge
Parkway and
Town of Blowing
Rock Land
Exchange Act of
2009.
16 USC 460a–5
note.
16 USC 460a–5
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Blue Ridge Parkway and Town of Blowing Rock Land Exchange Act of 2009”.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) TOWN.—The term “Town” means the Town of Blowing Rock in the State of North Carolina.

(3) MAP.—The term “map” means the National Park Service map titled “Blue Ridge Parkway, Proposed Land Exchange with Town of Blowing Rock”, numbered “601/90,000A”, and dated “April, 2008”.

(4) EXCHANGE.—The term “exchange” means the exchange of land authorized by section 3(a).

16 USC 460a–5
note.

SEC. 3. LAND EXCHANGE.

(a) IN GENERAL.—Subject to subsection (d), the Secretary may exchange approximately 20 acres of land within the boundary of the Blue Ridge Parkway that are generally depicted on the map as “Blowing Rock Reservoir”, for approximately 192 acres of land owned by the Town that are generally depicted on the map as “Town of Blowing Rock Exchange Lands”.

(b) MAP AVAILABILITY.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) TIMING.—The Secretary shall seek to complete the land exchange not later than three years after the date of the enactment of this Act.

(d) APPLICABLE LAWS; TERMS AND CONDITIONS.—The exchange shall be subject to—

(1) laws, regulations, and policies applicable to exchanges of land administered by the National Park Service, including those concerning land appraisals, equalization of values, and environmental compliance; and

(2) such terms and conditions as the Secretary considers appropriate.

(e) **EQUALIZATION OF VALUES.**—If the lands proposed for exchange are found to be not equal in value, the equalization of values may be achieved by adjusting the acreage amounts identified in subsection (a).

(f) **BOUNDARY ADJUSTMENT.**—Upon completion of the exchange, the Secretary shall adjust the boundary of the Blue Ridge Parkway to reflect the exchanged lands.

(g) **ADMINISTRATION.**—Lands acquired by the Secretary through the exchange shall be administered as part of the Blue Ridge Parkway in accordance with all applicable laws and regulations.

(h) **FUTURE DISPOSITION OF PROPERTY.**—If the Town desires to dispose of the reservoir property that is the subject of the exchange, the Secretary shall have the right of first refusal to acquire the property for the Blue Ridge Parkway.

Approved May 24, 2010.

LEGISLATIVE HISTORY—H.R. 1121:

HOUSE REPORTS: No. 111–227 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–147 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): July 27, considered and passed House.

Vol. 156 (2010): May 7, considered and passed Senate.



Public Law 111–168
111th Congress

An Act

May 24, 2010
[H.R. 1442]

To provide for the sale of the Federal Government’s reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Deadlines.

SECTION 1. CONVEYANCE OF FEDERAL REVERSIONARY INTEREST, MT. OLIVET CEMETERY, SALT LAKE CITY, UTAH.

(a) **CONVEYANCE REQUIRED.**—If, within one year after the completion of the appraisal required by subsection (c), the Mount Olivet Cemetery Association of Salt Lake City, Utah (in this section referred to as the “Association”), submits to the Secretary of the Interior an offer to acquire the Federal reversionary interest in all of the approximately 60 acres of land in Salt Lake City, Utah, conveyed to the Association under the Act of January 23, 1909 (chapter 37, 35 Stat. 589), the Secretary shall convey to the Association such reversionary interest in the lands covered by the offer. The Secretary shall complete the conveyance not later than 30 days after the date of the offer.

(b) **SURVEY.**—Not later than 90 days after the date of the enactment of this Act, the Secretary shall complete a survey of the lands described in subsection (a) to determine the precise boundaries and acreage of the lands subject to the Federal reversionary interest.

(c) **APPRAISAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall complete an appraisal of the Federal reversionary interest in the lands identified by the survey in subsection (b). The appraisal shall be completed in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice”.

(d) **CONSIDERATION.**—As consideration for the conveyance of the Federal reversionary interest under subsection (a), the Association shall pay to the Secretary an amount equal to the appraised value of the Federal interest, as determined under subsection (c). The consideration shall be paid not later than 30 days after the date the conveyance is made.

(e) **COSTS OF CONVEYANCE.**—As a condition of the conveyance under subsection (a), all costs associated with the conveyance under subsection (a), including the cost of the survey required by subsection (b) and the appraisal required by subsection (c), shall be paid by the Association.

(f) DEPOSIT AND USE OF PROCEEDS.—The Secretary shall deposit the proceeds from the conveyance under subsection (a) in the Federal Land Disposal Account established by section 206 of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305). The proceeds so deposited shall be available to the Secretary for expenditure in accordance with subsection (c) of such section.

Approved May 24, 2010.

LEGISLATIVE HISTORY—H.R. 1442:

HOUSE REPORTS: No. 111–198 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–150 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): July 14, 16, considered and passed House.

Vol. 156 (2010): May 7, considered and passed Senate.



Public Law 111–169
111th Congress

An Act

May 24, 2010
[H.R. 2802]

To provide for an extension of the legislative authority of the Adams Memorial Foundation to establish a commemorative work in honor of former President John Adams and his legacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

40 USC 8903
note.

SECTION 1. EXTENSION OF LEGISLATIVE AUTHORITY FOR MEMORIAL ESTABLISHMENT.

40 USC 1003
note.

(a) **LEGISLATIVE AUTHORITY.**—Section 1(c) of Public Law 107–62 is amended by striking “accordance with” and all that follows through the period at the end and inserting the following: “accordance with chapter 89 of title 40, United States Code, except that any reference in section 8903(e) of that chapter to the expiration at the end of or extension beyond a seven-year period shall be considered to be a reference to an expiration on or extension beyond December 2, 2013.”.

(b) **TECHNICAL AMENDMENTS.**—Public Law 107–62 is amended—

40 USC 1003
note.

(1) in section 1(e), by striking “(40 U.S.C. 1001, et seq.)” and inserting “(40 U.S.C. 8901 et seq.)”; and

(2) in section 2, by striking “(40 U.S.C. 1002)” and inserting “(40 U.S.C. 8902(a))”.

Approved May 24, 2010.

LEGISLATIVE HISTORY—H.R. 2802:

HOUSE REPORTS: No. 111–261 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–155 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Sept. 22, considered and passed House.

Vol. 156 (2010): May 7, considered and passed Senate.



Public Law 111–170
111th Congress

An Act

To amend title 39, United States Code, to clarify the instances in which the term “census” may appear on mailable matter.

May 24, 2010
[H.R. 5148]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. REQUIREMENT FOR MAIL BEARING THE TERM “CENSUS”
ON THE ENVELOPE OR OUTSIDE COVER OR WRAPPER.**

(a) MATTER SOLICITING THE PURCHASE OF A PRODUCT OR SERVICE.—Section 3001(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting “; or on which the term ‘census’ is visible through the envelope or outside cover or wrapper” after “or which bears the term ‘census’ on the envelope or outside cover or wrapper”; and

(2) in paragraph (2), by inserting “or matter on which the term ‘census’ is visible through the envelope or outside cover or wrapper” after “In the case of matter bearing the term ‘census’ on the envelope or outside cover or wrapper”.

(b) MATTER SOLICITING INFORMATION OR CONTRIBUTION OF FUNDS.—Section 3001(i) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting “; or on which the term ‘census’ is visible through the envelope or outside cover or wrapper” after “or which bears the term ‘census’ on the envelope or outside cover or wrapper”; and

(2) in paragraph (2), by inserting “or matter on which the term ‘census’ is visible through the envelope or outside cover or wrapper” after “In the case of matter bearing the term ‘census’ on the envelope or outside cover or wrapper”.

Approved May 24, 2010.

LEGISLATIVE HISTORY—H.R. 5148:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 28, considered and passed House.

May 5, considered and passed Senate.



Public Law 111–171
111th Congress

An Act

May 24, 2010
[H.R. 5160]

To extend the Caribbean Basin Economic Recovery Act, to provide customs support services to Haiti, and for other purposes.

Haiti Economic
Lift Program Act
of 2010.
19 USC 2701
note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Haiti Economic Lift Program Act of 2010”.

19 USC 2703a
note.

SEC. 2. FINDINGS.

Congress finds the following:

(1) On January 12, 2010, Haiti was hit by a 7.0 magnitude earthquake, the worst earthquake to affect Haiti in recorded history. Aftershocks from the earthquake, measuring up to 6.0 on the Richter scale, continued for days afterwards.

(2) The earthquake has devastated Haiti’s infrastructure, including homes, offices, factories, roads, ports, communications, and other facilities. The loss of life attributable to the earthquake was massive.

(3) Even before the earthquake, Haiti was the poorest country in the Western Hemisphere, ranking 149 out of 182 countries according to the United Nation’s Human Development Index.

(4) In recent years, however, the Government and people of Haiti had taken important steps forward to promote economic growth and development, including making strides towards establishing a competitive apparel sector.

(5) United States trade preference programs, including the Caribbean Basin Economic Recovery Act (as amended by the United States-Caribbean Basin Trade Partnership Act, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, and the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008), which extend duty-free tariff treatment to certain apparel produced in Haiti, have made an important contribution to Haiti’s economic development efforts.

(6) However, the Haitian apparel sector has been hard hit by the January 12, 2010, earthquake. A number of apparel factories based in and around Port-au-Prince have been heavily damaged, including the collapse of one major apparel factory that had employed nearly 4,000 workers.

(7) The Port-au-Prince seaport that had served the apparel trade has been badly damaged. And extensive damage to roads

has made it difficult to transport apparel to the Dominican Republic for shipment from ports in that country.

(8) According to estimates by the Department of Commerce, imports of apparel articles from Haiti to the United States in 2010 have decreased by 43 percent as compared to the same period in 2009.

(9) The earthquake has increased significantly the costs and uncertainty of doing business in Haiti. A strong and unequivocal commitment from the United States is needed to help Haiti offset these costs and preserve the gains made under United States trade preference programs, and to encourage buyers and investors to stand with Haiti through this crisis.

SEC. 3. EXTENSION OF CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended—

(1) in section 213(b)—

19 USC 2703.

(A) in paragraph (2)(A)—

(i) in clause (iii)—

(I) in subclause (II)(cc), by striking “September 30, 2010” and inserting “September 30, 2020”; and

(II) in subclause (IV)(dd), by striking “September 30, 2010” and inserting “September 30, 2020”; and

(ii) in clause (iv)(II), by striking “8” and inserting “18”; and

(B) in paragraph (5)(D)(i), by striking “September 30, 2010” and inserting “September 30, 2020”; and

(2) in section 213A(h), by striking “September 30, 2018” and inserting “September 30, 2020”. 19 USC 2703a.

SEC. 4. APPAREL AND OTHER ARTICLES SUBJECT TO CERTAIN ASSEMBLY RULES.

(a) CERTAIN OTHER APPAREL ARTICLES.—Section 213A(b)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a(b)(3)) is amended by adding at the end the following:

“(F) CERTAIN OTHER APPAREL ARTICLES.—

“(i) IN GENERAL.—Any of the apparel articles described in clause (ii) that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

“(ii) ARTICLES DESCRIBED.—Apparel articles described in this clause are apparel articles in the following category numbers that fall within the following statistical reporting numbers of the HTS (as in effect on the day before the date of the enactment of this subparagraph):

“Category Number	HTS Statistical Reporting Number
334	6101.90.9010 6112.11.0010 6103.22.0010 6113.00.9015
335	6104.22.0010 6104.29.2010 6112.11.0020
336	6104.49.9010
338	6103.22.0050 6105.90.8010 6112.11.0030
339	6104.22.0060 6104.29.2049 6106.90.2510 6106.90.3010 6110.20.1031 6110.20.1033 6112.11.0040
342	6104.22.0030 6104.29.2022 6104.52.0010 6104.52.0020 6104.59.8010
350	6107.91.0040 6107.91.0090
351	6107.21.0010 6107.21.0020 6107.91.0030 6108.31.0010 6108.31.0020
433	6103.23.0007 6103.29.0520 6103.31.0000 6103.33.1000 6103.39.8020
434	6101.30.1500

	6101.90.0500 6101.90.9020 6103.23.0005 6103.29.0510
435	6102.30.1000 6102.90.9010 6104.23.0010 6104.29.0510 6104.29.2012 6104.33.1000 6104.39.2020
438	6103.23.0025 6103.29.0550 6104.23.0020 6104.29.0560 6104.29.2051 6105.90.1000 6105.90.8020 6106.20.1020 6106.90.1010 6106.90.1020 6106.90.2520 6106.90.3020 6110.11.0070 6110.12.2070 6110.12.2080 6110.19.0070 6110.19.0080 6110.30.1550 6110.30.1560
633	6103.23.0037 6103.29.1015 6103.33.2000 6103.39.1000 6103.39.8030
634	6101.30.1000 6101.90.9030 6103.23.0036 6103.29.1010 6112.12.0010 6112.19.1010 6112.20.1010 6112.20.1030

	6113.00.9025
635	6102.30.0500 6102.90.9015 6104.23.0026 6104.29.1010 6104.29.2014 6104.39.2030 6112.12.0020 6112.19.1020 6112.20.1020 6112.20.1040 6113.00.9030
636	6104.49.9030 6104.44.2020
638	6103.23.0075 6103.29.1050 6105.90.8030 6110.30.1050 6110.30.2051 6110.30.2053 6112.12.0030 6112.19.1030
639	6104.23.0036 6104.29.1050 6104.29.2055 6106.90.2530 6106.90.3030 6110.30.1060 6110.30.2061 6110.30.2063 6112.12.0040 6112.19.1040
651	6107.22.0010 6107.22.0015 6107.22.0025 6107.99.1030 6108.32.0015

“(iii) CATEGORY DEFINED.—In this subparagraph, the term ‘category’ has the meaning given that term in paragraph (2A)(E) of this subsection.”.

(b) MADE-UP TEXTILE ARTICLES.—Section 213A(b)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a(b)(3)),

as amended by subsection (a), is further amended by adding at the end the following:

“(G) MADE-UP TEXTILE ARTICLES.—

“(i) IN GENERAL.—Any of the made-up textile articles described in clauses (ii) and (iii) that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

“(ii) ARTICLES DESCRIBED.—Made-up textile articles described in this clause are articles in the following category numbers that fall within the following statistical reporting numbers of the HTS (as in effect on the day before the date of the enactment of this subparagraph):

“Category Number	HTS Statistical Reporting Number
363	6302.60.0020
	6302.91.0015
	6302.91.0035
	6307.90.8940
369	6304.91.0020
	6304.92.0000
	6302.60.0010
	6302.60.0030
	6302.91.0005
	6302.91.0050
	6307.90.8910
	6307.90.8945
	5701.90.2020
	5702.39.2010
	5702.50.5600
	5702.99.0500
	5702.99.1500
	5705.00.2020
	5807.10.0510
	5807.90.0510
	6307.90.3010
	6301.30.0010
	6305.20.0000
	6307.10.1020
	6307.10.1090
	6406.10.7700
	9404.90.1000

	9404.90.9505 6301.30.0020 6302.91.0045
465	5701.10.9000 5702.50.2000 5702.50.4000 5702.91.3000 5702.91.4000 5703.10.2000 5703.10.8000 5704.10.0010 5705.00.2005 5705.00.2015 5702.31.1000 5702.31.2000
469	6304.19.3040 6304.91.0050 6304.99.1500 6304.99.6010 5601.29.0020 6302.39.0010 6406.10.9020
665	5701.90.1030 5701.90.2030 5702.32.1000 5702.32.2000 5702.42.2090 5702.50.5200 5702.92.1000 5702.92.9000 5703.20.1000 5703.30.2000 5703.30.8030 5703.30.8080 5704.10.0090 5705.00.2030 5703.20.2010 5703.20.2090
666	6304.11.2000 6304.91.0040 6304.93.0000 6304.99.6020 6301.40.0010 6301.40.0020

	6301.90.0010
669	5601.10.2000
	5601.22.0090
	5807.10.0520
	5807.90.0520
	6307.90.3020
	6305.32.0010
	6305.32.0020
	6305.32.0050
	6305.32.0060
	6305.39.0000
	6406.10.9040
	6308.00.0020
899	6304.11.3000
	6304.19.3060
	6304.91.0070
	6304.99.3500
	6304.99.6040
	5601.29.0090
	6301.90.0030
	6305.90.0000
	6406.10.9060
900	5601.29.0010
	5701.90.2010
	6301.90.0020

“(iii) OTHER ARTICLES DESCRIBED.—Made-up textile articles described in this clause are articles that fall within statistical reporting number 6406.10.9090 of the HTS (as in effect on the day before the date of the enactment of this subparagraph).

“(iv) CATEGORY DEFINED.—In this subparagraph, the term ‘category’ has the meaning given that term in paragraph (2A)(E) of this subsection.”.

SEC. 5. MODIFICATION OF TARIFF PREFERENCE LEVELS; VERIFICATION WITH RESPECT TO TRANSHIPMENT FOR CERTAIN APPAREL ARTICLES.

Section 213A(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a(b)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii)—

(i) by striking “The preferential treatment” and inserting “Except as provided in paragraph (2A), the preferential treatment”; and

(ii) by striking “9” and inserting “11”; and

(B) in subparagraph (B)(iii)—

(i) by striking “The preferential treatment” and inserting “Except as provided in paragraph (2A), the preferential treatment”; and

(ii) by striking “9” and inserting “11”; and

(2) by inserting after paragraph (2) the following:

“(2A) SPECIAL RULE FOR CERTAIN WOVEN ARTICLES AND CERTAIN KNIT ARTICLES ENTERED DURING FISCAL YEAR 2010 AND SUCCEEDING 1-YEAR PERIODS.—

President.
Notice.
Federal Register,
publication.

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C) and subject to subparagraph (D), if 52,000,000 square meter equivalents of apparel articles described in paragraph (2)(A)(i) or (2)(B)(i) enter the United States during the 1-year period beginning October 1, 2009, or any of the succeeding 1-year periods, the President shall extend the preferential treatment described in paragraph (2)(A)(i) or (2)(B)(i) (as the case may be) to not more than 200,000,000 square meter equivalents of apparel articles described in paragraph (2)(A)(i) or (2)(B)(i) (as the case may be) during that 1-year period, and shall publish notice of the extension in the Federal Register.

“(B) EXCEPTION FOR CERTAIN WOVEN ARTICLES.—

“(i) IN GENERAL.—In the case of apparel articles described in clause (ii), subparagraph (A) shall be applied by substituting ‘70,000,000’ for ‘200,000,000’.

“(ii) APPAREL ARTICLES DESCRIBED.—Apparel articles described in this clause are apparel articles described in paragraph (2)(A)(i) that are the following:

“(I) CATEGORY 347.—Apparel articles in category 347 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before the date of the enactment of this paragraph):

“6203.19.1020	6203.42.4011	6203.42.4061
6203.19.9020	6203.42.4016	6203.49.8020
6203.22.3020	6203.42.4026	6210.40.9033
6203.22.3030	6203.42.4036	6211.20.1520
6203.42.4003	6203.42.4046	6211.20.3810
6203.42.4006	6203.42.4051	6211.32.0040

“(II) CATEGORY 348.—Apparel articles in category 348 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before the date of the enactment of this paragraph):

“6204.12.0030	6204.62.4011	6204.69.9010
6204.19.8030	6204.62.4021	6210.50.9060
6204.22.3040	6204.62.4031	6211.20.1550
6204.22.3050	6204.62.4041	6211.20.6810
6204.29.4034	6204.62.4051	6211.42.0030
6204.62.3000	6204.62.4056	6217.90.9050
6204.62.4003	6204.62.4066	
6204.62.4006	6204.69.6010	

“(III) CATEGORY 647.—Apparel articles in category 647 that fall within the following statistical reporting numbers of the HTS (as in effect on

the day before the date of the enactment of this paragraph):

“6203.23.0060	6203.43.4020	6203.49.8030
6203.23.0070	6203.43.4030	6210.40.5031
6203.29.2030	6203.43.4040	6210.40.5039
6203.29.2035	6203.49.1500	6211.20.1525
6203.43.2500	6203.49.2015	6211.20.3820
6203.43.3510	6203.49.2030	6211.33.0030
6203.43.3590	6203.49.2045	
6203.43.4010	6203.49.2060	

“(IV) CATEGORY 648.—Apparel articles in category 648 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before the date of the enactment of this paragraph):

“6204.23.0040	6204.63.3510	6204.69.6030
6204.23.0045	6204.63.3530	6204.69.9030
6204.29.2020	6204.63.3532	6210.50.5031
6204.29.2025	6204.63.3540	6210.50.5039
6204.29.4038	6204.69.2510	6211.20.1555
6204.63.2000	6204.69.2530	6211.20.6820
6204.63.3010	6204.69.2540	6211.43.0040
6204.63.3090	6204.69.2560	6217.90.9060

“(C) EXCEPTION FOR CERTAIN KNIT ARTICLES.—

“(i) IN GENERAL.—In the case of apparel articles described in clause (ii), subparagraph (A) shall be applied by substituting ‘85,000,000’ for ‘200,000,000’.

“(ii) APPAREL ARTICLES DESCRIBED.—Apparel articles described in this clause are apparel articles described in paragraph (2)(B)(i) that fall within the following statistical reporting numbers of the HTS (as in effect on the day before the date of the enactment of this paragraph), other than shirts with plackets and pointed collars:

“6105.10.0010	6109.10.0040	6110.30.3053
6109.10.0018	6109.10.0045	6110.30.3059
6109.10.0027	6110.20.2079	

“(D) VERIFICATION WITH RESPECT TO TRANSSHIPMENT FOR CERTAIN APPAREL ARTICLES.—

“(i) IN GENERAL.—Not later than April 1, July 1, October 1, and January 1 of each year, the Commissioner responsible for United States Customs and Border Protection shall verify that apparel articles imported into the United States under this paragraph are not being unlawfully transshipped (within the meaning of subsection (f)) into the United States. Deadlines.

“(ii) REPORT TO PRESIDENT.—If the Commissioner determines pursuant to clause (i) that apparel articles imported into the United States under this paragraph are being unlawfully transshipped into the United States, the Commissioner shall report that determination to the President.

Time period.
President.

“(iii) **AUTHORITY TO REDUCE QUANTITATIVE LIMITATION.**—If, in any 1-year period with respect to which the President extends preferential treatment as described in this paragraph, the Commissioner reports to the President pursuant to clause (ii) regarding unlawful transshipments, the President—

“(I) may modify the quantitative limitation under this paragraph as the President considers appropriate to account for such transshipments; and

Notice.
Federal Register,
publication.

“(II) if the President modifies the limitation under subclause (I), shall publish notice of the modification in the Federal Register.

“(E) **CATEGORY DEFINED.**—In this paragraph, the term ‘category’ means the number assigned under the U.S. Textile and Apparel Category System of the Office of Textiles and Apparel of the Department of Commerce, as listed in the HTS under the applicable heading or subheading (as in effect on the day before the date of the enactment of this paragraph).”.

SEC. 6. EARNED IMPORT ALLOWANCE RULE.

Section 213A(b)(4)(B)(ii)(I) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a(b)(4)(B)(ii)(I)) is amended by striking “three” and inserting “two”.

SEC. 7. EXTENSION OF VALUE-ADDED RULE.

Section 213A of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a), as amended by this Act, is further amended—

(1) in subsection (a), by striking paragraph (1) and inserting the following:

“(1) **INITIAL APPLICABLE 1-YEAR PERIOD.**—The term ‘initial applicable 1-year period’ means the 1-year period beginning on December 20, 2006.”; and

(2) in subsection (b)(1)—

(A) in subparagraph (A), by striking “an applicable 1-year period” and inserting “the initial applicable 1-year period and any 1-year period thereafter”;

(B) in subparagraph (B)—

(i) in clause (i)—

(I) by striking “any applicable 1-year period” and inserting “the initial applicable 1-year period and any 1-year period thereafter”; and

(II) by striking “the applicable 1-year period” and inserting “that 1-year period”;

(ii) in clause (iv)(II)—

(I) in the subclause heading, by striking “APPLICABLE”;

(II) by striking “In each of the second, third, fourth, and fifth applicable 1-year periods” and inserting “In any 1-year period after the initial applicable 1-year period”; and

(III) by striking “applicable 1-year period” each place it appears and inserting “1-year period”;

(iii) in clause (v)(I)—

(I) in item (aa), by striking “, the second applicable 1-year period, and the third applicable

1-year period” and inserting “and the succeeding 8 1-year periods”;

(II) in item (bb), by striking “the fourth applicable 1-year period” and inserting “the 1-year period beginning on December 20, 2015, and the 1-year period beginning on December 20, 2016”; and

(III) in item (cc), by striking “the fifth applicable 1-year period” and inserting “the 1-year period beginning on December 20, 2017”; and

(iv) in clause (vi)—

(I) in subclause (II)—

(aa) by striking “any applicable 1-year period” and inserting “the initial applicable 1-year period or any 1-year period thereafter”; and

(bb) by striking “applicable 1-year period” each place it appears and inserting “1-year period”; and

(II) in subclause (III)—

(aa) in item (aa), by striking “an applicable 1-year period” and inserting “the initial applicable 1-year period or any 1-year period thereafter”; and

(bb) by striking “applicable 1-year period” each place it appears and inserting “1-year period”; and

(C) in subparagraph (C)—

(i) by striking “applicable 1-year periods” and inserting “1-year periods”;

(ii) by striking the table and inserting the following:

“During:	the corresponding percentage is:
-----------------	---

the initial applicable 1-year period	1 percent.
each of the succeeding 11 1-year periods	1.25 percent.”;

and

(iii) in the flush text, by striking “the last day of the fifth applicable 1-year period” and inserting “December 19, 2018”.

SEC. 8. WIRE HARNESES.

Section 213A(c) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703A(c)) is amended by striking “5-year period” and inserting “10-year period”. 19 USC 2703a.

SEC. 9. CUSTOMS SUPPORT SERVICES.

19 USC 2703a note.

(a) IN GENERAL.—

(1) RAPID RESPONSE TEAM.—The Commissioner responsible for United States Customs and Border Protection (in this section referred to as the “Commissioner”) shall, in consultation with the United States Coast Guard, the Drug Enforcement

Agency, and other Federal agencies, as appropriate, seek to send a rapid response team to Haiti—

(A) to assess the short-term and long-term technical, capacity-building, and training needs of the authorities of the Government of Haiti responsible for customs services; and

(B) to provide immediate assistance, as warranted, particularly with respect to—

(i) reestablishing full capacity for commercial port operations at the seaport at Port-au-Prince;

(ii) facilitating trade between the United States and Haiti under the Caribbean Basin Economic Recovery Act, as amended by this Act;

(iii) preventing unlawful transshipment of goods through Haiti to the United States; and

(iv) otherwise strengthening cooperation between the customs authorities of the United States, Haiti, and the Dominican Republic with respect to trade facilitation and economic development, customs compliance and law enforcement, and efforts to combat unlawful trafficking in narcotic drugs and psychotropic substances.

(2) REPORT.—Not later than 75 days after the date of the enactment of this Act, the Commissioner shall prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a nonconfidential report summarizing the results of the assessment required by paragraph (1)(A), including—

(A) a description of the short-term and long-term technical, capacity-building, and training needs of the authorities of the Government of Haiti responsible for customs services, including a prioritization of immediate infrastructure needs;

(B) a multi-year plan for supplying technical, capacity-building, and training assistance to those authorities, including specific responsibilities to be undertaken by the support team authorized by subsection (b); and

(C) a statement of the amount and purpose for which any funds were expended by the rapid response team in Haiti to administer the provisions of this section, including any expenditure of funds authorized to be appropriated pursuant to subsection (c)(1).

(b) SUPPORT TEAM.—

(1) IN GENERAL.—The Commissioner shall, in consultation with other Federal agencies, as appropriate, seek to establish a support team in Haiti for the purpose of helping to meet the short-term and long-term technical, capacity-building, and training needs of the authorities of the Government of Haiti responsible for customs services, as described in this section.

(2) TERMINATION.—The support team authorized by paragraph (1) shall terminate on September 30, 2020.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the United States Customs and Border Protection Agency, to remain available until expended—

(A) \$100,000 to help meet the immediate infrastructure needs of the authorities of the Government of Haiti responsible for customs services for the purpose of facilitating trade between the United States and Haiti under the Caribbean Basin Economic Recovery Act, as amended by this Act; and

(B) \$750,000 for each of the fiscal years 2011 through 2020 for the purpose of maintaining the support team authorized by subsection (b).

(2) SUPPLEMENT AND NOT SUPPLANT.—The amounts authorized to be appropriated by paragraph (1) shall supplement and not supplant any other funds authorized to be appropriated to the Department of Homeland Security.

SEC. 10. SENSE OF CONGRESS.

(a) REGIONAL COOPERATION.—It is the sense of Congress that the United States Trade Representative should seek to enter into consultations with representatives of countries with which the United States has a trading relationship for the purpose of encouraging those countries to establish bilateral trade preference programs with respect to textile and apparel articles produced in Haiti.

(b) TRANSSHIPMENT.—It is the sense of Congress that the Commissioner responsible for United States Customs and Border Protection should, in consultation with the United States Trade Representative and the Secretary of Commerce, seek to enter into consultations with representatives of countries with which the United States has a trading relationship for the purpose of preventing the unlawful transshipment of textile and apparel articles from those countries through Haiti.

SEC. 11. CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—

(1) in subparagraph (A), by striking “May 14, 2018” and inserting “November 10, 2018”; and

(2) in subparagraph (B)(i), by striking “June 7, 2018” and inserting “August 17, 2018”.

SEC. 12. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

(a) SHIFT FROM 2015 TO 2014.—The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 0.75 percentage points.

26 USC 6655
note.

(b) SHIFT FROM 2016 TO 2015.—The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 0.75 percentage points.

26 USC 6655
note.

SEC. 13. BUDGET COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved May 24, 2010.

LEGISLATIVE HISTORY—H.R. 5160:

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 5, considered and passed House.

May 6, considered and passed Senate.



Public Law 111–172
111th Congress

An Act

To support stabilization and lasting peace in northern Uganda and areas affected by the Lord’s Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord’s Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

May 24, 2010
[S. 1067]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act of 2009”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) For over 2 decades, the Government of Uganda engaged in an armed conflict with the Lord’s Resistance Army (LRA) in northern Uganda that led to the internal displacement of more than 2,000,000 Ugandans from their homes.

(2) The members of the Lord’s Resistance Army used brutal tactics in northern Uganda, including mutilating, abducting and forcing individuals into sexual servitude and forcing a large number of children and youth in Uganda, estimated by the Survey for War Affected Youth to be over 66,000, to fight as part of the rebel force.

(3) The Secretary of State has placed the Lord’s Resistance Army on the Terrorist Exclusion list pursuant to section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), and LRA leader Joseph Kony has been designated a “specially designated global terrorist” pursuant to Executive Order 13224.

(4) In late 2005, according to the United Nations Office for Coordination of Humanitarian Affairs, the Lord’s Resistance Army shifted their primary base of operations from southern Sudan to northeastern Democratic Republic of Congo, and the rebels have since withdrawn from northern Uganda.

(5) Representatives of the Government of Uganda and the Lord’s Resistance Army began peace negotiations in 2006, mediated by the Government of Southern Sudan in Juba, Sudan, and signed the Cessation of Hostilities Agreement on August 20, 2006, which provided for hundreds of thousands of internally displaced people to return home in safety.

(6) After nearly 2 years of negotiations, representatives from the parties reached the Final Peace Agreement in April

Lord’s Resistance
Army
Disarmament
and Northern
Uganda Recovery
Act of 2009.
22 USC 2151
note.
22 USC 2151
note.

2008, but Joseph Kony, the leader of the Lord's Resistance Army, refused to sign the Final Peace Agreement in May 2008 and his forces launched new attacks in northeastern Congo.

(7) According to the United Nations Office for the Coordination of Humanitarian Relief and the United Nations High Commissioner for Refugees, the new activity of the Lord's Resistance Army in northeastern Congo and southern Sudan since September 2008 has led to the abduction of at least 1,500 civilians, including hundreds of children, and the displacement of more than 540,000 people.

(8) In December 2008, the military forces of Uganda, the Democratic Republic of Congo, and southern Sudan launched a joint operation against the Lord's Resistance Army's bases in northeastern Congo, but the operation failed to apprehend Joseph Kony, and his forces retaliated with a series of new attacks and massacres in Congo and southern Sudan, killing an estimated 900 people in 2 months alone.

(9) Despite the refusal of Joseph Kony to sign the Final Peace Agreement, the Government of Uganda has committed to continue reconstruction plans for northern Uganda, and to implement those mechanisms of the Final Peace Agreement not conditional on the compliance of the Lord's Resistance Army.

(10) Since 2008, recovery efforts in northern Uganda have moved forward with the financial support of the United States and other donors, but have been hampered by a lack of strategic coordination, logistical delays, and limited leadership from the Government of Uganda.

22 USC 2151
note.

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States to work with regional governments toward a comprehensive and lasting resolution to the conflict in northern Uganda and other affected areas by—

(1) providing political, economic, military, and intelligence support for viable multilateral efforts to protect civilians from the Lord's Resistance Army, to apprehend or remove Joseph Kony and his top commanders from the battlefield in the continued absence of a negotiated solution, and to disarm and demobilize the remaining Lord's Resistance Army fighters;

(2) targeting assistance to respond to the humanitarian needs of populations in northeastern Congo, southern Sudan, and Central African Republic currently affected by the activity of the Lord's Resistance Army; and

(3) further supporting and encouraging efforts of the Government of Uganda and civil society to promote comprehensive reconstruction, transitional justice, and reconciliation in northern Uganda as affirmed in the Northern Uganda Crisis Response Act of 2004 (Public Law 108–283) and subsequent resolutions, including Senate Resolution 366, 109th Congress, agreed to February 2, 2006, Senate Resolution 573, 109th Congress, agreed to September 19, 2006, Senate Concurrent Resolution 16, 110th Congress, agreed to in the Senate March 1, 2007, and House Concurrent Resolution 80, 110th Congress, agreed to in the House of Representatives June 18, 2007.

SEC. 4. REQUIREMENT OF A STRATEGY TO SUPPORT THE DISARMAMENT OF THE LORD’S RESISTANCE ARMY.22 USC 2151
note.

(a) **REQUIREMENT FOR STRATEGY.**—Not later than 180 days after the date of the enactment of this Act, the President shall develop and submit to the appropriate committees of Congress a strategy to guide future United States support across the region for viable multilateral efforts to mitigate and eliminate the threat to civilians and regional stability posed by the Lord’s Resistance Army.

Deadline.
President.

(b) **CONTENT OF STRATEGY.**—The strategy shall include the following:

(1) A plan to help strengthen efforts by the United Nations and regional governments to protect civilians from attacks by the Lord’s Resistance Army while supporting the development of institutions in affected areas that can help to maintain the rule of law and prevent conflict in the long term.

(2) An assessment of viable options through which the United States, working with regional governments, could help develop and support multilateral efforts to eliminate the threat posed by the Lord’s Resistance Army.

(3) An interagency framework to plan, coordinate, and review diplomatic, economic, intelligence, and military elements of United States policy across the region regarding the Lord’s Resistance Army.

(4) A description of the type and form of diplomatic engagement across the region undertaken to coordinate and implement United States policy regarding the Lord’s Resistance Army and to work multilaterally with regional mechanisms, including the Tripartite Plus Commission and the Great Lakes Pact.

(5) A description of how this engagement will fit within the context of broader efforts and policy objectives in the Great Lakes Region.

(c) **FORM.**—The strategy under this section shall be submitted in unclassified form, but may include a classified annex.

SEC. 5. HUMANITARIAN ASSISTANCE FOR AREAS OUTSIDE UGANDA AFFECTED BY THE LORD’S RESISTANCE ARMY.

In accordance with section 491 of the Foreign Assistance Act of 1961 (22 U.S.C. 2292) and section 2 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601), the President is authorized to provide additional assistance to the Democratic Republic of Congo, southern Sudan, and Central African Republic to respond to the humanitarian needs of populations directly affected by the activity of the Lord’s Resistance Army.

President.
Democratic
Republic of the
Congo.
Sudan.
Central African
Republic.
22 USC 2151
note.**SEC. 6. ASSISTANCE FOR RECOVERY AND RECONSTRUCTION IN NORTHERN UGANDA.**22 USC 2151
note.

(a) **AUTHORITY.**—It is the sense of Congress that the President should support efforts by the people of northern Uganda and the Government of Uganda—

(1) to assist internally displaced people in transition and returnees to secure durable solutions by spurring economic revitalization, supporting livelihoods, helping to alleviate poverty, and advancing access to basic services at return sites, specifically clean water, health care, and schools;

(2) to enhance the accountability and administrative competency of local governance institutions and public agencies

in northern Uganda with regard to budget management, provision of public goods and services, and related oversight functions;

(3) to strengthen the operational capacity of the civilian police in northern Uganda to enhance public safety, prevent crime, and deal sensitively with gender-based violence, while strengthening accountability measures to prevent corruption and abuses;

(4) to rebuild and improve the capacity of the justice system in northern Uganda, including the courts and penal systems, with particular sensitivity to the needs and rights of women and children;

(5) to establish mechanisms for the disarmament, demobilization, and reintegration of former combatants and those abducted by the LRA, including vocational education and employment opportunities, with attention given to the roles and needs of men, women and children; and

(6) to promote programs to address psychosocial trauma, particularly post-traumatic stress disorder.

(b) FUTURE YEAR FUNDING.—It is the sense of Congress that the Secretary of State and Administrator of the United States Agency for International Development should work with the appropriate committees of Congress to increase assistance in future fiscal years to support activities described in this section if the Government of Uganda demonstrates a commitment to transparent and accountable reconstruction in war-affected areas of northern Uganda, specifically by—

(1) finalizing the establishment of mechanisms within the Office of the Prime Minister to sufficiently manage and coordinate the programs under the framework of the Peace Recovery and Development Plan for Northern Uganda (PRDP);

(2) increasing oversight activities and reporting, at the local and national level in Uganda, to ensure funds under the Peace Recovery and Development Plan for Northern Uganda framework are used efficiently and with minimal waste; and

(3) committing substantial funds of its own, above and beyond standard budget allocations to local governments, to the task of implementing the Peace Recovery and Development Plan for Northern Uganda such that communities affected by the war can recover.

(c) COORDINATION WITH OTHER DONOR NATIONS.—The United States should work with other donor nations to increase contributions for recovery efforts in northern Uganda and better leverage those contributions to enhance the capacity and encourage the leadership of the Government of Uganda in promoting transparent and accountable reconstruction in northern Uganda.

(d) TERMINATION OF ASSISTANCE.—It is the sense of Congress that the Secretary of State should withhold non-humanitarian bilateral assistance to the Republic of Uganda if the Secretary determines that the Government of Uganda is not committed to reconstruction and reconciliation in the war-affected areas of northern Uganda and is not taking proactive steps to ensure this process moves forward in a transparent and accountable manner.

SEC. 7. ASSISTANCE FOR RECONCILIATION AND TRANSITIONAL JUSTICE IN NORTHERN UGANDA.22 USC 2151
note.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, despite reconstruction and development efforts, a continued failure to take meaningful steps toward national reconciliation and accountability risks perpetuating longstanding political grievances and fueling new conflicts.

(b) AUTHORITY.—In accordance with section 531 of the Foreign Assistance Act of 1961 (22 U.S.C. 2346), the President is authorized to support efforts by the people of northern Uganda and the Government of Uganda to advance efforts to promote transitional justice and reconciliation on both local and national levels, including to encourage implementation of the mechanisms outlined in the Annexure to the Agreement on Accountability and Reconciliation between the Government of Uganda and the Lord's Resistance Army/Movement, signed at Juba February 19, 2008, namely—

(1) a body to investigate the history of the conflict, inquire into human rights violations committed during the conflict by all sides, promote truth-telling in communities, and encourage the preservation of the memory of events and victims of the conflict through memorials, archives, commemorations, and other forms of preservation;

(2) a special division of the High Court of Uganda to try individuals alleged to have committed serious crimes during the conflict, and a special unit to carry out investigations and prosecutions in support of trials;

(3) a system for making reparations to victims of the conflict; and

(4) a review and strategy for supporting transitional justice mechanisms in affected areas to promote reconciliation and encourage individuals to take personal responsibility for their conduct during the war.

SEC. 8. REPORT.22 USC 2151
note.

(a) REPORT REQUIRED.—Not later than 1 year after the submission of the strategy required under section 4, the Secretary of State shall prepare and submit to the appropriate committees of Congress a report on the progress made toward the implementation of the strategy required under section 4 and a description and evaluation of the assistance provided under this Act toward the policy objectives described in section 3.

(b) CONTENTS.—The report required under section (a) shall include—

(1) a description and evaluation of actions taken toward the implementation of the strategy required under section 4;

(2) a description of assistance provided under sections 5, 6, and 7;

(3) an evaluation of bilateral assistance provided to the Republic of Uganda and associated programs in light of stated policy objectives;

(4) a description of the status of the Peace Recovery and Development Plan for Northern Uganda and the progress of the Government of Uganda in fulfilling the steps outlined in section 6(b); and

(5) a description of amounts of assistance committed, and amounts provided, to northern Uganda during the reporting period by the Government of Uganda and each donor country.

(c) FORM.—The report under this section shall be submitted in unclassified form, but may include a classified annex.

22 USC 2151
note.

SEC. 9. SENSE OF CONGRESS ON FUNDING.

It is the sense of Congress that—

(1) of the total amounts to be appropriated for fiscal year 2011 for the Department of State and foreign operations, up to \$10,000,000 should be used to carry out activities under section 5; and

(2) of the total amounts to be appropriated for fiscal year 2011 through 2013 for the Department of State and foreign operations, up to \$10,000,000 in each such fiscal year should be used to carry out activities under section 7.

22 USC 2151
note.

SEC. 10. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives.

(2) GREAT LAKES REGION.—The term “Great Lakes Region” means the region comprising Burundi, Democratic Republic of Congo, Rwanda, southern Sudan, and Uganda.

(3) LRA-AFFECTED AREAS.—The term “LRA-affected areas” means those portions of northern Uganda, southern Sudan, northeastern Democratic Republic of Congo, and southeastern Central African Republic determined by the Secretary of State to be affected by the Lord’s Resistance Army as of the date of the enactment of this Act.

Approved May 24, 2010.

LEGISLATIVE HISTORY—S. 1067:

SENATE REPORTS: No. 111–108 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 10, considered and passed Senate.

May 12, considered and passed House.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

May 24, Presidential statement.



Public Law 111–173
111th Congress

An Act

To clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage.

May 27, 2010
[H.R. 5014]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF HEALTH CARE PROVIDED BY THE SECRETARY OF VETERANS AFFAIRS THAT CONSTITUTES MINIMUM ESSENTIAL COVERAGE.

(a) **IN GENERAL.**—Clause (v) of section 5000A(f)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended to read as follows:

Ante, p. 248.

“(v) a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary,”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act.

26 USC
5000A note.

Approved May 27, 2010.

LEGISLATIVE HISTORY—H.R. 5014 (S. 3162):

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 12, considered and passed House.

May 18, considered and passed Senate.



Public Law 111–174
111th Congress

An Act

May 27, 2010
[S. 1782]

To provide improvements for the operations of the Federal courts, and for other purposes.

Federal Judiciary
Administrative
Improvements
Act of 2010.
18 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Judiciary Administrative Improvements Act of 2010”.

SEC. 2. SENIOR JUDGE GOVERNANCE CORRECTION.

Section 631(a) of title 28, United States Code, is amended in the first sentence by striking “(including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed)”.

SEC. 3. REVISION OF STATUTORY DESCRIPTION OF THE DISTRICT OF NORTH DAKOTA.

Chapter 5 of title 28, United States Code, is amended by striking section 114 and inserting the following:

“§ 114. North Dakota

“North Dakota constitutes one judicial district.

“Court shall be held at Bismarck, Fargo, Grand Forks, and Minot.”.

SEC. 4. SEPARATION OF THE JUDGMENT AND STATEMENT OF REASONS FORMS.

Section 3553(c)(2) of title 18, United States Code, is amended by striking “the written order of judgment and commitment” and inserting “a statement of reasons form issued under section 994(w)(1)(B) of title 28”.

SEC. 5. PRETRIAL SERVICES FUNCTIONS FOR JUVENILES.

Section 3154 of title 18, United States Code, is amended—

(1) by redesignating paragraph (14) as paragraph (15); and

(2) by inserting after paragraph (13) the following:

“(14) Perform, in a manner appropriate for juveniles, any of the functions identified in this section with respect to juveniles awaiting adjudication, trial, or disposition under chapter 403 of this title who are not detained.”.

SEC. 6. STATISTICAL REPORTING SCHEDULE FOR CRIMINAL WIRETAP ORDERS.

Section 2519 of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge” and inserting “In January of each year, any judge who has issued an order (or an extension thereof) under section 2518 that expired during the preceding year, or who has denied approval of an interception during that year,”;

(2) in paragraph (2), by striking “In January of each year” and inserting “In March of each year”; and

(3) in paragraph (3), by striking “In April of each year” and inserting “In June of each year”.

SEC. 7. THRESHOLDS FOR ADMINISTRATIVE REVIEW OF OTHER THAN COUNSEL CASE COMPENSATION.

Section 3006A of title 18, United States Code, is amended—

(1) in subsection (e)—

(A) in paragraph (2)—

(i) in subparagraph (A), in the second sentence, by striking “\$500” and inserting “\$800”; and

(ii) in subparagraph (B), by striking “\$500” and inserting “\$800”; and

(B) in paragraph (3), in the first sentence, by striking “\$1,600” and inserting “\$2,400”; and

(2) by adding at the end the following:

“(5) The dollar amounts provided in paragraphs (2) and (3) shall be adjusted simultaneously by an amount, rounded to the nearest multiple of \$100, equal to the percentage of the cumulative adjustments taking effect under section 5303 of title 5 in the rates of pay under the General Schedule since the date the dollar amounts provided in paragraphs (2) and (3), respectively, were last enacted or adjusted by statute.”.

Approved May 27, 2010.

LEGISLATIVE HISTORY—S. 1782 (H.R. 3632):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 16, considered and passed Senate.

May 18, considered and passed House.



Public Law 111–175
111th Congress

An Act

May 27, 2010
[S. 3333]

To extend the statutory license for secondary transmissions under title 17, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Satellite
Television
Extension and
Localism Act of
2010.
17 USC 101 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Satellite Television Extension and Localism Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STATUTORY LICENSES

Sec. 101. Reference.

Sec. 102. Modifications to statutory license for satellite carriers.

Sec. 103. Modifications to statutory license for satellite carriers in local markets.

Sec. 104. Modifications to cable system secondary transmission rights under section 111.

Sec. 105. Certain waivers granted to providers of local-into-local service for all DMAs.

Sec. 106. Copyright Office fees.

Sec. 107. Termination of license.

Sec. 108. Construction.

TITLE II—COMMUNICATIONS PROVISIONS

Sec. 201. Reference.

Sec. 202. Extension of authority.

Sec. 203. Significantly viewed stations.

Sec. 204. Digital television transition conforming amendments.

Sec. 205. Application pending completion of rulemakings.

Sec. 206. Process for issuing qualified carrier certification.

Sec. 207. Nondiscrimination in carriage of high definition digital signals of non-commercial educational television stations.

Sec. 208. Savings clause regarding definitions.

Sec. 209. State public affairs broadcasts.

TITLE III—REPORTS AND SAVINGS PROVISION

Sec. 301. Definition.

Sec. 302. Report on market based alternatives to statutory licensing.

Sec. 303. Report on communications implications of statutory licensing modifications.

Sec. 304. Report on in-state broadcast programming.

Sec. 305. Local network channel broadcast reports.

Sec. 306. Savings provision regarding use of negotiated licenses.

Sec. 307. Effective date; Noninfringement of copyright.

TITLE IV—SEVERABILITY

Sec. 401. Severability.

TITLE V—DETERMINATION OF BUDGETARY EFFECTS

Sec. 501. Determination of Budgetary Effects.

TITLE I—STATUTORY LICENSES

SEC. 101. REFERENCE.

Except as otherwise provided, whenever in this title an amendment is made to a section or other provision, the reference shall be considered to be made to such section or provision of title 17, United States Code.

SEC. 102. MODIFICATIONS TO STATUTORY LICENSE FOR SATELLITE CARRIERS.

(a) HEADING RENAMED.—

(1) IN GENERAL.—The heading of section 119 is amended by striking “**superstations and network stations for private home viewing**” and inserting “**distant television programming by satellite**”.

(2) TABLE OF CONTENTS.—The table of contents for chapter 1 is amended by striking the item relating to section 119 and inserting the following:

“119. Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite.”.

(b) UNSERVED HOUSEHOLD DEFINED.—

(1) IN GENERAL.—Section 119(d)(10) is amended—

17 USC 119.

(A) by striking subparagraph (A) and inserting the following:

“(A) cannot receive, through the use of an antenna, an over-the-air signal containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household’s local market and affiliated with that network of—

“(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or

“(ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time;”;

(B) in subparagraph (B)—

(i) by striking “subsection (a)(14)” and inserting “subsection (a)(13),”; and

(ii) by striking “Satellite Home Viewer Extension and Reauthorization Act of 2004” and inserting “Satellite Television Extension and Localism Act of 2010”; and

(C) in subparagraph (D), by striking “(a)(12)” and inserting “(a)(11)”.

(2) QUALIFYING DATE DEFINED.—Section 119(d) is amended by adding at the end the following:

“(14) QUALIFYING DATE.—The term ‘qualifying date’, for purposes of paragraph (10)(A), means—

“(A) October 1, 2010, for multicast streams that exist on March 31, 2010; and

- 17 USC 119. “(B) January 1, 2011, for all other multicast streams.”.
- (c) FILING FEE.—Section 119(b)(1) is amended—
- (1) in subparagraph (A), by striking “and” after the semicolon at the end;
 - (2) in subparagraph (B), by striking the period and inserting “; and”; and
 - (3) by adding at the end the following:

“(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).”.
- (d) DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—Section 119(b) is amended—
- (1) by amending the subsection heading to read as follows:

“(b) DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—”;
 - (2) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) a royalty fee payable to copyright owners pursuant to paragraph (4) for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of a primary stream or multicast stream of each non-network station or network station during each calendar year month by the appropriate rate in effect under this subsection; and”;
 - (3) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;
 - (4) by inserting after paragraph (1) the following:

“(2) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.”;
 - (5) in paragraph (3), as redesignated, in the first sentence—
 - (A) by inserting “(including the filing fee specified in paragraph (1)(C))” after “shall receive all fees”; and
 - (B) by striking “paragraph (4)” and inserting “paragraph (5)”;
 - (6) in paragraph (4), as redesignated—
 - (A) by striking “paragraph (2)” and inserting “paragraph (3)”;
 - (B) by striking “paragraph (4)” each place it appears and inserting “paragraph (5)”;
 - (7) in paragraph (5), as redesignated, by striking “paragraph (2)” and inserting “paragraph (3)”.
- (e) ADJUSTMENT OF ROYALTY FEES.—Section 119(c) is amended as follows:
- (1) Paragraph (1) is amended—
 - (A) in the heading for such paragraph, by striking “ANALOG”;
 - (B) in subparagraph (A)—
 - (i) by striking “primary analog transmissions” and inserting “primary transmissions”; and
 - (ii) by striking “July 1, 2004” and inserting “July 1, 2009”;
 - (C) in subparagraph (B)—
 - (i) by striking “January 2, 2005, the Librarian of Congress” and inserting “June 1, 2010, the Copyright Royalty Judges”; and

Regulations.

- (ii) by striking “primary analog transmission” and inserting “primary transmissions”;
- (D) in subparagraph (C), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;
- (E) in subparagraph (D)—
 - (i) in clause (i)—
 - (I) by striking “(i) Voluntary agreements” and inserting the following:
“(i) VOLUNTARY AGREEMENTS; FILING.—Voluntary agreements”; and
 - (II) by striking “that a parties” and inserting “that are parties”; and
 - (ii) in clause (ii)—
 - (I) by striking “(ii)(I) Within” and inserting the following:
“(ii) PROCEDURE FOR ADOPTION OF FEES.—
“(I) PUBLICATION OF NOTICE.—Within”;
(II) in subclause (I), by striking “an arbitration proceeding pursuant to subparagraph (E)” and inserting “a proceeding under subparagraph (F)”;
 - (III) in subclause (II), by striking “(II) Upon receiving a request under subclause (I), the Librarian of Congress” and inserting the following:
“(II) PUBLIC NOTICE OF FEES.—Upon receiving a request under subclause (I), the Copyright Royalty Judges”; and
 - (IV) in subclause (III)—
 - (aa) by striking “(III) The Librarian” and inserting the following:
“(III) ADOPTION OF FEES.—The Copyright Royalty Judges”;
 - (bb) by striking “an arbitration proceeding” and inserting “the proceeding under subparagraph (F)”;
 - (cc) by striking “the arbitration proceeding” and inserting “that proceeding”;
- (F) in subparagraph (E)—
 - (i) by striking “Copyright Office” and inserting “Copyright Royalty Judges”; and
 - (ii) by striking “May 31, 2010” and inserting “December 31, 2014”; and
- (G) in subparagraph (F)—
 - (i) in the heading, by striking “COMPULSORY ARBITRATION” and inserting “COPYRIGHT ROYALTY JUDGES PROCEEDING”;
 - (ii) in clause (i)—
 - (I) in the heading, by striking “PROCEEDINGS” and inserting “THE PROCEEDING”;
 - (II) in the matter preceding subclause (I)—
 - (aa) by striking “May 1, 2005, the Librarian of Congress” and inserting “September 1, 2010, the Copyright Royalty Judges”;
 - (bb) by striking “arbitration proceedings” and inserting “a proceeding”;
 - (cc) by striking “fee to be paid” and inserting “fees to be paid”;

(dd) by striking “primary analog transmission” and inserting “the primary transmissions”; and

(ee) by striking “distributors” and inserting “distributors—”;

(III) in subclause (II)—

(aa) by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(bb) by striking “arbitration”; and

(IV) by amending the last sentence to read as follows: “Such proceeding shall be conducted under chapter 8.”;

(iii) in clause (ii), by amending the matter preceding subclause (I) to read as follows:

“(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmissions of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—”;

(iv) by amending clause (iii) to read as follows:

“(iii) EFFECTIVE DATE FOR DECISION OF COPYRIGHT ROYALTY JUDGES.—The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.”; and

(v) in clause (iv)—

(I) in the heading, by striking “FEE” and inserting “FEES”; and

(II) by striking “fee referred to in (iii)” and inserting “fees referred to in clause (iii)”.

(2) Paragraph (2) is amended to read as follows:

“(2) ANNUAL ROYALTY FEE ADJUSTMENT.—Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.”.

(f) DEFINITIONS.—

(1) SUBSCRIBER.—Section 119(d)(8) is amended to read as follows:

“(8) SUBSCRIBER; SUBSCRIBE.—

Effective date.

Notification.
Federal Register,
publication.
Deadline.

17 USC 119.

“(A) SUBSCRIBER.—The term ‘subscriber’ means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

“(B) SUBSCRIBE.—The term ‘subscribe’ means to elect to become a subscriber.”

(2) LOCAL MARKET.—Section 119(d)(11) is amended to read 17 USC 119. as follows:

“(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(j).”

(3) LOW POWER TELEVISION STATION.—Section 119(d) is amended by striking paragraph (12) and redesignating paragraphs (13) and (14) as paragraphs (12) and (13), respectively.

(4) MULTICAST STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(14) MULTICAST STREAM.—The term ‘multicast stream’ means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.”

(5) PRIMARY STREAM.—Section 119(d), as amended by paragraph (4), is further amended by adding at the end the following new paragraph:

“(15) PRIMARY STREAM.—The term ‘primary stream’ means—

“(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

“(B) if there is no stream described in subparagraph (A), then either—

“(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

“(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.”

(6) CLERICAL AMENDMENT.—Section 119(d) is amended in paragraphs (1), (2), and (5) by striking “which” each place it appears and inserting “that”.

(g) SUPERSTATION REDESIGNATED AS NON-NETWORK STATION.—Section 119 is amended—

(1) by striking “superstation” each place it appears in a heading and each place it appears in text and inserting “non-network station”; and

(2) by striking “superstations” each place it appears in a heading and each place it appears in text and inserting “non-network stations”.

(h) REMOVAL OF CERTAIN PROVISIONS.—

(1) REMOVAL OF PROVISIONS.—Section 119(a) is amended—

(A) in paragraph (2), by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C);

(B) by striking paragraph (3) and redesignating paragraphs (4) through (14) as paragraphs (3) through (13), respectively; and

(C) by striking paragraph (15) and redesignating paragraph (16) as paragraph (14).

17 USC 119.

(2) CONFORMING AMENDMENTS.—Section 119 is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking “(5), (6), and (8)” and inserting “(4), (5), and (7)”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking “subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8)” and inserting “subparagraph (B) of this paragraph and paragraphs (4), (5), (6), and (7)”;

(II) in subparagraph (B)(i), by striking the second sentence; and

(III) in subparagraph (C) (as redesignated), by striking clauses (i) and (ii) and inserting the following:

Deadline.

“(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

Deadline.

“(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list, aggregated by designated market area, identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or dropped as subscribers under clause (i) since the last submission under this subparagraph.”; and

(iii) in subparagraph (E) of paragraph (3) (as redesignated)—

(I) by striking “under paragraph (3) or”; and

(II) by striking “paragraph (12)” and inserting “paragraph (11)”;

(B) in subsection (b)(1), by striking the final sentence.

(i) MODIFICATIONS TO PROVISIONS FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) PREDICTIVE MODEL.—Section 119(a)(2)(B)(ii) is amended by adding at the end the following:

“(III) ACCURATE PREDICTIVE MODEL WITH RESPECT TO DIGITAL SIGNALS.—Notwithstanding subclause (I), in determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A) with respect to digital signals, a court shall rely on a predictive model

set forth by the Federal Communications Commission pursuant to a rulemaking as provided in section 339(c)(3) of the Communications Act of 1934 (47 U.S.C. 339(c)(3)), as that model may be amended by the Commission over time under such section to increase the accuracy of that model. Until such time as the Commission sets forth such model, a court shall rely on the predictive model as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05–182, FCC 05–199 (released December 9, 2005).”.

(2) MODIFICATIONS TO STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—Section 119(a)(3) (as redesignated) is amended—

117 USC 119.

(A) by striking “analog” each place it appears in a heading and text;

(B) by striking subparagraphs (B), (C), and (D), and inserting the following:

“(B) RULES FOR LAWFUL SUBSCRIBERS AS OF DATE OF ENACTMENT OF 2010 ACT.—In the case of a subscriber of a satellite carrier who, on the day before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, was lawfully receiving the secondary transmission of the primary transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as the ‘distant signal’), other than subscribers to whom subparagraph (A) applies, the statutory license under paragraph (2) shall apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network, and the subscriber’s household shall continue to be considered to be an unserved household with respect to such network, until such time as the subscriber elects to terminate such secondary transmissions, whether or not the subscriber elects to subscribe to receive the secondary transmission of the primary transmission of a local network station affiliated with the same network pursuant to the statutory license under section 122.

Applicability.

“(C) FUTURE APPLICABILITY.—

“(i) WHEN LOCAL SIGNAL AVAILABLE AT TIME OF SUBSCRIPTION.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of the primary transmission of a network station to a person who is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Television Extension and Localism Act of 2010 and, at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary transmission of a local network station affiliated with the same network pursuant to the statutory license under section 122.

- Deadline. “(ii) WHEN LOCAL SIGNAL AVAILABLE AFTER SUBSCRIPTION.—In the case of a subscriber who lawfully subscribes to and receives the secondary transmission by a satellite carrier of the primary transmission of a network station under the statutory license under paragraph (2) (in this clause referred to as the ‘distant signal’) on or after the date of the enactment of the Satellite Television Extension and Localism Act of 2010, the statutory license under paragraph (2) shall apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network, and the subscriber’s household shall continue to be considered to be an unserved household with respect to such network, until such time as the subscriber elects to terminate such secondary transmissions, but only if such subscriber subscribes to the secondary transmission of the primary transmission of a local network station affiliated with the same network within 60 days after the satellite carrier makes available to the subscriber such secondary transmission of the primary transmission of such local network station.”;
- (C) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively;
- (D) in subparagraph (E) (as redesignated), by striking “(C) or (D)” and inserting “(B) or (C)”; and
- (E) in subparagraph (F) (as redesignated), by inserting “9-digit” before “zip code”.
- 17 USC 119. (3) STATUTORY DAMAGES FOR TERRITORIAL RESTRICTIONS.—Section 119(a)(6) (as redesignated) is amended—
- (A) in subparagraph (A)(ii), by striking “\$5” and inserting “\$250”;
- (B) in subparagraph (B)—
- (i) in clause (i), by striking “\$250,000 for each 6-month period” and inserting “\$2,500,000 for each 3-month period”; and
- (ii) in clause (ii), by striking “\$250,000” and inserting “\$2,500,000”; and
- Courts. (C) by adding at the end the following flush sentences: “The court shall direct one half of any statutory damages ordered under clause (i) to be deposited with the Register of Copyrights for distribution to copyright owners pursuant to subsection (b). The Copyright Royalty Judges shall issue regulations establishing procedures for distributing such funds, on a proportional basis, to copyright owners whose works were included in the secondary transmissions that were the subject of the statutory damages.”.
- Regulations. Procedures. (4) TECHNICAL AMENDMENT.—Section 119(a)(4) (as redesignated) is amended by striking “and 509”.
- (5) CLERICAL AMENDMENT.—Section 119(a)(2)(B)(iii)(II) is amended by striking “In this clause” and inserting “In this clause,”.
- (j) MORATORIUM EXTENSION.—Section 119(e) is amended by striking “May 31, 2010” and inserting “December 31, 2014”.
- (k) CLERICAL AMENDMENTS.—Section 119 is amended—

(1) by striking “of the Code of Federal Regulations” each place it appears and inserting “, Code of Federal Regulations”; and

(2) in subsection (d)(6), by striking “or the Direct” and inserting “, or the Direct”.

SEC. 103. MODIFICATIONS TO STATUTORY LICENSE FOR SATELLITE CARRIERS IN LOCAL MARKETS.

(a) **HEADING RENAMED.**—

(1) **IN GENERAL.**—The heading of section 122 is amended by striking “**by satellite carriers within local markets**” and inserting “**of local television programming by satellite**”.

(2) **TABLE OF CONTENTS.**—The table of contents for chapter 1 is amended by striking the item relating to section 122 and inserting the following:

“122. Limitations on exclusive rights: Secondary transmissions of local television programming by satellite.”

(b) **STATUTORY LICENSE.**—Section 122(a) is amended to read 17 USC 122. as follows:

“(a) **SECONDARY TRANSMISSIONS INTO LOCAL MARKETS.**—

“(1) **SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS WITHIN A LOCAL MARKET.**—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

“(A) the secondary transmission is made by a satellite carrier to the public;

“(B) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

“(C) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

“(i) each subscriber receiving the secondary transmission; or

“(ii) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

“(2) **SIGNIFICANTLY VIEWED STATIONS.**—

“(A) **IN GENERAL.**—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of the primary transmission of a network station or a non-network station to a subscriber who resides outside the station’s local market but within a community in which the signal has been determined by the Federal Communications Commission to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to

Applicability.

a cable system whether signals are significantly viewed in a community.

Deadline.

“(B) WAIVER.—A subscriber who is denied the secondary transmission of the primary transmission of a network station or a non-network station under subparagraph (A) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station or non-network station in the local market affiliated with the same network or non-network where the subscriber is located. The network station or non-network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station or non-network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network station or non-network station shall be deemed to agree to the waiver request.

“(3) SECONDARY TRANSMISSION OF LOW POWER PROGRAMMING.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of the primary transmission of a television broadcast station that is licensed as a low power television station, to a subscriber who resides within the same designated market area as the station that originates the transmission.

“(B) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

Applicability.

“(C) NO IMPACT ON OTHER SECONDARY TRANSMISSIONS OBLIGATIONS.—A satellite carrier that makes secondary transmissions of a primary transmission of a low power television station under a statutory license provided under this section is not required, by reason of such secondary transmissions, to make any other secondary transmissions.

“(4) SPECIAL EXCEPTIONS.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall, if the secondary transmission is made by a satellite carrier that complies with the requirements of paragraph (1), be subject to statutory licensing under this paragraph as follows:

“(A) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in

the regulations of the Commission as in effect on such date (47 C.F.R. 76.51).

“(B) STATES WITH ALL NETWORK STATIONS AND NON-NETWORK STATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and non-network stations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47, Code of Federal Regulations).

“(C) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

“(i) on January 1, 2004, were in local markets principally comprised of counties in another State, and

“(ii) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under this paragraph shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

“(D) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

“(i) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

“(ii) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

“(E) NETWORKS OF NONCOMMERCIAL EDUCATIONAL BROADCAST STATIONS.—In the case of a system of three or more noncommercial educational broadcast stations licensed to a single State, public agency, or political, educational, or special purpose subdivision of a State, the statutory license provided for in this paragraph shall apply to the secondary transmission of the primary transmission of such system to any subscriber in any county or county equivalent within such State, if such subscriber is located in a designated market area that is not otherwise eligible to receive the secondary transmission of the primary transmission of a noncommercial educational broadcast station located within the State pursuant to paragraph (1).

17 USC 122.

“(5) APPLICABILITY OF ROYALTY RATES AND PROCEDURES.—The royalty rates and procedures under section 119(b) shall apply to the secondary transmissions to which the statutory license under paragraph (4) applies.”.

(c) REPORTING REQUIREMENTS.—Section 122(b) is amended—

(1) in paragraph (1), by striking “station a list” and all that follows through the end and inserting the following: “station—

“(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a); and

“(B) a separate list, aggregated by designated market area (by name and address, including street or rural route number, city, State, and 9-digit zip code), which shall indicate those subscribers being served pursuant to paragraph (2) of subsection (a).”; and

(2) in paragraph (2), by striking “network a list” and all that follows through the end and inserting the following: “network—

“(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection; and

“(B) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and 9-digit zip code), identifying those subscribers whose service pursuant to paragraph (2) of subsection (a) has been added or dropped since the last submission under this subsection.”.

(d) NO ROYALTY FEE FOR CERTAIN SECONDARY TRANSMISSIONS.—Section 122(c) is amended—

(1) in the heading, by inserting “FOR CERTAIN SECONDARY TRANSMISSIONS” after “REQUIRED”; and

(2) by striking “subsection (a)” and inserting “paragraphs (1), (2), and (3) of subsection (a)”.

(e) VIOLATIONS FOR TERRITORIAL RESTRICTIONS.—

(1) MODIFICATION TO STATUTORY DAMAGES.—Section 122(f) is amended—

(A) in paragraph (1)(B), by striking “\$5” and inserting “\$250”; and

(B) in paragraph (2), by striking “\$250,000” each place it appears and inserting “\$2,500,000”.

(2) CONFORMING AMENDMENTS FOR ADDITIONAL STATIONS.—Section 122 is amended—

(A) in subsection (f), by striking “section 119 or” each place it appears and inserting the following: “section 119, subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to”; and

(B) in subsection (g), by striking “section 119 or” and inserting the following: “section 119, paragraph (2)(A), (3), or (4) of subsection (a), or”.

(f) DEFINITIONS.—Section 122(j) is amended—

(1) in paragraph (1), by striking “which contracts” and inserting “that contracts”;

(2) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;

(3) in paragraph (3)—

(A) by redesignating such paragraph as paragraph (4);

(B) in the heading of such paragraph, by inserting “NON-NETWORK STATION;” after “NETWORK STATION;”; and

(C) by inserting “‘non-network station,’” after “‘network station,’”;

(4) by inserting after paragraph (2) the following:

“(3) LOW POWER TELEVISION STATION.—The term ‘low power television station’ means a low power TV station as defined in section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ‘low power television station’ includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.”;

(5) by inserting after paragraph (4) (as redesignated) the following:

“(5) NONCOMMERCIAL EDUCATIONAL BROADCAST STATION.—The term ‘noncommercial educational broadcast station’ means a television broadcast station that is a noncommercial educational broadcast station as defined in section 397 of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010.”; and

(6) by amending paragraph (6) (as redesignated) to read as follows:

“(6) SUBSCRIBER.—The term ‘subscriber’ means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.”.

SEC. 104. MODIFICATIONS TO CABLE SYSTEM SECONDARY TRANSMISSION RIGHTS UNDER SECTION 111.

(a) HEADING RENAMED.—

(1) IN GENERAL.—The heading of section 111 is amended by inserting at the end the following: “**of broadcast programming by cable**”.

(2) TABLE OF CONTENTS.—The table of contents for chapter 1 is amended by striking the item relating to section 111 and inserting the following:

“111. Limitations on exclusive rights: Secondary transmissions of broadcast programming by cable.”.

(b) TECHNICAL AMENDMENT.—Section 111(a)(4) is amended by striking “; or” and inserting “or section 122;”. 17 USC 111.

(c) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—Section 111(d) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking “A cable system whose secondary” and inserting the following: “STATEMENT OF ACCOUNT AND ROYALTY FEES.—Subject to paragraph (5), a cable system whose secondary”; and

(ii) by striking “by regulation—” and inserting “by regulation the following;”;

(B) in subparagraph (A)—

(i) by striking “a statement of account” and inserting “A statement of account”; and

(ii) by striking “; and” and inserting a period; and

(C) by striking subparagraphs (B), (C), and (D) and inserting the following:

“(B) Except in the case of a cable system whose royalty fee is specified in subparagraph (E) or (F), a total royalty fee payable to copyright owners pursuant to paragraph (3) for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during such period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

“(i) 1.064 percent of such gross receipts for the privilege of further transmitting, beyond the local service area of such primary transmitter, any non-network programming of a primary transmitter in whole or in part, such amount to be applied against the fee, if any, payable pursuant to clauses (ii) through (iv);

“(ii) 1.064 percent of such gross receipts for the first distant signal equivalent;

“(iii) 0.701 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

“(iv) 0.330 percent of such gross receipts for the fifth distant signal equivalent and each distant signal equivalent thereafter.

“(C) In computing amounts under clauses (ii) through (iv) of subparagraph (B)—

“(i) any fraction of a distant signal equivalent shall be computed at its fractional value;

“(ii) in the case of any cable system located partly within and partly outside of the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located outside of the local service area of such primary transmitter; and

“(iii) if a cable system provides a secondary transmission of a primary transmitter to some but not all communities served by that cable system—

“(I) the gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

“(II) the total royalty fee for the period paid by such system shall not be less than the royalty fee calculated under subparagraph (B)(i) multiplied by the gross receipts from all subscribers to the system.

“(D) A cable system that, on a statement submitted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, computed its royalty fee consistent with the methodology under subparagraph (C)(iii), or that amends a statement filed before such date

of enactment to compute the royalty fee due using such methodology, shall not be subject to an action for infringement, or eligible for any royalty refund or offset, arising out of its use of such methodology on such statement.

“(E) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are \$263,800 or less—

“(i) gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which \$263,800 exceeds such actual gross receipts, except that in no case shall a cable system’s gross receipts be reduced to less than \$10,400; and

“(ii) the royalty fee payable under this paragraph to copyright owners pursuant to paragraph (3) shall be 0.5 percent, regardless of the number of distant signal equivalents, if any.

“(F) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are more than \$263,800 but less than \$527,600, the royalty fee payable under this paragraph to copyright owners pursuant to paragraph (3) shall be—

“(i) 0.5 percent of any gross receipts up to \$263,800, regardless of the number of distant signal equivalents, if any; and

“(ii) 1 percent of any gross receipts in excess of \$263,800, but less than \$527,600, regardless of the number of distant signal equivalents, if any.

“(G) A filing fee, as determined by the Register of Copyrights pursuant to section 708(a).”;
(2) in paragraph (2), in the first sentence—

(A) by striking “The Register of Copyrights” and inserting the following “HANDLING OF FEES.—The Register of Copyrights”; and

(B) by inserting “(including the filing fee specified in paragraph (1)(G))” after “shall receive all fees”;

(3) in paragraph (3)—

(A) by striking “The royalty fees” and inserting the following: “DISTRIBUTION OF ROYALTY FEES TO COPYRIGHT OWNERS.—The royalty fees”;

(B) in subparagraph (A)—

(i) by striking “any such” and inserting “Any such”; and

(ii) by striking “; and” and inserting a period;

(C) in subparagraph (B)—

(i) by striking “any such” and inserting “Any such”; and

(ii) by striking the semicolon and inserting a period; and

(D) in subparagraph (C), by striking “any such” and inserting “Any such”;

(4) in paragraph (4), by striking “The royalty fees” and inserting the following: “PROCEDURES FOR ROYALTY FEE DISTRIBUTION.—The royalty fees”; and

(5) by adding at the end the following new paragraphs:

“(5) 3.75 PERCENT RATE AND SYNDICATED EXCLUSIVITY SURCHARGE NOT APPLICABLE TO MULTICAST STREAMS.—The royalty rates specified in sections 256.2(c) and 256.2(d) of title 37, Code of Federal Regulations (commonly referred to as the ‘3.75 percent rate’ and the ‘syndicated exclusivity surcharge’, respectively), as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010, as such rates may be adjusted, or such sections redesignated, thereafter by the Copyright Royalty Judges, shall not apply to the secondary transmission of a multicast stream.

Regulations.
Time period.

“(6) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to this section of the information reported on the semiannual statements of account filed under this subsection for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph (A) is able to confirm the correctness of the calculations and royalty payments reported therein. The regulations shall—

“(A) establish procedures for the designation of a qualified independent auditor—

“(i) with exclusive authority to request verification of such a statement of account on behalf of all copyright owners whose works were the subject of secondary transmissions of primary transmissions by the cable system (that deposited the statement) during the accounting period covered by the statement; and

“(ii) who is not an officer, employee, or agent of any such copyright owner for any purpose other than such audit;

“(B) establish procedures for safeguarding all non-public financial and business information provided under this paragraph;

“(C)(i) require a consultation period for the independent auditor to review its conclusions with a designee of the cable system;

“(ii) establish a mechanism for the cable system to remedy any errors identified in the auditor’s report and to cure any underpayment identified; and

“(iii) provide an opportunity to remedy any disputed facts or conclusions;

“(D) limit the frequency of requests for verification for a particular cable system and the number of audits that a multiple system operator can be required to undergo in a single year; and

“(E) permit requests for verification of a statement of account to be made only within 3 years after the last day of the year in which the statement of account is filed.

“(7) ACCEPTANCE OF ADDITIONAL DEPOSITS.—Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which

they are received and shall be distributed as specified under this subsection.”

(d) EFFECTIVE DATE OF NEW ROYALTY FEE RATES.—The royalty fee rates established in section 111(d)(1)(B) of title 17, United States Code, as amended by subsection (c)(1)(C) of this section, shall take effect commencing with the first accounting period occurring in 2010. 17 USC 111 note.

(e) DEFINITIONS.—Section 111(f) is amended—

17 USC 111.

(1) by striking the first undesignated paragraph and inserting the following:

“(1) PRIMARY TRANSMISSION.—A ‘primary transmission’ is a transmission made to the public by a transmitting facility whose signals are being received and further transmitted by a secondary transmission service, regardless of where or when the performance or display was first transmitted. In the case of a television broadcast station, the primary stream and any multicast streams transmitted by the station constitute primary transmissions.”;

(2) in the second undesignated paragraph—

(A) by striking “A ‘secondary transmission’” and inserting the following:

“(2) SECONDARY TRANSMISSION.—A ‘secondary transmission’”; and

(B) by striking “‘cable system’” and inserting “cable system”;

(3) in the third undesignated paragraph—

(A) by striking “A ‘cable system’” and inserting the following:

“(3) CABLE SYSTEM.—A ‘cable system’”; and

(B) by striking “Territory, Trust Territory, or Possession” and inserting “territory, trust territory, or possession of the United States”;

(4) in the fourth undesignated paragraph, in the first sentence—

(A) by striking “The ‘local service area of a primary transmitter’, in the case of a television broadcast station, comprises the area in which such station is entitled to insist” and inserting the following:

“(4) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The ‘local service area of a primary transmitter’, in the case of both the primary stream and any multicast streams transmitted by a primary transmitter that is a television broadcast station, comprises the area where such primary transmitter could have insisted”;

(B) by striking “76.59 of title 47 of the Code of Federal Regulations” and inserting the following: “76.59 of title 47, Code of Federal Regulations, or within the noise-limited contour as defined in 73.622(e)(1) of title 47, Code of Federal Regulations”; and

(C) by striking “as defined by the rules and regulations of the Federal Communications Commission,”;

(5) by amending the fifth undesignated paragraph to read as follows:

“(5) DISTANT SIGNAL EQUIVALENT.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), a ‘distant signal equivalent’—

“(i) is the value assigned to the secondary transmission of any non-network television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming; and

“(ii) is computed by assigning a value of one to each primary stream and to each multicast stream (other than a simulcast) that is an independent station, and by assigning a value of one-quarter to each primary stream and to each multicast stream (other than a simulcast) that is a network station or a noncommercial educational station.

“(B) EXCEPTIONS.—The values for independent, network, and noncommercial educational stations specified in subparagraph (A) are subject to the following:

“(i) Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of the enactment of the Copyright Act of 1976 permit a cable system, at its election, to effect such omission and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program.

“(ii) Where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of the enactment of the Copyright Act of 1976 permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year.

“(iii) In the case of the secondary transmission of a primary transmitter that is a television broadcast station pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or the secondary transmission of a primary transmitter that is a television broadcast station on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals that it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth in subparagraph (A), as the case may be, shall be multiplied by a fraction that is equal

to the ratio of the broadcast hours of such primary transmitter retransmitted by the cable system to the total broadcast hours of the primary transmitter.

“(iv) No value shall be assigned for the secondary transmission of the primary stream or any multicast streams of a primary transmitter that is a television broadcast station in any community that is within the local service area of the primary transmitter.”;

(6) by striking the sixth undesignated paragraph and inserting the following:

“(6) NETWORK STATION.—

“(A) TREATMENT OF PRIMARY STREAM.—The term ‘network station’ shall be applied to a primary stream of a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of the primary stream’s typical broadcast day.

“(B) TREATMENT OF MULTICAST STREAMS.—The term ‘network station’ shall be applied to a multicast stream on which a television broadcast station transmits all or substantially all of the programming of an interconnected program service that—

“(i) is owned or operated by, or affiliated with, one or more of the television networks described in subparagraph (A); and

“(ii) offers programming on a regular basis for 15 or more hours per week to at least 25 of the affiliated television licensees of the interconnected program service in 10 or more States.”;

(7) by striking the seventh undesignated paragraph and inserting the following:

“(7) INDEPENDENT STATION.—The term ‘independent station’ shall be applied to the primary stream or a multicast stream of a television broadcast station that is not a network station or a noncommercial educational station.”;

(8) by striking the eighth undesignated paragraph and inserting the following:

“(8) NONCOMMERCIAL EDUCATIONAL STATION.—The term ‘noncommercial educational station’ shall be applied to the primary stream or a multicast stream of a television broadcast station that is a noncommercial educational broadcast station as defined in section 397 of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010.”; and

(9) by adding at the end the following:

“(9) PRIMARY STREAM.—A ‘primary stream’ is—

“(A) the single digital stream of programming that, before June 12, 2009, was substantially duplicating the programming transmitted by the television broadcast station as an analog signal; or

“(B) if there is no stream described in subparagraph (A), then the single digital stream of programming transmitted by the television broadcast station for the longest period of time.

“(10) PRIMARY TRANSMITTER.—A ‘primary transmitter’ is a television or radio broadcast station licensed by the Federal Communications Commission, or by an appropriate governmental authority of Canada or Mexico, that makes primary transmissions to the public.

“(11) MULTICAST STREAM.—A ‘multicast stream’ is a digital stream of programming that is transmitted by a television broadcast station and is not the station’s primary stream.

“(12) SIMULCAST.—A ‘simulcast’ is a multicast stream of a television broadcast station that duplicates the programming transmitted by the primary stream or another multicast stream of such station.

“(13) SUBSCRIBER; SUBSCRIBE.—

“(A) SUBSCRIBER.—The term ‘subscriber’ means a person or entity that receives a secondary transmission service from a cable system and pays a fee for the service, directly or indirectly, to the cable system.

“(B) SUBSCRIBE.—The term ‘subscribe’ means to elect to become a subscriber.”

17 USC 804.

(f) TIMING OF SECTION 111 PROCEEDINGS.—Section 804(b)(1) is amended by striking “2005” each place it appears and inserting “2015”.

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CORRECTIONS TO FIX LEVEL DESIGNATIONS.—Section 111 is amended—

(A) in subsections (a), (c), and (e), by striking “clause” each place it appears and inserting “paragraph”;

(B) in subsection (c)(1), by striking “clauses” and inserting “paragraphs”; and

(C) in subsection (e)(1)(F), by striking “subclause” and inserting “subparagraph”.

(2) CONFORMING AMENDMENT TO HYPHENATE NONNETWORK.—Section 111 is amended by striking “nonnetwork” each place it appears and inserting “non-network”.

(3) PREVIOUSLY UNDESIGNATED PARAGRAPH.—Section 111(e)(1) is amended by striking “second paragraph of subsection (f)” and inserting “subsection (f)(2)”.

(4) REMOVAL OF SUPERFLUOUS ANDS.—Section 111(e) is amended—

(A) in paragraph (1)(A), by striking “and” at the end;

(B) in paragraph (1)(B), by striking “and” at the end;

(C) in paragraph (1)(C), by striking “and” at the end;

(D) in paragraph (1)(D), by striking “and” at the end;

and

(E) in paragraph (2)(A), by striking “and” at the end.

(5) REMOVAL OF VARIANT FORMS REFERENCES.—Section 111 is amended—

(A) in subsection (e)(4), by striking “, and each of its variant forms,”; and

(B) in subsection (f), by striking “and their variant forms”.

(6) CORRECTION TO TERRITORY REFERENCE.—Section 111(e)(2) is amended in the matter preceding subparagraph (A) by striking “three territories” and inserting “five entities”.

17 USC 111 note.

(h) EFFECTIVE DATE WITH RESPECT TO MULTICAST STREAMS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this section, to the extent such amendments assign a distant signal equivalent value to the secondary transmission of the multicast stream of a primary transmitter, shall take effect on the date of the enactment of this Act.

(2) DELAYED APPLICABILITY.—

(A) SECONDARY TRANSMISSIONS OF A MULTICAST STREAM BEYOND THE LOCAL SERVICE AREA OF ITS PRIMARY TRANSMITTER BEFORE 2010 ACT.—In any case in which a cable system was making secondary transmissions of a multicast stream beyond the local service area of its primary transmitter before the date of the enactment of this Act, a distant signal equivalent value (referred to in paragraph (1)) shall not be assigned to secondary transmissions of such multicast stream that are made on or before June 30, 2010.

(B) MULTICAST STREAMS SUBJECT TO PREEXISTING WRITTEN AGREEMENTS FOR THE SECONDARY TRANSMISSION OF SUCH STREAMS.—In any case in which the secondary transmission of a multicast stream of a primary transmitter is the subject of a written agreement entered into on or before June 30, 2009, between a cable system or an association representing the cable system and a primary transmitter or an association representing the primary transmitter, a distant signal equivalent value (referred to in paragraph (1)) shall not be assigned to secondary transmissions of such multicast stream beyond the local service area of its primary transmitter that are made on or before the date on which such written agreement expires.

(C) NO REFUNDS OR OFFSETS FOR PRIOR STATEMENTS OF ACCOUNT.—A cable system that has reported secondary transmissions of a multicast stream beyond the local service area of its primary transmitter on a statement of account deposited under section 111 of title 17, United States Code, before the date of the enactment of this Act shall not be entitled to any refund, or offset, of royalty fees paid on account of such secondary transmissions of such multicast stream.

(3) DEFINITIONS.—In this subsection, the terms “cable system”, “secondary transmission”, “multicast stream”, and “local service area of a primary transmitter” have the meanings given those terms in section 111(f) of title 17, United States Code, as amended by this section.

SEC. 105. CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAL SERVICE FOR ALL DMAS.

Courts.

Section 119 is amended by adding at the end the following new subsection:

17 USC 119.

“(g) CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

“(1) INJUNCTION WAIVER.—A court that issued an injunction pursuant to subsection (a)(7)(B) before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

“(2) LIMITED TEMPORARY WAIVER.—

“(A) IN GENERAL.—Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under subsection (a)(7)(B) before the date of the enactment of this subsection shall waive such injunction with respect to the statutory license provided under subsection (a)(2) to the extent necessary to allow such carrier to make secondary transmissions of primary transmissions made by a network station to unserved households located in short markets in which such carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

Time period.

“(B) EXPIRATION OF TEMPORARY WAIVER.—A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is issued unless extended for good cause by the court making the temporary waiver.

“(C) FAILURE TO PROVIDE LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

“(i) FAILURE TO ACT REASONABLY AND IN GOOD FAITH.—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to act reasonably or has failed to make a good faith effort to provide local-into-local service to all DMAs, such failure—

“(I) is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

“(II) shall result in the termination of the waiver issued under subparagraph (A).

“(ii) FAILURE TO PROVIDE LOCAL-INTO-LOCAL SERVICE.—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to provide local-into-local service to all DMAs, but determines that the carrier acted reasonably and in good faith, the court may in its discretion impose financial penalties that reflect—

“(I) the degree of control the carrier had over the circumstances that resulted in the failure;

“(II) the quality of the carrier’s efforts to remedy the failure; and

“(III) the severity and duration of any service interruption.

“(D) SINGLE TEMPORARY WAIVER AVAILABLE.—An entity may only receive one temporary waiver under this paragraph.

“(E) SHORT MARKET DEFINED.—For purposes of this paragraph, the term ‘short market’ means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subsection is not offered on the primary stream transmitted by any local television broadcast station.

“(3) ESTABLISHMENT OF QUALIFIED CARRIER RECOGNITION.—

“(A) STATEMENT OF ELIGIBILITY.—An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include—

“(i) an affidavit that the entity is providing local-into-local service to all DMAs;

“(ii) a motion for a waiver of the injunction;

“(iii) a motion that the court appoint a special master under Rule 53 of the Federal Rules of Civil Procedure;

“(iv) an agreement by the carrier to pay all expenses incurred by the special master under paragraph (4)(B)(ii); and

“(v) a certification issued pursuant to section 342(a) of Communications Act of 1934.

“(B) GRANT OF RECOGNITION AS A QUALIFIED CARRIER.—Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1). Upon motion pursuant to subparagraph (A)(iii), the court shall appoint a special master to conduct the examination and provide a report to the court as provided in paragraph (4)(B).

Appointment.
Reports.

“(C) VOLUNTARY TERMINATION.—At any time, an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

“(D) LOSS OF RECOGNITION PREVENTS FUTURE RECOGNITION.—No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

“(4) QUALIFIED CARRIER OBLIGATIONS AND COMPLIANCE.—

“(A) CONTINUING OBLIGATIONS.—

“(i) IN GENERAL.—An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

“(ii) COOPERATION WITH COMPLIANCE EXAMINATION.—An entity recognized as a qualified carrier shall fully cooperate with the special master appointed by the court under paragraph (3)(B) in an examination set forth in subparagraph (B).

“(B) QUALIFIED CARRIER COMPLIANCE EXAMINATION.—

“(i) EXAMINATION AND REPORT.—A special master appointed by the court under paragraph (3)(B) shall conduct an examination of, and file a report on, the qualified carrier’s compliance with the royalty payment and household eligibility requirements of the license under this section. The report shall address the qualified carrier’s conduct during the period beginning on the date on which the qualified carrier is recognized as such under paragraph (3)(B) and ending on April 30, 2012.

Time period.

“(ii) RECORDS OF QUALIFIED CARRIER.—Beginning on the date that is one year after the date on which

Time period.

the qualified carrier is recognized as such under paragraph (3)(B), but not later than December 1, 2011, the qualified carrier shall provide the special master with all records that the special master considers to be directly pertinent to the following requirements under this section:

“(I) Proper calculation and payment of royalties under the statutory license under this section.

“(II) Provision of service under this license to eligible subscribers only.

Records.

“(iii) SUBMISSION OF REPORT.—The special master shall file the report required by clause (i) not later than July 24, 2012, with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy of the report to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

“(iv) EVIDENCE OF INFRINGEMENT.—The special master shall include in the report a statement of whether the examination by the special master indicated that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement.

Deadline.

“(v) SUBSEQUENT EXAMINATION.—If the special master’s report includes a statement that its examination indicated the existence of substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement, the special master shall, not later than 6 months after the report under clause (i) is filed, initiate another examination of the qualified carrier’s compliance with the royalty payment and household eligibility requirements of the license under this section since the last report was filed under clause (iii). The special master shall file a report on the results of the examination conducted under this clause with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate. The report shall include a statement described in clause (iv).

Reports.
Records.

“(vi) COMPLIANCE.—Upon motion filed by an aggrieved copyright owner, the court recognizing an entity as a qualified carrier shall terminate such designation upon finding that the entity has failed to cooperate with the examinations required by this subparagraph.

“(vii) OVERSIGHT.—During the period of time that the special master is conducting an examination under

this subparagraph, the Comptroller General shall monitor the degree to which the entity seeking to be recognized or recognized as a qualified carrier under paragraph (3) is complying with the special master's examination. The qualified carrier shall make available to the Comptroller General all records and individuals that the Comptroller General considers necessary to meet the Comptroller General's obligations under this clause. The Comptroller General shall report the results of the monitoring required by this clause to the Committees on the Judiciary and on Energy and Commerce of the House of Representatives and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate at intervals of not less than six months during such period.

Records.

Reports.
Deadlines.

“(C) AFFIRMATION.—A qualified carrier shall file an affidavit with the district court and the Register of Copyrights 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier. The qualified carrier shall attach to its affidavit copies of all reports or orders issued by the court, the special master, and the Comptroller General.

Affidavits.
Deadline.

“(D) COMPLIANCE DETERMINATION.—Upon the motion of an aggrieved television broadcast station, the court recognizing an entity as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

“(E) PLEADING REQUIREMENT.—In any motion brought under subparagraph (D), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

“(F) BURDEN OF PROOF.—In any proceeding to make a determination under subparagraph (D), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to at least 90 percent of the households in such designated market area (based on the most recent census data released by the United States Census Bureau) at the time and place alleged.

“(5) FAILURE TO PROVIDE SERVICE.—

“(A) PENALTIES.—If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (1), and the court may, in its discretion—

“(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

“(ii) impose a fine of not less than \$250,000 and not more than \$5,000,000.

“(B) EXCEPTION FOR NONWILLFUL VIOLATION.—If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for noncompliance that reflect—

“(i) the degree of control the entity had over the circumstances that resulted in the failure;

“(ii) the quality of the entity’s efforts to remedy the failure and restore service; and

“(iii) the severity and duration of any service interruption.

“(6) PENALTIES FOR VIOLATIONS OF LICENSE.—A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not more than \$2,500,000.

“(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS DEFINED.—For purposes of this subsection:

“(A) IN GENERAL.—An entity provides ‘local-into-local service to all DMAs’ if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122.

“(B) HOUSEHOLD COVERAGE.—For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to at least 90 percent of the households in a designated market area based on the most recent census data released by the United States Census Bureau shall be considered to be providing local service to such designated market area.

“(C) GOOD QUALITY SATELLITE SIGNAL DEFINED.—The term ‘good quality satellite signal’ has the meaning given such term under section 342(e)(2) of Communications Act of 1934.”.

SEC. 106. COPYRIGHT OFFICE FEES.

17 USC 708.

Section 708(a) is amended—

(1) in paragraph (8), by striking “and” after the semicolon;

(2) in paragraph (9), by striking the period and inserting a semicolon;

(3) by inserting after paragraph (9) the following:

“(10) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 119 or 122; and

“(11) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.”; and

(4) by adding at the end the following new sentence: “Fees established under paragraphs (10) and (11) shall be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the

collection and administration of the statements of account and any royalty fees deposited with such statements.”.

SEC. 107. TERMINATION OF LICENSE.

(a) **TERMINATION.**—Section 119 of title 17, United States Code, as amended by this Act, shall cease to be effective on December 31, 2014. 17 USC 119 note.

(b) **CONFORMING AMENDMENT.**—Section 1003(a)(2)(A) of Public Law 111–118 (17 U.S.C. 119 note) is repealed. Repeal.

SEC. 108. CONSTRUCTION.

17 USC 111 note.

Nothing in section 111, 119, or 122 of title 17, United States Code, including the amendments made to such sections by this title, shall be construed to affect the meaning of any terms under the Communications Act of 1934, except to the extent that such sections are specifically cross-referenced in such Act or the regulations issued thereunder.

TITLE II—COMMUNICATIONS PROVISIONS

SEC. 201. REFERENCE.

Except as otherwise provided, whenever in this title an amendment is made to a section or other provision, the reference shall be considered to be made to such section or provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 202. EXTENSION OF AUTHORITY.

Section 325(b) is amended—

47 USC 325.

(1) in paragraph (2)(C), by striking “May 31, 2010” and inserting “December 31, 2014”; and

(2) in paragraph (3)(C), by striking “June 1, 2010” each place it appears in clauses (ii) and (iii) and inserting “January 1, 2015”.

SEC. 203. SIGNIFICANTLY VIEWED STATIONS.

(a) **IN GENERAL.**—Paragraphs (1) and (2) of section 340(b) are amended to read as follows: 47 USC 340.

“(1) **SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.**—This section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338.

Applicability.

“(2) **SERVICE LIMITATIONS.**—A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.”.

(b) **RULEMAKING REQUIRED.**—Within 270 days after the date of the enactment of this Act, the Federal Communications Commission shall take all actions necessary to promulgate a rule to implement the amendments made by subsection (a). Deadline.
47 USC 340 note.

SEC. 204. DIGITAL TELEVISION TRANSITION CONFORMING AMENDMENTS.

47 USC 338.

(a) SECTION 338.—Section 338 is amended—

(1) in subsection (a), by striking “(3) EFFECTIVE DATE.—No satellite” and all that follows through “until January 1, 2002.”; and

(2) by amending subsection (g) to read as follows:

“(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE RECEPTION ANTENNA.—

“(1) SINGLE RECEPTION ANTENNA.—Each satellite carrier that retransmits the signals of local television broadcast stations in a local market shall retransmit such stations in such market so that a subscriber may receive such stations by means of a single reception antenna and associated equipment.

“(2) ADDITIONAL RECEPTION ANTENNA.—If the carrier retransmits the signals of local television broadcast stations in a local market in high definition format, the carrier shall retransmit such signals in such market so that a subscriber may receive such signals by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used to comply with paragraph (1).”.

47 USC 339.

(b) SECTION 339.—Section 339 is amended—

(1) in subsection (a)—

(A) in paragraph (1)(B), by striking “Such two network stations” and all that follows through “more than two network stations.”; and

(B) in paragraph (2)—

(i) in the heading for subparagraph (A), by striking “TO ANALOG SIGNALS”;

(ii) in subparagraph (A)—

(I) in the heading for clause (i), by striking “ANALOG”;

(II) in clause (i)—

(aa) by striking “analog” each place it appears; and

(bb) by striking “October 1, 2004” and inserting “October 1, 2009”;

(III) in the heading for clause (ii), by striking “ANALOG”; and

(IV) in clause (ii)—

(aa) by striking “analog” each place it appears; and

(bb) by striking “2004” and inserting “2009”;

(iii) by amending subparagraph (B) to read as follows:

“(B) RULES FOR OTHER SUBSCRIBERS.—

“(i) IN GENERAL.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under this section (in this subparagraph referred to as a ‘distant signal’), other than subscribers to whom subparagraph (A) applies, the following shall apply:

“(I) In a case in which the satellite carrier makes available to that subscriber, on January

Applicability.
Deadlines.

1, 2005, the signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

“(II) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if—

“(aa) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to carry pursuant to section 338 the signals of stations from the local market of such local network station; and

“(bb) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

“(ii) SPECIAL CIRCUMSTANCES.—A subscriber of a satellite carrier who was lawfully receiving the distant signal of a network station on the day before the date of enactment of the Satellite Television Extension and Localism Act of 2010 may receive both such distant signal and the local signal of a network station affiliated with the same network until such subscriber chooses to no longer receive such distant signal from such carrier, whether or not such subscriber elects to subscribe to such local signal.”;

(iv) in subparagraph (C)—

(I) by striking “analog”;

(II) in clause (i), by striking “the Satellite Home Viewer Extension and Reauthorization Act of 2004; and” and inserting the following:

“the Satellite Television Extension and Localism Act of 2010 and, at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the signal of a local network station affiliated with the same television network pursuant to section 338 (and the retransmission of such signal by such carrier can reach such subscriber); or”; and

(III) by amending clause (ii) to read as follows:

“(ii) lawfully subscribes to and receives a distant signal on or after the date of enactment of the Satellite Television Extension and Localism Act of 2010, and, subsequent to such subscription, the satellite carrier makes available to that subscriber the signal of a local network station affiliated with the same network as the distant signal (and the retransmission of such

Deadline.

signal by such carrier can reach such subscriber), unless such person subscribes to the signal of the local network station within 60 days after such signal is made available.”;

(v) in subparagraph (D)—

(I) in the heading, by striking “DIGITAL”;

(II) by striking clauses (i), (iii) through (v), (vii) through (ix), and (xi);

(III) by redesignating clause (vi) as clause (i) and transferring such clause to appear before clause (ii);

(IV) by amending such clause (i) (as so redesignated) to read as follows:

“(i) ELIGIBILITY AND SIGNAL TESTING.—A subscriber of a satellite carrier shall be eligible to receive a distant signal of a network station affiliated with the same network under this section if, with respect to a local network station, such subscriber—

“(I) is a subscriber whose household is not predicted by the model specified in subsection (c)(3) to receive the signal intensity required under section 73.622(e)(1) or, in the case of a low-power station or translator station transmitting an analog signal, section 73.683(a) of title 47, Code of Federal Regulations, or a successor regulation;

“(II) is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) or, in the case of a low-power station or translator station transmitting an analog signal, section 73.683(a) of such title, or a successor regulation; or

“(III) is in an unserved household, as determined under section 119(d)(10)(A) of title 17, United States Code.”;

(V) in clause (ii)—

(aa) by striking “DIGITAL” in the heading;

(bb) by striking “digital” the first two places such term appears;

(cc) by striking “Satellite Home Viewer Extension and Reauthorization Act of 2004” and inserting “Satellite Television Extension and Localism Act of 2010”; and

(dd) by striking “, whether or not such subscriber elects to subscribe to local digital signals”;

(VI) by inserting after clause (ii) the following new clause:

“(iii) TIME-SHIFTING PROHIBITED.—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the signal of a local network station pursuant to section 338, the carrier may only provide the distant signal of a station affiliated with the same network to that subscriber if, in the case of any local market in the 48

contiguous States of the United States, the distant signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market.”; and

(VII) by redesignating clause (x) as clause (iv);

and

(vi) in subparagraph (E), by striking “distant analog signal or” and all that follows through “(B), or (D))” and inserting “distant signal”;

(2) in subsection (c)—

(A) by amending paragraph (3) to read as follows:

“(3) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL AND ON-LOCATION TESTING REQUIRED.—

Deadlines.

“(A) PREDICTIVE MODEL.—Within 270 days after the date of the enactment of the Satellite Television Extension and Localism Act of 2010, the Commission shall develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive signals in accordance with the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or a successor regulation, including to account for the continuing operation of translator stations and low power television stations. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Commission in CS Docket No. 98-201, as previously revised with respect to analog signals, and as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182, FCC 05-199 (released December 9, 2005). The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

Regulations.

Procedures.

“(B) ON-LOCATION TESTING.—The Commission shall issue an order completing its rulemaking proceeding in ET Docket No. 06-94 within 270 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010. In conducting such rulemaking, the Commission shall seek ways to minimize consumer burdens associated with on-location testing.”;

(B) by amending paragraph (4)(A) to read as follows:

“(A) IN GENERAL.—If a subscriber’s request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber’s satellite carrier a request for a test verifying the subscriber’s inability to receive a signal of the signal intensity referenced in clause (i) of subsection (a)(2)(D), the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct the test referenced in such clause. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such clause demonstrate that the subscriber does not receive a signal that meets or

Deadline.

exceeds the requisite signal intensity standard in such clause, the subscriber shall not be denied the retransmission of a signal of a network station under section 119(d)(10)(A) of title 17, United States Code.”;

(C) in paragraph (4)(B), by striking “the signal intensity” and all that follows through “United States Code” and inserting “such requisite signal intensity standard”; and

(D) in paragraph (4)(E), by striking “Grade B intensity”.

47 USC 340. (c) SECTION 340.—Section 340(i) is amended by striking paragraph (4).

47 USC 338 note. **SEC. 205. APPLICATION PENDING COMPLETION OF RULEMAKINGS.**

Time period. (a) IN GENERAL.—During the period beginning on the date of the enactment of this Act and ending on the date on which the Federal Communications Commission adopts rules pursuant to the amendments to the Communications Act of 1934 made by section 203 and section 204 of this title, the Federal Communications Commission shall follow its rules and regulations promulgated pursuant to sections 338, 339, and 340 of the Communications Act of 1934 as in effect on the day before the date of the enactment of this Act.

Applicability. (b) TRANSLATOR STATIONS AND LOW POWER TELEVISION STATIONS.—Notwithstanding subsection (a), for purposes of determining whether a subscriber within the local market served by a translator station or a low power television station affiliated with a television network is eligible to receive distant signals under section 339 of the Communications Act of 1934, the rules and regulations of the Federal Communications Commission for determining such subscriber’s eligibility as in effect on the day before the date of the enactment of this Act shall apply until the date on which the translator station or low power television station is licensed to broadcast a digital signal.

(c) DEFINITIONS.—As used in this subtitle:

(1) LOCAL MARKET; LOW POWER TELEVISION STATION; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms “local market”, “low power television station”, “satellite carrier”, “subscriber”, and “television broadcast station” have the meanings given such terms in section 338(k) of the Communications Act of 1934.

(2) NETWORK STATION; TELEVISION NETWORK.—The terms “network station” and “television network” have the meanings given such terms in section 339(d) of such Act.

SEC. 206. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.

Part I of title III is amended by adding at the end the following new section:

47 USC 342. **“SEC. 342. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.**

“(a) CERTIFICATION.—The Commission shall issue a certification for the purposes of section 119(g)(3)(A)(iii) of title 17, United States Code, if the Commission determines that—

“(1) a satellite carrier is providing local service pursuant to the statutory license under section 122 of such title in each designated market area; and

“(2) with respect to each designated market area in which such satellite carrier was not providing such local service as of the date of enactment of the Satellite Television Extension and Localism Act of 2010—

“(A) the satellite carrier’s satellite beams are designed, and predicted by the satellite manufacturer’s pre-launch test data, to provide a good quality satellite signal to at least 90 percent of the households in each such designated market area based on the most recent census data released by the United States Census Bureau; and

“(B) there is no material evidence that there has been a satellite or sub-system failure subsequent to the satellite’s launch that precludes the ability of the satellite carrier to satisfy the requirements of subparagraph (A).

“(b) INFORMATION REQUIRED.—Any entity seeking the certification provided for in subsection (a) shall submit to the Commission the following information:

Submission.

“(1) An affidavit stating that, to the best of the affiant’s knowledge, the satellite carrier provides local service in all designated market areas pursuant to the statutory license provided for in section 122 of title 17, United States Code, and listing those designated market areas in which local service was provided as of the date of enactment of the Satellite Television Extension and Localism Act of 2010.

“(2) For each designated market area not listed in paragraph (1):

“(A) Identification of each such designated market area and the location of its local receive facility.

“(B) Data showing the number of households, and maps showing the geographic distribution thereof, in each such designated market area based on the most recent census data released by the United States Census Bureau.

“(C) Maps, with superimposed effective isotropically radiated power predictions obtained in the satellite manufacturer’s pre-launch tests, showing that the contours of the carrier’s satellite beams as designed and the geographic area that the carrier’s satellite beams are designed to cover are predicted to provide a good quality satellite signal to at least 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

“(D) For any satellite relied upon for certification under this section, an affidavit stating that, to the best of the affiant’s knowledge, there have been no satellite or sub-system failures subsequent to the satellite’s launch that would degrade the design performance to such a degree that a satellite transponder used to provide local service to any such designated market area is precluded from delivering a good quality satellite signal to at least 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

“(E) Any additional engineering, designated market area, or other information the Commission considers necessary to determine whether the Commission shall grant a certification under this section.

“(c) CERTIFICATION ISSUANCE.—

Deadline.

“(1) PUBLIC COMMENT.—The Commission shall provide 30 days for public comment on a request for certification under this section.

“(2) DEADLINE FOR DECISION.—The Commission shall grant or deny a request for certification within 90 days after the date on which such request is filed.

Affidavit.
Deadline.

“(d) SUBSEQUENT AFFIRMATION.—An entity granted qualified carrier status pursuant to section 119(g) of title 17, United States Code, shall file an affidavit with the Commission 30 months after such status was granted stating that, to the best of the affiant’s knowledge, it is in compliance with the requirements for a qualified carrier.

“(e) DEFINITIONS.—For the purposes of this section:

“(1) DESIGNATED MARKET AREA.—The term ‘designated market area’ has the meaning given such term in section 122(j)(2)(C) of title 17, United States Code.

“(2) GOOD QUALITY SATELLITE SIGNAL.—

“(A) IN GENERAL.—The term “good quality satellite signal” means—

“(i) a satellite signal whose power level as designed shall achieve reception and demodulation of the signal at an availability level of at least 99.7 percent using—

“(I) models of satellite antennas normally used by the satellite carrier’s subscribers; and

“(II) the same calculation methodology used by the satellite carrier to determine predicted signal availability in the top 100 designated market areas; and

“(ii) taking into account whether a signal is in standard definition format or high definition format, compression methodology, modulation, error correction, power level, and utilization of advances in technology that do not circumvent the intent of this section to provide for non-discriminatory treatment with respect to any comparable television broadcast station signal, a video signal transmitted by a satellite carrier such that—

“(I) the satellite carrier treats all television broadcast stations’ signals the same with respect to statistical multiplexer prioritization; and

“(II) the number of video signals in the relevant satellite transponder is not more than the then current greatest number of video signals carried on any equivalent transponder serving the top 100 designated market areas.

Publication.

“(B) DETERMINATION.—For the purposes of subparagraph (A), the top 100 designated market areas shall be as determined by Nielsen Media Research and published in the Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication as of the date of a satellite carrier’s application for certification under this section.”.

SEC. 207. NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION DIGITAL SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS. 47 USC 338.

(a) IN GENERAL.—Section 338(a) is amended by adding at the end the following new paragraph:

“(5) NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.—

“(A) EXISTING CARRIAGE OF HIGH DEFINITION SIGNALS.—

Deadlines.

If, before the date of enactment of the Satellite Television Extension and Localism Act of 2010, an eligible satellite carrier is providing, under section 122 of title 17, United States Code, any secondary transmissions in high definition format to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, then such satellite carrier shall carry the signals in high-definition format of qualified non-commercial educational television stations located within that local market in accordance with the following schedule:

“(i) By December 31, 2010, in at least 50 percent of the markets in which such satellite carrier provides such secondary transmissions in high definition format.

“(ii) By December 31, 2011, in every market in which such satellite carrier provides such secondary transmissions in high definition format.

“(B) NEW INITIATION OF SERVICE.—If, on or after the date of enactment of the Satellite Television Extension and Localism Act of 2010, an eligible satellite carrier initiates the provision, under section 122 of title 17, United States Code, of any secondary transmissions in high definition format to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, then such satellite carrier shall carry the signals in high-definition format of all qualified non-commercial educational television stations located within that local market.”.

(b) DEFINITIONS.—Section 338(k) is amended—

(1) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively;

(2) by inserting after paragraph (1) the following new paragraph:

“(2) ELIGIBLE SATELLITE CARRIER.—The term ‘eligible satellite carrier’ means any satellite carrier that is not a party to a carriage contract that—

“(A) governs carriage of at least 30 qualified non-commercial educational television stations; and

“(B) is in force and effect within 150 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010.”;

Deadline.

(3) by redesignating paragraphs (6) through (9) (as previously redesignated) as paragraphs (7) through (10), respectively; and

(4) by inserting after paragraph (5) (as so redesignated) the following new paragraph:

“(6) **QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.**—The term ‘qualified noncommercial educational television station’ means any full-power television broadcast station that—

“(A) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational broadcast station and is owned and operated by a public agency, nonprofit foundation, nonprofit corporation, or nonprofit association; and

“(B) has as its licensee an entity that is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title.”.

47 USC 325 note. **SEC. 208. SAVINGS CLAUSE REGARDING DEFINITIONS.**

Nothing in this title or the amendments made by this title shall be construed to affect—

(1) the meaning of the terms “program related” and “primary video” under the Communications Act of 1934; or

(2) the meaning of the term “multicast” in any regulations issued by the Federal Communications Commission.

47 USC 335. **SEC. 209. STATE PUBLIC AFFAIRS BROADCASTS.**

Section 335(b) is amended—

(1) by inserting “**STATE PUBLIC AFFAIRS,**” after “**EDUCATIONAL,**” in the heading;

(2) by striking paragraph (1) and inserting the following:

“(1) **CHANNEL CAPACITY REQUIRED.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

“(B) **REQUIREMENT FOR QUALIFIED SATELLITE PROVIDER.**—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a qualified satellite provider of direct broadcast satellite service providing video programming, that such provider reserve a portion of its channel capacity, equal to not less than 3.5 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.”;

(3) in paragraph (5), by striking “For purposes of the subsection—” and inserting “For purposes of this subsection.”; and

(4) by adding at the end of paragraph (5) the following:

“(C) The term ‘qualified satellite provider’ means any provider of direct broadcast satellite service that—

“(i) provides the retransmission of the State public affairs networks of at least 15 different States;

“(ii) offers the programming of State public affairs networks upon reasonable prices, terms, and conditions as determined by the Commission under paragraph (4); and

Definition.

“(iii) does not delete any noncommercial programming of an educational or informational nature in connection with the carriage of a State public affairs network.

“(D) The term ‘State public affairs network’ means a non-commercial non-broadcast network or a noncommercial educational television station—

Definition.

“(i) whose programming consists of information about State government deliberations and public policy events; and

“(ii) that is operated by—

“(I) a State government or subdivision thereof;

“(II) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code and that is governed by an independent board of directors; or

“(III) a cable system.”.

TITLE III—REPORTS AND SAVINGS PROVISION

SEC. 301. DEFINITION.

47 USC 338 note.

In this title, the term “appropriate Congressional committees” means the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate and the Committees on the Judiciary and on Energy and Commerce of the House of Representatives.

SEC. 302. REPORT ON MARKET BASED ALTERNATIVES TO STATUTORY LICENSING.

Not later than 18 months after the date of the enactment of this Act, and after consultation with the Federal Communications Commission, the Register of Copyrights shall submit to the appropriate Congressional committees a report containing—

(1) proposed mechanisms, methods, and recommendations on how to implement a phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code, by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission;

(2) any recommendations for alternative means to implement a timely and effective phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code; and

(3) any recommendations for legislative or administrative actions as may be appropriate to achieve such a phase-out.

SEC. 303. REPORT ON COMMUNICATIONS IMPLICATIONS OF STATUTORY LICENSING MODIFICATIONS.

(a) STUDY.—The Comptroller General shall conduct a study that analyzes and evaluates the changes to the carriage requirements currently imposed on multichannel video programming

distributors under the Communications Act of 1934 (47 U.S.C. 151 et seq.) and the regulations promulgated by the Federal Communications Commission that would be required or beneficial to consumers, and such other matters as the Comptroller General deems appropriate, if Congress implemented a phase-out of the current statutory licensing requirements set forth under sections 111, 119, and 122 of title 17, United States Code. Among other things, the study shall consider the impact such a phase-out and related changes to carriage requirements would have on consumer prices and access to programming.

(b) **REPORT.**—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall report to the appropriate Congressional committees the results of the study, including any recommendations for legislative or administrative actions.

SEC. 304. REPORT ON IN-STATE BROADCAST PROGRAMMING.

Not later than 18 months after the date of the enactment of this Act, the Federal Communications Commission shall submit to the appropriate Congressional committees a report containing an analysis of—

(1) the number of households in a State that receive the signals of local broadcast stations assigned to a community of license that is located in a different State;

(2) the extent to which consumers in each local market have access to in-state broadcast programming over the air or from a multichannel video programming distributor; and

(3) whether there are alternatives to the use of designated market areas, as defined in section 122 of title 17, United States Code, to define local markets that would provide more consumers with in-state broadcast programming.

47 USC 338 note.

SEC. 305. LOCAL NETWORK CHANNEL BROADCAST REPORTS.

(a) **REQUIREMENT.**—

(1) **IN GENERAL.**—On the 270th day after the date of the enactment of this Act, and on each succeeding anniversary of such 270th day, each satellite carrier shall submit an annual report to the Federal Communications Commission setting forth—

(A) each local market in which it—

(i) retransmits signals of 1 or more television broadcast stations with a community of license in that market;

(ii) has commenced providing such signals in the preceding 1-year period; and

(iii) has ceased to provide such signals in the preceding 1-year period; and

(B) detailed information regarding the use and potential use of satellite capacity for the retransmission of local signals in each local market.

(2) **TERMINATION.**—The requirement under paragraph (1) shall cease after each satellite carrier has submitted 5 reports under such paragraph.

(b) **FCC STUDY; REPORT.**—

(1) **STUDY.**—If no satellite carrier files a request for a certification under section 342 of the Communications Act of 1934 (as added by section 206 of this title) within 270 days

after the date of the enactment of this Act, the Federal Communications Commission shall initiate a study of—

(A) incentives that would induce a satellite carrier to provide the signals of 1 or more television broadcast stations licensed to provide signals in local markets in which the satellite carrier does not provide such signals; and

(B) the economic and satellite capacity conditions affecting delivery of local signals by satellite carriers to these markets.

(2) **REPORT.**—Within 1 year after the date of the initiation of the study under paragraph (1), the Federal Communications Commission shall submit a report to the appropriate Congressional committees containing its findings, conclusions, and recommendations.

(c) **DEFINITIONS.**—In this section—

(1) the terms “local market” and “satellite carrier” have the meaning given such terms in section 339(d) of the Communications Act of 1934 (47 U.S.C. 339(d)); and

(2) the term “television broadcast station” has the meaning given such term in section 325(b)(7) of such Act (47 U.S.C. 325(b)(7)).

SEC. 306. SAVINGS PROVISION REGARDING USE OF NEGOTIATED LICENSES. 17 USC 111 note.

(a) **IN GENERAL.**—Nothing in this Act, title 17, United States Code, the Communications Act of 1934, regulations promulgated by the Register of Copyrights under this title or title 17, United States Code, or regulations promulgated by the Federal Communications Commission under this Act or the Communications Act of 1934 shall be construed to prevent a multichannel video programming distributor from retransmitting a performance or display of a work pursuant to an authorization granted by the copyright owner or, if within the scope of its authorization, its licensee.

(b) **LIMITATION.**—Nothing in subsection (a) shall be construed to affect any obligation of a multichannel video programming distributor under section 325(b) of the Communications Act of 1934 to obtain the authority of a television broadcast station before retransmitting that station’s signal.

SEC. 307. EFFECTIVE DATE; NONINFRINGEMENT OF COPYRIGHT. 17 USC 111 note.

(a) **EFFECTIVE DATE.**—Unless specifically provided otherwise, this Act, and the amendments made by this Act, shall take effect on February 27, 2010, and with the exception of the reference in subsection (b), all references to the date of enactment of this Act shall be deemed to refer to February 27, 2010, unless otherwise specified.

(b) **NONINFRINGEMENT OF COPYRIGHT.**—The secondary transmission of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if it was made by a satellite carrier on or after February 27, 2010, and prior to enactment of this Act, and was in compliance with the law as in existence on February 27, 2010.

TITLE IV—SEVERABILITY

17 USC 111 note. **SEC. 401. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provision or amendment to any person or circumstance shall not be affected thereby.

TITLE V—DETERMINATION OF BUDGETARY EFFECTS

SEC. 501. DETERMINATION OF BUDGETARY EFFECTS.

(a) **IN GENERAL.**—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved May 27, 2010.

LEGISLATIVE HISTORY—S. 3333:

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 7, considered and passed Senate.

May 12, considered and passed House.



Public Law 111–176
111th Congress

An Act

To designate the United States Department of the Interior Building in Washington, District of Columbia, as the “Stewart Lee Udall Department of the Interior Building”.

June 8, 2010
[H.R. 5128]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

43 USC 1451
note.

SECTION 1. DESIGNATION.

The United States Department of the Interior Building located at 1849 C Street, Northwest, in Washington, District of Columbia, shall be known and designated as the “Stewart Lee Udall Department of the Interior Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, record, or other paper of the United States to the building referred to in section 1 shall be considered to be a reference to the “Stewart Lee Udall Department of the Interior Building”.

Approved June 8, 2010.

LEGISLATIVE HISTORY—H.R. 5128 (S. 3248):

HOUSE REPORTS: No. 111–485 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 19, 20, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–177
111th Congress

An Act

June 8, 2010
[H.R. 5139]

To provide for the International Organizations Immunities Act to be extended to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Extending
Immunities to
the Office of the
High Representa-
tive in Bosnia
and Herzegovina
and the Inter-
national Civilian
Office in Kosovo
Act of 2010.
22 USC 288 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Extending Immunities to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo Act of 2010”.

SEC. 2. AUTHORITY TO EXTEND THE PROVISIONS OF THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT TO THE OFFICE OF THE HIGH REPRESENTATIVE IN BOSNIA AND HERZEGOVINA AND THE INTERNATIONAL CIVILIAN OFFICE IN KOSOVO.

The International Organizations Immunities Act (22 U.S.C. 288 et seq.) is amended by adding at the end the following new section:

22 USC 288f–7.

“SEC. 17. The provisions of this title may be extended to the Office of the High Representative in Bosnia and Herzegovina (and to its officers and employees) or the International Civilian Office in Kosovo (and to its officers and employees) in the same manner, to the same extent, and subject to the same conditions, as such provisions may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation. Any such extension may provide for the provisions of this title to continue to extend to the Office of the High Representative in Bosnia and Herzegovina (and to its officers and employees) or the International Civilian Office in Kosovo (and to its officers and employees) after that Office has been dissolved.”.

SEC. 3. BUDGET COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved June 8, 2010.

LEGISLATIVE HISTORY—H.R. 5139:

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 19, considered and passed House.

May 20, considered and passed Senate.



Public Law 111–178
111th Congress

An Act

June 9, 2010
[H.R. 2711]

To amend title 5, United States Code, to provide for the transportation and moving expenses for the immediate family of certain Federal employees who die in the performance of their duties.

Special Agent
Samuel Hicks
Families of
Fallen Heroes
Act.
5 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Special Agent Samuel Hicks Families of Fallen Heroes Act”.

SEC. 2. TRANSPORTATION AND MOVING EXPENSES FOR IMMEDIATE FAMILY OF CERTAIN DECEASED FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subchapter II of chapter 57 of title 5, United States Code, is amended by inserting after section 5724c the following:

“§ 5724d. Transportation and moving expenses for immediate family of certain deceased Federal employees

Regulations.
President.

“(a) IN GENERAL.—Under regulations prescribed by the President, the head of the agency concerned (or a designee) may determine that a covered employee died as a result of personal injury sustained while in the performance of the employee’s duty and authorize or approve the payment by the agency, from Government funds, of—

“(1) any qualified expense of the immediate family of the covered employee attributable to a change in their place of residence, if the place where the immediate family will reside following the death of the employee is—

“(A) different from the place where the immediate family resided at the time of the employee’s death; and

“(B) within the United States; and

“(2) any expense of preparing and transporting the remains of the deceased to—

“(A) the place where the immediate family will reside following the death of the employee; or

“(B) such other place appropriate for interment as is determined by the agency head (or designee).

“(b) NO DUPLICATE PAYMENT OF EXPENSES.—No expenses may be paid under this section if those expenses are paid from Government funds under section 5742 or any other authority.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘covered employee’ means—

“(A) a law enforcement officer, as defined in section 5541;

“(B) any employee in or under the Federal Bureau of Investigation who is not described in subparagraph (A); and

“(C) a customs and border protection officer, as defined in section 8331(31); and

“(2) the term ‘qualified expense’, as used with respect to an immediate family changing its place of residence, means the transportation expenses of the immediate family, the expenses of moving (including transporting, packing, crating, temporarily storing, draying, and unpacking) the household goods and personal effects of such immediate family, not in excess of 18,000 pounds net weight, and, when authorized or approved by the agency head (or designee), the transportation of 1 privately owned motor vehicle.”.

(b) NO RELEVANCE AS TO COMPENSATION CLAIMS.—No determination made under section 5724d of title 5, United States Code, shall be deemed relevant to or be considered in connection with any claim for compensation under chapter 81 of that title or under any other law under which compensation may be provided on account of death or personal injury, nor shall any determination made with respect to any such claim be deemed relevant to or be considered in connection with any request for payment of expenses under such section 5724d.

5 USC 5724 note.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5724c the following:

“Sec. 5724d. Transportation and moving expenses for immediate family of certain deceased Federal employees.”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 2711:

HOUSE REPORTS: No. 111–274 (Comm. on Oversight and Government Reform).
CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 8, considered and passed House.

Vol. 156 (2010): May 14, considered and passed Senate, amended.

May 25, House concurred in Senate amendments.



Public Law 111–179
111th Congress

An Act

June 9, 2010
[H.R. 3250]

To designate the facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, as the “Private First Class Garfield M. Langhorn Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRIVATE FIRST CLASS GARFIELD M. LANGHORN POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, shall be known and designated as the “Private First Class Garfield M. Langhorn Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Private First Class Garfield M. Langhorn Post Office Building”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 3250 (S. 2945):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 20, 21, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–180
111th Congress

An Act

To designate the facility of the United States Postal Service located at 109 Main Street in Swifton, Arkansas, as the “George Kell Post Office”.

June 9, 2010
[H.R. 3634]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GEORGE KELL POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 109 Main Street in Swifton, Arkansas, shall be known and designated as the “George Kell Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “George Kell Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 3634:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 1, 2, considered and passed House.
Vol. 156 (2010): May 25, considered and passed Senate.



Public Law 111–181
111th Congress

An Act

June 9, 2010
[H.R. 3892]

To designate the facility of the United States Postal Service located at 101 West Highway 64 Bypass in Roper, North Carolina, as the “E.V. Wilkins Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. E.V. WILKINS POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 101 West Highway 64 Bypass in Roper, North Carolina, shall be known and designated as the “E.V. Wilkins Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “E.V. Wilkins Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 3892:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 13, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–182
111th Congress

An Act

To designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the “Ann Marie Blute Post Office”.

June 9, 2010
[H.R. 4017]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ANN MARIE BLUTE POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, shall be known and designated as the “Ann Marie Blute Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Ann Marie Blute Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4017:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 8, 10, considered and passed House.
Vol. 156 (2010): May 25, considered and passed Senate.



Public Law 111–183
111th Congress

An Act

June 9, 2010
[H.R. 4095]

To designate the facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, as the “Congresswoman Jan Meyers Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSWOMAN JAN MEYERS POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, shall be known and designated as the “Congresswoman Jan Meyers Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Congresswoman Jan Meyers Post Office Building”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4095:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Jan. 20, considered and passed House.
May 25, considered and passed Senate.



Public Law 111–184
111th Congress

An Act

To designate the facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, as the “Sergeant Matthew L. Ingram Post Office”.

June 9, 2010
[H.R. 4139]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SERGEANT MATTHEW L. INGRAM POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, shall be known and designated as the “Sergeant Matthew L. Ingram Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Sergeant Matthew L. Ingram Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4139:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 13, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–185
111th Congress

An Act

June 9, 2010
[H.R. 4214]

To designate the facility of the United States Postal Service located at 45300 Portola Avenue in Palm Desert, California, as the “Roy Wilson Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ROY WILSON POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 45300 Portola Avenue in Palm Desert, California, shall be known and designated as the “Roy Wilson Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Roy Wilson Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4214:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 17, 18, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–186
111th Congress

An Act

To designate the facility of the United States Postal Service located at 930 39th Avenue in Greeley, Colorado, as the “W.D. Farr Post Office Building”.

June 9, 2010
[H.R. 4238]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. W.D. FARR POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 930 39th Avenue in Greeley, Colorado, shall be known and designated as the “W.D. Farr Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “W.D. Farr Post Office Building”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4238:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Feb. 22, considered and passed House.
May 25, considered and passed Senate.



Public Law 111–187
111th Congress

An Act

June 9, 2010
[H.R. 4425]

To designate the facility of the United States Postal Service located at 2–116th Street in North Troy, New York, as the “Martin G. ‘Marty’ Mahar Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MARTIN G. “MARTY” MAHAR POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 2–116th Street in North Troy, New York, shall be known and designated as the “Martin G. ‘Marty’ Mahar Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Martin G. ‘Marty’ Mahar Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4425 (S. 3012):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Feb. 22, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–188
111th Congress

An Act

To designate the facility of the United States Postal Service located at 119 Station Road in Cheyney, Pennsylvania, as the “Captain Luther H. Smith, U.S. Army Air Forces Post Office”.

June 9, 2010

[H.R. 4547]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CAPTAIN LUTHER H. SMITH, U.S. ARMY AIR FORCES POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 119 Station Road in Cheyney, Pennsylvania, shall be known and designated as the “Captain Luther H. Smith, U.S. Army Air Forces Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Captain Luther H. Smith, U.S. Army Air Forces Post Office”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4547:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 9, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–189
111th Congress

An Act

June 9, 2010
[H.R. 4628]

To designate the facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, as the “Sergeant Christopher R. Hrbek Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SERGEANT CHRISTOPHER R. HRBEK POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, shall be known and designated as the “Sergeant Christopher R. Hrbek Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Sergeant Christopher R. Hrbek Post Office Building”.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 4628 (S. 3013):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 15, 16, considered and passed House.

May 25, considered and passed Senate.



Public Law 111–190
111th Congress

An Act

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes.

June 9, 2010
[H.R. 5330]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DELAY OF SUNSET.

Section 211(a) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended—

(1) in subsection (a)—

(A) by inserting “of this subtitle” after “214”; and

(B) by striking “6 years” and inserting “16 years”;

and

(2) by amending subsection (b) to read as follows:

“(b) EXCEPTIONS.—With respect to—

“(1) a person who receives a marker on or before the date on which the provisions of section 211 through 214 of this subtitle shall cease to have effect that later results in the execution of an antitrust leniency agreement; or

“(2) an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect,

the provisions of sections 211 through 214 of this subtitle shall continue in effect.”.

SEC. 2. DEFINITIONS.

Section 212 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following:

“(6) MARKER.—The term ‘marker’ means an assurance given by the Antitrust Division to a candidate for corporate leniency that no other company will be considered for leniency, for some finite period of time, while the candidate is given an opportunity to perfect its leniency application.”.

SEC. 3. TIMELINESS; COOPERATION AFTER TERMINATION OF STAY OR PROTECTIVE ORDER.

(a) TIMELINESS.—Section 213(c) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended to read as follows:

“(c) **TIMELINESS.**—The court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant’s or cooperating individual’s cooperation with the claimant.”.

(b) **COOPERATION AFTER TERMINATION OF STAY OR PROTECTIVE ORDER.**—Section 213 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended by adding at the end the following—

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting after subsection (c) the following:

“(d) **COOPERATION AFTER EXPIRATION OF STAY OR PROTECTIVE ORDER.**—If the Antitrust Division does obtain a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement, once the stay or protective order, or a portion thereof, expires or is terminated, the antitrust leniency applicant and cooperating individuals shall provide without unreasonable delay any cooperation described in paragraphs (1) and (2) of subsection (b) that was prohibited by the expired or terminated stay or protective order, or the expired or terminated portion thereof, in order for the cooperation to be deemed satisfactory under such paragraphs.”.

SEC. 4. TECHNICAL CORRECTIONS.

Section 214 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended—

- (1) in paragraph (1) by inserting “of this subtitle” after “213(b)”; and
- (2) in paragraph (3)—
 - (A) by inserting “of this subtitle” after “213(a)” the 1st place it appears; and
 - (B) by striking “title” and inserting “subtitle”.

SEC. 5. GAO REPORT.

Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit, to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, a report on the effectiveness of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, both in criminal investigation and enforcement by the Department of Justice, and in private civil actions. Such report should include study of, inter alia—

- (1) the appropriateness of the addition of qui tam proceedings to the antitrust leniency program; and
- (2) the appropriateness of creating anti-retaliatory protection for employees who report illegal anticompetitive conduct.

15 USC 1 note.

SEC. 6. EFFECTIVE DATE OF AMENDMENTS.

The amendments made by section 1 shall take effect immediately before June 22, 2010.

SEC. 7. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved June 9, 2010.

LEGISLATIVE HISTORY—H.R. 5330:

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 24, considered and passed House.

May 27, considered and passed Senate.



Public Law 111–191
111th Congress

An Act

June 15, 2010
[S. 3473]

To amend the Oil Pollution Act of 1990 to authorize advances from Oil Spill Liability Trust Fund for the Deepwater Horizon oil spill.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADVANCES FROM OIL SPILL LIABILITY TRUST FUND FOR DEEPWATER HORIZON OIL SPILL.

Section 6002(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2752) is amended in the second sentence—

(1) by inserting “(1)” after “Coast Guard”; and

(2) by inserting before the period at the end the following: “and (2) in the case of the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, may, without further appropriation, obtain 1 or more advances from the Fund as needed, up to a maximum of \$100,000,000 for each advance, with the total amount of all advances not to exceed the amounts available under section 9509(c)(2) of the Internal Revenue Code of 1986, and within 7 days of each advance, shall notify Congress of the amount advanced and the facts and circumstances necessitating the advance”.

Deadline.
Notification.

SEC. 2. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved June 15, 2010.

LEGISLATIVE HISTORY—S. 3473:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 9, considered and passed Senate.

June 10, considered and passed House.



Public Law 111–192
111th Congress

An Act

June 25, 2010
[H.R. 3962]

To provide a physician payment update, to provide pension funding relief, and
for other purposes.

Preservation of
Access to Care
for Medicare
Beneficiaries and
Pension Relief
Act of 2010.
29 USC 1001
note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preservation of Access to Care
for Medicare Beneficiaries and Pension Relief Act of 2010”.

TITLE I—HEALTH PROVISIONS

SEC. 101. PHYSICIAN PAYMENT UPDATE.

(a) IN GENERAL.—Section 1848(d) of the Social Security Act
(42 U.S.C. 1395w–4(d)) is amended—

(1) in paragraph (10), in the heading, by striking “PORTION”
and inserting “JANUARY THROUGH MAY”; and

(2) by adding at the end the following new paragraph:

“(11) UPDATE FOR JUNE THROUGH NOVEMBER OF 2010.—

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B),
(9)(B), and (10)(B), in lieu of the update to the single
conversion factor established in paragraph (1)(C) that
would otherwise apply for 2010 for the period beginning
on June 1, 2010, and ending on November 30, 2010, the
update to the single conversion factor shall be 2.2 percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION
FACTOR FOR REMAINING PORTION OF 2010 AND SUBSEQUENT
YEARS.—The conversion factor under this subsection shall
be computed under paragraph (1)(A) for the period begin-
ning on December 1, 2010, and ending on December 31,
2010, and for 2011 and subsequent years as if subpara-
graph (A) had never applied.”.

(b) STATUTORY PAYGO.—The budgetary effects of this Act, for
the purpose of complying with the Statutory Pay-As-You-Go Act
of 2010, shall be determined by reference to the latest statement
titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly
submitted for printing in the Congressional Record by the Chairmen
of the House and Senate Budget Committees, provided that such
statement has been submitted prior to the vote on passage in
the House acting first on this conference report or amendment
between the Houses.

Time periods.

SEC. 102. CLARIFICATION OF 3-DAY PAYMENT WINDOW.42 USC 1395ww
note.

(a) **IN GENERAL.**—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended—

(1) by adding at the end of subsection (a)(4) the following new sentence: “In applying the first sentence of this paragraph, the term ‘other services related to the admission’ includes all services that are not diagnostic services (other than ambulance and maintenance renal dialysis services) for which payment may be made under this title that are provided by a hospital (or an entity wholly owned or operated by the hospital) to a patient—

“(A) on the date of the patient’s inpatient admission;

or

“(B) during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of such admission unless the hospital demonstrates (in a form and manner, and at a time, specified by the Secretary) that such services are not related (as determined by the Secretary) to such admission.”; and

(2) in subsection (d)(7)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(C) the determination of whether services provided prior to a patient’s inpatient admission are related to the admission (as described in subsection (a)(4)).”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to services furnished on or after the date of the enactment of this Act.

(c) **NO REOPENING OF PREVIOUSLY BUNDLED CLAIMS.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services may not reopen a claim, adjust a claim, or make a payment pursuant to any request for payment under title XVIII of the Social Security Act, submitted by an entity (including a hospital or an entity wholly owned or operated by the hospital) for services described in paragraph (2) for purposes of treating, as unrelated to a patient’s inpatient admission, services provided during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of the patient’s inpatient admission.

(2) **SERVICES DESCRIBED.**—For purposes of paragraph (1), the services described in this paragraph are other services related to the admission (as described in section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(a)(4)), as amended by subsection (a)) which were previously included on a claim or request for payment submitted under part A of title XVIII of such Act for which a reopening, adjustment, or request for payment under part B of such title, was not submitted prior to the date of the enactment of this Act.

(d) **IMPLEMENTATION.**—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of this section (and amendments made by this section) by program instruction or otherwise.

(e) **RULE OF CONSTRUCTION.**—Nothing in the amendments made by this section shall be construed as changing the policy described in section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(a)(4)), as applied by the Secretary of Health and Human Services before the date of the enactment of this Act, with respect to diagnostic services.

SEC. 103. ESTABLISH A CMS–IRS DATA MATCH TO IDENTIFY FRAUDULENT PROVIDERS.

(a) **AUTHORITY TO DISCLOSE RETURN INFORMATION CONCERNING OUTSTANDING TAX DEBTS FOR PURPOSES OF ENHANCING MEDICARE PROGRAM INTEGRITY.**—

26 USC 6103.

(1) **IN GENERAL.**—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(22) **DISCLOSURE OF RETURN INFORMATION TO DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR PURPOSES OF ENHANCING MEDICARE PROGRAM INTEGRITY.**—

“(A) **IN GENERAL.**—The Secretary shall, upon written request from the Secretary of Health and Human Services, disclose to officers and employees of the Department of Health and Human Services return information with respect to a taxpayer who has applied to enroll, or reenroll, as a provider of services or supplier under the Medicare program under title XVIII of the Social Security Act. Such return information shall be limited to—

“(i) the taxpayer identity information with respect to such taxpayer;

“(ii) the amount of the delinquent tax debt owed by that taxpayer; and

“(iii) the taxable year to which the delinquent tax debt pertains.

“(B) **RESTRICTION ON DISCLOSURE.**—Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Health and Human Services for the purposes of, and to the extent necessary in, establishing the taxpayer’s eligibility for enrollment or reenrollment in the Medicare program, or in any administrative or judicial proceeding relating to, or arising from, a denial of such enrollment or reenrollment, or in determining the level of enhanced oversight to be applied with respect to such taxpayer pursuant to section 1866(j)(3) of the Social Security Act.

Definition.

“(C) **DELINQUENT TAX DEBT.**—For purposes of this paragraph, the term ‘delinquent tax debt’ means an outstanding debt under this title for which a notice of lien has been filed pursuant to section 6323, but the term does not include a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or 7122, or a debt with respect to which a collection due process hearing under section 6330 is requested, pending, or completed and no payment is required.”.

(2) **CONFORMING AMENDMENTS.**—Section 6103(p)(4) of such Code, as amended by sections 1414 and 3308 of Public Law 111–148, in the matter preceding subparagraph (A) and in subparagraph (F)(ii), is amended by striking “or (17)” and inserting “(17), or (22)” each place it appears.

(b) SECRETARY’S AUTHORITY TO USE INFORMATION FROM THE DEPARTMENT OF TREASURY IN MEDICARE ENROLLMENTS AND RE-ENROLLMENTS.—Section 1866(j)(2) of the Social Security Act (42 U.S.C. 1395cc(j)), as inserted by section 6401(a) of Public Law 111–148, is further amended—

(1) by redesignating subparagraph (E) as subparagraph (F); and

(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) USE OF INFORMATION FROM THE DEPARTMENT OF TREASURY CONCERNING TAX DEBTS.—In reviewing the application of a provider of services or supplier to enroll or reenroll under the program under this title, the Secretary shall take into account the information supplied by the Secretary of the Treasury pursuant to section 6103(l)(22) of the Internal Revenue Code of 1986, in determining whether to deny such application or to apply enhanced oversight to such provider of services or supplier pursuant to paragraph (3) if the Secretary determines such provider of services or supplier owes such a debt.”.

Determination.

(c) AUTHORITY TO ADJUST PAYMENTS OF PROVIDERS OF SERVICES AND SUPPLIERS WITH THE SAME TAX IDENTIFICATION NUMBER FOR MEDICARE OBLIGATIONS.—Section 1866(j)(6) of the Social Security Act (42 U.S.C. 1395cc(j)(6)), as inserted by section 6401(a) of Public Law 111–148 and as redesignated by section 1304 of Public Law 111–152, is amended—

(1) in the paragraph heading, by striking “PAST-DUE” and inserting “MEDICARE”;

(2) in subparagraph (A), by striking “past-due obligations described in subparagraph (B)(ii) of an” and inserting “amount described in subparagraph (B)(ii) due from such”; and

(3) in subparagraph (B)(ii), by striking “a past-due obligation” and inserting “an amount that is more than the amount required to be paid”.

TITLE II—PENSION FUNDING RELIEF

Subtitle A—Single Employer Plans

SEC. 201. EXTENDED PERIOD FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS TO AMORTIZE CERTAIN SHORTFALL AMORTIZATION BASES.

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following subparagraph:

“(D) SPECIAL ELECTION FOR ELIGIBLE PLAN YEARS.—

“(i) IN GENERAL.—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ‘election year’), then, notwithstanding subparagraphs (A) and (B)—

Applicability.

“(I) the shortfall amortization installments with respect to such base shall be determined

under clause (ii) or (iii), whichever is specified in the election, and

“(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

“(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

“(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

“(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

“(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

“(iv) ELECTION.—

“(I) IN GENERAL.—The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

“(II) AMORTIZATION SCHEDULE.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

“(III) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury. The Secretary of the Treasury shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment

on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

“(v) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph. Definition.

“(vi) REPORTING.—A plan sponsor of a plan who makes an election under clause (i) shall—

“(I) give notice of the election to participants and beneficiaries of the plan, and Notice.

“(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

“(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).”.

(2) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following paragraph:

“(7) INCREASES IN ALTERNATE REQUIRED INSTALLMENTS IN CASES OF EXCESS COMPENSATION OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMPTIONS.—

“(A) IN GENERAL.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

“(B) TOTAL INSTALLMENTS LIMITED TO SHORTFALL BASE.—Subject to rules prescribed by the Secretary of the Treasury, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)— Regulations.

“(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

“(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

Definition.

“(C) INSTALLMENT ACCELERATION AMOUNT.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘installment acceleration amount’ means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year plus

“(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

“(ii) ANNUAL LIMITATION.—The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

“(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

“(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

“(iii) CARRYOVER OF EXCESS INSTALLMENT ACCELERATION AMOUNTS.—

“(I) IN GENERAL.—If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

“(II) CAP TO APPLY.—If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

“(III) LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.—No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

“(IV) ORDERING RULES.—For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

“(D) EXCESS EMPLOYEE COMPENSATION.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘excess employee compensation’ means, with respect to any employee for any plan year, the excess (if any) of—

Definition.

“(I) the aggregate amount includible in income under chapter 1 of the Internal Revenue Code of 1986 for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

“(II) \$1,000,000.

“(ii) AMOUNTS SET ASIDE FOR NONQUALIFIED DEFERRED COMPENSATION.—If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A of such Code) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

“(iii) ONLY REMUNERATION FOR CERTAIN POST-2009 SERVICES COUNTED.—Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A of the Internal Revenue Code of 1986) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1) of such Code) for at least 5 years from the date of such grant.

“(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation provide for the application of this clause in the case of a person other than a corporation.

“(v) OTHER EXCEPTIONS.—The following amounts includible in income shall not be taken into account under clause (i)(I):

“(I) COMMISSIONS.—Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

“(II) CERTAIN PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration consisting of non-qualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

“(vi) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—The term ‘employee’ includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) of such Code for the taxable year ending during such calendar year, and the term ‘compensation’ shall include earned income of such individual with respect to such self-employment.

Effective date.

“(vii) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) of such Code for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$1,000, such increase shall be rounded to the next lowest multiple of \$1,000.

“(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.—

“(i) IN GENERAL.—The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

“(I) the adjusted net income (within the meaning of section 4043) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

“(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—Dividends paid by one member of a controlled group (as defined in section 302(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) EXCEPTION FOR CERTAIN REDEMPTIONS.—Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

“(v) EXCEPTION FOR CERTAIN PREFERRED STOCK.—

“(I) IN GENERAL.—Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor’s income, and interest accrues on any unpaid dividends with respect to such stock.

“(II) APPLICABLE PREFERRED STOCK.—For purposes of subclause (I), the term ‘applicable preferred stock’ means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of this title).

Definition.

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 302(d)(3)).

“(ii) RESTRICTION PERIOD.—The term ‘restriction period’ means, with respect to any election year—

“(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

“(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

“(iii) ELECTIONS FOR MULTIPLE PLANS.—If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary of the Treasury shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan’s relative reduction in the plan’s shortfall amortization installment for the first plan year in the amortization period

described in subparagraph (A) (determined without regard to this paragraph).

“(iv) MERGERS AND ACQUISITIONS.—The Secretary of the Treasury shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).”.

(3) CONFORMING AMENDMENTS.—Section 303 of such Act (29 U.S.C. 1083) is amended—

(A) in subsection (c)(1), by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and inserting “any shortfall amortization base which has not been fully amortized under this subsection”, and

(B) in subsection (j)(3), by adding at the end the following:

Applicability. “(F) QUARTERLY CONTRIBUTIONS NOT TO INCLUDE CERTAIN INCREASED CONTRIBUTIONS.—Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).”.

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

26 USC 430. (1) IN GENERAL.—Paragraph (2) of section 430(c) is amended by adding at the end the following subparagraph:

Applicability. “(D) SPECIAL ELECTION FOR ELIGIBLE PLAN YEARS.—“(i) IN GENERAL.—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ‘election year’), then, notwithstanding subparagraphs (A) and (B)—

“(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

“(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

“(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

“(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

“(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan

years (using the segment rates under subparagraph (C) for the election year).

“(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

“(iv) ELECTION.—

“(I) IN GENERAL.—The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

“(II) AMORTIZATION SCHEDULE.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

“(III) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

“(v) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph. Definition.

“(vi) REPORTING.—A plan sponsor of a plan who makes an election under clause (i) shall—

“(I) give notice of the election to participants and beneficiaries of the plan, and Notice.

“(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

“(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).”.

26 USC 430.

(2) INCREASES IN REQUIRED CONTRIBUTIONS IF EXCESS COMPENSATION PAID.—Section 430(c) is amended by adding at the end the following paragraph:

“(7) INCREASES IN ALTERNATE REQUIRED INSTALLMENTS IN CASES OF EXCESS COMPENSATION OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMPTIONS.—

“(A) IN GENERAL.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

Regulations.

“(B) TOTAL INSTALLMENTS LIMITED TO SHORTFALL BASE.—Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

“(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

“(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

“(C) INSTALLMENT ACCELERATION AMOUNT.—For purposes of this paragraph—

Definition.

“(i) IN GENERAL.—The term ‘installment acceleration amount’ means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

“(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

“(ii) ANNUAL LIMITATION.—The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

“(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

“(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

“(iii) CARRYOVER OF EXCESS INSTALLMENT ACCELERATION AMOUNTS.—

“(I) IN GENERAL.—If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

“(II) CAP TO APPLY.—If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

“(III) LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.—No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

“(IV) ORDERING RULES.—For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

“(D) EXCESS EMPLOYEE COMPENSATION.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘excess employee compensation’ means, with respect to any employee for any plan year, the excess (if any) of—

Definition.

“(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

“(II) \$1,000,000.

“(ii) AMOUNTS SET ASIDE FOR NONQUALIFIED DEFERRED COMPENSATION.—If during any calendar year assets are set aside or reserved (directly or

Applicability.

indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

“(iii) ONLY REMUNERATION FOR CERTAIN POST-2009 SERVICES COUNTED.—Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1)) for at least 5 years from the date of such grant.

“(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

“(v) OTHER EXCEPTIONS.—The following amounts includible in income shall not be taken into account under clause (i)(I):

“(I) COMMISSIONS.—Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

“(II) CERTAIN PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

“(vi) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—The term ‘employee’ includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) for the taxable year ending during such calendar year, and the term ‘compensation’ shall include earned income of such individual with respect to such self-employment.

Effective date.

“(vii) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2010, the dollar amount

under clause (i)(II) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$1,000, such increase shall be rounded to the next lowest multiple of \$1,000.

“(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.—

“(i) IN GENERAL.—The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

“(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

“(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) EXCEPTION FOR CERTAIN REDEMPTIONS.—Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

“(v) EXCEPTION FOR CERTAIN PREFERRED STOCK.—

“(I) IN GENERAL.—Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor’s income, and interest accrues on any unpaid dividends with respect to such stock.

Definition.

“(II) APPLICABLE PREFERRED STOCK.—For purposes of subclause (I), the term ‘applicable preferred stock’ means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of Employee Retirement Income Security Act of 1974).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 412(d)(3)).

“(ii) RESTRICTION PERIOD.—The term ‘restriction period’ means, with respect to any election year—

“(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

“(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

“(iii) ELECTIONS FOR MULTIPLE PLANS.—If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan’s relative reduction in the plan’s shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

“(iv) MERGERS AND ACQUISITIONS.—The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).”.

26 USC 430.

(3) CONFORMING AMENDMENTS.—Section 430 is amended—

(A) in subsection (c)(1), by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and inserting “any shortfall amortization base which has not been fully amortized under this subsection”, and

(B) in subsection (j)(3), by adding at the end the following:

Applicability.

“(F) QUARTERLY CONTRIBUTIONS NOT TO INCLUDE CERTAIN INCREASED CONTRIBUTIONS.—Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).”.

26 USC 430 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2007.

SEC. 202. APPLICATION OF EXTENDED AMORTIZATION PERIOD TO PLANS SUBJECT TO PRIOR LAW FUNDING RULES.

(a) IN GENERAL.—Title I of the Pension Protection Act of 2006 is amended by redesignating section 107 as section 108 and by inserting the following after section 106: 120 Stat. 818.

“SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE. 26 USC 401 note.

“(a) IN GENERAL.—If the plan sponsor of a plan to which section 104, 105, or 106 of this Act applies elects to have this section apply for any eligible plan year (in this section referred to as an ‘election year’), section 302 of the Employee Retirement Income Security Act of 1974 and section 412 of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) shall apply to such year in the manner described in subsection (b) or (c), whichever is specified in the election. All references in this section to ‘such Act’ or ‘such Code’ shall be to such Act or such Code as in effect before the amendments made by this subtitle and subtitle B.

“(b) APPLICATION OF 2 AND 7 RULE.—In the case of an election year to which this subsection applies—

“(1) 2-YEAR LOOKBACK FOR DETERMINING DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN PLANS.—For purposes of applying section 302(d)(9) of such Act and section 412(l)(9) of such Code, the funded current liability percentage (as defined in subparagraph (C) thereof) for such plan for such plan year shall be such funded current liability percentage of such plan for the second plan year preceding the first election year of such plan.

“(2) CALCULATION OF DEFICIT REDUCTION CONTRIBUTION.—For purposes of applying section 302(d) of such Act and section 412(l) of such Code to a plan to which such sections apply (after taking into account paragraph (1))—

“(A) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act and section 412(l)(4)(C) of such Code shall be the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, and

“(B) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(c) APPLICATION OF 15-YEAR AMORTIZATION.—In the case of an election year to which this subsection applies, for purposes of applying section 302(d) of such Act and section 412(l) of such Code—

“(1) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act and section 412(l)(4)(C) of such Code for any pre-effective date plan year beginning with or after the first election year shall be the ratio of—

“(A) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, to

“(B) the increased unfunded new liability for such plan year, and

“(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(d) ELECTION.—

“(1) IN GENERAL.—The plan sponsor of a plan may elect to have this section apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan to which section 106 of this Act applies, the plan sponsor may only elect to have this section apply to 1 eligible plan year.

“(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rules under subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elects to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

“(3) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

“(e) DEFINITIONS.—For purposes of this section—

“(1) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year beginning in 2008 shall only be treated as an eligible plan year if the due date for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this clause.

“(2) PRE-EFFECTIVE DATE PLAN YEAR.—The term ‘pre-effective date plan year’ means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan.

“(3) INCREASED UNFUNDED NEW LIABILITY.—The term ‘increased unfunded new liability’ means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan’s assets determined under subsection 302(c)(2) of such Act and section 412(c)(2) of such Code equaled the product of the current liability of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(8)(B) of such Act and 412(l)(8)(B) of such Code) of the plan for the second plan year preceding the first election year of such plan.

“(4) OTHER DEFINITIONS.—The terms ‘unfunded new liability’ and ‘current liability’ shall have the meanings set forth in section 302(d) of such Act and section 412(l) of such Code.”

(b) ELIGIBLE CHARITY PLANS.—Section 104 of the Pension

26 USC 401 note. Protection Act of 2006 is amended—

(1) by striking “eligible cooperative plan” wherever it appears in subsections (a) and (b) and inserting “eligible cooperative plan or an eligible charity plan”, and

(2) by adding at the end the following new subsection:

“(d) ELIGIBLE CHARITY PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer

(determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.”.

(c) EFFECTIVE DATE.—

26 USC 401 note.

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the Pension Protection Act of 2006.

(2) ELIGIBLE CHARITY PLAN.—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2007, except that a plan sponsor may elect to apply such amendments to plan years beginning after December 31, 2008. Any such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

SEC. 203. LOOKBACK FOR CERTAIN BENEFIT RESTRICTIONS.

26 USC 436 note.
Applicability.

(a) IN GENERAL.—

(1) AMENDMENT TO ERISA.—Section 206(g)(9) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

29 USC 1056.

“(D) SPECIAL RULE FOR CERTAIN YEARS.—Solely for purposes of any applicable provision—

“(i) IN GENERAL.—For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

Time periods.

“(I) such percentage, as determined without regard to this subparagraph, or

“(II) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(II) clause (i)(II) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.

“(iii) APPLICABLE PROVISION.—For purposes of this subparagraph, the term ‘applicable provision’ means—

“(I) paragraph (3), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary of the Treasury, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

“(II) paragraph (4).”.

26 USC 436.	(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 436(j) of the Internal Revenue Code of 1986 is amended by adding at the end the following:
Time periods.	<p>“(3) SPECIAL RULE FOR CERTAIN YEARS.—Solely for purposes of any applicable provision—</p> <p>“(A) IN GENERAL.—For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—</p> <p>“(i) such percentage, as determined without regard to this paragraph, or</p> <p>“(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary.</p> <p>“(B) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—</p> <p>“(i) subparagraph (A) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and</p> <p>“(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.</p> <p>“(C) APPLICABLE PROVISION.—For purposes of this paragraph, the term ‘applicable provision’ means—</p> <p>“(i) subsection (d), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and</p> <p>“(ii) subsection (e).”.</p> <p>(b) INTERACTION WITH WRERA RULE.—Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement Income Security Act of 1974 and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year.</p> <p>(c) EFFECTIVE DATE.—</p> <p>(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning on or after October 1, 2008.</p> <p>(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.</p>
Definition.	
Applicability.	SEC. 204. LOOKBACK FOR CREDIT BALANCE RULE FOR PLANS MAINTAINED BY CHARITIES.
29 USC 1083.	(a) AMENDMENT TO ERISA.—Paragraph (3) of section 303(f) of the Employee Retirement Income Security Act of 1974 is amended by adding the following at the end thereof:

“(D) SPECIAL RULE FOR CERTAIN YEARS OF PLANS MAINTAINED BY CHARITIES.—

“(i) IN GENERAL.—For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year shall be the greater of—

Time periods.

“(I) such ratio, as determined without regard to this subparagraph, or

“(II) the ratio for such plan for the plan year beginning after August 31, 2007, and before September 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2008, and before January 1, 2011, and

“(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.

“(iii) LIMITATION TO CHARITIES.—This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1986.”.

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (3) of section 430(f) of the Internal Revenue Code of 1986 is amended by adding the following at the end thereof: 26 USC 430.

“(D) SPECIAL RULE FOR CERTAIN YEARS OF PLANS MAINTAINED BY CHARITIES.—

“(i) IN GENERAL.—For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

Time periods.

“(I) such ratio, as determined without regard to this subsection, or

“(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary.

“(iii) LIMITATION TO CHARITIES.—This subparagraph shall not apply to any plan unless such plan

is maintained exclusively by one or more organizations described in section 501(c)(3).”.

26 USC 430 note.

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after August 31, 2009.

(2) **SPECIAL RULE.**—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008.

Subtitle B—Multiemployer Plans

SEC. 211. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES.

(a) **ADJUSTMENTS.**—

(1) **AMENDMENT TO ERISA.**—Section 304(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1084(b)) is amended by adding at the end the following new paragraph:

“(8) **SPECIAL RELIEF RULES.**—Notwithstanding any other provision of this subsection—

“(A) **AMORTIZATION OF NET INVESTMENT LOSSES.**—

“(i) **IN GENERAL.**—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period —

“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

“(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

“(ii) **COORDINATION WITH EXTENSIONS.**—If this subparagraph applies for any plan year—

“(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

“(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

“(iii) **NET INVESTMENT LOSSES.**—For purposes of this subparagraph—

“(I) **IN GENERAL.**—Net investment losses shall be determined in the manner prescribed by the Secretary of the Treasury on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

“(II) **CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.**—The determination as to whether

Applicability.

Determination.

an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary of the Treasury for purposes of section 165 of the Internal Revenue Code of 1986.

“(B) EXPANDED SMOOTHING PERIOD.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

“(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

“(III) makes both changes described in subclauses (I) and (II) to such method.

“(ii) ASSET VALUATION METHODS.—If this subparagraph applies for any plan year—

“(I) the Secretary of the Treasury shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

“(II) such changes shall be deemed approved by such Secretary under section 302(d)(1) and section 412(d)(1) of such Code.

“(iii) AMORTIZATION OF REDUCTION IN UNFUNDED ACCRUED LIABILITY.—If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

“(C) SOLVENCY TEST.—The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

“(D) RESTRICTION ON BENEFIT INCREASES.—If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

“(i) the plan actuary certifies that—

Certification.

“(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

“(II) the plan’s funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

“(ii) the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

Notice.

“(E) REPORTING.—A plan sponsor of a plan to which this paragraph applies shall—

“(i) give notice of such application to participants and beneficiaries of the plan, and

“(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.”.

26 USC 431.

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 431(b) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RELIEF RULES.—Notwithstanding any other provision of this subsection—

“(A) AMORTIZATION OF NET INVESTMENT LOSSES.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period —

“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

“(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

“(ii) COORDINATION WITH EXTENSIONS.—If this subparagraph applies for any plan year—

“(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

“(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

“(iii) NET INVESTMENT LOSSES.—For purposes of this subparagraph—

Determination.

“(I) IN GENERAL.—Net investment losses shall be determined in the manner prescribed by the Secretary on the basis of the difference between

actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

“(II) CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.—The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

“(B) EXPANDED SMOOTHING PERIOD.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

“(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

“(III) makes both changes described in subclauses (I) and (II) to such method.

“(ii) ASSET VALUATION METHODS.—If this subparagraph applies for any plan year—

“(I) the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

“(II) such changes shall be deemed approved by the Secretary under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(d)(1).

“(iii) AMORTIZATION OF REDUCTION IN UNFUNDED ACCRUED LIABILITY.—If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

Applicability.

“(C) SOLVENCY TEST.—The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

Certification.

“(D) RESTRICTION ON BENEFIT INCREASES.—If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing

Applicability.

benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

“(i) the plan actuary certifies that—

“(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

“(II) the plan’s funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

“(ii) the amendment is required as a condition of qualification under part I of subchapter D or to comply with other applicable law.

Notice.

“(E) REPORTING.—A plan sponsor of a plan to which this paragraph applies shall—

“(i) give notice of such application to participants and beneficiaries of the plan, and

“(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.”.

26 USC 431 note.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect as of the first day of the first plan year ending after August 31, 2008, except that any election a plan makes pursuant to this section that affects the plan’s funding standard account for the first plan year beginning after August 31, 2008, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to such plan year.

(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act and 431(b)(8)(D) of such Code, as added by this section, shall take effect on the date of enactment of this Act.

TITLE III—BUDGETARY PROVISIONS

SEC. 301. BUDGETARY PROVISIONS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved June 25, 2010.

LEGISLATIVE HISTORY—H.R. 3962:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Nov. 7, considered and passed House.

Vol. 156 (2010): June 18, considered and passed Senate, amended.

June 24, House concurred in Senate amendments.



Public Law 111–193
111th Congress

An Act

June 28, 2010
[H.R. 3951]

To designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the “Roy Rondenno, Sr. Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ROY RONDENO, SR. POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, shall be known and designated as the “Roy Rondenno, Sr. Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Roy Rondenno, Sr. Post Office Building”.

Approved June 28, 2010.

LEGISLATIVE HISTORY—H.R. 3951:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 8, 9, considered and passed House.
Vol. 156 (2010): June 15, considered and passed Senate.



Public Law 111–194
111th Congress

Joint Resolution

To provide for the reconsideration and revision of the proposed constitution of the United States Virgin Islands to correct provisions inconsistent with the Constitution and Federal law.

June 30, 2010
[S.J. Res. 33]

Whereas Congress, recognizing the basic democratic principle of government by the consent of the governed, enacted Public Law 94–584 (94 Stat. 2899) authorizing the people of the United States Virgin Islands to organize a government pursuant to a constitution of their own adoption;

Whereas a proposed constitution to provide for local self-government for the people of the United States Virgin Islands was submitted by the President to Congress on March 1, 2010, pursuant to Public Law 94–584;

Whereas Congress, pursuant to Public Law 94–584, after receiving a proposed United States Virgin Islands constitution from the President may approve, amend, or modify the constitution by joint resolution, but the constitution “shall be deemed to have been approved” if Congress takes no action within “sixty legislative days (not interrupted by an adjournment sine die of the Congress) after its submission by the President”;

Whereas in carrying out Public Law 94–584, the President asked the Department of Justice, in consultation with the Department of the Interior, to provide views on the proposed constitution;

Whereas the Department of Justice concluded that several features of the proposed constitution warrant analysis and comment, including—

(1) the absence of an express recognition of United States sovereignty and the supremacy of Federal law;

(2) provisions for a special election on the territorial status of the United States Virgin Islands;

(3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry;

(4) residence requirements for certain offices;

(5) provisions guaranteeing legislative representation of certain geographic areas;

(6) provisions addressing territorial waters and marine resources;

(7) imprecise language in certain provisions of the bill of rights of the proposed constitution;

(8) the possible need to repeal certain Federal laws if the proposed constitution of the United States Virgin Islands is adopted; and

(9) the effect of congressional action or inaction on the proposed constitution; and

Whereas Congress shares the concerns expressed by the executive branch of the Federal Government on certain features of the proposed constitution of the United States Virgin Islands and shares the view that consideration should be given to revising those features: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SENSE OF CONGRESS ON PROPOSED CONSTITUTION FOR UNITED STATES VIRGIN ISLANDS.

It is the sense of Congress that Congress—

(1) recognizes the commitment and efforts of the Fifth Constitutional Convention of the United States Virgin Islands to develop a proposed constitution; and

(2) urges the Fifth Constitutional Convention of the United States Virgin Islands to reconvene for the purpose of reconsidering and revising the proposed constitution in response to the views of the executive branch of the Federal Government.

48 USC 1391
note, 1541 note.

SEC. 2. REVISION OF PROPOSED CONSTITUTION.

Section 5 of Public Law 94–584 (90 Stat. 2900) is amended—

(1) by designating the first, second, third, and fourth sentences as subsections (a), (b), (d), and (e), respectively;

(2) in subsection (b) (as so designated)—

(A) by striking “within” and all that follows through “after” and inserting “within 60 legislative days after”; and

(B) by inserting “or has urged the constitutional convention to reconvene,” after “in whole or in part,”;

(3) by inserting after subsection (b) (as so designated) the following:

“(c) REVISION OF PROPOSED CONSTITUTION.—

“(1) IN GENERAL.—If a convention reconvenes and revises the proposed constitution, the convention shall resubmit the revised proposed constitution simultaneously to the Governor of the Virgin Islands and the President.

“(2) COMMENTS OF PRESIDENT.—Not later than 60 calendar days after the date of receipt of the revised proposed constitution, the President shall—

“(A) notify the convention, the Governor, and Congress of the comments of the President on the revised proposed constitution; and

“(B) publish the comments in the Federal Register.”; and

(4) in subsection (d) (as so designated), by inserting “under subsection (b) (or, if revised pursuant to subsection (c), on

Deadline.

Notification.

Federal Register,
publication.

publication of the comments of the President in the Federal Register)” after “or modified”.

Approved June 30, 2010.

LEGISLATIVE HISTORY—S.J. Res. 33:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 17, considered and passed Senate.

June 29, considered and passed House.



Public Law 111–195
111th Congress

An Act

July 1, 2010
[H.R. 2194]

To amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

Comprehensive
Iran Sanctions,
Accountability,
and Divestment
Act of 2010.
22 USC 8501
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Sense of Congress regarding the need to impose additional sanctions with respect to Iran.

TITLE I—SANCTIONS

- Sec. 101. Definitions.
- Sec. 102. Expansion of sanctions under the Iran Sanctions Act of 1996.
- Sec. 103. Economic sanctions relating to Iran.
- Sec. 104. Mandatory sanctions with respect to financial institutions that engage in certain transactions.
- Sec. 105. Imposition of sanctions on certain persons who are responsible for or complicit in human rights abuses committed against citizens of Iran or their family members after the June 12, 2009, elections in Iran.
- Sec. 106. Prohibition on procurement contracts with persons that export sensitive technology to Iran.
- Sec. 107. Harmonization of criminal penalties for violations of sanctions.
- Sec. 108. Authority to implement United Nations Security Council resolutions imposing sanctions with respect to Iran.
- Sec. 109. Increased capacity for efforts to combat unlawful or terrorist financing.
- Sec. 110. Reports on investments in the energy sector of Iran.
- Sec. 111. Reports on certain activities of foreign export credit agencies and of the Export-Import Bank of the United States.
- Sec. 112. Sense of Congress regarding Iran’s Revolutionary Guard Corps and its affiliates.
- Sec. 113. Sense of Congress regarding Iran and Hezbollah.
- Sec. 114. Sense of Congress regarding the imposition of multilateral sanctions with respect to Iran.
- Sec. 115. Report on providing compensation for victims of international terrorism.

TITLE II—DIVESTMENT FROM CERTAIN COMPANIES THAT INVEST IN IRAN

- Sec. 201. Definitions.
- Sec. 202. Authority of State and local governments to divest from certain companies that invest in Iran.
- Sec. 203. Safe harbor for changes of investment policies by asset managers.
- Sec. 204. Sense of Congress regarding certain ERISA plan investments.
- Sec. 205. Technical corrections to Sudan Accountability and Divestment Act of 2007.

TITLE III—PREVENTION OF DIVERSION OF CERTAIN GOODS, SERVICES, AND TECHNOLOGIES TO IRAN

- Sec. 301. Definitions.

- Sec. 302. Identification of countries of concern with respect to the diversion of certain goods, services, and technologies to or through Iran.
- Sec. 303. Destinations of Diversion Concern.
- Sec. 304. Report on expanding diversion concern system to address the diversion of United States origin goods, services, and technologies to certain countries other than Iran.
- Sec. 305. Enforcement authority.

TITLE IV—GENERAL PROVISIONS

- Sec. 401. General provisions.
- Sec. 402. Determination of budgetary effects.

SEC. 2. FINDINGS.

22 USC 8501.

Congress makes the following findings:

(1) The illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles and its support for international terrorism, represent a threat to the security of the United States, its strong ally Israel, and other allies of the United States around the world.

(2) The United States and other responsible countries have a vital interest in working together to prevent the Government of Iran from acquiring a nuclear weapons capability.

(3) The International Atomic Energy Agency has repeatedly called attention to Iran's illicit nuclear activities and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to suspend those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly known as the "Nuclear Non-Proliferation Treaty").

(4) The serious and urgent nature of the threat from Iran demands that the United States work together with its allies to do everything possible—diplomatically, politically, and economically—to prevent Iran from acquiring a nuclear weapons capability.

(5) The United States and its major European allies, including the United Kingdom, France, and Germany, have advocated that sanctions be strengthened should international diplomatic efforts fail to achieve verifiable suspension of Iran's uranium enrichment program and an end to its nuclear weapons program and other illicit nuclear activities.

(6) The Government of Iran continues to engage in serious, systematic, and ongoing violations of human rights, including suppression of freedom of expression and religious freedom, illegitimately prolonged detention, torture, and executions. Such violations have increased in the aftermath of the fraudulent presidential election in Iran on June 12, 2009.

(7) The Government of Iran has been unresponsive to President Obama's unprecedented and serious efforts at engagement, revealing that the Government of Iran is not interested in a diplomatic resolution, as made clear, for example, by the following:

(A) Iran's apparent rejection of the Tehran Research Reactor plan, generously offered by the United States and its partners, of potentially great benefit to the people of Iran, and endorsed by Iran's own negotiators in October 2009.

(B) Iran’s ongoing clandestine nuclear program, as evidenced by its work on the secret uranium enrichment facility at Qom, its subsequent refusal to cooperate fully with inspectors from the International Atomic Energy Agency, and its announcement that it would build 10 new uranium enrichment facilities.

(C) Iran’s official notification to the International Atomic Energy Agency that it would enrich uranium to the 20 percent level, followed soon thereafter by its providing to that Agency a laboratory result showing that Iran had indeed enriched some uranium to 19.8 percent.

(D) A February 18, 2010, report by the International Atomic Energy Agency expressing “concerns about the possible existence in Iran of past or current undisclosed activities related to the development of a nuclear payload for a missile. These alleged activities consist of a number of projects and sub-projects, covering nuclear and missile related aspects, run by military-related organizations.”

(E) A May 31, 2010, report by the International Atomic Energy Agency expressing continuing strong concerns about Iran’s lack of cooperation with the Agency’s verification efforts and Iran’s ongoing enrichment activities, which are contrary to the longstanding demands of the Agency and the United Nations Security Council.

(F) Iran’s announcement in April 2010 that it had developed a new, faster generation of centrifuges for enriching uranium.

(G) Iran’s ongoing arms exports to, and support for, terrorists in direct contravention of United Nations Security Council resolutions.

(H) Iran’s July 31, 2009, arrest of 3 young citizens of the United States on spying charges.

(8) There is an increasing interest by State governments, local governments, educational institutions, and private institutions, business firms, and other investors to disassociate themselves from companies that conduct business activities in the energy sector of Iran, since such business activities may directly or indirectly support the efforts of the Government of Iran to achieve a nuclear weapons capability.

(9) Black market proliferation networks continue to flourish in the Middle East, allowing countries like Iran to gain access to sensitive dual-use technologies.

(10) Economic sanctions imposed pursuant to the provisions of this Act, the Iran Sanctions Act of 1996, as amended by this Act, and the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and other authorities available to the United States to impose economic sanctions to prevent Iran from developing nuclear weapons, are necessary to protect the essential security interests of the United States.

SEC. 3. SENSE OF CONGRESS REGARDING THE NEED TO IMPOSE ADDITIONAL SANCTIONS WITH RESPECT TO IRAN.

It is the sense of Congress that—

(1) international diplomatic efforts to address Iran’s illicit nuclear efforts and support for international terrorism are more likely to be effective if strong additional sanctions are imposed on the Government of Iran;

(2) the concerns of the United States regarding Iran are strictly the result of the actions of the Government of Iran;

(3) the revelation in September 2009 that Iran is developing a secret uranium enrichment site on a base of Iran's Revolutionary Guard Corps near Qom, which appears to have no civilian application, highlights the urgency that Iran—

(A) disclose the full nature of its nuclear program, including any other secret locations; and

(B) provide the International Atomic Energy Agency unfettered access to its facilities pursuant to Iran's legal obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly known as the "Nuclear Non-Proliferation Treaty") and Iran's safeguards agreement with the International Atomic Energy Agency;

(4) because of the involvement of Iran's Revolutionary Guard Corps in Iran's nuclear program, international terrorism, and domestic human rights abuses, the President should impose the full range of applicable sanctions on—

(A) any individual or entity that is an agent, alias, front, instrumentality, representative, official, or affiliate of Iran's Revolutionary Guard Corps; and

(B) any individual or entity that has conducted any commercial transaction or financial transaction with an individual or entity described in subparagraph (A);

(5) additional measures should be adopted by the United States to prevent the diversion of sensitive dual-use technologies to Iran;

(6) the President should—

(A) continue to urge the Government of Iran to respect the internationally recognized human rights and religious freedoms of its citizens;

(B) identify the officials of the Government of Iran and other individuals who are responsible for continuing and severe violations of human rights and religious freedom in Iran; and

(C) take appropriate measures to respond to such violations, including by—

(i) prohibiting officials and other individuals the President identifies as being responsible for such violations from entry into the United States; and

(ii) freezing the assets of the officials and other individuals described in clause (i);

(7) additional funding should be provided to the Secretary of State to document, collect, and disseminate information about human rights abuses in Iran, including serious abuses that have taken place since the presidential election in Iran on June 12, 2009;

(8) with respect to nongovernmental organizations based in the United States—

(A) many of such organizations are essential to promoting human rights and humanitarian goals around the world;

(B) it is in the national interest of the United States to allow responsible nongovernmental organizations based in the United States to establish and carry out operations

in Iran to promote civil society and foster humanitarian goodwill among the people of Iran; and

(C) the United States should ensure that the organizations described in subparagraph (B) are not unnecessarily hindered from working in Iran to provide humanitarian, human rights, and people-to-people assistance, as appropriate, to the people of Iran;

(9) the United States should not issue a license pursuant to an agreement for cooperation (as defined in section 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(b))) for the export of nuclear material, facilities, components, or other goods, services, or technology that are or would be subject to such an agreement to a country that is providing similar nuclear material, facilities, components, or other goods, services, or technology to another country that is not in full compliance with its obligations under the Nuclear Non-Proliferation Treaty, including its obligations under the safeguards agreement between that country and the International Atomic Energy Agency, unless the President determines that the provision of such similar nuclear material, facilities, components, or other goods, services, or technology to such other country does not undermine the nonproliferation policies and objectives of the United States; and

(10) the people of the United States—

(A) have feelings of friendship for the people of Iran;

(B) regret that developments in recent decades have created impediments to that friendship; and

(C) hold the people of Iran, their culture, and their ancient and rich history in the highest esteem.

TITLE I—SANCTIONS

22 USC 8511.

SEC. 101. DEFINITIONS.

In this title:

(1) **AGRICULTURAL COMMODITY.**—The term “agricultural commodity” has the meaning given that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” has the meaning given that term in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note), as amended by section 102 of this Act.

(3) **EXECUTIVE AGENCY.**—The term “executive agency” has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) **FAMILY MEMBER.**—The term “family member” means, with respect to an individual, a spouse, child, parent, sibling, grandchild, or grandparent of the individual.

(5) **IRANIAN DIPLOMATS AND REPRESENTATIVES OF OTHER GOVERNMENT AND MILITARY OR QUASI-GOVERNMENTAL INSTITUTIONS OF IRAN.**—The term “Iranian diplomat or representative of another government or military or quasi-governmental institution of Iran” means any of the Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran (as that term is defined in

section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note)).

(6) **KNOWINGLY.**—The term “knowingly”, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

(7) **MEDICAL DEVICE.**—The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(8) **MEDICINE.**—The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(9) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(10) **UNITED STATES PERSON.**—The term “United States person” means—

(A) a natural person who is a citizen or resident of the United States or a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); and

(B) an entity that is organized under the laws of the United States or any State.

SEC. 102. EXPANSION OF SANCTIONS UNDER THE IRAN SANCTIONS ACT OF 1996.

President.
Determinations.

(a) **IN GENERAL.**—Section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) **SANCTIONS WITH RESPECT TO THE DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN, PRODUCTION OF REFINED PETROLEUM PRODUCTS IN IRAN, AND EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.**—

“(1) **DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN.**—

“(A) **IN GENERAL.**—Except as provided in subsection (f), the President shall impose 3 or more of the sanctions described in section 6(a) with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010—

“(i) makes an investment described in subparagraph (B) of \$20,000,000 or more; or

“(ii) makes a combination of investments described in subparagraph (B) in a 12-month period if each such investment is of at least \$5,000,000 and such investments equal or exceed \$20,000,000 in the aggregate.

“(B) **INVESTMENT DESCRIBED.**—An investment described in this subparagraph is an investment that directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources.

“(2) **PRODUCTION OF REFINED PETROLEUM PRODUCTS.**—

“(A) **IN GENERAL.**—Except as provided in subsection (f), the President shall impose 3 or more of the sanctions described in section 6(a) with respect to a person if the President determines that the person knowingly, on or

after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, sells, leases, or provides to Iran goods, services, technology, information, or support described in subparagraph (B)—

“(i) any of which has a fair market value of \$1,000,000 or more; or

“(ii) that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more.

“(B) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support described in this subparagraph are goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

“(3) EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

“(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 3 or more of the sanctions described in section 6(a) with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010—

“(i) sells or provides to Iran refined petroleum products—

“(I) that have a fair market value of \$1,000,000 or more; or

“(II) that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more; or

“(ii) sells, leases, or provides to Iran goods, services, technology, information, or support described in subparagraph (B)—

“(I) any of which has a fair market value of \$1,000,000 or more; or

“(II) that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more.

“(B) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support described in this subparagraph are goods, services, technology, information, or support that could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products, including—

“(i) except as provided in subparagraph (C), underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease, or provision of such goods, services, technology, information, or support;

“(ii) financing or brokering such sale, lease, or provision; or

“(iii) providing ships or shipping services to deliver refined petroleum products to Iran.

“(C) EXCEPTION FOR UNDERWRITERS AND INSURANCE PROVIDERS EXERCISING DUE DILIGENCE.—The President may not impose sanctions under this paragraph with respect

to a person that provides underwriting services or insurance or reinsurance if the President determines that the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for the sale, lease, or provision of goods, services, technology, information, or support described in subparagraph (B).”;

(2) in subsection (b)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving such subparagraphs, as so redesignated, 2 ems to the right;

(B) by striking “The President shall impose” and inserting the following:

“(1) IN GENERAL.—The President shall impose”; and

(C) in paragraph (1), as redesignated by subparagraph (B) of this paragraph, by striking “two or more” and all that follows through “of this Act” and inserting “3 or more of the sanctions described in section 6(a) if the President determines that a person has, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010”; and

(D) by adding at the end the following:

“(2) ADDITIONAL MANDATORY SANCTIONS RELATING TO TRANSFER OF NUCLEAR TECHNOLOGY.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in any case in which a person is subject to sanctions under paragraph (1) because of an activity described in that paragraph that relates to the acquisition or development of nuclear weapons or related technology or of missiles or advanced conventional weapons that are designed or modified to deliver a nuclear weapon, no license may be issued for the export, and no approval may be given for the transfer or retransfer, directly or indirectly, to the country the government of which has primary jurisdiction over the person, of any nuclear material, facilities, components, or other goods, services, or technology that are or would be subject to an agreement for cooperation between the United States and that government.

“(B) EXCEPTION.—The sanctions described in subparagraph (A) shall not apply with respect to a country the government of which has primary jurisdiction over a person that engages in an activity described in that subparagraph if the President determines and notifies the appropriate congressional committees that the government of the country—

Notification.

“(i) does not know or have reason to know about the activity; or

“(ii) has taken, or is taking, all reasonable steps necessary to prevent a recurrence of the activity and to penalize the person for the activity.

“(C) INDIVIDUAL APPROVAL.—Notwithstanding subparagraph (A), the President may, on a case-by-case basis, approve the issuance of a license for the export, or approve the transfer or retransfer, of any nuclear material, facilities, components, or other goods, services, or technology

that are or would be subject to an agreement for cooperation, to a person in a country to which subparagraph (A) applies (other than a person that is subject to the sanctions under paragraph (1)) if the President—

Deadline.

“(i) determines that such approval is vital to the national security interests of the United States; and

“(ii) not later than 15 days before issuing such license or approving such transfer or retransfer, submits to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate the justification for approving such license, transfer, or retransfer.

Applicability.

“(D) CONSTRUCTION.—The restrictions in subparagraph (A) shall apply in addition to all other applicable procedures, requirements, and restrictions contained in the Atomic Energy Act of 1954 and other related laws.

“(E) DEFINITION.—In this paragraph, the term ‘agreement for cooperation’ has the meaning given that term in section 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(b)).

“(F) APPLICABILITY.—The sanctions under subparagraph (A) shall apply only in a case in which a person is subject to sanctions under paragraph (1) because of an activity described in that paragraph in which the person engages on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.”;

(3) in subsection (c)—

(A) by striking “(b)” each place it appears and inserting “(b)(1)”; and

(B) by striking paragraph (2) and inserting the following:

“(2) any person that—

“(A) is a successor entity to the person referred to in paragraph (1);

“(B) owns or controls the person referred to in paragraph (1), if the person that owns or controls the person referred to in paragraph (1) had actual knowledge or should have known that the person referred to in paragraph (1) engaged in the activities referred to in that paragraph; or

“(C) is owned or controlled by, or under common ownership or control with, the person referred to in paragraph (1), if the person owned or controlled by, or under common ownership or control with (as the case may be), the person referred to in paragraph (1) knowingly engaged in the activities referred to in that paragraph.”; and

(4) in subsection (f)—

(A) in the matter preceding paragraph (1), by striking “(b)” and inserting “(b)(1)”; and

(B) in paragraph (2), by striking “section 301(b)(1) of that Act (19 U.S.C. 2511(b)(1))” and inserting “section 301(b) of that Act (19 U.S.C. 2511(b))”.

50 USC 1701
note.

(b) DESCRIPTION OF SANCTIONS.—Section 6 of such Act is amended—

(1) by striking “The sanctions to be imposed” and inserting the following:

“(a) IN GENERAL.—The sanctions to be imposed”;

(2) in subsection (a), as redesignated by paragraph (1)—

(A) by redesignating paragraph (6) as paragraph (9);

and

(B) by inserting after paragraph (5) the following:

“(6) FOREIGN EXCHANGE.—The President may, pursuant to such regulations as the President may prescribe, prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest.

“(7) BANKING TRANSACTIONS.—The President may, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person.

“(8) PROPERTY TRANSACTIONS.—The President may, pursuant to such regulations as the President may prescribe, prohibit any person from—

“(A) acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property that is subject to the jurisdiction of the United States and with respect to which the sanctioned person has any interest;

“(B) dealing in or exercising any right, power, or privilege with respect to such property; or

“(C) conducting any transaction involving such property.”; and

(3) by adding at the end the following:

“(b) ADDITIONAL MEASURE RELATING TO GOVERNMENT CONTRACTS.—

“(1) MODIFICATION OF FEDERAL ACQUISITION REGULATION.—Not later than 90 days after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) shall be revised to require a certification from each person that is a prospective contractor that the person, and any person owned or controlled by the person, does not engage in any activity for which sanctions may be imposed under section 5.

Deadline.

“(2) REMEDIES.—

“(A) IN GENERAL.—If the head of an executive agency determines that a person has submitted a false certification under paragraph (1) on or after the date on which the revision of the Federal Acquisition Regulation required by this subsection becomes effective, the head of that executive agency shall terminate a contract with such person or debar or suspend such person from eligibility for Federal contracts for a period of not more than 3 years. Any such debarment or suspension shall be subject to the procedures that apply to debarment and suspension under the Federal Acquisition Regulation under subpart 9.4 of part 9 of title 48, Code of Federal Regulations.

Applicability.

“(B) INCLUSION ON LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT AND NONPROCUREMENT PROGRAMS.—The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) each person that is debarred, suspended, or proposed for debarment or suspension by the head of an executive agency on the basis of a determination of a false certification under subparagraph (A).

“(3) CLARIFICATION REGARDING CERTAIN PRODUCTS.—The remedies set forth in paragraph (2) shall not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)).

“(4) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under paragraph (1).

Certification.

“(5) WAIVERS.—The President may on a case-by-case basis waive the requirement that a person make a certification under paragraph (1) if the President determines and certifies in writing to the appropriate congressional committees, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives, that it is in the national interest of the United States to do so.

“(6) EXECUTIVE AGENCY DEFINED.—In this subsection, the term ‘executive agency’ has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

“(7) APPLICABILITY.—The revisions to the Federal Acquisition Regulation required under paragraph (1) shall apply with respect to contracts for which solicitations are issued on or after the date that is 90 days after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.”.

50 USC 1701
note.

(c) PRESIDENTIAL WAIVER.—Section 9 of such Act is amended—

(1) in subsection (a), by striking “5(b)” each place it appears and inserting “5(b)(1)”; and

(2) in subsection (c)—

(A) by striking “section 5(a) or (b)” each place it appears and inserting “section 5(a) or 5(b)(1)”; and

(B) in paragraph (1), by striking “important to the national interest” and inserting “necessary to the national interest”; and

(C) in paragraph (2), by striking subparagraph (C) and inserting the following:

“(C) an estimate of the significance of the conduct of the person in contributing to the ability of Iran to, as the case may be—

“(i) develop petroleum resources, produce refined petroleum products, or import refined petroleum products; or

“(ii) acquire or develop—

“(I) chemical, biological, or nuclear weapons or related technologies; or

“(II) destabilizing numbers and types of advanced conventional weapons; and”.

(d) REPORTS ON GLOBAL TRADE RELATING TO IRAN.—Section 10 of such Act is amended by adding at the end the following: 50 USC 1701 note.

“(d) REPORTS ON GLOBAL TRADE RELATING TO IRAN.—Not later than 90 days after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, and annually thereafter, the President shall submit to the appropriate congressional committees a report, with respect to the most recent 12-month period for which data are available, on the dollar value amount of trade, including in the energy sector, between Iran and each country maintaining membership in the Group of 20 Finance Ministers and Central Bank Governors.”.

(e) EXTENSION OF IRAN SANCTIONS ACT OF 1996.—Section 13(b) of such Act is amended by striking “December 31, 2011” and inserting “December 31, 2016”. 50 USC 1701 note.

(f) CLARIFICATION AND EXPANSION OF DEFINITIONS.—Section 14 of such Act is amended— 50 USC 1701 note.

(1) in paragraph (2), by striking “the Committee on Banking and Financial Services, and the Committee on International Relations” and inserting “the Committee on Financial Services, and the Committee on Foreign Affairs”;

(2) in paragraph (9), in the flush text following subparagraph (C), by striking “The term ‘investment’ does not include” and all that follows through “technology.”;

(3) by redesignating paragraphs (12), (13), (14), (15), and (16) as paragraphs (13), (14), (15), (17), and (18), respectively;

(4) by inserting after paragraph (11) the following:

“(12) KNOWINGLY.—The term ‘knowingly’, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.”; Definition.

(5) in paragraph (14), as redesignated by paragraph (3) of this subsection—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and moving such clauses, as so redesignated, 2 ems to the right;

(B) by striking “The term ‘person’ means—” and inserting the following:

“(A) IN GENERAL.—The term ‘person’ means—”;

(C) in subparagraph (A), as redesignated by this paragraph—

(i) in clause (ii), by inserting “financial institution, insurer, underwriter, guarantor, and any other business organization,” after “trust,”; and

(ii) in clause (iii), by striking “subparagraph (B)” and inserting “clause (ii)”;

(D) by adding at the end the following:

“(B) APPLICATION TO GOVERNMENTAL ENTITIES.—The term ‘person’ does not include a government or governmental entity that is not operating as a business enterprise.”;

(6) in paragraph (15), as redesignated by paragraph (3) of this subsection, by striking “petroleum and natural gas

resources” and inserting “petroleum, refined petroleum products, oil or liquefied natural gas, natural gas resources, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or liquefied natural gas”; and

(7) by inserting after paragraph (15), as so redesignated, the following:

Definition.

“(16) REFINED PETROLEUM PRODUCTS.—The term ‘refined petroleum products’ means diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel), and aviation gasoline.”.

50 USC 1701
note.

(g) WAIVER FOR CERTAIN PERSONS IN CERTAIN COUNTRIES; MANDATORY INVESTIGATIONS AND REPORTING; CONFORMING AMENDMENTS.—Section 4 of such Act is amended—

(1) in subsection (b)(2), by striking “(in addition to that provided in subsection (d))”;

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking “The President may” and inserting the following:

“(A) GENERAL WAIVER.—The President may”; and

(ii) by adding at the end the following:

“(B) WAIVER WITH RESPECT TO PERSONS IN COUNTRIES THAT COOPERATE IN MULTILATERAL EFFORTS WITH RESPECT TO IRAN.—The President may, on a case by case basis, waive for a period of not more than 12 months the application of section 5(a) with respect to a person if the President, at least 30 days before the waiver is to take effect—

Certification.

“(i) certifies to the appropriate congressional committees that—

“(I) the government with primary jurisdiction over the person is closely cooperating with the United States in multilateral efforts to prevent Iran from—

“(aa) acquiring or developing chemical, biological, or nuclear weapons or related technologies; or

“(bb) acquiring or developing destabilizing numbers and types of advanced conventional weapons; and

“(II) such a waiver is vital to the national security interests of the United States; and

“(ii) submits to the appropriate congressional committees a report identifying—

“(I) the person with respect to which the President waives the application of sanctions; and

“(II) the actions taken by the government described in clause (i)(I) to cooperate in multilateral efforts described in that clause.”; and

(B) by striking paragraph (2) and inserting the following:

“(2) SUBSEQUENT RENEWAL OF WAIVER.—At the conclusion of the period of a waiver under subparagraph (A) or (B) of paragraph (1), the President may renew the waiver—

“(A) if the President determines, in accordance with subparagraph (A) or (B) of that paragraph (as the case may be), that the waiver is appropriate; and

“(B)(i) in the case of a waiver under subparagraph (A) of paragraph (1), for subsequent periods of not more than six months each; and

“(ii) in the case of a waiver under subparagraph (B) of paragraph (1), for subsequent periods of not more than 12 months each.”;

(3) by striking subsection (d);

(4) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(5) in subsection (e), as redesignated by paragraph (4) of this subsection—

(A) in paragraph (1)—

(i) by striking “should initiate” and inserting “shall initiate”; and

(ii) by striking “investment activity in Iran as” and inserting “an activity”;

(B) in paragraph (2)—

(i) by striking “should determine” and inserting “shall (unless paragraph (3) applies) determine”; and

(ii) by striking “investment activity in Iran as” and inserting “an activity”; and

(C) by adding at the end the following:

“(3) SPECIAL RULE.—The President need not initiate an investigation, and may terminate an investigation, under this subsection if the President certifies in writing to the appropriate congressional committees that—

Certification.

“(A) the person whose activity was the basis for the investigation is no longer engaging in the activity or has taken significant verifiable steps toward stopping the activity; and

“(B) the President has received reliable assurances that the person will not knowingly engage in an activity described in section 5(a) in the future.”.

(h) EFFECTIVE DATE.—

50 USC 1701
note.

(1) IN GENERAL.—The amendments made by this section shall—

(A) take effect on the date of the enactment of this Act; and

(B) except as provided in this subsection or section 6(b)(7) of the Iran Sanctions Act of 1996, as amended by subsection (b) of this section, apply with respect to an investment or activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996, as amended by this section, that is commenced on or after such date of enactment.

(2) APPLICABILITY TO ONGOING INVESTMENTS PROHIBITED UNDER PRIOR LAW.—A person that makes an investment described in section 5(a) of the Iran Sanctions Act of 1996, as in effect on the day before the date of the enactment of this Act, that is commenced before such date of enactment and continues on or after such date of enactment, shall, except as provided in paragraph (4), be subject to the provisions of the Iran Sanctions Act of 1996, as in effect on the day before such date of enactment.

(3) APPLICABILITY TO ONGOING ACTIVITIES RELATING TO CHEMICAL, BIOLOGICAL, OR NUCLEAR WEAPONS OR RELATED

TECHNOLOGIES.—A person that, before the date of the enactment of this Act, commenced an activity described in section 5(b) of the Iran Sanctions Act of 1996, as in effect on the day before such date of enactment, and continues the activity on or after such date of enactment, shall be subject to the provisions of the Iran Sanctions Act of 1996, as amended by this Act.

(4) APPLICABILITY OF MANDATORY INVESTIGATIONS TO INVESTMENTS.—The amendments made by subsection (g)(5) of this section shall apply on and after the date of the enactment of this Act—

(A) with respect to an investment described in section 5(a)(1) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, that is commenced on or after such date of enactment; and

(B) with respect to an investment described in section 5(a) of the Iran Sanctions Act of 1996, as in effect on the day before the date of the enactment of this Act, that is commenced before such date of enactment and continues on or after such date of enactment.

(5) APPLICABILITY OF MANDATORY INVESTIGATIONS TO ACTIVITIES RELATING TO PETROLEUM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (g)(5) of this section shall apply on and after the date that is 1 year after the date of the enactment of this Act with respect to an activity described in paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, that is commenced on or after the date that is 1 year after the date of the enactment of this Act or the date on which the President fails to submit a certification that is required under subparagraph (B) (whichever is applicable).

(B) SPECIAL RULE FOR DELAY OF EFFECTIVE DATE.—

(i) REPORTING REQUIREMENT.—Not later than 30 days before the date that is 1 year after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report describing—

(I) the diplomatic and other efforts of the President—

(aa) to dissuade foreign persons from engaging in activities described in paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section; and

(bb) to encourage other governments to dissuade persons over which those governments have jurisdiction from engaging in such activities;

(II) the successes and failures of the efforts described in subclause (I); and

(III) each investigation under section 4(e) of the Iran Sanctions Act of 1996, as amended by subsection (g)(5) of this section and as in effect pursuant to subparagraph (C) of this paragraph, or any other review of an activity described in

paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, that is initiated or ongoing during the period beginning on the date of the enactment of this Act and ending on the date on which the President is required to submit the report.

(ii) CERTIFICATION.—If the President submits to the appropriate congressional committees, with the report required by clause (i), a certification that there was a substantial reduction in activities described in paragraphs (2) and (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, during the period described in clause (i)(III), the effective date provided for in subparagraph (A) shall be delayed for a 180-day period beginning after the date provided for in that subparagraph. Time period.

(iii) SUBSEQUENT REPORTS AND DELAYS.—The effective date provided for in subparagraph (A) shall be delayed for additional 180-day periods occurring after the end of the 180-day period provided for under clause (ii), if, not later than 30 days before the 180-day period preceding such additional 180-day period expires, the President submits to the appropriate congressional committees— Time period.

(I) a report containing the matters required in the report under clause (i) for the period beginning on the date on which the preceding report was required to be submitted under clause (i) or this clause (as the case may be) and ending on the date on which the President is required to submit the most recent report under this clause; and

(II) a certification that, during the period described in subclause (I), there was (as compared to the period for which the preceding report was submitted under this subparagraph) a progressive reduction in activities described in paragraphs (2) and (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section.

(iv) CONSEQUENCE OF FAILURE TO CERTIFY.—If the President does not make a certification at a time required by this subparagraph—

(I) the amendments made by subsection (g)(5) of this section shall apply on and after the date on which the certification was required to be submitted by this subparagraph, with respect to an activity described in paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, that—

(aa) is referenced in the most recent report required to be submitted under this subparagraph; or

(bb) is commenced on or after the date on which such most recent report is required to be submitted; and

(II) not later than 45 days after the date on which the certification was required to be submitted by this subparagraph, the President shall make a determination under paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996 (as the case may be), as amended by subsection (a) of this section, with respect to relevant activities described in subclause (I)(aa).

Time periods.

(C) **APPLICABILITY OF PERMISSIVE INVESTIGATIONS.**—During the 1-year period beginning on the date of the enactment of this Act and during any 180-day period during which the effective date provided for in subparagraph (A) is delayed pursuant to subparagraph (B), section 4(e) of the Iran Sanctions Act of 1996, as amended by subsection (g)(5) of this section, shall be applied, with respect to an activity described in paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, by substituting “should” for “shall” each place it appears.

(6) **WAIVER AUTHORITY.**—The amendments made by subsection (c) shall not be construed to affect any exercise of the authority under section 9(c) of the Iran Sanctions Act of 1996, as in effect on the day before the date of the enactment of this Act.

22 USC 8512.

SEC. 103. ECONOMIC SANCTIONS RELATING TO IRAN.

Effective date.
Applicability.

(a) **IN GENERAL.**—Notwithstanding section 101 of the Iran Freedom Support Act (Public Law 109–293; 120 Stat. 1344), and in addition to any other sanction in effect, beginning on the date that is 90 days after the date of the enactment of this Act, the economic sanctions described in subsection (b) shall apply with respect to Iran.

(b) **SANCTIONS.**—The sanctions described in this subsection are the following:

(1) PROHIBITION ON IMPORTS.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), no good or service of Iranian origin may be imported directly or indirectly into the United States.

(B) **EXCEPTIONS.**—The exceptions provided for in section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), including the exception for information and informational materials, shall apply to the prohibition in subparagraph (A) of this paragraph to the same extent that such exceptions apply to the authority provided under section 203(a) of that Act.

(2) PROHIBITION ON EXPORTS.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), no good, service, or technology of United States origin may be exported to Iran from the United States or by a United States person, wherever located.

(B) EXCEPTIONS.—

(i) **PERSONAL COMMUNICATIONS; ARTICLES TO RELIEVE HUMAN SUFFERING; INFORMATION AND INFORMATIONAL MATERIALS; TRANSACTIONS INCIDENT TO TRAVEL.**—The exceptions provided for in section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), including the exception for

Applicability.

information and informational materials, shall apply to the prohibition in subparagraph (A) of this paragraph to the same extent that such exceptions apply to the authority provided under section 203(a) of that Act.

(ii) FOOD; MEDICINE; HUMANITARIAN ASSISTANCE.—The prohibition in subparagraph (A) shall not apply to the exportation of—

(I) agricultural commodities, food, medicine, or medical devices; or

(II) articles exported to Iran to provide humanitarian assistance to the people of Iran.

(iii) INTERNET COMMUNICATIONS.—The prohibition in subparagraph (A) shall not apply to the exportation of—

(I) services incident to the exchange of personal communications over the Internet or software necessary to enable such services, as provided for in section 560.540 of title 31, Code of Federal Regulations (or any corresponding similar regulation or ruling);

(II) hardware necessary to enable such services; or

(III) hardware, software, or technology necessary for access to the Internet.

(iv) GOODS, SERVICES, OR TECHNOLOGIES NECESSARY TO ENSURE THE SAFE OPERATION OF COMMERCIAL AIRCRAFT.—The prohibition in subparagraph (A) shall not apply to the exportation of goods, services, or technologies necessary to ensure the safe operation of commercial aircraft produced in the United States or commercial aircraft into which aircraft components produced in the United States are incorporated, if the exportation of such goods, services, or technologies is approved by the Secretary of the Treasury, in consultation with the Secretary of Commerce, pursuant to regulations issued by the Secretary of the Treasury regarding the exportation of such goods, services, or technologies, if appropriate.

(v) GOODS, SERVICES, OR TECHNOLOGIES EXPORTED TO SUPPORT INTERNATIONAL ORGANIZATIONS.—The prohibition in subparagraph (A) shall not apply to the exportation of goods, services, or technologies that—

(I) are provided to the International Atomic Energy Agency and are necessary to support activities of that Agency in Iran; or

(II) are necessary to support activities, including the activities of nongovernmental organizations, relating to promoting democracy in Iran.

(vi) EXPORTS IN THE NATIONAL INTEREST.—The prohibition in subparagraph (A) shall not apply to the exportation of goods, services, or technologies if the President determines the exportation of such goods, services, or technologies to be in the national interest of the United States.

President.
Determination.

(3) FREEZING ASSETS.—

President.

(A) IN GENERAL.—At such time as the President determines that a person in Iran, including an Iranian diplomat or representative of another government or military or quasi-governmental institution of Iran (including Iran's Revolutionary Guard Corps and its affiliates), satisfies the criteria for designation with respect to the imposition of sanctions under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the President shall take such action as may be necessary to freeze, as soon as possible—

(i) the funds and other assets belonging to that person; and

(ii) any funds or other assets that person transfers, on or after the date on which the President determines the person satisfies such criteria, to any family member or associate acting for or on behalf of the person.

(B) REPORTS TO THE OFFICE OF FOREIGN ASSETS CONTROL.—The action described in subparagraph (A) includes requiring any United States financial institution that holds funds or assets of a person described in that subparagraph or funds or assets that person transfers to a family member or associate described in that subparagraph to report promptly to the Office of Foreign Assets Control information regarding such funds and assets.

(C) REPORTS TO CONGRESS.—Not later than 14 days after a decision is made to freeze the funds or assets of any person under subparagraph (A), the President shall report the name of the person to the appropriate congressional committees. Such a report may contain a classified annex.

(D) TERMINATION.—The President shall release assets or funds frozen under subparagraph (A) if the person to which the assets or funds belong or the person that transfers the assets or funds as described in subparagraph (A)(ii) (as the case may be) no longer satisfies the criteria for designation with respect to the imposition of sanctions under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(E) UNITED STATES FINANCIAL INSTITUTION DEFINED.—In this paragraph, the term “United States financial institution” means a financial institution (as defined in section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C. 1701 note)) that is a United States person.

Applicability.

(c) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of this section or regulations prescribed under this section to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.

(d) REGULATORY AUTHORITY.—

(1) IN GENERAL.—The President shall prescribe regulations to carry out this section, which may include regulatory exceptions to the sanctions described in subsection (b).

(2) APPLICABILITY OF CERTAIN REGULATIONS.—No exception to the prohibition under subsection (b)(1) may be made for

the commercial importation of an Iranian origin good described in section 560.534(a) of title 31, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act), unless the President—

(A) prescribes a regulation providing for such an exception on or after the date of the enactment of this Act; and

(B) submits to the appropriate congressional committees—

(i) a certification in writing that the exception is in the national interest of the United States; and

Certification.

(ii) a report describing the reasons for the exception.

Reports.

SEC. 104. MANDATORY SANCTIONS WITH RESPECT TO FINANCIAL INSTITUTIONS THAT ENGAGE IN CERTAIN TRANSACTIONS.

22 USC 8513.

(a) FINDINGS.—Congress makes the following findings:

(1) The Financial Action Task Force is an intergovernmental body whose purpose is to develop and promote national and international policies to combat money laundering and terrorist financing.

(2) Thirty-three countries, plus the European Commission and the Cooperation Council for the Arab States of the Gulf, belong to the Financial Action Task Force. The member countries of the Financial Action Task Force include the United States, Canada, most countries in western Europe, Russia, the People's Republic of China, Japan, South Korea, Argentina, and Brazil.

(3) In 2008 the Financial Action Task Force extended its mandate to include addressing “new and emerging threats such as proliferation financing”, meaning the financing of the proliferation of weapons of mass destruction, and published “guidance papers” for members to assist them in implementing various United Nations Security Council resolutions dealing with weapons of mass destruction, including United Nations Security Council Resolutions 1737 (2006) and 1803 (2008), which deal specifically with proliferation by Iran.

(4) The Financial Action Task Force has repeatedly called on members—

(A) to advise financial institutions in their jurisdictions to give special attention to business relationships and transactions with Iran, including Iranian companies and financial institutions;

(B) to apply effective countermeasures to protect their financial sectors from risks relating to money laundering and financing of terrorism that emanate from Iran;

(C) to protect against correspondent relationships being used by Iran and Iranian companies and financial institutions to bypass or evade countermeasures and risk-mitigation practices; and

(D) to take into account risks relating to money laundering and financing of terrorism when considering requests by Iranian financial institutions to open branches and subsidiaries in their jurisdictions.

(5) At a February 2010 meeting of the Financial Action Task Force, the Task Force called on members to apply countermeasures “to protect the international financial system from

the ongoing and substantial money laundering and terrorist financing (ML/TF) risks” emanating from Iran.

(b) SENSE OF CONGRESS REGARDING THE IMPOSITION OF SANCTIONS ON THE CENTRAL BANK OF IRAN.—Congress—

(1) acknowledges the efforts of the United Nations Security Council to impose limitations on transactions involving Iranian financial institutions, including the Central Bank of Iran; and

(2) urges the President, in the strongest terms, to consider immediately using the authority of the President to impose sanctions on the Central Bank of Iran and any other Iranian financial institution engaged in proliferation activities or support of terrorist groups.

(c) PROHIBITIONS AND CONDITIONS WITH RESPECT TO CERTAIN ACCOUNTS HELD BY FOREIGN FINANCIAL INSTITUTIONS.—

Deadline.
Regulations.

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in an activity described in paragraph (2).

(2) ACTIVITIES DESCRIBED.—A foreign financial institution engages in an activity described in this paragraph if the foreign financial institution—

(A) facilitates the efforts of the Government of Iran (including efforts of Iran’s Revolutionary Guard Corps or any of its agents or affiliates)—

(i) to acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction; or

(ii) to provide support for organizations designated as foreign terrorist organizations under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) or support for acts of international terrorism (as defined in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note));

(B) facilitates the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolution 1737 (2006), 1747 (2007), 1803 (2008), or 1929 (2010), or any other resolution that is agreed to by the Security Council and imposes sanctions with respect to Iran;

(C) engages in money laundering to carry out an activity described in subparagraph (A) or (B);

(D) facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in subparagraph (A) or (B); or

(E) facilitates a significant transaction or transactions or provides significant financial services for—

(i) Iran’s Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or

(ii) a financial institution whose property or interests in property are blocked pursuant to that Act in connection with—

(I) Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction; or

(II) Iran’s support for international terrorism.

(3) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed under paragraph (1) of this subsection to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.

Applicability.

(d) PENALTIES FOR DOMESTIC FINANCIAL INSTITUTIONS FOR ACTIONS OF PERSONS OWNED OR CONTROLLED BY SUCH FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to prohibit any person owned or controlled by a domestic financial institution from knowingly engaging in a transaction or transactions with or benefitting Iran’s Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

Deadline.
Regulations.

(2) PENALTIES.—The penalties provided for in section 206(b) of the International Emergency Economic Powers Act (50 U.S.C. 1705(b)) shall apply to a domestic financial institution to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act if—

Applicability.

(A) a person owned or controlled by the domestic financial institution violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed under paragraph (1) of this subsection; and

(B) the domestic financial institution knew or should have known that the person violated, attempted to violate, conspired to violate, or caused a violation of such regulations.

(e) REQUIREMENTS FOR FINANCIAL INSTITUTIONS MAINTAINING ACCOUNTS FOR FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations to require a domestic financial institution maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

Regulations.

(A) Perform an audit of activities described in subsection (c)(2) that may be carried out by the foreign financial institution.

(B) Report to the Department of the Treasury with respect to transactions or other financial services provided with respect to any such activity.

(C) Certify, to the best of the knowledge of the domestic financial institution, that the foreign financial institution is not knowingly engaging in any such activity.

(D) Establish due diligence policies, procedures, and controls, such as the due diligence policies, procedures, and controls described in section 5318(i) of title 31, United States Code, reasonably designed to detect whether the

- Secretary of the Treasury has found the foreign financial institution to knowingly engage in any such activity.
- Applicability. (2) PENALTIES.—The penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, shall apply to a person that violates a regulation prescribed under paragraph (1) of this subsection, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.
- Effective date. (f) WAIVER.—The Secretary of the Treasury may waive the application of a prohibition or condition imposed with respect to a foreign financial institution pursuant to subsection (c) or the imposition of a penalty under subsection (d) with respect to a domestic financial institution on and after the date that is 30 days after the Secretary—
- Determination. (1) determines that such a waiver is necessary to the national interest of the United States; and
- Reports. (2) submits to the appropriate congressional committees a report describing the reasons for the determination.
- (g) PROCEDURES FOR JUDICIAL REVIEW OF CLASSIFIED INFORMATION.—
- (1) IN GENERAL.—If a finding under subsection (c)(1), a prohibition, condition, or penalty imposed as a result of any such finding, or a penalty imposed under subsection (d), is based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)) and a court reviews the finding or the imposition of the prohibition, condition, or penalty, the Secretary of the Treasury may submit such information to the court *ex parte* and *in camera*.
- (2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to confer or imply any right to judicial review of any finding under subsection (c)(1), any prohibition, condition, or penalty imposed as a result of any such finding, or any penalty imposed under subsection (d).
- (h) CONSULTATIONS IN IMPLEMENTATION OF REGULATIONS.—In implementing this section and the regulations prescribed under this section, the Secretary of the Treasury—
- (1) shall consult with the Secretary of State; and
- (2) may, in the sole discretion of the Secretary of the Treasury, consult with such other agencies and departments and such other interested parties as the Secretary considers appropriate.
- (i) DEFINITIONS.—
- (1) IN GENERAL.—In this section:
- (A) ACCOUNT; CORRESPONDENT ACCOUNT; PAYABLE-THROUGH ACCOUNT.—The terms “account”, “correspondent account”, and “payable-through account” have the meanings given those terms in section 5318A of title 31, United States Code.
- (B) AGENT.—The term “agent” includes an entity established by a person for purposes of conducting transactions on behalf of the person in order to conceal the identity of the person.
- (C) FINANCIAL INSTITUTION.—The term “financial institution” means a financial institution specified in subparagraph (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (M), or (Y) of section 5312(a)(2) of title 31, United States Code.

(D) FOREIGN FINANCIAL INSTITUTION; DOMESTIC FINANCIAL INSTITUTION.—The terms “foreign financial institution” and “domestic financial institution” shall have the meanings of those terms as determined by the Secretary of the Treasury.

(E) MONEY LAUNDERING.—The term “money laundering” means the movement of illicit cash or cash equivalent proceeds into, out of, or through a country, or into, out of, or through a financial institution.

(2) OTHER DEFINITIONS.—The Secretary of the Treasury may further define the terms used in this section in the regulations prescribed under this section.

SEC. 105. IMPOSITION OF SANCTIONS ON CERTAIN PERSONS WHO ARE RESPONSIBLE FOR OR COMPLICIT IN HUMAN RIGHTS ABUSES COMMITTED AGAINST CITIZENS OF IRAN OR THEIR FAMILY MEMBERS AFTER THE JUNE 12, 2009, ELECTIONS IN IRAN.

President.
22 USC 8514.

(a) IN GENERAL.—The President shall impose sanctions described in subsection (c) with respect to each person on the list required by subsection (b).

(b) LIST OF PERSONS WHO ARE RESPONSIBLE FOR OR COMPLICIT IN CERTAIN HUMAN RIGHTS ABUSES.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a list of persons who are officials of the Government of Iran or persons acting on behalf of that Government (including members of paramilitary organizations such as Ansar-e-Hezbollah and Basij-e Mostaz’afin), that the President determines, based on credible evidence, are responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses against citizens of Iran or their family members on or after June 12, 2009, regardless of whether such abuses occurred in Iran.

Deadline.

(2) UPDATES OF LIST.—The President shall submit to the appropriate congressional committees an updated list under paragraph (1)—

(A) not later than 270 days after the date of the enactment of this Act and every 180 days thereafter; and

Deadlines.

(B) as new information becomes available.

(3) FORM OF REPORT; PUBLIC AVAILABILITY.—

(A) FORM.—The list required by paragraph (1) shall be submitted in unclassified form but may contain a classified annex.

(B) PUBLIC AVAILABILITY.—The unclassified portion of the list required by paragraph (1) shall be made available to the public and posted on the websites of the Department of the Treasury and the Department of State.

Web posting.

(4) CONSIDERATION OF DATA FROM OTHER COUNTRIES AND NONGOVERNMENTAL ORGANIZATIONS.—In preparing the list required by paragraph (1), the President shall consider credible data already obtained by other countries and nongovernmental organizations, including organizations in Iran, that monitor the human rights abuses of the Government of Iran.

(c) SANCTIONS DESCRIBED.—The sanctions described in this subsection are ineligibility for a visa to enter the United States and

sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), including blocking of property and restrictions or prohibitions on financial transactions and the exportation and importation of property, subject to such regulations as the President may prescribe, including regulatory exceptions to permit the United States to comply with the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed June 26, 1947, and entered into force November 21, 1947, and other applicable international obligations.

Determination.
Certification.

(d) **TERMINATION OF SANCTIONS.**—The provisions of this section shall terminate on the date on which the President determines and certifies to the appropriate congressional committees that the Government of Iran has—

(1) unconditionally released all political prisoners, including the citizens of Iran detained in the aftermath of the June 12, 2009, presidential election in Iran;

(2) ceased its practices of violence, unlawful detention, torture, and abuse of citizens of Iran while engaging in peaceful political activity;

(3) conducted a transparent investigation into the killings, arrests, and abuse of peaceful political activists that occurred in the aftermath of the June 12, 2009, presidential election in Iran and prosecuted the individuals responsible for such killings, arrests, and abuse; and

(4) made public commitments to, and is making demonstrable progress toward—

(A) establishing an independent judiciary; and

(B) respecting the human rights and basic freedoms recognized in the Universal Declaration of Human Rights.

22 USC 8515.

SEC. 106. PROHIBITION ON PROCUREMENT CONTRACTS WITH PERSONS THAT EXPORT SENSITIVE TECHNOLOGY TO IRAN.

(a) **IN GENERAL.**—Except as provided in subsection (b), and pursuant to such regulations as the President may prescribe, the head of an executive agency may not enter into or renew a contract, on or after the date that is 90 days after the date of the enactment of this Act, for the procurement of goods or services with a person that exports sensitive technology to Iran.

President.

(b) **AUTHORIZATION TO EXEMPT CERTAIN PRODUCTS.**—The President is authorized to exempt from the prohibition under subsection (a) only eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)).

(c) **SENSITIVE TECHNOLOGY DEFINED.**—

(1) **IN GENERAL.**—The term “sensitive technology” means hardware, software, telecommunications equipment, or any other technology, that the President determines is to be used specifically—

(A) to restrict the free flow of unbiased information in Iran; or

(B) to disrupt, monitor, or otherwise restrict speech of the people of Iran.

(2) **EXCEPTION.**—The term “sensitive technology” does not include information or informational materials the exportation of which the President does not have the authority to regulate

or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(d) GOVERNMENT ACCOUNTABILITY OFFICE REPORT ON EFFECT OF PROCUREMENT PROHIBITION.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives, a report assessing the extent to which executive agencies would have entered into or renewed contracts for the procurement of goods or services with persons that export sensitive technology to Iran if the prohibition under subsection (a) were not in effect.

SEC. 107. HARMONIZATION OF CRIMINAL PENALTIES FOR VIOLATIONS OF SANCTIONS.

(a) IN GENERAL.—

(1) VIOLATIONS OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS IMPOSING SANCTIONS.—Section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)) is amended—

(A) by striking “find not more than \$10,000” and inserting “fined not more than \$1,000,000”; and

(B) by striking “ten years” and all that follows and inserting “20 years, or both.”.

(2) VIOLATIONS OF CONTROLS ON EXPORTS AND IMPORTS OF DEFENSE ARTICLES AND DEFENSE SERVICES.—Section 38(c) of the Arms Export Control Act (22 U.S.C. 2778(c)) is amended by striking “ten years” and inserting “20 years”.

(3) VIOLATIONS OF PROHIBITION ON TRANSACTIONS WITH COUNTRIES THAT SUPPORT ACTS OF INTERNATIONAL TERRORISM.—Section 40(j) of the Arms Export Control Act (22 U.S.C. 2780(j)) is amended by striking “10 years” and inserting “20 years”.

(4) VIOLATIONS OF THE TRADING WITH THE ENEMY ACT.—Section 16(a) of the Trading with the enemy Act (50 U.S.C. App. 16(a)) is amended by striking “if a natural person” and all that follows and inserting “if a natural person, be imprisoned for not more than 20 years, or both.”.

(b) STUDY BY UNITED STATES SENTENCING COMMISSION.—Not later than 1 year after the date of the enactment of this Act, the United States Sentencing Commission, pursuant to the authority under sections 994 and 995 of title 28, United States Code, and the responsibility of the United States Sentencing Commission to advise Congress on sentencing policy under section 995(a)(20) of title 28, United States Code, shall study and submit to Congress a report on the impact and advisability of imposing a mandatory minimum sentence for violations of—

(1) section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a));

(2) sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. 2778, 2779, and 2780); and

(3) the Trading with the enemy Act (50 U.S.C. App. 1 et seq.).

Deadline.
Reports.

SEC. 108. AUTHORITY TO IMPLEMENT UNITED NATIONS SECURITY COUNCIL RESOLUTIONS IMPOSING SANCTIONS WITH RESPECT TO IRAN.

22 USC 8516.

In addition to any other authority of the President with respect to implementing resolutions of the United Nations Security Council,

the President may prescribe such regulations as may be necessary to implement a resolution that is agreed to by the United Nations Security Council and imposes sanctions with respect to Iran.

22 USC 8517.

SEC. 109. INCREASED CAPACITY FOR EFFORTS TO COMBAT UNLAWFUL OR TERRORIST FINANCING.

(a) FINDINGS.—Congress finds the following:

(1) The work of the Office of Terrorism and Financial Intelligence of the Department of the Treasury, which includes the Office of Foreign Assets Control and the Financial Crimes Enforcement Network, is critical to ensuring that the international financial system is not used for purposes of supporting terrorism and developing weapons of mass destruction.

(2) The Secretary of the Treasury has designated, including most recently on June 16, 2010, various Iranian individuals and banking, military, energy, and shipping entities as proliferators of weapons of mass destruction pursuant to Executive Order 13382 (50 U.S.C. 1701 note), thereby blocking transactions subject to the jurisdiction of the United States by those individuals and entities and their supporters.

(3) The Secretary of the Treasury has also identified an array of entities in the insurance, petroleum, and petrochemicals industries that the Secretary has determined to be owned or controlled by the Government of Iran and added those entities to the list contained in Appendix A to part 560 of title 31, Code of Federal Regulations (commonly known as the “Iranian Transactions Regulations”), thereby prohibiting transactions between United States persons and those entities.

(b) AUTHORIZATION OF APPROPRIATIONS FOR OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE.—There are authorized to be appropriated to the Secretary of the Treasury for the Office of Terrorism and Financial Intelligence—

(1) \$102,613,000 for fiscal year 2011; and

(2) such sums as may be necessary for each of the fiscal years 2012 and 2013.

(c) AUTHORIZATION OF APPROPRIATIONS FOR THE FINANCIAL CRIMES ENFORCEMENT NETWORK.—Section 310(d)(1) of title 31, United States Code, is amended by striking “such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005” and inserting “\$100,419,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 and 2013”.

(d) AUTHORIZATION OF APPROPRIATIONS FOR BUREAU OF INDUSTRY AND SECURITY OF THE DEPARTMENT OF COMMERCE.—There are authorized to be appropriated to the Secretary of Commerce for the Bureau of Industry and Security of the Department of Commerce—

(1) \$113,000,000 for fiscal year 2011; and

(2) such sums as may be necessary for each of the fiscal years 2012 and 2013.

President.
22 USC 8518.

SEC. 110. REPORTS ON INVESTMENTS IN THE ENERGY SECTOR OF IRAN.

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report—

(A) on investments in the energy sector of Iran that were made during the period described in paragraph (2); and

(B) that contains—

(i) an estimate of the volume of energy-related resources (other than refined petroleum), including ethanol, that Iran imported during the period described in paragraph (2); and

(ii) a list of all significant known energy-related joint ventures, investments, and partnerships located outside Iran that involve Iranian entities in partnership with entities from other countries, including an identification of the entities from other countries; and

(iii) an estimate of—

(I) the total value of each such joint venture, investment, and partnership; and

(II) the percentage of each such joint venture, investment, and partnership owned by an Iranian entity.

(2) PERIOD DESCRIBED.—The period described in this paragraph is the period beginning on January 1, 2006, and ending on the date that is 60 days after the date of the enactment of this Act.

(b) UPDATED REPORTS.—Not later than 180 days after submitting the report required by subsection (a), and every 180 days thereafter, the President shall submit to the appropriate congressional committees a report containing the matters required in the report under subsection (a)(1) for the 180-day period beginning on the date that is 30 days before the date on which the preceding report was required to be submitted by this section.

Time period.

SEC. 111. REPORTS ON CERTAIN ACTIVITIES OF FOREIGN EXPORT CREDIT AGENCIES AND OF THE EXPORT-IMPORT BANK OF THE UNITED STATES.

22 USC 8519.

(a) REPORT ON CERTAIN ACTIVITIES OF EXPORT CREDIT AGENCIES OF FOREIGN COUNTRIES.—

President.

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report on any activity of an export credit agency of a foreign country that is an activity comparable to an activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996, as amended by section 102 of this Act.

(2) UPDATES.—The President shall update the report required by paragraph (1) as new information becomes available with respect to the activities of export credit agencies of foreign countries.

(b) REPORT ON CERTAIN FINANCING BY THE EXPORT-IMPORT BANK OF THE UNITED STATES.—Not later than 30 days (or, in extraordinary circumstances, not later than 15 days) before the Export-Import Bank of the United States approves cofinancing (including loans, guarantees, other credits, insurance, and reinsurance) in which an export credit agency of a foreign country identified in the report required by subsection (a) will participate, the President shall submit to the appropriate congressional committees a report identifying—

(1) the export credit agency of the foreign country; and

(2) the beneficiaries of the financing.

SEC. 112. SENSE OF CONGRESS REGARDING IRAN'S REVOLUTIONARY GUARD CORPS AND ITS AFFILIATES.

It is the sense of Congress that the United States should—

(1) persistently target Iran's Revolutionary Guard Corps and its affiliates with economic sanctions for its support for terrorism, its role in proliferation, and its oppressive activities against the people of Iran;

(2) identify, as soon as possible—

(A) any foreign individual or entity that is an agent, alias, front, instrumentality, official, or affiliate of Iran's Revolutionary Guard Corps;

(B) any individual or entity that—

(i) has provided material support to any individual or entity described in subparagraph (A); or

(ii) has conducted any financial or commercial transaction with any such individual or entity; and

(C) any foreign government that—

(i) provides material support to any such individual or entity; or

(ii) conducts any commercial transaction or financial transaction with any such individual or entity; and

(3) immediately impose sanctions, including travel restrictions, sanctions authorized pursuant to this Act or the Iran Sanctions Act of 1996, as amended by section 102 of this Act, and the full range of sanctions available to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), on the individuals, entities, and governments described in paragraph (2).

SEC. 113. SENSE OF CONGRESS REGARDING IRAN AND HEZBOLLAH.

It is the sense of Congress that the United States should—

(1) continue to counter support received by Hezbollah from the Government of Iran and other foreign governments in response to Hezbollah's terrorist activities and the threat Hezbollah poses to Israel, the democratic sovereignty of Lebanon, and the national security interests of the United States;

(2) impose the full range of sanctions available to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) on Hezbollah, affiliates and supporters of Hezbollah designated for the imposition of sanctions under that Act, and persons providing Hezbollah with commercial, financial, or other services;

(3) urge the European Union, individual countries in Europe, and other countries to classify Hezbollah as a terrorist organization to facilitate the disruption of Hezbollah's operations; and

(4) renew international efforts to disarm Hezbollah and disband its militias in Lebanon, as called for by United Nations Security Council Resolutions 1559 (2004) and 1701 (2006).

SEC. 114. SENSE OF CONGRESS REGARDING THE IMPOSITION OF MULTILATERAL SANCTIONS WITH RESPECT TO IRAN.

It is the sense of Congress that—

(1) in general, effective multilateral sanctions are preferable to unilateral sanctions in order to achieve desired results from countries such as Iran; and

(2) the President should continue to work with allies of the United States to impose such sanctions as may be necessary to prevent the Government of Iran from acquiring a nuclear weapons capability.

SEC. 115. REPORT ON PROVIDING COMPENSATION FOR VICTIMS OF INTERNATIONAL TERRORISM.

Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report on equitable methods for providing compensation on a comprehensive basis to victims of acts of international terrorism who are citizens or residents of the United States or nationals of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))).

TITLE II—DIVESTMENT FROM CERTAIN COMPANIES THAT INVEST IN IRAN

SEC. 201. DEFINITIONS.

22 USC 8531.

In this title:

(1) **ENERGY SECTOR OF IRAN.**—The term “energy sector of Iran” refers to activities to develop petroleum or natural gas resources or nuclear power in Iran.

(2) **FINANCIAL INSTITUTION.**—The term “financial institution” has the meaning given that term in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(3) **IRAN.**—The term “Iran” includes the Government of Iran and any agency or instrumentality of Iran.

(4) **PERSON.**—The term “person” means—

(A) a natural person, corporation, company, business association, partnership, society, trust, or any other non-governmental entity, organization, or group;

(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and

(C) any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in subparagraph (A) or (B).

(5) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(6) **STATE OR LOCAL GOVERNMENT.**—The term “State or local government” includes—

(A) any State and any agency or instrumentality thereof;

(B) any local government within a State, and any agency or instrumentality thereof;

(C) any other governmental instrumentality of a State or locality; and

(D) any public institution of higher education within the meaning of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

22 USC 8532.

SEC. 202. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES THAT INVEST IN IRAN.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that the United States should support the decision of any State or local government that for moral, prudential, or reputational reasons divests from, or prohibits the investment of assets of the State or local government in, a person that engages in investment activities in the energy sector of Iran, as long as Iran is subject to economic sanctions imposed by the United States.

(b) **AUTHORITY TO DIVEST.**—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (d) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran described in subsection (c).

(c) **INVESTMENT ACTIVITIES DESCRIBED.**—A person engages in investment activities in Iran described in this subsection if the person—

(1) has an investment of \$20,000,000 or more in the energy sector of Iran, including in a person that provides oil or liquified natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquified natural gas, for the energy sector of Iran; or

(2) is a financial institution that extends \$20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.

(d) **REQUIREMENTS.**—Any measure taken by a State or local government under subsection (b) shall meet the following requirements:

(1) **NOTICE.**—The State or local government shall provide written notice to each person to which a measure is to be applied.

(2) **TIMING.**—The measure shall apply to a person not earlier than the date that is 90 days after the date on which written notice is provided to the person under paragraph (1).

(3) **OPPORTUNITY FOR HEARING.**—The State or local government shall provide an opportunity to comment in writing to each person to which a measure is to be applied. If the person demonstrates to the State or local government that the person does not engage in investment activities in Iran described in subsection (c), the measure shall not apply to the person.

(4) **SENSE OF CONGRESS ON AVOIDING ERRONEOUS TARGETING.**—It is the sense of Congress that a State or local government should not adopt a measure under subsection (b) with respect to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person engages in investment activities in Iran described in subsection (c).

(e) **NOTICE TO DEPARTMENT OF JUSTICE.**—Not later than 30 days after adopting a measure pursuant to subsection (b), a State

Applicability.
Effective date.

Deadline.

or local government shall submit written notice to the Attorney General describing the measure.

(f) NONPREEMPTION.—A measure of a State or local government authorized under subsection (b) or (i) is not preempted by any Federal law or regulation.

(g) DEFINITIONS.—In this section:

(1) ASSETS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “assets” refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

(B) EXCEPTION.—The term “assets” does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) INVESTMENT.—The “investment” includes—

(A) a commitment or contribution of funds or property;

(B) a loan or other extension of credit; and

(C) the entry into or renewal of a contract for goods or services.

(h) EFFECTIVE DATE.—

Applicability.

(1) IN GENERAL.—Except as provided in paragraph (2) or subsection (i), this section applies to measures adopted by a State or local government before, on, or after the date of the enactment of this Act.

(2) NOTICE REQUIREMENTS.—Except as provided in subsection (i), subsections (d) and (e) apply to measures adopted by a State or local government on or after the date of the enactment of this Act.

(i) AUTHORIZATION FOR PRIOR ENACTED MEASURES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section or any other provision of law, a State or local government may enforce a measure (without regard to the requirements of subsection (d), except as provided in paragraph (2)) adopted by the State or local government before the date of the enactment of this Act that provides for the divestment of assets of the State or local government from, or prohibits the investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran (determined without regard to subsection (c)) or other business activities in Iran that are identified in the measure.

(2) APPLICATION OF NOTICE REQUIREMENTS.—A measure described in paragraph (1) shall be subject to the requirements of paragraphs (1) and (2) and the first sentence of paragraph (3) of subsection (d) on and after the date that is 2 years after the date of the enactment of this Act.

Effective date.

SEC. 203. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS.

(a) IN GENERAL.—Section 13(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-13(c)(1)) is amended to read as follows:

“(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal,

or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information available to the public—

“(A) conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007 (50 U.S.C. 1701 note); or

“(B) engage in investment activities in Iran described in section 202(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.”.

Deadline.
15 USC 80a–13
note.

(b) SEC REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue any revisions the Commission determines to be necessary to the regulations requiring disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940 to include divestments of securities in accordance with paragraph (1)(B) of such section, as added by subsection (a) of this section.

SEC. 204. SENSE OF CONGRESS REGARDING CERTAIN ERISA PLAN INVESTMENTS.

It is the sense of Congress that a fiduciary of an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), may divest plan assets from, or avoid investing plan assets in, any person the fiduciary determines engages in investment activities in Iran described in section 202(c) of this Act, without breaching the responsibilities, obligations, or duties imposed upon the fiduciary by subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)), if—

(1) the fiduciary makes such determination using credible information that is available to the public; and

(2) the fiduciary prudently determines that the result of such divestment or avoidance of investment would not be expected to provide the employee benefit plan with—

(A) a lower rate of return than alternative investments with commensurate degrees of risk; or

(B) a higher degree of risk than alternative investments with commensurate rates of return.

SEC. 205. TECHNICAL CORRECTIONS TO SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007.

(a) ERISA PLAN INVESTMENTS.—Section 5 of the Sudan Accountability and Divestment Act of 2007 (Public Law 110–174; 50 U.S.C. 1701 note) is amended—

(1) by striking “section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104)” and inserting “subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1))”; and

(2) by striking paragraph (2) and inserting the following:
“(2) the fiduciary prudently determines that the result of such divestment or avoidance of investment would not be expected to provide the employee benefit plan with—

“(A) a lower rate of return than alternative investments with commensurate degrees of risk; or

“(B) a higher degree of risk than alternative investments with commensurate rates of return.”.

(b) SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS.—

(1) IN GENERAL.—Section 13(c)(2)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–13(c)(2)(A)) is amended to read as follows:

“(A) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to create, imply, diminish, change, or affect in any way whether or not a private right of action exists under subsection (a) or any other provision of this Act.”.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply as if included in the Sudan Accountability and Divestment Act of 2007 (Public Law 110–174; 50 U.S.C. 1701 note).

15 USC 80a–13
note.

TITLE III—PREVENTION OF DIVERSION OF CERTAIN GOODS, SERVICES, AND TECHNOLOGIES TO IRAN

SEC. 301. DEFINITIONS.

15 USC 8541.

In this title:

(1) ALLOW.—The term “allow”, with respect to the diversion through a country of goods, services, or technologies, means the government of the country knows or has reason to know that the territory of the country is being used for such diversion.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) COMMERCE CONTROL LIST.—The term “Commerce Control List” means the list maintained pursuant to part 774 of the Export Administration Regulations (or any corresponding similar regulation or ruling).

(4) DIVERT; DIVERSION.—The terms “divert” and “diversion” refer to the transfer or release, directly or indirectly, of a good, service, or technology to an end-user or an intermediary that is not an authorized recipient of the good, service, or technology.

(5) END-USER.—The term “end-user”, with respect to a good, service, or technology, means the person that receives and ultimately uses the good, service, or technology.

(6) EXPORT ADMINISTRATION REGULATIONS.—The term “Export Administration Regulations” means subchapter C of chapter VII of title 15, Code of Federal Regulations (or any corresponding similar regulation or ruling).

(7) GOVERNMENT.—The term “government” includes any agency or instrumentality of a government.

(8) **INTERMEDIARY.**—The term “intermediary” means a person that receives a good, service, or technology while the good, service, or technology is in transit to the end-user of the good, service, or technology.

(9) **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.**—The term “International Traffic in Arms Regulations” means subchapter M of chapter I of title 22, Code of Federal Regulations (or any corresponding similar regulation or ruling).

(10) **IRAN.**—The term “Iran” includes the Government of Iran and any agency or instrumentality of Iran.

(11) **IRANIAN END-USER.**—The term “Iranian end-user” means an end-user that is the Government of Iran or a person in, or an agency or instrumentality of, Iran.

(12) **IRANIAN INTERMEDIARY.**—The term “Iranian intermediary” means an intermediary that is the Government of Iran or a person in, or an agency or instrumentality of, Iran.

(13) **STATE SPONSOR OF TERRORISM.**—The term “state sponsor of terrorism” means any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism pursuant to—

(A) section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) (or any successor thereto);

(B) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)); or

(C) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)).

(14) **UNITED STATES MUNITIONS LIST.**—The term “United States Munitions List” means the list maintained pursuant to part 121 of the International Traffic in Arms Regulations (or any corresponding similar regulation or ruling).

22 USC 8542.

SEC. 302. IDENTIFICATION OF COUNTRIES OF CONCERN WITH RESPECT TO THE DIVERSION OF CERTAIN GOODS, SERVICES, AND TECHNOLOGIES TO OR THROUGH IRAN.

Deadline.
Reports.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the President, the Secretary of Defense, the Secretary of Commerce, the Secretary of State, the Secretary of the Treasury, and the appropriate congressional committees a report that identifies each country the government of which the Director believes, based on all information available to the Director, is allowing the diversion through the country of goods, services, or technologies described in subsection (b) to Iranian end-users or Iranian intermediaries.

(b) **GOODS, SERVICES, AND TECHNOLOGIES DESCRIBED.**—Goods, services, or technologies described in this subsection are goods, services, or technologies—

(1) that—

(A) originated in the United States;

(B) would make a material contribution to Iran’s—

(i) development of nuclear, chemical, or biological weapons;

(ii) ballistic missile or advanced conventional weapons capabilities; or

(iii) support for international terrorism; and

- (C) are—
- (i) items on the Commerce Control List or services related to those items; or
 - (ii) defense articles or defense services on the United States Munitions List; or
- (2) that are prohibited for export to Iran under a resolution of the United Nations Security Council.
- (c) **UPDATES.**—The Director of National Intelligence shall update the report required by subsection (a)—
- (1) as new information becomes available; and
 - (2) not less frequently than annually.
- (d) **FORM.**—The report required by subsection (a) and the updates required by subsection (c) may be submitted in classified form.

SEC. 303. DESTINATIONS OF DIVERSION CONCERN.

President.
22 USC 8543.

- (a) **DESIGNATION.**—
- (1) **IN GENERAL.**—The President shall designate a country as a Destination of Diversion Concern if the President determines that the government of the country allows substantial diversion of goods, services, or technologies described in section 302(b) through the country to Iranian end-users or Iranian intermediaries.
- (2) **DETERMINATION OF SUBSTANTIAL.**—For purposes of paragraph (1), the President shall determine whether the government of a country allows substantial diversion of goods, services, or technologies described in section 302(b) through the country to Iranian end-users or Iranian intermediaries based on criteria that include—
- (A) the volume of such goods, services, and technologies that are diverted through the country to such end-users or intermediaries;
 - (B) the inadequacy of the export controls of the country;
 - (C) the unwillingness or demonstrated inability of the government of the country to control the diversion of such goods, services, and technologies to such end-users or intermediaries; and
 - (D) the unwillingness or inability of the government of the country to cooperate with the United States in efforts to interdict the diversion of such goods, services, or technologies to such end-users or intermediaries.
- (b) **REPORT ON DESIGNATION.**—Upon designating a country as a Destination of Diversion Concern under subsection (a), the President shall submit to the appropriate congressional committees a report—
- (1) notifying those committees of the designation of the country; and
 - (2) containing a list of the goods, services, and technologies described in section 302(b) that the President determines are diverted through the country to Iranian end-users or Iranian intermediaries.
- (c) **LICENSING REQUIREMENT.**—Not later than 45 days after submitting a report required by subsection (b) with respect to a country designated as a Destination of Diversion Concern under subsection (a), the President shall require a license under the Export Administration Regulations or the International Traffic in Arms Regulations (whichever is applicable) to export to that country

Deadline.

a good, service, or technology on the list required under subsection (b)(2), with the presumption that any application for such a license will be denied.

(d) DELAY OF IMPOSITION OF LICENSING REQUIREMENT.—

Time period.
Determination.

(1) IN GENERAL.—The President may delay the imposition of the licensing requirement under subsection (c) with respect to a country designated as a Destination of Diversion Concern under subsection (a) for a 12-month period if the President—

(A) determines that the government of the country is taking steps—

(i) to institute an export control system or strengthen the export control system of the country;

(ii) to interdict the diversion of goods, services, or technologies described in section 302(b) through the country to Iranian end-users or Iranian intermediaries; and

(iii) to comply with and enforce United Nations Security Council Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), and 1929 (2010), and any other resolution that is agreed to by the Security Council and imposes sanctions with respect to Iran;

(B) determines that it is appropriate to carry out government-to-government activities to strengthen the export control system of the country; and

Reports.

(C) submits to the appropriate congressional committees a report describing the steps specified in subparagraph (A) being taken by the government of the country.

(2) ADDITIONAL 12-MONTH PERIODS.—The President may delay the imposition of the licensing requirement under subsection (c) with respect to a country designated as a Destination of Diversion Concern under subsection (a) for additional 12-month periods after the 12-month period referred to in paragraph (1) if the President, for each such 12-month period—

(A) makes the determinations described in subparagraphs (A) and (B) of paragraph (1) with respect to the country; and

(B) submits to the appropriate congressional committees an updated version of the report required by subparagraph (C) of paragraph (1).

Determination.

(3) STRENGTHENING EXPORT CONTROL SYSTEMS.—If the President determines under paragraph (1)(B) that it is appropriate to carry out government-to-government activities to strengthen the export control system of a country designated as a Destination of Diversion Concern under subsection (a), the United States shall initiate government-to-government activities that may include—

(A) cooperation by agencies and departments of the United States with counterpart agencies and departments in the country—

(i) to develop or strengthen the export control system of the country;

(ii) to strengthen cooperation among agencies of the country and with the United States and facilitate enforcement of the export control system of the country; and

(iii) to promote information and data exchanges among agencies of the country and with the United States;

(B) training officials of the country to strengthen the export control systems of the country—

(i) to facilitate legitimate trade in goods, services, and technologies; and

(ii) to prevent terrorists and state sponsors of terrorism, including Iran, from obtaining nuclear, biological, and chemical weapons, defense technologies, components for improvised explosive devices, and other defense articles; and

(C) encouraging the government of the country to participate in the Proliferation Security Initiative, such as by entering into a ship boarding agreement pursuant to the Initiative.

(e) **TERMINATION OF DESIGNATION.**—The designation of a country as a Destination of Diversion Concern under subsection (a) shall terminate on the date on which the President determines, and certifies to the appropriate congressional committees, that the country has adequately strengthened the export control system of the country to prevent the diversion of goods, services, and technologies described in section 302(b) to Iranian end-users or Iranian intermediaries.

Determination.
Certification.

(f) **FORM OF REPORTS.**—A report required by subsection (b) or (d) may be submitted in classified form.

SEC. 304. REPORT ON EXPANDING DIVERSION CONCERN SYSTEM TO ADDRESS THE DIVERSION OF UNITED STATES ORIGIN GOODS, SERVICES, AND TECHNOLOGIES TO CERTAIN COUNTRIES OTHER THAN IRAN.

(a) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report that—

President.

(1) identifies any country that the President determines is allowing the diversion, in violation of United States law, of items on the Commerce Control List or services related to those items, or defense articles or defense services on the United States Munitions List, that originated in the United States to another country if such other country—

Determination.

(A) is seeking to obtain nuclear, biological, or chemical weapons, or ballistic missiles; or

(B) provides support for acts of international terrorism; and

(2) assesses the feasibility and advisability of expanding the system established under section 303 for designating countries as Destinations of Diversion Concern to include countries identified under paragraph (1).

(b) **FORM.**—The report required by subsection (a) may be submitted in classified form.

SEC. 305. ENFORCEMENT AUTHORITY.

22 USC 8544.

The Secretary of Commerce may designate any employee of the Office of Export Enforcement of the Department of Commerce to conduct activities specified in clauses (i), (ii), and (iii) of section 12(a)(3)(B) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(a)(3)(B)) when the employee is carrying out activities to enforce—

(1) the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) (as in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.));

(2) the provisions of this title, or any other provision of law relating to export controls, with respect to which the Secretary of Commerce has enforcement responsibility; or

(3) any license, order, or regulation issued under—

(A) the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) (as in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)); or

(B) a provision of law referred to in paragraph (2).

TITLE IV—GENERAL PROVISIONS

22 USC 8551.

SEC. 401. GENERAL PROVISIONS.

President.
Certification.

(a) SUNSET.—The provisions of this Act (other than sections 105 and 305 and the amendments made by sections 102, 107, 109, and 205) shall terminate, and section 13(c)(1)(B) of the Investment Company Act of 1940, as added by section 203(a), shall cease to be effective, on the date that is 30 days after the date on which the President certifies to Congress that—

(1) the Government of Iran has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state sponsor of terrorism (as defined in section 301) under—

(A) section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) (or any successor thereto);

(B) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)); or

(C) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)); and

(2) Iran has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

(b) PRESIDENTIAL WAIVERS.—

Determination.

(1) IN GENERAL.—The President may waive the application of sanctions under section 103(b), the requirement to impose or maintain sanctions with respect to a person under section 105(a), the requirement to include a person on the list required by section 105(b), the application of the prohibition under section 106(a), or the imposition of the licensing requirement under section 303(c) with respect to a country designated as a Destination of Diversion Concern under section 303(a), if the President determines that such a waiver is in the national interest of the United States.

(2) REPORTS.—

(A) IN GENERAL.—If the President waives the application of a provision pursuant to paragraph (1), the President shall submit to the appropriate congressional committees a report describing the reasons for the waiver.

(B) SPECIAL RULE FOR REPORT ON WAIVING IMPOSITION OF LICENSING REQUIREMENT UNDER SECTION 303(c).—In any case in which the President waives, pursuant to paragraph

(1), the imposition of the licensing requirement under section 303(c) with respect to a country designated as a Destination of Diversion Concern under section 303(a), the President shall include in the report required by subparagraph (A) of this paragraph an assessment of whether the government of the country is taking the steps described in subparagraph (A) of section 303(d)(1).

(c) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF STATE AND THE DEPARTMENT OF THE TREASURY.—There are authorized to be appropriated to the Secretary of State and to the Secretary of the Treasury such sums as may be necessary to implement the provisions of, and amendments made by, titles I and III of this Act.

(2) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF COMMERCE.—There are authorized to be appropriated to the Secretary of Commerce such sums as may be necessary to carry out title III.

SEC. 402. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

Approved July 1, 2010.

LEGISLATIVE HISTORY—H.R. 2194:

HOUSE REPORTS: Nos. 111–342, Pt. 1 (Comm. on Foreign Affairs) and 111–512 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 15, considered and passed House.

Vol. 156 (2010): Mar. 11, considered and passed Senate, amended.

June 24, Senate and House agreed to conference report.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

July 1, Presidential remarks.



Public Law 111–196
111th Congress

An Act

July 2, 2010

[H.R. 5569]

To extend the National Flood Insurance Program until September 30, 2010

National Flood
Insurance
Program
Extension Act of
2010.
42 USC 4001
note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Flood Insurance Program Extension Act of 2010”.

SEC. 2. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

(a) PROGRAM EXTENSION.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking “September 30, 2008” and inserting “September 30, 2010”.

(b) FINANCING.—Section 1309(a) of such Act (42 U.S.C. 4016(a)) is amended—

(1) by striking “September 30, 2008” and inserting “September 30, 2010”; and

(2) by striking “\$20,775,000,000” and inserting “\$20,725,000,000”.

42 USC 4016
note.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be considered to have taken effect on May 31, 2010.

SEC. 3. BUDGET COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved July 2, 2010.

LEGISLATIVE HISTORY—H.R. 5569:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 23, considered and passed House.

June 30, considered and passed Senate.



Public Law 111–197
111th Congress

An Act

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

July 2, 2010
[H.R. 5611]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Airport and Airway Extension Act of 2010, Part II”.

Airport and
Airway
Extension Act of
2010, Part II.
26 USC 1 note.

SEC. 2. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

(a) **FUEL TAXES.**—Subparagraph (B) of section 4081(d)(2) of the Internal Revenue Code of 1986 is amended by striking “July 3, 2010” and inserting “August 1, 2010”. 26 USC 4081.

(b) **TICKET TAXES.**—

(1) **PERSONS.**—Clause (ii) of section 4261(j)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “July 3, 2010” and inserting “August 1, 2010”.

(2) **PROPERTY.**—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking “July 3, 2010” and inserting “August 1, 2010”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on July 4, 2010. 26 USC 4081 note.

SEC. 3. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 is amended—

(1) by striking “July 4, 2010” and inserting “August 2, 2010”; and

(2) by inserting “or the Airport and Airway Extension Act of 2010, Part II” before the semicolon at the end of subparagraph (A).

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 9502(e) of such Code is amended by striking “July 4, 2010” and inserting “August 2, 2010”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on July 4, 2010. 26 USC 9502 note.

SEC. 4. EXTENSION OF AIRPORT IMPROVEMENT PROGRAM.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Section 48103(7) of title 49, United States Code, is amended to read as follows:

“(7) \$3,515,000,000 for fiscal year 2010.”.

(2) AVAILABILITY OF AMOUNTS.—Sums made available pursuant to the amendment made by paragraph (1) shall remain available until expended.

(b) PROJECT GRANT AUTHORITY.—Section 47104(c) of such title is amended by striking “July 3, 2010,” and inserting “August 1, 2010,”.

SEC. 5. EXTENSION OF EXPIRING AUTHORITIES.

(a) Section 40117(l)(7) of title 49, United States Code, is amended by striking “July 4, 2010,” and inserting “August 2, 2010.”.

(b) Section 44302(f)(1) of such title is amended—

(1) by striking “July 3, 2010,” and inserting “August 1, 2010,”; and

(2) by striking “September 30, 2010,” and inserting “October 31, 2010,”.

(c) Section 44303(b) of such title is amended by striking “September 30, 2010,” and inserting “October 31, 2010,”.

(d) Section 47107(s)(3) of such title is amended by striking “July 4, 2010,” and inserting “August 2, 2010.”.

(e) Section 47115(j) of such title is amended by striking “July 4, 2010,” and inserting “August 2, 2010,”.

(f) Section 47141(f) of such title is amended by striking “July 3, 2010,” and inserting “August 1, 2010.”.

(g) Section 49108 of such title is amended by striking “July 3, 2010,” and inserting “August 1, 2010,”.

(h) Section 161 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 47109 note) is amended by striking “July 4, 2010,” and inserting “August 2, 2010,”.

(i) Section 186(d) of such Act (117 Stat. 2518) is amended by striking “July 4, 2010,” and inserting “August 2, 2010,”.

(j) The amendments made by this section shall take effect on July 4, 2010.

Effective date.
49 USC 40117
note.

SEC. 6. FEDERAL AVIATION ADMINISTRATION OPERATIONS.

Section 106(k)(1)(F) of title 49, United States Code, is amended to read as follows:

Time period.

“(F) \$7,813,037,096 for the period beginning on October 1, 2009, and ending on August 1, 2010.”.

SEC. 7. AIR NAVIGATION FACILITIES AND EQUIPMENT.

Section 48101(a)(6) of title 49, United States Code, is amended to read as follows:

Time period.

“(6) \$2,453,539,493 for the period beginning on October 1, 2009, and ending on August 1, 2010.”.

SEC. 8. RESEARCH, ENGINEERING, AND DEVELOPMENT.

Section 48102(a)(14) of title 49, United States Code, is amended to read as follows:

“(14) \$159,184,932 for the period beginning on October 1, 2009, and ending on August 1, 2010.”. Time period.

Approved July 2, 2010.

LEGISLATIVE HISTORY—H.R. 5611:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 29, considered and passed House.

June 30, considered and passed Senate.



Public Law 111–198
111th Congress

An Act

July 2, 2010
[H.R. 5623]

To amend the Internal Revenue Code of 1986 to extend the homebuyer tax credit for the purchase of a principal residence before October 1, 2010, in the case of a written binding contract entered into with respect to such principal residence before May 1, 2010, and for other purposes.

Homebuyer
Assistance and
Improvement Act
of 2010.
26 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Homebuyer Assistance and Improvement Act of 2010”.

SEC. 2. EXTENSION OF HOMEBUYER CREDIT FOR CERTAIN PURCHASES PURSUANT TO BINDING CONTRACTS.

26 USC 36.

(a) IN GENERAL.—Paragraph (2) of section 36(h) of the Internal Revenue Code of 1986 is amended by striking “paragraph (1) shall be applied by substituting ‘July 1, 2010’” and inserting “and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting ‘October 1, 2010’”.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 36(h)(3) of such Code is amended by inserting “, and for ‘October 1, 2010’” after “for ‘July 1, 2010’”.

26 USC 36 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased after June 30, 2010.

SEC. 3. APPLICATION OF BAD CHECKS PENALTY TO ELECTRONIC PAYMENTS.

(a) IN GENERAL.—Section 6657 of the Internal Revenue Code of 1986 is amended—

(1) by striking “If any check or money order in payment of any amount” and inserting “If any instrument in payment, by any commercially acceptable means, of any amount”, and

(2) by striking “such check” each place it appears and inserting “such instrument”.

26 USC 6657
note.

(b) EFFECTIVE DATES.—The amendments made by this section shall apply to instruments tendered after the date of the enactment of this Act.

SEC. 4. DISCLOSURE OF PRISONER RETURN INFORMATION TO STATE PRISONS.

(a) IN GENERAL.—Subparagraph (A) of section 6103(k)(10) of the Internal Revenue Code of 1986 is amended—

(1) by inserting “and the head of any State agency charged with the responsibility for administration of prisons” after “the head of the Federal Bureau of Prisons”, and

(2) by striking “Federal prison” and inserting “Federal or State prison”.

(b) RESTRICTION ON REDISCLOSURE.—Subparagraph (B) of section 6103(k)(10) of such Code is amended—

26 USC 6103.

(1) by inserting “and the head of any State agency charged with the responsibility for administration of prisons” after “the head of the Federal Bureau of Prisons”, and

(2) by inserting “or agency” after “such Bureau”.

(c) RECORDKEEPING.—Paragraph (4) of section 6103(p) of such Code is amended by inserting “(k)(10),” before “(l)(6),” in the matter preceding subparagraph (A).

(d) CLERICAL AMENDMENT.—The heading of paragraph (10) of section 6103(k) of such Code is amended by striking “OF PRISONERS TO FEDERAL BUREAU OF PRISONS” and inserting “TO CERTAIN PRISON OFFICIALS”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made after the date of the enactment of this Act.

26 USC 6103
note.

SEC. 5. AMENDMENT OF TRAVEL PROMOTION ACT OF 2009.

(a) TRAVEL PROMOTION FUND FEES.—Section 217(h)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)) is amended—

(1) by striking “subsection (d) of section 11 of the Travel Promotion Act of 2009.” in clause (ii) and inserting “subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)).”; and

(2) by striking “September 30, 2014.” in clause (iii) and inserting “September 30, 2015.”.

(b) IMPLEMENTATION BEGINNING IN FISCAL YEAR 2011.—Subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)) is amended—

(1) by striking “For fiscal year 2010, the” in paragraph (2)(A) and inserting “The”;

(2) by striking “quarterly, beginning on January 1, 2010,” in paragraph (2)(A) and inserting “monthly, immediately following the collection of fees under section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)(i)(I)).”;

(3) by striking “fiscal years 2011 through 2014,” in paragraph (2)(B) and inserting “fiscal years 2012 through 2015.”;

(4) by striking “fiscal year 2010,” in paragraph (3)(A) and inserting “fiscal year 2011.”;

(5) by striking “fiscal year 2011,” each place it appears in paragraph (3)(A) and inserting “fiscal year 2012.”; and

(6) by striking “fiscal year 2010, 2011, 2012, 2013, or 2014” in paragraph (4)(B) and inserting “fiscal year 2011, 2012, 2013, 2014, or 2015”.

SEC. 6. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved July 2, 2010.

LEGISLATIVE HISTORY—H.R. 5623:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 29, considered and passed House.

June 30, considered and passed Senate.



Public Law 111–199
111th Congress

An Act

To amend the Toxic Substances Control Act to reduce the emissions of formaldehyde from composite wood products, and for other purposes.

July 7, 2010
[S. 1660]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Formaldehyde Standards for Composite Wood Products Act”.

SEC. 2. FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS.

(a) AMENDMENT.—The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended by adding at the end the following:

Formaldehyde
Standards for
Composite Wood
Products Act.
15 USC 2601
note.

“TITLE VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

“SEC. 601. FORMALDEHYDE STANDARDS.

15 USC 2697.

“(a) DEFINITIONS.—In this section:

“(1) FINISHED GOOD.—

“(A) IN GENERAL.—The term ‘finished good’ means any good or product (other than a panel) containing—

“(i) hardwood plywood;

“(ii) particleboard; or

“(iii) medium-density fiberboard.

“(B) EXCLUSIONS.—The term ‘finished good’ does not include—

“(i) any component part or other part used in the assembly of a finished good; or

“(ii) any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, such as—

“(I) an antique; or

“(II) secondhand furniture.

“(2) HARDBOARD.—The term ‘hardboard’ has such meaning as the Administrator shall establish, by regulation, pursuant to subsection (d).

“(3) HARDWOOD PLYWOOD.—

“(A) IN GENERAL.—The term ‘hardwood plywood’ means a hardwood or decorative panel that is—

“(i) intended for interior use; and
 “(ii) composed of (as determined under the standard numbered ANSI/HPVA HP-1-2009) an assembly of layers or plies of veneer, joined by an adhesive with—

- “(I) lumber core;
- “(II) particleboard core;
- “(III) medium-density fiberboard core;
- “(IV) hardboard core; or
- “(V) any other special core or special back material.

“(B) EXCLUSIONS.—The term ‘hardwood plywood’ does not include—

- “(i) military-specified plywood;
- “(ii) curved plywood; or
- “(iii) any other product specified in—
 - “(I) the standard entitled ‘Voluntary Product Standard—Structural Plywood’ and numbered PS 1-07; or
 - “(II) the standard entitled ‘Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels’ and numbered PS 2-04.

“(C) LAMINATED PRODUCTS.—

“(i) RULEMAKING.—

“(I) IN GENERAL.—The Administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term ‘hardwood plywood’ should exempt engineered veneer or any laminated product.

“(II) MODIFICATION.—The Administrator may modify any aspect of the definition contained in clause (ii) before including that definition in the regulations promulgated pursuant to subclause (I).

“(ii) LAMINATED PRODUCT.—The term ‘laminated product’ means a product—

“(I) in which a wood veneer is affixed to—

- “(aa) a particleboard platform;
- “(bb) a medium-density fiberboard platform; or
- “(cc) a veneer-core platform; and

“(II) that is—

- “(aa) a component part;
- “(bb) used in the construction or assembly of a finished good; and
- “(cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

“(4) MANUFACTURED HOME.—The term ‘manufactured home’ has the meaning given the term in section 3280.2 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

“(5) MEDIUM-DENSITY FIBERBOARD.—The term ‘medium-density fiberboard’ means a panel composed of cellulosic fibers

made by dry forming and pressing a resinated fiber mat (as determined under the standard numbered ANSI A208.2-2009).

“(6) MODULAR HOME.—The term ‘modular home’ means a home that is constructed in a factory in 1 or more modules—

“(A) each of which meet applicable State and local building codes of the area in which the home will be located; and

“(B) that are transported to the home building site, installed on foundations, and completed.

“(7) NO-ADDED FORMALDEHYDE-BASED RESIN.—

“(A) IN GENERAL.—(i) The term ‘no-added formaldehyde-based resin’ means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

“(I) one test conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to clause (ii), ASTM D-6007-02; and

“(II) 3 months of routine quality control tests pursuant to ASTM D-6007-02 or ASTM D-5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

“(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

“(B) INCLUSIONS.—The term ‘no-added formaldehyde-based resin’ may include any resin made from—

“(i) soy;

“(ii) polyvinyl acetate; or

“(iii) methylene diisocyanate.

“(C) EMISSION STANDARDS.—The following are the emission standards for composite wood products made with no-added formaldehyde-based resins under this paragraph:

“(i) No higher than 0.04 parts per million of formaldehyde for 90 percent of the 3 months of routine quality control testing data required under subparagraph (A)(ii).

“(ii) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

“(8) PARTICLEBOARD.—

“(A) IN GENERAL.—The term ‘particleboard’ means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under the standard numbered ANSI A208.1-2009).

“(B) EXCLUSIONS.—The term ‘particleboard’ does not include any product specified in the standard entitled ‘Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels’ and numbered PS 2-04.

“(9) RECREATIONAL VEHICLE.—The term ‘recreational vehicle’ has the meaning given the term in section 3282.8

of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

“(10) ULTRA LOW-EMITTING FORMALDEHYDE RESIN.—

“(A) IN GENERAL.—(i) The term ‘ultra low-emitting formaldehyde resin’ means a resin in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

“(I) 2 quarterly tests conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to clause (ii), ASTM D-6007-02; and

“(II) 6 months of routine quality control tests pursuant to ASTM D-6007-02 or ASTM D-5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

“(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

“(B) INCLUSIONS.—The term ‘ultra low-emitting formaldehyde resin’ may include—

“(i) melamine-urea-formaldehyde resin;

“(ii) phenol formaldehyde resin; and

“(iii) resorcinol formaldehyde resin.

“(C) EMISSION STANDARDS.—

“(i) The Administrator may, pursuant to regulations issued under subsection (d), reduce the testing requirements for a manufacturer only if its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

“(I) For hardwood plywood, no higher than 0.05 parts per million of formaldehyde.

“(II) For medium-density fiberboard—

“(aa) no higher than 0.06 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

“(bb) no test result higher than 0.09 parts per million of formaldehyde.

“(III) For particleboard—

“(aa) no higher than 0.05 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

“(bb) no test result higher than 0.08 parts per million of formaldehyde.

“(IV) For thin medium-density fiberboard—

“(aa) no higher than 0.08 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

“(bb) no test result higher than 0.11 parts per million of formaldehyde.

“(ii) The Administrator may not, pursuant to regulations issued under subsection (d), exempt a manufacturer from third party certification requirements unless

its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

“(I) No higher than 0.04 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii).

“(II) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

“(b) REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

Effective date.
Applicability.

“(2) EMISSION STANDARDS.—The emission standards referred to in paragraph (1), based on test method ASTM E-1333-96 (2002), are as follows:

“(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

“(B) For hardwood plywood with a composite core—

“(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

“(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

“(C) For medium-density fiberboard—

“(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

“(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

“(D) For thin medium-density fiberboard—

“(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

“(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

“(E) For particleboard—

“(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

“(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

“(3) COMPLIANCE WITH EMISSION STANDARDS.—(A) Compliance with the emission standards described in paragraph (2) shall be measured by—

“(i) quarterly tests shall be conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to subparagraph (B), ASTM D-6007-02; and

“(ii) quality control tests shall be conducted pursuant to ASTM D-6007-02, ASTM D-5582, or such other test methods as may be established by the Administrator through rulemaking.

“(B) Test results obtained under subparagraph (A)(i) or (ii) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

Regulations.

“(C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.

“(4) APPLICABILITY.—The formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is—

“(A) in the form of an unfinished panel; or

“(B) incorporated into a finished good.

“(c) EXEMPTIONS.—The formaldehyde emission standard referred to in subsection (b)(1) shall not apply to—

“(1) hardboard;

“(2) structural plywood, as specified in the standard entitled ‘Voluntary Product Standard—Structural Plywood’ and numbered PS 1-07;

“(3) structural panels, as specified in the standard entitled ‘Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels’ and numbered PS 2-04;

“(4) structural composite lumber, as specified in the standard entitled ‘Standard Specification for Evaluation of Structural Composite Lumber Products’ and numbered ASTM D 5456-06;

“(5) oriented strand board;

“(6) glued laminated lumber, as specified in the standard entitled ‘Structural Glued Laminated Timber’ and numbered ANSI A190.1-2002;

“(7) prefabricated wood I-joists, as specified in the standard entitled ‘Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists’ and numbered ASTM D 5055-05;

“(8) finger-jointed lumber;

“(9) wood packaging (including pallets, crates, spools, and dunnage);

“(10) composite wood products used inside a new—

“(A) vehicle (other than a recreational vehicle) constructed entirely from new parts that has never been—

“(i) the subject of a retail sale; or

“(ii) registered with the appropriate State agency or authority responsible for motor vehicles or with any foreign state, province, or country;

“(B) rail car;

“(C) boat;

“(D) aerospace craft; or

“(E) aircraft;

“(11) windows that contain composite wood products, if the window product contains less than 5 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window product; or

“(12) exterior doors and garage doors that contain composite wood products, if—

“(A) the doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

“(B) the doors contain less than 3 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

“(d) REGULATIONS.—

“(1) IN GENERAL.—Not later than January 1, 2013, the Administrator shall promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).

Deadline.

“(2) INCLUSIONS.—The regulations promulgated pursuant to paragraph (1) shall include provisions relating to—

“(A) labeling;

“(B) chain of custody requirements;

“(C) sell-through provisions;

“(D) ultra low-emitting formaldehyde resins;

“(E) no-added formaldehyde-based resins;

“(F) finished goods;

“(G) third-party testing and certification;

“(H) auditing and reporting of third-party certifiers;

“(I) recordkeeping;

“(J) enforcement;

“(K) laminated products; and

“(L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.

The Administrator shall not provide under subparagraph (L) exceptions to the formaldehyde emission standard requirements in subsection (b).

“(3) SELL-THROUGH PROVISIONS.—

“(A) IN GENERAL.—Sell-through provisions established by the Administrator under this subsection, with respect to composite wood products and finished goods containing regulated composite wood products (including recreational vehicles, manufactured homes, and modular homes), shall—

“(i) be based on a designated date of manufacture (which shall be no earlier than the date 180 days following the promulgation of the regulations pursuant to this subsection) of the composite wood product or finished good, rather than date of sale of the composite wood product or finished good; and

“(ii) provide that any inventory of composite wood products or finished goods containing regulated composite wood products, manufactured before the designated date of manufacture of the composite wood

products or finished goods, shall not be subject to the formaldehyde emission standard requirements under subsection (b)(1).

“(B) IMPLEMENTING REGULATIONS.—The regulations promulgated under this subsection shall—

“(i) prohibit the stockpiling of inventory to be sold after the designated date of manufacture; and

“(ii) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacture.

“(C) DEFINITION.—For purposes of this paragraph, the term ‘stockpiling’ means manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between the date of enactment of the Formaldehyde Standards for Composite Wood Products Act and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before the date of enactment of the Formaldehyde Standards for Composite Wood Products Act.

Deadline.

“(4) IMPORT REGULATIONS.—Not later than July 1, 2013, the Administrator, in coordination with the Commissioner of Customs and Border Protection and other appropriate Federal departments and agencies, shall revise regulations promulgated pursuant to section 13 as the Administrator determines to be necessary to ensure compliance with this section.

“(5) SUCCESSOR STANDARDS AND TEST METHODS.—The Administrator may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in this section with its successor version.

“(e) PROHIBITED ACTS.—An individual or entity that violates any requirement under this section (including any regulation promulgated pursuant to subsection (d)) shall be considered to have committed a prohibited act under section 15.”

(b) CONFORMING AMENDMENT.—The table of contents of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended by adding at the end the following:

“TITLE VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

“Sec. 601. Formaldehyde standards.”.

SEC. 3. REPORTS TO CONGRESS.

Not later than one year after the date of enactment of this Act, and annually thereafter through December 31, 2014, the Administrator of the Environmental Protection Agency shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing, with respect to the preceding year—

(1) the status of the measures carried out or planned to be carried out pursuant to title VI of the Toxic Substances Control Act; and

(2) the extent to which relevant industries have achieved compliance with the requirements under that title.

SEC. 4. MODIFICATION OF REGULATION.

Not later than 180 days after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that the regulation reflects the standards established by section 601 of the Toxic Substances Control Act.

15 USC 2697
note.
Deadline.

Approved July 7, 2010.

LEGISLATIVE HISTORY—S. 1660:

SENATE REPORTS: No. 111–169 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 14, considered and passed Senate.

June 23, considered and passed House.



Public Law 111–200
111th Congress

An Act

July 7, 2010
[S. 2865]

To reauthorize the Congressional Award Act (2 U.S.C. 801 et seq.), and for other purposes.

Congressional
Award Program
Reauthorization
Act of 2009.
2 USC 801 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Congressional Award Program Reauthorization Act of 2009”.

SEC. 2. CONGRESSIONAL AWARD PROGRAM.

(a) IMPLEMENTATION AND PRESENTATION.—Section 102 of the Congressional Award Act (2 U.S.C. 802) is amended—

(1) in the matter following subsection (b)(5), by striking “under paragraph (3)”; and

(2) in subsection (c), in the second sentence, by striking “during” and inserting “in connection with”.

(b) TERMS OF APPOINTMENT AND REAPPOINTMENTS.—Section 103 of the Congressional Award Act (2 U.S.C. 803) is amended by striking subsection (b) and inserting the following:

“(b) TERMS OF APPOINTED MEMBERS; REAPPOINTMENT.—

“(1) Appointed members of the Board shall continue to serve at the pleasure of the officer by whom they are appointed, and (unless reappointed under paragraph (2)) shall serve for a term of 4 years.

“(2)(A) Subject to the limitations in subparagraph (B), members of the Board may be reappointed, except that no member may serve more than 2 full consecutive terms. Members may be reappointed to 2 full consecutive terms after being appointed to fill a vacancy on the Board.

“(B) Members of the Board shall not be subject to the limitation on reappointment in subparagraph (A) during their period of service as Chairman of the Board and may be reappointed to an additional full term after termination of such Chairmanship.

Effective date.

“(3)(A) Notwithstanding paragraph (1) or (2), the term of each member of the Board shall begin on October 1 of the even numbered year which would otherwise apply with one-half of the Board positions having terms which begin in each even numbered year.

Applicability.

“(B) Subparagraph (A) shall apply to appointments made to the Board on or after the date of enactment of the Congressional Award Program Reauthorization Act of 2009.”.

(c) REQUIREMENTS REGARDING FINANCIAL OPERATIONS.—Section 104(c) of the Congressional Award Act (2 U.S.C. 804(c)) is amended—

(1) in paragraph (1), in the third sentence, by striking “, in any calendar year,” and inserting “in any fiscal year”; and

(2) by striking paragraph (2) and inserting the following:

“(2)(A) The Comptroller General of the United States shall determine for each fiscal year whether the Director has substantially complied with paragraph (1). The findings made by the Comptroller General under the preceding sentence shall be included in the reports submitted under section 107(b).

Determination.

“(B) If the Director fails to substantially comply with paragraph (1), the Board shall instruct the Director to take such actions as may be necessary to correct such deficiencies, and shall remove and replace the Director if such deficiencies are not promptly corrected.”.

(d) FUNDING AND EXPENDITURES.—Section 106(a) of the Congressional Award Act (2 U.S.C. 806(a)) is amended by striking paragraph (1) and inserting the following:

“(1) the Board shall carry out its functions and make expenditures with—

“(A) such resources as are available to the Board from sources other than the Federal Government; and

“(B) funds awarded in any grant program administered by a Federal agency in accordance with the law establishing that grant program.”.

(e) STATEWIDE CONGRESSIONAL AWARD COUNCILS.—Section 106(c) of the Congressional Award Act (2 U.S.C. 806(c)) is amended by striking paragraph (4) and inserting the following:

“(4) Each Statewide Council established under this section may receive contributions, and use such contributions for the purposes of the Program. The Board shall adopt appropriate financial management methods in order to ensure the proper accounting of these funds. Each Statewide Council shall comply with subsections (a), (d), (e), and (h) governing the Board.”.

(f) CONTRACTING AND USE OF FUNDS FOR SCHOLARSHIPS.—Section 106 of the Congressional Award Act (2 U.S.C. 806) is amended—

(1) in subsection (d), by inserting “to be” after “expenditure is”; and

(2) in subsection (e)(1)(A), by inserting “or for scholarships” after “local program”.

(g) NONPROFIT CORPORATION.—Section 106 of the Congressional Award Act (2 U.S.C. 806) is amended by striking subsection (i) and inserting the following:

“(i)(1) The Board shall provide for the incorporation of a nonprofit corporation to be known as the Congressional Award Foundation (together with any subsidiary nonprofit corporations determined desirable by the Board, collectively referred to in this title as the ‘Corporation’) for the sole purpose of assisting the Board to carry out the Congressional Award Program, and shall delegate to the Corporation such duties as it considers appropriate, including the employment of personnel, expenditure of funds, and the incurring of financial or other contractual obligations.

“(2) The articles of incorporation of the Congressional Award Foundation shall provide that—

“(A) the members of the Board of Directors of the Foundation shall be the members of the Board, with up to 24 additional voting members appointed by the Board, and the Director who shall serve as a nonvoting member; and

“(B) the extent of the authority of the Foundation shall be the same as that of the Board.

“(3) No director, officer, or employee of any corporation established under this subsection may receive compensation, travel expenses, or benefits from both the Corporation and the Board.”.

(h) TERMINATION.—

(1) IN GENERAL.—Section 108 of the Congressional Award Act (2 U.S.C. 808) is amended by striking “October 1, 2009” and inserting “October 1, 2013”.

2 USC 808 note.

(2) EFFECTIVE DATE.—This subsection shall take effect as of October 1, 2009.

Approved July 7, 2010.

LEGISLATIVE HISTORY—S. 2865:

SENATE REPORTS: No. 111–163 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 17, considered and passed Senate.

June 23, considered and passed House.



Public Law 111–201
111th Congress

Joint Resolution

Recognizing the 60th anniversary of the outbreak of the Korean War and reaffirming the United States-Korea alliance.

July 7, 2010

[S.J. Res. 32]

Whereas on June 25, 1950, communist North Korea invaded the Republic of Korea with approximately 135,000 troops, thereby initiating the Korean War;

Whereas on June 27, 1950, President Harry Truman ordered the United States Armed Forces to help the Republic of Korea defend itself against the North Korean invasion;

Whereas the hostilities ended in a cease-fire marked by the signing of the armistice at Panmunjom on July 27, 1953, and the peninsula still technically remains in a state of war;

Whereas during the Korean War, approximately 1,789,000 members of the United States Armed Forces served in theater along with the forces of the Republic of Korea and 20 other members of the United Nations to defend freedom and democracy;

Whereas casualties of the United States during the Korean War included 54,246 dead (of whom 33,739 were battle deaths), more than 103,284 wounded, and approximately 8,055 listed as missing in action or prisoners of war;

Whereas the Korean War Veterans Recognition Act (Public Law 111–41) was enacted on July 27, 2009, so that the honorable service and noble sacrifice by members of the United States Armed Forces in the Korean War will never be forgotten;

Whereas President Barack Obama issued a proclamation to designate July 27, 2009, as the National Korean War Veterans Armistice Day and called upon Americans to display flags at half-staff in memory of the Korean War veterans;

Whereas since 1975, the Republic of Korea has invited thousands of American Korean War veterans, including members of the Korean War Veterans Association, to revisit Korea in appreciation for their sacrifices;

Whereas in the 60 years since the outbreak of the Korean War, the Republic of Korea has emerged from a war-torn economy into one of the major economies in the world and one of the largest trading partners of the United States;

Whereas the Republic of Korea is among the closest allies of the United States, having contributed troops in support of United States operations during the Vietnam war, Gulf war, and operations in Iraq and Afghanistan, while also supporting numerous United Nations peacekeeping missions throughout the world;

Whereas since the end of the Korean War era, more than 28,500 members of the United States Armed Forces have served annually in the United States Forces Korea to defend the Republic of Korea against external aggression, and to promote regional peace;

Whereas North Korea's sinking of the South Korean naval ship, Cheonan, on March 26, 2010, which resulted in the killing of 46 sailors, necessitates a reaffirmation of the United States-Korea alliance in safeguarding the stability of the Korean Peninsula;

Whereas from the ashes of war and the sharing of spilled blood on the battlefield, the United States and the Republic of Korea have continuously stood shoulder-to-shoulder to promote and defend international peace and security, economic prosperity, human rights, and the rule of law both on the Korean Peninsula and beyond; and

Whereas beginning in June 2010, various ceremonies are being planned in the United States and the Republic of Korea to commemorate the 60th anniversary of the outbreak of the Korean War and to honor all Korean War veterans, including the Korean War Veterans Appreciation Ceremony in the hometown of President Harry S. Truman, which will express the commitment of the United States to remember and honor all veterans of the Korean War: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the historical importance of the 60th anniversary of the outbreak of the Korean War, which began on June 25, 1950;

(2) honors the noble service and sacrifice of the United States Armed Forces and the armed forces of allied countries that served in Korea since 1950 to the present;

(3) encourages all Americans to participate in commemorative activities to pay solemn tribute to, and to never forget, the veterans of the Korean War; and

(4) reaffirms the commitment of the United States to its alliance with the Republic of Korea for the betterment of peace and prosperity on the Korean Peninsula.

Approved July 7, 2010.

LEGISLATIVE HISTORY—S.J. Res. 32 (H.J. Res. 86):

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 16, considered and passed Senate.

June 23, considered and passed House.



Public Law 111–202
111th Congress

An Act

To permanently authorize Radio Free Asia, and for other purposes.

July 13, 2010

[S. 3104]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

22 USC 6208
note.

Congress finds the following:

- (1) Radio Free Asia (referred to in this Act as “RFA”)—
 - (A) was authorized under section 309 of the United States International Broadcasting Act of 1994 (22 U.S.C. 6208);
 - (B) was incorporated as a private, non-profit corporation in March 1996 in the hope that its operations would soon be obviated by the global advancement of democracy; and
 - (C) is headquartered in Washington, DC, with additional offices in Bangkok, Hong Kong, Phnom Penh, Seoul, Ankara, and Taipei.
- (2) RFA broadcasts serve as substitutes for indigenous free media in regions lacking free media outlets.
- (3) The mission of RFA is “to provide accurate and timely news and information to Asian countries whose governments prohibit access to a free press” in order to enable informed decisionmaking by the people within Asia.
- (4) RFA provides daily broadcasts of news, commentary, analysis, and cultural programming to Asian countries in several languages, including—
 - (A) 12 hours per day in Mandarin;
 - (B) 8 hours per day in 3 Tibetan dialects, Uke, Kham, and Amdo;
 - (C) 4 hours per day in Korean and Burmese;
 - (D) 2 hours per day in Cantonese, Vietnamese, Laotian, Khmer (Cambodian), and Uyghur; and
 - (E) 1½ hours per week in Wu (local Shanghai dialect).
- (5) The governments of the countries targeted for these broadcasts have consistently denied and blocked attempts at Medium Wave and FM transmissions into their countries, forcing RFA to rely on Shortwave broadcasts and the Internet.
- (6) RFA has provided continuous online news to its Asian audiences since 2004, although some countries—
 - (A) routinely and aggressively block RFA’s website;
 - (B) monitor access to RFA’s website; and
 - (C) discourage online users by making it illegal to access RFA’s website.

(7) Despite these attempts, RFA has successfully managed to reach its online audiences through proxies, cutting-edge software, and active republication and repostings by its audience.

(8) RFA also provides forums for local opinions and experiences through message boards, podcasts, web logs (blogs), cell phone-distributed newscasts, and new media, including Facebook, Flickr, Twitter, and YouTube.

(9) Freedom House has documented that freedom of the press is in decline in nearly every region of the world, particularly in Asia, where none of the countries served by RFA have increased their freedom of the press during the past 5 years.

(10) In fiscal year 2010, RFA is operating on a \$37,000,000 budget, less than \$400,000 of which is available to fund Internet censorship circumvention.

(11) Congress currently provides grant funding for RFA's operations on a fiscal year basis.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) public access to timely, uncensored, and accurate information is imperative for promoting government accountability and the protection of human rights;

(2) Radio Free Asia provides a vital voice to people in Asia;

(3) some of the governments in Asia spend millions of dollars each year to jam RFA's shortwave, block its Internet sites;

(4) Congress should provide additional funding to RFA and the other entities overseen by the Broadcasting Board of Governors for—

(A) Internet censorship circumvention; and

(B) enhancement of their cyber security efforts; and

(5) permanently authorizing funding for Radio Free Asia would—

(A) reflect the concern that media censorship and press restrictions in the countries served by RFA have increased since RFA was established; and

(B) send a powerful signal of our Nation's support for free press in Asia and throughout the world.

SEC. 3. PERMANENT AUTHORIZATION FOR RADIO FREE ASIA.

Section 309 of the United States International Broadcasting Act of 1994 (22 U.S.C. 6208) is amended—

(1) in subsection (c)(2), by striking “, and shall further specify that funds to carry out the activities of Radio Free Asia may not be available after September 30, 2010”;

(2) by striking subsection (f);

(3) by redesignating subsections (g) and (h) as subsection (f) and (g), respectively; and

(4) in subsection (f), as redesignated—

(A) by striking “The Board” and inserting the following: “(1) NOTIFICATION.—The Board”;

(B) by striking “before entering” and inserting the following: “before—

“(A) entering”;

(C) by striking “Radio Free Asia.” and inserting the following: “Radio Free Asia; or

“(B) entering into any agreements in regard to the utilization of Radio Free Asia transmitters, equipment, or other resources that will significantly reduce the broadcasting activities of Radio Free Asia.”;

(D) by striking “The Chairman” and inserting the following:

“(2) CONSULTATION.—The Chairman”; and

(E) by inserting “or Radio Free Asia broadcasting activities” before the period at the end.

Approved July 13, 2010.

LEGISLATIVE HISTORY—S. 3104:

SENATE REPORTS: No. 111–214 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 25, considered and passed Senate.

June 30, considered and passed House.



Public Law 111–203
111th Congress

An Act

July 21, 2010
[H.R. 4173]

Dodd-Frank Wall
Street Reform
and Consumer
Protection Act.
12 USC 5301
note.

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Dodd-Frank Wall Street Reform and Consumer Protection Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Severability.
- Sec. 4. Effective date.
- Sec. 5. Budgetary effects.
- Sec. 6. Antitrust savings clause.

TITLE I—FINANCIAL STABILITY

- Sec. 101. Short title.
- Sec. 102. Definitions.

Subtitle A—Financial Stability Oversight Council

- Sec. 111. Financial Stability Oversight Council established.
- Sec. 112. Council authority.
- Sec. 113. Authority to require supervision and regulation of certain nonbank financial companies.
- Sec. 114. Registration of nonbank financial companies supervised by the Board of Governors.
- Sec. 115. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.
- Sec. 116. Reports.
- Sec. 117. Treatment of certain companies that cease to be bank holding companies.
- Sec. 118. Council funding.
- Sec. 119. Resolution of supervisory jurisdictional disputes among member agencies.
- Sec. 120. Additional standards applicable to activities or practices for financial stability purposes.
- Sec. 121. Mitigation of risks to financial stability.
- Sec. 122. GAO Audit of Council.
- Sec. 123. Study of the effects of size and complexity of financial institutions on capital market efficiency and economic growth.

Subtitle B—Office of Financial Research

- Sec. 151. Definitions.
- Sec. 152. Office of Financial Research established.
- Sec. 153. Purpose and duties of the Office.
- Sec. 154. Organizational structure; responsibilities of primary programmatic units.
- Sec. 155. Funding.
- Sec. 156. Transition oversight.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial
Companies and Bank Holding Companies

- Sec. 161. Reports by and examinations of nonbank financial companies by the Board of Governors.
- Sec. 162. Enforcement.
- Sec. 163. Acquisitions.
- Sec. 164. Prohibition against management interlocks between certain financial companies.
- Sec. 165. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.
- Sec. 166. Early remediation requirements.
- Sec. 167. Affiliations.
- Sec. 168. Regulations.
- Sec. 169. Avoiding duplication.
- Sec. 170. Safe harbor.
- Sec. 171. Leverage and risk-based capital requirements.
- Sec. 172. Examination and enforcement actions for insurance and orderly liquidation purposes.
- Sec. 173. Access to United States financial market by foreign institutions.
- Sec. 174. Studies and reports on holding company capital requirements.
- Sec. 175. International policy coordination.
- Sec. 176. Rule of construction.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

- Sec. 201. Definitions.
- Sec. 202. Judicial review.
- Sec. 203. Systemic risk determination.
- Sec. 204. Orderly liquidation of covered financial companies.
- Sec. 205. Orderly liquidation of covered brokers and dealers.
- Sec. 206. Mandatory terms and conditions for all orderly liquidation actions.
- Sec. 207. Directors not liable for acquiescing in appointment of receiver.
- Sec. 208. Dismissal and exclusion of other actions.
- Sec. 209. Rulemaking; non-conflicting law.
- Sec. 210. Powers and duties of the Corporation.
- Sec. 211. Miscellaneous provisions.
- Sec. 212. Prohibition of circumvention and prevention of conflicts of interest.
- Sec. 213. Ban on certain activities by senior executives and directors.
- Sec. 214. Prohibition on taxpayer funding.
- Sec. 215. Study on secured creditor haircuts.
- Sec. 216. Study on bankruptcy process for financial and nonbank financial institutions.
- Sec. 217. Study on international coordination relating to bankruptcy process for nonbank financial institutions.

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE
CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

- Sec. 300. Short title.
- Sec. 301. Purposes.
- Sec. 302. Definition.

Subtitle A—Transfer of Powers and Duties

- Sec. 311. Transfer date.
- Sec. 312. Powers and duties transferred.
- Sec. 313. Abolishment.
- Sec. 314. Amendments to the Revised Statutes.
- Sec. 315. Federal information policy.
- Sec. 316. Savings provisions.
- Sec. 317. References in Federal law to Federal banking agencies.
- Sec. 318. Funding.
- Sec. 319. Contracting and leasing authority.

Subtitle B—Transitional Provisions

- Sec. 321. Interim use of funds, personnel, and property of the Office of Thrift Supervision.
- Sec. 322. Transfer of employees.
- Sec. 323. Property transferred.
- Sec. 324. Funds transferred.
- Sec. 325. Disposition of affairs.
- Sec. 326. Continuation of services.

Sec. 327. Implementation plan and reports.

Subtitle C—Federal Deposit Insurance Corporation

- Sec. 331. Deposit insurance reforms.
- Sec. 332. Elimination of procyclical assessments.
- Sec. 333. Enhanced access to information for deposit insurance purposes.
- Sec. 334. Transition reserve ratio requirements to reflect new assessment base.
- Sec. 335. Permanent increase in deposit and share insurance.
- Sec. 336. Management of the Federal Deposit Insurance Corporation.

Subtitle D—Other Matters

- Sec. 341. Branching.
- Sec. 342. Office of Minority and Women Inclusion.
- Sec. 343. Insurance of transaction accounts.

Subtitle E—Technical and Conforming Amendments

- Sec. 351. Effective date.
- Sec. 352. Balanced Budget and Emergency Deficit Control Act of 1985.
- Sec. 353. Bank Enterprise Act of 1991.
- Sec. 354. Bank Holding Company Act of 1956.
- Sec. 355. Bank Holding Company Act Amendments of 1970.
- Sec. 356. Bank Protection Act of 1968.
- Sec. 357. Bank Service Company Act.
- Sec. 358. Community Reinvestment Act of 1977.
- Sec. 359. Crime Control Act of 1990.
- Sec. 360. Depository Institution Management Interlocks Act.
- Sec. 361. Emergency Homeowners' Relief Act.
- Sec. 362. Federal Credit Union Act.
- Sec. 363. Federal Deposit Insurance Act.
- Sec. 364. Federal Home Loan Bank Act.
- Sec. 365. Federal Housing Enterprises Financial Safety and Soundness Act of 1992.
- Sec. 366. Federal Reserve Act.
- Sec. 367. Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- Sec. 368. Flood Disaster Protection Act of 1973.
- Sec. 369. Home Owners' Loan Act.
- Sec. 370. Housing Act of 1948.
- Sec. 371. Housing and Community Development Act of 1992.
- Sec. 372. Housing and Urban-Rural Recovery Act of 1983.
- Sec. 373. National Housing Act.
- Sec. 374. Neighborhood Reinvestment Corporation Act.
- Sec. 375. Public Law 93–100.
- Sec. 376. Securities Exchange Act of 1934.
- Sec. 377. Title 18, United States Code.
- Sec. 378. Title 31, United States Code.

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Elimination of private adviser exemption; limited exemption for foreign private advisers; limited intrastate exemption.
- Sec. 404. Collection of systemic risk data; reports; examinations; disclosures.
- Sec. 405. Disclosure provision amendment.
- Sec. 406. Clarification of rulemaking authority.
- Sec. 407. Exemption of venture capital fund advisers.
- Sec. 408. Exemption of and record keeping by private equity fund advisers.
- Sec. 409. Family offices.
- Sec. 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers.
- Sec. 411. Custody of client assets.
- Sec. 412. Adjusting the accredited investor standard.
- Sec. 413. GAO study and report on accredited investors.
- Sec. 414. GAO study on self-regulatory organization for private funds.
- Sec. 415. Commission study and report on short selling.
- Sec. 416. Transition period.

TITLE V—INSURANCE

Subtitle A—Office of National Insurance

- Sec. 501. Short title.
- Sec. 502. Federal Insurance Office.

Subtitle B—State-Based Insurance Reform

- Sec. 511. Short title.

Sec. 512. Effective date.

PART I—NONADMITTED INSURANCE

- Sec. 521. Reporting, payment, and allocation of premium taxes.
- Sec. 522. Regulation of nonadmitted insurance by insured's home State.
- Sec. 523. Participation in national producer database.
- Sec. 524. Uniform standards for surplus lines eligibility.
- Sec. 525. Streamlined application for commercial purchasers.
- Sec. 526. GAO study of nonadmitted insurance market.
- Sec. 527. Definitions.

PART II—REINSURANCE

- Sec. 531. Regulation of credit for reinsurance and reinsurance agreements.
- Sec. 532. Regulation of reinsurer solvency.
- Sec. 533. Definitions.

PART III—RULE OF CONSTRUCTION

- Sec. 541. Rule of construction.
- Sec. 542. Severability.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS
ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

- Sec. 601. Short title.
- Sec. 602. Definition.
- Sec. 603. Moratorium and study on treatment of credit card banks, industrial loan companies, and certain other companies under the Bank Holding Company Act of 1956.
- Sec. 604. Reports and examinations of holding companies; regulation of functionally regulated subsidiaries.
- Sec. 605. Assuring consistent oversight of permissible activities of depository institution subsidiaries of holding companies.
- Sec. 606. Requirements for financial holding companies to remain well capitalized and well managed.
- Sec. 607. Standards for interstate acquisitions.
- Sec. 608. Enhancing existing restrictions on bank transactions with affiliates.
- Sec. 609. Eliminating exceptions for transactions with financial subsidiaries.
- Sec. 610. Lending limits applicable to credit exposure on derivative transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions.
- Sec. 611. Consistent treatment of derivative transactions in lending limits.
- Sec. 612. Restriction on conversions of troubled banks.
- Sec. 613. De novo branching into States.
- Sec. 614. Lending limits to insiders.
- Sec. 615. Limitations on purchases of assets from insiders.
- Sec. 616. Regulations regarding capital levels.
- Sec. 617. Elimination of elective investment bank holding company framework.
- Sec. 618. Securities holding companies.
- Sec. 619. Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds.
- Sec. 620. Study of bank investment activities.
- Sec. 621. Conflicts of interest.
- Sec. 622. Concentration limits on large financial firms.
- Sec. 623. Interstate merger transactions.
- Sec. 624. Qualified thrift lenders.
- Sec. 625. Treatment of dividends by certain mutual holding companies.
- Sec. 626. Intermediate holding companies.
- Sec. 627. Interest-bearing transaction accounts authorized.
- Sec. 628. Credit card bank small business lending.

TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

- Sec. 701. Short title.

Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

- Sec. 711. Definitions.
- Sec. 712. Review of regulatory authority.
- Sec. 713. Portfolio margining conforming changes.
- Sec. 714. Abusive swaps.
- Sec. 715. Authority to prohibit participation in swap activities.

- Sec. 716. Prohibition against Federal Government bailouts of swaps entities.
- Sec. 717. New product approval CFTC—SEC process.
- Sec. 718. Determining status of novel derivative products.
- Sec. 719. Studies.
- Sec. 720. Memorandum.

PART II—REGULATION OF SWAP MARKETS

- Sec. 721. Definitions.
- Sec. 722. Jurisdiction.
- Sec. 723. Clearing.
- Sec. 724. Swaps; segregation and bankruptcy treatment.
- Sec. 725. Derivatives clearing organizations.
- Sec. 726. Rulemaking on conflict of interest.
- Sec. 727. Public reporting of swap transaction data.
- Sec. 728. Swap data repositories.
- Sec. 729. Reporting and recordkeeping.
- Sec. 730. Large swap trader reporting.
- Sec. 731. Registration and regulation of swap dealers and major swap participants.
- Sec. 732. Conflicts of interest.
- Sec. 733. Swap execution facilities.
- Sec. 734. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 735. Designated contract markets.
- Sec. 736. Margin.
- Sec. 737. Position limits.
- Sec. 738. Foreign boards of trade.
- Sec. 739. Legal certainty for swaps.
- Sec. 740. Multilateral clearing organizations.
- Sec. 741. Enforcement.
- Sec. 742. Retail commodity transactions.
- Sec. 743. Other authority.
- Sec. 744. Restitution remedies.
- Sec. 745. Enhanced compliance by registered entities.
- Sec. 746. Insider trading.
- Sec. 747. Antidisruptive practices authority.
- Sec. 748. Commodity whistleblower incentives and protection.
- Sec. 749. Conforming amendments.
- Sec. 750. Study on oversight of carbon markets.
- Sec. 751. Energy and environmental markets advisory committee.
- Sec. 752. International harmonization.
- Sec. 753. Anti-manipulation authority.
- Sec. 754. Effective date.

Subtitle B—Regulation of Security-Based Swap Markets

- Sec. 761. Definitions under the Securities Exchange Act of 1934.
- Sec. 762. Repeal of prohibition on regulation of security-based swap agreements.
- Sec. 763. Amendments to the Securities Exchange Act of 1934.
- Sec. 764. Registration and regulation of security-based swap dealers and major security-based swap participants.
- Sec. 765. Rulemaking on conflict of interest.
- Sec. 766. Reporting and recordkeeping.
- Sec. 767. State gaming and bucket shop laws.
- Sec. 768. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 769. Definitions under the Investment Company Act of 1940.
- Sec. 770. Definitions under the Investment Advisers Act of 1940.
- Sec. 771. Other authority.
- Sec. 772. Jurisdiction.
- Sec. 773. Civil penalties.
- Sec. 774. Effective date.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

- Sec. 801. Short title.
- Sec. 802. Findings and purposes.
- Sec. 803. Definitions.
- Sec. 804. Designation of systemic importance.
- Sec. 805. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.
- Sec. 806. Operations of designated financial market utilities.
- Sec. 807. Examination of and enforcement actions against designated financial market utilities.
- Sec. 808. Examination of and enforcement actions against financial institutions subject to standards for designated activities.

- Sec. 809. Requests for information, reports, or records.
- Sec. 810. Rulemaking.
- Sec. 811. Other authority.
- Sec. 812. Consultation.
- Sec. 813. Common framework for designated clearing entity risk management.
- Sec. 814. Effective date.

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE
REGULATION OF SECURITIES

- Sec. 901. Short title.

Subtitle A—Increasing Investor Protection

- Sec. 911. Investor Advisory Committee established.
- Sec. 912. Clarification of authority of the Commission to engage in investor testing.
- Sec. 913. Study and rulemaking regarding obligations of brokers, dealers, and investment advisers.
- Sec. 914. Study on enhancing investment adviser examinations.
- Sec. 915. Office of the Investor Advocate.
- Sec. 916. Streamlining of filing procedures for self-regulatory organizations.
- Sec. 917. Study regarding financial literacy among investors.
- Sec. 918. Study regarding mutual fund advertising.
- Sec. 919. Clarification of Commission authority to require investor disclosures before purchase of investment products and services.
- Sec. 919A. Study on conflicts of interest.
- Sec. 919B. Study on improved investor access to information on investment advisers and broker-dealers.
- Sec. 919C. Study on financial planners and the use of financial designations.
- Sec. 919D. Ombudsman.

Subtitle B—Increasing Regulatory Enforcement and Remedies

- Sec. 921. Authority to restrict mandatory pre-dispute arbitration.
- Sec. 922. Whistleblower protection.
- Sec. 923. Conforming amendments for whistleblower protection.
- Sec. 924. Implementation and transition provisions for whistleblower protection.
- Sec. 925. Collateral bars.
- Sec. 926. Disqualifying felons and other “bad actors” from Regulation D offerings.
- Sec. 927. Equal treatment of self-regulatory organization rules.
- Sec. 928. Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers.
- Sec. 929. Unlawful margin lending.
- Sec. 929A. Protection for employees of subsidiaries and affiliates of publicly traded companies.
- Sec. 929B. Fair Fund amendments.
- Sec. 929C. Increasing the borrowing limit on Treasury loans.
- Sec. 929D. Lost and stolen securities.
- Sec. 929E. Nationwide service of subpoenas.
- Sec. 929F. Formerly associated persons.
- Sec. 929G. Streamlined hiring authority for market specialists.
- Sec. 929H. SIPC Reforms.
- Sec. 929I. Protecting confidentiality of materials submitted to the Commission.
- Sec. 929J. Expansion of audit information to be produced and exchanged.
- Sec. 929K. Sharing privileged information with other authorities.
- Sec. 929L. Enhanced application of antifraud provisions.
- Sec. 929M. Aiding and abetting authority under the Securities Act and the Investment Company Act.
- Sec. 929N. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act.
- Sec. 929O. Aiding and abetting standard of knowledge satisfied by recklessness.
- Sec. 929P. Strengthening enforcement by the Commission.
- Sec. 929Q. Revision to recordkeeping rule.
- Sec. 929R. Beneficial ownership and short-swing profit reporting.
- Sec. 929S. Fingerprinting.
- Sec. 929T. Equal treatment of self-regulatory organization rules.
- Sec. 929U. Deadline for completing examinations, inspections and enforcement actions.
- Sec. 929V. Security Investor Protection Act amendments.
- Sec. 929W. Notice to missing security holders.
- Sec. 929X. Short sale reforms.
- Sec. 929Y. Study on extraterritorial private rights of action.
- Sec. 929Z. GAO study on securities litigation.

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

- Sec. 931. Findings.

- Sec. 932. Enhanced regulation, accountability, and transparency of nationally recognized statistical rating organizations.
- Sec. 933. State of mind in private actions.
- Sec. 934. Referring tips to law enforcement or regulatory authorities.
- Sec. 935. Consideration of information from sources other than the issuer in rating decisions.
- Sec. 936. Qualification standards for credit rating analysts.
- Sec. 937. Timing of regulations.
- Sec. 938. Universal ratings symbols.
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12 USC 5301.

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) **AFFILIATE.**—The term “affiliate” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) **APPROPRIATE FEDERAL BANKING AGENCY.**—On and after the transfer date, the term “appropriate Federal banking agency” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended by title III.

(3) BOARD OF GOVERNORS.—The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

(4) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection established under title X.

(5) COMMISSION.—The term “Commission” means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) COMMODITY FUTURES TERMS.—The terms “futures commission merchant”, “swap”, “swap dealer”, “swap execution facility”, “derivatives clearing organization”, “board of trade”, “commodity trading advisor”, “commodity pool”, and “commodity pool operator” have the same meanings as given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(7) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(8) COUNCIL.—The term “Council” means the Financial Stability Oversight Council established under title I.

(9) CREDIT UNION.—The term “credit union” means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(10) FEDERAL BANKING AGENCY.—The term—

(A) “Federal banking agency” means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) “Federal banking agencies” means all of the agencies referred to in subparagraph (A), collectively.

(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term “functionally regulated subsidiary” has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(12) PRIMARY FINANCIAL REGULATORY AGENCY.—The term “primary financial regulatory agency” means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.);

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading advisor or introducing broker to be registered under that Act;

(iv) any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vi) any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vii) any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) any registered entity under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(13) PRUDENTIAL STANDARDS.—The term “prudential standards” means enhanced supervision and regulatory standards developed by the Board of Governors under section 165.

(14) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(15) SECURITIES TERMS.—The—

(A) terms “broker”, “dealer”, “issuer”, “nationally recognized statistical rating organization”, “security”, and “securities laws” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term “investment adviser” has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(C) term “investment company” has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

(16) STATE.—The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(17) TRANSFER DATE.—The term “transfer date” means the date established under section 311.

(18) OTHER INCORPORATED DEFINITIONS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—The terms “bank”, “bank holding company”, “control”, “deposit”, “depository institution”, “Federal depository institution”, “Federal savings association”, “foreign bank”, “including”, “insured branch”, “insured depository institution”, “national member bank”, “national nonmember bank”, “savings association”, “State bank”, “State depository institution”, “State member bank”, “State nonmember bank”, “State savings association”, and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) HOLDING COMPANIES.—The term—

(i) “bank holding company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(ii) “financial holding company” has the same meaning as in section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)); and

(iii) “savings and loan holding company” has the same meaning as in section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)).

12 USC 5302.

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

12 USC 5301
note.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or the amendments made by this Act, this Act and such amendments shall take effect 1 day after the date of enactment of this Act.

SEC. 5. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

12 USC 5303.

SEC. 6. ANTITRUST SAVINGS CLAUSE.

Definition.

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term “antitrust laws” has the same meaning

as in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition.

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the “Financial Stability Act of 2010”.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term “bank holding company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term “Chairperson” means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term “member agency” means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term “foreign nonbank financial company” means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term “U.S. nonbank financial company” means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) predominantly engaged in financial activities, as defined in paragraph (6).

Financial
Stability Act of
2010.
12 USC 5301
note.

12 USC 5311.

(C) NONBANK FINANCIAL COMPANY.—The term “nonbank financial company” means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term “nonbank financial company supervised by the Board of Governors” means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

(5) OFFICE OF FINANCIAL RESEARCH.—The term “Office of Financial Research” means the office established under section 152.

(6) PREDOMINANTLY ENGAGED.—A company is “predominantly engaged in financial activities” if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) SIGNIFICANT INSTITUTIONS.—The terms “significant nonbank financial company” and “significant bank holding company” have the meanings given those terms by rule of the Board of Governors, but in no instance shall the term “significant nonbank financial company” include those entities that are excluded under paragraph (4)(B).

Regulations.

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the application of subtitles A and C (other than section 113(b)) with respect to a foreign nonbank financial company, references in this title to “company” or “subsidiary” include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

Subtitle A—Financial Stability Oversight Council

12 USC 5321.

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

Effective date.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members:

(1) VOTING MEMBERS.—The voting members, who shall each have 1 vote on the Council shall be—

- (A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;
- (B) the Chairman of the Board of Governors;
- (C) the Comptroller of the Currency;
- (D) the Director of the Bureau;
- (E) the Chairman of the Commission;
- (F) the Chairperson of the Corporation;
- (G) the Chairperson of the Commodity Futures Trading Commission;
- (H) the Director of the Federal Housing Finance Agency;
- (I) the Chairman of the National Credit Union Administration Board; and
- (J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

- (A) the Director of the Office of Financial Research;
- (B) the Director of the Federal Insurance Office;
- (C) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;
- (D) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and
- (E) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) NONVOTING MEMBER PARTICIPATION.—The nonvoting members of the Council shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard and promote the free exchange of confidential supervisory information.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) of subsection (b)(2) shall serve for a term of 2 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State

regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

Publication.
List.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Independent Member of the Financial Stability Oversight Council (1).”.

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

12 USC 5322.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and

counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial system.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

(E) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(F) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(G) identify gaps in regulation that could pose risks to the financial stability of the United States;

(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113;

(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

Recommendations.

(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII);

(K) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

Recommendations.

Deadline.
Reports.

(L) review and, as appropriate, may submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

(M) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(N) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 113 or title VIII, and the basis for such determinations;

(v) all recommendations made under section 119 and the result of such recommendations; and

(vi) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time at which each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) TESTIMONY BY THE CHAIRPERSON.—The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(d) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research, member agencies, and the Federal Insurance Office, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, the Office of Financial Research, any member agency, and the Federal Insurance Office, are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) MITIGATION IN CASE OF FOREIGN FINANCIAL COMPANIES.—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

Consultation.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this title.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

Applicability.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

12 USC 5323.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) the amount and nature of the financial assets of the company;

(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson,

may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the United States related off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the extent to which the company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority;

(I) the amount and nature of the United States financial assets of the company;

(J) the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(c) ANTI-EVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this title, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would

pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (a)(2) or (b)(2), as applicable;

(B) the company is organized or operates in such a manner as to evade the application of this title; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title, consistent with paragraph (3).

(2) REPORT.—Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

(3) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES; ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—

(A) ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in which the financial activities of such company and its subsidiaries shall be conducted (other than the activities described in section 167(b)(2)) in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this title as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(B) ACTION OF THE BOARD OF GOVERNORS.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

Applicability.

(4) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d) through (h) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(5) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term “financial activities”—

Definition.

(A) means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(B) includes the ownership or control of one or more insured depository institutions; and

(C) does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

(6) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not

be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company supervised by the Board of Governors. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

(d) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to such nonbank financial company supervised by the Board of Governors; and

Deadline.

(2) rescind any such determination, if the Council, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(e) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

Deadlines.

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(f) EMERGENCY EXCEPTION.—

Deadlines.

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (e) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate

Waiver authority.

threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this subsection to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

Consultation.

(3) INTERNATIONAL COORDINATION.—In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

(4) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this subsection, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(5) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this subsection, which shall contain a statement of the basis for the decision of the Council.

(g) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

Deadline.

(h) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(2), (e)(3), or (f)(5), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

Consultation.

(i) INTERNATIONAL COORDINATION.—In exercising its duties under this title with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPER- 12 USC 5324.
VISIED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title. Deadline.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS 12 USC 5325.
FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY
THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING
COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) RECOMMENDED APPLICATION OF REQUIRED STANDARDS.—In making recommendations under this section, the Council may—

(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate; or

(B) recommend an asset threshold that is higher than \$50,000,000,000 for the application of any standard described in subsections (c) through (g).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures;

(H) short-term debt limits; and

(I) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under section 165; and

(C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of contingent capital that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) **ENHANCED PUBLIC DISCLOSURES.**—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) **SHORT-TERM DEBT LIMITS.**—The Council may make recommendations to the Board of Governors to require short-term debt limits to mitigate the risks that an over-accumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system.

12 USC 5326.

SEC. 116. REPORTS.

(a) **IN GENERAL.**—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of \$50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

- (1) the financial condition of the company;
- (2) systems for monitoring and controlling financial, operating, and other risks;
- (3) transactions with any subsidiary that is a depository institution; and
- (4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) **USE OF EXISTING REPORTS.**—

(1) **IN GENERAL.**—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies or to a relevant foreign supervisory authority;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) **AVAILABILITY.**—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) **CONFIDENTIALITY.**—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

12 USC 5327.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) **APPLICABILITY.**—This section shall apply to—

- (1) any entity that—

(A) was a bank holding company having total consolidated assets equal to or greater than \$50,000,000,000 as of January 1, 2010; and

(B) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008; and

(2) any successor entity (as defined by the Board of Governors, in consultation with the Council) to an entity described in paragraph (1).

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

Deadlines.

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

Reports.

(A) PROPOSED DECISION.—A Council decision to grant an appeal under this subsection shall be made by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson. Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if, not later than 1 year after the date of submission of the report under subparagraph (A), the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the

term “nonbank financial company” under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

12 USC 5328.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

12 USC 5329.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR COUNCIL RECOMMENDATION.—The Council shall seek to resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under title X);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

Notice.

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

Deadline.

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council seek to resolve the dispute.

(b) COUNCIL RECOMMENDATION.—The Council shall seek to resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM OF RECOMMENDATION.—Any Council recommendation under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be approved by the affirmative vote of $\frac{2}{3}$ of the voting members of the Council then serving.

(d) NONBINDING EFFECT.—Any recommendation made by the Council under subsection (c) shall not be binding on the Federal agencies that are parties to the dispute.

12 USC 5330.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may provide for more stringent regulation of a financial activity by issuing recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the

conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

Consultation.
Public comments.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

Deadline.

(d) REPORT TO CONGRESS.—The Council shall report to Congress

on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement, such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a),

recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether such standards should remain in effect.

Regulations.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

12 USC 5331.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of \$50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than $\frac{2}{3}$ of the voting members of the Council then serving, shall—

(1) limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(2) restrict the ability of the company to offer a financial product or products;

(3) require the company to terminate one or more activities;

(4) impose conditions on the manner in which the company conducts 1 or more activities; or

(5) if the Board of Governors determines that the actions described in paragraphs (1) through (4) are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

Deadlines.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of

receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) **DECISION.**—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) **FACTORS FOR CONSIDERATION.**—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in making any determination under subsection (a).

(d) **APPLICATION TO FOREIGN FINANCIAL COMPANIES.**—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies—

(1) giving due regard to the principle of national treatment and equality of competitive opportunity; and

(2) taking into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

SEC. 122. GAO AUDIT OF COUNCIL.

12 USC 5332.

(a) **AUTHORITY TO AUDIT.**—The Comptroller General of the United States may audit the activities of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent that such activities relate to work for the Council by such person or entity.

(b) **ACCESS TO INFORMATION.**—

Records.

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the Comptroller General shall, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, have access to—

(A) any records or other information under the control of or used by the Council;

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent that such records or other information is relevant to an audit under subsection (a); and

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the activities on behalf of the Council of such agent or representative), at such reasonable times as the Comptroller General may request.

(2) **COPIES.**—The Comptroller General may make and retain copies of such books, accounts, and other records, access to which is granted under this section, as the Comptroller General considers appropriate.

12 USC 5333.

SEC. 123. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.**(a) STUDY REQUIRED.—**

Cost estimate.

(1) **IN GENERAL.**—The Chairperson of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the benefits and costs on the efficiency of capital markets, on the financial sector, and on national economic growth, of—

(A) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(B) limits on the organizational complexity and diversification of large financial institutions;

(C) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(D) limits on risk transfer between business units of large financial institutions;

(E) requirements to carry contingent capital or similar mechanisms;

(F) limits on commingling of commercial and financial activities by large financial institutions;

(G) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(H) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

(2) **RECOMMENDATIONS.**—The study required by this section shall include recommendations for the optimal structure of any limits considered in subparagraphs (A) through (E), in order to maximize their effectiveness and minimize their economic impact.

(b) **REPORT.**—Not later than the end of the 180-day period beginning on the date of enactment of this title, and not later than every 5 years thereafter, the Chairperson shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

Subtitle B—Office of Financial Research

12 USC 5341.

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

(1) the terms “Office” and “Director” mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;

(2) the term “financial company” has the same meaning as in title II, and includes an insured depository institution and an insurance company;

(3) the term “Data Center” means the data center established under section 154;

(4) the term “Research and Analysis Center” means the research and analysis center established under section 154;

(5) the term “financial transaction data” means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

(6) the term “position data”—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

(7) the term “financial contract” means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(8) the term “financial instrument” means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

12 USC 5342.

(a) **ESTABLISHMENT.**—There is established within the Department of the Treasury the Office of Financial Research.

(b) **DIRECTOR.**—

(1) **IN GENERAL.**—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

President.
Appointment.

(2) **TERM OF SERVICE.**—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) **EXECUTIVE LEVEL.**—The Director shall be compensated at Level III of the Executive Schedule.

(4) **PROHIBITION ON DUAL SERVICE.**—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

(5) **RESPONSIBILITIES, DUTIES, AND AUTHORITY.**—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.

(c) **BUDGET.**—The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

(d) **OFFICE PERSONNEL.**—

(1) **IN GENERAL.**—The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) **COMPENSATION.**—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(A) by striking “Finance Board,” and inserting “Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection”; and

(B) by striking “and the Office of Thrift Supervision,”.

(4) SENIOR EXECUTIVES.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking “and the National Credit Union Administration,” and inserting “the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research,”.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

Regulations.

(g) POST-EMPLOYMENT PROHIBITIONS.—The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(h) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

(i) FELLOWSHIP PROGRAM.—The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

(j) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

“Director of the Office of Financial Research.”.

SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

12 USC 5343.

(a) **PURPOSE AND DUTIES.**—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

- (1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;
- (2) standardizing the types and formats of data reported and collected;
- (3) performing applied research and essential long-term research;
- (4) developing tools for risk measurement and monitoring;
- (5) performing other related services;
- (6) making the results of the activities of the Office available to financial regulatory agencies; and
- (7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) **ADMINISTRATIVE AUTHORITY.**—The Office may—

- (1) share data and information, including software developed by the Office, with the Council, member agencies, and the Bureau of Economic Analysis, which shared data, information, and software—

(A) shall be maintained with at least the same level of security as is used by the Office; and

(B) may not be shared with any individual or entity without the permission of the Council;

- (2) sponsor and conduct research projects; and

(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

(c) **RULEMAKING AUTHORITY.**—

- (1) **SCOPE.**—The Office, in consultation with the Chairperson, shall issue rules, regulations, and orders only to the extent necessary to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

(2) **STANDARDIZATION.**—Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency. This paragraph shall not supersede or interfere with the independent authority of a member agency under other law to collect data, in such format and manner as the member agency requires.

Time period.

(d) **TESTIMONY.**—

- (1) **IN GENERAL.**—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the

Reports.

Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(2) **NO PRIOR REVIEW.**—No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

Notification.

(e) **ADDITIONAL REPORTS.**—The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

(f) **SUBPOENA.**—

(1) **IN GENERAL.**—The Director may require from a financial company, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), but only upon a written finding by the Director that—

(A) such data is required to carry out the functions described under this subtitle; and

(B) the Office has coordinated with the relevant primary financial regulatory agency, as required under section 154(b)(1)(B)(ii).

(2) **FORMAT.**—Subpoenas under paragraph (1) shall bear the signature of the Director, and shall be served by any person or class of persons designated by the Director for that purpose.

(3) **ENFORCEMENT.**—In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

12 USC 5344.

SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF PRIMARY PROGRAMMATIC UNITS.

(a) **IN GENERAL.**—There are established within the Office, to carry out the programmatic responsibilities of the Office—

(1) the Data Center; and

(2) the Research and Analysis Center.

(b) **DATA CENTER.**—

(1) **GENERAL DUTIES.**—

(A) **DATA COLLECTION.**—The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this subtitle. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

(B) **AUTHORITY.**—

(i) **IN GENERAL.**—The Office may, as determined by the Council or by the Director in consultation with the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial

activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.

(ii) MITIGATION OF REPORT BURDEN.—Before requiring the submission of a report from any financial company that is regulated by a member agency, any primary financial regulatory agency, a foreign supervisory authority, or the Office shall coordinate with such agencies or authority, and shall, whenever possible, rely on information available from such agencies or authority.

(iii) COLLECTION OF FINANCIAL TRANSACTION AND POSITION DATA.—The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies.

(C) RULEMAKING.—The Office shall promulgate regulations pursuant to subsections (a)(1), (a)(2), (a)(7), and (c)(1) of section 153 regarding the type and scope of the data to be collected by the Data Center under this paragraph.

(2) RESPONSIBILITIES.—

(A) PUBLICATION.—The Data Center shall prepare and publish, in a manner that is easily accessible to the public—

Public
information.

(i) a financial company reference database;

(ii) a financial instrument reference database; and

(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

(B) CONFIDENTIALITY.—The Data Center shall not publish any confidential data under subparagraph (A).

(3) INFORMATION SECURITY.—The Director shall ensure that data collected and maintained by the Data Center are kept secure and protected against unauthorized disclosure.

(4) CATALOG OF FINANCIAL ENTITIES AND INSTRUMENTS.—The Data Center shall maintain a catalog of the financial entities and instruments reported to the Office.

(5) AVAILABILITY TO THE COUNCIL AND MEMBER AGENCIES.—The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

(6) OTHER AUTHORITY.—The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

Public
information.

(c) RESEARCH AND ANALYSIS CENTER.—

(1) GENERAL DUTIES.—The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources—

(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

(B) to monitor, investigate, and report on changes in systemwide risk levels and patterns to the Council and Congress;

(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

(D) to evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies;

(E) to maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators;

(F) to investigate disruptions and failures in the financial markets, report findings, and make recommendations to the Council based on those findings;

(G) to conduct studies and provide advice on the impact of policies related to systemic risk; and

(H) to promote best practices for financial risk management.

(d) REPORTING RESPONSIBILITIES.—

(1) REQUIRED REPORTS.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) CONTENT.—Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

12 USC 5345.

SEC. 155. FUNDING.

(a) FINANCIAL RESEARCH FUND.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the “Financial Research Fund”.

(2) FUND RECEIPTS.—All amounts provided to the Office under subsection (c), and all assessments that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) INVESTMENTS AUTHORIZED.—

(A) AMOUNTS IN FUND MAY BE INVESTED.—The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.

(4) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations

held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority, or for any other purpose.

(c) INTERIM FUNDING.—During the 2-year period following the date of enactment of this Act, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

Time period.

(d) PERMANENT SELF-FUNDING.—Beginning 2 years after the date of enactment of this Act, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of 50,000,000,000 or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 115, to collect assessments equal to the total expenses of the Office.

Effective date.
Regulations.
Assessments.

SEC. 156. TRANSITION OVERSIGHT.

12 USC 5346.

(a) PURPOSE.—The purpose of this section is to ensure that the Office—

- (1) has an orderly and organized startup;
- (2) attracts and retains a qualified workforce; and
- (3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

- (i) identification of skill and technical expertise needs and actions taken to meet those requirements;
- (ii) steps taken to foster innovation and creativity;
- (iii) leadership development and succession planning; and
- (iv) effective use of technology by employees.

(B) **WORKPLACE FLEXIBILITY PLAN.**—The Office shall submit a workforce flexibility plan that includes, to the extent practicable—

- (i) telework;
- (ii) flexible work schedules;
- (iii) phased retirement;
- (iv) reemployed annuitants;
- (v) part-time work;
- (vi) job sharing;
- (vii) parental leave benefits and childcare assistance;
- (viii) domestic partner benefits;
- (ix) other workplace flexibilities; or
- (x) any combination of the items described in clauses (i) through (ix).

(C) **RECRUITMENT AND RETENTION PLAN.**—The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

- (i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
- (ii) streamlined employment application processes;
- (iii) the provision of timely notification of the status of employment applications to applicants; and
- (iv) the collection of information to measure indicators of hiring effectiveness.

(c) **EXPIRATION.**—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to affect—

- (1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or
- (2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

12 USC 5361.

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) **REPORTS.**—

(1) **IN GENERAL.**—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this title.

(2) **USE OF EXISTING REPORTS AND INFORMATION.**—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) **AVAILABILITY.**—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) **EXAMINATIONS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to inform the Board of Governors of—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks of the company or such subsidiary that may pose a threat to the safety and soundness of such company or subsidiary or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company or such subsidiary with the requirements of this title.

(2) **USE OF EXAMINATION REPORTS AND INFORMATION.**—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any subsidiary depository institution or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) **COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.**—The Board of Governors shall—

(1) provide reasonable notice to, and consult with, the primary financial regulatory agency for any subsidiary before requiring a report or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the fullest extent possible.

Notice.
Consultation.

SEC. 162. ENFORCEMENT.

12 USC 5362.

(a) **IN GENERAL.**—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided

in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

12 USC 5363.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than \$50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of \$10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

Applicability.

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than

\$50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) **STANDARDS FOR REVIEW.**—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(5) **HART-SCOTT-RODINO FILING REQUIREMENT.**—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES. 12 USC 5364.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than \$50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES. 12 USC 5365.

(a) **IN GENERAL.**—

(1) **PURPOSE.**—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than \$50,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) **TAILORED APPLICATION.**—

(A) **IN GENERAL.**—In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness,

complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) ADJUSTMENT OF THRESHOLD FOR APPLICATION OF CERTAIN STANDARDS.—The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 115, establish an asset threshold above \$50,000,000,000 for the application of any standard established under subsections (c) through (g).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate.

(2) STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors

or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any

proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) NO LIMITING EFFECT.—A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under title II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

Deadline.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

Regulations.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may

Definition.

determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), “credit exposure” to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term “credit exposure” for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

Effective date.

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term “short-term debt” means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.

Establishment.
Deadline.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than \$10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than \$10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

Deadline.
Effective date.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

Publication.

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) BY THE COMPANY.—

Deadlines.

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semi-annual stress tests. All other financial companies that have total consolidated assets of more than \$10,000,000,000 and are regulated by a primary Federal financial regulatory

agency shall conduct annual stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) REPORT.—A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term “stress test” for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 3 different sets of conditions, including baseline, adverse, and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

Publication.

(j) LEVERAGE LIMITATION.—

(1) REQUIREMENT.—The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than \$50,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) CONSIDERATIONS.—In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 113 and any other risk-related factors that the Council deems appropriate.

(3) REGULATIONS.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

Procedures.

(k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) EXEMPTIONS.—If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) OFF-BALANCE-SHEET ACTIVITIES DEFINED.—For purposes of this subsection, the term “off-balance-sheet activities” means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers’ acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

12 USC 5366.

Regulations.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

12 USC 5367.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board

of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—

(A) BOARD AUTHORITY.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

Deadline.
Notification.

(B) NECESSARY ACTIONS.—Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or

(ii) to ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to the date of enactment of this Act, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(3) SOURCE OF STRENGTH.—A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) PARENT COMPANY REPORTS.—The Board of Governors may, from time to time, require reports under oath from a

company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) LIMITED PARENT COMPANY ENFORCEMENT.—

(A) IN GENERAL.—In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act, and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

(c) REGULATIONS.—The Board of Governors—

Criteria.

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

12 USC 5368.

SEC. 168. REGULATIONS.

Deadline.

The Board of Governors shall have authority to issue regulations to implement subtitles A and C and the amendments made thereunder. Except as otherwise specified in subtitle A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement subtitles A and C, and the amendments made thereunder.

12 USC 5369.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

12 USC 5370.

(a) **REGULATIONS.**—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

Criteria.

(b) **CONSIDERATIONS.**—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) **REVISIONS.**—

(1) **IN GENERAL.**—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

Review.

(2) **TRANSITION PERIOD.**—No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) **REPORT.**—The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

12 USC 5371.

(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS.**—The term “generally applicable leverage capital requirements” means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) **GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.**—The term “generally applicable risk-based capital requirements” means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) **DEFINITION OF DEPOSITORY INSTITUTION HOLDING COMPANY.**—The term “depository institution holding company” means a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(b) **MINIMUM CAPITAL REQUIREMENTS.**—

(1) **MINIMUM LEVERAGE CAPITAL REQUIREMENTS.**—The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(2) **MINIMUM RISK-BASED CAPITAL REQUIREMENTS.**—The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(3) **INVESTMENTS IN FINANCIAL SUBSIDIARIES.**—For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 5136A of the Revised Statutes of the United States or section 46(a)(2) of the Federal Deposit Insurance Act need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors

or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) EFFECTIVE DATES AND PHASE-IN PERIODS.—

(A) DEBT OR EQUITY INSTRUMENTS ON OR AFTER MAY 19, 2010.—For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) DEBT OR EQUITY INSTRUMENTS ISSUED BEFORE MAY 19, 2010.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) DEBT OR EQUITY INSTRUMENTS OF SMALLER INSTITUTIONS.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than \$15,000,000,000 as of December 31, 2009, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) DEPOSITORY INSTITUTION HOLDING COMPANIES NOT PREVIOUSLY SUPERVISED BY THE BOARD OF GOVERNORS.—For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after the date of enactment of this Act

(E) CERTAIN BANK HOLDING COMPANY SUBSIDIARIES OF FOREIGN BANKING ORGANIZATIONS.—For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after the date of enactment of this Act.

(5) EXCEPTIONS.—This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008, and prior to October 4, 2010;

(B) any Federal home loan bank; or

(C) any small bank holding company that is subject to the Small Bank Holding Company Policy Statement of the Board of Governors, as in effect on May 19, 2010.

(6) STUDY AND REPORT ON SMALL INSTITUTION ACCESS TO CAPITAL.—

(A) STUDY REQUIRED.—The Comptroller General of the United States, after consultation with the Federal banking

Definition.

agencies, shall conduct a study of access to capital by smaller insured depository institutions.

(B) SCOPE.—For purposes of this study required by subparagraph (A), the term “smaller insured depository institution” means an insured depository institution with total consolidated assets of \$5,000,000,000 or less.

(C) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) CAPITAL REQUIREMENTS TO ADDRESS ACTIVITIES THAT POSE RISKS TO THE FINANCIAL SYSTEM.—

(A) IN GENERAL.—Subject to the recommendations of the Council, in accordance with section 120, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) CONTENT.—Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

SEC. 172. EXAMINATION AND ENFORCEMENT ACTIONS FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

(a) EXAMINATIONS FOR INSURANCE AND RESOLUTION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended—

(1) by striking “In addition” and inserting the following: “(A) IN GENERAL.—In addition”; and

(2) by striking “whenever the board of directors determines” and all that follows through the period and inserting the following: “or nonbank financial company supervised by the Board of Governors or a bank holding company described in section

165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

“(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.”.

Review.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1), by inserting “, any depository institution holding company,” before “or any institution-affiliated party”;

(2) in paragraph (2)—

(A) by striking “or” at the end of subparagraph (B);

(B) at the end of subparagraph (C), by striking the period and inserting “or”; and

(C) by inserting at the end the following new subparagraph:

“(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund;”;

(3) by adding at the end the following:

“(6) POWERS AND DUTIES WITH RESPECT TO DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of exercising the backup authority provided in this subsection—

“(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

“(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.”.

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to limit or curtail the Corporation’s current authority to

12 USC 5372.

examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.

SEC. 173. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.

(a) **ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.**—Section 7(d)(3) of the International Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is amended—

- (1) in subparagraph (C), by striking “and” at the end;
- (2) in subparagraph (D), by striking the period at the end of and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(E) for a foreign bank that presents a risk to the stability of United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.”.

(b) **TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.**—Section 7(e)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is amended—

- (1) in subparagraph (A), by striking “or” at the end;
- (2) in subparagraph (B), by striking the period at the end of and inserting “; or”; and

(3) by inserting after subparagraph (B), the following new subparagraph:

“(C) for a foreign bank that presents a risk to the stability of the United States financial system, the home country of the foreign bank has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.”.

(c) **REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER AND TERMINATION OF SUCH REGISTRATION.**—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

“(k) **REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.**—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

“(l) **TERMINATION OF A UNITED STATES BROKER OR DEALER.**—For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.”.

SEC. 174. STUDIES AND REPORTS ON HOLDING COMPANY CAPITAL REQUIREMENTS.

(a) **STUDY OF HYBRID CAPITAL INSTRUMENTS.**—The Comptroller General of the United States, in consultation with the Board of Governors, the Comptroller of the Currency, and the Corporation, shall conduct a study of the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies. The study shall consider—

- (1) the current use of hybrid capital instruments, such as trust preferred shares, as a component of Tier 1 capital;
- (2) the differences between the components of capital permitted for insured depository institutions and those permitted for companies that control insured depository institutions;
- (3) the benefits and risks of allowing such instruments to be used to comply with Tier 1 capital requirements;
- (4) the economic impact of prohibiting the use of such capital instruments for Tier 1;
- (5) a review of the consequences of disqualifying trust preferred instruments, and whether it could lead to the failure or undercapitalization of existing banking organizations;
- (6) the international competitive implications prohibiting hybrid capital instruments for Tier 1;
- (7) the impact on the cost and availability of credit in the United States from such a prohibition;
- (8) the availability of capital for financial institutions with less than \$10,000,000,000 in total assets; and
- (9) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(b) **STUDY OF FOREIGN BANK INTERMEDIATE HOLDING COMPANY CAPITAL REQUIREMENTS.**—The Comptroller General of the United States, in consultation with the Secretary, the Board of Governors, the Comptroller of the Currency, and the Corporation, shall conduct a study of capital requirements applicable to United States intermediate holding companies of foreign banks that are bank holding companies or savings and loan holding companies. The study shall consider—

- (1) current Board of Governors policy regarding the treatment of intermediate holding companies;
- (2) the principle of national treatment and equality of competitive opportunity for foreign banks operating in the United States;
- (3) the extent to which foreign banks are subject on a consolidated basis to home country capital standards comparable to United States capital standards;
- (4) potential effects on United States banking organizations operating abroad of changes to United States policy regarding intermediate holding companies;
- (5) the impact on the cost and availability of credit in the United States from a change in United States policy regarding intermediate holding companies; and
- (6) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(c) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit reports to the Committee on Banking, Housing, and

Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives summarizing the results of the studies required under subsection (a). The reports shall include specific recommendations for legislative or regulatory action regarding the treatment of hybrid capital instruments, including trust preferred shares, and shall explain the basis for such recommendations.

Consultation.
12 USC 5373.

SEC. 175. INTERNATIONAL POLICY COORDINATION.

(a) **BY THE PRESIDENT.**—The President, or a designee of the President, may coordinate through all available international policy channels, similar policies as those found in United States law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect financial stability and the global economy.

(b) **BY THE COUNCIL.**—The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(c) **BY THE BOARD OF GOVERNORS AND THE SECRETARY.**—The Board of Governors and the Secretary shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.

12 USC 5374.

SEC. 176. RULE OF CONSTRUCTION.

No regulation or standard imposed under this title may be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable. This title, and the rules and regulations or orders prescribed pursuant to this title, do not divest any such agency of any authority derived from any other applicable law.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

12 USC 5381.

SEC. 201. DEFINITIONS.

(a) **IN GENERAL.**—In this title, the following definitions shall apply:

(1) **ADMINISTRATIVE EXPENSES OF THE RECEIVER.**—The term “administrative expenses of the receiver” includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

(2) **BANKRUPTCY CODE.**—The term “Bankruptcy Code” means title 11, United States Code.

(3) **BRIDGE FINANCIAL COMPANY.**—The term “bridge financial company” means a new financial company organized by

the Corporation in accordance with section 210(h) for the purpose of resolving a covered financial company.

(4) CLAIM.—The term “claim” means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) COMPANY.—The term “company” has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)), except that such term includes any company described in paragraph (11), the majority of the securities of which are owned by the United States or any State.

(6) COURT.—The term “Court” means the United States District Court for the District of Columbia, unless the context otherwise requires.

(7) COVERED BROKER OR DEALER.—The term “covered broker or dealer” means a covered financial company that is a broker or dealer that—

(A) is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

(B) is a member of SIPC.

(8) COVERED FINANCIAL COMPANY.—The term “covered financial company”—

(A) means a financial company for which a determination has been made under section 203(b); and

(B) does not include an insured depository institution.

(9) COVERED SUBSIDIARY.—The term “covered subsidiary” means a subsidiary of a covered financial company, other than—

(A) an insured depository institution;

(B) an insurance company; or

(C) a covered broker or dealer.

(10) DEFINITIONS RELATING TO COVERED BROKERS AND DEALERS.—The terms “customer”, “customer name securities”, “customer property”, and “net equity” in the context of a covered broker or dealer, have the same meanings as in section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll).

(11) FINANCIAL COMPANY.—The term “financial company” means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has

determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

(12) FUND.—The term “Fund” means the Orderly Liquidation Fund established under section 210(n).

(13) INSURANCE COMPANY.—The term “insurance company” means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator;

and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) NONBANK FINANCIAL COMPANY.—The term “nonbank financial company” has the same meaning as in section 102(a)(4)(C).

(15) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term “nonbank financial company supervised by the Board of Governors” has the same meaning as in section 102(a)(4)(D).

(16) SIPC.—The term “SIPC” means the Securities Investor Protection Corporation.

Regulations.

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term “financial company” under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

12 USC 5382.

SEC. 202. JUDICIAL REVIEW.

(a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

(1) PETITION TO DISTRICT COURT.—

(A) DISTRICT COURT REVIEW.—

Notification.

(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If

Appointment.

the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

(ii) FORM AND CONTENT OF ORDER.—The Secretary shall present all relevant findings and the recommendation made pursuant to section 203(a) to the Court. The petition shall be filed under seal.

(iii) DETERMINATION.—On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(iv) ISSUANCE OF ORDER.—If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11)—

(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

(B) EFFECT OF DETERMINATION.—The determination of the Court under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (2). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

Records.

(C) CRIMINAL PENALTIES.—A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than 250,000, or imprisoned for not more than 5 years, or both.

(2) APPEAL OF DECISIONS OF THE DISTRICT COURT.—

(A) APPEAL TO COURT OF APPEALS.—

Deadline.

(i) IN GENERAL.—Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an appeal of a final decision of the Court filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

(ii) CONDITION OF JURISDICTION.—The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

(iii) EXPEDITION.—The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

(iv) SCOPE OF REVIEW.—For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(B) APPEAL TO THE SUPREME COURT.—

Deadline.

(i) IN GENERAL.—A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

Records.

(ii) WRITTEN STATEMENT.—In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

(iii) EXPEDITION.—The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

(iv) SCOPE OF REVIEW.—Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(b) ESTABLISHMENT AND TRANSMITTAL OF RULES AND PROCEDURES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Court shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1). Deadline.

(2) PUBLICATION OF RULES.—The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

- (A) the Committee on the Judiciary of the Senate;
- (B) the Committee on Banking, Housing, and Urban Affairs of the Senate;
- (C) the Committee on the Judiciary of the House of Representatives; and
- (D) the Committee on Financial Services of the House of Representatives.

(c) PROVISIONS APPLICABLE TO FINANCIAL COMPANIES.—

(1) BANKRUPTCY CODE.—Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder or otherwise applicable insolvency law, and not the provisions of this title, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

(2) THIS TITLE.—The provisions of this title shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases, except as expressly provided in this title.

(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary— Certification.

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) SECOND EXTENSION OF TIME LIMIT.—

(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for

up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

Deadline.
Termination
date.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

Reports.
Deadline.

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

(e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDATION PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the activities of the Court, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

Evaluation.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Court; and

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

(2) REPORTS.—Not later than 1 year after the date of enactment of this Act, in each successive year until the third year, and every fifth year after that date of enactment, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate reports summarizing the results of the studies conducted under paragraph (1).

(f) STUDY OF INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Comptroller General of the United States shall evaluate, with respect to the bankruptcy process for financial companies—

(i) the extent to which international coordination currently exists;

(ii) current mechanisms and structures for facilitating international cooperation;

(iii) barriers to effective international coordination; and

(iv) ways to increase and make more effective international coordination.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

Evaluation.

(3) **REPORT TO COUNCIL.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) **COUNCIL REPORT OF ACTION.**—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

12 USC 5383.

SEC. 203. SYSTEMIC RISK DETERMINATION.**(a) WRITTEN RECOMMENDATION AND DETERMINATION.—****(1) VOTE REQUIRED.—**

(A) **IN GENERAL.**—On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the members of the Board of Governors then serving and $\frac{2}{3}$ of the members of the board of directors of the Corporation then serving.

(B) **CASES INVOLVING BROKERS OR DEALERS.**—In the case of a broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a broker or dealer, the Commission and the Board of Governors, at the request of the Secretary, or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the members of the Board of Governors then serving and $\frac{2}{3}$ of the members of the Commission then serving, and in consultation with the Corporation.

(C) **CASES INVOLVING INSURANCE COMPANIES.**—In the case of an insurance company, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is an insurance company, the Director of the Federal Insurance Office and the Board of Governors, at the request of the Secretary or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the Board of Governors then serving and the affirmative approval of the Director of the Federal Insurance Office, and in consultation with the Corporation.

(2) **RECOMMENDATION REQUIRED.**—Any written recommendation pursuant to paragraph (1) shall contain—

(A) an evaluation of whether the financial company is in default or in danger of default;

(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

(C) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities;

(D) a recommendation regarding the nature and the extent of actions to be taken under this title regarding the financial company;

(E) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

(F) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company;

(G) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and

(H) an evaluation of whether the company satisfies the definition of a financial company under section 201.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal or State law, the Secretary shall take action in accordance with section 202(a)(1)(A), if, upon the written recommendation under subsection (a), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

(3) no viable private sector alternative is available to prevent the default of the financial company;

(4) any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under this title is appropriate, given the impact that any action taken under this title would have on financial stability in the United States;

(5) any action under section 204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company;

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and

(7) the company satisfies the definition of a financial company under section 201.

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) document any determination under subsection (b);

(B) retain the documentation for review under paragraph (2); and

Notification.

(C) notify the covered financial company and the Corporation of such determination.

(2) REPORT TO CONGRESS.—Not later than 24 hours after the date of appointment of the Corporation as receiver for a covered financial company, the Secretary shall provide written notice of the recommendations and determinations reached in accordance with subsections (a) and (b) to the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, which shall consist of a summary of the basis for the determination, including, to the extent available at the time of the determination—

(A) the size and financial condition of the covered financial company;

(B) the sources of capital and credit support that were available to the covered financial company;

(C) the operations of the covered financial company that could have had a significant impact on financial stability, markets, or both;

(D) identification of the banks and financial companies which may be able to provide the services offered by the covered financial company;

(E) any potential international ramifications of resolution of the covered financial company under other applicable insolvency law;

(F) an estimate of the potential effect of the resolution of the covered financial company under other applicable insolvency law on the financial stability of the United States;

(G) the potential effect of the appointment of a receiver by the Secretary on consumers;

(H) the potential effect of the appointment of a receiver by the Secretary on the financial system, financial markets, and banks and other financial companies; and

(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

(3) REPORTS TO CONGRESS AND THE PUBLIC.—

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366

of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

Publication.
Web posting.

(B) AMENDMENTS.—The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise and resubmit the reports prepared under this paragraph, as necessary.

Deadline.

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

Deadline.

(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of this title, a financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

(A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or

(D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(5) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), that results in the appointment of the Corporation as receiver, including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto;

(C) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors, counterparties, and shareholders; and

(D) the likely disruptive effect of the determination and such action on the reasonable expectations of creditors, counterparties, and shareholders, taking into account the impact any action under this title would have on financial stability in the United States, including whether the rights of such parties will be disrupted.

(d) CORPORATION POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this title, including the terms and conditions for the provision and use of funds under sections 204(d), 210(h)(2)(G)(iv), and 210(h)(9).

(e) TREATMENT OF INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES.—

(1) IN GENERAL.—Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under applicable State law.

(2) EXCEPTION FOR SUBSIDIARIES AND AFFILIATES.—The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of an insurance company that is not itself an insurance company.

(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 202(a) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

Time period.

12 USC 5384.

SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL COMPANIES.

(a) PURPOSE OF ORDERLY LIQUIDATION AUTHORITY.—It is the purpose of this title to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this title shall be exercised in the manner that best fulfills such purpose, so that—

(1) creditors and shareholders will bear the losses of the financial company;

(2) management responsible for the condition of the financial company will not be retained; and

(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company

bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

(b) CORPORATION AS RECEIVER.—Upon the appointment of the Corporation under section 202, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this title.

(c) CONSULTATION.—The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;

(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

(d) FUNDING FOR ORDERLY LIQUIDATION.—Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 206 and subject to the plan described in section 210(n)(9), funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.

12 USC 5385.

SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS AND DEALERS.

(a) APPOINTMENT OF SIPC AS TRUSTEE.—

(1) **APPOINTMENT.**—Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for the liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

(2) ACTIONS BY SIPC.—

(A) **FILING.**—Upon appointment of SIPC under paragraph (1), SIPC shall promptly file with any Federal district court of competent jurisdiction specified in section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) as to the covered broker or dealer. The Federal district court shall accept and approve the filing, including outside of normal business hours, and shall immediately issue the protective decree as to the covered broker or dealer.

(B) **ADMINISTRATION BY SIPC.**—Following entry of the protective decree, and except as otherwise provided in this section, the determination of claims and the liquidation of assets retained in the receivership of the covered broker or dealer and not transferred to the bridge financial company shall be administered under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as trustee for the covered broker or dealer.

(C) **DEFINITION OF FILING DATE.**—For purposes of the liquidation proceeding, the term “filing date” means the date on which the Corporation is appointed as receiver of the covered broker or dealer.

(D) **DETERMINATION OF CLAIMS.**—As trustee for the covered broker or dealer, SIPC shall determine and satisfy, consistent with this title and with the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), all claims against the covered broker or dealer arising on or before the filing date.

(b) POWERS AND DUTIES OF SIPC.—

(1) **IN GENERAL.**—Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered

broker or dealer to any bridge financial company established in accordance with this title.

(2) LIMITATION OF POWERS.—The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

(A) any action, except as otherwise provided in this title—

- (i) to make funds available under section 204(d);
- (ii) to organize, establish, operate, or terminate any bridge financial company;
- (iii) to transfer assets and liabilities;
- (iv) to enforce or repudiate contracts; or
- (v) to take any other action relating to such bridge financial company under section 210; or

(B) determining claims under subsection (e).

(3) PROTECTIVE DECREE.—SIPC and the Corporation, in consultation with the Commission, shall jointly determine the terms of the protective decree to be filed by SIPC with any court of competent jurisdiction under section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as required by subsection (a).

(4) QUALIFIED FINANCIAL CONTRACTS.—Notwithstanding any provision of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) to the contrary (including section 5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 210(c)(8)) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 210, including the limitations and restrictions contained in section 210(c)(10)(B).

(c) LIMITATION ON COURT ACTION.—Except as otherwise provided in this title, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accordance with subsection (e) and such claims shall be limited to money damages.

(d) ACTIONS BY CORPORATION AS RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, no action taken by the Corporation as receiver with respect to a covered broker or dealer shall—

(A) adversely affect the rights of a customer to customer property or customer name securities;

(B) diminish the amount or timely payment of net equity claims of customers; or

(C) otherwise impair the recoveries provided to a customer under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(2) NET PROCEEDS.—The net proceeds from any transfer, sale, or disposition of assets of the covered broker or dealer, or proceeds thereof by the Corporation as receiver for the covered broker or dealer shall be for the benefit of the estate of the covered broker or dealer, as provided in this title.

(e) CLAIMS AGAINST THE CORPORATION AS RECEIVER.—Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

(1) shall be determined in accordance with section 210(a)(2); and

(2) may be reviewed by the appropriate district or territorial court of the United States in accordance with section 210(a)(5).

(f) SATISFACTION OF CUSTOMER CLAIMS.—

(1) OBLIGATIONS TO CUSTOMERS.—Notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this title been distributed in a proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the Corporation is appointed as receiver.

(2) SATISFACTION OF CLAIMS BY SIPC.—SIPC, as trustee for a covered broker or dealer, shall satisfy customer claims in the manner and amount provided under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), as if the appointment of the Corporation as receiver had not occurred, and with a filing date as of the date on which the Corporation is appointed as receiver. The Corporation shall satisfy customer claims, to the extent that a customer would have received more securities or cash with respect to the allocation of customer property had the covered financial company been subject to a proceeding under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

(g) PRIORITIES.—

(1) CUSTOMER PROPERTY.—As trustee for a covered broker or dealer, SIPC shall allocate customer property and deliver customer name securities in accordance with section 8(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–2(c)).

(2) OTHER CLAIMS.—All claims other than those described in paragraph (1) (including any unpaid claim by a customer for the allowed net equity claim of such customer from customer property) shall be paid in accordance with the priorities in section 210(b).

(h) RULEMAKING.—The Commission and the Corporation, after consultation with SIPC, shall jointly issue rules to implement this section.

SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL ORDERLY LIQUIDATION ACTIONS. 12 USC 5386.

In taking action under this title, the Corporation shall—

(1) determine that such action is necessary for purposes of the financial stability of the United States, and not for the purpose of preserving the covered financial company;

(2) ensure that the shareholders of a covered financial company do not receive payment until after all other claims and the Fund are fully paid;

(3) ensure that unsecured creditors bear losses in accordance with the priority of claim provisions in section 210;

(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver);

(5) ensure that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed, if such members have not already been removed at the time the Corporation is appointed as receiver; and

(6) not take an equity interest in or become a shareholder of any covered financial company or any covered subsidiary.

SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER. 12 USC 5387.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to the appointment of the Corporation as receiver for the covered financial company under section 203.

SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.

Effective dates.
12 USC 5388.

(a) **IN GENERAL.**—Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 202 or the appointment of SIPC as trustee for a covered broker or dealer under section 205, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) shall be dismissed, upon notice to the bankruptcy court (with respect to a case commenced under the Bankruptcy Code), and upon notice to SIPC (with respect to a covered broker or dealer) and no such case or proceeding may be commenced with respect to a covered financial company at any time while the orderly liquidation is pending.

(b) **REVESTING OF ASSETS.**—Effective as of the date of appointment of the Corporation as receiver, the assets of a covered financial company shall, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code, the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), or any similar provision of State liquidation or insolvency law applicable to the covered financial company, revert in the covered financial company.

(c) **LIMITATION.**—Notwithstanding subsections (a) and (b), any order entered or other relief granted by a bankruptcy court prior to the date of appointment of the Corporation as receiver shall

continue with the same validity as if an orderly liquidation had not been commenced.

12 USC 5389.

SEC. 209. RULEMAKING; NON-CONFLICTING LAW.

The Corporation shall, in consultation with the Council, prescribe such rules or regulations as the Corporation considers necessary or appropriate to implement this title, including rules and regulations with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons with respect to any covered financial company or any assets or other property of or held by such covered financial company, and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act. To the extent possible, the Corporation shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

12 USC 5390.

SEC. 210. POWERS AND DUTIES OF THE CORPORATION.**(a) POWERS AND AUTHORITIES.—****(1) GENERAL POWERS.—**

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under this title, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATION OF THE COVERED FINANCIAL COMPANY DURING THE PERIOD OF ORDERLY LIQUIDATION.—The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

(D) **ADDITIONAL POWERS AS RECEIVER.**—The Corporation shall, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up the affairs of a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) **ADDITIONAL POWERS WITH RESPECT TO FAILING SUBSIDIARIES OF A COVERED FINANCIAL COMPANY.**—

(i) **IN GENERAL.**—In any case in which a receiver is appointed for a covered financial company under section 202, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

(I) the covered subsidiary is in default or in danger of default;

(II) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States; and

(III) such action would facilitate the orderly liquidation of the covered financial company.

(ii) **TREATMENT AS COVERED FINANCIAL COMPANY.**—If the Corporation is appointed as receiver of a covered subsidiary of a covered financial company under clause (i), the covered subsidiary shall thereafter be considered a covered financial company under this title, and the Corporation shall thereafter have all the powers and rights with respect to that covered subsidiary as it has with respect to a covered financial company under this title.

(F) **ORGANIZATION OF BRIDGE COMPANIES.**—The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

(G) **MERGER; TRANSFER OF ASSETS AND LIABILITIES.**—

(i) **IN GENERAL.**—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including any assets and liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) **FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.**—With respect to a transaction described in

clause (i)(I) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

Reports.
Notification.
Deadline.

(II) if, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request; and

Termination
date.

(III) if notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section 7A, or is extended pursuant to subsection (e)(2) of such section 7A.

(iii) SETOFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable noninsolvency law.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

(I) APPLICABLE NONINSOLVENCY LAW.—Except as may otherwise be provided in this title, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

(J) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This subparagraph may not be construed as limiting any rights that the

Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) or under any other provision of law.

(K) INCIDENTAL POWERS.—The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this title, and such incidental powers as shall be necessary to carry out such powers under this title.

(L) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(M) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges described in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions under this section.

(N) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

(O) RESTRICTION ON TRANSFERS.—

(i) SELECTION OF ACCOUNTS FOR TRANSFER.—If the Corporation establishes one or more bridge financial companies with respect to a covered broker or dealer, the Corporation shall transfer to one of such bridge financial companies, all customer accounts of the covered broker or dealer, and all associated customer name securities and customer property, unless the Corporation, after consulting with the Commission and SIPC, determines that—

(I) the customer accounts, customer name securities, and customer property are likely to be promptly transferred to another broker or dealer that is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 73o(b)) and is a member of SIPC; or

(II) the transfer of the accounts to a bridge financial company would materially interfere with

the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(ii) TRANSFER OF PROPERTY.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

(iii) CUSTOMER CONSENT AND COURT APPROVAL NOT REQUIRED.—Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.

(iv) NOTIFICATION OF SIPC AND SHARING OF INFORMATION.—The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

(2) DETERMINATION OF CLAIMS.—

Reports.

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.

Publication.
Deadlines.

(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) MAILING REQUIRED.—The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

(i) at the last address of the creditor appearing in such books;

(ii) in any claim filed by the claimant; or

Deadline.

(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30

days after the date of the discovery of such name and address.

(3) PROCEDURES FOR RESOLUTION OF CLAIMS.—

(A) DECISION PERIOD.—

Notification.

(i) IN GENERAL.—Prior to the 180th day after the date on which a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it allows or disallows the claim, in accordance with subparagraphs (B), (C), and (D).

(ii) EXTENSION OF TIME.—By written agreement executed not later than 180 days after the date on which a claim against a covered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant and the Corporation. Failure to notify the claimant of any disallowance within the time period set forth in clause (i), as it may be extended by agreement under this clause, shall be deemed to be a disallowance of such claim, and the claimant may file or continue an action in court, as provided in paragraph (4).

Deadline.

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books, records, or both of the covered financial company;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If the Corporation as receiver disallows any claim filed under clause (i), the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO UNDERSECURED CREDITORS.—In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

(4) JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

(B) TIMING.—A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim against a

covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

(C) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(5) EXPEDITED DETERMINATION OF CLAIMS.—

(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

(i) having a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

(ii) that irreparable injury will occur if the claims procedure established under paragraph (3) is followed.

(B) DETERMINATION PERIOD.—Prior to the end of the 90-day period beginning on the date on which a claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim, or any portion thereof; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

(ii) notify the claimant of the determination; and

(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

Notification.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Corporation denies the claim or a portion thereof.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action

Time period.

or motion may be filed in accordance with subparagraph (C), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(6) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

(7) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

(iii) determined by the final judgment of a court of competent jurisdiction.

(B) LIMITATION.—A creditor shall, in no event, receive less than the amount that the creditor is entitled to receive under paragraphs (2) and (3) of subsection (d), as applicable.

(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) RULEMAKING BY THE CORPORATION.—The Corporation may prescribe such rules, including definitions of

terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

(8) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

Time period.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

(9) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202) and the Corporation, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this title, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) mitigates the potential for serious adverse effects to the financial system;

(iv) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

Time period.

(10) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(11) AVOIDABLE TRANSFERS.—

(A) FRAUDULENT TRANSFERS.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the date on which the Corporation was appointed receiver, if—

(i) the covered financial company voluntarily or involuntarily—

(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud

any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

(II) received less than a reasonably equivalent value in exchange for such transferor obligation; and

(ii) the covered financial company voluntarily or involuntarily—

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the covered financial company was an unreasonably small capital;

(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

(i) to or for the benefit of a creditor;

(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) that was made while the covered financial company was insolvent;

(iv) that was made—

(I) 90 days or less before the date on which the Corporation was appointed receiver; or

(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

(v) that enables the creditor to receive more than the creditor would receive if—

(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

(II) the transfer had not been made; and

(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that

was not authorized under this title by the Corporation as receiver.

(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFeree OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii) from—

(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—Subject to the other provisions of this title—

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under sections 547, 548, and 549 of the Bankruptcy Code; and

(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

(i) subparagraphs (A) and (B)—

(I) the term “insider” has the same meaning as in section 101(31) of the Bankruptcy Code;

(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

(III) the term “value” means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not

include an unperformed promise to furnish support to the covered financial company; and

(ii) subparagraph (B)—

(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

(II) the term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

(12) SETOFF.—

(A) GENERALLY.—Except as otherwise provided in this title, any right of a creditor to offset a mutual debt owed by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable noninsolvency law, except to the extent that—

(i) the claim of the creditor against the covered financial company is disallowed;

(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

(I) after the Corporation was appointed as receiver of the covered financial company; or

(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

(iii) the debt owed to the covered financial company was incurred by the covered financial company—

(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

(II) while the covered financial company was insolvent; and

(III) for the purpose of obtaining a right of setoff against the covered financial company (except for a setoff in connection with a qualified financial contract).

(B) INSUFFICIENCY.—

(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

(II) the first day on which there is an insufficiency during the 90-day period preceding the date

Time periods.

on which the Corporation is appointed as receiver for the covered financial company.

(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term “insufficiency” means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

Definition.

(C) INSOLVENCY.—The term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

Time period.

(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may sell or transfer any assets free and clear of the setoff rights of any party, except that such party shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), (C), and (D) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(E), in an amount equal to the value of such setoff rights.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

Applicability.

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this title, any final and nonappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver

to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

Public
information.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the authorities of this title and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

Regulations.

(I) the avoidance of duplicative record retention; and

(II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

(ii) RETENTION OF RECORDS.—Unless otherwise required by applicable Federal law or court order, the Corporation may not, at any time, destroy any records that are subject to clause (i).

(iii) RECORDS DEFINED.—As used in this subparagraph, the terms “records” and “records of a covered financial company” mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of 11,725 for each individual (as indexed for inflation, by regulation of the Corporation)

Deadline.

Deadline.

earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by 11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—

(i) to maximize the value of the assets of the covered financial company;

(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

(iii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

(6) PRIORITY OF EXPENSES AND UNSECURED CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC MEMBER.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver under section 205(e), shall have the priority prescribed in paragraph (1), except that—

(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

(D) the Corporation may, after paying any proven claims to customers under section 205 and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether

or not to exercise the rights of repudiation under this section within a reasonable period of time.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this paragraph and subsection (d), except as otherwise specifically provided in this subsection.

(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based on the likelihood

that such contingent claim would become fixed and the probable magnitude thereof.

(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

(A) IN GENERAL.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the Corporation as receiver shall not be liable to the lessee for any damages arising after such date

as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property, subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date on which the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company or at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 542 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with

any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract” —

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or an option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such

settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master

agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) **REPURCHASE AGREEMENT.**—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except

that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements

to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraphs (9) and (10)—

(I) the term “default” means, with respect to a covered financial company, any adjudication or other official decision by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

(II) the term “in danger of default” means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(bb) in the opinion of the Corporation or such authority—

(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement

shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

(x) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

Time period.

(G) CERTAIN OBLIGATIONS TO CLEARING ORGANIZATIONS.—In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F)(i) or paragraph (10)(B)), as required by the rules of the clearing organization when due. Notwithstanding any other provision of this title, if the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company, including, without limitation, the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

(H) RECORDKEEPING.—

(i) JOINT RULEMAKING.—The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Corporation as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(ii) TIME FRAME.—The Federal primary financial regulatory agencies shall prescribe joint final or interim final regulations not later than 24 months after the date of enactment of this Act.

(iii) BACK-UP RULEMAKING AUTHORITY.—If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default,

which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

(ii) the term “clearing organization” has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—

(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(II) the transfer includes any qualified financial contract.

(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

Time period.

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the

New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

- (i) any person or any affiliate of such person; and
- (ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, may enforce any contract, other than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(a)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the

Time period.

Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of

a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

(B) **RULE OF CONSTRUCTION.**—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(d) **VALUATION OF CLAIMS IN DEFAULT.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) **MAXIMUM LIABILITY.**—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

(3) **SPECIAL PROVISION FOR ORDERLY LIQUIDATION BY SIPC.**—The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

(4) **ADDITIONAL PAYMENTS AUTHORIZED.**—

(A) **IN GENERAL.**—Subject to subsection (o)(1)(D)(i), the Corporation, with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

(B) **LIMITATIONS.**—

(i) **PROHIBITION.**—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any

Determination.

claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(C) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this title, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business, but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities, and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(iv) OPERATING FUNDS IN LIEU OF CAPITAL AND IMPLEMENTATION PLAN.—Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(9), funds for the operation of the bridge financial company in lieu of capital.

(H) BRIDGE BROKERS OR DEALERS.—

(i) IN GENERAL.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by operation of law and immediately upon approval of its articles of association—

(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;

(II) operate in accordance with such articles and this section; and

(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

(iv) OPERATION OF BRIDGE BROKERS OR DEALERS.—Notwithstanding any other provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may have to any shareholder, member, general

partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) AUTHORITY OF CORPORATION.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies, in accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subparagraph, if—

(i) the Corporation determines that such action is necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company; and

(C) has been on the official record of the company, since the time of its execution, or with which, the party claiming under the agreement provides documentation of such agreement and its authorized execution or confirmation by the covered financial company that is acceptable to the receiver.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(9), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

(10) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

Notification.
Reports.
Deadline.

Termination
date.

(12) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

Termination
date.

(13) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or

substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

(14) EFFECT OF TERMINATION EVENTS.—

Delaware.

(A) MERGER OR CONSOLIDATION.—A merger or consolidation, described in paragraph (13)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of

all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

Time period.

(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(16) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) **IN GENERAL.**—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(ii) **HEARING.**—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial company to obtain secured credit under clause (i).

(D) **BURDEN OF PROOF.**—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

(E) **QUALIFIED FINANCIAL CONTRACTS.**—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

(17) **EFFECT ON DEBTS AND LIENS.**—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) **SHARING RECORDS.**—If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) **EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.**—

(1) **TIME FOR FILING NOTICE OF APPEAL.**—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

Deadlines.

(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

Courts.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

Applicability.

(A) in the case of any covered financial company or bridge financial company that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name security and customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 the Bankruptcy Code, in respect of the distribution to any customer of all customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the terms “customer”, “customer name security”, and “customer property and member property” have the same meanings as in sections 741 and 761 of title 11, United States Code; and

(B) the terms “commodity broker” and “stockbroker” have the same meanings as in section 101 of the Bankruptcy Code.

(n) ORDERLY LIQUIDATION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the “Orderly Liquidation Fund”, which shall be available to the Corporation to carry out the authorities contained in this title, for the cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (5), and the exercise of the authorities of the Corporation under this title.

(2) PROCEEDS.—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (5), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

(3) MANAGEMENT.—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

(4) INVESTMENTS.—At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

(5) AUTHORITY TO ISSUE OBLIGATIONS.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an

interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

- (i) the current average rate on an index of corporate obligations of comparable maturity; and
- (ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—

The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

Determination.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

(7) RULEMAKING.—The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

(8) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this section shall be construed to affect the authority of the Corporation under subsection (a) or (b) of section 14 or section 15(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1824, 1825(c)(5)), the management of the Deposit Insurance Fund by the Corporation, or the resolution of insured depository institutions, provided that—

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

(9) ORDERLY LIQUIDATION AND REPAYMENT PLANS.—

(A) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

(B) MANDATORY REPAYMENT PLAN.—

Contracts.

(i) IN GENERAL.—No amount authorized under paragraph (6)(B) may be provided by the Secretary to the Corporation under paragraph (5), unless an agreement is in effect between the Secretary and the Corporation that—

(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (o) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (o)(1)(B).

(ii) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary and the Corporation shall—

(I) consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the terms of any repayment schedule agreement; and

Records.
Time period.

(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date on which any amount is provided

by the Secretary to the Corporation under paragraph (5).

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term “implementation expenses”—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

(o) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENTS.—

(A) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term “eligible financial company” means any bank holding company with total consolidated assets equal to or greater than \$50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

(B) ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary under this title within 60 months of the date of issuance of such obligations.

Deadline.

(C) EXTENSIONS AUTHORIZED.—The Corporation may, with the approval of the Secretary, extend the time period under subparagraph (B), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system of the United States.

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (B), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely

from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than \$50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (D)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1)(D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account—

(A) economic conditions generally affecting financial companies so as to allow assessments to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(B) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation, or other State insolvency proceeding with respect to 1 or more insurance companies;

Recommendation.

(C) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the liabilities of the company, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates;

(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and

(E) such other risk-related factors as the Corporation, or the Council, as applicable, may determine to be appropriate.

(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

(6) RULEMAKING.—

(A) IN GENERAL.—The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall

Consultation.

consult with the Secretary in the development and finalization of such regulations.

(B) **EQUITABLE TREATMENT.**—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

(p) **UNENFORCEABILITY OF CERTAIN AGREEMENTS.**—

(1) **IN GENERAL.**—No provision described in paragraph (2) shall be enforceable against or impose any liability on any person, as such enforcement or liability shall be contrary to public policy.

(2) **PROHIBITED PROVISIONS.**—A provision described in this paragraph is any term contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire;

(B) prohibits any person from offering to acquire or acquiring; or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this title.

(q) **OTHER EXEMPTIONS.**—

(1) **IN GENERAL.**—When acting as a receiver under this title—

(A) the Corporation, including its franchise, its capital, reserves and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed;

(B) no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation; and

(C) the Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due; and

(D) the Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising

under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(r) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

Regulations.

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds \$1,000,000, to such covered financial company;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any covered financial company; and

(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term “default” means a failure to comply with

the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term “compensation” to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

12 USC 5391.

SEC. 211. MISCELLANEOUS PROVISIONS.

(a) CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.—Section 1032(1) of title 18, United States Code, is amended by inserting “the Federal Deposit Insurance Corporation acting as receiver for a covered financial company, in accordance with title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act,” before “or the National Credit”.

(b) CONFORMING AMENDMENT.—Section 1032 of title 18, United States Code, is amended in the section heading, by striking “**of financial institution**”.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting “section 210(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),” after “section 11(e) of the Federal Deposit Insurance Act,”.

(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

Audits.
Investigations.

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1). Deadlines.

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing— Audits.
Investigations.

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1). Deadlines.

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act

of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) **TERMINATION OF RESPONSIBILITIES.**—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) **PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.**—

Reports.

(1) **SCOPE.**—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

Evaluation.

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

Recommendation.

(D) recommend appropriate administrative or legislative action.

(2) **REPORTS AND TESTIMONY.**—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

12 USC 5392.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) **NO OTHER FUNDING.**—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) **LIMIT ON GOVERNMENTAL ACTIONS.**—No governmental entity may take any action to circumvent the purposes of this title.

(c) **CONFLICT OF INTEREST.**—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECUTIVES AND DIRECTORS. 12 USC 5393.

(a) **PROHIBITION AUTHORITY.**—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) **AUTHORITY TO ISSUE ORDER.**—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) **AUTHORIZED ACTIONS.**—

(1) **IN GENERAL.**—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

Notice.
Time period.

Applicability.

(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

12 USC 5394.

SEC. 214. PROHIBITION ON TAXPAYER FUNDING.

(a) LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

(b) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

SEC. 215. STUDY ON SECURED CREDITOR HAIRCUTS.

(a) STUDY REQUIRED.—The Council shall conduct a study evaluating the importance of maximizing United States taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the orderly liquidation authority authorized by this Act. In carrying out such study, the Council shall—

(1) not be prejudicial to current or past laws or regulations with respect to secured creditor treatment in a resolution process;

(2) study the similarities and differences between the resolution mechanisms authorized by the Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991, and the orderly liquidation authority authorized by this Act;

(3) determine how various secured creditors are treated in such resolution mechanisms and examine how a haircut (of various degrees) on secured creditors could improve market discipline and protect taxpayers;

(4) compare the benefits and dynamics of prudent lending practices by depository institutions in secured loans for consumers and small businesses to the lending practices of secured creditors to large, interconnected financial firms;

(5) consider whether credit differs according to different types of collateral and different terms and timing of the extension of credit; and

(6) include an examination of stakeholders who were unsecured or under-collateralized and seek collateral when a firm is failing, and the impact that such behavior has on financial stability and an orderly resolution that protects taxpayers if the firm fails.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Council shall issue a report to the Congress containing all findings and conclusions

made by the Council in carrying out the study required under subsection (a).

SEC. 216. STUDY ON BANKRUPTCY PROCESS FOR FINANCIAL AND NONBANK FINANCIAL INSTITUTIONS.

(a) **STUDY.**—

(1) **IN GENERAL.**—Upon enactment of this Act, the Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding the resolution of financial companies under the Bankruptcy Code, under chapter 7 or 11 thereof.

(2) **ISSUES TO BE STUDIED.**—Issues to be studied under this section include—

(A) the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

(B) whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code, in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(C) whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(D) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated; and

(E) the implications, challenges, and benefits to creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies.

(b) **REPORTS TO CONGRESS.**—Not later than 1 year after the date of enactment of this Act, and in each successive year until the fifth year after the date of enactment of this Act, the Administrative Office of the United States courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 217. STUDY ON INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR NONBANK FINANCIAL INSTITUTIONS.

(a) **STUDY.**—

(1) **IN GENERAL.**—The Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding international coordination relating to the resolution of systemic financial companies under the United States Bankruptcy Code and applicable foreign law.

(2) **ISSUES TO BE STUDIED.**—With respect to the bankruptcy process for financial companies, issues to be studied under this section include—

(A) the extent to which international coordination currently exists;

(B) current mechanisms and structures for facilitating international cooperation;

(C) barriers to effective international coordination; and

(D) ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

(b) **REPORT TO CONGRESS.**—Not later than 1 year after the date of enactment of this Act, the Administrative office of the United States Courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

Enhancing
Financial
Institution Safety
and Soundness
Act of 2010.

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

12 USC 5301
note.

SEC. 300. SHORT TITLE.

This title may be cited as the “Enhancing Financial Institution Safety and Soundness Act of 2010”.

12 USC 5401.

SEC. 301. PURPOSES.

The purposes of this title are—

(1) to provide for the safe and sound operation of the banking system of the United States;

(2) to preserve and protect the dual system of Federal and State-chartered depository institutions;

(3) to ensure the fair and appropriate supervision of each depository institution, regardless of the size or type of charter of the depository institution; and

(4) to streamline and rationalize the supervision of depository institutions and the holding companies of depository institutions.

12 USC 5402.

SEC. 302. DEFINITION.

In this title, the term “transferred employee” means, as the context requires, an employee transferred to the Office of the Comptroller of the Currency or the Corporation under section 322.

Subtitle A—Transfer of Powers and Duties

12 USC 5411.

SEC. 311. TRANSFER DATE.

Definition.

(a) **TRANSFER DATE.**—Except as provided in subsection (b), the term “transfer date” means the date that is 1 year after the date of enactment of this Act.

(b) **EXTENSION PERMITTED.**—

Deadline.

(1) **NOTICE REQUIRED.**—The Secretary, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors, and the Chairperson of the Corporation, may extend the period under subsection (a) and designate a transfer date that is

not later than 18 months after the date of enactment of this Act, if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that commencement of the orderly process to implement this title is not feasible by the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary to commence the process of orderly implementation of this title;

(C) the transfer date designated under this subsection; and

(D) a description of the steps that will be taken to initiate the process of an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 270 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register notice of any transfer date designated under paragraph (1).

Deadline.
Federal Register,
publication.

SEC. 312. POWERS AND DUTIES TRANSFERRED.

12 USC 5412.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

(b) FUNCTIONS OF THE OFFICE OF THRIFT SUPERVISION.—

(1) SAVINGS AND LOAN HOLDING COMPANY FUNCTIONS TRANSFERRED.—

(A) TRANSFER OF FUNCTIONS.—There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to—

(i) the supervision of—

(I) any savings and loan holding company; and

(II) any subsidiary (other than a depository institution) of a savings and loan holding company; and

(ii) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings and loan holding companies.

(B) POWERS, AUTHORITIES, RIGHTS, AND DUTIES.—The Board of Governors shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions and authority transferred under subparagraph (A).

(2) ALL OTHER FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—All rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 11 of the Home Owners' Loan Act (12 U.S.C. 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders and under section 5(q) of such Act relating to tying arrangements is transferred to the Board of Governors.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1) and subparagraph (A)—

(i) there are transferred to the Office of the Comptroller of the Currency and the Comptroller of the Currency—

(I) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to Federal savings associations; and

(II) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to savings associations; and

(ii) the Office of the Comptroller of the Currency and the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, on the day before the transfer date relating to the functions and authority transferred under clause (i).

(C) CORPORATION.—Except as provided in paragraph (1) and subparagraphs (A) and (B)—

(i) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to State savings associations are transferred to the Corporation; and

(ii) the Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions transferred under clause (i).

(c) CONFORMING AMENDMENTS.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (q), by striking paragraphs (1) through (4) and inserting the following:

“(1) the Office of the Comptroller of the Currency, in the case of—

“(A) any national banking association;

“(B) any Federal branch or agency of a foreign bank;

and

“(C) any Federal savings association;

“(2) the Federal Deposit Insurance Corporation, in the case of—

“(A) any State nonmember insured bank;

“(B) any foreign bank having an insured branch; and

“(C) any State savings association;

“(3) the Board of Governors of the Federal Reserve System, in the case of—

“(A) any State member bank;

“(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

“(C) any foreign bank which does not operate an insured branch;

“(D) any agency or commercial lending company other than a Federal agency;

“(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

“(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

“(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.”; and

(2) in paragraphs (1) and (3) of subsection (u), by striking “(other than a bank holding company” and inserting “(other than a bank holding company or savings and loan holding company”.

(d) CONSUMER PROTECTION.—Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.

SEC. 313. ABOLISHMENT.

12 USC 5413.

Effective 90 days after the transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

Effective date.

SEC. 314. AMENDMENTS TO THE REVISED STATUTES.

(a) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

“SEC. 324. COMPTROLLER OF THE CURRENCY.

“(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ESTABLISHED.—There is established in the Department of the Treasury a bureau to be known as the ‘Office of the Comptroller of the Currency’ which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

“(b) COMPTROLLER OF THE CURRENCY.—

“(1) IN GENERAL.—The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency, and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law.

“(2) ADDITIONAL AUTHORITY.—The Comptroller of the Currency shall have the same authority with respect to functions transferred to the Comptroller of the Currency under the Enhancing Financial Institution Safety and Soundness Act of 2010 as was vested in the Director of the Office of Thrift Supervision on the transfer date, as defined in section 311 of that Act.”.

(b) SUPERVISION OF FEDERAL SAVINGS ASSOCIATIONS.—Chapter 9 of title VII of the Revised Statutes of the United States (12 U.S.C. 1 et seq.) is amended by inserting after section 327A (12 U.S.C. 4a) the following:

12 USC 4b. **“SEC. 327B. DEPUTY COMPTROLLER FOR THE SUPERVISION AND EXAMINATION OF FEDERAL SAVINGS ASSOCIATIONS.**

Designation. **“The Comptroller of the Currency shall designate a Deputy Comptroller, who shall be responsible for the supervision and examination of Federal savings associations.”.**

(c) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting before the period at the end the following: “or any Federal savings association”.

12 USC 1 note. (d) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 315. FEDERAL INFORMATION POLICY.

Section 3502(5) of title 44, United States Code, is amended by inserting “Office of the Comptroller of the Currency,” after “the Securities and Exchange Commission,”.

12 USC 5414. **SEC. 316. SAVINGS PROVISIONS.**

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 312(b) and 313 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that—

(A) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Board of Governors by this title, the Board of Governors shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision as a party to the action or proceeding on and after the transfer date;

(B) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Comptroller of the Currency by this title, the Office of the Comptroller of the Currency or the Comptroller of the Currency shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding on and after the transfer date; and

(C) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Corporation by this title, the Corporation shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision as a party to the action or proceeding on and after the transfer date.

(b) CONTINUATION OF EXISTING OTS ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision or the Director of the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of such orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against—

(1) the Board of Governors, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Board of Governors, until modified, terminated, set aside, or superseded in accordance with applicable law by the Board of Governors, by any court of competent jurisdiction, or by operation of law;

(2) the Office of the Comptroller of the Currency or the Comptroller of the Currency, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Comptroller of the Currency, respectively, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(3) the Corporation, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with applicable law by the Corporation, by any court of competent jurisdiction, or by operation of law.

(c) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY THE BOARD OF GOVERNORS.—Not later than the transfer date, the Board of Governors shall—

(A) identify the regulations continued under subsection

(b) that will be enforced by the Board of Governors; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(2) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Office of the Comptroller of the Currency shall—

(A) after consultation with the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(3) BY THE CORPORATION.—Not later than the transfer date, the Corporation shall—

(A) after consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

Deadlines.
Federal Register,
publication.

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(d) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before such date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the proposed regulation.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the interim or final regulation, unless modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, by any court of competent jurisdiction, or by operation of law.

12 USC 5415.

SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

On and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 312(b) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate and consistent with the amendments made in subtitle E.

SEC. 318. FUNDING.

(a) COMPENSATION OF EXAMINERS.—Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481 et seq.) is amended—

(1) in the second undesignated paragraph (12 U.S.C. 481), in the fourth sentence, by striking “without regard to the provisions of other laws applicable to officers or employees of the United States” and inserting the following: “set and adjusted subject to chapter 71 of title 5, United States Code, and without regard to the provisions of other laws applicable to officers or employees of the United States”; and

(2) in the third undesignated paragraph (12 U.S.C. 482), in the first sentence, by striking “shall fix” and inserting “shall, subject to chapter 71 of title 5, United States Code, fix”.

(b) FUNDING OF OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Chapter 4 of title LXII of the Revised Statutes is amended by inserting after section 5240 (12 U.S.C. 481, 482) the following:

“SEC. 5240A. The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C.

12 USC 16.

1813(q)(1)), as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. In establishing the amount of an assessment, fee, or charge collected from an entity under this section, the Comptroller of the Currency may take into account the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller of the Currency determines is appropriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under section 5240.

“The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section, except as provided in chapter 71 of title 5, United States Code (with respect to compensation).”

(c) FUNDING OF BOARD OF GOVERNORS.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

“(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

“(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

“(2) COMPANIES.—The companies described in this paragraph are—

“(A) all bank holding companies having total consolidated assets of \$50,000,000,000 or more;

“(B) all savings and loan holding companies having total consolidated assets of \$50,000,000,000 or more; and

“(C) all nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”

(d) CORPORATION EXAMINATION FEES.—Section 10(e) of the Federal Deposit Insurance Act (12 U.S.C. 1820(e)) is amended by striking paragraph (1) and inserting the following:

“(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations.”

(e) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date. 12 USC 16 note.

12 USC 5416.

SEC. 319. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law (except the full and open competition requirements of the Competition in Contracting Act), the Office of the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

Subtitle B—Transitional Provisions

12 USC 5431.

SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.

(a) **IN GENERAL.**—Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

Consultation.

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;

Determination.

(2) determine jointly, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this Act and ending on the transfer date;

(B) which personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors during the period beginning on the date of enactment of this Act and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) **AGENCY CONSULTATION.**—When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

Payment.

(1) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a);

(2) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under subsection (a); and

(3) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a).

(c) NOTICE REQUIRED.—The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under subsection (b).

SEC. 322. TRANSFER OF EMPLOYEES.

12 USC 5432.

(a) IN GENERAL.—

(1) OFFICE OF THRIFT SUPERVISION EMPLOYEES.—

(A) IN GENERAL.—Except as provided in section 1064, all employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title; and

Determination.

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) EMPLOYEES TRANSFERRED; SERVICE PERIODS CREDITED.—For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 312, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

(B) DECLINING TRANSFERS ALLOWED.—The Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their

- confidential, policy-making, policy-determining, or policy-advocating character.
- (4) **ADDITIONAL APPOINTMENT AUTHORITY.**—Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively.
- Deadlines. (b) **TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.**—Each employee to be transferred under subsection (a)(1) shall—
- (1) be transferred not later than 90 days after the transfer date; and
- Notice. (2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer of the employee.
- (c) **TRANSFER OF FUNCTIONS.**—
- (1) **IN GENERAL.**—Notwithstanding any other provision of law, the transfer of employees under this subtitle shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.
- (2) **PRIORITY.**—If any provision of this subtitle conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.
- (d) **EMPLOYEE STATUS AND ELIGIBILITY.**—The transfer of functions and employees under this subtitle, and the abolishment of the Office of Thrift Supervision under section 313, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.
- (e) **EQUAL STATUS AND TENURE POSITIONS.**—
- (1) **STATUS AND TENURE.**—Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.
- (2) **FUNCTIONS.**—To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.
- (f) **NO ADDITIONAL CERTIFICATION REQUIREMENTS.**—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.
- (g) **PERSONNEL ACTIONS LIMITED.**—
- (1) **PROTECTION.**—
- (A) **IN GENERAL.**—Except as provided in paragraph (2), each affected employee shall not, during the 30-month period beginning on the transfer date, be involuntarily
- Time period.

separated, or involuntarily reassigned outside his or her locality pay area.

(B) **AFFECTED EMPLOYEES.**—For purposes of this paragraph, the term “affected employee” means— Definition.

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date; and

(ii) an employee of the Office of the Comptroller of the Currency or the Corporation holding a permanent position on the day before the transfer date.

(2) **EXCEPTIONS.**—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

(A) separate an employee for cause or for unacceptable performance;

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign an employee outside such employee’s locality pay area when the Office of the Comptroller of the Currency or the Corporation determines that the reassignment is necessary for the efficient operation of the agency.

(h) **PAY.**—

(1) **30-MONTH PROTECTION.**—Except as provided in paragraph (2), during the 30-month period beginning on the date on which the employee was transferred under this subtitle, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred. Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 30-month period will be the reduced rate that would have applied but for the transfer.

(2) **EXCEPTIONS.**—The Comptroller of the Currency or the Corporation may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance;

or

(B) with the consent of the transferred employee.

(3) **PROTECTION ONLY WHILE EMPLOYED.**—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation. Applicability.

(4) **PAY INCREASES PERMITTED.**—Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

(i) **BENEFITS.**—

(1) **RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.**—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—

Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term “existing retirement plan” means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

Time period.

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

Time period.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—

If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

Time period.

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this title on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

Deadline.

(j) INCORPORATION INTO AGENCY PAY SYSTEM.—Not later than 30 months after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall place each transferred employee into the established pay system and structure of the appropriate employing agency.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other employee of the Office of the Comptroller of the Currency or the Corporation on the basis of prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

Procedures.

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

Study.

Deadline.

(1) REORGANIZATION.—

(1) IN GENERAL.—If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the reorganization shall be deemed a “major reorganization” for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

Time period.

(2) SERVICE CREDIT.—For purposes of this subsection, periods of service with a Federal home loan bank or a joint office of Federal home loan banks shall be credited as periods of service with a Federal agency.

SEC. 323. PROPERTY TRANSFERRED.

12 USC 5433.

(a) PROPERTY DEFINED.—For purposes of this section, the term “property” includes all real property (including leaseholds) and all personal property, including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence related to such reports, and any other information or materials.

(b) PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.—

(1) IN GENERAL.—No later than 90 days after the transfer date, all property of the Office of Thrift Supervision (other than property described under paragraph (b)(2)) that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

Deadline.

(2) PERSONAL PROPERTY.—All books, accounts, records, reports, files, memoranda, papers, documents, reports of examination, work papers, and correspondence of the Office of Thrift Supervision that the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Board of Governors under this title shall be transferred to the Board of Governors in a manner consistent with the purposes of this title.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement

relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation, as appropriate, together with the property to which it relates.

(d) **PRESERVATION OF PROPERTY.**—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

12 USC 5434.

SEC. 324. FUNDS TRANSFERRED.

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 325 and are available to the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(2)(B), shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(2)(C), shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(A), shall be transferred to the Board of Governors on the transfer date.

Time periods.
12 USC 5435.

SEC. 325. DISPOSITION OF AFFAIRS.

(a) **AUTHORITY OF DIRECTOR.**—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—

(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 323; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision.

(b) **STATUS OF DIRECTOR.**—

(1) **IN GENERAL.**—Notwithstanding the transfer of functions under this subtitle, during the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Director of the Office of Thrift Supervision on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this subtitle during such 90-day period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

SEC. 326. CONTINUATION OF SERVICES.

12 USC 5436.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions transferred to the Office of the Comptroller of the Currency, the Corporation or the Board of Governors under this title, shall—

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, until the transfer of functions under this title is complete; and

(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

Consultation.

SEC. 327. IMPLEMENTATION PLAN AND REPORTS.

12 USC 5437.

(a) PLAN SUBMISSION.—Within 180 days of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, shall jointly submit a plan to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors detailing the steps the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 301 through 326, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of receiving the plan required under subsection (a), the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives detailing whether the plan conforms with the provisions of sections 301 through 326, and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) IMPLEMENTATION REPORTS.—Not later than 6 months after the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report on the status of the implementation of the plan to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Subtitle C—Federal Deposit Insurance Corporation

SEC. 331. DEPOSIT INSURANCE REFORMS.

(a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraph (D); and

(2) by redesignating subparagraph (C) as subparagraph (D).

12 USC 1817
note.

(b) ASSESSMENT BASE.—The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term “assessment base” with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

(2) the sum of—

(A) the average tangible equity of the insured depository institution during the assessment period; and

(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker’s bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker’s bank.

SEC. 332. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

Section 7(e) of the Federal Deposit Insurance Act is amended— 12 USC 1817.

(1) in paragraph (2)—

(A) by amending subparagraph (B) to read as follows:

“(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).”;

(B) by amending subparagraph (C) to read as follows:

“(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph”; and

Regulations.

(C) by striking subparagraphs (D) through (G); and

(2) in paragraph (4)(A) by striking “paragraphs (2)(D) and” and inserting “paragraphs (2) and”.

SEC. 333. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking “agreement” and inserting “consultation”.

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking “such as” and inserting “including”; and

(2) in clause (iii), by striking “Corporation” and inserting “Corporation, except as provided in section 7(a)(2)(B)”.

SEC. 334. TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE.

(a) Section 7(b)(3)(B) of the Federal Deposit Insurance Act is amended to read as follows:

“(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).”.

(b) Section 3(y)(3) of the Federal Deposit Insurance Act is amended by inserting “, or such comparable percentage of the assessment base set forth in section 7(b)(2)(C)” before the period. 12 USC 1813.

(c) For a period of not less than 5 years after the date of the enactment of this title, the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under section 7(b)(2)(C) of the Federal Deposit Insurance Act. Time period. Public information. 12 USC 1817 note.

(d) RESERVE RATIO.—Notwithstanding the timing requirements of section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act, the Corporation shall take such steps as may be necessary for the reserve ratio of the Deposit Insurance Fund to reach 1.35 percent of estimated insured deposits by September 30, 2020.

(e) OFFSET.—In setting the assessments necessary to meet the requirements of subsection (d), the Corporation shall offset the effect of subsection (d) on insured depository institutions with total consolidated assets of less than \$10,000,000,000.

SEC. 335. PERMANENT INCREASE IN DEPOSIT AND SHARE INSURANCE.

(a) **PERMANENT INCREASE IN DEPOSIT INSURANCE.**—Section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) is amended—

(1) by striking “\$100,000” and inserting “\$250,000”; and

(2) by adding at the end the following new sentences: “Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to \$250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this Act. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).”

(b) **PERMANENT INCREASE IN SHARE INSURANCE.**—Section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) is amended by striking “\$100,000” and inserting “\$250,000”.

SEC. 336. MANAGEMENT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) **IN GENERAL.**—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)(1)(B), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the Consumer Financial Protection Bureau”;

(2) by amending subsection (d)(2) to read as follows:

“(2) **ACTING OFFICIALS MAY SERVE.**—In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.”; and

(3) in subsection (f)(2), by striking “Office of Thrift Supervision” and inserting “Consumer Financial Protection Bureau”.

(b) **EFFECTIVE DATE.**—This section, and the amendments made by this section, shall take effect on the transfer date.

12 USC 1812
note.

Subtitle D—Other Matters

12 USC 5451.

SEC. 341. BRANCHING.

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—

(1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank; and

(2) establish, acquire, and operate additional branches and agencies at any location within any State in which the savings association operated a branch immediately before the savings association became a bank, if the law of the State in which the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State.

SEC. 342. OFFICE OF MINORITY AND WOMEN INCLUSION.

12 USC 5452.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—

Deadlines.

(A) **IN GENERAL.**—Except as provided in subparagraph (B), not later than 6 months after the date of enactment of this Act, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) **BUREAU.**—The Bureau shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 1062.

(2) **TRANSFER OF RESPONSIBILITIES.**—Each agency that, on the day before the date of enactment of this Act, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(3) **DUTIES WITH RESPECT TO CIVIL RIGHTS LAWS.**—The responsibilities described in paragraph (1) do not include enforcement of statutes, regulations, or executive orders pertaining to civil rights, except each Director shall coordinate with the agency administrator, or the designee of the agency administrator, regarding the design and implementation of any remedies resulting from violations of such statutes, regulations, or executive orders.

(b) DIRECTOR.—

(1) **IN GENERAL.**—The Director of each Office shall be appointed by, and shall report to, the agency administrator. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code, or an equivalent designation.

(2) **DUTIES.**—Each Director shall develop standards for—

Standards.

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and

(C) assessing the diversity policies and practices of entities regulated by the agency.

(3) **OTHER DUTIES.**—Each Director shall advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.

(4) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(C) may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

Standards.
Procedures.

(1) IN GENERAL.—The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) CONTRACTS.—The procedures established by each agency for review and evaluation of contract proposals and for hiring service providers shall include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

(3) TERMINATION.—

(A) DETERMINATION.—The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make a determination whether an agency contractor, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.

(B) EFFECT OF DETERMINATION.—

(i) RECOMMENDATION TO AGENCY ADMINISTRATOR.—Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) ACTION BY AGENCY ADMINISTRATOR.—Upon receipt of a recommendation under clause (i), the agency administrator may—

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) APPLICABILITY.—This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

(e) **REPORTS.**—Each Office shall submit to Congress an annual report regarding the actions taken by the agency and the Office pursuant to this section, which shall include—

- (1) a statement of the total amounts paid by the agency to contractors since the previous report;
- (2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);
- (3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;
- (4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and
- (5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) **DIVERSITY IN AGENCY WORKFORCE.**—Each agency shall take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency in a manner consistent with applicable law. Such steps shall include—

- (1) recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;
- (2) sponsoring and recruiting at job fairs in urban communities;
- (3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;
- (4) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;
- (5) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and
- (6) any other mass media communications that the Office determines necessary.

(g) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply: Applicability.

- (1) **AGENCY.**—The term “agency” means—
 - (A) the Departmental Offices of the Department of the Treasury;
 - (B) the Corporation;
 - (C) the Federal Housing Finance Agency;
 - (D) each of the Federal reserve banks;
 - (E) the Board;
 - (F) the National Credit Union Administration;
 - (G) the Office of the Comptroller of the Currency;
 - (H) the Commission; and
 - (I) the Bureau.
- (2) **AGENCY ADMINISTRATOR.**—The term “agency administrator” means the head of an agency.
- (3) **MINORITY.**—The term “minority” has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note).
- (4) **MINORITY-OWNED BUSINESS.**—The term “minority-owned business” has the same meaning as in section 21A(r)(4)(A)

of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect on the day before the transfer date.

(5) OFFICE.—The term “Office” means the Office of Minority and Women Inclusion established by an agency under subsection (a).

(6) WOMEN-OWNED BUSINESS.—The term “women-owned business” has the meaning given the term “women’s business” in section 21A(r)(4)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(B)), as in effect on the day before the transfer date.

SEC. 343. INSURANCE OF TRANSACTION ACCOUNTS.

(a) BANKS AND SAVINGS ASSOCIATIONS.—

(1) AMENDMENTS.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(A) in subparagraph (B)—

(i) by striking “The net amount” and inserting the following:

“(i) IN GENERAL.—Subject to clause (ii), the net amount”; and

(ii) by adding at the end the following new clauses:

“(ii) INSURANCE FOR NONINTEREST-BEARING TRANSACTION ACCOUNTS.—Notwithstanding clause (i), the Corporation shall fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such depositor under clause (i).

“(iii) NONINTEREST-BEARING TRANSACTION ACCOUNT DEFINED.—For purposes of this subparagraph, the term ‘noninterest-bearing transaction account’ means a deposit or account maintained at an insured depository institution—

“(I) with respect to which interest is neither accrued nor paid;

“(II) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

“(III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.”; and

(B) in subparagraph (C), by striking “subparagraph (B)” and inserting “subparagraph (B)(i)”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on December 31, 2010.

(3) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)), as amended by paragraph (1), is amended—

(A) in subparagraph (B)—

(i) by striking “DEPOSIT.—” and all that follows through “clause (ii), the net amount” and insert “DEPOSIT.—The net amount”; and

12 USC 1821
note.

Effective date.
12 USC 1821
note.

(ii) by striking clauses (ii) and (iii); and

(B) in subparagraph (C), by striking “subparagraph (B)(i)” and inserting “subparagraph (B)”.

(b) CREDIT UNIONS.—

(1) AMENDMENTS.—Section 207(k)(1) of the Federal Credit Union Act (12 U.S.C. 1787(k)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking “Subject to the provisions of paragraph (2), the net amount” and inserting the following:

“(i) NET AMOUNT OF INSURANCE PAYABLE.—Subject to clause (ii) and the provisions of paragraph (2), the net amount”; and

(ii) by adding at the end the following new clauses:

“(ii) INSURANCE FOR NONINTEREST-BEARING TRANSACTION ACCOUNTS.—Notwithstanding clause (i), the Board shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such member or depositor under clause (i).

“(iii) NONINTEREST-BEARING TRANSACTION ACCOUNT DEFINED.—For purposes of this subparagraph, the term ‘noninterest-bearing transaction account’ means an account or deposit maintained at an insured credit union—

“(I) with respect to which interest is neither accrued nor paid;

“(II) on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

“(III) on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal.”; and

(B) in subparagraph (B), by striking “subparagraph (A)” and inserting “subparagraph (A)(i)”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect upon the date of the enactment of this Act

12 USC 1787
note.

(3) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 207(k)(1) of the Federal Credit Union Act (12 U.S.C. 1787(k)(1)), as amended by paragraph (1), is amended—

Effective date.
12 USC 1787
note.

(A) in subparagraph (A)—

(i) by striking “(i) NET AMOUNT OF INSURANCE PAYABLE.—” and all that follows through “paragraph (2), the net amount” and inserting “Subject to the provisions of paragraph (2), the net amount”; and

(ii) by striking clauses (ii) and (iii); and

(B) in subparagraph (B), by striking “subparagraph (A)(i)” and inserting “subparagraph (A)”.

Subtitle E—Technical and Conforming Amendments

12 USC 906 note. **SEC. 351. EFFECTIVE DATE.**

Except as provided in section 364(a), the amendments made by this subtitle shall take effect on the transfer date.

SEC. 352. BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

Section 256(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)) is amended—

(1) in paragraph (4), by striking subparagraphs (C) and (G); and

(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C), (D), (E), and (F), respectively.

SEC. 353. BANK ENTERPRISE ACT OF 1991.

Section 232(a) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834(a)) is amended—

(1) in the subsection heading, by striking “BY FEDERAL RESERVE BOARD”;

(2) in paragraph (1)—

(A) by striking “The Board of Governors of the Federal Reserve System,” and inserting “The Comptroller of the Currency”; and

(B) by striking “section 7(b)(2)(H)” and inserting “section 7(b)(2)(E)”;

(3) in paragraph (2)(A), by striking “Board” and inserting “Comptroller”; and

(4) in paragraph (3)—

(A) by redesignating subparagraphs (A) through (C) as subparagraphs (B) through (D), respectively; and

(B) by inserting before subparagraph (B) the following:

“(A) COMPTROLLER.—The term ‘Comptroller’ means the Comptroller of the Currency.”.

Definition.

SEC. 354. BANK HOLDING COMPANY ACT OF 1956.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 2(j)(3) (12 U.S.C. 1841(j)(3)), strike “Director of the Office of Thrift Supervision” and inserting “appropriate Federal banking agency”;

(2) in section 4 (12 U.S.C. 1843)—

(A) in subsection (i)—

(i) in paragraph (4)—

(I) in subparagraph (A)—

(aa) in the subparagraph heading, by striking “TO DIRECTOR”; and

(bb) by striking “Board” and all that follows through the end of the subparagraph and inserting “Board shall solicit comments and recommendations from—

“(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

“(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.”.

(II) in subparagraph (B), by striking “Director” each place that term appears and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,”;

(ii) in paragraph (5)—

(I) in subparagraph (B), by striking “Director with” and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with”; and

(II) by striking “Director” each place that term appears and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation”;

(iii) in paragraph (6), by striking “Director” and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,”; and

(iv) by striking paragraph (7); and

(3) in section 5(f) (12 U.S.C. 1844(f))—

(A) by striking “subpena” each place that term appears and inserting “subpoena”;

(B) by striking “subpenas” each place that term appears and inserting “subpoenas”; and

(C) by striking “subpenaed” and inserting “subpoenaed”.

SEC. 355. BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

Section 106(b)(1) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)) is amended in the undesignated matter following subparagraph (E) by inserting “issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may” after “The Board may”.

SEC. 356. BANK PROTECTION ACT OF 1968.

The Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) is amended—

(1) in section 2 (12 U.S.C. 1881), by striking “the term” and all that follows through the end of the section and inserting “the term ‘Federal supervisory agency’ means the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).”;

Definition.

(2) in section 3 (12 U.S.C. 1882), by striking “and loan” each place that term appears; and

(3) in section 5 (12 U.S.C. 1884), by striking “and loan”.

SEC. 357. BANK SERVICE COMPANY ACT.

The Bank Service Company Act (12 U.S.C. 1861 et seq.) is amended—

(1) in section 1(b)(4) (12 U.S.C. 1861(b)(4))—

(A) by inserting after “an insured bank,” the following: “a savings association”;

(B) by striking “Director of the Office of Thrift Supervision” and inserting “appropriate Federal banking agency”; and

- (C) by striking “, the Federal Savings and Loan Insurance Corporation,”;
- (2) in section 1(b)(5), by striking “term ‘insured depository institution’ has the same meaning as in section 3(c)” and inserting “terms ‘depository institution’ and ‘savings association’ have the same meanings as in section 3”; and
- (3) in section 7(c)(2) (12 U.S.C. 1867(c)(2)), by inserting “each” after “notify”.

SEC. 358. COMMUNITY REINVESTMENT ACT OF 1977.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended—

- (1) in section 803 (12 U.S.C. 2902)—

- (A) in paragraph (1)—

- (i) in subparagraph (A), by inserting “and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)” after “banks”;

- (ii) in subparagraph (B), by striking “and bank holding companies” and inserting “, bank holding companies, and savings and loan holding companies”;

- (iii) in subparagraph (C), by striking “; and” and inserting “, and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation).”; and

- (B) by striking paragraph (2) (relating to the Office of Thrift Supervision), as added by section 744(q) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73; 103 Stat. 440); and

- (2) in section 806 (12 U.S.C. 2905), by inserting “, except that the Comptroller of the Currency shall prescribe regulations applicable to savings associations and the Board of Governors shall prescribe regulations applicable to insured State member banks, bank holding companies and savings and loan holding companies,” after “supervisory agency”.

Regulations.
Applicability.

SEC. 359. CRIME CONTROL ACT OF 1990.

The Crime Control Act of 1990 is amended—

- (1) in section 2539(c)(2) (28 U.S.C. 509 note)—

- (A) by striking subparagraphs (C) and (D); and

- (B) by redesignating subparagraphs (E) through (H) as subparagraphs (C) through (G), respectively; and

- (2) in section 2554(b)(2) (Public Law 101-647; 104 Stat. 4890)—

- (A) in subparagraph (A), by striking “, the Director of the Office of Thrift Supervision,” and inserting “the Comptroller of the Currency”; and

- (B) in subparagraph (B), by striking “, the Director” and all that follows through “Trust Corporation” and inserting “or the Federal Deposit Insurance Corporation”.

SEC. 360. DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) is amended—

- (1) in section 207 (12 U.S.C. 3206)—

- (A) in paragraph (1), by inserting before the comma at the end the following: “and Federal savings associations

(the deposits of which are insured by the Federal Deposit Insurance Corporation);

(B) in paragraph (2), by striking “, and bank holding companies” and inserting “, bank holding companies, and savings and loan holding companies”;

(C) in paragraph (3), by striking “Corporation,” and inserting “Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”;

(D) by striking paragraph (4);

(E) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(F) in paragraph (5), as so redesignated, by striking “through (5)” and inserting “through (4)”;

(2) in section 209 (12 U.S.C. 3207)—

(A) in paragraph (1), by inserting before the comma at the end the following: “and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation);”;

(B) in paragraph (2), by striking “, and bank holding companies” and inserting “, bank holding companies, and savings and loan holding companies”;

(C) in paragraph (3), by striking “Corporation,” and inserting “Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”;

(D) by striking paragraph (4); and

(E) by redesignating paragraph (5) as paragraph (4);

and

(3) in section 210(a) (12 U.S.C. 3208(a))—

(A) by striking “his” and inserting “the”; and

(B) by inserting “of the Attorney General” after “enforcement functions”.

SEC. 361. EMERGENCY HOMEOWNERS’ RELIEF ACT.

Section 110 of the Emergency Homeowners’ Relief Act (12 U.S.C. 2709) is amended in the second sentence, by striking “Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation” and inserting “Housing Finance Agency”.

SEC. 362. FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended—

(1) in section 107(8) (12 U.S.C. 1757(8)), by striking “or the Federal Savings and Loan Insurance Corporation”;

(2) in section 205 (12 U.S.C. 1785)—

(A) in subsection (b)(2)(G)(i), by striking “the Office of Thrift Supervision and”; and

(B) in subsection (i)(1), by striking “or the Federal Savings and Loan Insurance Corporation”; and

(3) in section 206(g)(7) (12 U.S.C. 1786(g)(7))—

(A) in subparagraph (A)—

(i) in clause (ii), by striking “(b)(8)” and inserting “(b)(9)”;

(ii) in clause (v)—

(I) by striking “depository” and inserting “financial”; and

(II) by adding “and” at the end;

- (iii) in clause (vi)—
 - (I) by striking “Board” and inserting “Agency”;
- and
- (II) by striking “; and” and inserting a period;
- and
- (iv) by striking clause (vii); and
- (B) in subparagraph (D)—
 - (i) in clause (iii), by adding “and” at the end;
 - (ii) in clause (iv)—
 - (I) by striking “Board” and inserting “Agency”;
 - and
 - (II) by striking “and” at the end; and
 - (iii) by striking clause (v).

SEC. 363. FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

- (1) in section 3 (12 U.S.C. 1813)—
 - (A) in subsection (b)(1)(C), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;
 - (B) in subsection (l)(5), in the matter preceding subparagraph (A), by striking “Director of the Office of Thrift Supervision,”; and
 - (C) in subsection (z), by striking “the Director of the Office of Thrift Supervision,”;
- (2) in section 7 (12 U.S.C. 1817)—
 - (A) in subsection (a)—
 - (i) in paragraph (2)—
 - (I) in subparagraph (A)—
 - (aa) in the first sentence, by striking “the Director of the Office of Thrift Supervision,”;
 - (bb) in the second sentence—
 - (AA) by striking “the Director of the Office of Thrift Supervision,” and inserting “to”; and
 - (BB) by inserting “to” before “any Federal home”; and
 - (cc) by striking “Finance Board” each place that term appears and inserting “Finance Agency”; and
 - (II) in subparagraph (B), by striking “the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision,” and inserting “the Comptroller of the Currency and the Board of Governors of the Federal Reserve System,”;
 - (ii) in paragraph (3), in the first sentence, by striking “Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision.” and inserting “Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System.”;
 - (iii) in paragraph (6), by striking “section 232(a)(3)(C)” and inserting “section 232(a)(3)(D)”; and

(iv) in paragraph (7), by striking “, the Director of the Office of Thrift Supervision,”; and
(B) in subsection (n)—

(i) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION” and inserting “COMPTROLLER OF THE CURRENCY”;

(ii) in the first sentence—

(I) by striking “the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”; and

(II) by inserting “Federal” before “savings associations”;

(iii) in the third sentence, by striking “, the Financing Corporation, and the Resolution Funding Corporation”; and

(iv) by striking “the Director” each place that term appears and inserting “the Comptroller”;

(3) in section 8 (12 U.S.C. 1818)—

(A) in subsection (a)(8)(B)(ii), in the last sentence, by striking “Director of the Office of Thrift Supervision” each place that term appears and inserting “Comptroller of the Currency”;

(B) in subsection (b)(3)—

(i) by inserting “any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 10 of Home Owners’ Loan Act)), any noninsured State member bank” after “Bank Holding Company Act of 1956,”; and

(ii) by inserting “or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution)” before the period at the end;

(C) by striking paragraph (9) of subsection (b) and inserting the following new paragraph:
“(9) [Repealed]”.

(D) in subsection (e)(7)—

(i) in subparagraph (A)—

(I) in clause (v), by inserting “and” after the semicolon;

(II) in clause (vi)—

(aa) by striking “Board” and inserting “Agency”; and

(bb) by striking “; and” and inserting a period; and

(III) by striking clause (vii); and

(ii) in subparagraph (D)—

(I) in clause (iii), by inserting “and” after the semicolon;

(II) in clause (iv)—

(aa) by striking “Board” and inserting “Agency”; and

(bb) by striking “; and” and inserting a period; and

(III) by striking clause (v);

(E) in subsection (j)—

- (i) in paragraph (2), by striking “, or as a savings association under subsection (b)(9) of this section”;
- (ii) in paragraph (3), by inserting “or” after the semicolon;
- (iii) in paragraph (4), by striking “; or” and inserting a comma; and
- (iv) by striking paragraph (5);
- (F) in subsection (o), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and
- (G) in subsection (w)(3)(A), by striking “and the Office of Thrift Supervision”;
- (4) in section 10 (12 U.S.C. 1820)—
 - (A) in subsection (d)(5), by striking “or the Resolution Trust Corporation” each place that term appears; and
 - (B) in subsection (k)(5)(B)—
 - (i) in clause (ii), by inserting “and” after the semicolon;
 - (ii) in clause (iii), by striking “; and” and inserting a period; and
 - (iii) by striking clause (iv);
- (5) in section 11 (12 U.S.C. 1821)—
 - (A) in subsection (c)—
 - (i) in paragraph (2)(A)(ii), by striking “(other than section 21A of the Federal Home Loan Bank Act)”;
 - (ii) in paragraph (4), by striking “Except as otherwise provided in section 21A of the Federal Home Loan Bank Act and notwithstanding” and inserting “Notwithstanding”;
 - (iii) in paragraph (6)—
 - (I) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION” and inserting “COMPTROLLER OF THE CURRENCY”;
 - (II) in subparagraph (A)—
 - (aa) by striking “or the Resolution Trust Corporation”; and
 - (bb) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and
 - (III) by amending subparagraph (B) to read as follows:

“(B) RECEIVER.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.”;
 - (iv) in paragraph (12)(A), by striking “or the Resolution Trust Corporation”;
 - (B) in subsection (d)—
 - (i) in paragraph (17)(A), by striking “or the Director of the Office of Thrift Supervision”; and
 - (ii) in paragraph (18)(B), by striking “or the Director of the Office of Thrift Supervision”;
 - (C) in subsection (m)—
 - (i) in paragraph (9), by striking “or the Director of the Office of Thrift Supervision, as appropriate”;

- (ii) in paragraph (16), by striking “or the Director of the Office of Thrift Supervision, as appropriate” each place that term appears; and
- (iii) in paragraph (18), by striking “or the Director of the Office of Thrift Supervision, as appropriate” each place that term appears;
- (D) in subsection (n)—
 - (i) in paragraph (1)(A)—
 - (I) by striking “, or the Director of the Office of Thrift Supervision, with respect to” and inserting “or”; and
 - (II) by striking “applicable,” and inserting “applicable,”;
 - (ii) in paragraph (2)(A), by striking “or the Director of the Office of Thrift Supervision”;
 - (iii) in paragraph (4)(D), by striking “and the Director of the Office of Thrift Supervision, as appropriate,”;
 - (iv) in paragraph (4)(G), by striking “and the Director of the Office of Thrift Supervision, as appropriate,”; and
 - (v) in paragraph (12)(B)—
 - (I) by inserting “as” after “shall appoint the Corporation”;
 - (II) by striking “or the Director of the Office of Thrift Supervision, as appropriate,” each place such term appears;
- (E) in subsection (p)—
 - (i) in paragraph (2)(B), by striking “the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,” and inserting “or the Corporation,”; and
 - (ii) in paragraph (3)(B), by striking “, the FSLIC Resolution Fund, the Resolution Trust Corporation,”; and
- (F) in subsection (r), by striking “and the Resolution Trust Corporation”;
- (6) in section 13(k)(1)(A)(iv) (12 U.S.C. 1823(k)(1)(A)(iv)), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;
- (7) in section 18 (12 U.S.C. 1828)—
 - (A) in subsection (c)(2)—
 - (i) in subparagraph (A), by inserting “or a Federal savings association” before the semicolon;
 - (ii) in subparagraph (B), by adding “and” at the end;
 - (iii) in subparagraph (C), by striking “(except” and all that follows through “; and” and inserting “or a State savings association.”; and
 - (iv) by striking subparagraph (D);
 - (B) in subsection (g)(1), by striking “the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”;
 - (C) in subsection (i)(2)(C), by striking “Director of the Office of Thrift Supervision” and inserting “Corporation”; and
 - (D) in subsection (m)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “and the Director of the Office of Thrift Supervision” and inserting “or the Comptroller of the Currency, as appropriate,”; and

(II) in subparagraph (B), by striking “and orders of the Director of the Office of Thrift Supervision” and inserting “of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency, as appropriate,”; and

(II) in subparagraph (B)—

(aa) in the matter before clause (i), by striking “Director of the Office of Thrift Supervision” and inserting “Corporation or the Comptroller of the Currency, as appropriate,”; and

(bb) in the matter following clause (ii)—

(AA) in the first sentence, by striking “Director of the Office of Thrift Supervision” and inserting “Office of the Comptroller of the Currency, as appropriate,”; and

(BB) by striking the second sentence and inserting the following: “The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.”; and

(iii) in paragraph (3)—

(I) in subparagraph (A), in the second sentence—

(aa) by inserting “, in the case of a Federal savings association,” before “consult with”; and

(bb) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(II) in subparagraph (B)—

(aa) in the subparagraph heading, by striking “DIRECTOR” and inserting “COMPTROLLER OF THE CURRENCY”;

(bb) by striking “Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(cc) by inserting a comma after “soundness”; and

(dd) by inserting “as to Federal savings associations” after “compliance”;

(8) in section 19(e) (12 U.S.C. 1829(e))—

(A) in paragraph (1), by striking “Director of the Office of Thrift Supervision” and inserting “Board of Governors of the Federal Reserve System”; and

(B) in paragraph (2), by striking “Director of the Office of Thrift Supervision” and inserting “Board of Governors of the Federal Reserve System”;

(9) in section 28 (12 U.S.C. 1831e)—

(A) in subsection (e)—

(i) in paragraph (2)—

(I) in subparagraph (A)(ii), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate”;

(II) in subparagraph (C), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate,”; and

(III) in subparagraph (F), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate”; and

(ii) in paragraph (3)—

(I) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate”; and

(II) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate,”; and

(B) in subsection (h)(2), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency, of the Corporation,”; and

(10) in section 33(e) (12 U.S.C. 1831j(e)), by striking “Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision” and inserting “Federal Housing Finance Agency and the Comptroller of the Currency”.

SEC. 364. FEDERAL HOME LOAN BANK ACT.

(a) **REPEAL OF SECTION 18(c).**—Effective 90 days after the transfer date, section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is repealed.

12 USC 1438
note.
Effective date.

(b) **REPEAL OF SECTION 21A.**—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is repealed.

SEC. 365. FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) in section 1315(b) (12 U.S.C. 4515(b)), by striking “the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.” and inserting “and the Federal Deposit Insurance Corporation.”; and

(2) in section 1317(c) (12 U.S.C. 4517(c)), by striking “the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision” and inserting “or the Federal Deposit Insurance Corporation”.

SEC. 366. FEDERAL RESERVE ACT.

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—
(1) in section 11(a)(2) (12 U.S.C. 248(a)(2))—

(A) by inserting “State savings associations that are insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act),” after “case of insured”;

(B) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(C) by inserting “Federal” before “savings association which”; and

(D) by striking “savings and loan association” and inserting “savings association”; and

(2) in section 19(b) (12 U.S.C. 461(b))—

(A) in paragraph (1)(F), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(B) in paragraph (4)(B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

SEC. 367. FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended—

(1) in section 203 (12 U.S.C. 1812 note), by striking subsection (b);

(2) in section 302(1) (12 U.S.C. 1467a note), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(3) in section 305(12 U.S.C. 1464 note), by striking subsection (b);

(4) in section 308 (12 U.S.C. 1463 note)—

(A) in subsection (a), by striking “Director of the Office of Thrift Supervision” and inserting “Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Chairman of the National Credit Union Administration,”; and

(B) by adding at the end the following new subsection:

“(c) **REPORTS.**—The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Chairman of the National Credit Union Administration, and the Chairperson of Board of Directors of the Federal Deposit Insurance Corporation shall each submit an annual report to the Congress containing a description of actions taken to carry out this section.”;

(5) in section 402 (12 U.S.C. 1437 note)—

(A) in subsection (a), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(B) by striking subsection (b);

(C) in subsection (e)—

(i) in paragraph (1), by striking “Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in each of paragraphs (2), (3), and (4), by striking “Director of the Office of Thrift Supervision”

each place that term appears and inserting “Comptroller of the Currency”; and

(D) by striking “Federal Housing Finance Board” each place that term appears and inserting “Federal Housing Finance Agency”;

(6) in section 1103(a) (12 U.S.C. 3332(a)), by striking “and the Resolution Trust Corporation”;

(7) in section 1205(b) (12 U.S.C. 1818 note)—

(A) in paragraph (1)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively; and

(B) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”;

(8) in section 1206 (12 U.S.C. 1833b)—

(A) by striking “Board, the Oversight Board of the Resolution Trust Corporation” and inserting “Agency, and”; and

(B) by striking “, and the Office of Thrift Supervision”;

(9) in section 1216 (12 U.S.C. 1833e)—

(A) in subsection (a)—

(i) in paragraph (3), by adding “and” at the end;

(ii) in paragraph (4), by striking the semicolon at the end and inserting a period;

(iii) by striking paragraphs (2), (5), and (6); and

(iv) by redesignating paragraphs (3) and (4), as paragraphs (2) and (3), respectively;

(B) in subsection (c)—

(i) by striking “the Director of the Office of Thrift Supervision,” and inserting “and”; and

(ii) by striking “the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation”; and

(C) in subsection (d)—

(i) by striking paragraphs (3), (5), and (6); and

(ii) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

SEC. 368. FLOOD DISASTER PROTECTION ACT OF 1973.

Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking “, the Office of Thrift Supervision”.

SEC. 369. HOME OWNERS’ LOAN ACT.

The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) in section 1 (12 U.S.C. 1461), by striking the table of contents;

(2) in section 2 (12 U.S.C. 1462), as amended by this Act—

(A) by striking paragraphs (1) and (3);

(B) by redesignating paragraph (2) as paragraph (1);

(C) by redesignating paragraphs (4) through (9) as paragraphs (2) through (7), respectively; and

(D) by adding at the end the following:

Definitions.

“(8) BOARD.—The term ‘Board’, other than in the context of the Board of Directors of the Corporation, means the Board of Governors of the Federal Reserve System.

“(9) COMPTROLLER.—The term ‘Comptroller’ means the Comptroller of the Currency.”;

(3) in section 3 (12 U.S.C. 1462a)—

(A) by striking the section heading and inserting the following:

“SEC. 3. ADMINISTRATIVE PROVISIONS.”;

(B) by striking subsections (a), (b), (c), (d), (g), (h), (i), and (j);

(C) by redesignating subsections (e) and (f) as subsections (a) and (b), respectively;

(D) in subsection (a), as so redesignated—

(i) in the heading by striking “OF THE DIRECTOR”; and

(ii) in the matter preceding paragraph (1), by striking “The Director” and inserting “In accordance with subtitle A of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the appropriate Federal banking agency”; and

(E) in subsection (b), as so redesignated, by striking “Director” and inserting “appropriate Federal banking agency”;

(4) in section 4 (12 U.S.C. 1463)—

(A) in subsection (a)—

(i) in the subsection heading, by striking “FEDERAL”;

(ii) by striking paragraphs (1) and (2) and inserting the following:

“(1) EXAMINATION AND SAFE AND SOUND OPERATION.—

“(A) FEDERAL SAVINGS ASSOCIATIONS.—The Comptroller shall provide for the examination and safe and sound operation of Federal savings associations.

“(B) STATE SAVINGS ASSOCIATIONS.—The Corporation shall provide for the examination and safe and sound operation of State savings associations.

“(2) REGULATIONS FOR SAVINGS ASSOCIATIONS.—The Comptroller may prescribe regulations with respect to savings associations, as the Comptroller determines to be appropriate to carry out the purposes of this Act.”; and

(iii) in paragraph (3), by striking “Director” each place that term appears and inserting “Comptroller and the Corporation”;

(B) in subsection (b)—

(i) in paragraph (2)—

(I) in subparagraph (A), by adding “and” at the end;

(II) in subparagraph (B), by striking “; and” and inserting a period; and

(III) by striking subparagraph (C); and

(ii) by striking “Director” each place that term appears and inserting “Comptroller”;

(C) in subsection (c)—

(i) by striking “All regulations and policies of the Director” and inserting “The regulations of the Comptroller and the policies of the Comptroller and the Corporation”; and

(ii) by striking “of the Currency”;

(D) in subsection (e)(5), by striking “Director” and inserting “Comptroller”;

(E) in subsection (f), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and

(F) in subsection (h), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(5) in section 5 (12 U.S.C. 1464)—

(A) in subsection (a), by striking “Director”, each place such term appears and inserting “Comptroller of the Currency”;

(B) in subsection (b), by striking “Director”, each place such term appears and inserting “Comptroller of the Currency”;

(C) in subsection (c)—

(i) in paragraph (5)—

(I) in subparagraph (A), by striking “Director” and inserting “appropriate Federal banking agency”; and

(II) in subparagraph (B)—

(aa) by striking “The Director” and inserting “The appropriate Federal banking agency”; and

(bb) by striking “the Director” and inserting “the appropriate Federal banking agency”;

(D) in subsection (d)—

(i) in paragraph (1)—

(I) in subparagraph (A)—

(aa) in the first sentence, by striking “Director” and inserting “appropriate Federal banking agency”;

(bb) in the second sentence—

(AA) by striking “Director’s own name and through the Director’s own attorneys” and inserting “name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency”; and

(BB) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and

(cc) in the third sentence, by striking “Director” each place that term appears and inserting “Comptroller”;

(II) in subparagraph (B)—

(aa) in clauses (i) through (iv), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(III) in clause (v)—

(aa) in the matter preceding subclause (I), by striking “Director” and inserting “appropriate Federal banking agency”;

(bb) in subclause (II), by striking “subpenas” and inserting “subpoenas”; and

(cc) in the matter following subclause (II), by striking “subpena” and inserting “subpoena”;

(IV) in clause (vi)—

(aa) in the first sentence, by striking “Director” and inserting “appropriate Federal banking agency”; and

(bb) in the second sentence, by striking “Director” and inserting “Comptroller”;

(V) in clause (vii)—

(aa) in the first sentence, by striking “subpena” and inserting “subpoena”;

(bb) in the second sentence, by striking “subpenaed” and inserting “subpoenaed”; and

(cc) in the third sentence, by striking “Director” and inserting “appropriate Federal banking agency”;

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking “Director of the Office of Thrift Supervision” and inserting “appropriate Federal banking agency”;

(bb) by striking “any insured savings association” and inserting “an insured savings association”; and

(cc) by striking “Director determines, in the Director’s discretion” and inserting “appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency”;

(II) in subparagraph (B), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(III) in subparagraphs (C) and (D), by striking “Director” and inserting “appropriate Federal banking agency”;

(IV) in subparagraph (E)—

(aa) in clause (ii)—

(AA) in the clause heading, by striking “OR RTC”; and

(BB) by striking “or the Resolution Trust Corporation, as appropriate,” each place that term appears; and

(bb) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and

(iii) in paragraph (3)—

(I) in subparagraph (A), by striking “Director” each place that term appears and inserting “Comptroller”; and

(II) in subparagraph (B)—

- (aa) in the subparagraph heading, by striking “OR RTC”;
- (bb) by striking “Corporation or the Resolution Trust”; and
- (cc) by striking “Director” and inserting “Comptroller”;
- (iv) in paragraph (4), by striking “Director” and inserting “appropriate Federal banking agency”;
- (v) in paragraph (6)—

- (I) in subparagraph (A), by striking “Director” and inserting “Comptroller”; and

- (II) in subparagraphs (B) and (C), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
- (vi) in paragraph (7)—

- (I) in subparagraphs (A), (B), and (D), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

- (II) in subparagraph (C), by striking “Director” and inserting “Federal Deposit Insurance Corporation or the Comptroller, as appropriate,”; and

- (III) by striking subparagraph (E) and inserting the following:

“(E) ADMINISTRATION BY THE COMPTROLLER AND THE CORPORATION.—The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.”;

(E) in subsection (e)(2), strike “Director” and insert “Comptroller”;

(F) in subsection (i)—

- (i) by striking “Director”, each place such term appears, and inserting “Comptroller”;

- (ii) in paragraph (2), in the heading, by striking “DIRECTOR” and inserting “COMPTROLLER”;

- (iii) in paragraph (5)(A), by striking “of the Currency”; and

- (iv) except as provided in clauses (i) through (iii), by striking “Director” each place such term appears and inserting “Comptroller”;

(G) in subsection (o)—

- (i) in paragraph (1), by striking “Director” and inserting “Comptroller”; and

- (ii) in paragraph (2)(B), by striking “Director’s determination” and inserting “determination of the Comptroller”;

(H) in subsections (m), (n), (o), and (p), by striking “Director”, each place such term appears, and inserting “Comptroller”;

(I) in subsection (q)—

- (i) in paragraph (6), by striking “of Governors of the Federal Reserve System”;

- (ii) by striking “Director” each place that term appears and inserting “Board”; and

- (iii) by inserting “in consultation with the Comptroller and the Corporation,” before “considers”;
- (J) in subsection (r)(3), by striking “Director” and inserting “Comptroller of the Currency”;
- (K) in subsection (s)—
 - (i) in paragraph (1), strike “Director” and insert “Comptroller of the Currency”;
 - (ii) in paragraph (2), strike “Director” and insert “Comptroller of the Currency”;
 - (iii) in paragraph (3), by striking “Director’s discretion, the Director” and inserting “discretion of the appropriate Federal banking agency, the appropriate Federal banking agency,”;
 - (iv) in paragraph (4), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and
 - (v) in paragraph (5)—
 - (I) by striking “Director”, each place such term appears, and inserting “appropriate Federal banking agency”; and
 - (II) by striking “Director’s approval” and inserting “approval of the appropriate Federal banking agency”;
- (L) in subsection (t)—
 - (i) in paragraph (1), by striking subparagraph (D);
 - (ii) by striking paragraph (3) and inserting the following:

“(3) [Repealed].”;
 - (iii) in paragraph (5)—
 - (I) in subparagraph (B), by striking “Corporation, in its sole discretion” and inserting “appropriate Federal banking agency, in the sole discretion of the appropriate Federal banking agency”; and
 - (II) by striking subparagraph (D);
 - (iv) in paragraph (6)—
 - (I) by striking subparagraph (A) and inserting the following:

“(A) [Reserved].”;
 - (II) in subparagraph (B), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
 - (III) in subparagraph (C)—
 - (aa) in clause (i), by striking “Director’s prior approval” and inserting “prior approval of the appropriate Federal banking agency”;
 - (bb) in clause (ii), by striking “Director’s discretion” and inserting “discretion of the appropriate Federal banking agency”; and
 - (cc) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
 - (IV) in subparagraph (E), by striking “Director shall” and inserting “appropriate Federal banking agency may”; and
 - (V) in subparagraph (F), by striking “Director” and all that follows through the end of the

subparagraph and inserting “appropriate Federal banking agency under this Act or any other provision of law.”;

(v) in paragraph (7), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(vi) by striking paragraph (8) and inserting the following:

“(8) [Repealed].”;

(vii) in paragraph (9)—

(I) in subparagraph (A), by striking “Director” and inserting “Comptroller”;

(II) in subparagraph (C), by striking “of the Currency”; and

(III) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(viii) except as provided in clauses (i) through (vii), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(M) in subsection (u), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(N) in subsection (v)—

(i) in paragraph (2), by striking “Director’s determinations” and inserting “determinations of the appropriate Federal banking agency”; and

(ii) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(O) in subsection (w)(1)—

(i) in subparagraph (A)(II), by striking “Director’s intention” and inserting “intention of the Comptroller”; and

(ii) in subparagraph (B), by striking “Director’s intention” and inserting “intention of the Comptroller”; and

(P) except as provided in subparagraphs (A) through (J), by striking “Director” each place that term appears and inserting “Comptroller”;

(6) in section 8 (12 U.S.C. 1466a), by striking “Director” each place that term appears and inserting “Comptroller”;

(7) in section 9 (12 U.S.C. 1467)—

(A) in subsection (a), by striking “assessed by the Director” and all that follows through the end of the subsection and inserting the following: “assessed by—

“(1) the Comptroller, against each such Federal savings association, as the Comptroller deems necessary or appropriate; and

“(2) the Corporation, against each such State savings association, as the Corporation deems necessary or appropriate.”;

(B) in subsection (b), by striking “Director”, each place such term appears, and inserting “Comptroller or Corporation, as appropriate”;

(C) in subsection (e)—

- (i) by striking “Only the Director” and inserting “The Comptroller”; and
- (ii) by striking “Director’s designee” and inserting “designee of the Comptroller”;
- (D) by striking subsection (f) and inserting the following:
 - “(f) [Reserved].”;
 - (E) in subsection (g)—
 - (i) in paragraph (1), by striking “Director” and inserting “appropriate Federal banking agency”; and
 - (ii) in paragraph (2), by striking “Director, or the Corporation, as the case may be,” and inserting “appropriate Federal banking agency for the savings association”;
 - (F) in subsection (i), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
 - (G) in subsection (j), by striking “Director’s sole discretion” and inserting “sole discretion of the appropriate Federal banking agency”;
 - (H) in subsection (k), by striking “Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act,” and inserting “appropriate Federal banking agency may assess against an institution”; and
 - (I) except as provided in subparagraphs (A) through (G), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
- (8) in section 10 (12 U.S.C. 1467a)—
 - (A) in subsection (a)(1), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
 - (B) in subsection (b)—
 - (i) in paragraph (2), by striking “and the regional office of the Director of the district in which its principal office is located,”; and
 - (ii) in paragraph (6), by striking “Director’s own motion or application” and inserting “motion or application of the Board”;
 - (C) in subsection (c)—
 - (i) in paragraph (2)(F), by striking “of Governors of the Federal Reserve System”;
 - (ii) in paragraph (4)(B), in the subparagraph heading, by striking “BY DIRECTOR”;
 - (iii) in paragraph (6)(D), in the subparagraph heading, by striking “BY DIRECTOR”; and
 - (iv) in paragraph (9)(E), by inserting “(in consultation with the appropriate Federal banking agency)” after “including a determination”;
 - (D) in subsection (g)(5)(B), by striking “the Director’s discretion” and inserting “the discretion of the Board”;
 - (E) in subsection (l), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
 - (F) in subsection (m), by striking “Director” and inserting “appropriate Federal banking agency”;

(G) in subsection (p)—

(i) in paragraph (1)—

(I) by striking “Director determines” the 1st place such term appears and inserting “Board or the appropriate Federal banking agency for the savings association determines”;

(II) by striking “Director may” and inserting “Board may”; and

(III) by striking “Director determines” the 2nd place such term appears and inserting “Board, in consultation with the appropriate Federal banking agency for the savings association determines”; and

(ii) in paragraph (2), by striking “Director”, each place such term appears, and inserting “Board”;

(H) in subsection (q), by striking “Director”, each place such term appears, and inserting “Board”;

(I) in subsection (r), by striking “Director”, each place such term appears, and inserting “Board or appropriate Federal banking agency”;

(J) in subsection (s)—

(i) in paragraph (2)—

(I) in subparagraph (B)(ii), by striking “Director’s judgment” and inserting “judgment of the appropriate Federal banking agency for the savings association”; and

(II) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency for the savings association”; and

(ii) in paragraph (4), by striking “Director” and inserting “Comptroller”; and

(K) except as provided in subparagraphs (A) through (J), by striking “Director” each place that term appears and inserting “Board”;

(9) in section 11 (12 U.S.C. 1468), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(10) in section 12 (12 U.S.C. 1468a), by striking “the Director” and inserting “a Federal banking agency”; and

(11) in section 13 (12 U.S.C. 1468a) is amended by striking “Director” and inserting “a Federal banking agency”. 12 USC 1468b.

SEC. 370. HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended—

(1) in the matter preceding paragraph (1), by striking “and the Director of the Office of Thrift Supervision” and inserting “, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation”; and

(2) in paragraph (3), by striking “Board” and inserting “Agency”.

SEC. 371. HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.

Section 543 of the Housing and Community Development Act of 1992 (Public Law 102-550; 106 Stat. 3798) is amended—

(1) in subsection (c)(1)—

(A) by striking subparagraphs (D) through (F); and

12 USC 1707
note.

(B) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respectively; and
(2) in subsection (f)—

(A) in paragraph (2), by striking “the Office of Thrift Supervision,” each place that term appears; and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking “the Office of Thrift Supervision,”; and

(ii) in subparagraph (D), by striking “Office of Thrift Supervision,”.

SEC. 372. HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.

Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p–1) is amended in the first sentence, by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

SEC. 373. NATIONAL HOUSING ACT.

Section 202(f) of the National Housing Act (12 U.S.C. 1708(f)) is amended—

(1) by striking paragraph (5) and inserting the following:
“(5) if the mortgagee is a national bank, a subsidiary or affiliate of such bank, a Federal savings association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency,”;

(2) in paragraph (6), by adding “and” at the end;

(3) in paragraph (7)—

(A) by inserting “or State savings association” after “State bank”; and

(B) by striking “; and” and inserting a period; and

(4) by striking paragraph (8).

SEC. 374. NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8105(c)(3)) is amended by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

SEC. 375. PUBLIC LAW 93–100.

Section 5(d) of Public Law 93–100 (12 U.S.C. 1470(a)) is amended—

(1) in paragraph (1), by striking “Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State non-member insured banks” and inserting “appropriate Federal banking agency, with respect to the institutions subject to the jurisdiction of each such agency,”; and

(2) in paragraph (2), by striking “supervisory” and inserting “banking”.

SEC. 376. SECURITIES EXCHANGE ACT OF 1934.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3(a)(34) (15 U.S.C. 78c(a)(34))—

(A) in subparagraph (A)—

(i) in clause (i), by striking “or a subsidiary or a department or division of any such bank” and inserting “a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association”;

(ii) in clause (ii), by striking “or a subsidiary or a department or division of such subsidiary” and inserting “a subsidiary or a department or division of such subsidiary, or a savings and loan holding company”;

(iii) in clause (iii), by striking “or a subsidiary or department or division thereof,” and inserting “a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and”;

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(B) in subparagraph (B)—

(i) in clause (i), by striking “or a subsidiary of any such bank” and inserting “a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association”;

(ii) in clause (ii), by striking “or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph” and inserting “a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company”;

(iii) in clause (iii), by striking “or a subsidiary thereof,” and inserting “a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and”;

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(C) in subparagraph (C)—

(i) in clause (i), by striking “bank” and inserting “bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(ii) in clause (ii), by striking “or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph” and inserting “a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company”;

(iii) in clause (iii), by striking “System)” and inserting, “System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and”;

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(D) in subparagraph (D)—

(i) in clause (i), by inserting after “bank” the following: “or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(ii) in clause (ii), by adding “and” at the end;

(iii) by striking clause (iii);

(iv) by redesignating clause (iv) as clause (iii); and

(v) in clause (iii), as so redesignated, by inserting after “bank” the following: “or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(E) in subparagraph (F)—

(i) in clause (i), by inserting after “bank” the following: “or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(ii) by striking clause (ii);

(iii) by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively; and

(iv) in clause (iii), as so redesignated, by inserting before the semicolon the following: “or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(F) in subparagraph (G)—

(i) in clause (i), by inserting after “national bank” the following: “, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,”;

(ii) in clause (iii)—

(I) by inserting after “bank)” the following: “, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,”; and

- (II) by adding “and” at the end;
- (iii) by striking clause (iv); and
- (iv) by redesignating clause (v) as clause (iv); and
- (G) in the undesignated matter following subparagraph (H), by striking “, and the term ‘District of Columbia savings and loan association’ means any association subject to examination and supervision by the Office of Thrift Supervision under section 8 of the Home Owners’ Loan Act of 1933”;
- (2) in section 12(i) (15 U.S.C. 78l(i))—
 - (A) in paragraph (1), by inserting after “national banks” the following: “and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation”;
 - (B) by striking “(3)” and all that follows through “vested in the Office of Thrift Supervision” and inserting “and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation”; and
 - (C) in the second sentence, by striking “the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision” and inserting “and the Federal Deposit Insurance Corporation”;
- (3) in section 15C(g)(1) (15 U.S.C. 78o–5(g)(1)), by striking “the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,”; and
- (4) in section 23(b)(1) (15 U.S.C. 78w(b)(1)), by striking “, other than the Office of Thrift Supervision,”.

SEC. 377. TITLE 18, UNITED STATES CODE.

Title 18, United States Code, is amended—

- (1) in section 212(c)(2)—
 - (A) by striking subparagraph (C); and
 - (B) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively;
- (2) in section 657, by striking “Office of Thrift Supervision, the Resolution Trust Corporation,”;
- (3) in section 981(a)(1)(D)—
 - (A) by striking “Resolution Trust Corporation,”; and
 - (B) by striking “or the Office of Thrift Supervision”;
- (4) in section 982(a)(3)—
 - (A) by striking “Resolution Trust Corporation,”; and
 - (B) by striking “or the Office of Thrift Supervision”;
- (5) in section 1006—
 - (A) by striking “Office of Thrift Supervision,”; and
 - (B) by striking “the Resolution Trust Corporation,”;
- (6) in section 1014—
 - (A) by striking “the Office of Thrift Supervision”; and
 - (B) by striking “the Resolution Trust Corporation,”;
- and
- (7) in section 1032(1)—
 - (A) by striking “the Resolution Trust Corporation,”;
- and
- (B) by striking “or the Director of the Office of Thrift Supervision”.

SEC. 378. TITLE 31, UNITED STATES CODE.

Title 31, United States Code, is amended—

(1) in section 321—

(A) in subsection (c)—

(i) in paragraph (1), by adding “and” at the end;

(ii) in paragraph (2), by striking “; and” and inserting a period; and

(iii) by striking paragraph (3); and

(B) by striking subsection (e); and

(2) in section 714(a), by striking “the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.” and inserting “and the Office of the Comptroller of the Currency.”.

Private Fund
Investment
Advisers
Registration Act
of 2010.
15 USC 80b–20
note.

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

SEC. 401. SHORT TITLE.

This title may be cited as the “Private Fund Investment Advisers Registration Act of 2010”.

SEC. 402. DEFINITIONS.

(a) INVESTMENT ADVISERS ACT OF 1940 DEFINITIONS.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

“(29) The term ‘private fund’ means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

“(30) The term ‘foreign private adviser’ means any investment adviser who—

“(A) has no place of business in the United States;

“(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

“(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

“(D) neither—

“(i) holds itself out generally to the public in the United States as an investment adviser; nor

“(ii) acts as—

“(I) an investment adviser to any investment company registered under the Investment Company Act of 1940; or

“(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.”.

15 USC 80b–2
note.

(b) OTHER DEFINITIONS.—As used in this title, the terms “investment adviser” and “private fund” have the same meanings as in section 202 of the Investment Advisers Act of 1940, as amended by this title.

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(1) in paragraph (1), by inserting “, other than an investment adviser who acts as an investment adviser to any private fund,” before “all of whose”;

(2) by striking paragraph (3) and inserting the following:

“(3) any investment adviser that is a foreign private adviser;”; and

(3) in paragraph (5), by striking “or” at the end;

(4) in paragraph (6)—

(A) by striking “any investment adviser” and inserting “(A) any investment adviser”;

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(C) in clause (ii) (as so redesignated), by striking the period at the end and inserting “; or”; and

(D) by adding at the end the following:

“(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission.”.

(5) by adding at the end the following:

“(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-54), who solely advises—

“(A) small business investment companies that are licensees under the Small Business Investment Act of 1958;

“(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

“(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending.”.

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

“(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

“(1) IN GENERAL.—The Commission may require any investment adviser registered under this title—

“(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised

by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the ‘Council’); and

“(B) to provide or make available to the Council those reports or records or the information contained therein.

“(2) TREATMENT OF RECORDS.—The records and reports of any private fund to which an investment adviser registered under this title provides investment advice shall be deemed to be the records and reports of the investment adviser.

“(3) REQUIRED INFORMATION.—The records and reports required to be maintained by an investment adviser and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

“(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

“(B) counterparty credit risk exposure;

“(C) trading and investment positions;

“(D) valuation policies and practices of the fund;

“(E) types of assets held;

“(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

“(G) trading practices; and

“(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

“(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

“(5) FILING OF RECORDS.—The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

“(6) EXAMINATION OF RECORDS.—

“(A) PERIODIC AND SPECIAL EXAMINATIONS.—The Commission—

“(i) shall conduct periodic inspections of the records of private funds maintained by an investment adviser registered under this title in accordance with a schedule established by the Commission; and

“(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

“(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this title shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

“(7) INFORMATION SHARING.—

“(A) IN GENERAL.—The Commission shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

“(B) CONFIDENTIALITY.—The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.”

“(8) COMMISSION CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

“(A) to withhold information from Congress, upon an agreement of confidentiality; or

“(B) prevent the Commission from complying with—

“(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

“(ii) an order of a court of the United States in an action brought by the United States or the Commission.

“(9) OTHER RECIPIENTS CONFIDENTIALITY.—Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).

“(10) PUBLIC INFORMATION EXCEPTION.—

“(A) IN GENERAL.—The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts

ascertained during an examination, as provided by section 210(b) of this title.

“(B) PROPRIETARY INFORMATION.—For purposes of this paragraph, proprietary information includes sensitive, non-public information regarding—

“(i) the investment or trading strategies of the investment adviser;

“(ii) analytical or research methodologies;

“(iii) trading data;

“(iv) computer hardware or software containing intellectual property; and

“(v) any additional information that the Commission determines to be proprietary.

“(11) ANNUAL REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.”.

SEC. 405. DISCLOSURE PROVISION AMENDMENT.

Section 210(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10(c)) is amended by inserting before the period at the end the following: “or for purposes of assessment of potential systemic risk”.

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: “, including rules and regulations defining technical, trade, and other terms used in this title, except that the Commission may not define the term ‘client’ for purposes of paragraphs (1) and (2) of section 206 to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser”; and

(2) by adding at the end the following:

“(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under this title and the Commodity Exchange Act (7 U.S.C. 1a et seq.).”.

Consultation.
Deadline.

SEC. 407. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

“(1) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after the date of enactment of this subsection, the Commission

Regulations.

shall issue final rules to define the term ‘venture capital fund’ for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.”.

Records.

SEC. 408. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

“(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

“(1) IN GENERAL.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than \$150,000,000.

“(2) REPORTING.—The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

Records.

“(n) REGISTRATION AND EXAMINATION OF MID-SIZED PRIVATE FUND ADVISERS.—In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.”.

Regulations.
Procedures.

SEC. 409. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking “or (G)” and inserting the following: “; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)”.

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term “family office” shall provide for an exemption that—

15 USC 80b–2
note.

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act, and the grandfathering provisions in paragraph (3);

(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices; and

(3) does not exclude any person who was not registered or required to be registered under the Investment Advisers Act of 1940 on January 1, 2010 from the definition of the term “family office”, solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to—

Deadline.

(A) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who—

(i) have invested with the family office before January 1, 2010; and

(ii) are accredited investors, as defined in Regulation D of the Commission (or any successor thereto) under the Securities Act of 1933, or, as the Commission may prescribe by rule, the successors-in-interest thereto;

(B) any company owned exclusively and controlled by members of the family of the family office, or as the Commission may prescribe by rule;

(C) any investment adviser registered under the Investment Adviser Act of 1940 that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice.

(c) **ANTIFRAUD AUTHORITY.**—A family office that would not be a family office, but for subsection (b)(3), shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Investment Advisers Act of 1940.

SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

“(2) **TREATMENT OF MID-SIZED INVESTMENT ADVISERS.**—

“(A) **IN GENERAL.**—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 203.

“(B) **COVERED PERSONS.**—An investment adviser described in this subparagraph is an investment adviser that—

“(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

“(ii) has assets under management between—

“(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

“(II) \$100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.”.

SEC. 411. CUSTODY OF CLIENT ASSETS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by adding at the end the following new section:

“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.

15 USC 80b–18b.

“An investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.”.

SEC. 412. COMPTROLLER GENERAL STUDY ON CUSTODY RULE COSTS.

The Comptroller General of the United States shall—

(1) conduct a study of—

(A) the compliance costs associated with the current Securities and Exchange Commission rules 204–2 (17 C.F.R. Parts 275.204–2) and rule 206(4)–2 (17 C.F.R. 275.206(4)–2) under the Investment Advisers Act of 1940 regarding custody of funds or securities of clients by investment advisers; and

(B) the additional costs if subsection (b)(6) of rule 206(4)–2 (17 C.F.R. 275.206(4)–2(b)(6)) relating to operational independence were eliminated; and

(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 3 years after the date of enactment of this Act.

Reports.
Deadline.

SEC. 413. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

15 USC 77b note.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than \$1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be \$1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term “accredited investor”, as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the

protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term “accredited investor”, excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

Deadlines.

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term “accredited investor”, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term “accredited investor”, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

SEC. 414. RULE OF CONSTRUCTION RELATING TO THE COMMODITIES EXCHANGE ACT.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is further amended by adding at the end the following new section:

15 USC 80b–18c.

“SEC. 224. RULE OF CONSTRUCTION RELATING TO THE COMMODITIES EXCHANGE ACT.

“Nothing in this title shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Commodity Futures Trading Commission or any private party, arising under the Commodity Exchange Act (7 U.S.C. 1 et seq.) governing commodity pools, commodity pool operators, or commodity trading advisors.”.

SEC. 415. GAO STUDY AND REPORT ON ACCREDITED INVESTORS.

The Comptroller General of the United States shall conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study not later than 3 years after the date of enactment of this Act.

SEC. 416. GAO STUDY ON SELF-REGULATORY ORGANIZATION FOR PRIVATE FUNDS.

The Comptroller General of the United States shall—

(1) conduct a study of the feasibility of forming a self-regulatory organization to oversee private funds; and

(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 1 year after the date of enactment of this Act.

Reports.
Deadline.

SEC. 417. COMMISSION STUDY AND REPORT ON SHORT SELLING.

(a) STUDIES.—The Division of Risk, Strategy, and Financial Innovation of the Commission shall conduct—

(1) a study, taking into account current scholarship, on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes and the incidence of—

(A) the failure to deliver shares sold short; or

(B) delivery of shares on the fourth day following the short sale transaction; and

(2) a study of—

(A) the feasibility, benefits, and costs of requiring reporting publicly, in real time short sale positions of publicly listed securities, or, in the alternative, reporting such short positions in real time only to the Commission and the Financial Industry Regulatory Authority; and

(B) the feasibility, benefits, and costs of conducting a voluntary pilot program in which public companies will agree to have all trades of their shares marked “short”, “market maker short”, “buy”, “buy-to-cover”, or “long”, and reported in real time through the Consolidated Tape.

(b) REPORTS.—The Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(1) on the results of the study required under subsection (a)(1), including recommendations for market improvements, not later than 2 years after the date of enactment of this Act; and

(2) on the results of the study required under subsection (a)(2), not later than 1 year after the date of enactment of this Act.

SEC. 418. QUALIFIED CLIENT STANDARD.

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(e)) is amended by adding at the end the following: “With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000.”

Order.
Deadlines.

15 USC 80b–2
note.
Effective date.

SEC. 419. TRANSITION PERIOD.

Except as otherwise provided in this title, this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission.

TITLE V—INSURANCE

Federal
Insurance Office
Act of 2010.
31 USC 301 note.

Subtitle A—Federal Insurance Office**SEC. 501. SHORT TITLE.**

This subtitle may be cited as the “Federal Insurance Office Act of 2010”.

SEC. 502. FEDERAL INSURANCE OFFICE.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of subtitle I of title 31, United States Code, is amended—

(1) by redesignating section 312 as section 315;

(2) by redesignating section 313 as section 312; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

“SEC. 313. FEDERAL INSURANCE OFFICE.

“(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Federal Insurance Office.

“(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

“(c) FUNCTIONS.—

“(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office, pursuant to the direction of the Secretary, shall have the authority—

“(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

“(B) to monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance;

“(C) to recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

“(D) to assist the Secretary in administering the Terrorism Insurance Program established in the Department

of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

“(E) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating covered agreements (as such term is defined in subsection (r));

“(F) to determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements;

“(G) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

“(H) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

“(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

“(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Stability Oversight Council established under the Financial Stability Act of 2010.

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except—

“(1) health insurance, as determined by the Secretary in coordination with the Secretary of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91);

“(2) long-term care insurance, except long-term care insurance that is included with life or annuity insurance components, as determined by the Secretary in coordination with the Secretary of Health and Human Services, and in the case of long-term care insurance that is included with such components, the Secretary shall coordinate with the Secretary of Health and Human Services in performing the functions of the Office; and

“(3) crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

“(e) GATHERING OF INFORMATION.—

“(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

“(A) receive and collect data and information on and from the insurance industry and insurers;

“(B) enter into information-sharing agreements;

“(C) analyze and disseminate data and information; and

“(D) issue reports regarding all lines of insurance except health insurance.

“(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—

“(A) IN GENERAL.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the

Office may reasonably require in carrying out the functions described under subsection (c).

“(B) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term ‘insurer’ means any entity that writes insurance or reinsures risks and issues contracts or policies in 1 or more States.

“(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

“(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, and may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act), in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

“(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

“(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Office may be made available

to State insurance regulators, individually or collectively, through an information-sharing agreement that—

“(i) shall comply with applicable Federal law; and

“(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

“(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

“(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

“(f) PREEMPTION OF STATE INSURANCE MEASURES.—

“(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

“(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

“(B) is inconsistent with a covered agreement.

“(2) DETERMINATION.—

“(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

“(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

“(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

“(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

“(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

“(v) consider any comments received.

“(B) SCOPE OF REVIEW.—For purposes of this subsection, any determination of the Director regarding State insurance measures, and any preemption under paragraph (1) as a result of such determination, shall be limited

Federal Register,
publication.

Comments.

to the subject matter contained within the covered agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

“(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

“(i) notify the appropriate State of the determination and the extent of the inconsistency;

“(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

“(iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.

“(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

“(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(B) notify the appropriate State.

“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

“(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

“(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.

“(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

“(j) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) preempt—

“(A) any State insurance measure that governs any insurer’s rates, premiums, underwriting, or sales practices;

“(B) any State coverage requirements for insurance;

“(C) the application of the antitrust laws of any State to the business of insurance; or

“(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer;

“(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

“(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

“(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

“(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multinational regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

“(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

“(n) ANNUAL REPORTS TO CONGRESS.—

“(1) SECTION 313(f) REPORTS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

“(2) INSURANCE INDUSTRY.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the insurance industry and any other information as deemed relevant by the Director or requested by such Committees.

“(o) REPORTS ON U.S. AND GLOBAL REINSURANCE MARKET.—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

“(1) a report received not later than September 30, 2012, describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States; and

“(2) a report received not later than January 1, 2013, and updated not later than January 1, 2015, describing the impact of part II of the Nonadmitted and Reinsurance Reform Act of 2010 on the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions.

“(p) STUDY AND REPORT ON REGULATION OF INSURANCE.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

“(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

“(A) Systemic risk regulation with respect to insurance.

“(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

“(C) Consumer protection for insurance products and practices, including gaps in State regulation.

“(D) The degree of national uniformity of State insurance regulation.

“(E) The regulation of insurance companies and affiliates on a consolidated basis.

“(F) International coordination of insurance regulation.

“(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

“(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

“(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

“(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

“(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

“(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

“(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

“(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

“(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

“(iii) in the case of life insurance companies, on the loss of the special status of separate account assets and separate account liabilities; and

“(iv) on the international competitiveness of insurance companies.

“(G) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

“(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.

“(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Director shall consult with

the State insurance regulators, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

“(q) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and any other resource of the Department of the Treasury available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

“(r) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

“(2) COVERED AGREEMENT.—The term ‘covered agreement’ means a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

“(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

“(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

“(3) INSURER.—The term ‘insurer’ means any person engaged in the business of insurance, including reinsurance.

“(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term ‘Federal financial regulatory agency’ means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

“(5) NON-UNITED STATES INSURER.—The term ‘non-United States insurer’ means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

“(6) OFFICE.—The term ‘Office’ means the Federal Insurance Office established by this section.

“(7) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

“(8) STATE INSURANCE REGULATOR.—The term ‘State insurance regulator’ means any State regulatory authority responsible for the supervision of insurers.

“(9) SUBSTANTIALLY EQUIVALENT TO THE LEVEL OF PROTECTION ACHIEVED.—The term ‘substantially equivalent to the level of protection achieved’ means the prudential measures of a foreign government, authority, or regulatory entity achieve a similar outcome in consumer protection as the outcome achieved under State insurance or reinsurance regulation.

“(10) UNITED STATES INSURER.—The term ‘United States insurer’ means—

“(A) an insurer that is organized under the laws of a State; or

“(B) a United States branch of a non-United States insurer.

“(s) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

“SEC. 314. COVERED AGREEMENTS.

“(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

“(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

“(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

“(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

“(A) the nature of the agreement;

“(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

“(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

“(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

“(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

“(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.”

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking “; and” and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.”

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

“Sec. 312. Terrorism and financial intelligence.

“Sec. 313. Federal Insurance Office.

Time period.

“Sec. 314. Covered agreements,
“Sec. 315. Continuing in office.”.

Subtitle B—State-Based Insurance Reform

Nonadmitted and
Reinsurance
Reform Act
of 2010.
15 USC 8201
note.

SEC. 511. SHORT TITLE.

This subtitle may be cited as the “Nonadmitted and Reinsurance Reform Act of 2010”.

SEC. 512. EFFECTIVE DATE.

15 USC 8201
note.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

15 USC 8201.

(a) HOME STATE’S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured’s home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

Applicability.

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured’s home State may require surplus lines brokers and insureds who

have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

15 USC 8202.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

15 USC 8203.

Time period.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

15 USC 8204.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS. 15 USC 8205.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

Written request.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) **CONTENTS.**—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) **CONSULTATION WITH NAIC.**—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) **REPORT.**—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective date of this subtitle.

SEC. 527. DEFINITIONS.

15 USC 8206.

For purposes of this part, the following definitions shall apply:

(1) **ADMITTED INSURER.**—The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) **AFFILIATE.**—The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) **AFFILIATED GROUP.**—The term “affiliated group” means any group of entities that are all affiliated.

(4) **CONTROL.**—An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) **EXEMPT COMMERCIAL PURCHASER.**—The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

Effective dates.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) **HOME STATE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) **AFFILIATED GROUPS.**—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) **INDEPENDENTLY PROCURED INSURANCE.**—The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

(8) **NAIC.**—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(9) **NONADMITTED INSURANCE.**—The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) **NON-ADMITTED INSURANCE MODEL ACT.**—The term “Non-Admitted Insurance Model Act” means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) **NONADMITTED INSURER.**—The term “nonadmitted insurer”—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

(12) **PREMIUM TAX.**—The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) **QUALIFIED RISK MANAGER.**—The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any

other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) SURPLUS LINES BROKER.—The term “surplus lines broker” means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(16) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART II—REINSURANCE

SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS. 15 USC 8221.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY. 15 USC 8222.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS. 15 USC 8223.

For purposes of this part, the following definitions shall apply:

(1) CEDING INSURER.—The term “ceding insurer” means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms “State of domicile” and “domiciliary State” mean, with respect to an insurer or

reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(4) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) REINSURER.—

(A) IN GENERAL.—The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART III—RULE OF CONSTRUCTION

15 USC 8231.

SEC. 541. RULE OF CONSTRUCTION.

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

15 USC 8232.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

Bank and
Savings
Association
Holding
Company and
Depository
Institution
Regulatory
Improvements
Act of 2010.
12 USC 1811
note.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the “Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010”.

12 USC 1815
note.

SEC. 602. DEFINITION.

For purposes of this title, a company is a “commercial firm” if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined

in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.

SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

(a) **MORATORIUM.**—

12 USC 1815
note.

(1) **DEFINITIONS.**—In this subsection—

(A) the term “credit card bank” means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(B) the term “industrial bank” means an institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(C) the term “trust bank” means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

(2) **MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.**—

The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) that is received after November 23, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

(3) **CHANGE IN CONTROL.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

(B) **EXCEPTIONS.**—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank—

(i) **that—**

(I) is in danger of default, as determined by the appropriate Federal banking agency;

(II) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency; or

(III) results from an acquisition of voting shares of a publicly traded company that controls an industrial bank, credit card bank, or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

(ii) that has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or State law, including section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act.

(b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to determine whether it is necessary, in order to strengthen the safety and soundness of institutions or the stability of the financial system, to eliminate the exceptions under section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) for institutions described in—

(A) section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E));

(B) section 2(a)(5)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(F));

(C) section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(D) section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(E) section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(F) section 2(c)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(B)).

(2) CONTENT OF STUDY.—

(A) IN GENERAL.—The study required under paragraph (1), with respect to the institutions referenced in each of subparagraphs (A) through (E) of paragraph (1), shall, to the extent feasible be based on information provided to the Comptroller General by the appropriate Federal or State regulator, and shall—

(i) identify the types and number of institutions excepted from section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) under each of the subparagraphs described in subparagraphs (A) through (E) of paragraph (1);

(ii) generally describe the size and geographic locations of the institutions described in clause (i);

(iii) determine the extent to which the institutions described in clause (i) are held by holding companies that are commercial firms;

(iv) determine whether the institutions described in clause (i) have any affiliates that are commercial firms;

(v) identify the Federal banking agency responsible for the supervision of the institutions described in clause (i) on and after the transfer date;

(vi) determine the adequacy of the Federal bank regulatory framework applicable to each category of institution described in clause (i), including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between

an institution, the holding company of the institution, and any other affiliate of the institution; and

(vii) evaluate the potential consequences of subjecting the institutions described in clause (i) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of each category of institution, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(B) SAVINGS ASSOCIATIONS.—With respect to institutions described in paragraph (1)(F), the study required under paragraph (1) shall—

(i) determine the adequacy of the Federal bank regulatory framework applicable to such institutions, including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

(ii) evaluate the potential consequences of subjecting the institutions described in paragraph (1)(F) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of such institutions, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS BY BANK HOLDING COMPANIES.—Sections 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended—

(1) by striking subclause (A)(ii) and inserting the following:

“(ii) compliance by the bank holding company or subsidiary with—

“(I) this Act;

“(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

“(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.”;

(2) by striking subparagraph (B) and inserting the following:

“(B) USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.—The Board shall, to the fullest extent possible, use—

“(i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

“(ii) externally audited financial statements of the bank holding company or subsidiary;

“(iii) information otherwise available from Federal or State regulatory agencies; and

“(iv) information that is otherwise required to be reported publicly.”; and

(3) by adding at the end the following:

“(C) AVAILABILITY.—Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).”.

(b) EXAMINATIONS OF BANK HOLDING COMPANIES.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as follows:

“(2) EXAMINATIONS.—

“(A) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

“(i) inform the Board of—

“(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

“(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—

“(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

“(bb) the stability of the financial system of the United States; and

“(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

“(ii) monitor the compliance of the bank holding company and the subsidiary with—

“(I) this Act;

“(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

“(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

“(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on—

“(i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and

“(ii) the reports and other information required under paragraph (1).

“(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

“(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a bank holding company before commencing an examination of the subsidiary under this section; and

“(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.”.

Notice.
Consultation.

(c) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 5(c)(5)(B) (12 U.S.C. 1844(c)(5)(B)), by striking clause (v) and inserting the following:

“(v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities.”; and

(2) by striking section 10A (12 U.S.C. 1848a).

(d) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following:

“(7) FINANCIAL STABILITY.—In every case, the Board shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”.

(e) ACQUISITIONS OF NONBANKS.—

(1) NOTICE PROCEDURES.—Section 4(j)(2)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)(A)) is amended by striking “or unsound banking practices” and inserting “unsound banking practices, or risk to the stability of the United States banking or financial system”.

(2) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—Section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is amended to read as follows:

“(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—

“(i) IN GENERAL.—Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may

commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

“(ii) EXCEPTION.—A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consolidated assets to be acquired by the financial holding company exceed \$10,000,000,000.

“(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if the approval of the Board is not required.”.

(f) BANK MERGER ACT TRANSACTIONS.—Section 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(5)) is amended, in the matter immediately following subparagraph (B), by striking “and the convenience and needs of the community to be served” and inserting “the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system”.

(g) REPORTS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(b)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(2)) is amended—

(1) by striking “Each savings” and inserting the following:

“(A) IN GENERAL.—Each savings”; and

(2) by adding at the end the following:

“(B) USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.—The Board shall, to the fullest extent possible, use—

“(i) reports and other supervisory information that the savings and loan holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

“(ii) externally audited financial statements of the savings and loan holding company or subsidiary;

“(iii) information that is otherwise available from Federal or State regulatory agencies; and

“(iv) information that is otherwise required to be reported publicly.

“(C) AVAILABILITY.—Upon the request of the Board, a savings and loan holding company or a subsidiary of a savings and loan holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).”.

(h) EXAMINATION OF SAVINGS AND LOAN HOLDING COMPANIES.—

(1) DEFINITIONS.—Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is amended by adding at the end the following:

“(10) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term ‘functionally regulated subsidiary’ has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).”.

(2) EXAMINATION.—Section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)) is amended by striking paragraph (4) and inserting the following:

“(4) EXAMINATIONS.—

“(A) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a savings and loan holding company and each subsidiary of a savings and loan holding company system, in order to—

“(i) inform the Board of—

“(I) the nature of the operations and financial condition of the savings and loan holding company and the subsidiary;

“(II) the financial, operational, and other risks within the savings and loan holding company system that may pose a threat to—

“(aa) the safety and soundness of the savings and loan holding company or of any depository institution subsidiary of the savings and loan holding company; or

“(bb) the stability of the financial system of the United States; and

“(III) the systems of the savings and loan holding company for monitoring and controlling the risks described in subclause (II); and

“(ii) monitor the compliance of the savings and loan holding company and the subsidiary with—

“(I) this Act;

“(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

“(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

“(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this subsection, the Board shall, to the fullest extent possible, rely on—

“(i) the examination reports made by other Federal or State regulatory agencies relating to a savings and loan holding company and any subsidiary; and

“(ii) the reports and other information required under paragraph (2).

“(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

“(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a savings and loan holding company before commencing an examination of the subsidiary under this section; and

“(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.”.

Notice.
Consultation.

(i) DEFINITION OF THE TERM “SAVINGS AND LOAN HOLDING COMPANY”.—Section 10(a)(1)(D)(ii) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)(1)(D)(ii)) is amended to read as follows:

“(ii) EXCLUSION.—The term ‘savings and loan holding company’ does not include—

“(I) a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association);

“(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

“(III) a company described in subsection (c)(9)(C) solely by virtue of such company’s control of an intermediate holding company established pursuant to section 10A.”.

12 USC 1462
note.

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 25 the following new section:

12 USC 1831c.

“SEC. 26. ASSURING CONSISTENT OVERSIGHT OF SUBSIDIARIES OF HOLDING COMPANIES.

“(a) DEFINITIONS.—For purposes of this section:

“(1) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(2) FUNCTIONALLY REGULATED SUBSIDIARY.—The term ‘functionally regulated subsidiary’ has the same meaning as in section 5(c)(5) of the Bank Holding Company Act.

“(3) LEAD INSURED DEPOSITORY INSTITUTION.—The term ‘lead insured depository institution’ has the same meaning as in section 2(o)(8) of the Bank Holding Company Act.

“(b) EXAMINATION REQUIREMENTS.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board shall examine the activities of a nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of a depository institution holding company that are permissible for the insured depository institution subsidiaries of the depository institution holding company in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company.

“(c) STATE COORDINATION.—

“(1) CONSULTATION AND COORDINATION.—If a nondepository institution subsidiary is supervised by a State bank supervisor or other State regulatory authority, the Board, in conducting the examinations required in subsection (b), shall consult and coordinate with such State regulator.

“(2) ALTERNATING EXAMINATIONS PERMITTED.—The examinations required under subsection (b) may be conducted in joint or alternating manner with a State regulator, if the Board determines that an examination of a nondepository institution subsidiary conducted by the State carries out the purposes of this section.

“(d) APPROPRIATE FEDERAL BANKING AGENCY BACKUP EXAMINATION AUTHORITY.—

“(1) IN GENERAL.—In the event that the Board does not conduct examinations required under subsection (b) in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted by the lead insured depository institution subsidiary of the depository institution holding company, the appropriate Federal banking agency for the lead insured depository institution may recommend in writing (which shall include a written explanation of the concerns giving rise to the recommendation) that the Board perform the examination required under subsection (b).

“(2) EXAMINATION BY AN APPROPRIATE FEDERAL BANKING AGENCY.—If the Board does not, before the end of the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), begin an examination as required under subsection (b) or provide a written explanation or plan to the appropriate Federal banking agency making such recommendation responding to the concerns raised by the appropriate Federal banking agency for the lead insured depository institution, the appropriate Federal banking agency for the lead insured depository institution may, subject to the Consumer Financial Protection Act of 2010, examine the activities that are permissible for a depository institution subsidiary conducted by such nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of the depository institution holding company as if the nondepository institution subsidiary were an insured depository institution for which the appropriate Federal banking agency of the lead insured depository institution was the appropriate Federal banking agency, to determine whether the activities—

Time period.

“(A) pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company;

“(B) are conducted in accordance with applicable Federal law; and

“(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other material risks of the activities that may pose a material threat to the safety and soundness of the insured depository institution subsidiaries of the holding company.

“(3) AGENCY COORDINATION WITH THE BOARD.—An appropriate Federal banking agency that conducts an examination pursuant to paragraph (2) shall coordinate examination of the activities of nondepository institution subsidiaries described in subsection (b) with the Board in a manner that—

“(A) avoids duplication;

“(B) shares information relevant to the supervision of the depository institution holding company;

“(C) achieves the objectives of subsection (b); and

“(D) ensures that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by such agency and the Board.

“(4) FEE PERMITTED FOR EXAMINATION COSTS.—An appropriate Federal banking agency that conducts an examination or enforcement action pursuant to this section may collect an assessment, fee, or such other charge from the subsidiary as the appropriate Federal banking agency determines necessary or appropriate to carry out the responsibilities of the appropriate Federal banking agency in connection with such examination.

“(e) REFERRALS FOR ENFORCEMENT BY APPROPRIATE FEDERAL BANKING AGENCY.—

“(1) RECOMMENDATION OF ENFORCEMENT ACTION.—The appropriate Federal banking agency for the lead insured depository institution, based upon its examination of a nondepository institution subsidiary conducted pursuant to subsection (d), or other relevant information, may submit to the Board, in writing, a recommendation that the Board take enforcement action against such nondepository institution subsidiary, together with an explanation of the concerns giving rise to the recommendation, if the appropriate Federal banking agency determines (by a vote of its members, if applicable) that the activities of the nondepository institution subsidiary pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company.

Time period.

“(2) BACK-UP AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—If, within the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), the Board does not take enforcement action against the nondepository institution subsidiary or provide a plan for supervisory or enforcement action that is acceptable to the appropriate Federal banking agency that made the recommendation pursuant to paragraph (1), such agency may take the recommended enforcement action against the nondepository institution subsidiary, in the same manner as if the nondepository institution subsidiary were an insured depository institution for which the agency was the appropriate Federal banking agency.

“(f) COORDINATION AMONG APPROPRIATE FEDERAL BANKING AGENCIES.—Each Federal banking agency, prior to or when exercising authority under subsection (d) or (e) shall—

Notice.
Consultation.

“(1) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State bank supervisor (or other State regulatory agency) of the nondepository institution subsidiary of a depository institution holding company that is described in subsection (d) before commencing any examination of the subsidiary;

“(2) to the fullest extent possible—

“(A) rely on the examinations, inspections, and reports of the appropriate Federal banking agency or the State bank supervisor (or other State regulatory agency) of the subsidiary;

“(B) avoid duplication of examination activities, reporting requirements, and requests for information; and

“(C) ensure that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the appropriate Federal banking agencies.

“(g) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting any authority of the Board, the Corporation, or the Comptroller of the Currency under any other provision of law.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the transfer date.

12 USC 1831c
note.

SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

(a) AMENDMENT.—Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking “and” at the end;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following:

“(C) the bank holding company is well capitalized and well managed; and”; and

(4) in subparagraph (D)(ii), as so redesignated, by striking “subparagraphs (A) and (B)” and inserting “subparagraphs (A), (B), and (C)”.

(b) HOME OWNERS’ LOAN ACT AMENDMENT.—Section 10(c)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(c)(2)) is amended by adding at the end the following new subparagraph:

“(H) Any activity that is permissible for a financial holding company (as such term is defined under section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)) to conduct under section 4(k) of the Bank Holding Company Act of 1956 if—

“(i) the savings and loan holding company meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company; and

“(ii) the savings and loan holding company conducts the activity in accordance with the same terms, conditions, and requirements that apply to the conduct of such activity by a bank holding company under the Bank Holding Company Act of 1956 and the Board’s regulations and interpretations under such Act.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

12 USC 1467a
note.

SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended by striking “adequately capitalized and adequately managed” and inserting “well capitalized and well managed”.

(b) **INTERSTATE BANK MERGERS.**—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended by striking “will continue to be adequately capitalized and adequately managed” and inserting “will be well capitalized and well managed”.

12 USC 1831u
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the transfer date.

SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) **AFFILIATE TRANSACTIONS.**—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking subparagraph (D) and inserting the following:

“(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and”; and

(B) in paragraph (7)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: “, including a purchase of assets subject to an agreement to repurchase”;

(ii) in subparagraph (C), by striking “, including assets subject to an agreement to repurchase,”;

(iii) in subparagraph (D)—

(I) by inserting “or other debt obligations” after “acceptance of securities”; and

(II) by striking “or” at the end; and

(iv) by adding at the end the following:

“(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or

“(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate.”;

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “subsidiary” and all that follows through “time of the transaction” and inserting “subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be secured at all times”; and

(ii) in each of subparagraphs (A) through (D), by striking “or letter of credit” and inserting “letter of credit, or credit exposure”;

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(D) in paragraph (2), as so redesignated, by inserting before the period at the end “, or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction”; and

(E) in paragraph (3), as so redesignated—

(i) by inserting “or other debt obligations” after “securities”; and

(ii) by striking “or guarantee” and all that follows through “behalf of,” and inserting “guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to,”;

(3) in subsection (d)(4), in the matter preceding subparagraph (A), by striking “or issuing” and all that follows through “behalf of,” and inserting “issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to,”; and

(4) in subsection (f)—

(A) in paragraph (2)—

(i) by striking “or order”;

(ii) by striking “if it finds” and all that follows through the end of the paragraph and inserting the following: “if—

“(i) the Board finds the exemption to be in the public interest and consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding; and

Notification.

“(ii) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under clause (i), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.”;

Time period.
Notice.

(iii) by striking the Board and inserting the following:

“(A) IN GENERAL.—The Board”; and

(iv) by adding at the end the following:

“(B) ADDITIONAL EXEMPTIONS.—

“(i) NATIONAL BANKS.—The Comptroller of the Currency may, by order, exempt a transaction of a national bank from the requirements of this section if—

“(I) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

Notification.

“(II) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subclause (I), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

Time period.
Notice.

“(ii) STATE BANKS.—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State nonmember bank, and the Board may, by order, exempt a transaction of a State member bank, from the requirements of this section if—

“(I) the Board and the Federal Deposit Insurance Corporation jointly find that the exemption is in the public interest and consistent with the purposes of this section; and

“(II) the Federal Deposit Insurance Corporation finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund.”; and

(B) by adding at the end the following:

“(4) AMOUNTS OF COVERED TRANSACTIONS.—The Board may issue such regulations or interpretations as the Board determines are necessary or appropriate with respect to the manner in which a netting agreement may be taken into account in determining the amount of a covered transaction between a member bank or a subsidiary and an affiliate, including the extent to which netting agreements between a member bank or a subsidiary and an affiliate may be taken into account in determining whether a covered transaction is fully secured for purposes of subsection (d)(4). An interpretation under this paragraph with respect to a specific member bank, subsidiary, or affiliate shall be issued jointly with the appropriate Federal banking agency for such member bank, subsidiary, or affiliate.”.

(b) TRANSACTIONS WITH AFFILIATES.—Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e)) is amended—

(1) by striking the undesignated matter following subparagraph (B);

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking “The Board” and inserting the following:

“(1) IN GENERAL.—The Board”;

(5) in paragraph (1)(B), as so redesignated—

(A) in the matter preceding clause (i), by inserting before “regulations” the following: “subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding,”; and

(B) in clause (ii), by striking the comma at the end and inserting a period; and

(6) by adding at the end the following:

“(2) EXCEPTION.—The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.”.

(c) HOME OWNERS’ LOAN ACT.—Section 11 of the Home Owners’ Loan Act (12 U.S.C. 1468) is amended by adding at the end the following:

“(d) EXEMPTIONS.—

Notification.

Time period.
Notice.

“(1) **FEDERAL SAVINGS ASSOCIATIONS.**—The Comptroller of the Currency may, by order, exempt a transaction of a Federal savings association from the requirements of this section if—

“(A) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

Notification.

“(B) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subparagraph (A), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

Time period.
Notice.

“(2) **STATE SAVINGS ASSOCIATION.**—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State savings association from the requirements of this section if the Board and the Federal Deposit Insurance Corporation jointly find that—

“(A) the exemption is in the public interest and consistent with the purposes of this section; and

“(B) the exemption does not present an unacceptable risk to the Deposit Insurance Fund.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 1 year after the transfer date.

12 USC 371c
note.

SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

(a) **AMENDMENT.**—Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(b) **PROSPECTIVE APPLICATION OF AMENDMENT.**—The amendments made by this section shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act.

12 USC 371c
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 1 year after the transfer date.

12 USC 371c
note.

SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

(a) **NATIONAL BANKS.**—Section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)) is amended—

(1) in paragraph (1), by striking “shall include” and all that follows through the end of the paragraph and inserting the following: “shall include—

“(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association

to advance funds to or on behalf of a person pursuant to a contractual commitment; and

“(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;”;

(2) in paragraph (2), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(3) the term ‘derivative transaction’ includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.”.

(b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is amended by striking “Director” each place that term appears and inserting “Comptroller of the Currency”.

12 USC 84 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 611. CONSISTENT TREATMENT OF DERIVATIVE TRANSACTIONS IN LENDING LIMITS.

(a) AMENDMENT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

“(y) STATE LENDING LIMIT TREATMENT OF DERIVATIVES TRANSACTIONS.—An insured State bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. 84(b)(3)), only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.”.

12 USC 1828
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 18 months after the transfer date.

SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION.—The Act entitled “An Act to provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes.” (12 U.S.C. 214 et seq.) is amended by adding at the end the following:

12 USC 214d.

“SEC. 10. PROHIBITION ON CONVERSION.

“A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Comptroller of the Currency with respect to a significant supervisory matter.”.

(b) CONVERSION OF A STATE BANK OR SAVINGS ASSOCIATION.—Section 5154 of the Revised Statutes of the United States (12 U.S.C. 35) is amended by adding at the end the following: “The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association or Federal savings association during any period in which the State bank or State savings association is subject to

a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a State Attorney General.”.

(c) CONVERSION OF A FEDERAL SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following:

“(6) LIMITATION ON CERTAIN CONVERSIONS BY FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings association may not convert to a State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Currency with respect to a significant supervisory matter.”.

(d) EXCEPTION.—The prohibition on the approval of conversions under the amendments made by subsections (a), (b), and (c) shall not apply, if—

(1) the Federal banking agency that would be the appropriate Federal banking agency after the proposed conversion gives the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, written notice of the proposed conversion including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution;

(2) within 30 days of receipt of the written notice required under paragraph (1), the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, does not object to the conversion or the plan to address the significant supervisory matter;

(3) after conversion of the insured depository institution, the appropriate Federal banking agency after the conversion implements such plan; and

(4) in the case of a final enforcement action by a State Attorney General, approval of the conversion is conditioned on compliance by the insured depository institution with the terms of such final enforcement action.

(e) NOTIFICATION OF PENDING ENFORCEMENT ACTIONS.—

(1) COPY OF CONVERSION APPLICATION.—At the time an insured depository institution files a conversion application, the insured depository institution shall transmit a copy of the conversion application to—

(A) the appropriate Federal banking agency for the insured depository institution; and

(B) the Federal banking agency that would be the appropriate Federal banking agency of the insured depository institution after the proposed conversion.

(2) NOTIFICATION AND ACCESS TO INFORMATION.—Upon receipt of a copy of the application described in paragraph (1), the appropriate Federal banking agency for the insured depository institution proposing the conversion shall—

(A) notify the Federal banking agency that would be the appropriate Federal banking agency for the institution

after the proposed conversion in writing of any ongoing supervisory or investigative proceedings that the appropriate Federal banking agency for the institution proposing to convert believes is likely to result, in the near term and absent the proposed conversion, in a cease and desist order (or other formal enforcement order) or memorandum of understanding with respect to a significant supervisory matter; and

(B) provide the Federal banking agency that would be the appropriate Federal banking agency for the institution after the proposed conversion access to all investigative and supervisory information relating to the proceedings described in subparagraph (A).

SEC. 613. DE NOVO BRANCHING INTO STATES.

(a) **NATIONAL BANKS.**—Section 5155(g)(1)(A) of the Revised Statutes of the United States (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

“(A) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State; and”.

(b) **STATE INSURED BANKS.**—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

“(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and”.

SEC. 614. LENDING LIMITS TO INSIDERS.

(a) **EXTENSIONS OF CREDIT.**—Section 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C. 375b(9)(D)(i)) is amended—

- (1) by striking the period at the end and inserting “; or”;
- (2) by striking “a person” and inserting “the person”;
- (3) by striking “extends credit by making” and inserting the following: “extends credit to a person by—

“(I) making”; and

- (4) by adding at the end the following:

“(II) having credit exposure to the person arising from a derivative transaction (as defined in section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b))), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.”.

12 USC 375b
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) **AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.**—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

“(z) **GENERAL PROHIBITION ON SALE OF ASSETS.**—

“(1) **IN GENERAL.**—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as

such terms are defined in section 22(h) of Federal Reserve Act), unless—

“(A) the transaction is on market terms; and

“(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

“(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.”.

Consultation.

(b) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22(d) of the Federal Reserve Act (12 U.S.C. 375) is amended to read as follows:

“(d) [Reserved]”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

12 USC 375 note.

SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS.

(a) CAPITAL LEVELS OF BANK HOLDING COMPANIES.—Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended—

(1) by inserting after “orders” the following: “, including regulations and orders relating to the capital requirements for bank holding companies,”; and

(2) by adding at the end the following: “In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.”.

(b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(g)(1) of the Home Owners’ Loan Act (12 U.S.C. 1467a(g)(1)) is amended—

(1) by inserting after “orders” the following: “, including regulations and orders relating to capital requirements for savings and loan holding companies,”; and

(2) by inserting at the end the following: “In establishing capital regulations pursuant to this subsection, the appropriate Federal banking agency shall seek to make such requirements countercyclical so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.”.

(c) CAPITAL LEVELS OF INSURED DEPOSITORY INSTITUTIONS.—Section 908(a)(1) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)) is amended by adding at the end the following: “Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained

by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.”

(d) **SOURCE OF STRENGTH.**—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 38 (12 U.S.C. 1831o) the following:

12 USC 1831o–1. **“SEC. 38A. SOURCE OF STRENGTH.**

“(a) **HOLDING COMPANIES.**—The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

“(b) **OTHER COMPANIES.**—If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

“(c) **REPORTS.**—The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or indirectly controls the insured depository institution, to submit a report, under oath, for the purposes of—

“(1) assessing the ability of such company to comply with the requirement under subsection (b); and

“(2) enforcing the compliance of such company with the requirement under subsection (b).

Deadline.

“(d) **RULES.**—Not later than 1 year after the transfer date, as defined in section 311 of the Enhancing Financial Institution Safety and Soundness Act of 2010, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

“(e) **DEFINITION.**—In this section, the term ‘source of financial strength’ means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.”.

12 USC 1467a note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the transfer date.

SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

(a) **AMENDMENT.**—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

15 USC 78q note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the transfer date.

12 USC 1850a.

SEC. 618. SECURITIES HOLDING COMPANIES.

(a) **DEFINITIONS.**—In this section—

(1) the term “associated person of a securities holding company” means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term “foreign bank” has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7));

(3) the term “insured bank” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) the term “securities holding company”—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;

(ii) an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or a savings association;

(iii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or an affiliate of a savings association;

(iv) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a));

(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term “supervised securities holding company” means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, “savings association”, and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(b) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

Regulations.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—

(A) REGISTRATION.—A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors

such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) EFFECTIVE DATE.—A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

(1) RECORDKEEPING AND REPORTING.—

(A) RECORDKEEPING AND REPORTING REQUIRED.—Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) FORM AND CONTENTS.—

(i) IN GENERAL.—Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) CONTENTS.—Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment

of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) AVAILABILITY.—A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) EXAMINATION AUTHORITY.—

(A) FOCUS OF EXAMINATION AUTHORITY.—The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) CAPITAL AND RISK MANAGEMENT.—

(1) IN GENERAL.—The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

Regulations.

(2) DIFFERENTIATION.—In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

(3) CONTENT.—Any standards imposed on a supervised securities holding company under this subsection shall take into account—

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses,

and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

Effective date.

(4) NOTICE.—A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) OTHER PROVISIONS OF LAW APPLICABLE TO SUPERVISED SECURITIES HOLDING COMPANIES.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) BANK HOLDING COMPANY ACT OF 1956.—Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

12 USC 1851.

“SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

“(a) IN GENERAL.—

“(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

“(A) engage in proprietary trading; or

“(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

“(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains

any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

“(b) STUDY AND RULEMAKING.—

“(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

Deadline.
Recommendations.

“(A) promote and enhance the safety and soundness of banking entities;

“(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

“(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

“(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

“(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

“(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

“(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

“(2) RULEMAKING.—

“(A) IN GENERAL.—Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

Deadline.

“(B) COORDINATED RULEMAKING.—

“(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph shall be issued by—

“(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

“(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

“(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

“(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Consultation.

“(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

“(iii) COUNCIL ROLE.—The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

“(c) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

“(A) 12 months after the date of the issuance of final rules under subsection (b); or

“(B) 2 years after the date of enactment of this section.

Deadline.

“(2) CONFORMANCE PERIOD FOR DIVESTITURE.—A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant

to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

“(3) EXTENDED TRANSITION FOR ILLIQUID FUNDS.—

“(A) APPLICATION.—The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

“(B) TIME LIMIT ON APPROVAL.—The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

“(4) DIVESTITURE REQUIRED.—Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

“(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

“(B) the date on which any extensions granted by the Board under paragraph (3) expire.

“(5) ADDITIONAL CAPITAL DURING TRANSITION PERIOD.—Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

Regulations.

“(6) SPECIAL RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issue rules to implement paragraphs (2) and (3).

Deadline.

“(d) PERMITTED ACTIVITIES.—

“(1) IN GENERAL.—Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as ‘permitted activities’) are permitted:

“(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to

the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

“(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

“(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

“(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

“(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

“(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

“(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

“(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

“(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees,

or management of the fund, including any necessary expenses for the foregoing, only if—

“(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

“(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

“(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

“(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

“(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

“(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

“(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

“(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

“(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

“(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c)

solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

“(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

“(2) LIMITATION ON PERMITTED ACTIVITIES.—

“(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

“(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

“(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

“(iii) would pose a threat to the safety and soundness of such banking entity; or

“(iv) would pose a threat to the financial stability of the United States.

“(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

“(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

“(4) DE MINIMIS INVESTMENT.—

“(A) IN GENERAL.—A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

“(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

“(ii) making a de minimis investment.

“(B) LIMITATIONS AND RESTRICTIONS ON INVESTMENTS.—

“(i) REQUIREMENT TO SEEK OTHER INVESTORS.—

A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

“(ii) LIMITATIONS ON SIZE OF INVESTMENTS.—Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

“(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund; Deadline.

“(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

“(iii) CAPITAL.—For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

“(C) EXTENSION.—Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

“(e) ANTI-EVASION.—

“(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

“(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency’s jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall

order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

“(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

“(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

“(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1), as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

“(3) PERMITTED SERVICES.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if—

“(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

“(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) are satisfied; and

“(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

“(B) TREATMENT OF PRIME BROKERAGE TRANSACTIONS.—

For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) as if the counterparty were an affiliate of the banking entity.

“(4) APPLICATION TO NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

Regulations.

“(g) RULES OF CONSTRUCTION.—

“(1) LIMITATION ON CONTRARY AUTHORITY.—Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

“(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

“(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

“(h) DEFINITIONS.—In this section, the following definitions shall apply:

“(1) BANKING ENTITY.—The term ‘banking entity’ means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term ‘insured depository institution’ does not include an institution that functions solely in a trust or fiduciary capacity, if—

“(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

“(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

“(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

“(D) such institution does not—

“(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

“(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

“(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms ‘hedge fund’ and ‘private equity fund’ mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

“(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term ‘nonbank financial company supervised by the Board’ means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

“(4) PROPRIETARY TRADING.—The term ‘proprietary trading’, when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

“(5) SPONSOR.—The term to ‘sponsor’ a fund means—

“(A) to serve as a general partner, managing member, or trustee of a fund;

“(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

“(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

“(6) TRADING ACCOUNT.—The term ‘trading account’ means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

“(7) ILLIQUID FUND.—

“(A) IN GENERAL.—The term ‘illiquid fund’ means a hedge fund or private equity fund that—

“(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

“(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding

this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

“(B) HEDGE FUND.—For the purposes of this paragraph, the term ‘hedge fund’ means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(m)).”.

SEC. 620. STUDY OF BANK INVESTMENT ACTIVITIES.

(a) STUDY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the appropriate Federal banking agencies shall jointly review and prepare a report on the activities that a banking entity, as such term is defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et. seq.), may engage in under Federal and State law, including activities authorized by statute and by order, interpretation and guidance. Deadline.

(2) CONTENT.—In carrying out the study under paragraph (1), the appropriate Federal banking agencies shall review and consider—

(A) the type of activities or investments;

(B) any financial, operational, managerial, or reputation risks associated with or presented as a result of the banking entity engaged in the activity or making the investment; and

(C) risk mitigation activities undertaken by the banking entity with regard to the risks.

(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than 2 months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

(2) the appropriateness of the conduct of each activity or type of investment by banking entities; and

(3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments described in subsection (a).

SEC. 621. CONFLICTS OF INTEREST.

(a) IN GENERAL.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

“SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

15 USC 77z-2a.

“(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in

section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

Deadline.

“(b) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a).

“(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to—

“(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or

“(2) purchases or sales of asset-backed securities made pursuant to and consistent with—

“(A) commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

“(B) bona fide market-making in the asset backed security.

“(d) RULE OF CONSTRUCTION.—This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.”.

15 USC 77z–2a
note.

(b) EFFECTIVE DATE.—Section 27B of the Securities Act of 1933, as added by this section, shall take effect on the effective date of final rules issued by the Commission under subsection (b) of such section 27B, except that subsections (b) and (d) of such section 27B shall take effect on the date of enactment of this Act.

SEC. 622. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

12 USC 1852.

“SEC. 14. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘Council’ means the Financial Stability Oversight Council;

“(2) the term ‘financial company’ means—

“(A) an insured depository institution;

“(B) a bank holding company;

“(C) a savings and loan holding company;

“(D) a company that controls an insured depository institution;

“(E) a nonbank financial company supervised by the Board under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

“(F) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and

“(3) the term ‘liabilities’ means—

“(A) with respect to a United States financial company—

“(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

“(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

“(B) with respect to a foreign-based financial company—

“(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

“(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

“(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

“(b) CONCENTRATION LIMIT.—Subject to the recommendations by the Council under subsection (e), a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

“(c) EXCEPTION TO CONCENTRATION LIMIT.—With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

“(1) of a bank in default or in danger of default;

“(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

“(3) that would result only in a de minimis increase in the liabilities of the financial company.

“(d) RULEMAKING AND GUIDANCE.—The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

“(e) COUNCIL STUDY AND RULEMAKING.—

“(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this section, the Council shall—

Deadline.

“(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms

and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

“(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

Deadline.

“(2) RULEMAKING.—Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).”.

SEC. 623. INTERSTATE MERGER TRANSACTIONS.

(a) INTERSTATE MERGER TRANSACTIONS.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following:

“(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

“(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

“(C) In this paragraph—

“(i) the term ‘interstate merger transaction’ means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

“(ii) the term ‘home State’ means—

“(I) with respect to a national bank, the State in which the main office of the bank is located;

“(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

“(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.”.

(b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(A) in subsection (i), by adding at the end the following:

“(8) INTERSTATE ACQUISITIONS.—

“(A) IN GENERAL.—The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this Act if—

“(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

“(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).”; and

(B) in subsection (k)(6)(B), by striking “savings association” and inserting “insured depository institution”.

(2) DEFINITIONS.—Section 2(o)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(4)) is amended—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C)(ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(D) with respect to a State savings association, the State by which the savings association is chartered; and

“(E) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.”.

(c) ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(e)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(e)(2)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (C), by striking “or” at the end;

(B) in subparagraph (D), by striking the period at the end and inserting “, or”; and

(C) by adding at the end the following:

“(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if—

“(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

“(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

“(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).”; and

(2) by adding at the end the following:

“(7) DEFINITIONS.—For purposes of paragraph (2)(E)—

“(A) the terms ‘default’, ‘in danger of default’, and ‘insured depository institution’ have the same meanings

as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

“(B) the term ‘home State’ means—

“(i) with respect to a national bank, the State in which the main office of the bank is located;

“(ii) with respect to a State bank or State savings association, the State by which the savings association is chartered;

“(iii) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located; and

“(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company.”.

SEC. 624. QUALIFIED THRIFT LENDERS.

Section 10(m)(3) of the Home Owners’ Loan Act (12 U.S.C. 1467a(m)(3)) is amended—

(1) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall immediately be subject to the restrictions under subparagraph (B).”; and

(2) in subparagraph (B)(i), by striking subclause (III) and inserting the following:

“(III) DIVIDENDS.—The savings association may not pay dividends, except for dividends that—

“(aa) would be permissible for a national bank;

“(bb) are necessary to meet obligations of a company that controls such savings association; and

“(cc) are specifically approved by the Comptroller of the Currency and the Board after a written request submitted to the Comptroller of the Currency and the Board by the savings association not later than 30 days before the date of the proposed payment.

“(IV) REGULATORY AUTHORITY.—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) and subject to actions authorized by section 5(d) of the Home Owners’ Loan Act (12 U.S.C. 1464(d)).”.

SEC. 625. TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.

(a) IN GENERAL.—Section 10(o) of the Home Owners’ Loan Act (12 U.S.C. 1467a(o)) is amended by adding at the end the following:

“(11) DIVIDENDS.—

“(A) DECLARATION OF DIVIDENDS.—

“(i) ADVANCE NOTICE REQUIRED.—Each subsidiary of a mutual holding company that is a savings association shall give the appropriate Federal banking agency and the Board notice not later than 30 days before the date of a proposed declaration by the board of directors of the savings association of any dividend on the guaranty, permanent, or other nonwithdrawable stock of the savings association. Deadline.

“(ii) INVALID DIVIDENDS.—Any dividend described in clause (i) that is declared without giving notice to the appropriate Federal banking agency and the Board under clause (i), or that is declared during the 30-day period preceding the date of a proposed declaration for which notice is given to the appropriate Federal banking agency and the Board under clause (i), shall be invalid and shall confer no rights or benefits upon the holder of any such stock. Time period.

“(B) WAIVER OF DIVIDENDS.—A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

“(i) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

“(ii) the mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver. Deadline.

“(C) RESOLUTION INCLUDED IN WAIVER NOTICE.—A notice of a waiver under subparagraph (B) shall include a copy of the resolution of the board of directors of the mutual holding company, in such form and substance as the Board may determine, together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company.

“(D) STANDARDS FOR WAIVER OF DIVIDEND.—The Board may not object to a waiver of dividends under subparagraph (B) if—

“(i) the waiver would not be detrimental to the safe and sound operation of the savings association;

“(ii) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

“(iii) the mutual holding company has, prior to December 1, 2009—

“(I) reorganized into a mutual holding company under subsection (o);

“(II) issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

“(III) waived dividends it had a right to receive from the subsidiary stock savings association.

“(E) VALUATION.—

“(i) IN GENERAL.—The appropriate Federal banking agency shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

“(ii) EXCEPTION.—In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the appropriate Federal banking agency shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.”.

12 USC 1467a
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the transfer date.

SEC. 626. INTERMEDIATE HOLDING COMPANIES.

The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 10 (12 U.S.C. 1467a) the following new section:

12 USC 1467b.

“SEC. 10A. INTERMEDIATE HOLDING COMPANIES.

“(a) DEFINITION.—For purposes of this section:

“(1) FINANCIAL ACTIVITIES.—The term ‘financial activities’ means activities described in clauses (i) and (ii) of section 10(c)(9)(A).

“(2) GRANDFATHERED UNITARY SAVINGS AND LOAN HOLDING COMPANY.—The term ‘grandfathered unitary savings and loan holding company’ means a company described in section 10(c)(9)(C).

“(3) INTERNAL FINANCIAL ACTIVITIES.—The term ‘internal financial activities’ includes—

“(A) internal financial activities conducted by a grandfathered savings and loan holding company or any affiliate; and

“(B) internal treasury, investment, and employee benefit functions.

“(b) REQUIREMENT.—

“(1) IN GENERAL.—

Deadline.

“(A) ACTIVITIES OTHER THAN FINANCIAL ACTIVITIES.—If a grandfathered unitary savings and loan holding company conducts activities other than financial activities, the Board may require such company to establish and conduct all or a portion of such financial activities in or through an intermediate holding company, which shall be a savings and loan holding company, established pursuant to regulations of the Board, not later than 90 days (or such longer

period as the Board may deem appropriate) after the transfer date.

“(B) OTHER ACTIVITIES.—Notwithstanding subparagraph (A), the Board shall require a grandfathered unitary savings and loan holding company to establish an intermediate holding company if the Board makes a determination that the establishment of such intermediate holding company is necessary—

“(i) to appropriately supervise activities that are determined to be financial activities; or

“(ii) to ensure that supervision by the Board does not extend to the activities of such company that are not financial activities.

“(2) INTERNAL FINANCIAL ACTIVITIES.—

“(A) TREATMENT OF INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, the internal financial activities of a grandfathered unitary savings and loan holding company shall not be required to be placed in an intermediate holding company.

“(B) GRANDFATHERED ACTIVITIES.—A grandfathered unitary savings and loan holding company may continue to engage in an internal financial activity, subject to review by the Board to determine whether engaging in such activity presents undue risk to the grandfathered unitary savings and loan holding company or to the financial stability of the United States, if—

“(i) the grandfathered unitary savings and loan holding company engaged in the activity during the year before the date of enactment of this section; and

“(ii) at least $\frac{2}{3}$ of the assets or $\frac{2}{3}$ of the revenues generated from the activity are from or attributable to the grandfathered unitary savings and loan holding company.

“(3) SOURCE OF STRENGTH.—A grandfathered unitary savings and loan holding company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

“(4) PARENT COMPANY REPORTS.—The Board, may from time to time, examine and require reports under oath from a grandfathered unitary savings and loan holding company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company as required under paragraph (3) and enforcing compliance with such requirement.

“(5) LIMITED PARENT COMPANY ENFORCEMENT.—

“(A) IN GENERAL.—In addition to any other authority of the Board, the Board may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1)(A) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act, and a company described in paragraph (1)(A) shall be subject to such section (solely for purposes of this subparagraph) in the same manner

and to the same extent as if the company described in paragraph (1)(A) were a savings and loan holding company.

“(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by a grandfathered unitary savings and loan holding company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

“(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

“(c) REGULATIONS.—The Board—

“(1) shall promulgate regulations to establish the criteria for determining whether to require a grandfathered unitary savings and loan holding company to establish an intermediate holding company under subsection (b); and

“(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a parent of such company and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between the intermediate holding company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of the intermediate holding company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

“(d) RULES OF CONSTRUCTION.—

“(1) ACTIVITIES.—Nothing in this section shall be construed to require a grandfathered unitary savings and loan holding company to conform its activities to permissible activities.

“(2) PERMISSIBLE CORPORATE REORGANIZATION.—The formation of an intermediate holding company as required in subsection (b) shall be presumed to be a permissible corporate reorganization as described in section 10(c)(9)(D).”.

SEC. 627. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.

(a) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows: “(i) [Repealed].”

(2) HOME OWNERS’ LOAN ACT.—The first sentence of section 5(b)(1)(B) of the Home Owners’ Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking “savings association may not—” and all that follows through “(ii) permit any” and inserting “savings association may not permit any”.

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

“(g) [Repealed].”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

SEC. 628. CREDIT CARD BANK SMALL BUSINESS LENDING.

Section 2(c)(2)(F)(v) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F)(v)) is amended by inserting before the

period the following: “, other than credit card loans that are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations”.

TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

Wall Street
Transparency
and
Accountability
Act of 2010.
15 USC 8301
note.

SEC. 701. SHORT TITLE.

This title may be cited as the “Wall Street Transparency and Accountability Act of 2010”.

Subtitle A—Regulation of Over-the- Counter Swaps Markets

PART I—REGULATORY AUTHORITY

SEC. 711. DEFINITIONS.

15 USC 8301.

In this subtitle, the terms “prudential regulator”, “swap”, “swap dealer”, “major swap participant”, “swap data repository”, “associated person of a swap dealer or major swap participant”, “eligible contract participant”, “swap execution facility”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “associated person of a security-based swap dealer or major security-based swap participant” have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), including any modification of the meanings under section 721(b) of this Act.

SEC. 712. REVIEW OF REGULATORY AUTHORITY.

15 USC 8302.

(a) CONSULTATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this subtitle, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(2) SECURITIES AND EXCHANGE COMMISSION.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the

extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(3) PROCEDURES AND DEADLINE.—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code, and shall be issued in final form not later than 360 days after the date of enactment of this Act.

(4) APPLICABILITY.—The requirements of paragraphs (1) and (2) shall not apply to an order issued—

(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5, United States Code.

(5) EFFECT.—Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(6) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

(7) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(8) MIXED SWAPS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section 3(a)(68)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(D)), as may be necessary to carry out the purposes of this title.

(b) LIMITATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

- (i) security-based swap dealers;
- (ii) major security-based swap participants;
- (iii) security-based swap data repositories;
- (iv) associated persons of a security-based swap dealer or major security-based swap participant;
- (v) eligible contract participants with respect to security-based swaps; or
- (vi) swap execution facilities with respect to security-based swaps.

(2) SECURITIES AND EXCHANGE COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of—

- (A) swaps; or
- (B) with regard to its activities or functions concerning swaps—
 - (i) swap dealers;
 - (ii) major swap participants;
 - (iii) swap data repositories;
 - (iv) persons associated with a swap dealer or major swap participant;
 - (v) eligible contract participants with respect to swaps; or
 - (vi) swap execution facilities with respect to swaps.

(3) PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS AND NATIONAL SECURITIES ASSOCIATIONS.—

(A) FUTURES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that this subparagraph shall not limit the authority of a registered futures association to examine for compliance with, and enforce, its rules on capital adequacy.

(B) NATIONAL SECURITIES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap, except that this subparagraph shall not limit the authority of a national securities association to examine for compliance with, and enforce, its rules on capital adequacy.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—

(A) IN GENERAL.—If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(7) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the

Deadline.

date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) EXPEDITED PROCEEDING.—A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) TRANSMITTAL OF PETITION AND RECORD.—

Deadline.

(A) IN GENERAL.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) DUTY OF RESPONDING COMMISSION.—On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and

(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.

(3) STANDARD OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall—

(A) give deference to the views of neither Commission; and

(B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(7) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order until the date on which the determination of the United States Court of Appeals for the District of Columbia Circuit is final (including any appeal of the determination).

(d) JOINT RULEMAKING.—

(1) IN GENERAL.—Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall further define the terms “swap”, “security-based swap”, “swap dealer”, “security-based swap dealer”, “major swap participant”, “major security-based swap participant”, “eligible contract participant”, and “security-based swap agreement” in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).

(2) AUTHORITY OF THE COMMISSIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall jointly adopt such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and

Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) **TRADE REPOSITORY RECORDKEEPING.**—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(C) **BOOKS AND RECORDS.**—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and security-based swap participants.

(D) **COMPARABLE RULES.**—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(E) **TRACKING UNCLEARED TRANSACTIONS.**—Any rules prescribed under subparagraph (A) shall require the maintenance of records of all activities relating to security-based swap agreement transactions defined under subparagraph (A) that are not cleared.

(F) **SHARING OF INFORMATION.**—The Commodity Futures Trading Commission shall make available to the Securities and Exchange Commission information relating to security-based swap agreement transactions defined in subparagraph (A) that are not cleared.

(3) **FINANCIAL STABILITY OVERSIGHT COUNCIL.**—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) or (2) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with 1 of the Commissions regarding the entirety of the matter or by determining a compromise position.

(4) **JOINT INTERPRETATION.**—Any interpretation of, or guidance by either Commission regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors,

if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

Deadline.

(e) GLOBAL RULEMAKING TIMEFRAME.—Unless otherwise provided in this title, or an amendment made by this title, the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title or an amendment made by this title not later than 360 days after the date of enactment of this Act.

(f) RULES AND REGISTRATION BEFORE FINAL EFFECTIVE DATES.—Beginning on the date of enactment of this Act and notwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act,

provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.

SEC. 713. PORTFOLIO MARGINING CONFORMING CHANGES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) is amended by adding at the end the following:

“(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.”.

Consultation.

(b) COMMODITY EXCHANGE ACT.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by adding at the end the following:

“(h) Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 4(c) of this Act or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section 4f(a)(1) of this Act and also registered as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934, hold in a portfolio margining account carried as a securities account subject to section 15(c)(3) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.”.

Contracts.

Consultation.

(c) DUTY OF COMMODITY FUTURES TRADING COMMISSION.—Section 20 of the Commodity Exchange Act (7 U.S.C. 24) is amended by adding at the end the following:

“(c) The Commission shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.”.

SEC. 714. ABUSIVE SWAPS.

15 USC 8303.

The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, individually may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of—

(A) swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

(B) security-based swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); and

(2) issue a report with respect to any types of swaps or security-based swaps that the Commodity Futures Trading Commission or the Securities and Exchange Commission determines to be detrimental to—

Reports.

(A) the stability of a financial market; or

(B) participants in a financial market.

SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

15 USC 8304.

Except as provided in section 4 of the Commodity Exchange Act (7 U.S.C. 6), if the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.

15 USC 8305.

SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.

(a) **PROHIBITION ON FEDERAL ASSISTANCE.**—Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) **DEFINITIONS.**—In this section:

(1) **FEDERAL ASSISTANCE.**—The term “Federal assistance” means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act, Federal Deposit Insurance Corporation insurance or guarantees for the purpose of—

(A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or

(D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.

(2) **SWAPS ENTITY.**—

(A) **IN GENERAL.**—The term “swaps entity” means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, that is registered under—

(i) the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) **EXCLUSION.**—The term “swaps entity” does not include any major swap participant or major security-based swap participant that is an insured depository institution.

(c) **AFFILIATES OF INSURED DEPOSITORY INSTITUTIONS.**—The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent an insured depository institution from having or establishing an affiliate which is a swaps entity, as long as such insured depository institution is part of a bank holding company, or savings and loan holding company, that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 23A and 23B of the Federal Reserve Act and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

(d) **ONLY BONA FIDE HEDGING AND TRADITIONAL BANK ACTIVITIES PERMITTED.**—The prohibition in subsection (a) shall apply to any insured depository institution unless the insured depository institution limits its swap or security-based swap activities to:

(1) Hedging and other similar risk mitigating activities directly related to the insured depository institution’s activities.

(2) Acting as a swaps entity for swaps or security-based swaps involving rates or reference assets that are permissible for investment by a national bank under the paragraph designated as “Seventh.” of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), other than as described in paragraph (3).

Applicability.

(3) LIMITATION ON CREDIT DEFAULT SWAPS.—Acting as a swaps entity for credit default swaps, including swaps or security-based swaps referencing the credit risk of asset-backed securities as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this Act) shall not be considered a bank permissible activity for purposes of subsection (d)(2) unless such swaps or security-based swaps are cleared by a derivatives clearing organization (as such term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c)) that is registered, or exempt from registration, as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act, respectively.

(e) EXISTING SWAPS AND SECURITY-BASED SWAPS.—The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by an insured depository institution after the end of the transition period described in subsection (f). Applicability.

(f) TRANSITION PERIOD.—To the extent an insured depository institution qualifies as a “swaps entity” and would be subject to the Federal assistance prohibition in subsection (a), the appropriate Federal banking agency, after consulting with and considering the views of the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, shall permit the insured depository institution up to 24 months to divest the swaps entity or cease the activities that require registration as a swaps entity. In establishing the appropriate transition period to effect such divestiture or cessation of activities, which may include making the swaps entity an affiliate of the insured depository institution, the appropriate Federal banking agency shall take into account and make written findings regarding the potential impact of such divestiture or cessation of activities on the insured depository institution’s (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation. The appropriate Federal banking agency may consider such other factors as may be appropriate. The appropriate Federal banking agency may place such conditions on the insured depository institution’s divestiture or ceasing of activities of the swaps entity as it deems necessary and appropriate. The transition period under this subsection may be extended by the appropriate Federal banking agency, after consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, for a period of up to 1 additional year.

(g) EXCLUDED ENTITIES.—For purposes of this section, the term “swaps entity” shall not include any insured depository institution under the Federal Deposit Insurance Act or a covered financial company under title II which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

(h) EFFECTIVE DATE.—The prohibition in subsection (a) shall be effective 2 years following the date on which this Act is effective.

(i) LIQUIDATION REQUIRED.—

(1) IN GENERAL.—

(A) FDIC INSURED INSTITUTIONS.—All swaps entities that are FDIC insured institutions that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(B) INSTITUTIONS THAT POSE A SYSTEMIC RISK AND ARE SUBJECT TO HEIGHTENED PRUDENTIAL SUPERVISION AS REGULATED UNDER SECTION 113.—All swaps entities that are institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 113, that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(C) NON-FDIC INSURED, NON-SYSTEMICALLY SIGNIFICANT INSTITUTIONS NOT SUBJECT TO HEIGHTENED PRUDENTIAL SUPERVISION AS REGULATED UNDER SECTION 113.—No taxpayer resources shall be used for the orderly liquidation of any swaps entities that are non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 113.

(2) RECOVERY OF FUNDS.—All funds expended on the termination or transfer of the swap or security-based swap activity of the swaps entity shall be recovered in accordance with applicable law from the disposition of assets of such swap entity or through assessments, including on the financial sector as provided under applicable law.

(3) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

(j) PROHIBITION ON UNREGULATED COMBINATION OF SWAPS ENTITIES AND BANKING.—At no time following adoption of the rules in subsection (k) may a bank or bank holding company be permitted to be or become a swap entity unless it conducts its swap or security-based swap activity in compliance with such minimum standards set by its prudential regulator as are reasonably calculated to permit the swaps entity to conduct its swap or security-based swap activities in a safe and sound manner and mitigate systemic risk.

(k) RULES.—In prescribing rules, the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring and controlling risks arising from the swaps entity's operations.

(4) Systems for identifying, measuring and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in new markets and products.

(I) **AUTHORITY OF THE FINANCIAL STABILITY OVERSIGHT COUNCIL.**—The Financial Stability Oversight Council may determine that, when other provisions established by this Act are insufficient to effectively mitigate systemic risk and protect taxpayers, that swaps entities may no longer access Federal assistance with respect to any swap, security-based swap, or other activity of the swaps entity. Any such determination by the Financial Stability Oversight Council of a prohibition of federal assistance shall be made on an institution-by-institution basis, and shall require the vote of not fewer than two-thirds of the members of the Financial Stability Oversight Council, which must include the vote by the Chairman of the Council, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Federal Deposit Insurance Corporation. Notice and hearing requirements for such determinations shall be consistent with the standards provided in title I.

(m) **BAN ON PROPRIETARY TRADING IN DERIVATIVES.**—An insured depository institution shall comply with the prohibition on proprietary trading in derivatives as required by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

SEC. 717. NEW PRODUCT APPROVAL CFTC—SEC PROCESS.

(a) **AMENDMENTS TO THE COMMODITY EXCHANGE ACT.**—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) is amended—

(1) in clause (i) by striking “This” and inserting “(I) Except as provided in subclause (II), this”; and

(2) by adding at the end of clause (i) the following:

“(II) This Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 5c(c) of, a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.”.

(b) **AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**—The Securities Exchange Act of 1934 is amended by adding the following section after section 3A (15 U.S.C. 78c-1):

“SEC. 3B. SECURITIES-RELATED DERIVATIVES.

15 USC 78c-2.

“(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission

pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.

“(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the ‘purchase’ or ‘sale’ of a security shall be deemed to include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under such agreement, contract, or transaction, as the context may require.”

(c) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

“(10) Notwithstanding paragraph (2), the time period within which the Commission is required by order to approve a proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved is stayed pending a determination by the Commission upon the request of the Commodity Futures Trading Commission or its Chairman that the Commission issue a determination as to whether a product that is the subject of such proposed rule change is a security pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.”

(d) AMENDMENT TO COMMODITY EXCHANGE ACT.—Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(1)) is amended—

(1) by striking “Subject to paragraph (2)” and inserting the following:

“(A) ELECTION.—Subject to paragraph (2)”; and

(2) by adding at the end the following:

“(B) CERTIFICATION.—The certification of a product pursuant to this paragraph shall be stayed pending a determination by the Commission upon the request of the Securities and Exchange Commission or its Chairman that the Commission issue a determination as to whether the product that is the subject of such certification is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.”

15 USC 8306.

SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE PRODUCTS.

(a) PROCESS FOR DETERMINING THE STATUS OF A NOVEL DERIVATIVE PRODUCT.—

(1) NOTICE.—

(A) IN GENERAL.—Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with the Securities and Exchange

Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.

(B) NOTIFICATION.—If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall notify the other Commission and provide a copy of such filing to the other Commission. Deadline.

(2) REQUEST FOR DETERMINATION.—

(A) IN GENERAL.—No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)). Deadline.

(B) REQUEST.—No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission's exclusive jurisdiction under section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)). Deadline.

(C) REQUIREMENT RELATING TO REQUEST.—A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.

(D) EFFECT.—Nothing in this paragraph shall be construed to prevent—

(i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange Commission grant an exemption pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78mm(a)(1)) with respect to a product that is the subject of a filing under paragraph (1); or

(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with respect to a product that is the subject of a filing under paragraph (1),

Provided, however, that nothing in this subparagraph shall be construed to require the Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; provided further, That an order granting or denying an exemption described in this subparagraph and issued

under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).

(E) WITHDRAWAL OF REQUEST.—A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.

Deadline.

(3) DETERMINATION.—Notwithstanding any other provision of law, no later than 120 days after the date of receipt of a request—

(A) under subparagraph (A) or (B) of paragraph (2), unless such request has been withdrawn pursuant to paragraph (2)(E), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall, by order, issue the determination requested in subparagraph (A) or (B) of paragraph (2), as applicable, and the reasons therefor; or

(B) under paragraph (2)(D), unless such request has been withdrawn, the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall grant an exemption or provide reasons for not granting such exemption, provided that any decision by the Securities and Exchange Commission not to grant such exemption shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y).

(b) JUDICIAL RESOLUTION.—

Deadline.

(1) IN GENERAL.—The Commodity Futures Trading Commission or the Securities and Exchange Commission may petition the United States Court of Appeals for the District of Columbia Circuit for review of a final order of the other Commission issued pursuant to subsection (a)(3)(A), with respect to a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) that it believes affects its statutory jurisdiction within 60 days after the date of entry of such order, a written petition requesting a review of the order. Any such proceeding shall be expedited by the Court of Appeals.

Deadline.

(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) STANDARD OF REVIEW.—The court, in considering a petition filed pursuant to paragraph (1), shall give no deference to, or presumption in favor of, the views of either Commission.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the order, until the date on which the determination of the court is final (including any appeal of the determination).

15 USC 8307.

SEC. 719. STUDIES.

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) **STUDY.**—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) **REPORT TO THE CONGRESS.**—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) **REQUIRED HEARING.**—Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report. Deadline.

(4) **BIENNIAL REPORTING.**—In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) **IN GENERAL.**—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) **GOALS.**—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by—

- (A) commercial users and traders of derivatives;
- (B) derivative clearing houses, exchanges and electronic trading platforms;
- (C) trade repositories and regulator investigations of market activities; and
- (D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal

definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) INTERNATIONAL SWAP REGULATION.—

Study.

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—

(i) swap regulation in the United States, Asia, and Europe; and

(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) STABLE VALUE CONTRACTS.—

(1) DETERMINATION.—

(A) STATUS.—Not later than 15 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap. In making the determination required under this subparagraph, the Commissions jointly shall consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

Deadline.
Study.

(B) REGULATIONS.—If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption for stable value contracts from the definition of swap is appropriate and in the public interest. The Commissions shall issue regulations implementing the determinations required under this paragraph. Until the effective date of such regulations, and notwithstanding any other provision of this title, the requirements of this title shall not apply to stable value contracts.

(C) LEGAL CERTAINTY.—Stable value contracts in effect prior to the effective date of the regulations described in subparagraph (B) shall not be considered swaps.

(2) DEFINITION.—For purposes of this subsection, the term “stable value contract” means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, including plans described in section 3(32) of such Act) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).

SEC. 720. MEMORANDUM.

15 USC 8308.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this Act, negotiate a memorandum of understanding to establish procedures for—

Deadline.

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the 2 agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

Deadline.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

PART II—REGULATION OF SWAP MARKETS

SEC. 721. DEFINITIONS.

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (2), (3) and (4), (5) through (17), (18) through (23), (24) through (28), (29), (30), (31) through (33), and (34) as paragraphs (6), (8) and (9), (11) through (23), (26) through (31), (34) through (38), (40), (41), (44) through (46), and (51), respectively;

(2) by inserting after paragraph (1) the following:

“(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’—

“(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

“(B) means the Board in the case of a noninsured State bank; and

“(C) is the Farm Credit Administration for farm credit system institutions.

“(3) ASSOCIATED PERSON OF A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘associated person of a security-based swap dealer or major security-based swap participant’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

“(4) ASSOCIATED PERSON OF A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘associated person of a swap dealer or major swap participant’ means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

“(i) the solicitation or acceptance of swaps; or

“(ii) the supervision of any person or persons so engaged.

“(B) EXCLUSION.—Other than for purposes of section 4s(b)(6), the term ‘associated person of a swap dealer or major swap participant’ does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

“(5) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”;

(3) by inserting after paragraph (6) (as redesignated by paragraph (1)) the following:

“(7) CLEARED SWAP.—The term ‘cleared swap’ means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.”;

(4) in paragraph (9) (as redesignated by paragraph (1)), by striking “except onions” and all that follows through the period at the end and inserting the following: “except onions (as provided by the first section of Public Law 85-839 (7 U.S.C. 13-1)) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.”;

(5) by inserting after paragraph (9) (as redesignated by paragraph (1)) the following:

“(10) COMMODITY POOL.—

“(A) IN GENERAL.—The term ‘commodity pool’ means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

“(i) commodity for future delivery, security futures product, or swap;

“(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(iii) commodity option authorized under section 4c; or

“(iv) leverage transaction authorized under section 19.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘commodity pool’ any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(6) by striking paragraph (11) (as redesignated by paragraph (1)) and inserting the following:

“(11) COMMODITY POOL OPERATOR.—

“(A) IN GENERAL.—The term ‘commodity pool operator’ means any person—

“(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

“(I) commodity for future delivery, security futures product, or swap;

“(II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(III) commodity option authorized under section 4c; or

“(IV) leverage transaction authorized under section 19; or

“(ii) who is registered with the Commission as a commodity pool operator.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘commodity pool operator’ any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(7) in paragraph (12) (as redesignated by paragraph (1)), in subparagraph (A)—

(A) in clause (i)—

(i) in subclause (I), by striking “made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility” and inserting “, security futures product, or swap”;

(ii) by redesignating subclauses (II) and (III) as subclauses (III) and (IV);

(iii) by inserting after subclause (I) the following:

“(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

(iv) in subclause (IV) (as so redesignated), by striking “or”;

(B) in clause (ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(iii) is registered with the Commission as a commodity trading advisor; or

“(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(8) in paragraph (17) (as redesignated by paragraph (1)), in subparagraph (A), in the matter preceding clause (i), by striking “paragraph (12)(A)” and inserting “paragraph (18)(A)”;

(9) in paragraph (18) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in the matter following clause (vii)(III)—

(I) by striking “section 1a (11)(A)” and inserting “paragraph (17)(A)”;

(II) by striking “\$25,000,000” and inserting “\$50,000,000”;

(ii) in clause (xi), in the matter preceding subclause (I), by striking “total assets in an amount” and inserting “amounts invested on a discretionary basis, the aggregate of which is”;

(10) by striking paragraph (22) (as redesignated by paragraph (1)) and inserting the following:

“(22) FLOOR BROKER.—

“(A) IN GENERAL.—The term ‘floor broker’ means any person—

“(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

“(I) any commodity for future delivery, security futures product, or swap; or

“(II) any commodity option authorized under section 4c; or

“(ii) who is registered with the Commission as a floor broker.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘floor broker’ any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(11) by striking paragraph (23) (as redesignated by paragraph (1)) and inserting the following:

“(23) FLOOR TRADER.—

“(A) IN GENERAL.—The term ‘floor trader’ means any person—

“(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account—

“(I) any commodity for future delivery, security futures product, or swap; or

“(II) any commodity option authorized under section 4c; or

“(ii) who is registered with the Commission as a floor trader.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘floor trader’ any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person’s own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(12) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

“(24) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

“(25) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a transaction that solely involves—

“(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

“(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.”;

(13) by striking paragraph (28) (as redesignated by paragraph (1)) and inserting the following:

“(28) FUTURES COMMISSION MERCHANT.—

“(A) IN GENERAL.—The term ‘futures commission merchant’ means an individual, association, partnership, corporation, or trust—

“(i) that—

“(I) is—

“(aa) engaged in soliciting or in accepting orders for—

“(AA) the purchase or sale of a commodity for future delivery;

“(BB) a security futures product;

“(CC) a swap;

“(DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(EE) any commodity option authorized under section 4c; or

“(FF) any leverage transaction authorized under section 19; or

“(bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and

“(II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

“(ii) that is registered with the Commission as a futures commission merchant.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘futures commission merchant’ any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(14) in paragraph (30) (as redesignated by paragraph (1)), in subparagraph (B), by striking “state” and inserting “State”;

(15) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

“(31) INTRODUCING BROKER.—

“(A) IN GENERAL.—The term ‘introducing broker’ means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

“(i) who—

“(I) is engaged in soliciting or in accepting orders for—

“(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

“(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(cc) any commodity option authorized under section 4c; or

“(dd) any leverage transaction authorized under section 19; and

“(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

“(ii) who is registered with the Commission as an introducing broker.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘introducing broker’ any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this Act, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(16) by inserting after paragraph (31) (as redesignated by paragraph (1)) the following:

“(32) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap participant’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

“(33) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

“(I) positions held for hedging or mitigating commercial risk; and

“(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

“(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

“(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

“(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.

“(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define

Regulations.

by rule or regulation the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

“(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

“(D) EXCLUSIONS.—The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.”;

(17) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

“(39) PRUDENTIAL REGULATOR.—The term ‘prudential regulator’ means—

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System;

“(ii) a State-chartered branch or agency of a foreign bank;

“(iii) any foreign bank which does not operate an insured branch;

“(iv) any organization operating under section 25A of the Federal Reserve Act or having an agreement with the Board under section 225 of the Federal Reserve Act;

“(v) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1965 (12 U.S.C. 1841)), any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)) that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered with the Commission as a swap dealer or major swap participant under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant);

“(vi) after the transfer date (as defined in section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), any savings and loan holding company (as defined in section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a)) and any subsidiary of such company (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered as a swap dealer or major swap participant with the Commission under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant); or

“(vii) any organization operating under section 25A of the Federal Reserve Act (12U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a national bank;

“(ii) a federally chartered branch or agency of a foreign bank; or

“(iii) any Federal savings association;

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a State-chartered bank that is not a member of the Federal Reserve System; or

“(ii) any State savings association;

“(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

“(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).”;

(18) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking “and”; and

(D) by inserting after subparagraph (C) (as so redesignated) the following:

“(D) a swap execution facility registered under section 5h;

“(E) a swap data repository registered under section 21; and”;

(19) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

“(42) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”

“(43) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”;

(20) in paragraph (46) (as redesignated by paragraph (1)), by striking “subject to section 2(h)(7)” and inserting “subject to section 2(h)(5)”;

(21) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

“(47) SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction—

“(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

“(I) an interest rate swap;

“(II) a rate floor;

“(III) a rate cap;

“(IV) a rate collar;

“(V) a cross-currency rate swap;

“(VI) a basis swap;

“(VII) a currency swap;

“(VIII) a foreign exchange swap;

“(IX) a total return swap;

“(X) an equity index swap;

“(XI) an equity swap;

“(XII) a debt index swap;

“(XIII) a debt swap;

“(XIV) a credit spread;
“(XV) a credit default swap;
“(XVI) a credit swap;
“(XVII) a weather swap;
“(XVIII) an energy swap;
“(XIX) a metal swap;
“(XX) an agricultural swap;
“(XXI) an emissions swap; and
“(XXII) a commodity swap;

“(iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;

“(v) including any security-based swap agreement which meets the definition of ‘swap agreement’ as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

“(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

“(B) EXCLUSIONS.—The term ‘swap’ does not include—

“(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

“(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

“(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

“(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

“(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

“(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the

purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

“(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘swap’ includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

“(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

“(D) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

“(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

“(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a

Determination.

written determination under section 1b that either foreign exchange swaps or foreign exchange forwards or both—

“(I) should be not be regulated as swaps under this Act; and

“(II) are not structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of that Act.

“(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

“(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

“(iv) BUSINESS STANDARDS.—Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

“(v) SECRETARY.—For purposes of this subparagraph, the term ‘Secretary’ means the Secretary of the Treasury.

“(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

“(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

“(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

“(48) SWAP DATA REPOSITORY.—The term ‘swap data repository’ means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties

for the purpose of providing a centralized recordkeeping facility for swaps.

“(49) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person who—

“(i) holds itself out as a dealer in swaps;

“(ii) makes a market in swaps;

“(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

“(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

“(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

“(C) EXCEPTION.—The term ‘swap dealer’ does not include a person that enters into swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

“(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

“(50) SWAP EXECUTION FACILITY.—The term ‘swap execution facility’ means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

“(A) facilitates the execution of swaps between persons;

and

“(B) is not a designated contract market.”.

(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking “participants” and inserting “participants”.

15 USC 8321.

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term “commercial risk”; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

15 USC 8321.

(c) MODIFICATION OF DEFINITIONS.—To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms “swap”, “swap dealer”, “major swap participant”, and “eligible contract participant”.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking “except that” and all that follows through the period at the end and inserting the following: “except that—

“(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

“(i) with respect to—

“(I) paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(1)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

“(II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note); and

“(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

“(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commissions determine that the exemption would be consistent with the public interest.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking “section 1a(20)” and inserting “section 1a”; and

(ii) in subitem (BB), by striking “section 1a(20)” and inserting “section 1a”; and

(B) in item (dd), by striking “section 1a(12)(A)(ii)” and inserting “section 1a(18)(A)(ii)”.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking “section 1a(6)” and inserting “section 1a”.

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”. 7 USC 6q.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking “section 1a(9)” and inserting “section 1a”.

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking “section 1a(12)(B)(ii)” and inserting “section 1a(18)(B)(ii)”; and

(B) in subclause (II), by striking “section 1a(12)” and inserting “section 1a(18)”.

7 USC 27. (9) Section 402 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in subsection (a)(7), by striking “section 1a(20)” and inserting “section 1a”;

(B) in subsection (b)(2), by striking “section 1a(12)” and inserting “section 1a”; and

(C) in subsection (c), by striking “section 1a(4)” and inserting “section 1a”.

(10) The first section of Public Law 85–839 (7 U.S.C. 13–1) is amended in subsection (a), in the first sentence, by inserting “motion picture box office receipts (or any index, measure, value, or data related to such receipts) or” after “sale of”.

7 USC 1a note. (f) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, the amendments made by subsection (a)(4) shall take effect on June 1, 2010.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended—

(1) in subparagraph (A), in the first sentence—

(A) by inserting “the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and” after “otherwise provided in”;

(B) by striking “(C) and (D)” and inserting “(C), (D), and (I)”;

(C) by striking “(c) through (i) of this section” and inserting “(c) and (f)”;

(D) by striking “contracts of sale” and inserting “swaps or contracts of sale”; and

(E) by striking “or derivatives transaction execution facility registered pursuant to section 5 or 5a” and inserting “pursuant to section 5 or a swap execution facility pursuant to section 5h”; and

(2) by adding at the end the following:

“(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements as defined pursuant to section 3(a)(78) of the Securities Exchange Act of 1934, and security-based swaps.

“(ii) In addition to the authority of the Securities and Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

“(H) Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to, any security other than a security-based swap.”.

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

“(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

“(1) shall not be considered to be insurance; and

“(2) may not be regulated as an insurance contract under the law of any State.”.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking “or” at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

“(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

“(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

“(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.”.

(e) FEDERAL ENERGY REGULATORY COMMISSION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

“(I)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

“(I) not executed, traded, or cleared on a registered entity or trading facility; or

“(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

“(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

“(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

“(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared

on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).”.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

“(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

“(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

“(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

“(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).”.

15 USC 8322.

(g) AUTHORITY OF FERC.—Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to section 222 of the Federal Power Act and section 4A of the Natural Gas Act that existed prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

(h) DETERMINATION.—The Commodity Exchange Act is amended by inserting after section 1a (7 U.S.C. 1a) the following:

7 USC 1b.

“SEC. 1b. REQUIREMENTS OF SECRETARY OF THE TREASURY REGARDING EXEMPTION OF FOREIGN EXCHANGE SWAPS AND FOREIGN EXCHANGE FORWARDS FROM DEFINITION OF THE TERM ‘SWAP’.

“(a) REQUIRED CONSIDERATIONS.—In determining whether to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term ‘swap’, the Secretary of the Treasury (referred to in this section as the ‘Secretary’) shall consider—

“(1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

“(2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this Act for other classes of swaps;

“(3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

“(4) the extent of adequate payment and settlement systems; and

“(5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.

“(b) DETERMINATION.—If the Secretary makes a determination to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term ‘swap’, the Secretary shall submit to the appropriate committees of Congress a determination that contains—

“(1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and

“(2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status.

“(c) EFFECT OF DETERMINATION.—A determination by the Secretary under subsection (b) shall not exempt any foreign exchange swaps and foreign exchange forwards traded on a designated contract market or swap execution facility from any applicable anti-fraud and antimanipulation provision under this title.”.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

“(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and (h) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities or Commission registrants) governs or applies to a swap.

“(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.”.

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

“(h) CLEARING REQUIREMENT.—

“(1) IN GENERAL.—

“(A) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing

organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.

“(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

“(i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

“(2) COMMISSION REVIEW.—

“(A) COMMISSION-INITIATED REVIEW.—

“(i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

“(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

“(B) SWAP SUBMISSIONS.—

“(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

“(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

“(iii) The Commission shall—

“(I) make available to the public submissions received under clauses (i) and (ii);

“(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

“(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

“(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

Public comment.
Time period.

Notice.

Public
information.

Public comment.
Time period.

“(D) DETERMINATION.—

“(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

“(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

“(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

“(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

“(IV) The effect on competition, including appropriate fees and charges applied to clearing.

“(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

“(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(E) RULES.—Not later than 1 year after the date of the enactment of this subsection, the Commission shall adopt rules for a derivatives clearing organization’s submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii). Deadline.

“(3) STAY OF CLEARING REQUIREMENT.—

“(A) IN GENERAL.—After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group,

category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

“(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

Deadline.

“(D) RULES.—Not later than 1 year after the date of the enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization’s clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

“(4) PREVENTION OF EVASION.—

Regulations.

“(A) IN GENERAL.—The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

“(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

“(i) investigate the relevant facts and circumstances;

Deadline.
Public
information.
Reports.

“(ii) within 30 days issue a public report containing the results of the investigation; and

“(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

“(C) EFFECT ON AUTHORITY.—Nothing in this paragraph—

“(i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and

“(ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.

“(5) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

“(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap data repository or the Commission no later than the later of—

“(i) 90 days after such effective date; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(6) CLEARING TRANSITION RULES.—

“(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

“(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

“(7) EXCEPTIONS.—

“(A) IN GENERAL.—The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

“(i) is not a financial entity;

“(ii) is using swaps to hedge or mitigate commercial risk; and

“(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

Notification.

“(B) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

“(C) FINANCIAL ENTITY DEFINITION.—

“(i) IN GENERAL.—For the purposes of this paragraph, the term ‘financial entity’ means—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) a commodity pool;

“(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

“(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

“(ii) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

“(I) depository institutions with total assets of \$10,000,000,000 or less;

“(II) farm credit system institutions with total assets of \$10,000,000,000 or less; or

“(III) credit unions with total assets of \$10,000,000,000 or less.

“(iii) LIMITATION.—Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

“(D) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a-3(c));

“(VI) a commodity pool; or

“(VII) a bank holding company with over \$50,000,000,000 in consolidated assets.

“(iii) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this clause.

“(E) ELECTION OF COUNTERPARTY.—

Exemption.
Time period.

“(i) SWAPS REQUIRED TO BE CLEARED.—With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

“(ii) SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

“(I) may elect to require clearing of the swap; and

“(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

“(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

“(8) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

“(i) execute the transaction on a board of trade designated as a contract market under section 5; or

“(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).”.

(b) COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:

“(j) COMMITTEE APPROVAL BY BOARD.—Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if an appropriate committee of the issuer’s board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.”.

7 USC 2 note.

(c) GRANDFATHER PROVISIONS.—

Deadline.

(1) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) CONSIDERATION; AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION.—The Commodity Futures Trading Commission—

(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and

(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

(3) AGRICULTURAL SWAPS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

Regulations.

(B) EXCEPTION.—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

Compliance.
Records.

(4) REQUIRED REPORTING.—If the exception described in section 2(h)(8)(B) of the Commodity Exchange Act applies, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to section 2(h)(8)(B) of the Commodity Exchange Act.

SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREATMENT.

(a) SEGREGATION REQUIREMENTS FOR CLEARED SWAPS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 732) is amended by adding at the end the following:

“(f) SWAPS.—

“(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

“(2) CLEARED SWAPS.—

“(A) SEGREGATION REQUIRED.—A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

“(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

“(3) EXCEPTIONS.—

“(A) USE OF FUNDS.—

“(i) IN GENERAL.—Notwithstanding paragraph (2), money, securities, and property of swap customers of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with a derivatives clearing organization.

“(ii) WITHDRAWAL.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

“(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

“(4) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

“(5) COMMODITY CONTRACT.—A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761

of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

“(6) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.”.

(b) BANKRUPTCY TREATMENT OF CLEARED SWAPS.—Section 761 of title 11, United States Code, is amended—

(1) in paragraph (4), by striking subparagraph (F) and inserting the following:

“(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and

“(ii) with respect to a futures commission merchant or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization;”; and

(2) in paragraph (9)(A)(i), by striking “the commodity futures account” and inserting “a commodity contract account”.

(c) SEGREGATION REQUIREMENTS FOR UNCLEARED SWAPS.—Section 4s of the Commodity Exchange Act (as added by section 731) is amended by adding at the end the following:

“(1) SEGREGATION REQUIREMENTS.—

“(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SWAP TRANSACTIONS.—

“(A) NOTIFICATION.—A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

“(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

“(i) segregate the funds or other property for the benefit of the counterparty; and

“(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.

“(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

“(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and

“(B)(i) not apply to variation margin payments; or

“(ii) not preclude any commercial arrangement regarding—

“(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

“(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

“(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1) shall be—

“(A) carried by an independent third-party custodian; and

“(B) designated as a segregated account for and on behalf of the counterparty.

“(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”.

SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.

(a) REGISTRATION REQUIREMENT.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by striking subsections (a) and (b) and inserting the following:

“(a) REGISTRATION REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

“(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

“(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or

“(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

“(B) a swap.

“(2) EXCEPTION.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

“(b) VOLUNTARY REGISTRATION.—A person that clears 1 or more agreements, contracts, or transactions that are not required to

Contracts.

be cleared under this Act may register with the Commission as a derivatives clearing organization.”.

(b) REGISTRATION FOR DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE OFFICER; ANNUAL REPORTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

“(g) EXISTING DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES.—

“(1) IN GENERAL.—A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before the date of enactment of this subsection—

“(A) the depository institution cleared swaps as a multilateral clearing organization; or

“(B) the clearing agency cleared swaps.

“(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(3) SHARING OF INFORMATION.—The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).

“(h) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

“(i) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the derivatives clearing organization;

“(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

“(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of non-compliance issues identified by the compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the derivatives clearing organization of the compliance officer with respect to this Act (including regulations); and

“(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

Certification.

(c) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—Section 5b(c) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)) is amended by striking paragraph (2) and inserting the following:

“(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

“(A) COMPLIANCE.—

“(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing

organization complies with each core principle described in this paragraph.

“(B) FINANCIAL RESOURCES.—

“(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

“(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

“(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

“(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

“(i) IN GENERAL.—Each derivatives clearing organization shall establish—

“(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

“(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

“(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

“(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

“(I) be objective;

“(II) be publicly disclosed; and

“(III) permit fair and open access.

“(D) RISK MANAGEMENT.—

“(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

“(ii) MEASUREMENT OF CREDIT EXPOSURE.—Each derivatives clearing organization shall—

“(I) not less than once during each business day of the derivatives clearing organization,

measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

“(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

“(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

“(I) the operations of the derivatives clearing organization would not be disrupted; and

“(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

“(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

“(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

“(I) risk-based; and

“(II) reviewed on a regular basis.

“(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

“(i) complete money settlements on a timely basis (but not less frequently than once each business day);

“(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

“(iii) ensure that money settlements are final when effected;

“(iv) maintain an accurate record of the flow of funds associated with each money settlement;

“(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

“(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

“(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

“(F) TREATMENT OF FUNDS.—

“(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

“(ii) **HOLDING OF FUNDS AND ASSETS.**—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

“(iii) **PERMISSIBLE INVESTMENTS.**—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

“(G) **DEFAULT RULES AND PROCEDURES.**—

“(i) **IN GENERAL.**—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

“(I) become insolvent; or

“(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

“(ii) **DEFAULT PROCEDURES.**—Each derivatives clearing organization shall—

“(I) clearly state the default procedures of the derivatives clearing organization;

“(II) make publicly available the default rules of the derivatives clearing organization; and

“(III) ensure that the derivatives clearing organization may take timely action—

“(aa) to contain losses and liquidity pressures; and

“(bb) to continue meeting each obligation of the derivatives clearing organization.

“(H) **RULE ENFORCEMENT.**—Each derivatives clearing organization shall—

“(i) maintain adequate arrangements and resources for—

“(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

“(II) the resolution of disputes;

“(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

“(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

“(I) **SYSTEM SAFEGUARDS.**—Each derivatives clearing organization shall—

“(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

Public
information.

Reports.

“(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

Procedures.

“(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

“(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

“(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

Tests.

“(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

“(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

“(i) in a form and manner that is acceptable to the Commission; and

“(ii) for a period of not less than 5 years.

Time period.

“(L) PUBLIC INFORMATION.—

“(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

“(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

“(iii) PUBLIC DISCLOSURE.—Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

“(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

“(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

“(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

“(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

“(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

- Contracts.
- “(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—
- “(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and
- “(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.
- “(N) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—
- “(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or
- “(ii) impose any material anticompetitive burden.
- “(O) GOVERNANCE FITNESS STANDARDS.—
- “(i) GOVERNANCE ARRANGEMENTS.—Each derivatives clearing organization shall establish governance arrangements that are transparent—
- “(I) to fulfill public interest requirements; and
- “(II) to permit the consideration of the views of owners and participants.
- “(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—
- “(I) directors;
- “(II) members of any disciplinary committee;
- “(III) members of the derivatives clearing organization;
- “(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and
- “(V) any party affiliated with any individual or entity described in this clause.
- “(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall—
- “(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and
- “(ii) establish a process for resolving conflicts of interest described in clause (i).
- “(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.
- “(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.”
- Regulations.
- 7 USC 7a-1 note.
- (d) CONFLICTS OF INTEREST.—The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.

(e) REPORTING REQUIREMENTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) (as amended by subsection (b)) is amended by adding at the end the following:

“(k) REPORTING REQUIREMENTS.—

“(1) DUTY OF DERIVATIVES CLEARING ORGANIZATIONS.—Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.

“(2) DATA COLLECTION AND MAINTENANCE REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

“(A) swaps data reported to swap data repositories; and

“(B) swaps traded on swap execution facilities.

“(3) REPORTS ON SECURITY-BASED SWAP AGREEMENTS TO BE SHARED WITH THE SECURITIES AND EXCHANGE COMMISSION.—

“(A) IN GENERAL.—A derivatives clearing organization that clears security-based swap agreements (as defined in section 1a(47)(A)(v)) shall, upon request, open to inspection and examination to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and disclosure requirements of section 8.

“(B) JURISDICTION.—Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is registered with the Commission.

“(4) INFORMATION SHARING.—Subject to section 8, and upon request, the Commission shall share information collected under paragraph (2) with—

“(A) the Board;

“(B) the Securities and Exchange Commission;

“(C) each appropriate prudential regulator;

“(D) the Financial Stability Oversight Council;

“(E) the Department of Justice; and

“(F) any other person that the Commission determines to be appropriate, including—

“(i) foreign financial supervisors (including foreign futures authorities);

“(ii) foreign central banks; and

“(iii) foreign ministries.

“(5) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the Commission may share information with any entity described in paragraph (4)—

“(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

“(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 8.

“(6) PUBLIC INFORMATION.—Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).”.

(f) PUBLIC DISCLOSURE.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence—

(1) by inserting “, central bank and ministries,” after “department” each place it appears; and

(2) by striking “. is a party.” and inserting “, is a party.”.

(g) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEALS.—The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) by striking sections 404 and 407 (7 U.S.C. 27b, 27e);

(B) in section 402 (7 U.S.C. 27), by striking subsection (d); and

(C) in section 408 (7 U.S.C. 27f)—

(i) in subsection (c)—

(I) by striking “in the case” and all that follows through “a hybrid” and inserting “in the case of a hybrid”;

(II) by striking “; or” and inserting a period; and

(III) by striking paragraph (2);

(ii) by striking subsection (b); and

(iii) by redesignating subsection (c) as subsection

(b).

(2) LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

“(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

“(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

“(2) the definitions of ‘security-based swap’ in section 3(a)(68) of the Securities Exchange Act of 1934 and ‘security-based swap agreement’ in section 1a(47)(A)(v) of the Commodity Exchange Act and section 3(a)(78) of the Securities Exchange Act of 1934 do not include any identified bank product.

“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

“(1) would meet the definition of a ‘swap’ under section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a) or a ‘security-based swap’ under that section 3(a)(68) of the Securities Exchange Act of 1934; and

“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified

banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified bank product that—

“(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

“(2) meets the definition of swap in section 1a(47) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

“(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”

(h) REDUCING CLEARING SYSTEMIC RISK.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1(F)(i)) is amended by adding at the end the following: “In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.”

SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.

15 USC 8323.

(a) IN GENERAL.—In order to mitigate conflicts of interest, not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commodity Futures Trading Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of \$50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

Deadline.

(b) PURPOSES.—The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant’s conduct of business with, a derivatives clearing organization, contract market, or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

(c) CONSIDERATIONS.—In adopting rules pursuant to this section, the Commodity Futures Trading Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap

execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION DATA.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) is amended by adding at the end the following:

“(13) PUBLIC AVAILABILITY OF SWAP TRANSACTION DATA.—

“(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—

In this paragraph, the term ‘real-time public reporting’ means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

“(B) PURPOSE.—The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

“(C) GENERAL RULE.—The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

“(i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(1) (including those swaps that are excepted from the requirement pursuant to subsection (h)(7)), the Commission shall require real-time public reporting for such transactions.

“(ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(1), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.

“(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

“(iv) With respect to swaps that are determined to be required to be cleared under subsection (h)(2) but are not cleared, the Commission shall require real-time public reporting for such transactions.

“(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

“(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

“(i) to ensure such information does not identify the participants;

“(ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;

“(iii) to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and

“(iv) that take into account whether the public disclosure will materially reduce market liquidity.

“(F) TIMELINESS OF REPORTING.—Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

“(G) REPORTING OF SWAPS TO REGISTERED SWAP DATA REPOSITORIES.—Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.

“(14) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

“(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

“(i) the trading and clearing in the major swap categories; and

“(ii) the market participants and developments in new products.

“(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from swap data repositories and derivatives clearing organizations; and

“(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

“(C) AUTHORITY OF THE COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.”.

SEC. 728. SWAP DATA REPOSITORIES.

The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:

“SEC. 21. SWAP DATA REPOSITORIES.

7 USC 24a.

“(a) REGISTRATION REQUIREMENT.—

“(1) REQUIREMENT; AUTHORITY OF DERIVATIVES CLEARING ORGANIZATION.—

“(A) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

“(B) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization may register as a swap data repository.

“(2) INSPECTION AND EXAMINATION.—Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

“(3) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

“(i) the requirements and core principles described in this section; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) REASONABLE DISCRETION OF SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this section.

“(b) STANDARD SETTING.—

“(1) DATA IDENTIFICATION.—

“(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

“(B) REQUIREMENT.—In carrying out subparagraph (A), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

“(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

“(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

“(c) DUTIES.—A swap data repository shall—

“(1) accept data prescribed by the Commission for each swap under subsection (b);

“(2) confirm with both counterparties to the swap the accuracy of the data that was submitted;

“(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

“(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

“(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13);

“(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities;

“(6) maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity; and

“(7) on a confidential basis pursuant to section 8, upon request, and after notifying the Commission of the request, make available all data obtained by the swap data repository, including individual counterparty trade and position data, to—

“(A) each appropriate prudential regulator;

“(B) the Financial Stability Oversight Council;

“(C) the Securities and Exchange Commission;

“(D) the Department of Justice; and

“(E) any other person that the Commission determines to be appropriate, including—

“(i) foreign financial supervisors (including foreign futures authorities);

“(ii) foreign central banks; and

“(iii) foreign ministries; and

“(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.

“(d) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—

Before the swap data repository may share information with any entity described in subsection (c)(7)—

“(1) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

“(2) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 8.

“(e) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each swap data repository shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the swap data repository;

“(B) review the compliance of the swap data repository with respect to the requirements and core principles described in this section;

“(C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of non-compliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the swap data repository of the chief compliance officer with respect to this Act (including regulations); and

“(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and

Certification.

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

“(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA REPOSITORIES.—

“(1) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap data repository shall not—

“(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

“(2) GOVERNANCE ARRANGEMENTS.—Each swap data repository shall establish governance arrangements that are transparent—

“(A) to fulfill public interest requirements; and

“(B) to support the objectives of the Federal Government, owners, and participants.

“(3) CONFLICTS OF INTEREST.—Each swap data repository shall—

Regulations.

“(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and

“(B) establish a process for resolving conflicts of interest described in subparagraph (A).

“(4) ADDITIONAL DUTIES DEVELOPED BY COMMISSION.—

“(A) IN GENERAL.—The Commission may develop 1 or more additional duties applicable to swap data repositories.

“(B) CONSIDERATION OF EVOLVING STANDARDS.—In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

“(C) ADDITIONAL DUTIES FOR COMMISSION DESIGNEES.—The Commission shall establish additional duties for any registrant described in section 1a(48) in order to minimize

conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the swap data repository.

“(g) **REQUIRED REGISTRATION FOR SWAP DATA REPOSITORIES.**—Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

“(h) **RULES.**—The Commission shall adopt rules governing persons that are registered under this section.”.

SEC. 729. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

7 USC 6q.

“SEC. 4r. REPORTING AND RECORDKEEPING FOR UNCLEARED SWAPS.

7 USC 6r.

“(a) REQUIRED REPORTING OF SWAPS NOT ACCEPTED BY ANY DERIVATIVES CLEARING ORGANIZATION.—

“(1) IN GENERAL.—Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

“(A) a swap data repository described in section 21;
or

“(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

“(2) TRANSITION RULE FOR PREENACTMENT SWAPS.—

“(A) SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—Each swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final rule; or

“(ii) such other period as the Commission determines to be appropriate.

“(B) COMMISSION RULEMAKING.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each swap entered into before the date of enactment as referenced in subparagraph (A).

“(C) EFFECTIVE DATE.—The reporting provisions described in this section shall be effective upon the enactment of this section.

“(3) REPORTING OBLIGATIONS.—

“(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (1) and (2).

“(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With

respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (1) and (2).

“(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (1) and (2).

“(b) DUTIES OF CERTAIN INDIVIDUALS.—Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not—

“(1) clear the swap in accordance with section 2(h)(1); or

“(2) have the data regarding the swap accepted by a swap data repository in accordance with rules (including timeframes) adopted by the Commission under section 21.

“(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

“(1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

“(2) maintain books and records pertaining to the swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

“(A) any representative of the Commission;

“(B) an appropriate prudential regulator;

“(C) the Securities and Exchange Commission;

“(D) the Financial Stability Oversight Council; and

“(E) the Department of Justice.

“(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 21.”

SEC. 730. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4s (as added by section 731) the following:

7 USC 6t.

“SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) PROHIBITION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

“(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

“(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

“(2) EXCEPTION.—Paragraph (1) shall not apply if—

“(A) the person files or causes to be filed with the properly designated officer of the Commission such reports

regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

“(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

“(b) REQUIREMENTS.—

Records.

“(1) IN GENERAL.—Books and records described in subsection (a)(2)(B) shall—

“(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

“(B) be open at all times to inspection and examination by any representative of the Commission; and

“(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section 1a(47)(A)(v)), and consistent with the confidentiality and disclosure requirements of section 8.

“(2) JURISDICTION.—Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe record-keeping and reporting requirements for large swap traders under this section.

“(c) APPLICABILITY.—For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

“(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 4a(a)(3).”.

SEC. 731. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 729) the following:

“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

7 USC 6s.

“(a) REGISTRATION.—

“(1) SWAP DEALERS.—It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

“(2) MAJOR SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

“(2) CONTENTS.—

“(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) CONTINUAL REPORTING.—A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

“(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

“(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

Regulations.
Deadline.

“(5) TRANSITION.—Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(c) DUAL REGISTRATION.—

“(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

“(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

“(d) RULEMAKINGS.—

“(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

“(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

“(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

Regulations.

“(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

“(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

“(2) RULES.—

“(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

“(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

“(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

“(3) STANDARDS FOR CAPITAL AND MARGIN.—

“(A) IN GENERAL.—To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall—

“(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

“(ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

“(B) RULE OF CONSTRUCTION.—

“(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

“(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) (except for section 4f(a)(3)) in accordance with section 4f(b); or

“(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) in accordance with section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).

“(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to swap dealers and major swap participants for which it is the prudential regulator and the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

“(i) preserving the financial integrity of markets trading swaps; and

“(ii) preserving the stability of the United States financial system.

“(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

Consultation.

“(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

“(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

“(I) swap dealers; and

“(II) major swap participants.

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant—

“(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

Reports.
Regulations.

“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission; and

“(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

“(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

“(3) COUNTERPARTY RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

“(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of the business of the registered swap dealer and major swap participant;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission determines to be appropriate.

“(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

“(A) ADVISING SPECIAL ENTITIES.—A swap dealer or major swap participant that acts as an advisor to a special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

Compliance.

“(B) ENTERING OF SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A swap dealer that enters into or offers to enter into swap with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

“(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term ‘special entity’ means—

“(i) a Federal agency;

“(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

“(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

“(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

“(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

“(i) information about the material risks and characteristics of the swap;

“(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

“(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

“(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;

“(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

“(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(4) SPECIAL REQUIREMENTS FOR SWAP DEALERS ACTING AS ADVISORS.—

“(A) IN GENERAL.—It shall be unlawful for a swap dealer or major swap participant—

“(i) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

“(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

“(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

“(B) DUTY.—Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

“(C) REASONABLE EFFORTS.—Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

“(i) the financial status of the Special Entity;

“(ii) the tax status of the Special Entity;

“(iii) the investment or financing objectives of the Special Entity; and

“(iv) any other information that the Commission may prescribe by rule or regulation.

“(5) SPECIAL REQUIREMENTS FOR SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

“(A) Any swap dealer or major swap participant that offers to enter or enters into a swap with a Special Entity shall—

“(i) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that—

“(I) has sufficient knowledge to evaluate the transaction and risks;

“(II) is not subject to a statutory disqualification;

“(III) is independent of the swap dealer or major swap participant;

“(IV) undertakes a duty to act in the best interests of the counterparty it represents;

“(V) makes appropriate disclosures;

“(VI) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

“(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

“(ii) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

“(B) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

“(7) APPLICABILITY.—This section shall not apply with respect to a transaction that is—

“(A) initiated by a Special Entity on an exchange or swap execution facility; and

“(B) one in which the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.

“(i) DOCUMENTATION STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—The Commission shall adopt rules governing documentation standards for swap dealers and major swap participants.

“(j) DUTIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

“(2) RISK MANAGEMENT PROCEDURES.—The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

“(3) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

“(B) swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to swaps; and

“(D) other information relevant to its trading in swaps.

“(4) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

“(5) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

“(B) address such other issues as the Commission determines to be appropriate.

“(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap dealer or major swap participant shall not—

“(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.

“(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the swap dealer or major swap participant;

“(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of non-compliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, re-testing, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the swap dealer or major swap participant with respect to this Act (including regulations); and

“(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

Certification.

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

SEC. 732. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) by redesignating subsection (c) as subsection (e); and
(2) by inserting after subsection (b) the following:

Procedures.

“(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

“(2) address such other issues as the Commission determines to be appropriate.

Regulations.

“(d) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 17.”.

SEC. 733. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b-2) the following:

7 USC 7b-3.

“SEC. 5h. SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—

“(1) IN GENERAL.—No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

“(2) DUAL REGISTRATION.—Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.

“(b) TRADING AND TRADE PROCESSING.—

“(1) IN GENERAL.—Except as specified in paragraph (2), a swap execution facility that is registered under subsection (a) may—

“(A) make available for trading any swap; and

“(B) facilitate trade processing of any swap.

“(2) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

“(c) IDENTIFICATION OF FACILITY USED TO TRADE SWAPS BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.

“(d) RULE-WRITING.—

“(1) The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e).

“(2) For all swaps that are not required to be executed through a swap execution facility as defined in paragraph (1), such trades may be executed through any other available means of interstate commerce.

“(3) The Securities and Exchange Commission and Commodity Futures Trading Commission shall update these rules as necessary to account for technological and other innovation.

“(e) RULE OF CONSTRUCTION.—The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.

“(f) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

Regulations.

“(1) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

“(i) the core principles described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) REASONABLE DISCRETION OF SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission by rule or regulation, a swap execution facility

described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

“(2) COMPLIANCE WITH RULES.—A swap execution facility shall—

“(A) establish and enforce compliance with any rule of the swap execution facility, including—

“(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

“(ii) any limitation on access to the swap execution facility;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

“(i) to provide market participants with impartial access to the market; and

“(ii) to capture information that may be used in establishing whether rule violations have occurred;

“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

“(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8).

“(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING AND TRADE PROCESSING.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

“(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission on request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

“(B) POSITION LIMITS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall—

Contracts.

“(i) set its position limitation at a level no higher than the Commission limitation; and

“(ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

“(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1).

Procedures.

“(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

“(9) TIMELY PUBLICATION OF TRADING INFORMATION.—

“(A) IN GENERAL.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

Public information.

“(B) CAPACITY OF SWAP EXECUTION FACILITY.—The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

“(10) RECORDKEEPING AND REPORTING.—

“(A) IN GENERAL.—A swap execution facility shall—

“(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

Time period.

“(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act; and

“(iii) shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

“(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

“(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall not—

“(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(12) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(13) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

Time period.

“(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

“(14) SYSTEM SAFEGUARDS.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

“(i) are reliable and secure; and

“(ii) have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

“(i) the timely recovery and resumption of operations; and

“(ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

“(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

“(i) order processing and trade matching;

“(ii) price reporting;

“(iii) market surveillance and

“(iv) maintenance of a comprehensive and accurate audit trail.

“(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—

“(i) report directly to the board or to the senior officer of the facility;

“(ii) review compliance with the core principles in this subsection;

“(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

“(v) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

“(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

“(C) REQUIREMENTS FOR PROCEDURES.—In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(D) ANNUAL REPORTS.—

“(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(I) the compliance of the swap execution facility with this Act; and

“(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

“(ii) REQUIREMENTS.—The chief compliance officer shall—

“(I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and

“(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

Certification.

“(g) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

“(h) RULES.—The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.”.

SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

Repeal.

(a) **IN GENERAL.**—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) in subsection (a)(1)(A), in the first sentence, by striking “or 5a”; and

(B) in paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by striking “section 5a of this Act” and all that follows through “5d of this Act” and inserting “section 5b of this Act”.

(2) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

(A) by striking “that—” and all that follows through “(i) has been designated” and inserting “that has been designated”;

(B) by striking “; or” and inserting “; and” and

(C) by striking clause (ii).

7 USC 7a-3 note.

(c) **ABILITY TO PETITION COMMISSION.**—

(1) **IN GENERAL.**—Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) **CONSIDERATION OF PETITION.**—The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

Regulations.
Procedures.

SEC. 735. DESIGNATED CONTRACT MARKETS.

(a) **CRITERIA FOR DESIGNATION.**—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b).

(b) **CORE PRINCIPLES FOR CONTRACT MARKETS.**—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following:

“(d) **CORE PRINCIPLES FOR CONTRACT MARKETS.**—

“(1) **DESIGNATION AS CONTRACT MARKET.**—

“(A) **IN GENERAL.**—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

“(i) any core principle described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) **REASONABLE DISCRETION OF CONTRACT MARKET.**—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

“(2) **COMPLIANCE WITH RULES.**—

“(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

“(i) access requirements;

“(ii) the terms and conditions of any contracts to be traded on the contract market; and

“(iii) rules prohibiting abusive trade practices on the contract market.

“(B) CAPACITY OF CONTRACT MARKET.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

“(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

“(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

“(4) PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

“(A) methods for conducting real-time monitoring of trading; and

“(B) comprehensive and accurate trade reconstructions.

“(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

“(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

“(6) EMERGENCY AUTHORITY.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

“(A) to liquidate or transfer open positions in any contract;

“(B) to suspend or curtail trading in any contract; and

“(C) to require market participants in any contract to meet special margin requirements.

“(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

“(ii) the rules and specifications describing the operation of the contract market’s—

“(I) electronic matching platform; or

“(II) trade execution facility.

Public
information.

“(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

“(9) EXECUTION OF TRANSACTIONS.—

“(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

“(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;

“(ii) an exchange of—

“(I) futures in connection with a cash commodity transaction;

“(II) futures for cash commodities; or

“(III) futures for swaps; or

“(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

Records.

“(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

“(A) to assist in the prevention of customer and market abuses; and

“(B) to provide evidence of any violations of the rules of the contract market.

“(11) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce—

“(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

“(B) rules to ensure—

“(i) the financial integrity of any—

“(I) futures commission merchant; and

“(II) introducing broker; and

“(ii) the protection of customer funds.

“(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules—

“(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

“(B) to promote fair and equitable trading on the contract market.

“(13) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

“(14) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

“(15) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

“(16) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

“(A) to minimize conflicts of interest in the decision-making process of the contract market; and

“(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

“(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

“(18) RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

“(A) in a form and manner that is acceptable to the Commission; and

“(B) for a period of at least 5 years.

Time period.

“(19) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

“(A) adopt any rule or taking any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading on the contract market.

“(20) SYSTEM SAFEGUARDS.—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(21) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

“(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

“(22) DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

Records.

“(23) SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”.

SEC. 736. MARGIN.

Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended—

(1) in subparagraph (C), by striking “, excepting the setting of levels of margin”;

(2) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

(3) by inserting after subparagraph (C) the following:

“(D) margin requirements, provided that the rules, regulations, or orders shall—

“(i) be limited to protecting the financial integrity of the derivatives clearing organization;

“(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

“(iii) not set specific margin amounts.”.

SEC. 737. POSITION LIMITS.

(a) AGGREGATE POSITION LIMITS.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting after “(a)” the following:

“(1) IN GENERAL.—”;

(2) in the first sentence, by striking “on electronic trading facilities with respect to a significant price discovery contract” and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities”;

(3) in the second sentence—

(A) by inserting “, including any group or class of traders,” after “held by any person”; and

(B) by striking “on an electronic trading facility with respect to a significant price discovery contract,” and inserting “swaps traded on or subject to the rules of a

designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity,”; and

(4) by adding at the end the following:

“(2) ESTABLISHMENT OF LIMITATIONS.—

“(A) IN GENERAL.—In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

Regulations.
Contracts.

“(B) TIMING.—

“(i) EXEMPT COMMODITIES.—For exempt commodities, the limits required under subparagraph (A) shall be established within 180 days after the date of the enactment of this paragraph.

“(ii) AGRICULTURAL COMMODITIES.—For agricultural commodities, the limits required under subparagraph (A) shall be established within 270 days after the date of the enactment of this paragraph.

“(C) GOAL.—In establishing the limits required under subparagraph (A), the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

“(3) SPECIFIC LIMITATIONS.—In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

“(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

“(B) to the maximum extent practicable, in its discretion—

“(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

“(ii) to deter and prevent market manipulation, squeezes, and corners;

“(iii) to ensure sufficient market liquidity for bona fide hedgers; and

“(iv) to ensure that the price discovery function of the underlying market is not disrupted.

“(4) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

“(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

“(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

“(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

“(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

“(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

“(5) ECONOMICALLY EQUIVALENT CONTRACTS.—

“(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

“(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

“(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

“(ii) establish the limits simultaneously with limits established under paragraph (2).

“(6) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed

Contracts.

for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

“(7) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”.

(b) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility”.

(c) BONA FIDE HEDGING TRANSACTION.—Section 4a(c) of the Commodity Exchange Act is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding at the end the following:

“(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

“(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

“(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

“(iii) arises from the potential change in the value of—

“(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

“(II) liabilities that a person owns or anticipates incurring; or

“(III) services that a person provides, purchases, or anticipates providing or purchasing; or

“(B) reduces risks attendant to a position resulting from a swap that—

“(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

“(ii) meets the requirements of subparagraph (A).”.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the date of the enactment of this section.

Contracts.

7 USC 6a note.

SEC. 738. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the first sentence, by striking “The Commission” and inserting the following:

“(2) PERSONS LOCATED IN THE UNITED STATES.—

“(A) IN GENERAL.—The Commission”;

(2) in the second sentence, by striking “Such rules and regulations” and inserting the following:

“(B) DIFFERENT REQUIREMENTS.—Rules and regulations described in subparagraph (A)”;

(3) in the third sentence—

(A) by striking “No rule or regulation” and inserting the following:

“(C) PROHIBITION.—Except as provided in paragraphs (1) and (2), no rule or regulation”;

(B) by striking “that (1) requires” and inserting the following: “that—

“(i) requires”; and

(C) by striking “market, or (2) governs” and inserting the following: “market; or

“(ii) governs”; and

(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:

“(1) FOREIGN BOARDS OF TRADE.—

“(A) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, ‘direct access’ refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. In adopting such rules and regulations, the commission shall consider—

“(i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade’s home country; and

“(ii) any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade’s home country.

“(B) LINKED CONTRACTS.—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on

a registered entity, unless the Commission determines that—

“(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

“(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

“(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

“(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

Notification.

“(aa) the information that the foreign board of trade will make publicly available;

Public information.

“(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(V) provides the Commission such information as is necessary to publish reports on aggregate

Reports.

trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

Effective date.

“(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.”.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting “or by subsection (e)” after “Unless exempted by the Commission pursuant to subsection (c)”; and

(2) by adding at the end the following:

“(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

“(1) IN GENERAL.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

“(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

“(i) legally organized under the laws of a foreign country;

“(ii) authorized to act as a board of trade by a foreign futures authority; and

“(iii) subject to regulation by the foreign futures authority; and

“(B) has not been determined by the Commission to be operating in violation of subsection (a).

“(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).”.

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 739) is amended by adding at the end the following:

“(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”.

SEC. 739. LEGAL CERTAINTY FOR SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

“(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

“(B) SWAPS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to such agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

“(i) to meet the definition of a swap under section 1a; or

“(ii) to be cleared in accordance with section 2(h)(1).

“(5) LEGAL CERTAINTY FOR LONG-TERM SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—

“(A) EFFECT ON SWAPS.—Unless specifically reserved in the applicable swap, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the swap.

“(B) POSITION LIMITS.—Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader’s position is increased after the effective date of such position limit rule, regulation, or order.”.

SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.

Repeal.

SEC. 741. ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY.—The Commodity Exchange Act is amended by inserting after section 4b (7 U.S.C. 6b) the following:

“SEC. 4b-1. ENFORCEMENT AUTHORITY.

7 USC 6b-1.

“(a) COMMODITY FUTURES TRADING COMMISSION.—Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the

Wall Street Transparency and Accountability Act of 2010 with respect to any person.

“(b) PRUDENTIAL REGULATORS.—The prudential regulators shall have exclusive authority to enforce the provisions of section 4s(e) with respect to swap dealers or major swap participants for which they are the prudential regulator.

“(c) REFERRALS.—

“(1) PRUDENTIAL REGULATORS.—If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this Act (including section 4s or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

“(A) a request that the Commission initiate an enforcement proceeding under this Act; and

“(B) an explanation of the facts and circumstances that led to the preparation of the written report.

“(2) COMMISSION.—If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 4s or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

“(A) a request that the prudential regulator initiate an enforcement proceeding under this Act or any other Federal law (including regulations); and

“(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

“(d) BACKSTOP ENFORCEMENT AUTHORITY.—

“(1) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

“(2) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”;

(B) in subsection (b), by striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”; and

(C) by adding at the end the following:

Time period.

“(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

“(1) to employ any device, scheme, or artifice to defraud;

“(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

“(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”.

(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting “or swap” before “if the transaction is used or may be used”.

(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting “or of any swap,” before “or has willfully made”.

(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting “or of any swap,” before “or otherwise is violating”.

(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a-1(a)) is amended in the matter preceding the proviso by inserting “or any swap” after “commodity for future delivery”.

(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting “or of any swap,” before “or to corner”; and

(ii) in paragraph (4), by inserting “swap data repository,” before “or futures association” and

(B) in subsection (e)(1)—

(i) by inserting “swap data repository,” before “or registered futures association”; and

(ii) by inserting “, or swaps,” before “on the basis”.

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

“(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.”.

(8) Section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)) is amended—

(A) by striking “(dd),” each place it appears;

(B) in clause (iii), by inserting “, and accounts or pooled investment vehicles described in clause (vi),” before “shall be subject to”; and

(C) by adding at the end the following:

“(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).”.

(9) Section 2(c)(2)(C) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)) is amended—

Applicability.

- (A) by striking “(dd),” each place it appears;
- (B) in clause (ii)(I), by inserting “, and accounts or pooled investment vehicles described in clause (vii),” before “shall be subject to”; and
- (C) by adding at the end the following:
- Applicability. “(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).”.
- (10) Section 1a(19)(A)(iv)(II) of the Commodity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II)) (as redesignated by section 721(a)(1)) is amended by inserting before the semicolon at the end the following: “provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term ‘eligible contract participant’ shall not include a commodity pool in which any participant is not otherwise an eligible contract participant”.
- (11) Section 6(e) of the Commodity Exchange Act (7 U.S.C. 9a) is amended by adding at the end the following:
- Penalty. “(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).
- Penalty. “(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).”.
- 15 USC 8324. (c) SAVINGS CLAUSE.—Notwithstanding any other provision of this title, nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority granted by Federal law other than this title.

SEC. 742. RETAIL COMMODITY TRANSACTIONS.

- (a) IN GENERAL.—Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—
- (1) in paragraph (1), by striking “5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))” and inserting “, 5b, or 12(e)(2)(B))”; and
- (2) in paragraph (2), by adding at the end the following:
- Contracts. “(D) RETAIL COMMODITY TRANSACTIONS.—
- “(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—
- “(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and
- “(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or

a person acting in concert with the offeror or counterparty on a similar basis.

“(ii) EXCEPTIONS.—This subparagraph shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

“(iii) ENFORCEMENT.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

Applicability.

“(iv) ELIGIBLE COMMERCIAL ENTITY.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.”.

(b) GRAMM-LEACH-BLILEY ACT.—Section 206(a) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note) is amended, in the matter preceding paragraph (1), by striking “For purposes of” and inserting “Except as provided in subsection (e), for purposes of”.

(c) CONFORMING AMENDMENTS RELATING TO RETAIL FOREIGN EXCHANGE TRANSACTIONS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (aa), by inserting “United States” before “financial institution”;

(B) by striking items (dd) and (ff);

(C) by redesignating items (ee) and (gg) as items (dd) and (ff), respectively; and

(D) in item (dd) (as so redesignated), by striking the semicolon and inserting “; or”.

(2) Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) (as amended by subsection (a)(2)) is amended by adding at the end the following:

“(E) PROHIBITION.—

“(i) DEFINITION OF FEDERAL REGULATORY AGENCY.—In this subparagraph, the term ‘Federal regulatory agency’ means—

“(I) the Commission;

“(II) the Securities and Exchange Commission;

“(III) an appropriate Federal banking agency;

“(IV) the National Credit Union Association;

and

“(V) the Farm Credit Administration.

“(ii) PROHIBITION.—

“(I) IN GENERAL.—Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

“(II) EFFECTIVE DATE.—With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to the date of enactment of this subclause, subclause (I) shall take effect 90 days after the date of enactment of this subclause.

“(iii) REQUIREMENTS OF RULES AND REGULATIONS.—

“(I) IN GENERAL.—The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

“(aa) disclosure;

“(bb) recordkeeping;

“(cc) capital and margin;

“(dd) reporting;

“(ee) business conduct;

“(ff) documentation; and

“(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

“(II) TREATMENT.—The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.”.

Contracts.

Determination.

SEC. 743. OTHER AUTHORITY.

7 USC 1a note.

Unless otherwise provided by the amendments made by this subtitle, the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law.

SEC. 744. RESTITUTION REMEDIES.

Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a–1(d)) is amended by adding at the end the following:

“(3) **EQUITABLE REMEDIES.**—In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

“(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

“(B) disgorgement of gains received in connection with such violation.”.

SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.

(a) **EFFECT OF INTERPRETATION.**—Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended by striking paragraph (2) and inserting the following:

“(2) **EFFECT OF INTERPRETATION.**—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).”.

(b) **NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.**—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (c) and inserting the following:

“(c) **NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.**—

Certification.

“(1) **IN GENERAL.**—A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

“(2) **RULE REVIEW.**—The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

Effective date.
Notification.
Determination.

Notification.
Time period.

“(3) STAY OF CERTIFICATION FOR RULES.—

“(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

Effective date.

“(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

“(i) withdraws the stay prior to that time; or

“(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this Act (including regulations under this Act).

Public comment.

“(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

“(4) PRIOR APPROVAL.—

“(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

“(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

“(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

“(5) APPROVAL.—

“(A) RULES.—The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this subtitle (including regulations).

“(B) CONTRACTS AND INSTRUMENTS.—The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this Act (including regulations).

“(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

“(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of

a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

“(I) activity that is unlawful under any Federal or State law;

“(II) terrorism;

“(III) assassination;

“(IV) war;

“(V) gaming; or

“(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

“(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

“(iii) SWAPS CONTRACTS.—

“(I) IN GENERAL.—In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

Determination.

“(II) REQUIREMENTS.—Any such criteria, conditions, or rules shall consider—

“(aa) the financial integrity of the derivatives clearing organization; and

“(bb) any other factors which the Commission determines may be appropriate.

“(iv) DEADLINE.—The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.”.

(c) VIOLATION OF CORE PRINCIPLES.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended by striking subsection (d).

SEC. 746. INSIDER TRADING.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

“(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or

administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—

“(A) a contract of sale of a commodity for future delivery (or option on such a contract);

“(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(C) a swap.

“(4) NONPUBLIC INFORMATION.—

“(A) IMPARTING OF NONPUBLIC INFORMATION.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract);

“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap.

“(B) KNOWING USE.—It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract);

“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap.

“(C) THEFT OF NONPUBLIC INFORMATION.—It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government

holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract);

“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap, provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses (i), (ii), or (iii).”.

SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (as amended by section 746) is amended by adding at the end the following:

“(5) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

“(A) violates bids or offers;

“(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

“(C) is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).

“(6) RULEMAKING AUTHORITY.—The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

“(7) USE OF SWAPS TO DEFRAUD.—It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.”.

SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end the following:

“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION. 7 USC 26.

“(a) DEFINITIONS.—In this section:

“(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term ‘covered judicial or administrative action’ means any judicial or administrative action brought by the Commission under this Act that results in monetary sanctions exceeding \$1,000,000.

“(2) FUND.—The term ‘Fund’ means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).

“(3) MONETARY SANCTIONS.—The term ‘monetary sanctions’, when used with respect to any judicial or administrative action means—

“(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

“(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

“(4) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

“(5) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by the Commission under this Act, means any judicial or administrative action brought by an entity described in subclauses (I) through (VI) of subsection (h)(2)(C) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

“(6) SUCCESSFUL RESOLUTION.—The term ‘successful resolution’, when used with respect to any judicial or administrative action brought by the Commission under this Act, includes any settlement of such action.

“(7) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of this Act to the Commission, in a manner established by rule or regulation by the Commission.

“(b) AWARDS.—

“(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

Regulations.

“(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

“(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

“(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

“(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—

“(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

“(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission—

“(i) shall take into consideration—

“(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

“(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

“(III) the programmatic interest of the Commission in deterring violations of the Act (including regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

“(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

“(ii) shall not take into consideration the balance of the Fund.

“(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

“(i) a appropriate regulatory agency;

“(ii) the Department of Justice;

“(iii) a registered entity;

“(iv) a registered futures association;

“(v) a self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); or

“(vi) a law enforcement organization;

“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;

“(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

“(d) REPRESENTATION.—

“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

“(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

“(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission, by rule or regulation.

“(f) APPEALS.—

“(1) IN GENERAL.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission.

“(2) APPEALS.—Any determination described in paragraph (1) may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.

“(3) REVIEW.—The court shall review the determination made by the Commission in accordance with section 7064 of title 5, United States Code.

“(g) COMMODITY FUTURES TRADING COMMISSION CUSTOMER PROTECTION FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the ‘Commodity Futures Trading Commission Customer Protection Fund’.

“(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

“(A) the payment of awards to whistleblowers as provided in subsection (a); and

“(B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this Act, or the rules and regulations thereunder.

“(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund:

“(A) MONETARY SANCTIONS.—Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed to victims of a violation of this Act or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds \$100,000,000.

Deadline.

“(B) ADDITIONAL AMOUNTS.—If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under this Act that is based on information provided by a whistleblower.

“(C) INVESTMENT INCOME.—All income from investments made under paragraph (4).

“(4) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission’s judgment, required to meet the current needs of the Fund.

“(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

“(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on—

“(A) the Commission’s whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;

“(B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

“(C) the balance of the Fund at the beginning of the preceding fiscal year;

“(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

“(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

“(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);

“(H) the balance of the Fund at the end of the preceding fiscal year; and

“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(h) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

“(i) in providing information to the Commission in accordance with subsection (b); or

“(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

“(B) ENFORCEMENT.—

“(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code.

“(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

“(iii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

“(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

“(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

“(ii) the amount of back pay otherwise owed to the individual, with interest; and

“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(B) EFFECT.—Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(C) AVAILABILITY TO GOVERNMENT AGENCIES.—

“(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this Act and protect customers and in accordance with clause (ii), be made available to—

“(I) the Department of Justice;

“(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

“(III) a registered entity, registered futures association, or self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

“(IV) a State attorney general in connection with any criminal investigation;

“(V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

“(VI) a foreign futures authority.

“(ii) MAINTENANCE OF INFORMATION.—Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

“(iii) STUDY ON IMPACT OF FOIA EXEMPTION ON COMMODITY FUTURES TRADING COMMISSION.—

“(I) STUDY.—The Inspector General of the Commission shall conduct a study—

“(aa) on whether the exemption under section 552(b)(3) of title 5, United States Code (known as the Freedom of Information Act) established in paragraph (2)(A) aids whistleblowers in disclosing information to the Commission;

“(bb) on what impact the exemption has had on the public’s ability to access information about the Commission’s regulation of commodity futures and option markets; and

“(cc) to make any recommendations on whether the Commission should continue to use the exemption.

“(II) REPORT.—Not later than 30 months after the date of enactment of this clause, the Inspector General shall—

“(aa) submit a report on the findings of the study required under this clause to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on

Public
information.
Web posting.

Financial Services of the House of Representatives; and

“(bb) make the report available to the public through publication of a report on the website of the Commission.

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(i) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

Deadline.

“(j) IMPLEMENTING RULES.—The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(k) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(l) AWARDS.—A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this Act, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(m) PROVISION OF FALSE INFORMATION.—A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.

“(n) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

“(1) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

“(2) PREDISPUTE ARBITRATION AGREEMENTS.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.”.

SEC. 749. CONFORMING AMENDMENTS.

(a) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking “engage as” and inserting “be a”; and

(ii) by striking “or introducing broker” and all that follows through “or derivatives transaction execution facility”;

(B) in paragraph (1), by striking “or introducing broker”; and

(C) in paragraph (2), by striking “if a futures commission merchant”; and

(2) by adding at the end the following:

“(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.”.

(b) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended—

(1) by striking “(3) Subsection (1) of this section” and inserting the following:

“(3) EXCEPTION.—

“(A) IN GENERAL.—Paragraph (1)”; and

(2) by striking “to any investment trust” and all that follows through the period at the end and inserting the following: “to any commodity pool that is engaged primarily in trading commodity interests.

“(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be ‘engaged primarily’ in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

“(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.”.

(c) Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended—

(1) in subsection (a)(1)—

(A) by striking “, 5a(d),”; and

(B) by striking “and section (2)(h)(7) with respect to significant price discovery contracts,”; and

(2) in subsection (f)(1), by striking “section 4d(c) of this Act” and inserting “section 4d(e)”.

(d) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking “or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,”.

(e) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking “, or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,”.

(f) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking “section 2(c), 2(d), 2(f), or 2(g) of this Act” and inserting “section 2(c) or 2(f) of this Act”; and

(2) by striking “2(h) or”.

(g) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c) of this Act” and inserting “section 4d(e)”.

7 USC 25.

(h) Section 22 of the Commodity Exchange Act is amended—

(1) in subsection (a)(1)(B), by—

(A) inserting “or any swap” after “commodity”; and

(B) inserting “or any swap” after “such contract”;

(2) in subsection (a)(1)(C), by adding at the end the following:

“(iv) a swap; or”; and

(3) in subsection (b)(1)(A), by striking “section 2(h)(7) or sections 5 through 5c” and inserting “section 5, 5b, 5c, 5h, or 21”.

(i) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(1) by striking “section 2(c), 2(d), 2(f), or 2(g) of such Act” and inserting “section 2(c), 2(f), or 2(i) of that Act”; and

(2) by striking “2(h) or”.

SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.

Establishment.

(a) INTERAGENCY WORKING GROUP.—There is established to carry out this section an interagency working group (referred to in this section as the “interagency group”) composed of the following members or designees:

(1) The Chairman of the Commodity Futures Trading Commission (referred to in this section as the “Commission”), who shall serve as Chairman of the interagency group.

(2) The Secretary of Agriculture.

(3) The Secretary of the Treasury.

(4) The Chairman of the Securities and Exchange Commission.

(5) The Administrator of the Environmental Protection Agency.

(6) The Chairman of the Federal Energy Regulatory Commission.

(7) The Commissioner of the Federal Trade Commission.

(8) The Administrator of the Energy Information Administration.

(b) ADMINISTRATIVE SUPPORT.—The Commission shall provide the interagency group such administrative support services as are necessary to enable the interagency group to carry out the functions of the interagency group under this section.

(c) CONSULTATION.—In carrying out this section, the interagency group shall consult with representatives of exchanges, clearinghouses, self-regulatory bodies, major carbon market participants, consumers, and the general public, as the interagency group determines to be appropriate.

(d) STUDY.—The interagency group shall conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

(e) REPORT.—Not later than 180 days after the date of enactment of this Act, the interagency group shall submit to Congress a report on the results of the study conducted under subsection

(b), including recommendations for the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) (as amended by section 727) is amended by adding at the end the following:

“(15) ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.—

“(A) ESTABLISHMENT.—

“(i) IN GENERAL.—An Energy and Environmental Markets Advisory Committee is hereby established.

“(ii) MEMBERSHIP.—The Committee shall have 9 members.

“(iii) ACTIVITIES.—The Committee’s objectives and scope of activities shall be—

“(I) to conduct public meetings;

“(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and

“(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

“(B) REQUIREMENTS.—

“(i) IN GENERAL.—The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

Public meetings.

“(ii) MEMBERS.—Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

“(C) APPOINTMENT.—The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

“(D) REIMBURSEMENT.—Members shall be entitled to per diem and travel expense reimbursement by the Commission.

“(E) FACA.—The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.

SEC. 752. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators (as that term is defined in section 1a(39) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or

Consultation.
Standards.
15 USC 8325.
Securities.

Contracts.

appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection of users of contracts of sale of a commodity for future delivery.

SEC. 753. ANTI-MANIPULATION AUTHORITY.

(a) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

Regulations.
Deadline.

“(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

“(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

“(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

“(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

“(C) GOOD FAITH MISTAKES.—Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).

“(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the

Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

“(3) OTHER MANIPULATION.—In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

“(4) ENFORCEMENT.—

“(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

“(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

“(i) contain a description of the charges against the person that is the subject of the complaint; and

“(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

“(C) HEARING.—A hearing described in subparagraph (B)(ii)—

“(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A); Deadline.

“(ii) shall require the person to show cause regarding why—

“(I) an order should not be made—

“(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

“(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

“(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

“(iii) may be held before—

“(I) the Commission; or

“(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission. Records.

“(5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member

of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

“(6) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

“(7) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

“(8) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

“(9) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

“(10) EVIDENCE.—On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

“(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

“(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

“(C) assess such person—

“(i) a civil penalty of not more than an amount equal to the greater of—

“(I) \$140,000; or

“(II) triple the monetary gain to such person for each such violation; or

“(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section

9(a)(2), a civil penalty of not more than an amount equal to the greater of—

“(I) \$1,000,000; or

“(II) triple the monetary gain to the person for each such violation; and

“(D) require restitution to customers of damages proximately caused by violations of the person.

“(11) ORDERS.—

“(A) NOTICE.—The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

“(i) registered mail;

“(ii) certified mail; or

“(iii) personal delivery.

“(B) REVIEW.—

“(i) IN GENERAL.—A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

“(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

“(I) for the circuit in which the petitioner carries out the business of the petitioner; or

“(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

“(C) PROCEDURE.—

“(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

“(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

“(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.”.

(b) CEASE AND DESIST ORDERS, FINES.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

“(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance

Records.

Penalty.

of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of \$140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): *Provided*, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c).”.

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

“(D) who purchased or sold a contract referred to in subparagraph (B) hereof or swap if the violation constitutes—

“(i) the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; or

“(ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.”.

7 USC 9 note.

(d) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section.

7 USC 7a note.

SEC. 754. EFFECTIVE DATE.

Unless otherwise provided in this title, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in subparagraphs (A) and (B) of paragraph (5), by inserting “(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after “securities” each place that term appears;

(2) in paragraph (10), by inserting “security-based swap,” after “security future,”;

(3) in paragraph (13), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

(A) in subparagraph (B)(i)—

(i) in subclause (I), by striking “or government securities dealer” and inserting “government securities dealer, security-based swap dealer, or major security-based swap participant”; and

(ii) in subclause (II), by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”;

(B) in subparagraph (C), by striking “or government securities dealer” and inserting “government securities dealer, security-based swap dealer, or major security-based swap participant”; and

(C) in subparagraph (D), by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and

(6) by adding at the end the following:

“(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person—

“(i) who is not a security-based swap dealer; and

“(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

“(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

“(III) that is a financial entity that—

“(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

“(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

“(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person’s relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

“(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

“(68) SECURITY-BASED SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that—

“(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act (without regard to paragraph (47)(B)(x) of such section); and

“(ii) is based on—

“(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

“(II) a single security or loan, including any interest therein or on the value thereof; or

“(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

“(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with

all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

“(C) EXCLUSIONS.—The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

“(D) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

“(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term ‘index’ means an index or group of securities, including any interest therein or based on the value thereof.

“(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ means—

“(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

“(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

“(iii) any employee of such security-based swap dealer or major security-based swap participant.

“(B) EXCLUSION.—Other than for purposes of section 15F(1)(2), the term ‘person associated with a security-based swap dealer or major security-based swap participant’ or

‘associated person of a security-based swap dealer or major security-based swap participant’ does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

“(71) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person who—

“(i) holds himself out as a dealer in security-based swaps;

“(ii) makes a market in security-based swaps;

“(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

“(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

“(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

“(C) EXCEPTION.—The term ‘security-based swap dealer’ does not include a person that enters into security-based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of regular business.

“(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

“(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(74) PRUDENTIAL REGULATOR.—The term ‘prudential regulator’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term ‘security-based swap data repository’ means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

“(76) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term ‘security-based swap execution facility’ means a trading system or platform in which multiple participants have the

ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

“(A) facilitates the execution of security-based swaps between persons; and

“(B) is not a national securities exchange.

“(78) SECURITY-BASED SWAP AGREEMENT.—

“(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

“(B) EXCLUSIONS.—The term ‘security-based swap agreement’ does not include any security-based swap.”.

(b) **AUTHORITY TO FURTHER DEFINE TERMS.**—The Securities and Exchange Commission may, by rule, further define— 15 USC 8341.

(1) the term “commercial risk”;

(2) any other term included in an amendment to the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) made by this subtitle; and

(3) the terms “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “eligible contract participant”, with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this subtitle or the amendments made by this subtitle.

SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAP AGREEMENTS.

(a) **REPEAL.**—Sections 206B and 206C of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note) are repealed.

(b) **CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.**—Section 206A(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended in the material preceding paragraph (1), by striking “Except as” and all that follows through “that—” and inserting the following: “Except as provided in subsection (b), as used in this section, the term ‘swap agreement’ means any agreement, contract, or transaction that—”.

(c) **CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.**—

(1) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b-1) is amended—

(A) by striking subsection (a) and reserving that subsection; and

(B) by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that such term appears and inserting “(as defined in section 3(a)(78) of the Securities Exchange Act of 1934)”.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting “(including security-based swaps)” after “securities”; and

(ii) by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” and inserting “(as defined in section 3(a)(78) of the Securities Exchange Act)”; and

(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(78) of the Securities Exchange Act of 1934”.

(d) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3A (15 U.S.C. 78c-1)—

(A) by striking subsection (a) and reserving that subsection; and

(B) by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

(2) in section 9 (15 U.S.C. 78i)—

(A) in subsection (a), by striking paragraphs (2) through (5) and inserting the following:

“(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

“(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.”; and

(B) in subsection (i), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(3) in section 10 (15 U.S.C. 78j)—

(A) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act),” each place that term appears; and

(B) in the matter following subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act), in each place that such terms appear”;

(4) in section 15 (15 U.S.C. 78o)—

(A) in subsection (c)(1)(A), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act),”;

(B) in subparagraphs (B) and (C) of subsection (c)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that term appears;

(C) by redesignating subsection (i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455), as subsection (j); and

(D) in subsection (j), as redesignated by subparagraph (C), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(5) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))”;

(B) in subsection (a)(3)(B), by inserting “or security-based swaps” after “security-based swap agreement”;

(C) in the first sentence of subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(D) in the third sentence of subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” and inserting “or a security-based swap”; and

(E) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(6) in section 20 (15 U.S.C. 78t),

(A) in subsection (d), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(7) in section 21A (15 U.S.C. 78u-1)—

(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) **CLEARING FOR SECURITY-BASED SWAPS.**—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3B (as added by section 717 of this Act):

15 USC 78c–3.

“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.

“(a) IN GENERAL.—

“(1) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under this Act if the security-based swap is required to be cleared.

“(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

“(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

“(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

“(b) COMMISSION REVIEW.—

“(1) COMMISSION-INITIATED REVIEW.—

“(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.

Public comment.

“(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

“(2) SWAP SUBMISSIONS.—

Notice.

“(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type, or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

“(B) Any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of the date of enactment of this subsection shall be considered submitted to the Commission.

“(C) The Commission shall—

Public information.

“(i) make available to the public any submission received under subparagraphs (A) and (B);

“(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

Public comment.

“(iii) provide at least a 30-day public comment period regarding its determination whether the

clearing requirement under subsection (a)(1) shall apply to the submission.

“(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

“(4) DETERMINATION.—

“(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 17A.

“(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

“(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

“(iv) The effect on competition, including appropriate fees and charges applied to clearing.

“(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

“(C) In making a determination under subsection (b)(1) or paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(5) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for a clearing agency’s submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type, or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in paragraph (2)(B).

Deadline.

“(c) STAY OF CLEARING REQUIREMENT.—

“(1) IN GENERAL.—After making a determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

“(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

“(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

“(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

“(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps.

Deadline.

“(4) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency’s clearing of a security-based swap, or a group, category, type, or class of security-based swaps, that it has accepted for clearing.

“(d) PREVENTION OF EVASION.—

Regulations.

“(1) IN GENERAL.—The Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

“(2) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall—

Deadline.
Reports.

“(A) investigate the relevant facts and circumstances;

“(B) within 30 days issue a public report containing the results of the investigation; and

“(C) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.

“(3) EFFECT ON AUTHORITY.—Nothing in this subsection—

“(A) authorizes the Commission to adopt rules requiring a clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would threaten the financial integrity of the clearing agency; and

“(B) affects the authority of the Commission to enforce the open access provisions of subsection (a)(2) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.

“(e) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows: Deadlines.

“(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of this section.

“(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap data repository or the Commission no later than the later of—

“(A) 90 days after such effective date; or

“(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

“(f) CLEARING TRANSITION RULES.—

“(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

“(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

“(g) EXCEPTIONS.—

“(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if 1 of the counterparties to the security-based swap—

“(A) is not a financial entity;

“(B) is using security-based swaps to hedge or mitigate commercial risk; and

“(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps. Notification.

“(2) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

“(3) FINANCIAL ENTITY DEFINITION.—

“(A) IN GENERAL.—For the purposes of this subsection, the term ‘financial entity’ means—

“(i) a swap dealer;

“(ii) a security-based swap dealer;

“(iii) a major swap participant;

“(iv) a major security-based swap participant;

“(v) a commodity pool as defined in section 1a(10) of the Commodity Exchange Act;

“(vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

“(vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(viii) a person predominantly engaged in activities that are in the business of banking or financial in

nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

“(B) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

“(i) depository institutions with total assets of \$10,000,000,000 or less;

“(ii) farm credit system institutions with total assets of \$10,000,000,000 or less; or

“(iii) credit unions with total assets of \$10,000,000,000 or less.

“(4) TREATMENT OF AFFILIATES.—

“(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

“(B) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in subparagraph (A) shall not apply if the affiliate is—

“(i) a swap dealer;

“(ii) a security-based swap dealer;

“(iii) a major swap participant;

“(iv) a major security-based swap participant;

“(v) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a-3(c));

“(vi) a commodity pool; or

“(vii) a bank holding company with over \$50,000,000,000 in consolidated assets.

“(C) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 15F(e) and the clearing requirement described in subsection (a) with regard to security-based swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this subparagraph.

“(5) ELECTION OF COUNTERPARTY.—

“(A) SECURITY-BASED SWAPS REQUIRED TO BE CLEARED.—With respect to any security-based swap that is subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the

sole right to select the clearing agency at which the security-based swap will be cleared.

“(B) SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any security-based swap that is not subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

“(i) may elect to require clearing of the security-based swap; and

“(ii) shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

“(6) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

“(h) TRADE EXECUTION.—

“(1) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

“(A) execute the transaction on an exchange; or

“(B) execute the transaction on a security-based swap execution facility registered under section 3D or a security-based swap execution facility that is exempt from registration under section 3D(e).

“(2) EXCEPTION.—The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).

“(i) BOARD APPROVAL.—Exemptions from the requirements of this section to clear a security-based swap or execute a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 or that is required to file reports pursuant to section 15(d), only if an appropriate committee of the issuer’s board or governing body has reviewed and approved the issuer’s decision to enter into security-based swaps that are subject to such exemptions.

“(j) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each registered clearing agency shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the clearing agency;

“(B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

“(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(D) ensure compliance with this title (including regulations issued under this title) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(E) establish procedures for the remediation of non-compliance issues identified by the compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(F) establish and follow appropriate procedures for the handling, management response, remediation, re-testing, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this title (including regulations under this title); and

“(ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:

“(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.

“(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this title may register with the Commission as a clearing agency.

“(i) STANDARDS FOR CLEARING AGENCIES CLEARING SECURITY-BASED SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a

clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

“(j) RULES.—The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this title.

“(k) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.

“(l) EXISTING DEPOSITORY INSTITUTIONS AND DERIVATIVE CLEARING ORGANIZATIONS.—

“(1) IN GENERAL.—A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before the date of enactment of this subsection—

“(A) the depository institution cleared swaps as a multilateral clearing organization; or

“(B) the derivative clearing organization cleared swaps pursuant to an exemption from registration as a clearing agency.

“(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(3) SHARING OF INFORMATION.—The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).

“(m) MODIFICATION OF CORE PRINCIPLES.—The Commission may conform the core principles established in this section to reflect evolving United States and international standards.”.

(c) SECURITY-BASED SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C (as added by subsection (a) of this section) the following:

“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.

15 USC 78c-4.

“(a) REGISTRATION.—

“(1) IN GENERAL.—No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.

“(2) DUAL REGISTRATION.—Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

“(b) TRADING AND TRADE PROCESSING.—A security-based swap execution facility that is registered under subsection (a) may—

“(1) make available for trading any security-based swap; and

“(2) facilitate trade processing of any security-based swap.

“(c) IDENTIFICATION OF FACILITY USED TO TRADE SECURITY-BASED SWAPS BY NATIONAL SECURITIES EXCHANGES.—A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

“(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP EXECUTION FACILITIES.—

“(1) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with—

“(i) the core principles described in this subsection;

and

“(ii) any requirement that the Commission may impose by rule or regulation.

“(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which it complies with the core principles described in this subsection.

“(2) COMPLIANCE WITH RULES.—A security-based swap execution facility shall—

“(A) establish and enforce compliance with any rule established by such security-based swap execution facility, including—

“(i) the terms and conditions of the security-based swaps traded or processed on or through the facility;

and

“(ii) any limitation on access to the facility;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

“(i) to provide market participants with impartial access to the market; and

“(ii) to capture information that may be used in establishing whether rule violations have occurred; and

“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING AND TRADE PROCESSING.—The security-based swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

“(ii) procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

“(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The security-based swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

“(B) provide the information to the Commission on request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1).

“(7) EMERGENCY AUTHORITY.—The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

“(8) TIMELY PUBLICATION OF TRADING INFORMATION.—

“(A) IN GENERAL.—The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

“(B) CAPACITY OF SECURITY-BASED SWAP EXECUTION FACILITY.—The security-based swap execution facility shall be required to have the capacity to electronically capture

Regulations.

Regulations.
Procedures.

Regulations.

Public
information.

and transmit and disseminate trade information with respect to transactions executed on or through the facility.

“(9) RECORDKEEPING AND REPORTING.—

“(A) IN GENERAL.—A security-based swap execution facility shall—

Time period.

“(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

“(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this title.

“(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

“(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap execution facility shall not—

“(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(11) CONFLICTS OF INTEREST.—The security-based swap execution facility shall—

Regulations.

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

Process.

“(B) establish a process for resolving the conflicts of interest.

“(12) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

“(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources—

“(i) enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

“(ii) exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

“(13) SYSTEM SAFEGUARDS.—The security-based swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

“(i) are reliable and secure; and

“(ii) have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

Procedures.

“(i) the timely recovery and resumption of operations; and

“(ii) the fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

“(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued—

Tests.

“(i) order processing and trade matching;

“(ii) price reporting;

“(iii) market surveillance; and

“(iv) maintenance of a comprehensive and accurate audit trail.

“(14) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—

“(i) report directly to the board or to the senior officer of the facility;

“(ii) review compliance with the core principles in this subsection;

“(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

“(v) ensure compliance with this title and the rules and regulations issued under this title, including rules prescribed by the Commission pursuant to this section;

“(vi) establish procedures for the remediation of noncompliance issues found during—

“(I) compliance office reviews;

“(II) look backs;

“(III) internal or external audit findings;

“(IV) self-reported errors; or

“(V) through validated complaints; and

“(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(C) ANNUAL REPORTS.—

“(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(I) the compliance of the security-based swap execution facility with this title; and

“(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based swap execution facility.

“(ii) REQUIREMENTS.—The chief compliance officer shall—

“(I) submit each report described in clause (i) with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and

“(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

“(f) RULES.—The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.”.

(d) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3D (as added by subsection (b)) the following:

15 USC 78c-5.

“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

“(a) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this title with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

“(b) CLEARED SECURITY-BASED SWAPS.—

“(1) SEGREGATION REQUIRED.—A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

“(2) COMMINGLING PROHIBITED.—Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or be used to margin, secure, or guarantee

any trades or contracts of any security-based swaps customer or person other than the person for whom the same are held.

“(c) EXCEPTIONS.—

“(1) USE OF FUNDS.—

“(A) IN GENERAL.—Notwithstanding subsection (b), money, securities, and property of a security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

“(B) WITHDRAWAL.—Notwithstanding subsection (b), such share of the money, securities, and property described in subparagraph (A) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared security-based swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.

“(2) COMMISSION ACTION.—Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

“(d) PERMITTED INVESTMENTS.—Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

“(e) PROHIBITION.—It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.

“(f) SEGREGATION REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAPS.—

“(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SECURITY-BASED SWAP TRANSACTIONS.—

“(A) NOTIFICATION.—A security-based swap dealer or major security-based swap participant shall be required to notify the counterparty of the security-based swap dealer or major security-based swap participant at the beginning of a security-based swap transaction that the counterparty

has the right to require segregation of the funds of other property supplied to margin, guarantee, or secure the obligations of the counterparty.

“(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall—

“(i) segregate the funds or other property for the benefit of the counterparty; and

“(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the security-based swap dealer or major security-based swap participant.

“(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

“(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency; and

“(B)(i) not apply to variation margin payments; or

“(ii) not preclude any commercial arrangement regarding—

“(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

“(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

“(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1) shall be—

“(A) carried by an independent third-party custodian; and

“(B) designated as a segregated account for and on behalf of the counterparty.

“(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

“(g) BANKRUPTCY.—A security-based swap, as defined in section 3(a)(68) shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11, United States Code. An account that holds a security-based swap, other than a portfolio margining account referred to in section 15(c)(3)(C) shall be considered to be a securities account, as that term is defined in section 741 of title 11, United States Code. The definitions

of the terms ‘purchase’ and ‘sale’ in section 3(a)(13) and (14) shall be applied to the terms ‘purchase’ and ‘sale’, as used in section 741 of title 11, United States Code. The term ‘customer’, as defined in section 741 of title 11, United States Code, excludes any person, to the extent that such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to which there is a customer protection requirement under section 15(c)(3) or a segregation requirement.”.

(e) **TRADING IN SECURITY-BASED SWAPS.**—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(1) **SECURITY-BASED SWAPS.**—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”.

(f) **ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.**—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:

“(1) any transaction in connection with any security whereby any party to such transaction acquires—

“(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

“(B) any security futures product on the security; or

“(C) any security-based swap involving the security or the issuer of the security;

“(2) any transaction in connection with any security with relation to which such person has, directly or indirectly, any interest in any—

“(A) such put, call, straddle, option, or privilege;

“(B) such security futures product; or

“(C) such security-based swap; or

“(3) any transaction in any security for the account of any person who such person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

“(A) such put, call, straddle, option, or privilege;

“(B) such security futures product with relation to such security; or

“(C) any security-based swap involving such security or the issuer of such security.”.

(g) **RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.**—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(j) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission

Regulations.

shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.

(h) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j-1) the following:

15 USC 78j-2.

“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

Fraud.
Regulations.

“(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

“(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 3(a), and any other instrument relating to such security or loan or group or index of securities or loans; or

“(2) any security-based swap and—

“(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 3(a); and

“(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).

“(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.

“(c) SRO RULES.—

“(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

“(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

“(i) any member of such self-regulatory organization; or

“(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

“(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under this subsection.

“(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing the limits under paragraph (1), the self-regulatory organization may require such member or person to aggregate positions in—

“(A) any security-based swap and any security or loan or group or narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans; or

“(B)(i) any security-based swap; and

“(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

“(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person’s own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.”.

(i) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) PUBLIC AVAILABILITY OF SECURITY-BASED SWAP TRANSACTION DATA.—

“(1) IN GENERAL.—

“(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—In this paragraph, the term ‘real-time public reporting’ means to report data relating to a security-based swap transaction, including price and volume, as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

“(B) PURPOSE.—The purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

“(C) GENERAL RULE.—The Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

“(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 3C(a)(1) (including those security-based swaps that are excepted from the requirement

pursuant to section 3C(g)), the Commission shall require real-time public reporting for such transactions.

“(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in section 3C(a)(1), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

“(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 3C(a)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

“(iv) With respect to security-based swaps that are determined to be required to be cleared under section 3C(b) but are not cleared, the Commission shall require real-time public reporting for such transactions.

“(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

“(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

“(i) to ensure such information does not identify the participants;

“(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

“(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

“(iv) that take into account whether the public disclosure will materially reduce market liquidity.

“(F) TIMELINESS OF REPORTING.—Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

“(G) REPORTING OF SWAPS TO REGISTERED SECURITY-BASED SWAP DATA REPOSITORIES.—Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.

“(H) REGISTRATION OF CLEARING AGENCIES.—A clearing agency may register as a security-based swap data repository.

“(2) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

Criteria.

“(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

“(i) the trading and clearing in the major security-based swap categories; and

“(ii) the market participants and developments in new products.

“(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from security-based swap data repositories and clearing agencies; and

“(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

“(C) AUTHORITY OF COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

“(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.

“(2) INSPECTION AND EXAMINATION.—Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

“(3) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

“(i) the requirements and core principles described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation.

“(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

“(4) STANDARD SETTING.—

“(A) DATA IDENTIFICATION.—

“(i) IN GENERAL.—In accordance with clause (ii), the Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

“(ii) REQUIREMENT.—In carrying out clause (i), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

“(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

“(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.

“(5) DUTIES.—A security-based swap data repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

“(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

“(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

“(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

“(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

“(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

“(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

“(G) on a confidential basis pursuant to section 24, upon request, and after notifying the Commission of the request, make available all data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

“(i) each appropriate prudential regulator;

“(ii) the Financial Stability Oversight Council;

“(iii) the Commodity Futures Trading Commission;

“(iv) the Department of Justice; and

“(v) any other person that the Commission determines to be appropriate, including—

“(I) foreign financial supervisors (including foreign futures authorities);

“(II) foreign central banks; and

“(III) foreign ministries.

“(H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G)—

“(i) the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided; and

Confidentiality.
Notification.

“(ii) each entity shall agree to indemnify the security-based swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 24.

“(6) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—

“(i) report directly to the board or to the senior officer of the security-based swap data repository;

“(ii) review the compliance of the security-based swap data repository with respect to the requirements and core principles described in this subsection;

“(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;

“(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(v) ensure compliance with this title (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(I) compliance office review;

“(II) look-back;

“(III) internal or external audit finding;

“(IV) self-reported error; or

“(V) validated complaint; and

“(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(C) ANNUAL REPORTS.—

“(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

Regulations.

“(I) the compliance of the security-based swap data repository of the chief compliance officer with respect to this title (including regulations); and

“(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

“(ii) REQUIREMENTS.—A compliance report under clause (i) shall—

“(I) accompany each appropriate financial report of the security-based swap data repository that is required to be furnished to the Commission pursuant to this section; and

Certification.

“(II) include a certification that, under penalty of law, the compliance report is accurate and complete.

“(7) CORE PRINCIPLES APPLICABLE TO SECURITY-BASED SWAP DATA REPOSITORIES.—

“(A) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the swap data repository shall not—

“(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

“(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

“(B) GOVERNANCE ARRANGEMENTS.—Each security-based swap data repository shall establish governance arrangements that are transparent—

“(i) to fulfill public interest requirements; and

“(ii) to support the objectives of the Federal Government, owners, and participants.

“(C) CONFLICTS OF INTEREST.—Each security-based swap data repository shall—

Regulations.

“(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

Process.

“(ii) establish a process for resolving any conflicts of interest described in clause (i).

“(D) ADDITIONAL DUTIES DEVELOPED BY COMMISSION.—

“(i) IN GENERAL.—The Commission may develop 1 or more additional duties applicable to security-based swap data repositories.

“(ii) CONSIDERATION OF EVOLVING STANDARDS.—In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

“(iii) ADDITIONAL DUTIES FOR COMMISSION DESIGNEES.—The Commission shall establish additional duties for any registrant described in section 13(m)(2)(C) in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the security-based swap data repository.

“(8) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP DATA REPOSITORIES.—Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act as a swap data repository.

“(9) RULES.—The Commission shall adopt rules governing persons that are registered under this subsection.”.

SEC. 764. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS. 15 USC 78o–8.

“(a) REGISTRATION.—

“(1) SECURITY-BASED SWAP DEALERS.—It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

“(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) CONTENTS.—

“(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) CONTINUAL REPORTING.—A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

“(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

“(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

“(5) TRANSITION.—Not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

Deadline.

“(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(c) DUAL REGISTRATION.—

“(1) SECURITY-BASED SWAP DEALER.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless

of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

“(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

“(d) RULEMAKING.—

“(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

“(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

“(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

“(2) RULES.—

“(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap

participant, for which there is not a prudential regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

“(C) CAPITAL.—In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

“(3) STANDARDS FOR CAPITAL AND MARGIN.—

“(A) IN GENERAL.—To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

“(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

“(B) RULE OF CONSTRUCTION.—

“(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

“(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

“(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.

“(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this title or the Commodity Exchange Act.

“(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository

institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

“(i) preserving the financial integrity of markets trading security-based swaps; and

“(ii) preserving the stability of the United States financial system.

“(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

Deadline.
Consultation.

“(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

“(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

“(I) security-based swap dealers; and

“(II) major security-based swap participants.

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

“(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

“(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of

telephone calls, for such period as may be required by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

“(3) COUNTERPARTY RECORDS.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

“(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission determines to be appropriate.

“(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

Compliance.

“(A) ADVISING SPECIAL ENTITIES.—A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

“(B) ENTERING OF SECURITY-BASED SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A security-based swap dealer that enters into or offers to enter into security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

“(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term ‘special entity’ means—

“(i) a Federal agency;

“(ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;

“(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

“(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

“(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

Verification.

“(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of—

“(i) information about the material risks and characteristics of the security-based swap;

“(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

“(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

“(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

“(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

“(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS.—

“(A) IN GENERAL.—It shall be unlawful for a security-based swap dealer or major security-based swap participant—

“(i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;

“(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or

“(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

“(B) DUTY.—Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

“(C) REASONABLE EFFORTS.—Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is

necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

- “(i) the financial status of the special entity;
- “(ii) the tax status of the special entity;
- “(iii) the investment or financing objectives of the special entity; and
- “(iv) any other information that the Commission may prescribe by rule or regulation.

“(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

“(A) IN GENERAL.—Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

“(i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—

Compliance.

“(I) has sufficient knowledge to evaluate the transaction and risks;

“(II) is not subject to a statutory disqualification;

“(III) is independent of the security-based swap dealer or major security-based swap participant;

“(IV) undertakes a duty to act in the best interests of the counterparty it represents;

“(V) makes appropriate disclosures;

“(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

“(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

“(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

“(B) COMMISSION AUTHORITY.—The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

“(7) APPLICABILITY.—This subsection shall not apply with respect to a transaction that is—

“(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

“(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.”

“(i) DOCUMENTATION STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

“(2) RULES.—The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

Compliance.

“(j) DUTIES.—Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

“(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

“(2) RISK MANAGEMENT PROCEDURES.—The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

“(3) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

“(A) terms and conditions of its security-based swaps;

“(B) security-based swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to security-based swaps; and

“(D) other information relevant to its trading in security-based swaps.

“(4) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major security-based swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

Procedures.

“(5) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing

clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this title; and

“(B) address such other issues as the Commission determines to be appropriate.

“(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant shall not—

“(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.

“(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;

“(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of non-compliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, re-testing, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the security-based swap dealer or major swap participant with respect to this title (including regulations); and

“(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

Certification.

“(1) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

“(1) PRIMARY ENFORCEMENT AUTHORITY.—

“(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

“(B) PRUDENTIAL REGULATORS.—The prudential regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this title (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

“(C) REFERRAL.—

“(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend

in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(D) BACKSTOP ENFORCEMENT AUTHORITY.—

Time period.

“(i) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (C)(i), the prudential regulator may initiate an enforcement proceeding.

“(ii) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (C)(ii), the Commission may initiate an enforcement proceeding.

“(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps

Time period.

on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

Deadline.

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(4) UNLAWFUL CONDUCT.—It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.”.

15 USC 8342.

(b) SAVINGS CLAUSE.—Notwithstanding any other provision of this title, nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority by Federal law other than this title.

15 USC 8343.

SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.

Deadline.

(a) IN GENERAL.—In order to mitigate conflicts of interest, not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Securities and Exchange Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section

2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of \$50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(b) **PURPOSES.**—The Securities and Exchange Commission shall adopt rules if the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant's conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.

(c) **CONSIDERATIONS.**—In adopting rules pursuant to this section, the Securities and Exchange Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

SEC. 766. REPORTING AND RECORDKEEPING.

(a) **IN GENERAL.**—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following:

“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

15 USC 78m–1.

“(a) REQUIRED REPORTING OF SECURITY-BASED SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR DERIVATIVES CLEARING ORGANIZATION.—

“(1) IN GENERAL.—Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—

“(A) a security-based swap data repository described in section 13(n); or

“(B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

“(2) TRANSITION RULE FOR PREENACTMENT SECURITY-BASED SWAPS.—

“(A) SECURITY-BASED SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered

security-based swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final rule; or

“(ii) such other period as the Commission determines to be appropriate.

“(B) COMMISSION RULEMAKING.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in subparagraph (A).

“(C) EFFECTIVE DATE.—The reporting provisions described in this section shall be effective upon the date of the enactment of this section.

“(3) REPORTING OBLIGATIONS.—

“(A) SECURITY-BASED SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—With respect to a security-based swap in which only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under paragraphs (1) and (2).

“(B) SECURITY-BASED SWAPS IN WHICH 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER AND THE OTHER A MAJOR SECURITY-BASED SWAP PARTICIPANT.—With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-based swap as required under paragraphs (1) and (2).

“(C) OTHER SECURITY-BASED SWAPS.—With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).

“(b) DUTIES OF CERTAIN INDIVIDUALS.—Any individual or entity that enters into a security-based swap shall meet each requirement described in subsection (c) if the individual or entity did not—

“(1) clear the security-based swap in accordance with section 3C(a)(1); or

“(2) have the data regarding the security-based swap accepted by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this title.

“(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

“(1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

“(2) maintain books and records pertaining to the security-based swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

“(A) any representative of the Commission;

“(B) an appropriate prudential regulator;

“(C) the Commodity Futures Trading Commission;
“(D) the Financial Stability Oversight Council; and
“(E) the Department of Justice.

“(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by security-based swap data repositories under this title.”.

(b) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1), by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) in subsection (g)(1), by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule” after “subsection (d)(1) of this section”.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule,” after “subsection (d)(1) of this section”.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and

(2) in subparagraph (F), by striking “broker or dealer” and inserting “broker, dealer, security-based swap dealer, or a major security-based swap participant”.

(e) SECURITY-BASED SWAP BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.”.

SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) LIMITATION ON JUDGMENTS.—

“(1) IN GENERAL.—No person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations under this title.

“(2) RULE OF CONSTRUCTION.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

“(3) STATE BUCKET SHOP LAWS.—No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate—

“(A) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

“(B) any security-based swap between eligible contract participants; or

“(C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

“(4) OTHER STATE PROVISIONS.—No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.”.

SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3), by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and

(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or

similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”

(b) **REGISTRATION OF SECURITY-BASED SWAPS.**—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).”

SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended by adding at the end the following:

“(54) The terms ‘commodity pool’, ‘commodity pool operator’, ‘commodity trading advisor’, ‘major swap participant’, ‘swap’, ‘swap dealer’, and ‘swap execution facility’ have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).”

SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following:

“(29) The terms ‘commodity pool’, ‘commodity pool operator’, ‘commodity trading advisor’, ‘major swap participant’, ‘swap’, ‘swap dealer’, and ‘swap execution facility’ have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).”

SEC. 771. OTHER AUTHORITY.

15 USC 8344.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

SEC. 772. JURISDICTION.

(a) **IN GENERAL.**—Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following:

“(c) **DERIVATIVES.**—Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs (65), (66), (68), (69), (70), (71), (72), (73), (74), (75), (76), and (79) of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), and 17A(l); provided that the Commission shall have exemptive authority under this title with respect to security-based swaps as to the same matters that the Commodity

Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 4(c) of the Commodity Exchange Act.”.

(b) **RULE OF CONSTRUCTION.**—Section 30 of the Securities Exchange Act of 1934 (15 U.S.C. 78dd) is amended by adding at the end the following:

“(c) **RULE OF CONSTRUCTION.**—No provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this title, as in effect prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.”.

SEC. 773. CIVIL PENALTIES.

15 USC 78u–2.

Section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78p-2) is amended by adding at the end the following:

“(f) **SECURITY-BASED SWAPS.**—

“(1) **CLEARING AGENCY.**—Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 3C shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 3C.

“(2) **SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.**—Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 3C shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 3C.”.

15 USC 77b note.

SEC. 774. EFFECTIVE DATE.

Unless otherwise provided, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.

Payment,
Clearing, and
Settlement
Supervision Act
of 2010.
12 USC 5301
note.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2010”.

12 USC 5461.

SEC. 802. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing

and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multi-lateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors to promote uniform standards for the—

(A) management of risks by systemically important financial market utilities; and

(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

12 USC 5462.

In this title, the following definitions shall apply:

(1) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial regulator” means—

(A) the primary financial regulatory agency, as defined in section 2 of this Act;

(B) the National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.); and

(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

(2) DESIGNATED ACTIVITY.—The term “designated activity” means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 804.

(3) DESIGNATED CLEARING ENTITY.—The term “designated clearing entity” means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1).

(4) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial market utility” means a financial market utility that the Council has designated as systemically important under section 804.

(5) FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term “financial institution” means—

(i) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

(vii) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2);

(viii) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2);

(ix) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(x) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(B) EXCLUSIONS.—The term “financial institution” does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or designated clearing entities, provided that the exclusions in this

subparagraph apply only with respect to the activities that require the entity to be so registered.

(6) FINANCIAL MARKET UTILITY.—

(A) INCLUSION.—The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(B) EXCLUSIONS.—The term “financial market utility” does not include—

(i) designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

Applicability.

(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

(7) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term “payment, clearing, or settlement activity” means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term “financial transaction” includes—

- (i) funds transfers;
- (ii) securities contracts;
- (iii) contracts of sale of a commodity for future delivery;
- (iv) forward contracts;
- (v) repurchase agreements;

- (vi) swaps;
- (vii) security-based swaps;
- (viii) swap agreements;
- (ix) security-based swap agreements;
- (x) foreign exchange contracts;
- (xi) financial derivatives contracts; and
- (xii) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

- (i) the calculation and communication of unsettled financial transactions between counterparties;
- (ii) the netting of transactions;
- (iii) provision and maintenance of trade, contract, or instrument information;
- (iv) the management of risks and activities associated with continuing financial transactions;
- (v) transmittal and storage of payment instructions;
- (vi) the movement of funds;
- (vii) the final settlement of financial transactions;

and

- (viii) other similar functions that the Council may determine.

(D) EXCLUSION.—Payment, clearing, and settlement activities shall not include public reporting of swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(8) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term “Supervisory Agency” means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

- (i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.

- (ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.

- (iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act.

- (iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council

shall decide which agency is the Supervisory Agency for purposes of this title.

(9) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

12 USC 5463.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

Deadline.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

Deadline.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

Deadlines.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

Web posting.
Federal Register,
publication.

Deadlines.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

Federal Register,
publication.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

12 USC 5464.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—

(1) BOARD OF GOVERNORS.—Except as provided in paragraph (2), the Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(A) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

(B) the conduct of designated activities by financial institutions.

(2) SPECIAL PROCEDURES FOR DESIGNATED CLEARING ENTITIES AND DESIGNATED ACTIVITIES OF CERTAIN FINANCIAL INSTITUTIONS.—

(A) CFTC AND COMMISSION.—The Commodity Futures Trading Commission and the Commission may each prescribe regulations, in consultation with the Council and the Board of Governors, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for those designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator, governing—

(i) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and

(ii) the conduct of designated activities by such financial institutions.

(B) REVIEW AND DETERMINATION.—The Board of Governors may determine that existing prudential requirements of the Commodity Futures Trading Commission, the Commission, or both (including requirements prescribed pursuant to subparagraph (A)) with respect to designated clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit,

operational, or other risks to the financial markets or to the financial stability of the United States.

(C) WRITTEN DETERMINATION.—Any determination by the Board of Governors under subparagraph (B) shall be provided in writing to the Commodity Futures Trading Commission or the Commission, as applicable, and the Council, and shall explain why existing prudential requirements, considered as a whole, are insufficient to ensure that the operations and activities of the designated clearing entities or the activities of financial institutions described in subparagraph (B) will not pose significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. The Board of Governors' determination shall contain a detailed analysis supporting its findings and identify the specific prudential requirements that are insufficient.

Deadline.

(D) CFTC AND COMMISSION RESPONSE.—The Commodity Futures Trading Commission or the Commission, as applicable, shall within 60 days either object to the Board of Governors' determination with a detailed analysis as to why existing prudential requirements are sufficient, or submit an explanation to the Council and the Board of Governors describing the actions to be taken in response to the Board of Governors' determination.

(E) AUTHORIZATION.—Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient.”

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

- (1) promote robust risk management;
- (2) promote safety and soundness;
- (3) reduce systemic risks; and
- (4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as—

- (1) risk management policies and procedures;
- (2) margin and collateral requirements;
- (3) participant or counterparty default policies and procedures;
- (4) the ability to complete timely clearing and settlement of financial transactions;
- (5) capital and financial resource requirements for designated financial market utilities; and
- (6) other areas that are necessary to achieve the objectives and principles in subsection (b).

(d) LIMITATION ON SCOPE.—Except as provided in subsections (e) and (f) of section 807, nothing in this title shall be construed to permit the Council or the Board of Governors to take any action or exercise any authority granted to the Commodity Futures Trading Commission under section 2(h) of the Commodity Exchange

Act or the Securities and Exchange Commission under section 3C(a) of the Securities Exchange Act of 1934, including—

(1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;

(2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing requirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934;

(3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934; or

(4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

(e) **THRESHOLD LEVEL.**—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) **COMPLIANCE REQUIRED.**—Designated financial market utilities and financial institutions subject to the standards prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES. 12 USC 5465.

(a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) **ADVANCES.**—The Board of Governors may authorize a Federal Reserve bank under section 10B of the Federal Reserve Act (12 U.S.C. 347b) to provide to a designated financial market utility discount and borrowing privileges only in unusual or exigent circumstances, upon the affirmative vote of a majority of the Board of Governors then serving (or such other number in accordance with the provisions of section 11(r)(2) of the Federal Reserve Act (12 U.S.C. 248(r)(2)) after consultation with the Secretary, and upon a showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions. All such discounts and borrowing privileges shall be subject to such other limitations, restrictions, and regulations as the Board of Governors may prescribe. Access to discount and borrowing privileges under section 10B of the Federal Reserve Act as authorized in this section does not require a designated

financial market utility to be or become a bank or bank holding company.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide notice 60 days in advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE SUPERVISORY AGENCIES.—Each Supervisory Agency, in consultation with the Board of Governors, shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

Deadline.

(i) the date that the Supervisory Agency receives the notice of proposed change; or

(ii) the date the Supervisory Agency receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

Time period.

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency, or the date the Supervisory Agency receives any further information it requested, if the Supervisory Agency notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency.

Time period.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any applicable rules, orders, or standards prescribed under section 805(a).

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

12 USC 5466.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) The designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this title, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult annually with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b). The Supervisory Agency shall lead all examinations conducted under subsections (a) and (b).

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, at any time recommend to the Supervisory Agency that such

Deadline.

agency take enforcement action against a designated financial market utility in order to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days. Deadline.

(3) BINDING ARBITRATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may refer the recommendation to the Council for a binding decision on whether an enforcement action is warranted.

(4) ENFORCEMENT ACTION.—Upon an affirmative vote by a majority of the Council in favor of the Board of Governors' recommendation under paragraph (3), the Council may require the Supervisory Agency to—

(A) exercise the enforcement authority referenced in subsection (c); and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Supervisory Agency and upon an affirmative vote by a majority the Council, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to conclude that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or

(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

12 USC 5467.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) **EXAMINATION.**—The appropriate financial regulator is authorized to examine a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed under section 805(a).

(b) **ENFORCEMENT.**—For purposes of enforcing the provisions of this title, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 805(a) for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

Consultation.

(c) **TECHNICAL ASSISTANCE.**—The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) **DELEGATION.**—

(1) **EXAMINATION.**—

(A) **REQUEST TO BOARD OF GOVERNORS.**—The appropriate financial regulator may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed under this title.

(B) **EXAMINATION BY BOARD OF GOVERNORS.**—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

(2) **ENFORCEMENT.**—

(A) **REQUEST TO BOARD OF GOVERNORS.**—The appropriate financial regulator may request the Board of Governors to enforce this title or the rules or orders prescribed

under this title against a financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

Determination.

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed under this title against any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution;

Notification.

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board's notification under clause (ii); or

Deadline.

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reasonable opportunity to participate in the examination; and

(v) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

- Notification.
- (i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;
 - (ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution;
 - (iii) either—

Deadline.

- (I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

- (II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States, subject to the Board of Governors notifying the appropriate financial regulator of the Board's enforcement action; and
- (iv) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

12 USC 5468.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe

that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may each require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors or the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.—The Board of Governors and the Council may each require 1 or more financial institutions subject to the standards prescribed under section 805(a) for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors or the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed under section 805(a) with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed under section 805(a) with respect to the designated activity.

(3) LIMITATION.—The Board of Governors may, upon an affirmative vote by a majority of the Council, prescribe regulations under this section that impose a recordkeeping or reporting requirement on designated clearing entities or financial institutions engaged in designated activities that are subject to standards that have been prescribed under section 805(a)(2).

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors or the Council shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors or the Council.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency

Deadline.
Notice.

or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency are authorized to—

Notification.

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information, or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to each other, and to the Secretary, Federal Reserve Banks, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the Commodity Exchange Act (7 U.S.C. 12).

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors, the Supervisory Agencies, or the Council under this section and any materials prepared by the Board of Governors, the Supervisory Agencies, or the Council regarding their assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with their supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

12 USC 5469.

SEC. 810. RULEMAKING.

The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respective authorities and duties granted under this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

12 USC 5470.

Unless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. CONSULTATION.

12 USC 5471.

(a) CFTC.—The Commodity Futures Trading Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of the Commodity Exchange Act, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010; and

(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010.

(b) SEC.—The Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C), 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Exchange Act of 1934, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 19(b)(2) of the Securities Exchange Act of 1934; and

(3) prior to exercising its rulemaking authorities under section 13(n) of the Securities Exchange Act of 1934, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEARING ENTITY RISK MANAGEMENT.

12 USC 5472.

The Commodity Futures Trading Commission and the Commission shall coordinate with the Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations for—

Deadline.
Reports.

(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by designated clearing entities;

(3) promoting robust risk management oversight by regulators of designated clearing entities; and

(4) improving regulators’ ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

12 USC 5461
note.

SEC. 814. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

Investor
Protection and
Securities
Reform Act of
2010.

**TITLE IX—INVESTOR PROTECTIONS
AND IMPROVEMENTS TO THE REGU-
LATION OF SECURITIES**

15 USC 78a note.

SEC. 901. SHORT TITLE.

This title may be cited as the “Investor Protection and Securities Reform Act of 2010”.

Subtitle A—Increasing Investor Protection

SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

15 USC 78pp.

“SEC. 39. INVESTOR ADVISORY COMMITTEE.

“(a) ESTABLISHMENT AND PURPOSE.—

“(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the ‘Committee’).

“(2) PURPOSE.—The Committee shall—

“(A) advise and consult with the Commission on—

“(i) regulatory priorities of the Commission;

“(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

“(iii) initiatives to protect investor interest; and

“(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

“(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The members of the Committee shall be—

“(A) the Investor Advocate;

“(B) a representative of State securities commissions;

“(C) a representative of the interests of senior citizens;

and

“(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

“(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

“(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

“(iii) are knowledgeable about investment issues and decisions; and

“(iv) have reputations of integrity.

“(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

“(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

“(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

“(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

“(A) a chairman, who may not be employed by an issuer;

“(B) a vice chairman, who may not be employed by an issuer;

“(C) a secretary; and

“(D) an assistant secretary.

“(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

“(d) MEETINGS.—

“(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

“(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

“(B) from time to time, at the call of the Commission.

“(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

“(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

“(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

“(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

“(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

“(g) REVIEW BY COMMISSION.—The Commission shall—

“(1) review the findings and recommendations of the Committee; and

“(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

“(A) assessing the finding or recommendation of the Committee; and

Deadline.

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

“(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

“(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.”.

SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMISSION TO ENGAGE IN INVESTOR TESTING.

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following:

“(e) EVALUATION OF RULES OR PROGRAMS.—For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

“(1) gather information from and communicate with investors or other members of the public;

“(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

“(3) consult with academics and consultants, as necessary to carry out this subsection.

“(f) RULE OF CONSTRUCTION.—For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.”.

SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS.

15 USC 78o note.

(a) DEFINITION.—For purposes of this section, the term “retail customer” means a natural person, or the legal representative of such natural person, who—

(1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and

(2) uses such advice primarily for personal, family, or household purposes.

15 USC 78o note.

(b) STUDY.—The Commission shall conduct a study to evaluate—

(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards; and

(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care

for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider— 15 USC 78o note.

(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards;

(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute;

(3) whether retail customers understand that there are different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers in the provision of personalized investment advice about securities to retail customers;

(4) whether the existence of different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers is a source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive;

(5) the regulatory, examination, and enforcement resources devoted to, and activities of, the Commission, the States, and a national securities association to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

(A) the effectiveness of the examinations of brokers, dealers, and investment advisers in determining compliance with regulations;

(B) the frequency of the examinations; and

(C) the length of time of the examinations;

(6) the substantive differences in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers;

(7) the specific instances related to the provision of personalized investment advice about securities in which—

(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

(B) the regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

(8) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

(9) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers, as interpreted by the Commission and the courts; and

(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

(10) the potential impact of eliminating the broker and dealer exclusion from the definition of “investment adviser” under section 202(a)(11)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)(C)), in terms of—

(A) the impact and potential benefits and harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and recommendations about securities to retail customers or the availability of such advice and recommendations;

(B) the number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), and the additional requirements to which brokers, dealers, and persons associated with brokers and dealers would become subject, including—

(i) any potential additional associated person licensing, registration, and examination requirements; and

(ii) the additional costs, if any, to the additional entities and individuals; and

(C) the impact on Commission and State resources to—

(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

(11) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the varying scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

(12) the potential impact upon retail customers that could result from potential changes in the regulatory requirements

or legal standards of care affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers regarding the provision of investment advice, including any potential impact on—

(A) protection from fraud;

(B) access to personalized investment advice, and recommendations about securities to retail customers; or

(C) the availability of such advice and recommendations;

(13) the potential additional costs and expenses to—

(A) retail customers regarding and the potential impact on the profitability of their investment decisions; and

(B) brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

(14) any other consideration that the Commission considers necessary and appropriate in determining whether to conduct a rulemaking under subsection (f).

(d) REPORT.—

15 USC 78o note.

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (b) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (b), to make such findings, conclusions, and policy recommendations; and

(B) an analysis of whether any identified legal or regulatory gaps, shortcomings, or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers.

(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

15 USC 78o note.

(f) RULEMAKING.—The Commission may commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized

15 USC 78o note.

investment advice about securities to such retail customers. The Commission shall consider the findings conclusions, and recommendations of the study required under subsection (b).

(g) AUTHORITY TO ESTABLISH A FIDUCIARY DUTY FOR BROKERS AND DEALERS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

“(k) STANDARD OF CONDUCT.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

“(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

“(l) OTHER MATTERS.—The Commission shall—

“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

“(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.”.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, is further amended by adding at the end the following new subsections:

“(g) STANDARD OF CONDUCT.—

“(1) IN GENERAL.—The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such

rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term ‘customer’ that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

“(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means a natural person, or the legal representative of such natural person, who—

“(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

“(B) uses such advice primarily for personal, family, or household purposes.

“(h) OTHER MATTERS.—The Commission shall—

“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

“(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.”.

(h) HARMONIZATION OF ENFORCEMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (g)(1), is further amended by adding at the end the following new subsection:

15 USC 78o.

“(m) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

“(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

“(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940.”.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by subsection

(g)(2), is further amended by adding at the end the following new subsection:

“(i) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

“(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

“(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment adviser under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.”.

15 USC 80b-11
note.

SEC. 914. STUDY ON ENHANCING INVESTMENT ADVISER EXAMINATIONS.

(a) STUDY REQUIRED.—

Review.

(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

Time period.

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission’s efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 915. OFFICE OF THE INVESTOR ADVOCATE.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(g) OFFICE OF THE INVESTOR ADVOCATE.—

“(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the ‘Office’).

“(2) INVESTOR ADVOCATE.—

“(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

“(i) report directly to the Chairman; and

“(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

“(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

“(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

Time periods.

“(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

“(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

“(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

“(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

“(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

“(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

“(C) identify problems that investors have with financial service providers and investment products;

“(D) analyze the potential impact on investors of—

“(i) proposed regulations of the Commission; and

“(ii) proposed rules of self-regulatory organizations registered under this title; and

“(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

“(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

“(6) ANNUAL REPORTS.—

“(A) REPORT ON OBJECTIVES.—

“(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on

the objectives of the Investor Advocate for the following fiscal year.

“(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

“(B) REPORT ON ACTIVITIES.—

“(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

“(ii) CONTENTS.—Each report required under clause (i) shall include—

“(I) appropriate statistical information and full and substantive analysis;

“(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

“(III) a summary of the most serious problems encountered by investors during the reporting period;

“(IV) an inventory of the items described in subclause (III) that includes—

“(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

“(bb) the length of time that each item has remained on such inventory; and

“(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

“(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

“(VI) any other information, as determined appropriate by the Investor Advocate.

“(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

“(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

“(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.”.

Procedures.
Deadline.

SEC. 916. STREAMLINING OF FILING PROCEDURES FOR SELF-REGULATORY ORGANIZATIONS.

(a) **FILING PROCEDURES.**—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by striking paragraph (2) (including the undesignated matter immediately following subparagraph (B)) and inserting the following:

“(2) **APPROVAL PROCESS.**—

Deadlines.

“(A) **APPROVAL PROCESS ESTABLISHED.**—

“(i) **IN GENERAL.**—Except as provided in clause (ii), not later than 45 days after the date of publication of a proposed rule change under paragraph (1), the Commission shall—

“(I) by order, approve or disapprove the proposed rule change; or

“(II) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

“(ii) **EXTENSION OF TIME PERIOD.**—The Commission may extend the period established under clause (i) by not more than an additional 45 days, if—

“(I) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

Publication.

“(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

“(B) **PROCEEDINGS.**—

“(i) **NOTICE AND HEARING.**—If the Commission does not approve or disapprove a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

“(I) notice of the grounds for disapproval under consideration; and

“(II) opportunity for hearing, to be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change.

“(ii) **ORDER OF APPROVAL OR DISAPPROVAL.**—

“(I) **IN GENERAL.**—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

“(II) **EXTENSION OF TIME PERIOD.**—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

“(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

Publication.

“(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

“(C) **STANDARDS FOR APPROVAL AND DISAPPROVAL.**—

“(i) **APPROVAL.**—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent

with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.

“(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i).

Publication.

“(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

“(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

“(i) the Commission does not approve or disapprove the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

“(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).

Notice.
Deadline.
Web posting.

“(E) PUBLICATION DATE BASED ON FEDERAL REGISTER PUBLISHING.—For purposes of this paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the Commission shall thereafter send the notice to the Federal Register for publication thereof under paragraph (1) within 15 days of the date on which such website publication is made. If the Commission fails to send the notice for publication thereof within such 15 day period, then the date of publication shall be deemed to be the date on which such website publication was made.

“(F) RULEMAKING.—

Deadline.
Procedures.

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Investor Protection and Securities Reform Act of 2010, after consultation with other regulatory agencies, the Commission shall promulgate rules setting forth the procedural requirements of the proceedings required under this paragraph.

“(ii) NOTICE AND COMMENT NOT REQUIRED.—The rules promulgated by the Commission under clause (i) are not required to include republication of proposed rule changes or solicitation of public comment.”.

(b) CLARIFICATION OF FILING DATE.—

(1) RULE OF CONSTRUCTION.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

“(10) RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

“(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed

to be the date on which the Commission receives the proposed rule change.

“(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not later than 7 business days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, except that if the Commission determines that the proposed rule change is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the self-regulatory organization of such determination not later than 7 business days after the date of receipt by the Commission and, for the purposes of subparagraph (A), a proposed rule change has not been received by the Commission, if, not later than 21 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.”.

Deadlines.
Notification.

(2) PUBLICATION.—Section 19(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(1)) is amended by striking “upon” and inserting “as soon as practicable after the date of”.

(c) EFFECTIVE DATE OF PROPOSED RULES.—Section 19(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking “may take effect” and inserting “shall take effect”; and

(B) by inserting “on any person, whether or not the person is a member of the self-regulatory organization” after “charge imposed by the self-regulatory organization”; and

(2) in subparagraph (C)—

(A) by amending the second sentence to read as follows: “At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”;

Time period.

(B) by inserting after the second sentence the following: “If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved.”; and

(C) in the third sentence, by striking “the preceding sentence” and inserting “this subparagraph”.

(d) CONFORMING CHANGE.—Section 19(b)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(4)(D)) is amended to read as follows:

Notification.
Deadline.

“(D)(i) The Commission shall order the temporary suspension of any change in the rules of a clearing agency made by a proposed rule change that has taken effect under paragraph (3), if the appropriate regulatory agency for the clearing agency notifies the Commission not later than 30 days after the date on which the proposed rule change was filed of—

“(I) the determination by the appropriate regulatory agency that the rules of such clearing agency, as so changed, may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible; and

“(II) the reasons for the determination described in subclause (I).

“(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.”.

SEC. 917. STUDY REGARDING FINANCIAL LITERACY AMONG INVESTORS.

(a) IN GENERAL.—The Commission shall conduct a study to identify—

(1) the existing level of financial literacy among retail investors, including subgroups of investors identified by the Commission;

(2) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;

(3) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of open-end companies, as that term is defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that are registered under section 8 of that Act;

(4) methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of open-end companies described in paragraph (3);

(5) the most effective existing private and public efforts to educate investors; and

(6) in consultation with the Financial Literacy and Education Commission, a strategy (including, to the extent practicable, measurable goals and objectives) to increase the financial literacy of investors in order to bring about a positive change in investor behavior.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 918. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

- (1) existing and proposed regulatory requirements for open-end investment company advertisements;
- (2) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds;
- (3) the impact of such advertising on consumers; and
- (4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

- (1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and
- (2) the Committee on Financial Services of the House of Representatives.

SEC. 919. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT PRODUCTS AND SERVICES.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

“(n) **DISCLOSURES TO RETAIL INVESTORS.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

“(2) **CONSIDERATIONS.**—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

“(3) **FORM AND CONTENTS OF DOCUMENTS AND INFORMATION.**—Any documents or information designated under a rule promulgated under paragraph (1) shall—

“(A) be in a summary format; and

“(B) contain clear and concise information about—

“(i) investment objectives, strategies, costs, and risks; and

“(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.”.

SEC. 919A. STUDY ON CONFLICTS OF INTEREST.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study—

- (1) to identify and examine potential conflicts of interest that exist between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm; and

(2) to make recommendations to Congress designed to protect investors in light of such conflicts.

(b) CONSIDERATIONS.—In conducting the study under subsection (a), the Comptroller General shall—

(1) consider—

(A) the potential for investor harm resulting from conflicts, including consideration of the forms of misconduct engaged in by the several securities firms and individuals that entered into the Global Analyst Research Settlements in 2003 (also known as the “Global Settlement”);

(B) the nature and benefits of the undertakings to which those firms agreed in enforcement proceedings, including firewalls between research and investment banking, separate reporting lines, dedicated legal and compliance staffs, allocation of budget, physical separation, compensation, employee performance evaluations, coverage decisions, limitations on soliciting investment banking business, disclosures, transparency, and other measures;

(C) whether any such undertakings should be codified and applied permanently to securities firms, or whether the Commission should adopt rules applying any such undertakings to securities firms; and

(D) whether to recommend regulatory or legislative measures designed to mitigate possible adverse consequences to investors arising from the conflicts of interest or to enhance investor protection or confidence in the integrity of the securities markets; and

(2) consult with State attorneys general, State securities officials, the Commission, the Financial Industry Regulatory Authority (“FINRA”), NYSE Regulation, investor advocates, brokers, dealers, retail investors, institutional investors, and academics.

(c) REPORT.—The Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 18 months after the date of enactment of this Act.

15 USC 80b–10
note.

SEC. 919B. STUDY ON IMPROVED INVESTOR ACCESS TO INFORMATION ON INVESTMENT ADVISERS AND BROKER-DEALERS.

(a) STUDY.—

Deadlines.

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as identify additional information that should be made publicly available.

(2) CONTENTS.—The study required by subsection (a) shall include an analysis of the advantages and disadvantages of further centralizing access to the information contained in the 2 systems, including—

(A) identification of those data pertinent to investors;
and

(B) the identification of the method and format for displaying and publishing such data to enhance accessibility by and utility to investors.

(b) IMPLEMENTATION.—Not later than 18 months after the date of completion of the study required by subsection (a), the Commission shall implement any recommendations of the study. Deadlines.

SEC. 919C. STUDY ON FINANCIAL PLANNERS AND THE USE OF FINANCIAL DESIGNATIONS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to evaluate— Evaluation.
Regulations.

(1) the effectiveness of State and Federal regulations to protect investors and other consumers from individuals who hold themselves out as financial planners through the use of misleading titles, designations, or marketing materials;

(2) current State and Federal oversight structure and regulations for financial planners; and

(3) legal or regulatory gaps in the regulation of financial planners and other individuals who provide or offer to provide financial planning services to consumers.

(b) CONSIDERATIONS.—In conducting the study required under subsection (a), the Comptroller General shall consider—

(1) the role of financial planners in providing advice regarding the management of financial resources, including investment planning, income tax planning, education planning, retirement planning, estate planning, and risk management;

(2) whether current regulations at the State and Federal level provide adequate ethical and professional standards for financial planners;

(3) the possible risk posed to investors and other consumers by individuals who hold themselves out as financial planners or as otherwise providing financial planning services in connection with the sale of financial products, including insurance and securities;

(4) the possible risk posed to investors and other consumers by individuals who otherwise use titles, designations, or marketing materials in a misleading way in connection with the delivery of financial advice;

(6) the ability of investors and other consumers to understand licensing requirements and standards of care that apply to individuals who hold themselves out as financial planners or as otherwise providing financial planning services;

(7) the possible benefits to investors and other consumers of regulation and professional oversight of financial planners; and

(8) any other consideration that the Comptroller General deems necessary or appropriate to effectively execute the study required under subsection (a).

(c) RECOMMENDATIONS.—In providing recommendations for the appropriate regulation of financial planners and other individuals who provide or offer to provide financial planning services, in order to protect investors and other consumers of financial planning services, the Comptroller General shall consider—

(1) the appropriate structure for regulation of financial planners and individuals providing financial planning services; and

(2) the appropriate scope of the regulations needed to protect investors and other consumers, including but not limited to the need to establish competency standards, practice standards, ethical guidelines, disciplinary authority, and transparency to investors and other consumers.

(d) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) the Special Committee on Aging of the Senate; and

(C) the Committee on Financial Services of the House of Representatives.

(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including a description of the considerations, analysis, and government, public, industry, non-profit and consumer input that the Comptroller General considered to make such findings, conclusions, and legislative, regulatory, or other recommendations.

15 USC 78d.

SEC. 919D. OMBUDSMAN.

Section 4(g) of the Securities Exchange Act of 1934, as added by section 914, is amended by adding at the end the following:

Deadline.

“(8) OMBUDSMAN.—

“(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

“(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

“(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

“(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

“(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

“(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

“(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the

activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).”.

Subtitle B—Increasing Regulatory Enforcement and Remedies

SEC. 921. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by this title, is further amended by adding at the end the following new subsection:

“(o) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following new subsection:

“(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

SEC. 922. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21E the following:

“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

15 USC 78u–6.

“(a) DEFINITIONS.—In this section the following definitions shall apply:

“(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term ‘covered judicial or administrative action’ means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding \$1,000,000.

“(2) FUND.—The term ‘Fund’ means the Securities and Exchange Commission Investor Protection Fund.

“(3) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

“(4) MONETARY SANCTIONS.—The term ‘monetary sanctions’, when used with respect to any judicial or administrative action, means—

“(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

“(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

“(5) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

“(6) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

“(b) AWARDS.—

“(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

“(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

“(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

“(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

“(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—

“(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

“(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission—

“(i) shall take into consideration—

“(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

“(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

“(III) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

“(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

“(ii) shall not take into consideration the balance of the Fund.

“(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

“(i) an appropriate regulatory agency;

“(ii) the Department of Justice;

“(iii) a self-regulatory organization;

“(iv) the Public Company Accounting Oversight Board; or

“(v) a law enforcement organization;

“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1); or

“(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

“(d) REPRESENTATION.—

“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

“(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information

as the Commission may require, directly or through counsel for the whistleblower.

“(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

Determination.
Deadline.

“(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission. The court shall review the determination made by the Commission in accordance with section 706 of title 5, United States Code.

Courts.

“(g) INVESTOR PROTECTION FUND.—

“(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the ‘Securities and Exchange Commission Investor Protection Fund’.

“(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

“(A) paying awards to whistleblowers as provided in subsection (b); and

“(B) funding the activities of the Inspector General of the Commission under section 4(i).

“(3) DEPOSITS AND CREDITS.—

“(A) IN GENERAL.—There shall be deposited into or credited to the Fund an amount equal to—

“(i) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds \$300,000,000;

“(ii) any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds \$200,000,000; and

“(iii) all income from investments made under paragraph (4).

“(B) ADDITIONAL AMOUNTS.—If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission

in the covered judicial or administrative action on which the award is based.

“(4) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

“(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission on the record.

“(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the date of enactment of this subsection, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

“(A) the whistleblower award program, established under this section, including—

“(i) a description of the number of awards granted; and

“(ii) the types of cases in which awards were granted during the preceding fiscal year;

“(B) the balance of the Fund at the beginning of the preceding fiscal year;

“(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

“(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

“(F) the balance of the Fund at the end of the preceding fiscal year; and

“(G) a complete set of audited financial statements, including—

“(i) a balance sheet;

“(ii) income statement; and

“(iii) cash flow analysis.

“(h) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

“(i) in providing information to the Commission in accordance with this section;

“(ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of

the Commission based upon or related to such information; or

“(iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including section 10A(m) of such Act (15 U.S.C. 78f(m)), section 1513(e) of title 18, United States Code, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

“(B) ENFORCEMENT.—

“(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

“(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

“(iii) STATUTE OF LIMITATIONS.—

“(I) IN GENERAL.—An action under this subsection may not be brought—

“(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred; or

“(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

“(II) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

“(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

“(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

“(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and

“(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys’ fees.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section

552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.

“(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(C) RULE OF CONSTRUCTION.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(D) AVAILABILITY TO GOVERNMENT AGENCIES.—

“(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

“(I) the Attorney General of the United States;

“(II) an appropriate regulatory authority;

“(III) a self-regulatory organization;

“(IV) a State attorney general in connection with any criminal investigation;

“(V) any appropriate State regulatory authority;

“(VI) the Public Company Accounting Oversight Board;

“(VII) a foreign securities authority; and

“(VIII) a foreign law enforcement authority.

“(ii) CONFIDENTIALITY.—

“(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

“(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section if the whistleblower—

“(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

“(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

“(j) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary

or appropriate to implement the provisions of this section consistent with the purposes of this section.”.

(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting “or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),” after “78o(d),”; and

(2) by inserting “or nationally recognized statistical rating organization” after “such company”.

(c) SECTION 1514A OF TITLE 18, UNITED STATES CODE.—

(1) STATUTE OF LIMITATIONS; JURY TRIAL.—Section 1514A(b)(2) of title 18, United States Code, is amended—

(A) in subparagraph (D)—

(i) by striking “90” and inserting “180”; and

(ii) by striking the period at the end and inserting “, or after the date on which the employee became aware of the violation.”; and

(B) by adding at the end the following:

“(E) JURY TRIAL.—A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.”.

(2) PRIVATE SECURITIES LITIGATION WITNESSES; NON-ENFORCEABILITY; INFORMATION.—Section 1514A of title 18, United States Code, is amended by adding at the end the following:

“(e) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

“(1) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

“(2) PREDISPUTE ARBITRATION AGREEMENTS.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.”.

(d) STUDY OF WHISTLEBLOWER PROTECTION PROGRAM.—

(1) STUDY.—The Inspector General of the Commission shall conduct a study of the whistleblower protections established under the amendments made by this section, including—

(A) whether the final rules and regulation issued under the amendments made by this section have made the whistleblower protection program (referred to in this subsection as the “program”) clearly defined and user-friendly;

(B) whether the program is promoted on the website of the Commission and has been widely publicized;

(C) whether the Commission is prompt in—

(i) responding to—

(I) information provided by whistleblowers; and

(II) applications for awards filed by whistleblowers;

(ii) updating whistleblowers about the status of their applications; and

(iii) otherwise communicating with the interested parties;

(D) whether the minimum and maximum reward levels are adequate to entice whistleblowers to come forward with

information and whether the reward levels are so high as to encourage illegitimate whistleblower claims;

(E) whether the appeals process has been unduly burdensome for the Commission;

(F) whether the funding mechanism for the Investor Protection Fund is adequate;

(G) whether, in the interest of protecting investors and identifying and preventing fraud, it would be useful for Congress to consider empowering whistleblowers or other individuals, who have already attempted to pursue the case through the Commission, to have a private right of action to bring suit based on the facts of the same case, on behalf of the Government and themselves, against persons who have committed securities fraud;

(H)(i) whether the exemption under section 552(b)(3) of title 5 (known as the Freedom of Information Act) established in section 21F(h)(2)(A) of the Securities Exchange Act of 1934, as added by this Act, aids whistleblowers in disclosing information to the Commission;

(ii) what impact the exemption described in clause (i) has had on the ability of the public to access information about the regulation and enforcement by the Commission of securities; and

(iii) any recommendations on whether the exemption described in clause (i) should remain in effect; and

(I) such other matters as the Inspector General deems appropriate.

(2) REPORT.—Not later than 30 months after the date of enactment of this Act, the Inspector General shall—

(A) submit a report on the findings of the study required under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House; and

(B) make the report described in subparagraph (A) available to the public through publication of the report on the website of the Commission.

Public
information.
Web posting.

SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)) is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”.

(b) SECURITIES EXCHANGE ACT.—

(1) SECTION 21.—Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)) is amended

by inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”.

(2) SECTION 21A.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1) is amended—

(A) in subsection (d)(1) by—

(i) striking “(subject to subsection (e))”; and

(ii) inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

(B) by striking subsection (e); and

(C) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

15 USC 78u-7.

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTION.

Deadline.

(a) IMPLEMENTING RULES.—The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

(b) ORIGINAL INFORMATION.—Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 21F(a)(3) of the Securities Exchange Act of 1934, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, if the information is provided by the whistleblower after the date of enactment of this subtitle.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle.

Establishment.

(d) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934 (as add by section 922(a)). Such office shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its activities, whistleblower complaints, and the response of the Commission to such complaints.

Reports.
Deadline.

SEC. 925. COLLATERAL BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 15.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “12 months, or bar such person from being associated with a broker or dealer,” and inserting “12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.”.

(2) SECTION 15B.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities

dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.”.

(3) SECTION 17A.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(4)(C)) is amended by striking “twelve months or bar any such person from being associated with the transfer agent,” and inserting “12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization,”.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking “twelve months or bar any such person from being associated with an investment adviser,” and inserting “12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,”.

SEC. 926. DISQUALIFYING FELONS AND OTHER “BAD ACTORS” FROM REGULATION D OFFERINGS.

15 USC 77d note.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

Deadline.

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking “an exchange required thereby” and inserting “a self-regulatory organization.”.

SEC. 928. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter preceding paragraph (1)—

(1) by striking “, unless exempt from registration pursuant to section 203(b),” and inserting “registered or required to be registered with the Commission”;

(2) by striking “make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to”; and

(3) by striking “to” after “in any way”.

SEC. 929. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “; and” and inserting “; or”.

SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDIARIES AND AFFILIATES OF PUBLICLY TRADED COMPANIES.

Section 1514A of title 18, United States Code, is amended by inserting “including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company” after “the Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

SEC. 929B. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.”;

(2) in subsection (b)—

(A) by striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”;

(B) by striking “in the disgorgement fund” and inserting “in such fund”;

(3) by striking subsection (e).

SEC. 929C. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sentence, by striking “\$1,000,000,000” and inserting “\$2,500,000,000”.

SEC. 929D. LOST AND STOLEN SECURITIES.

Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking “missing, lost, counterfeit, or stolen securities” and inserting “securities that are missing, lost, counterfeit, stolen, or cancelled”; and

(2) in subparagraph (B), by striking “or stolen” and inserting “stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe”.

SEC. 929E. NATIONWIDE SERVICE OF SUBPOENAS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a-43) is amended by inserting after the fourth sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

SEC. 929F. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULE-MAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(8)) is amended by striking “any member

or employee” and inserting “any person who is, or at the time of the alleged violation or abuse was, a member or employee”.

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is amended—

(1) in paragraph (1)(C), by striking “any person associated, or seeking to become associated,” and inserting “any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated”; and

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”; and

(B) in subparagraph (B), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”.

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting “, or, as to any act or practice, or omission to act, while associated with a member, formerly associated” after “member or a person associated”.

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting “or, as to any act or practice, or omission to act, while a participant, was a participant,” after “in which such person is a participant,”.

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(2) by striking “such officer or director” and inserting “such person”.

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and

(2) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at the time of the alleged misconduct, so served or acted”.

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following:

“(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

For purposes of sections 3(c), 101(c), 105, and 107(c) and the rules of the Board and Commission issued thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any

Applicability.

person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

“(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

“(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

“(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

“(II) non-cooperation, as described in section 105(b)(3), with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.”.

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking “or a person associated with such a firm” and inserting “, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm”.

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking “the supervisory personnel” and inserting “any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person”; and

(2) in subparagraph (B)—

(A) by striking “No associated person” and inserting “No current or former supervisory person”; and

(B) by striking “any other person” and inserting “any associated person”.

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking “any member” and inserting “any person who is, or at the time of the alleged misconduct was, a member”.

SEC. 929G. STREAMLINED HIRING AUTHORITY FOR MARKET SPECIALISTS.

(a) APPOINTMENT AUTHORITY.—Section 3114 of title 5, United States Code, is amended by striking the section heading and all that follows through the end of subsection (a) and inserting the following:

“§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

“(a) **APPLICABILITY.**—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 31 of title 5, United States Code, is amended by striking the item relating to section 3114 and inserting the following:

“3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.”.

15 USC 78d note.

(c) **PAY AUTHORITY.**—The Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.

SEC. 929H. SIPC REFORMS.

(a) **INCREASING THE CASH LIMIT OF PROTECTION.**—Section 9 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff-3) is amended—

(1) in subsection (a)(1), by striking “\$100,000 for each such customer” and inserting “the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)”; and

(2) by adding the following new subsections:

“(d) **STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.**—For purposes of this section, the term ‘standard maximum cash advance amount’ means \$250,000, as such amount may be adjusted after December 31, 2010, as provided under subsection (e).

“(e) **INFLATION ADJUSTMENT.**—

“(1) **IN GENERAL.**—Not later than January 1, 2011, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

“(A) \$250,000 multiplied by—

“(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

“(2) **ROUNDING.**—If the standard maximum cash advance amount determined under paragraph (1) for any period is not

Deadlines.
Determination.

a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

“(3) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

“(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

Federal Register, publication.

“(B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

“(4) IMPLEMENTATION PERIOD.—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

Effective date.

“(5) INFLATION ADJUSTMENT CONSIDERATIONS.—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

“(A) the overall state of the fund and the economic conditions affecting members of SIPC;

“(B) the potential problems affecting members of SIPC; and

“(C) such other factors as the Board of Directors of SIPC may determine appropriate.”.

(b) LIQUIDATION OF A CARRYING BROKER-DEALER.—Section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

(1) by striking the undesignated matter immediately following subparagraph (B);

(2) in subparagraph (A), by striking “any member of SIPC” and inserting “the member”;

(3) in subparagraph (B), by striking the comma at the end and inserting a period;

(4) by striking “If SIPC” and inserting the following:

“(A) IN GENERAL.—SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 21(e) or 27 of the Securities Exchange Act of 1934, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 9, if SIPC”; and

(5) by adding at the end the following:

“(B) CONSENT REQUIRED.—No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC, except as provided in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”.

SEC. 929I. PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), by striking “subsection (e)” and inserting “subsection (f)”;

(2) by redesignating subsection (e) as subsection (f); and

(3) by inserting after subsection (d) the following:

“(e) RECORDS OBTAINED FROM REGISTERED PERSONS.—

“(1) IN GENERAL.—Except as provided in subsection (f), the Commission shall not be compelled to disclose records or information obtained pursuant to section 17(b), or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities.

“(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 17 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”.

(b) INVESTMENT COMPANY ACT OF 1940.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”;

(2) by striking subsection (d); and

(3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by adding at the end the following:

“(d) LIMITATIONS ON DISCLOSURE BY THE COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under section 204, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from

complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 204 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”.

SEC. 929J. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) PRODUCTION OF DOCUMENTS.—

“(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

“(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon request of the Commission or the Board; and

“(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

“(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

“(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

“(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.”;

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following:

“(d) SERVICE OF REQUESTS OR PROCESS.—

“(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

Designation.

“(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or, performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleading, or other papers in any action brought to enforce this section.

“(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

“(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.”.

SEC. 929K. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), as amended by subsection (d)(1)(A), by striking “subsection (f)” and inserting “subsection (g)”;

(2) in subsection (e), as added by subsection (d)(1)(C), by striking “subsection (f)” and inserting “subsection (g)”;

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

“(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

“(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

“(A) any agency (as defined in section 6 of title 18, United States Code);

“(B) the Public Company Accounting Oversight Board;

“(C) any self-regulatory organization;

“(D) any foreign securities authority;

“(E) any foreign law enforcement authority; or

“(F) any State securities or law enforcement authority.

“(2) NONDISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

“(3) NONWAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

“(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

“(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘privilege’ includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

“(B) the term ‘foreign law enforcement authority’ means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

“(C) the term ‘State securities or law enforcement authority’ means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.”.

SEC. 929L. ENHANCED APPLICATION OF ANTIFRAUD PROVISIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

15 USC 78i.

(A) by striking “registered on a national securities exchange” each place that term appears and inserting “other than a government security”;

(B) in subsection (b), by striking “by use of any facility of a national securities exchange,”; and

(C) in subsection (c), by inserting after “unlawful for any” the following: “broker, dealer, or”;

(2) in section 10(a)(1), by striking “registered on a national securities exchange” and inserting “other than a government security”; and

15 USC 78j.

(3) in section 15(c)(1)(A), by striking “otherwise than on a national securities exchange of which it is a member”.

15 USC 78o.

SEC. 929M. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking “Every person who” and inserting “(a) CONTROLLING PERSONS.—Every person who”; and

(2) by adding at the end the following:

“(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

(b) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a-48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

15 USC 80a-47.

“(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in

violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

SEC. 929N. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsection:

“(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.”.

SEC. 929O. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly” after “knowingly”.

SEC. 929P. STRENGTHENING ENFORCEMENT BY THE COMMISSION.

(a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

“(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

“(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

“(A) such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) such penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be \$7,500 for a natural person or \$75,000 for any other person.

“(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$75,000 for a natural person or \$375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

“(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$150,000 for a natural person or \$725,000 for any other person, if—

“(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) such act or omission directly or indirectly resulted in—

“(I) substantial losses or created a significant risk of substantial losses to other persons; or

“(II) substantial pecuniary gain to the person who committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.”

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

(A) by striking the matter following paragraph (4);

(B) in the matter preceding paragraph (1), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest and”;

(C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the margins accordingly;

(D) by striking “In any proceeding” and inserting the following:

“(1) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following:

“(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

“(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

(3) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amended—

(A) by striking the matter following subparagraph (C);

(B) in the matter preceding subparagraph (A), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest, and”;

(C) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the margins accordingly;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”.

(4) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

(A) by striking the matter following subparagraph (D);

(B) in the matter preceding subparagraph (A), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest and”;

(C) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”.

Courts.

(b) EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

“(c) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 17(a) involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(A) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(B) by adding at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this title involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(3) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended—

(A) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(B) by adding at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 206 involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(c) CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after “controlled person is liable” the following: “(including to the Commission in any action brought under paragraph (1) or (3) of section 21(d))”.

SEC. 929Q. REVISION TO RECORDKEEPING RULE.

(a) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(1) in subsection (a)(1), by adding at the end the following:

“Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.”; and

(2) in subsection (b), by adding at the end the following:

“(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.”.

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended by adding at the end the following new subsection:

“(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.”.

SEC. 929R. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after “within ten days after such acquisition” the following: “or within such shorter time as the Commission may establish by rule”; and

(B) by striking “send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and”;

(2) in subsection (d)(2)—

(A) by striking “in the statements to the issuer and the exchange, and”; and

- (B) by striking “shall be transmitted to the issuer and the exchange and”;
- (3) in subsection (g)(1), by striking “shall send to the issuer of the security and”; and
- (4) in subsection (g)(2)—
 - (A) by striking “sent to the issuer and”; and
 - (B) by striking “shall be transmitted to the issuer and”.

(b) **SHORT-SWING PROFIT REPORTING.**—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

- (1) in paragraph (1), by striking “(and, if such security is registered on a national securities exchange, also with the exchange)”;
- (2) in paragraph (2)(B), by inserting after “officer” the following: “, or within such shorter time as the Commission may establish by rule”.

SEC. 929S. FINGERPRINTING.

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

- (1) in the first sentence, by striking “and registered clearing agency,” and inserting “registered clearing agency, registered securities information processor, national securities exchange, and national securities association”; and
- (2) in the second sentence, by striking “or clearing agency,” and inserting “clearing agency, securities information processor, national securities exchange, or national securities association,”.

SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking “an exchange required thereby” and inserting “a self-regulatory organization,”.

SEC. 929U. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS AND ENFORCEMENT ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D the following new section:

“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

15 USC 78d–5.

“(a) ENFORCEMENT INVESTIGATIONS.—

“(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

Notification.
Filing.

“(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director’s designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director’s designee may, after providing notice to the Chairman of the Commission,

Time period.

extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

“(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

Notification.

“(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded, has concluded without findings, or that the staff requests the entity undertake corrective action.

Time period.

“(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection, or regarding the staff requests the entity undertake corrective action, cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.”.

SEC. 929V. SECURITY INVESTOR PROTECTION ACT AMENDMENTS.

(a) INCREASING THE MINIMUM ASSESSMENT PAID BY SIPC MEMBERS.—Section 4(d)(1)(C) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by striking “\$150 per annum” and inserting the following: “0.02 percent of the gross revenues from the securities business of such member of SIPC”.

(b) INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.—Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking “\$50,000” and inserting “\$250,000”; and

(2) in paragraph (2), by striking “\$50,000” and inserting “\$250,000”.

(c) PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

“(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—

“(1) IN GENERAL.—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual

knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than \$250,000 or imprisoned for not more than 5 years.

“(2) INJUNCTIONS.—Any court having jurisdiction of a civil action arising under this Act may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk’s office.”.

Procedures.
Certification.
Records.

SEC. 929W. NOTICE TO MISSING SECURITY HOLDERS.

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is amended by adding at the end the following new subsection:

“(g) DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.—

“(1) REVISION OF RULES REQUIRED.—The Commission shall revise its regulations in section 240.17Ad–17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

“(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

Notification.
Deadline.

“(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than \$25.

“(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

“(D) For purposes of such revised regulations—

“(i) a security holder shall be considered a ‘missing security holder’ if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

“(ii) the term ‘paying agent’ includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that

accepts payments from the issuer of a security and distributes the payments to the holders of the security.

Deadline. “(2) RULEMAKING.—The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.”.

SEC. 929X. SHORT SALE REFORMS.

(a) SHORT SALE DISCLOSURE.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

Regulations. “(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.”.

Deadline.

(b) SHORT SELLING ENFORCEMENT.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

- (1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and
- (2) inserting after subsection (c), the following new subsection:

“(d) TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.”.

Regulations.

(c) INVESTOR NOTIFICATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

- (1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and
- (2) inserting after subsection (d) the following new subsection:

“(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer’s securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer’s securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection

of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.”.

SEC. 929Y. STUDY ON EXTRATERRITORIAL PRIVATE RIGHTS OF ACTION.

(a) **IN GENERAL.**—The Securities and Exchange Commission of the United States shall solicit public comment and thereafter conduct a study to determine the extent to which private rights of action under the antifraud provisions of the Securities and Exchange Act of 1934 (15 U.S.C. 78u-4) should be extended to cover—

Public comment.

(1) conduct within the United States that constitutes a significant step in the furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; and

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(b) **CONTENTS.**—The study shall consider and analyze, among other things—

(1) the scope of such a private right of action, including whether it should extend to all private actors or whether it should be more limited to extend just to institutional investors or otherwise;

(2) what implications such a private right of action would have on international comity;

(3) the economic costs and benefits of extending a private right of action for transnational securities frauds; and

(4) whether a narrower extraterritorial standard should be adopted.

(c) **REPORT.**—A report of the study shall be submitted and recommendations made to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House not later than 18 months after the date of enactment of this Act.

SEC. 929Z. GAO STUDY ON SECURITIES LITIGATION.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on the impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws. To the extent feasible, this study shall include—

(1) a review of the role of secondary actors in companies issuance of securities;

(2) the courts interpretation of the scope of liability for secondary actors under Federal securities laws after January 14, 2008; and

(3) the types of lawsuits decided under the Private Securities Litigation Act of 1995.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the findings of the study required under subsection (a).

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

15 USC 78o–7
note.

SEC. 931. FINDINGS.

Congress finds the following:

(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical “gatekeeper” role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial “gatekeepers” do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.

SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND TRANSPARENCY OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) IN GENERAL.—Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking “furnished” and inserting “filed” and by striking “furnishing” and inserting “filing”;

(B) in paragraph (1)(B), by striking “furnishing” and inserting “filing”; and

(C) in the first sentence of paragraph (2), by striking “furnish to” and inserting “file with”;

(2) in subsection (c)—

(A) in paragraph (2)—

(i) in the second sentence, by inserting “any other provision of this section, or” after “Notwithstanding”; and

(ii) by inserting after the period at the end the following: “Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.”; and

(B) by adding at the end the following:

“(3) INTERNAL CONTROLS OVER PROCESSES FOR DETERMINING CREDIT RATINGS.—

“(A) IN GENERAL.—Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

“(B) ATTESTATION REQUIREMENT.—The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

Deadline.
Reports.

“(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

“(ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and

Assessment.

“(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.”;

(3) in subsection (d)—

(A) by inserting after “or revoke the registration of any nationally recognized statistical rating organization” the following: “, or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization.”;

Censure.

(B) by inserting “bar” after “placing of limitations, suspension.”;

(C) in paragraph (2), by striking “furnished to” and inserting “filed with”;

(D) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(E) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the subparagraph margins accordingly;

(F) in the matter preceding subparagraph (A), as so redesignated, by striking “The Commission” and inserting the following:

“(1) IN GENERAL.—The Commission”;

(G) in subparagraph (D), as so redesignated—

(i) by striking “furnish” and inserting “file”; and

(ii) by striking “or” at the end.

(H) in subparagraph (E), as so redesignated, by striking the period at the end and inserting a semicolon; and

(I) by adding at the end the following:

“(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

“(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES.—

“(A) IN GENERAL.—The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

“(B) CONSIDERATIONS.—In making any determination under subparagraph (A), the Commission shall consider—

“(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce ratings that are accurate for that class or subclass of securities; and

“(ii) such other factors as the Commission may determine.”;

(4) in subsection (h), by adding at the end the following:

“(3) SEPARATION OF RATINGS FROM SALES AND MARKETING.—

“(A) RULES REQUIRED.—The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

“(B) CONTENTS OF RULES.—The rules issued under subparagraph (A) shall provide for—

“(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

“(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commission finds, on the record, after notice and opportunity for a hearing, that—

“(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

“(II) the violation of a rule issued under this subsection affected a rating.

“(4) LOOK-BACK REQUIREMENT.—

“(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

“(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

“(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

“(B) REVIEW BY COMMISSION.—

“(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

“(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

“(I) not less frequently than annually; and

“(II) whenever such policies are materially modified or amended.

“(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—

“(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

“(i) was a senior officer of such organization;

“(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

“(iii) supervised an employee described in clause (ii).

“(B) PUBLIC DISCLOSURE.—Upon receiving such a report, the Commission shall make such information publicly available.”;

(5) in subsection (j)—

(A) by striking “Each” and inserting the following: “(1) IN GENERAL.—Each”; and

(B) by adding at the end the following:

“(2) LIMITATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

“(i) perform credit ratings;

“(ii) participate in the development of ratings methodologies or models;

“(iii) perform marketing or sales functions; or

“(iv) participate in establishing compensation levels, other than for employees working for that individual.

“(B) EXCEPTION.—The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

“(3) OTHER DUTIES.—Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

“(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

“(B) confidential, anonymous complaints by employees or users of credit ratings.

“(4) COMPENSATION.—The compensation of each compliance officer appointed under paragraph (1) shall not be linked to the financial performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer’s judgment.

“(5) ANNUAL REPORTS REQUIRED.—

“(A) ANNUAL REPORTS REQUIRED.—Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

“(i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and

“(ii) a certification that the report is accurate and complete.

“(B) SUBMISSION OF REPORTS TO THE COMMISSION.—Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.”;

Procedures.

(6) in subsection (k), by striking “furnish to” and inserting “file with”;

(7) in subsection (l)(2)(A)(i), by striking “furnished” and inserting “filed”; and

(8) by striking subsection (p) and inserting the following:

“(p) REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

“(1) ESTABLISHMENT OF OFFICE OF CREDIT RATINGS.—

“(A) OFFICE ESTABLISHED.—The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the ‘Office’) to administer the rules of the Commission—

“(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

“(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

“(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

“(B) DIRECTOR OF THE OFFICE.—The head of the Office shall be the Director, who shall report to the Chairman.

“(2) STAFFING.—The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

“(3) COMMISSION EXAMINATIONS.—

“(A) ANNUAL EXAMINATIONS REQUIRED.—The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

“(B) CONDUCT OF EXAMINATIONS.—Each examination under subparagraph (A) shall include a review of—

“(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

“(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

“(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

“(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

“(v) the governance of the nationally recognized statistical rating organization;

“(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

“(vii) the processing of complaints by the nationally recognized statistical rating organization; and

“(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

Public
information.

“(C) INSPECTION REPORTS.—The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

“(i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;

“(ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and

“(iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

Fines.
Penalties.

“(4) RULEMAKING AUTHORITY.—The Commission shall—

“(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this section and the rules thereunder; and

“(B) issue such rules as may be necessary to carry out this section.

“(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

Public
information.

“(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

“(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

“(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

“(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

“(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

“(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested;

“(E) are appropriate to the business model of a nationally recognized statistical rating organization; and

“(F) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and

that such rating was an independent evaluation of the risks and merits of the instrument.

“(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall Regulations.
prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

“(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

“(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board; and

“(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

“(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

“(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

“(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

“(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

“(3) to notify users of credit ratings—

Notification.

“(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

“(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

“(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

“(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

“(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

“(1) FORM FOR DISCLOSURES.—The Commission shall Regulations.
require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

“(A) information relating to—

“(i) the assumptions underlying the credit rating procedures and methodologies;

“(ii) the data that was relied on to determine the credit rating; and

“(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

“(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

“(2) FORMAT.—The form developed under paragraph (1) shall—

“(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

“(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

“(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

“(3) CONTENT OF FORM.—

“(A) QUALITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

“(i) the credit ratings produced by the nationally recognized statistical rating organization;

“(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products;

“(iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;

“(iv) information on the uncertainty of the credit rating, including—

“(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

“(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

“(aa) any limits on the scope of historical data; and

“(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

“(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

“(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

“(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

“(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

“(ix) such additional information as the Commission may require.

“(B) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

“(i) an explanation or measure of the potential volatility of the credit rating, including—

“(I) any factors that might lead to a change in the credit ratings; and

“(II) the magnitude of the change that a user can expect under different market conditions;

“(ii) information on the content of the rating, including—

“(I) the historical performance of the rating; and

“(II) the expected probability of default and the expected loss in the event of default;

“(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

“(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

“(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating;

“(iv) such additional information as may be required by the Commission.

“(4) DUE DILIGENCE SERVICES FOR ASSET-BACKED SECURITIES.—

“(A) FINDINGS.—The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

“(B) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which

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information.

such services relate, written certification, as provided in subparagraph (C).

“(C) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

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“(D) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.

“(t) CORPORATE GOVERNANCE, ORGANIZATION, AND MANAGEMENT OF CONFLICTS OF INTEREST.—

Establishment.

“(1) BOARD OF DIRECTORS.—Each nationally recognized statistical rating organization shall have a board of directors.

“(2) INDEPENDENT DIRECTORS.—

“(A) IN GENERAL.—At least $\frac{1}{2}$ of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

“(B) INDEPENDENCE DETERMINATION.—In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

“(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

“(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

“(II) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof; and

“(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

“(C) COMPENSATION AND TERM.—The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.

“(3) DUTIES OF BOARD OF DIRECTORS.—In addition to the overall responsibilities of the board of directors, the board shall oversee—

“(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

“(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

“(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

“(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

“(4) TREATMENT OF NRSRO SUBSIDIARIES.—If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

“(A) at least $\frac{1}{2}$ of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

“(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.

“(5) EXCEPTION AUTHORITY.—If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.”.

(b) CONFORMING AMENDMENT.—Section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)) is amended by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.

(a) ACCOUNTABILITY.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is amended to read as follows:

“(m) ACCOUNTABILITY.—

“(1) IN GENERAL.—The enforcement and penalty provisions of this title shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 21E.

Applicability.

“(2) RULEMAKING.—The Commission shall issue such rules as may be necessary to carry out this subsection.”.

(b) STATE OF MIND.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended—

(1) by striking “In any” and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), in any”; and

(2) by adding at the end the following:

“(B) EXCEPTION.—In the case of an action for money damages brought against a credit rating agency or a controlling person under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

“(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

“(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.”.

SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

“(u) DUTY TO REPORT TIPS ALLEGING MATERIAL VIOLATIONS OF LAW.—

“(1) DUTY TO REPORT.—Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).”.

SEC. 935. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RATING DECISIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

“(v) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.”.

SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and

(2) is tested for knowledge of the credit rating process.

SEC. 937. TIMING OF REGULATIONS.

15 USC 78o–7
note.

Unless otherwise specifically provided in this subtitle, the Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act.

SEC. 938. UNIVERSAL RATINGS SYMBOLS.

15 USC 78o–8.

(a) **RULEMAKING.**—The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

Procedures.

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) **RULE OF CONSTRUCTION.**—Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) **FEDERAL DEPOSIT INSURANCE ACT.**—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(b)(1)(E)(i), by striking “credit rating entities, and other private economic” and insert “private economic, credit,”;

12 USC 1817.

(2) in section 28(d)—

12 USC 1831e.

(A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(C) in paragraph (2), by striking “not of investment grade”;

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3);

and

(F) in paragraph (3), as so redesignated—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”; and

(3) in section 28(e)—

(A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”; and

(C) in paragraphs (2) and (3), by striking “not of investment grade” each place that it appears and inserting “that does not meet standards of credit-worthiness established by the Corporation”.

(b) **FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.**—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking “that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,”.

(c) **INVESTMENT COMPANY ACT OF 1940.**—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking “is rated investment grade by not less than 1 nationally recognized statistical rating organization” and inserting “meets such standards of credit-worthiness as the Commission shall adopt”.

(d) **REVISED STATUTES.**—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”;

(2) in the heading for subsection (a)(3) by striking “RATING OR COMPARABLE REQUIREMENT” and inserting “REQUIREMENT”;

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

“(A) **IN GENERAL.**—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.”.

(4) in the heading for subsection (f), by striking “MAINTAIN PUBLIC RATING OR” and inserting “MEET STANDARDS OF CREDIT-WORTHINESS”; and

(5) in subsection (f)(1), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”.

(e) **SECURITIES EXCHANGE ACT OF 1934.**—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking “is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as established by the Commission”; and

(2) in paragraph (53)(A), by striking “is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as established by the Commission”.

(f) **WORLD BANK DISCUSSIONS.**—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and

Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking “credit rating” and inserting “credit-worthiness”.

(g) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 2 years after the date of enactment of this Act. 12 USC 24a note.

(h) **STUDY AND REPORT.**—

(1) **IN GENERAL.**—Commission shall undertake a study on the feasibility and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

SEC. 939A. REVIEW OF RELIANCE ON RATINGS.

(a) **AGENCY REVIEW.**—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency shall, to the extent applicable, review—

(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(2) any references to or requirements in such regulations regarding credit ratings.

(b) **MODIFICATIONS REQUIRED.**—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(c) **REPORT.**—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b).

SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the

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15 USC 78o–7
note.
Deadline.

Standards.

15 USC 78m
note.

Deadline.

exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

SEC. 939C. SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.

(a) **STUDY.**—The Commission shall conduct a study of—

(1) the independence of nationally recognized statistical rating organizations; and

(2) how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally recognized statistical rating organizations.

(b) **SUBJECTS FOR EVALUATION.**—In conducting the study under subsection (a), the Commission shall evaluate—

(1) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

(2) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and

(3) any other issue relating to nationally recognized statistical rating organizations, as the Chairman of the Commission determines is appropriate.

(c) **REPORT.**—Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for improving the integrity of ratings issued by nationally recognized statistical rating organizations.

15 USC 78o–9
note.

SEC. 939D. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.

SEC. 939E. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

(1) establishing independent standards for governing the profession of rating analysts;

(2) establishing a code of ethical conduct; and

(3) overseeing the profession of rating analysts.

(b) **REPORT.**—Not later than 1 year after the date of publication of the rules issued by the Commission pursuant to section 936, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a).

SEC. 939F. STUDY AND RULEMAKING ON ASSIGNED CREDIT RATINGS. 15 USC 78o–9.

(a) **DEFINITION.**—In this section, the term “structured finance product” means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by section 941, and any structured product based on an asset-backed security, as determined by the Commission, by rule.

(b) **STUDY.**—The Commission shall carry out a study of—

(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

(D) any constitutional or other issues concerning the establishment of such a system;

(3) the range of metrics that could be used to determine the accuracy of credit ratings; and

(4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

(c) **REPORT AND RECOMMENDATION.**—Not later than 24 months after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

(1) the findings of the study required under subsection (b); and

(2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

(d) **RULEMAKING.**—

(1) **RULEMAKING.**—After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system

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for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

(2) **RULE OF CONSTRUCTION.**—Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

SEC. 939G. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

SEC. 939H. SENSE OF CONGRESS.

It is the sense of Congress that the Securities and Exchange Commission should exercise the rulemaking authority of the Commission under section 15E(h)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(h)(2)(B)) to prevent improper conflicts of interest arising from employees of nationally recognized statistical rating organizations providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services.

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION.

(a) **DEFINITION OF ASSET-BACKED SECURITY.**—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(77) **ASSET-BACKED SECURITY.**—The term ‘asset-backed security’—

“(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

“(i) a collateralized mortgage obligation;

“(ii) a collateralized debt obligation;

“(iii) a collateralized bond obligation;

“(iv) a collateralized debt obligation of asset-backed securities;

“(v) a collateralized debt obligation of collateralized debt obligations; and

“(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

“(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.”.

(b) CREDIT RISK RETENTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15F, as added by this Act, the following:

“SEC. 15G. CREDIT RISK RETENTION.

15 USC 78o–11.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘Federal banking agencies’ means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

“(2) the term ‘insured depository institution’ has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

“(3) the term ‘securitizer’ means—

“(A) an issuer of an asset-backed security; or

“(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

“(4) the term ‘originator’ means a person who—

“(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

“(B) sells an asset directly or indirectly to a securitizer.

“(b) REGULATIONS REQUIRED.—

Deadline.

“(1) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

“(2) RESIDENTIAL MORTGAGES.—Not later than 270 days after the date of the enactment of this section, the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Federal Housing Finance Agency, shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

“(c) STANDARDS FOR REGULATIONS.—

“(1) STANDARDS.—The regulations prescribed under subsection (b) shall—

“(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

“(B) require a securitizer to retain—

“(i) not less than 5 percent of the credit risk for any asset—

“(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

“(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

“(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

“(C) specify—

“(i) the permissible forms of risk retention for purposes of this section;

“(ii) the minimum duration of the risk retention required under this section; and

“(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

Applicability.

“(D) apply, regardless of whether the securitizer is an insured depository institution;

“(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), which in the determination of the Federal banking agencies and the Commission may include—

“(i) retention of a specified amount or percentage of the total credit risk of the asset;

“(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer;

“(iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and

“(iv) provision of adequate representations and warranties and related enforcement mechanisms; and

“(F) establish appropriate standards for retention of an economic interest with respect to collateralized debt obligations, securities collateralized by collateralized debt obligations, and similar instruments collateralized by other asset-backed securities; and

“(G) provide for—

“(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

“(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

“(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986, as may be appropriate in the public interest and for the protection of investors; and

“(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

“(2) ASSET CLASSES.—

“(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

“(B) CONTENTS.—For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

“(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

“(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

“(2) consider—

“(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

“(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent

origination of the type of loan or asset to be sold to the securitizer; and

“(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

“(e) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

“(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

“(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

“(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

“(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

“(3) CERTAIN INSTITUTIONS AND PROGRAMS EXEMPT.—

“(A) FARM CREDIT SYSTEM INSTITUTIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan or other financial asset made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

“(B) OTHER FEDERAL PROGRAMS.—This section shall not apply to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or an agency of the United States. For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States.

“(4) EXEMPTION FOR QUALIFIED RESIDENTIAL MORTGAGES.—

Regulations.

“(A) IN GENERAL.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

Definition.

“(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term ‘qualified residential mortgage’ for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

“(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

“(ii) standards with respect to—

“(I) the residual income of the mortgagor after all monthly obligations;

“(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

“(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

“(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;

“(iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and

“(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

“(C) LIMITATION ON DEFINITION.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency in defining the term ‘qualified residential mortgage’, as required by subparagraph (B), shall define that term to be no broader than the definition ‘qualified mortgage’ as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010, and regulations adopted thereunder.

“(5) CONDITION FOR QUALIFIED RESIDENTIAL MORTGAGE EXEMPTION.—The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

“(6) CERTIFICATION.—The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

“(f) ENFORCEMENT.—The regulations issued under this section shall be enforced by—

“(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

“(2) the Commission, with respect to any securitizer that is not an insured depository institution.

“(g) AUTHORITY OF COMMISSION.—The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

“(h) AUTHORITY TO COORDINATE ON RULEMAKING.—The Chairperson of the Financial Stability Oversight Council shall coordinate all joint rulemaking required under this section.

“(i) EFFECTIVE DATE OF REGULATIONS.—The regulations issued under this section shall become effective—

“(1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and

“(2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on which final rules under this section are published in the Federal Register.”.

(c) STUDY ON RISK RETENTION.—

(1) STUDY.—The Board of Governors of the Federal Reserve System, in coordination and consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission shall conduct a study of the combined impact on each individual class of asset-backed security established under section 15G(c)(2) of the Securities Exchange Act of 1934, as added by subsection (b), of—

(A) the new credit risk retention requirements contained in the amendment made by subsection (b), including the effect credit risk retention requirements have on increasing the market for Federally subsidized loans; and

(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

(2) REPORT.—Not later than 90 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-BACKED SECURITIES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by striking “(d) Each” and inserting the following:

“(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

“(1) IN GENERAL.—Each”;

(2) in the third sentence, by inserting after “securities of each class” the following: “, other than any class of asset-backed securities,”; and

(3) by adding at the end the following:

“(2) ASSET-BACKED SECURITIES.—

“(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and

prescribe requirements appropriate for each class of issuers of asset-backed securities.”.

(b) SECURITIES ACT OF 1933.—Section 7 of the Securities Act of 1933 (15 U.S.C. 77g) is amended by adding at the end the following:

“(c) DISCLOSURE REQUIREMENTS.—

“(1) IN GENERAL.—The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

Regulations.

“(2) CONTENT OF REGULATIONS.—In adopting regulations under this subsection, the Commission shall—

“(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

“(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

“(i) data having unique identifiers relating to loan brokers or originators;

“(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

“(iii) the amount of risk retention by the originator and the securitizer of such assets.”.

SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

15 USC 78o–7 note.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by this subtitle) that—

Deadline.
Regulations.

(1) require each national recognized statistical rating organization to include in any report accompanying a credit rating a description of—

(A) the representations, warranties, and enforcement mechanisms available to investors; and

(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934, as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) EXEMPTION ELIMINATED.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by striking “(6) transactions” and inserting the following:

“(5) transactions”.

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking “4(6)” and inserting “4(5)”.

SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN ASSET-BACKED SECURITIES ISSUES.

Section 7 of the Securities Act of 1933 (15 U.S.C. 77g), as amended by this subtitle, is amended by adding at the end the following:

Deadline.
Regulations.

“(d) REGISTRATION STATEMENT FOR ASSET-BACKED SECURITIES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934) that require any issuer of an asset-backed security—

“(1) to perform a review of the assets underlying the asset-backed security; and

“(2) to disclose the nature of the review under paragraph (1).”.

SEC. 946. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS.

(a) STUDY REQUIRED.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;

(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

(3) a comparable analysis for proactively adjusting mortgage origination requirements;

(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and

(6) recommendations for implementation and enabling legislation.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of the Financial Services Oversight Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

Subtitle E—Accountability and Executive Compensation

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

“SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

15 USC 78n–1.

“(a) SEPARATE RESOLUTION REQUIRED.—

Deadlines.

“(1) IN GENERAL.—Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

“(2) FREQUENCY OF VOTE.—Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

“(3) EFFECTIVE DATE.—The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section shall include—

“(A) the resolution described in paragraph (1); and

“(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

“(b) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

“(1) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which

Regulations.

it may) be paid or become payable to or on behalf of such executive officer.

“(2) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

“(c) RULE OF CONSTRUCTION.—The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

“(1) as overruling a decision by such issuer or board of directors;

“(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

“(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

“(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

Reports.
Deadline.

“(d) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

“(e) EXEMPTION.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.”.

SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:

15 USC 78j-3.

“SEC. 10C. COMPENSATION COMMITTEES.

Regulations.

“(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

“(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940, or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

“(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

“(A) a member of the board of directors of the issuer; and

“(B) independent.

“(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term ‘independence’ for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

“(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

“(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

“(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

“(b) INDEPENDENCE OF COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

“(1) IN GENERAL.—The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

“(2) RULES.—The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—

“(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

“(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

“(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

“(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

“(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

“(c) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

“(1) AUTHORITY TO RETAIN COMPENSATION CONSULTANT.—

“(A) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

“(B) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

“(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

“(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

“(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

“(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

“(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

“(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

“(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—

“(1) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

“(2) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

“(3) RULE OF CONSTRUCTION.—This subsection may not be construed—

“(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

“(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

“(e) COMPENSATION OF COMPENSATION CONSULTANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVISERS.—Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

“(1) to a compensation consultant; and

“(2) to independent legal counsel or any other adviser to the compensation committee.

“(f) COMMISSION RULES.—

“(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section. Deadline.

“(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition. Procedures.

“(3) EXEMPTION AUTHORITY.—

“(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

“(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

“(g) CONTROLLED COMPANY EXEMPTION.—

“(1) IN GENERAL.—This section shall not apply to any controlled company.

“(2) DEFINITION.—For purposes of this section, the term ‘controlled company’ means an issuer—

“(A) that is listed on a national securities exchange or by a national securities association; and

“(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.”.

(b) STUDY AND REPORT.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants and the effects of such use.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commission shall submit a report to Congress on the results of the study and review required by this subsection.

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

(a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

“(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The Regulations.

disclosure under this subsection may include a graphic representation of the information required to be disclosed.”.

15 USC 78/ note.
Regulations.

(b) **ADDITIONAL DISCLOSURE REQUIREMENTS.**—

(1) **IN GENERAL.**—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

(2) **TOTAL COMPENSATION.**—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.

The Securities Exchange Act of 1934 is amended by inserting after section 10C, as added by section 952, the following:

15 USC 78j-4.

“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION POLICY.

Regulations.

“(a) **LISTING STANDARDS.**—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

“(b) **RECOVERY OF FUNDS.**—The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

“(1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

“(2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.”.

SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

Regulations.

“(j) **DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.**—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member

of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

“(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

“(2) held, directly or indirectly, by the employee or member of the board of directors.”.

SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING.

12 USC 5641.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) **IN GENERAL.**—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

Deadline.
Regulations.

(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(B) could lead to material financial loss to the covered financial institution.

(2) **RULES OF CONSTRUCTION.**—Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

Deadline.
Regulations.

(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(2) that could lead to material financial loss to the covered financial institution.

(c) STANDARDS.—The appropriate Federal regulators shall—

(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p–1) for insured depository institutions; and

(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p– 9 1(c)).

(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section

505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

(e) **DEFINITIONS.**—As used in this section—

(1) the term “appropriate Federal regulator” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

(2) the term “covered financial institution” means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(f) **EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.**—The requirements of this section shall not apply to covered financial institutions with assets of less than \$1,000,000,000.

SEC. 957. VOTING BY BROKERS.

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (A), by redesignating clauses (i) through (v) as subclauses (I) through (V), respectively, and adjusting the margins accordingly;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(C) by inserting “(A)” after “(9)”; and

(D) in the matter immediately following clause (iv), as so redesignated, by striking “As used” and inserting the following:

“(B) As used”.

(2) by adding at the end the following:

“(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

“(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member

of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

“(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).”.

Subtitle F—Improvements to the Management of the Securities and Exchange Commission

SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SUPERVISORY CONTROLS.

15 USC 78d–6.

(a) **ANNUAL REPORTS AND CERTIFICATION.**—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) **CONTENTS OF REPORTS.**—Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).

(c) **CERTIFICATION.**—

(1) **SIGNATURE.**—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) **CONTENT OF CERTIFICATION.**—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

Time period.

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

Time period.

(d) NEW DIRECTOR OR ACTING DIRECTOR.—Notwithstanding subsection (a), if the Director of the Division of Enforcement, the Director of the Division of Corporate Finance, or the Director of the Office of Compliance Inspections and Examinations has served as Director of the Division or Office for less than 90 days on the date on which a report is required to be submitted under subsection (a), the Commission may submit the report on the date on which the Director has served as Director for 90 days. If there is no Director of the Division of Enforcement, the Division of Corporate Finance, or the Office of Compliance Inspections and Examinations, on the date on which a report is required to be submitted under subsection (a), the Acting Director of the Division or Office may make the certification required under subsection (c).

(e) REVIEW BY THE COMPTROLLER GENERAL.—

(1) REPORT.—The Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains a review of the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1), not less frequently than once every 3 years, at a time to coincide with the publication of the reports of the Commission under this section.

(2) AUTHORITY TO HIRE EXPERTS.—The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

15 USC 78d-7.

SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGEMENT.

(a) TRIENNIAL REPORT REQUIRED.—Once every 3 years, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

(b) CONTENTS OF REPORT.—Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the application of the promotion criteria to the decisions of the Commission;

(D) the competence of the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the consideration of supervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low-level, mid-level, or senior-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties and circumstances under which the Commission has issued to employees a notice of termination; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate;

(2) an evaluation of any improvements made with respect to the areas described in paragraph (1) since the date of submission of the previous report; and

(3) recommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.

(c) CONSULTATION.—In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, the Inspector General of the Commission, persons that have business before the Commission, any union representing the employees of the Commission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

(d) REPORT BY COMMISSION.—Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

(e) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under this section, as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

(f) AUTHORITY TO HIRE EXPERTS.—The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller

General described in this section, in order to assist the Comptroller General in carrying out such duties.

15 USC 78d–8.

SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.(a) **REPORTS OF COMMISSION.—**

(1) **ANNUAL REPORTS REQUIRED.**—Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

(2) **ATTESTATION.**—The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

(b) **REPORT BY COMPTROLLER GENERAL.—**

(1) **REPORT REQUIRED.**—Not later than 6 months after the end of the first fiscal year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

(2) **ATTESTATION.**—The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

(c) **REIMBURSEMENTS FOR COST OF REPORTS.—**

(1) **REIMBURSEMENTS REQUIRED.**—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (b), as billed therefor by the Comptroller General.

(2) **CREDITING AND USE OF REIMBURSEMENTS.**—Such reimbursements shall—

(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

15 USC 78d–9.

SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURITIES ASSOCIATIONS.

(a) **REPORT REQUIRED.**—Not later than 2 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the

regulatory enforcement or rulemaking by such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

(4) the arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations;

(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

(A) the methods of funding;

(B) the sufficiency of funds;

(C) how funds are invested by the national securities association pending use; and

(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

(8) the policies regarding the employment of former employees of national securities associations by regulated entities;

(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

(10) the transparency of governance and activities of the national securities associations; and

(11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members;

(b) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

SEC. 965. COMPLIANCE EXAMINERS.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(h) EXAMINERS.—

“(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

“(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

“(B) report to the Director of that Division.

“(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

“(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

“(B) report to the Director of that Division.”.

SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4C (15 U.S.C. 78d-3) the following:

15 USC 78d-4.

“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.

“(a) SUGGESTION SUBMISSIONS BY COMMISSION EMPLOYEES.—

“(1) HOTLINE ESTABLISHED.—The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

“(A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and

“(B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.

“(2) CONFIDENTIALITY.—The Inspector General shall maintain as confidential—

“(A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and

“(B) at the request of any such individual, any specific information provided by the individual.

“(b) CONSIDERATION OF REPORTS.—The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.

“(c) RECOGNITION.—The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

“(1) increase the work efficiency, effectiveness, or productivity of the Commission; or

“(2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

“(d) REPORT.—The Inspector General of the Commission shall submit to Congress an annual report containing a description of—

“(1) the nature, number, and potential benefits of any suggestions received under subsection (a);

“(2) the nature, number, and seriousness of any allegations received under subsection (a);

“(3) any recommendations made or actions taken by the Inspector General in response to substantiated allegations received under subsection (a); and

“(4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

“(e) FUNDING.—The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange

Commission Investor Protection Fund established under section 21F.”.

SEC. 967. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) **IN GENERAL.**—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section referred to as the “SEC”) shall hire an independent consultant of high caliber and with expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC’s relationship with and the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC’s oversight. Deadline.

(2) **SPECIFIC AREAS FOR STUDY.**—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;

(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC’s hiring authorities, workplace policies, and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC’s mission of investor protection; and

(iv) the application of civil service laws by the SEC;

(F) whether the SEC’s oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC’s reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to

enable the SEC and other entities on which the consultant reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC's implementation of the regulatory and administrative recommendations contained in the consultant's report.

SEC. 968. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and

(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

Subtitle G—Strengthening Corporate Governance

SEC. 971. PROXY ACCESS.

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

“(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

“(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).”.

(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

15 USC 78n note.

(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers.

15 USC 78n note.

SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

“SEC. 14B. CORPORATE GOVERNANCE.

15 USC 78n–2.

“Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

Deadline.
Regulations.

“(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

“(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).”.

Subtitle H—Municipal Securities

SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND CHANGES TO THE BOARD OF THE MSRB.

(a) REGISTRATION OF MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) is amended—

(1) in paragraph (1)—

(A) by inserting “(A)” after “(1)”; and

(B) by adding at the end the following:

“(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.”;

(2) in paragraph (2), by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(3) in paragraph (3), by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(4) in paragraph (4), by striking “dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers” and inserting “dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors”; and

(5) by adding at the end the following:

“(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.”.

(b) MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking “Not later than” and all that follows through “appointed by the Commission” and inserting “The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),”;

(B) by striking the second sentence and inserting the following: “The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as ‘public representatives’); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred

to as ‘broker-dealer representatives’), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as ‘advisor representatives’ and, together with the broker-dealer representatives and the bank representatives, are referred to as ‘regulated representatives’). Each member of the board shall be knowledgeable of matters related to the municipal securities markets.”; and

(C) in the third sentence, by striking “initial”;

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting before the period at the end of the first sentence the following: “and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors”; and

(ii) by striking the second sentence;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting “, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities,” after “sale of, any municipal security”; and

(II) by inserting “and municipal entities or obligated persons” after “protection of investors”;

(ii) in clause (i), by striking “municipal securities brokers and municipal securities dealers” each place that term appears and inserting “municipal securities brokers, municipal securities dealers, and municipal advisors”;

(iii) in clause (ii), by adding “and” at the end;

(iv) in clause (iii), by striking “; and” and inserting a period; and

(v) by striking clause (iv);

(C) by amending subparagraph (B) to read as follows:

“(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

“(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

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“(ii) shall specify the length or lengths of terms members shall serve;

“(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

“(iv) shall establish requirements regarding the independence of public representatives.”.

(D) in subparagraph (C)—

(i) by inserting “and municipal financial products” after “municipal securities” the first two times that term appears;

(ii) by inserting “, municipal entities, obligated persons,” before “and the public interest”;

(iii) by striking “between” and inserting “among”;

(iv) by striking “issuers, municipal securities brokers, or municipal securities dealers, to fix” and inserting “municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix”; and

(v) by striking “brokers or municipal securities dealers, to regulate” and inserting “brokers, municipal securities dealers, or municipal advisors, to regulate”;

(E) in subparagraph (D)—

(i) by inserting “and advice concerning municipal financial products” after “transactions in municipal securities”;

(ii) by striking “That no” and inserting “that no”;

(iii) by inserting “municipal advisor,” before “or person associated”; and

(iv) by striking “a municipal securities broker or municipal securities dealer may be compelled” and inserting “a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled”;

(F) in subparagraph (E)—

(i) by striking “municipal securities brokers and municipal securities dealers” and inserting “municipal securities brokers, municipal securities dealers, and municipal advisors”; and

(ii) by striking “municipal securities broker or municipal securities dealer” and inserting “municipal securities broker, municipal securities dealer, or municipal advisor”;

(G) in subparagraph (G), by striking “municipal securities brokers and municipal securities dealers” and inserting “municipal securities brokers, municipal securities dealers, and municipal advisors”;

(H) in subparagraph (J)—

(i) by striking “municipal securities broker and each municipal securities dealer” and inserting “municipal securities broker, municipal securities dealer, and municipal advisor”; and

(ii) by striking the period at the end of the second sentence and inserting “, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents

required to be submitted under any rule issued by the Board.”;

(I) in subparagraph (K)—

(i) by inserting “broker, dealer, or” before “municipal securities dealer” each place that term appears; and

(ii) by striking “municipal securities investment portfolio” and inserting “related account of a broker, dealer, or municipal securities dealer”; and

(J) by adding at the end the following:

“(L) with respect to municipal advisors—

“(i) prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor’s fiduciary duty to its clients;

“(ii) provide continuing education requirements for municipal advisors;

“(iii) provide professional standards; and

“(iv) not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.”;

(3) by redesignating paragraph (3) as paragraph (7); and

(4) by inserting after paragraph (2) the following:

“(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

“(A) establish information systems; and

“(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons which systems may be developed for the purposes of serving as a repository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization, except that the Board—

“(i) may not charge a fee to municipal entities or obligated persons to submit documents or other information to the Board or charge a fee to any person to obtain, directly from the Internet site of the Board, documents or information submitted by municipal entities, obligated persons, brokers, dealers, municipal securities dealers, or municipal advisors, including documents submitted under the rules of the Board or the Commission; and

“(ii) shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under section 19(b).

“(4) The Board may provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under section 15A, or any other appropriate regulatory agency, as applicable.

“(5) The Board, the Commission, and a registered securities association under section 15A, or the designees of the Board, the Commission, or such association, shall meet not less frequently than 2 times a year—

“(A) to describe the work of the Board, the Commission, and the registered securities association involving the regulation of municipal securities; and

“(B) to share information about—

“(i) the interpretation of the Board, the Commission, and the registered securities association of Board rules; and

“(ii) examination and enforcement of compliance with Board rules.”

(c) DISCIPLINE OF BROKERS, DEALERS, MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS; FIDUCIARY DUTY OF MUNICIPAL ADVISORS.—Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) is amended—

(1) in paragraph (1), by inserting “, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person,” after “any municipal security”;

(2) by adding at the end of paragraph (1) the following: “A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor’s fiduciary duty or that is in contravention of any rule of the Board.”

(3) in paragraph (2), by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(4) in paragraph (3)—

(A) by inserting “or municipal entities or obligated person” after “protection of investors” each place that term appears; and

(B) by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(5) in paragraph (4), by inserting “or municipal advisor” after “municipal securities dealer or obligated person” each place that term appears;

(6) in paragraph (6)(B), by inserting “or municipal entities or obligated person” after “protection of investors”;

(7) in paragraph (7)—

(A) in subparagraph (A)—

(i) in clause (i), by striking “; and” and inserting a semicolon;

(ii) in clause (ii), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

“(iii) the Commission, or its designee, in the case of municipal advisors.”.

(B) in subparagraph (B), by inserting “or municipal entities or obligated person” after “protection of investors”; and

(8) by adding at the end the following:

“(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board. Fines.

“(B) Fines collected by a registered securities association under section 15A(7) with respect to violations of the rules of the Board shall be accounted for by such registered securities association separately from other fines collected under section 15A(7) and shall be allocated between such registered securities association and the Board, and such allocation shall require the registered securities association to pay to the Board $\frac{1}{3}$ of all fines collected by the registered securities association reasonably allocable to violations of the rules of the Board, or such other portion of such fines as may be directed by the Commission upon agreement between the registered securities association and the Board.”.

(d) ISSUANCE OF MUNICIPAL SECURITIES.—Section 15B(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) is amended—

(1) by striking “through a municipal securities broker or municipal securities dealer or otherwise” and inserting “through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise”; and

(2) by inserting “or municipal advisors” before “to furnish”.

(e) DEFINITIONS.—Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) is amended by adding at the end the following:

“(e) DEFINITIONS.—For purposes of this section—

“(1) the term ‘Board’ means the Municipal Securities Rule-making Board established under subsection (b)(1);

“(2) the term ‘guaranteed investment contract’ includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

“(3) the term ‘investment strategies’ includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

“(4) the term ‘municipal advisor’—

“(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

“(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

“(ii) undertakes a solicitation of a municipal entity;

“(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (iii) of subparagraph (A); and

“(C) does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)), any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice;

“(5) the term ‘municipal financial product’ means municipal derivatives, guaranteed investment contracts, and investment strategies;

“(6) the term ‘rules of the Board’ means the rules proposed and adopted by the Board under subsection (b)(2);

“(7) the term ‘person associated with a municipal advisor’ or ‘associated person of an advisor’ means—

“(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions);

“(B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and

“(C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor;

“(8) the term ‘municipal entity’ means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

“(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

“(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

“(C) any other issuer of municipal securities;

“(9) the term ‘solicitation of a municipal entity or obligated person’ means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer,

municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

“(10) the term ‘obligated person’ means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.”.

(f) REGISTERED SECURITIES ASSOCIATION.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following:

“(15) The rules of the association provide that the association shall—

“(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

“(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 15B(b)(2)(E), so that the Municipal Securities Rulemaking Board may—

“(i) assist in such enforcement actions and examinations; and

“(ii) evaluate the ongoing effectiveness of the rules of the Board.”.

(g) REGISTRATION AND REGULATION OF BROKERS AND DEALERS.—Section 15 of the Securities Exchange Act of 1934 is amended— 15 USC 78o.

(1) in subsection (b)(4), by inserting “municipal advisor,” after “municipal securities dealer” each place that term appears; and

(2) in subsection (c), by inserting “broker, dealer, or” before “municipal securities dealer” each place that term appears.

(h) ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Section 17(a)(1) of the Securities Exchange Act of 1934 is amended by inserting “municipal advisor,” after “municipal securities dealer”. 15 USC 78q.

(i) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on October 1, 2010. 15 USC 78o note.

SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF INCREASED DISCLOSURE TO INVESTORS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure required to be made by issuers of municipal securities.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall—

(1) broadly describe—

(A) the size of the municipal securities markets and the issuers and investors; and

(B) the disclosures provided by issuers to investors;

(2) compare the amount, frequency, and quality of disclosures that issuers of municipal securities are required by law to provide for the benefit of municipal securities holders, including the amount of and frequency of disclosures actually

provided by issuers of municipal securities, with the amount of and frequency of disclosures that issuers of corporate securities provide for the benefit of corporate securities holders, taking into account the differences between issuers of municipal securities and issuers of corporate securities;

(3) evaluate the costs and benefits to various types of issuers of municipal securities of requiring issuers of municipal bonds to provide additional financial disclosures for the benefit of investors;

(4) evaluate the potential benefit to investors from additional financial disclosures by issuers of municipal bonds; and

(5) make recommendations relating to disclosure requirements for municipal issuers, including the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) (commonly known as the “Tower Amendment”).

(c) **REPORT.**—Not later than 24 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study conducted under subsection (a), including recommendations for how to improve disclosure by issuers of municipal securities.

SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE MUNICIPAL SECURITIES MARKETS.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study of the municipal securities markets.

(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with copies to the Special Committee on Aging of the Senate and the Commission, on the results of the study conducted under subsection (a), including—

(1) an analysis of the mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement clearing, and credit enhancements;

(2) the needs of the markets and investors and the impact of recent innovations;

(3) recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities markets, including with reference to items listed in paragraph (1); and

(4) potential uses of derivatives in the municipal securities markets.

Deadline.

(c) **RESPONSES.**—Not later than 180 days after receipt of the report required under subsection (b), the Commission shall submit a response to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with a copy to the Special Committee on Aging of the Senate, stating the actions the Commission has taken in response to the recommendations contained in such report.

SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.

(a) **AMENDMENT TO THE SECURITIES ACT OF 1933.**—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), as amended by section 912, is further amended by adding at the end the following:

“(g) FUNDING FOR THE GASB.—

“(1) IN GENERAL.—The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4), require a national securities association registered under the Securities Exchange Act of 1934 to establish—

“(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the ‘GASB’); and

“(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

“(2) ANNUAL BUDGET.—For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

“(3) USE OF FUNDS.—Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

“(4) LIMITATION ON FEE.—The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

“(5) RULES OF CONSTRUCTION.—

“(A) FEES NOT PUBLIC MONIES.—Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

“(B) LIMITATION ON AUTHORITY OF THE COMMISSION.—Nothing in this subsection shall be construed to—

“(i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or

“(ii) affect the setting of generally accepted accounting principles by the GASB.

“(C) NONINTERFERENCE WITH STATES.—Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.”.

(b) STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates—

(A) the role and importance of the Governmental Accounting Standards Board in the municipal securities markets; and

(B) the manner and the level at which the Governmental Accounting Standards Board has been funded.

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

15 USC 78o–4a.
Establishment.

SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.

(a) IN GENERAL.—There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) DIRECTOR OF THE OFFICE.—The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) STAFFING.—

(1) IN GENERAL.—The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.

(2) REQUIREMENT.—The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION WITH FOREIGN AUTHORITIES.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by adding at the end the following:

“(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term ‘foreign auditor oversight authority’ means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.”.

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

“(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered

a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

“(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

“(ii) the foreign auditor oversight authority provides—

“(I) such assurances of confidentiality as the Board may request;

“(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

“(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

“(iii) the Board determines that it is appropriate to share such information.”

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.

SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.

(a) DEFINITIONS.—

(1) DEFINITIONS AMENDED.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) is amended by adding at the end the following new section:

“SEC. 110. DEFINITIONS.

15 USC 7220.

“For the purposes of this title, the following definitions shall apply:

“(1) AUDIT.—The term ‘audit’ means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

“(2) AUDIT REPORT.—The term ‘audit report’ means a document, report, notice, or other record—

“(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

“(B) in which a public accounting firm either—

“(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

“(ii) asserts that no such opinion can be expressed.

“(3) BROKER.—The term ‘broker’ means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(4) DEALER.—The term ‘dealer’ means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(5) PROFESSIONAL STANDARDS.—The term ‘professional standards’ means—

“(A) accounting principles that are—

“(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

“(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

“(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

“(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

“(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

“(6) SELF-REGULATORY ORGANIZATION.—The term ‘self-regulatory organization’ has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”.

(2) CONFORMING AMENDMENT.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended in the matter preceding paragraph (1), by striking “In this” and inserting “Except as otherwise specifically provided in this Act, in this”.

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211) is amended—

(1) by striking “issuers” each place that term appears and inserting “issuers, brokers, and dealers”; and

(2) in subsection (a)—

(A) by striking “public companies” and inserting “companies”; and

(B) by striking “for companies the securities of which are sold to, and held by and for, public investors”.

(c) REGISTRATION WITH THE BOARD.—Section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amended—

(1) in subsection (a)—

(A) by striking “Beginning 180” and all that follows through “101(d), it” and inserting “It”; and

(B) by striking “issuer” and inserting “issuer, broker, or dealer”;

(2) in subsection (b)—

(A) in paragraph (2)(A), by striking “issuers” and inserting “issuers, brokers, and dealers”; and

(B) by striking “issuer” each place that term appears and inserting “issuer, broker, or dealer”.

(d) AUDITING AND INDEPENDENCE.—Section 103(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)) is amended—

(1) in paragraph (1), by striking “and such ethics standards” and inserting “such ethics standards, and such independence standards”;

(2) in paragraph (2)(A)(iii), by striking “describe in each audit report” and inserting “in each audit report for an issuer, describe”; and

(3) in paragraph (2)(B)(i), by striking “issuers” and inserting “issuers, brokers, and dealers”.

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—

(1) AMENDMENTS.—Section 104(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(a)) is amended—

(A) by striking “The Board shall” and inserting the following:

“(1) INSPECTIONS GENERALLY.—The Board shall”; and

(B) by adding at the end the following:

“(2) INSPECTIONS OF AUDIT REPORTS FOR BROKERS AND DEALERS.—

“(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

“(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

“(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

“(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (A).”

(2) CONFORMING AMENDMENT.—Section 17(e)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(e)(1)(A)) is amended by striking “registered public accounting firm” and inserting “independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002.”

(f) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

(1) in the subparagraph heading, by inserting “, BROKER, OR DEALER” after “ISSUER”;

(2) by striking “any issuer” each place that term appears and inserting “any issuer, broker, or dealer”; and

(3) by striking “an issuer under this subsection” and inserting “a registered public accounting firm under this subsection”.

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216(a)) is amended—

(1) in paragraph (1), by striking “issuer” and inserting “issuer, broker, or dealer”; and

(2) in paragraph (2), by striking “issuers” and inserting “issuers, brokers, or dealers”.

(h) FUNDING.—Section 109 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219) is amended—

(1) in subsection (c)(2), by striking “subsection (i)” and inserting “subsection (j)”;

(2) in subsection (d)—

(A) in paragraph (2), by striking “allowing for differentiation among classes of issuers, as appropriate” and inserting “and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate”; and

(B) by adding at the end the following:

Fees.

“(3) BROKERS AND DEALERS.—The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after the date of enactment of the Investor Protection and Securities Reform Act of 2010.”;

15 USC 78m.

(3) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(4) by inserting after subsection (g) the following:

“(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

“(1) OBLIGATION TO PAY.—Each broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section.

“(2) ALLOCATION.—Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

“(3) PROPORTIONALITY.—The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board.”.

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B)) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following:

“(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;”.

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)) is amended—

(1) in subclause (III), by striking “and” at the end;

(2) in subclause (IV), by striking the comma and inserting “; and”; and

(3) by inserting after subclause (IV) the following:

“(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization.”.

SEC. 983. PORTFOLIO MARGINING.

(a) ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff3(a)(1)) is amended by inserting “or options on commodity futures contracts” after “claim for securities”.

15 USC 78fff–3.

(b) DEFINITIONS.—Section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll) is amended—

(1) by striking paragraph (2) and inserting the following:

“(2) CUSTOMER.—

“(A) IN GENERAL.—The term ‘customer’ of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

“(B) INCLUDED PERSONS.—The term ‘customer’ includes—

“(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

“(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

“(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

“(C) EXCLUDED PERSONS.—The term ‘customer’ does not include any person, to the extent that—

“(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

“(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists

for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.”;

(2) in paragraph (4)—

(A) in subparagraph (C), by striking “and” at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following:

“(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and”;

(3) in paragraph (9), in the matter following subparagraph (L), by inserting after “Such term” the following: “includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term”; and

(4) in paragraph (11)—

(A) in subparagraph (A)—

(i) by striking “filing date, all” and all that follows through the end of the subparagraph and inserting the following: “filing date—

“(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

“(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; minus”; and

(B) in the matter following subparagraph (C), by striking “In determining” and inserting the following: “A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining”.

SEC. 984. LOAN OR BORROWING OF SECURITIES.

(a) RULEMAKING AUTHORITY.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following:

“(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as

defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.”.

(b) RULEMAKING REQUIRED.—Not later than 2 years after the date of enactment of this Act, the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.

Deadline.
15 USC 78j note.

SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURITIES LAWS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking “individual,” and inserting “individual,”;

(2) in section 18 (15 U.S.C. 77r)—

(A) in subsection (b)(1)(C), by striking “is a security” and inserting “a security”; and

(B) in subsection (c)(2)(B)(i), by striking “State, or” and inserting “State or”;

(3) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking “in paragraph (1) of (3)” and inserting “in paragraph (1) or (3)”; and

(4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking “business entity,” and inserting “business entity,”.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 2 (15 U.S.C. 78b), by striking “affected” and inserting “effected”;

(2) in section 3 (15 U.S.C. 78c)—

(A) in subsection (a)(55)(A), by striking “section 3(a)(12) of the Securities Exchange Act of 1934” and inserting “section 3(a)(12) of this title”; and

(B) in subsection (g), by striking “company, account person, or entity” and inserting “company, account, person, or entity”;

(3) in section 10A(i)(1)(B) (15 U.S.C. 78j–1(i)(1)(B))—

(A) in the subparagraph heading, by striking “MINIMUS” and inserting “MINIMIS”; and

(B) in clause (i), by striking “nonaudit” and inserting “non-audit”;

(4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking “earning statement” and inserting “earnings statement”;

(5) in section 15 (15 U.S.C. 78o)—

(A) in subsection (b)(1)—

(i) in subparagraph (B), by striking “The order granting” and all that follows through “from such membership.”; and

(ii) in the undesignated matter immediately following subparagraph (B), by inserting after the first sentence the following: “The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association,

or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.”;

(6) in section 15C(a)(2) (15 U.S.C. 78o-5(a)(2))—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(B) in subparagraph (B), as so redesignated, by striking “The order granting” and all that follows through “from such membership.”; and

(C) in the matter following subparagraph (B), as so redesignated, by inserting after the first sentence the following: “The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.”;

(7) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking “15A(k) gives” and inserting “15A(k), give”; and

(8) in section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)), by striking “paragraph (1) subsection” and inserting “Paragraph (1)”.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking “section 2 of such Act” and inserting “section 2(a) of such Act”; and

(2) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking “, in the” and inserting “in the”.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) is amended—

(1) in section 2(a)(19) (15 U.S.C. 80a-2(a)(19)), in the matter following subparagraph (B)(vii)—

(A) by striking “clause (vi)” each place that term appears and inserting “clause (vii)”; and

(B) in each of subparagraphs (A)(vi) and (B)(vi), by adding “and” at the end of subclause (III);

(2) in section 9(b)(4)(B) (15 U.S.C. 80a-9(b)(4)(B)), by adding “or” after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a-12(d)(1)(J)), by striking “any provision of this subsection” and inserting “any provision of this paragraph”;

(4) in section 17(f) (15 U.S.C. 80a-17(f))—

(A) in paragraph (4), by striking “No such member” and inserting “No member of a national securities exchange”; and

(B) in paragraph (6), by striking “company may serve” and inserting “company, may serve”; and

(5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a-60(a)(3)(B)(iii))—

(A) by striking “paragraph (1) of section 205” and inserting “section 205(a)(1)”; and

(B) by striking “clause (A) or (B) of that section” and inserting “paragraph (1) or (2) of section 205(b)”.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended—

(1) in section 203 (15 U.S.C. 80b-3)—

(A) in subsection (c)(1)(A), by striking “principal business office and” and inserting “principal office, principal place of business, and”; and

(B) in subsection (k)(4)(B), in the matter following clause (ii), by striking “principal place of business” and inserting “principal office or place of business”;

(2) in section 206(3) (15 U.S.C. 80b-6(3)), by adding “or” after the semicolon at the end;

(3) in section 213(a) (15 U.S.C. 80b-13(a)), by striking “principal place of business” and inserting “principal office or place of business”; and

(4) in section 222 (15 U.S.C. 80b-18a), by striking “principal place of business” each place that term appears and inserting “principal office and place of business”.

SEC. 986. CONFORMING AMENDMENTS RELATING TO REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking “the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.)”;

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

“(7) DEFINITION.—For purposes of this subsection, the term ‘emergency’ means—

“(A) a major market disturbance characterized by or constituting—

“(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

“(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

“(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

“(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

“(ii) the transmission or processing of securities transactions.”; and

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking “section 18(c) of the Public Utility Holding Company Act of 1935.”

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by striking paragraph (17) and inserting the following:

“(17) The terms ‘Securities Act of 1933’ and ‘Securities Exchange Act of 1934’ shall be deemed to refer, respectively,

to such Acts, as amended, whether amended prior to or after the enactment of this title.”;

(2) in section 308 (15 U.S.C. 77hhh), by striking “Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” each place that term appears and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”;

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk), by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”; and

(6) in section 326 (15 U.S.C. 77zzz), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,” and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)), by striking “Public Utility Holding Company Act of 1935”;

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by striking paragraph (8) and inserting the following:

“(8) [Repealed]”;

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking “the Public Utility Holding Company Act of 1935,”; and

(4) in section 50 (15 U.S.C. 80a–49), by striking “the Public Utility Holding Company Act of 1935,”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(21)) is amended by striking “Public Utility Holding Company Act of 1935”.

SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NON-MATERIAL LOSSES TO THE DEPOSIT INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 38(k) of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended—

12 USC 1831o.

(1) in paragraph (2), by striking subparagraph (B) and inserting the following:

“(B) MATERIAL LOSS DEFINED.—The term ‘material loss’ means any estimated loss in excess of—

“(i) \$200,000,000, if the loss occurs during the period beginning on January 1, 2010, and ending on December 31, 2011;

“(ii) \$150,000,000, if the loss occurs during the period beginning on January 1, 2012, and ending on December 31, 2013; and

“(iii) \$50,000,000, if the loss occurs on or after January 1, 2014, provided that if the inspector general of a Federal banking agency certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House

of Representatives that the number of projected failures of depository institutions that would require material loss reviews for the following 12 months will be greater than 30 and would hinder the effectiveness of its oversight functions, then the definition of ‘material loss’ shall be \$75,000,000 for a duration of 1 year from the date of the certification.”;

(2) in paragraph (4)(A) by striking “the report” and inserting “any report on losses required under this subsection,”;

(3) by striking paragraph (6);

(4) by redesignating paragraph (5) as paragraph (6); and

(5) by inserting after paragraph (4) the following:

“(5) ~~LOSSES THAT ARE NOT MATERIAL.~~—

“(A) ~~SEMIANNUAL REPORT.~~—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

Time period.

“(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

“(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

“(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corporation as receiver under section 11(c)(5); and

“(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

“(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

“(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

“(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to the Federal banking agency and Congress.

“(B) ~~DEADLINE FOR SEMIANNUAL REPORT.~~—The Inspector General of each Federal banking agency shall—

“(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

“(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for subsection (k) of section 38 of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended to read as follows:

“(k) REVIEWS REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS LOSSES.—”.

SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NON-MATERIAL LOSSES TO THE NATIONAL CREDIT UNION SHARE INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 216(j) of the Federal Credit Union Act (12 U.S.C. 1790d(j)) is amended to read as follows:

“(j) REVIEWS REQUIRED WHEN SHARE INSURANCE FUND EXPERIENCES LOSSES.—

“(1) IN GENERAL.—If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

Reports.

“(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

“(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

“(ii) recommendations for preventing any such loss in the future; and

“(B) submit a copy of the report under subparagraph (A) to—

“(i) the Comptroller General of the United States;

“(ii) the Corporation;

“(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

“(iv) to any Member of Congress, upon request.

“(2) MATERIAL LOSS DEFINED.—For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

“(A) \$25,000,000; and

“(B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 208 or was appointed liquidating agent.

“(3) PUBLIC DISCLOSURE REQUIRED.—

“(A) IN GENERAL.—The Board shall disclose a report under this subsection, upon request under section 552 of title 5, United States Code, without excising—

“(i) any portion under section 552(b)(5) of title 5, United States Code; or

“(ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5, United States Code.

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.

“(4) LOSSES THAT ARE NOT MATERIAL.—

“(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

Time periods.

“(i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;

“(ii) for each loss to the Fund that is not a material loss, determine—

Determination.

“(I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for appointing the Board as the liquidating agent for any Federal or State credit union; and

“(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

“(iii) prepare and submit a written report to the Board and to Congress on the results of the determinations of the Inspector General that includes—

“(I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and

“(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

“(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of the Board shall—

“(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

“(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

“(5) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

“(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) with respect to each such report; and

“(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).”.

Recommendations.

SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON PROPRIETARY TRADING.

(a) DEFINITIONS.—In this section—

(1) the term “covered entity” means—

(A) an insured depository institution, an affiliate of an insured depository institution, a bank holding company,

a financial holding company, or a subsidiary of a bank holding company or a financial holding company, as those terms are defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.); and

(B) any other entity, as the Comptroller General of the United States may determine; and

(2) the term “proprietary trading” means the act of a covered entity investing as a principal in securities, commodities, derivatives, hedge funds, private equity firms, or such other financial products or entities as the Comptroller General may determine.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the risks and conflicts associated with proprietary trading by and within covered entities, including an evaluation of—

(A) whether proprietary trading presents a material systemic risk to the stability of the United States financial system, and if so, the costs and benefits of options for mitigating such systemic risk;

(B) whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities, and if so, the costs and benefits of options for mitigating such risks;

(C) whether proprietary trading presents material conflicts of interest between covered entities that engage in proprietary trading and the clients of the institutions who use the firm to execute trades or who rely on the firm to manage assets, and if so, the costs and benefits of options for mitigating such conflicts of interest;

(D) whether adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of covered entities that engage in proprietary trading, and if not, the costs and benefits of options for the improvement of such disclosure; and

(E) whether the banking, securities, and commodities regulators of institutions that engage in proprietary trading have in place adequate systems and controls to monitor and contain any risks and conflicts of interest related to proprietary trading, and if not, the costs and benefits of options for the improvement of such systems and controls.

(2) CONSIDERATIONS.—In carrying out the study required under paragraph (1), the Comptroller General shall consider—

(A) current practice relating to proprietary trading;

(B) the advisability of a complete ban on proprietary trading;

(C) limitations on the scope of activities that covered entities may engage in with respect to proprietary trading;

(D) the advisability of additional capital requirements for covered entities that engage in proprietary trading;

(E) enhanced restrictions on transactions between affiliates related to proprietary trading;

(F) enhanced accounting disclosures relating to proprietary trading;

(G) enhanced public disclosure relating to proprietary trading; and

(H) any other options the Comptroller General deems appropriate.

(c) **REPORT TO CONGRESS.**—Not later than 15 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (b).

(d) **ACCESS BY COMPTROLLER GENERAL.**—For purposes of conducting the study required under subsection (b), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity), at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records, as the Comptroller General deems appropriate.

(e) **CONFIDENTIALITY OF REPORTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Comptroller General may not disclose information regarding—

(A) any proprietary trading activity of a covered entity, unless such information is disclosed at a level of generality that does not reveal the investment or trading position or strategy of the covered entity for any specific security, commodity, derivative, or other investment or financial product; or

(B) any individual interviewed by the Comptroller General for purposes of the study under subsection (b), unless such information is disclosed at a level of generality that does not reveal—

(i) the name of or identifying details relating to such individual; or

(ii) in the case of an individual who is an employee of a third party that provides professional services to a covered entity believed to be engaged in proprietary trading, the name of or any identifying details relating to such third party.

(2) **EXCEPTIONS.**—The Comptroller General may disclose the information described in paragraph (1)—

(A) to a department, agency, or official of the Federal Government, for official use, upon request;

(B) to a committee of Congress, upon request; and

(C) to a court, upon an order of such court.

SEC. 989A. SENIOR INVESTOR PROTECTIONS.

12 USC 5537.

(a) **DEFINITIONS.**—As used in this section—

(1) the term “eligible entity” means—

(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of

Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) adopted rules with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

(C) a consumer protection agency of any State, if—

(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

(2) the term “financial product” means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

(3) the term “misleading designation”—

(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include a certification, professional designation, license, or other credential that—

(i) was issued by or obtained from an academic institution having regional accreditation;

(ii) meets the standards for certifications and professional designations outlined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto) or by the Model Regulations on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

(iii) was issued by or obtained from a State;

(4) the term “misleading or fraudulent marketing” means the use of a misleading designation by a person that sells to or advises a senior in connection with the sale of a financial product;

(5) the term “NASAA” means the North American Securities Administrators Association;

(6) the term “Office” means the Office of Financial Literacy of the Bureau;

(7) the term “senior” means any individual who has attained the age of 62 years or older; and

(8) the term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(b) GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DESIGNATIONS.—The Office shall establish a program under which the Office may make grants to States or eligible entities—

(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

(c) APPLICATIONS.—A State or eligible entity desiring a grant under this section shall submit an application to the Office, in such form and in such a manner as the Office may determine, that includes—

(1) a proposal for activities to protect seniors from misleading or fraudulent marketing that are proposed to be funded using a grant under this section, including—

(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

(B) a description of how the proposed activities would—

(i) protect seniors from misleading or fraudulent marketing in the sale of financial products, including by proactively identifying victims of misleading and fraudulent marketing who are seniors;

(ii) assist in the investigation and prosecution of those using misleading or fraudulent marketing; and

(iii) discourage and reduce cases of misleading or fraudulent marketing; and

(C) a description of how the proposed activities would be coordinated with other State efforts; and

(2) any other information, as the Office determines is appropriate.

(d) PERFORMANCE OBJECTIVES AND REPORTING REQUIREMENTS.—The Office may establish such performance objectives and reporting requirements for States and eligible entities receiving a grant under this section as the Office determines are necessary

to carry out and assess the effectiveness of the program under this section.

(e) MAXIMUM AMOUNT.—The amount of a grant under this section may not exceed—

(1) \$500,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted rules—

(A) on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(C) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); and

(2) \$100,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted—

(A) rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto); or

(B) rules—

(i) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

(f) SUBGRANTS.—A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

(g) REAPPLICATION.—A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section, \$8,000,000 for each of fiscal years 2011 through 2015.

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting “the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,” after “means”;

(B) in subparagraph (A), by striking “and” after the semicolon; and

(C) by adding after subparagraph (B) the following:

“(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

“(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

“(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

“(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

“(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

“(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;”;

(2) in subsection (h), by inserting “if the designated Federal entity is not a board or commission, include” after “designated Federal entities and”.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking “and” after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

“(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

“(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

“(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

“(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the

reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.”.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following “(e)” as paragraph (2); and

(2) by striking “(e)” and inserting the following:

“(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a $\frac{2}{3}$ majority of the board or commission.”.

5 USC app. 11
note.

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the “Council of Inspectors General”) chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general’s

ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of person to person lending to determine the optimal Federal regulatory structure.

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with Federal banking agencies, the Commission, consumer groups, outside experts, and the person to person lending industry.

(3) CONTENT OF STUDY.—The study required under paragraph (1) shall include an examination of—

(A) the regulatory structure as it exists on the date of enactment of this Act, as determined by the Commission, with particular attention to—

(i) the application of the Securities Act of 1933 to person to person lending platforms;

(ii) the posting of consumer loan information on the EDGAR database of the Commission; and

(iii) the treatment of privately held person to person lending platforms as public companies;

(B) the State and other Federal regulators responsible for the oversight and regulation of person to person lending markets;

(C) any Federal, State, or local government or private studies of person to person lending completed or in progress on the date of enactment of this Act;

(D) consumer privacy and data protections, minimum credit standards, anti-money laundering and risk management in the regulatory structure as it exists on the date of enactment of this Act, and whether additional or alternative safeguards are needed; and

(E) the uses of person to person lending.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) CONTENT OF REPORT.—The report required under paragraph (1) shall include alternative regulatory options, including—

(A) the involvement of other Federal agencies; and

(B) alternative approaches by the Commission and recommendations on whether the alternative approaches are effective.

SEC. 989G. EXEMPTION FOR NONACCELERATED FILERS.

15 USC 7262.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

“(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither a ‘large accelerated filer’ nor an ‘accelerated filer’ as those terms are defined in Rule 12b-2 of the Commission (17 C.F.R. 240.12b-2).”.

(b) STUDY.—The Securities and Exchange Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between \$75,000,000 and \$250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 9 months after the date of the enactment of this subtitle, the Commission shall transmit a report of such study to Congress.

Deadline.
Reports.

5 USC app. 5
note.

SEC. 989H. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.

The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or

(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).

Certification.

SEC. 989I. GAO STUDY REGARDING EXEMPTION FOR SMALLER ISSUERS.

(a) STUDY REGARDING EXEMPTION FOR SMALLER ISSUERS.—The Comptroller General of the United States shall carry out a study

on the impact of the amendments made by this Act to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), which shall include an analysis of—

(1) whether issuers that are exempt from such section 404(b) have fewer or more restatements of published accounting statements than issuers that are required to comply with such section 404(b);

(2) the cost of capital for issuers that are exempt from such section 404(b) compared to the cost of capital for issuers that are required to comply with such section 404(b);

(3) whether there is any difference in the confidence of investors in the integrity of financial statements of issuers that comply with such section 404(b) and issuers that are exempt from compliance with such section 404(b);

(4) whether issuers that do not receive the attestation for internal controls required under such section 404(b) should be required to disclose the lack of such attestation to investors; and

(5) the costs and benefits to issuers that are exempt from such section 404(b) that voluntarily have obtained the attestation of an independent auditor.

(b) **REPORT.**—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study required under subsection (a).

SEC. 989J. FURTHER PROMOTING THE ADOPTION OF THE NAIC MODEL REGULATIONS THAT ENHANCE PROTECTION OF SENIORS AND OTHER CONSUMERS.

15 USC 77c note.

(a) **IN GENERAL.**—The Commission shall treat as exempt securities described under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance or endowment policy or annuity contract or optional annuity contract—

(1) the value of which does not vary according to the performance of a separate account;

(2) that—

(A) satisfies standard nonforfeiture laws or similar requirements of the applicable State at the time of issue; or

(B) in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners; and

(3) that is issued—

(A) on and after June 16, 2013, in a State, or issued by an insurance company that is domiciled in a State, that—

(i) adopts rules that govern suitability requirements in the sale of an insurance or endowment policy or annuity contract or optional annuity contract, which shall substantially meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation adopted by the

Deadline.

National Association of Insurance Commissioners in March 2010; and

(ii) adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulations described in subparagraph (A) within 5 years of the adoption by the Association of any further successors thereto; or

(B) by an insurance company that adopts and implements practices on a nationwide basis for the sale of any insurance or endowment policy or annuity contract or optional annuity contract that meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto, and is therefore subject to examination by the State of domicile of the insurance company, or by any other State where the insurance company conducts sales of such products, for the purpose of monitoring compliance under this section.

(b) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to affect whether any insurance or endowment policy or annuity contract or optional annuity contract that is not described in this section is or is not an exempt security under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)).

Subtitle J—Securities and Exchange Commission Match Funding

SEC. 991. SECURITIES AND EXCHANGE COMMISSION MATCH FUNDING.

(a) **MATCH FUNDING AUTHORITY.**—

(1) **AMENDMENTS.**—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(A) by striking subsection (a) and inserting the following:

Fees.
Assessments.

“(a) **RECOVERY OF COSTS OF ANNUAL APPROPRIATION.**—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.”;

(B) in subsection (e)(2), by striking “September 30” and inserting “September 25”;

(C) in subsection (g), by striking “April 30 of the fiscal year preceding the fiscal year to which such rate applies” and inserting “30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted”;

(D) by striking subsection (j) and inserting the following:

“(j) **ADJUSTMENTS TO FEE RATES.**—

“(1) **ANNUAL ADJUSTMENT.**—Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce

aggregate fee collections under this section (including assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.

“(2) MID-YEAR ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than March 1, adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees collected during such five-month period and assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by subsection (l).

Determination.
Deadline.

Order.
Deadline.

“(3) REVIEW.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review.

“(4) EFFECTIVE DATE.—

“(A) ANNUAL ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), an adjusted rate prescribed under paragraph (1) shall take effect on the later of—

“(i) the first day of the fiscal year to which such rate applies; or

“(ii) 60 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted.

“(B) MID-YEAR ADJUSTMENT.—An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.”;

(E) in subsection (k), by striking “30 days” and inserting “60 days”; and

(F) in subsection (l), by striking “DEFINITIONS.—” and all that follows through “SALES.—The baseline” and inserting “BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—The baseline”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the later of—

15 USC 78ee.

(A) October 1, 2011; or

(B) the date of enactment of an Act making a regular appropriation to the Commission for fiscal year 2012.

(b) AMENDMENTS TO REGISTRATION FEE PROVISIONS.—

(1) SECTION 6(b) OF THE SECURITIES ACT OF 1933.—Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended—

(A) by striking “offsetting” each place that term appears and inserting “fee”;

(B) by striking paragraphs (1), (3), (4), (6), (8), and (9);

(C) by redesignating paragraph (2) as paragraph (1);

(D) by redesignating paragraph (5) as paragraph (2);

(E) by redesignating paragraph (7) as paragraph (3);

(F) by redesignating paragraph (10) as paragraph (5);

(G) by redesignating paragraph (11) as paragraph (6);

(H) in paragraph (1), as so redesignated, by striking “paragraph (5) or (6).” and inserting “paragraph (2).”;

(I) in paragraph (2), as so redesignated—

(i) by striking “of the fiscal years 2003 through 2011” and inserting “fiscal year”; and

(ii) by striking “paragraph (2)” and inserting “paragraph (1)”;

(J) by inserting after paragraph (3), as so redesignated, the following:

“(4) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.”;

(K) in paragraph (5), as redesignated, by striking “April 30” and inserting “August 31”;

(L) in paragraph (6), as so redesignated—

(i) by striking “of the fiscal years 2002 through 2011” and inserting “fiscal year”; and

(ii) by inserting at the end of the table in subparagraph (A) the following:

“2012	\$425,000,000
2013	\$455,000,000
2014	\$485,000,000
2015	\$515,000,000
2016	\$550,000,000
2017	\$585,000,000
2018	\$620,000,000
2019	\$660,000,000
2020	\$705,000,000
2021 and each fiscal year thereafter	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.”.

(2) SECTION 13(e) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(A) in paragraph (3), by striking “paragraphs (5) and (6)” and inserting “paragraph (4)”;

(B) by striking paragraphs (4), (5), and (6);

(C) by inserting after paragraph (3) the following:

“(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

“(5) FEE COLLECTIONS.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

“(6) EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).”; and

(D) by striking paragraphs (8), (9), and (10).

(3) SECTION 14(g) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)) is amended—

(A) in paragraph (1), by striking “paragraphs (5) and (6)” each time that term appears and inserting “paragraph (4)”;

(B) in paragraph (3), by striking “paragraphs (5) and (6)” and inserting “paragraph (4)”;

(C) by striking paragraphs (4), (5), and (6);

(D) by inserting after paragraph (3) the following:

“(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

“(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

“(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).”; and

(E) by striking paragraphs (8), (9), and (10); and

(F) by redesignating paragraph (11) as paragraph (8).

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 2011, except that for fiscal year 2012, the Commission shall publish the rate established under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), as amended by this Act, on August 31, 2011.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

Order.

Publication.
15 USC 77f note.

“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

“In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

“(1) for fiscal year 2011, \$1,300,000,000;

“(2) for fiscal year 2012, \$1,500,000,000;

“(3) for fiscal year 2013, \$1,750,000,000;

“(4) for fiscal year 2014, \$2,000,000,000; and

“(5) for fiscal year 2015, \$2,250,000,000.”.

(d) TRANSMITTAL OF BUDGET REQUESTS.—

(1) AMENDMENT.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended by adding at the end the following:

“(m) TRANSMITTAL OF COMMISSION BUDGET REQUESTS.—

“(1) BUDGET REQUIRED.—For fiscal year 2012, and each fiscal year thereafter, the Commission shall prepare and submit a budget to the President. Whenever the Commission submits a budget estimate or request to the President or the Office of Management and Budget, the Commission shall concurrently transmit copies of the estimate or request to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

“(2) SUBMISSION TO CONGRESS.—The President shall submit each budget submitted under paragraph (1) to Congress, in unaltered form, together with the annual budget for the Administration submitted by the President.

“(3) CONTENTS.—The Commission shall include in each budget submitted under paragraph (1)—

“(A) an itemization of the amount of funds necessary to carry out the functions of the Commission.

“(B) an amount to be designated as contingency funding to be used by the Commission to address unanticipated needs; and

“(C) a designation of any activities of the Commission for which multi-year budget authority would be suitable.”.

(2) BUDGET OF THE PRESIDENT.—For fiscal year 2012, and each fiscal year thereafter, the annual budget for the Administration submitted by the President to Congress shall reflect the amendments made by this section.

(e) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) AMENDMENT.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by this Act, is amended by adding at the end the following:

“(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

“(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the ‘Securities and Exchange Commission Reserve Fund’ (referred to in this subsection as the ‘Reserve Fund’).

“(2) RESERVE FUND AMOUNTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940

(15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

“(B) LIMITATIONS.—For any 1 fiscal year—

“(i) the amount deposited in the Fund may not exceed \$50,000,000; and

“(ii) the balance in the Fund may not exceed \$100,000,000.

“(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

“(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

Deadline.
Notification.

“(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on October 1, 2011.

15 USC 78d note.

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer
Financial
Protection Act of
2010.

SEC. 1001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Act of 2010”.

12 USC 5301
note.

SEC. 1002. DEFINITIONS.

12 USC 5481.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term “affiliate” means any person that controls, is controlled by, or is under common control with another person.

(2) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) CONSUMER.—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “consumer financial product or service” means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term “covered person” means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) CREDIT.—The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) DEPOSIT-TAKING ACTIVITY.—The term “deposit-taking activity” means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) DESIGNATED TRANSFER DATE.—The term “designated transfer date” means the date established under section 1062.

(10) DIRECTOR.—The term “Director” means the Director of the Bureau.

(11) ELECTRONIC CONDUIT SERVICES.—The term “electronic conduit services”—

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person—

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such

person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) **ENUMERATED CONSUMER LAWS.**—Except as otherwise specifically provided in section 1029, subtitle G or subtitle H, the term “enumerated consumer laws” means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act;

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 as it applies to section 501(b);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8); and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) **FAIR LENDING.**—The term “fair lending” means fair, equitable, and nondiscriminatory access to credit for consumers.

(14) **FEDERAL CONSUMER FINANCIAL LAW.**—The term “Federal consumer financial law” means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.

(15) **FINANCIAL PRODUCT OR SERVICE.**—

(A) **IN GENERAL.**—The term “financial product or service” means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or

service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this title, be considered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) LIMITATION.—Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any—

(I) examination or enforcement powers authority under this title with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this title to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) EXCLUSIONS.—The term “financial product or service” does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) FOREIGN EXCHANGE.—The term “foreign exchange” means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) **INSURED CREDIT UNION.**—The term “insured credit union” has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(18) **PAYMENT INSTRUMENT.**—The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) **PERSON.**—The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) **PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.**—The term “person regulated by the Commodity Futures Trading Commission” means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(21) **PERSON REGULATED BY THE COMMISSION.**—The term “person regulated by the Commission” means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) **PERSON REGULATED BY A STATE INSURANCE REGULATOR.**—The term “person regulated by a State insurance regulator” means any person that is engaged in the business of

insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(23) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term “person that performs income tax preparation activities for consumers” means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(24) PRUDENTIAL REGULATOR.—The term “prudential regulator” means—

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 3 of the Federal Deposit Insurance Act), or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) RELATED PERSON.—The term “related person”—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) SERVICE PROVIDER.—

(A) IN GENERAL.—The term “service provider” means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term “service provider” does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) STATE.—The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

(28) STORED VALUE.—

(A) IN GENERAL.—The term “stored value” means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) EXCLUSION.—Notwithstanding subparagraph (A), the term “stored value” does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is—

(i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;

(ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;

(iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;

(iv) purchased on a prepaid basis in exchange for payment; and

(v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) TRANSMITTING OR EXCHANGING FUNDS.—The term “transmitting or exchanging funds” means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

12 USC 5491.

SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

Applicability.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System, an independent bureau to be known as the “Bureau of Consumer Financial Protection”, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5, United States Code. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

President.

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the Bureau.

President.

(2) APPOINTMENT.—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) QUALIFICATION.—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) COMPENSATION.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) TERM.—

(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) **SERVICE RESTRICTION.**—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) **OFFICES.**—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

12 USC 5492.

(a) **POWERS OF THE BUREAU.**—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) **DELEGATION OF AUTHORITY.**—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) **AUTONOMY OF THE BUREAU.**—

(1) **COORDINATION WITH THE BOARD OF GOVERNORS.**—Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) **AUTONOMY.**—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

(5) CLARIFICATION OF AUTONOMY OF THE BUREAU IN LEGAL PROCEEDINGS.—The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.

12 USC 5493.

SEC. 1013. ADMINISTRATION.**(a) PERSONNEL.—****(1) APPOINTMENT.—**

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau, in accordance with the applicable provisions of title 5, United States Code.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.

(C) WAIVER AUTHORITY.—

(i) IN GENERAL.—In making any appointment under subparagraph (A), the Director may waive the requirements of chapter 33 of title 5, United States Code, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)), while providing for—

(I) fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(II) fair and open competition and equitable treatment in the consideration and selection of individuals to positions;

(III) fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, and promoting employees.

(ii) VETERANS PREFERENCES.—In implementing this subparagraph, the Director shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33 of title 5, United States Code. The authority under this subparagraph to waive the requirements of that chapter 33 shall expire 5 years after the date of enactment of this Act.

Expiration date.

(2) COMPENSATION.—Notwithstanding any otherwise applicable provision of title 5, United States Code, concerning compensation, including the provisions of chapter 51 and chapter 53, the following provisions shall apply with respect to employees of the Bureau:

Applicability.

(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the Director.

(B) The Director shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are comparable to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

(3) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—

(A) EMPLOYEE ELECTION.—Employees appointed to the Bureau may elect to participate in either—

(i) both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, under the same terms on which such participation is offered to employees of the Board of Governors who participate in such plans and under the terms and conditions specified under section 1064(i)(1)(C); or

(ii) the Civil Service Retirement System under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System under chapter 84 of title 5, United States Code, if previously covered under one of those Federal employee retirement systems.

(B) ELECTION PERIOD.—Bureau employees shall make an election under this paragraph not later than 1 year after the date of appointment by, or transfer under subtitle F to, the Bureau. Participation in, and benefit accruals under, any other retirement plan established or maintained by the Federal Government shall end not later than the date on which participation in, and benefit accruals under, the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan begin.

Deadline.

Payments.

(C) EMPLOYER CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of such plan.

(D) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986, (26 U.S.C. 414).

Applicability.

(4) LABOR-MANAGEMENT RELATIONS.—Chapter 71 of title 5, United States Code, shall apply to the Bureau and the employees of the Bureau.

(5) AGENCY OMBUDSMAN.—

Deadline.

Appointment.

(A) ESTABLISHMENT REQUIRED.—Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(B) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subparagraph (A) shall—

(i) act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau; and

(ii) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Establishment.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems;

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources; and

(iii) participation by the State agency includes measures necessary to provide for protection of personally identifiable information that conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that apply to the Federal agencies described in subparagraph (D).

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, subject to the standards applicable to Federal agencies for protection of the confidentiality of personally identifiable information and for data security and integrity. The prudential regulators, the Federal Trade Commission, and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, subject to the standards applicable to Federal agencies

for protection of confidentiality of personally identifiable information and for data security and integrity.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

Establishment.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL EDUCATION.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Education, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

Strategy.

(2) OTHER DUTIES.—The Office of Financial Education shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy, through activities including providing opportunities for consumers to access—

(A) financial counseling, including community-based financial counseling, where practicable;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Education shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking “and” at the end;

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

“(C) the Director of the Bureau of Consumer Financial Protection; and”.

(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: “The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.”.

(7) STUDY AND REPORT ON FINANCIAL LITERACY PROGRAM.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study to identify—

(i) the feasibility of certification of persons providing the programs or performing the activities described in paragraph (2), including recognizing outstanding programs, and developing guidelines and resources for community-based practitioners, including—

(I) a potential certification process and standards for certification;

(II) appropriate certifying entities;

(III) resources required for funding such a process; and

(IV) a cost-benefit analysis of such certification;

(ii) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs;

(iii) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and

(iv) recommendations intended to encourage the development of programs that effectively improve financial education outcomes and empower consumers to make better informed financial decisions based on findings.

(B) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

Establishment.

(1) IN GENERAL.—The Director shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

(2) COORDINATION.—

(A) REGIONAL SERVICES.—The Director is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

(B) AGREEMENTS.—The Director is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

(3) DEFINITION.—As used in this subsection, the term “service member” means any member of the United States Armed Forces and any member of the National Guard or Reserves.

(f) TIMING.—The Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs shall each be established not later than 1 year after the designated transfer date.

(g) OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

Deadline.

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the designated transfer date, the Director shall

establish the Office of Financial Protection for Older Americans, the functions of which shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this subsection, referred to as “seniors”) on protection from unfair, deceptive, and abusive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) ASSISTANT DIRECTOR.—The Office of Financial Protection for Older Americans (in this subsection referred to as the “Office”) shall be headed by an assistant director.

(3) DUTIES.—The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior’s needs; and

(iii) methods in which a senior can verify a financial advisor’s credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair, deceptive, and abusive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

Deadline.
Recommendations.

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) **ESTABLISHMENT REQUIRED.**—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) **MEMBERSHIP.**—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) **MEETINGS.**—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) **COMPENSATION AND TRAVEL EXPENSES.**—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

12 USC 5495.

SEC. 1015. COORDINATION.

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

12 USC 5496.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) **APPEARANCES BEFORE CONGRESS.**—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) **REPORTS REQUIRED.**—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, a report, beginning with the session following the designated transfer date. The Bureau may also submit such report to the Committee on Commerce, Science, and Transportation of the Senate.

(c) **CONTENTS.**—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; and

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion.

SEC. 1017. FUNDING; PENALTIES AND FINES.

12 USC 5497.

(a) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—

(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

Effective date.
Deadlines.

(2) FUNDING CAP.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such expenses in fiscal year 2011;

(ii) 11 percent of such expenses in fiscal year 2012;

and

(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

(B) ADJUSTMENT OF AMOUNT.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted

annually, using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal Government, or the successor index thereto, for the 12-month period ending on September 30 of the year preceding the transfer.

(C) REVIEWABILITY.—Notwithstanding any other provision in this title, the funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.

Transfer
authority.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.

(4) BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

Deadline.

(B) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

- (i) assets and liabilities and surplus or deficit;
- (ii) income and expenses; and
- (iii) sources and application of funds.

(C) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(F) FINANCIAL STATEMENTS.—The financial statements of the Bureau shall not be consolidated with the financial statements of either the Board of Governors or the Federal Reserve System.

(5) AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

Deadline.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

Transfer
authority.

(b) CONSUMER FINANCIAL PROTECTION FUND.—

(1) SEPARATE FUND IN FEDERAL RESERVE ESTABLISHED.—There is established in the Federal Reserve a separate fund, to be known as the “Bureau of Consumer Financial Protection Fund” (referred to in this section as the “Bureau Fund”). The Bureau Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose.

(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—The Bureau may request the Board of Governors to direct the investment of the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(d) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve a separate fund, to be known as the “Consumer Financial Civil Penalty Fund” (referred to in this section as the “Civil Penalty Fund”). The Civil Penalty Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose. If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) **PAYMENT TO VICTIMS.**—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.

(e) **AUTHORIZATION OF APPROPRIATIONS; ANNUAL REPORT.**—

(1) **DETERMINATION REGARDING NEED FOR APPROPRIATED FUNDS.**—

(A) **IN GENERAL.**—The Director is authorized to determine that sums available to the Bureau under this section will not be sufficient to carry out the authorities of the Bureau under Federal consumer financial law for the upcoming year.

(B) **REPORT REQUIRED.**—When making a determination under subparagraph (A), the Director shall prepare a report regarding the funding of the Bureau, including the assets and liabilities of the Bureau, and the extent to which the funding needs of the Bureau are anticipated to exceed the level of the amount set forth in subsection (a)(2). The Director shall submit the report to the President and to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(2) **AUTHORIZATION OF APPROPRIATIONS.**—If the Director makes the determination and submits the report pursuant to paragraph (1), there are hereby authorized to be appropriated to the Bureau, for the purposes of carrying out the authorities granted in Federal consumer financial law, \$200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

(3) **APPORTIONMENT.**—Notwithstanding any other provision of law, the amounts in paragraph (2) shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

(4) **ANNUAL REPORT.**—The Director shall prepare and submit a report, on an annual basis, to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives regarding the financial operating plans and forecasts of the Director, the financial condition and results of operations of the Bureau, and the sources and application of funds of the Bureau, including any funds appropriated in accordance with this subsection.

SEC. 1018. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

12 USC 5491
note.

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

12 USC 5511.

(a) **PURPOSE.**—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets

for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) **OBJECTIVES.**—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) **FUNCTIONS.**—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

12 USC 5512.

SEC. 1022. RULEMAKING AUTHORITY.

(a) **IN GENERAL.**—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

(1) **GENERAL AUTHORITY.**—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) **STANDARDS FOR RULEMAKING.**—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

Consultation.

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

- (i) the total assets of the class of covered persons;
- (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
- (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

Applicability.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual

Publication.
Reports.
Deadline.

or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) CONFIDENTIALITY RULES.—

(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any

other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a “financial institution”, as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall

reflect available evidence and any data that the Bureau reasonably may collect.

(2) **REPORTS.**—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order. Publication.

(3) **PUBLIC COMMENT REQUIRED.**—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

12 USC 5513.

(a) **REVIEW OF BUREAU REGULATIONS.**—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(b) **PETITION.**—

(1) **PROCEDURE.**—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and

(B) files the petition with the Council not later than 10 days after the date on which the regulation has been published in the Federal Register.

Deadline.

(2) **PUBLICATION.**—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Federal Register, publication.

(c) **STAYS AND SET ASIDES.**—

(1) **STAY.**—

(A) **IN GENERAL.**—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) **EXPIRATION.**—A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).

(2) **NO ADVERSE INFERENCE.**—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) **VOTE.**—

(A) **IN GENERAL.**—The decision to issue a stay of, or set aside, any regulation under this section shall be made

only with the affirmative vote in accordance with subparagraph (B) of $\frac{2}{3}$ of the members of the Council then serving.

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(4) DECISIONS TO SET ASIDE.—

(A) EFFECT OF DECISION.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

(ii) the expiration of a stay issued by the Council under this section.

(C) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

(6) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

(7) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

(8) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

(d) APPLICATION OF OTHER LAW.—Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, United States Code, to a regulation which is the subject of a petition filed under this section.

(e) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

Federal Register,
publication.

(f) **IMPLEMENTING RULES.**—The Council shall prescribe procedural rules to implement this section.

SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

12 USC 5514.

(a) **SCOPE OF COVERAGE.**—

(1) **APPLICABILITY.**—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2);

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 1013(b)(3) or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(D) offers or provides to a consumer any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650), notwithstanding section 1027(a)(2)(A) and subject to section 1027(a)(2)(C); or

(E) offers or provides to a consumer a payday loan.

(2) **RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.**—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section. The Bureau shall issue its initial rule not later than 1 year after the designated transfer date.

Consultation.

Deadline.

(3) **RULES OF CONSTRUCTION.**—

(A) **CERTAIN PERSONS EXCLUDED.**—This section shall not apply to persons described in section 1025(a) or 1026(a).

(B) **ACTIVITY LEVELS.**—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) **SUPERVISION.**—

(1) **IN GENERAL.**—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—

Reports.

Examinations.

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) **RISK-BASED SUPERVISION PROGRAM.**—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau

of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

- (A) the asset size of the covered person;
- (B) the volume of transactions involving consumer financial products or services in which the covered person engages;
- (C) the risks to consumers created by the provision of such consumer financial products or services;
- (D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and
- (E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

- (A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and
- (B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

Regulations.

(A) IN GENERAL.—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

(B) RECORDKEEPING.—The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(C) REQUIREMENTS CONCERNING OBLIGATIONS.—The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(D) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE ENFORCEMENT AUTHORITY.—Except as provided in paragraph (3) and section 1061, with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

Contracts.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law and except as provided in section 1061, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a)(1) under such law for purposes of

assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a)(1), subject to those provisions of law.

Coordination.

(e) **SERVICE PROVIDERS.**—A service provider to a person described in subsection (a)(1) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) **PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.**—No provision of this title may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

12 USC 5515.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

Applicability.

(a) **SCOPE OF COVERAGE.**—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of more than \$10,000,000,000 and any affiliate thereof; or

(2) an insured credit union with total assets of more than \$10,000,000,000 and any affiliate thereof.

Reports.

Examinations.

(b) **SUPERVISION.**—

(1) **IN GENERAL.**—The Bureau shall have exclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial laws;

(B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and

(C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.

(2) **COORDINATION.**—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) **USE OF EXISTING REPORTS.**—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) **PRESERVATION OF AUTHORITY.**—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned

or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, including performing follow up supervisory and support functions incidental thereto, to assure compliance with such proceeding.

Deadline.
Time period.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

Coordination.

(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution or insured credit union, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

Reports.
Deadline.

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the “agencies”) are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

Deadline.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

Establishment.

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

Determination.
Deadline.

(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

Publication.

(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

Regulations.

(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law, or the authority of a prudential regulator to interpret or take enforcement action under any other provision of Federal law for safety and soundness purposes.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

12 USC 5516.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

Applicability.

(1) an insured depository institution with total assets of \$10,000,000,000 or less; or

(2) an insured credit union with total assets of \$10,000,000,000 or less.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to

support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) EXAMINATIONS.—

(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator to assess compliance with the requirements of Federal consumer financial law of persons described in subsection (a).

(2) AGENCY COORDINATION.—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority (relative to the Bureau) to enforce such laws.

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 1025 to the same

Reports.
Records.

Notification.
Recommendation.

Deadline.

extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES. 12 USC 5517.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended significantly exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) LIMITATIONS.—

Applicability.

(i) IN GENERAL.—Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services—

(I) if such merchant, retailer, or seller of nonfinancial goods or services is engaged in a transaction described in subparagraph (B)(i) or (B)(ii); or

(II) to the extent that such merchant, retailer, or seller is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(D) RULES.—

(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the

receipts of that business concern reasonably are expected to meet that size threshold.

(iv) OTHER STANDARDS FOR SMALL BUSINESS.—With respect to a merchant, retailer, or seller of nonfinancial goods or services that is classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act.

(E) EXCEPTION FROM STATE ENFORCEMENT.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—The Bureau may exercise rulemaking, supervisory, enforcement, or other authority under this title with respect to a person described in paragraph (1) when such person is—

(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director may not exercise any rule-making, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) MANUFACTURED HOME.—The term “manufactured home” has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term “modular home” means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 1002(5)—

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) EXISTING AUTHORITY.—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(f) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) STATE INSURANCE AUTHORITY UNDER GRAMM-LEACH-BLILEY.—Notwithstanding paragraph (2), the Bureau shall not exercise any authorities that are granted a State insurance authority under section 505(a)(6) of the Gramm-Leach-Bliley Act with respect to a person regulated by a State insurance authority.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is—

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of the Internal Revenue Code of 1986 offered by a State or other prepaid tuition program offered by a State.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rule-making or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION PURSUANT TO AGENCY REQUEST.—

(i) AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with

respect to the provision of services relating to any specified plan or arrangement.

(ii) AGENCY RESPONSE.—In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response, not later than 90 days after receipt of such request, to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement. Deadline.

(iii) SCOPE OF BUREAU ACTION.—Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this title. A request or response made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF PRODUCTS OR SERVICES.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term “specified plan or arrangement” means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974, or any prepaid tuition program offered by a State. Definition.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer

law or any law for which authorities are transferred under subtitle F or H.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Farm Credit Administration.

(2) DEFINITION.—For purposes of this subsection, the term “person regulated by the Farm Credit Administration” means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

Contracts.
Procedures.
Notification.

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such provisions—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) ATTORNEY GENERAL.—No provision of this title, including section 1024(c)(1), shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) DEPOSIT INSURANCE AND SHARE INSURANCE.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

(s) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION. 12 USC 5518.

(a) STUDY AND REPORT.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute

between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) **FURTHER AUTHORITY.**—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) **LIMITATION.**—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

Applicability.

(d) **EFFECTIVE DATE.**—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (b) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

12 USC 5519.

SEC. 1029. EXCLUSION FOR AUTO DEALERS.

(a) **SALE, SERVICING, AND LEASING OF MOTOR VEHICLES EXCLUDED.**—Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) **CERTAIN FUNCTIONS EXCEPTED.**—Subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;

(2) operates a line of business—

(A) that involves the extension of retail credit or retail leases involving motor vehicles; and

(B) in which—

(i) the extension of retail credit or retail leases are provided directly to consumers; and

(ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) **PRESERVATION OF AUTHORITIES OF OTHER AGENCIES.**—Except as provided in subsections (b) and (d), nothing in this title, including subtitle F, shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency, with respect to a person described in subsection (a).

(d) **FEDERAL TRADE COMMISSION AUTHORITY.**—Notwithstanding section 18 of the Federal Trade Commission Act, the Federal Trade

Commission is authorized to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act. in accordance with section 553 of title 5, United States Code, with respect to a person described in subsection (a).

(e) **COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.**—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **MOTOR VEHICLE.**—The term “motor vehicle” means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) **MOTOR VEHICLE DEALER.**—The term “motor vehicle dealer” means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

SEC. 1029A. EFFECTIVE DATE.

12 USC 5511
note.

This subtitle shall become effective on the designated transfer date, except that sections 1022, 1024, and 1025(e) shall become effective on the date of enactment of this Act.

Subtitle C—Specific Bureau Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

12 USC 5531.

(a) **IN GENERAL.**—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) **RULEMAKING.**—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful

unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) CONSULTATION.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

(f) CONSIDERATION OF SEASONAL INCOME.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

SEC. 1032. DISCLOSURES.

(a) IN GENERAL.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are

fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) SAFE HARBOR.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) PUBLIC DISCLOSURE.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

Deadline.
Public comment.

12 USC 5533.

SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) **IN GENERAL.**—Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) **EXCEPTIONS.**—A covered person may not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other provision of law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) **NO DUTY TO MAINTAIN RECORDS.**—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) **STANDARDIZED FORMATS FOR DATA.**—The Bureau, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) **CONSULTATION.**—The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure, to the extent appropriate, that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

12 USC 5534.

SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.

Procedures.

(a) **TIMELY REGULATOR RESPONSE TO CONSUMERS.**—The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

(b) **TIMELY RESPONSE TO REGULATOR BY COVERED PERSON.**—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including—

(1) steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer;

(2) responses received by the covered person from the consumer; and

(3) follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) **PROVISION OF INFORMATION TO CONSUMERS.**—

(1) **IN GENERAL.**—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.

Compliance.

(2) **EXCEPTIONS.**—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025, a prudential regulator, and any other agency having jurisdiction over a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 may not be required by this section to make available to the consumer—

(A) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(B) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct;

(C) any information required to be kept confidential by any other provision of law; or

(D) any nonpublic or confidential information, including confidential supervisory information.

(d) **AGREEMENTS WITH OTHER AGENCIES.**—The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency regarding procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.

Memorandum.

SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

12 USC 5535.

(a) **ESTABLISHMENT.**—The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the “Ombudsman”) within the Bureau, to provide timely assistance to borrowers of private education loans.

Designation.

(b) **PUBLIC INFORMATION.**—The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well

as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) **FUNCTIONS OF OMBUDSMAN.**—The Ombudsman designated under this subsection shall—

Deadline.
Memorandum.

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

Recommendations.

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) **ANNUAL REPORTS.**—

(1) **IN GENERAL.**—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) **SUBMISSION.**—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) **DEFINITIONS.**—For purposes of this section, the terms “private education loan” and “institution of higher education” have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

12 USC 5536.

SEC. 1036. PROHIBITED ACTS.

(a) **IN GENERAL.**—It shall be unlawful for—

(1) any covered person or service provider—

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice;

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

(b) EXCEPTION.—No person shall be held to have violated subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.

SEC. 1037. EFFECTIVE DATE.

12 USC 5531
note.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

12 USC 5551.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term “consumer protection regulation” means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

Federal Register,
publication.

12 USC 5552.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) ACTION BY STATE AGAINST NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION TO ENFORCE RULES.—

(A) IN GENERAL.—Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association to enforce a provision of this title.

(B) ENFORCEMENT OF RULES PERMITTED.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title and to secure remedies under provisions of this title or remedies otherwise provided under other law.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

Records.

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title, including any regulation prescribed by the Bureau under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding;

and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and
 (C) appeal any order or judgment, to the same extent as any other party in the proceeding may.
 (c) REGULATIONS.—The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

12 USC 5553.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

12 USC 25b.

“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

“(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) NATIONAL BANK.—The term ‘national bank’ includes—

“(A) any bank organized under the laws of the United States; and

“(B) any Federal branch established in accordance with the International Banking Act of 1978.

“(2) STATE CONSUMER FINANCIAL LAWS.—The term ‘State consumer financial law’ means a State law that does not directly or indirectly discriminate against national banks and that

directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

“(3) OTHER DEFINITIONS.—The terms ‘affiliate’, ‘subsidiary’, ‘includes’, and ‘including’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(b) PREEMPTION STANDARD.—

“(1) IN GENERAL.—State consumer financial laws are preempted, only if—

“(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

“(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

“(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

“(2) SAVINGS CLAUSE.—This title and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

“(3) CASE-BY-CASE BASIS.—

“(A) DEFINITION.—As used in this section the term ‘case-by-case basis’ refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

“(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

“(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

“(5) STANDARDS OF REVIEW.—

“(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors

which the court finds persuasive and relevant to its decision.

“(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

“(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

“(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A. v. Nelson*, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

“(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

Notice.
Public comment.

Deadline.

Federal Register,
publication.

“(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

“(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

“(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title or section 24 of Federal Reserve Act (12 U.S.C. 371), a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that

the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

“(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of ‘interest’ under such provision.

“(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.”.

Publication.
Deadline.
Records.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.”.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

12 USC 25b.

“(h) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

“(1) DEFINITIONS.—For purposes of this subsection, the terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(2) RULE OF CONSTRUCTION.—No provision of this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).”.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

12 USC 1465.

“(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

“(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.”.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.”.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

12 USC 25b. (a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

“(i) VISITORIAL POWERS.—

“(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in *Cuomo v. Clearing House Assn., L. L. C.* (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

“(j) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.”.

12 USC 1465. (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners’ Loan Act (as added by this title) is amended by adding at the end the following:

Applicability. “(c) VISITORIAL POWERS.—The provisions of sections 5136C(i) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.”

“(d) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.”.

12 USC 5551 note.

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

12 USC 5561.

SEC. 1051. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) BUREAU INVESTIGATION.—The term “Bureau investigation” means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has

been engaged in any conduct that is a violation, as defined in this section.

(2) BUREAU INVESTIGATOR.—The term “Bureau investigator” means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) CUSTODIAN.—The term “custodian” means the custodian or any deputy custodian designated by the Bureau.

(4) DOCUMENTARY MATERIAL.—The term “documentary material” includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(5) VIOLATION.—The term “violation” means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

12 USC 5562.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand issued, and any enforcement petition filed, under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) RETURN RECEIPTS.—In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

Certificate.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

Certificate.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected

Certificate.

to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH AND RECORDATION.—The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place at which the examination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the officer investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney for that person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such

person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) if the refusal is on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

Time period.

(F) CERTIFICATION BY INVESTIGATOR.—The Bureau investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the Bureau investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Bureau investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Bureau may for good cause limit such

witness to inspection of the official transcript of his testimony.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

Deadline.

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or rule promulgated by the Bureau.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section.

(2) APPEAL.—Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

12 USC 5563.

(a) IN GENERAL.—The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any rules prescribed by the Bureau under this title; and

(2) any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 1024, 1025, and 1026, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

Deadlines.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon

Deadline.
Notification.
Order.

Deadline.
Petition.

Records.

the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Bureau may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the residence or principal office or place of business of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

Deadline.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

12 USC 5564.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law, the Bureau may, subject to sections 1024, 1025, and 1026, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—

(1) IN GENERAL.—When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General and, with respect to a civil action against an insured depository institution or insured credit union, the appropriate prudential regulator.

(2) NOTICE AND COORDINATION.—

(A) NOTICE OF OTHER ACTIONS.—In addition to any notice required under paragraph (1), the Bureau shall

notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) COORDINATION.—In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

Consultation.
Deadline.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Bureau under this title, including the authority to interpret Federal consumer financial law.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the Bureau.

Deadlines.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with any Federal consumer financial law.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—An action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) BUREAU AUTHORITY.—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

12 USC 5565.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) RELIEF.—Relief under this section may include, without limitation—

- (A) rescission or reformation of contracts;
- (B) refund of moneys or return of real property;
- (C) restitution;
- (D) disgorgement or compensation for unjust enrichment;
- (E) payment of damages or other monetary relief;
- (F) public notification regarding the violation, including the costs of notification;
- (G) limits on the activities or functions of the person; and
- (H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed \$5,000 for each day during which such violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed \$25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed \$1,000,000 for each day during which such violation continues.

(3) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (2), the Bureau or the court shall take into account the appropriateness of the penalty with respect to—

- (A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) **AUTHORITY TO MODIFY OR REMIT PENALTY.**—The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) **NOTICE AND HEARING.**—No civil penalty may be assessed under this subsection with respect to a violation of any Federal consumer financial law, unless—

(A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

12 USC 5566.

If the Bureau obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Bureau shall transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

12 USC 5567.

(a) **IN GENERAL.**—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law,

rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term “covered employee” means any individual performing tasks related to the offering or provision of a consumer financial product or service.

Deadlines. (c) PROCEDURES AND TIMETABLES.—

(1) COMPLAINT.—

(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

Notification.

(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

- (i) the filing of the complaint;
- (ii) the allegations contained in the complaint;
- (iii) the substance of evidence supporting the complaint; and
- (iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

Determination.

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

Notification.

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

Order.

(B) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and

if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) PENALTIES.—

(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(I) to take affirmative action to abate the violation;

(II) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(III) to provide compensatory damages to the complainant.

(ii) PENALTY.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against

Assessment.

whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) **PENALTY FOR FRIVOLOUS CLAIMS.**—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding \$1,000, to be paid by the complainant.

(D) **DE NOVO REVIEW.**—

Deadlines.

(i) **FAILURE OF THE SECRETARY TO ACT.**—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) **PROCEDURES.**—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(II) the amount of back pay, with interest; and

(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

Deadline.

(E) **OTHER APPEALS.**—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) **ACTIONS BY THE SECRETARY.**—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) **CIVIL ACTIONS TO COMPEL COMPLIANCE.**—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) **AWARD OF COSTS AUTHORIZED.**—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(D) **MANDAMUS PROCEEDINGS.**—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) **NO WAIVER OF RIGHTS AND REMEDIES.**—Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) **NO PREDISPUTE ARBITRATION AGREEMENTS.**—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under this section.

(3) **EXCEPTION.**—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.

Regulation.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

12 USC 5561
note.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

12 USC 5581.

(a) **DEFINED TERMS.**—For purposes of this subtitle—

(1) the term “consumer financial protection functions” means—

(A) all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines; and

(B) the examination authority described in subsection (c)(1), with respect to a person described in subsection 1025(a); and

(2) the terms “transferor agency” and “transferor agencies” mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) BOARD OF GOVERNORS AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) COMPTROLLER AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) DIRECTOR AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) CORPORATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—The authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission.

(B) BUREAU AUTHORITY.—

(i) IN GENERAL.—The Bureau shall have all powers and duties under the enumerated consumer laws to prescribe rules, issue guidelines, or to conduct studies or issue reports mandated by such laws, that were vested in the Federal Trade Commission on the day before the designated transfer date.

(ii) FEDERAL TRADE COMMISSION ACT.—Subject to subtitle B, the Bureau may enforce a rule prescribed under the Federal Trade Commission Act by the Federal Trade Commission with respect to an unfair or deceptive act or practice to the extent that such rule applies to a covered person or service provider with respect to the offering or provision of a consumer financial product or service as if it were a rule prescribed under section 1031 of this title.

(C) AUTHORITY OF THE FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission (including its authority with respect to affiliates described in section 1025(a)(1)) under the Federal Trade Commission Act or any other law, other than the authority under an enumerated consumer law to prescribe rules, issue official guidelines, or conduct a study or issue a report mandated under such law.

(ii) COMMISSION AUTHORITY RELATING TO RULES PRESCRIBED BY THE BUREAU.—Subject to subtitle B, the Federal Trade Commission shall have authority to enforce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) a rule prescribed by the Bureau under this title with respect to a covered person subject to the jurisdiction of the Federal Trade Commission under that Act, and a violation of such a rule by such a person shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices.

(D) COORDINATION.—To avoid duplication of or conflict between rules prescribed by the Bureau under section 1031 of this title and the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act that apply to a covered person or service provider with respect to the offering or provision of consumer financial products or services, the agencies shall negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period.

Contracts.

(E) DEFERENCE.—No provision of this title shall be construed as altering, limiting, expanding, or otherwise affecting the deference that a court affords to the—

(i) Federal Trade Commission in making determinations regarding the meaning or interpretation of any provision of the Federal Trade Commission Act, or of any other Federal law for which the Commission has authority to prescribe rules; or

(ii) Bureau in making determinations regarding the meaning or interpretation of any provision of a Federal consumer financial law (other than any law described in clause (i)).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) are transferred to the Bureau.

(B) AUTHORITY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.), on the day before the designated transfer date.

(c) AUTHORITIES OF THE PRUDENTIAL REGULATORS.—

(1) EXAMINATION.—A transferor agency that is a prudential regulator shall have—

(A) authority to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1025(a), that is incidental to the backup and enforcement procedures provided to the regulator under section 1025(c); and

(B) exclusive authority (relative to the Bureau) to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1026(a), except as provided to the Bureau under subsections (b) and (c) of section 1026.

(2) ENFORCEMENT.—

(A) **LIMITATION.**—The authority of a transferor agency that is a prudential regulator to enforce compliance with Federal consumer financial laws with respect to a person described in section 1025(a), shall be limited to the backup and enforcement procedures in described in section 1025(c).

(B) **EXCLUSIVE AUTHORITY.**—A transferor agency that is a prudential regulator shall have exclusive authority (relative to the Bureau) to enforce compliance with Federal consumer financial laws with respect to a person described in section 1026(a), except as provided to the Bureau under subsections (b) and (c) of section 1026.

(C) **STATUTORY ENFORCEMENT.**—For purposes of carrying out the authorities under, and subject to the limitations of, subtitle B, each prudential regulator may enforce compliance with the requirements imposed under this title, and any rule or order prescribed by the Bureau under this title, under—

(i) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any covered person or service provider that is an insured credit union, or service provider thereto, or any affiliate of an insured credit union, who is subject to the jurisdiction of the Board under that Act; and

(ii) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to a covered person or service provider that is a person described in section 3(q) of that Act and who is subject to the jurisdiction of that agency, as set forth in sections 3(q) and 8 of the Federal Deposit Insurance Act; or

(iii) the Bank Service Company Act (12 U.S.C. 1861 et seq.).

(d) **EFFECTIVE DATE.**—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

12 USC 5582.

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

Deadline.

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 1061; and

(2) publish notice of that designated date in the Federal Register.

Notice.
Federal Register,
publication.

(b) **CHANGING DESIGNATION.**—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration

Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

Notice.
Federal Register,
publication.

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

Time period.

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 12 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

Determination.

(A) a written determination that orderly implementation of this title is not feasible before the date that is 12 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 18 months after the date of enactment of this Act.

12 USC 5583.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(2) existed on the day before the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.), or the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq) transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary

of the Department of Housing and Urban Development transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULINGS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and under subsection (i), all orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect, and shall continue to be enforceable by the appropriate transferor agency, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall not be enforceable by or against the Bureau.

(2) EXCEPTION FOR ORDERS APPLICABLE TO PERSONS DESCRIBED IN SECTION 1025(a).—All orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date with respect to any person described in section 1025(a), shall continue in effect, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall be enforceable by or against the Bureau or transferor agency.

(i) IDENTIFICATION OF RULES AND ORDERS CONTINUED.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the Bureau; and

(2) shall publish a list of such rules and orders in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

List.
Federal Register,
publication.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

12 USC 5584.

Determinations.

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) CERTAIN OFFICE OF THE COMPTROLLER OF THE CURRENCY EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Comptroller of the Currency shall—

(i) jointly determine the number of employees of the Office of the Comptroller of the Currency necessary to perform or support the consumer financial protection functions of the Office of the Comptroller of the Currency that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of the Comptroller of the Currency for transfer to the Bureau, in a manner that the Bureau and the Office of the Comptroller of the Currency, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of the Comptroller of the Currency identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) CERTAIN OFFICE OF THRIFT SUPERVISION EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Director of the Office of Thrift Supervision shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the consumer financial protection functions of the Office of Thrift Supervision that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of Thrift Supervision identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(6) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the

Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(7) CONSUMER EDUCATION, FINANCIAL LITERACY, CONSUMER COMPLAINTS, AND RESEARCH FUNCTIONS.—The Bureau and each of the transferor agencies (except the Federal Trade Commission) shall jointly determine the number of employees and the types and grades of employees necessary to perform the functions of the Bureau under subtitle A, including consumer education, financial literacy, policy analysis, responses to consumer complaints and inquiries, research, and similar functions. All employees jointly identified under this paragraph shall be transferred to the Bureau for employment.

(8) AUTHORITY OF THE PRESIDENT TO RESOLVE DISPUTES.—

(A) ACTION AUTHORIZED.—In the event that the Bureau and a transferor agency are unable to reach an agreement under paragraphs (1) through (7) by the designated transfer date, the President, or the designee thereof, may issue an order or directive to the transferor agency to effect the transfer of personnel and property under this subtitle.

(B) TRANSMITTAL TO CONGRESS REQUIRED.—If an order or directive is issued under subparagraph (A), the President shall transmit a copy of the written determination made with respect to such order or directive, including an explanation for the need for the order or directive, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives.

(C) SUNSET.—The authority provided in this paragraph shall terminate 3 years after the designated transfer date.

(9) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM, FDIC, HUD, NCUA, OCC, AND OTS.—Each employee transferred to the Bureau from the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—For purposes of determining the status and position placement of a transferred employee, any period of service with the Board of Governors or a Federal reserve bank shall be credited as a period of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside of his or her locality pay area when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) PAY.—

(1) 2-YEAR PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received

during the pay period immediately preceding the date of transfer.

(B) LIMITATION.—Notwithstanding subparagraph (A), if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the date of transfer, the Bureau may reduce the rate of basic pay on the date on which the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period shall be the reduced rate that would have applied, but for the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

- (A) for cause;
- (B) for unacceptable performance; or
- (C) with the consent of the employee.

Applicability.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) REORGANIZATION.—

Determination.
Time period.

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a “substantial reorganization” for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as

employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Unless an election is made under clause (iii) or subparagraph (B), each employee transferred pursuant to this subtitle shall remain enrolled in the existing retirement plan of that employee as of the date of transfer, through any period of continuous employment with the Bureau.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

Payments.

(iii) OPTION TO ELECT INTO THE FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—Any employee transferred pursuant to this subtitle may, during the 1-year period beginning 6 months after the designated transfer date, elect to end their participation and benefit accruals under their existing retirement plan or plans and elect to participate in both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, through any period of continuous employment with the Bureau, under the same terms as are applicable to Federal Reserve System transferred employees, as provided in subparagraph (C). An election of coverage by the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan shall begin on the day following the end of the 18-

Effective date.

month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date. If an employee elects to participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, all of the service of the employee that was creditable under their existing retirement plan shall be transferred to the Federal Reserve System Retirement Plan on the day following the end of the 18-month period beginning on the designated transfer date.

(iv) BUREAU CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan under this subparagraph. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of the Federal Reserve System Thrift Plan.

(v) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Reserve System Retirement Plan an amount determined by the Board of Governors, in consultation with the Bureau, to be necessary to reimburse the Federal Reserve System Retirement Plan for the costs to such plan of providing benefits to employees electing coverage under the Federal Reserve System Retirement Plan under subparagraph (iii), and who were transferred to the Bureau from outside of the Federal Reserve System.

(vi) OPTION TO ELECT INTO THRIFT PLAN CREATED BY THE BUREAU.—If the Bureau chooses to establish a thrift plan, the employees transferred pursuant to this subtitle shall have the option to elect, under such terms and conditions as the Bureau may establish, coverage under such a thrift plan established by the Bureau. Transferred employees may not remain in the thrift plan of the agency from which the employee transferred under this subtitle, if the employee elects to participate in a thrift plan established by the Bureau.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO THE FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any Federal Reserve System transferred employee who was enrolled in the Federal Reserve System Retirement Plan on the day before the date of his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal Employee Retirement Program.

(ii) **EFFECTIVE DATE OF COVERAGE.**—An election of coverage by the Federal Employee Retirement Program under this subparagraph shall begin on the day following the end of the 18-month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the Federal Reserve System transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date.

(C) **BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.**—

(i) **BENEFITS PROVIDED.**—Federal Reserve System employees transferred pursuant to this subtitle shall continue to be eligible to participate in the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan through any period of continuous employment with the Bureau, unless the employee makes an election under subparagraph (A)(vi) or (B). The retirement benefits, formulas, and features offered to the Federal Reserve System transferred employees shall be the same as those offered to employees of the Board of Governors who participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, as amended from time to time.

(ii) **LIMITATION.**—The Bureau shall not have responsibility or authority—

(I) to amend an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan);

(II) for administering an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan);
or

(III) for ensuring the plans comply with applicable laws, fiduciary rules, and related responsibilities.

(iii) **TAX QUALIFIED STATUS.**—Notwithstanding any other provision of law, providing benefits to Federal Reserve System employees transferred to the Bureau pursuant to this subtitle, and to employees who elect coverage pursuant to subparagraph (A)(iii) or under section 1013(a)(2)(B), shall not cause any existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) to lose its tax-qualified status under sections 401(a) and 501(a) of the Internal Revenue Code of 1986.

(iv) **BUREAU CONTRIBUTION.**—The Bureau shall pay any employer contributions to the existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) for each Federal Reserve System transferred employee participating in those plans, as required under the plan, after the designated transfer date.

(v) **CONTROLLED GROUP STATUS.**—The Bureau is the same employer as the Federal Reserve System

(as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term “existing retirement plan” means, with respect to an employee transferred pursuant to this subtitle, the retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan, of the agency from which the employee was transferred under this subtitle, in which the employee was enrolled on the day before the date on which the employee was transferred;

(ii) the term “Federal Employee Retirement Program” means either the Civil Service Retirement System established under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System established under chapter 84 of title 5, United States Code, depending upon the service history of the individual;

(iii) the term “Federal Reserve System transferred employee” means a transferred employee who is an employee of the Board of Governors or a Federal reserve bank on the day before the designated transfer date, and who is transferred to the Bureau on the designated transfer date pursuant to this subtitle;

(iv) the term “Federal Reserve System Retirement Plan” means the Retirement Plan for Employees of the Federal Reserve System; and

(v) the term “Federal Reserve System Thrift Plan” means the Thrift Plan for Employees of the Federal Reserve System.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each employee transferred pursuant to this subtitle may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a medical, dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) MEDICAL, DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity’s, medical, dental, vision, or life insurance program, an employee transferred pursuant to this subtitle who was a member of such a program at the agency or

Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code;

(iii) the Federal Employees Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability; and

(iv) the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—

If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, long term care insurance program, an employee transferred pursuant to this subtitle who was a member of such a program at the agency or Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875 of title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—

For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life

insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Bureau, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

Deadline. (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(1) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

12 USC 5585.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of enactment of this Act.

SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

12 USC 5586.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

SEC. 1067. TRANSITION OVERSIGHT.

12 USC 5587.

(a) PURPOSE.—The purpose of this section is to ensure that the Bureau—

- (1) has an orderly and organized startup;
- (2) attracts and retains a qualified workforce; and
- (3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

- (i) identification of skill and technical expertise needs and actions taken to meet those requirements;
- (ii) steps taken to foster innovation and creativity;
- (iii) leadership development and succession planning; and
- (iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

- (i) telework;
- (ii) flexible work schedules;
- (iii) phased retirement;
- (iv) reemployed annuitants;

- (v) part-time work;
- (vi) job sharing;
- (vii) parental leave benefits and childcare assistance;
- (viii) domestic partner benefits;
- (ix) other workplace flexibilities; or
- (x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

- (i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
- (ii) streamlined employment application processes;
- (iii) the provision of timely notification of the status of employment applications to applicants; and
- (iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

(e) PARTICIPATION IN EXAMINATIONS.—In order to prepare the Bureau to conduct examinations under section 1025 upon the designated transfer date, the Bureau and the applicable prudential regulator may agree to include, on a sampling basis, examiners on examinations of the compliance with Federal consumer financial law of institutions described in section 1025(a) conducted by the prudential regulators prior to the designated transfer date.

Subtitle G—Regulatory Improvements

SEC. 1071. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following:

15 USC 1691o–2.

“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.

“(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

“(b) INFORMATION GATHERING.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for women-owned, minority-owned, or small business, the financial institution shall—

“(1) inquire whether the business is a women-owned, minority-owned, or small business, without regard to whether such application is received in person, by mail, by telephone,

by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

“(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information. Records.

“(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

“(d) NO ACCESS BY UNDERWRITERS.—

“(1) LIMITATION.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

“(2) LIMITED ACCESS.—If a financial institution determines that a loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information. Determination. Notice.

“(e) FORM AND MANNER OF INFORMATION.—

“(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b). Records.

“(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

“(A) the number of the application and the date on which the application was received;

“(B) the type and purpose of the loan or other credit being applied for;

“(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

“(D) the type of action taken with respect to such application, and the date of such action;

“(E) the census tract in which is located the principal place of business of the women-owned, minority-owned, or small business loan applicant;

“(F) the gross annual revenue of the business in the last fiscal year of the women-owned, minority-owned, or small business loan applicant preceding the date of the application;

“(G) the race, sex, and ethnicity of the principal owners of the business; and

“(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

“(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining any record of information under this

section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the women-owned, minority-owned, or small business loan applicant.

“(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.

“(f) AVAILABILITY OF INFORMATION.—

Deadline.

“(1) SUBMISSION TO BUREAU.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau.

“(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be—

Time period.

“(A) retained for not less than 3 years after the date of preparation;

“(B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau;

“(C) annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation.

“(3) COMPILATION OF AGGREGATE DATA.—The Bureau may, at its discretion—

“(A) compile and aggregate data collected under this section for its own use; and

“(B) make public such compilations of aggregate data.

“(g) BUREAU ACTION.—

“(1) IN GENERAL.—The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

“(2) EXCEPTIONS.—The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.

“(3) GUIDANCE.—The Bureau shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women-owned, minority-owned, or small businesses for purposes of this section.

“(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FINANCIAL INSTITUTION.—The term ‘financial institution’ means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

“(2) SMALL BUSINESS.—The term ‘small business’ has the same meaning as the term ‘small business concern’ in section 3 of the Small Business Act (15 U.S.C. 632).

“(3) **SMALL BUSINESS LOAN.**—The term ‘small business loan’ means a loan made to a small business.

“(4) **MINORITY.**—The term ‘minority’ has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“(5) **MINORITY-OWNED BUSINESS.**—The term ‘minority-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

“(6) **WOMEN-OWNED BUSINESS.**—The term ‘women-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.”.

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) in paragraph (3), by striking “or” at the end;

(2) in paragraph (4), by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (4), the following:

“(5) to make an inquiry under section 704B, in accordance with the requirements of that section.”.

(c) **CLERICAL AMENDMENT.**—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704A the following new item:

15 USC 1691
note.

“704B. Small business loan data collection.”.

(d) **EFFECTIVE DATE.**—This section shall become effective on the designated transfer date.

SEC. 1072. ASSISTANCE FOR ECONOMICALLY VULNERABLE INDIVIDUALS AND FAMILIES.

(a) **HERA AMENDMENTS.**—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) is amended—

(1) in subsection (a), by inserting in each of paragraphs (1), (2), (3), and (4) “or economically vulnerable individuals and families” after “homebuyers” each place that term appears;

(2) in subsection (b)(1), by inserting “or economically vulnerable individuals and families” after “homebuyers”;

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking “or” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(C) a nonprofit corporation that—

“(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

“(ii) specializes or has expertise in working with economically vulnerable individuals and families, but whose primary purpose is not provision of credit counseling services.”; and

(4) in subsection (d)(1), by striking “not more than 5”.

12 USC 1701x
note.

(b) **APPLICABILITY.**—Amendments made by subsection (a) shall not apply to programs authorized by section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) that are funded with appropriations prior to fiscal year 2011.

12 USC 5601.

SEC. 1073. REMITTANCE TRANSFERS.

(a) **TREATMENT OF REMITTANCE TRANSFERS.**—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 902(b) (15 U.S.C. 1693(b)), by inserting “and remittance” after “electronic fund”;

(2) in section 904(c) (15 U.S.C. 1693b(c)), in the first sentence, by inserting “or remittance transfers” after “electronic fund transfers”;

15 USC
1693p–1693r,
1693 note.

(3) by redesignating sections 919, 920, 921, and 922 as sections 920, 921, 922, and 923, respectively; and

(4) by inserting after section 918 the following:

15 USC 1693o–1.

“SEC. 919. REMITTANCE TRANSFERS.

“(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

“(1) IN GENERAL.—Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board. Disclosures required under this section shall be in addition to any other disclosures applicable under this title.

“(2) DISCLOSURES.—Subject to rules prescribed by the Board, a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

“(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing—

“(i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;

“(ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and

“(iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point; and

“(B) at the time at which the sender makes payment in connection with the remittance transfer—

“(i) a receipt showing—

“(I) the information described in subparagraph (A);

“(II) the promised date of delivery to the designated recipient; and

“(III) the name and either the telephone number or the address of the designated recipient, if either the telephone number or the address of the designated recipient is provided by the sender; and

“(ii) a statement containing—

“(I) information about the rights of the sender under this section regarding the resolution of errors; and

“(II) appropriate contact information for—

“(aa) the remittance transfer provider; and

“(bb) the State agency that regulates the remittance transfer provider and the Board, including the toll-free telephone number established under section 1013 of the Consumer Financial Protection Act of 2010.

“(3) REQUIREMENTS RELATING TO DISCLOSURES.—With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

“(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that clearly and conspicuously describe the information required to be disclosed therein; and

Notice.

“(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

“(4) EXCEPTION FOR DISCLOSURES OF AMOUNT RECEIVED.—

“(A) IN GENERAL.—Subject to the rules prescribed by the Board, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and if—

Applicability.

“(i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and

“(ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient.

“(B) DEADLINE.—The application of subparagraph (A) shall terminate 5 years after the date of enactment of the Consumer Financial Protection Act of 2010, unless the Board determines that termination of such provision would negatively affect the ability of remittance transfer providers described in subparagraph (A) to send remittances to locations in foreign countries, in which case, the Board may, by rule, extend the application of subparagraph (A) to not longer than 10 years after the date of enactment of the Consumer Financial Protection Act of 2010.

Termination
date.
Determination.

“(5) EXEMPTION AUTHORITY.—The Board may, by rule, permit a remittance transfer provider to satisfy the requirements of—

“(A) paragraph (2)(A) orally, if the transaction is conducted entirely by telephone;

Deadline.

“(B) paragraph (2)(B), in the case of a transaction conducted entirely by telephone, by mailing the disclosures required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, or by including such documents in the next periodic statement, if the telephone transaction is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with the remittance transfer provider;

“(C) subparagraphs (A) and (B) of paragraph (2) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer; and

“(D) paragraph (2)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act, if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

“(6) STOREFRONT AND INTERNET NOTICES.—

“(A) IN GENERAL.—

“(i) PROMINENT POSTING.—Subject to subparagraph (B), the Board may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts, as the Board may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged.

“(ii) ONSITE DISPLAYS.—The Board may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or controlled by the remittance transfer provider.

“(iii) INTERNET NOTICES.—Subject to paragraph (3), the Board shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice, comparable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

“(iv) RULEMAKING AUTHORITY.—In prescribing rules under this subparagraph, the Board may impose standards or requirements regarding the provision of the storefront and Internet notices required under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

“(B) STUDY AND ANALYSIS.—Prior to proposing rules under subparagraph (A), the Board shall undertake appropriate studies and analyses, which shall be consistent with section 904(a)(2), and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

“(i) to compare prices for remittance transfers; and

“(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

“(b) FOREIGN LANGUAGE DISCLOSURES.—The disclosures required under this section shall be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

“(c) REGULATIONS REGARDING TRANSFERS TO CERTAIN NATIONS.—If the Board determines that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Board may prescribe rules (not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010) addressing the issue, which rules shall include standards for a remittance transfer provider to provide—

Deadline.

“(1) a receipt that is consistent with subsections (a) and

(b); and

“(2) a reasonably accurate estimate of the foreign currency to be received, based on the rate provided to the sender by the remittance transfer provider at the time at which the transaction was initiated by the sender.

“(d) REMITTANCE TRANSFER ERRORS.—

Notices.
Deadlines.

“(1) ERROR RESOLUTION.—

“(A) IN GENERAL.—If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

“(B) REMEDIES.—Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

“(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

“(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

“(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or

“(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

“(2) RULES.—The Board shall establish, by rule issued not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, clear and appropriate standards for remittance transfer providers with respect to

Deadline.

error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

“(A) of the complaint of the sender;

“(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

“(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

Deadline.

“(3) CANCELLATION AND REFUND POLICY RULES.—Not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

“(e) APPLICABILITY OF THIS TITLE.—

“(1) IN GENERAL.—A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

“(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

“(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), or any regulations promulgated thereunder; or

“(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

“(f) ACTS OF AGENTS.—

“(1) IN GENERAL.—A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

“(2) OBLIGATIONS OF REMITTANCE TRANSFER PROVIDERS.—The Board shall prescribe rules to implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Board under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.

“(g) DEFINITIONS.—As used in this section—

“(1) the term ‘designated recipient’ means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this Act;

“(2) the term ‘remittance transfer’—

“(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903; and

“(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a);

“(3) the term ‘remittance transfer provider’ means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

“(4) the term ‘sender’ means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.”.

(b) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors shall work with the Federal reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion; and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) REPORT TO CONGRESS.—Not later than one calendar year after the date of enactment of this Act, and on April 30 biennially thereafter during the 10-year period beginning on that date of enactment, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban

Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—As part of its duties as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment (or the “SAFE Strategy”), as it relates to remittances.

(d) FEDERAL CREDIT UNION ACT CONFORMING AMENDMENT.—Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended to read as follows:

“(12) in accordance with regulations prescribed by the Board—

“(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act); and

“(B) to cash checks and money orders for persons in the field of membership for a fee;”.

(e) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of enactment of this Act, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which the remittance history of a consumer could be used to enhance the credit score of the consumer;

(2) the current legal and business model barriers and impediments that impede the use of the remittance history of the consumer to enhance the credit score of the consumer; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title and the amendments made by this title may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate

used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in sections 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by this section).

SEC. 1074. DEPARTMENT OF THE TREASURY STUDY ON ENDING THE CONSERVATORSHIP OF FANNIE MAE, FREDDIE MAC, AND REFORMING THE HOUSING FINANCE SYSTEM.

(a) STUDY REQUIRED.—

(1) **IN GENERAL.**—The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as “Fannie Mae”) and the Federal Home Loan Mortgage Corporation (in this section referred to as “Freddie Mac”), while minimizing the cost to taxpayers, including such options as—

Recommendations.

(A) the gradual wind-down and liquidation of such entities;

(B) the privatization of such entities;

(C) the incorporation of the functions of such entities into a Federal agency;

(D) the dissolution of Fannie Mae and Freddie Mac into smaller companies; or

(E) any other measures the Secretary determines appropriate.

(2) **ANALYSES.**—The study required under paragraph (1) shall include an analysis of—

(A) the role of the Federal Government in supporting a stable, well-functioning housing finance system, and whether and to what extent the Federal Government should bear risks in meeting Federal housing finance objectives;

(B) how the current structure of the housing finance system can be improved;

(C) how the housing finance system should support the continued availability of mortgage credit to all segments of the market;

(D) how the housing finance system should be structured to ensure that consumers continue to have access to 30-year, fixed rate, pre-payable mortgages and other mortgage products that have simple terms that can be easily understood;

(E) the role of the Federal Housing Administration and the Department of Veterans Affairs in a future housing system;

(F) the impact of reforms of the housing finance system on the financing of rental housing;

(G) the impact of reforms of the housing finance system on secondary market liquidity;

(H) the role of standardization in the housing finance system;

(I) how housing finance systems in other countries offer insights that can help inform options for reform in the United States; and

(J) the options for transition to a reformed housing finance system.

(b) **REPORT AND RECOMMENDATIONS.**—Not later than January 31, 2011, the Secretary of the Treasury shall submit the report and recommendations required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 1075. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

(a) **IN GENERAL.**—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

15 USC 1693p,
1693q.

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

15 USC 1693o–2.

“SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

“(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

“(1) REGULATORY AUTHORITY OVER INTERCHANGE TRANSACTION FEES.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

“(2) REASONABLE INTERCHANGE TRANSACTION FEES.—The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

“(3) RULEMAKING REQUIRED.—

Deadline.
Standards.

“(A) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

“(B) INFORMATION COLLECTION.—The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

“(4) CONSIDERATIONS; CONSULTATION.—In prescribing regulations under paragraph (3)(A), the Board shall—

“(A) consider the functional similarity between—

“(i) electronic debit transactions; and

“(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

“(B) distinguish between—

“(i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

“(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

“(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

“(5) ADJUSTMENTS TO INTERCHANGE TRANSACTION FEES FOR FRAUD PREVENTION COSTS.—

“(A) ADJUSTMENTS.—The Board may allow for an adjustment to the fee amount received or charged by an issuer under paragraph (2), if—

“(i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

“(ii) the issuer complies with the fraud-related standards established by the Board under subparagraph (B), which standards shall—

“(I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and

“(II) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

“(B) RULEMAKING REQUIRED.—

“(i) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for making adjustments under this paragraph.

Deadline.
Standards.

“(ii) FACTORS FOR CONSIDERATION.—In issuing the standards and prescribing regulations under this paragraph, the Board shall consider—

“(I) the nature, type, and occurrence of fraud in electronic debit transactions;

“(II) the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;

“(III) the available and economical means by which fraud on electronic debit transactions may be reduced;

“(IV) the fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

“(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

“(VI) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and

“(VII) such other factors as the Board considers appropriate.

“(6) EXEMPTION FOR SMALL ISSUERS.—

“(A) IN GENERAL.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than \$10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

“(B) DEFINITION.—For purposes of this paragraph, the term “issuer” shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

“(7) EXEMPTION FOR GOVERNMENT-ADMINISTERED PAYMENT PROGRAMS AND RELOADABLE PREPAID CARDS.—

“(A) IN GENERAL.—This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

“(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program; or

“(ii) a plastic card, payment code, or device that is—

“(I) linked to funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

“(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

“(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

“(IV) used to transfer or debit funds, monetary value, or other assets; and

“(V) reloadable and not marketed or labeled as a gift card or gift certificate.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card: Applicability.

“(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

“(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer’s designated automated teller machine network.

“(C) DEFINITION.—For purposes of subparagraph (B), the term ‘designated automated teller machine network’ means either—

“(i) all automated teller machines identified in the name of the issuer; or

“(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer’s customers.

“(D) REPORTING.—Beginning 12 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall annually provide a report to the Congress regarding — Effective date.

“(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

“(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

“(8) REGULATORY AUTHORITY OVER NETWORK FEES.—

“(A) IN GENERAL.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.

“(B) LIMITATION.—The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

“(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

“(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

“(C) RULEMAKING REQUIRED.—The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A). Deadline.

“(9) EFFECTIVE DATE.—This subsection shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010.

Deadlines.

“(b) LIMITATION ON PAYMENT CARD NETWORK RESTRICTIONS.—

“(1) PROHIBITIONS AGAINST EXCLUSIVITY ARRANGEMENTS.—

“(A) NO EXCLUSIVE NETWORK.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

“(i) 1 such network; or

“(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

“(I) affiliated persons; or

“(II) networks affiliated with such issuer.

“(B) NO ROUTING RESTRICTIONS.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

“(2) LIMITATION ON RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—

“(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

“(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

“(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

“(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

“(B) LAWFUL DISCOUNTS.—For purposes of this paragraph, the network may not penalize any person for the providing of a discount that is in compliance with Federal law and applicable State law.

“(3) LIMITATION ON RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—

“(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

“(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that —

“(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

“(II) such minimum dollar value does not exceed \$10.00; or

“(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

“(B) INCREASE IN MINIMUM DOLLAR AMOUNT.—The Board may, by regulation prescribed pursuant to section 553 of title 5, United States Code, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

“(4) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed to authorize any person—

“(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

“(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

“(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means any company that controls, is controlled by, or is under common control with another company.

“(2) DEBIT CARD.—The term ‘debit card’—

“(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

“(B) includes a general-use prepaid card, as that term is defined in section 915(a)(2)(A); and

“(C) does not include paper checks.

“(3) CREDIT CARD.—The term ‘credit card’ has the same meaning as in section 103 of the Truth in Lending Act.

“(4) DISCOUNT.—The term ‘discount’—

“(A) means a reduction made from the price that customers are informed is the regular price; and

“(B) does not include any means of increasing the price that customers are informed is the regular price.

“(5) ELECTRONIC DEBIT TRANSACTION.—The term ‘electronic debit transaction’ means a transaction in which a person uses a debit card.

“(6) FEDERAL AGENCY.—The term ‘Federal agency’ means—

“(A) an agency (as defined in section 101 of title 31, United States Code); and

“(B) a Government corporation (as defined in section 103 of title 5, United States Code).

“(7) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).

“(8) INTERCHANGE TRANSACTION FEE.—The term ‘interchange transaction fee’ means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

“(9) ISSUER.—The term ‘issuer’ means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

“(10) NETWORK FEE.—The term ‘network fee’ means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.

“(11) PAYMENT CARD NETWORK.—The term ‘payment card network’ means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.

“(d) ENFORCEMENT.—

“(1) IN GENERAL.—Compliance with the requirements imposed under this section shall be enforced under section 918.

“(2) EXCEPTION.—Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section.”.

(b) AMENDMENT TO THE FOOD AND NUTRITION ACT OF 2008.—Section 7(h)(10) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read as follows:

“(10) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer or reimbursement systems under this Act.”.

(c) AMENDMENT TO THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following new subsection:

“(f) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this section.”.

(d) AMENDMENT TO THE CHILD NUTRITION ACT OF 1966.—Section 11 of the Child Nutrition Act of 1966 (42 U.S.C. 1780) is amended by adding at the end the following:

“(c) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).”.

SEC. 1076. REVERSE MORTGAGE STUDY AND REGULATIONS.

12 USC 5602.

(a) **STUDY.**—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study on reverse mortgage transactions.

(b) **REGULATIONS.**—

(1) **IN GENERAL.**—If the Bureau determines through the study required under subsection (a) that conditions or limitations on reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this title, including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage for such purpose.

(2) **IDENTIFIED PRACTICES AND INTEGRATED DISCLOSURES.**—The regulations prescribed under paragraph (1) may, as the Bureau may so determine—

(A) identify any practice as unfair, deceptive, or abusive in connection with a reverse mortgage transaction; and

(B) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(c) **RULE OF CONSTRUCTION.**—This section shall not be construed as limiting the authority of the Bureau to issue regulations, orders, or guidance that apply to reverse mortgages prior to the completion of the study required under subsection (a).

SEC. 1077. REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.

(a) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission, and the Attorney General of the United States, shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives, on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(b) **CONTENT.**—The report required by this section shall examine, at a minimum—

(1) the growth and changes of the private education loan market in the United States;

(2) factors influencing such growth and changes;

(3) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers;

(4) the characteristics of private education loan borrowers, including—

(A) the types of institutions of higher education that they attend;

(B) socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender);

(C) what other forms of financing borrowers use to pay for education;

(D) whether they exhaust their Federal loan options before taking out a private loan;

(E) whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students;

(F) whether such borrowers are students enrolled in a program leading to a certificate, license, or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree; and

(G) if practicable, employment and repayment behaviors;

(5) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(6) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(7) the terms, conditions, and pricing of private education loans;

(8) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers' awareness and understanding about terms and conditions of various financial products;

(9) whether Federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation's fair lending laws and that allows public officials to determine lender compliance with fair lending laws; and

(10) any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable Federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

SEC. 1078. STUDY AND REPORT ON CREDIT SCORES.

(a) **STUDY.**—The Bureau shall conduct a study on the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers.

(b) **REPORT TO CONGRESS.**—The Bureau shall submit a report to Congress on the results of the study conducted under subsection (a) not later than 1 year after the date of enactment of this Act.

SEC. 1079. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS. 12 USC 5603.

(a) **REVIEW.**—The Director shall review all Federal laws and regulations relating to the protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes.

(b) **REPORT.**—Not later than 1 year after the designated transfer date, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such consumers; and

(3) recommendations for regulations to ensure the appropriate protection of such consumers.

(c) **PROGRAM.**—Not later than 2 years after the date of the submission of the report under subsection (b), the Bureau shall, consistent with subtitle B, propose regulations or otherwise establish a program to protect consumers who use exchange facilitators.

(d) **EXCHANGE FACILITATOR DEFINED.**—In this section, the term “exchange facilitator” means a person that—

(1) facilitates, for a fee, an exchange of like kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer’s relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000–37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(3));

(2) maintains an office for the purpose of soliciting business to perform the services described in paragraph (1); or

(3) advertises any of the services described in paragraph (1) or solicits clients in printed publications, direct mail, television or radio advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

SEC. 1079A. FINANCIAL FRAUD PROVISIONS.

(a) **SENTENCING GUIDELINES.**—

(1) **SECURITIES FRAUD.**—

(A) **DIRECTIVE.**—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses under the guidelines and policy statements appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

Review.
28 USC 994 note.

(B) REQUIREMENTS.—In making any amendments to the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

28 USC 994 note.

(2) FINANCIAL INSTITUTION FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses under the guidelines and policy statements ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) REQUIREMENTS.—In making any amendments to the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm

to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) EXTENSION OF STATUTE OF LIMITATIONS FOR SECURITIES FRAUD VIOLATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

“§ 3301. Securities fraud offenses

“(a) DEFINITION.—In this section, the term ‘securities fraud offense’ means a violation of, or a conspiracy or an attempt to violate—

“(1) section 1348;

“(2) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a));

“(3) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

“(4) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

“(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

“(6) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy).

“(b) LIMITATION.—No person shall be prosecuted, tried, or punished for a securities fraud offense, unless the indictment is found or the information is instituted within 6 years after the commission of the offense.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

“3301. Securities fraud offenses.”.

(c) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking “or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter” and inserting “agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter”; and

(2) by adding at the end the following:

“(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.”.

Subtitle H—Conforming Amendments

5 USC app. 8G
note.
Effective date.
5 USC app. 8G.

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting “and the Bureau of Consumer Financial Protection” after “Board of Governors of the Federal Reserve System”;

Appointment.

(2) in section 8G(c), by adding at the end the following: “For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.”; and

(3) in section 8G(g)(3), by inserting “and the Bureau of Consumer Financial Protection” after “Board of Governors of the Federal Reserve System” the first place that term appears.

5 USC 552a note.

SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective date.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

“(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.”.

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking “1974” and all that follows through “described and defined” and inserting the following: “1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined”; and

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after “transactions made” each place that term appears “on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,”;

(ii) in paragraph (2), by striking “and” at the end;

(iii) in paragraph (3), by striking the period at the end and inserting “; and”; and

(iv) by adding at the end the following new paragraph:

“(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau

of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.”;

(B) by striking subsection (c) and inserting the following:

“(c) **PREEMPTION OF STATE LAW.**—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.”; and

(C) by adding at the end the following:

“(d) **BUREAU ACTIONS.**—The Bureau of Consumer Financial Protection shall—

“(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

“(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

“(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

“(e) **DESIGNATED TRANSFER DATE.**—As used in this section, the term ‘designated transfer date’ means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.”.

(b) **EFFECTIVE DATE.**—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) **RULE OF CONSTRUCTION.**—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking “Board” each place that term appears and inserting “Bureau”, except in subsections (a) and (e) of section 904 (as amended in paragraph (3) of this section) and in 918 (15 U.S.C. 1693o) (as so designated by the Credit Card Act of 2009) and section 920 (as added by section 1076);

(2) in section 903 (15 U.S.C. 1693a)—

(A) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively; and

(B) by inserting after paragraph (3) the following:

“(4) the term ‘Bureau’ means the Bureau of Consumer Financial Protection;”;

(3) in section 904 (15 U.S.C. 1693b)—

Review.

Determination.

Regulations.

Definition.

12 USC 3802 note.

12 USC 3802 note.

15 USC 1693a et seq.

Definition.

Regulations. (A) in subsection (a), by striking “(a) PRESCRIPTION BY BOARD.—The Board shall prescribe regulations to carry out the purposes of this title.” and inserting the following:

Regulations. “(a) PRESCRIPTION BY THE BUREAU AND THE BOARD.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this title.

“(2) AUTHORITY OF THE BOARD.—The Board shall have sole authority to prescribe rules—

“(A) to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010; and

“(B) to carry out the purposes of section 920.”; and

(B) by adding at the end the following new subsection:

“(e) DEFERENCE.—No provision of this title may be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

“(1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this title for which the Bureau has authority to prescribe regulations; or

“(2) the Board in making determinations regarding the meaning or interpretation of section 920.”.

(4) in section 916(d) (15 U.S.C. 1693m) (as so designated by the Credit CARD Act of 2009)—

(A) in the subsection heading, by striking “OF BOARD OR APPROVAL OF DULY AUTHORIZED OFFICIAL OR EMPLOYEE OF FEDERAL RESERVE SYSTEM”;

(B) by inserting “Bureau or the” before “Board” each place that term appears; and

(C) by inserting “Bureau of Consumer Financial Protection or the” before “Federal Reserve System”; and

(5) in section 918 (15 U.S.C. 1693o) (as so designated by the Credit CARD Act of 2009)—

(A) in subsection (a)—

(i) by striking “Compliance” and inserting “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance”;

(ii) by striking paragraphs (1) and (2), and inserting the following:

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

“(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;”;

(iii) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(iv) in paragraph (2) (as so redesignated), by striking the period at the end and inserting a semicolon;

(v) in paragraph (3) (as so redesignated), by striking “and” at the end;

(vi) in paragraph (4) (as so redesignated), by striking the period at the end and inserting “and”; and

(vii) by adding at the end the following:

“(5) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title, except that the Bureau shall not have authority to enforce the requirements of section 920 or any regulations prescribed by the Board under section 920.”;

(B) in subsection (b), by inserting “any of paragraphs (1) through (4) of” before “subsection (a)” each place that term appears; and

(C) by striking subsection (c) and inserting the following:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.”.

SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking “Board” each place that term appears, other than in section 703(f) (as added by this section) and section 704(a)(4) (15 U.S.C. 1691c(a)(4)), and inserting “Bureau”;

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

“(c) The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”; Definition.

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

“SEC. 703. PROMULGATION OF REGULATIONS BY THE BUREAU.”;

(B) by striking “(a) REGULATIONS.—”;

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively;

(E) in subsection (c), as so redesignated, by striking “paragraph (2)” and inserting “subsection (b)”; and

(F) by adding at the end the following:

Regulations.

“(f) BOARD AUTHORITY.—Notwithstanding subsection (a), the Board shall prescribe regulations to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

“(g) DEFERENCE.—Notwithstanding any power granted to any Federal agency under this title, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this title that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this title”;

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking “Compliance” and inserting “Subject to subtitle B of the Consumer Protection Financial Protection Act of 2010”;

(ii) by striking paragraphs (1) and (2) and inserting the following:

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

“(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;”;

(iii) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(iv) in paragraph (7) (as so redesignated), by striking “and” at the end;

(v) in paragraph (8) (as so redesignated), by striking the period at the end, and inserting “; and”; and

(vi) by adding at the end the following:

“(9) Subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.”;

(B) by striking subsection (c) and inserting the following:

“(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (8) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

(C) in subsection (d), by striking “Board” and inserting “Bureau”;

(5) in section 706(e) (15 U.S.C. 1691e(e))—

(A) in the subsection heading—

(i) by striking “BOARD” each place that term appears and inserting “BUREAU”; and

(ii) by striking “FEDERAL RESERVE SYSTEM” and inserting “BUREAU OF CONSUMER FINANCIAL PROTECTION”; and

(B) by striking “Federal Reserve System” and inserting “Bureau of Consumer Financial Protection”;

(6) in section 706(g) (15 U.S.C. 1691e(g)), by striking “(3)” and inserting “(9)”; and

(7) in section 706(f) (15 U.S.C. 1691e(f)), by striking “two years from” each place that term appears and inserting “5 years after”.

SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENT TO SECTION 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after “Board” the following “, jointly with the Director of the Bureau of Consumer Financial Protection,”.

(b) AMENDMENTS TO SECTION 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) by inserting after “Board” each place that term appears, other than in subsection (f), the following: “, jointly with the Director of the Bureau of Consumer Financial Protection,”; and

(2) in subsection (f), by striking “Board.” each place that term appears and inserting the following: “Board, jointly with the Director of the Bureau of Consumer Financial Protection.”.

(c) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after “Board” each place that term appears, other than in the heading for section 605(f)(1), the following: “, jointly with the Director of the Bureau of Consumer Financial Protection,”; and

(2) in subsection (f)(1), in the paragraph heading, by inserting “AND BUREAU” after “BOARD”.

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after “Board” the following “, jointly with the Director of the Bureau of Consumer Financial Protection,”; and

(2) by striking subsection (e) and inserting the following:

“(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.”.

(e) EXPEDITED FUNDS AVAILABILITY IMPROVEMENTS.—Section 603 of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended—

(1) in subsection (a)(2)(D), by striking “\$100” and inserting “\$200”; and

(2) in subsection (b)(3)(C), in the subparagraph heading, by striking “\$100” and inserting “\$200”; and

(3) in subsection (c)(1)(B)(iii), in the clause heading, by striking “\$100” and inserting “\$200”.

(f) REGULAR ADJUSTMENTS FOR INFLATION.—Section 607 of the Expedited Funds Availability Act (12 U.S.C. 4006) is amended by adding at the end the following:

Deadline.

“(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR INFLATION.—The dollar amounts under this title shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$25.”.

SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

15 USC 1666,
1666c, 1666j.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking “Board” each place that term appears, other than in section 105(i) (as added by this subtitle) and inserting “Bureau”.

SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.

(a) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

“(w) The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”; and

Definition.

(2) except as otherwise specifically provided in this subsection—

(A) by striking “Federal Trade Commission” each place that term appears and inserting “Bureau”;

15 USC 1681a *et seq.*

(B) by striking “FTC” each place that term appears and inserting “Bureau”;

15 USC 1681s.

(C) by striking “the Commission” each place that term appears, other than sections 615(e) (15 U.S.C. 1681m(e)) and 628(a)(1) (15 U.S.C. 1681w(a)(1)), and inserting “the Bureau”; and

15 USC 1681a *et seq.*

(D) by striking “The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly” each place that term appears, other than section 615(e)(1) (15 U.S.C. 1681m(e)) and section 628(a)(1) (15 U.S.C. 1681w(a)(1)), and inserting “The Bureau shall”;

15 USC 1681c, 1681s–2.

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking “Board of Governors of the Federal Reserve System” and inserting “Bureau”;

(4) in section 604(g) (15 U.S.C. 1681b(g))—

(A) in paragraph (3), by striking subparagraph (C) and inserting the following:

“(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).”; and

(B) by striking paragraph (5) and inserting the following:

“(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH

(2).—

“(A) REGULATIONS REQUIRED.—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.”;

(5) in section 605(h)(2)(A) (15 U.S.C. 1681c(h)(2)(A)), by striking “with respect to the entities that are subject to their respective enforcement authority under section 621” and inserting “, in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,”.

(6) in section 611(e)(2) (15 U.S.C. 1681i(e)), by striking paragraph (2) and inserting the following:

“(2) EXCLUSION.—Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).”;

(7) in section 615(d)(2)(B) (15 U.S.C. 1681m(d)(2)(B)), by striking “the Federal banking agencies” and inserting “the Federal Trade Commission, the Federal banking agencies,”;

(8) in section 615(e)(1) (15 U.S.C. 1681m(e)(1)), by striking “and the Commission” and inserting “the Federal Trade

Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission”;

(9) in section 615(h)(6) (15 U.S.C. 1681m(h)(6)), by striking subparagraph (A) and inserting the following:

“(A) RULES REQUIRED.—The Bureau shall prescribe rules to carry out this subsection.”;

(10) in section 621 (15 U.S.C. 1681s)—

(A) by striking subsection (a) and inserting the following:

“(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

“(1) IN GENERAL.—The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this title under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of subparagraphs (A) through (G) of subsection (b)(1), and subject to subtitle B of the Consumer Financial Protection Act of 2010, subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this title.

“(2) PENALTIES.—

“(A) KNOWING VIOLATIONS.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than \$2,500 per violation.

“(B) DETERMINING PENALTY AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such prior conduct, ability to pay, effect

on ability to continue to do business, and such other matters as justice may require.

“(C) LIMITATION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1), unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.”;

(B) by striking subsection (b) and inserting the following:

“(b) ENFORCEMENT BY OTHER AGENCIES.—

“(1) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 615(d) shall be enforced under—

“(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(i) any national bank or State savings association, and any Federal branch or Federal agency of a foreign bank;

“(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

“(iii) any bank or Federal savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank;

“(B) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

“(C) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

“(D) the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

“(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act;

“(F) the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission;

“(G) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that is subject to the jurisdiction of the Securities and Exchange Commission; and

“(H) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.

“(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).”;

(C) in subsection (c)(2)—

(i) by inserting “and the Federal Trade Commission” before “or the appropriate”; and

(ii) by inserting “and the Federal Trade Commission” before “or appropriate” each place that term appears;

(D) in subsection (c)(4), by inserting before “or the appropriate” each place that term appears the following: “, the Federal Trade Commission,”;

(E) by striking subsection (e) and inserting the following:

“(e) REGULATORY AUTHORITY.—

“(1) IN GENERAL.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this title, except with respect to sections 615(e) and 628. The Bureau may prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this title, and to prevent evasions thereof or to facilitate compliance therewith. Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the regulations prescribed by the Bureau under this title shall apply to any person that is subject to this title, notwithstanding the enforcement authorities granted to other agencies under this section.

“(2) DEFERENCE.—Notwithstanding any power granted to any Federal agency under this title, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this title that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this title. The regulations prescribed by the Bureau under this title shall apply to any person that is subject to this title, notwithstanding the enforcement authorities granted to other agencies under this section.”; and

(F) in subsection (f)(2), by striking “the Federal banking agencies” and insert “the Federal Trade Commission, the Federal banking agencies,”;

(11) in section 623 (15 U.S.C. 1681s–2)—

(A) in subsection (a)(7), by striking subparagraph (D) and inserting the following:

“(D) MODEL DISCLOSURE.—

Applicability.

“(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

“(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

“(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.”;

(B) in subsection (a)(8), by inserting “, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration,” before “shall jointly”; and

(C) by striking subsection (e) and inserting the following:

“(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

“(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

“(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

“(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

“(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

“(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

“(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

“(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

“(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.”;

(12) in section 628(a)(1) (15 U.S.C. 1681w(a)(1)), by striking “Not later than” and all that follows through “Exchange Commission,” and inserting “The Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies,

Review.

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Examination.

and the National Credit Union Administration, with respect to the entities that are subject to their respective enforcement authority under section 621,”; and

(13) in section 628(a)(3) (15 U.S.C. 1681w(a)(3)), by striking “the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission” and inserting “the agencies identified in paragraph (1)”.

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—The Fair and Accurate Credit Transactions Act of 2003 (Public Law 108–159) is amended—

(1) in section 112(b) (15 U.S.C. 1681c–1 note), by striking “Commission” and inserting “Bureau”;

(2) in section 211(d) (15 U.S.C. 1681j note), by striking “Commission” each place that term appears and inserting “Bureau”;

(3) in section 214(b) (15 U.S.C. 1681s–3 note), by striking paragraph (1) and inserting the following:

Regulations.

“(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3), shall be prescribed, as described in paragraph (2), by—

“(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

“(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

“(C) the Bureau, with respect to other entities subject to this Act.”; and

(4) in section 214(e)(1) (15 U.S.C. 1681s–3 note), by striking “Commission” and inserting “Bureau”.

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

15 USC 1692k,
1692m, 1692o.

(1) by striking “Commission” each place that term appears and inserting “Bureau”;

(2) in section 803 (15 U.S.C. 1692a)—

(A) by striking paragraph (1) and inserting the following:

Definition.

“(1) The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”;

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

Compliance.

“(a) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall be authorized to enforce compliance with this title, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission

under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

(B) in subsection (b)—

(i) by striking “Compliance” and inserting “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance”;

(ii) by striking paragraphs (1) and (2) and inserting the following:

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

“(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;”;

(iii) by redesignating paragraphs (3) through (6), as paragraphs (2) through (5), respectively;

(iv) in paragraph (4) (as so redesignated), by striking “and” at the end;

(v) in paragraph (5) (as so redesignated), by striking the period at the end and inserting “; and”; and

(vi) by inserting before the undesignated matter at the end the following:

“(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.”.

(4) in subsection (d), by striking “Neither the Commission” and all that follows through the end of the subsection and inserting the following: “Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this title.”.

SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

“(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.”; and

(2) in section 43 (12 U.S.C. 1831t)—

(A) in subsection (c), by striking “Federal Trade Commission” and inserting “Bureau”;

(B) in subsection (d), by striking “Federal Trade Commission” and inserting “Bureau”;

(C) in subsection (e)—

(i) in paragraph (2), by striking “Federal Trade Commission” and inserting “Bureau”; and

(ii) by adding at the end the following new paragraph:

“(5) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:

“(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.”; and

(ii) in paragraph (2), by striking subparagraph (C) and inserting the following:

“(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.”.

Definition.

SEC. 1091. AMENDMENT TO FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

Section 1004(a)(4) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)(4)) is amended by striking “Director, Office of Thrift Supervision” and inserting “Director of the Consumer Financial Protection Bureau”.

SEC. 1092. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended—

(1) by striking the subsection heading and inserting the following:

“(f) DEFINITIONS OF BANKS, SAVINGS AND LOAN INSTITUTIONS, AND FEDERAL CREDIT UNIONS.—”.

(2) by striking paragraph (1) and inserting the following:

“(1) [Repealed.]”;

(3) by striking paragraphs (5) through (7);

(4) in paragraph (2)—

(A) by striking “(2) ENFORCEMENT” and all that follows through “in the case of” and inserting the following:

“(2) DEFINITION.—For purposes of this Act, the term ‘bank’ means”;

(B) in subparagraph (A), by striking “, by the division” and all that follows through “Currency”;

(C) in subparagraph (B)—

(i) by striking “, by the division” and all that follows through “System”; and

(ii) by striking “25(a)” and inserting “25A”; and

(D) in subparagraph (C)—

(i) by striking “(other” and inserting “(other than”;

and

(ii) by striking “, by the division” and all that follows through “Corporation”;

(5) in paragraph (3), by striking “Compliance” and all that follows through “as defined in” and inserting the following: “For purposes of this Act, the term “savings and loan institution” has the same meaning as in”; and

(6) in paragraph (4), by striking “Compliance” and all that follows through “credit unions under” and inserting the following: “For purposes of this Act, the term “Federal credit union” has the same meaning as in”.

SEC. 1093. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 501(b) (15 U.S.C. 6801(b)), by inserting “, other than the Bureau of Consumer Financial Protection,” after “505(a)”;

(2) in section 502(e)(5) (15 U.S.C. 6802(e)(5)), by inserting “the Bureau of Consumer Financial Protection” after “(including”;

(3) in section 504(a) (15 U.S.C. 6804(a))—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) RULEMAKING.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to their respective jurisdiction under section 505 (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 501.

“(B) CFTC.—The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of

this subtitle with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 5g of the Commodity Exchange Act.

“(C) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010.

“(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subtitle.

Consultation.

“(2) COORDINATION, CONSISTENCY, AND COMPARABILITY.—Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.”; and

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(B) in paragraph (3), by striking “, and shall be issued in final form not later than 6 months after the date of enactment of this Act”;

(4) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking “This subtitle” and all that follows through “as follows:” and inserting “Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:”;

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act,” after “Act,”;

(ii) in subparagraph (A), by striking “, by the Office of the Comptroller of the Currency”;

(iii) in subparagraph (B), by striking “, by the Board of Governors of the Federal Reserve System”;

(iv) in subparagraph (C), by striking “, by the Board of Directors of the Federal Deposit Insurance Corporation”; and

(v) in subparagraph (D), by striking “, by the Director of the Office of Thrift Supervision”; and

(C) by adding at the end the following:

“(8) Under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the

Bureau and any person subject to this subtitle, but not with respect to the standards under section 501.”;

(5) in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting “, other than the Bureau of Consumer Financial Protection,” after “subsection (a)”;

(6) in section 507(b) (15 U.S.C. 6807), by striking “Federal Trade Commission” and inserting “Bureau of Consumer Financial Protection”.

SEC. 1094. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) by striking “Board” each place that term appears, other than in sections 303, 304(h), 305(b) (as amended by this section), and 307(a) (as amended by this section) and inserting “Bureau”. 12 USC 2803 et seq.

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

“(1) the term ‘Bureau’ means the Bureau of Consumer Financial Protection;” Definition.

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—

(i) in paragraph (4), by inserting “age,” before “and gender”;

(ii) in paragraph (3), by striking “and” at the end;

(iii) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

“(5) the number and dollar amount of mortgage loans grouped according to measurements of—

“(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

“(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

“(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

“(D) such other information as the Bureau may require; and

“(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

“(A) the value of the real property pledged or proposed to be pledged as collateral;

“(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

“(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

“(D) the actual or proposed term in months of the mortgage loan;

“(E) the channel through which application was made, including retail, broker, and other relevant categories;

“(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

“(G) as the Bureau may determine to be appropriate, a universal loan identifier;

“(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

“(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and

“(J) such other information as the Bureau may require.”;

(B) by striking subsection (h) and inserting the following:

“(h) SUBMISSION TO AGENCIES.—

“(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in consultation with other appropriate agencies described in paragraph (2) and, after notice and comment, shall develop regulations that—

“(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

“(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

“(C) require disclosure of the class of the purchaser of such loans;

“(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

“(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.

“(2) OTHER APPROPRIATE AGENCIES.—The appropriate agencies described in this paragraph are—

“(A) the appropriate Federal banking agencies, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to the entities that are subject to the jurisdiction of each such agency, respectively;

“(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in

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Public comment.

section 303(2)(A) which is not otherwise referred to in this paragraph;

“(C) the National Credit Union Administration Board with respect to credit unions; and

“(D) the Secretary of Housing and Urban Development with respect to other lending institutions not regulated by the agencies referred to in subparagraph (A) or (B).

“(3) RULES FOR MODIFICATIONS UNDER PARAGRAPH (1).—

“(A) APPLICATION.—A modification under paragraph (1)(E) shall apply to information concerning—

“(i) credit score data described in subsection (b)(6)(I), in a manner that is consistent with the purpose described in paragraph (1)(E); and

“(ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose.

“(B) STANDARDS.—The Bureau shall prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of this title, in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information described in subparagraph (A) in aggregate or other reasonably modified form, in order to effectuate the purposes of this title.”;

“(C) in subsection (i), by striking “subsection (b)(4)” and inserting “subsections (b)(4), (b)(5), and (b)(6)”;

“(D) in subsection (j)—

(i) by striking paragraph (3) and inserting the following:

“(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require”; and

(ii) in paragraph (2)(A), by striking “in the format in which such information is maintained by the institution” and inserting “in such formats as the Bureau may require”;

“(E) in subsection (m), by striking paragraph (2) and inserting the following:

“(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require.”; and

“(F) by adding at the end the following:

“(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.”;

(4) in section 305 (12 U.S.C. 2804)—

Regulations.

(A) by striking subsection (b) and inserting the following:

“(b) POWERS OF CERTAIN OTHER AGENCIES.—

“(1) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced—

“(A) under section 8 of the Federal Deposit Insurance Act, the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(i) any national bank or Federal savings association, and any Federal branch or Federal agency of a foreign bank;

“(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

“(iii) any bank or State savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C);

“(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle;

“(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

“(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

“(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).”; and

(B) by adding at the end the following:

“(d) OVERALL ENFORCEMENT AUTHORITY OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). To facilitate research, examinations, and enforcement, all data collected pursuant to section 304 shall be available to the entities listed under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this title.”;

(5) in section 306 (12 U.S.C. 2805(b)), by striking subsection (b) and inserting the following:

“(b) EXEMPTION AUTHORITY.—The Bureau may, by regulation, exempt from the requirements of this title any State-chartered

depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 8 of the Federal Deposit Insurance Act, in the case of national banks and Federal savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation.”; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

12 USC 2806.

“(a) IN GENERAL.—

“(1) CONSULTATION REQUIRED.—The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

“(3) CONTRACTING AUTHORITY.—The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

“(b) RECOMMENDATIONS TO CONGRESS.—The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this title.”.

SEC. 1095. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking “Compliance” and all that follows through the end of paragraph (1) and inserting the following: “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this Act shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

“(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

“(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act

which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

“(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);”;

(B) in paragraph (2), by striking “and” at the end;

(C) in paragraph (3), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(4) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, with respect to any person subject to this Act.”; and

(2) in subsection (b)(2), by inserting before the period at the end the following: “, subject to subtitle B of the Consumer Financial Protection Act of 2010”.

SEC. 1096. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.

The Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended—

(1) in section 158(a), by striking “Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board” and inserting “Bureau, in consultation with the Advisory Board to the Bureau”; and

(2) in section 158(b), by striking “Board of Governors of the Federal Reserve System” and inserting “Bureau”.

15 USC 1638
note.

SEC. 1097. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) is amended—

(1) by striking subsection (a) and inserting the following:

Regulations.

“(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

“(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.

“(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1), in the same manner, by the same means, and with the same jurisdiction, as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.”; and

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

“(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

“(A) to enjoin that practice;

“(B) to enforce compliance with the rule;

“(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

“(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.”;

(B) in paragraphs (2) and (3), by striking “the primary Federal regulator” each time the term appears and inserting “the Bureau of Consumer Financial Protection or the Commission, as appropriate”;

(C) in paragraph (3), by inserting “and subject to subtitle B of the Consumer Financial Protection Act of 2010,” after “paragraph (2),”; and

(D) in paragraph (6), by striking “the primary Federal regulator” each place that term appears and inserting “the Bureau of Consumer Financial Protection or the Commission”.

SEC. 1098. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking “and” at the end;

(B) in paragraph (8), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(9) the term ‘Bureau’ means the Bureau of Consumer Financial Protection.”; Definition.

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: “The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and Publication.

to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”;

(B) by striking “Secretary” each place that term appears and inserting “Bureau”; and

(C) by striking “form” each place that term appears and inserting “forms”;

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking “Secretary” each place that term appears and inserting “Bureau”; and

(B) in subsection (a), by striking the first sentence and inserting the following: “The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.”;

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking “Secretary” and inserting “Bureau”; and

(B) by striking “, by regulations that shall take effect not later than April 20, 1991,”;

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking “Secretary” and inserting “Bureau”;

(6) in section 8(c)(5) (12 U.S.C. 2607(c)(5)), by striking “Secretary” and inserting “Bureau”;

(7) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting “BUREAU AND” before “SECRETARY”; and

(B) by striking paragraph (4), and inserting the following:

“(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.”;

(8) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking “Secretary” and inserting “Bureau”;

(9) in section 16 (12 U.S.C. 2614), by inserting “the Bureau,” before “the Secretary”;

(10) in section 18 (12 U.S.C. 2616), by striking “Secretary” each place that term appears and inserting “Bureau”; and

(11) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking “SECRETARY” and inserting “BUREAU”;

(B) in subsection (a), by striking “Secretary” each place that term appears and inserting “Bureau”; and

(C) in subsections (b) and (c), by striking “the Secretary” each place that term appears and inserting “the Bureau”.

Booklets.

SEC. 1098A. AMENDMENTS TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT.

The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) is amended—

(1) by striking “Secretary” each place that term appears and inserting “Director”; 15 USC 1702 *et seq.*

(2) by striking “Department of Housing and Urban Development” each place that term appears and inserting “Bureau of Consumer Financial Protection”; 15 USC 1715.

(3) by striking “Department” each place that term appears and inserting “Bureau”; 15 USC 1715.

(4) in section 1402 (15 U.S.C. 1701)—

(A) by striking paragraph (1) and inserting the following:

“(1) ‘Director’ means the Director of the Bureau of Consumer Financial Protection;” Definition.

(B) in paragraph (10), by striking “and” at the end;

(C) in paragraph (11), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(12) ‘Bureau’ means the Bureau of Consumer Financial Protection.”; and Definition.

(5) in section 1416(a) (15 U.S.C. 1715(a)), by striking “Secretary of Housing and Urban Development” and inserting “Director of the Bureau of Consumer Financial Protection”.

SEC. 1099. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101— 12 USC 3401.

(A) in paragraph (6)—

(i) in subparagraph (A), by inserting “and” after the semicolon;

(ii) in subparagraph (B), by striking “and” at the end; and

(iii) by striking subparagraph (C); and

(B) in paragraph (7), by striking subparagraph (B), and inserting the following:

“(B) the Bureau of Consumer Financial Protection;”;

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking “and the Commodity Futures Trading Commission is permitted” and inserting “the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted”; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

“(r) DISCLOSURE TO THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Nothing in this title shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.”.

SEC. 1100. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

- (1) by striking “a Federal banking agency” each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting “the Bureau”;
- 12 USC 5102,
5106.
12 USC 5102 *et*
seq. (2) by striking “Federal banking agencies” each place that term appears and inserting “Bureau”; and
- (3) by striking “Secretary” each place that term appears and inserting “Director”;
- (4) in section 1503 (12 U.S.C. 5102)—
- (A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;
- Definitions. (B) by striking paragraph (1) and inserting the following:
- “(1) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.
- “(2) FEDERAL BANKING AGENCY.—The term ‘Federal banking agency’ means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.”; and
- (C) by striking paragraph (10), as so designated by this section, and inserting the following:
- Definition. “(10) DIRECTOR.—The term ‘Director’ means the Director of the Bureau of Consumer Financial Protection.”; and
- (5) in section 1507 (12 U.S.C. 5106)—
- (A) in subsection (a)—
- (i) by striking paragraph (1) and inserting the following:
- System. “(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010.”; and
- Deadline. (ii) in paragraph (2)—
- (I) by striking “appropriate Federal banking agency and the Farm Credit Administration” and inserting “Bureau”; and
- (II) by striking “employees’s identity” and inserting “identity of the employee”; and
- (B) in subsection (b), by striking “through the Financial Institutions Examination Council, and the Farm Credit Administration”, and inserting “and the Bureau of Consumer Financial Protection”;
- (6) in section 1508 (12 U.S.C. 5107)—
- (A) by striking the section heading and inserting the following: “**SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTECTION BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.**”; and
- (B) by adding at the end the following:
- “(f) REGULATION AUTHORITY.—

“(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

“(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.”;

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

“SEC. 1510. FEES.

12 USC 5109.

“The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.”;

(8) by striking section 1513 (12 U.S.C. 5112) and inserting the following:

“SEC. 1513. LIABILITY PROVISIONS.

12 USC 5112.

“The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.”; and

(9) in section 1514 (12 U.S.C. 5113) in the section heading, by striking “**UNDER HUD BACKUP LICENSING SYSTEM**” and inserting “**BY THE BUREAU**”.

SEC. 1100A. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 103 (15 U.S.C. 1602)—

(A) by redesignating subsections (b) through (bb) as subsections (c) through (cc), respectively; and

(B) by inserting after subsection (a) the following:

“(b) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”;

Definition.

(2) by striking “Board” each place that term appears, other than in section 140(d) and sections 105(i) and 108(a), as amended by this section, and inserting “Bureau”;

15 USC 1602 et seq.

(3) by striking “Federal Trade Commission” each place that term appears, other than in section 108(c) and section 129(m), as amended by this Act, and other than in the context of a reference to the Federal Trade Commission Act, and inserting “Bureau”;

15 USC 1616, 1632, 1651.

(4) in section 105(a) (15 U.S.C. 1604(a)), in the second sentence—

(A) by striking “Except in the case of a mortgage referred to in section 103(aa), these regulations may contain such” and inserting “Except with respect to the provisions of section 129 that apply to a mortgage referred to in section 103(aa), such regulations may contain such additional requirements,”; and

(B) by inserting “all or” after “exceptions for”;

Publication.

(5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: “The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”;

(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)), by inserting “all or” after “from all or part of this title”;

(7) in section 105 (15 U.S.C. 1604), by adding at the end the following:

“(i) AUTHORITY OF THE BOARD TO PRESCRIBE RULES.—Notwithstanding subsection (a), the Board shall have authority to prescribe rules under this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010. Regulations prescribed under this subsection may contain such classifications, differentiations, or other provisions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.”;

15 USC 1607.

(8) in section 108 (15 U.S.C. 1604), by adding at the end the following:

(A) by striking subsection (a) and inserting the following:

“(a) ENFORCING AGENCIES.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

“(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

“(2) the Federal Credit Union Act, by the Director of the National Credit Union Administration, with respect to any Federal credit union;

“(3) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

“(4) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act;

“(5) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

“(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.”; and

(B) by striking subsection (c) and inserting the following:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (5) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.”; and

(9) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:

“(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (1)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.”; and

(10) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking “the Board” each place that term appears and inserting “the Bureau”; and

(B) by striking “The Board” each place that term appears and inserting “The Bureau”.

15 USC 1667c,
1667e, 1667f.

15 USC 1667a,
1667e, 1667f.

SEC. 1100B. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

12 USC 4302 *et seq.*

(1) by striking “Board” each place that term appears, other than in section 272(b) (12 U.S.C. 4311), and inserting “Bureau”;
 (2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking “Compliance” and all that follows through the end of paragraph (1) and inserting: “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this subtitle shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

“(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

“(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

“(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);”;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle.”;

(3) in section 272(b) (12 U.S.C. 4311(b)), by striking “regulation prescribed by the Board” each place that term appears and inserting “regulation prescribed by the Bureau”; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

“(4) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”.

Definition.

SEC. 1100C. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

“(b) RULEMAKING AUTHORITY.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

Consultation.

“(c) VIOLATIONS.—Any violation of any rule prescribed under subsection (a)—

“(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

“(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.”.

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended by inserting after “Commission” each place that term appears the following: “or the Bureau of Consumer Financial Protection”.

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after “Commission” each place that term appears the following: “or the Bureau of Consumer Financial Protection”.

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

“(d) ENFORCEMENT BY BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010, with respect to the offering or provision of a consumer financial product or service subject to that Act.”.

SEC. 1100D. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting “the Bureau of Consumer Financial Protection, the Office of Financial Research,” after “the Securities and Exchange Commission,”.

(b) COMPARABLE TREATMENT.—Section 3513 of title 44, United States Code, is amended by adding at the end the following:

“(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.”.

SEC. 1100E. ADJUSTMENTS FOR INFLATION IN THE TRUTH IN LENDING ACT.

(a) CAPS.—

(1) CREDIT TRANSACTIONS.—Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking “\$25,000” and inserting “\$50,000”.

(2) CONSUMER LEASES.—Section 181(1) of the Truth in Lending Act (15 U.S.C. 1667(1)) is amended by striking “\$25,000” and inserting “\$50,000”.

(b) ADJUSTMENTS FOR INFLATION.—On and after December 31, 2011, the Bureau shall adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act (as amended by this section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$100, or \$1,000, as applicable.

Deadline.
15 USC 1603
note.

SEC. 1100F. USE OF CONSUMER REPORTS.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following:

“(2) provide to the consumer written or electronic disclosure—

“(A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

“(B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1);”;

(C) in paragraph (4) (as so redesignated), by striking “paragraph (2)” and inserting “paragraph (3)”; and

(2) in subsection (h)(5)—

(A) in subparagraph (C), by striking “; and” and inserting a semicolon;

(B) in subparagraph (D), by striking the period and inserting “; and”; and

(C) by inserting at the end the following:

“(E) include a statement informing the consumer of—

“(i) a numerical credit score as defined in section 609(f)(2)(A), used by such person in making the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

“(ii) the information set forth in subparagraphs (B) through (E) of section 609(f)(1).”.

SEC. 1100G. SMALL BUSINESS FAIRNESS AND REGULATORY TRANSPARENCY.

(a) **PANEL REQUIREMENT.**—Section 609(d) of title 5, United States Code, is amended by striking “means the” and all that follows and inserting the following: “means—

“(1) the Environmental Protection Agency;

“(2) the Consumer Financial Protection Bureau of the Federal Reserve System; and

“(3) the Occupational Safety and Health Administration of the Department of Labor.”.

(b) **INITIAL REGULATORY FLEXIBILITY ANALYSIS.**—Section 603 of title 5, United States Code, is amended by adding at the end the following:

“(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

“(A) any projected increase in the cost of credit for small entities;

“(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

“(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

“(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

“(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

“(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).”

(c) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604(a) of title 5, United States Code, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.”

SEC. 1100H. EFFECTIVE DATE.

5 USC 552a note.

Except as otherwise provided in this subtitle and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 and 1082, shall become effective on the designated transfer date.

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

SEC. 1101. FEDERAL RESERVE ACT AMENDMENTS ON EMERGENCY LENDING AUTHORITY.

(a) FEDERAL RESERVE ACT.—The third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority) is amended—

(1) by inserting “(3)(A)” before “In unusual”;

(2) by striking “individual, partnership, or corporation” the first place that term appears and inserting the following: “participant in any program or facility with broad-based eligibility”;

(3) by striking “exchange for an individual or a partnership or corporation” and inserting “exchange”;

(4) by striking “such individual, partnership, or corporation” and inserting the following: “such participant in any program or facility with broad-based eligibility”;

(5) by striking “for individuals, partnerships, corporations” and inserting “for any participant in any program or facility with broad-based eligibility”; and

(6) by striking “may prescribe.” and inserting the following: “may prescribe.

“(B)(i) As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial

Regulation.
Procedures.

company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.

“(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding.

“(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

“(iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.

“(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

“(i) not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes—

“(I) the justification for the exercise of authority to provide such assistance;

“(II) the identity of the recipients of such assistance;

“(III) the date and amount of the assistance, and form in which the assistance was provided; and

“(IV) the material terms of the assistance, including—

“(aa) duration;

“(bb) collateral pledged and the value thereof;

“(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

Deadlines.
Reports.

“(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

“(ee) the expected costs to the taxpayers of such assistance; and

“(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

“(I) the value of collateral; and

“(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

“(III) the expected or final cost to the taxpayers of such assistance.

“(D) The information required to be submitted to Congress under subparagraph (C) related to—

“(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

“(ii) the amounts borrowed by each participant in any such program or facility;

“(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

Confidentiality.

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).

“(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”.

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting “unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343),” after “this title,”.

(c) REFERENCES.—On and after the date of enactment of this Act, any reference in any provision of Federal law to the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) shall be deemed to be a reference to section 13(3) of the Federal Reserve Act, as so designated by this section.

Effective date.
12 USC 343 note.

SEC. 1102. AUDITS OF SPECIAL FEDERAL RESERVE CREDIT FACILITIES.

(a) AUDITS.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

“(f) AUDITS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

“(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

“(A) CREDIT FACILITY.—The term ‘credit facility’ means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), that is not subject to audit under subsection (e).

“(B) COVERED TRANSACTION.—The term ‘covered transaction’ means any open market transaction or discount window advance that meets the definition of ‘covered transaction’ in section 11(s) of the Federal Reserve Act.

“(2) AUTHORITY FOR AUDITS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct audits, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility, if the Comptroller General determines that such audits are appropriate, solely for the purposes of assessing, with respect to a credit facility or a covered transaction—

“(A) the operational integrity, accounting, financial reporting, and internal controls governing the credit facility or covered transaction;

“(B) the effectiveness of the security and collateral policies established for the facility or covered transaction in mitigating risk to the relevant Federal reserve bank and taxpayers;

“(C) whether the credit facility or the conduct of a covered transaction inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

“(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility or to conduct any covered transaction.

“(3) REPORTS AND DELAYED DISCLOSURE.—

“(A) REPORTS REQUIRED.—A report on each audit conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed.

“(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the matters described in paragraph (2) that were audited and are the subject of the report, together with such recommendations for legislative or administrative action relating to such matters as the Comptroller General may determine to be appropriate.

“(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

“(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to Congress, the names or identifying details of specific

participants in any credit facility or covered transaction, the amounts borrowed by or transferred by or to specific participants in any credit facility or covered transaction, or identifying details regarding assets or collateral held or transferred by, under, or in connection with any credit facility or covered transaction, and any report provided under subparagraph (A) shall be redacted to ensure that such names and details are not disclosed.

“(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity of the subject participant or the identifying details of the subject assets, collateral, or transaction.

Expiration date.

“(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any report on a credit facility 1 year after the effective date of the termination by the Board of Governors of the authorization for the credit facility. For purposes of this clause, a credit facility shall be deemed to have terminated 24 months after the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board of Governors.

Deadline.

“(iv) EXCEPTIONS.—The nondisclosure obligation under clause (i) shall not apply to the credit facilities Maiden Lane, Maiden Lane II, and Maiden Lane III.

“(v) RELEASE OF COVERED TRANSACTION INFORMATION.—The Comptroller General shall release a nonredacted version of any report regarding covered transactions upon the release of the information regarding such covered transactions by the Board of Governors of the Federal Reserve System, as provided in section 11(s) of the Federal Reserve Act.”.

(b) ACCESS TO RECORDS.—Section 714(d) of title 31, United States Code, is amended—

(1) in paragraph (2), by inserting “or any person or entity described in paragraph (3)(A)” after “used by an agency”;

(2) in paragraph (3), by inserting “or (f)” after “subsection (e)” each place that term appears;

(3) in clauses (i) and (ii) of paragraph (3)(A), by inserting “or the Federal Reserve banks” after “by the Board” each place that term appears;

(4) in paragraph (3)(A)(ii), by inserting “participating in or” after “any entity”; and

(5) in paragraph (3)(B), by adding at the end the following: “The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall provide to any person or entity described in subparagraph (A) a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out a audit or examination under this subsection.”.

Records.

SEC. 1103. PUBLIC ACCESS TO INFORMATION.

(a) **IN GENERAL.**—Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended by adding at the end the following:

Web posting.
Time period.

“(c) **PUBLIC ACCESS TO INFORMATION.**—The Board shall place on its home Internet website, a link entitled ‘Audit’, which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months following the date of release of the relevant information, including—

“(1) the reports prepared by the Comptroller General under section 714 of title 31, United States Code;

“(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 11B;

“(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under section 13(3) (relating to emergency lending authority); and

“(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.”.

(b) **FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.**—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following new subsection:

“(s) **FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.**—

“(1) **IN GENERAL.**—In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

“(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

“(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

“(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

“(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

“(2) **MANDATORY RELEASE DATE.**—In the case of—

“(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

“(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

“(3) **EARLIER RELEASE DATE AUTHORIZED.**—The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph

(2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

“(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) CREDIT FACILITY.—The term ‘credit facility’ has the same meaning as in section 714(f)(1)(A) of title 31, United States Code.

“(B) COVERED TRANSACTION.—The term ‘covered transaction’ means—

“(i) any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

“(ii) any advance made under section 10B after the date of enactment of that Act.

“(5) TERMINATION OF CREDIT FACILITY BY OPERATION OF LAW.—A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

“(6) CONSISTENT TREATMENT OF INFORMATION.—Except as provided in this subsection or section 13(3)(D), or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title, shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

Confidentiality.

“(7) PROTECTION OF PERSONAL PRIVACY.—This subsection and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.

“(8) STUDY OF FOIA EXEMPTION IMPACT.—

“(A) STUDY.—The Inspector General of the Board of Governors of the Federal Reserve System shall—

“(i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount

window lending programs, and open market operations; and

“(ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

Publication.
Web posting.

“(B) REPORT.—Not later than 30 months after the date of enactment of this section, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

“(9) RULE OF CONSTRUCTION.—Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”.

12 USC 5611.

SEC. 1104. LIQUIDITY EVENT DETERMINATION.

(a) DETERMINATION AND WRITTEN RECOMMENDATION.—

(1) DETERMINATION REQUEST.—The Secretary may request the Corporation and the Board of Governors to determine whether a liquidity event exists that warrants use of the guarantee program authorized under section 1105.

(2) REQUIREMENTS OF DETERMINATION.—Any determination pursuant to paragraph (1) shall—

(A) be written; and

(B) contain an evaluation of the evidence that—

(i) a liquidity event exists;

(ii) failure to take action would have serious adverse effects on financial stability or economic conditions in the United States; and

(iii) actions authorized under section 1105 are needed to avoid or mitigate potential adverse effects on the United States financial system or economic conditions.

(b) PROCEDURES.—Notwithstanding any other provision of Federal or State law, upon the determination of both the Corporation (upon a vote of not fewer than $\frac{2}{3}$ of the members of the Corporation then serving) and the Board of Governors (upon a vote of not fewer than $\frac{2}{3}$ of the members of the Board of Governors then serving) under subsection (a) that a liquidity event exists that warrants use of the guarantee program authorized under section 1105, and with the written consent of the Secretary—

(1) the Corporation shall take action in accordance with section 1105(a); and

(2) the Secretary (in consultation with the President) shall take action in accordance with section 1105(c).

(c) DOCUMENTATION AND REVIEW.—

(1) DOCUMENTATION.—The Secretary shall—

(A) maintain the written documentation of each determination of the Corporation and the Board of Governors under this section; and

(B) provide the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination of the Corporation and the Board of Governors under subsection (a), including—

(A) the basis for the determination; and

(B) the likely effect of the actions taken.

(d) REPORT TO CONGRESS.—On the earlier of the date of a submission made to Congress under section 1105(c), or within 30 days of the date of a determination under subsection (a), the Secretary shall provide written notice of the determination of the Corporation and the Board of Governors to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, including a description of the basis for the determination.

SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.

12 USC 5612.

(a) IN GENERAL.—Upon the written determination of the Corporation and the Board of Governors under section 1104, the Corporation shall create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress, except that a guarantee of obligations under this section may not include the provision of equity in any form.

(b) RULEMAKING AND TERMS AND CONDITIONS.—

(1) POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish, by regulation, and in consultation with the Secretary, policies and procedures governing the issuance of guarantees authorized by this section. Such policies and procedures may include a requirement of collateral as a condition of any such guarantee.

(2) TERMS AND CONDITIONS.—The terms and conditions of any guarantee program shall be established by the Corporation, with the concurrence of the Secretary.

(c) DETERMINATION OF GUARANTEED AMOUNT.—

(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2) of this subsection, the Secretary (in consultation with the President) shall determine the maximum amount of debt outstanding that the Corporation may guarantee under this section, and the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to that maximum amount and a request for approval of such plan. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Secretary (in consultation with the President) determines, after a submission to Congress under paragraph (1), that the maximum guarantee amount should be raised, and the Council concurs with that determination, the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees

up to the increased maximum debt guarantee amount. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(d) RESOLUTION OF APPROVAL.—

President.

(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

Notification.
Deadline.

(2) FAST TRACK CONSIDERATION IN SENATE.—

(A) RECONVENING.—Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

Time period.

(C) FLOOR CONSIDERATION.—

(i) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

Limitation.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.— Appeals.

Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(3) RULES.—

(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply: Procedures.
Applicability.

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution of the Senate—

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on passage shall be on the joint resolution of the House of Representatives.

(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

(4) DEFINITION.—As used in this subsection, the term “joint resolution” means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress; Deadline.

(B) that does not have a preamble;

(C) the title of which is as follows: “Joint resolution relating to the approval of a plan to guarantee obligations under section 1105 of the Dodd-Frank Wall Street Reform and Consumer Protection Act”; and

(D) the matter after the resolving clause of which is as follows: “That Congress approves the obligation of

any amount described in section 1105(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”.

(e) FUNDING.—

(1) FEES AND OTHER CHARGES.—The Corporation shall charge fees and other assessments to all participants in the program established pursuant to this section, in such amounts as are necessary to offset projected losses and administrative expenses, including amounts borrowed pursuant to paragraph (3), and such amounts shall be available to the Corporation.

(2) EXCESS FUNDS.—If, at the conclusion of the program established under this section, there are any excess funds collected from the fees associated with such program, the funds shall be deposited in the General Fund of the Treasury.

(3) AUTHORITY OF CORPORATION.—The Corporation—

(A) may borrow funds from the Secretary of the Treasury and issue obligations of the Corporation to the Secretary for amounts borrowed, and the amounts borrowed shall be available to the Corporation for purposes of carrying out a program established pursuant to this section, including the payment of reasonable costs of administering the program, and the obligations issued shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraphs (1) and (4), as applicable; and

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act.

(4) BACKUP SPECIAL ASSESSMENTS.—To the extent that the funds collected pursuant to paragraph (1) are insufficient to cover any losses or expenses, including amounts borrowed pursuant to paragraph (3), arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program, in amounts necessary to address such insufficiency, and which shall be available to the Corporation to cover such losses or expenses.

(5) AUTHORITY OF THE SECRETARY.—The Secretary may purchase any obligations issued under paragraph (3)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(5)(E).

(f) RULE OF CONSTRUCTION.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) COMPANY.—The term “company” means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

(2) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term “depository institution holding company” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) LIQUIDITY EVENT.—The term “liquidity event” means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

(4) SOLVENT.—The term “solvent” means that the value of the assets of an entity exceed its obligations to creditors.

SEC. 1106. ADDITIONAL RELATED AMENDMENTS.

12 USC 5613.

(a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of enactment of this section, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely available debt guarantee program for which section 1105 would provide authority.

Effective date.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting “for which the Corporation has been appointed receiver” before “would have serious”; and

(B) in the undesignated matter following subclause (II), by inserting “for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver” after “provide assistance under this section”; and

(2) in clause (v)(I), by striking “The” and inserting “Not later than 3 days after making a determination under clause (i), the”.

(c) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) participating in a program under section 1105, or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation shall—

(1) appoint itself as receiver for the insured depository institution that defaults; and

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require—

(i) consideration of whether a determination shall be made, as provided in section 203 to resolve the company under section 202; and

(ii) the company to file a petition for bankruptcy under section 301 of title 11, United States Code, if the Corporation is not appointed receiver pursuant to section 202 within 30 days of the date of default; or

Deadline.

(B) file a petition for involuntary bankruptcy on behalf of the company under section 303 of title 11, United States Code.

SEC. 1107. FEDERAL RESERVE ACT AMENDMENTS ON FEDERAL RESERVE BANK GOVERNANCE.

The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting the following: “The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the president.”.

SEC. 1108. FEDERAL RESERVE ACT AMENDMENTS ON SUPERVISION AND REGULATION POLICY.

(a) ESTABLISHMENT OF THE POSITION OF VICE CHAIRMAN FOR SUPERVISION.—

(1) POSITION ESTABLISHED.—The second undesignated paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242) (relating to the Chairman and Vice Chairman of the Board) is amended by striking the third sentence and inserting the following: “Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in the fourth undesignated paragraph of this section, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms.”.

12 USC 242 note.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on the date of enactment of this title and applies to individuals who are designated by the President on or after that date to serve as Vice Chairman of Supervision.

(b) APPEARANCES BEFORE CONGRESS.—Section 10 of the Federal Reserve Act (12 U.S.C. 241 et seq.) is amended by adding at the end the following:

12 USC 247b.

“(12) APPEARANCES BEFORE CONGRESS.—The Vice Chairman for Supervision shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives and at semi-annual hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.”.

(c) BOARD RESPONSIBILITY TO SET SUPERVISION AND REGULATORY POLICY.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) (relating to enumerated powers of the Board) is amended by adding at the end of subsection (k) (relating to delegation)

the following: “The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.”.

(d) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

12 USC 5614.

(1) NO DECISIONS BY FEDERAL RESERVE BANK PRESIDENTS.—No provision of title I relating to the authority of the Board of Governors shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(2) VOTING DECISIONS BY BOARD.—The Board of Governors shall not delegate the authority to make any voting decision that the Board of Governors is authorized or required to make under title I of this Act in contravention of section 11(k) of the Federal Reserve Act.

SEC. 1109. GAO AUDIT OF THE FEDERAL RESERVE FACILITIES; PUBLICATION OF BOARD ACTIONS.

(a) GAO AUDIT.—

(1) IN GENERAL.—Notwithstanding section 714(b) of title 31, United States Code, or any other provision of law, the Comptroller General of the United States (in this subsection referred to as the “Comptroller General”) shall conduct a one-time audit of all loans and other financial assistance provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act by the Board of Governors or a Federal reserve bank under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of section 13(3) of the Federal Reserve Act (as so designated by this title).

Time period.

(2) ASSESSMENTS.—In conducting the audit under paragraph (1), the Comptroller General shall assess—

(A) the operational integrity, accounting, financial reporting, and internal controls of the credit facility;

(B) the effectiveness of the security and collateral policies established for the facility in mitigating risk to the relevant Federal reserve bank and taxpayers;

(C) whether the credit facility inappropriately favors one or more specific participants over other institutions eligible to utilize the facility;

(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility; and

(E) whether there were conflicts of interest with respect to the manner in which such facility was established or operated.

(3) TIMING.—The audit required by this subsection shall be commenced not later than 30 days after the date of enactment of this Act, and shall be completed not later than 12 months after that date of enactment.

(4) REPORT REQUIRED.—The Comptroller General shall submit a report on the audit conducted under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, and such report shall be made available to—

- (A) the Speaker of the House of Representatives;
- (B) the majority and minority leaders of the House of Representatives;
- (C) the majority and minority leaders of the Senate;
- (D) the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives; and
- (E) any member of Congress who requests it.

(b) AUDIT OF FEDERAL RESERVE BANK GOVERNANCE.—

(1) AUDIT.—

Deadline.

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall complete an audit of the governance of the Federal reserve bank system.

(B) REQUIRED EXAMINATIONS.—The audit required under subparagraph (A) shall—

(i) examine the extent to which the current system of appointing Federal reserve bank directors effectively represents “the public, without discrimination on the basis of race, creed, color, sex or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers” in the selection of bank directors, as such requirement is set forth under section 4 of the Federal Reserve Act;

(ii) examine whether there are actual or potential conflicts of interest created when the directors of Federal reserve banks, which execute the supervisory functions of the Board of Governors of the Federal Reserve System, are elected by member banks;

(iii) examine the establishment and operations of each facility described in subsection (a)(1) and each Federal reserve bank involved in the establishment and operations thereof; and

(iv) identify changes to selection procedures for Federal reserve bank directors, or to other aspects of Federal reserve bank governance, that would—

(I) improve how the public is represented;

(II) eliminate actual or potential conflicts of interest in bank supervision;

(III) increase the availability of information useful for the formation and execution of monetary policy; or

(IV) in other ways increase the effectiveness or efficiency of reserve banks.

(2) REPORT REQUIRED.—A report on the audit conducted under paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed, and such report shall be made available to—

(A) the Speaker of the House of Representatives;

(B) the majority and minority leaders of the House of Representatives;

(C) the majority and minority leaders of the Senate;

(D) the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives; and

(E) any member of Congress who requests it.

(c) PUBLICATION OF BOARD ACTIONS.—Notwithstanding any other provision of law, the Board of Governors shall publish on its website, not later than December 1, 2010, with respect to all loans and other financial assistance provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of section 13(3) of the Federal Reserve Act (as so designated by this title)—

Web posting.
Deadline.

(1) the identity of each business, individual, entity, or foreign central bank to which the Board of Governors or a Federal reserve bank has provided such assistance;

(2) the type of financial assistance provided to that business, individual, entity, or foreign central bank;

(3) the value or amount of that financial assistance;

(4) the date on which the financial assistance was provided;

(5) the specific terms of any repayment expected, including the repayment time period, interest charges, collateral, limitations on executive compensation or dividends, and other material terms; and

(6) the specific rationale for each such facility or program.

TITLE XII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

Improving Access to Mainstream Financial Institutions Act of 2010.

SEC. 1201. SHORT TITLE.

This title may be cited as the “Improving Access to Mainstream Financial Institutions Act of 2010”.

12 USC 5301
note.

SEC. 1202. PURPOSE.

The purpose of this title is to encourage initiatives for financial products and services that are appropriate and accessible for millions of Americans who are not fully incorporated into the financial mainstream.

12 USC 5621.

SEC. 1203. DEFINITIONS.

12 USC 5622.

In this title, the following definitions shall apply:

(1) ACCOUNT.—The term “account” means an agreement between an individual and an eligible entity under which the individual obtains from or through the entity 1 or more banking products and services, and includes a deposit account, a savings

account (including a money market savings account), an account for a closed-end loan, and other products or services, as the Secretary deems appropriate.

(2) **COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.**—The term “community development financial institution” has the same meaning as in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)).

(3) **ELIGIBLE ENTITY.**—The term “eligible entity” means—

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and exempt from tax under section 501(a) of such Code;

(B) a federally insured depository institution;

(C) a community development financial institution;

(D) a State, local, or tribal government entity; or

(E) a partnership or other joint venture comprised of 1 or more of the entities described in subparagraphs (A) through (D), in accordance with regulations prescribed by the Secretary under this title.

(4) **FEDERALLY INSURED DEPOSITORY INSTITUTION.**—The term “federally insured depository institution” means any insured depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as that term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

12 USC 5623.

SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS.

Grants.

(a) **IN GENERAL.**—The Secretary is authorized to establish a multiyear program of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings to promote initiatives designed—

(1) to enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution that are appropriate to meet the financial needs of such individuals; and

(2) to improve access to the provision of accounts, on reasonable terms, for low- and moderate-income individuals.

(b) **PROGRAM ELIGIBILITY AND ACTIVITIES.**—

(1) **IN GENERAL.**—The Secretary shall restrict participation in any program established under subsection (a) to an eligible entity. Subject to regulations prescribed by the Secretary under this title, 1 or more eligible entities may participate in 1 or several programs established under subsection (a).

(2) **ACCOUNT ACTIVITIES.**—Subject to regulations prescribed by the Secretary, an eligible entity may, in participating in a program established under subsection (a), offer or provide to low- and moderate-income individuals products and services relating to accounts, including—

(A) small-dollar value loans; and

(B) financial education and counseling relating to conducting transactions in and managing accounts.

12 USC 5624.

SEC. 1205. LOW-COST ALTERNATIVES TO SMALL DOLLAR LOANS.

(a) **GRANTS AUTHORIZED.**—The Secretary is authorized to establish multiyear demonstration programs by means of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings, with eligible entities to provide low-cost, small

loans to consumers that will provide alternatives to more costly small dollar loans.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Loans under this section shall be made on terms and conditions, and pursuant to lending practices, that are reasonable for consumers.

(2) FINANCIAL LITERACY AND EDUCATION OPPORTUNITIES.—

(A) IN GENERAL.—Each eligible entity awarded a grant under this section shall promote and take appropriate steps to ensure the provision of financial literacy and education opportunities, such as relevant counseling services, educational courses, or wealth building programs, to each consumer provided with a loan pursuant to this section. Grants.

(B) AUTHORITY TO EXPAND ACCESS.—As part of the grants, agreements, and undertakings established under this section, the Secretary may implement reasonable measures or programs designed to expand access to financial literacy and education opportunities, including relevant counseling services, educational courses, or wealth building programs to be provided to individuals who obtain loans from eligible entities under this section.

SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE FUNDS.

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following:

“SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE FUNDS.

12 USC 4719.

“(a) PURPOSES.—The purposes of this section are—

“(1) to make financial assistance available from the Fund in order to help community development financial institutions defray the costs of operating small dollar loan programs, by providing the amounts necessary for such institutions to establish their own loan loss reserve funds to mitigate some of the losses on such small dollar loan programs; and

“(2) to encourage community development financial institutions to establish and maintain small dollar loan programs that would help give consumers access to mainstream financial institutions and combat high cost small dollar lending.

“(b) GRANTS.—

“(1) LOAN-LOSS RESERVE FUND GRANTS.—The Fund shall make grants to community development financial institutions or to any partnership between such community development financial institutions and any other federally insured depository institution with a primary mission to serve targeted investment areas, as such areas are defined under section 103(16), to enable such institutions or any partnership of such institutions to establish a loan-loss reserve fund in order to defray the costs of a small dollar loan program established or maintained by such institution.

“(2) MATCHING REQUIREMENT.—A community development financial institution or any partnership of institutions established pursuant to paragraph (1) shall provide non-Federal matching funds in an amount equal to 50 percent of the amount of any grant received under this section.

“(3) USE OF FUNDS.—Any grant amounts received by a community development financial institution or any partnership between or among such institutions under paragraph (1)—

“(A) may not be used by such institution to provide direct loans to consumers;

“(B) may be used by such institution to help recapture a portion or all of a defaulted loan made under the small dollar loan program of such institution; and

“(C) may be used to designate and utilize a fiscal agent for services normally provided by such an agent.

“(4) TECHNICAL ASSISTANCE GRANTS.—The Fund shall make technical assistance grants to community development financial institutions or any partnership between or among such institutions to support and maintain a small dollar loan program. Any grant amounts received under this paragraph may be used for technology, staff support, and other costs associated with establishing a small dollar loan program.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘consumer reporting agency that compiles and maintains files on consumers on a nationwide basis’ has the same meaning given such term in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)); and

“(2) the term ‘small dollar loan program’ means a loan program wherein a community development financial institution or any partnership between or among such institutions offers loans to consumers that—

“(A) are made in amounts not exceeding \$2,500;

“(B) must be repaid in installments;

“(C) have no pre-payment penalty;

“(D) the institution has to report payments regarding the loan to at least 1 of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and

“(E) meet any other affordability requirements as may be established by the Administrator.”.

Application.
12 USC 5625.

SEC. 1207. PROCEDURAL PROVISIONS.

An eligible entity desiring to participate in a program or obtain a grant under this title shall submit an application to the Secretary, in such form and containing such information as the Secretary may require.

12 USC 5626.

SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION TO THE SECRETARY.—There are authorized to be appropriated to the Secretary, such sums as are necessary to both administer and fund the programs and projects authorized by this title, to remain available until expended.

(b) AUTHORIZATION TO THE FUND.—There is authorized to be appropriated to the Fund for each fiscal year beginning in fiscal year 2010, an amount equal to the amount of the administrative costs of the Fund for the operation of the grant program established under this title.

12 USC 5627.

SEC. 1209. REGULATIONS.

(a) IN GENERAL.—The Secretary is authorized to promulgate regulations to implement and administer the grant programs and undertakings authorized by this title.

(b) REGULATORY AUTHORITY.—Regulations prescribed under this section may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of grant programs, undertakings, or eligible

entities, as, in the judgment of the Secretary, are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion of this title, or to facilitate compliance with this title.

SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.

12 USC 5628.

For each fiscal year in which a program or project is carried out under this title, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

TITLE XIII—PAY IT BACK ACT

Pay It Back Act.

SEC. 1301. SHORT TITLE.12 USC 5201
note.

This title may be cited as the “Pay It Back Act”.

SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.

Section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)) is amended—

(1) in paragraph (3)—

(A) by striking “, \$700,000,000,000, as such amount is reduced by \$1,259,000,000, as such amount is reduced by \$1,244,000,000” and inserting “\$475,000,000,000”; and

(B) by striking “outstanding at any one time”; and

(2) by adding at the end the following:

“(4) For purposes of this subsection, the amount of authority considered to be exercised by the Secretary shall not be reduced by—

“(A) any amounts received by the Secretary before, on, or after the date of enactment of the Pay It Back Act from repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this Act;

“(B) any amounts committed for any guarantees pursuant to the TARP that became or become uncommitted; or

“(C) any losses realized by the Secretary.

“(5) No authority under this Act may be used to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010.”.

SEC. 1303. REPORT.

Section 106 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216) is amended by inserting at the end the following:

“(f) REPORT.—The Secretary of the Treasury shall report to Congress every 6 months on amounts received and transferred to the general fund under subsection (d).”.

SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RECOVERY ACT OF 2008.

(a) **SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.**—Section 304(g)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) **DEFICIT REDUCTION.**—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

“(i) dedicated for the sole purpose of deficit reduction; and

“(ii) prohibited from use as an offset for other spending increases or revenue reductions.”.

(b) **SALE OF FREDDIE MAC OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.**—Section 306(l)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) **DEFICIT REDUCTION.**—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

“(i) dedicated for the sole purpose of deficit reduction; and

“(ii) prohibited from use as an offset for other spending increases or revenue reductions.”.

(c) **SALE OF FEDERAL HOME LOAN BANKS OBLIGATIONS BY THE TREASURY; DEFICIT REDUCTION.**—Section 11(l)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) **DEFICIT REDUCTION.**—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

“(i) dedicated for the sole purpose of deficit reduction; and

“(ii) prohibited from use as an offset for other spending increases or revenue reductions.”.

(d) **REPAYMENT OF FEES.**—Any periodic commitment fee or any other fee or assessment paid by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to the Secretary of the Treasury as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity authorized or carried out pursuant to the authorities granted to the Secretary of the Treasury under section 1117 of the Housing and Economic Recovery Act of 2008

(Public Law 110–289; 122 Stat. 2683), including any fee agreed to by contract between the Secretary and the Association or Corporation, shall be deposited in the General Fund of the Treasury where such amounts shall be—

- (1) dedicated for the sole purpose of deficit reduction; and
- (2) prohibited from use as an offset for other spending increases or revenue reductions.

SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.

The Director of the Federal Housing Finance Agency shall submit to Congress a report on the plans of the Agency to continue to support and maintain the Nation’s vital housing industry, while at the same time guaranteeing that the American taxpayer will not suffer unnecessary losses.

SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

(a) REJECTION OF ARRA FUNDS BY STATE.—Section 1607 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 305) is amended by adding at the end the following:

“(d) STATEWIDE REJECTION OF FUNDS.—If funds provided to any State in any division of this Act are not accepted for use by the Governor of the State pursuant to subsection (a) or by the State legislature pursuant to subsection (b), then all such funds shall be—

- “(1) rescinded; and
- “(2) deposited in the General Fund of the Treasury where such amounts shall be—
 - “(A) dedicated for the sole purpose of deficit reduction; and
 - “(B) prohibited from use as an offset for other spending increases or revenue reductions.”.

Rescission.

(b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.—Title XVI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by adding at the end the following:

“SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.

“Notwithstanding any other provision of this Act, if the head of any executive agency withdraws or recaptures for any reason funds appropriated or otherwise made available under this division, and such funds have not been obligated by a State to a local government or for a specific project, such recaptured funds shall be—

- “(1) rescinded; and
- “(2) deposited in the General Fund of the Treasury where such amounts shall be—
 - “(A) dedicated for the sole purpose of deficit reduction; and
 - “(B) prohibited from use as an offset for other spending increases or revenue reductions.”.

(c) RETURN OF UNOBLIGATED FUNDS BY END OF 2012.—Section 1603 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by—

- (1) striking “All funds” and inserting “(a) IN GENERAL.—All funds”; and
- (2) adding at the end the following:

“(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any discretionary appropriations made available in this division that have not been

obligated as of December 31, 2012, are hereby rescinded, and such amounts shall be deposited in the General Fund of the Treasury where such amounts shall be—

“(1) dedicated for the sole purpose of deficit reduction; and

“(2) prohibited from use as an offset for other spending increases or revenue reductions.

“(c) PRESIDENTIAL WAIVER AUTHORITY.—

“(1) IN GENERAL.—The President may waive the requirements under subsection (b), if the President determines that it is not in the best interest of the Nation to rescind a specific unobligated amount after December 31, 2012.

“(2) REQUESTS.—The head of an executive agency may also apply to the President for a waiver from the requirements under subsection (b).”.

Mortgage Reform
and Anti-
Predatory
Lending Act.

TITLE XIV—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

15 USC 1601
note.

(a) SHORT TITLE.—This title may be cited as the “Mortgage Reform and Anti-Predatory Lending Act”.

12 USC 5481
note.

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subtitles A, B, C, and E and sections 1471, 1472, 1475, and 1476, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002, and come under the purview of the Bureau of Consumer Financial Protection for purposes of title X, including the transfer of functions and personnel under subtitle F of title X and the savings provisions of such subtitle.

15 USC 1601
note.

(c) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—The regulations required to be prescribed under this title or the amendments made by this title shall—

(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.

Subtitle A—Residential Mortgage Loan Origination Standards

SEC. 1401. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

“(cc) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

“(1) COMMISSION.—Unless otherwise specified, the term ‘Commission’ means the Federal Trade Commission.

“(2) MORTGAGE ORIGINATOR.—The term ‘mortgage originator’—

“(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

“(i) takes a residential mortgage loan application;

“(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

“(iii) offers or negotiates terms of a residential mortgage loan;

“(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

“(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

“(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

“(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

“(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

“(ii) is fully amortizing;

“(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

“(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

“(v) meets any other criteria the Board may prescribe;

“(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

“(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

“(3) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ‘Nationwide Mortgage Licensing System and Registry’ has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

“(4) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

“(5) RESIDENTIAL MORTGAGE LOAN.—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

“(6) SECRETARY.—The term ‘Secretary’, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

“(7) SERVICER.—The term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).”.

SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended—

(1) by redesignating the 2nd of the 2 sections designated as section 129 (15 U.S.C. 1639a) (relating to duty of servicers of residential mortgages) as section 129A; and

(2) by inserting after section 129A (as so redesignated) the following new section:

“§ 129B. Residential mortgage loan origination

15 USC 1639b.

“(a) FINDING AND PURPOSE.—

“(1) FINDING.—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

“(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

“(b) DUTY OF CARE.—

“(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

“(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008; and

“(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

“(2) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.”

Regulations.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.

“129B. Residential mortgage loan origination.”

SEC. 1403. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 1402(a)) is amended by inserting after subsection (b) the following new subsection:

“(c) PROHIBITION ON STEERING INCENTIVES.—

“(1) IN GENERAL.—For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

“(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

“(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has

directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if—

“(i) the mortgage originator does not receive any compensation directly from the consumer; and

“(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Board may, by rule, waive or provide exemptions to this clause if the Board determines that such waiver or exemption is in the interest of consumers and in the public interest.

“(3) REGULATIONS.—The Board shall prescribe regulations to prohibit—

“(A) mortgage originators from steering any consumer to a residential mortgage loan that—

“(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a)); or

“(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

“(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(b)(2)) to a residential mortgage loan that is not a qualified mortgage;

“(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

“(D) mortgage originators from—

“(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

“(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

“(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a residential mortgage loan secured by a consumer’s principal dwelling from another mortgage originator.

“(4) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

“(A) permitting any yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage

Waiver authority.

originator to vary based on the terms of the loan (other than the amount of the principal);

“(B) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

“(C) restricting a consumer’s ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator’s right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer’s decision about whether to finance such fees or costs; or

“(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.”.

SEC. 1404. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 1403) the following new subsection:

“(d) **LIABILITY FOR VIOLATIONS.**—

“(1) **IN GENERAL.**—For purposes of providing a cause of action for any failure by a mortgage originator, other than a creditor, to comply with any requirement imposed under this section and any regulation prescribed under this section, section 130 shall be applied with respect to any such failure by substituting ‘mortgage originator’ for ‘creditor’ each place such term appears in each such subsection.

Applicability.

“(2) **MAXIMUM.**—The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney’s fee.”.

SEC. 1405. REGULATIONS.

(a) **DISCRETIONARY REGULATORY AUTHORITY.**—Section 129B of the Truth in Lending Act is amended by inserting after subsection (d) (as added by section 1404) the following new subsection:

“(e) **DISCRETIONARY REGULATORY AUTHORITY.**—

“(1) **IN GENERAL.**—The Board shall, by regulations, prohibit or condition terms, acts or practices relating to residential mortgage loans that the Board finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129C, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

“(2) **APPLICATION.**—The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.

“(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.”.

15 USC 1601
note.

(b) DISCLOSURES.—Notwithstanding any other provision of this title, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Board may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Board determines that such exemption or modification is in the interest of consumers and in the public interest.

SEC. 1406. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for affordable homeownership, and enable homeowners at risk of foreclosure to refinance or modify their mortgages.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit a report to the Congress on the results of the study, which shall include recommendations for the regulatory and legislative requirements referred to in subsection (a).

Subtitle B—Minimum Standards For Mortgages

SEC. 1411. ABILITY TO REPAY.

(a) IN GENERAL.—

15 USC 1639c
note.

(1) RULE OF CONSTRUCTION.—No regulation, order, or guidance issued by the Bureau under this title shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution.

(2) AMENDMENT TO TRUTH IN LENDING ACT.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 1402(a)) the following new section:

15 USC 1639c.

“§ 129C. Minimum standards for residential mortgage loans

“(a) ABILITY TO REPAY.—

“(1) IN GENERAL.—In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

“(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured

by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

“(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer’s ability to repay a residential mortgage loan shall include consideration of the consumer’s credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer’s equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

“(4) INCOME VERIFICATION.—A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer’s Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer’s income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer’s income history in making a determination under this subsection shall include the verification of such income by the use of—

“(A) Internal Revenue Service transcripts of tax returns; or

“(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

“(5) EXEMPTION.—With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

“(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

“(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

“(C) Total points and fees (as defined in section 103(aa)(4), other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

“(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-

Regulations.

rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

“(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

“(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

“(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

“(6) NONSTANDARD LOANS.—

“(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer’s ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

“(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer’s ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

“(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

“(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

“(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

“(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract’s repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

“(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

“(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

“(i) consider the mortgagor’s good standing on the existing mortgage;

“(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

“(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

“(7) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term ‘fully indexed rate’ means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

“(8) REVERSE MORTGAGES AND BRIDGE LOANS.—This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

“(9) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 1402(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.

SEC. 1412. SAFE HARBOR AND REBUTTABLE PRESUMPTION.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (a) (as added by section 1411) the following new subsection:

“(b) PRESUMPTION OF ABILITY TO REPAY.—

“(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this title, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

“(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) QUALIFIED MORTGAGE.—The term ‘qualified mortgage’ means any residential mortgage loan—

“(i) for which the regular periodic payments for the loan may not—

“(I) result in an increase of the principal balance; or

“(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

“(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a ‘balloon payment’ is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

“(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

“(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(vi) that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

“(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

“(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

“(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of this subsection.

“(B) AVERAGE PRIME OFFER RATE.—The term ‘average prime offer rate’ means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Board..

“(C) POINTS AND FEES.—

“(i) IN GENERAL.—For purposes of subparagraph (A), the term ‘points and fees’ means points and fees as defined by section 103(aa)(4) (other than bona fide

third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

“(ii) COMPUTATION.—For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

“(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

“(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

“(iii) BONA FIDE DISCOUNT POINTS DEFINED.—For purposes of clause (ii), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(iv) INTEREST RATE REDUCTION.—Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

“(D) SMALLER LOANS.—The Board shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

Regulations.

“(E) BALLOON LOANS.—The Board may, by regulation, provide that the term ‘qualified mortgage’ includes a balloon loan—

Urban and rural areas.

“(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

“(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

“(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into

account all applicable taxes, insurance, and assessments; and

“(iv) that is extended by a creditor that—

“(I) operates predominantly in rural or underserved areas;

“(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;

“(III) retains the balloon loans in portfolio; and

“(IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle.

“(3) REGULATIONS.—

“(A) IN GENERAL.—The Board shall prescribe regulations to carry out the purposes of this subsection.

“(B) REVISION OF SAFE HARBOR CRITERIA.—

“(i) IN GENERAL.—The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

“(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Board, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

“(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

“(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

“(III) The Department of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h).

“(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.”.

SEC. 1413. DEFENSE TO FORECLOSURE.

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end the following new subsection:

“(k) DEFENSE TO FORECLOSURE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential

mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 129B(c), or of section 129C(a), as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under subsection (e).

“(2) AMOUNT OF RECOUPMENT OR SETOFF.—

“(A) IN GENERAL.—The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney’s fee.

“(B) SPECIAL RULE.—Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.”.

SEC. 1414. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by this title) the following new subsections:

“(c) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

“(1) PROHIBITED ON CERTAIN LOANS.—

“(A) IN GENERAL.—A residential mortgage loan that is not a ‘qualified mortgage’, as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

“(B) EXCLUSIONS.—For purposes of this subsection, a ‘qualified mortgage’ may not include a residential mortgage loan that—

“(i) has an adjustable rate; or

“(ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

“(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in

effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

“(2) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

Deadline.

“(A) shall publish, and update at least weekly, average prime offer rates;

“(B) may publish multiple rates based on varying types of mortgage transactions; and

“(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

Time periods.

“(3) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

“(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

“(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

“(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

“(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

“(4) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

“(d) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

“(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

“(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

“(e) ARBITRATION.—

“(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

“(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

“(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

“(f) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

“(1) the creditor provides the consumer with a statement that—

“(A) the pending transaction will or may, as the case may be, result in negative amortization;

“(B) describes negative amortization in such manner as the Board shall prescribe;

“(C) negative amortization increases the outstanding principal balance of the account; and

“(D) negative amortization reduces the consumer’s equity in the dwelling or real property; and

“(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient

documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.”.

(b) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by inserting after paragraph (6) the following new paragraph:

“(7) sections 21B and 21C of the Securities Exchange Act of 1934, in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.”.

(c) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (f) (as added by subsection (a)) the following new subsection:

“(g) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

“(1) DEFINITION.—For purposes of this subsection, the term ‘anti-deficiency law’ means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

“(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

“(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.”.

(d) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (g) (as added by subsection (c)) the following new subsection:

“(h) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

“(1) the creditor’s policy regarding the acceptance of partial payments; and

“(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

“(i) **TIMESHARE PLANS.**—This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.”.

SEC. 1415. RULE OF CONSTRUCTION.

15 USC 1639b
note.

Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this title), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act or any other provision of Federal or State law.

SEC. 1416. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) **INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.**—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) in paragraph (2)(A)(ii)—

(A) by striking “\$100” and inserting “\$200”; and

(B) by striking “\$1,000” and inserting “\$2,000”;

(2) in paragraph (2)(B), by striking “\$500,000” and inserting “\$1,000,000”; and

(3) in paragraph (4), by inserting “, paragraph (1) or (2) of section 129B(c), or section 129C(a)” after “section 129”.

(b) **STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.**—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended—

(1) in the first sentence, by striking “Any action” and inserting “Except as provided in the subsequent sentence, any action”; and

(2) by inserting after the first sentence the following new sentence: “Any action under this section with respect to any violation of section 129, 129B, or 129C may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.”.

SEC. 1417. LENDER RIGHTS IN THE CONTEXT OF BORROWER DECEPTION.

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding after subsection (k) (as added by this title) the following new subsection:

“(l) **EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.**—In addition to any other remedy available by law or contract, no creditor or assignee shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.”.

SEC. 1418. SIX-MONTH NOTICE REQUIRED BEFORE RESET OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) **IN GENERAL.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 128 the following new section:

15 USC 1638a.

“§ 128A. Reset of hybrid adjustable rate mortgages

“(a) **HYBRID ADJUSTABLE RATE MORTGAGES DEFINED.**—For purposes of this section, the term ‘hybrid adjustable rate mortgage’ means a consumer credit transaction secured by the consumer’s principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

Time period.

“(b) **NOTICE OF RESET AND ALTERNATIVES.**—During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

“(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

“(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

“(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

“(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

“(A) refinancing;

“(B) renegotiation of loan terms;

“(C) payment forbearances; and

“(D) pre-foreclosure sales.

“(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.

“(c) **SAVINGS CLAUSE.**—The Board may require the notice in paragraph (b) or other notice consistent with this Act for adjustable rate mortgage loans that are not hybrid adjustable rate mortgage loans.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 128 the following new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

SEC. 1419. REQUIRED DISCLOSURES.

Section 128(a) of Truth in Lending Act (15 U.S.C. 1638(a)) is amended by adding at the end the following new paragraphs:

“(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

“(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

“(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

“(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

“(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

“(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.”.

SEC. 1420. DISCLOSURES REQUIRED IN MONTHLY STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.

Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following new subsection:

“(f) PERIODIC STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.—

“(1) IN GENERAL.—The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

“(A) The amount of the principal obligation under the mortgage.

“(B) The current interest rate in effect for the loan.

“(C) The date on which the interest rate may next reset or adjust.

“(D) The amount of any prepayment fee to be charged, if any.

“(E) A description of any late payment fees.

“(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

“(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(H) Such other information as the Board may prescribe in regulations.

“(2) DEVELOPMENT AND USE OF STANDARD FORM.—The Board shall develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.

“(3) EXCEPTION.—Paragraph (1) shall not apply to any fixed rate residential mortgage loan where the creditor, assignee, or servicer provides the obligor with a coupon book that provides the obligor with substantially the same information as required in paragraph (1).”.

SEC. 1421. REPORT BY THE GAO.

(a) REPORT REQUIRED.—The Comptroller General of the United States shall conduct a study to determine the effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are not within the safe harbor provided in the amendments made by this subtitle;

(2) on the ability of prospective homebuyers to obtain financing;

(3) on the ability of homeowners facing resets or adjustments to refinance—for example, do they have fewer refinancing options due to the unavailability of certain loan products that were available before the enactment of this Act;

(4) on minorities’ ability to access affordable credit compared with other prospective borrowers;

(5) on home sales and construction;

(6) of extending the rescission right, if any, on adjustable rate loans and its impact on litigation;

(7) of State foreclosure laws and, if any, an investor’s ability to transfer a property after foreclosure;

(8) of expanding the existing provisions of the Home Ownership and Equity Protection Act of 1994;

(9) of prohibiting prepayment penalties on high-cost mortgages; and

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(c) EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also

include an analysis by the Comptroller General of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages, including an analysis of the exceptions and adjustments authorized in section 129C(b)(3) of the Truth in Lending Act and a recommendation on whether a uniform standard is needed.

(d) ANALYSIS OF CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include—

(1) an analysis by the Comptroller General of whether the credit risk retention provisions have significantly reduced risks to the larger credit market of the repackaging and selling of securitized loans on a secondary market; and

(2) recommendations to the Congress on adjustments that should be made, or additional measures that should be undertaken.

SEC. 1422. STATE ATTORNEY GENERAL ENFORCEMENT AUTHORITY.

Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by striking “section 129 may also” and inserting “section 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H of this Act may also”.

Subtitle C—High-Cost Mortgages

SEC. 1431. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) HIGH-COST MORTGAGE DEFINED.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:

“(aa) HIGH-COST MORTGAGE.—

“(1) DEFINITION.—

“(A) IN GENERAL.—The term ‘high-cost mortgage’, and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage transaction, if—

“(i) in the case of a credit transaction secured—

“(I) by a first mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction; or

“(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction;

“(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

“(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; or

“(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

“(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

“(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

“(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

“(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

“(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

“(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

“(i) any premium provided by an agency of the Federal Government or an agency of a State;

“(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

“(iii) any premium paid by the consumer after closing.”.

(b) ADJUSTMENT OF PERCENTAGE POINTS.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

“(B) An increase or decrease under subparagraph (A)—

“(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

“(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.”.

(c) POINTS AND FEES DEFINED.—

(1) IN GENERAL.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking subparagraph (B) and inserting the following:

“(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;”;

(B) by redesignating subparagraph (D) as subparagraph (G); and

(C) by inserting after subparagraph (C) the following new subparagraphs:

“(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

“(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

“(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and”.

(2) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph:

“(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.”.

(d) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by inserting after subsection (cc) (as added by section 1401) the following new subsection:

“(dd) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts

described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

“(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point—

“(A) the average prime offer rate, as defined in section 129C; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points—

“(A) the average prime offer rate, as defined in section 129C; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(3) For purposes of paragraph (1), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.”.

SEC. 1432. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.

Repeal.

(a) PREPAYMENT PENALTY PROVISIONS.—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

(b) NO BALLOON PAYMENTS.—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended to read as follows:

“(e) NO BALLOON PAYMENTS.—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.”.

SEC. 1433. ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (j), (k), (l) and (m) as subsections (n), (o), (p), and (q) respectively; and

(2) by inserting after subsection (i) the following new subsections:

“(j) RECOMMENDED DEFAULT.—No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost

mortgage that refinances all or any portion of such existing loan or debt.

“(k) LATE FEES.—

“(1) IN GENERAL.—No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

“(A) in an amount in excess of 4 percent of the amount of the payment past due;

“(B) unless the loan documents specifically authorize the charge or fee;

“(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

“(D) more than once with respect to a single late payment.

“(2) COORDINATION WITH SUBSEQUENT LATE FEES.—If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

“(3) FAILURE TO MAKE INSTALLMENT PAYMENT.—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

“(l) ACCELERATION OF DEBT.—No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

“(m) RESTRICTION ON FINANCING POINTS AND FEES.—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

“(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

“(2) Any points or fees.”.

(b) PROHIBITIONS ON EVASIONS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (q) (as so redesignated by subsection (a)(1)) the following new subsection:

“(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a high-cost mortgage—

“(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

Deadlines.

“(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title.”.

(c) MODIFICATION OR DEFERRAL FEES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (r) (as added by subsection (b) of this section) the following new subsection:

“(s) MODIFICATION AND DEFERRAL FEES PROHIBITED.—A creditor, successor in interest, assignee, or any agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.”.

(d) PAYOFF STATEMENT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (c) of this section) the following new subsection:

“(t) PAYOFF STATEMENT.—

“(1) FEES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

“(B) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer’s principal dwelling and are not high-cost mortgages.

“(C) FEE DISCLOSURE.—Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

“(D) MULTIPLE REQUESTS.—If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

Deadline.

“(2) PROMPT DELIVERY.—Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.”.

(e) PRE-LOAN COUNSELING REQUIRED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection t) (as added by subsection (d) of this section) the following new subsection:

“(u) PRE-LOAN COUNSELING.—

Certification.

“(1) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of

the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

“(2) DISCLOSURES REQUIRED PRIOR TO COUNSELING.—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

“(3) REGULATIONS.—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).”.

(f) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (u) (as added by subsection (e)) the following new subsection:

“(v) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

Deadlines.
Notifications.

“(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

“(2) within 60 days of the creditor’s discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.”.

Subtitle D—Office of Housing Counseling

SEC. 1441. SHORT TITLE.

This subtitle may be cited as the “Expand and Preserve Home Ownership Through Counseling Act”.

SEC. 1442. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

Expand and
Preserve Home
Ownership
Through
Counseling Act.
12 USC 1701
note.

“(g) OFFICE OF HOUSING COUNSELING.—

“(1) ESTABLISHMENT.—There is established, in the Department, the Office of Housing Counseling.

“(2) DIRECTOR.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

“(3) FUNCTIONS.—

“(A) IN GENERAL.—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

“(i) research, grant administration, public outreach, and policy development relating to such counseling; and

“(ii) establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling.

“(B) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

“(i) the counseling procedures under section 106(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

“(ii) carrying out all other functions of the Secretary under section 106(g) of the Housing and Urban Development Act of 1968, including the establishment, operation, and publication of the availability of the toll-free telephone number under paragraph (2) of such section;

“(iii) contributing to the distribution of home buying information booklets pursuant to section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604);

“(iv) carrying out the certification program under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e));

“(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for selection of applications to receive assistance;

“(vi) carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the study under section 6 of the Expand and Preserve Home Ownership Through Counseling Act;

“(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

“(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

“(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

“(4) ADVISORY COMMITTEE.—

“(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director. Appointment.

“(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent the mortgage and real estate industry, including consumers and housing counseling agencies certified by the Secretary.

“(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

“(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

“(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

“(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.”.

SEC. 1443. COUNSELING PROCEDURES.

(a) IN GENERAL.—Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following new subsection:

“(g) PROCEDURES AND ACTIVITIES.—

“(1) COUNSELING PROCEDURES.—

Definitions.

“(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

“(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term ‘homeownership counseling’ means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

“(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

“(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

“(VI) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

“(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

“(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

“(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

“(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

“(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));

“(vi) section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G));

“(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));

“(viii) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

“(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

“(x) in the National Housing Act—

“(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2)

of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

“(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2); and

“(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);

“(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B));

“(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7); and

“(xiii) section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note).

“(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term ‘rental housing counseling’ means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

“(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

“(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

“(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

“(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

“(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

“(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

“(vi) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

“(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

“(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

“(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

“(3) MORTGAGE SOFTWARE SYSTEMS.—

“(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

“(i) the consumer’s financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

“(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

“(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary’s specifications.

“(B) USE AND INITIAL AVAILABILITY.—Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

Web posting.

“(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

“(D) BUDGET COMPLIANCE.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

“(4) NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

“(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable

sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

“(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

Public
information.
Web posting.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed \$3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

“(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

“(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

“(I) tips on avoiding foreclosure rescue scams;

“(II) tips on avoiding predatory lending mortgage agreements;

“(III) tips on avoiding for-profit foreclosure counseling services; and

“(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

“(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.

“(iii) TERMS DEFINED.—For purposes of this subparagraph:

“(I) HIGH DENSITY OF FORECLOSURES.—An area has a ‘high density of foreclosures’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

“(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a ‘high percentage of retirement communities’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

“(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a ‘high

percentage of low-income minority communities' if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

“(5) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.”.

(b) CONFORMING AMENDMENTS TO GRANT PROGRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

(1) in subclause (III), by striking “and” at the end;

(2) in subclause (IV) by striking the period at the end and inserting “; and”; and

(3) by inserting after subclause (IV) the following new subclause:

Notification.

“(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).”.

SEC. 1444. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)) is amended by adding at the end the following new paragraph:

“(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

“(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

Standards.
Guidelines.

“(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

“(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

“(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

“(i) IN GENERAL.—None of the amounts made available under this paragraph shall be distributed to—

“(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

“(II) any organization which employs applicable individuals.

“(ii) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subparagraph, the term ‘applicable individual’ means an individual who—

“(I) is—

“(aa) employed by the organization in a permanent or temporary capacity;

“(bb) contracted or retained by the organization; or

“(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

“(II) has been convicted for a violation under Federal law relating to an election for Federal office.

“(E) GRANTMAKING PROCESS.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

“(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$45,000,000 for each of fiscal years 2009 through 2012 for—

“(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

“(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

“(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.”.

SEC. 1445. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

“(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.”;

(2) in paragraph (2)—

(A) by inserting “and for certifying organizations” before the period at the end of the first sentence; and

(B) in the second sentence by striking “for certification” and inserting “, for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,”;

(3) in paragraph (3), by inserting “organizations and” before “individuals”;

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

“(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.

“(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).”.

SEC. 1446. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.

Deadlines.
Reports.

12 USC 1701p–2.

Public
information.

SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development and the Director of the Bureau, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available, subject to subsection (e).

(b) CENSUS TRACT DATA.—Information in the database may be collected, aggregated, and made available on a census tract basis.

(c) REQUIREMENTS.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary of Housing and Urban Development and the Director of the Bureau consider appropriate.

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to encourage discriminatory or unsound allocation of credit or lending policies or practices.

(e) **PRIVACY AND CONFIDENTIALITY.**—In establishing and maintaining the database described in subsection (a), the Secretary of Housing and Urban Development and the Director of the Bureau shall—

(1) be subject to the standards applicable to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity;

(2) implement the necessary measures to conform to the standards for data integrity and security described in paragraph (1); and

(3) collect and make available information under this section, in accordance with paragraphs (5) and (6) of section 1022(c) and the rules prescribed under such paragraphs, in order to protect privacy and confidentiality.

SEC. 1448. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is amended by adding at the end the following new subsection:

“(h) **DEFINITIONS.**—For purposes of this section:

“(1) **NONPROFIT ORGANIZATION.**—The term ‘nonprofit organization’ has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

“(2) **STATE.**—The term ‘State’ means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

“(3) **UNIT OF GENERAL LOCAL GOVERNMENT.**—The term ‘unit of general local government’ means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

“(4) **HUD-APPROVED COUNSELING AGENCY.**—The term ‘HUD-approved counseling agency’ means a private or public nonprofit organization that is—

“(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

“(B) certified by the Secretary to provide housing counseling services.

“(5) **STATE HOUSING FINANCE AGENCY.**—The term ‘State housing finance agency’ means any public body, agency, or instrumentality specifically created under State statute that is authorized to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.”.

SEC. 1449. ACCOUNTABILITY AND TRANSPARENCY FOR GRANT RECIPIENTS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is amended by adding at the end the following:

“(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.—

“(1) TRACKING OF FUNDS.—The Secretary shall—

“(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

“(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

“(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization or entity to ensure compliance with the limitations and requirements of this section, the regulations under this section, and any requirements or conditions under which such amounts were provided; and

“(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

“(2) MISUSE OF FUNDS.—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such assistance was provided—

“(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts and return to the Secretary any such amounts that remain unused or uncommitted for use; and

“(B) such organization or entity shall be ineligible, at any time after such determination, to apply for or receive any further covered assistance.

The remedies under this paragraph are in addition to any other remedies that may be available under law.

“(3) COVERED ASSISTANCE.—For purposes of this subsection, the term ‘covered assistance’ means any grant or other financial assistance provided under this section.”.

SEC. 1450. UPDATING AND SIMPLIFICATION OF MORTGAGE INFORMATION BOOKLET.

Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) in the section heading, by striking “SPECIAL” and inserting “HOME BUYING”;

(2) by striking subsections (a) and (b) and inserting the following new subsections:

Reports.
Records.

Deadline.
Reimbursement.

Definition.

“(a) PREPARATION AND DISTRIBUTION.—The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the ‘Director’) shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

Deadline.

Lists.

“(b) CONTENTS.—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

“(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

“(A) balloon payments;

“(B) prepayment penalties;

“(C) the advantages of prepayment; and

“(D) the trade-off between closing costs and the interest rate over the life of the loan.

“(2) An explanation and sample of the uniform settlement statement required by section 4.

“(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

List.

“(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

List.

“(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

“(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled ‘Consumer Handbook on Adjustable Rate Mortgages’, published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

“(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

“(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing

and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

“(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

“(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

“(11) An explanation of a consumer’s responsibilities, liabilities, and obligations in a mortgage transaction.

“(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

“(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.”;

(3) in subsection (c), by inserting at the end the following new sentence: “Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.”; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: “The lender shall provide the booklet in the version that is most appropriate for the person receiving it.”.

12 USC 1701x-1. **SEC. 1451. HOME INSPECTION COUNSELING.**

(a) **PUBLIC OUTREACH.—**

(1) **IN GENERAL.**—The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564-CN entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled “For Your Protection—Get a Home Inspection” that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled “Ten Important Questions To Ask Your Home Inspector”, in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

Public
information.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

SEC. 1452. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

42 USC 8108.

(a) ASSISTANCE TO NRC.—Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 106(a)(4)(F) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)(F)) (as added by section 1444), 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

Notice.

(b) NOTICE.—The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform borrowers under residential mortgage loans—

(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Web sites for housing counseling and for tips for avoiding foreclosure.

Subtitle E—Mortgage Servicing

SEC. 1461. ESCROW AND IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 1411) the following new section:

15 USC 1639d.

“§ 129D. Escrow or impound accounts relating to certain consumer credit transactions

“(a) IN GENERAL.—Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

“(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

“(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

“(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

“(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

“(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage

in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 1.5 or more percentage points; or

“(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 2.5 or more percentage points; or

“(4) so required pursuant to regulation.

“(c) EXEMPTIONS.—The Board may, by regulation, exempt from the requirements of subsection (a) a creditor that—

“(1) operates predominantly in rural or underserved areas;

“(2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Board;

“(3) retains its mortgage loan originations in portfolio; and

“(4) meets any asset size threshold and any other criteria the Board may establish, consistent with the purposes of this subtitle.

“(d) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, unless and until—

“(1) such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance;

“(2) such borrower is delinquent;

“(3) such borrower otherwise has not complied with the legal obligation, as established by rule; or

“(4) the underlying mortgage establishing the account is terminated.

“(e) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARES IN A COOPERATIVE OR IN WHICH AN ASSOCIATION MUST MAINTAIN A MASTER INSURANCE POLICY.—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by dwellings or units, where the borrower must join an association as a condition of ownership, and that association has an obligation to the dwelling or unit owners to maintain a master policy insuring the dwellings or units.

“(f) CLARIFICATION ON ESCROW ACCOUNTS FOR LOANS NOT MEETING STATUTORY TEST.—For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

“(1) on terms mutually agreeable to the parties to the loan;

“(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or

“(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.

“(g) ADMINISTRATION OF MANDATORY ESCROW OR IMPOUND ACCOUNTS.—

“(1) IN GENERAL.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution or credit union.

“(2) ADMINISTRATION.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

“(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

“(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

“(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

“(3) APPLICABILITY OF PAYMENT OF INTEREST.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

“(4) PENALTY COORDINATION WITH RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

“(h) DISCLOSURES RELATING TO MANDATORY ESCROW OR IMPOUND ACCOUNT.—In the case of any impound, trust, or escrow account that is required under subsection (b), the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

“(1) The fact that an escrow or impound account will be established at consummation of the transaction.

“(2) The amount required at closing to initially fund the escrow or impound account.

“(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

“(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if

Notice.
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Regulations.

applicable) and any other required periodic payments or premiums.

“(5) The fact that, if the consumer chooses to terminate the account in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

“(6) Such other information as the Board determines necessary for the protection of the consumer.

“(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FLOOD INSURANCE.—The term ‘flood insurance’ means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

“(2) HAZARD INSURANCE.—The term ‘hazard insurance’ shall have the same meaning as provided for ‘hazard insurance’, ‘casualty insurance’, ‘homeowner’s insurance’, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.”.

(b) EXEMPTIONS AND MODIFICATIONS.—The Board may prescribe rules that revise, add to, or subtract from the criteria of section 129D(b) of the Truth in Lending Act if the Board determines that such rules are in the interest of consumers and in the public interest.

15 USC 1639d
note.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C (as added by section 1411) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit transactions.”.

SEC. 1462. DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.

15 USC 1639d.

Section 129D of the Truth in Lending Act (as added by section 1461) is amended by adding at the end the following new subsection:

“(j) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

“(1) IN GENERAL.—If—

“(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

“(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account, the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

“(2) DISCLOSURE REQUIREMENTS.—Any disclosure provided to a consumer under paragraph (1) shall include the following:

“(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

“(B) A clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

“(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

“(D) Such other information as the Board determines necessary for the protection of the consumer.”.

SEC. 1463. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.

(a) **SERVICER PROHIBITIONS.**—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsections:

“(k) **SERVICER PROHIBITIONS.**—

“(1) **IN GENERAL.**—A servicer of a federally related mortgage shall not—

“(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract’s requirements to maintain property insurance;

“(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

“(C) fail to take timely action to respond to a borrower’s requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer’s duties;

“(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

“(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

“(2) **FORCE-PLACED INSURANCE DEFINED.**—For purposes of this subsection and subsections (l) and (m), the term ‘force-placed insurance’ means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

“(l) **REQUIREMENTS FOR FORCE-PLACED INSURANCE.**—A servicer of a federally related mortgage shall not be construed as having

Deadline.

a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

“(1) WRITTEN NOTICES TO BORROWER.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

“(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

“(i) a reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;

“(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

“(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

“(iv) a statement that the servicer may obtain such coverage at the borrower’s expense if the borrower does not provide such demonstration of the borrower’s existing coverage in a timely manner;

“(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

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“(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

Time period.

“(2) SUFFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

“(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of confirmation of a borrower’s existing insurance coverage, the servicer shall—

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“(A) terminate the force-placed insurance; and

“(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower’s insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer’s account with respect to the force-placed insurance during such period.

“(4) CLARIFICATION WITH RESPECT TO FLOOD DISASTER PROTECTION ACT.—No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

“(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—

All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.”.

(b) INCREASE IN PENALTY AMOUNTS.—Section 6(f) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(f)) is amended—

(1) in paragraphs (1)(B) and (2)(B), by striking “\$1,000” each place such term appears and inserting “\$2,000”; and

(2) in paragraph (2)(B)(i), by striking “\$500,000” and inserting “\$1,000,000”.

(c) DECREASE IN RESPONSE TIMES.—Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is amended—

(1) in paragraph (1)(A), by striking “20 days” and inserting “5 days”; and

(2) in paragraph (2), by striking “60 days” and inserting “30 days”; and

(3) by adding at the end the following new paragraph:

“(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.”.

(d) PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: “Any balance in any such account that is within the servicer’s control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.”.

Deadline.
Notification.

Deadline.

SEC. 1464. TRUTH IN LENDING ACT AMENDMENTS.

(a) REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129E (as added by section 1472) the following new section:

15 USC 1639f.

“§ 129F. Requirements for prompt crediting of home loan payments

“(a) IN GENERAL.—In connection with a consumer credit transaction secured by a consumer’s principal dwelling, no servicer shall fail to credit a payment to the consumer’s loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

“(b) EXCEPTION.—If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.”.

(b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.), as amended by this title, is amended by inserting after section 129F (as added by subsection (a)) the following new section:

15 USC 1639g.

“§ 129G. Requests for payoff amounts of home loan

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“A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more

than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.”.

SEC. 1465. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.

Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

“(4) REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.—

“(A) IN GENERAL.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974.

“(B) ASSESSMENT VALUE.—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.”.

Subtitle F—Appraisal Activities

SEC. 1471. PROPERTY APPRAISAL REQUIREMENTS.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129G (as added by section 1464(b)) the following new section:

“§ 129H. Property appraisal requirements

15 USC 1639h.

“(a) IN GENERAL.—A creditor may not extend credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

“(b) APPRAISAL REQUIREMENTS.—

“(1) PHYSICAL PROPERTY VISIT.—Subject to the rules prescribed under paragraph (4), an appraisal of property to be secured by a higher-risk mortgage does not meet the requirement of this section unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.

“(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

“(A) IN GENERAL.—If the purpose of a higher-risk mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different certified or licensed appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

“(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

“(3) CERTIFIED OR LICENSED APPRAISER DEFINED.—For purposes of this section, the term ‘certified or licensed appraiser’ means a person who—

“(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

“(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

“(4) REGULATIONS.—

“(A) IN GENERAL.—The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau shall jointly prescribe regulations to implement this section.

“(B) EXEMPTION.—The agencies listed in subparagraph (A) may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

Deadline.

“(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a higher-risk mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

“(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.

“(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of \$2,000.

“(f) HIGHER-RISK MORTGAGE DEFINED.—For purposes of this section, the term ‘higher-risk mortgage’ means a residential mortgage loan, other than a reverse mortgage loan that is a qualified mortgage, as defined in section 129C, secured by a principal dwelling—

“(1) that is not a qualified mortgage, as defined in section 129C; and

“(2) with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as defined in section 129C, as of the date the interest rate is set—

“(A) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(B) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(C) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.”.

SEC. 1472. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 1461(a)) the following new section:

“§ 129E. Appraisal independence requirements

15 USC 1639e.

“(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

“(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), acts or practices that violate appraisal independence shall include—

“(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

“(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

“(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

“(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

“(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

“(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

“(2) Provide further detail, substantiation, or explanation for the appraiser’s value conclusion.

“(3) Correct errors in the appraisal report.

“(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

“(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

“(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer’s principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

“(g) RULES AND INTERPRETIVE GUIDELINES.—

“(1) IN GENERAL.—Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).

“(2) INTERIM FINAL REGULATIONS.—The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after the date of enactment of this section defining with specificity acts or practices that violate

Deadline.

appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

“(h) APPRAISAL REPORT PORTABILITY.—Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

“(i) CUSTOMARY AND REASONABLE FEE.—

“(1) IN GENERAL.—Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

“(2) FEE APPRAISER DEFINITION.—For purposes of this section, the term ‘fee appraiser’ means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

“(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or

“(B) a company not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

“(3) EXCEPTION FOR COMPLEX ASSIGNMENTS.—In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

“(j) SUNSET.—Effective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

“(k) PENALTIES.—

“(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than \$10,000 for each day any such violation continues.

Applicability.

“(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting ‘\$20,000’ for ‘\$10,000’ with respect to all subsequent violations.

“(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129D (as added by section 1461(c)) the following new items:

“129E. Appraisal independence requirements.

“129F. Requirements for prompt crediting of home loan payments.

“129G. Requests for payoff amounts of home loan.

“129H. Property appraisal requirements.”.

(c) DEFERENCE.—Section 105 of the Truth in Lending Act (15 U.S.C. 1604) is amended by adding at the end the following:

Applicability.

“(h) DEFERENCE.—Notwithstanding any power granted to any Federal agency under this title, the deference that a court affords to the Bureau with respect to a determination made by the Bureau relating to the meaning or interpretation of any provision of this title, other than section 129E or 129H, shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of this title.”.

(d) CONFORMING AMENDMENTS IN TITLE X NOT APPLICABLE TO SECTIONS 129E AND 129H.—Notwithstanding section 1099A, the term “Board” in sections 129E and 129H, as added by this subtitle, shall not be substituted by the term “Bureau”.

SEC. 1473. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FFIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: “, and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences”.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

“(5) transmit an annual report to the Congress not later than June 15 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.”.

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended—

(1) by inserting “in public session after notice in the Federal Register, but may close certain portions of these meetings related to personnel and review of preliminary State audit reports,” after “shall meet”; and

(2) by adding after the final period the following: “The subject matter discussed in any closed or executive session shall be described in the Federal Register notice of the meeting.”.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting “prescribe regulations in accordance with chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) after notice and opportunity for comment,” after “hold hearings”; and

(2) at the end by inserting “Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.”.

Establishment.

(e) APPRAISAL REVIEWS AND COMPLEX APPRAISALS.—

(1) SECTION 1110.—Section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339) is amended—

(A) in paragraph (1), by striking “and”;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by inserting after paragraph (2) the following:

“(3) that such appraisals shall be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.”.

(2) SECTION 1113.—Section 1113 of the Financial Institutions and Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended by inserting before the period the following: “, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical”.

Definition.

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is amended—

(A) by amending paragraph (1) to read as follows:

“(1) monitor the requirements established by States—

“(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

“(B) for the registration and supervision of the operations and activities of an appraisal management company;” and

(B) by adding at the end the following new paragraph: “(6) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.”.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM REQUIREMENTS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

12 USC 3353.

“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM REQUIREMENTS.

Regulations.
Applicability.
States.

“(a) IN GENERAL.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements shall include a requirement that such companies—

“(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

“(2) verify that only licensed or certified appraisers are used for federally related transactions;

“(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

“(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(b) RELATION TO STATE LAW.—Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).

Applicability.

“(c) FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.

Investigation.

“(d) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a

background investigation carried out by the State appraiser certifying and licensing agency.

“(e) REPORTING.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee. Regulations.

“(f) EFFECTIVE DATE.—

“(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.

“(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.”.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: “The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal management company to the national registry.”.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

“(11) APPRAISAL MANAGEMENT COMPANY.—The term ‘appraisal management company’ means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

“(A) to recruit, select, and retain appraisers;

“(B) to contract with licensed and certified appraisers to perform appraisal assignments;

“(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for

services provided, and reimbursing appraisers for services performed; or

“(D) to review and verify the work of appraisers.”.

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) transmit reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

“(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and”.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 1473(g)) to read as follows:

“(4) collect—

“(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

“(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

“(i) in the case of such a company that has been in existence for more than a year, \$25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee’s functions under this title; and

“(ii) in the case of such a company that has not been in existence for more than a year, \$25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee’s functions under this title.”; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

“Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of \$80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.”

Deadline.

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the “Appraisal Subcommittee Account”.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(b)) is amended—

12 USC 3338
note.

(1) by striking “and” after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

“(5) to make grants to State appraiser certifying and licensing agencies, in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this title, including—

“(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

“(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

“(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.”.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the “Appraisal Subcommittee Account” pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting “whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers” before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

“(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’ shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.”.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

“(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

“(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

“(2) processes complaints and completes investigations in a reasonable time period;

“(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

“(4) maintains an effective regulatory program; and

“(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analysis of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.”.

(2) in subsection (b)(2), by inserting after “authority” the following: “or sufficient funding”.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

“(b) RECIPROCITY.—Notwithstanding any other provisions of this title, a federally related transaction shall not be appraised

by a certified or licensed appraiser unless the State appraiser certifying or licensing agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another State when—

“(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

“(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.”.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking “shall not exclude” and all that follows through the end of the subsection and inserting the following: “may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.”.

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

“(g) APPRAISER INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency’s policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.”.

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

“(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board’s Course Approval Program.”.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is amended by adding at the end the following new subsection:

“(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 6 months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator,

Deadline.
Determination.

or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.”.

(q) **AUTOMATED VALUATION MODELS.**—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is amended by adding at the end the following new section (and amending the table of contents accordingly):

12 USC 3354.

“SEC. 1125. AUTOMATED VALUATION MODELS USED TO ESTIMATE COLLATERAL VALUE FOR MORTGAGE LENDING PURPOSES.

“(a) **IN GENERAL.**—Automated valuation models shall adhere to quality control standards designed to—

“(1) ensure a high level of confidence in the estimates produced by automated valuation models;

“(2) protect against the manipulation of data;

“(3) seek to avoid conflicts of interest;

“(4) require random sample testing and reviews; and

“(5) account for any other such factor that the agencies listed in subsection (b) determine to be appropriate.

“(b) **ADOPTION OF REGULATIONS.**—The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, shall promulgate regulations to implement the quality control standards required under this section.

“(c) **ENFORCEMENT.**—Compliance with regulations issued under this subsection shall be enforced by—

“(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

“(2) with respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the Bureau of Consumer Financial Protection, and a State attorney general.

“(d) **AUTOMATED VALUATION MODEL DEFINED.**—For purposes of this section, the term ‘automated valuation model’ means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.”.

(r) **BROKER PRICE OPINIONS.**—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is amended by adding at the end the following new section (and amending the table of contents accordingly):

12 USC 3355.

“SEC. 1126. BROKER PRICE OPINIONS.

“(a) **GENERAL PROHIBITION.**—In conjunction with the purchase of a consumer’s principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece

of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

“(b) **BROKER PRICE OPINION DEFINED.**—For purposes of this section, the term ‘broker price opinion’ means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).”.

(s) **AMENDMENTS TO APPRAISAL SUBCOMMITTEE.**—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: “, the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency”; and

(2) by inserting at the end the following: “At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.”.

(t) **TECHNICAL CORRECTIONS.**—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking “council,” and inserting “Council,”.

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking “Corporations,” and inserting “Corporation,”.

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking “council” and inserting “Council”.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking “Federal Financial Institutions Examination Council” and inserting “Financial Institutions Examination Council”; and

(ii) by striking “the council’s functions” and inserting “the Council’s functions”.

SEC. 1474. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

“(e) **COPIES FURNISHED TO APPLICANTS.**—

“(1) **IN GENERAL.**—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant’s application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant’s request for credit or the application is incomplete or withdrawn. Deadline.

“(2) **WAIVER.**—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

“(3) **REIMBURSEMENT.**—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

“(4) **FREE COPY.**—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

“(5) **NOTIFICATION TO APPLICANTS.**—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

“(6) **VALUATION DEFINED.**—For purposes of this subsection, the term ‘valuation’ shall include any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.”.

**SEC. 1475. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974
AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.**

12 USC 2603.

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

“(c) The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

“(1) the fee paid directly to the appraiser by such company; and

“(2) the administration fee charged by such company.”.

SEC. 1476. GAO STUDY ON THE EFFECTIVENESS AND IMPACT OF VARIOUS APPRAISAL METHODS, VALUATION MODELS AND DISTRIBUTIONS CHANNELS, AND ON THE HOME VALUATION CODE OF CONDUCT AND THE APPRAISAL SUBCOMMITTEE.

(a) **IN GENERAL.**—The Government Accountability Office shall conduct a study on—

(1) the effectiveness and impact of—

(A) appraisal methods, including the cost approach, the comparative sales approach, the income approach, and others that may be available;

(B) appraisal valuation models, including licensed and certified appraisals, broker-priced opinions, and automated valuation models; and

(C) appraisal distribution channels, including appraisal management companies, independent appraisal operations within mortgage originators, and fee-for-service appraisers;

(2) the Home Valuation Code of Conduct; and

(3) the Appraisal Subcommittee’s functions pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(b) **STUDY.**—Not later than—

(1) 12 months after the date of enactment of this Act, the Government Accountability Office shall submit a study

Deadline.

to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives; and

(2) 90 days after the date of enactment of this Act, the Government Accountability Office shall provide a report on the status of the study and any preliminary findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Deadline.
Reports.

(c) CONTENT OF STUDY.—The study required by this section shall include an examination of the following:

(1) APPRAISAL APPROACHES, VALUATION MODELS, AND DISTRIBUTION CHANNELS.—

(A) The prevalence, alone or in combination, of certain appraisal approaches, models, and channels in purchase-money and refinance mortgage transactions.

(B) The accuracy of these approaches, models, and channels in assessing the property as collateral.

(C) Whether and how these approaches, models, and channels contributed to price speculation during the previous cycle.

(D) The costs to consumers of these approaches, models, and channels.

(E) The disclosure of fees to consumers in the appraisal process.

(F) To what extent the usage of these approaches, models, and channels may be influenced by a conflict of interest between the mortgage lender and the appraiser and the mechanism by which the lender selects and compensates the appraiser.

(G) The suitability of these approaches, models, and channels in rural versus urban areas.

(2) HOME VALUATION CODE OF CONDUCT (HVCC).—

(A) How the HVCC affects mortgage lenders' selection of appraisers.

(B) How the HVCC affects State regulation of appraisers and appraisal distribution channels.

(C) How the HVCC affects the quality and cost of appraisals and the length of time to obtain an appraisal.

(D) How the HVCC affects mortgage brokers, small businesses, and consumers.

(d) ADDITIONAL STUDY REQUIRED.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Government Accountability Office shall submit a study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Deadline.

(2) CONTENT OF ADDITIONAL STUDY.—The study required under paragraph (1) shall include—

(A) an examination of—

(i) the Appraisal Subcommittee's ability to monitor and enforce State and Federal certification requirements and standards, including by providing a summary with a statistical breakdown of enforcement actions taken during the last 10 years;

(ii) whether existing Federal financial institutions regulatory agency exemptions on appraisals for federally related transactions needs to be revised; and

(iii) whether new means of data collection, such as the establishment of a national repository, would benefit the Appraisal Subcommittee’s ability to perform its functions; and

(B) recommendations from this examination for administrative and legislative action at the Federal and State level.

Subtitle G—Mortgage Resolution and Modification

12 USC 5220b.

SEC. 1481. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

(A) the rental income generated by such properties;

and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of the enactment of this Act;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) COORDINATION.—The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(c) DEFINITION.—For purposes of this section, the term “multifamily properties” means a residential structure that consists of 5 or more dwelling units.

(d) PREVENTION OF QUALIFICATION FOR CRIMINAL APPLICANTS.—

(1) IN GENERAL.—No person shall be eligible to begin receiving assistance from the Making Home Affordable Program authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or any other mortgage assistance program authorized or funded by that Act, on or after 60 days after the date of the enactment of this Act, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following:

(A) Felony larceny, theft, fraud, or forgery.

(B) Money laundering.

(C) Tax evasion.

(2) PROCEDURES.—The Secretary shall establish procedures to ensure compliance with this subsection.

Time period.

(3) **REPORT.**—The Secretary shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the implementation of this provision. The report shall also describe the steps taken to implement this subsection.

SEC. 1482. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES. 12 USC 5219a.

(a) **NET PRESENT VALUE INPUT DATA.**—The Secretary of the Treasury (in this section referred to as the “Secretary”) shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) **WEB-BASED SITE FOR NPV CALCULATOR AND APPLICATION.**—

(1) **NPV CALCULATOR.**—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary’s methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) **DISCLOSURE.**—Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) **APPLICATION.**—The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) **PUBLIC AVAILABILITY OF NPV METHODOLOGY, COMPUTER MODEL, AND VARIABLES.**—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary’s methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all non-proprietary variables used in such net present value analysis.

SEC. 1483. PUBLIC AVAILABILITY OF INFORMATION OF MAKING HOME AFFORDABLE PROGRAM. 12 USC 5219b.

(a) **REVISIONS TO PROGRAM GUIDELINES.**—The Secretary of the Treasury (in this section referred to as the “Secretary”) shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the

Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

Deadlines. (b) PUBLIC AVAILABILITY.—Data shall be made available according to the following guidelines:

Reports. (1) Not more than 14 days after each monthly deadline
Web posting. for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall include the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

Records. (2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level.

Regulations. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant's name and identification number.

SEC. 1484. PROTECTING TENANTS AT FORECLOSURE EXTENSION AND CLARIFICATION.

The Protecting Tenants at Foreclosure Act is amended—

(1) in section 702 (12 U.S.C. 5220 note)—

(A) in subsection (a)(2), by striking “, as of the date of such notice of foreclosure”; and

(B) in subsection (c), by inserting after the period the following: “For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.”; and

(2) in section 704 (12 U.S.C. 5201 note), by striking “2012” and inserting “2014”.

Subtitle H—Miscellaneous Provisions

SEC. 1491. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.

(a) FINDINGS.—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae's and Freddie Mac's mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be “special affordable” loans made to borrowers with incomes less than 60 percent of an area's median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased \$175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately \$1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae's acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury

Department subsequently agreeing to purchase at least \$200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise's common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of \$5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

SEC. 1492. GAO STUDY REPORT ON GOVERNMENT EFFORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crack-down on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) REPORT.—

(1) IN GENERAL.—The Comptroller General shall submit a report to the Congress on the study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) SPECIFIC TOPICS.—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and

(C) the adequacy of financial resources that the Federal Government is allocating to—

(i) crackdown on loan modification and foreclosure rescue scams; and

(ii) the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues.

SEC. 1493. REPORTING OF MORTGAGE DATA BY STATE.

(a) IN GENERAL.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking “resulting” and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State for” after “modifications in”; and

(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.”.

Deadline.

SEC. 1494. STUDY OF EFFECT OF DRYWALL PRESENCE ON FORECLOSURES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of—

(1) the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007; and

(2) the availability of property insurance for residential structures in which such drywall is present.

(b) REPORT.—Not later than the expiration of the 120-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the study conducted under subsection (a) containing its findings, conclusions, and recommendations.

SEC. 1495. DEFINITION.

For purposes of this title, the term “designated transfer date” means the date established under section 1062 of this Act.

15 USC 1601
note.

SEC. 1496. EMERGENCY MORTGAGE RELIEF.

(a) EMERGENCY HOMEOWNERS’ RELIEF FUND.—Effective October 1, 2010, and notwithstanding any other provision of law, there is hereby made available to the Secretary of Housing and Urban Development such sums as are necessary to provide \$1,000,000,000 in assistance through the Emergency Homeowners’ Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act.

Effective date.
12 USC 2706
note.

(b) REAUTHORIZATION OF EMERGENCY MORTGAGE RELIEF PROGRAM.—Title I of the Emergency Housing Act of 1975 is amended—

(1) in section 103 (12 U.S.C. 2702)—

(A) in paragraph (2)—

(i) by striking “have indicated” and all that follows through “regulation of the holder” and insert “have certified”;

(ii) by striking “(such as the volume of delinquent loans in its portfolio)”;

(iii) by striking “, except that such statement” and all that follows through “purposes of this title”; and

(B) in paragraph (4), by inserting “or medical conditions” after “adverse economic conditions”;
(2) in section 104 (12 U.S.C. 2703)—

Determination.

(A) in subsection (b), by striking “, but such assistance” and all that follows through the period at the end and inserting the following: “. The amount of assistance provided to a homeowner under this title shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed \$50,000.”;

(B) in subsection (d), by striking “interest on a loan or advance” and all that follows through the end of the subsection and inserting the following: “(1) the rate of interest on any loan or advance of credit insured under this title shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this title. In establishing rates, terms and conditions for loans or advances of credit made under this title, the Secretary shall take into account a homeowner’s ability to repay such loan or advance of credit.”; and

(C) in subsection (e), by inserting after the period at the end of the first sentence the following: “Any eligible homeowner who receives a grant or an advance of credit under this title may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.”;

(3) in section 105 (12 U.S.C. 2704)—

(A) by striking subsection (b);

(B) in subsection (e)—

(i) by inserting “and emergency mortgage relief payments made under section 106” after “insured under this section”; and

(ii) by striking “\$1,500,000,000 at any one time” and inserting “\$3,000,000,000”;

(C) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(D) by adding at the end the following new subsection:

Guidelines.
Procedures.

“(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 106 based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 103(5).”;

12 USC 2706.

(4) in section 107—

(A) by striking “(a)”; and

(B) by striking subsection (b);

(5) in section 108 (12 U.S.C. 2707), by adding at the end the following new subsection:

“(d) **COVERAGE OF EXISTING PROGRAMS.**—The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this title.”;

Determination.

(6) in section 109 (12 U.S.C. 2708)—

(A) in the section heading, by striking “AUTHORIZATION AND”;

(B) by striking subsection (a);

(C) by striking “(b)”;

(D) by striking “1977” and inserting “2011”;

(7) by striking sections 110, 111, and 113 (12 U.S.C. 2709, 2710, 2712); and

(8) by redesignating section 112 (12 U.S.C. 2711) as section 110.

SEC. 1497. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD STABILIZATION PROGRAM.

42 USC 5301
note.

(a) **IN GENERAL.**—Effective October 1, 2010, out of funds in the Treasury not otherwise appropriated, there is hereby made available to the Secretary of Housing and Urban Development \$1,000,000,000, and the Secretary of Housing and Urban Development shall use such amounts for assistance to States and units of general local government for the redevelopment of abandoned and foreclosed homes, in accordance with the same provisions applicable under the second undesignated paragraph under the heading “Community Planning and Development—Community Development Fund” in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 217) to amounts made available under such second undesignated paragraph, except as follows:

Effective date.
State and local
governments.

(1) Notwithstanding the matter of such second undesignated paragraph that precedes the first proviso, amounts made available by this section shall remain available until expended.

(2) The 3rd, 4th, 5th, 6th, 7th, and 15th provisos of such second undesignated paragraph shall not apply to amounts made available by this section.

(3) Amounts made available by this section shall be allocated based on a funding formula for such amounts established by the Secretary in accordance with section 2301(b) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301 note), except that—

(A) notwithstanding paragraph (2) of such section 2301(b), the formula shall be established not later than 30 days after the date of the enactment of this Act;

Deadline.

(B) notwithstanding such section 2301(b), each State shall receive, at a minimum, not less than 0.5 percent of funds made available under this section;

(C) the Secretary may establish a minimum grant amount for direct allocations to units of general local government located within a State, which shall not exceed \$1,000,000;

(D) each State and local government receiving grant amounts shall establish procedures to create preferences

Procedures.

for the development of affordable rental housing for properties assisted with amounts made available by this section; and

(E) the Secretary may use not more than 2 percent of the funds made available under this section for technical assistance to grantees.

(4) Paragraph (1) of section 2301(c) of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

Applicability.

(5) The fourth proviso from the end of such second undesignated paragraph shall be applied to amounts made available by this section by substituting “2013” for “2012”.

Definition.

(6) Notwithstanding section 2301(a) of the Housing and Economic Recovery Act of 2008, the term “State” means any State, as defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302), and the District of Columbia, for purposes of this section and this title, as applied to amounts made available by this section.

Election violations.

(7)(A) None of the amounts made available by this section shall be distributed to—

(i) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(ii) any organization which employs applicable individuals.

Definition.

(B) In this paragraph, the term “applicable individual” means an individual who—

(i) is—

(I) employed by the organization in a permanent or temporary capacity;

(II) contracted or retained by the organization; or

(III) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been convicted for a violation under Federal law relating to an election for Federal office.

(8) An eligible entity receiving a grant under this section shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity, as such term is defined by the Secretary, of projects funded under this section or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects.

(b) ADDITIONAL AMENDMENTS.—

42 USC 5301 note.

(1) SECTION 2301.—Section 2301(f)(3)(A)(ii) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301(f)(3)(A)(ii))—

(A) is amended by striking “for the purchase and redevelopment of abandoned and foreclosed upon homes or residential properties that will be used”; and

Applicability.

(B) shall apply with respect to any unexpended or unobligated balances, including recaptured and reallocated funds made available under this Act, section 2301 of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301), and the heading “Community Planning and Development—Community Development Fund” in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 217).

(2) NOTICE OF FORECLOSURE.—For any amounts made available under this section, under division B, title III of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301), or under the heading “Community Planning and Development—Community Development Fund” in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 217), the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

SEC. 1498. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED ISSUES.

Grants.
12 USC 1701x-2.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development (hereafter in this section referred to as the “Secretary”) shall establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) COMPETITIVE ALLOCATION.—The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection “State and local legal organizations” are those State and local organizations whose primary business or mission is to provide legal assistance.

States and local
organizations.

(c) PRIORITY TO CERTAIN AREAS.—In allocating amounts in accordance with subsection (b), the Secretary shall give priority consideration to State and local legal organizations that are operating in the 125 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—

(A) homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and

(B) tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides.

(2) COMMENCE USE WITHIN 90 DAYS.—Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

(3) PROHIBITION ON CLASS ACTIONS.—No funds provided to a State or local legal organization under this section may be used to support any class action litigation.

(4) LIMITATION ON LEGAL ASSISTANCE.—Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or nonjudicial.

(5) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, this subsection shall take effect on the date of the enactment of this Act.

Election
violations.

(e) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

(1) IN GENERAL.—None of the amounts made available under this section shall be distributed to—

(A) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(2) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subsection, the term “applicable individual” means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been convicted for a violation under Federal law relating to an election for Federal office.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$35,000,000 for each of fiscal years 2011 through 2012 for grants under this section.

TITLE XV—MISCELLANEOUS PROVISIONS

SEC. 1501. RESTRICTIONS ON USE OF UNITED STATES FUNDS FOR FOREIGN GOVERNMENTS; PROTECTION OF AMERICAN TAXPAYERS.

The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end the following:

22 USC 286tt.

“SEC. 68. RESTRICTIONS ON USE OF UNITED STATES FUNDS FOR FOR- EIGN GOVERNMENTS; PROTECTION OF AMERICAN TAX- PAYERS.

“(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund—

“(1) to evaluate, prior to consideration by the Board of Executive Directors of the Fund, any proposal submitted to the Board for the Fund to make a loan to a country if—

“(A) the amount of the public debt of the country exceeds the gross domestic product of the country as of the most recent year for which such information is available; and

“(B) the country is not eligible for assistance from the International Development Association.

“(2) OPPOSITION TO LOANS UNLIKELY TO BE REPAID IN FULL.—If any such evaluation indicates that the proposed loan is not likely to be repaid in full, the Secretary of the Treasury shall instruct the United States Executive Director at the Fund to use the voice and vote of the United States to oppose the proposal.

“(b) REPORTS TO CONGRESS.—Within 30 days after the Board of Executive Directors of the Fund approves a proposal described in subsection (a), and annually thereafter by June 30, for the

duration of any program approved under such proposals, the Secretary of the Treasury shall report in writing to the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate assessing the likelihood that loans made pursuant to such proposals will be repaid in full, including—

“(1) the borrowing country’s current debt status, including, to the extent possible, its maturity structure, whether it has fixed or floating rates, whether it is indexed, and by whom it is held;

“(2) the borrowing country’s external and internal vulnerabilities that could potentially affect its ability to repay; and

“(3) the borrowing country’s debt management strategy.”.

SEC. 1502. CONFLICT MINERALS.

(a) SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

(b) DISCLOSURE RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following new subsection:

“(p) DISCLOSURES RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—

“(1) REGULATIONS.—

“(A) IN GENERAL.—Not later than 270 days after the date of the enactment of this subsection, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person’s first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

“(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

15 USC 78m
note.

Deadlines.
Effective date.
Reports.

“(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free (‘DRC conflict free’ is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

“(B) CERTIFICATION.—The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

“(C) UNRELIABLE DETERMINATION.—If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

“(D) DRC CONFLICT FREE.—For purposes of this paragraph, a product may be labeled as ‘DRC conflict free’ if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

Web posting.

“(E) INFORMATION AVAILABLE TO THE PUBLIC.—Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

“(2) PERSON DESCRIBED.—A person is described in this paragraph if—

“(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

“(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

President.
Determination.

“(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

“(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

Publication.

“(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

President.
Determination.
Certification.

“(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than

the date that is one day after the end of the 5-year period beginning on the date of the enactment of this subsection, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

“(5) DEFINITIONS.—For purposes of this subsection, the terms ‘adjoining country’, ‘appropriate congressional committees’, ‘armed group’, and ‘conflict mineral’ have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”.

(c) STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.—

(1) STRATEGY.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products. Deadline.

(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

(iii) A description of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations in the Democratic Republic of the Congo.

(2) MAP.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall, in accordance with the recommendation of the United Deadline.

Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

(III) local and international nongovernmental organizations;

Public
information.

(ii) make such map available to the public; and
(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the “Conflict Minerals Map”, and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as “Conflict Zone Mines”.

Deadline.

(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

Notice.
Deadline.

(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502, as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

(d) REPORTS.—

(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act and annually thereafter until the termination of the disclosure requirements under section 13(p) of the Securities Exchange Act of 1934, the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that includes the following:

(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

(C)(i) A general review of persons described in clause

(ii) and whether information is publicly available about—

(I) the use of conflict minerals by such persons;

and

(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

(ii) A person is described in this clause if—

(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934, as added by subsection (b); and

(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934.

(B) Recommendations for the processes used to carry out such audits, including ways to—

(i) improve the accuracy of such audits; and

(ii) establish standards of best practices.

(C) A listing of all known conflict mineral processing facilities worldwide.

(e) DEFINITIONS.—For purposes of this section:

(1) ADJOINING COUNTRY.—The term “adjoining country”, with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) ARMED GROUP.—The term “armed group” means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating

to the Democratic Republic of the Congo or an adjoining country.

(4) **CONFLICT MINERAL.**—The term “conflict mineral” means—

(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

(5) **UNDER THE CONTROL OF ARMED GROUPS.**—The term “under the control of armed groups” means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country.

15 USC 78m-2.

SEC. 1503. REPORTING REQUIREMENTS REGARDING COAL OR OTHER MINE SAFETY.

(a) **REPORTING MINE SAFETY INFORMATION.**—Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:

(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

(G) the total number of mining-related fatalities.

(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.—

Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8-K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

Effective date.

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.

(d) COMMISSION AUTHORITY.—

(1) ENFORCEMENT.—A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.

(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

(e) DEFINITIONS.—In this section—

(1) the terms “issuer” and “securities laws” have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term “coal or other mine” means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

(3) the term “operator” has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(f) EFFECTIVE DATE.—This section shall take effect on the day that is 30 days after the date of enactment of this Act.

SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

“(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘commercial development of oil, natural gas, or minerals’ includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

“(B) the term ‘foreign government’ means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

“(C) the term ‘payment’—

“(i) means a payment that is—

“(I) made to further the commercial development of oil, natural gas, or minerals; and

“(II) not de minimis; and

“(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

“(D) the term ‘resource extraction issuer’ means an issuer that—

“(i) is required to file an annual report with the Commission; and

“(ii) engages in the commercial development of oil, natural gas, or minerals;

“(E) the term ‘interactive data format’ means an electronic data format in which pieces of information are identified using an interactive data standard; and

“(F) the term ‘interactive data standard’ means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

“(2) DISCLOSURE.—

“(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource

Deadline.
Regulations.
Reports.

extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

“(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

“(ii) the type and total amount of such payments made to each government.

“(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

“(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

“(D) INTERACTIVE DATA STANDARD.—

“(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

“(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

“(I) the total amounts of the payments, by category;

“(II) the currency used to make the payments;

“(III) the financial period in which the payments were made;

“(IV) the business segment of the resource extraction issuer that made the payments;

“(V) the government that received the payments, and the country in which the government is located;

“(VI) the project of the resource extraction issuer to which the payments relate; and

“(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

“(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

“(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

“(3) PUBLIC AVAILABILITY OF INFORMATION.—

Web posting.

“(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

“(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.”.

SEC. 1505. STUDY BY THE COMPTROLLER GENERAL.

Deadline.
Reports.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall issue a report assessing the relative independence, effectiveness, and expertise of presidentially appointed inspectors general and inspectors general of designated Federal entities, as such term is defined under section 8G of the Inspector General Act of 1978, and the effects on independence of the amendments to the Inspector General Act of 1978 made by this Act.

(b) REPORT.—The report required by subsection (a) shall be issued to the Committees on Financial Services and Oversight and Government Reform of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Homeland Security and Governmental Affairs of the Senate.

SEC. 1506. STUDY ON CORE DEPOSITS AND BROKERED DEPOSITS.

(a) STUDY.—The Corporation shall conduct a study to evaluate—

(1) the definition of core deposits for the purpose of calculating the insurance premiums of banks;

(2) the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them;

(3) an assessment of the differences between core deposits and brokered deposits and their role in the economy and banking sector of the United States;

(4) the potential stimulative effect on local economies of redefining core deposits; and

(5) the competitive parity between large institutions and community banks that could result from redefining core deposits.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Corporation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study under subsection (a) that includes legislative recommendations, if any, to address concerns arising in connection with the definitions of core deposits and brokered deposits.

TITLE XVI—SECTION 1256 CONTRACTS**SEC. 1601. CERTAIN SWAPS, ETC., NOT TREATED AS SECTION 1256 CONTRACTS.**

(a) **IN GENERAL.**—Subsection (b) of section 1256 of the Internal Revenue Code of 1986 is amended—

26 USC 1256.

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and by indenting such subparagraphs (as so redesignated) accordingly,

(2) by striking “For purposes of” and inserting the following:

“(1) **IN GENERAL.**—For purposes of”, and

(3) by striking the last sentence and inserting the following new paragraph:

“(2) **EXCEPTIONS.**—The term ‘section 1256 contract’ shall not include—

“(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

“(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 1256
note.

Approved July 21, 2010.

LEGISLATIVE HISTORY—H.R. 4173 (S. 3217):

HOUSE REPORTS: No. 111–517 (Comm. of Conference).

SENATE REPORTS: No. 111–176 (Comm. on Banking, Housing, and Urban Affairs) accompanying S. 3217.

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 9–11, considered and passed House.

Vol. 156 (2010): May 20, considered and passed Senate, amended, in lieu of S. 3217.

June 30, House agreed to conference report.

July 13, 15, Senate considered and agreed to conference report.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

July 21, Presidential remarks.



Public Law 111–204
111th Congress

An Act

July 22, 2010
[S. 1508]

To amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars.

Improper
Payments
Elimination and
Recovery Act of
2010.
31 USC 3301
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Improper Payments Elimination and Recovery Act of 2010”.

SEC. 2. IMPROPER PAYMENTS ELIMINATION AND RECOVERY.

(a) **SUSCEPTIBLE PROGRAMS AND ACTIVITIES.**—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended by striking subsection (a) and inserting the following:

“(a) **IDENTIFICATION OF SUSCEPTIBLE PROGRAMS AND ACTIVITIES.**—

Guidelines.

“(1) **IN GENERAL.**—The head of each agency shall, in accordance with guidance prescribed by the Director of the Office of Management and Budget, periodically review all programs and activities that the relevant agency head administers and identify all programs and activities that may be susceptible to significant improper payments.

Deadline.

“(2) **FREQUENCY.**—Reviews under paragraph (1) shall be performed for each program and activity that the relevant agency head administers during the year after which the Improper Payments Elimination and Recovery Act of 2010 is enacted and at least once every 3 fiscal years thereafter. For those agencies already performing a risk assessment every 3 years, agencies may apply to the Director of the Office of Management and Budget for a waiver from the requirement of the preceding sentence and continue their 3-year risk assessment cycle.

“(3) **RISK ASSESSMENTS.**—

“(A) **DEFINITION.**—In this subsection the term ‘significant’ means—

“(i) except as provided under clause (ii), that improper payments in the program or activity in the preceding fiscal year may have exceeded—

“(I) \$10,000,000 of all program or activity payments made during that fiscal year reported and 2.5 percent of program outlays; or

“(II) \$100,000,000; and

“(ii) with respect to fiscal years following September 30th of a fiscal year beginning before fiscal year 2013 as determined by the Office of Management

and Budget, that improper payments in the program or activity in the preceding fiscal year may have exceeded—

“(I) \$10,000,000 of all program or activity payments made during that fiscal year reported and 1.5 percent of program outlays; or

“(II) \$100,000,000.

“(B) SCOPE.—In conducting the reviews under paragraph (1), the head of each agency shall take into account those risk factors that are likely to contribute to a susceptibility to significant improper payments, such as—

“(i) whether the program or activity reviewed is new to the agency;

“(ii) the complexity of the program or activity reviewed;

“(iii) the volume of payments made through the program or activity reviewed;

“(iv) whether payments or payment eligibility decisions are made outside of the agency, such as by a State or local government;

“(v) recent major changes in program funding, authorities, practices, or procedures;

“(vi) the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate; and

“(vii) significant deficiencies in the audit report of the agency or other relevant management findings that might hinder accurate payment certification.”.

(b) ESTIMATION OF IMPROPER PAYMENTS.—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended by striking subsection (b) and inserting the following:

“(b) ESTIMATION OF IMPROPER PAYMENTS.—With respect to each program and activity identified under subsection (a), the head of the relevant agency shall—

“(1) produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of the Office of Management and Budget, of the improper payments made by each program and activity; and

“(2) include those estimates in the accompanying materials to the annual financial statement of the agency required under section 3515 of title 31, United States Code, or similar provision of law and applicable guidance of the Office of Management and Budget.”.

(c) REPORTS ON ACTIONS TO REDUCE IMPROPER PAYMENTS.—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended by striking subsection (c) and inserting the following:

“(c) REPORTS ON ACTIONS TO REDUCE IMPROPER PAYMENTS.—With respect to any program or activity of an agency with estimated improper payments under subsection (b), the head of the agency shall provide with the estimate under subsection (b) a report on what actions the agency is taking to reduce improper payments, including—

“(1) a description of the causes of the improper payments, actions planned or taken to correct those causes, and the

planned or actual completion date of the actions taken to address those causes;

“(2) in order to reduce improper payments to a level below which further expenditures to reduce improper payments would cost more than the amount such expenditures would save in prevented or recovered improper payments, a statement of whether the agency has what is needed with respect to—

“(A) internal controls;

“(B) human capital; and

“(C) information systems and other infrastructure;

“(3) if the agency does not have sufficient resources to establish and maintain effective internal controls under paragraph (2)(A), a description of the resources the agency has requested in its budget submission to establish and maintain such internal controls;

“(4) program-specific and activity-specific improper payments reduction targets that have been approved by the Director of the Office of Management and Budget; and

“(5) a description of the steps the agency has taken to ensure that agency managers, programs, and, where appropriate, States and localities are held accountable through annual performance appraisal criteria for—

“(A) meeting applicable improper payments reduction targets; and

“(B) establishing and maintaining sufficient internal controls, including an appropriate control environment, that effectively—

“(i) prevent improper payments from being made;

and

“(ii) promptly detect and recover improper payments that are made.”.

(d) REPORTS ON ACTIONS TO RECOVER IMPROPER PAYMENTS.—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (d) and (f) as subsections (f) and (g), respectively; and

(3) by inserting after subsection (c) the following:

“(d) REPORTS ON ACTIONS TO RECOVER IMPROPER PAYMENTS.—With respect to any improper payments identified in recovery audits conducted under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note), the head of the agency shall provide with the estimate under subsection (b) a report on all actions the agency is taking to recover improper payments, including—

“(1) a discussion of the methods used by the agency to recover overpayments;

“(2) the amounts recovered, outstanding, and determined to not be collectable, including the percent such amounts represent of the total overpayments of the agency;

“(3) if a determination has been made that certain overpayments are not collectable, a justification of that determination;

“(4) an aging schedule of the amounts outstanding;

“(5) a summary of how recovered amounts have been disposed of;

“(6) a discussion of any conditions giving rise to improper payments and how those conditions are being resolved; and

“(7) if the agency has determined under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note) that performing recovery audits for any applicable program or activity is not cost-effective, a justification for that determination.

“(e) GOVERNMENTWIDE REPORTING OF IMPROPER PAYMENTS AND ACTIONS TO RECOVER IMPROPER PAYMENTS.—

“(1) REPORT.—Each fiscal year the Director of the Office of Management and Budget shall submit a report with respect to the preceding fiscal year on actions agencies have taken to report information regarding improper payments and actions to recover improper overpayments to—

“(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(B) the Committee on Oversight and Government Reform of the House of Representatives.

“(2) CONTENTS.—Each report under this subsection shall include—

“(A) a summary of the reports of each agency on improper payments and recovery actions submitted under this section;

“(B) an identification of the compliance status of each agency to which this Act applies;

“(C) governmentwide improper payment reduction targets; and

“(D) a discussion of progress made towards meeting governmentwide improper payment reduction targets.”

(e) DEFINITIONS.—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended by striking subsections (f) (as redesignated by this section) and inserting the following:

“(f) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ means an executive agency, as that term is defined in section 102 of title 31, United States Code.

“(2) IMPROPER PAYMENT.—The term ‘improper payment’—

“(A) means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

“(B) includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts.

“(3) PAYMENT.—The term ‘payment’ means any transfer or commitment for future transfer of Federal funds such as cash, securities, loans, loan guarantees, and insurance subsidies to any non-Federal person or entity, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.

“(4) PAYMENT FOR AN INELIGIBLE GOOD OR SERVICE.—The term ‘payment for an ineligible good or service’ shall include a payment for any good or service that is rejected under any

provision of any contract, grant, lease, cooperative agreement, or any other funding mechanism.”.

(f) GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended by striking subsection (g) (as redesignated by this section) and inserting the following:

Deadline.

“(g) GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Improper Payments Elimination and Recovery Act of 2010, the Director of the Office of Management and Budget shall prescribe guidance for agencies to implement the requirements of this section. The guidance shall not include any exemptions to such requirements not specifically authorized by this section.

“(2) CONTENTS.—The guidance under paragraph (1) shall prescribe—

“(A) the form of the reports on actions to reduce improper payments, recovery actions, and governmentwide reporting; and

“(B) strategies for addressing risks and establishing appropriate prepayment and postpayment internal controls.”.

31 USC 3321
note.
Deadline.
Criteria.

(g) DETERMINATIONS OF AGENCY READINESS FOR OPINION ON INTERNAL CONTROL.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Management and Budget shall develop—

(1) specific criteria as to when an agency should initially be required to obtain an opinion on internal control over improper payments; and

(2) criteria for an agency that has demonstrated a stabilized, effective system of internal control over improper payments, whereby the agency would qualify for a multiyear cycle for obtaining an audit opinion on internal control over improper payments, rather than an annual cycle.

31 USC 3321
note.

(h) RECOVERY AUDITS.—

(1) DEFINITION.—In this subsection, the term “agency” has the meaning given under section 2(f) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) as redesignated by this Act.

(2) IN GENERAL.—

(A) CONDUCT OF AUDITS.—Except as provided under paragraph (4) and if not prohibited under any other provision of law, the head of each agency shall conduct recovery audits with respect to each program and activity of the agency that expends \$1,000,000 or more annually if conducting such audits would be cost-effective.

(B) PROCEDURES.—In conducting recovery audits under this subsection, the head of an agency—

(i) shall give priority to the most recent payments and to payments made in any program or programs identified as susceptible to significant improper payments under section 2(a) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note);

(ii) shall implement this subsection in a manner designed to ensure the greatest financial benefit to the Government; and

(iii) may conduct recovery audits directly, by using other departments and agencies of the United States, or by procuring performance of recovery audits by private sector sources by contract (subject to the availability of appropriations), or by any combination thereof.

(C) RECOVERY AUDIT CONTRACTS.—With respect to recovery audits procured by an agency by contract—

(i) subject to subparagraph (B)(iii), and except to the extent such actions are outside the agency's authority, as defined by section 605(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605(a)), the head of the agency may authorize the contractor to notify entities (including persons) of potential overpayments made to such entities, respond to questions concerning potential overpayments, and take other administrative actions with respect to overpayment claims made or to be made by the agency; and

(ii) such contractor shall have no authority to make final determinations relating to whether any overpayment occurred and whether to compromise, settle, or terminate overpayment claims.

(D) CONTRACT TERMS AND CONDITIONS.—

(i) IN GENERAL.—The agency shall include in each contract for procurement of performance of a recovery audit a requirement that the contractor shall—

(I) provide to the agency periodic reports on conditions giving rise to overpayments identified by the contractor and any recommendations on how to mitigate such conditions;

Reports.

(II) notify the agency of any overpayments identified by the contractor pertaining to the agency or to any other agency or agencies that are beyond the scope of the contract; and

Notification.

(III) report to the agency credible evidence of fraud or vulnerabilities to fraud, and conduct appropriate training of personnel of the contractor on identification of fraud.

(ii) REPORTS ON ACTIONS TAKEN.—Not later than November 1 of each year, each agency shall submit a report on actions taken by the agency during the preceding fiscal year to address the recommendations described under clause (i)(I) to—

(I) the Office of Management and Budget; and

(II) Congress.

(E) AGENCY ACTION FOLLOWING NOTIFICATION.—An agency shall take prompt and appropriate action in response to a report or notification by a contractor under subparagraph (D)(i)(I) or (II), to collect overpayments and shall forward to other agencies any information that applies to such agencies.

(3) DISPOSITION OF AMOUNTS RECOVERED.—

(A) IN GENERAL.—Amounts collected by agencies each fiscal year through recovery audits conducted under this subsection shall be treated in accordance with this paragraph. The agency head shall determine the distribution of collected amounts, less amounts needed to fulfill the

Determination.

purposes of section 3562(a) of title 31, United States Code, in accordance with subparagraphs (B), (C), and (D).

(B) USE FOR FINANCIAL MANAGEMENT IMPROVEMENT PROGRAM.—Not more than 25 percent of the amounts collected by an agency through recovery audits—

(i) shall be available to the head of the agency to carry out the financial management improvement program of the agency under paragraph (4);

(ii) may be credited, if applicable, for that purpose by the head of an agency to any agency appropriations and funds that are available for obligation at the time of collection; and

(iii) shall be used to supplement and not supplant any other amounts available for that purpose and shall remain available until expended.

(C) USE FOR ORIGINAL PURPOSE.—Not more than 25 percent of the amounts collected by an agency—

(i) shall be credited to the appropriation or fund, if any, available for obligation at the time of collection for the same general purposes as the appropriation or fund from which the overpayment was made;

(ii) shall remain available for the same period and purposes as the appropriation or fund to which credited; and

(iii) if the appropriation from which the overpayment was made has expired, shall be newly available for the same time period as the funds were originally available for obligation, except that any amounts that are recovered more than five fiscal years from the last fiscal year in which the funds were available for obligation shall be deposited in the Treasury as miscellaneous receipts, except that in the case of recoveries of overpayments that are made from trust or special fund accounts, such amounts shall revert to those accounts.

(D) USE FOR INSPECTOR GENERAL ACTIVITIES.—Not more than 5 percent of the amounts collected by an agency shall be available to the Inspector General of that agency—

(i) for—

(I) the Inspector General to carry out this Act; or

(II) any other activities of the Inspector General relating to investigating improper payments or auditing internal controls associated with payments; and

(ii) shall remain available for the same period and purposes as the appropriation or fund to which credited.

(E) REMAINDER.—Amounts collected that are not applied in accordance with subparagraph (A), (B), (C), or (D) shall be deposited in the Treasury as miscellaneous receipts, except that in the case of recoveries of overpayments that are made from trust or special fund accounts, such amounts shall revert to those accounts.

(F) DISCRETIONARY AMOUNTS.—This paragraph shall apply only to recoveries of overpayments that are made from discretionary appropriations (as that term is defined

Applicability.

by paragraph 7 of section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985) and shall not apply to recoveries of overpayments that are made from discretionary amounts that were appropriated prior to enactment of this Act.

(G) APPLICATION.—This paragraph shall not apply to recoveries of overpayments if the appropriation from which the overpayment was made has not expired.

(4) FINANCIAL MANAGEMENT IMPROVEMENT PROGRAM.—

(A) REQUIREMENT.—The head of each agency shall conduct a financial management improvement program, consistent with rules prescribed by the Director of the Office of Management and Budget.

Regulations.

(B) PROGRAM FEATURES.—In conducting the program, the head of the agency—

(i) shall, as the first priority of the program, address problems that contribute directly to agency improper payments; and

(ii) may seek to reduce errors and waste in other agency programs and operations.

(5) PRIVACY PROTECTIONS.—Any nongovernmental entity that, in the course of recovery auditing or recovery activity under this subsection, obtains information that identifies an individual or with respect to which there is a reasonable basis to believe that the information can be used to identify an individual, may not disclose the information for any purpose other than such recovery auditing or recovery activity and governmental oversight of such activity, unless disclosure for that other purpose is authorized by the individual to the executive agency that contracted for the performance of the recovery auditing or recovery activity.

(6) OTHER RECOVERY AUDIT REQUIREMENTS.—

(A) IN GENERAL.—(i) Except as provided in clause (ii), subchapter VI of chapter 35 of title 31, United States Code, is repealed.

Repeal.
31 USC 3561
et seq.

(ii) Section 3562(a) of title 31, United States Code, shall continue in effect, except that references in such section 3562(a) to programs carried out under section 3561 of such title, shall be interpreted to mean programs carried out under section 2(h) of this Act.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) TABLE OF SECTIONS.—The table of sections for chapter 35 of title 31, United States Code, is amended by striking the matter relating to subchapter VI.

(ii) DEFINITION.—Section 3501 of title 31, United States Code, is amended by striking “and subchapter VI of this title”.

(iii) HOMELAND SECURITY GRANTS.—Section 2022(a)(6) of the Homeland Security Act of 2002 (6 U.S.C. 612(a)(6)) is amended by striking “(as that term is defined by the Director of the Office of Management and Budget under section 3561 of title 31, United States Code)” and inserting “under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note)”.

(7) RULE OF CONSTRUCTION.—Except as provided under paragraph (5), nothing in this section shall be construed as

terminating or in any way limiting authorities that are otherwise available to agencies under existing provisions of law to recover improper payments and use recovered amounts.

Study.

(i) REPORT ON RECOVERY AUDITING.—Not later than 2 years after the date of the enactment of this Act, the Chief Financial Officers Council established under section 302 of the Chief Financial Officers Act of 1990 (31 U.S.C. 901 note), in consultation with the Council of Inspectors General on Integrity and Efficiency established under section 7 of the Inspector General Reform Act of 2009 (Public Law 110–409) and recovery audit experts, shall conduct a study of—

(1) the implementation of subsection (h);
(2) the costs and benefits of agency recovery audit activities, including—

(A) those activities under subsection (h); and

(B) the effectiveness of using the services of—

(i) private contractors;

(ii) agency employees;

(iii) cross-servicing from other agencies; or

(iv) any combination of the provision of services described under clauses (i) through (iii); and

(3) submit a report on the results of the study to—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Oversight and Government Reform of the House of Representatives; and

(C) the Comptroller General.

31 USC 3321
note.

SEC. 3. COMPLIANCE.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term “agency” has the meaning given under section 2(f) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) as redesignated by this Act.

(2) ANNUAL FINANCIAL STATEMENT.—The term “annual financial statement” means the annual financial statement required under section 3515 of title 31, United States Code, or similar provision of law.

(3) COMPLIANCE.—The term “compliance” means that the agency—

(A) has published an annual financial statement for the most recent fiscal year and posted that report and any accompanying materials required under guidance of the Office of Management and Budget on the agency website;

(B) if required, has conducted a program specific risk assessment for each program or activity that conforms with section 2(a) the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note); and

(C) if required, publishes improper payments estimates for all programs and activities identified under section 2(b) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in the accompanying materials to the annual financial statement;

(D) publishes programmatic corrective action plans prepared under section 2(c) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) that the

agency may have in the accompanying materials to the annual financial statement;

(E) publishes improper payments reduction targets established under section 2(c) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) that the agency may have in the accompanying materials to the annual financial statement for each program assessed to be at risk, and is meeting such targets; and

(F) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 2(b) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

(b) ANNUAL COMPLIANCE REPORT BY INSPECTORS GENERAL OF AGENCIES.—Each fiscal year, the Inspector General of each agency shall determine whether the agency is in compliance and submit a report on that determination to—

Determination.

(1) the head of the agency;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and

(4) the Comptroller General.

(c) REMEDIATION.—

(1) NONCOMPLIANCE.—

(A) IN GENERAL.—If an agency is determined by the Inspector General of that agency not to be in compliance under subsection (b) in a fiscal year, the head of the agency shall submit a plan to Congress describing the actions that the agency will take to come into compliance.

Plans.

(B) PLAN.—The plan described under subparagraph (A) shall include—

(i) measurable milestones to be accomplished in order to achieve compliance for each program or activity;

(ii) the designation of a senior agency official who shall be accountable for the progress of the agency in coming into compliance for each program or activity; and

(iii) the establishment of an accountability mechanism, such as a performance agreement, with appropriate incentives and consequences tied to the success of the official designated under clause (ii) in leading the efforts of the agency to come into compliance for each program and activity.

(2) NONCOMPLIANCE FOR 2 FISCAL YEARS.—

(A) IN GENERAL.—If an agency is determined by the Inspector General of that agency not to be in compliance under subsection (b) for 2 consecutive fiscal years for the same program or activity, and the Director of the Office of Management and Budget determines that additional funding would help the agency come into compliance, the head of the agency shall obligate additional funding, in an amount determined by the Director, to intensified compliance efforts.

Determination.

(B) FUNDING.—In providing additional funding described under subparagraph (A), the head of an agency

Transfer authority.

shall use any reprogramming or transfer authority available to the agency. If after exercising that reprogramming or transfer authority additional funding is necessary to obligate the full level of funding determined by the Director of the Office of Management and Budget under subparagraph (A), the agency shall submit a request to Congress for additional reprogramming or transfer authority.

Deadline.

(3) REAUTHORIZATION AND STATUTORY PROPOSALS.—If an agency is determined by the Inspector General of that agency not to be in compliance under subsection (b) for more than 3 consecutive fiscal years for the same program or activity, the head of the agency shall, not later than 30 days after such determination, submit to Congress—

(A) reauthorization proposals for each program or activity that has not been in compliance for 3 or more consecutive fiscal years; or

(B) proposed statutory changes necessary to bring the program or activity into compliance.

(d) COMPLIANCE ENFORCEMENT PILOT PROGRAMS.—

(1) IN GENERAL.—The Director of the Office of Management and Budget may establish 1 or more pilot programs which shall test potential accountability mechanisms with appropriate incentives and consequences tied to success in ensuring compliance with this Act and eliminating improper payments.

(2) REPORT.—Not later than 5 years after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit a report to Congress on the findings associated with any pilot programs conducted under paragraph (1). The report shall include any legislative or other recommendations that the Director determines necessary.

(e) REPORT ON CHIEF FINANCIAL OFFICERS ACT OF 1990.—Not later than 1 year after the date of the enactment of this Act, the Chief Financial Officers Council established under section 302 of the Chief Financial Officers Act of 1990 (31 U.S.C. 901 note) and the Council of Inspectors General on Integrity and Efficiency established under section 7 of the Inspector General Reform Act of 2009 (Public Law 110-409), in consultation with a broad cross-section of experts and stakeholders in Government accounting and financial management shall—

(1) jointly examine the lessons learned during the first 20 years of implementing the Chief Financial Officers Act of 1990 (31 U.S.C. 901) and identify reforms or improvements, if any, to the legislative and regulatory compliance framework for Federal financial management that will optimize Federal agency efforts to—

Publication.

(A) publish relevant, timely, and reliable reports on Government finances; and

(B) implement internal controls that mitigate the risk for fraud, waste, and error in Government programs; and

(2) jointly submit a report on the results of the examination to—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Oversight and Government Reform of the House of Representatives; and

PUBLIC LAW 111–204—JULY 22, 2010

124 STAT. 2235

(C) the Comptroller General.

Approved July 22, 2010.

LEGISLATIVE HISTORY—S. 1508 (H.R. 3393):

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 23, considered and passed Senate.

July 14, considered and passed House.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

July 22, Presidential remarks.



Public Law 111–205
111th Congress

An Act

July 22, 2010
[H.R. 4213]

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Unemployment
Compensation
Extension Act of
2010.
26 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Unemployment Compensation Extension Act of 2010”.

SEC. 2. EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) IN GENERAL.—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking “June 2, 2010” each place it appears and inserting “November 30, 2010”;

(B) in the heading for subsection (b)(2), by striking “JUNE 2, 2010” and inserting “NOVEMBER 30, 2010”; and

(C) in subsection (b)(3), by striking “November 6, 2010” and inserting “April 30, 2011”.

(2) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking “June 2, 2010” each place it appears and inserting “December 1, 2010”; and

(B) in subsection (c), by striking “November 6, 2010” and inserting “May 1, 2011”.

(3) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “November 6, 2010” and inserting “April 30, 2011”.

(b) FUNDING.—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (D), by striking “and” at the end; and

(2) by inserting after subparagraph (E) the following:

“(F) the amendments made by section 2(a)(1) of the Unemployment Compensation Extension Act of 2010; and”.

(c) CONDITIONS FOR RECEIVING EMERGENCY UNEMPLOYMENT COMPENSATION.—Section 4001(d)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended, in the matter preceding subparagraph (A), by inserting before “shall apply” the following: “(including terms and conditions relating to availability for work, active search for work, and refusal to accept work)”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Continuing Extension Act of 2010 (Public Law 111–157). 26 USC 3304 note.

SEC. 3. COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.

(a) **CERTAIN INDIVIDUALS NOT INELIGIBLE BY REASON OF NEW ENTITLEMENT TO REGULAR BENEFITS.**—Section 4002 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended by adding at the end the following:

“(g) **COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.**— Determinations.

“(1) If—

“(A) an individual has been determined to be entitled to emergency unemployment compensation with respect to a benefit year,

“(B) that benefit year has expired,

“(C) that individual has remaining entitlement to emergency unemployment compensation with respect to that benefit year, and

“(D) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either \$100 or 25 percent less than the individual’s weekly benefit amount in the benefit year referred to in subparagraph (A),

then the State shall determine eligibility for compensation as provided in paragraph (2).

“(2) For individuals described in paragraph (1), the State shall determine whether the individual is to be paid emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

“(A) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

“(B) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this paragraph), until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

“(C) The State shall pay, if permitted by State law—

“(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

“(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

“(D) The State shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.”.

Applicability.
26 USC 3304
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to individuals whose benefit years, as described in section 4002(g)(1)(B) the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by this section, expire after the date of enactment of this Act.

SEC. 4. REQUIRING STATES TO NOT REDUCE REGULAR COMPENSATION IN ORDER TO BE ELIGIBLE FOR FUNDS UNDER THE EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

Section 4001 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended by adding at the end the following new subsection:

Determination.

“(g) **NONREDUCTION RULE.**—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

“(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement occurring on or after June 2, 2010 (determined disregarding any additional amounts attributable to the modification described in section 2002(b)(1) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438)), will be less than

“(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on June 2, 2010.”.

SEC. 5. BUDGETARY PROVISIONS.

(a) **STATUTORY PAYGO.**—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

(b) **EMERGENCY DESIGNATIONS.**—Sections 2 and 3—

(1) are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g));

(2) in the House of Representatives, are designated as an emergency for purposes of pay-as-you-go principles; and

(3) in the Senate, are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th

Congress), the concurrent resolution on the budget for fiscal year 2010.

Approved July 22, 2010.

LEGISLATIVE HISTORY—H.R. 4213:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 9, considered and passed House.

Vol. 156 (2010): Mar. 1–5, 8–10, considered and passed Senate, amended.

May 28, House concurred in Senate amendment with an amendment.

July 21, Senate concurred in House amendment with an amendment.

July 22, House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

July 22, Presidential statement.



Public Law 111–206
111th Congress

An Act

July 27, 2010
[H.R. 689]

Shasta-Trinity
National Forest
Administrative
Jurisdiction
Transfer Act.

To interchange the administrative jurisdiction of certain Federal lands between the Forest Service and the Bureau of Land Management, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shasta-Trinity National Forest Administrative Jurisdiction Transfer Act”.

SEC. 2. TRANSFER OF ADMINISTRATIVE JURISDICTION TO THE BUREAU OF LAND MANAGEMENT.

(a) **IN GENERAL.**—Administrative jurisdiction over the Federal land described in subsection (b) is transferred from the Secretary of Agriculture to the Secretary of the Interior.

(b) **DESCRIPTION OF LAND.**—The Federal land referred to in subsection (a) is the land within the Shasta-Trinity National Forest in California, Mount Diablo Meridian, as generally depicted on the map entitled “Shasta-Trinity Administrative Jurisdiction Transfer: Transfer from Forest Service to BLM, Map 1” and dated November 23, 2009.

(c) **MANAGEMENT AND STATUS OF TRANSFERRED LAND.**—The Federal land described in subsection (b) shall be administered in accordance with—

- (1) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and
- (2) any other applicable law (including regulations).

SEC. 3. TRANSFER OF ADMINISTRATIVE JURISDICTION TO THE FOREST SERVICE.

(a) **IN GENERAL.**—Administrative jurisdiction over the Federal land described in subsection (b) is transferred from the Secretary of the Interior to the Secretary of Agriculture.

(b) **DESCRIPTION OF LAND.**—The Federal land referred to in subsection (a) is the land administered by the Director of the Bureau of Land Management in the Mount Diablo Meridian, California, as generally depicted on the map entitled “Shasta-Trinity Administrative Jurisdiction Transfer: Transfer from BLM to Forest Service, Map 2” and dated November 23, 2009.

(c) **MANAGEMENT AND STATUS OF TRANSFERRED LAND.**—

- (1) **IN GENERAL.**—The Federal land described in subsection (b) shall be—
 - (A) withdrawn from the public domain;
 - (B) reserved for administration as part of the Shasta-Trinity National Forest; and

(C) managed in accordance with the laws (including the regulations) generally applicable to the National Forest System.

(2) WILDERNESS ADMINISTRATION.—The land transferred to the Secretary of Agriculture under subsection (a) that is within the Trinity Alps Wilderness shall—

(A) not affect the wilderness status of the transferred land; and

(B) be administered in accordance with—

(i) this section;

(ii) the Wilderness Act (16 U.S.C. 1131 et seq.); and

(iii) the California Wilderness Act of 1984 (16 U.S.C. 1132 note; Public Law 98–425).

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) CORRECTIONS.—

(1) MINOR ADJUSTMENTS.—The Secretary of Agriculture and the Secretary of the Interior may, by mutual agreement, make minor corrections and adjustments to the transfers under this Act to facilitate land management, including corrections and adjustments to any applicable surveys.

(2) PUBLICATIONS.—Any corrections or adjustments made under subsection (a) shall be effective on the date of publication of a notice of the corrections or adjustments in the Federal Register.

Effective date.
Notice.
Federal Register,
publication.

(b) HAZARDOUS SUBSTANCES.—

(1) NOTICE.—The Secretary of Agriculture and the Secretary of the Interior shall, with respect to the land described in sections 2(b) and 3(b), respectively—

(A) identify any known sites containing hazardous substances; and

(B) provide to the head of the Federal agency to which the land is being transferred notice of any sites identified under subparagraph (A).

(2) CLEANUP OBLIGATIONS.—To the same extent as on the day before the date of enactment of this Act, with respect to any Federal liability—

(A) the Secretary of Agriculture shall remain responsible for any cleanup of hazardous substances on the Federal land described in section 2(b); and

(B) the Secretary of the Interior shall remain responsible for any cleanup of hazardous substances on the Federal land described in section 3(b).

(c) EFFECT ON EXISTING RIGHTS AND AUTHORIZATIONS.—Nothing in this Act affects—

(1) any valid existing rights; or

(2) the validity or term and conditions of any existing withdrawal, right-of-way, easement, lease, license, or permit on the land to which administrative jurisdiction is transferred under this Act, except that beginning on the date of enactment of this Act, the head of the agency to which administrative jurisdiction over the land is transferred shall be responsible for administering the interests or authorizations (including

reissuing the interests or authorizations in accordance with applicable law).

Approved July 27, 2010.

LEGISLATIVE HISTORY—H.R. 689:

HOUSE REPORTS: No. 111–108 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–145 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): June 2, considered and passed House.

Vol. 156 (2010): May 7, considered and passed Senate, amended.
July 13, House concurred in Senate amendment.



Public Law 111–207
111th Congress

An Act

To amend title 46, United States Code, to establish requirements to ensure the security and safety of passengers and crew on cruise vessels, and for other purposes.

July 27, 2010
[H.R. 3360]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Cruise Vessel Security and Safety Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Cruise vessel security and safety requirements.
- Sec. 4. Offset of administrative costs.
- Sec. 5. Budgetary effects.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) There are approximately 200 overnight ocean-going cruise vessels worldwide. The average ocean-going cruise vessel carries 2,000 passengers with a crew of 950 people.

(2) In 2007 alone, approximately 12,000,000 passengers were projected to take a cruise worldwide.

(3) Passengers on cruise vessels have an inadequate appreciation of their potential vulnerability to crime while on ocean voyages, and those who may be victimized lack the information they need to understand their legal rights or to know whom to contact for help in the immediate aftermath of the crime.

(4) Sexual violence, the disappearance of passengers from vessels on the high seas, and other serious crimes have occurred during luxury cruises.

(5) Over the last 5 years, sexual assault and physical assaults on cruise vessels were the leading crimes investigated by the Federal Bureau of Investigation with regard to cruise vessel incidents.

(6) These crimes at sea can involve attacks both by passengers and crewmembers on other passengers and crewmembers.

(7) Except for United States flagged vessels, or foreign flagged vessels operating in an area subject to the direct jurisdiction of the United States, there are no Federal statutes or regulations that explicitly require cruise lines to report alleged crimes to United States Government officials.

(8) It is not known precisely how often crimes occur on cruise vessels or exactly how many people have disappeared

Cruise Vessel
Security and
Safety Act of
2010.
46 USC 101 note.

46 USC 3507
note.

during ocean voyages because cruise line companies do not make comprehensive, crime-related data readily available to the public.

(9) Obtaining reliable crime-related cruise data from governmental sources can be difficult, because multiple countries may be involved when a crime occurs on the high seas, including the flag country for the vessel, the country of citizenship of particular passengers, and any countries having special or maritime jurisdiction.

(10) It can be difficult for professional crime investigators to immediately secure an alleged crime scene on a cruise vessel, recover evidence of an onboard offense, and identify or interview potential witnesses to the alleged crime.

(11) Most cruise vessels that operate into and out of United States ports are registered under the laws of another country, and investigations and prosecutions of crimes against passengers and crewmembers may involve the laws and authorities of multiple nations.

(12) The Department of Homeland Security has found it necessary to establish 500-yard security zones around cruise vessels to limit the risk of terrorist attack. Recently piracy has dramatically increased throughout the world.

(13) To enhance the safety of cruise passengers, the owners of cruise vessels could upgrade, modernize, and retrofit the safety and security infrastructure on such vessels by installing peep holes in passenger room doors, installing security video cameras in targeted areas, limiting access to passenger rooms to select staff during specific times, and installing acoustic hailing and warning devices capable of communicating over distances.

SEC. 3. CRUISE VESSEL SECURITY AND SAFETY REQUIREMENTS.

(a) IN GENERAL.—Chapter 35 of title 46, United States Code, is amended by adding at the end the following:

“§ 3507. Passenger vessel security and safety requirements

“(a) VESSEL DESIGN, EQUIPMENT, CONSTRUCTION, AND RETROFITTING REQUIREMENTS.—

“(1) IN GENERAL.—Each vessel to which this subsection applies shall comply with the following design and construction standards:

“(A) The vessel shall be equipped with ship rails that are located not less than 42 inches above the cabin deck.

“(B) Each passenger stateroom and crew cabin shall be equipped with entry doors that include peep holes or other means of visual identification.

“(C) For any vessel the keel of which is laid after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, each passenger stateroom and crew cabin shall be equipped with—

“(i) security latches; and

“(ii) time-sensitive key technology.

“(D) The vessel shall integrate technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard, to the extent that such technology is available.

“(E) The vessel shall be equipped with a sufficient number of operable acoustic hailing or other such warning devices to provide communication capability around the entire vessel when operating in high risk areas (as defined by the United States Coast Guard).

“(2) FIRE SAFETY CODES.—In administering the requirements of paragraph (1)(C), the Secretary shall take into consideration fire safety and other applicable emergency requirements established by the U. S. Coast Guard and under international law, as appropriate.

“(3) EFFECTIVE DATE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall take effect 18 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010.

“(B) LATCH AND KEY REQUIREMENTS.—The requirements of paragraph (1)(C) take effect on the date of enactment of the Cruise Vessel Security and Safety Act of 2010.

“(b) VIDEO RECORDING.—

“(1) REQUIREMENT TO MAINTAIN SURVEILLANCE.—The owner of a vessel to which this section applies shall maintain a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes, as determined by the Secretary.

“(2) ACCESS TO VIDEO RECORDS.—The owner of a vessel to which this section applies shall provide to any law enforcement official performing official duties in the course and scope of an investigation, upon request, a copy of all records of video surveillance that the official believes may provide evidence of a crime reported to law enforcement officials.

“(c) SAFETY INFORMATION.—

“(1) CRIMINAL ACTIVITY PREVENTION AND RESPONSE GUIDE.—The owner of a vessel to which this section applies (or the owner’s designee) shall—

“(A) have available for each passenger a guide (referred to in this subsection as the ‘security guide’), written in commonly understood English, which—

“(i) provides a description of medical and security personnel designated on board to prevent and respond to criminal and medical situations with 24 hour contact instructions;

(ii) describes the jurisdictional authority applicable, and the law enforcement processes available, with respect to the reporting of homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, any offense to which section 2241, 2242, 2243, or 2244(a) or (c) of title 18 applies, firing or tampering with the vessel, or theft of money or property in excess of \$10,000, together with contact information for the appropriate law enforcement authorities for missing persons or reportable crimes which arise—

“(I) in the territorial waters of the United States;

“(II) on the high seas; or

“(III) in any country to be visited on the voyage;

Web posting.

“(B) provide a copy of the security guide to the Federal Bureau of Investigation for comment; and

“(C) publicize the security guide on the website of the vessel owner.

“(2) EMBASSY AND CONSULATE LOCATIONS.—The owner of a vessel to which this section applies shall provide in each passenger stateroom, and post in a location readily accessible to all crew and in other places specified by the Secretary, information regarding the locations of the United States embassy and each consulate of the United States for each country the vessel will visit during the course of the voyage.

“(d) SEXUAL ASSAULT.—The owner of a vessel to which this section applies shall—

“(1) maintain on the vessel adequate, in-date supplies of anti-retroviral medications and other medications designed to prevent sexually transmitted diseases after a sexual assault;

“(2) maintain on the vessel equipment and materials for performing a medical examination in sexual assault cases to evaluate the patient for trauma, provide medical care, and preserve relevant medical evidence;

“(3) make available on the vessel at all times medical staff who have undergone a credentialing process to verify that he or she—

“(A) possesses a current physician’s or registered nurse’s license and—

“(i) has at least 3 years of post-graduate or post-registration clinical practice in general and emergency medicine; or

“(ii) holds board certification in emergency medicine, family practice medicine, or internal medicine;

“(B) is able to provide assistance in the event of an alleged sexual assault, has received training in conducting forensic sexual assault examination, and is able to promptly perform such an examination upon request and provide proper medical treatment of a victim, including administration of anti-retroviral medications and other medications that may prevent the transmission of human immunodeficiency virus and other sexually transmitted diseases; and

“(C) meets guidelines established by the American College of Emergency Physicians relating to the treatment and care of victims of sexual assault;

“(4) prepare, provide to the patient, and maintain written documentation of the findings of such examination that is signed by the patient; and

“(5) provide the patient free and immediate access to—

“(A) contact information for local law enforcement, the Federal Bureau of Investigation, the United States Coast Guard, the nearest United States consulate or embassy, and the National Sexual Assault Hotline program or other third party victim advocacy hotline service; and

“(B) a private telephone line and Internet-accessible computer terminal by which the individual may confidentially access law enforcement officials, an attorney, and the information and support services available through the National Sexual Assault Hotline program or other third party victim advocacy hotline service.

“(e) CONFIDENTIALITY OF SEXUAL ASSAULT EXAMINATION AND SUPPORT INFORMATION.—The master or other individual in charge of a vessel to which this section applies shall—

“(1) treat all information concerning an examination under subsection (d) confidential, so that no medical information may be released to the cruise line or other owner of the vessel or any legal representative thereof without the prior knowledge and approval in writing of the patient, or, if the patient is unable to provide written authorization, the patient’s next-of-kin, except that nothing in this paragraph prohibits the release of—

“(A) information, other than medical findings, necessary for the owner or master of the vessel to comply with the provisions of subsection (g) or other applicable incident reporting laws;

“(B) information to secure the safety of passengers or crew on board the vessel; or

“(C) any information to law enforcement officials performing official duties in the course and scope of an investigation; and

“(2) treat any information derived from, or obtained in connection with, post-assault counseling or other supportive services confidential, so no such information may be released to the cruise line or any legal representative thereof without the prior knowledge and approval in writing of the patient, or, if the patient is unable to provide written authorization, the patient’s next-of-kin.

“(f) CREW ACCESS TO PASSENGER STATEROOMS.—The owner of a vessel to which this section applies shall—

“(1) establish and implement procedures and restrictions concerning— Procedures.

“(A) which crewmembers have access to passenger staterooms; and

“(B) the periods during which they have that access; and

“(2) ensure that the procedures and restrictions are fully and properly implemented and periodically reviewed.

“(g) LOG BOOK AND REPORTING REQUIREMENTS.—

Records.

“(1) IN GENERAL.—The owner of a vessel to which this section applies shall—

“(A) record in a log book, either electronically or otherwise, in a centralized location readily accessible to law enforcement personnel, a report on—

“(i) all complaints of crimes described in paragraph (3)(A)(i),

“(ii) all complaints of theft of property valued in excess of \$1,000, and

“(iii) all complaints of other crimes, committed on any voyage that embarks or disembarks passengers in the United States; and

“(B) make such log book available upon request to any agent of the Federal Bureau of Investigation, any member of the United States Coast Guard, and any law enforcement officer performing official duties in the course and scope of an investigation.

“(2) DETAILS REQUIRED.—The information recorded under paragraph (1) shall include, at a minimum—

“(A) the vessel operator;

“(B) the name of the cruise line;

“(C) the flag under which the vessel was operating at the time the reported incident occurred;

“(D) the age and gender of the victim and the accused assailant;

“(E) the nature of the alleged crime or complaint, as applicable, including whether the alleged perpetrator was a passenger or a crewmember;

“(F) the vessel’s position at the time of the incident, if known, or the position of the vessel at the time of the initial report;

“(G) the time, date, and method of the initial report and the law enforcement authority to which the initial report was made;

“(H) the time and date the incident occurred, if known;

“(I) the total number of passengers and the total number of crew members on the voyage; and

“(J) the case number or other identifier provided by the law enforcement authority to which the initial report was made.

“(3) REQUIREMENT TO REPORT CRIMES AND OTHER INFORMATION.—

“(A) IN GENERAL.—The owner of a vessel to which this section applies (or the owner’s designee)—

“(i) shall contact the nearest Federal Bureau of Investigation Field Office or Legal Attache by telephone as soon as possible after the occurrence on board the vessel of an incident involving homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, any offense to which section 2241, 2242, 2243, or 2244(a) or (c) of title 18 applies, firing or tampering with the vessel, or theft of money or property in excess of \$10,000 to report the incident;

“(ii) shall furnish a written report of the incident to an Internet based portal maintained by the Secretary;

“(iii) may report any serious incident that does not meet the reporting requirements of clause (i) and that does not require immediate attention by the Federal Bureau of Investigation via the Internet based portal maintained by the Secretary; and

“(iv) may report any other criminal incident involving passengers or crewmembers, or both, to the proper State or local government law enforcement authority.

“(B) INCIDENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—Subparagraph (A) applies to an incident involving criminal activity if—

“(i) the vessel, regardless of registry, is owned, in whole or in part, by a United States person, regardless of the nationality of the victim or perpetrator, and the incident occurs when the vessel is within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any State;

“(ii) the incident concerns an offense by or against a United States national committed outside the jurisdiction of any nation;

“(iii) the incident occurs in the Territorial Sea of the United States, regardless of the nationality of the vessel, the victim, or the perpetrator; or

“(iv) the incident concerns a victim or perpetrator who is a United States national on a vessel during a voyage that departed from or will arrive at a United States port.

“(4) AVAILABILITY OF INCIDENT DATA VIA INTERNET.—

“(A) WEBSITE.—The Secretary shall maintain a statistical compilation of all incidents described in paragraph (3)(A)(i) on an Internet site that provides a numerical accounting of the missing persons and alleged crimes recorded in each report filed under paragraph (3)(A)(i) that are no longer under investigation by the Federal Bureau of Investigation. The data shall be updated no less frequently than quarterly, aggregated by cruise line, each cruise line shall be identified by name, and each crime shall be identified as to whether it was committed by a passenger or a crew member.

Deadlines.

“(B) ACCESS TO WEBSITE.—Each cruise line taking on or discharging passengers in the United States shall include a link on its Internet website to the website maintained by the Secretary under subparagraph (A).

“(h) ENFORCEMENT.—

“(1) PENALTIES.—

“(A) CIVIL PENALTY.—Any person that violates this section or a regulation under this section shall be liable for a civil penalty of not more than \$25,000 for each day during which the violation continues, except that the maximum penalty for a continuing violation is \$50,000.

“(B) CRIMINAL PENALTY.—Any person that willfully violates this section or a regulation under this section shall be fined not more than \$250,000 or imprisoned not more than 1 year, or both.

“(2) DENIAL OF ENTRY.—The Secretary may deny entry into the United States to a vessel to which this section applies if the owner of the vessel—

“(A) commits an act or omission for which a penalty may be imposed under this subsection; or

“(B) fails to pay a penalty imposed on the owner under this subsection.

“(i) PROCEDURES.—Within 6 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary shall issue guidelines, training curricula, and inspection and certification procedures necessary to carry out the requirements of this section.

Deadline.
Guidelines.

“(j) REGULATIONS.—The Secretary and the Commandant shall each issue such regulations as are necessary to implement this section.

“(k) APPLICATION.—

“(1) IN GENERAL.—This section and section 3508 apply to a passenger vessel (as defined in section 2101(22)) that—

“(A) is authorized to carry at least 250 passengers;

“(B) has onboard sleeping facilities for each passenger;

“(C) is on a voyage that embarks or disembarks passengers in the United States; and

“(D) is not engaged on a coastwise voyage.

“(2) FEDERAL AND STATE VESSELS.—This section and section 3508 do not apply to a vessel of the United States operated by the Federal Government or a vessel owned and operated by a State.

“(1) DEFINITIONS.—In this section and section 3508:

“(1) COMMANDANT.—The term ‘Commandant’ means the Commandant of the Coast Guard.

“(2) OWNER.—The term ‘owner’ means the owner, charterer, managing operator, master, or other individual in charge of a vessel.

“§ 3508. Crime scene preservation training for passenger vessel crewmembers

Deadline.
Guidelines.

“(a) IN GENERAL.—Within 1 year after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary, in consultation with the Director of the Federal Bureau of Investigation and the Maritime Administration, shall develop training standards and curricula to allow for the certification of passenger vessel security personnel, crewmembers, and law enforcement officials on the appropriate methods for prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment. The Administrator of the Maritime Administration may certify organizations in the United States and abroad that offer the curriculum for training and certification under subsection (c).

“(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include—

“(1) the training and certification of vessel security personnel, crewmembers, and law enforcement officials in accordance with accepted law enforcement and security guidelines, policies, and procedures, including recommendations for incorporating a background check process for personnel trained and certified in foreign ports;

“(2) the training of students and instructors in all aspects of prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment; and

“(3) the provision or recognition of off-site training and certification courses in the United States and foreign countries to develop and provide the required training and certification described in subsection (a) and to enhance security awareness and security practices related to the preservation of evidence in response to crimes on board passenger vessels.

Effective date.

“(c) CERTIFICATION REQUIREMENT.—Beginning 2 years after the standards are established under subsection (b), no vessel to which this section applies may enter a United States port on a voyage (or voyage segment) on which a United States citizen is a passenger unless there is at least 1 crewmember onboard who is certified as having successfully completed training in the prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment on passenger vessels under subsection (a).

“(d) INTERIM TRAINING REQUIREMENT.—No vessel to which this section applies may enter a United States port on a voyage (or

voyage segment) on which a United States citizen is a passenger unless there is at least 1 crewmember onboard who has been properly trained in the prevention detection, evidence preservation and the reporting requirements of criminal activities in the international maritime environment. The owner of a such a vessel shall maintain certification or other documentation, as prescribed by the Secretary, verifying the training of such individual and provide such documentation upon request for inspection in connection with enforcement of the provisions of this section. This subsection shall take effect 1 year after the date of enactment of the Cruise Vessel Safety and Security Act of 2010 and shall remain in effect until superseded by the requirements of subsection (c).

Certification.

Effective date.

“(e) CIVIL PENALTY.—Any person that violates this section or a regulation under this section shall be liable for a civil penalty of not more than \$50,000.

“(f) DENIAL OF ENTRY.—The Secretary may deny entry into the United States to a vessel to which this section applies if the owner of the vessel—

“(1) commits an act or omission for which a penalty may be imposed under subsection (e); or

“(2) fails to pay a penalty imposed on the owner under subsection (e).”.

(b) CLERICAL AMENDMENT.—The table of contents for such chapter is amended by adding at the end the following:

“3507. Passenger vessel security and safety requirements

“3508. Crime scene preservation training for passenger vessel crewmembers”.

SEC. 4. OFFSET OF ADMINISTRATIVE COSTS.

(a) REPEAL OF CERTAIN REPORT REQUIREMENTS.—

(1) Section 1130 of the Coast Guard Authorization Act of 1996 (33 U.S.C. 2720 note) is amended by striking subsection (b).

(2) Section 112 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note) is repealed.

(3) Section 676 of title 14, United States Code, is amended by striking subsection (d).

(4) Section 355 of title 37, United States Code, is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

(5) Section 205 of the Coast Guard and Maritime Transportation Act of 2006 (14 U.S.C. 637 note) is amended by striking subsection (d).

(b) COMBINATION OF FISHERIES ENFORCEMENT PLANS AND FOREIGN FISHING INCURSION REPORTS.—The Secretary of the department in which the Coast Guard is operating shall combine the reports required under section 224 of the Coast Guard and Maritime Transportation Act of 2004 (16 U.S.C. 1861b) and section 804 of the Coast Guard and Maritime Transportation Act of 2006 (16 U.S.C. 1828) into a single annual report for fiscal years beginning after fiscal year 2010.

16 USC 1828
note.

SEC. 5. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved July 27, 2010.

LEGISLATIVE HISTORY—H.R. 3360:

HOUSE REPORTS: No. 111–332 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Nov. 17, considered and passed House.

Vol. 156 (2010): June 10, considered and passed Senate, amended.
June 30, House concurred in Senate amendment.



Public Law 111–208
111th Congress

An Act

To designate the facility of the United States Postal Service located at 1981 Cleveland Avenue in Columbus, Ohio, as the “Clarence D. Lumpkin Post Office”.

July 27, 2010
[H.R. 4840]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARENCE D. LUMPKIN POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1981 Cleveland Avenue in Columbus, Ohio, shall be known and designated as the “Clarence D. Lumpkin Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Clarence D. Lumpkin Post Office”.

Approved July 27, 2010.

LEGISLATIVE HISTORY—H.R. 4840:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 19, 21, considered and passed House.

May 25, considered and passed Senate, amended.

July 14, House concurred in Senate amendments.



Public Law 111–209
111th Congress

An Act

July 27, 2010
[H.R. 5502]

To amend the effective date of the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DELAY OF EFFECTIVE DATE.

Title IV of the Credit Card Accountability Responsibility and Disclosure Act, is amended by striking section 403 and inserting the following:

15 USC 1693l–1
note.

“SEC. 403. EFFECTIVE DATE.

“(a) IN GENERAL.—Except as provided under subsection (b) of this section, this title and the amendments made by this title shall become effective 15 months after the date of enactment of this Act.

“(b) EXCEPTION.—

“(1) IN GENERAL.—In the case of a gift certificate, store gift card, or general-use prepaid card that was produced prior to April 1, 2010, the effective date of the disclosure requirements described in sections 915(b)(3) and (c)(2)(B) of the Electronic Funds Transfer Act shall be January 31, 2011, provided that an issuer of such a certificate or card shall—

“(A) comply with paragraphs (1) and (2) of section 915(b) of such Act;

“(B) consider any such certificate or card for which funds expire to have no expiration date with respect to the underlying funds;

“(C) at a consumer’s request, replace such certificate or card that has funds remaining at no cost to the consumer; and

“(D) comply with the disclosure requirements of paragraph (2) of this subsection.

Notice.
Web posting.

“(2) DISCLOSURE REQUIREMENTS.—The disclosure requirements of this subsection are met by providing notice to consumers, via in-store signage, messages during customer service calls, Web sites, and general advertising, that—

“(A) any such certificate or card for which funds expire shall be deemed to have no expiration date with respect to the underlying funds;

“(B) consumers holding such certificate or card shall have a right to a free replacement certificate or card that includes the packaging and materials, typically associated with such a certificate or card; and

“(C) any dormancy fee, inactivity fee, or service fee for such certificates or cards that might otherwise be charged shall not be charged if such fees do not comply with section 915 of the Electronic Funds Transfer Act.

“(3) PERIOD FOR DISCLOSURE REQUIREMENTS.—The notice requirements in paragraph (2) of this subsection shall continue until January 31, 2013.”.

Approved July 27, 2010.

LEGISLATIVE HISTORY—H.R. 5502:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 14, considered and passed House.

July 13, considered and passed Senate.



Public Law 111–210
111th Congress

Joint Resolution

July 27, 2010
[H.J. Res. 83]

Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

50 USC 1701
note.

SECTION 1. RENEWAL OF IMPORT RESTRICTIONS UNDER BURMESE FREEDOM AND DEMOCRACY ACT OF 2003.

(a) IN GENERAL.—Congress approves the renewal of the import restrictions contained in section 3(a)(1) and section 3A (b)(1) and (c)(1) of the Burmese Freedom and Democracy Act of 2003.

(b) RULE OF CONSTRUCTION.—This joint resolution shall be deemed to be a “renewal resolution” for purposes of section 9 of the Burmese Freedom and Democracy Act of 2003.

SEC. 2. CUSTOMS USER FEES.

Section 13031(j)(3)(B)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)(B)(i)) is amended by striking “August 17, 2018” and inserting “August 24, 2018”.

26 USC 6655
note.

SEC. 3. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 0.25 percentage points.

SEC. 4. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SEC. 5. EFFECTIVE DATE.

19 USC 58c note.

This joint resolution and the amendments made by this joint resolution shall take effect on the date of the enactment of this joint resolution or July 26, 2010, whichever occurs earlier.

Approved July 27, 2010.

LEGISLATIVE HISTORY—H.J. Res. 83:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 14, considered and passed House.

July 22, considered and passed Senate.



Public Law 111–211
111th Congress

An Act

July 29, 2010
[H.R. 725]

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Indian Arts and
Crafts
Amendments Act
of 2010.

**TITLE I—INDIAN ARTS AND CRAFTS
AMENDMENTS**

SEC. 101. SHORT TITLE; TABLE OF CONTENTS.

25 USC 305 note.

(a) **SHORT TITLE.**—This title may be cited as the “Indian Arts and Crafts Amendments Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this title is as follows:

Sec. 101. Short title; table of contents.

Sec. 102. Indian arts and crafts.

Sec. 103. Misrepresentation of Indian produced goods and products.

SEC. 102. INDIAN ARTS AND CRAFTS.

(a) **CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MISREPRESENTATIONS.**—Section 5 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. 305d) is amended to read as follows:

25 USC 305d.

“SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.

“(a) **DEFINITION OF FEDERAL LAW ENFORCEMENT OFFICER.**—In this section, the term ‘Federal law enforcement officer’ includes a Federal law enforcement officer (as defined in section 115(c) of title 18, United States Code).

“(b) **AUTHORITY TO CONDUCT INVESTIGATIONS.**—Any Federal law enforcement officer shall have the authority to conduct an investigation relating to an alleged violation of this Act occurring within the jurisdiction of the United States.

“(c) **CRIMINAL PROCEEDINGS.**—

“(1) **INVESTIGATION.**—

“(A) **IN GENERAL.**—The Board may refer an alleged violation of section 1159 of title 18, United States Code, to any Federal law enforcement officer for appropriate investigation.

“(B) **REFERRAL NOT REQUIRED.**—A Federal law enforcement officer may investigate an alleged violation of section 1159 of that title regardless of whether the Federal law

enforcement officer receives a referral under subparagraph (A).

“(2) FINDINGS.—The findings of an investigation of an alleged violation of section 1159 of title 18, United States Code, by any Federal department or agency under paragraph (1)(A) shall be submitted, as appropriate, to—

“(A) a Federal or State prosecuting authority; or

“(B) the Board.

“(3) RECOMMENDATIONS.—On receiving the findings of an investigation under paragraph (2), the Board may—

“(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of title 18, United States Code; and

“(B) provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines to be appropriate.

“(d) CIVIL ACTIONS.—In lieu of, or in addition to, any criminal proceeding under subsection (c), the Board may recommend that the Attorney General initiate a civil action under section 6.”.

(b) CAUSE OF ACTION FOR MISREPRESENTATION.—Section 6 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. 305e) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by inserting before subsection (b) (as redesignated by paragraph (2)) the following:

“(a) DEFINITIONS.—In this section:

“(1) INDIAN.—The term ‘Indian’ means an individual that—

“(A) is a member of an Indian tribe; or

“(B) is certified as an Indian artisan by an Indian tribe.

“(2) INDIAN PRODUCT.—The term ‘Indian product’ has the meaning given the term in any regulation promulgated by the Secretary.

“(3) INDIAN TRIBE.—

“(A) IN GENERAL.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(B) INCLUSION.—The term ‘Indian tribe’ includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.”;

(4) in subsection (b) (as redesignated by paragraph (2)), by striking “subsection (c)” and inserting “subsection (d)”;

(5) in subsection (c) (as redesignated by paragraph (2))—

(A) by striking “subsection (a)” and inserting “subsection (b)”;

(B) by striking “suit” and inserting “the civil action”;

(6) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

“(d) PERSONS THAT MAY INITIATE CIVIL ACTIONS.—

“(1) IN GENERAL.—A civil action under subsection (b) may be initiated by—

“(A) the Attorney General, at the request of the Secretary acting on behalf of—

“(i) an Indian tribe;

“(ii) an Indian; or

“(iii) an Indian arts and crafts organization;

“(B) an Indian tribe, acting on behalf of—

“(i) the Indian tribe;

“(ii) a member of that Indian tribe; or

“(iii) an Indian arts and crafts organization;

“(C) an Indian; or

“(D) an Indian arts and crafts organization.

“(2) DISPOSITION OF AMOUNTS RECOVERED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

“(B) EXCEPTIONS.—

“(i) ATTORNEY GENERAL.—In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—

“(I) the amount of the cost of the civil action and reasonable attorney’s fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

“(II) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

“(ii) INDIAN TRIBE.—In the case of a civil action initiated under paragraph (1)(B), the Indian tribe may deduct from the amount—

“(I) the amount of the cost of the civil action; and

“(II) reasonable attorney’s fees.”; and

(7) in subsection (e), by striking “(e) In the event that” and inserting the following:

“(e) SAVINGS PROVISION.—If”.

SEC. 103. MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

Section 1159 of title 18, United States Code, is amended—

(1) by striking subsection (b) and inserting the following:

“(b) PENALTY.—Any person that knowingly violates subsection (a) shall—

“(1) in the case of a first violation by that person—

“(A) if the applicable goods are offered or displayed for sale at a total price of \$1,000 or more, or if the applicable goods are sold for a total price of \$1,000 or more—

“(i) in the case of an individual, be fined not more than \$250,000, imprisoned for not more than 5 years, or both; and

“(ii) in the case of a person other than an individual, be fined not more than \$1,000,000; and

“(B) if the applicable goods are offered or displayed for sale at a total price of less than \$1,000, or if the applicable goods are sold for a total price of less than \$1,000—

“(i) in the case of an individual, be fined not more than \$25,000, imprisoned for not more than 1 year, or both; and

“(ii) in the case of a person other than an individual, be fined not more than \$100,000; and

“(2) in the case of a subsequent violation by that person, regardless of the amount for which any good is offered or displayed for sale or sold—

“(A) in the case of an individual, be fined under this title, imprisoned for not more than 15 years, or both; and

“(B) in the case of a person other than an individual, be fined not more than \$5,000,000.”; and

(2) in subsection (c), by striking paragraph (3) and inserting the following:

“(3) the term ‘Indian tribe’—

“(A) has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); and

“(B) includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority; and”.

TITLE II—TRIBAL LAW AND ORDER

Tribal Law and
Order Act of
2010.

SEC. 201. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the “Tribal Law and Order Act of 2010”.

25 USC 2801
note.

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 201. Short title; table of contents.

Sec. 202. Findings; purposes.

Sec. 203. Definitions.

Sec. 204. Severability.

Sec. 205. Jurisdiction of the State of Alaska.

Sec. 206. Effect.

Subtitle A—Federal Accountability and Coordination

Sec. 211. Office of Justice Services responsibilities.

Sec. 212. Disposition reports.

Sec. 213. Prosecution of crimes in Indian country.

Sec. 214. Administration.

Subtitle B—State Accountability and Coordination

Sec. 221. State criminal jurisdiction and resources.

Sec. 222. State, tribal, and local law enforcement cooperation.

Subtitle C—Empowering Tribal Law Enforcement Agencies and Tribal Governments

- Sec. 231. Tribal police officers.
- Sec. 232. Drug enforcement in Indian country.
- Sec. 233. Access to national criminal information databases.
- Sec. 234. Tribal court sentencing authority.
- Sec. 235. Indian Law and Order Commission.
- Sec. 236. Exemption for tribal display materials.

Subtitle D—Tribal Justice Systems

- Sec. 241. Indian alcohol and substance abuse.
- Sec. 242. Indian tribal justice; technical and legal assistance.
- Sec. 243. Tribal resources grant program.
- Sec. 244. Tribal jails program.
- Sec. 245. Tribal probation office liaison program.
- Sec. 246. Tribal youth program.
- Sec. 247. Improving public safety presence in rural Alaska.

Subtitle E—Indian Country Crime Data Collection and Information Sharing

- Sec. 251. Tracking of crimes committed in Indian country.
- Sec. 252. Criminal history record improvement program.

Subtitle F—Domestic Violence and Sexual Assault Prosecution and Prevention

- Sec. 261. Prisoner release and reentry.
- Sec. 262. Domestic and sexual violence offense training.
- Sec. 263. Testimony by Federal employees.
- Sec. 264. Coordination of Federal agencies.
- Sec. 265. Sexual assault protocol.
- Sec. 266. Study of IHS sexual assault and domestic violence response capabilities.

25 USC 2801
note.

SEC. 202. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country;

(2) Congress and the President have acknowledged that—

(A) tribal law enforcement officers are often the first responders to crimes on Indian reservations; and

(B) tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country;

(3) less than 3,000 tribal and Federal law enforcement officers patrol more than 56,000,000 acres of Indian country, which reflects less than ½ of the law enforcement presence in comparable rural communities nationwide;

(4) the complicated jurisdictional scheme that exists in Indian country—

(A) has a significant negative impact on the ability to provide public safety to Indian communities;

(B) has been increasingly exploited by criminals; and

(C) requires a high degree of commitment and cooperation among tribal, Federal, and State law enforcement officials;

(5)(A) domestic and sexual violence against American Indian and Alaska Native women has reached epidemic proportions;

(B) 34 percent of American Indian and Alaska Native women will be raped in their lifetimes; and

(C) 39 percent of American Indian and Alaska Native women will be subject to domestic violence;

(6) Indian tribes have faced significant increases in instances of domestic violence, burglary, assault, and child abuse as a direct result of increased methamphetamine use on Indian reservations; and

(7) crime data is a fundamental tool of law enforcement, but for decades the Bureau of Indian Affairs and the Department of Justice have not been able to coordinate or consistently report crime and prosecution rates in tribal communities.

(b) PURPOSES.—The purposes of this title are—

(1) to clarify the responsibilities of Federal, State, tribal, and local governments with respect to crimes committed in Indian country;

(2) to increase coordination and communication among Federal, State, tribal, and local law enforcement agencies;

(3) to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country;

(4) to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence against American Indian and Alaska Native women;

(5) to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country; and

(6) to increase and standardize the collection of criminal data and the sharing of criminal history information among Federal, State, and tribal officials responsible for responding to and investigating crimes in Indian country.

SEC. 203. DEFINITIONS.

25 USC 2801
note.

(a) IN GENERAL.—In this title:

(1) INDIAN COUNTRY.—The term “Indian country” has the meaning given the term in section 1151 of title 18, United States Code.

(2) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) TRIBAL GOVERNMENT.—The term “tribal government” means the governing body of a federally recognized Indian tribe.

(b) INDIAN LAW ENFORCEMENT REFORM ACT.—Section 2 of the Indian Law Enforcement Reform Act (25 U.S.C. 2801) is amended by adding at the end the following:

“(10) The term ‘tribal justice official’ means—

“(A) a tribal prosecutor;

“(B) a tribal law enforcement officer; or

“(C) any other person responsible for investigating or prosecuting an alleged criminal offense in tribal court.”.

SEC. 204. SEVERABILITY.

25 USC 2801
note.

If any provision of this title, an amendment made by this title, or the application of such a provision or amendment to any individual, entity, or circumstance, is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this title, the remaining amendments made by this title, and the application of those provisions and amendments to individuals, entities, or circumstances other than the affected individual, entity, or circumstance shall not be affected.

25 USC 2801
note.

SEC. 205. JURISDICTION OF THE STATE OF ALASKA.

Nothing in this Act limits, alters, expands, or diminishes the civil or criminal jurisdiction of the State of Alaska, any subdivision of the State of Alaska, or any Indian tribe in that State.

25 USC 2801
note.

SEC. 206. EFFECT.

Nothing in this Act confers on an Indian tribe criminal jurisdiction over non-Indians.

Subtitle A—Federal Accountability and Coordination

SEC. 211. OFFICE OF JUSTICE SERVICES RESPONSIBILITIES.

(a) **DEFINITIONS.**—Section 2 of the Indian Law Enforcement Reform Act (25 U.S.C. 2801) is amended—

(1) by striking paragraph (8);

(2) by redesignating paragraphs (1) through (7) as paragraphs (2) through (8), respectively;

(3) by redesignating paragraph (9) as paragraph (1) and moving the paragraphs so as to appear in numerical order; and

(4) in paragraph (1) (as redesignated by paragraph (3)), by striking “Division of Law Enforcement Services” and inserting “Office of Justice Services”.

(b) **ADDITIONAL RESPONSIBILITIES OF OFFICE.**—Section 3 of the Indian Law Enforcement Reform Act (25 U.S.C. 2802) is amended—

(1) in subsection (b), by striking “(b) There is hereby established within the Bureau a Division of Law Enforcement Services which” and inserting the following:

Establishment.

“(b) **OFFICE OF JUSTICE SERVICES.**—There is established in the Bureau an office, to be known as the ‘Office of Justice Services’, that”;

(2) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking “Division of Law Enforcement Services” and inserting “Office of Justice Services”;

(B) in paragraph (8), by striking “and” at the end;

(C) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

“(10) the development and provision of dispatch and emergency and E–911 services;

“(11) communicating with tribal leaders, tribal community and victims’ advocates, tribal justice officials, indigent defense representatives, and residents of Indian country on a regular basis regarding public safety and justice concerns facing tribal communities;

“(12) conducting meaningful and timely consultation with tribal leaders and tribal justice officials in the development of regulatory policies and other actions that affect public safety and justice in Indian country;

“(13) providing technical assistance and training to tribal law enforcement officials to gain access and input authority to utilize the National Criminal Information Center and other national crime information databases pursuant to section 534 of title 28, United States Code;

“(14) in coordination with the Attorney General pursuant to subsection (g) of section 302 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732), collecting, analyzing, and reporting data regarding Indian country crimes on an annual basis; Data collection. Reports.

“(15) on an annual basis, sharing with the Department of Justice all relevant crime data, including Uniform Crime Reports, that the Office of Justice Services prepares and receives from tribal law enforcement agencies on a tribe-by-tribe basis to ensure that individual tribal governments providing data are eligible for programs offered by the Department of Justice; Information sharing.

“(16) submitting to the appropriate committees of Congress, for each fiscal year, a detailed spending report regarding tribal public safety and justice programs that includes— Reports.

“(A)(i) the number of full-time employees of the Bureau and tribal governments who serve as—

“(I) criminal investigators;

“(II) uniform police;

“(III) police and emergency dispatchers;

“(IV) detention officers;

“(V) executive personnel, including special agents in charge, and directors and deputies of various offices in the Office of Justice Services; and

“(VI) tribal court judges, prosecutors, public defenders, appointed defense counsel, or related staff; and

“(ii) the amount of appropriations obligated for each category described in clause (i) for each fiscal year;

“(B) a list of amounts dedicated to law enforcement and corrections, vehicles, related transportation costs, equipment, inmate transportation costs, inmate transfer costs, replacement, improvement, and repair of facilities, personnel transfers, detailees and costs related to their details, emergency events, public safety and justice communications and technology costs, and tribal court personnel, facilities, indigent defense, and related program costs;

“(C) a list of the unmet staffing needs of law enforcement, corrections, and court personnel (including indigent defense and prosecution staff) at tribal and Bureau of Indian Affairs justice agencies, the replacement and repair needs of tribal and Bureau corrections facilities, needs for tribal police and court facilities, and public safety and emergency communications and technology needs; and

“(D) the formula, priority list or other methodology used to determine the method of disbursement of funds for the public safety and justice programs administered by the Office of Justice Services;

“(17) submitting to the appropriate committees of Congress, for each fiscal year, a report summarizing the technical assistance, training, and other support provided to tribal law enforcement and corrections agencies that operate relevant programs pursuant to self-determination contracts or self-governance compacts with the Secretary; and Reports.

“(18) promulgating regulations to carry out this Act, and routinely reviewing and updating, as necessary, the regulations Regulations.

contained in subchapter B of title 25, Code of Federal Regulations (or successor regulations).”;

(3) in subsection (d)—

(A) in paragraph (1), by striking “Division of Law Enforcement Services” and inserting “Office of Justice Services”; and

(B) in paragraph (4)(i), in the first sentence, by striking “Division” and inserting “Office of Justice Services”;

(4) in subsection (e), by striking “Division of Law Enforcement Services” each place it appears and inserting “Office of Justice Services”; and

(5) by adding at the end the following:

Deadline.

“(f) LONG-TERM PLAN FOR TRIBAL DETENTION PROGRAMS.—Not later than 1 year after the date of enactment of this subsection, the Secretary, acting through the Bureau, in coordination with the Department of Justice and in consultation with tribal leaders, tribal courts, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including—

“(1) a description of proposed activities for—

“(A) the construction, operation, and maintenance of juvenile (in accordance with section 4220(a)(3) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2453(a)(3)) and adult detention facilities (including regional facilities) in Indian country;

“(B) contracting with State and local detention centers, upon approval of affected tribal governments; and

“(C) alternatives to incarceration, developed in cooperation with tribal court systems;

“(2) an assessment and consideration of the construction of Federal detention facilities in Indian country; and

“(3) any other alternatives as the Secretary, in coordination with the Attorney General and in consultation with Indian tribes, determines to be necessary.”.

(c) LAW ENFORCEMENT AUTHORITY.—Section 4 of the Indian Law Enforcement Reform Act (25 U.S.C. 2803) is amended—

(1) in paragraph (2)(A), by striking “, or” and inserting “or offenses processed by the Central Violations Bureau); or”; and

(2) in paragraph (3)—

(A) in subparagraph (B), by striking “, or” at the end and inserting a semicolon;

(B) in subparagraphs (B) and (C), by striking “reasonable grounds” each place it appears and inserting “probable cause”;

(C) in subparagraph (C), by adding “or” at the end; and

(D) by adding at the end the following:

“(D)(i) the offense involves—

“(I) a misdemeanor controlled substance offense in violation of—

“(aa) the Controlled Substances Act (21 U.S.C. 801 et seq.);

“(bb) title IX of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (21 U.S.C. 862a et seq.); or

“(cc) section 731 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (21 U.S.C. 865);

“(II) a misdemeanor firearms offense in violation of chapter 44 of title 18, United States Code;

“(III) a misdemeanor assault in violation of chapter 7 of title 18, United States Code; or

“(IV) a misdemeanor liquor trafficking offense in violation of chapter 59 of title 18, United States Code; and

“(ii) the employee has probable cause to believe that the individual to be arrested has committed, or is committing, the crime;”.

SEC. 212. DISPOSITION REPORTS.

Section 10 of the Indian Law Enforcement Reform Act (25 U.S.C. 2809) is amended by striking subsections (a) through (d) and inserting the following:

“(a) COORDINATION AND DATA COLLECTION.—

“(1) INVESTIGATIVE COORDINATION.—Subject to subsection (c), if a law enforcement officer or employee of any Federal department or agency terminates an investigation of an alleged violation of Federal criminal law in Indian country without referral for prosecution, the officer or employee shall coordinate with the appropriate tribal law enforcement officials regarding the status of the investigation and the use of evidence relevant to the case in a tribal court with authority over the crime alleged.

“(2) INVESTIGATION DATA.—The Federal Bureau of Investigation shall compile, on an annual basis and by Field Division, information regarding decisions not to refer to an appropriate prosecuting authority cases in which investigations had been opened into an alleged crime in Indian country, including—

“(A) the types of crimes alleged;

“(B) the statuses of the accused as Indians or non-Indians;

“(C) the statuses of the victims as Indians or non-Indians; and

“(D) the reasons for deciding against referring the investigation for prosecution.

“(3) PROSECUTORIAL COORDINATION.—Subject to subsection (c), if a United States Attorney declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal criminal law in Indian country, the United States Attorney shall coordinate with the appropriate tribal justice officials regarding the status of the investigation and the use of evidence relevant to the case in a tribal court with authority over the crime alleged.

“(4) PROSECUTION DATA.—The United States Attorney shall submit to the Native American Issues Coordinator to compile, on an annual basis and by Federal judicial district, information regarding all declinations of alleged violations of Federal criminal law that occurred in Indian country that were referred for prosecution by law enforcement agencies, including—

“(A) the types of crimes alleged;

“(B) the statuses of the accused as Indians or non-Indians;

“(C) the statuses of the victims as Indians or non-Indians; and

“(D) the reasons for deciding to decline or terminate the prosecutions.

“(b) ANNUAL REPORTS.—The Attorney General shall submit to Congress annual reports containing, with respect to the applicable calendar year, the information compiled under paragraphs (2) and (4) of subsection (a)—

“(1) organized—

“(A) in the aggregate; and

“(B)(i) for the Federal Bureau of Investigation, by Field Division; and

“(ii) for United States Attorneys, by Federal judicial district; and

“(2) including any relevant explanatory statements.

“(c) EFFECT OF SECTION.—

“(1) IN GENERAL.—Nothing in this section requires any Federal agency or official to transfer or disclose any confidential, privileged, or statutorily protected communication, information, or source to an official of any Indian tribe.

“(2) FEDERAL RULES OF CRIMINAL PROCEDURE.—Nothing in this section affects or limits the requirements of Rule 6 of the Federal Rules of Criminal Procedure.

“(3) REGULATIONS.—The Attorney General shall establish, by regulation, standards for the protection of the confidential or privileged communications, information, and sources described in this section.”.

SEC. 213. PROSECUTION OF CRIMES IN INDIAN COUNTRY.

(a) APPOINTMENT OF SPECIAL PROSECUTORS.—

(1) IN GENERAL.—Section 543 of title 28, United States Code, is amended—

(A) in subsection (a), by inserting before the period at the end the following: “, including the appointment of qualified tribal prosecutors and other qualified attorneys to assist in prosecuting Federal offenses committed in Indian country”; and

(B) by adding at the end the following:

“(c) INDIAN COUNTRY.—In this section, the term ‘Indian country’ has the meaning given that term in section 1151 of title 18.”.

(2) SENSE OF CONGRESS REGARDING CONSULTATION.—It is the sense of Congress that, in appointing attorneys under section 543 of title 28, United States Code, to serve as special prosecutors in Indian country, the Attorney General should consult with tribal justice officials of each Indian tribe that would be affected by the appointment.

(b) TRIBAL LIAISONS.—

(1) IN GENERAL.—The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) is amended by adding at the end the following:

25 USC 2810.

“SEC. 13. ASSISTANT UNITED STATES ATTORNEY TRIBAL LIAISONS.

“(a) APPOINTMENT.—The United States Attorney for each district that includes Indian country shall appoint not less than 1 assistant United States Attorney to serve as a tribal liaison for the district.

“(b) DUTIES.—The duties of a tribal liaison shall include the following:

“(1) Coordinating the prosecution of Federal crimes that occur in Indian country.

“(2) Developing multidisciplinary teams to combat child abuse and domestic and sexual violence offenses against Indians.

“(3) Consulting and coordinating with tribal justice officials and victims’ advocates to address any backlog in the prosecution of major crimes in Indian country in the district.

“(4) Developing working relationships and maintaining communication with tribal leaders, tribal community and victims’ advocates, and tribal justice officials to gather information from, and share appropriate information with, tribal justice officials.

“(5) Coordinating with tribal prosecutors in cases in which a tribal government has concurrent jurisdiction over an alleged crime, in advance of the expiration of any applicable statute of limitation.

“(6) Providing technical assistance and training regarding evidence gathering techniques and strategies to address victim and witness protection to tribal justice officials and other individuals and entities that are instrumental to responding to Indian country crimes.

“(7) Conducting training sessions and seminars to certify special law enforcement commissions to tribal justice officials and other individuals and entities responsible for responding to Indian country crimes.

“(8) Coordinating with the Office of Tribal Justice, as necessary.

“(9) Conducting such other activities to address and prevent violent crime in Indian country as the applicable United States Attorney determines to be appropriate.

“(c) EFFECT OF SECTION.—Nothing in this section limits the authority of any United States Attorney to determine the duties of a tribal liaison officer to meet the needs of the Indian tribes located within the relevant Federal district.

“(d) ENHANCED PROSECUTION OF MINOR CRIMES.—

“(1) IN GENERAL.—Each United States Attorney serving a district that includes Indian country is authorized and encouraged—

“(A) to appoint Special Assistant United States Attorneys pursuant to section 543(a) of title 28, United States Code, to prosecute crimes in Indian country as necessary to improve the administration of justice, and particularly when—

“(i) the crime rate exceeds the national average crime rate; or

“(ii) the rate at which criminal offenses are declined to be prosecuted exceeds the national average declination rate;

“(B) to coordinate with applicable United States district courts regarding scheduling of Indian country matters and holding trials or other proceedings in Indian country, as appropriate;

“(C) to provide to appointed Special Assistant United States Attorneys appropriate training, supervision, and staff support; and

“(D) to provide technical and other assistance to tribal governments and tribal court systems to ensure that the goals of this subsection are achieved.

“(2) SENSE OF CONGRESS REGARDING CONSULTATION.—It is the sense of Congress that, in appointing Special Assistant United States Attorneys under this subsection, a United States Attorney should consult with tribal justice officials of each Indian tribe that would be affected by the appointment.”.

(2) SENSE OF CONGRESS REGARDING EVALUATIONS OF TRIBAL LIAISONS.—

(A) FINDINGS.—Congress finds that—

(i) many residents of Indian country rely solely on United States Attorneys offices to prosecute felony and misdemeanor crimes occurring on Indian land; and

(ii) tribal liaisons have dual obligations of—

(I) coordinating prosecutions of Indian country crime; and

(II) developing relationships with residents of Indian country and serving as a link between Indian country residents and the Federal justice process.

(B) SENSE OF CONGRESS.—It is the sense of Congress that the Attorney General should—

(i) take all appropriate actions to encourage the aggressive prosecution of all Federal crimes committed in Indian country; and

(ii) when appropriate, take into consideration the dual responsibilities of tribal liaisons described in subparagraph (A)(ii) in evaluating the performance of the tribal liaisons.

SEC. 214. ADMINISTRATION.

(a) OFFICE OF TRIBAL JUSTICE.—

(1) DEFINITIONS.—Section 4 of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3653) is amended—

(A) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(B) by inserting after paragraph (1) the following:

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Office of Tribal Justice.”.

(2) STATUS.—Title I of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 is amended—

(A) by redesignating section 106 (25 U.S.C. 3666) as section 107; and

(B) by inserting after section 105 (25 U.S.C. 3665) the following:

“SEC. 106. OFFICE OF TRIBAL JUSTICE.

“(a) IN GENERAL.—Not later than 90 days after the date of enactment of the Tribal Law and Order Act of 2010, the Attorney General shall establish the Office of Tribal Justice as a component of the Department.

“(b) PERSONNEL AND FUNDING.—The Attorney General shall provide to the Office of Tribal Justice such personnel and funds as are necessary to establish the Office of Tribal Justice as a component of the Department under subsection (a).

25 USC 3665a.

Deadline.
Establishment.

“(c) DUTIES.—The Office of Tribal Justice shall—

“(1) serve as the program and legal policy advisor to the Attorney General with respect to the treaty and trust relationship between the United States and Indian tribes;

“(2) serve as the point of contact for federally recognized tribal governments and tribal organizations with respect to questions and comments regarding policies and programs of the Department and issues relating to public safety and justice in Indian country; and

“(3) coordinate with other bureaus, agencies, offices, and divisions within the Department of Justice to ensure that each component has an accountable process to ensure meaningful and timely consultation with tribal leaders in the development of regulatory policies and other actions that affect—

“(A) the trust responsibility of the United States to Indian tribes;

“(B) any tribal treaty provision;

“(C) the status of Indian tribes as sovereign governments; or

“(D) any other tribal interest.”.

(b) NATIVE AMERICAN ISSUES COORDINATOR.—The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) (as amended by section 213(b)) is amended by adding at the end the following:

“SEC. 14. NATIVE AMERICAN ISSUES COORDINATOR.

25 USC 2811.

“(a) ESTABLISHMENT.—There is established in the Executive Office for United States Attorneys of the Department of Justice a position to be known as the ‘Native American Issues Coordinator’.

“(b) DUTIES.—The Native American Issues Coordinator shall—

“(1) coordinate with the United States Attorneys that have authority to prosecute crimes in Indian country;

“(2) coordinate prosecutions of crimes of national significance in Indian country, as determined by the Attorney General;

“(3) coordinate as necessary with other components of the Department of Justice and any relevant advisory groups to the Attorney General or the Deputy Attorney General; and

“(4) carry out such other duties as the Attorney General may prescribe.”.

Subtitle B—State Accountability and Coordination

SEC. 221. STATE CRIMINAL JURISDICTION AND RESOURCES.

(a) CONCURRENT AUTHORITY OF UNITED STATES.—Section 401(a) of the Indian Civil Rights Act of 1968 (25 U.S.C. 1321(a)) is amended—

(1) by striking the section designation and heading and all that follows through “The consent of the United States” and inserting the following:

“SEC. 401. ASSUMPTION BY STATE OF CRIMINAL JURISDICTION.

“(a) CONSENT OF UNITED STATES.—

“(1) IN GENERAL.—The consent of the United States”; and

(2) by adding at the end the following:

“(2) CONCURRENT JURISDICTION.—At the request of an Indian tribe, and after consultation with and consent by the Attorney General, the United States shall accept concurrent jurisdiction to prosecute violations of sections 1152 and 1153 of title 18, United States Code, within the Indian country of the Indian tribe.”.

(b) APPLICABLE LAW.—Section 1162 of title 18, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding subsection (c), at the request of an Indian tribe, and after consultation with and consent by the Attorney General—

“(1) sections 1152 and 1153 shall apply in the areas of the Indian country of the Indian tribe; and

“(2) jurisdiction over those areas shall be concurrent among the Federal Government, State governments, and, where applicable, tribal governments.”.

25 USC 2815.

SEC. 222. STATE, TRIBAL, AND LOCAL LAW ENFORCEMENT COOPERATION.

The Attorney General may provide technical and other assistance to State, tribal, and local governments that enter into cooperative agreements, including agreements relating to mutual aid, hot pursuit of suspects, and cross-deputization for the purposes of—

(1) improving law enforcement effectiveness;

(2) reducing crime in Indian country and nearby communities; and

(3) developing successful cooperative relationships that effectively combat crime in Indian country and nearby communities.

Subtitle C—Empowering Tribal Law Enforcement Agencies and Tribal Governments

SEC. 231. TRIBAL POLICE OFFICERS.

(a) FLEXIBILITY IN TRAINING LAW ENFORCEMENT OFFICERS SERVING INDIAN COUNTRY.—Section 3(e) of the Indian Law Enforcement Reform Act (25 U.S.C. 2802(e)) (as amended by section 211(b)(4)) is amended—

(1) in paragraph (1)—

(A) by striking “(e)(1) The Secretary” and inserting the following:

“(e) STANDARDS OF EDUCATION AND EXPERIENCE AND CLASSIFICATION OF POSITIONS.—

“(1) STANDARDS OF EDUCATION AND EXPERIENCE.—

“(A) IN GENERAL.—The Secretary”; and

(B) by adding at the end the following:

“(B) REQUIREMENTS FOR TRAINING.—The training standards established under subparagraph (A)—

“(i) shall be consistent with standards accepted by the Federal Law Enforcement Training Accreditation commission for law enforcement officers attending similar programs; and

“(ii) shall include, or be supplemented by, instruction regarding Federal sources of authority and jurisdiction, Federal crimes, Federal rules of criminal procedure, and constitutional law to bridge the gap between State training and Federal requirements.

“(C) TRAINING AT STATE, TRIBAL, AND LOCAL ACADEMIES.—Law enforcement personnel of the Office of Justice Services or an Indian tribe may satisfy the training standards established under subparagraph (A) through training at a State or tribal police academy, a State, regional, local, or tribal college or university, or other training academy (including any program at a State, regional, local, or tribal college or university) that meets the appropriate Peace Officer Standards of Training.

“(D) MAXIMUM AGE REQUIREMENT.—Pursuant to section 3307(e) of title 5, United States Code, the Secretary may employ as a law enforcement officer under section 4 any individual under the age of 47, if the individual meets all other applicable hiring requirements for the applicable law enforcement position.”;

(2) in paragraph (3), by striking “Agencies” and inserting “agencies”; and

(3) by adding at the end the following:

“(4) BACKGROUND CHECKS FOR TRIBAL JUSTICE OFFICIALS.—

“(A) IN GENERAL.—The Office of Justice Services shall develop standards and deadlines for the provision of background checks to tribal law enforcement and corrections officials.

“(B) TIMING.—If a request for a background check is made by an Indian tribe that has contracted or entered into a compact for law enforcement or corrections services with the Bureau of Indian Affairs pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Office of Justice Services shall complete the check not later than 60 days after the date of receipt of the request, unless an adequate reason for failure to respond by that date is provided to the Indian tribe in writing.”.

(b) SPECIAL LAW ENFORCEMENT COMMISSIONS.—Section 5 of the Indian Law Enforcement Reform Act (25 U.S.C. 2804) is amended—

(1) by striking “(a) The Secretary may enter into an agreement” and inserting the following:

“(a) AGREEMENTS.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Tribal Law and Order Act of 2010, the Secretary shall establish procedures to enter into memoranda of agreement”;

Deadline.
Procedures.

(2) in the second sentence, by striking “The Secretary” and inserting the following:

“(2) CERTAIN ACTIVITIES.—The Secretary”; and

(3) by adding at the end the following:

“(3) PROGRAM ENHANCEMENT.—

“(A) TRAINING SESSIONS IN INDIAN COUNTRY.—

“(i) IN GENERAL.—The procedures described in paragraph (1) shall include the development of a plan to enhance the certification and provision of special

law enforcement commissions to tribal law enforcement officials, and, subject to subsection (d), State and local law enforcement officials, pursuant to this section.

“(ii) INCLUSIONS.—The plan under clause (i) shall include the hosting of regional training sessions in Indian country, not less frequently than biannually, to educate and certify candidates for the special law enforcement commissions.

“(B) MEMORANDA OF AGREEMENT.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Tribal Law and Order Act of 2010, the Secretary, in consultation with Indian tribes and tribal law enforcement agencies, shall develop minimum requirements to be included in special law enforcement commission agreements pursuant to this section.

“(ii) SUBSTANCE OF AGREEMENTS.—Each agreement entered into pursuant to this section shall reflect the status of the applicable certified individual as a Federal law enforcement officer under subsection (f), acting within the scope of the duties described in section 3(c).

“(iii) AGREEMENT.—Not later than 60 days after the date on which the Secretary determines that all applicable requirements under clause (i) are met, the Secretary shall offer to enter into a special law enforcement commission agreement with the Indian tribe.”.

(c) INDIAN LAW ENFORCEMENT FOUNDATION.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following:

“TITLE VII—INDIAN LAW ENFORCEMENT FOUNDATION

25 USC 458ccc.

“SEC. 701. DEFINITIONS.

“In this title:

“(1) BOARD.—The term ‘Board’ means the Board of Directors of the Foundation.

“(2) BUREAU.—The term ‘Bureau’ means the Office of Justice Services of the Bureau of Indian Affairs.

“(3) COMMITTEE.—The term ‘Committee’ means the Committee for the Establishment of the Indian Law Enforcement Foundation established under section 702(e)(1).

“(4) FOUNDATION.—The term ‘Foundation’ means the Indian Law Enforcement Foundation established under section 702.

“(5) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

25 USC
458ccc–1.

“SEC. 702. INDIAN LAW ENFORCEMENT FOUNDATION.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—As soon as practicable after the date of enactment of this title, the Secretary shall establish, under the laws of the District of Columbia and in accordance with this title, a foundation, to be known as the ‘Indian Law Enforcement Foundation’.

“(2) FUNDING DETERMINATIONS.—No funds, gift, property, or other item of value (including any interest accrued on such an item) acquired by the Foundation shall—

“(A) be taken into consideration for purposes of determining Federal appropriations relating to the provision of public safety or justice services to Indians; or

“(B) otherwise limit, diminish, or affect the Federal responsibility for the provision of public safety or justice services to Indians.

“(b) NATURE OF CORPORATION.—The Foundation—

“(1) shall be a charitable and nonprofit federally chartered corporation; and

“(2) shall not be an agency or instrumentality of the United States.

“(c) PLACE OF INCORPORATION AND DOMICILE.—The Foundation shall be incorporated and domiciled in the District of Columbia.

“(d) DUTIES.—The Foundation shall—

“(1) encourage, accept, and administer, in accordance with the terms of each donation, private gifts of real and personal property, and any income from or interest in such gifts, for the benefit of, or in support of, public safety and justice services in American Indian and Alaska Native communities; and

“(2) assist the Office of Justice Services of the Bureau of Indian Affairs and Indian tribal governments in funding and conducting activities and providing education to advance and support the provision of public safety and justice services in American Indian and Alaska Native communities.

“(e) COMMITTEE FOR THE ESTABLISHMENT OF THE INDIAN LAW ENFORCEMENT FOUNDATION.—

“(1) IN GENERAL.—The Secretary shall establish a committee, to be known as the ‘Committee for the Establishment of the Indian Law Enforcement Foundation’, to assist the Secretary in establishing the Foundation.

“(2) DUTIES.—Not later than 180 days after the date of enactment of this section, the Committee shall— Deadline.

“(A) carry out such activities as are necessary to incorporate the Foundation under the laws of the District of Columbia, including acting as incorporators of the Foundation;

“(B) ensure that the Foundation qualifies for and maintains the status required to carry out this section, until the date on which the Board is established;

“(C) establish the constitution and initial bylaws of the Foundation;

“(D) provide for the initial operation of the Foundation, including providing for temporary or interim quarters, equipment, and staff; and

“(E) appoint the initial members of the Board in accordance with the constitution and initial bylaws of the Foundation.

“(f) BOARD OF DIRECTORS.—

“(1) IN GENERAL.—The Board of Directors shall be the governing body of the Foundation.

“(2) POWERS.—The Board may exercise, or provide for the exercise of, the powers of the Foundation.

“(3) SELECTION.—

“(A) IN GENERAL.—Subject to subparagraph (B), the number of members of the Board, the manner of selection of the members (including the filling of vacancies), and the terms of office of the members shall be as provided in the constitution and bylaws of the Foundation.

“(B) REQUIREMENTS.—

“(i) NUMBER OF MEMBERS.—The Board shall be composed of not less than 7 members.

“(ii) INITIAL VOTING MEMBERS.—The initial voting members of the Board—

“(I) shall be appointed by the Committee not later than 180 days after the date on which the Foundation is established; and

“(II) shall serve for staggered terms.

“(iii) QUALIFICATION.—The members of the Board shall be United States citizens with knowledge or experience regarding public safety and justice in Indian and Alaska Native communities.

“(C) COMPENSATION.—A member of the Board shall not receive compensation for service as a member, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred in the performance of the duties of the Foundation.

“(g) OFFICERS.—

“(1) IN GENERAL.—The officers of the Foundation shall be—

“(A) a Secretary, elected from among the members of the Board; and

“(B) any other officers provided for in the constitution and bylaws of the Foundation.

“(2) CHIEF OPERATING OFFICER.—

“(A) SECRETARY.—Subject to subparagraph (B), the Secretary of the Foundation may serve, at the direction of the Board, as the chief operating officer of the Foundation.

“(B) APPOINTMENT.—The Board may appoint a chief operating officer in lieu of the Secretary of the Foundation under subparagraph (A), who shall serve at the direction of the Board.

“(3) ELECTION.—The manner of election, term of office, and duties of the officers of the Foundation shall be as provided in the constitution and bylaws of the Foundation.

“(h) POWERS.—The Foundation—

“(1) shall adopt a constitution and bylaws for the management of the property of the Foundation and the regulation of the affairs of the Foundation;

“(2) may adopt and alter a corporate seal;

“(3) may enter into contracts;

“(4) may acquire (through gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;

“(5) may sue and be sued; and

“(6) may perform any other act necessary and proper to carry out the purposes of the Foundation.

“(i) PRINCIPAL OFFICE.—

“(1) IN GENERAL.—The principal office of the Foundation shall be located in the District of Columbia.

“(2) ACTIVITIES; OFFICES.—The activities of the Foundation may be conducted, and offices may be maintained, throughout

Deadline.

the United States in accordance with the constitution and bylaws of the Foundation.

“(j) SERVICE OF PROCESS.—The Foundation shall comply with the law on service of process of each State in which the Foundation is incorporated and of each State in which the Foundation carries on activities.

“(k) LIABILITY OF OFFICERS, EMPLOYEES, AND AGENTS.—

“(1) IN GENERAL.—The Foundation shall be liable for the acts of the officers, employees, and agents of the Foundation acting within the scope of the authority of the officers, employees, and agents.

“(2) PERSONAL LIABILITY.—A member of the Board shall be personally liable only for gross negligence in the performance of the duties of the member.

“(l) RESTRICTIONS.—

“(1) LIMITATION ON SPENDING.—Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation shall not exceed the percentage described in paragraph (2) of the sum of—

“(A) the amounts transferred to the Foundation under subsection (n) during the preceding fiscal year; and

“(B) donations received from private sources during the preceding fiscal year.

“(2) PERCENTAGES.—The percentages referred to in paragraph (1) are—

“(A) for the first 2 fiscal years described in that paragraph, 25 percent;

“(B) for the following fiscal year, 20 percent; and

“(C) for each fiscal year thereafter, 15 percent.

“(3) APPOINTMENT AND HIRING.—The appointment of officers and employees of the Foundation shall be subject to the availability of funds.

“(4) STATUS.—A member of the Board or officer, employee, or agent of the Foundation shall not by reason of association with the Foundation be considered to be an officer, employee, or agent of the United States.

“(m) AUDITS.—The Foundation shall comply with section 10101 of title 36, United States Code, as if the Foundation were a corporation under part B of subtitle II of that title.

“(n) FUNDING.—For each of fiscal years 2011 through 2015, out of any unobligated amounts available to the Secretary, the Secretary may use to carry out this section not more than \$500,000.

“SEC. 703. ADMINISTRATIVE SERVICES AND SUPPORT.

“(a) PROVISION OF SUPPORT BY SECRETARY.—Subject to subsection (b), during the 5-year period beginning on the date on which the Foundation is established, the Secretary—

“(1) may provide personnel, facilities, and other administrative support services to the Foundation;

“(2) may provide funds for initial operating costs and to reimburse the travel expenses of the members of the Board; and

“(3) shall require and accept reimbursements from the Foundation for—

“(A) services provided under paragraph (1); and

“(B) funds provided under paragraph (2).

25 USC
458ccc-2.
Time period.

“(b) REIMBURSEMENT.—Reimbursements accepted under subsection (a)(3)—

“(1) shall be deposited in the Treasury of the United States to the credit of the applicable appropriations account; and

“(2) shall be chargeable for the cost of providing services described in subsection (a)(1) and travel expenses described in subsection (a)(2).

“(c) CONTINUATION OF CERTAIN SERVICES.—The Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) if the facilities and services are—

“(1) available; and

“(2) provided on reimbursable cost basis.”.

(d) TECHNICAL AMENDMENTS.—The Indian Self-Determination and Education Assistance Act is amended—

(1) by redesignating title V (25 U.S.C. 458bbb et seq.) as title VIII and moving the title so as to appear at the end of the Act;

(2) by redesignating sections 501, 502, and 503 (25 U.S.C. 458bbb, 458bbb-1, 458bbb-2) as sections 801, 802, and 803, respectively; and

(3) in subsection (a)(2) of section 802 and paragraph (2) of section 803 (as redesignated by paragraph (2)), by striking “section 501” and inserting “section 801”.

(e) ACCEPTANCE AND ASSISTANCE.—Section 5 of the Indian Law Enforcement Reform Act (25 U.S.C. 2804) is amended by adding at the end the following:

“(g) ACCEPTANCE OF ASSISTANCE.—The Bureau may accept reimbursement, resources, assistance, or funding from—

“(1) a Federal, tribal, State, or other government agency;

or

“(2) the Indian Law Enforcement Foundation established under section 701(a) of the Indian Self-Determination and Education Assistance Act.”.

SEC. 232. DRUG ENFORCEMENT IN INDIAN COUNTRY.

(a) EDUCATION AND RESEARCH PROGRAMS.—Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended in subsections (a)(1) and (c), by inserting “tribal,” after “State,” each place it appears.

(b) PUBLIC-PRIVATE EDUCATION PROGRAM.—Section 503 of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 872a) is amended—

(1) in subsection (a), by inserting “tribal,” after “State,”; and

(2) in subsection (b)(2), by inserting “, tribal,” after “State”.

(c) COOPERATIVE ARRANGEMENTS.—Section 503 of the Controlled Substances Act (21 U.S.C. 873) is amended—

(1) in subsection (a)—

(A) by inserting “tribal,” after “State,” each place it appears; and

(B) in paragraphs (6) and (7), by inserting “, tribal,” after “State” each place it appears; and

(2) in subsection (d)(1), by inserting “, tribal,” after “State”.

(d) POWERS OF ENFORCEMENT PERSONNEL.—Section 508(a) of the Controlled Substances Act (21 U.S.C. 878(a)) is amended in

25 USC
458ddd—
458ddd-2.
25 USC
458ddd-1,
458ddd-2.

the matter preceding paragraph (1) by inserting “, tribal,” after “State”.

(e) EFFECT OF GRANTS.—Nothing in this section or any amendment made by this section— 21 USC 872 note.

(1) allows the grant to be made to, or used by, an entity for law enforcement activities that the entity lacks jurisdiction to perform; or

(2) has any effect other than to authorize, award, or deny a grant of funds to a federally recognized Indian tribe for the purposes described in the relevant grant program.

SEC. 233. ACCESS TO NATIONAL CRIMINAL INFORMATION DATABASES.

(a) ACCESS TO NATIONAL CRIMINAL INFORMATION DATABASES.—Section 534 of title 28, United States Code, is amended—

(1) in subsection (a)(4), by inserting “Indian tribes,” after “the States,”;

(2) by striking subsection (d) and inserting the following:

“(d) INDIAN LAW ENFORCEMENT AGENCIES.—The Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies—

“(1) to access and enter information into Federal criminal information databases; and

“(2) to obtain information from the databases.”;

(3) by redesignating the second subsection (e) as subsection (f); and

(4) in paragraph (2) of subsection (f) (as redesignated by paragraph (3)), in the matter preceding subparagraph (A), by inserting “, tribal,” after “Federal”.

(b) REQUIREMENT.—

28 USC 534 note.

(1) IN GENERAL.—The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements be permitted access to national crime information databases.

(2) SANCTIONS.—For purpose of sanctions for noncompliance with requirements of, or misuse of, national crime information databases and information obtained from those databases, a tribal law enforcement agency or official shall be treated as Federal law enforcement agency or official.

(3) NCIC.—Each tribal justice official serving an Indian tribe with criminal jurisdiction over Indian country shall be considered to be an authorized law enforcement official for purposes of access to the National Crime Information Center of the Federal Bureau of Investigation.

SEC. 234. TRIBAL COURT SENTENCING AUTHORITY.

(a) INDIVIDUAL RIGHTS.—Section 202 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1302), is amended—

(1) in the matter preceding paragraph (1), by striking “No Indian tribe” and inserting the following:

“(a) IN GENERAL.—No Indian tribe”;

(2) in subsection (a) (as designated by paragraph (1))—

(A) in paragraph (6) by inserting “(except as provided in subsection (b))” after “assistance of counsel for his defense”; and

(B) by striking paragraph (7) and inserting the following:

“(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

“(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

“(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

“(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;” and

(3) by adding at the end the following:

“(b) OFFENSES SUBJECT TO GREATER THAN 1-YEAR IMPRISONMENT OR A FINE GREATER THAN \$5,000.—A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

“(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

“(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

“(c) RIGHTS OF DEFENDANTS.—In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

“(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

“(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

“(3) require that the judge presiding over the criminal proceeding—

“(A) has sufficient legal training to preside over criminal proceedings; and

“(B) is licensed to practice law by any jurisdiction in the United States;

“(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

“(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

“(d) SENTENCES.—In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

“(1) to serve the sentence—

“(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian

Guidelines.
Deadline.

tribes) not later than 180 days after the date of enactment of the Tribal Law and Order Act of 2010;

“(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) of the Tribal Law and Order Act of 2010;

“(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

“(D) in an alternative rehabilitation center of an Indian tribe; or

“(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

“(e) DEFINITION OF OFFENSE.—In this section, the term ‘offense’ means a violation of a criminal law.

“(f) EFFECT OF SECTION.—Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.”.

(b) REPORT.—Not later than 4 years after the date of enactment of this Act, the Attorney General, in coordination with the Secretary of the Interior, shall submit a report to the appropriate committees of Congress that includes—

(1) a description of the effectiveness of enhanced tribal court sentencing authority in curtailing violence and improving the administration of justice on Indian lands; and

(2) a recommendation of whether enhanced sentencing authority should be discontinued, enhanced, or maintained at the level authorized under this title.

(c) BUREAU OF PRISONS TRIBAL PRISONER PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this title, the Director of the Bureau of Prisons shall establish a pilot program under which the Bureau of Prisons shall accept offenders convicted in tribal court pursuant to section 202 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1302) (as amended by this section), subject to the conditions described in paragraph (2).

(2) CONDITIONS.—

(A) IN GENERAL.—As a condition of participation in the pilot program described in paragraph (1), the tribal court shall submit to the Attorney General a request for confinement of the offender, for approval by the Attorney General (or a designee) by not later than 30 days after the date of submission.

(B) LIMITATIONS.—Requests for confinement shall be limited to offenders convicted of a violent crime (comparable to the violent crimes described in section 1153(a) of title 18, United States Code) for which the sentence includes a term of imprisonment of 2 or more years.

(C) CUSTODY CONDITIONS.—The imprisonment by the Bureau of Prisons shall be subject to the conditions described in section 5003 of title 18, United States Code, regarding the custody of State offenders, except that the offender shall be placed in the nearest available and appropriate Federal facility, and imprisoned at the expense of the United States.

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(D) CAP.—The Bureau of Prisons shall confine not more than 100 tribal offenders at any time.

(3) RESCINDING REQUESTS.—

(A) IN GENERAL.—The applicable tribal government shall retain the authority to rescind the request for confinement of a tribal offender by the Bureau of Prisons under this paragraph at any time during the sentence of the offender.

(B) RETURN TO TRIBAL CUSTODY.—On rescission of a request under subparagraph (A), a tribal offender shall be returned to tribal custody.

(4) REASSESSMENT.—If tribal court demand for participation in this pilot program exceeds 100 tribal offenders, a representative of the Bureau of Prisons shall notify Congress.

(5) REPORT.—Not later than 3 years after the date of establishment of the pilot program, the Attorney General shall submit to Congress a report describing the status of the program, including recommendations regarding the future of the program, if any.

(6) TERMINATION.—Except as otherwise provided by an Act of Congress, the pilot program under this paragraph shall expire on the date that is 4 years after the date on which the program is established.

(d) GRANTS AND CONTRACTS.—Section 1007(b) of the Economic Opportunity Act of 1964 (42 U.S.C. 2996f(b)) is amended by striking paragraph (2) and inserting the following:

“(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with an offense in an Indian tribal court;”.

SEC. 235. INDIAN LAW AND ORDER COMMISSION.

The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) (as amended by section 214(b)) is amended by adding at the end the following:

25 USC 2812.

“SEC. 15. INDIAN LAW AND ORDER COMMISSION.

“(a) ESTABLISHMENT.—There is established a commission to be known as the Indian Law and Order Commission (referred to in this section as the ‘Commission’).

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Commission shall be composed of 9 members, of whom—

“(A) 3 shall be appointed by the President, in consultation with—

“(i) the Attorney General; and

“(ii) the Secretary;

“(B) 2 shall be appointed by the Majority Leader of the Senate, in consultation with the Chairpersons of the Committees on Indian Affairs and the Judiciary of the Senate;

“(C) 1 shall be appointed by the Minority Leader of the Senate, in consultation with the Vice Chairperson and Ranking Member of the Committees on Indian Affairs and the Judiciary of the Senate;

“(D) 2 shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairpersons of the Committees on the Judiciary and Natural Resources of the House of Representatives; and

“(E) 1 shall be appointed by the Minority Leader of the House of Representatives, in consultation with the Ranking Members of the Committees on the Judiciary and Natural Resources of the House of Representatives.

“(2) REQUIREMENTS FOR ELIGIBILITY.—Each member of the Commission shall have significant experience and expertise in—

“(A) the Indian country criminal justice system; and

“(B) matters to be studied by the Commission.

“(3) CONSULTATION REQUIRED.—The President, the Speaker and Minority Leader of the House of Representatives, and the Majority Leader and Minority Leader of the Senate shall consult before the appointment of members of the Commission under paragraph (1) to achieve, to the maximum extent practicable, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

President.

“(4) TERM.—Each member shall be appointed for the life of the Commission.

“(5) TIME FOR INITIAL APPOINTMENTS.—The appointment of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

“(6) VACANCIES.—A vacancy in the Commission shall be filled—

“(A) in the same manner in which the original appointment was made; and

“(B) not later than 60 days after the date on which the vacancy occurred.

Deadline.

“(c) OPERATION.—

“(1) CHAIRPERSON.—Not later than 15 days after the date on which all members of the Commission have been appointed, the Commission shall select 1 member to serve as Chairperson of the Commission.

Deadline.

“(2) MEETINGS.—

“(A) IN GENERAL.—The Commission shall meet at the call of the Chairperson.

“(B) INITIAL MEETING.—The initial meeting shall take place not later than 30 days after the date described in paragraph (1).

Deadline.

“(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

“(4) RULES.—The Commission may establish, by majority vote, any rules for the conduct of Commission business, in accordance with this Act and other applicable law.

“(d) COMPREHENSIVE STUDY OF CRIMINAL JUSTICE SYSTEM RELATING TO INDIAN COUNTRY.—The Commission shall conduct a comprehensive study of law enforcement and criminal justice in tribal communities, including—

“(1) jurisdiction over crimes committed in Indian country and the impact of that jurisdiction on—

“(A) the investigation and prosecution of Indian country crimes; and

“(B) residents of Indian land;

“(2) the tribal jail and Federal prisons systems and the effect of those systems with respect to—

“(A) reducing Indian country crime; and

“(B) rehabilitation of offenders;

“(3)(A) tribal juvenile justice systems and the Federal juvenile justice system as relating to Indian country; and

“(B) the effect of those systems and related programs in preventing juvenile crime, rehabilitating Indian youth in custody, and reducing recidivism among Indian youth;

“(4) the impact of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) on—

“(A) the authority of Indian tribes;

“(B) the rights of defendants subject to tribal government authority; and

“(C) the fairness and effectiveness of tribal criminal systems; and

“(5) studies of such other subjects as the Commission determines relevant to achieve the purposes of the Tribal Law and Order Act of 2010.

“(e) RECOMMENDATIONS.—Taking into consideration the results of the study under paragraph (1), the Commission shall develop recommendations on necessary modifications and improvements to justice systems at the tribal, Federal, and State levels, including consideration of—

“(1) simplifying jurisdiction in Indian country;

“(2) improving services and programs—

“(A) to prevent juvenile crime on Indian land;

“(B) to rehabilitate Indian youth in custody; and

“(C) to reduce recidivism among Indian youth;

“(3) adjustments to the penal authority of tribal courts and exploring alternatives to incarceration;

“(4) the enhanced use of chapter 43 of title 28, United States Code (commonly known as ‘the Federal Magistrates Act’) in Indian country;

“(5) effective means of protecting the rights of victims and defendants in tribal criminal justice systems (including defendants incarcerated for a period of less than 1 year);

“(6) changes to the tribal jails and Federal prison systems; and

“(7) other issues that, as determined by the Commission, would reduce violent crime in Indian country.

“(f) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the President and Congress a report that contains—

“(1) a detailed statement of the findings and conclusions of the Commission; and

“(2) the recommendations of the Commission for such legislative and administrative actions as the Commission considers to be appropriate.

“(g) POWERS.—

“(1) HEARINGS.—

“(A) IN GENERAL.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers to be advisable to carry out the duties of the Commission under this section.

“(B) PUBLIC REQUIREMENT.—The hearings of the Commission under this paragraph shall be open to the public.

“(2) WITNESS EXPENSES.—

“(A) IN GENERAL.—A witness requested to appear before the Commission shall be paid the same fees and allowances as are paid to witnesses under section 1821 of title 28, United States Code.

“(B) PER DIEM AND MILEAGE.—The fees and allowances for a witness shall be paid from funds made available to the Commission.

“(3) INFORMATION FROM FEDERAL, TRIBAL, AND STATE AGENCIES.—

“(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers to be necessary to carry out this section.

“(B) TRIBAL AND STATE AGENCIES.—The Commission may request the head of any tribal or State agency to provide to the Commission such information as the Commission considers to be necessary to carry out this section.

“(4) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

“(5) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

“(h) COMMISSION PERSONNEL MATTERS.—

“(1) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

“(2) DETAIL OF FEDERAL EMPLOYEES.—On the affirmative vote of $\frac{2}{3}$ of the members of the Commission and the approval of the appropriate Federal agency head, an employee of the Federal Government may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

“(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—On request of the Commission, the Attorney General shall provide to the Commission, on a reimbursable basis, reasonable and appropriate office space, supplies, and administrative assistance.

“(i) CONTRACTS FOR RESEARCH.—

“(1) RESEARCHERS AND EXPERTS.—

“(A) IN GENERAL.—On an affirmative vote of $\frac{2}{3}$ of the members of the Commission, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out the duties of the Commission under this section.

“(B) NATIONAL INSTITUTE OF JUSTICE.—The National Institute of Justice may enter into a contract with the researchers and experts selected by the Commission under subparagraph (A) to provide funding in exchange for the services of the researchers and experts.

“(2) OTHER ORGANIZATIONS.—Nothing in this subsection limits the ability of the Commission to enter into contracts with any other entity or organization to carry out research

necessary to carry out the duties of the Commission under this section.

“(j) TRIBAL ADVISORY COMMITTEE.—

“(1) ESTABLISHMENT.—The Commission shall establish a committee, to be known as the ‘Tribal Advisory Committee’.

“(2) MEMBERSHIP.—

“(A) COMPOSITION.—The Tribal Advisory Committee shall consist of 2 representatives of Indian tribes from each region of the Bureau of Indian Affairs.

“(B) QUALIFICATIONS.—Each member of the Tribal Advisory Committee shall have experience relating to—

“(i) justice systems;

“(ii) crime prevention; or

“(iii) victim services.

“(3) DUTIES.—The Tribal Advisory Committee shall—

“(A) serve as an advisory body to the Commission; and

“(B) provide to the Commission advice and recommendations, submit materials, documents, testimony, and such other information as the Commission determines to be necessary to carry out the duties of the Commission under this section.

“(k) FUNDING.—For the fiscal year after the date of enactment of the Tribal Law and Order Act of 2010, out of any unobligated amounts available to the Secretary of the Interior or the Attorney General, the Secretary or the Attorney General may use to carry out this section not more than \$2,000,000.

“(l) TERMINATION OF COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits the report of the Commission under subsection (f).

“(m) NONAPPLICABILITY OF FACCA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.”.

SEC. 236. EXEMPTION FOR TRIBAL DISPLAY MATERIALS.

(a) IN GENERAL.—Section 845(a) of title 18, United States Code is amended—

(1) in paragraph (5), by striking “and” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “and”; and

(3) by adding at the end the following:

“(7) the transportation, shipment, receipt, or importation of display fireworks materials for delivery to a federally recognized Indian tribe or tribal agency.”.

(b) DEFINITION OF INDIAN TRIBE.—Section 841 of title 18, United States Code is amended by adding at the end the following:

“(t) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).”.

(c) TECHNICAL AMENDMENTS.—Section 845 of title 18, United States Code is amended—

(1) in subsection (a), by striking “subsections” in the first place it appears and inserting “subsection”; and

(2) in subsection (b), by striking “Secretary” each place it appears and inserting “Attorney General”.

Subtitle D—Tribal Justice Systems

SEC. 241. INDIAN ALCOHOL AND SUBSTANCE ABUSE.

(a) CORRECTION OF REFERENCES.—

(1) INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.—Section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1)—

(I) by striking “Not later than 120 days after the date of enactment of this subtitle” and inserting “Not later than 1 year after the date of enactment of the Tribal Law and Order Act of 2010”; and

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(II) by inserting “, the Attorney General,” after “Secretary of the Interior”;

(ii) in paragraph (2)(A), by inserting “, Office of Justice Programs, Substance Abuse and Mental Health Services Administration,” after “Bureau of Indian Affairs,”;

(iii) in paragraph (4), by inserting “, Department of Justice, Substance Abuse and Mental Health Services Administration,” after “Bureau of Indian Affairs”;

(iv) in paragraph (5), by inserting “, Department of Justice, Substance Abuse and Mental Health Services Administration,” after “Bureau of Indian Affairs”;

(v) in paragraph (7), by inserting “, the Attorney General,” after “Secretary of the Interior”;

(B) in subsection (c), by inserting “, the Attorney General,” after “Secretary of the Interior”; and

(C) in subsection (d), by striking “the date of enactment of this subtitle” and inserting “the date of enactment of the Tribal Law and Order Act of 2010”.

(2) TRIBAL ACTION PLANS.—Section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2412) is amended—

(A) in subsection (b), in the first sentence, by inserting “, the Office of Justice Programs, the Substance Abuse and Mental Health Services Administration,” before “and the Indian Health Service service unit”;

(B) in subsection (c)(1)(A)(i), by inserting “, the Office of Justice Programs, the Substance Abuse and Mental Health Services Administration,” before “and the Indian Health Service service unit”;

(C) in subsection (d)(2), by striking “fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” and inserting “the period of fiscal years 2011 through 2015”;

(D) in subsection (e), in the first sentence, by inserting “, the Attorney General,” after “the Secretary of the Interior”; and

(E) in subsection (f)(3), by striking “fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” and inserting “fiscal years 2011 through 2015”.

(3) DEPARTMENTAL RESPONSIBILITY.—Section 4207 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2413) is amended—

(A) in subsection (a), by inserting “, the Attorney General” after “Bureau of Indian Affairs”;

(B) in subsection (b)—

(i) by striking paragraph (1) and inserting the following:

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—To improve coordination among the Federal agencies and departments carrying out this subtitle, there is established within the Substance Abuse and Mental Health Services Administration an office, to be known as the ‘Office of Indian Alcohol and Substance Abuse’ (referred to in this section as the ‘Office’).

“(B) DIRECTOR.—The director of the Office shall be appointed by the Administrator of the Substance Abuse and Mental Health Services Administration—

“(i) on a permanent basis; and

“(ii) at a grade of not less than GS-15 of the General Schedule.”;

(ii) in paragraph (2)—

(I) by striking “(2) In addition” and inserting the following:

“(2) RESPONSIBILITIES OF OFFICE.—In addition”;

(II) by striking subparagraph (A) and inserting the following:

“(A) coordinating with other agencies to monitor the performance and compliance of the relevant Federal programs in achieving the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205;”;

(III) in subparagraph (B)—

(aa) by striking “within the Bureau of Indian Affairs”; and

(bb) by striking the period at the end and inserting “; and”; and

(IV) by adding at the end the following:

“(C) not later than 1 year after the date of enactment of the Tribal Law and Order Act of 2010, developing, in coordination and consultation with tribal governments, a framework for interagency and tribal coordination that—

“(i) establish the goals and other desired outcomes of this Act;

“(ii) prioritizes outcomes that are aligned with the purposes of affected agencies;

“(iii) provides guidelines for resource and information sharing;

“(iv) provides technical assistance to the affected agencies to establish effective and permanent interagency communication and coordination; and

“(v) determines whether collaboration is feasible, cost-effective, and within agency capability.”; and

(iii) by striking paragraph (3) and inserting the following:

Deadline.

“(3) APPOINTMENT OF EMPLOYEES.—The Administrator of the Substance Abuse and Mental Health Services Administration shall appoint such employees to work in the Office, and shall provide such funding, services, and equipment, as may be necessary to enable the Office to carry out the responsibilities under this subsection.”; and

(C) in subsection (c)—

(i) by striking “of Alcohol and Substance Abuse” each place it appears;

(ii) in paragraph (1), in the second sentence, by striking “The Assistant Secretary of the Interior for Indian Affairs” and inserting “The Administrator of the Substance Abuse and Mental Health Services Administration”; and

(iii) in paragraph (3)—

(I) in the matter preceding subparagraph (A), by striking “Youth” and inserting “youth”; and

(II) by striking “programs of the Bureau of Indian Affairs” and inserting “the applicable Federal programs”.

(4) REVIEW OF PROGRAMS.—Section 4208a(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2414a(a)) is amended in the matter preceding paragraph (1) by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(5) FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.—Section 4209 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2415) is amended—

(A) in subsection (a), by inserting “, the Attorney General,” after “the Secretary of the Interior”;

(B) in subsection (b)—

(i) in the first sentence, by inserting “, the Attorney General,” after “the Secretary of the Interior”;

(ii) in the second sentence, by inserting “, nor the Attorney General,” after “the Secretary of the Interior”; and

(iii) in the third sentence, by inserting “, the Department of Justice,” after “the Department of the Interior”; and

(C) in subsection (c)(1), by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(6) REVIEW.—Section 4211(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2431(a)) is amended in the matter preceding paragraph (1) by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(b) INDIAN EDUCATION PROGRAMS.—Section 4212 of the Indian Alcohol and Substance Abuse Prevention Act of 1986 (25 U.S.C. 2432) is amended by striking subsection (a) and inserting the following:

“(a) SUMMER YOUTH PROGRAMS.—

“(1) IN GENERAL.—The head of the Indian Alcohol and Substance Abuse Program, in coordination with the Assistant Secretary for Indian Affairs, shall develop and implement programs in tribal schools and schools funded by the Bureau of Indian Education (subject to the approval of the local school board or contract school board) to determine the effectiveness

of summer youth programs in advancing the purposes and goals of this Act.

“(2) COSTS.—The head of the Indian Alcohol and Substance Abuse Program and the Assistant Secretary shall defray all costs associated with the actual operation and support of the summer youth programs in a school from funds appropriated to carry out this subsection.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the programs under this subsection \$5,000,000 for each of fiscal years 2011 through 2015.”

(c) EMERGENCY SHELTERS.—Section 4213(e) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433(e)) is amended—

(1) in paragraph (1), by striking “fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.” and inserting “each of fiscal years 2011 through 2015.”;

(2) in paragraph (2), by striking “each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.” and inserting “each of fiscal years 2011 through 2015.”; and

(3) by indenting paragraphs (4) and (5) appropriately.

(d) REVIEW OF PROGRAMS.—Section 4215(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2441(a)) is amended by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(e) ILLEGAL NARCOTICS TRAFFICKING; SOURCE ERADICATION.—Section 4216 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2442) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking the comma at the end and inserting a semicolon;

(ii) in subparagraph (B), by striking “, and” at the end and inserting a semicolon;

(iii) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(iv) by adding at the end the following:

“(D) the Blackfeet Nation of Montana for the investigation and control of illegal narcotics traffic on the Blackfeet Indian Reservation along the border with Canada.”;

(B) in paragraph (2), by striking “United States Custom Service” and inserting “United States Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, and the Drug Enforcement Administration”; and

(C) by striking paragraph (3) and inserting the following:

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$2,000,000 for each of fiscal years 2011 through 2015.”; and

(2) in subsection (b)(2), by striking “for the fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” and “for each of fiscal years 2011 through 2015.”.

(f) LAW ENFORCEMENT AND JUDICIAL TRAINING.—Section 4218 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2451) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) TRAINING PROGRAMS.—

“(1) IN GENERAL.—The Secretary of the Interior, in coordination with the Attorney General, the Administrator of the Drug Enforcement Administration, and the Director of the Federal Bureau of Investigation, shall ensure, through the establishment of a new training program or by supplementing existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel have access to training regarding—

“(A) the investigation and prosecution of offenses relating to illegal narcotics; and

“(B) alcohol and substance abuse prevention and treatment.

“(2) YOUTH-RELATED TRAINING.—Any training provided to Bureau of Indian Affairs or tribal law enforcement or judicial personnel under paragraph (1) shall include training in issues relating to youth alcohol and substance abuse prevention and treatment.”; and

(2) in subsection (b), by striking “as may be necessary” and all that follows through the end of the subsection and inserting “as are necessary for each of fiscal years 2011 through 2015.”.

(g) JUVENILE DETENTION CENTERS.—Section 4220 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2453) is amended—

(1) in subsection (a)—

(A) by striking “The Secretary” the first place it appears and inserting the following:

“(1) IN GENERAL.—The Secretary”;

(B) in the second sentence, by striking “The Secretary shall” and inserting the following:

“(2) CONSTRUCTION AND OPERATION.—The Secretary shall”;

and

(C) by adding at the end the following:

“(3) DEVELOPMENT OF PLAN.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary and the Attorney General, in consultation with tribal leaders and tribal justice officials, shall develop a long-term plan for the construction, renovation, and operation of Indian juvenile detention and treatment centers and alternatives to detention for juvenile offenders.

Deadline.

“(B) COORDINATION.—The plan under subparagraph (A) shall require the Bureau of Indian Education and the Indian Health Service to coordinate with tribal and Bureau of Indian Affairs juvenile detention centers to provide services to those centers.”; and

(2) in paragraphs (1) and (2) of subsection (b)—

(A) by striking “for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” each place it appears and inserting “for each of fiscal years 2011 through 2015”; and

(B) by indenting paragraph (2) appropriately.

SEC. 242. INDIAN TRIBAL JUSTICE; TECHNICAL AND LEGAL ASSISTANCE.

(a) INDIAN TRIBAL JUSTICE.—

(1) BASE SUPPORT FUNDING.—Section 103(b) of the Indian Tribal Justice Act (25 U.S.C. 3613(b)) is amended by striking paragraph (2) and inserting the following:

“(2) the employment of tribal court personnel, including tribal court judges, prosecutors, public defenders, appointed defense counsel, guardians ad litem, and court-appointed special advocates for children and juveniles;”.

(2) TRIBAL JUSTICE SYSTEMS.—Section 201 of the Indian Tribal Justice Act (25 U.S.C. 3621) is amended—

(A) in subsection (a)—

(i) by striking “the provisions of sections 101 and 102 of this Act” and inserting “sections 101 and 102”; and

(ii) by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2011 through 2015”;

(B) in subsection (b)—

(i) by striking “the provisions of section 103 of this Act” and inserting “section 103”; and

(ii) by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2011 through 2015”;

(C) in subsection (c), by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2011 through 2015”; and

(D) in subsection (d), by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2011 through 2015”.

(b) TECHNICAL AND LEGAL ASSISTANCE.—

(1) TRIBAL CIVIL LEGAL ASSISTANCE GRANTS.—Section 102 of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3662) is amended by inserting “(including guardians ad litem and court-appointed special advocates for children and juveniles)” after “civil legal assistance”.

(2) TRIBAL CRIMINAL LEGAL ASSISTANCE GRANTS.—Section 103 of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3663) is amended by striking “criminal legal assistance to members of Indian tribes and tribal justice systems” and inserting “defense counsel services to all defendants in tribal court criminal proceedings and prosecution and judicial services for tribal courts”.

(3) FUNDING.—The Indian Tribal Justice Technical and Legal Assistance Act of 2000 is amended—

(A) in section 107 (as redesignated by section 214(a)(2)(A)), by striking “2000 through 2004” and inserting “2011 through 2015”; and

(B) in section 201(d) (25 U.S.C. 3681(d)), by striking “2000 through 2004” and inserting “2011 through 2015”.

SEC. 243. TRIBAL RESOURCES GRANT PROGRAM.

Section 1701 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended—

(1) in subsection (b)—

(A) in each of paragraphs (1) through (4) and (6) through (17), by inserting “to” after the paragraph designation;

(B) in paragraph (1), by striking “State and” and inserting “State, tribal, or”;

(C) in paragraphs (9) and (10), by inserting “, tribal,” after “State” each place it appears;

(D) in paragraph (15)—

(i) by striking “a State in” and inserting “a State or Indian tribe in”;

(ii) by striking “the State which” and inserting “the State or tribal community that”; and

(iii) by striking “a State or” and inserting “a State, tribal, or”;

(E) in paragraph (16), by striking “and” at the end

(F) in paragraph (17), by striking the period at the end and inserting “; and”;

(G) by redesignating paragraphs (6) through (17) as paragraphs (5) through (16), respectively; and

(H) by adding at the end the following:

“(17) to permit tribal governments receiving direct law enforcement services from the Bureau of Indian Affairs to access the program under this section for use in accordance with paragraphs (1) through (16).”.

(2) in subsection (i), by striking “The authority” and inserting “Except as provided in subsection (j), the authority”; and

(3) by adding at the end the following:

“(j) GRANTS TO INDIAN TRIBES.—

“(1) IN GENERAL.—Notwithstanding subsection (i) and section 1703, and in acknowledgment of the Federal nexus and distinct Federal responsibility to address and prevent crime in Indian country, the Attorney General shall provide grants under this section to Indian tribal governments, for fiscal year 2011 and any fiscal year thereafter, for such period as the Attorney General determines to be appropriate to assist the Indian tribal governments in carrying out the purposes described in subsection (b).

“(2) PRIORITY OF FUNDING.—In providing grants to Indian tribal governments under this subsection, the Attorney General shall take into consideration reservation crime rates and tribal law enforcement staffing needs of each Indian tribal government.

“(3) FEDERAL SHARE.—Because of the Federal nature and responsibility for providing public safety on Indian land, the Federal share of the cost of any activity carried out using a grant under this subsection—

“(A) shall be 100 percent; and

“(B) may be used to cover indirect costs.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$40,000,000 for each of fiscal years 2011 through 2015.

“(k) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Attorney General shall submit to Congress a report describing the extent and effectiveness of the Community Oriented Policing (COPS) initiative as applied in Indian country, including particular references to—

- “(1) the problem of intermittent funding;
- “(2) the integration of COPS personnel with existing law enforcement authorities; and
- “(3) an explanation of how the practice of community policing and the broken windows theory can most effectively be applied in remote tribal locations.”.

SEC. 244. TRIBAL JAILS PROGRAM.

(a) **IN GENERAL.**—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by striking subsection (a) and inserting the following:

“(a) **RESERVATION OF FUNDS.**—Notwithstanding any other provision of this part, of amounts made available to the Attorney General to carry out programs relating to offender incarceration, the Attorney General shall reserve \$35,000,000 for each of fiscal years 2011 through 2015 to carry out this section.”.

(b) **REGIONAL DETENTION CENTERS.**—

(1) **IN GENERAL.**—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by striking subsection (b) and inserting the following:

“(b) **GRANTS TO INDIAN TRIBES.**—

“(1) **IN GENERAL.**—From the amounts reserved under subsection (a), the Attorney General shall provide grants—

“(A) to Indian tribes for purposes of—

“(i) construction and maintenance of jails on Indian land for the incarceration of offenders subject to tribal jurisdiction;

“(ii) entering into contracts with private entities to increase the efficiency of the construction of tribal jails; and

“(iii) developing and implementing alternatives to incarceration in tribal jails;

“(B) to Indian tribes for the construction of tribal justice centers that combine tribal police, courts, and corrections services to address violations of tribal civil and criminal laws;

“(C) to consortia of Indian tribes for purposes of constructing and operating regional detention centers on Indian land for long-term incarceration of offenders subject to tribal jurisdiction, as the applicable consortium determines to be appropriate.

“(2) **PRIORITY OF FUNDING.**—in providing grants under this subsection, the Attorney General shall take into consideration applicable—

“(A) reservation crime rates;

“(B) annual tribal court convictions; and

“(C) bed space needs.

“(3) **FEDERAL SHARE.**—Because of the Federal nature and responsibility for providing public safety on Indian land, the Federal share of the cost of any activity carried out using a grant under this subsection shall be 100 percent.”.

(2) **CONFORMING AMENDMENT.**—Section 20109(c) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709(c)) is amended by inserting “or consortium of Indian tribes, as applicable,” after “Indian tribe”.

(3) LONG-TERM PLAN.—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by adding at the end the following:

“(d) LONG-TERM PLAN.—Not later than 1 year after the date of enactment of this subsection, the Attorney General, in coordination with the Bureau of Indian Affairs and in consultation with tribal leaders, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including—

Deadline.

“(1) a description of proposed activities for—

“(A) construction, operation, and maintenance of juvenile (in accordance with section 4220(a)(3) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2453(a)(3)) and adult detention facilities (including regional facilities) in Indian country;

“(B) contracting with State and local detention centers, on approval of the affected tribal governments; and

“(C) alternatives to incarceration, developed in cooperation with tribal court systems;

“(2) an assessment and consideration of the construction of Federal detention facilities in Indian country; and

“(3) any other alternatives as the Attorney General, in coordination with the Bureau of Indian Affairs and in consultation with Indian tribes, determines to be necessary.”.

SEC. 245. TRIBAL PROBATION OFFICE LIAISON PROGRAM.

Title II of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3681 et seq.) is amended by adding at the end the following:

“SEC. 203. ASSISTANT PROBATION OFFICERS.

25 USC 3682.

“To the maximum extent practicable, the chief judge or chief probation or pretrial services officer of each judicial district, in coordination with the Office of Tribal Justice and the Office of Justice Services, shall—

“(1) appoint individuals residing in Indian country to serve as probation or pretrial services officers or assistants for purposes of monitoring and providing services to Federal prisoners residing in Indian country; and

“(2) provide substance abuse, mental health, and other related treatment services to offenders residing on Indian land.”.

SEC. 246. TRIBAL YOUTH PROGRAM.

(a) INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS.—Section 504 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5783) is amended—

(1) in subsection (a), by inserting “, or to federally recognized Indian tribe or consortia of federally recognized Indian tribes under subsection (d)” after “subsection (b)”; and

(2) by adding at the end the following:

“(d) GRANTS FOR TRIBAL DELINQUENCY PREVENTION AND RESPONSE PROGRAMS.—

“(1) IN GENERAL.—The Administrator shall make grants under this section, on a competitive basis, to eligible Indian tribes or consortia of Indian tribes, as described in paragraph (2)—

“(A) to support and enhance—

“(i) tribal juvenile delinquency prevention services; and

“(ii) the ability of Indian tribes to respond to, and care for, juvenile offenders; and

“(B) to encourage accountability of Indian tribal governments with respect to preventing juvenile delinquency and responding to, and caring for, juvenile offenders.

“(2) ELIGIBLE INDIAN TRIBES.—To be eligible to receive a grant under this subsection, an Indian tribe or consortium of Indian tribes shall submit to the Administrator an application in such form and containing such information as the Administrator may require.

“(3) CONSIDERATIONS.—In providing grants under this subsection, the Administrator shall take into consideration, with respect to the Indian tribe to be served, the—

“(A) juvenile crime rates;

“(B) dropout rates; and

“(C) number of at-risk youth.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$25,000,000 for each of fiscal years 2011 through 2015.”.

(b) COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 206(a)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616(a)(2)) is amended—

(1) in subparagraph (A), by striking “Nine” and inserting “Ten”; and

(2) in subparagraph (B), by adding at the end the following:

“(iv) One member shall be appointed by the Chairman of the Committee on Indian Affairs of the Senate, in consultation with the Vice Chairman of that Committee and the Chairman and Ranking Member of the Committee on Natural Resources of the House of Representatives.”.

SEC. 247. IMPROVING PUBLIC SAFETY PRESENCE IN RURAL ALASKA.

(a) DEFINITIONS.—In this section:

(1) STATE.—

(A) IN GENERAL.—The term “State” means the State of Alaska.

(B) INCLUSION.—The term “State” includes any political subdivision of the State of Alaska.

(2) VILLAGE PUBLIC SAFETY OFFICER.—The term “village public safety officer” means an individual employed as a village public safety officer under the program established by the State pursuant to Alaska Statute 18.65.670.

(3) TRIBAL ORGANIZATION.—The term “tribal organization” has the meaning given that term in section 4 of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b(1)).

(b) COPS GRANTS.—The State and any Indian tribe or tribal organization in the State that employs a village public safety officer shall be eligible to apply for a grant under section 1701 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) (provided that only an Indian tribe or tribal organization may receive a grant under the tribal resources grant program

42 USC
3796dd note.

42 USC
3796dd note.

under subsection (j) of that section) on an equal basis with other eligible applicants for funding under that section.

(c) **STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE GRANTS.**—The State and any Indian tribe or tribal organization in the State that employs a village public safety officer shall be eligible to apply for a grant under the Staffing for Adequate Fire and Emergency Response program under section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a) on an equal basis with other eligible applicants for funding under that program. 42 USC 3796dd note.

(d) **TRAINING FOR VILLAGE PUBLIC SAFETY OFFICERS AND TRIBAL LAW ENFORCEMENT POSITIONS FUNDED UNDER COPS PROGRAM.**— 42 USC 3796dd note.

(1) **IN GENERAL.**—Any village public safety officer or tribal law enforcement officer in the State shall be eligible to participate in any training program offered at the Indian Police Academy of the Federal Law Enforcement Training Center.

(2) **FUNDING.**—Funding received pursuant to grants approved under section 1701 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) may be used for training of officers at programs described in paragraph (1) or at a police academy in the State certified by the Alaska Police Standards Council.

(e) **FUNDS FOR COURTS OF LAW ENFORCEMENT OFFICERS.**—Section 112(a) of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 62) is amended—

(1) by striking paragraph (1);

(2) by redesignating subparagraphs (A) and (B) of paragraph (2) as paragraphs (1) and (2), respectively, and indenting appropriately; and

(3) by redesignating clauses (i) through (iv) of paragraph (2) (as so redesignated) as subparagraphs (A) through (D), respectively, and indenting appropriately. 25 USC 3651 note.

Subtitle E—Indian Country Crime Data Collection and Information Sharing

SEC. 251. TRACKING OF CRIMES COMMITTED IN INDIAN COUNTRY.

(a) **GANG VIOLENCE.**—Section 1107 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (28 U.S.C. 534 note; Public Law 109–162) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (8) through (12) as paragraphs (9) through (13), respectively;

(B) by inserting after paragraph (7) the following:

“(8) the Office of Justice Services of the Bureau of Indian Affairs;”;

(C) in paragraph (9) (as redesignated by subparagraph (A)), by striking “State” and inserting “tribal, State,”; and

(D) in paragraphs (10) through (12) (as redesignated by subparagraph (A)), by inserting “tribal,” before “State,” each place it appears; and

(2) in subsection (b), by inserting “tribal,” before “State,” each place it appears.

(b) **BUREAU OF JUSTICE STATISTICS.**—Section 302 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732) is amended—

(1) in subsection (c)—

(A) in each of paragraphs (3) through (6), by inserting “tribal,” after “State,” each place it appears;

(B) in paragraph (7), by inserting “and in Indian country” after “States”;

(C) in paragraph (9), by striking “Federal and State Governments” and inserting “Federal Government and State and tribal governments”;

(D) in each of paragraphs (10) and (11), by inserting “, tribal,” after “State” each place it appears;

(E) in paragraph (13), by inserting “, Indian tribes,” after “States”;

(F) in paragraph (17)—

(i) by striking “State and local” and inserting “State, tribal, and local”; and

(ii) by striking “State, and local” and inserting “State, tribal, and local”;

(G) in paragraph (18), by striking “State and local” and inserting “State, tribal, and local”;

(H) in paragraph (19), by inserting “and tribal” after “State” each place it appears;

(I) in paragraph (20), by inserting “, tribal,” after “State”; and

(J) in paragraph (22), by inserting “, tribal,” after “Federal”;

(2) in subsection (d)—

(A) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively, and indenting the subparagraphs appropriately;

(B) by striking “To insure” and inserting the following:

“(1) IN GENERAL.—To ensure”; and

(C) by adding at the end the following:

“(2) CONSULTATION WITH INDIAN TRIBES.—The Director, acting jointly with the Assistant Secretary for Indian Affairs (acting through the Office of Justice Services) and the Director of the Federal Bureau of Investigation, shall work with Indian tribes and tribal law enforcement agencies to establish and implement such tribal data collection systems as the Director determines to be necessary to achieve the purposes of this section.”;

(3) in subsection (e), by striking “subsection (d)(3)” and inserting “subsection (d)(1)(C)”;

(4) in subsection (f)—

(A) in the subsection heading, by inserting “, Tribal,” after “State”; and

(B) by inserting “, tribal,” after “State”; and

(5) by adding at the end the following:

“(g) REPORTS.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Director shall submit to Congress a report describing the data collected and analyzed under this section relating to crimes in Indian country.”.

(c) EFFECT OF GRANTS.—Nothing in this section or any amendment made by this section—

(1) allows the grant to be made to, or used by, an entity for law enforcement activities that the entity lacks jurisdiction to perform; or

(2) has any effect other than to authorize, award, or deny a grant of funds to a federally recognized Indian tribe for the purposes described in the relevant grant program.

SEC. 252. CRIMINAL HISTORY RECORD IMPROVEMENT PROGRAM.

(a) **IN GENERAL.**—Section 1301(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h(a)) is amended by inserting “, tribal,” after “State”.

(b) **EFFECT OF GRANTS.**—Nothing in this section or any amendment made by this section—

42 USC 3796h
note.

(1) allows the grant to be made to, or used by, an entity for law enforcement activities that the entity lacks jurisdiction to perform; or

(2) has any effect other than to authorize, award, or deny a grant of funds to a federally recognized Indian tribe for the purposes described in the relevant grant program.

Subtitle F—Domestic Violence and Sexual Assault Prosecution and Prevention

SEC. 261. PRISONER RELEASE AND REENTRY.

(a) **DUTIES OF BUREAU OF PRISONS.**—Section 4042 of title 18, United States Code, is amended—

(1) in subsection (a)(4), by inserting “, tribal,” after “State”;

(2) in subsection (b)(1), in the first sentence, by striking “officer of the State and of the local jurisdiction” and inserting “officers of each State, tribal, and local jurisdiction”; and

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking “officer of the State and of the local jurisdiction” and inserting “officer of each State, tribal, and local jurisdiction”; and

(B) in subparagraph (B), by inserting “, tribal,” after “State” each place it appears.

(b) **AUTHORITY OF INSTITUTE; TIME; RECORDS OF RECIPIENTS; ACCESS; SCOPE OF SECTION.**—Section 4352(a) of title 18, United States Code, is amended—

(1) in paragraphs (1), (3), (4), and (8), by inserting “tribal,” after “State,” each place it appears;

(2) in paragraph (6)—

(A) by inserting “and tribal communities,” after “States”; and

(B) by inserting “, tribal,” after “State”; and

(3) in paragraph (12) by inserting “, tribal,” after “State”.

SEC. 262. DOMESTIC AND SEXUAL VIOLENCE OFFENSE TRAINING.

Section 3(c)(9) of the Indian Law Enforcement Reform Act (25 U.S.C. 2802(c)(9)) (as amended by section 211(a)(2)) is amended by inserting before the semicolon at the end the following: “, including training to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to Federal and tribal prosecutors to increase the conviction rate for domestic and sexual violence offenses for purposes of addressing and preventing domestic and sexual violent offenses”.

SEC. 263. TESTIMONY BY FEDERAL EMPLOYEES.

The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) (as amended by section 235) is amended by adding at the end the following:

25 USC 2813.

“SEC. 16. TESTIMONY BY FEDERAL EMPLOYEES.

“(a) APPROVAL OF EMPLOYEE TESTIMONY OR DOCUMENTS.—

“(1) IN GENERAL.—The Director of the Office of Justice Services or the Director of the Indian Health Service, as appropriate (referred to in this section as the ‘Director concerned’), shall approve or disapprove, in writing, any request or subpoena from a tribal or State court for a law enforcement officer, sexual assault nurse examiner, or other employee under the supervision of the Director concerned to provide documents or testimony in a deposition, trial, or other similar criminal proceeding regarding information obtained in carrying out the official duties of the employee.

“(2) DEADLINE.—The court issuing a subpoena under paragraph (1) shall provide to the appropriate Federal employee (or agency in the case of a document request) notice regarding the request to provide testimony (or release a document) by not less than 30 days before the date on which the testimony will be provided.

“(b) APPROVAL.—

“(1) IN GENERAL.—The Director concerned shall approve a request or subpoena under subsection (a) if the request or subpoena does not violate the policy of the Department to maintain impartiality.

“(2) FAILURE TO APPROVE.—If the Director concerned fails to approve or disapprove a request or subpoena for testimony or release of a document by the date that is 30 days after the date of receipt of notice of the request or subpoena, the request or subpoena shall be considered to be approved for purposes of this section.”.

42 USC 14044
note.**SEC. 264. COORDINATION OF FEDERAL AGENCIES.**

Any report of the Secretary of Health and Human Services to Congress on the development of Indian victim services and victim advocate training programs shall include any recommendations that the Secretary determines to be necessary to prevent the sex trafficking of Indian women.

SEC. 265. SEXUAL ASSAULT PROTOCOL.

The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) (as amended by section 236) is amended by adding at the end the following:

25 USC 2814.

“SEC. 17. POLICIES AND PROTOCOL.

“The Director of the Indian Health Service, in coordination with the Director of the Office of Justice Services and the Director of the Office on Violence Against Women of the Department of Justice, in consultation with Indian Tribes and Tribal Organizations, and in conference with Urban Indian Organizations, shall develop standardized sexual assault policies and protocol for the facilities of the Service, based on similar protocol that has been established by the Department of Justice.”.

SEC. 266. STUDY OF IHS SEXUAL ASSAULT AND DOMESTIC VIOLENCE RESPONSE CAPABILITIES.

(a) STUDY.—The Comptroller General of the United States shall—

(1) conduct a study of the capability of Indian Health Service facilities in remote Indian reservations and Alaska Native villages, including facilities operated pursuant to contracts or compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), to collect, maintain, and secure evidence of sexual assaults and domestic violence incidents required for criminal prosecution; and

(2) develop recommendations for improving those capabilities.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a report describing the results of the study under subsection (a), including the recommendations developed under that subsection, if any.

Approved July 29, 2010.

LEGISLATIVE HISTORY—H.R. 725 (S. 151):

HOUSE REPORTS: No. 111–397, Pt. 1 (Comm. on Natural Resources).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 19, considered and passed House.

June 23, considered and passed Senate, amended.

July 21, House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

July 29, Presidential remarks.



Public Law 111–212
111th Congress

An Act

July 29, 2010
[H.R. 4899]

Making supplemental appropriations for the fiscal year ending September 30, 2010,
and for other purposes.

Supplemental
Appropriations
Act, 2010.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, and for other purposes, namely:

TITLE I

CHAPTER 1

DEPARTMENT OF AGRICULTURE

FARM SERVICE AGENCY

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

For an additional amount for gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, to be available from funds in the Agricultural Credit Insurance Fund, as follows: guaranteed farm ownership loans, \$300,000,000; operating loans, \$650,000,000, of which \$250,000,000 shall be for unsubsidized guaranteed loans, \$50,000,000 shall be for subsidized guaranteed loans, and \$350,000,000 shall be for direct loans.

For an additional amount for the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: guaranteed farm ownership loans, \$1,110,000; operating loans, \$29,470,000, of which \$5,850,000 shall be for unsubsidized guaranteed loans, \$7,030,000 shall be for subsidized guaranteed loans, and \$16,590,000 shall be for direct loans.

For an additional amount for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$1,000,000.

EMERGENCY FOREST RESTORATION PROGRAM

For implementation of the emergency forest restoration program established under section 407 of the Agricultural Credit Act of 1978 (16 U.S.C. 2206) for expenses resulting from natural disasters that occurred on or after January 1, 2010, and for other purposes, \$18,000,000, to remain available until expended: *Provided*, That the program: (1) shall be carried out without regard

to chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”) and the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (2) with rules issued without a prior opportunity for notice and comment except, as determined to be appropriate by the Farm Service Agency, rules may be promulgated by an interim rule effective on publication with an opportunity for notice and comment: *Provided further*, That in carrying out this program, the Secretary shall use the authority provided under section 808(2) of title 5, United States Code: *Provided further*, That to reduce Federal costs in administering this heading, the emergency forest restoration program shall be considered to have met the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for activities similar in nature and quantity to those of the emergency conservation program established under title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 et seq.).

FOREIGN AGRICULTURAL SERVICE

FOOD FOR PEACE TITLE II GRANTS

For an additional amount for “Food for Peace Title II Grants” for emergency relief and rehabilitation, and other expenses related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake, \$150,000,000, to remain available until expended.

GENERAL PROVISIONS—THIS CHAPTER

SECTION 101. None of the funds appropriated or made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out a biomass crop assistance program as authorized by section 9011 of Public Law 107–171 in excess of \$552,000,000 in fiscal year 2010 or \$432,000,000 in fiscal year 2011: *Provided*, That section 3002 shall not apply to the amount under this section.

SEC. 102. (a) Section 502(h)(8) of the Housing Act of 1949 (42 U.S.C. 1472(h)(8)) is amended to read as follows:

“(8) FEES.—Notwithstanding paragraph (14)(D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender—

“(A) at the time of issuance of the guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and

“(B) an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan.”

(b) Section 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2001 (H.R. 5426 as enacted by Public Law 106–387, 115 Stat. 1549A–34) is repealed.

(c) For gross obligations for the principal amount of guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, an additional amount shall be for section 502 unsubsidized guaranteed loans sufficient to meet the remaining fiscal year 2010 demand,

Loans.

Repeal.

42 USC 1472
note.
Waiver authority.

provided that existing program underwriting standards are maintained, and provided further that the Secretary may waive fees described herein for very low- and low-income borrowers, not to exceed \$697,000,000 in loan guarantees.

CHAPTER 2

DEPARTMENT OF COMMERCE

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

(RESCISSION)

Of the funds made available under the heading “National Telecommunications and Information Administration” for Digital-to-Analog Converter Box Program in prior years, \$111,500,000 are rescinded.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

Pursuant to section 703 of the Public Works and Economic Development Act (42 U.S.C. 3233), for an additional amount for “Economic Development Assistance Programs”, for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in States that experienced damage due to severe storms and flooding during March 2010 through May 2010 for which the President declared a major disaster covering an entire State or States with more than 20 counties declared major disasters under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, \$49,000,000, to remain available until expended.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for “Operations, Research, and Facilities”, \$5,000,000, for necessary expenses related to commercial fishery failures as determined by the Secretary of Commerce in January 2010.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

EXPLORATION

The matter contained in title III of division B of Public Law 111–117 regarding “National Aeronautics and Space Administration Exploration” is amended by inserting at the end of the last proviso “: *Provided further*, That notwithstanding any other provision of law or regulation, funds made available for Constellation in fiscal year 2010 for ‘National Aeronautics and Space Administration Exploration’ and from previous appropriations for ‘National Aeronautics and Space Administration Exploration’ shall be available to fund continued performance of Constellation contracts, and performance of such Constellation contracts may not be terminated

for convenience by the National Aeronautics and Space Administration in fiscal year 2010”.

CHAPTER 3

DEPARTMENT OF DEFENSE—MILITARY

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For an additional amount for “Military Personnel, Army”, \$1,429,809,000.

MILITARY PERSONNEL, NAVY

For an additional amount for “Military Personnel, Navy”, \$40,478,000.

MILITARY PERSONNEL, MARINE CORPS

For an additional amount for “Military Personnel, Marine Corps”, \$145,499,000.

MILITARY PERSONNEL, AIR FORCE

For an additional amount for “Military Personnel, Air Force”, \$94,068,000.

RESERVE PERSONNEL, ARMY

For an additional amount for “Reserve Personnel, Army”, \$5,722,000.

RESERVE PERSONNEL, NAVY

For an additional amount for “Reserve Personnel, Navy”, \$2,637,000.

RESERVE PERSONNEL, MARINE CORPS

For an additional amount for “Reserve Personnel, Marine Corps”, \$34,758,000.

RESERVE PERSONNEL, AIR FORCE

For an additional amount for “Reserve Personnel, Air Force”, \$1,292,000.

NATIONAL GUARD PERSONNEL, ARMY

For an additional amount for “National Guard Personnel, Army”, \$33,184,000.

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for “Operation and Maintenance, Army”, \$11,719,927,000, of which \$218,300,000 shall be available

to restore amounts transferred from this account to “Overseas Humanitarian, Disaster, and Civic Aid” for emergency relief activities related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for “Operation and Maintenance, Navy”, \$2,735,194,000, of which \$187,600,000 shall be available to restore amounts transferred from this account to “Overseas Humanitarian, Disaster, and Civic Aid” for emergency relief activities related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for “Operation and Maintenance, Marine Corps”, \$829,326,000, of which \$30,700,000 shall be available to restore amounts transferred from this account to “Overseas Humanitarian, Disaster, and Civic Aid” for emergency relief activities related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for “Operation and Maintenance, Air Force”, \$3,835,095,000, of which \$218,400,000 shall be available to restore amounts transferred from this account to “Overseas Humanitarian, Disaster, and Civic Aid” for emergency relief activities related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

Determination.
Port facilities.

Guam.

Deadline.
Notification.

For an additional amount for “Operation and Maintenance, Defense-Wide”, \$1,236,727,000: *Provided*, That up to \$50,000,000, to remain available until expended, shall be available for transfer to the Port of Guam Improvement Enterprise Fund established by section 3512 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417): *Provided further*, That funds transferred under the previous proviso shall be merged with and available for obligation for the same time period and for the same purposes as the appropriation to which transferred: *Provided further*, That these funds may be transferred by the Secretary of Defense only if he determines such amounts are required to improve facilities, relieve port congestion, and provide greater access to port facilities: *Provided further*, That any amounts transferred pursuant to the previous three provisos shall be available to the Secretary of Transportation, acting through the Administrator of the Maritime Administration, to carry out under the Port of Guam Improvement Enterprise Program planning, design, and construction of projects for the Port of Guam to improve facilities, relieve port congestion, and provide greater access to port facilities: *Provided further*, That the transfer authority in this section is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That the Secretary shall, not

fewer than five days prior to making transfers under this authority, notify the congressional defense committees in writing of the details of any such transfer.

OPERATION AND MAINTENANCE, ARMY RESERVE

For an additional amount for “Operation and Maintenance, Army Reserve”, \$41,006,000.

OPERATION AND MAINTENANCE, NAVY RESERVE

For an additional amount for “Operation and Maintenance, Navy Reserve”, \$75,878,000.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For an additional amount for “Operation and Maintenance, Marine Corps Reserve”, \$857,000.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For an additional amount for “Operation and Maintenance, Air Force Reserve”, \$124,039,000.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for “Operation and Maintenance, Army National Guard”, \$180,960,000.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For an additional amount for “Operation and Maintenance, Air National Guard”, \$203,287,000.

AFGHANISTAN SECURITY FORCES FUND

For an additional amount for “Afghanistan Security Forces Fund”, \$2,604,000,000, to remain available until September 30, 2011: *Provided*, That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, for the purpose of allowing the Commander, Combined Security Transition Command—Afghanistan, or the Secretary’s designee, to provide assistance, with the concurrence of the Secretary of State, to the security forces of Afghanistan, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction, and funding: *Provided further*, That the authority to provide assistance under this heading is in addition to any other authority to provide assistance to foreign nations: *Provided further*, That contributions of funds for the purposes provided herein from any person, foreign government, or international organization may be credited to this Fund, to remain available until expended, and used for such purposes: *Provided further*, That the Secretary shall notify the congressional defense committees in writing upon the receipt and upon the transfer of any contribution, delineating the sources and amounts of the funds received and the specific use of such contributions: *Provided further*, That the Secretary of Defense shall, not fewer than 15 days prior to making transfers from this appropriation account, notify the

Notification.

Deadline.
Notification.

congressional defense committees in writing of the details of any such transfer.

IRAQ SECURITY FORCES FUND

Notification.

Deadline.
Notification.

For the “Iraq Security Forces Fund”, \$1,000,000,000, to remain available until September 30, 2011: *Provided*, That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, for the purpose of allowing the Commander, United States Forces—Iraq, or the Secretary’s designee, to provide assistance, with the concurrence of the Secretary of State, to the security forces of Iraq, including the provision of equipment, supplies, services, training, facility and infrastructure repair, and renovation: *Provided further*, That the authority to provide assistance under this heading is in addition to any other authority to provide assistance to foreign nations: *Provided further*, That contributions of funds for the purposes provided herein from any person, foreign government, or international organization may be credited to this Fund, to remain available until expended, and used for such purposes: *Provided further*, That the Secretary shall notify the congressional defense committees in writing upon the receipt and upon the transfer of any contribution, delineating the sources and amounts of the funds received and the specific use of such contributions: *Provided further*, That the Secretary of Defense shall, not fewer than 15 days prior to making transfers from this appropriation account, notify the congressional defense committees in writing of the details of any such transfer.

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For an additional amount for “Aircraft Procurement, Army”, \$219,470,000, to remain available until September 30, 2012.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For an additional amount for “Procurement of Weapons and Tracked Combat Vehicles, Army”, \$3,000,000, to remain available until September 30, 2012.

PROCUREMENT OF AMMUNITION, ARMY

For an additional amount for “Procurement of Ammunition, Army”, \$17,055,000, to remain available until September 30, 2012.

OTHER PROCUREMENT, ARMY

For an additional amount for “Other Procurement, Army”, \$2,065,006,000, to remain available until September 30, 2012.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for “Aircraft Procurement, Navy”, \$296,000,000, to remain available until September 30, 2012.

OTHER PROCUREMENT, NAVY

For an additional amount for “Other Procurement, Navy”, \$31,576,000, to remain available until September 30, 2012.

PROCUREMENT, MARINE CORPS

For an additional amount for “Procurement, Marine Corps”, \$162,927,000, to remain available until September 30, 2012.

AIRCRAFT PROCUREMENT, AIR FORCE

For an additional amount for “Aircraft Procurement, Air Force”, \$174,766,000, to remain available until September 30, 2012.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for “Other Procurement, Air Force”, \$672,741,000, to remain available until September 30, 2012.

PROCUREMENT, DEFENSE-WIDE

For an additional amount for “Procurement, Defense-Wide”, \$189,276,000, to remain available until September 30, 2012.

MINE RESISTANT AMBUSH PROTECTED VEHICLE FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the “Mine Resistant Ambush Protected Vehicle Fund”, \$1,123,000,000, to remain available until September 30, 2011: *Provided*, That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, to procure, sustain, transport, and field Mine Resistant Ambush Protected vehicles: *Provided further*, That the Secretary shall transfer such funds only to appropriations for operations and maintenance; procurement; research, development, test and evaluation; and defense working capital funds to accomplish the purpose provided herein: *Provided further*, That the funds transferred shall be merged with and available for the same purposes and the same time period as the appropriation to which they are transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That the Secretary shall, not fewer than 10 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer.

Deadline.
Notification.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For an additional amount for “Research, Development, Test and Evaluation, Navy”, \$44,835,000, to remain available until September 30, 2011.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For an additional amount for “Research, Development, Test and Evaluation, Air Force”, \$163,775,000, to remain available until September 30, 2011.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for “Research, Development, Test and Evaluation, Defense-Wide”, \$65,138,000, to remain available until September 30, 2011.

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For an additional amount for “Defense Working Capital Funds”, \$1,134,887,000, to remain available until expended.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

123 Stat. 3424.

For an additional amount for “Defense Health Program”, \$33,367,000 for operation and maintenance: *Provided*, That language under this heading in title VI, division A of Public Law 111–118 is amended by striking “\$15,093,539,000” and inserting in lieu thereof “\$15,121,714,000”.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Drug Interdiction and Counter-Drug Activities, Defense”, \$94,000,000, to remain available until September 30, 2011.

GENERAL PROVISIONS—THIS CHAPTER

SEC. 301. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)): *Provided*, That section 8079 of the Department of Defense Appropriations Act, 2010 (Public Law 111–118; 123 Stat. 3446) is amended by striking “fiscal year 2010 until” and all that follows and insert “fiscal year 2010.”.

(INCLUDING TRANSFER OF FUNDS)

123 Stat. 3427.

SEC. 302. Section 8005 of the Department of Defense Appropriations Act, 2010 (division A of Public Law 111–118) is amended by striking “\$4,000,000,000” and inserting “\$4,500,000,000”.

Determination.

SEC. 303. Funds made available in this chapter to the Department of Defense for operation and maintenance may be used to purchase items having an investment unit cost of not more than \$250,000: *Provided*, That upon determination by the Secretary of Defense that such action is necessary to meet the operational requirements of a Commander of a Combatant Command engaged

in contingency operations overseas, such funds may be used to purchase items having an investment item unit cost of not more than \$500,000.

SEC. 304. Of the funds obligated or expended by any Federal agency in support of emergency humanitarian assistance services at the request of or in coordination with the Department of Defense, the Department of State, or the U.S. Agency for International Development, on or after January 12, 2010 and before February 12, 2010, in support of the Haitian earthquake relief efforts not to exceed \$500,000 are deemed to be specifically authorized by the Congress. Haiti.

SEC. 305. Section 8011 of the title VIII, division A of Public Law 111–118 is amended by striking “within 30 days of enactment of this Act” and inserting in lieu thereof “30 days prior to contract award”. Deadline.
10 USC 2306b
note.

(RESCISSIONS)

SEC. 306. (a) Of the funds appropriated in Department of Defense Appropriation Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

“Other Procurement, Air Force, 2009/2011”, \$5,000,000; and

“Research, Development, Test and Evaluation, Army, 2009/2010”, \$72,161,000.

(b) Section 3002 shall not apply to the amounts in this section.

SEC. 307. None of the funds provided in this chapter may be used to finance programs or activities denied by Congress in fiscal years 2009 or 2010 appropriations to the Department of Defense or to initiate a procurement or research, development, test and evaluation new start program without prior written notification to the congressional defense committees. Notification.

HIGH-VALUE DETAINEE INTERROGATION GROUP CHARTER AND REPORT

SEC. 308. (a) SUBMISSION OF CHARTER AND PROCEDURES.—Not later than 30 days after the final approval of the charter and procedures for the interagency body established to carry out an interrogation pursuant to a recommendation of the report of the Special Task Force on interrogation and Transfer Policies submitted under section 5(g) of Executive Order 13491 (commonly known as the High-Value Detainee Interrogation Group), or not later than 30 days after the date of the enactment of this Act, whichever is later, the Director of National Intelligence shall submit to the congressional intelligence committees such charter and procedures.

(b) UPDATES.—Not later than 30 days after the final approval of any significant modification or revision to the charter or procedures referred to in subsection (a), the Director of National Intelligence shall submit to the congressional intelligence committees any such modification or revision.

(c) LESSONS LEARNED.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report setting forth an analysis and assessment of the lessons learned as a result of the operations and activities of the High-Value Detainee Interrogation Group since the establishment of that group.

(d) SUBMITTAL OF CHARTER AND REPORTS TO ADDITIONAL COMMITTEES OF CONGRESS.—At the same time the Director of National Intelligence submits the charter and procedures referred to in subsection (a), any modification or revision to the charter or procedures under subsection (b), and any report under subsection (c) to the congressional intelligence committees, the Director shall also submit such matter to—

(1) the Committees on Armed Services, Homeland Security and Governmental Affairs, the Judiciary, and Appropriations of the Senate; and

(2) the Committees on Armed Services, Homeland Security, the Judiciary, and Appropriations of the House of Representatives.

CHAPTER 4

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

INVESTIGATIONS

Studies.

For an additional amount for “Investigations”, \$5,400,000: *Provided*, That funds provided under this heading in this chapter shall be used for studies in States affected by severe storms and flooding: *Provided further*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after enactment of this Act.

Deadlines.
Reports.

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for “Mississippi River and Tributaries” to dredge eligible projects in response to, and repair damages to Federal projects caused by, natural disasters, \$18,600,000, to remain available until expended: *Provided*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after enactment of this Act.

Deadlines.
Reports.

OPERATION AND MAINTENANCE

For an additional amount for “Operation and Maintenance” to dredge navigation projects in response to, and repair damages to Corps projects caused by, natural disasters, \$173,000,000, to remain available until expended: *Provided*, That the Secretary of the Army is directed to use \$44,000,000 of the amount provided under this heading for nondisaster related emergency repairs to critical infrastructure: *Provided further*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of

Deadlines.
Reports.

these funds, beginning not later than 60 days after enactment of this Act.

FLOOD CONTROL AND COASTAL EMERGENCIES

For an additional amount for “Flood Control and Coastal Emergencies”, as authorized by section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), for necessary expenses relating to natural disasters as authorized by law, \$20,000,000, to remain available until expended: *Provided*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after enactment of this Act.

Deadlines.
Reports.

GENERAL PROVISIONS—THIS CHAPTER

EMERGENCY DROUGHT RELIEF

SEC. 401. For an additional amount for “Water and Related Resources”, \$10,000,000, for drought emergency assistance: *Provided*, That financial assistance may be provided under the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2201 et seq.) and any other applicable Federal law (including regulations) for the optimization and conservation of project water supplies to assist drought-plagued areas of the West.

SEC. 402. Funds made available in the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111-85), under the account “Weapons Activities” shall be available for the purchase of not to exceed one aircraft.

RECLASSIFICATION OF CERTAIN APPROPRIATIONS FOR THE NATIONAL NUCLEAR SECURITY ADMINISTRATION

SEC. 403. (a) FISCAL YEAR 2009 APPROPRIATIONS.—The matter under the heading “Weapons Activities” under the heading “National Nuclear Security Administration” under the heading “Atomic Energy Defense Activities” under the heading “Department of Energy” under title III of division C of the Omnibus Appropriations Act, 2009 (Public Law 111-8; 123 Stat. 621) is amended by striking “the 09-D-007 LANSCE Refurbishment, PED,” and inserting “capital equipment acquisition, installation, and associated design funds for LANSCE,”.

(b) FISCAL YEAR 2010 APPROPRIATIONS.—The amount appropriated under the heading “Weapons Activities” under the heading “National Nuclear Security Administration” under the heading “Atomic Energy Defense Activities” under the heading “Department of Energy” under title III of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111-85; 123 Stat. 2866) and made available for LANSCE Reinvestment, PED, Los Alamos National Laboratory, Los Alamos, New Mexico, shall be made available instead for capital equipment acquisition, installation, and associated design funds for LANSCE, Los Alamos National Laboratory, Los Alamos, New Mexico.

SEC. 404. (a) Section 104(c) of the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2214(c)) is amended by striking “September 30, 2010” and inserting “September 30, 2012” in lieu thereof.

(b) Section 301 of the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2241) is amended by striking “through 2010” and inserting “through 2012” in lieu thereof.

Texas.

SEC. 405. (a) The Secretary of the Army shall not be required to make a determination under the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) for the project for flood control, Trinity River and tributaries, Texas, authorized by section 2 of the Act entitled “An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved March 2, 1945 [59 Stat. 18], as modified by section 5141 of the Water Resources Development Act of 2007 [121 Stat. 1253].

Exemption.

(b) The Federal Highway Administration is exempt from the requirements of 49 U.S.C. 303 and 23 U.S.C. 138 for any highway project to be constructed in the vicinity of the Dallas Floodway, Dallas, Texas.

SEC. 406. (a) The Secretary of the Army may use funds made available under the heading “OPERATION AND MAINTENANCE” of this chapter to place, at full Federal expense, dredged material available from maintenance dredging of existing Federal navigation channels located in the Gulf Coast region to mitigate the impacts of the Deepwater Horizon Oil spill in the Gulf of Mexico.

(b) The Secretary of the Army shall coordinate the placement of dredged material with appropriate Federal and Gulf Coast State agencies.

(c) The placement of dredged material pursuant to this section shall not be subject to a least-cost-disposal analysis or to the development of a Chief of Engineers report.

(d) Nothing in this section shall affect the ability or authority of the Federal Government to recover costs from an entity determined to be a responsible party in connection with the Deepwater Horizon Oil spill pursuant to the Oil Pollution Act of 1990 or any other applicable Federal statute for actions undertaken pursuant to this section.

CHAPTER 5

DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses” for necessary expenses for emergency relief, rehabilitation, and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake, \$690,000, to remain available until expended: *Provided*, That funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

(RESCISSION)

Of the amounts made available for necessary expenses of the Office of Inspector General under this heading in Public Law 111–117, \$1,800,000 are rescinded: *Provided*, That section 3002 shall not apply to the amount under this heading.

DISTRICT OF COLUMBIA

FEDERAL FUNDS

FEDERAL PAYMENT TO THE PUBLIC DEFENDER SERVICE FOR THE
DISTRICT OF COLUMBIA

(INCLUDING RESCISSION)

For an additional amount for “Federal Payment to the Public Defender Service for the District of Columbia”, \$700,000, to remain available until September 30, 2012.

Of the funds provided under this heading for “Federal Payment to the District of Columbia Public Defender Service” in title IV of division D of Public Law 111–8, \$700,000 are rescinded: *Provided*, That section 3002 shall not apply to the amounts under this heading.

INDEPENDENT AGENCY

FINANCIAL CRISIS INQUIRY COMMISSION

SALARIES AND EXPENSES

For the necessary expenses of the Financial Crisis Inquiry Commission established pursuant to section 5 of the Fraud Enforcement and Recovery Act of 2009 (Public Law 111–21), \$1,800,000, to remain available until February 15, 2011: *Provided*, That section 3002 shall not apply to the amount under this heading.

CHAPTER 6

DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

OPERATING EXPENSES

For an additional amount for “Operating Expenses” for necessary expenses and other disaster-response activities related to Haiti following the earthquake of January 12, 2010, \$50,000,000, to remain available until September 30, 2012.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for “Acquisition, Construction, and Improvements”, \$15,500,000, to remain available until September 30, 2014, for aircraft replacement.

FEDERAL EMERGENCY MANAGEMENT AGENCY

DISASTER RELIEF

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Disaster Relief”, \$5,100,000,000, to remain available until expended, of which \$5,000,000 shall be transferred to the Department of Homeland Security Office of the Inspector General for audits and investigations related to disasters.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

For an additional amount for “United States Citizenship and Immigration Services” for necessary expenses and other disaster response activities related to Haiti following the earthquake of January 12, 2010, \$10,600,000, to remain available until September 30, 2011.

GENERAL PROVISIONS—THIS CHAPTER

SEC. 601. Notwithstanding the 10 percent limitation contained in section 503(c) of Public Law 111-83, for fiscal year 2010, the Secretary of Homeland Security may transfer to the fund established by 8 U.S.C. 1101 note, up to \$20,000,000, from appropriations available to the Department of Homeland Security: *Provided*, That the Secretary shall notify the Committees on Appropriations of the Senate and House of Representatives 5 days in advance of such transfer.

Notification.
Deadline.

(RESCISSIONS)

SEC. 602. (a) The following unobligated balances made available pursuant to section 505 of Public Law 110-329 are rescinded: \$2,200,000 from Coast Guard “Operating Expenses”; \$1,800,000 from the “Office of the Secretary and Executive Management”; and \$489,152 from “Analysis and Operations”.

Repeal.

122 Stat. 3666.

(b) The third clause of the proviso directing the expenditure of funds under the heading “Alteration of Bridges” in the Department of Homeland Security Appropriations Act, 2009, is repealed, and from available balances made available for Coast Guard “Alteration of Bridges”, \$5,910,848 are rescinded: *Provided*, That funds rescinded pursuant to this subsection shall exclude balances made available in the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(c) From the unobligated balances of appropriations made available in Public Law 111-83 to the “Office of the Federal Coordinator for Gulf Coast Rebuilding”, \$700,000 are rescinded.

(d) Section 3002 shall not apply to the amounts in this section.

SEC. 603. The Administrator of the Federal Emergency Management Agency shall consider satisfied for Hurricane Katrina the non-Federal match requirement for assistance provided by the Federal Emergency Management Agency pursuant to section 404(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c(a).

SEC. 604. Funds appropriated in Public Law 111-83 under the heading National Protection and Programs Directorate “Infrastructure Protection and Information Security” shall be available

for facility upgrades and related costs to establish a United States Computer Emergency Readiness Team Operations Support Center/Continuity of Operations capability.

SEC. 605. Two C–130J aircraft funded elsewhere in this Act shall be transferred to the Coast Guard.

SEC. 606. Notwithstanding any other provision of law, including any agreement, the Federal share of assistance, including direct Federal assistance provided under sections 403, 406, and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5140b, 5172, and 5173), for damages resulting from FEMA–3311–EM–RI, FEMA–1894–DR, FEMA–1906–DR, FEMA–1909–DR, and all other areas Presidentially declared a disaster, prior to or following enactment, and resulting from the May 1 and 2, 2010 weather events that elicited FEMA–1909–DR, shall not be less than 90 percent of the eligible costs under such sections.

SEC. 607. (a) Not later than 30 days after the date of the enactment of this Act, the Assistant Secretary for the Transportation Security Administration shall issue a security directive that requires a commercial foreign air carrier who operates flights in and out of the United States to check the list of individuals that the Transportation Security Administration has prohibited from flying not later than 30 minutes after such list is modified and provided to such air carrier.

Deadline.
Security
directive.
List.

(b) The requirements of subsection (a) shall not apply to commercial foreign air carriers that operate flights in and out of the United States and that are enrolled in the Secure Flight program or that are Advance Passenger Information System Quick Query (AQQ) compliant.

CHAPTER 7

DEPARTMENT OF LABOR

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Departmental Management” for mine safety activities and legal services related to the Department of Labor’s caseload before the Federal Mine Safety and Health Review Commission (“FMSHRC”), \$18,200,000, which shall remain available for obligation through the date that is 12 months after the date of enactment of this Act: *Provided*, That the Secretary of Labor may transfer such sums as necessary to the “Mine Safety and Health Administration” for enforcement and mine safety activities, which may include conference litigation functions related to the FMSHRC caseload, investigation of the Upper Big Branch Mine disaster, standards and rulemaking activities, emergency response equipment purchases and upgrades, and organizational improvements: *Provided further*, That the Committees on Appropriations of the Senate and the House of Representatives are notified at least 15 days in advance of any transfer.

Notification.
Deadline.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE SECRETARY

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Public Health and Social Services Emergency Fund” for necessary expenses for emergency relief and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, and for other disaster-response activities relating to the earthquake, \$220,000,000, to remain available until expended: *Provided*, That these funds may be transferred by the Secretary to accounts within the Department of Health and Human Services, shall be merged with the appropriation to which transferred, and shall be available only for the purposes provided herein: *Provided further*, That none of the funds provided in this paragraph may be transferred prior to notification of the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That the transfer authority provided in this paragraph is in addition to any other transfer authority available in this or any other Act: *Provided further*, That funds appropriated in this paragraph may be used to reimburse agencies for obligations incurred for the purposes provided herein prior to enactment of this Act: *Provided further*, That funds may be used for the non-Federal share of expenditures for medical assistance furnished under title XIX of the Social Security Act, and for child health assistance furnished under title XXI of such Act, that are related to earthquake response activities: *Provided further*, That funds may be used for services performed by the National Disaster Medical System in connection with such earthquake, for the return of evacuated Haitian citizens to Haiti, and for grants to States and other entities to reimburse payments made for otherwise uncompensated health and human services furnished in connection with individuals given permission by the United States Government to come from Haiti to the United States after such earthquake, and not eligible for assistance under such titles: *Provided further*, That the limitation in subsection (d) of section 1113 of the Social Security Act shall not apply with respect to any repatriation assistance provided in response to the Haiti earthquake of January 12, 2010: *Provided further*, That with respect to the previous proviso, such additional repatriation assistance shall only be available from the funds appropriated herein.

RELATED AGENCY

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For an additional amount for “Federal Mine Safety and Health Review Commission, Salaries and Expenses” \$3,800,000, to remain available for obligation for 12 months after enactment of this Act.

CHAPTER 8

HOUSE OF REPRESENTATIVES

PAYMENT TO WIDOWS AND HEIRS OF DECEASED MEMBERS OF
CONGRESS

For a payment to Joyce Murtha, widow of John P. Murtha, late a Representative from Pennsylvania, \$174,000: *Provided*, That section 3002 shall not apply to this appropriation. Joyce Murtha.

CAPITOL POLICE

GENERAL EXPENSES

For an additional amount for “Capitol Police, General Expenses” to purchase and install the indoor coverage portion of the new radio system for the Capitol Police, \$12,956,000, to remain available until September 30, 2012: *Provided*, That the Chief of the Capitol Police may not obligate any of the funds appropriated under this heading without approval of an obligation plan by the Committees on Appropriations of the Senate and the House of Representatives. Obligation plan.

CHAPTER 9

MILITARY CONSTRUCTION

MILITARY CONSTRUCTION, ARMY

For an additional amount for “Military Construction, Army”, \$242,296,000, to remain available until September 30, 2012: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects not otherwise authorized by law.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for “Military Construction, Air Force”, \$406,590,000, to remain available until September 30, 2012: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects not otherwise authorized by law.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for “Family Housing Operation and Maintenance, Air Force”, \$7,953,000.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

For an additional amount for “Compensation and Pensions”, \$13,377,189,000, to remain available until expended: *Provided*, That section 3002 shall not apply to the amount under this heading.

GENERAL PROVISION—THIS CHAPTER

(INCLUDING TRANSFER OF FUNDS)

SEC. 901. (a) Of the amounts made available to the Department of Veterans Affairs under the “Construction, Major Projects” account, in fiscal year 2010 or previous fiscal years, up to \$67,000,000 may be transferred to the “Filipino Veterans Equity Compensation Fund” account or may be retained in the “Construction, Major Projects” account and used by the Secretary of Veterans Affairs for such major medical facility projects (as defined under section 8104(a) of title 38, United States Code) that have been authorized by law as the Secretary considers appropriate: *Provided*, That any amount transferred from “Construction, Major Projects” shall be derived from unobligated balances that are a direct result of bid savings: *Provided further*, That no amounts may be transferred from amounts that were designated by Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

(b) Section 3002 shall not apply to the amount in this section.

LIMITATION ON USE OF FUNDS AVAILABLE TO THE DEPARTMENT OF
VETERANS AFFAIRS

Agent Orange.

SEC. 902. The amount made available to the Department of Veterans Affairs by this chapter under the heading “VETERANS BENEFITS ADMINISTRATION” under the heading “COMPENSATION AND PENSIONS” may not be obligated or expended until the expiration of the period for Congressional disapproval under chapter 8 of title 5, United States Code (commonly referred to as the “Congressional Review Act”), of the regulations prescribed by the Secretary of Veterans Affairs pursuant to section 1116 of title 38, United States Code, to establish a service connection between exposure of veterans to Agent Orange during service in the Republic of Vietnam during the Vietnam era and hairy cell leukemia and other chronic B cell leukemias, Parkinson’s disease, and ischemic heart disease.

CHAPTER 10

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Diplomatic and Consular Programs”, \$1,261,000,000, to remain available until September 30, 2011: *Provided*, That the Secretary of State may transfer up to \$149,500,000 of the total funds made available under this heading to any other appropriation of any department or agency of the United States, upon concurrence of the head of such department or agency and after consultation with the Committees on Appropriations, to support operations in and assistance for Afghanistan and

Pakistan and to carry out the provisions of the Foreign Assistance Act of 1961.

For an additional amount for “Diplomatic and Consular Programs” for necessary expenses for emergency relief, rehabilitation, and reconstruction support, and other expenses related to Haiti following the earthquake of January 12, 2010, \$65,000,000, to remain available until September 30, 2011: *Provided*, That funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act: *Provided further*, That up to \$3,700,000 of the funds made available in this paragraph may be transferred to, and merged with, funds made available under the heading “Emergencies in the Diplomatic and Consular Service”: *Provided further*, That up to \$290,000 of the funds made available in this paragraph may be transferred to, and merged with, funds made available under the heading “Repatriation Loans Program Account”.

OFFICE OF INSPECTOR GENERAL

For an additional amount for “Office of Inspector General” for necessary expenses for oversight of operations and programs in Afghanistan, Pakistan, and Iraq, \$3,600,000, to remain available until September 30, 2013.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For an additional amount for “Embassy Security, Construction, and Maintenance” for necessary expenses for emergency needs in Haiti following the earthquake of January 12, 2010, \$79,000,000, to remain available until expended: *Provided*, That funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

INTERNATIONAL ORGANIZATIONS

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

For an additional amount for “Contributions for International Peacekeeping Activities” for necessary expenses for emergency security related to Haiti following the earthquake of January 12, 2010, \$96,500,000, to remain available until September 30, 2011: *Provided*, That funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For an additional amount for “International Broadcasting Operations” for necessary expenses for emergency broadcasting support and other expenses related to Haiti following the earthquake of January 12, 2010, \$3,000,000, to remain available until September 30, 2011: *Provided*, That funds appropriated in this paragraph

may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

UNITED STATES AGENCY FOR INTERNATIONAL
DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

OFFICE OF INSPECTOR GENERAL

For an additional amount for “Office of Inspector General” for necessary expenses for oversight of operations and programs in Afghanistan and Pakistan, \$3,400,000, to remain available until September 30, 2013.

For an additional amount for “Office of Inspector General” for necessary expenses for oversight of emergency relief, rehabilitation, and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, \$4,500,000, to remain available until September 30, 2012: *Provided*, That up to \$1,500,000 of the funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

GLOBAL HEALTH AND CHILD SURVIVAL

For an additional amount for “Global Health and Child Survival” for necessary expenses for pandemic preparedness and response, \$45,000,000, to remain available until September 30, 2011.

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount for “International Disaster Assistance” for necessary expenses for emergency relief and rehabilitation, and other expenses related to Haiti following the earthquake of January 12, 2010, \$460,000,000, to remain available until expended: *Provided*, That funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

ECONOMIC SUPPORT FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Economic Support Fund”, \$1,620,000,000, to remain available until September 30, 2012, of which not less than \$1,309,000,000 shall be made available for assistance for Afghanistan and not less than \$259,000,000 shall be made available for assistance for Pakistan: *Provided*, That funds appropriated under this heading in this Act and in prior Acts making appropriations for the Department of State, foreign operations, and related programs that are made available for assistance for Afghanistan may be made available, after consultation with the Committees on Appropriations, for disarmament, demobilization

and reintegration activities, subject to the requirements of section 904(e) in this chapter, and for a United States contribution to an internationally managed fund to support the reintegration into Afghan society of individuals who have renounced violence against the Government of Afghanistan.

For an additional amount for “Economic Support Fund” for necessary expenses for emergency relief, rehabilitation, and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, \$770,000,000, to remain available until September 30, 2012: *Provided*, That of the funds appropriated in this paragraph, up to \$120,000,000 may be transferred to the Department of the Treasury for United States contributions to a multi-donor trust fund for reconstruction and recovery efforts in Haiti: *Provided further*, That of the funds appropriated in this paragraph, up to \$10,000,000 may be transferred to, and merged with, funds made available under the heading “United States Agency for International Development, Funds Appropriated to the President, Operating Expenses” for administrative costs relating to the purposes provided herein and to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act: *Provided further*, That funds appropriated in this paragraph may be transferred to, and merged with, funds available under the heading “Development Credit Authority” for the purposes provided herein: *Provided further*, That such transfer authority is in addition to any other transfer authority provided by this or any other Act: *Provided further*, That funds made available to the Comptroller General pursuant to title I, chapter 4 of Public Law 106–31, to monitor the provision of assistance to address the effects of hurricanes in Central America and the Caribbean, shall also be available to the Comptroller General to monitor relief, rehabilitation, and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, and shall remain available until expended: *Provided further*, That funds appropriated in this paragraph may be made available to the United States Agency for International Development and the Department of State to reimburse any accounts for obligations incurred for the purpose provided herein prior to enactment of this Act.

For an additional amount for “Economic Support Fund” for necessary expenses for assistance for Jordan, \$100,000,000, to remain available until September 30, 2012.

DEPARTMENT OF STATE

MIGRATION AND REFUGEE ASSISTANCE

For an additional amount for “Migration and Refugee Assistance” for necessary expenses for assistance for refugees and internally displaced persons, \$165,000,000, to remain available until expended.

DEPARTMENT OF THE TREASURY

INTERNATIONAL AFFAIRS TECHNICAL ASSISTANCE

For an additional amount for “International Affairs Technical Assistance” for necessary expenses for emergency relief, rehabilitation, and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, \$7,100,000, to remain

available until September 30, 2012: *Provided*, That of the funds appropriated in this paragraph, up to \$60,000 may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

INTERNATIONAL SECURITY ASSISTANCE

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

Iraq.
Determination.
Reports.

For an additional amount for “International Narcotics Control and Law Enforcement”, \$1,034,000,000, to remain available until September 30, 2012: *Provided*, That of the funds appropriated under this heading, not less than \$650,000,000 shall be made available for assistance for Iraq of which \$450,000,000 is for one-time start up costs and limited operational costs of the Iraqi police program, and \$200,000,000 is for implementation, management, security, communications, and other expenses related to such program and may be obligated only after the Secretary of State determines and reports to the Committees on Appropriations that the Government of Iraq supports and is cooperating with such program: *Provided further*, That funds appropriated in this chapter for assistance for Iraq shall not be subject to the limitation on assistance in section 7042(b)(1) of division F of Public Law 111-117: *Provided further*, That of the funds appropriated in this paragraph, not less than \$169,000,000 shall be made available for assistance for Afghanistan and not less than \$40,000,000 shall be made available for assistance for Pakistan: *Provided further*, That of the funds appropriated under this heading, \$175,000,000 shall be made available for assistance for Mexico for judicial reform, institution building, anti-corruption, and rule of law activities, and shall be available subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

Mexico.
Consultation.
Notification.

For an additional amount for “International Narcotics Control and Law Enforcement” for necessary expenses for emergency relief, rehabilitation, and reconstruction aid, and other expenses related to Haiti following the earthquake of January 12, 2010, \$147,660,000, to remain available until September 30, 2012: *Provided*, That funds appropriated in this paragraph may be used to reimburse obligations incurred for the purposes provided herein prior to enactment of this Act.

FUNDS APPROPRIATED TO THE PRESIDENT

FOREIGN MILITARY FINANCING PROGRAM

For an additional amount for “Foreign Military Financing Program”, \$100,000,000, to remain available until September 30, 2012, of which not less than \$50,000,000 shall be made available for assistance for Pakistan and not less than \$50,000,000 shall be made available for assistance for Jordan.

GENERAL PROVISIONS—THIS CHAPTER

EXTENSION OF AUTHORITIES

SEC. 1001. Funds appropriated in this chapter may be obligated and expended notwithstanding section 10 of Public Law 91–672 (22 U.S.C. 2412), section 15 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 6212), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

ALLOCATIONS

SEC. 1002. (a) Funds appropriated in this chapter for the following accounts shall be made available for programs and countries in the amounts contained in the respective tables included in the report accompanying this Act:

- (1) “Diplomatic and Consular Programs”.
- (2) “Economic Support Fund”.
- (3) “International Narcotics Control and Law Enforcement”.

(b) For the purposes of implementing this section, and only with respect to the tables included in the report accompanying this Act, the Secretary of State and the Administrator of the United States Agency for International Development, as appropriate, may propose deviations to the amounts referred in subsection (a), subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961.

Notification.

SPENDING PLANS AND NOTIFICATION PROCEDURES

SEC. 1003. (a) SPENDING PLANS.—Not later than 45 days after enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, and the Broadcasting Board of Governors, shall submit reports to the Committees on Appropriations detailing planned uses of funds appropriated in this chapter, except for funds appropriated under the headings “International Disaster Assistance” and “Migration and Refugee Assistance”.

Deadlines.
Reports.

(b) OBLIGATION REPORTS.—The Secretary of State, in consultation with the Administrator of the United States Agency for International Development, and the Broadcasting Board of Governors, shall submit reports to the Committees on Appropriations not later than 90 days after enactment of this Act, and every 180 days thereafter until September 30, 2012, on obligations, expenditures, and program outputs and outcomes.

(c) NOTIFICATION.—Funds made available in this chapter shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961, except for funds appropriated under the headings “International Disaster Assistance” and “Migration and Refugee Assistance”.

AFGHANISTAN

SEC. 1004. (a) The terms and conditions of sections 1102(a), (b)(1), (c), and (d) of Public Law 111–32 shall apply to funds appropriated in this chapter that are available for assistance for Afghanistan.

Reports.
Applicability.

(b) Funds appropriated in this chapter and in prior Acts making appropriations for the Department of State, foreign operations, and related programs under the headings “Economic Support Fund” and “International Narcotics Control and Law Enforcement” that are available for assistance for Afghanistan may be obligated only if the Secretary of State reports to the Committees on Appropriations that prior to the disbursement of funds, representatives of the Afghan national, provincial or local government, local communities and civil society organizations, as appropriate, will be consulted and participate in the design of programs, projects, and activities, and following such disbursement will participate in implementation and oversight, and progress will be measured against specific benchmarks.

Determination.

(c)(1) Funds appropriated in this chapter may be made available for assistance for the Government of Afghanistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Afghanistan is—

(A) cooperating with United States reconstruction and reform efforts;

(B) demonstrating a commitment to accountability by removing corrupt officials, implementing fiscal transparency and other necessary reforms of government institutions, and facilitating active public engagement in governance and oversight of public resources; and

(C) respecting the internationally recognized human rights of Afghan women.

(2) If at any time after making the determination required in paragraph (1) the Secretary receives credible information that the factual basis for such determination no longer exists, the Secretary should suspend assistance and promptly inform the relevant Afghan authorities that such assistance is suspended until sufficient factual basis exists to support the determination.

Determination.

(d) Funds appropriated in this chapter and in prior Acts that are available for assistance for Afghanistan may be made available to support reconciliation with, or reintegration of, former combatants only if the Secretary of State determines and reports to the Committees on Appropriations that—

(1) Afghan women are participating at national, provincial and local levels of government in the design, policy formulation and implementation of the reconciliation or reintegration process, and women’s internationally recognized human rights are protected in such process; and

(2) such funds will not be used to support any pardon, immunity from prosecution or amnesty, or any position in the Government of Afghanistan or security forces, for any leader of an armed group responsible for crimes against humanity, war crimes, or other violations of internationally recognized human rights.

Determination.

(e) Funds appropriated in this chapter that are available for assistance for Afghanistan may be made available to support the work of the Independent Electoral Commission and the Electoral Complaints Commission in Afghanistan only if the Secretary of State determines and reports to the Committees on Appropriations that—

(1) the Independent Electoral Commission has no members or other employees who participated in, or helped to cover

up, acts of fraud in the 2009 elections for president in Afghanistan, and the Electoral Complaints Commission is a genuinely independent body with all the authorities that were invested in it under Afghanistan law as of December 31, 2009, and with no members appointed by the President of Afghanistan; and

(2) the central Government of Afghanistan has taken steps to ensure that women are able to exercise their rights to political participation, whether as candidates or voters.

(f)(1) Not more than 45 days after enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the Committees on Appropriations a strategy to address the needs and protect the rights of Afghan women and girls, including planned expenditures of funds appropriated in this chapter, and detailed plans for implementing and monitoring such strategy. Deadline.
Strategy.

(2) Such strategy shall be coordinated with and support the goals and objectives of the National Action Plan for Women of Afghanistan and the Afghan National Development Strategy and shall include a defined scope and methodology to measure the impact of such assistance.

(g)(1) Notwithstanding section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) and requirements for awarding task orders under task and delivery order contracts under section 303J of such Act (41 U.S.C. 253j), the Secretary of State may award task orders for police training in Afghanistan under current Department of State contracts for police training.

(2) Any task order awarded under paragraph (1) shall be for a limited term and shall remain in performance only until a successor contract or contracts awarded by the Department of Defense using full and open competition have entered into full performance after completion of any start-up or transition periods.

PAKISTAN

SEC. 1005. (a) Funds appropriated in this chapter and in prior Acts making appropriations for the Department of State, foreign operations, and related programs under the headings “Foreign Military Financing Program” and “Pakistan Counterinsurgency Capability Fund” shall be made available—

(1) in a manner that promotes unimpeded access by humanitarian organizations to detainees, internally displaced persons, and other Pakistani civilians adversely affected by the conflict; and

(2) in accordance with section 620J of the Foreign Assistance Act of 1961, and the Secretary of State shall inform relevant Pakistani authorities of the requirements of section 620J and of its application, and regularly monitor units of Pakistani security forces that receive United States assistance and the performance of such units.

(b)(1) Of the funds appropriated in this chapter under the heading “Economic Support Fund” for assistance for Pakistan, \$5,000,000 shall be made available through the Bureau of Democracy, Human Rights and Labor, Department of State, for human

rights programs in Pakistan, including training of government officials and security forces, and assistance for human rights organizations.

Deadline.
Human rights
strategy.

(2) Not later than 90 days after enactment of this Act and prior to the obligation of funds under this subsection, the Secretary of State shall submit to the Committees on Appropriations a human rights strategy in Pakistan including the proposed uses of funds.

(c) Of the funds appropriated in this chapter under the heading “Economic Support Fund” for assistance for Pakistan, up to \$1,500,000 should be made available to the Department of State and the United States Agency for International Development for the lease of aircraft to implement programs and conduct oversight in northwestern Pakistan, which shall be coordinated under the authority of the United States Chief of Mission in Pakistan.

IRAQ

SEC. 1006. (a) The uses of aircraft in Iraq purchased or leased with funds made available under the headings “International Narcotics Control and Law Enforcement” and “Diplomatic and Consular Affairs” in this chapter and in prior Acts making appropriations for the Department of State, foreign operations, and related programs shall be coordinated under the authority of the United States Chief of Mission in Iraq.

Applicability.

(b) The terms and conditions of section 1106(b) of Public Law 111-32 shall apply to funds made available in this chapter for assistance for Iraq under the heading “International Narcotics Control and Law Enforcement”.

(c) Of the funds appropriated in this chapter and in prior acts making appropriations for the Department of State, foreign operations, and related programs under the headings “Diplomatic and Consular Programs” and “Embassy Security, Construction, and Maintenance” for Afghanistan, Pakistan and Iraq, up to \$300,000,000 may, after consultation with the Committees on Appropriations, be transferred between, and merged with, such appropriations for activities related to security for civilian led operations in such countries.

HAITI

Reports.

SEC. 1007. (a) Funds appropriated in this chapter and in prior Acts making appropriations for the Department of State, foreign operations, and related programs under the headings “Economic Support Fund” and “International Narcotics Control and Law Enforcement” that are available for assistance for Haiti may be obligated only if the Secretary of State reports to the Committees on Appropriations that prior to the disbursement of funds, representatives of the Haitian national, provincial or local government, local communities and civil society organizations, as appropriate, will be consulted and participate in the design of programs, projects, and activities, and following such disbursement will participate in implementation and oversight, and progress will be measured against specific benchmarks.

Determination.

(b)(1) Funds appropriated in this chapter under the headings “Economic Support Fund” and “International Narcotics Control and Law Enforcement” may be made available for assistance for the Government of Haiti only if the Secretary of State determines

and reports to the Committees on Appropriations that the Government of Haiti is—

(A) cooperating with United States reconstruction and reform efforts; and

(B) demonstrating a commitment to accountability by removing corrupt officials, implementing fiscal transparency and other necessary reforms of government institutions, and facilitating active public engagement in governance and oversight of public resources.

(2) If at any time after making the determination required in paragraph (1) the Secretary receives credible information that the factual basis for making such determination no longer exists, the Secretary should suspend assistance and promptly inform the relevant Haitian authorities that such assistance is suspended until sufficient factual basis exists to support the determination.

(c)(1) Funds appropriated in this chapter for bilateral assistance for Haiti may be provided as direct budget support to the central Government of Haiti only if the Secretary of State reports to the Committees on Appropriations that the Government of the United States and the Government of Haiti have agreed, in writing, to clear and achievable goals and objectives for the use of such funds, and have established mechanisms within each implementing agency to ensure that such funds are used for the purposes for which they were intended.

(2) The Secretary should suspend any such direct budget support to an implementing agency if the Secretary has credible evidence of misuse of such funds by any such agency.

(3) Any such direct budget support shall be subject to prior consultation with the Committees on Appropriations.

(d) Funds appropriated in this chapter that are made available for assistance for Haiti shall be made available, to the maximum extent practicable, in a manner that emphasizes the participation and leadership of Haitian women and directly improves the security, economic and social well-being, and political status of Haitian women and girls.

(e) Funds appropriated in this chapter may be made available for assistance for Haiti notwithstanding any other provision of law, except for section 620J of the Foreign Assistance Act of 1961 and provisions of this chapter.

HAITI DEBT RELIEF

SEC. 1008. (a) For an additional amount for “Contribution to the Inter-American Development Bank”, “Contribution to the International Development Association”, and “Contribution to the International Fund for Agricultural Development”, to cancel Haiti’s existing debts and repayments on disbursements from loans committed prior to January 12, 2010, and for the United States share of an increase in the resources of the Fund for Special Operations of the Inter-American Development Bank, to the extent separately authorized in this chapter, in furtherance of providing debt relief for Haiti in view of the Cancun Declaration of March 21, 2010, a total of \$212,000,000, to remain available until September 30, 2012.

(b) Up to \$40,000,000 of the amounts appropriated under the heading “Department of the Treasury, Debt Restructuring” in prior Acts making appropriations for the Department of State, foreign

operations, and related programs may be used to cancel Haiti's existing debts and repayments on disbursements from loans committed prior to January 12, 2010, to the Inter-American Development Bank, the International Development Association, and the International Fund for Agricultural Development, and for the United States share of an increase in the resources of the Fund for Special Operations of the Inter-American Development Bank in furtherance of providing debt relief to Haiti in view of the Cancun Declaration of March 21, 2010.

HAITI DEBT RELIEF AUTHORITY

SEC. 1009. The Inter-American Development Bank Act, Public Law 86-147, as amended (22 U.S.C. 283 et seq.), is further amended by adding at the end thereof the following new section:

22 USC 283z-12. **“SEC. 40. AUTHORITY TO VOTE FOR AND CONTRIBUTE TO AN INCREASE IN RESOURCES OF THE FUND FOR SPECIAL OPERATIONS; PROVIDING DEBT RELIEF TO HAITI.**

“(a) VOTE AUTHORIZED.—In accordance with section 5 of this Act, the United States Governor of the Bank is authorized to vote in favor of a resolution to increase the resources of the Fund for Special Operations up to \$479,000,000, in furtherance of providing debt relief for Haiti in view of the Cancun Declaration of March 21, 2010, which provides that:

“(1) Haiti's debts to the Fund for Special Operations are to be cancelled;

“(2) Haiti's remaining local currency conversion obligations to the Fund for Special Operations are to be cancelled;

“(3) undisbursed balances of existing loans of the Fund for Special Operations to Haiti are to be converted to grants; and

“(4) the Fund for Special Operations is to make available significant and immediate grant financing to Haiti as well as appropriate resources to other countries remaining as borrowers within the Fund for Special Operations, consistent with paragraph 6 of the Cancun Declaration of March 21, 2010.

“(b) CONTRIBUTION AUTHORITY.—To the extent and in the amount provided in advance in appropriations Acts the United States Governor of the Bank may, on behalf of the United States and in accordance with section 5 of this Act, contribute up to \$252,000,000 to the Fund for Special Operations, which will provide for debt relief of:

“(1) up to \$240,000,000 to the Fund for Special Operations;

“(2) up to \$8,000,000 to the International Fund For Agricultural Development (IFAD); and

“(3) up to \$4,000,000 for the International Development Association (IDA).

“(c) AUTHORIZATION OF APPROPRIATIONS.—To pay for the contribution authorized under subsection (b), there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury \$212,000,000, for the United States contribution to the Fund for Special Operations.”.

MEXICO

Applicability.
Determination.

SEC. 1010. (a) For purposes of funds appropriated in this chapter and in prior Acts making appropriations for the Department

of State, foreign operations, and related programs under the heading “International Narcotics Control and Law Enforcement” that are made available for assistance for Mexico, the provisions of paragraphs (1) through (3) of section 7045(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (division H of Public Law 111-8) shall apply and the report required in paragraph (1) shall be based on a determination by the Secretary of State of compliance with each of the requirements in paragraph (1)(A) through (D).

(b) Funds appropriated in this chapter under the heading “International Narcotics Control and Law Enforcement” that are available for assistance for Mexico may be made available only after the Secretary of State submits a report to the Committees on Appropriations detailing a coordinated, multi-year, interagency strategy to address the causes of drug-related violence and other organized criminal activity in Central and South America, Mexico, and the Caribbean, which shall describe—

Reports.

(1) the United States multi-year strategy for the region, including a description of key challenges in the source, transit, and demand zones; the key objectives of the strategy; and a detailed description of outcome indicators for measuring progress toward such objectives;

(2) the integration of diplomatic, administration of justice, law enforcement, civil society, economic development, demand reduction, and other assistance to achieve such objectives;

(3) progress in phasing out law enforcement activities of the militaries of each recipient country, as applicable; and

(4) governmental efforts to investigate and prosecute violations of internationally recognized human rights.

(c) Of the funds appropriated in this chapter under the heading “Diplomatic and Consular Programs”, up to \$5,000,000 may be made available for armored vehicles and other emergency diplomatic security support for United States Government personnel in Mexico.

EL SALVADOR

SEC. 1011. Of the funds appropriated in this chapter under the heading “Economic Support Fund”, \$25,000,000 shall be made available for necessary expenses for emergency relief and reconstruction assistance for El Salvador related to Hurricane/Tropical Storm Ida.

DEMOCRATIC REPUBLIC OF THE CONGO

SEC. 1012. Of the funds appropriated in this chapter under the heading “Economic Support Fund”, \$15,000,000 shall be made available for necessary expenses for emergency security and humanitarian assistance for civilians, particularly women and girls, in the eastern region of the Democratic Republic of the Congo.

INTERNATIONAL SCIENTIFIC COOPERATION

SEC. 1013. Funds appropriated in prior Acts making appropriations for the Department of State, foreign operations, and related programs that are made available for science and technology centers in the former Soviet Union may be used to support productive, non-military projects that engage scientists and engineers who have no weapons background, but whose competence could otherwise

be applied to weapons development, provided such projects are executed through existing science and technology centers and notwithstanding sections 503 and 504 of the FREEDOM Support Act (Public Law 102-511), and following consultation with the Committees on Appropriations, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

INTERNATIONAL RENEWABLE ENERGY AGENCY

22 USC 290p.

SEC. 1014. For fiscal year 2011 and thereafter, the President is authorized to accept the statute of, and to maintain membership of the United States in, the International Renewable Energy Agency, and the United States' assessed contributions to maintain such membership may be paid from funds appropriated for "Contributions to International Organizations".

OFFICE OF INSPECTOR GENERAL PERSONNEL

Contracts.

SEC. 1015. (a) Funds appropriated in this chapter for the United States Agency for International Development Office of Inspector General (OIG) may be made available to contract with United States citizens for personal services when the Inspector General determines that the personnel resources of the OIG are otherwise insufficient.

(1) Not more than 5 percent of the OIG personnel (determined on a full-time equivalent basis), as of any given date, are serving under personal services contracts.

Determination.

(2) Contracts under this paragraph shall not exceed a term of 2 years unless the Inspector General determines that exceptional circumstances justify an extension of up to 1 additional year, and contractors under this paragraph shall not be considered employees of the Federal Government for purposes of title 5, United States Code, or members of the Foreign Service for purposes of title 22, United States Code.

Waiver authority.

(b)(1) The Inspector General may waive subsections (a) through (d) of section 8344, and subsections (a) through (e) of section 8468 of title 5, United States Code, and subsections (a) through (d) of section 4064 of title 22, United States Code, on behalf of any re-employed annuitant serving in a position within the OIG to facilitate the assignment of persons to positions in Iraq, Pakistan, Afghanistan, and Haiti or to positions vacated by members of the Foreign Service assigned to those countries.

Termination date.

(2) The authority provided in paragraph (1) shall be exercised on a case-by-case basis for positions for which there is difficulty recruiting or retaining a qualified employee or to address a temporary emergency hiring need, individuals employed by the OIG under this paragraph shall not be considered employees for purposes of subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title, and the authorities of the Inspector General under this paragraph shall terminate on October 1, 2012.

AUTHORITY TO REPROGRAM FUNDS

President.
Certification.
Reports.

SEC. 1016. Of the funds appropriated by this chapter for assistance for Afghanistan, Iraq and Pakistan, up to \$100,000,000 may be made available pursuant to the authority of section 451 of the Foreign Assistance Act of 1961, as amended, for assistance

in the Middle East and South Asia regions if the President finds, in addition to the requirements of section 451 and certifies and reports to the Committees on Appropriations, that exercising the authority of this section is necessary to protect the national security interests of the United States: *Provided*, That the Secretary of State shall consult with the Committees on Appropriations prior to the reprogramming of such funds, which shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the funding limitation otherwise applicable to section 451 of the Foreign Assistance Act of 1961 shall not apply to this section: *Provided further*, That the authority of this section shall expire upon enactment of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2011.

Consultation.
Notification.

Expiration date.

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

(INCLUDING RESCISSION)

SEC. 1017. (a) Of the funds appropriated under the heading “Department of State, Administration of Foreign Affairs, Office of Inspector General” and authorized to be transferred to the Special Inspector General for Afghanistan Reconstruction in title XI of Public Law 111–32, \$7,200,000 are rescinded.

(b) For an additional amount for “Department of State, Administration of Foreign Affairs, Office of Inspector General” which shall be available for the Special Inspector General for Afghanistan Reconstruction for reconstruction oversight in Afghanistan, \$7,200,000, and shall remain available until September 30, 2011.

CHAPTER 11

DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

HIGHWAY TRAFFIC SAFETY GRANTS

(HIGHWAY TRUST FUND)

(INCLUDING RESCISSION)

Of the amounts provided for Safety Belt Performance Grants in Public Law 111–117, \$15,000,000 shall be available to pay for expenses necessary to discharge the functions of the Secretary, with respect to traffic and highway safety under subtitle C of title X of Public Law 109–59 and chapter 301 and part C of subtitle VI of title 49, United States Code, and for the planning or execution of programs authorized under section 403 of title 23, United States Code: *Provided*, That such funds shall be available until September 30, 2011, and shall be in addition to the amount of any limitation imposed on obligations in fiscal year 2011.

Of the amounts made available for Safety Belt Performance Grants under section 406 of title 23, United States Code, \$25,000,000 in unobligated balances are permanently rescinded: *Provided*, That section 3002 shall not apply to the amounts under this heading.

CONSUMER ASSISTANCE TO RECYCLE AND SAVE PROGRAM

(RESCISSION)

Of the amounts made available for the Consumer Assistance to Recycle and Save Program, \$44,000,000 in unobligated balances are rescinded.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

State and local
governments.
Plans.

Waiver authority.

Federal Register,
publication.
Deadline.

States.
Deadline.

For an additional amount for the “Community Development Fund”, for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by severe storms and flooding from March 2010 through May 2010 for which the President declared a major disaster covering an entire State or States with more than 20 counties declared major disasters under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, \$100,000,000, to remain available until expended, for activities authorized under title I of the Housing and Community Development Act of 1974 (Public Law 93–383): *Provided*, That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary: *Provided further*, That prior to the obligation of funds a grantee shall submit a plan to the Secretary detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure: *Provided further*, That funds provided under this heading may be used by a State or locality as a matching requirement, share, or contribution for any other Federal program: *Provided further*, That such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers: *Provided further*, That funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a State or subdivision thereof under the Community Development Fund: *Provided further*, That a State or subdivision thereof may use up to 5 percent of its allocation for administrative costs: *Provided further*, That in administering the funds under this heading, the Secretary of Housing and Urban Development may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees (except for requirements related to fair housing, non-discrimination, labor standards, and the environment), upon a request by a State or subdivision thereof explaining why such waiver is required to facilitate the use of such funds or guarantees, if the Secretary finds that such waiver would not be inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974: *Provided further*, That the Secretary shall publish in the Federal Register any waiver of any statute or regulation that the Secretary administers pursuant to title I of the Housing and Community Development Act of 1974 no later than 5 days before the effective date of such waiver: *Provided*

further, That the Secretary shall obligate to a State or subdivision thereof not less than 50 percent of the funding provided under this heading within 90 days after the enactment of this Act.

TITLE II

DEPARTMENT OF COMMERCE

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For an additional amount, in addition to amounts provided elsewhere in this Act, for “Economic Development Assistance Programs”, to carry out planning, technical assistance and other assistance under section 209, and consistent with section 703(b), of the Public Works and Economic Development Act (42 U.S.C. 3149, 3233), in States affected by the incidents related to the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, \$5,000,000, to remain available until expended.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount, in addition to amounts provided elsewhere in this Act, for “Operations, Research, and Facilities”, \$13,000,000, to remain available until expended, for responding to economic impacts on fishermen and fishery-dependent businesses: *Provided*, That the amounts appropriated herein are not available unless the Secretary of Commerce determines that resources provided under other authorities and appropriations including by the responsible parties under the Oil Pollution Act, 33 U.S.C. 2701, et seq., are not sufficient to respond to economic impacts on fishermen and fishery-dependent business following an incident related to a spill of national significance declared under the National Contingency Plan provided for under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

Determination.

For an additional amount, in addition to amounts provided elsewhere in this Act, for “Operations, Research, and Facilities”, for activities undertaken including scientific investigations and sampling as a result of the incidents related to the discharge of oil and the use of oil dispersants that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, \$7,000,000, to remain available until expended. These activities may be funded through the provision of grants to universities, colleges and other research partners through extramural research funding.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, Food and Drug Administration, Department of Health and Human Services, for food safety monitoring and response activities in connection with the incidents related to the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, \$2,000,000, to remain available until expended.

DEPARTMENT OF THE INTERIOR

DEPARTMENTAL OFFICES

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the “Office of the Secretary, Salaries and Expenses” for increased inspections, enforcement, investigations, environmental and engineering studies, and other activities related to emergency offshore oil spill incidents in the Gulf of Mexico, \$29,000,000, to remain available until expended: *Provided*, That such funds may be transferred by the Secretary to any other account in the Department of the Interior to carry out the purposes provided herein.

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For an additional amount for “Salaries and Expenses, General Legal Activities”, \$10,000,000, to remain available until expended, for litigation expenses resulting from incidents related to the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

Study.

For an additional amount for “Science and Technology” for a study on the potential human and environmental risks and impacts of the release of crude oil and the application of dispersants, surface washing agents, bioremediation agents, and other mitigation measures listed in the National Contingency Plan Product List (40 C.F.R. Part 300 Subpart J), as appropriate, \$2,000,000, to remain available until expended: *Provided*, That the study shall be performed at the direction of the Administrator of the Environmental Protection Agency, in coordination with the Secretary of

Commerce and the Secretary of the Interior: *Provided further*, That the study may be funded through the provision of grants to universities and colleges through extramural research funding.

GENERAL PROVISION—THIS TITLE

DEEPWATER HORIZON

SEC. 2001. Section 6002(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2752) is amended in the second sentence:

(1) by inserting “: (1)” before “may obtain an advance” and after “the Coast Guard”;

(2) by striking “advance. Amounts” and inserting the following: “advance; (2) in the case of discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, may, without further appropriation, obtain one or more advances from the Oil Spill Liability Trust Fund as needed, up to a maximum of \$100,000,000 for each advance, the total amount of all advances not to exceed the amounts available under section 9509(c)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 9509(c)(2)), and within 7 days of each advance, shall notify Congress of the amount advanced and the facts and circumstances necessitating the advance; and (3) amounts”.

Deadline.
Notification.

PROHIBITION ON FINES AND LIABILITY

SEC. 2002. None of the funds made available by this Act shall be used to levy against any person any fine, or to hold any person liable for construction or renovation work performed by the person, in any State under the final rule entitled “Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet; Notice of Availability; Final Rule” (73 Fed. Reg. 21692 (April 22, 2008)), and the final rule entitled “Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program” signed by the Administrator on April 22, 2010.

RIGHT-OF-WAY

SEC. 2003. (a) Notwithstanding any other provision of law, the Secretary of the Interior shall—

Deadlines.

(1) not later than 30 days after the date of enactment of this Act, amend Right-of-Way Grants No. NVN–49781/IDI–26446/NVN–85211/NVN–85210 of the Bureau of Land Management to shift the 200-foot right-of-way for the 500-kilovolt transmission line project to the alignment depicted on the maps entitled “Southwest Intertie Project” and dated December 10, 2009, and May 21, 2010, and approve the construction, operation and maintenance plans of the project; and

(2) not later than 90 days after the date of enactment of this Act, issue a notice to proceed with construction of the project in accordance with the amended grants and approved plans described in paragraph (1).

Notice.

(b) Notwithstanding any other provision of law, the Secretary of Energy may provide or facilitate federal financing for the project described in subsection (a) under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115) or the Energy Policy Act of 2005 (42 U.S.C. 15801 et seq.), based

on the comprehensive reviews and consultations performed by the Secretary of the Interior.

FUNDING FOR ENVIRONMENTAL AND FISHERIES IMPACTS

SEC. 2004. (1) FISHERIES DISASTER RELIEF.—For an additional amount, in addition to other amounts provided in this Act for the National Oceanic and Atmospheric Administration, \$15,000,000 to be available to provide fisheries disaster relief under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a) related to a commercial fishery failure due to a fishery resource disaster in the Gulf of Mexico that resulted from the Deepwater Horizon oil discharge.

(2) EXPANDED STOCK ASSESSMENT OF FISHERIES.—For an additional amount, in addition to other amounts provided in this Act for the National Oceanic and Atmospheric Administration, \$10,000,000 to conduct an expanded stock assessment of the fisheries of the Gulf of Mexico. Such expanded stock assessment shall include an assessment of the commercial and recreational catch and biological sampling, observer programs, data management and processing activities, the conduct of assessments, and follow-up evaluations of such fisheries.

(3) ECOSYSTEM SERVICES IMPACTS STUDY.—For an additional amount, in addition to other amounts provided for the Department of Commerce, \$1,000,000 to be available for the National Academy of Sciences to conduct a study of the long-term ecosystem service impacts of the Deepwater Horizon oil discharge. Such study shall assess long-term costs to the public of lost water filtration, hunting, and fishing (commercial and recreational), and other ecosystem services associated with the Gulf of Mexico.

Rescission.

(4) IN GENERAL.—Of the amounts appropriated or made available under division B, title I of Public Law 111-117 that remain unobligated as of the date of the enactment of this Act under Procurement, Acquisition, and Construction for the National Oceanic and Atmospheric Administration, \$26,000,000 of the amounts appropriated are hereby rescinded.

TITLE III

GENERAL PROVISIONS—THIS ACT

AVAILABILITY OF FUNDS

SEC. 3001 No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

EMERGENCY DESIGNATION

SEC. 3002. Unless otherwise specified, each amount in this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

Payments.

SEC. 3003. (a) Notwithstanding any other provision of law, for fiscal year 2010 only, all funds received from sales, bonuses, royalties, and rentals under the Geothermal Steam Act of 1970

(30 U.S.C. §§ 1001 et seq.) shall be deposited in the Treasury, of which—

(1) 50 percent shall be used by the Secretary of the Treasury to make payments to States within the boundaries of which the leased land and geothermal resources are located;

(2) 25 percent shall be used by the Secretary of the Treasury to make payments to the counties within the boundaries of which the leased land or geothermal resources are located; and

(3) 25 percent shall be deposited in miscellaneous receipts.

(b) Section 3002 shall not apply to this section.

SEC. 3004. (a) Public Law 111-88, the Interior, Environment, and Related Agencies Appropriations Act, 2010, is amended under the heading “Office of the Special Trustee for American Indians” by—

123 Stat. 2922.

(1) striking “\$185,984,000” and inserting “\$176,984,000”; and

(2) striking “\$56,536,000” and inserting “\$47,536,000”.

(b) Section 3002 shall not apply to the amounts in this section.

SEC. 3005. Section 502(c) of the Chesapeake Bay Initiative Act of 1998 (16 U.S.C. 461 note; Public Law 105-312) is amended by striking “2008” and inserting “2011”.

SEC. 3006. For fiscal years 2010 and 2011—

(1) the National Park Service Recreation Fee Program account may be available for the cost of adjustments and changes within the original scope of contracts for National Park Service projects funded by Public Law 111-5 and for associated administrative costs when no funds are otherwise available for such purposes;

(2) notwithstanding section 430 of division E of Public Law 111-8 and section 444 of Public Law 111-88, the Secretary of the Interior may utilize unobligated balances for adjustments and changes within the original scope of projects funded through division A, title VII, of Public Law 111-5 and for associated administrative costs when no funds are otherwise available;

(3) the Secretary of the Interior shall ensure that any unobligated balances utilized pursuant to paragraph (2) shall be derived from the bureau and account for which the project was funded in Public Law 111-5; and

(4) the Secretary of the Interior shall consult with the Committees on Appropriations prior to making any charges authorized by this section.

Consultation.

SEC. 3007. (a) Section 205(d) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2304(d)) is amended by striking “10 years” and inserting “11 years”.

(b) Section 3002 shall not apply to this section.

SEC. 3008. Of the amounts appropriated for the Edward Byrne Memorial Justice Assistance Grant Program under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.) under the heading “STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE” under the heading “OFFICE OF JUSTICE PROGRAMS” under the heading “STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES” under title II of the Omnibus Appropriations Act, 2009 (Public Law 111-8; 123 Stat. 579), at the discretion of the Attorney General, the amounts to be made available to Genesee County, Michigan for assistance for individuals

Michigan.

transitioning from prison in Genesee County, Michigan pursuant to the joint statement of managers accompanying that Act may be made available to My Brother's Keeper of Genesee County, Michigan to provide assistance for individuals transitioning from prison in Genesee County, Michigan.

SEC. 3009. Section 159(b)(2)(C) of title I of division A of the Consolidated Appropriations Act, 2010 (49 U.S.C. 24305 note) is amended by striking clauses (i) and (ii) and inserting the following:

“(i) requiring inspections of any container containing a firearm or ammunition; and

“(ii) the temporary suspension of firearm carriage service if credible intelligence information indicates a threat related to the national rail system or specific routes or trains.”.

PUBLIC AVAILABILITY OF CONTRACTOR INTEGRITY AND PERFORMANCE
DATABASE

Web posting.

SEC. 3010. Section 872(e)(1) of the Clean Contracting Act of 2008 (subtitle G of title VIII of Public Law 110-417; 41 U.S.C. 417b(e)(1)) is amended by adding at the end the following: “In addition, the Administrator shall post all such information, excluding past performance reviews, on a publicly available Internet website.”.

ASSESSMENTS ON GUANTANAMO BAY DETAINEES

Deadline.

SEC. 3011. (a) SUBMISSION OF INFORMATION RELATED TO DISPOSITION DECISIONS.—Not later than 45 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the participants of the interagency review of Guantanamo Bay detainees conducted pursuant to Executive Order 13492 (10 U.S.C. 801 note), shall fully inform the congressional intelligence committees concerning the basis for the disposition decisions reached by the Guantanamo Review Task Force, and shall provide to the congressional intelligence committees—

Analyses.

(1) the written threat analyses prepared on each detainee by the Guantanamo Review Task Force established pursuant to Executive Order 13492; and

(2) access to the intelligence information that formed the basis of any such specific assessments or threat analyses.

Deadline.

(b) FUTURE SUBMISSIONS.—In addition to the analyses, assessments, and information required under subsection (a) and not later than 10 days after the date that a threat assessment described in subsection (a) is disseminated, the Director of National Intelligence shall provide to the congressional intelligence committees—

(1) any new threat assessment prepared by any element of the intelligence community of a Guantanamo Bay detainee who remains in detention or is pending release or transfer; and

(2) access to the intelligence information that formed the basis of such threat assessment.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” has the meaning given that term in section 3(7) of the National Security Act of 1947 (50 U.S.C. 401a(7)).

Georgia.

SEC. 3012. Of the amounts appropriated for the Edward Byrne Memorial Justice Assistance Grant Program under subpart 1 of

part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.) under the heading “STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE” under the heading “OFFICE OF JUSTICE PROGRAMS” under the heading “STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES” under title II of the Omnibus Appropriations Act, 2009 (Public Law 111–8; 123 Stat. 579), at the discretion of the Attorney General, the amounts to be made available to the Marcus Institute, Atlanta, Georgia, to provide remediation for the potential consequences of childhood abuse and neglect, pursuant to the joint statement of managers accompanying that Act, may be made available to the Georgia State University Center for Healthy Development, Atlanta, Georgia.

COASTAL IMPACT ASSISTANCE

SEC. 3013. Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is amended by adding at the end the following:

“(e) EMERGENCY FUNDING.—

“(1) IN GENERAL.—In response to a spill of national significance under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), at the request of a producing State or coastal political subdivision and notwithstanding the requirements of part 12 of title 43, Code of Federal Regulations (or a successor regulation), the Secretary may immediately disburse funds allocated under this section for 1 or more individual projects that are—

“(A) consistent with subsection (d); and

“(B) specifically designed to respond to the spill of national significance.

“(2) APPROVAL BY SECRETARY.—The Secretary may, in the sole discretion of the Secretary, approve, on a project by project basis, the immediate disbursement of the funds under paragraph (1).

“(3) STATE REQUIREMENTS.—

“(A) ADDITIONAL INFORMATION.—If the Secretary approves a project for funding under this subsection that is included in a plan previously approved under subsection (c), not later than 90 days after the date of the funding approval, the producing State or coastal political subdivision shall submit to the Secretary any additional information that the Secretary determines to be necessary to ensure that the project is in compliance with subsection (d).

“(B) AMENDMENT TO PLAN.—If the Secretary approves a project for funding under this subsection that is not included in a plan previously approved under subsection (c), not later than 90 days after the date of the funding approval, the producing State or coastal political subdivision shall submit to the Secretary for approval an amendment to the plan that includes any projects funded under paragraph (1), as well as any information about such projects that the Secretary determines to be necessary to ensure that the project is in compliance with subsection (d).

“(C) LIMITATION.—If a producing State or coastal political subdivision does not submit the additional information or amendments to the plan required by this paragraph, or if, based on the information submitted by the Secretary

Deadlines.

determines that the project is not in compliance with subsection (d), by the deadlines specified in this paragraph, the Secretary shall not disburse any additional funds to the producing State or the coastal political subdivisions until the date on which the additional information or amendment to the plan has been approved by the Secretary.”.

This Act may be cited as the “Supplemental Appropriations Act, 2010”.

Approved July 29, 2010.

LEGISLATIVE HISTORY—H.R. 4899:

SENATE REPORTS: No. 111–188 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 24, considered and passed House.

May 24–27, considered and passed Senate, amended.

July 1, House concurred in Senate amendment with an amendment.

July 22, Senate considered and rejected House amendment.

July 27, House receded and concurred in Senate amendment.



Public Law 111–213
111th Congress

An Act

To provide a technical adjustment with respect to funding for independent living centers under the Rehabilitation Act of 1973 in order to ensure stability for such centers.

July 29, 2010
[H.R. 5610]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Independent Living Centers Technical Adjustment Act”.

Independent
Living Centers
Technical
Adjustment Act.
29 USC 701 note.

SEC. 2. INDEPENDENT LIVING CENTERS TECHNICAL ADJUSTMENT.

(a) GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH FEDERAL FUNDING EXCEEDS STATE FUNDING.—

29 USC 796f–1
note.

(1) IN GENERAL.—If the conditions described in paragraph (2) are satisfied with respect to a State, in awarding funds to existing centers for independent living (described in section 722(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–1(c))) in the State, the Commissioner of the Rehabilitation Services Administration—

(A) in fiscal year 2010—

(i) shall distribute among such centers funds appropriated for the centers for independent living program under part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.) by any Act other than the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) in the same proportion as such funds were distributed among such centers in the State in fiscal year 2009, notwithstanding section 722(e) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–1(e)) and any contrary provision of a State plan submitted under section 704 of such Act (29 U.S.C. 796c); and

(ii) shall disregard any funds provided to such centers from funds appropriated by the American Recovery and Reinvestment Act of 2009 for the centers for independent living program under part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.); and

(B) in fiscal year 2011 and subsequent fiscal years, shall disregard any funds provided to such centers from funds appropriated by the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) for the centers for independent living program under part C of title

VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.).

(2) CONDITIONS.—The conditions described in this paragraph are the following:

Deadline.

(A) The Commissioner receives a request from the State, not later than August 5, 2010, jointly signed by the State's designated State unit (referred to in section 704(c) of such Act (29 U.S.C. 796c(c))) and the State's Statewide Independent Living Council (established under section 705 of such Act (29 U.S.C. 796d)), for the Commissioner to disregard any funds provided to centers for independent living in the State from funds appropriated by the American Recovery and Reinvestment Act of 2009 for the centers for independent living program under part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.).

(B) The Commissioner is not conducting a competition to establish a new part C center for independent living with funds appropriated by the American Recovery and Reinvestment Act of 2009 in the State.

(b) GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING.—In awarding funds to existing centers for independent living (described in section 723(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–2(c))) in a State, the director of the designated State unit that has approval to make such awards—

(1) in fiscal year 2010—

(A) may distribute among such centers funds appropriated for the centers for independent living program under part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.) by any Act other than the American Recovery and Reinvestment Act of 2009 in the same proportion as such funds were distributed among such centers in the State in fiscal year 2009, notwithstanding section 723(e) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–2(e)) and any contrary provision of a State plan submitted under section 704 of such Act (29 U.S.C. 796c); and

(B) may disregard any funds provided to such centers from funds appropriated by the American Recovery and Reinvestment Act of 2009 for the centers for independent living program under part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.); and

(2) in fiscal year 2011 and subsequent fiscal years, may disregard any funds provided to such centers from funds appropriated by the American Recovery and Reinvestment Act of 2009 for the centers for independent living program under

part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C.
796f et seq.).

Approved July 29, 2010.

LEGISLATIVE HISTORY—H.R. 5610:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 30, considered and passed House.

July 27, considered and passed Senate, amended.

July 28, House concurred in Senate amendment.



Public Law 111–214
111th Congress

An Act

July 30, 2010
[H.R. 5849]

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) **IN GENERAL.**—Section 1 of the Act entitled “An Act to extend temporarily certain authorities of the Small Business Administration”, approved October 10, 2006 (Public Law 109–316; 120 Stat. 1742), as most recently amended by section 1 of Public Law 111–162 (124 Stat. 1129), is amended by striking “July 31, 2010” each place it appears and inserting “September 30, 2010”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on July 30, 2010.

Approved July 30, 2010.

LEGISLATIVE HISTORY—H.R. 5849:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 27, considered and passed House and Senate.



Public Law 111–215
111th Congress

An Act

To modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels.

July 30, 2010

[S. 3372]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.

Section 2(a) of Public Law 110–299 (33 U.S.C. 1342 note) is amended by striking “during the 2-year period beginning on the date of enactment of this Act” and inserting “during the period beginning on the date of the enactment of this Act and ending on December 18, 2013”.

Approved July 30, 2010.

LEGISLATIVE HISTORY—S. 3372 (H.R. 5301):

HOUSE REPORTS: No. 111–539 (Comm. on Transportation and Infrastructure) accompanying H.R. 5301.

SENATE REPORTS: No. 111–209 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 14, considered and passed Senate.

July 29, considered and passed House.



Public Law 111–216
111th Congress

An Act

Aug. 1, 2010
[H.R. 5900]

Airline Safety
and Federal
Aviation
Administration
Extension Act
of 2010.
49 USC 40101
note.

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend airport improvement program project grant authority and to improve airline safety, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Airline Safety and Federal Aviation Administration Extension Act of 2010”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
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TITLE I—AIRPORT AND AIRWAY EXTENSION

SEC. 101. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

(a) FUEL TAXES.—Subparagraph (B) of section 4081(d)(2) of the Internal Revenue Code of 1986 is amended by striking “August 1, 2010” and inserting “September 30, 2010”. 26 USC 4081.

(b) TICKET TAXES.—

(1) PERSONS.—Clause (ii) of section 4261(j)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “August 1, 2010” and inserting “September 30, 2010”.

(2) PROPERTY.—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking “August 1, 2010” and inserting “September 30, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 2, 2010. 26 USC 4081 note.

SEC. 102. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDI- TURE AUTHORITY.

(a) IN GENERAL.—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 is amended—

(1) by striking “August 2, 2010” and inserting “October 1, 2010”; and

(2) by inserting “or the Airline Safety and Federal Aviation Administration Extension Act of 2010” before the semicolon at the end of subparagraph (A).

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 9502(e) of such Code is amended by striking “August 2, 2010” and inserting “October 1, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 2, 2010. 26 USC 9502 note.

SEC. 103. EXTENSION OF AIRPORT IMPROVEMENT PROGRAM.

Section 47104(c) of title 49, United States Code, is amended by striking “August 1, 2010,” and inserting “September 30, 2010,”.

SEC. 104. EXTENSION OF EXPIRING AUTHORITIES.

(a) Section 40117(l)(7) of title 49, United States Code, is amended by striking “August 2, 2010.” and inserting “October 1, 2010.”.

(b) Section 44302(f)(1) of such title is amended—

(1) by striking “August 1, 2010,” and inserting “September 30, 2010,”; and

(2) by striking “October 31, 2010,” and inserting “December 31, 2010,”.

(c) Section 44303(b) of such title is amended by striking “October 31, 2010,” and inserting “December 31, 2010,”.

(d) Section 47107(s)(3) of such title is amended by striking “August 2, 2010.” and inserting “October 1, 2010.”.

(e) Section 47115(j) of such title is amended by striking “fiscal years 2004 through 2009, and for the portion of fiscal year 2010 ending before August 2, 2010,” and inserting “fiscal years 2004 through 2010,”.

(f) Section 47141(f) of such title is amended by striking “August 1, 2010.” and inserting “September 30, 2010.”.

(g) Section 49108 of such title is amended by striking “August 1, 2010,” and inserting “September 30, 2010,”.

(h) Section 161 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 47109 note) is amended by striking “fiscal year 2009, or in the portion of fiscal year 2010 ending before August 2, 2010,” and inserting “fiscal year 2009 or 2010”.

(i) Section 186(d) of such Act (117 Stat. 2518) is amended by striking “October 1, 2009, and for the portion of fiscal year 2010 ending before August 2, 2010,” and inserting “October 1, 2010,”.

(j) The amendments made by this section shall take effect on August 2, 2010.

Effective date.
49 USC 40117
note.

SEC. 105. FEDERAL AVIATION ADMINISTRATION OPERATIONS.

Section 106(k)(1)(F) of title 49, United States Code, is amended to read as follows:

“(F) \$9,350,028,000 for fiscal year 2010.”.

SEC. 106. AIR NAVIGATION FACILITIES AND EQUIPMENT.

Section 48101(a)(6) of title 49, United States Code, is amended to read as follows:

“(6) \$2,936,203,000 for fiscal year 2010.”.

SEC. 107. RESEARCH, ENGINEERING, AND DEVELOPMENT.

Section 48102(a)(14) of title 49, United States Code, is amended to read as follows:

“(14) \$190,500,000 for fiscal year 2010.”.

TITLE II—AIRLINE SAFETY AND PILOT TRAINING IMPROVEMENT

49 USC 44701
note.

SEC. 201. DEFINITIONS.

(a) **DEFINITIONS.**—In this title, the following definitions apply:

(1) **ADVANCED QUALIFICATION PROGRAM.**—The term “advanced qualification program” means the program established by the Federal Aviation Administration in Advisory Circular 120–54A, dated June 23, 2006, including any subsequent revisions thereto.

(2) **AIR CARRIER.**—The term “air carrier” has the meaning given that term in section 40102 of title 49, United States Code.

(3) **AVIATION SAFETY ACTION PROGRAM.**—The term “aviation safety action program” means the program established by the Federal Aviation Administration in Advisory Circular 120–66B, dated November 15, 2002, including any subsequent revisions thereto.

(4) **FLIGHT CREWMEMBER.**—The term “flight crewmember” has the meaning given the term “flightcrew member” in part 1 of title 14, Code of Federal Regulations.

(5) **FLIGHT OPERATIONAL QUALITY ASSURANCE PROGRAM.**—The term “flight operational quality assurance program” means the program established by the Federal Aviation Administration in Advisory Circular 120–82, dated April 12, 2004, including any subsequent revisions thereto.

(6) **LINE OPERATIONS SAFETY AUDIT.**—The term “line operations safety audit” means the procedure referenced by the

Federal Aviation Administration in Advisory Circular 120–90, dated April 27, 2006, including any subsequent revisions thereto.

(7) PART 121 AIR CARRIER.—The term “part 121 air carrier” means an air carrier that holds a certificate issued under part 121 of title 14, Code of Federal Regulations.

(8) PART 135 AIR CARRIER.—The term “part 135 air carrier” means an air carrier that holds a certificate issued under part 135 of title 14, Code of Federal Regulations.

SEC. 202. SECRETARY OF TRANSPORTATION RESPONSES TO SAFETY RECOMMENDATIONS.

49 USC 44701
note.

(a) IN GENERAL.—The first sentence of section 1135(a) is amended by inserting “to the Board” after “shall give”.

49 USC 1135.

(b) AIR CARRIER SAFETY RECOMMENDATIONS.—Section 1135 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) ANNUAL REPORT ON AIR CARRIER SAFETY RECOMMENDATIONS.—

“(1) IN GENERAL.—The Secretary shall submit to Congress and the Board, on an annual basis, a report on the recommendations made by the Board to the Secretary regarding air carrier operations conducted under part 121 of title 14, Code of Federal Regulations.

“(2) RECOMMENDATIONS TO BE COVERED.—The report shall cover—

“(A) any recommendation for which the Secretary has developed, or intends to develop, procedures to adopt the recommendation or part of the recommendation, but has yet to complete the procedures; and

“(B) any recommendation for which the Secretary, in the preceding year, has issued a response under subsection (a)(2) or (a)(3) refusing to carry out all or part of the procedures to adopt the recommendation.

“(3) CONTENTS.—

“(A) PLANS TO ADOPT RECOMMENDATIONS.—For each recommendation of the Board described in paragraph (2)(A), the report shall contain—

“(i) a description of the recommendation;

“(ii) a description of the procedures planned for adopting the recommendation or part of the recommendation;

“(iii) the proposed date for completing the procedures; and

“(iv) if the Secretary has not met a deadline contained in a proposed timeline developed in connection with the recommendation under subsection (b), an explanation for not meeting the deadline.

“(B) REFUSALS TO ADOPT RECOMMENDATIONS.—For each recommendation of the Board described in paragraph (2)(B), the report shall contain—

“(i) a description of the recommendation; and

“(ii) a description of the reasons for the refusal to carry out all or part of the procedures to adopt the recommendation.”.

49 USC 44701
note.

SEC. 203. FAA PILOT RECORDS DATABASE.

(a) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—Section 44703(h) of title 49, United States Code, is amended by adding at the end the following:

Termination
date.

“(16) APPLICABILITY.—This subsection shall cease to be effective on the date specified in regulations issued under subsection (i).”.

(b) ESTABLISHMENT OF FAA PILOT RECORDS DATABASE.—Section 44703 of such title is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following:

“(i) FAA PILOT RECORDS DATABASE.—

“(1) IN GENERAL.—Before allowing an individual to begin service as a pilot, an air carrier shall access and evaluate, in accordance with the requirements of this subsection, information pertaining to the individual from the pilot records database established under paragraph (2).

“(2) PILOT RECORDS DATABASE.—The Administrator shall establish an electronic database (in this subsection referred to as the ‘database’) containing the following records:

“(A) FAA RECORDS.—From the Administrator—

“(i) records that are maintained by the Administrator concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings;

“(ii) records that are maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of title 14, Code of Federal Regulations; and

“(iii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

“(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person (except a branch of the Armed Forces, the National Guard, or a reserve component of the Armed Forces) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for the air carrier or person—

“(i) records pertaining to the individual that are maintained by the air carrier (other than records relating to flight time, duty time, or rest time) or person, including records under regulations set forth in—

“(I) section 121.683 of title 14, Code of Federal Regulations;

“(II) section 121.111(a) of such title;

“(III) section 121.219(a) of such title;

“(IV) section 125.401 of such title; and

“(V) section 135.63(a)(4) of such title; and

“(ii) other records pertaining to the individual’s performance as a pilot that are maintained by the air carrier or person concerning—

“(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

“(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

“(III) any release from employment or resignation, termination, or disqualification with respect to employment.

“(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

“(3) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier—

“(A) shall obtain the written consent of an individual before accessing records pertaining to the individual under paragraph (1); and

“(B) may, notwithstanding any other provision of law or agreement to the contrary, require an individual with respect to whom the carrier is accessing records under paragraph (1) to execute a release from liability for any claim arising from accessing the records or the use of such records by the air carrier in accordance with this section (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

“(4) REPORTING.—

“(A) REPORTING BY ADMINISTRATOR.—The Administrator shall enter data described in paragraph (2)(A) into the database promptly to ensure that an individual’s records are current.

“(B) REPORTING BY AIR CARRIERS AND OTHER PERSONS.—

“(i) IN GENERAL.—Air carriers and other persons shall report data described in paragraphs (2)(B) and (2)(C) to the Administrator promptly for entry into the database.

“(ii) DATA TO BE REPORTED.—Air carriers and other persons shall report, at a minimum, under clause (i) the following data described in paragraph (2)(B):

“(I) Records that are generated by the air carrier or other person after the date of enactment of this paragraph.

“(II) Records that the air carrier or other person is maintaining, on such date of enactment, pursuant to subsection (h)(4).

“(5) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator—

“(A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that the individual is deceased; and

“(B) may remove the individual’s records from the database after that date.

“(6) RECEIPT OF CONSENT.—The Administrator shall not permit an air carrier to access records pertaining to an individual from the database under paragraph (1) without the air carrier first demonstrating to the satisfaction of the Administrator that the air carrier has obtained the written consent of the individual.

“(7) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS AND CORRECT INACCURACIES.—Notwithstanding any other provision of law or agreement, the Administrator, upon receipt of written request from an individual—

Deadline.

“(A) shall make available, not later than 30 days after the date of the request, to the individual for review all records referred to in paragraph (2) pertaining to the individual; and

“(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records.

“(8) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—

“(A) IN GENERAL.—The Administrator may establish a reasonable charge for the cost of processing a request under paragraph (1) or (7) and for the cost of furnishing copies of requested records under paragraph (7).

“(B) CREDITING APPROPRIATIONS.—Funds received by the Administrator pursuant to this paragraph shall—

“(i) be credited to the appropriation current when the amount is received;

“(ii) be merged with and available for the purposes of such appropriation; and

“(iii) remain available until expended.

“(9) PRIVACY PROTECTIONS.—

“(A) USE OF RECORDS.—An air carrier that accesses records pertaining to an individual under paragraph (1) may use the records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the individual and the confidentiality of the records accessed, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

“(B) DISCLOSURE OF INFORMATION.—

“(i) IN GENERAL.—Except as provided by clause (ii), information collected by the Administrator under paragraph (2) shall be exempt from the disclosure requirements of section 552 of title 5.

“(ii) EXCEPTIONS.—Clause (i) shall not apply to—

“(I) deidentified, summarized information to explain the need for changes in policies and regulations;

“(II) information to correct a condition that compromises safety;

“(III) information to carry out a criminal investigation or prosecution;

“(IV) information to comply with section 44905, regarding information about threats to civil aviation; and

“(V) such information as the Administrator determines necessary, if withholding the information would not be consistent with the safety responsibilities of the Federal Aviation Administration.

“(10) PERIODIC REVIEW.—Not later than 18 months after the date of enactment of this paragraph, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—

Deadlines.
Statement.

“(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be included in the database under paragraph (2); or

“(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

“(11) REGULATIONS FOR PROTECTION AND SECURITY OF RECORDS.—The Administrator shall prescribe such regulations as may be necessary—

“(A) to protect and secure—

“(i) the personal privacy of any individual whose records are accessed under paragraph (1); and

“(ii) the confidentiality of those records; and

“(B) to preclude the further dissemination of records received under paragraph (1) by the person who accessed the records.

“(12) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier may allow an individual to begin service as a pilot, without first obtaining information described in paragraph (2)(B) from the database pertaining to the individual, if—

“(A) the air carrier has made a documented good faith attempt to access the information from the database; and

“(B) the air carrier has received written notice from the Administrator that the information is not contained in the database because the individual was employed by an air carrier or other person that no longer exists or by a foreign government or other entity that has not provided the information to the database.

“(13) LIMITATIONS ON ELECTRONIC ACCESS TO RECORDS.—

“(A) ACCESS BY INDIVIDUALS DESIGNATED BY AIR CARRIERS.—For the purpose of increasing timely and efficient access to records described in paragraph (2), the Administrator may allow, under terms established by the Administrator, an individual designated by an air carrier to have electronic access to the database.

“(B) TERMS.—The terms established by the Administrator under subparagraph (A) for allowing a designated individual to have electronic access to the database shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that—

“(i) the designated individual has received the written consent of the pilot applicant to access the information; and

“(ii) information obtained using such access will not be used for any purpose other than making the hiring decision.

“(14) AUTHORIZED EXPENDITURES.—Of amounts appropriated under section 106(k)(1), a total of \$6,000,000 for fiscal years 2010 through 2013 may be used to carry out this subsection.

“(15) REGULATIONS.—

“(A) IN GENERAL.—The Administrator shall issue regulations to carry out this subsection.

“(B) EFFECTIVE DATE.—The regulations shall specify the date on which the requirements of this subsection take effect and the date on which the requirements of subsection (h) cease to be effective.

“(C) EXCEPTIONS.—Notwithstanding subparagraph (B)—

Deadline.

“(i) the Administrator shall begin to establish the database under paragraph (2) not later than 90 days after the date of enactment of this paragraph;

Effective date.

“(ii) the Administrator shall maintain records in accordance with paragraph (5) beginning on the date of enactment of this paragraph; and

Time period.

“(iii) air carriers and other persons shall maintain records to be reported to the database under paragraph (4)(B) in the period beginning on such date of enactment and ending on the date that is 5 years after the requirements of subsection (h) cease to be effective pursuant to subparagraph (B).

Time period.
Applicability.

“(16) SPECIAL RULE.—During the one-year period beginning on the date on which the requirements of this section become effective pursuant to paragraph (15)(B), paragraph (7)(A) shall be applied by substituting ‘45 days’ for ‘30 days’.”.

(c) CONFORMING AMENDMENTS.—

(1) LIMITATION ON LIABILITY; PREEMPTION OF STATE LAW.—Section 44703(j) (as redesignated by subsection (b)(1) of this section) is amended—

(A) in the subsection heading by striking “LIMITATION” and inserting “LIMITATIONS”;

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A) by striking “paragraph (2)” and inserting “subsection (h)(2) or (i)(3)”;

(ii) in subparagraph (A) by inserting “or accessing the records of that individual under subsection (i)(1)” before the semicolon; and

(iii) in the matter following subparagraph (D) by striking “subsection (h)” and inserting “subsection (h) or (i)”;

(C) in paragraph (2) by striking “subsection (h)” and inserting “subsection (h) or (i)”;

(D) in paragraph (3), in the matter preceding subparagraph (A), by inserting “or who furnished information to the database established under subsection (i)(2)” after “subsection (h)(1)”;

(E) by adding at the end the following:

“(4) PROHIBITION ON ACTIONS AND PROCEEDINGS AGAINST AIR CARRIERS.—

“(A) HIRING DECISIONS.—An air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

“(B) ACTIONS AND PROCEEDINGS.—No action or proceeding may be brought against an air carrier by or on behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual after the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute a release from liability requested under subsection (h)(2)(B) or (i)(3)(B).”.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Section 44703(k) (as redesignated by subsection (b)(1) of this section) is amended by striking “subsection (h)” and inserting “subsection (h) or (i)”.

SEC. 204. FAA TASK FORCE ON AIR CARRIER SAFETY AND PILOT TRAINING.

49 USC 44701
note.

(a) ESTABLISHMENT.—The Administrator of the Federal Aviation Administration shall establish a special task force to be known as the FAA Task Force on Air Carrier Safety and Pilot Training (in this section referred to as the “Task Force”).

(b) COMPOSITION.—The Task Force shall consist of members appointed by the Administrator and shall include air carrier representatives, labor union representatives, and aviation safety experts with knowledge of foreign and domestic regulatory requirements for flight crewmember education and training.

(c) DUTIES.—The duties of the Task Force shall include, at a minimum, evaluating best practices in the air carrier industry and providing recommendations in the following areas:

(1) Air carrier management responsibilities for flight crewmember education and support.

(2) Flight crewmember professional standards.

(3) Flight crewmember training standards and performance.

(4) Mentoring and information sharing between air carriers.

(d) REPORT.—Not later than one year after the date of enactment of this Act, and before the last day of each one-year period thereafter until termination of the Task Force, the Task Force shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing—

(1) the progress of the Task Force in identifying best practices in the air carrier industry;

(2) the progress of air carriers and labor unions in implementing the best practices identified by the Task Force;

(3) recommendations of the Task Force, if any, for legislative or regulatory actions;

(4) the progress of air carriers and labor unions in implementing training-related, nonregulatory actions recommended by the Administrator; and

(5) the progress of air carriers in developing specific programs to share safety data and ensure implementation of the most effective safety practices.

(e) **TERMINATION.**—The Task Force shall terminate on September 30, 2012.

(f) **APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Task Force.

49 USC 44701
note.

SEC. 205. AVIATION SAFETY INSPECTORS AND OPERATIONAL RESEARCH ANALYSTS.

Deadline.
Reports.

(a) **REVIEW BY DOT INSPECTOR GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Inspector General of the Department of Transportation shall conduct a review of the aviation safety inspectors and operational research analysts of the Federal Aviation Administration assigned to part 121 air carriers and submit to the Administrator of the Federal Aviation Administration a report on the results of the review.

(b) **PURPOSES.**—The purpose of the review shall be, at a minimum—

(1) to review the level of the Administration’s oversight of each part 121 air carrier;

(2) to make recommendations to ensure that each part 121 air carrier is receiving an equivalent level of oversight;

(3) to assess the number and level of experience of aviation safety inspectors assigned to each part 121 air carrier;

(4) to evaluate how the Administration is making assignments of aviation safety inspectors to each part 121 air carrier;

(5) to review various safety inspector oversight programs, including the geographic inspector program;

(6) to evaluate the adequacy of the number of operational research analysts assigned to each part 121 air carrier;

(7) to evaluate the surveillance responsibilities of aviation safety inspectors, including en route inspections;

(8) to evaluate whether inspectors are able to effectively use data sources, such as the Safety Performance Analysis System and the Air Transportation Oversight System, to assist in targeting oversight of each part 121 air carrier;

(9) to assess the feasibility of establishment by the Administration of a comprehensive repository of information that encompasses multiple Administration data sources and allows access by aviation safety inspectors and operational research analysts to assist in the oversight of each part 121 air carrier; and

(10) to conduct such other analyses as the Inspector General considers relevant to the review.

49 USC 44701
note.

SEC. 206. FLIGHT CREWMEMBER MENTORING, PROFESSIONAL DEVELOPMENT, AND LEADERSHIP.

(a) **AVIATION RULEMAKING COMMITTEE.**—

(1) **IN GENERAL.**—The Administrator of the Federal Aviation Administration shall convene an aviation rulemaking committee to develop procedures for each part 121 air carrier to take the following actions:

(A) Establish flight crewmember mentoring programs under which the air carrier will pair highly experienced flight crewmembers who will serve as mentor pilots and be paired with newly employed flight crewmembers. Mentor pilots should be provided, at a minimum, specific instruction on techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly employed flight crewmembers.

(B) Establish flight crewmember professional development committees made up of air carrier management and labor union or professional association representatives to develop, administer, and oversee formal mentoring programs of the carrier to assist flight crewmembers to reach their maximum potential as safe, seasoned, and proficient flight crewmembers.

(C) Establish or modify training programs to accommodate substantially different levels and types of flight experience by newly employed flight crewmembers.

(D) Establish or modify training programs for second-in-command flight crewmembers attempting to qualify as pilot-in-command flight crewmembers for the first time in a specific aircraft type and ensure that such programs include leadership and command training.

(E) Ensure that recurrent training for pilots in command includes leadership and command training.

(F) Such other actions as the aviation rulemaking committee determines appropriate to enhance flight crewmember professional development.

(2) COMPLIANCE WITH STERILE COCKPIT RULE.—Leadership and command training described in paragraphs (1)(D) and (1)(E) shall include instruction on compliance with flight crewmember duties under part 121.542 of title 14, Code of Federal Regulations.

(3) STREAMLINED PROGRAM REVIEW.—

(A) IN GENERAL.—As part of the rulemaking required by subsection (b), the Administrator shall establish a streamlined review process for part 121 air carriers that have in effect, as of the date of enactment of this Act, the programs described in paragraph (1).

(B) EXPEDITED APPROVALS.—Under the streamlined review process, the Administrator shall—

(i) review the programs of such part 121 air carriers to determine whether the programs meet the requirements set forth in the final rule referred to in subsection (b)(2); and

(ii) expedite the approval of the programs that the Administrator determines meet such requirements.

(b) RULEMAKING.—The Administrator shall issue—

(1) not later than one year after the date of enactment of this Act, a notice of proposed rulemaking based on the recommendations of the aviation rulemaking committee convened under subsection (a); and

(2) not later than 36 months after such date of enactment, a final rule based on such recommendations.

Deadlines.

Notice.

49 USC 44701
note.

SEC. 207. FLIGHT CREWMEMBER PAIRING AND CREW RESOURCE MANAGEMENT TECHNIQUES.

(a) **STUDY.**—The Administrator of the Federal Aviation Administration shall conduct a study on aviation industry best practices with regard to flight crewmember pairing, crew resource management techniques, and pilot commuting.

(b) **REPORT.**—Not later than one year after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

49 USC 44701
note.

SEC. 208. IMPLEMENTATION OF NTSB FLIGHT CREWMEMBER TRAINING RECOMMENDATIONS.

(a) **RULEMAKING PROCEEDINGS.**—

(1) **STALL AND UPSET RECOGNITION AND RECOVERY TRAINING.**—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require part 121 air carriers to provide flight crewmembers with ground training and flight training or flight simulator training—

(A) to recognize and avoid a stall of an aircraft or, if not avoided, to recover from the stall; and

(B) to recognize and avoid an upset of an aircraft or, if not avoided, to execute such techniques as available data indicate are appropriate to recover from the upset in a given make, model, and series of aircraft.

(2) **REMEDIAL TRAINING PROGRAMS.**—The Administrator shall conduct a rulemaking proceeding to require part 121 air carriers to establish remedial training programs for flight crewmembers who have demonstrated performance deficiencies or experienced failures in the training environment.

(3) **DEADLINES.**—The Administrator shall—

(A) not later than one year after the date of enactment of this Act, issue a notice of proposed rulemaking under each of paragraphs (1) and (2); and

(B) not later than 36 months after the date of enactment of this Act, issue a final rule for the rulemaking under each of paragraphs (1) and (2).

(b) **STICK PUSHER TRAINING AND WEATHER EVENT TRAINING.**—

(1) **MULTIDISCIPLINARY PANEL.**—Not later than 120 days after the date of enactment of this Act, the Administrator shall convene a multidisciplinary panel of specialists in aircraft operations, flight crewmember training, human factors, and aviation safety to study and submit to the Administrator a report on methods to increase the familiarity of flight crewmembers with, and improve the response of flight crewmembers to, stick pusher systems, icing conditions, and microburst and windshear weather events.

(2) **REPORT TO CONGRESS AND NTSB.**—Not later than one year after the date on which the Administrator convenes the panel, the Administrator shall—

(A) submit to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the National Transportation Safety Board a report based on the findings of the panel; and

Notice.

Deadline.
Reports.

(B) with respect to stick pusher systems, initiate appropriate actions to implement the recommendations of the panel.

(c) DEFINITIONS.—In this section, the following definitions apply:

(1) FLIGHT TRAINING AND FLIGHT SIMULATOR.—The terms “flight training” and “flight simulator” have the meanings given those terms in part 61.1 of title 14, Code of Federal Regulations (or any successor regulation).

(2) STALL.—The term “stall” means an aerodynamic loss of lift caused by exceeding the critical angle of attack.

(3) STICK PUSHER.—The term “stick pusher” means a device that, at or near a stall, applies a nose down pitch force to an aircraft’s control columns to attempt to decrease the aircraft’s angle of attack.

(4) UPSET.—The term “upset” means an unusual aircraft attitude.

SEC. 209. FAA RULEMAKING ON TRAINING PROGRAMS.

Deadlines.
49 USC 44701
note.

(a) COMPLETION OF RULEMAKING ON TRAINING PROGRAMS.—Not later than 14 months after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue a final rule with respect to the notice of proposed rulemaking published in the Federal Register on January 12, 2009 (74 Fed. Reg. 1280; relating to training programs for flight crewmembers and aircraft dispatchers).

(b) EXPERT PANEL TO REVIEW PART 121 AND PART 135 TRAINING HOURS.—

(1) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall convene a multidisciplinary expert panel comprised of, at a minimum, air carrier representatives, training facility representatives, instructional design experts, aircraft manufacturers, safety organization representatives, and labor union representatives.

(2) ASSESSMENT AND RECOMMENDATIONS.—The panel shall assess and make recommendations concerning—

(A) the best methods and optimal time needed for flight crewmembers of part 121 air carriers and flight crewmembers of part 135 air carriers to master aircraft systems, maneuvers, procedures, takeoffs and landings, and crew coordination;

(B) initial and recurrent testing requirements for pilots, including the rigor and consistency of testing programs such as check rides;

(C) the optimal length of time between training events for such flight crewmembers, including recurrent training events;

(D) the best methods reliably to evaluate mastery by such flight crewmembers of aircraft systems, maneuvers, procedures, takeoffs and landings, and crew coordination;

(E) classroom instruction requirements governing curriculum content and hours of instruction;

(F) the best methods to allow specific academic training courses to be credited toward the total flight hours required to receive an airline transport pilot certificate; and

(G) crew leadership training.

(3) **BEST PRACTICES.**—In making recommendations under subsection (b)(2), the panel shall consider, if appropriate, best practices in the aviation industry with respect to training protocols, methods, and procedures.

(4) **REPORT.**—Not later than one year after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the National Transportation Safety Board a report based on the findings of the panel.

49 USC 44701
note.

SEC. 210. DISCLOSURE OF AIR CARRIERS OPERATING FLIGHTS FOR TICKETS SOLD FOR AIR TRANSPORTATION.

Section 41712 of title 49, United States Code, is amended by adding at the end the following:

“(c) **DISCLOSURE REQUIREMENT FOR SELLERS OF TICKETS FOR FLIGHTS.**—

“(1) **IN GENERAL.**—It shall be an unfair or deceptive practice under subsection (a) for any ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier to fail to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket—

“(A) the name of the air carrier providing the air transportation; and

“(B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.

“(2) **INTERNET OFFERS.**—In the case of an offer to sell tickets described in paragraph (1) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.”.

49 USC 44701
note.
Deadline.

SEC. 211. SAFETY INSPECTIONS OF REGIONAL AIR CARRIERS.

The Administrator of the Federal Aviation Administration shall perform, not less frequently than once each year, random, onsite inspections of air carriers that provide air transportation pursuant to a contract with a part 121 air carrier to ensure that such air carriers are complying with all applicable safety standards of the Administration.

49 USC 44701
note.

SEC. 212. PILOT FATIGUE.

(a) **FLIGHT AND DUTY TIME REGULATIONS.**—

(1) **IN GENERAL.**—In accordance with paragraph (3), the Administrator of the Federal Aviation Administration shall issue regulations, based on the best available scientific information, to specify limitations on the hours of flight and duty time allowed for pilots to address problems relating to pilot fatigue.

(2) **MATTERS TO BE ADDRESSED.**—In conducting the rule-making proceeding under this subsection, the Administrator shall consider and review the following:

(A) Time of day of flights in a duty period.

(B) Number of takeoff and landings in a duty period.

(C) Number of time zones crossed in a duty period.

(D) The impact of functioning in multiple time zones or on different daily schedules.

(E) Research conducted on fatigue, sleep, and circadian rhythms.

(F) Sleep and rest requirements recommended by the National Transportation Safety Board and the National Aeronautics and Space Administration.

(G) International standards regarding flight schedules and duty periods.

(H) Alternative procedures to facilitate alertness in the cockpit.

(I) Scheduling and attendance policies and practices, including sick leave.

(J) The effects of commuting, the means of commuting, and the length of the commute.

(K) Medical screening and treatment.

(L) Rest environments.

(M) Any other matters the Administrator considers appropriate.

(3) RULEMAKING.—The Administrator shall issue—

Deadlines.
Notice.

(A) not later than 180 days after the date of enactment of this Act, a notice of proposed rulemaking under paragraph (1); and

(B) not later than one year after the date of enactment of this Act, a final rule under paragraph (1).

(b) FATIGUE RISK MANAGEMENT PLAN.—

Deadlines.

(1) SUBMISSION OF FATIGUE RISK MANAGEMENT PLAN BY PART 121 AIR CARRIERS.—Not later than 90 days after the date of enactment of this Act, each part 121 air carrier shall submit to the Administrator for review and acceptance a fatigue risk management plan for the carrier's pilots.

(2) CONTENTS OF PLAN.—A fatigue risk management plan submitted by a part 121 air carrier under paragraph (1) shall include the following:

(A) Current flight time and duty period limitations.

(B) A rest scheme consistent with such limitations that enables the management of pilot fatigue, including annual training to increase awareness of—

(i) fatigue;

(ii) the effects of fatigue on pilots; and

(iii) fatigue countermeasures.

(C) Development and use of a methodology that continually assesses the effectiveness of the program, including the ability of the program—

(i) to improve alertness; and

(ii) to mitigate performance errors.

(3) REVIEW.—Not later than 12 months after the date of enactment of this Act, the Administrator shall review and accept or reject the fatigue risk management plans submitted under this subsection. If the Administrator rejects a plan, the Administrator shall provide suggested modifications for resubmission of the plan.

(4) PLAN UPDATES.—

(A) IN GENERAL.—A part 121 air carrier shall update its fatigue risk management plan under paragraph (1) every 2 years and submit the update to the Administrator for review and acceptance.

(B) REVIEW.—Not later than 12 months after the date of submission of a plan update under subparagraph (A), the Administrator shall review and accept or reject the update. If the Administrator rejects an update, the Administrator shall provide suggested modifications for resubmission of the update.

(5) COMPLIANCE.—A part 121 air carrier shall comply with the fatigue risk management plan of the air carrier that is accepted by the Administrator under this subsection.

(6) CIVIL PENALTIES.—A violation of this subsection by a part 121 air carrier shall be treated as a violation of chapter 447 of title 49, United States Code, for purposes of the application of civil penalties under chapter 463 of that title.

(c) EFFECT OF COMMUTING ON FATIGUE.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the effects of commuting on pilot fatigue and report its findings to the Administrator.

(2) STUDY.—In conducting the study, the National Academy of Sciences shall consider—

(A) the prevalence of pilot commuting in the commercial air carrier industry, including the number and percentage of pilots who commute;

(B) information relating to commuting by pilots, including distances traveled, time zones crossed, time spent, and methods used;

(C) research on the impact of commuting on pilot fatigue, sleep, and circadian rhythms;

(D) commuting policies of commercial air carriers (including passenger and all-cargo air carriers), including pilot check-in requirements and sick leave and fatigue policies;

(E) postconference materials from the Federal Aviation Administration's June 2008 symposium titled "Aviation Fatigue Management Symposium: Partnerships for Solutions";

(F) Federal Aviation Administration and international policies and guidance regarding commuting; and

(G) any other matters as the Administrator considers appropriate.

(3) PRELIMINARY FINDINGS.—Not later than 120 days after the date of entering into arrangements under paragraph (1), the National Academy of Sciences shall submit to the Administrator its preliminary findings under the study.

(4) REPORT.—Not later than 9 months after the date of entering into arrangements under paragraph (1), the National Academy of Sciences shall submit a report to the Administrator containing its findings under the study and any recommendations for regulatory or administrative actions by the Federal Aviation Administration concerning commuting by pilots.

(5) RULEMAKING.—Following receipt of the report of the National Academy of Sciences under paragraph (4), the Administrator shall—

(A) consider the findings and recommendations in the report; and

Deadline.
Study.
Reports.

Deadline.

(B) update, as appropriate based on scientific data, regulations required by subsection (a) on flight and duty time.

SEC. 213. VOLUNTARY SAFETY PROGRAMS.

49 USC 44701
note.

(a) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the aviation safety action program, the flight operational quality assurance program, the line operations safety audit, and the advanced qualification program.

(b) **CONTENTS.**—The report shall include—

(1) a list of—

(A) which air carriers are using one or more of the voluntary safety programs referred to in subsection (a); and

(B) the voluntary safety programs each air carrier is using;

(2) if an air carrier is not using one or more of the voluntary safety programs—

(A) a list of such programs the carrier is not using; and

(B) the reasons the carrier is not using each such program;

(3) if an air carrier is using one or more of the voluntary safety programs, an explanation of the benefits and challenges of using each such program;

(4) a detailed analysis of how the Administration is using data derived from each of the voluntary safety programs as safety analysis and accident or incident prevention tools and a detailed plan on how the Administration intends to expand data analysis of such programs;

(5) an explanation of—

(A) where the data derived from the voluntary safety programs is stored;

(B) how the data derived from such programs is protected and secured; and

(C) what data analysis processes air carriers are implementing to ensure the effective use of the data derived from such programs;

(6) a description of the extent to which aviation safety inspectors are able to review data derived from the voluntary safety programs to enhance their oversight responsibilities;

(7) a description of how the Administration plans to incorporate operational trends identified under the voluntary safety programs into the air transport oversight system and other surveillance databases so that such system and databases are more effectively utilized;

(8) other plans to strengthen the voluntary safety programs, taking into account reviews of such programs by the Inspector General of the Department of Transportation; and

(9) such other matters as the Administrator determines are appropriate.

49 USC 44701
note.

SEC. 214. ASAP AND FOQA IMPLEMENTATION PLAN.

(a) **DEVELOPMENT AND IMPLEMENTATION PLAN.**—The Administrator of the Federal Aviation Administration shall develop and implement a plan to facilitate the establishment of an aviation safety action program and a flight operational quality assurance program by all part 121 air carriers.

(b) **MATTERS TO BE CONSIDERED.**—In developing the plan under subsection (a), the Administrator shall consider—

(1) how the Administration can assist part 121 air carriers with smaller fleet sizes to derive a benefit from establishing a flight operational quality assurance program;

(2) how part 121 air carriers with established aviation safety action and flight operational quality assurance programs can quickly begin to report data into the aviation safety information analysis sharing database; and

(3) how part 121 air carriers and aviation safety inspectors can better utilize data from such database as accident and incident prevention tools.

(c) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a copy of the plan developed under subsection (a) and an explanation of how the Administration will implement the plan.

(d) **DEADLINE FOR BEGINNING IMPLEMENTATION OF PLAN.**—Not later than one year after the date of enactment of this Act, the Administrator shall begin implementation of the plan developed under subsection (a).

49 USC 44701
note.

SEC. 215. SAFETY MANAGEMENT SYSTEMS.

(a) **RULEMAKING.**—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require all part 121 air carriers to implement a safety management system.

(b) **MATTERS TO CONSIDER.**—In conducting the rulemaking under subsection (a), the Administrator shall consider, at a minimum, including each of the following as a part of the safety management system:

(1) An aviation safety action program.

(2) A flight operational quality assurance program.

(3) A line operations safety audit.

(4) An advanced qualification program.

(c) **DEADLINES.**—The Administrator shall issue—

(1) not later than 90 days after the date of enactment of this Act, a notice of proposed rulemaking under subsection (a); and

(2) not later than 24 months after the date of enactment of this Act, a final rule under subsection (a).

(d) **SAFETY MANAGEMENT SYSTEM DEFINED.**—In this section, the term “safety management system” means the program established by the Federal Aviation Administration in Advisory Circular 120–92, dated June 22, 2006, including any subsequent revisions thereto.

Notice.

Regulations.

49 USC 44701
note.

SEC. 216. FLIGHT CREWMEMBER SCREENING AND QUALIFICATIONS.

(a) **REQUIREMENTS.**—

(1) **RULEMAKING PROCEEDING.**—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require part 121 air carriers to develop and implement means and methods for ensuring that flight crewmembers have proper qualifications and experience.

(2) **MINIMUM REQUIREMENTS.**—

(A) **PROSPECTIVE FLIGHT CREWMEMBERS.**—Rules issued under paragraph (1) shall ensure that prospective flight crewmembers undergo comprehensive preemployment screening, including an assessment of the skills, aptitudes, airmanship, and suitability of each applicant for a position as a flight crewmember in terms of functioning effectively in the air carrier’s operational environment.

(B) **ALL FLIGHT CREWMEMBERS.**—Rules issued under paragraph (1) shall ensure that, after the date that is 3 years after the date of enactment of this Act, all flight crewmembers—

(i) have obtained an airline transport pilot certificate under part 61 of title 14, Code of Federal Regulations; and

(ii) have appropriate multi-engine aircraft flight experience, as determined by the Administrator.

(b) **DEADLINES.**—The Administrator shall issue—

(1) not later than 180 days after the date of enactment of this Act, a notice of proposed rulemaking under subsection (a); and

(2) not later than 24 months after such date of enactment, a final rule under subsection (a).

(c) **DEFAULT.**—The requirement that each flight crewmember for a part 121 air carrier hold an airline transport pilot certificate under part 61 of title 14, Code of Federal Regulations, shall begin to apply on the date that is 3 years after the date of enactment of this Act even if the Administrator fails to meet a deadline established under this section.

Notice.

Regulations.

Applicability.
Effective date.

SEC. 217. AIRLINE TRANSPORT PILOT CERTIFICATION.

49 USC 44701
note.

(a) **RULEMAKING PROCEEDING.**—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to amend part 61 of title 14, Code of Federal Regulations, to modify requirements for the issuance of an airline transport pilot certificate.

(b) **MINIMUM REQUIREMENTS.**—To be qualified to receive an airline transport pilot certificate pursuant to subsection (a), an individual shall—

(1) have sufficient flight hours, as determined by the Administrator, to enable a pilot to function effectively in an air carrier operational environment; and

(2) have received flight training, academic training, or operational experience that will prepare a pilot, at a minimum, to—

(A) function effectively in a multipilot environment;

(B) function effectively in adverse weather conditions, including icing conditions;

(C) function effectively during high altitude operations;

(D) adhere to the highest professional standards; and

(E) function effectively in an air carrier operational environment.

(c) FLIGHT HOURS.—

(1) NUMBERS OF FLIGHT HOURS.—The total flight hours required by the Administrator under subsection (b)(1) shall be at least 1,500 flight hours.

(2) FLIGHT HOURS IN DIFFICULT OPERATIONAL CONDITIONS.—The total flight hours required by the Administrator under subsection (b)(1) shall include sufficient flight hours, as determined by the Administrator, in difficult operational conditions that may be encountered by an air carrier to enable a pilot to operate safely in such conditions.

(d) CREDIT TOWARD FLIGHT HOURS.—The Administrator may allow specific academic training courses, beyond those required under subsection (b)(2), to be credited toward the total flight hours required under subsection (c). The Administrator may allow such credit based on a determination by the Administrator that allowing a pilot to take specific academic training courses will enhance safety more than requiring the pilot to fully comply with the flight hours requirement.

(e) RECOMMENDATIONS OF EXPERT PANEL.—In conducting the rulemaking proceeding under this section, the Administrator shall review and consider the assessment and recommendations of the expert panel to review part 121 and part 135 training hours established by section 209(b) of this Act.

Regulations.

(f) DEADLINE.—Not later than 36 months after the date of enactment of this Act, the Administrator shall issue a final rule under subsection (a).

Approved August 1, 2010.

LEGISLATIVE HISTORY—H.R. 5900:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 29, considered and passed House.

July 30, considered and passed Senate.



Public Law 111–217
111th Congress

An Act

To designate the facility of the United States Postal Service located at 1343 West Irving Park Road in Chicago, Illinois, as the “Steve Goodman Post Office Building”.

Aug. 3, 2010
[H.R. 4861]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STEVE GOODMAN POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1343 West Irving Park Road in Chicago, Illinois, shall be known and designated as the “Steve Goodman Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Steve Goodman Post Office Building”.

Approved August 3, 2010.

LEGISLATIVE HISTORY—H.R. 4861:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 26, considered and passed House.

July 14, considered and passed Senate.



Public Law 111–218
111th Congress

An Act

Aug. 3, 2010
[H.R. 5051]

To designate the facility of the United States Postal Service located at 23 Genesee Street in Hornell, New York, as the “Zachary Smith Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ZACHARY SMITH POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 23 Genesee Street in Hornell, New York, shall be known and designated as the “Zachary Smith Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Zachary Smith Post Office Building”.

Approved August 3, 2010.

LEGISLATIVE HISTORY—H.R. 5051 (S. 3200):
CONGRESSIONAL RECORD, Vol. 156 (2010):
May 11, considered and passed House.
July 14, considered and passed Senate.



Public Law 111–219
111th Congress

An Act

To designate the facility of the United States Postal Service located at 15 South Main Street in Sharon, Massachusetts, as the “Michael C. Rothberg Post Office”.

Aug. 3, 2010
[H.R. 5099]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MICHAEL C. ROTHBERG POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 15 South Main Street in Sharon, Massachusetts, shall be known and designated as the “Michael C. Rothberg Post Office”.

(b) REFERENCES.—Any references in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Michael C. Rothberg Post Office”.

Approved August 3, 2010.

LEGISLATIVE HISTORY—H.R. 5099 (S. 3465):

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 18, 19, considered and passed House.

July 14, considered and passed Senate.



Public Law 111–220
111th Congress

An Act

Aug. 3, 2010

[S. 1789]

Fair Sentencing
Act of 2010.
21 USC 801 note.

To restore fairness to Federal cocaine sentencing.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair Sentencing Act of 2010”.

SEC. 2. COCAINE SENTENCING DISPARITY REDUCTION.

(a) CSA.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) in subparagraph (A)(iii), by striking “50 grams” and inserting “280 grams”; and

(2) in subparagraph (B)(iii), by striking “5 grams” and inserting “28 grams”.

(b) IMPORT AND EXPORT ACT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1)(C), by striking “50 grams” and inserting “280 grams”; and

(2) in paragraph (2)(C), by striking “5 grams” and inserting “28 grams”.

SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the sentence beginning “Notwithstanding the preceding sentence,”.

SEC. 4. INCREASED PENALTIES FOR MAJOR DRUG TRAFFICKERS.

(a) INCREASED PENALTIES FOR MANUFACTURE, DISTRIBUTION, DISPENSATION, OR POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended—

(1) in subparagraph (A), by striking “\$4,000,000”, “\$10,000,000”, “\$8,000,000”, and “\$20,000,000” and inserting “\$10,000,000”, “\$50,000,000”, “\$20,000,000”, and “\$75,000,000”, respectively; and

(2) in subparagraph (B), by striking “\$2,000,000”, “\$5,000,000”, “\$4,000,000”, and “\$10,000,000” and inserting “\$5,000,000”, “\$25,000,000”, “\$8,000,000”, and “\$50,000,000”, respectively.

(b) INCREASED PENALTIES FOR IMPORTATION AND EXPORTATION.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1), by striking “\$4,000,000”, “\$10,000,000”, “\$8,000,000”, and “\$20,000,000” and inserting “\$10,000,000”, “\$50,000,000”, “\$20,000,000”, and “\$75,000,000”, respectively; and

(2) in paragraph (2), by striking “\$2,000,000”, “\$5,000,000”, “\$4,000,000”, and “\$10,000,000” and inserting “\$5,000,000”, “\$25,000,000”, “\$8,000,000”, and “\$50,000,000”, respectively.

SEC. 5. ENHANCEMENTS FOR ACTS OF VIOLENCE DURING THE COURSE OF A DRUG TRAFFICKING OFFENSE.

Review.
28 USC 994 note.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense.

SEC. 6. INCREASED EMPHASIS ON DEFENDANT’S ROLE AND CERTAIN AGGRAVATING FACTORS.

Review.
28 USC 994 note.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if—

(1) the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement official in connection with a drug trafficking offense;

(2) the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856); or

(3)(A) the defendant is an organizer, leader, manager, or supervisor of drug trafficking activity subject to an aggravating role enhancement under the guidelines; and

(B) the offense involved 1 or more of the following super-aggravating factors:

(i) The defendant—

(I) used another person to purchase, sell, transport, or store controlled substances;

(II) used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

(III) such person had a minimum knowledge of the illegal enterprise and was to receive little or no compensation from the illegal transaction.

(ii) The defendant—

(I) knowingly distributed a controlled substance to a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual;

(II) knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) knowingly distributed a controlled substance to an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood.

Review.
28 USC 994 note.

SEC. 7. INCREASED EMPHASIS ON DEFENDANT'S ROLE AND CERTAIN MITIGATING FACTORS.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and policy statements to ensure that—

(1) if the defendant is subject to a minimal role adjustment under the guidelines, the base offense level for the defendant based solely on drug quantity shall not exceed level 32; and

(2) there is an additional reduction of 2 offense levels if the defendant—

(A) otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) was to receive no monetary compensation from the illegal transaction; and

(C) was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense.

28 USC 994 note.

SEC. 8. EMERGENCY AUTHORITY FOR UNITED STATES SENTENCING COMMISSION.

The United States Sentencing Commission shall—

Deadline.

(1) promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(2) pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

SEC. 9. REPORT ON EFFECTIVENESS OF DRUG COURTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report analyzing the effectiveness of drug court programs receiving funds under the drug court grant program under part EE of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797–u et seq.).

(b) CONTENTS.—The report submitted under subsection (a) shall—

- (1) assess the efforts of the Department of Justice to collect data on the performance of federally funded drug courts;
- (2) address the effect of drug courts on recidivism and substance abuse rates;
- (3) address any cost benefits resulting from the use of drug courts as alternatives to incarceration;
- (4) assess the response of the Department of Justice to previous recommendations made by the Comptroller General regarding drug court programs; and
- (5) make recommendations concerning the performance, impact, and cost-effectiveness of federally funded drug court programs.

**SEC. 10. UNITED STATES SENTENCING COMMISSION REPORT ON
IMPACT OF CHANGES TO FEDERAL COCAINE SENTENCING
LAW.**

Not later than 5 years after the date of enactment of this Act, the United States Sentencing Commission, pursuant to the authority under sections 994 and 995 of title 28, United States Code, and the responsibility of the United States Sentencing Commission to advise Congress on sentencing policy under section 995(a)(20) of title 28, United States Code, shall study and submit to Congress a report regarding the impact of the changes in Federal sentencing law under this Act and the amendments made by this Act.

Approved August 3, 2010.

LEGISLATIVE HISTORY—S. 1789:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Mar. 17, considered and passed Senate.
July 28, considered and passed House.



Public Law 111–221
111th Congress

An Act

Aug. 6, 2010
[H.R. 4684]

To require the Secretary of the Treasury to strike medals in commemoration of the 10th anniversary of the September 11, 2001, terrorist attacks on the United States and the establishment of the National September 11 Memorial & Museum at the World Trade Center.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National
September 11
Memorial &
Museum
Commemorative
Medal Act of
2010.
31 USC 5111
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “National September 11 Memorial & Museum Commemorative Medal Act of 2010”.

SEC. 2. STRIKING AND DESIGN OF MEDALS.

(a) **STRIKING OF MEDALS.**—In commemoration of the 10th anniversary of the September 11, 2001, terrorist attacks on the United States and the establishment of the National September 11 Memorial & Museum at the World Trade Center, the Secretary of the Treasury (hereinafter referred to as the “Secretary”) shall strike and make available for sale not more than 2,000,000 silver medals, each of which shall contain 1 ounce of silver.

(b) **DESIGN REQUIREMENT.**—

(1) **IN GENERAL.**—The design of the medals struck under this Act shall be emblematic of the courage, sacrifice, and strength of those individuals who perished in the terrorist attacks of September 11, 2001, the bravery of those who risked their lives to save others that day, and the endurance, resilience, and hope of those who survived.

(2) **INSCRIPTIONS.**—On each medal struck under this Act, there shall be—

(A) an inscription of the years “2001–2011”; and

(B) an inscription of the words “Always Remember”.

(c) **SELECTION.**—The design for the medals struck under this Act shall be—

(1) selected by the Secretary, after consultation with the National September 11 Memorial & Museum at the World Trade Center and the Commission of Fine Arts; and

(2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 3. ISSUANCE OF MEDALS.

(a) **QUALITY OF MEDALS.**—The medals struck under this Act shall be made available for sale in the quality comparable to proof coins.

(b) **MINT FACILITY.**—

(1) **IN GENERAL.**—Only 2 facilities of the United States Mint may be used to strike medals under this Act.

(2) USE OF THE UNITED STATES MINTS AT WEST POINT, NEW YORK, AND PHILADELPHIA, PENNSYLVANIA.—It is the sense of Congress that, to the extent possible, approximately one-half of the medals to be struck under this Act should be struck at the United States Mint at West Point, New York, and approximately one-half struck at the United States Mint at Philadelphia, Pennsylvania.

(c) DATE OF ISSUANCE.—The Secretary may make the medals available for sale under this Act beginning on January 1, 2011.

(d) TERMINATION OF AUTHORITY.—No medals shall be struck under this Act after December 31, 2012.

SEC. 4. NUMISMATIC ITEMS.

For purposes of sections 5134 and 5136 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

SEC. 5. NATIONAL MEDALS.

The medals struck under this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 6. SALE OF MEDALS.

(a) SALES PRICE.—The medals made available for sale under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the cost of designing and selling such medals (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping); and

(2) the surcharge provided in section 7 with respect to such medals.

(b) BULK SALES.—The Secretary shall make bulk sales of the medals at a reasonable discount.

(c) INTRODUCTORY ORDERS.—

(1) IN GENERAL.—The Secretary shall accept introductory orders for medals made available for sale under this Act.

(2) DISCOUNT.—Sale prices with respect to introductory orders under paragraph (1) shall be made at a reasonable discount.

SEC. 7. SURCHARGES.

(a) IN GENERAL.—All sales of medals made available for sale under this Act shall include a surcharge of \$10 per medal.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of medals under this Act shall be paid to the National September 11 Memorial & Museum at the World Trade Center to support the operations and maintenance of the National September 11 Memorial & Museum at the World Trade Center following its completion.

(c) AUDITS.—The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data of the National September 11 Memorial & Museum at the World Trade Center as may be related to the expenditures of amounts paid under subsection (b).

SEC. 8. BUDGET COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined

by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

Approved August 6, 2010.

LEGISLATIVE HISTORY—H.R. 4684:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 20, considered and passed House.

July 22, considered and passed Senate.



Public Law 111–222
111th Congress

An Act

To amend the National Law Enforcement Museum Act to extend the termination date.

Aug. 6, 2010
[S. 1053]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL LAW ENFORCEMENT MUSEUM ACT.

Section 4(f) of the National Law Enforcement Museum Act (Public Law 106–492) is amended by striking “10 years” and inserting “13 years”. 114 Stat. 2212.

Approved August 6, 2010.

LEGISLATIVE HISTORY—S. 1053:

SENATE REPORTS: No. 111–137 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 7, considered and passed Senate.

July 21, considered and passed House.



Public Law 111–223
111th Congress

An Act

Aug. 10, 2010
[H.R. 2765]

Securing the
Protection of our
Enduring and
Established
Constitutional
Heritage Act.
Courts.
28 USC 1 note.

28 USC 4101
note.

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing the Protection of our Enduring and Established Constitutional Heritage Act” or the “SPEECH Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The freedom of speech and the press is enshrined in the first amendment to the Constitution, and is necessary to promote the vigorous dialogue necessary to shape public policy in a representative democracy.

(2) Some persons are obstructing the free expression rights of United States authors and publishers, and in turn chilling the first amendment to the Constitution of the United States interest of the citizenry in receiving information on matters of importance, by seeking out foreign jurisdictions that do not provide the full extent of free-speech protections to authors and publishers that are available in the United States, and suing a United States author or publisher in that foreign jurisdiction.

(3) These foreign defamation lawsuits not only suppress the free speech rights of the defendants to the suit, but inhibit other written speech that might otherwise have been written or published but for the fear of a foreign lawsuit.

(4) The threat of the libel laws of some foreign countries is so dramatic that the United Nations Human Rights Committee examined the issue and indicated that in some instances the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work. The advent of the internet and the international distribution of foreign media also create the danger that one country’s unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest.

(5) Governments and courts of foreign countries scattered around the world have failed to curtail this practice of permitting libel lawsuits against United States persons within their

courts, and foreign libel judgments inconsistent with United States first amendment protections are increasingly common.

SEC. 3. RECOGNITION OF FOREIGN DEFAMATION JUDGMENTS.

(a) **IN GENERAL.**—Part VI of title 28, United States Code, is amended by adding at the end the following:

“CHAPTER 181—FOREIGN JUDGMENTS

“Sec.

“4101. Definitions.

“4102. Recognition of foreign defamation judgments.

“4103. Removal.

“4104. Declaratory judgments.

“4105. Attorney’s fees.

“§ 4101. Definitions

“In this chapter:

“(1) **DEFAMATION.**—The term ‘defamation’ means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

“(2) **DOMESTIC COURT.**—The term ‘domestic court’ means a Federal court or a court of any State.

“(3) **FOREIGN COURT.**—The term ‘foreign court’ means a court, administrative body, or other tribunal of a foreign country.

“(4) **FOREIGN JUDGMENT.**—The term ‘foreign judgment’ means a final judgment rendered by a foreign court.

“(5) **STATE.**—The term ‘State’ means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

“(6) **UNITED STATES PERSON.**—The term ‘United States person’ means—

“(A) a United States citizen;

“(B) an alien lawfully admitted for permanent residence to the United States;

“(C) an alien lawfully residing in the United States at the time that the speech that is the subject of the foreign defamation action was researched, prepared, or disseminated; or

“(D) a business entity incorporated in, or with its primary location or place of operation in, the United States.

“§ 4102. Recognition of foreign defamation judgments

“(a) **FIRST AMENDMENT CONSIDERATIONS.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that—

“(A) the defamation law applied in the foreign court’s adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located; or

“(B) even if the defamation law applied in the foreign court’s adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located.

“(2) BURDEN OF ESTABLISHING APPLICATION OF DEFAMATION LAWS.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showings required under subparagraph (A) or (B).

“(b) JURISDICTIONAL CONSIDERATIONS.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the exercise of personal jurisdiction by the foreign court comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

“(2) BURDEN OF ESTABLISHING EXERCISE OF JURISDICTION.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showing that the foreign court’s exercise of personal jurisdiction comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

“(c) JUDGMENT AGAINST PROVIDER OF INTERACTIVE COMPUTER SERVICE.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230) unless the domestic court determines that the judgment would be consistent with section 230 if the information that is the subject of such judgment had been provided in the United States.

“(2) BURDEN OF ESTABLISHING CONSISTENCY OF JUDGMENT.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of establishing that the judgment is consistent with section 230.

“(d) APPEARANCES NOT A BAR.—An appearance by a party in a foreign court rendering a foreign judgment to which this section applies shall not deprive such party of the right to oppose the recognition or enforcement of the judgment under this section, or represent a waiver of any jurisdictional claims.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

“(1) affect the enforceability of any foreign judgment other than a foreign judgment for defamation; or

“(2) limit the applicability of section 230 of the Communications Act of 1934 (47 U.S.C. 230) to causes of action for defamation.

“§ 4103. Removal

“In addition to removal allowed under section 1441, any action brought in a State domestic court to enforce a foreign judgment for defamation in which—

“(1) any plaintiff is a citizen of a State different from any defendant;

“(2) any plaintiff is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

“(3) any plaintiff is a citizen of a State and any defendant is a foreign state or citizen or subject of a foreign state, may be removed by any defendant to the district court of the United States for the district and division embracing the place where such action is pending without regard to the amount in controversy between the parties.

“§ 4104. Declaratory judgments

“(a) CAUSE OF ACTION.—

“(1) IN GENERAL.—Any United States person against whom a foreign judgment is entered on the basis of the content of any writing, utterance, or other speech by that person that has been published, may bring an action in district court, under section 2201(a), for a declaration that the foreign judgment is repugnant to the Constitution or laws of the United States. For the purposes of this paragraph, a judgment is repugnant to the Constitution or laws of the United States if it would not be enforceable under section 4102 (a), (b), or (c).

“(2) BURDEN OF ESTABLISHING UNENFORCEABILITY OF JUDGMENT.—The party bringing an action under paragraph (1) shall bear the burden of establishing that the foreign judgment would not be enforceable under section 4102 (a), (b), or (c).

“(b) NATIONWIDE SERVICE OF PROCESS.—Where an action under this section is brought in a district court of the United States, process may be served in the judicial district where the case is brought or any other judicial district of the United States where the defendant may be found, resides, has an agent, or transacts business.

“§ 4105. Attorneys’ fees

“In any action brought in a domestic court to enforce a foreign judgment for defamation, including any such action removed from State court to Federal court, the domestic court shall, absent exceptional circumstances, allow the party opposing recognition or enforcement of the judgment a reasonable attorney’s fee if such party prevails in the action on a ground specified in section 4102 (a), (b), or (c).”

(b) SENSE OF CONGRESS.—It is the Sense of the Congress that for the purpose of pleading a cause of action for a declaratory judgment, a foreign judgment for defamation or any similar offense as described under chapter 181 of title 28, United States Code, (as added by this Act) shall constitute a case of actual controversy under section 2201(a) of title 28, United States Code.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

“181. Foreign judgments4101.”.

Approved August 10, 2010.

LEGISLATIVE HISTORY—H.R. 2765:

HOUSE REPORTS: No. 111–154 (Comm. on the Judiciary).

SENATE REPORTS: No. 111–224 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 155 (2009): June 15, considered and passed House.

Vol. 156 (2010): July 19, considered and passed Senate, amended.

July 27, House concurred in Senate amendment.



Public Law 111–224
111th Congress

An Act

Making supplemental appropriations for the United States Patent and Trademark Office for the fiscal year ending September 30, 2010, and for other purposes.

Aug. 10, 2010
[H.R. 5874]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated for the fiscal year ending September 30, 2010, and for other purposes, namely:

United States
Patent and
Trademark Office
Supplemental
Appropriations
Act, 2010.

DEPARTMENT OF COMMERCE

UNITED STATES PATENT AND TRADEMARK OFFICE

For an additional amount for “Salaries and Expenses” of the United States Patent and Trademark Office, \$129,000,000, to remain available until expended: *Provided*, That the sum herein appropriated from the general fund shall be reduced as offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376 are received during fiscal year 2010, so as to result in a fiscal year 2010 appropriation from the general fund estimated at \$0: *Provided further*, That during fiscal year 2010, should the total amount of offsetting fee collections be less than \$2,016,000,000, this amount shall be reduced accordingly.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

Of funds made available under this heading by Public Law 111–117, \$129,000,000 are hereby rescinded. Recission.

124 STAT. 2386

PUBLIC LAW 111-224—AUG. 10, 2010

This Act may be cited as the “United States Patent and Trademark Office Supplemental Appropriations Act, 2010”.

Approved August 10, 2010.

LEGISLATIVE HISTORY—H.R. 5874:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 28, considered and passed House.

July 29, considered and passed Senate.



Public Law 111–225
111th Congress

An Act

To amend title 18, United States Code, to prohibit the possession or use of cell phones and similar wireless devices by Federal prisoners.

Aug. 10, 2010
[S. 1749]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Cell Phone Contraband Act of 2010”.

Cell Phone
Contraband Act
of 2010.
18 USC 1 note.

SEC. 2. WIRELESS DEVICES IN PRISON.

Section 1791 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking “or (d)(1)(E)” and inserting “, (d)(1)(E), or (d)(1)(F)”; and

(B) in paragraph (5), by striking “(d)(1)(F)” and inserting “(d)(1)(G)”; and

(2) in subsection (d)(1)—

(A) in subparagraph (E), by striking “and” at the end;

(B) by redesignating subparagraph (F) as subparagraph (G); and

(C) by inserting after subparagraph (E) the following:

“(F) a phone or other device used by a user of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) in connection with such service; and”.

SEC. 3. GAO STUDY.

Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress with research and findings on the following issues:

Deadline.
Reports.

(1) A study of telephone rates within Federal prisons to include information on interstate, intrastate and collect calls made by prisoners, including—

(A) the costs of operating inmate telephone services;

(B) the general cost to prison telephone service providers of providing telephone services to the Federal prisons;

(C) the revenue obtained from inmate telephone systems;

(D) how the revenue from these systems is used by the Bureau of Prisons; and

(E) options for lowering telephone costs to inmates and their families, while still maintaining sufficient security.

(2) A study of selected State and Federal efforts to prevent the smuggling of cell phones and other wireless devices into prisons, including efforts that selected State and Federal authorities are making to minimize trafficking of cell phones by guards and other prison officials and recommendations to reduce the number of cell phones that are trafficked into prisons.

(3) A study of cell phone use by inmates in selected State and Federal prisons, including—

(A) the quantity of cell phones confiscated by authorities in selected State and Federal prisons; and

(B) the reported impact, if any, of: (1) inmate cell phone use on the overall security of prisons; and (2) connections to criminal activity from within prisons.

SEC. 4. COMPLIANCE WITH PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

Approved August 10, 2010.

LEGISLATIVE HISTORY—S. 1749:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 13, considered and passed Senate.

July 20, considered and passed House, amended.

July 28, Senate concurred in House amendment.



Public Law 111–226
111th Congress

An Act

To modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

Aug. 10, 2010
[H.R. 1586]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the “_____ Act of _____”. 26 USC 1 note.

TITLE I

EDUCATION JOBS FUND

EDUCATION JOBS FUNDS

SEC. 101. There are authorized to be appropriated and there are appropriated out of any money in the Treasury not otherwise obligated for necessary expenses for an Education Jobs Fund, \$10,000,000,000: *Provided*, That the amount under this heading shall be administered under the terms and conditions of sections 14001 through 14013 and title XV of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) except as follows:

(1) ALLOCATION OF FUNDS.—

(A) Funds appropriated under this heading shall be available only for allocation by the Secretary of Education (in this heading referred to as the Secretary) in accordance with subsections (a), (b), (d), (e), and (f) of section 14001 of division A of Public Law 111–5 and subparagraph (B) of this paragraph, except that the amount reserved under such subsection (b) shall not exceed \$1,000,000 and such subsection (f) shall be applied by substituting one year for two years.

(B) Prior to allocating funds to States under section 14001(d) of division A of Public Law 111–5, the Secretary shall allocate 0.5 percent to the Secretary of the Interior for schools operated or funded by the Bureau of Indian Affairs on the basis of the schools’ respective needs for activities consistent with this heading under such terms and conditions as the Secretary of the Interior may determine.

(2) RESERVATION.—A State that receives an allocation of funds appropriated under this heading may reserve not more than 2 percent for the administrative costs of carrying out its responsibilities with respect to those funds.

(3) AWARDS TO LOCAL EDUCATIONAL AGENCIES.—

(A) Except as specified in paragraph (2), an allocation of funds to a State shall be used only for awards to local educational agencies for the support of elementary and secondary education in accordance with paragraph (5) for the 2010–2011 school year (or, in the case of reallocations made under section 14001(f) of division A of Public Law 111–5, for the 2010–2011 or the 2011–2012 school year).

(B) Funds used to support elementary and secondary education shall be distributed through a State’s primary elementary and secondary funding formulae or based on local educational agencies’ relative shares of funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent fiscal year for which data are available.

(C) Subsections (a) and (b) of section 14002 of division A of Public Law 111–5 shall not apply to funds appropriated under this heading.

(4) COMPLIANCE WITH EDUCATION REFORM ASSURANCES.—

For purposes of awarding funds appropriated under this heading, any State that has an approved application for Phase II of the State Fiscal Stabilization Fund that was submitted in accordance with the application notice published in the Federal Register on November 17, 2009 (74 Fed. Reg. 59142) shall be deemed to be in compliance with subsection (b) and paragraphs (2) through (5) of subsection (d) of section 14005 of division A of Public Law 111–5.

(5) REQUIREMENT TO USE FUNDS TO RETAIN OR CREATE EDUCATION JOBS.—Notwithstanding section 14003(a) of division A of Public Law 111–5, funds awarded to local educational agencies under paragraph (3)—

(A) may be used only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services; and

(B) may not be used for general administrative expenses or for other support services expenditures as those terms were defined by the National Center for Education Statistics in its Common Core of Data as of the date of enactment of this Act.

(6) PROHIBITION ON USE OF FUNDS FOR RAINY-DAY FUNDS OR DEBT RETIREMENT.—A State that receives an allocation may not use such funds, directly or indirectly, to—

(A) establish, restore, or supplement a rainy-day fund;

(B) supplant State funds in a manner that has the effect of establishing, restoring, or supplementing a rainy-day fund;

(C) reduce or retire debt obligations incurred by the State; or

(D) supplant State funds in a manner that has the effect of reducing or retiring debt obligations incurred by the State.

(7) DEADLINE FOR AWARD.—The Secretary shall award funds appropriated under this heading not later than 45 days after the date of the enactment of this Act to States that have submitted applications meeting the requirements applicable to funds under this heading. The Secretary shall not require information in applications beyond what is necessary to determine compliance with applicable provisions of law.

(8) ALTERNATE DISTRIBUTION OF FUNDS.—If, within 30 days after the date of the enactment of this Act, a Governor has not submitted an approvable application, the Secretary shall provide for funds allocated to that State to be distributed to another entity or other entities in the State (notwithstanding section 14001(e) of division A of Public Law 111-5) for support of elementary and secondary education, under such terms and conditions as the Secretary may establish, provided that all terms and conditions that apply to funds appropriated under this heading shall apply to such funds distributed to such entity or entities. No distribution shall be made to a State under this paragraph, however, unless the Secretary has determined (on the basis of such information as may be available) that the requirements of clauses (i), (ii), or (iii) of paragraph 10(A) are likely to be met, notwithstanding the lack of an application from the Governor of that State.

Deadline.
Applicability.

(9) LOCAL EDUCATIONAL AGENCY APPLICATION.—Section 442 of the General Education Provisions Act shall not apply to a local educational agency that has previously submitted an application to the State under title XIV of division A of Public Law 111-5. The assurances provided under that application shall continue to apply to funds awarded under this heading.

(10) MAINTENANCE OF EFFORT.—

(A) Except as provided in paragraph (8), the Secretary shall not allocate funds to a State under paragraph (1) unless the Governor of the State provides an assurance to the Secretary that—

(i) for State fiscal year 2011, the State will maintain State support for elementary and secondary education (in the aggregate or on the basis of expenditures per pupil) and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for each of the two categories, respectively, for State fiscal year 2009;

(ii) for State fiscal year 2011, the State will maintain State support for elementary and secondary education and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for each of the two categories, respectively, for State fiscal year 2010; or

(iii) in the case of a State in which State tax collections for calendar year 2009 were less than State tax collections for calendar year 2006, for State fiscal year 2011 the State will maintain State support for elementary and secondary education (in the aggregate) and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students)—

(I) at not less than the level of such support for each of the two categories, respectively, for State fiscal year 2006; or

(II) at a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for each of the two categories, respectively, for State fiscal year 2006.

(B) Section 14005(d)(1) and subsections (a) through (c) of section 14012 of division A of Public Law 111-5 shall not apply to funds appropriated under this heading.

(11) ADDITIONAL REQUIREMENTS FOR THE STATE OF TEXAS.—

Applicability.

The following requirements shall apply to the State of Texas:

(A) Notwithstanding paragraph (3)(B), funds used to support elementary and secondary education shall be distributed based on local educational agencies' relative shares of funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent fiscal year which data are available. Funds distributed pursuant to this paragraph shall be used to supplement and not supplant State formula funding that is distributed on a similar basis to part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.).

(B) The Secretary shall not allocate funds to the State of Texas under paragraph (1) unless the Governor of the State provides an assurance to the Secretary that the State will for fiscal years 2011, 2012, and 2013 maintain State support for elementary and secondary education at a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for such purpose for fiscal year 2011 prior to the enactment of this Act.

(C) Notwithstanding paragraph (8), no distribution shall be made to the State of Texas or local education agencies therein unless the Governor of Texas makes an assurance to the Secretary that the requirements in paragraphs (11)(A) and (11)(B) will be met, notwithstanding the lack of an application from the Governor of Texas.

TITLE II

STATE FISCAL RELIEF AND OTHER PROVISIONS; REVENUE OFFSETS

Subtitle A—State Fiscal Relief and Other Provisions

EXTENSION OF ARRA INCREASE IN FMAP

SEC. 201. Section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) is amended—

42 USC 1396d
note.

(1) in subsection (a)(3), by striking “first calendar quarter” and inserting “first 3 calendar quarters”;

(2) in subsection (b)—

(A) in paragraph (1), by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”; and

(B) by adding at the end the following:

“(3) PHASE-DOWN OF GENERAL INCREASE.—

“(A) SECOND QUARTER OF FISCAL YEAR 2011.—For each State, for the second quarter of fiscal year 2011, the FMAP percentage increase for the State under paragraph (1) or (2) (as applicable) shall be 3.2 percentage points.

“(B) THIRD QUARTER OF FISCAL YEAR 2011.—For each State, for the third quarter of fiscal year 2011, the FMAP percentage increase for the State under paragraph (1) or (2) (as applicable) shall be 1.2 percentage points.”;

(3) in subsection (c)—

(A) in paragraph (2)(B), by striking “July 1, 2010” and inserting “January 1, 2011”;

(B) in paragraph (3)(B)(i), by striking “July 1, 2010” and inserting “January 1, 2011” each place it appears; and

(C) in paragraph (4)(C)(ii), by striking “the 3-consecutive-month period beginning with January 2010” and inserting “any 3-consecutive-month period that begins after December 2009 and ends before January 2011”;

(4) in subsection (e), by adding at the end the following:

“Notwithstanding paragraph (5), effective for payments made on or after January 1, 2010, the increases in the FMAP for a State under this section shall apply to payments under title XIX of such Act that are attributable to expenditures for medical assistance provided to nonpregnant childless adults made eligible under a State plan under such title (including under any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) who would have been eligible for child health assistance or other health benefits under eligibility standards in effect as of December 31, 2009, of a waiver of the State child health plan under the title XXI of such Act.”;

Effective date.
Applicability.

(5) in subsection (g)—

(A) in paragraph (1), by striking “September 30, 2011” and inserting “March 31, 2012”;

(B) in paragraph (2), by inserting “of such Act” after “1923”; and

(C) by adding at the end the following:

“(3) CERTIFICATION BY CHIEF EXECUTIVE OFFICER.—No additional Federal funds shall be paid to a State as a result of this section with respect to a calendar quarter occurring during the period beginning on January 1, 2011, and ending on June

Time period.
Deadline.

30, 2011, unless, not later than 45 days after the date of enactment of this paragraph, the chief executive officer of the State certifies that the State will request and use such additional Federal funds.”; and

(6) in subsection (h)(3), by striking “December 31, 2010” and inserting “June 30, 2011”.

TREATMENT OF CERTAIN DRUGS FOR COMPUTATION OF MEDICAID AMP

42 USC 1396r–8
note.

SEC. 202. Effective as if included in the enactment of Public Law 111–148, section 1927(k)(1)(B)(i)(IV) of the Social Security Act (42 U.S.C. 1396r–8(k)(1)(B)(i)(IV)), as amended by section 2503(a)(2)(B) of Public Law 111–148 and section 1101(c)(2) of Public Law 111–152, is amended by adding at the end the following: “, unless the drug is an inhalation, infusion, instilled, implanted, or injectable drug that is not generally dispensed through a retail community pharmacy; and”.

SUNSET OF TEMPORARY INCREASE IN BENEFITS UNDER THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

SEC. 203. Section 101(a) of title I of division A of Public Law 111–5 (123 Stat. 120), as amended by section 4262 of this Act, is amended by striking paragraph (2) and inserting the following:

“(2) **TERMINATION.**—The authority provided by this subsection shall terminate after March 31, 2014.”.

Subtitle B—Revenue Offsets

RULES TO PREVENT SPLITTING FOREIGN TAX CREDITS FROM THE INCOME TO WHICH THEY RELATE

SEC. 211. (a) **IN GENERAL.**—Subpart A of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

26 USC 909.

“SEC. 909. **SUSPENSION OF TAXES AND CREDITS UNTIL RELATED INCOME TAKEN INTO ACCOUNT.**

“(a) **IN GENERAL.**—If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by the taxpayer, such tax shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter by the taxpayer.

“(b) **SPECIAL RULES WITH RESPECT TO SECTION 902 CORPORATIONS.**—If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, such tax shall not be taken into account—

“(1) for purposes of section 902 or 960, or

“(2) for purposes of determining earnings and profits under section 964(a),

before the taxable year in which the related income is taken into account under this chapter by such section 902 corporation or a domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to such section 902 corporation.

“(c) **SPECIAL RULES.**—For purposes of this section—

“(1) **APPLICATION TO PARTNERSHIPS, ETC.**—In the case of a partnership, subsections (a) and (b) shall be applied at the partner level. Except as otherwise provided by the Secretary,

a rule similar to the rule of the preceding sentence shall apply in the case of any S corporation or trust.

“(2) TREATMENT OF FOREIGN TAXES AFTER SUSPENSION.—In the case of any foreign income tax not taken into account by reason of subsection (a) or (b), except as otherwise provided by the Secretary, such tax shall be so taken into account in the taxable year referred to in such subsection (other than for purposes of section 986(a)) as a foreign income tax paid or accrued in such taxable year.

“(d) DEFINITIONS.—For purposes of this section—

“(1) FOREIGN TAX CREDIT SPLITTING EVENT.—There is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account under this chapter by a covered person.

“(2) FOREIGN INCOME TAX.—The term ‘foreign income tax’ means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

“(3) RELATED INCOME.—The term ‘related income’ means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of foreign income tax relates.

“(4) COVERED PERSON.—The term ‘covered person’ means, with respect to any person who pays or accrues a foreign income tax (hereafter in this paragraph referred to as the ‘payor’)—

“(A) any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value),

“(B) any person which holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor,

“(C) any person which bears a relationship to the payor described in section 267(b) or 707(b), and

“(D) any other person specified by the Secretary for purposes of this paragraph.

“(5) SECTION 902 CORPORATION.—The term ‘section 902 corporation’ means any foreign corporation with respect to which one or more domestic corporations meets the ownership requirements of subsection (a) or (b) of section 902.

“(e) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provides—

“(1) appropriate exceptions from the provisions of this section, and

“(2) for the proper application of this section with respect to hybrid instruments.”.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 909. Suspension of taxes and credits until related income taken into account.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to— 26 USC 909 note.

(1) foreign income taxes (as defined in section 909(d) of the Internal Revenue Code of 1986, as added by this section) paid or accrued in taxable years beginning after December 31, 2010; and

(2) foreign income taxes (as so defined) paid or accrued by a section 902 corporation (as so defined) in taxable years beginning on or before such date (and not deemed paid under section 902(a) or 960 of such Code on or before such date), but only for purposes of applying sections 902 and 960 with respect to periods after such date.

Section 909(b)(2) of the Internal Revenue Code of 1986, as added by this section, shall not apply to foreign income taxes described in paragraph (2).

DENIAL OF FOREIGN TAX CREDIT WITH RESPECT TO FOREIGN INCOME
NOT SUBJECT TO UNITED STATES TAXATION BY REASON OF COVERED
ASSET ACQUISITIONS

26 USC 901. SEC. 212. (a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1986 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

Definitions. “(m) DENIAL OF FOREIGN TAX CREDIT WITH RESPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED STATES TAXATION BY REASON OF COVERED ASSET ACQUISITIONS.—

“(1) IN GENERAL.—In the case of a covered asset acquisition, the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to the relevant foreign assets—

“(A) shall not be taken into account in determining the credit allowed under subsection (a), and

“(B) in the case of a foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), shall not be taken into account for purposes of section 902 or 960.

“(2) COVERED ASSET ACQUISITION.—For purposes of this section, the term ‘covered asset acquisition’ means—

“(A) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies,

“(B) any transaction which—

“(i) is treated as an acquisition of assets for purposes of this chapter, and

“(ii) is treated as the acquisition of stock of a corporation (or is disregarded) for purposes of the foreign income taxes of the relevant jurisdiction,

“(C) any acquisition of an interest in a partnership which has an election in effect under section 754, and

“(D) to the extent provided by the Secretary, any other similar transaction.

“(3) DISQUALIFIED PORTION.—For purposes of this section—

“(A) IN GENERAL.—The term ‘disqualified portion’ means, with respect to any covered asset acquisition, for any taxable year, the ratio (expressed as a percentage) of—

“(i) the aggregate basis differences (but not below zero) allocable to such taxable year under subparagraph (B) with respect to all relevant foreign assets, divided by

“(ii) the income on which the foreign income tax referred to in paragraph (1) is determined (or, if the taxpayer fails to substantiate such income to the satisfaction of the Secretary, such income shall be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to such income in the relevant jurisdiction).

“(B) ALLOCATION OF BASIS DIFFERENCE.—For purposes of subparagraph (A)(i)—

“(i) IN GENERAL.—The basis difference with respect to any relevant foreign asset shall be allocated to taxable years using the applicable cost recovery method under this chapter.

“(ii) SPECIAL RULE FOR DISPOSITION OF ASSETS.—Except as otherwise provided by the Secretary, in the case of the disposition of any relevant foreign asset—

“(I) the basis difference allocated to the taxable year which includes the date of such disposition shall be the excess of the basis difference with respect to such asset over the aggregate basis difference with respect to such asset which has been allocated under clause (i) to all prior taxable years, and

“(II) no basis difference with respect to such asset shall be allocated under clause (i) to any taxable year thereafter.

“(C) BASIS DIFFERENCE.—

“(i) IN GENERAL.—The term ‘basis difference’ means, with respect to any relevant foreign asset, the excess of—

“(I) the adjusted basis of such asset immediately after the covered asset acquisition, over

“(II) the adjusted basis of such asset immediately before the covered asset acquisition.

“(ii) BUILT-IN LOSS ASSETS.—In the case of a relevant foreign asset with respect to which the amount described in clause (i)(II) exceeds the amount described in clause (i)(I), such excess shall be taken into account under this subsection as a basis difference of a negative amount.

“(iii) SPECIAL RULE FOR SECTION 338 ELECTIONS.—

In the case of a covered asset acquisition described in paragraph (2)(A), the covered asset acquisition shall be treated for purposes of this subparagraph as occurring at the close of the acquisition date (as defined in section 338(h)(2)).

“(4) RELEVANT FOREIGN ASSETS.—For purposes of this section, the term ‘relevant foreign asset’ means, with respect to any covered asset acquisition, any asset (including any goodwill, going concern value, or other intangible) with respect to such acquisition if income, deduction, gain, or loss attributable to such asset is taken into account in determining the foreign income tax referred to in paragraph (1).

“(5) FOREIGN INCOME TAX.—For purposes of this section, the term ‘foreign income tax’ means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

“(6) TAXES ALLOWED AS A DEDUCTION, ETC.—Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

“(7) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including to exempt from the application of this subsection certain covered asset acquisitions, and relevant foreign assets with respect to which the basis difference is de minimis.”.

26 USC 901 note.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to covered asset acquisitions (as defined in section 901(m)(2) of the Internal Revenue Code of 1986, as added by this section) after December 31, 2010.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any covered asset acquisition (as so defined) with respect to which the transferor and the transferee are not related if such acquisition is—

(A) made pursuant to a written agreement which was binding on January 1, 2011, and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before July 29, 2010, or

(C) described on or before January 1, 2011, in a public announcement or in a filing with the Securities and Exchange Commission.

(3) RELATED PERSONS.—For purposes of this subsection, a person shall be treated as related to another person if the relationship between such persons is described in section 267 or 707(b) of the Internal Revenue Code of 1986.

SEPARATE APPLICATION OF FOREIGN TAX CREDIT LIMITATION, ETC., TO ITEMS RESOURCED UNDER TREATIES

26 USC 904.

SEC. 213. (a) IN GENERAL.—Subsection (d) of section 904 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

“(6) SEPARATE APPLICATION TO ITEMS RESOURCED UNDER TREATIES.—

“(A) IN GENERAL.—If—

“(i) without regard to any treaty obligation of the United States, any item of income would be treated as derived from sources within the United States,

“(ii) under a treaty obligation of the United States, such item would be treated as arising from sources outside the United States, and

“(iii) the taxpayer chooses the benefits of such treaty obligation,

subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each such item.

“(B) COORDINATION WITH OTHER PROVISIONS.—This paragraph shall not apply to any item of income to which subsection (h)(10) or section 865(h) applies.

“(C) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate

to carry out the purposes of this paragraph, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 904 note.

LIMITATION ON THE AMOUNT OF FOREIGN TAXES DEEMED PAID WITH
RESPECT TO SECTION 956 INCLUSIONS

SEC. 214. (a) IN GENERAL.—Section 960 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection: 26 USC 960.

“(c) LIMITATION WITH RESPECT TO SECTION 956 INCLUSIONS.—

“(1) IN GENERAL.—If there is included under section 951(a)(1)(B) in the gross income of a domestic corporation any amount attributable to the earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, the amount of any foreign income taxes deemed to have been paid during the taxable year by such domestic corporation under section 902 by reason of subsection (a) with respect to such inclusion in gross income shall not exceed the amount of the foreign income taxes which would have been deemed to have been paid during the taxable year by such domestic corporation if cash in an amount equal to the amount of such inclusion in gross income were distributed as a series of distributions (determined without regard to any foreign taxes which would be imposed on an actual distribution) through the chain of ownership which begins with such foreign corporation and ends with such domestic corporation.

“(2) AUTHORITY TO PREVENT ABUSE.—The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which prevent the inappropriate use of the foreign corporation’s foreign income taxes not deemed paid by reason of paragraph (1).”.

Regulations.
Guidelines.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010. 26 USC 960 note.

SPECIAL RULE WITH RESPECT TO CERTAIN REDEMPTIONS BY FOREIGN
SUBSIDIARIES

SEC. 215. (a) IN GENERAL.—Paragraph (5) of section 304(b) of the Internal Revenue Code of 1986 is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph: 26 USC 304.

“(B) SPECIAL RULE IN CASE OF FOREIGN ACQUIRING CORPORATION.—In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, no earnings and profits shall be taken into account under paragraph (2)(A) (and subparagraph (A) shall not apply) if more than 50 percent of the dividends arising from such acquisition (determined without regard to this subparagraph) would neither—

“(i) be subject to tax under this chapter for the taxable year in which the dividends arise, nor

“(ii) be includible in the earnings and profits of a controlled foreign corporation (as defined in section 957 and without regard to section 953(c)).”.

26 USC 304 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

MODIFICATION OF AFFILIATION RULES FOR PURPOSES OF RULES
ALLOCATING INTEREST EXPENSE

26 USC 864.

SEC. 216. (a) IN GENERAL.—Subparagraph (A) of section 864(e)(5) of the Internal Revenue Code of 1986 is amended by adding at the end the following: “Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—

“(i) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States, and

“(ii) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).”.

26 USC 864 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TERMINATION OF SPECIAL RULES FOR INTEREST AND DIVIDENDS RE-
CEIVED FROM PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-
NESS REQUIREMENTS

26 USC 861.

SEC. 217. (a) IN GENERAL.—Paragraph (1) of section 861(a) of the Internal Revenue Code of 1986 is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) GRANDFATHER RULE WITH RESPECT TO WITHHOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM PERSONS MEETING THE 80-PERCENT FOREIGN BUSINESS REQUIREMENTS.—

26 USC 871.

(1) IN GENERAL.—Subparagraph (B) of section 871(i)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

“(B) The active foreign business percentage of—

“(i) any dividend paid by an existing 80/20 company, and

“(ii) any interest paid by an existing 80/20 company.”.

(2) DEFINITIONS AND SPECIAL RULES.—Section 871 of such Code is amended by redesignating subsections (l) and (m) as subsections (m) and (n), respectively, and by inserting after subsection (k) the following new subsection:

“(1) RULES RELATING TO EXISTING 80/20 COMPANIES.—For purposes of this subsection and subsection (i)(2)(B)—

“(1) EXISTING 80/20 COMPANY.—

“(A) IN GENERAL.—The term ‘existing 80/20 company’ means any corporation if—

“(i) such corporation met the 80-percent foreign business requirements of section 861(c)(1) (as in effect before the date of the enactment of this subsection) for such corporation’s last taxable year beginning before January 1, 2011,

“(ii) such corporation meets the 80-percent foreign business requirements of subparagraph (B) with respect to each taxable year after the taxable year referred to in clause (i), and

“(iii) there has not been an addition of a substantial line of business with respect to such corporation after the date of the enactment of this subsection.
“(B) FOREIGN BUSINESS REQUIREMENTS.—

“(i) IN GENERAL.—Except as provided in clause (iv), a corporation meets the 80-percent foreign business requirements of this subparagraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such corporation for the testing period is active foreign business income.

“(ii) ACTIVE FOREIGN BUSINESS INCOME.—For purposes of clause (i), the term ‘active foreign business income’ means gross income which—

“(I) is derived from sources outside the United States (as determined under this subchapter), and

“(II) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States.

“(iii) TESTING PERIOD.—For purposes of this subsection, the term ‘testing period’ means the 3-year period ending with the close of the taxable year of the corporation preceding the payment (or such part of such period as may be applicable). If the corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

“(iv) TRANSITION RULE.—In the case of a taxable year for which the testing period includes 1 or more taxable years beginning before January 1, 2011—

“(I) a corporation meets the 80-percent foreign business requirements of this subparagraph if and only if the weighted average of—

“(aa) the percentage of the corporation’s gross income from all sources that is active foreign business income (as defined in subparagraph (B) of section 861(c)(1) (as in effect before the date of the enactment of this subsection)) for the portion of the testing period that includes taxable years beginning before January 1, 2011, and

“(bb) the percentage of the corporation’s gross income from all sources that is active foreign business income (as defined in clause (ii) of this subparagraph) for the portion of the testing period, if any, that includes taxable years beginning on or after January 1, 2011, is at least 80 percent, and

“(II) the active foreign business percentage for such taxable year shall equal the weighted average percentage determined under subclause (I).

“(2) ACTIVE FOREIGN BUSINESS PERCENTAGE.—Except as provided in paragraph (1)(B)(iv), the term ‘active foreign business percentage’ means, with respect to any existing 80/20 company, the percentage which—

“(A) the active foreign business income of such company for the testing period, is of

“(B) the gross income of such company for the testing period from all sources.

Applicability.

“(3) AGGREGATION RULES.—For purposes of applying paragraph (1) (other than subparagraphs (A)(i) and (B)(iv) thereof) and paragraph (2)—

“(A) IN GENERAL.—The corporation referred to in paragraph (1)(A) and all of such corporation’s subsidiaries shall be treated as one corporation.

“(B) SUBSIDIARIES.—For purposes of subparagraph (A), the term ‘subsidiary’ means any corporation in which the corporation referred to in subparagraph (A) owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting ‘50 percent’ for ‘80 percent’ each place it appears and without regard to section 1504(b)(3)).

“(4) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide for the proper application of the aggregation rules described in paragraph (3).”.

(c) CONFORMING AMENDMENTS.—

26 USC 861.

(1) Section 861 of the Internal Revenue Code of 1986 is amended by striking subsection (c) and by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

26 USC 904.

(2) Paragraph (9) of section 904(h) of such Code is amended to read as follows:

“(9) TREATMENT OF CERTAIN DOMESTIC CORPORATIONS.—In the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.”.

26 USC 2104.

(3) Subsection (c) of section 2104 of such Code is amended in the last sentence by striking “or to a debt obligation of a domestic corporation” and all that follows and inserting a period.

26 USC 861 note.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2010.

(2) GRANDFATHER RULE FOR OUTSTANDING DEBT OBLIGATIONS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to payments of interest on obligations issued before the date of the enactment of this Act.

(B) EXCEPTION FOR RELATED PARTY DEBT.—Subparagraph (A) shall not apply to any interest which is payable

to a related person (determined under rules similar to the rules of section 954(d)(3)).

(C) SIGNIFICANT MODIFICATIONS TREATED AS NEW ISSUES.—For purposes of subparagraph (A), a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as a new issue.

LIMITATION ON EXTENSION OF STATUTE OF LIMITATIONS FOR FAILURE
TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANSFERS

SEC. 218. (a) IN GENERAL.—Paragraph (8) of section 6501(c) of the Internal Revenue Code of 1986 is amended—

26 USC 6501.

(1) by striking “In the case of any information” and inserting the following:

“(A) IN GENERAL.—In the case of any information”;

and

(2) by adding at the end the following:

“(B) APPLICATION TO FAILURES DUE TO REASONABLE CAUSE.—If the failure to furnish the information referred to in subparagraph (A) is due to reasonable cause and not willful neglect, subparagraph (A) shall apply only to the item or items related to such failure.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 513 of the Hiring Incentives to Restore Employment Act.

26 USC 6501
note.

ELIMINATION OF ADVANCE REFUNDABILITY OF EARNED INCOME
CREDIT

SEC. 219. (a) IN GENERAL.—The following provisions of the Internal Revenue Code of 1986 are repealed:

(1) Section 3507.

26 USC 3507.

(2) Subsection (g) of section 32.

26 USC 32.

(3) Paragraph (7) of section 6051(a).

26 USC 6051.

(b) CONFORMING AMENDMENTS.—

(1) Section 6012(a) of the Internal Revenue Code of 1986 is amended by striking paragraph (8) and by redesignating paragraph (9) as paragraph (8).

26 USC 6012.

(2) Section 6302 of such Code is amended by striking subsection (i).

26 USC 6302.

(3) The table of sections for chapter 25 of such Code is amended by striking the item relating to section 3507.

(c) EFFECTIVE DATE.—The repeals and amendments made by this section shall apply to taxable years beginning after December 31, 2010.

26 USC 32 note.

TITLE III

RESCISSIONS

SEC. 301. There is rescinded from accounts under the heading “Department of Agriculture—Rural Development”, \$122,000,000, to be derived from the unobligated balances of funds that were provided for such accounts in prior appropriation Acts (other than Public Law 111–5) and that were designated by the Congress in such Acts as an emergency requirement pursuant to a concurrent

resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 302. Of the funds made available for “Department of Commerce—National Telecommunications and Information Administration—Broadband Technology Opportunities Program” in title II of division A of Public Law 111-5, \$302,000,000 are rescinded.

SEC. 303. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are rescinded from the following accounts in the specified amounts:

- “Aircraft Procurement, Army, 2008/2010”, \$21,000,000;
- “Procurement of Weapons and Tracked Combat Vehicles, Army, 2008/2010”, \$21,000,000;
- “Procurement of Ammunition, Army, 2008/2010”, \$17,000,000;
- “Other Procurement, Army, 2008/2010”, \$75,000,000;
- “Weapons Procurement, Navy, 2008/2010”, \$26,000,000;
- “Other Procurement, Navy, 2008/2010”, \$42,000,000;
- “Procurement, Marine Corps, 2008/2010”, \$13,000,000;
- “Aircraft Procurement, Air Force, 2008/2010”, \$102,000,000;
- “Missile Procurement, Air Force, 2008/2010”, \$28,000,000;
- “Procurement of Ammunition, Air Force, 2008/2010”, \$7,000,000;
- “Other Procurement, Air Force, 2008/2010”, \$130,000,000;
- “Procurement, Defense-Wide, 2008/2010”, \$33,000,000;
- “Research, Development, Test and Evaluation, Army, 2009/2010”, \$76,000,000;
- “Research, Development, Test and Evaluation, Air Force, 2009/2010”, \$164,000,000;
- “Research, Development, Test and Evaluation, Defense-Wide, 2009/2010”, \$137,000,000;
- “Operation, Test and Evaluation, Defense, 2009/2010”, \$1,000,000;
- “Operation and Maintenance, Army, 2010”, \$154,000,000;
- “Operation and Maintenance, Navy, 2010”, \$155,000,000;
- “Operation and Maintenance, Marine Corps, 2010”, \$25,000,000;
- “Operation and Maintenance, Air Force, 2010”, \$155,000,000;
- “Operation and Maintenance, Defense-Wide, 2010”, \$126,000,000;
- “Operation and Maintenance, Army Reserve, 2010”, \$12,000,000;
- “Operation and Maintenance, Navy Reserve, 2010”, \$6,000,000;
- “Operation and Maintenance, Marine Corps Reserve, 2010”, \$1,000,000;
- “Operation and Maintenance, Air Force Reserve, 2010”, \$14,000,000;
- “Operation and Maintenance, Army National Guard, 2010”, \$28,000,000; and
- “Operation and Maintenance, Air National Guard, 2010”, \$27,000,000.

SEC. 304. (a) Of the funds appropriated in the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the

following funds are rescinded from the following accounts in the specified amounts:

“Operation and Maintenance, Army, 2009/2010”, \$113,500,000;
“Operation and Maintenance, Navy, 2009/2010”, \$34,000,000;
“Operation and Maintenance, Marine Corps, 2009/2010”, \$7,000,000;
“Operation and Maintenance, Air Force, 2009/2010”, \$61,000,000;
“Operation and Maintenance, Army Reserve, 2009/2010”, \$3,500,000;
“Operation and Maintenance, Navy Reserve, 2009/2010”, \$8,000,000;
“Operation and Maintenance, Marine Corps Reserve, 2009/2010”, \$1,000,000;
“Operation and Maintenance, Air Force Reserve, 2009/2010”, \$2,000,000;
“Operation and Maintenance, Army National Guard, 2009/2010”, \$1,000,000;
“Operation and Maintenance, Air National Guard, 2009/2010”, \$2,500,000; and
“Defense Health Program, 2009/2010”, \$27,000,000.

(b) Of the funds appropriated in the Supplemental Appropriations Act, 2008 (Public Law 110–252), the following funds are rescinded from the following account in the specified amount:

“Procurement, Marine Corps, 2009/2011”, \$122,000,000.

SEC. 305. (a) Of the funds appropriated for “Procurement of Weapons and Tracked Combat Vehicles, Army” in title III of division A of public Law 111–118, \$116,000,000 are rescinded.

(b) Of the funds appropriated for “Other Procurement, Army” in title III of division C of Public Law 110–329, \$87,000,000 are rescinded.

SEC. 306. There are rescinded the following amounts from the specified accounts:

(1) \$20,000,000, to be derived from unobligated balances of funds made available in prior appropriations Acts under the heading “Department of Energy—Nuclear Energy”.

SEC. 307. Of the unobligated balances of funds provided under the heading “Nuclear Regulatory Commission” in prior appropriations Acts, \$18,000,000 is permanently rescinded.

SEC. 308. Of the funds made available for “Department of Energy—Title 17—Innovative Technology Loan Guarantee Program” in title III of division A of Public Law 111–5, \$1,500,000,000 are rescinded.

SEC. 309. There are permanently rescinded from “General Services Administration—Real Property Activities—Federal Building Fund”, \$75,000,000 from Rental of Space and \$25,000,000 from Building Operations, to be derived from unobligated balances that were provided in previous appropriations Acts.

SEC. 310. Of the funds made available for “Bureau of Indian Affairs—Indian Guaranteed Loan Program Account” in title VII of division A of Public Law 111–5, \$6,820,000 are rescinded.

SEC. 311. Of the funds made available for “Environmental Protection Agency—Hazardous Substance Superfund” in title VII of division A of Public Law 111–5, \$2,600,000 are rescinded.

SEC. 312. Of the funds made available for “Environmental Protection Agency—Leaking Underground Storage Tank Trust Fund Program” in title VII of division A of Public Law 111-5, \$9,200,000 are rescinded.

SEC. 313. Of the funds made available for transfer in title VII of division A of Public Law 111-5, “Environmental Protection Agency—Environmental Programs and Management”, \$10,000,000 are rescinded.

SEC. 314. Of the funds made available for “National Park Service—Construction” in chapter 7 of division B of Public Law 108-324, \$4,800,000 are rescinded.

SEC. 315. Of the funds made available for “National Park Service—Construction” in chapter 5 of title II of Public Law 109-234, \$6,400,000 are rescinded.

SEC. 316. Of the funds made available for “Fish and Wildlife Service—Construction” in chapter 6 of title I of division B of Public Law 110-329, \$3,000,000 are rescinded.

SEC. 317. The unobligated balance of funds appropriated in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1995 (Public Law 103-333; 108 Stat. 2574) under the heading “Public Health and Social Services Emergency Fund” is rescinded.

SEC. 318. Of the funds appropriated for the Commissioner of Social Security under section 2201(e)(2)(B) in title II of division B of Public Law 111-5, \$47,000,000 are rescinded.

SEC. 319. Of the funds appropriated in part VI of subtitle I of title II of division B of Public Law 111-5, \$110,000,000 are rescinded, to be derived only from the amount provided under section 1899K(b) of such title.

SEC. 320. Of the funds appropriated for “Department of Education—Education for the Disadvantaged” in division D of Public Law 111-117, \$50,000,000 are rescinded, to be derived only from the amount provided for a comprehensive literacy development and education program under section 1502 of the Elementary and Secondary Education Act of 1965.

SEC. 321. Of the funds appropriated for “Department of Education—Student Aid Administration” in division D of Public Law 111-117, \$82,000,000 are rescinded.

SEC. 322. Of the funds appropriated for “Department of Education—Innovation and Improvement” in division D of Public Law 111-117, \$10,700,000 are rescinded, to be derived only from the amount provided to carry out subpart 8 of part D of title V of the Elementary and Secondary Education Act of 1965.

SEC. 323. Of the unobligated balances available under “Department of Defense, Military Construction, Army” from prior appropriations Acts, \$340,000,000 is rescinded: *Provided*, That no funds may be rescinded from amounts that were designated by the Congress as an emergency requirement or as appropriations for overseas deployments and other activities pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

Overseas
deployments.

SEC. 324. Of the unobligated balances available under “Department of Defense, Military Construction, Navy and Marine Corps” from prior appropriations Acts, \$110,000,000 is rescinded: *Provided*, That no funds may be rescinded from amounts that were designated by the Congress as an emergency requirement or as appropriations

Overseas
deployments.

for overseas deployments and other activities pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 325. Of the unobligated balances available under “Department of Defense, Military Construction, Air Force” from prior appropriations Acts, \$50,000,000 is rescinded: *Provided*, That no funds may be rescinded from amounts that were designated by the Congress as an emergency requirement or as appropriations for overseas deployments and other activities pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

Overseas
deployments.

SEC. 326. Of the funds made available for the General Operating Expenses account of the Department of Veterans Affairs in section 2201(e)(4)(A)(ii) of division B of Public Law 111–5 (123 Stat. 454; 26 U.S.C. 6428 note), \$6,100,000 are rescinded.

SEC. 327. Of the amount appropriated or otherwise made available by title X of division A of Public Law 111–5, the American Recovery and Reinvestment Act of 2009, under the heading “Departmental Administration, Information Technology Systems” \$5,000,000 is hereby rescinded.

SEC. 328. (a) MILLENNIUM CHALLENGE CORPORATION.—Of the unobligated balances available under the heading “Millennium Challenge Corporation” in title III of division H of Public Law 111–8 and under such heading in prior Acts making appropriations for the Department of State, foreign operations, and related programs, \$50,000,000 are rescinded.

(b) CIVILIAN STABILIZATION INITIATIVE.—

(1) DEPARTMENT OF STATE.—Of the unobligated balances available under the heading “Department of State—Administration of Foreign Affairs—Civilian Stabilization Initiative” in prior Acts making appropriations for the Department of State, foreign operations, and related programs, \$40,000,000 are rescinded.

(2) UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.—Of the unobligated balances available under the heading “United States Agency for International Development—Funds Appropriated to the President—Civilian Stabilization Initiative” in prior Acts making appropriations for the Department of State, foreign operations, and related programs, \$30,000,000 are rescinded.

SEC. 329. There are rescinded the following amounts from the specified accounts:

(1) “Department of Transportation—Federal Aviation Administration—Facilities and Equipment”, \$2,182,544, to be derived from unobligated balances made available under this heading in Public Law 108–324.

(2) “Department of Transportation—Federal Aviation Administration—Facilities and Equipment”, \$5,705,750, to be derived from unobligated balances made available under this heading in Public Law 109–148.

SEC. 330. Of the unobligated balances of funds apportioned to each State under chapter 1 of title 23, United States Code, \$2,200,000,000 are permanently rescinded: *Provided*, That such rescission shall be distributed among the States in the same proportion as the funds subject to such rescission were apportioned to the States for fiscal year 2009: *Provided further*, That such rescission shall not apply to the funds distributed in accordance with

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States.
Determination.

sections 130(f) and 104(b)(5) of title 23, United States Code; sections 133(d)(1) and 163 of such title, as in effect on the day before the date of enactment of Public Law 109–59; and the first sentence of section 133(d)(3)(A) of such title: *Provided further*, That notwithstanding section 1132 of Public Law 110–140, in administering the rescission required under this heading, the Secretary of Transportation shall allow each State to determine the amount of the required rescission to be drawn from the programs to which the rescission applies.

TITLE IV

BUDGETARY PROVISIONS

BUDGETARY PROVISIONS

SEC. 401. The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

Approved August 10, 2010.

LEGISLATIVE HISTORY—H.R. 1586:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Mar. 19, considered and passed House.

Vol. 156 (2010): Mar. 10, 11, 16–19, 22, considered and passed Senate, amended.

Mar. 25, House concurred in Senate amendments with an amendment.

July 29, Aug. 2, 4, 5, Senate considered and concurred in House amendment with an amendment.

Aug. 10, House concurred in Senate amendment.



Public Law 111–227
111th Congress

An Act

To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, and for other purposes.

Aug. 11, 2010
[H.R. 4380]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States Manufacturing Enhancement Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
Sec. 2. Reference.

TITLE I—NEW DUTY SUSPENSIONS AND REDUCTIONS

- Sec. 1004. Certain reusable grocery bags.
Sec. 1009. Epilink 701.
Sec. 1011. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning.
Sec. 1012. Acrylic or modacrylic synthetic staple fibers, not carded, combed, or otherwise processed for spinning.
Sec. 1013. Acrylic or modacrylic synthetic staple fibers, not carded, combed, or otherwise processed for spinning, containing at least 85 percent by weight of acrylonitrile units.
Sec. 1014. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning, not dyed or pigmented.
Sec. 1015. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning, raw white (undyed).
Sec. 1016. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning, containing at least 85 percent by weight of acrylonitrile units.
Sec. 1017. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning, not pigmented.
Sec. 1020. Acrylic or modacrylic synthetic staple fibers, not carded, combed, or otherwise processed for spinning, containing 2 percent or more but not over 3 percent of water.
Sec. 1021. Acrylic or modacrylic synthetic staple fibers, not carded, combed, or otherwise processed for spinning, not pigmented.
Sec. 1022. Acrylic or modacrylic synthetic filament tow.
Sec. 1023. Acrylic or modacrylic synthetic filament tow, containing 2 percent or more but not over 3 percent of water.
Sec. 1024. Acrylic or modacrylic synthetic filament tow containing 85 percent or more by weight of acrylonitrile units.
Sec. 1025. Acrylic or modacrylic synthetic staple fibers, not carded, combed, or otherwise processed for spinning, raw white (undyed).
Sec. 1026. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning, containing 85 percent or more of acrylonitrile units.
Sec. 1027. Certain synthetic staple fibers that are not carded, combed, or otherwise processed for spinning containing 2 percent or more but not over 3 percent of water.
Sec. 1028. MDA50.

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Manufacturing
Enhancement
Act of 2010.
19 USC 1 note.

- Sec. 1029. Nourybond 276 Modifier.
- Sec. 1030. Polycaprolactone Diol #1.
- Sec. 1032. Certain acrylic synthetic staple fiber.
- Sec. 1033. Certain acrylic synthetic staple fiber, containing by weight 92 percent or more of polyacrylonitrile.
- Sec. 1034. Certain acrylic synthetic staple fiber dyed but not carded, combed for spinning.
- Sec. 1035. Certain acrylic staple fiber.
- Sec. 1037. ϵ -Caprolactone-2-ethyl-2-(hydroxymethyl)-1,3-propanediol polymer.
- Sec. 1038. ϵ -Caprolactone-neopentylglycol copolymer.
- Sec. 1041. Cetalex.
- Sec. 1049. Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymers with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and reduced methyl esters of reduced polymerized, oxidized tetrafluoroethylene, compounds with trimethylamine.
- Sec. 1052. Ortho-Nitro-Phenol.
- Sec. 1053. Certain acrylic synthetic staple fiber, containing 2 percent or more but not over 8 percent of water.
- Sec. 1054. Certain acrylic synthetic staple fiber, containing not more than 0.01 percent of zinc.
- Sec. 1062. 3-Chloro-2-methylphenyl methyl sulfide.
- Sec. 1065. 1,3-Dimethyl-1H-pyrazol-5-ol and 1,3-Dimethyl-5-pyrazolone.
- Sec. 1067. Neodymium oxide.
- Sec. 1068. DMDPA.
- Sec. 1070. Certain air pressure distillation columns.
- Sec. 1071. nPBAL.
- Sec. 1072. Primid XL-552.
- Sec. 1074. Certain imaging colorants.
- Sec. 1075. Certain imaging colorants of fast yellow, cyan, fast black, and magenta.
- Sec. 1076. Copper oxychloride and copper hydroxide.
- Sec. 1079. DCDNBTF Benzene, 2,4-dichloro-1,3-dinitro-5-(trifluoromethyl).
- Sec. 1080. Mixtures containing n-butyl-1,2-benzisothiazolin-3-one (Butyl benzisothiazoline) and application adjuvants.
- Sec. 1081. Mixtures containing n-butyl-1,2-benzisothiazolin-3-one, 1-hydroxypyridine-2-thione, zinc salt (Zinc pyrrhione) and application adjuvants.
- Sec. 1089. Bis(4-t-butylcyclohexyl) peroxydicarbonate.
- Sec. 1091. Didecanoyl Peroxide.
- Sec. 1093. Glycerol ester of dimerized gum.
- Sec. 1097. Mixtures containing Fenoxaprop-p-ethyl, Pyrasulfotole, Bromoxynil octanoate, and Bromoxynil heptanoate.
- Sec. 1110. Dry adhesive copolyamide pellets.
- Sec. 1113. Corvus herbicide.
- Sec. 1114. Evergol.
- Sec. 1115. Liberty, Rely, and Ignite herbicides.
- Sec. 1126. Cyclopropylaminonicotinic acid.
- Sec. 1127. Grilbond IL 6-50%F.
- Sec. 1128. Primid QM-1260.
- Sec. 1136. 1-Chloro-2-chloromethyl-3-fluorobenzene.
- Sec. 1142. Dimerized gum.
- Sec. 1149. Pyrasulfotole.
- Sec. 1151. Helional.
- Sec. 1160. Over-the-range microwaves.
- Sec. 1162. Porous hollow fibers.
- Sec. 1163. Cellular plastic sheets for filters.
- Sec. 1164. Certain Woven Mesh for Use in Filters.
- Sec. 1165. Plastic fittings of perfluoroalkoxy.
- Sec. 1167. 2-Hydroxypropylmethyl cellulose.
- Sec. 1170. Mixtures containing 2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane 2,4,6-trioxide.
- Sec. 1174. N-phenyl-p-phenylenediamine.
- Sec. 1176. Dilauroyl peroxide.
- Sec. 1181. 4-Chloro-3,5-dinitro- α,α,α -trifluorotoluene.
- Sec. 1187. AE 0172747 Ether.
- Sec. 1191. Yarn of carded hair of Kashmir (cashmere) goats, of yarn count less than 19.35 metric, not put up for retail sale.
- Sec. 1192. Yarn of carded camel hair.
- Sec. 1200. Certain laundry work surfaces.
- Sec. 1203. Certain mixtures of perfluorocarbons.
- Sec. 1204. Certain perfluorocarbon morpholines.
- Sec. 1205. Certain perfluoroamines.
- Sec. 1206. Certain perfluoroalkanes.

- Sec. 1207. Perfluorobutanesulfonyl fluoride.
 Sec. 1209. Grilamid TR 90.
 Sec. 1210. Stainless steel single-piece exhaust gas manifolds.
 Sec. 1211. Effective date.

TITLE II—EXISTING DUTY SUSPENSIONS AND REDUCTIONS

- Sec. 2001. Extension of certain existing duty suspensions and reductions and other modifications.
 Sec. 2002. Effective date.

TITLE III—ADDITIONAL EXISTING DUTY SUSPENSIONS AND REDUCTIONS

- Sec. 3001. Extensions of certain existing duty suspensions and reductions and other modifications.
 Sec. 3002. Effective date.

TITLE IV—CUSTOMS USER FEES; TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES; PAYGO COMPLIANCE

- Sec. 4001. Customs user fees.
 Sec. 4002. Time for payment of corporate estimated taxes.
 Sec. 4003. PAYGO compliance.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision, the reference shall be considered to be made to a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007).

TITLE I—NEW DUTY SUSPENSIONS AND REDUCTIONS

SEC. 1004. CERTAIN REUSABLE GROCERY BAGS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.01	Shopping bags with an outer surface of spun bonded polypropylene fabric or nonwoven polypropylene fabric (provided for in subheading 4202.92.30)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1009. EPILINK 701.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.02	Aqueous emulsion of a modified aliphatic amine mixture of: decanedioic acid, compounds with 1,3-benzenedimethanamine-bisphenol A-bisphenol A diglycidyl ether-diethylenetriamine glycidyl phenyl ether reaction product-epichlorohydrin-formaldehyde-propylene oxide-triethylenetetramine polymer (provided for in subheading 3911.90.45)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1011. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.03	Modacrylic staple fibers containing 35 percent or more but not over 85 percent by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, not pigmented (ecru), crimped, with an average decitex of 2.2 (plus or minus 10 percent) and fiber length of 51 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1012. ACRYLIC OR MODACRYLIC SYNTHETIC STAPLE FIBERS, NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.04	Acrylic staple fibers (polyacrylonitrile staple) containing at least 85 percent by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, colored, crimped, with an average decitex of 3.0 (plus or minus 10 percent) and fiber length of 50 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1013. ACRYLIC OR MODACRYLIC SYNTHETIC STAPLE FIBERS, NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, CONTAINING AT LEAST 85 PERCENT BY WEIGHT OF ACRYLONITRILE UNITS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.05	Modacrylic staple fibers containing 35 percent or more but not over 85 percent by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, not pigmented (ecru), crimped, with an average decitex of 1.9 (plus or minus 10 percent) and fiber length of 51 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1014. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, NOT DYED OR PIGMENTED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.06	Acrylic staple fibers containing at least 85 percent by weight of acrylonitrile units and 2 percent or more but not more than 3 percent of water, not dyed or pigmented (ecru), crimped, with an average decitex of 1.9 (plus or minus 10 percent) and fiber length of 51 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1015. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, RAW WHITE (UNDYED).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.07	Acrylic staple fibers containing at least 85 percent by weight of acrylonitrile units and 2 percent or more but not more than 3 percent of water, raw white (undyed), crimped, with an average decitex of 2.2 (plus or minus 10 percent) and fiber length of 38 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1016. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, CONTAINING AT LEAST 85 PERCENT BY WEIGHT OF ACRYLONITRILE UNITS.

Subchapter II of chapter 99 is is amended by inserting in numerical sequence the following new heading:

“	9902.40.08	Acrylic staple fibers containing at least 85 percent by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, raw white (undyed), crimped, with an average decitex of 1.3 (plus or minus 10 percent) and fiber length of 38 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1017. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, NOT PIGMENTED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.09	Modacrylic staple fibers containing 35 percent or more but not over 85 percent by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, not pigmented (ecru), crimped, with an average decitex of 2.2 (plus or minus 10 percent) and fiber length of 38 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1020. ACRYLIC OR MODACRYLIC SYNTHETIC STAPLE FIBERS, NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, CONTAINING 2 PERCENT OR MORE BUT NOT OVER 3 PERCENT OF WATER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.10	Acrylic staple fibers (polyacrylonitrile staple) containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, colored, crimped, with an average decitex of 2.2 (plus or minus 10 percent) and fiber length of 45 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1021. ACRYLIC OR MODACRYLIC SYNTHETIC STAPLE FIBERS, NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, NOT PIGMENTED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.11	Acrylic staple fibers (polyacrylonitrile staple) containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, not pigmented (ecru), crimped, with an average decitex of 1.3 (plus or minus 10 percent) and fiber length of 40 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1022. ACRYLIC OR MODACRYLIC SYNTHETIC FILAMENT TOW.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.12	Acrylic filament tow containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, raw white (undyed), crimped, with an average decitex of 4.1 (plus or minus 10 percent) and an aggregate filament measure in the tow bundle from 660,000 to 1,200,000 decitex, with a length greater than 2 meters (provided for in subheading 5501.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1023. ACRYLIC OR MODACRYLIC SYNTHETIC FILAMENT TOW, CONTAINING 2 PERCENT OR MORE BUT NOT OVER 3 PERCENT OF WATER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.13	Acrylic filament tow containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, raw white (undyed), crimped, with an average decitex of 2.2 (plus or minus 10 percent) and an aggregate filament measure in the tow bundle between 660,000 and 1,200,000 decitex, with a length greater than two meters (provided for in subheading 5501.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1024. ACRYLIC OR MODACRYLIC SYNTHETIC FILAMENT TOW CONTAINING 85 PERCENT OR MORE BY WEIGHT OF ACRYLONITRILE UNITS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.14	Acrylic fiber tow containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, raw white (undyed), crimped, with an average decitex of 3.3 (plus or minus 10 percent) and an aggregate filament measure in the tow bundle between 660,000 and 1,200,000 decitex, with a length greater than 2 meters (provided for in subheading 5501.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1025. ACRYLIC OR MODACRYLIC SYNTHETIC STAPLE FIBERS, NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, RAW WHITE (UNDYED).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.15	Acrylic staple fibers containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, raw white (undyed), crimped, with an average decitex of 1.1 (plus or minus 10 percent) and fiber length of 38 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1026. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING, CONTAINING 85 PERCENT OR MORE OF ACRYLONITRILE UNITS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.16	Acrylic staple fibers (polyacrylonitrile staple) containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, non-pigmented (ecru), crimped, with an average decitex of 2.2 (plus or minus 10 percent), and fiber length of 50 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1027. CERTAIN SYNTHETIC STAPLE FIBERS THAT ARE NOT CARDED, COMBED, OR OTHERWISE PROCESSED FOR SPINNING CONTAINING 2 PERCENT OR MORE BUT NOT OVER 3 PERCENT OF WATER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.17	Acrylic staple fibers (polyacrylonitrile staple) containing 85 percent or more by weight of acrylonitrile units and 2 percent or more but not over 3 percent of water, colored, crimped, with an average decitex of 2.2 (plus or minus 10 percent) and fiber length of 50 mm (plus or minus 10 percent) (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1028. MDA50.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.18	Mixtures of formaldehyde polymers with aniline (CAS No. 25214-70-4) and with 4,4'-methylenedianiline (CAS No. 101-77-9) (provided for in subheading 3909.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1029. NOURYBOND 276 MODIFIER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.19	Mixtures of alkene polymers with maleic anhydride, 2-(1-piperazinyl) ethylimides, diisononyl phthalate (CAS No. 28553-12-0) and bis(1-methylethyl)-naphthalene (CAS No. 38640-62-9) (provided for in subheading 3908.90.70)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1030. POLYCAPROLACTONE DIOL #1.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.20	Caprolactone-diethylene glycol copolymer (CAS No. 75035-33-5) (provided for in subheading 3907.99.01)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1032. CERTAIN ACRYLIC SYNTHETIC STAPLE FIBER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.21	Acrylic filament tow (polyacrylonitrile tow) containing by weight 92 percent or more of polyacrylonitrile, not more than 0.01 percent of zinc and 2 percent or more but not over 8 percent of water, imported in the form of 8 sub-bundles crimped together, each containing 24,000 filaments (plus or minus 10 percent) with an average decitex of 4.0 to 5.6 (plus or minus 10 percent) and length greater than 2 meters (provided for in subheading 5501.30.00)	1.2%	No change	No change	On or before 12/31/2012	”.
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SEC. 1033. CERTAIN ACRYLIC SYNTHETIC STAPLE FIBER, CONTAINING BY WEIGHT 92 PERCENT OR MORE OF POLYACRYLONITRILE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.22	Acrylic filament tow (polyacrylonitrile tow) containing by weight 92 percent or more of polyacrylonitrile, not more than 0.01 percent of zinc and 2 percent or more but not over 8 percent of water, imported in the form of bundles of crimped product each containing 214,000 filaments (plus or minus 10 percent) with an average decitex of 4.0 to 5.6 decitex (plus or minus 10 percent) and length greater than 2 meters (provided for in subheading 5501.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1034. CERTAIN ACRYLIC SYNTHETIC STAPLE FIBER DYED BUT NOT CARDED, COMBED FOR SPINNING.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.23	Acrylic staple fibers (polyacrylonitrile staple), dyed but not carded, combed or otherwise processed for spinning, containing by weight 92 percent or more of polyacrylonitrile, not more than 0.01 percent of zinc and 2 percent or more but not over 8 percent of water, the foregoing with a decitex of 4.0 to 6.7 (plus or minus 10 percent), with a fiber shrinkage of from 0 to 22 percent (plus or minus 10 percent), and with a cut fiber length of 100 mm to 135 mm and a target length of 120 mm (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1035. CERTAIN ACRYLIC STAPLE FIBER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.24	Acrylic staple fibers (polyacrylonitrile staple), not dyed and not carded, combed or otherwise processed for spinning, containing by weight 92 percent or more of polyacrylonitrile, not more than 0.01 percent of zinc and 2 percent or more but not over 8 percent of water, the foregoing with a decitex of 4.0 to 6.7 (plus or minus 10 percent), with a fiber shrinkage of 0 to 22 percent (plus or minus 10 percent) and with a cut fiber length of 89 mm to 140 mm and a target length of 115 mm (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1037. ϵ -CAPROLACTONE-2-ETHYL-2-(HYDROXYMETHYL)-1,3-PROPANEDIOL POLYMER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.25	ϵ -Caprolactone-2-ethyl-2-(hydroxymethyl)-1,3-propanediol polymer (CAS No. 37625-56-2) (provided for in subheading 3907.99.01)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1038. ϵ -CAPROLACTONE-NEOPENTYLGLYCOL COPOLYMER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.26	ϵ -Caprolactone-neopentylglycol copolymer (CAS No. 69089-45-8) (provided for in subheading 3907.99.01)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1041. CETALOX.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.27	Dodecahydro-3a,6,6,9a-tetramethylnaphtho(2,1-b)furan (CAS No. 3738–00–9) (provided for in subheading 2932.99.90)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1049. PROPANOIC ACID, 3-HYDROXY-2-(HYDROXYMETHYL)-2-METHYL-, POLYMERS WITH 5-ISOCYANATO-1-(ISOCYANATOMETHYL)-1,3,3-TRIMETHYLCYCLOHEXANE AND REDUCED METHYL ESTERS OF REDUCED POLYMERIZED, OXIDIZED TETRAFLUOROETHYLENE, COMPOUNDS WITH TRIMETHYLAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.28	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-, methyl polymers with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and reduced methyl esters of reduced polymerized, oxidized tetrafluoroethylene, compounds with trimethylamine (CAS No. 328389–91–9) (provided for in subheading 3904.69.50)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1052. ORTHO-NITRO-PHENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.29	2-Nitrophenol (o-nitrophenol) (CAS No. 88–75–5) (provided for in subheading 2908.99.25)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1053. CERTAIN ACRYLIC SYNTHETIC STAPLE FIBER, CONTAINING 2 PERCENT OR MORE BUT NOT OVER 8 PERCENT OF WATER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.30	Acrylic staple fiber (polyacrylonitrile staple), dyed, not carded, combed or otherwise processed for spinning, the foregoing containing by weight 92 percent or more of polyacrylonitrile, not more than 0.01 percent of zinc and 2 percent or more but not over 8 percent of water, with a decitex of 4.0 to 6.7 (plus or minus 10 percent), a fiber shrinkage of from 0 to 22 percent (plus or minus 10 percent) and a cut fiber length of 89 to 140 mm, with a target length of 115 mm (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1054. CERTAIN ACRYLIC SYNTHETIC STAPLE FIBER, CONTAINING NOT MORE THAN 0.01 PERCENT OF ZINC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.31	Acrylic staple fiber (polyacrylonitrile staple), not dyed, not carded, combed or otherwise processed for spinning, the foregoing containing by weight 92 percent or more of polyacrylonitrile, not more than 0.01 percent of zinc and 2 percent or more but not over 8 percent of water, with a decitex of 4.0 to 6.7 (plus or minus 10 percent), with a fiber shrinkage of from 0 to 22 percent (plus or minus 10 percent) and a cut fiber length of 100 mm to 135 mm, with a target length of 120 mm (provided for in subheading 5503.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1062. 3-CHLORO-2-METHYLPHENYL METHYL SULFIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.32	3-Chloro-2-methylphenyl methyl sulfide (CAS No. 82961–52–2) (provided for in subheading 2930.90.29)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1065. 1,3-DIMETHYL-1H-PYRAZOL-5-OL AND 1,3-DIMETHYL-5-PYRAZOLONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.33	1,3-Dimethyl-1H-pyrazol-5-ol (CAS No. 5203–77–0) and 1,3-dimethyl-5-pyrazolone (CAS No. 2749–59–9) (provided for in subheading 2933.19.90)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1067. NEODYMIUM OXIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.34	Neodymium oxide (CAS No. 1313-97-9) (provided for in subheading 2846.90.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1068. DMDPA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.35	4'-Methoxy-2,2',4-trimethyl diphenylamine (CAS No. 41374-20-3) (provided for in subheading 2922.29.61)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1070. CERTAIN AIR PRESSURE DISTILLATION COLUMNS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.36	Pressure distillation columns, designed to liquefy air and its component gases, the foregoing containing brazed aluminum plate-fin heat exchangers (provided for in subheading 8419.60.10)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1071. nPBAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.37	4-Propylbenzaldehyde (CAS No. 28785-06-0) (provided for in subheading 2912.29.60)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1072. PRIMID XL-552.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.38	N,N,N',N'-Tetrakis(2-hydroxyethyl)-hexanediamide (CAS No. 6334–25–4) (provided for in subheading 2924.19.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1074. CERTAIN IMAGING COLORANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	9902.40.39	Black 661 inkjet printing ink: Aryl substituted pyrazonyl [[[substituted phenyl azo]substituted naphthenyl] Azo phenyl]azo, sodium salt (PMN No. P99–105) (provided for in subheading 3215.11.00)	0.3%	No change	No change	On or before 12/31/2012 ...
	9902.40.40	Black 820 inkjet printing ink: Substituted naphthalene [[substituted pyridinyl azo] alkoxyphenyl azo]azo, potassium / sodium salt (PMN No. P04–390) (provided for in subheading 3215.11.00)	0.3%	No change	No change	On or before 12/31/2012 ...
	9902.40.41	Cyan 854 inkjet printing ink: Copper phthalocyanine substituted with sulphonic acids and alkyl Sulphonoamides, sodium/ ammonium salts (PMN No. P02–893) (provided for in subheading 3215.19.00)	0.3%	No change	No change	On or before 12/31/2012 ...
	9902.40.42	Cyan 1 RO inkjet printing ink: Copper phthalocyanine substituted with sulphonic acids and sulphonoamides, sodium salts (CAS No. 90295–11–7) (provided for in subheading 3215.19.00)	0.3%	No change	No change	On or before 12/31/2012 ...
	9902.40.43	Cyan 226 inkjet printing ink: Copper phthalocyanine substituted with sulphonic acids and alkyl sulphonoamides, sodium salt (PMN No. P99–105) (provided for in subheading 3215.19.00)	0.3%	No change	No change	On or before 12/31/2012 ...

9902.40.44	Black 263 inkjet printing ink: [[Substituted naphthalenylazo] alkoxyl phenyl azo] carboxyphenylene, lithium salt (PMN No. P-00-351) (provided for in subheading 3215.11.00)	0.3%	No change	No change	On or before 12/31/2012 ...
9902.40.45	Cyan 9075 inkjet printing ink: Copper phthalocyanine substituted with sulphonic acids and sulphonamides, sodium salts (CAS No. 90295-11-7) (provided for in subheading 3215.19.00)	0.3%	No change	No change	On or before 12/31/2012 ...
9902.40.46	Yellow 1 Stage inkjet printing ink: Substituted naphthylene [[aminoalkyl triazinediyl]bis substituted phenylene azo]bis, sodium salt (CAS No. 50925-42-3) (provided for in subheading 3215.19.00)	0.3%	No change	No change	On or before 12/31/2012 ...
9902.40.47	Fast Black 286 inkjet printing ink: [(substituted naphthalenylazo) substituted naphthalenyl azo] carboxyphenylene, sodium salt (PMN No. P-90-394) (provided for in subheading 3215.11.00)	0.3%	No change	No change	On or before 12/31/2012 ...
9902.40.48	Magenta 3BOA inkjet printing ink: [[Chloro[[[substituted naphthylzao]substituted naphthalene] Amino] triazinyl] amino] benzoic acid, sodium/lithium salts (PMN No. P-83-386) (provided for in subheading 3215.19.00) ...	0.3%	No change	No change	On or before 12/31/2012 ...
9902.40.49	Yellow 746 inkjet printing ink: Aryl [Substituted phenylazo] pyridine, sodium/lithium salt (PMN No. P-02-234) (provided for in subheading 3215.19.0060)	0.3%	No change	No change	On or before 12/31/2012 ...

SEC. 1075. CERTAIN IMAGING COLORANTS OF FAST YELLOW, CYAN, FAST BLACK, AND MAGENTA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	9902.40.50	Fast Yellow 2 inkjet printing ink: Substituted phenylene [[morphylinyl triazinediyl]bis phenylene azo]bis, ammonium/sodium/hydrogen salt (PMN No. P-94-36) (provided for in subheading 3215.19.00)	Free	No change	No change	On or before 12/31/2012
	9902.40.51	Cyan 1 inkjet printing ink: Copper phthalocyanine substituted with sulphonic acids and sulphonamides (PMN No. P94-580) (provided for in subheading 3215.19.00)	Free	No change	No change	On or before 12/31/2012
	9902.40.52	Cyan 485 inkjet printing ink: Copper phthalocyanine substituted with sulphonic acids and alkyl sulphonamides, sodium salt (PMN No. P-99-105) (provided for in subheading 3215.19.00)	Free	No change	No change	On or before 12/31/2012
	9902.40.53	Fast Black 287NA: [(substituted naphthalenylazo) substituted naphthalenyl azo] carboxyphenylene, sodium salt (PMN No. P-90-391) (provided for in subheading 3215.11.00)	Free	No change	No change	On or before 12/31/2012

9902.40.54	Magenta M700: Nickel [substituted naphthenyl azo] substituted triazole, sodium salt (PMN No. P-03-307) (pro- vided for in sub- heading 3215.19.00)	Free	No change	No change	On or be- fore 12/31/ 2012 ”.
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SEC. 1076. COPPER OXYCHLORIDE AND COPPER HYDROXIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.55	Copper oxychloride (CAS No. 1332–40–7) and copper hydroxide (CAS No. 20427–59–2) (provided for in subheading 3808.92.30)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1079. DCDNBTF BENZENE, 2,4-DICHLORO-1,3-DINITRO-5-(TRIFLUOROMETHYL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.56	Benzene, 2,4-dichloro-1,3-dinitro-5-(trifluoromethyl) (CAS No. 29091–09–6) (provided for in subheading 2904.90.47)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1080. MIXTURES CONTAINING N-BUTYL-1,2-BENZISOTHIAZOLIN-3-ONE (BUTYL BENZISOTHIAZLINE) AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.57	Mixtures containing n-butyl-1,2-benzisothiazolin-3-one (Butyl benzisothiazoline) (CAS No. 4299–07–4) and application adjuvants (provided for in subheading 3808.92.15 or 3808.99.08)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1081. MIXTURES CONTAINING N-BUTYL-1,2-BENZISOTHIAZOLIN-3-ONE, 1-HYDROXYPYRIDINE-2-THIONE, ZINC SALT (ZINC PYRITHIONE) AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.58	Mixtures containing n-butyl-1,2-benzisothiazolin-3-one (CAS No. 4299-07-4), 1-hydroxypyridine-2-thione, zinc salt (Zinc pyrithione) (CAS No. 13463-41-7) and application adjuvants (provided for in subheading 3808.99.08)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1089. BIS(4-T-BUTYLCYCLOHEXYL) PEROXYDICARBONATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.59	Bis(4-t-butylcyclohexyl) peroxydicarbonate (CAS No. 15520-11-3) (provided for in subheading 2920.90.50)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1091. DIDECANOYL PEROXIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.60	Didecanoyl peroxide (CAS No. 762-12-9) (provided for in subheading 2915.90.50)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1093. GLYCEROL ESTER OF DIMERIZED GUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.61	Glycerol ester of dimerized gum (100 percent) rosin, catalyzed with sulfuric acid, softening point not less than 104 °C, acid number 3 to 8, (CAS No. 68475-37-6) (provided for in subheading 3806.30.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1097. MIXTURES CONTAINING FENOXAPROP-P-ETHYL, PYRASULFOTOLE, BROMOXYNIL OCTANOATE, AND BROMOXYNIL HEPTANOATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.62	Mixtures containing ethyl (R)-2-[4-(6-chloro-1,3-benzoxazol-2-yloxy)phenoxy]propionate (Fenoxaprop-p-ethyl) (CAS No. 71283–80–2), 5-hydroxy-1,3-dimethylpyrazol-4-yl 2-mesyl-4-(trifluoromethyl)phenyl ketone (Pyrasulfotole) (CAS No. 365400–11–9), 2,6-dibromo-4-cyanophenyl octanoate (Bromoxynil octanoate) (CAS No. 1689–99–2), and 2,6-dibromo-4-cyanophenyl heptanoate (Bromoxynil heptanoate) (CAS No. 56634–95–8) (provided for in subheading 3808.93.15)	Free	No change	No change	On or before 12/31/2012 ...	”.
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SEC. 1110. DRY ADHESIVE COPOLYAMIDE PELLETS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.63	Piperazine co-polymerized copolyamide resin high-temperature melt adhesive pellets (CAS No. 118106–10–8, 1000189–84–3, or 1000189–29–6) (provided for in subheading 3908.10.00 or 3908.90.70)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1113. CORVUS HERBICIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.64	Mixtures containing thien carbazole-methyl (methyl 4-[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonylsulfamoyl]-5-methylthiophene-3-carboxylate), isoxaflutole (5-cyclopropyl-1,2-oxazol-4-yl)(α,α,α -trifluoro-2-mesyl-p-tolyl)methanone and cyprosulfamide (N-(4-[(cyclopropylamin-o)carbonyl]phenyl)sulfonyl)-2-methoxybenzamide) (CAS Nos. 317815–83–1, 141112–29–0, and 221667–31–8) (provided for in subheading 3808.93.15)	1.9%	No change	No change	On or before 12/31/2012 ...	”.
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SEC. 1114. EVERGOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.65	Mixtures containing 5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl)isoxazole (Isoxaflutole) (CAS No. 141112–29–0) and N-(4-[(cyclopropylamin-o)carbonyl]phenyl)sulfonyl)-2-methoxybenzamide (Cyprosulfamide) (CAS No. 221667–31–8) (provided for in subheading 3808.93.15) ...	3.5%	No change	No change	On or before 12/31/2012 ...	”.
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SEC. 1115. LIBERTY, RELY, AND IGNITE HERBICIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.66	Mixtures of ammonium (2RS)-2-amino-4-(methylphosphinato)butyric acid (Glufosinate-ammonium) (CAS No. 77182–82–2) with application adjuvants (provided for in subheading 3808.93.50)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1126. CYCLOPROPYLAMINONICOTINIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.67	2-Cyclopropylaminonicotinic acid (CAS No. 639807-18-4) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1127. GRILBOND IL 6-50%F.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.68	N,N'-(Methylenedi-p-phenylene)bis[hexahydro-2-oxo-1H-azepine-1-carboxamide (CAS No. 54112-23-1) (provided for in subheading 2924.19.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1128. PRIMID QM-1260.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.69	N,N,N',N'-Tetrakis(2-hydroxypropyl)-hexanediamide (CAS No. 57843-53-5) (provided for in subheading 2924.19.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1136. 1-CHLORO-2-CHLOROMETHYL-3-FLUOROBENZENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.70	1-Chloro-2-chloromethyl-3-fluorobenzene (CAS No. 55117-15-2) (provided for in subheading 2903.69.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1142. DIMERIZED GUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.71	Partially polymerized (dimerized) rosin, catalyzed with sulfuric acid, softening point not less than 92°C, acid number not less than 140 (CAS No. 65997-05-9) (provided for in subheading 3806.90.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1149. PYRASULFOTOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.72	(5-Hydroxy-1,3-dimethylpyrazol-4-yl)(α,α,α -trifluoro-2-mesyl-p-tolyl)methanone (Pyrasulfotole) (CAS No. 365400-11-9) (provided for in subheading 2933.19.23)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1151. HELIONAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.73	3-(1,3-Benzodioxol-5-yl)-2-methylpropanal (Helional) (CAS No. 1205-17-0) (provided for in subheading 2932.99.70)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1160. OVER-THE-RANGE MICROWAVES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.74	Microwave oven and range hood combinations with oven capacity exceeding 45.0 liters (provided for in subheading 8516.50.00)	1.8%	No change	No change	On or before 12/31/2012	”.
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SEC. 1162. POROUS HOLLOW FIBERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.75	Porous hollow filaments of perfluoroalkoxy (PFA) copolymer resin, the foregoing certified by the importer as having pore sizes of less than 0.05 microns and with a maximum fiber diameter of 1 mm (provided for in subheading 5404.19.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1163. CELLULAR PLASTIC SHEETS FOR FILTERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.76	Cellular plastic membrane sheets of polytetrafluoroethylene resin measuring 10 microns to 140 microns thick that, when tested, retain polystyrene latex beads of 0.15 microns diameter; and cellular plastic membrane sheets of polysulfone resin of various thicknesses and porosity, each certified by the importer for use in manufacturing filters of heading 8421 (provided for in subheading 3921.19.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1164. CERTAIN WOVEN MESH FOR USE IN FILTERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.77	Woven mesh of perfluoroalkoxy copolymer resin with fibers measuring 100 to 120 microns in diameter, which is used as a textile support medium in filters of heading 8421 or 5911 (provided for in subheading 5407.71.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1165. PLASTIC FITTINGS OF PERFLUOROALKOXY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.78	Plastic fittings composed of perfluoroalkoxy (PFA) resin with internal diameters ranging from 1.59 mm to 35.1 mm (provided for in subheading 3917.40.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1167. 2-HYDROXYPROPYLMETHYL CELLULOSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.79	2-Hydroxypropylmethyl cellulose containing a hydroxypropyl content of 7–17 percent by weight and a methoxyl content of 28–30 percent by weight per ASTM D–2363 (CAS No. 9004–65–3) (provided for in subheading 3912.39.00)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1170. MIXTURES CONTAINING 2,4,6-TRIPROPYL-1,3,5,2,4,6-TRIOXATRIPHOSPHINANE 2,4,6-TRIOXIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.80	Mixtures containing 2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane 2,4,6-trioxide (CAS No. 68957–94–8) and organic solvents (provided for in subheading 3824.90.92)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1174. N-PHENYL-P-PHENYLENEDIAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.81	N-phenyl-p-phenylenediamine (CAS No. 101–54–2) (provided for in subheading 2921.51.50)	5.4%	No change	No change	On or before 12/31/2012	”.
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SEC. 1176. DILAULOYL PEROXIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.82	Dilauroyl peroxide (CAS No. 105–74–8) (provided for in subheading 2915.90.50)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1181. 4-CHLORO-3,5-DINITRO- α,α,α -TRIFLUOROTOLUENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.83	4-Chloro-3,5-dinitro- α,α,α -trifluorotoluene (CAS No. 393–75–9) (provided for in subheading 2904.90.15)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1187. AE 0172747 ETHER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.84	Benzoic acid, 2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]- (CAS No. 120100-77-8) (provided for in subheading 2930.90.29)	3.3%	No change	No change	On or before 12/31/2012	”.
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SEC. 1191. YARN OF CARDED HAIR OF KASHMIR (CASHMERE) GOATS, OF YARN COUNT LESS THAN 19.35 METRIC, NOT PUT UP FOR RETAIL SALE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.85	Yarn of carded hair of Kashmir (cashmere) goats, of yarn count less than 19.35 metric, not put up for retail sale (provided for in subheading 5108.10.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1192. YARN OF CARDED CAMEL HAIR.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.86	Yarn of carded camel hair (provided for in subheading 5108.10.80)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1200. CERTAIN LAUNDRY WORK SURFACES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.87	Laundry work surfaces, each comprising a molded polyvinyl chloride plastic base with backguard supply tray and having a chemical and scratch-resistant synthetic rubber work mat insert on the top surface, the foregoing designed for placement across the tops of household front-loading clothes washer and dryer pairs to make a single work surface (provided for in subheading 4016.99.05)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1203. CERTAIN MIXTURES OF PERFLUOROCARBONS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.88	Mixtures of C5–C18 perfluorocarbon alkanes, perfluorocarbon amines, and/or perfluorocarbon ethers (CAS No. 86508–42–1) (provided for in subheading 3824.90.92)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1204. CERTAIN PERFLUOROCARBON MORPHOLINES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.89	C1–C3 Perfluoroalkyl perfluoromorpholine (CAS No. 86508–42–1) (provided for in subheading 2934.99.90)	Free	No change	No change	On or before 12/31/2012	”.
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SEC. 1205. CERTAIN PERFLUOROAMINES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.90	C9–C15 Perfluorocarbon amines (CAS No. 86508–42–1) (pro- vided for in sub- heading 2921.19.60)	Free	No change	No change	On or be- fore 12/31/ 2012 ”.
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SEC. 1206. CERTAIN PERFLUOROALKANES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.91	C5–C8 Perfluorocarbonalk- anes (CAS No. 86508–42– 1) (pro- vided for in sub- heading 2903.39.20)	Free	No change	No change	On or be- fore 12/31/ 2012 ”.
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SEC. 1207. PERFLUOROBUTANESULFONYL FLUORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.92	Perfluorobutanesulf- onyl fluoride (CAS No. 375–72–4) (pro- vided for in sub- heading 2904.10.50 or 2904.90.50)	Free	No change	No change	On or be- fore 12/31/ 2012 ”.
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SEC. 1209. GRILAMID TR 90.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.93	Dodecanedioic acid, polymer with 4,4'- methylenebis(2- methylcyclohexana- mine) (CAS No. 163800–66–6) (pro- vided for in sub- heading 3908.10.00)	Free	No change	No change	On or be- fore 12/31/ 2012 ”.
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SEC. 1210. STAINLESS STEEL SINGLE-PIECE EXHAUST GAS MANIFOLDS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.40.94	Cast stainless steel single-piece exhaust gas manifolds, suitable for use solely or principally with spark-ignition internal combustion engines and certified by the importer as capable of withstanding exhaust gas temperatures of 900° C or higher (provided for in subheading 9902.01.50)	0.6%	No change	No change	On or before 12/31/2012	”.
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SEC. 1211. EFFECTIVE DATE.

The amendments made by this title apply to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

TITLE II—EXISTING DUTY SUSPENSIONS AND REDUCTIONS

SEC. 2001. EXTENSION OF CERTAIN EXISTING DUTY SUSPENSIONS AND REDUCTIONS AND OTHER MODIFICATIONS.

(a) EXTENSIONS.—Each of the following headings is amended by striking the date in the effective period column and inserting “12/31/2012”:

(1) Heading 9902.10.48 (relating to a mixture of 1,3,5-Triazine-2,4,6-triamine,N,N''-[1,2-ethane-diyl-bis [[[4,6-bis-[butyl (1,2,2,6,6-pentamethyl-4-piperidiny]amino]-1,3,5-triazine-2-yl] imino]-3,1-propanediyl]] bis[N',N''- dibutyl-N',N''-bis(1,2,2,6,6-pentamethyl-4-piperidiny]- and Butanedioic acid, dimethylester polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidine ethanol).

(2) Heading 9902.24.76 (relating to 2-Nitroaniline).

(3) Heading 9902.10.78 (relating to lutetium oxide).

(4) Heading 9902.10.77 (relating to phosphoric acid, lanthanum salt, and cerium terbium-doped).

(6) Heading 9902.02.21 (relating to yttrium oxides having a purity of at least 99.9 percent).

(9) Heading 9902.23.28 (relating to parts for use in the manufacture of certain high-performance loudspeakers).

(10) Heading 9902.24.08 (relating to the mixture of 5,5-Bis[(g,v-perfluoro(C4-20)alkylthio)methyl]-2-hydroxy-2-oxo-1,3,2-dioxaphosphorinane, ammonium salt and 2,2-bis[(g,v-perfluoro(C4-20)-alkylthio)methyl]-3-hydroxypropyl phosphate, diammonium salt and di-[2,2-bis[(g,v-perfluoro-(C4-20)alkylthio)methyl]-3-hydroxypropyl phosphate, ammonium salt and 2,2-bis[(g,v-perfluoro(C4-20)alkylthio)methyl]-1,3-di-(dihydrogenphosphate)propane, tetraammonium salt).

(11) Heading 9902.25.66 (relating to Glycine, N,N-Bis[2-hydroxy-3-(2-propenyloxy)propyl]-, monosodium salt, reaction

products with ammonium hydroxide and pentafluoroiodoethane-tetrafluoroethylyene telomer).

(12) Heading 9902.24.07 (relating to 3-Cyclohexene-1-carboxylic acid, 6-[(di-2-propenylamino)carbonyl]-, rel-(1R,6R)-, reaction products with pentafluoroiodoethane-tetrafluoroethylene telomer, ammonium salt).

(13) Heading 9902.12.47 (relating to Bis(2,2,6,6-tetramethyl-4-piperidyl) sebacate).

(14) Heading 9902.02.15 (relating to Tetraethylammonium perfluorooctanesulfonate).

(15) Heading 9902.28.01 (relating to Thionyl chloride).

(16) Heading 9902.24.64 (relating to 1,1,2,2,3,3,4,4,4-Nonafluorobutanesulfonic acid, potassium salt).

(17) Heading 9902.24.62 (relating to Phosphoric acid, tris (2-ethylhexyl)ester).

(18) Heading 9902.24.61 (relating to certain plasticizers).

(19) Heading 9902.11.93 (relating to 1,4-benzenedicarboxylic acid, polymer with n,n'-bis(2-aminoethyl)-1,2-ethanediamine, cyclized, methosulfate).

(21) Heading 9902.03.03 (relating to sulfur black 1).

(22) Heading 9902.22.45 (relating to cyanuric chloride).

(23) Heading 9902.22.87 (relating to magnesium peroxide, minimum 25 percent purity).

(24) Heading 9902.11.06 (relating to DEMBB).

(25) Heading 9902.29.06 (relating to diphenyl sulfide).

(26) Heading 9902.29.16 (relating to 4,4-Dimethoxy-2-butanone).

(27) Heading 9902.29.08 (relating to 3-Amino-5-mercapto-1,2,4-triazole).

(28) Heading 9902.22.10 (relating to 2-Phenylphenol sodium salt).

(29) Heading 9902.25.40 (relating to Styrene, ar-ethyl, polymer with divinylbenzene and styrene beads with low ash).

(30) Heading 9902.29.26 (relating to 1,3-Dimethyl-2-imidazolidinone).

(31) Heading 9902.25.34 (relating to 3,4-Dichlorobenzotrifluoride).

(32) Heading 9902.25.41 (relating to mixtures of fungicide).

(33) Heading 9902.02.90 (relating to halofenozide).

(34) Heading 9902.02.96 (relating to isoxaben).

(35) Heading 9902.32.87 (relating to fenbuconazole).

(36) Heading 9902.30.49 (relating to ethalfluralin).

(37) Heading 9902.05.17 (relating to tebufenozide).

(38) Heading 9902.25.38 (relating to quintec).

(39) Heading 9902.29.61 (relating to quinoline).

(40) Heading 9902.02.93 (relating to mixed isomers of 1,3-dichloropropene).

(41) Heading 9902.25.39 (relating to 1,2-Benzisothiazol-3(2H)-one (9Cl)).

(42) Heading 9902.32.92 (relating to β -Bromo- β -nitrostyrene).

(43) Heading 9902.25.37 (relating to mixtures of insecticide).

(44) Heading 9902.32.90 (relating to diiodomethyl-*p*-tolylsulfone).

(45) Heading 9902.11.86 (relating to methyl hydroxyethyl cellulose).

- (46) Heading 9902.11.84 (relating to methyl hydroxyethyl cellulose products).
- (47) Heading 9902.02.92 (relating to 1,2-Benzenedicarboxaldehyde).
- (48) Heading 9902.29.25 (relating to 2-Phenylphenol).
- (49) Heading 9902.02.85 (relating to 3,4-Dichlorobenzonitrile).
- (50) Heading 9902.29.17 (relating to 2,6-Dichloroaniline).
- (51) Heading 9902.10.62 (relating to certain hydraulic control units).
- (52) Heading 9902.24.09 (relating to 1-(3H)-Isobenzofuranone, 3,3-bis(2-methyl-1-octyl-1H-indol-3-yl)-).
- (53) Heading 9902.32.14 (relating to 2-methyl-4,6-bis[(octylthio)methyl]phenol).
- (54) Heading 9902.24.43 (relating to 2-Methyl-1-[4-(methylthio)phenyl]-2-(4-morpholinyl)-1-propanone).
- (55) Heading 9902.24.77 (relating to 2,2-(2,5-Thiophenediyl)bis(5-(1,1-dimethylethyl) benzoxazole)).
- (56) Heading 9902.24.91 (relating to reactive black 5).
- (57) Heading 9902.02.44 (relating to Reactive red 266 (2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[[2-[[4-fluoro-6-[[5-hydroxy-6-[(4-methoxy-2-sulfo)phenyl]azo]-7-sulfo-naphthalenyl]amino]-1,3,5-triazin-2-yl]amino]-1-methylethyl]amino]-1,3,5-triazin-2-yl]amino]-3-[[4-(ethenylsulfonyl)phenyl]azo]-4-hydroxy, sodium salt)).
- (58) Heading 9902.13.26 (relating to diuron).
- (60) Heading 9902.13.24 (relating to linuron).
- (61) Heading 9902.23.49 (relating to Dimethyl malonate).
- (64) Heading 9902.23.56 (relating to certain 6V lead-acid storage batteries).
- (66) Heading 9902.12.43 (relating to dimethyl carbonate).
- (67) Heading 9902.01.48 (relating to ethyl pyruvate).
- (68) Heading 9902.01.44 (relating to benzyl carbazate).
- (69) Heading 9902.12.45 (relating to famoxadone, Cymoxanil, and application adjuvants).
- (70) Heading 9902.12.42 (relating to DPX-KN128).
- (71) Heading 9902.29.91 (relating to Methyl-4-trifluoro methoxyphenyl-N-(chlorocarbonyl) carbamate).
- (72) Heading 9902.23.64 (relating to acetoacetyl-2,5-dimethoxy-4-chloroanilide).
- (73) Heading 9902.23.63 (relating to 3-amino-4-methylbenzamide).
- (74) Heading 9902.23.61 (relating to basic blue 7).
- (75) Heading 9902.23.60 (relating to basic violet 1).
- (76) Heading 9902.23.59 (relating to 5-chloro-3-hydroxy-2-methyl-2-naphthanilide).
- (77) Heading 9902.23.58 (relating to 5-chloro-3-hydroxy-2-methoxy-2-naphthanilide).
- (78) Headings 9902.22.17 and 9902.22.18 (relating to O-Chlorotoluene).
- (79) Heading 9902.22.19 (relating to bayderm bottom dlv-n).
- (80) Heading 9902.24.55 (relating to certain ethylene-vinyl acetate copolymers).
- (81) Heading 9902.04.09 (relating to 3,6,9-trioxaundecanedioic acid).

- (82) Heading 9902.22.98 (relating to 3-(trifluoromethyl) benzoate).
- (83) Heading 9902.01.14 (relating to 5-MPDC).
- (84) Heading 9902.23.01 (relating to 4-methylbenzonitrile).
- (85) Heading 9902.22.99 (relating to 4-(trifluoromethoxy) phenyl isocyanate).
- (86) Heading 9902.10.31 (relating to trichloroacetaldehyde).
- (87) Heading 9902.10.72 (relating to 4-chlorobenzaldehyde).
- (88) Heading 9902.10.65 (relating to 2-acetylbutyrolactone).
- (89) Heading 9902.01.83 (relating to ethoprop).
- (90) Heading 9902.11.49 (relating to product mixtures containing foramsulfuron and iodosulfuronmethyl-sodium).
- (91) Heading 9902.01.36 (relating to Methanol, sodium salt).
- (92) Heading 9902.24.60 (relating to 2-ethylhexyl 4-methoxycinnamate).
- (93) Heading 9902.11.78 (relating to ion-exchange resin powder, dried to less than 5 percent moisture).
- (94) Heading 9902.02.29 (relating to 10,10'-oxybisphenoxarsine).
- (95) Heading 9902.02.33 (relating to a certain ion exchange resin).
- (96) Heading 9902.11.79 (relating to a ion-exchange resin powder, dried to less than 10 percent moisture).
- (97) Heading 9902.02.32 (relating to a certain ion exchange resin).
- (98) Heading 9902.22.33 (relating to trichlorobenzene).
- (99) Heading 9902.12.06 (relating to (IPN) isophthalonitrile).
- (100) Heading 9902.12.05 (relating to 1-chloro-2-propanone).
- (101) Heading 9902.13.29 (relating to brodifacoum).
- (102) Heading 9902.23.04 (relating to mixtures or coprecipitates of yttrium oxide and europium oxide).
- (103) Heading 9902.23.06 (relating to mixtures or coprecipitates of yttrium phosphate and cerium phosphate).
- (104) Heading 9902.11.35 (relating to DPA).
- (105) Heading 9902.12.50 (relating to Pigment Brown 25).
- (110) Heading 9902.10.80 (relating to Permethrin).
- (111) Heading 9902.11.74 (relating to Cypermethrin).
- (112) Heading 9902.13.27 (relating to Bromacil and Diuron).
- (113) Heading 9902.13.45 (relating to Pyrithiobac-sodium).
- (114) Heading 9902.05.01 (relating to mixtures of methyl 2-[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]-amino]carbonyl]amino]sulfonyl]-3-methylbenzoate and application adjuvants).
- (115) Heading 9902.13.32 (relating to trifloxysulfuron-sodium technical).
- (116) Heading 9902.04.11 (relating to 1,3-Benzenedicarboxamide, N, N'-bis-(2,2,6,6-tetramethyl-4-piperidiny)-).
- (117) Heading 9902.04.07 (relating to reaction products of phosphorous trichloride with 1,1'-biphenyl and 2,4-bis(1,1-dimethylethyl)phenol).
- (118) Heading 9902.04.05 (relating to preparations based on ethanediamide, N-(2-ethoxyphenyl)-N'-(4-isodecylphenyl)-).

(119) Heading 9902.04.12 (relating to 3-Dodecyl-1-(2,2,6,6-tetramethyl-4-piperidiny)-2,5-pyrrolidinedione).

(120) Heading 9902.04.06 (relating to 1-Acetyl-4-(3-dodecyl-2,5-dioxo-1-pyrrolidiny)-2,2,6,6-tetramethylpiperidine).

(121) Heading 9902.84.91 (relating to certain manufacturing equipment).

(122) Heading 9902.23.47 (relating to self contained, carafeless automatic drip coffeemaker with electronic clock).

(123) Heading 9902.23.48 (relating to under the counter mounting electric can openers).

(124) Heading 9902.23.46 (relating to self contained, carafeless automatic drip coffeemaker).

(125) Heading 9902.23.45 (relating to open top, electric indoor grills).

(126) Heading 9902.23.44 (relating to electric juice extractors).

(127) Heading 9902.23.43 (relating to electric juice extractors).

(128) Heading 9902.23.42 (relating to sandwich toaster grills).

(129) Heading 9902.23.41 (relating to ice shavers).

(130) Heading 9902.23.40 (relating to combination single slot toaster and toaster ovens).

(131) Heading 9902.23.39 (relating to electric knives).

(132) Heading 9902.23.38 (relating to handheld electric can openers).

(136) Heading 9902.02.08 (relating to cyprodinil).

(137) Heading 9902.02.12 (relating to difenoconazole).

(138) Heading 9902.12.53 (relating to mixtures of difenoconazole and mefenoxam).

(139) Heading 9902.13.31 (relating to formulations of Thiamethoxam, Difenoconazole, Fludioxonil, and Mefenoxam).

(140) Heading 9902.02.09 (relating to mixtures of cyhalothrin and application adjuvants).

(141) Heading 9902.02.05 (relating to mucochloric acid).

(142) Heading 9902.02.04 (relating to mixtures of mefenoxam, fludioxonil, and cymoxanil with application adjuvants).

(143) Heading 9902.01.16 (relating to epdc).

(144) Heading 9902.24.18 (relating to mixtures of 2-amino-2,3-dimethylbutanenitrile and toluene).

(145) Heading 9902.24.19 (relating to 2,3-quinoline dicarboxylic acid).

(147) Heading 9902.24.20 (relating to 3,5-Difluoroaniline).

(148) Heading 9902.24.17 (relating to quinolinic acid).

(150) Heading 9902.13.44 (relating to 2-methyl-4-methoxy-6-methylamino-1,3,5-triazine).

(151) Heading 9902.13.42 (relating to 2-amino-4-methoxy-6-methyl-1,3,5-triazine).

(152) Heading 9902.33.63 (relating to 3-(ethylsulfonyl)-2-pyridinesulfonamide).

(153) Heading 9902.33.61 (relating to carbamic acid).

(154) Heading 9902.25.05 (relating to Direct Yellow 119).

(155) Heading 9902.02.37 (relating to 2-amino-6-nitrophenol-4-sulfonic acid).

(156) Heading 9902.02.38 (relating to 2-amino-5-sulfobenzoic acid).

- (157) Heading 9902.01.66 (relating to 2,4-disulfobenzaldehyde).
- (158) Heading 9902.01.65 (relating to p-cresidinesulfonic acid (4-amino-5-methoxy-2-methylbenzenesulfonic acid)).
- (159) Heading 9902.23.66 (relating to synthetic indigo powder, (3h-indol-3-one, 2-(1,3-dihydro-3-oxo-2h-indol-2-ylidene)-1,2-dihydro-)).
- (160) Heading 9902.02.39 (relating to 2,5-bis[(1,3-dioxobutyl)amino]benzenesulfonic acid).
- (161) Heading 9902.25.04 (relating to Basic Yellow 40 chloride based).
- (162) Heading 9902.23.37 (relating to metal halide lamps designed for use in video projectors).
- (163) Heading 9902.05.11 (relating to 3,3',4,4'-biphenyltetracarboxylic dianhydride).
- (164) Heading 9902.05.14 (relating to pyromellitic dianhydride).
- (165) Heading 9902.11.71 (relating to lewattit).
- (166) Heading 9902.32.82 (relating to 2,6-Dichlorotoluene).
- (167) Heading 9902.04.10 (relating to Crotonic acid).
- (168) Heading 9902.03.05 (relating to Fluorobenzene).
- (169) Heading 9902.24.67 (relating to unicycles).
- (170) Heading 9902.24.69 (relating to bicycle wheel rims).
- (171) Heading 9902.10.41 (relating to o-Anisidine).
- (172) Heading 9902.23.65 (relating to Phenyl salicylate (benzoic acid, 2-hydroxy-, phenyl ester)).
- (173) Heading 9902.22.80 (relating to Titanium mononitride).
- (174) Heading 9902.11.37 (relating to 1-Fluoro-2-nitrobenzene).
- (175) Heading 9902.10.43 (relating to 2,4-Xylidine).
- (176) Heading 9902.24.45 (relating to Vat Black 25).
- (177) Heading 9902.12.34 (relating to Chloroacetic acid, sodium salt).
- (178) Heading 9902.02.75 (relating to esters and sodium esters of parahydroxybenzoic acid).
- (179) Heading 9902.11.01 (relating to Glyoxylic acid).
- (180) Heading 9902.22.41 (relating to Isobutyl 4-hydroxybenzoate and its sodium salt).
- (181) Heading 9902.34.01 (relating to sodium petroleum sulfonic acids, sodium salts).
- (182) Heading 9902.29.70 (relating to Tetraacetylethylenediamine).
- (183) Heading 9902.85.42 (relating to certain cathode-ray tubes).
- (184) Heading 9902.23.21 (relating to a certain specialty monomer).
- (185) Heading 9902.01.62 (relating to THV).
- (186) Heading 9902.13.86 (relating to certain refracting and reflecting telescopes).
- (187) Heading 9902.03.34 (relating to Penta Amino Aceto Nitrate Cobalt III).
- (188) Heading 9902.11.44 (relating to mixtures of methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)ureidosulfonyl] benzoate, sodium salt (Iodosulfuron methyl, sodium salt) and application adjuvants).
- (189) Heading 9902.11.48 (relating to mesosulfuronmethyl).

- (190) Heading 9902.24.34 (relating to tetramethrin).
- (191) Heading 9902.25.69 (relating to flumioxasin).
- (192) Heading 9902.10.83 (relating to Resmethrin).
- (194) Heading 9902.23.07 (relating to oysters (other than smoked), prepared or preserved).
- (195) Heading 9902.05.22 (relating to fenpropathrin).
- (196) Heading 9902.24.35 (relating to tralomethrin).
- (197) Heading 9902.24.29 (relating to Bispyribac-sodium).
- (198) Heading 9902.24.30 (relating to dinotefuran).
- (199) Heading 9902.24.31 (relating to etoxazole).
- (200) Heading 9902.24.27 (relating to Pyriproxyfen).
- (201) Heading 9902.05.24 (relating to Uniconazole).
- (202) Heading 9902.12.03 (relating to Previcur).
- (203) Heading 9902.13.97 (relating to Ziram).
- (204) Heading 9902.03.79 (relating to mixtures of thiophanate methyl and application adjuvants).
- (205) Heading 9902.03.77 (relating to thiophanate methyl).
- (206) Heading 9902.02.87 (relating to Methyl sulfanilylcarbamate, sodium salt (asulam sodium salt)).
- (207) Heading 9902.12.10 (relating to 2-Oxepanone polymer with 1,4-butanediol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-ethyl-1-hexanol-blocked).
- (208) Heading 9902.11.83 (relating to Polyisocyanate cross linking agent products containing triphenylmethane triisocyanate in solvents).
- (209) Heading 9902.11.87 (relating to Trimethylopropane tris(3-aziridinylpropanoate)).
- (210) Heading 9902.11.82 (relating to Hexane, 1,6-diisocyanato-, homopolymer, 3,5-dimethyl-1H-pyrazole-blocked in solvents).
- (211) Heading 9902.11.80 (relating to 1,2,3-Propanetriol, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, methyloxirane and oxirane).
- (212) Heading 9902.10.22 (relating to acrylic or modacrylic staple fibers, carded, combed, or otherwise processed for spinning).
- (213) Heading 9902.23.27 (relating to filament tow of rayon).
- (214) Heading 9902.23.33 (relating to certain staple fibers of viscose rayon, not carded, combed, or otherwise processed for spinning).
- (215) Heading 9902.23.34 (relating to certain staple fibers of viscose rayon, carded, combed, or otherwise processed for spinning).
- (216) Heading 9902.10.93 (relating to certain transaxles designed for use in hybrid vehicles).
- (217) Heading 9902.10.94 (relating to certain static converters designed for use in hybrid vehicles).
- (218) Heading 9902.10.95 (relating to certain controllers for electric power assisted braking systems, designed for use in hybrid vehicles).
- (219) Heading 9902.10.64 (relating to 2,4-Dichloroaniline).
- (220) Heading 9902.10.38 (relating to Fenamidone).
- (221) Heading 9902.10.36 (relating to Pyrimethanil).
- (222) Heading 9902.02.99 (relating to cis-3-Hexen-1-ol).
- (223) Heading 9902.02.98 (relating to polytetramethylene ether glycol).

- (224) Heading 9902.24.14 relating to C12-18 alkenes).
- (225) Heading 9902.03.59 (relating to acid black 132).
- (226) Heading 9902.01.75 (relating to acid black 172).
- (227) Heading 9902.03.67 (relating to acid blue 113).
- (228) Heading 9902.03.65 (relating to acid orange 116).
- (229) Heading 9902.03.58 (relating to disperse blue 56).
- (230) Heading 9902.24.90 (relating to Reactive Blue 250).
- (231) Heading 9902.24.41 (relating to Lycopene 10 percent).
- (232) Heading 9902.22.07 (relating to 3,7-dichloro-8-quinolinecarboxylic acid).
- (233) Heading 9902.01.19 (relating to 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidineidione).
- (234) Heading 9902.32.85 (relating to Bis(4-fluorophenyl)methanone).
- (235) Heading 9902.23.20 (relating to Morpholine,4-[4,5-dihydro-4-[3-[5-hydroxy-1-methyl-3-(4-morpholinylcarbonyl)-1H-pyrazol-3-yl]-2-propenylidene]-1-methyl-5-oxo-1H-pyrazol-3-yl]carbonyl]-, potassium salt; 1,4-benzenedisulfonic acid, 2-[4-[5-[1-(2,5-disulfophenyl)-1,5-dihydro-3-[(methylamino)carbonyl]-5-oxo-4H-pyrazol-4-ylidene]-3-(2-oxo-1-pyrrolidinyl)-1,3-pentadienyl]-5-hydroxy-3-[(methylamino)carbonyl]-1H-pyrazol-1-yl]-, pentapotassium salt).
- (236) Heading 9902.25.30 (relating to certain cores used in remanufacture).
- (237) Heading 9902.25.31 (relating to certain cores used in remanufacture).
- (238) Heading 9902.25.32 (relating to certain cores used in remanufacture).
- (239) Heading 9902.12.19 (relating to D-Mannose).
- (240) Heading 9902.02.57 (relating to Propoxur).
- (241) Heading 9902.13.77 (relating to Desmedipham in bulk or mixtures).
- (242) Heading 9902.22.96 (relating to triphenyltin hydroxide).
- (243) Heading 9902.22.94 (relating to MCPB Acid and MCPB Sodium Salt).
- (244) Heading 9902.23.31 (relating to lamp-holder housings of aluminum, containing sockets).
- (245) Heading 9902.23.32 (relating to lamp-holder housings of brass, containing sockets).
- (246) Heading 9902.23.29 (relating to lamp-holder housings of plastic, containing sockets).
- (247) Heading 9902.23.30 (relating to lamp-holder housings of porcelain, containing sockets).
- (248) Heading 9902.01.43 (relating to Thymol).
- (249) Heading 9902.01.40 (relating to Menthyl anthranilate).
- (250) Heading 9902.01.35 (relating to 2-Phenylbenzimidazole-5-sulfonic acid).
- (251) Heading 9902.24.47 (relating to Methyl Salicylate).
- (252) Heading 9902.01.38 (relating to p-Methylacetophenone).
- (253) Heading 9902.01.39 (relating to 2,2-Dimethyl-3-(3-methylphenyl)propanal).

- (254) Heading 9902.38.31 (relating to mixtures of n-phenyl-n-((trichloromethyl)thio)-benzenesulfonamide, calcium carbonate, and mineral oil).
- (255) Heading 9902.80.05 (relating to cobalt boron).
- (256) Heading 9902.02.49 (relating to 4-(trifluoromethyl)-benzaldehyde).
- (257) Heading 9902.22.03 (relating to 3-oxido-5-oxo-4-propionylcyclohex-3-enecarboxylic acid calcium salt).
- (258) Heading 9902.22.91 (relating to mixtures of methyl (E)-methoxyimino-[α -(o-tolyloxy)-o-tolyl]acetate (Kresoxim methyl) and application adjuvants).
- (259) Heading 9902.10.75 (relating to Phosphorus Thiochloride).
- (260) Heading 9902.01.56 (relating to 2-Chlorobenzyl chloride).
- (261) Heading 9902.10.82 (relating to N-3[3-(1-methylethoxy)phenyl]-2-(trifluoromethyl)benzamide).
- (262) Heading 9902.24.42 (relating to mixtures of propoxycarbazone-sodium, Mesosulfuron-methyl, and application adjuvants).
- (264) Heading 9902.05.19 (relating to ethofumesate in bulk or mixtures).
- (265) Heading 9902.11.15 (relating to Tetraconazole).
- (266) Heading 9902.22.44 (relating to sodium hypophosphite).
- (267) Heading 9902.01.41 (relating to Allyl isothiocyanate).
- (268) Heading 9902.10.44 (relating to Crotonaldehyde (2-butenaldehyde)).
- (269) Heading 9902.23.50 (relating to lightweight digital camera lenses).
- (270) Heading 9902.23.51 (relating to digital zoom camera lenses).
- (271) Heading 9902.23.53 (relating to certain color video monitors).
- (272) Heading 9902.23.52 (relating to certain color video monitors).
- (273) Heading 9902.23.55 (relating to certain black and white monitors).
- (274) Heading 9902.23.54 (relating to certain color video monitors).
- (275) Heading 9902.03.01 (relating to yarn of combed cashmere or yarn of camel hair).
- (276) Heading 9902.12.20 (relating to camel hair, processed beyond the degreased or carbonized condition).
- (277) Heading 9902.12.21 (relating to waste of camel hair).
- (278) Heading 9902.12.22 (relating to camel hair, carded or combed).
- (279) Heading 9902.12.23 (relating to woven fabrics containing 85 percent or more by weight of vicuna hair).
- (280) Heading 9902.12.24 (relating to camel hair, not processed in any manner beyond the degreased or carbonized condition).
- (281) Heading 9902.12.25 (relating to noils of camel hair).
- (282) Heading 9902.23.36 (relating to multi-format DVD camcorders).
- (283) Heading 9902.23.35 (relating to multi-format DVD camcorders).

- (284) Heading 9902.72.02 (relating to Ferro Boron).
- (285) Heading 9902.10.63 (relating to shield asy-steering gear).
- (286) Heading 9902.23.16 (relating to Ethene, tetrafluoro, oxidized, polymerized, reduced, decarboxylated).
- (288) Heading 9902.22.05 (relating to methoxyacetic acid).
- (289) Heading 9902.24.58 (relating to Zeta-cypermethrin).
- (290) Heading 9902.11.60 (relating to 1,2-Pentanediol).
- (291) The first heading 9902.85.06 (relating to certain 120 volt/60 Hz electrical transformers).
- (292) Heading 9902.02.95 (relating to 2-Propenoic acid, polymer with diethenylbenzene).
- (b) OTHER MODIFICATIONS.—
 - (1) 4-CHLOROBENZONITRILE.—Heading 9902.25.24 is amended—
 - (A) by striking “p-Chlorobenzonitrile” and inserting “4-Chlorobenzonitrile”;
 - (B) by striking “1.5%” and inserting “Free”; and
 - (C) by striking “12/31/2009” and inserting “12/31/2012”.
 - (2) CYCLOPENTANONE.—Heading 9902.11.02 is amended—
 - (A) by striking “Free” and inserting “1.7%”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
 - (3) MICRO-POROUS, ULTRAFINE, SPHERICAL POLYAMIDE POWDERS OF POLYAMIDE 6; POLYAMIDE-12; AND POLYAMIDE 6, 12.—Heading 9902.39.08 is amended—
 - (A) by amending the article description to read as follows: “Micro-porous, ultrafine, spherical polyamide powders of polyamide 6 (CAS No. 356040–79–4); polyamide-12 (CAS No. 338462–62–7); and polyamide 6, 12 (CAS No. 356040–89–6) (provided for in subheadings 3908.10.00 and 3908.90.70)”;
 - (B) by striking “12/31/2009” and by inserting “12/31/2012”.
 - (4) 9,10-ANTHRACENEDIONE, 2-(1,1-DIMETHYLPROPYL)- AND 9,10-ANTHRACENEDIONE, 2-(1,2-DIMETHYLPROPYL)-.—Heading 9902.24.05 is amended—
 - (A) by striking “9,10-Anthracenedione, 2-pentyl- (CAS No. 13936–21–5)” and inserting “9,10-Anthracenedione, 2-(1,1-dimethylpropyl)- (CAS No. 32588–54–8) and 9,10-anthracenedione, 2-(1,2-dimethylpropyl)- (CAS No. 68892–28–4)”;
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
 - (5) MESOTRIONE.—Subchapter II of chapter 99 is amended—
 - (A) by striking heading 9902.25.80; and
 - (B) in heading 9902.11.03, by striking the date in the effective period column and inserting “12/31/2012”.
 - (6) ADTP.—Heading 9902.25.33 is amended—
 - (A) by striking “Free” and inserting “3%”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
 - (7) CYHALOFOP-BUTYL.—Heading 9902.02.86 is amended—
 - (A) by inserting “(Cyhalofop-butyl)” after “(2R)”;
 - (B) by striking “1.5%” and inserting “2%”; and
 - (C) by striking “12/31/2009” and inserting “12/31/2012”.
 - (8) 2-CYANOPYRIDINE.—Heading 9902.22.35 is amended—
 - (A) by striking “Free” and inserting “3.2%”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.

- (9) BENFLURALIN.—Heading 9902.29.59 is amended—
 (A) by inserting “(Benfluralin)” after “toluidine”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (10) DMDS.—Heading 9902.33.92 is amended—
 (A) by striking “Free” and inserting “1%”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (11) MCPA ESTER.—Heading 9902.10.54 is amended—
 (A) by amending the article description to read as follows: “2-Ethylhexyl (4-chloro-2-methylphenoxy)acetate (MCPA-2-ethylhexyl) (CAS No. 29450-45-1) (provided for in subheading 2918.99.20)”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (12) MCPA ACID.—Heading 9902.13.60 is amended—
 (A) in the article description, by inserting “(MCPA)” before “(CAS”;
 (B) by striking “Free” and inserting “2.8%”; and
 (C) by striking “12/31/2009” and inserting “12/31/2012”.
- (13) PROPICONAZOLE.—Heading 9902.29.80 is amended—
 (A) in the article description, by inserting “(Propiconazole)” before “(CAS”;
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (14) MYCLOBUTANIL.—Heading 9902.02.91 is amended—
 (A) by striking “3%” and inserting “2.3%”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (15) METHOXYFENOZIDE.—Heading 9902.32.93 is amended—
 (A) by inserting “(Methoxyfenozide)” after “hydrazide”;
 (B) by striking “1.0%” and inserting “4.3%”; and
 (C) by striking “12/31/2009” and inserting “12/31/2012”.
- (16) TRIFLURALIN.—Heading 9902.05.33 is amended—
 (A) in the article description, by inserting “(Trifluralin)” before “(CAS”;
 (B) by striking “2.6%” and inserting “2.4%”; and
 (C) by striking “12/31/2009” and inserting “12/31/2012”.
- (18) DEPCT.—Heading 9902.29.58 is amended—
 (A) by striking “phosphorochlorodithioate” and inserting “phosphorochloridodithioate”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (19) BICYCLE SPEEDOMETERS.—Heading 9902.24.65 is amended—
 (A) by striking “Free” and inserting “0.9%”; and
 (B) by striking “12/31/2009” and by inserting “12/31/2012”.
- (20) 11-AMINOUNDECANOIC ACID.—Heading 9902.32.49 is amended—
 (A) by striking “2.3%” and inserting “2.6%”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (21) BIAXIALLY ORIENTED POLYPROPYLENE DIELECTRIC FILM.—Heading 9902.25.75 is amended—
 (A) by striking “3.7%” and inserting “Free”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (22) PALM FATTY ACID DISTILLATE.—Heading 9902.11.32 is amended—
 (A) by striking “1%” and inserting “1.2%”; and
 (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (23) 5-CHLORO-1-INDANONE.—Heading 9902.12.44 is amended—

- (A) by striking “Free” and inserting “1.1%”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (24) 1-PROPENE, 1,1,2,3,3,3-HEXAFLUORO-, OXIDIZED, POLYMERIZED, REDUCED HYDROLYZED.—Heading 9902.23.10 is amended—
(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (25) ETHENE TETRAFLUORO-OXIDIZED, POLYMERIZED REDUCED, METHYL ESTERS, REDUCED, ETHOXYLATED.—Heading 9902.23.17 is amended—
(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (26) 1, 1, 2-2-TETRAFLUOROETHENE, OXIDIZED, POLYMERIZED.—Heading 9902.23.14 is amended—
(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (27) METHOXYCARBONYL-TERMINATED PERFLUORINATED POLYOXYMETHYLENE-POLYOXYETHYLENE.—Heading 9902.23.15 is amended—
(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (28) ETHENE, TETRAFLUORO, OXIDIZED, POLYMERIZED REDUCED, METHYL ESTERS, REDUCED.—Heading 9902.23.19 is amended—
(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (29) OXIRANEMETHANOL, POLYMERS WITH REDUCED METHYL ESTERS OF REDUCED POLYMERIZED OXIDIZED TETRAFLUOROETHYLENE.—Heading 9902.23.18 is amended—
(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (30) 1-PROPENE, 1,1,2,3,3,3-HEXAFLUORO-, OXIDIZED, POLYMERIZED.—Heading 9902.23.11 is amended—
(A) by striking “3907.20.00” and inserting “3904.69.50”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (31) VINYLIDENE CHLORIDE-METHYL METHACRYLATE-ACRYLONITRILE COPOLYMER.—Heading 9902.23.09 is amended—
(A) by striking “(provided for in subheading 3904.50.00)” and inserting “(provided for in subheading 3904.90.50)”; and
(B) by striking “12/31/2009” and inserting “12/31/2012”.
- (32) 1-PROPENE, 1,1,2,3,3,3-HEXAFLUORO-, TELOMER WITH CHLOROTRIFLUOROETHENE, OXIDIZED, REDUCED, ETHYL ESTER, HYDROLYZED.—Heading 9902.23.12 is amended—

(A) by striking “(provided for in subheading 3907.20.00)” and inserting “(provided for in subheading 3904.69.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(33) PRODIAMINE.—Heading 9902.03.19 is amended—

(A) by amending the article description to read as follows: “2,4-Dinitro-N3,N3-dipropyl-4-(trifluoromethyl)-1,3-benzenediamine (Prodiamine) (CAS No. 29091-21-2) (provided for in subheading 2921.59.80)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(34) BENTAZON.—Heading 9902.05.10 is amended—

(A) by amending the article description to read as follows: “3-Isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one-2,2-dioxide, sodium salt (Bentazon, sodium salt) (CAS No. 50723-80-3) (provided for in subheading 2934.99.15)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(35) IPRDIONE.—Heading 9902.01.51 is amended—

(A) by striking “2%” and inserting “2.4%”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(36) β -CYFLUTHRIN.—Heading 9902.02.54 is amended—

(A) by striking “4.3%” and inserting “4.8%”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(37) CYFLUTHRIN.—Heading 9902.10.67 is amended—

(A) by striking “3.5%” and inserting “Free”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(38) CLOTHIANIDIN.—Heading 9902.10.84 is amended—

(A) by striking “5.4%” and inserting “Free”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(39) TRIFLOXYSTROBIN.—Heading 9902.10.76 is amended—

(A) by striking “2.4%” and inserting “5.4%”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(40) FOE HYDROXY.—Heading 9902.03.38 is amended—

(A) by striking “5.2%” and inserting “0.6%”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(41) HELIUM.—Heading 9902.01.47 is amended—

(A) by inserting “(CAS No. 7440-59-7)” before “(provided for in subheading 2804.29.00)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(42) A CERTAIN CHEMICAL.—Heading 9902.22.11 is amended—

(A) by striking “Adsorbent resin comprised of a macroporous polymer of diethenylbenzene” and inserting “Macroporous poly(divinylbenzene)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(43) ACM.—Heading 9902.10.79 is amended—

(A) by striking “0.7%” and inserting “1.7%”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(44) OXADIAZON.—Heading 9902.10.73 is amended—

(A) by amending the article description to read as follows: “2-*tert*-Butyl-4-(2,4-dichloro-5-isopropoxyphenyl)- Δ^2 -1,3,4-oxadiazolin-5-one (Oxadiazon) (CAS No. 19666-30-9) (provided for in subheading 2934.99.11)”; and

(B) by striking “Free” and inserting “0.9%”; and

(C) by striking “12/31/2009” and inserting “12/31/2012”.

(45) N-CYCLOHEXYLTHIOPHTHALIMIDE.—Subchapter II of chapter 99 is amended—

- (A) by striking heading 9902.03.30 (relating to N-Cyclohexylthiophthalimide); and
- (B) in heading 9902.22.26 (relating to N-Cyclohexylthiophthalimide), by striking “12/31/2009” and inserting “12/31/2012”.
- (46) 4,4-DITHIODIMORPHOLINE.—Heading 9902.22.27 is amended—
- (A) by striking “2930.90.91” and inserting “2934.99.90”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (48) CERTAIN MEN’S FOOTWEAR COVERING THE ANKLE WITH COATED OR LAMINATED TEXTILE FABRICS.—Heading 9902.25.60 is amended—
- (A) by striking “12.8%” and inserting “16.5%”; and
- (B) in the effective period column, by striking the date contained therein and inserting “12/31/2012”.
- (49) CARFENTRAZONE-ETHYL.—Heading 9902.01.54 is amended—
- (A) by amending the article description to read as follows: “ α -2-Dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid, ethyl ester (Carfentrazonethyl) (CAS No. 128639-02-1) and formulations thereof (provided for in subheadings 2933.99.22 and 3808.93.15)”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (50) 4,4’-OXYDIANILINE.—Heading 9902.05.12 is amended—
- (A) by striking “1.5%” and inserting “1.0%”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (51) REACTIVE BLUE 235.—Heading 9902.02.47 is amended—
- (A) by inserting “(Reactive Blue 235)” after “trisodium”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (52) REACTIVE RED 238.—Heading 9902.02.48 is amended—
- (A) by inserting “(Reactive Red 238)” after “tetrasodium salt”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (53) IMAZALIL.—Heading 9902.38.09 is amended—
- (A) in the article description—
- (i) by inserting “(Imazalil)” after “enilconazole”; and
- (ii) by striking “or 73790-28-0”; and
- (B) by striking “12/31/2006” and inserting “12/31/2012”.
- (54) MIXTURES OF SODIUM SALTS.—Heading 9902.29.83 is amended—
- (A) in the article description, by inserting “(CAS No. 144538-83-0)” after “acid”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (55) ISOXAFLUTOLE.—Heading 9902.11.46 is amended—
- (A) by striking “4.8%” and inserting “Free”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (56) ISOXADIFEN-ETHYL.—Heading 9902.11.45 is amended—
- (A) in the article description, by striking “(Isoxadifenethyl)” and inserting “(Isoxadifen-Ethyl)”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (57) SPIROMESIFEN.—Heading 9902.10.71 is amended—
- (A) in the article description—

- (i) by inserting “(Spiromesifen)” after “ester”; and
 - (ii) by inserting “No.” after “CAS”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (59) CERTAIN MEN’S FOOTWEAR NOT COVERING THE ANKLE WITH COATED OR LAMINATED TEXTILE FABRICS.—Heading 9902.25.61 is amended—
 - (A) by striking “15.2%” and inserting “17.5%”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (60) 2-METHYL-5-NITROBENZENESULFONIC ACID.—Subchapter II of chapter 99 is amended—
 - (A) by striking heading 9902.02.36; and
 - (B) in heading 9902.29.23, by striking “12/31/2009” and inserting “12/31/2012”.
- (61) METHIDATHION.—Heading 9902.02.02 is amended—
 - (A) by inserting “(Methidathion)” before “(CAS)”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (62) TRINEXAPAC-ETHYL.—Heading 9902.29.93 is amended—
 - (A) by striking all before “(CAS)” and inserting “Ethyl (RS)-4-cyclopropyl(hydroxy)methylene-3,5-dioxocyclohexanecarboxylate (Trinexapac-ethyl)”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (63) RIMSULFURON.—Heading 9902.33.60 is amended—
 - (A) by inserting “(Rimsulfuron)” before “and application adjuvants”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (64) CERTAIN ION-EXCHANGE RESINS.—Heading 9902.39.30 is amended—
 - (A) by amending the article description to read as follows: “Ion-exchange resin, copolymerized from acrylonitrile with divinylbenzene, ethylvinylbenzene and 1,7-octadiene, hydrolyzed (CAS No. 130353-60-5) (provided for in subheading 3914.00.60)”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (65) BRAKES DESIGNED FOR BICYCLES.—Heading 9902.24.71 is amended—
 - (A) by striking “Free” and inserting “6.3%”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (67) REACTIVE YELLOW 7459.—Heading 9902.02.46 is amended—
 - (A) by inserting “(Reactive Yellow 7459)” before “(CAS No. 143683-24-3)”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (68) CERTAIN CATALYTIC CONVERTER MATS OF CERAMIC FIBERS.—Heading 9902.25.72 is amended—
 - (A) by amending the article description to read as follows: “Catalytic converter mounting mats of ceramic fibers, 4.7625 mm or more in thickness, such fibers containing over 65 percent by weight of aluminum oxide, in bulk, sheets or rolls (provided for in subheading 6806.10.00), the foregoing designed for use in motor vehicles of heading 8703”; and
 - (B) by striking “1.5%” and inserting “Free”; and
 - (C) in the effective period column, by striking the date contained therein and inserting “12/31/2012”.
- (69) FLUMICLORAC-PENTYL.—Heading 9902.24.36 is amended—

- (A) in the article description—
 - (i) by striking “CAS No. 87547-04-4” and inserting “CAS No. 87546-18-7”; and
 - (ii) by striking “subheading 2926.90.25” and inserting “subheading 2925.19.42”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (70) ACEPHATE.—Heading 9902.25.68 is amended—
 - (A) by striking “1.8%” and inserting “2.9%”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (71) PHENMEDIPHAM.—Subchapter II of chapter 99 is amended—
 - (A) in heading 9902.13.76, by striking the date in the effective period column and inserting “12/31/2012”; and
 - (B) by striking heading 9902.31.13.
- (72) ORYZALIN.—Heading 9902.05.16 is amended—
 - (A) by amending the article description to read as follows: “4-(Dipropylamino)-3,5-dinitrobenzenesulfonamide (Oryzalin) (CAS No. 19044-88-3) (provided for in subheading 2935.00.95)”; and
 - (B) by striking “12/31/2006” and inserting “12/31/2012”.
- (73) POLY(TOLUENE DIISOCYANATE).—Heading 9902.12.04 is amended—
 - (A) by striking “dissolved in organic solvents”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (74) ALUMINUM TRIS (O-ETHYLPHOSPHONATE) (FOSETYL-AL).—Heading 9902.01.73 is amended—
 - (A) by inserting “(Fosetyl-Al)” before “(CAS”;
 - (B) by striking “Free” and inserting “0.4%”; and
 - (C) by striking “12/31/2009” and inserting “12/31/2012”.
- (75) CYCLOPROPANE-1,1-DICARBOXYLIC ACID, DIMETHYL ESTER.—Heading 9902.10.69 is amended—
 - (A) by striking “1.8%” and inserting “Free”; and
 - (B) by striking the date in the effective period column and inserting “12/31/2012”.
- (76) CLETHODIM.—Heading 9902.24.74 is amended—
 - (A) by striking “3808.93.20” and inserting “3808.93.50”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (77) ACID BLACK 107.—Heading 9902.03.61 is amended—
 - (A) by striking “3204.12.45” and inserting “3204.12.50”; and
 - (B) by striking “12/31/2006” and inserting “12/31/2012”.
- (78) DISPERSE RED 356.—Heading 9902.24.97 is amended—
 - (A) by amending the article description to read as follows: “Disperse red 356 (3-phenyl-7-(4-propoxyphenyl)benzo[1,2-b:4,5-b']difuran-2,6-dione) (CAS No. 79694-17-0) (provided for in subheading 3204.11.35)”; and
 - (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (79) IMIDACLOPRID PESTICIDES.—Heading 9902.02.52 is amended—
 - (A) by inserting “(imidacloprid)” before “(CAS”;
 - (B) by striking “5.7%” and inserting “4.2%”; and
 - (C) by striking “12/31/2009” and inserting “12/31/2012”.
- (80) IMIDACLOPRID TECHNICAL.—Heading 9902.10.32 is amended—
 - (A) by striking “pyrdinyl” and inserting “pyridinyl”;

(B) by striking “Free” and inserting “4.2%”; and

(C) by striking “12/31/2009” and inserting “12/31/2012”.

(81) OPTION AND REVOLVER HERBICIDES.—Heading 9902.10.37 is amended—

(A) by striking “2.6%” and inserting “Free”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(82) CERTAIN LIGHT ABSORBING PHOTO DYES.—Heading 9902.29.34 is amended—

(A) by amending the article description to read as follows:

“4-[4-[3-[4-(Dimethylamino)phenyl]-2-propenylidene]-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-1-yl] benzenesulfonic acid, compound with N,N-diethylethanamine (1:1) (Acid Violet 520T Pina) (CAS No. 109940-17-2) (provided for under subheading 3204.12.45); 4-[3-[3-carboxy-5-hydroxy-1-(4-sulfophenyl)-1H-pyrazole-4-yl]-2-propenylidene]-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1H-pyrazole-3-carboxylic acid, sodium salt, compound with N,N-diethylethanamine (CAS No. 90066-12-9) (provided for in subheading 2933.19.37); 4-[4,5-dihydro-4-[[5-hydroxy-3-methyl-1-(4-sulfophenyl)-1H-pyrazol-4-yl]methylene]-3-methyl-5-oxo-1H-pyrazol-1-yl]benzenesulfonic acid, dipotassium salt (CAS No. 94266-02-1) (provided for in subheading 2933.19.37); 4-[4-[[4-(dimethylamino)phenyl]methylene]-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-1-yl]benzenesulfonic acid, potassium salt (CAS No. 27268-31-1) (provided for in subheading 2933.19.37); 4,5-dihydro-5-oxo-4-[(phenylamino)methylene]-1-(4-sulfophenyl)-1H-pyrazole-3-carboxylic acid, disodium salt (provided for in subheading 2933.19.37); and 4-[5-[3-carboxy-5-hydroxy-1-(4-sulfophenyl)-1H-pyrazol-4-yl]-2,4-pentadienylidene]-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1H-pyrazole-3-carboxylic acid, tetrapotassium salt (CAS No. 134863-74-4) (provided for in subheading 2933.19.37); and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(83) ASPIRIN.—Heading 9902.12.11 is amended—

(A) by striking “aspirin” and inserting “Aspirin”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(84) 4-(2,4-DICHLOROPHENOXY) BUTYRIC ACID AND 4-(2,4-DICHLOROPHENOXY) BUTYRIC ACID, DIMETHYLAMINE SALT.—Heading 9902.23.26 is amended—

(A) by amending the article description to read as follows: “4-(2,4-Dichlorophenoxy) butyric acid (2,4-DB) (CAS No. 94-82-6) (provided for in subheading 2918.99.20); and 4-(2,4-dichlorophenoxy) butyric acid, dimethylamine salt (2,4-DB-dimethylammonium) (CAS No. 2758-42-1) (provided for in subheading 2921.11.00); and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(85) BROMOXYNIL OCTANOATE.—Heading 9902.22.97 is amended—

(A) in the article description—

(i) by inserting “(Bromoxynil octanoate)” before “(CAS”; and

(ii) by striking “1689-84-5” and inserting “1689-99-2”; and

(B) by striking “Free” and inserting “2.6%”; and

(C) by striking “12/31/2009” and inserting “12/31/2012”.

(86) DICHLORPROP-P, DICHLOROPROP-2-ETHYLHEXYL, AND DICHLORPROP-P-DIMETHYLAMMONIUM.—Heading 9902.23.25 is amended—

(A) by amending the article description to read as follows: “(+)-(R)-2-(2,4-Dichlorophenoxy) propanoic acid (Dichlorprop-p) (CAS No. 15165-67-0) (provided for in subheading 2918.99.20); (+)-(R)-2-(2,4-dichlorophenoxy) propanoic acid, 2-ethylhexyl ester (Dichlorprop-2-ethylhexyl) (CAS No. 79270-78-3) (provided for in subheading 2918.99.20); and (+)-(R)-2-(2,4-dichlorophenoxy) propanoic acid, dimethylamine salt (Dichlorprop-P-dimethylammonium) (CAS No. 104786-87-0) (provided for in subheading 2921.11.00)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(87) MCPA DIMETHYLAMMONIUM.—Heading 9902.25.42 is amended—

(A) by inserting “(MCPA dimethylammonium)” before “(CAS”;

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(88) LACTIC ACID, MENTHYL ESTER AND FRESCOLAT.—Heading 9902.01.42 is amended—

(A) by amending the article description to read as follows: “5-Methyl-2-(methylethyl)cyclohexyl-2-hydroxypropanoate (Lactic acid, menthyl ester) (Frescolat) (CAS No. 59259-38-0) (provided for in subheading 2918.11.51)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(89) BENZALDEHYDE, 4-METHOXY.—Heading 9902.11.57 is amended—

(A) by striking “Benzoldehyde” and inserting “Benzaldehyde”;

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(90) MIXTURES OF INDOXACARB.—Heading 9902.01.46 is amended—

(A) by amending the article description to read as follows: “Mixtures of (4aS)-7-chloro-2, 5-dihydro-2-[[methoxycarbonyl][4-(trifluoromethoxy) phenyl]amino]carbonyl]-indeno[1,2-e]-[1,3,4] oxadiazine-4a (3H)-carboxylic acid methyl ester and inert ingredients (CAS No. 173584-44-6) (provided for in subheading 3808.91.25)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(91) PACLOBUTRAZOL.—Heading 9902.01.99 is amended—

(A) by striking “(RS)” and inserting “(2RS”;

(B) by striking “paclobutrazol” and inserting “Paclobutrazol”;

(C) by striking “12/31/2006” and inserting “12/31/2012”.

(92) PACLOBUTRAZOL 2CS.—Heading 9902.02.01 is amended—

(A) by striking “(RS)” and inserting “(2RS”;

(B) by striking “paclobutrazol” and inserting “Paclobutrazol”;

(C) by striking “12/31/2006” and inserting “12/31/2012”.

(93) CERIUM SULFIDE PIGMENTS.—Heading 9902.22.90 is amended—

(A) by amending the article description to read as follows: “Pigment preparations based on cerium sulfide or mixtures of cerium sulfide and lanthanum sulfide (CAS

Nos. 12014-93-6 and 12031-49-1) (provided for in subheading 3206.49.60)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(94) MIXTURES OR COPRECIPITATES OF LANTHANUM PHOSPHATE, CERIUM-DOPED LANTHANUM PHOSPHATE, CERIUM PHOSPHATE, AND TERBIUM PHOSPHATE.—Heading 9902.23.05 is amended—

(A) by amending the article description to read as follows: “Mixtures or coprecipitates of lanthanum phosphate, cerium-doped lanthanum phosphate, cerium phosphate, and terbium phosphate (CAS Nos. 13778-59-1, 95823-34-0, 13454-71-2 and 13863-48-4) (provided for in subheadings 2846.10.00 and 2846.90.80)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(95) CERTAIN MANUFACTURING EQUIPMENT.—Heading 9902.84.83 is amended—

(A) by amending the article description to read as follows: “Machine tools for working wire of iron or steel, numerically controlled, the foregoing certified for use in production of radial tires designed for off-the-highway use and for use on a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), and parts thereof (provided for in subheading 8463.30.00 or 8466.94.85)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(96) CERTAIN MANUFACTURING EQUIPMENT.—Heading 9902.84.81 is amended—

(A) by amending the article description to read as follows: “Shearing machines used to cut metallic tissue, numerically controlled, the foregoing certified for use in production of radial tires designed for off-the-highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), and parts thereof (provided for in subheading 8462.31.00 or 8466.94.85)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(97) SULFENTRAZONE.—Heading 9902.25.57 is amended—

(A) in the article description—

(i) by striking “methanesulfona-mide” and inserting “methanesulfonamide”; and

(ii) by striking “(provided for in subheading 2935.00.75)” and inserting “and formulations thereof (provided for in subheadings 2935.00.75 and 3808.93.15)”; and

(B) by striking “1.2%” and inserting “3.2%”; and

(C) by striking “12/31/2009” and inserting “12/31/2012”.

(98) N-ETHYL-N-(3-SULFOBENZYL)ANILINE (BENZENESULFONIC ACID, 3-[(ETHYLPHENYLAMINO)METHYL]-).—Heading 9902.01.68 is amended—

(A) by amending the article description to read as follows: “N-Ethyl-N-(3-sulfobenzyl)aniline (3-[(ethylphenylamino)methyl]-benzenesulfonic acid) (CAS No. 101-11-1) (provided for in subheading 2921.42.90)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(99) AN ULTRAVIOLET DYE.—Heading 9902.28.19 is amended—

(A) in the article description, by striking “9-Anthracene-carboxylic acid, (triethoxysilyl)-methyl ester” and inserting “9-Anthracenecarboxylic acid, (triethoxysilyl)methyl ester”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(100) DELTAMETHRIN.—Heading 9902.01.49 is amended—

(A) by amending the article description to read as follows: ““(S)- α -Cyano-3-phenoxybenzyl (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate (Deltamethrin) (CAS No. 52918-63-5) in bulk, or put up in forms or packings for retail sale (provided for in subheading 2926.90.30 or 3808.91.25)””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(101) BIOALLETHRIN.—Heading 9902.24.32 is amended—

(A) by amending the article description to read as follows: ““(RS)-3-allyl-2-methyl-4-oxocyclopent-2-enyl (1R,3R)-2,2-dimethyl-3-(2-methylprop-1-enyl)cyclopropanecarboxylate (Bioallethrin) (CAS No. 584-79-2) (provided for in subheading 2916.20.50)””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(102) S-BIOALLETHRIN.—Heading 9902.24.33 is amended—

(A) by amending the article description to read as follows: ““(S)-3-allyl-2-methyl-4-oxocyclopent-2-enyl (1R,3R)-2,2-dimethyl-3-(2-methylprop-1-enyl)cyclopropanecarboxylate (S-Bioallethrin) (CAS No. 28434-00-6) (provided for in subheading 2916.20.50)””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(103) POLYFUNCTIONAL AZIRIDINE.—Heading 9902.11.88 is amended—

(A) in the article description, by striking “Polyfunctional aziridine” and inserting “Pentaerythritol tris (3-(1-aziridinyl) propionate””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(104) DESMODUR RF-E.—Heading 9902.12.17 is amended—

(A) by striking “and ethyl acetate and monochlorobenzene as solvents””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(105) DESMODUR HL BA.—Heading 9902.12.18 is amended—

(A) by amending the article description to read as follows: ““1,3-Diisocyanatomethylbenzene, polymer with 1,6-diisocyanatohexane (CAS No. 63368-95-6) (provided for in subheading 3911.90.45)””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(106) CERTAIN SEMI-MANUFACTURED FORMS OF GOLD.—Heading 9902.71.08 is amended—

(A) by amending the article description to read as follows: ““Wire containing 99.9 percent or more by weight of gold and with dopants added to control wirebonding characteristics, having a diameter of 0.05 mm or less, for use in the manufacture of diodes, transistors or similar semiconductor devices or electronic integrated circuits (provided for in subheading 7108.13.70)””; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(107) 2,2-DIMETHYLBUTANOIC ACID 3-(2,4-DICHLOROPHENYL)-2-OXO-1-OXASPIRO(4.5)DEC-3-EN-4-YL ESTER.—Heading 9902.12.02 is amended—

(A) by amending the article description to read as follows: “3-(2,4-Dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutyrate (Spirodiclofen) (CAS No. 148477–71–8) (provided for in subheading 2932.29.10)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(108) 4-ANILINO-3-NITRO-N-PHENYLBENZENESULPHONAMIDE.—Heading 9902.03.52 is amended—

(A) by amending the article description to read as follows: “Disperse Yellow 42 (4-Anilino-3-nitro-N-phenylbenzenesulfonamide) (CAS No. 5124–25–4) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(109) MAGNESIUM ZINC ALUMINUM HYDROXIDE CARBONATE HYDRATE.—Heading 9902.24.13 is amended—

(A) by amending the article description to read as follows: “Magnesium zinc aluminum hydroxide carbonate (CAS No. 169314–88–9) coated with stearic acid (CAS No. 57–11–4) (provided for in subheading 3812.30.90)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(110) MAGNESIUM ALUMINUM HYDROXIDE CARBONATE HYDRATE.—Heading 9902.05.32 is amended—

(A) by amending the article description to read as follows: “Magnesium aluminum hydroxide carbonate (synthetic hydrotalcite) (CAS No. 11097–59–9) (provided for in subheading 2842.90.90); and magnesium aluminum hydroxide carbonate (synthetic hydrotalcite) (CAS No. 11097–59–9) coated with stearic acid (CAS No. 57–11–4) (provided for in subheading 3812.30.90)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(111) DIRECT BLACK 22.—Heading 9902.25.25 is amended—

(A) in the article description, by inserting “(trisodium 6-[(2,4-diaminophenyl)azo]-3-[[4-[[4-[[7-[(2,4-diaminophenyl)azo]-1-hydroxy-3-sulphonato-2-naphthyl]azo]phenyl]amino]-3-sulphonatophenyl]azo]-4-hydroxynaphthalene-2-sulphonate)” after “Direct Black 22”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(112) DISPERSE BLUE 60.—Heading 9902.03.50 is amended—

(A) by amending the article description to read as follows: “Disperse blue 60 (4,11-diamino-2-(3-methoxypropyl)-1H-naphth(2,3-f)isoindole-1,3,5,10(2H)-tetrone) (CAS No. 12217–80–0) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(113) DISPERSE BLUE 79:1.—Heading 9902.03.46 is amended—

(A) by amending the article description to read as follows: “Disperse blue 79:1 (N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxyphenyl]acetamide) (CAS No. 3618–72–2) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(114) DISPERSE ORANGE 30.—Heading 9902.03.45 is amended—

(A) by amending the article description to read as follows: “Disperse orange 30 (3-[[2-(acetyloxy)ethyl]-[4-[(2,6-dichloro-4-nitrophenyl)azo]phenyl]amino]-propanenitrile) (CAS No. 5261-31-4) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(115) DISPERSE RED 60.—Heading 9902.03.49 is amended—

(A) by amending the article description to read as follows: “Disperse red 60 (1-amino-4-hydroxy-2-phenoxy-9,10-anthracenedione) (CAS No. 17418-58-5) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(116) DISPERSE RED 73.—Heading 9902.03.57 is amended—

(A) by amending the article description to read as follows: “Disperse red 73 (2-[[4-[(2-cyanoethyl)ethylamino]phenyl]azo]-5-nitro-benzonitrile) (CAS No. 16889-10-4) (provided for in subheading 3204.11.10)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(117) DISPERSE RED 167:1.—Heading 9902.03.47 is amended—

(A) by amending the article description to read as follows: “Disperse red 167:1 (N-[5-bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4-nitrophenyl)azo]phenyl]-acetamide) (CAS No. 1533-78-4) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(118) DISPERSE YELLOW 64.—Heading 9902.03.48 is amended—

(A) by amending the article description to read as follows: “Disperse yellow 64 (2-(4-bromo-3-hydroxy-2-quinolyl)-1H-indene-1,3(2H)-dione) (CAS No. 10319-14-9) (provided for in subheading 3204.11.50)”; and

(B) by striking “12/31/2006” and inserting “12/31/2012”.

(119) 2-(CARBOMETHOXY)BENZENESULFONYL ISOCYANATE.—Heading 9902.11.97 is amended—

(A) by amending the article description to read as follows: “2-(Carbomethoxy)benzenesulfonyl isocyanate (CAS No. 74222-95-0) (provided for in subheading 2930.90.29)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(120) CERTAIN CAPERS.—Heading 9902.10.26 is amended—

(A) by amending the article description to read as follows: “Capers, prepared or preserved by vinegar or acetic acid, in containers holding 3.4 kg or less (provided for in subheading 2001.90.20)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(121) CERTAIN CAPERS.—Heading 9902.10.28 is amended—

(A) by amending the article description to read as follows: “Capers, prepared or preserved by vinegar or acetic acid, in immediate containers holding more than 3.4 kg (provided for in subheading 2001.90.10)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(122) FRESCOLAT MGA.—Heading 9902.24.49 is amended—

(A) by amending the article description to read as follows: “6-Isopropyl-9-methyl-1,4-dioxaspiro[4.5]decane-2-methanol (Menthone glyceryl ketal) (CAS No. 63187-91-7) (provided for in subheading 2932.99.90)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(123) *O*-PARAQUAT DICHLORIDE.—Heading 9902.13.06 is amended—

(A) by striking “Paraquat” and all that follows through “dichloride”) and inserting “*o*-Paraquat dichloride”;

(B) by striking “4.41%” and inserting “Free”; and

(C) by striking “12/31/2009” and inserting “12/31/2012”.

(124) 4-[(4-AMINOPHENYL)AZO]BENZENESULFONIC ACID.—Heading 9902.02.41 is amended—

(A) by amending the article description to read as follows: “4-[(4-Aminophenyl)azo]benzenesulfonic acid (Food Yellow 6) (CAS No. 104-23-4) (provided for in subheading 3204.12.50)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(125) TSME.—Heading 9902.11.85 is amended—

(A) by amending the article description to read as follows: “*o*-Toluenesulfonic acid, methyl ester (CAS No. 23373-38-8) and *p*-toluenesulfonic acid, methyl ester (CAS No. 80-48-8) (provided for in subheading 2904.90.40)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(126) ACID BLUE 324 (4-[[3-(ACETYLAMINO)PHENYL]AMINO]-1-AMINO-9,10-DIHYDRO-9,10-DIOXO-2-ANTHRACENESULFONIC ACID, MONOSODIUM SALT).—Heading 9902.25.02 is amended—

(A) by amending the article description to read as follows: “Acid blue 324 (4-[[3-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-2-anthracenesulfonic acid, monosodium salt) (CAS No. 70571-81-2) (provided for in subheading 3204.12.45)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(127) FERRATE(3-), TRIS[5,6-DIAMINO-1,3-NAPHTHALENEDISULFONATE(2-)-N,N']-TRIPOTASSIUM.—Heading 9902.32.62 is amended—

(A) by amending the article description to read as follows: “Ferrate(3-), tris[5,6-diamino-1,3-naphthalenedisulfonato(2-)-N,N']-, tripotassium (CAS No. 85187-44-6) (provided for in subheading 2942.00.10)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(128) 2,6-DIBROMO-4-CYANOPHENYL OCTANOATE/HEPTANOATE.—Heading 9902.10.57 is amended—

(A) by amending the article description to read as follows: “Mixtures of 2,6-dibromo-4-cyanophenyl octanoate (bromoxynil octanoate) (CAS No. 1689-99-2) and 2,6-dibromo-4-cyanophenyl heptanoate (bromoxynil heptanoate) (CAS No. 56634-95-8) (provided for in subheading 3808.93.15)”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(129) TRIMETHYL CYCLO HEXANOL.—Heading 9902.05.03 is amended—

(A) in the article description, by striking “-1-”; and

(B) by striking “12/31/2009” and inserting “12/31/2012”.

(130) METHYL CINNAMATE.—Heading 9902.05.04 is amended—

- (A) by amending the article description to read as follows: “Methyl cinnamate (methyl phenylprop-2-enoate) (CAS No. 103-26-4) (provided for in subheading 2916.39.20)”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (131) CIS-2-TERT-BUTYLCYCLOHEXANOL ACETATE.—Heading 9902.11.62 is amended—
- (A) by amending the article description to read as follows: “cis-2-tert-Butylcyclohexyl acetate (Agrumex) (CAS No. 20298-69-5) (provided for in subheading 2915.39.45)”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (132) YARN OF CARDED CASHMERE OF 19.35 METRIC YARN COUNT OR HIGHER.—Heading 9902.03.02 is amended—
- (A) in the article description, by striking “finer” and inserting “higher”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (133) TETRAETHYLTHIURAM DISULFIDE.—Heading 9902.22.28 is amended—
- (A) in the article description, by inserting “(Disulfiram)” before “(CAS”;
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (134) TETRAMETHYLTHIURAM DISULFIDE.—Heading 9902.22.29 is amended—
- (A) in the article description, by inserting “(Thiram)” before “(CAS”;
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (135) FINE ANIMAL HAIR OF KASHMIR (CASHMERE) GOATS.—Heading 9902.22.77 is amended—
- (A) in the article description, by inserting “, processed beyond the degreased or carbonized condition” after “goats”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (136) FIPRONIL.—Heading 9902.24.16 is amended—
- (A) by striking “Free” and inserting “5.2%”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (137) NOA 446510 TECHNICAL.—Heading 9902.12.07 is amended—
- (A) by striking “α” and inserting “2”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (138) HYDROXYLAMINE.—Heading 9902.01.03 is amended—
- (A) by striking “0.6%” and inserting “1.0%”; and
- (B) by striking “12/31/2006” and inserting “12/31/2012”.
- (139) PHBA.—Heading 9902.29.03 is amended—
- (A) by striking “3.1%” and inserting “4.3%”; and
- (B) by striking “12/31/2009” and inserting “12/31/2012”.
- (140) THIAMETHOXAM TECHNICAL.—Heading 9902.03.11 is amended—
- (A) in the article description, by striking “[” before “(2-chloro” and by striking the closed parentheses after “thiazolyl”;
- (B) by striking “Free” and inserting “5%”; and
- (C) by striking “12/31/2009” and inserting “12/31/2012”.
- (142) TRIADIMEFON.—Heading 9902.10.33 is amended—
- (A) by striking “Free” and inserting “0.7%”; and
- (B) by striking “12/31/2009” and by inserting “12/31/2012”.

(143) CERTAIN 12V LEAD-ACID STORAGE BATTERIES.—
Heading 9902.03.87 is amended—

(A) by striking “Free” and inserting “0.1%”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(144) SORBIC ACID.—Heading 9902.10.25 is amended—

(A) by striking “1.9%” and inserting “2%”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(145) DIETHYL KETONE.—Heading 9902.25.67 is amended—

(A) by striking “1.3%” and inserting “1.4%”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(146) ETHOXYQUIN.—Heading 9902.22.32 is amended—

(A) by striking “Free” and inserting “0.5%”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(147) FLUMETRALIN.—Heading 9902.02.07 is amended—

(A) by amending the article description to read as follows: “N-(2-Chloro-6-fluorobenzyl)-N-ethyl- α,α,α -trifluoro-2,6-dinitro-p-toluidine (Flumetralin) (CAS No. 62924-70-3) (provided for in subheading 2921.49.45)”; and

(B) by striking “12/31/2006” and by inserting “12/31/2012”.

(149) POWDERED ION EXCHANGE RESIN COMPRISING A COPOLYMER OF STYRENE CROSSLINKED WITH DIVINYLBENZENE, SULPHONIC ACID, SODIUM FORM.—Heading 9902.02.34 is amended—

(A) by amending the article description to read as follows: “Powdered ion exchange resin comprised of a copolymer of styrene, cross linked with divinyl-benzene, further reacted to provide sulfonic acid functionality (sodium form), having a nominal particle size of 0.075 mm to 0.150 mm, dried to a moisture content of not more than 10 percent (CAS No. 63182-08-1) (provided for in subheading 3914.00.60)”; and

(B) by striking “12/31/2006” and by inserting “12/31/2012”.

(150) CERTAIN FIBERGLASS SHEETS.—Heading 9902.70.19 is amended—

(A) by amending the article description to read as follows: “Smooth nonwoven fiberglass sheets, 0.40 mm or more but not over 1.65 mm in thickness, predominantly of glass fibers bound together in a polyvinyl alcohol matrix, of a type primarily used as acoustical facing for ceiling panels (provided for in subheading 7019.32.00)”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(151) CLOMAZONE.—Heading 9902.24.21 is amended—

(A) by adding at the end of the article description the following: “and any formulations containing such compound (provided for in subheading 3808.93.15)”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(152) CYAZOFAMID.—Heading 9902.24.56 is amended—

(A) by adding at the end of the article description the following: “and any formulations containing such compound (provided for in subheading 3808.92.15)”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(153) FLONICAMID.—Heading 9902.24.57 is amended—

(A) by adding at the end of the article description the following: “and any formulations containing such compound (provided for in subheading 3808.91.25)”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(154) COPOLYMER OF METHYLETHYL KETOXIME AND TOLUENE DIISOCYANATE.—Heading 9902.12.12 is amended—

(A) in the article description, by striking “toluenediisocyanate” and inserting “toluene diisocyanate”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

(155) N,N-DIMETHYLPYPERIDINIUM CHLORIDE.—Heading 9902.13.25 is amended—

(A) in the article description, by striking “2933.39.25” and inserting “2933.39.27”; and

(B) by striking “12/31/2009” and by inserting “12/31/2012”.

SEC. 2002. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title apply to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(b) RETROACTIVE APPLICABILITY.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to paragraph (2), the entry of an article described in any heading of subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States (as amended by this title)—

(A) which was made on or after January 1, 2010, and before the 15th day after the date of the enactment of this Act, and

(B) with respect to which there would have been no duty or a reduced duty (as the case may be) if the amendment or amendments made by this title applied to such entry,

shall be liquidated or reliquidated as though the entry had been made on the 15th day after the date of the enactment of this Act.

Deadline.

(2) REQUESTS.—A liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with U.S. Customs and Border Protection not later than 180 days after the date of the enactment of this Act that contains sufficient information to enable U.S. Customs and Border Protection—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

Deadline.

(3) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry of an article under paragraph (1) shall be paid,

without interest, not later than 90 days after the date of the liquidation or reliquidation (as the case may be).

(4) DEFINITION.—As used in this subsection, the term “entry” includes a withdrawal from warehouse for consumption.

TITLE III—ADDITIONAL EXISTING DUTY SUSPENSIONS AND REDUCTIONS

SEC. 3001. EXTENSIONS OF CERTAIN EXISTING DUTY SUSPENSIONS AND REDUCTIONS AND OTHER MODIFICATIONS.

(a) EXTENSIONS AND RENEWALS.—Each of the following headings is amended by striking the date in the effective period column and inserting “12/31/2012”:

(1) Heading 9902.01.01 (relating to bitolylene diisocyanate (TODI)).

(2) Heading 9902.64.04 (relating to certain ski boots, cross country ski footwear, and snowboard boots).

(3) Heading 9902.12.08 (relating to hexythiazox technical).

(4) Heading 9902.23.85 (relating to lug bottom boots for use in fishing waders).

(5) Heading 9902.12.56 (relating to Avermectin B).

(6) Heading 9902.02.10 (relating to primsulfuron).

(7) Heading 9902.12.58 (relating to metalaxyl-M).

(8) Heading 9902.13.30 (relating to pymetrozine technical).

(9) Heading 9902.01.59 (relating to etridiazole).

(10) Heading 9902.01.60 (relating to 2-Mercaptoethanol).

(11) Heading 9902.01.61 (relating to bifenazate).

(12) Heading 9902.02.14 (relating to phenyl isocyanate).

(13) Heading 9902.22.20 (relating to 2,3-Dichloronitrobenzene).

(14) Heading 9902.22.71 (relating to a mixture used in ceramic arc tubes).

(15) Heading 9902.22.58 (relating to Solvent Red 227).

(16) Heading 9902.22.57 (relating to 2-Aminothiophenol).

(17) Heading 9902.22.56 (relating to 3,4-Dimethoxybenzaldehyde).

(18) Heading 9902.25.09 (relating to Propargite).

(19) Heading 9902.03.06 (relating to high tenacity multiple (folded) or cabled yarn of viscose rayon).

(20) Heading 9902.05.07 (relating to high tenacity single yarn of viscose rayon with a decitex equal to or greater than 1,000).

(21) Heading 9902.05.13 (relating to 4,4'-Oxydiphthalic anhydride).

(22) Heading 9902.25.07 (relating to 2,2,6,6-Tetramethyl-4-piperidinone).

(23) Heading 9902.32.07 (relating to certain organic pigments and dyes).

(24) Heading 9902.29.07 (relating to 4-Hexylresorcinol).

(25) Heading 9902.29.37 (relating to certain sensitizing dyes).

(26) Heading 9902.24.10 (relating to mixtures of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-1,3,5-triazine-2,4-diyl][2,2,6,6-tetramethyl-4-piperidinyl]imino]-1,6-hexanediyl[(2,2,6,6-tetramethyl-4-piperidinyl)imino]]) and bis(2,2,6,6-tetramethyl-4-piperidyl) sebacate).

- (27) Heading 9902.25.22 (relating to diisopropyl succinate).
- (28) Heading 9902.25.14 (relating to p-chloroaniline).
- (29) Heading 9902.33.59 (relating to phenyl (4,6-dimethoxypyrimidin-2-yl) carbamate).
- (30) Heading 9902.01.45 (relating to (S)-cyano(3-phenoxyphenyl)methyl (S)-4-chloro- α -(1-methylethylbenzeneacetate (Esfenvalerate))).
- (31) Heading 9902.24.23 (relating to N,N-Hexane-1,6-diylbis(3-(3,5-di-tert-butyl-4-hydroxyphenylpropionamide))).
- (32) Heading 9902.25.06 (relating to pentaerythritol tetrakis[3-(dodecylthio)propionate]).
- (33) Heading 9902.85.09 (relating to certain AC electric motors of an output exceeding 37.5 W but not exceeding 72 W).
- (34) Heading 9902.02.30 (relating to macroporous ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, thiol functionalized).
- (35) Heading 9902.25.08 (relating to Ipconazole).
- (36) Heading 9902.23.86 (relating to parts or accessories of instruments or apparatus for measuring or checking electrical quantities).
- (37) Heading 9902.01.80 (relating to certain optical instruments).
- (38) Heading 9902.23.88 (relating to subassemblies for instruments or apparatus for measuring or checking electrical quantities).
- (39) Heading 9902.23.93 (relating to mixtures of 2-butyl-2-ethylpropane-1,3-diol and neopentyl glycol).
- (40) Heading 9902.23.91 (relating to allyl pentaerythritol).
- (41) Heading 9902.23.92 (relating to 2-Butyl-2-ethylpropane-1,3-diol).
- (42) Heading 9902.23.97 (relating to ditrimethylol propane).
- (43) Heading 9902.23.98 (relating to poly(oxy-1,2-ethanediyl), α -hydro-v-hydroxy-ether with 2,2'-(oxybis(methylene)) bis(2-hydroxymethyl)-1,3-propanediol).
- (44) Heading 9902.24.01 (relating to trimethylolpropane diallyl ether).
- (45) Heading 9902.24.02 (relating to trimethylolpropane monoallyl ether).
- (46) Heading 9902.23.96 (relating to 1,3-Dioxane-5-methanol, 5-ethyl-).
- (47) Heading 9902.25.21 (relating to 1,8-Naphthalimide).
- (48) Heading 9902.25.18 (relating to p-Acetoacetanilide).
- (49) Heading 9902.25.20 (relating to Copper Phthalocyanine Green 7, Crude).
- (50) Heading 9902.25.13 (relating to p-aminobenzamide).
- (51) Heading 9902.22.23 (relating to Basic Red 1:1).
- (52) Heading 9902.25.15 (relating to p-chloro-2-nitroaniline).
- (53) Heading 9902.23.95 (relating to polymer of propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-polymer with 2,2-bis(hydroxymethyl)-1,3-propanediol and oxirane, decanoate octanoate).
- (54) Heading 9902.23.94 (relating to polymers of propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-with 2,2-bis(hydroxymethyl)-1,3-propanediol and oxirane).

(55) Heading 9902.25.11 (relating to p-toluenesulfonyl chloride).

(56) Heading 9902.24.03 (relating to trimethylolpropane oxetane).

(57) Heading 9902.05.15 (relating to 1,3-bis(4-Aminophenoxy)benzene).

(58) Heading 9902.25.19 (relating to 1-Hydroxy-2-naphthoic acid).

(59) Heading 9902.25.17 (relating to 2-Chloroacetoacetanilide).

(60) Heading 9902.25.16 (relating to 3-Chloro-4-methylaniline).

(61) Heading 9902.38.15 (relating to aqueous catalytic preparations based on iron (III) toluenesulfonate).

(62) Heading 9902.29.87 (relating to 3,4-Ethylenedioxythiophene).

(63) Heading 9902.39.15 (relating to aqueous dispersions of poly(3,4-ethylenedioxythiophene) poly(styrenesulfonate) (cationic), whether or not containing binder resin and organic solvent).

(64) Heading 9902.01.90 (relating to certain twisted synthetic filament yarns).

(65) Heading 9902.01.91 (relating to certain untwisted synthetic filament yarns).

(66) Heading 9902.13.10 (relating to volleyballs).

(67) Heading 9902.13.08 (relating to leather basketballs).

(68) Heading 9902.12.72 (relating to mixtures of zinc dialkyldithiophosphate with an elastomer binder of ethylenepropylene-diene monomer and ethyl vinyl acetate, dispersing agents and silica).

(69) Heading 9902.12.76 (relating to mixtures of zinc dicyanato diamine with an elastomer binder of ethylene-propylene-diene monomer and ethyl vinyl acetate, and dispersing agents).

(70) Heading 9902.12.75 (relating to mixtures of N'-(3,4-dichloro-phenyl)-N,Ndimethylurea with acrylate rubber).

(71) Heading 9902.12.74 (relating to mixtures of caprolactam disulfide with an elastomer binder of ethylene-propylene-diene monomer and ethyl vinyl acetate, and dispersing agents).

(72) Heading 9902.12.78 (relating to mixtures of benzenesulfonic acid, dodecyl-, with 2-aminoethanol and poly(oxy-1,2-ethanediyl), α -[1-oxo-9-octadecenyl]-w-hydroxy-, (9Z)).

(73) Heading 9902.12.77 (relating to 4,8-Dicyclohexyl -6-2,10-dimethyl -12*H*-dibenzo[*d,g*][1,3,2]-dioxaphosphocin).

(74) Heading 9902.24.89 (relating to Reactive Red 123).

(75) Heading 9902.24.93 (relating to 5-[(2-Cyano-4-nitrophenyl) azo]-2-[[2-(2-hydroxyethoxy)ethyl]amino]-4-methyl-6-(phenylamino)-3-pyridine carbonitrile).

(76) Heading 9902.24.94 (relating to Cyano[3-[(6-methoxy-2-benzothiazolyl)amino]-1*H*-isoindol-1-ylidene]acetic acid, pentyl ester).

(77) Heading 9902.24.95 (relating to [(9,10-Dihydro-9,10-dioxo-1,4-anthracenediyl)bis[imino[3-(2-methylpropyl)-3,1-propanediyl]]] bisbenzenesulfonic acid, disodium salt).

- (78) Heading 9902.24.96 (relating to [4-(2,6-Dihydro-2,6-dioxo-7-phenylbenzo[1,2-b:4,5-b]difuran-3-yl)phenoxy]acetic acid, 2-ethoxyethyl ester).
- (79) Heading 9902.03.51 (relating to 9,10-Anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenyl-amino)-).
- (80) Heading 9902.24.86 (relating to Acid Red 414).
- (81) Heading 9902.24.87 (relating to Solvent Yellow 163).
- (82) Heading 9902.24.88 (relating to 4-Amino-3,6-bis[[5-[[4-chloro-6-[methyl[2-(methylamino)-2-oxoethyl]amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-5-hydroxy-2,7-naphthalenedisulfonic acid, lithium potassium sodium salt).
- (83) Heading 9902.22.48 (relating to certain children's footwear with outer soles of leather and uppers of leather).
- (84) Heading 9902.22.47 (relating to certain work footwear for women).
- (85) Heading 9902.22.85 (relating to certain lights designed for use in aircraft).
- (86) Heading 9902.22.84 (relating to certain seals designed for use in aircraft).
- (87) Heading 9902.22.81 (relating to marine sextants of metal designed for use in navigating by celestial bodies).
- (88) Heading 9902.23.82 (relating to certain women's footwear, valued over \$20/pair, covering the ankle, whose height from the bottom of the outer sole to the top of the upper does not exceed 8 inches, with a coated or laminated textile fabric).
- (89) Heading 9902.23.83 (relating to certain women's footwear, valued over \$20/pair, not covering the ankle, with a coated or laminated textile fabric).
- (90) Heading 9902.25.01 (relating to 7-[[2-[(Aminocarbonyl)amino]-4-[[4-[4-[2-[[4-[[3-[(aminocarbonyl)amino]-4-[(3,6,8-trisulfo-2-naphthalenyl)azo]phenyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]ethyl]-1-piperazinyl]-6-chloro-1,3,5-triazin-2-yl]amino]phenyl]azo]-1,3,6-naphthalenetrisulfonic acid, lithium potassium sodium salt).
- (91) Heading 9902.24.99 (relating to 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-4-hydroxy-3-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-, sodium salt).
- (92) Heading 9902.24.98 (relating to 2-[[[2, 5-Dichloro-4-[(2-methyl-1H-indol-3-yl)azo]phenyl]sulfonyl]amino]-ethanesulfonic acid, monosodium salt).
- (93) Heading 9902.13.46 (relating to certain decorative plates, sculptures, and plaques).
- (94) Heading 9902.23.02 (relating to diaminodecane).
- (95) Heading 9902.22.04 (relating to methyl methoxyacetate).
- (96) Heading 9902.03.92 (relating to N1-[(6-Chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine).
- (97) Heading 9902.25.27 (relating to 2,2-(6-(4-Methoxyphenol)-1,3,5-triazine-2,4-diyl)bis(5-((2-ethylhexyl)oxy)phenol)).
- (98) Heading 9902.25.26 (relating to 2,2-Methylenebis[6-(2H-benzotriazolyl-2-yl)-4-(1,1,3,3-tetramethylbutylphenol)phenol]).
- (99) Heading 9902.12.01 (relating to Butralin).

(100) Heading 9902.24.39 (relating to diphenyl (2,4,6-trimethylbenzoyl) phosphine oxide).

(102) Heading 9902.22.83 (relating to vacuum relief valves).

(b) OTHER MODIFICATIONS.—

(1) CERTAIN TEXTURED ROLLED GLASS SHEETS.—Heading 9902.70.03 is amended—

(A) by striking the article description and inserting the following: “Rolled glass in sheets, yellow-green in color, not finished or edged-worked, textured on one surface, suitable for incorporation in cooking stoves, ranges or ovens described in subheading 8516.60.40 (provided for in subheading 7003.12.00 or 7003.19.00)”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(2) PYRIDABEN.—Heading 9902.22.08 is amended—

(A) by striking the article description and inserting the following: “2-*tert*-Butyl-5-(4-*tert*-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one (Pyridaben) (CAS No. 96489-71-3) (provided for in subheading 2933.99.22)”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(3) CLOQUINTOCET-MEXYL.—Heading 9902.12.57 is amended—

(A) in the article description, by striking “2933.49.30” and inserting “2933.49.60”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(4) CLODINAFOP-PROPARGYL.—Heading 9902.12.55 is amended—

(A) by striking “1.7%” in the column 1 general rate of duty column and inserting “2.9%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(5) FLUDIOXONIL.—Heading 9902.12.54 is amended—

(A) by striking the article description and inserting the following: “1*H*-Pyrrole-3-carbonitrile, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-(fludioxonil) (CAS No. 131341-86-1) (provided for in subheading 2934.99.12)”; and

(B) by striking “1.6%” in the column 1 general rate of duty column and inserting “1.0%”; and

(C) by striking the date in the effective period column and inserting “12/31/2012”.

(6) PINOXADEN.—Heading 9902.12.60 is amended—

(A) by striking “1.8%” in the column 1 general rate of duty column and inserting “1.1%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(7) AZOXYSTROBIN.—Heading 9902.02.06 is amended—

(A) by striking the article description and inserting the following: “Benzenecetic acid, (E)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]- α -(methoxymethylene)-, methyl ester (azoxystrobin) (CAS No. 131860-33-8) (provided for in subheading 2933.59.15)”; and

(B) by striking “Free” in the column 1 general rate of duty column and inserting “5.5%”; and

(C) by striking the date in the effective period column and inserting “12/31/2012”.

(8) CYPROCONAZOLE.—Heading 9902.12.59 is amended—

(A) in the article description, by striking “2934.99.12” and inserting “2933.99.22”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(9) MIXED XYLIDINES.—Heading 9902.22.36 is amended—

(A) in the article description, by striking “2921.49.50” and inserting “2921.49.45”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(10) LIQUID-FILLED GLASS BULBS, DESIGNED FOR SPRINKLER SYSTEMS AND OTHER RELEASE DEVICES.—Heading 9902.24.26 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “0.9%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(11) GOLF BAG BODIES MADE OF WOVEN FABRICS OF NYLON OR POLYESTER SEWN TOGETHER WITH POCKETS, AND DIVIDERS OR GRAPHITE PROTECTORS, ACCOMPANIED WITH RAINHOODS.—Heading 9902.23.24 is amended—

(A) by striking the article description and inserting the following: “Golf bag bodies made of woven fabrics of nylon or polyester sewn together with pockets, and dividers or graphite protectors, accompanied with rainhoods (provided for in subheading 6307.90.98)”; and

(B) by striking “Free” in the column 1 general rate of duty column and inserting “1.5%”; and

(C) by striking the date in the effective period column and inserting “12/31/2012”.

(12) PYRACLOSTROBIN.—Heading 9902.01.21 is amended—

(A) by striking “6%” in the column 1 general rate of duty column and inserting “6.2%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(13) PEPPERONCINI PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID, NOT FROZEN.—Heading 9902.10.27 is amended—

(A) by striking the article description and inserting the following: “Pepperoncini, prepared or preserved otherwise than by vinegar or acetic acid, not frozen (provided for in subheading 2005.99.55)”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(14) PEPPERONCINI PREPARED OR PRESERVED BY VINEGAR.—Heading 9902.10.29 is amended—

(A) by striking “2.2%” in the column 1 general rate of duty column and inserting “4.3%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(15) ETHYL 2-(ISOCYANATOSULFONYL)BENZOATE.—Heading 9902.11.96 is amended—

(A) by striking the article description and inserting the following: “Ethyl 2-(Isocyanatosulfonyl)benzoate (CAS No. 77375-79-2) (provided for in subheading 2930.90.29)”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(16) CERTAIN RAYON STAPLE FIBERS.—Heading 9902.55.04 is amended—

(A) in the article description, by striking “filaments” and inserting “staple fibers”;

(B) by striking “Free” in the column 1 general rate of duty column and inserting “1.8%”; and

(C) by striking the date in the effective period column and inserting “12/31/2012”.

(17) AZOXYSTROBIN.—Heading 9902.12.51 is amended—

(A) by striking “6.17%” in the column 1 general rate of duty column and inserting “3.1%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(18) CERTAIN EDUCATIONAL DEVICES.—Heading 9902.85.43 is amended—

(A) by striking “0.55%” in the column 1 general rate of duty column and inserting “1.6%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(19) CERTAIN BAGS FOR TOYS.—Heading 9902.01.78 is amended—

(A) by striking the article description and inserting the following: “Bags (provided for in subheading 4202.92.45) for transporting, storing, or protecting goods of heading 9503 or 9504, imported and sold with such articles therein”;

(B) by striking “Free” in the column 1 general rate of duty column and inserting “8.9%”; and

(C) by striking the date in the effective period column and inserting “12/31/2012”.

(20) ARTICHOKE PREPARED OR PRESERVED BY VINEGAR OR ACETIC ACID.—Heading 9902.03.90 is amended—

(A) by striking “7.9%” in the column 1 general rate of duty column and inserting “6.64%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(21) ARTICHOKE PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID.—Heading 9902.03.89 is amended—

(A) by striking “13.8%” in the column 1 general rate of duty column and inserting “13.34%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(22) CERTAIN CASES OR CONTAINERS TO BE USED FOR ELECTRONIC DRAWING TOYS, ELECTRONIC GAMES, OR EDUCATIONAL TOYS.—Heading 9902.11.90 is amended—

(A) in the article description, by inserting “, or educational toys or devices of heading 8543” after “or 9504”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(23) BASKETBALLS OTHER THAN OF LEATHER OR RUBBER.—Heading 9902.13.07 is amended—

(A) by striking “0.9%” in the column 1 general rate of duty column and inserting “1.1%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(24) METHYLIONONE.—Heading 9902.11.10 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “0.6%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(25) CERTAIN CHILDREN’S FOOTWEAR WITH UPPERS OF VEGETABLE FIBERS.—Heading 9902.13.92 is amended—

(A) by striking “6.5%” in the column 1 general rate of duty column and inserting “7.1%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(26) CERTAIN MEN’S FOOTWEAR WITH UPPERS OF VEGETABLE FIBERS.—Heading 9902.13.91 is amended—

(A) by striking “4.5%” in the column 1 general rate of duty column and inserting “6.4%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(27) CERTAIN CHILDREN’S FOOTWEAR WITH UPPERS OF LEATHER OR COMPOSITION LEATHER.—Heading 9902.22.46 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “9.5%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(29) RUBBER BASKETBALLS.—Heading 9902.13.09 is amended—

(A) by striking “1.5%” in the column 1 general rate of duty column and inserting “0.7%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(30) CERTAIN WOMEN’S FOOTWEAR, VALUED OVER \$20/PAIR, WITH A COATED OR LAMINATED TEXTILE FABRIC.—Heading 9902.23.78 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “13.6%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(31) CERTAIN MEN’S FOOTWEAR, VALUED OVER \$20/PAIR, WITH A COATED OR LAMINATED TEXTILE FABRIC.—Heading 9902.23.77 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “27.6%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(32) CERTAIN MEN’S FOOTWEAR, VALUED OVER \$20/PAIR, WHOSE HEIGHT FROM THE BOTTOM OF THE OUTER SOLE TO THE TOP OF THE UPPER DOES NOT EXCEED 8 INCHES, WITH A COATED OR LAMINATED TEXTILE FABRIC.—Heading 9902.23.76 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “24.7%”; and

(B) by striking the date in the effective period column and inserting “12/31/2012”.

(33) CERTAIN WOMEN'S FOOTWEAR, VALUED OVER \$20/PAIR, COVERING THE ANKLE, WITH A COATED OR LAMINATED TEXTILE FABRIC.—Heading 9902.23.75 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “25%”; and

(B) by striking the date in the effective column period and inserting “12/31/2012”.

(34) CERTAIN MUSIC BOXES.—Heading 9902.13.47 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “0.2%”; and

(B) by striking the date in the effective column period and inserting “12/31/2012”.

(35) CERTAIN ACETAMIPRID, WHETHER OR NOT COMBINED WITH APPLICATION ADJUVANTS.—Heading 9902.01.72 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “0.8%”; and

(B) by striking the date in the effective column period and inserting “12/31/2012”.

(36) ERASERS OF VULCANIZED RUBBER OTHER THAN HARD RUBBER OR CELLULAR RUBBER.—Heading 9902.25.51 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “0.2%”; and

(B) by striking the date in the effective column period and inserting “12/31/2012”.

(37) ELECTRICALLY OPERATED PENCIL SHARPENERS.—Heading 9902.22.82 is amended—

(A) by striking “Free” in the column 1 general rate of duty column and inserting “0.4%”; and

(B) by striking the date in the effective column period and inserting “12/31/2012”.

(38) CERTAIN AC ELECTRIC MOTORS OF AN OUTPUT EXCEEDING 74.6 W BUT NOT EXCEEDING 85 W.—The second heading 9902.85.06 (relating to certain AC electric motors of an output exceeding 74.6 W but not exceeding 85 W)—

(A) is redesignated as heading 9902.85.10; and

(B) is amended by striking the date in the effective column period and inserting “12/31/2012”.

SEC. 3002. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title apply to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(b) RETROACTIVE APPLICABILITY.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to paragraph (2), the entry of an article described in any heading of subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States (as amended by this title)—

(A) which was made on or after January 1, 2010, and before the 15th day after the date of the enactment of this Act, and

- (B) with respect to which there would have been no duty or a reduced duty (as the case may be) if the amendment or amendments made by this title applied to such entry, shall be liquidated or reliquidated as though the entry had been made on the 15th day after the date of the enactment of this Act.
- Deadline. (2) REQUESTS.—A liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with U.S. Customs and Border Protection not later than 180 days after the date of the enactment of this Act that contains sufficient information to enable U.S. Customs and Border Protection—
- (A) to locate the entry; or
- (B) to reconstruct the entry if it cannot be located.
- Deadline. (3) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry of an article under paragraph (1) shall be paid, without interest, not later than 90 days after the date of the liquidation or reliquidation (as the case may be).
- (4) DEFINITION.—As used in this subsection, the term “entry” includes a withdrawal from warehouse for consumption.

TITLE IV—CUSTOMS USER FEES; TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES; PAYGO COMPLIANCE

SEC. 4001. CUSTOMS USER FEES.

- (a) IN GENERAL.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—
- (1) in subparagraph (A), by striking “November 10, 2018” and inserting “December 10, 2018”; and
- (2) in subparagraph (B)(i), by striking “August 24, 2018” and inserting “November 30, 2018”.
- (b) RELATED TECHNICAL CORRECTION.—
- (1) IN GENERAL.—Section 11 of the Haiti Economic Lift Program Act of 2010 (Public Law 111–171; 124 Stat. 1207) is amended in the matter preceding paragraph (1) by inserting “Budget” before “Reconciliation”.
- 19 USC 58c. (2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Haiti Economic Lift Program Act of 2010.
- 19 USC 58c note.

26 USC 6655
note.
Effective date.

SEC. 4002. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 0.5 percentage points.

SEC. 4003. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved August 11, 2010.

LEGISLATIVE HISTORY—H.R. 4380:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 21, considered and passed House.

July 27, considered and passed Senate.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Aug. 11, Presidential remarks.



Public Law 111–228
111th Congress

An Act

Aug. 11, 2010
[H.R. 5872]

To provide adequate commitment authority for fiscal year 2010 for guaranteed loans that are obligations of the General and Special Risk Insurance Funds of the Department of Housing and Urban Development.

General and
Special Risk
Insurance Funds
Availability Act
of 2010.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “General and Special Risk Insurance Funds Availability Act of 2010”.

SEC. 2. ADEQUATE COMMITMENT AUTHORITY.

Notwithstanding any other provision of law, for fiscal year 2010 the Secretary of Housing and Urban Development may enter into commitments to guarantee loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), in an amount not exceeding \$20,000,000,000 in total loan principal, any part of which is to be guaranteed.

SEC. 3. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved August 11, 2010.

LEGISLATIVE HISTORY—H.R. 5872:

CONGRESSIONAL RECORD, Vol. 156 (2010):
July 28, considered and passed House.
Aug. 4, considered and passed Senate.



Public Law 111–229
111th Congress

An Act

To increase the flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance, and for other purposes.

Aug. 11, 2010
[H.R. 5981]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MORTGAGE INSURANCE PREMIUMS.

(a) FLEXIBILITY.—Subparagraph (B) of section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)(B)) is amended—

(1) in the matter preceding clause (i)—

(A) by striking “shall” and inserting “may”; and

(B) by striking “0.50 percent” and inserting “1.5 percent”; and

(2) in clause (ii), by striking “shall be in an amount not exceeding 0.55 percent” and inserting “may be in an amount not exceeding 1.55 percent”.

(b) IMPLEMENTATION.—The Secretary may adjust the amount of any initial or annual premium charged pursuant to subsection (a) through notice published in the Federal Register or mortgagee letter. Such notice or mortgagee letter shall establish the effective date of any premium adjustment therein.

Notice.
Federal Register,
publication.
12 USC 1709
note.
Effective date.

SEC. 2. CONGRESSIONAL TESTIMONY.

Deadline.

The Assistant Secretary of the Department of Housing and Urban Development who is the Federal Housing Commissioner shall appear before the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives within 270 days after the enactment

of this Act to discuss the finances, including premiums, of the Federal Housing Administration.

Approved August 11, 2010.

LEGISLATIVE HISTORY—H.R. 5981:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 30, considered and passed House.

Aug. 4, considered and passed Senate.



Public Law 111–230
111th Congress

An Act

Making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes.

Aug. 13, 2010
[H.R. 6080]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, and for other purposes, namely:

TITLE I

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, \$253,900,000, to remain available until September 30, 2011, of which \$39,000,000 shall be for costs to maintain U.S. Customs and Border Protection Officer staffing on the Southwest Border of the United States, \$29,000,000 shall be for hiring additional U.S. Customs and Border Protection Officers for deployment at ports of entry on the Southwest Border of the United States, \$175,900,000 shall be for hiring additional Border Patrol agents for deployment to the Southwest Border of the United States, and \$10,000,000 shall be to support integrity and background investigation programs.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For an additional amount for “Border Security Fencing, Infrastructure, and Technology”, \$14,000,000, to remain available until September 30, 2011, for costs of designing, building, and deploying tactical communications for support of enforcement activities on the Southwest Border of the United States.

AIR AND MARINE INTERDICTION, OPERATIONS, MAINTENANCE, AND
PROCUREMENT

For an additional amount for “Air and Marine Interdiction, Operations, Maintenance, and Procurement”, \$32,000,000, to remain available until September 30, 2012, for costs of acquisition and deployment of unmanned aircraft systems.

CONSTRUCTION AND FACILITIES MANAGEMENT

For an additional amount for “Construction and Facilities Management”, \$6,000,000, to remain available until September 30, 2011, for costs to construct up to 2 forward operating bases for use by the Border Patrol to carry out enforcement activities on the Southwest Border of the United States.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, \$80,000,000, to remain available until September 30, 2011, of which \$30,000,000 shall be for law enforcement activities targeted at reducing the threat of violence along the Southwest Border of the United States, and \$50,000,000 shall be for hiring of additional agents, investigators, intelligence analysts, and support personnel.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, \$8,100,000, to remain available until September 30, 2011, for costs to provide basic training for new U.S. Customs and Border Protection Officers, Border Patrol agents, and U.S. Immigration and Customs Enforcement personnel.

GENERAL PROVISIONS

(RESCISSIONS)

SEC. 101. From unobligated balances made available to U.S. Customs and Border Protection “Border Security Fencing, Infrastructure, and Technology”, \$100,000,000 are rescinded: *Provided*, That section 401 shall not apply to the amount in this section.

TITLE II

DEPARTMENT OF JUSTICE

SEC. 201. For an additional amount for the Department of Justice for necessary expenses for increased law enforcement activities related to Southwest border enforcement, \$196,000,000, to remain available until September 30, 2011: *Provided*, That funds shall be distributed to the following accounts and in the following specified amounts:

- (1) “Administrative Review and Appeals”, \$2,118,000.
- (2) “Detention Trustee”, \$7,000,000.
- (3) “Legal Activities, Salaries and Expenses, General Legal Activities”, \$3,862,000.
- (4) “Legal Activities, Salaries and Expenses, United States Attorneys”, \$9,198,000.
- (5) “United States Marshals Service, Salaries and Expenses”, \$29,651,000.
- (6) “United States Marshals Service, Construction”, \$8,000,000.

(7) “Interagency Law Enforcement, Interagency Crime and Drug Enforcement”, \$21,000,000.

(8) “Federal Bureau of Investigation, Salaries and Expenses”, \$24,000,000.

(9) “Drug Enforcement Administration, Salaries and Expenses”, \$33,671,000.

(10) “Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses”, \$37,500,000.

(11) “Federal Prison System, Salaries and Expenses”, \$20,000,000.

TITLE III

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, \$10,000,000, to remain available until September 30, 2011: *Provided*, That notwithstanding section 302 of division C of Public Law 111–117, funding shall be available for transfer between Judiciary accounts to meet increased workload requirements resulting from immigration and other law enforcement initiatives.

TITLE IV

GENERAL PROVISIONS

SEC. 401. Each amount appropriated or otherwise made available under this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SEC. 402. (a) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act and ending on September 30, 2014, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) shall be increased by 2,250 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant’s employees are nonimmigrants admitted pursuant to section 101(a)(15)(H)(i)(b) of such Act or section 101(a)(15)(L) of such Act.

(b) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act and ending on September 30, 2014, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) shall be increased by \$2,000 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant’s employees are such nonimmigrants or nonimmigrants described in section 101(a)(15)(L) of such Act.

Time period.
Fee increases.
8 USC 1101 note.

(c) During the period beginning on the date of the enactment of this Act and ending on September 30, 2014, all amounts collected pursuant to the fee increases authorized under this section shall be deposited in the General Fund of the Treasury.

Approved August 13, 2010.

LEGISLATIVE HISTORY—H.R. 6080:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 10, considered and passed House.

Aug. 12, considered and passed Senate.



Public Law 111–231
111th Congress

An Act

To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village.

Aug. 16, 2010
[H.R. 511]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TERMINATION OF NRCS EASEMENTS AND ASSOCIATED CONTRACTUAL ARRANGEMENTS, VILLAGE OF CASEYVILLE, ILLINOIS.

(a) **TERMINATION AUTHORIZED.**—The Secretary of Agriculture may terminate any easement held by the Secretary on land owned by the Village of Caseyville, Illinois, and terminate associated contractual arrangements with the Village.

(b) **CONSIDERATION.**—As consideration for the termination of an easement and associated contractual arrangements under subsection (a), the Village of Caseyville, Illinois, shall enter into such compensatory arrangements with the Secretary as determined to be appropriate by the Secretary.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 511:

HOUSE REPORTS: No. 111–253 (Comm. on Agriculture).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Sept. 15, considered and passed House.

Vol. 156 (2010): Aug. 5, considered and passed Senate.



Public Law 111–232
111th Congress

An Act

Aug. 16, 2010
[H.R. 2097]

Star-Spangled
Banner
Commemorative
Coin Act.
31 USC 5112
note.

To require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the writing of the Star-Spangled Banner, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Star-Spangled Banner Commemorative Coin Act”.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) During the Battle for Baltimore of the War of 1812, Francis Scott Key visited the British fleet in the Chesapeake Bay on September 7, 1814, to secure the release of Dr. William Beanes, who had been captured after the British burned Washington, DC.

(2) The release of Dr. Beanes was secured, but Key and Beanes were held by the British during the shelling of Fort McHenry, one of the forts defending Baltimore.

(3) On the morning of September 14, 1814, after the 25-hour British bombardment of Fort McHenry, Key peered through the clearing smoke to see a 42-foot by 30-foot American flag flying proudly atop the Fort.

(4) He was so inspired to see the enormous flag still flying over the Fort that he began penning a song, which he named *The Defence of Fort McHenry*, to commemorate the occasion and he included a note that it should be sung to the tune of the popular British melody *To Anacreon in Heaven*.

(5) In 1916, President Woodrow Wilson ordered that the anthem, which had been popularly renamed the *Star-Spangled Banner*, be played at military and naval occasions.

(6) On March 3, 1931, President Herbert Hoover signed a resolution of Congress that officially designated the *Star-Spangled Banner* as the National Anthem of the United States.

SEC. 3. COIN SPECIFICATIONS.

(a) \$1 SILVER COINS.—The Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall mint and issue the following coins in commemoration of the bicentennial of the writing of the *Star-Spangled Banner*:

(1) \$5 GOLD COINS.—Not more than 100,000 \$5 coins, which shall—

(A) weigh 8.359 grams;

(B) have a diameter of 0.850 inches; and

(C) contain 90 percent gold and 10 percent alloy.

(2) \$1 SILVER COINS.—Not more than 500,000 \$1 coins, which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the War of 1812 and particularly the Battle for Baltimore that formed the basis for the *Star-Spangled Banner*.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year “2012”; and

(C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary, after consultation with the Maryland War of 1812 Bicentennial Commission and the Commission of Fine Arts; and

(2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only one facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) PERIOD FOR ISSUANCE.—The Secretary may issue coins under this Act only during the calendar year beginning on January 1, 2012.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in section 7 with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) **DISCOUNT.**—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) **IN GENERAL.**—All sales of coins issued under this Act shall include a surcharge of—

(1) \$35 per coin for the \$5 coin; and

(2) \$10 per coin for the \$1 coin.

(b) **DISTRIBUTION.**—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be paid to the Maryland War of 1812 Bicentennial Commission for the purpose of supporting bicentennial activities, educational outreach activities (including supporting scholarly research and the development of exhibits), and preservation and improvement activities pertaining to the sites and structures relating to the War of 1812.

(c) **AUDITS.**—The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data of the Maryland War of 1812 Bicentennial Commission as may be related to the expenditures of amounts paid under subsection (b).

(d) **LIMITATION.**—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 2097:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Sept. 9, considered and passed House.

Vol. 156 (2010): Aug. 2, considered and passed Senate.



Public Law 111–233
111th Congress

An Act

To reauthorize State agricultural mediation programs under title V of the Agricultural Credit Act of 1987.

Aug. 16, 2010
[H.R. 3509]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Agricultural Credit Act of 2010”.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 506 of the Agricultural Credit Act of 1987 (7 U.S.C. 5106) is amended by striking “2010” and inserting “2015”.

Agricultural
Credit Act of
2010.
7 USC 5101 note.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 3509:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 17, 18, considered and passed House.

Aug. 5, considered and passed Senate.



Public Law 111–234
111th Congress

An Act

Aug. 16, 2010
[H.R. 4275]

To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the “John C. Godbold Federal Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The annex building under construction for the United States courthouse located at 56 Forsyth Street in Atlanta, Georgia, known as the Elbert P. Tuttle United States Court of Appeals Building, shall be known and designated as the “John C. Godbold Federal Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the annex building referred to in section 1 shall be deemed to be a reference to the “John C. Godbold Federal Building”.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 4275:

HOUSE REPORTS: No. 111–444 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 14, considered and passed House.

Aug. 5, considered and passed Senate.



Public Law 111–235
111th Congress

An Act

To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the “President Ronald W. Reagan Post Office Building”.

Aug. 16, 2010
[H.R. 5278]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRESIDENT RONALD W. REAGAN POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, shall be known and designated as the “President Ronald W. Reagan Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “President Ronald W. Reagan Post Office Building”.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 5278:

CONGRESSIONAL RECORD, Vol. 156 (2010):
June 9, considered and passed House.
July 30, considered and passed Senate.



Public Law 111–236
111th Congress

An Act

Aug. 16, 2010
[H.R. 5395]

To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the “Paula Hawkins Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAULA HAWKINS POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, shall be known and designated as the “Paula Hawkins Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Paula Hawkins Post Office Building”.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 5395:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 28, 30, considered and passed House.

July 30, considered and passed Senate.



Public Law 111–237
111th Congress

An Act

To amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly and to provide for the assessment by the Secretary of the Treasury of certain criminal restitution.

Aug. 16, 2010
[H.R. 5552]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Firearms Excise Tax Improvement Act of 2010”.

Firearms Excise
Tax
Improvement Act
of 2010.
26 USC 1 note.

SEC. 2. TIME FOR PAYMENT OF MANUFACTURERS' EXCISE TAX ON RECREATIONAL EQUIPMENT.

(a) IN GENERAL.—Subsection (d) of section 6302 of the Internal Revenue Code of 1986 (relating to mode or time of collection) is amended to read as follows:

26 USC 6302.

“(d) TIME FOR PAYMENT OF MANUFACTURERS' EXCISE TAX ON RECREATIONAL EQUIPMENT.—The taxes imposed by subchapter D of chapter 32 of this title (relating to taxes on recreational equipment) shall be due and payable on the date for filing the return for such taxes.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles sold by the manufacturer, producer, or importer after the date of the enactment of this Act.

26 USC 6302
note.

SEC. 3. ASSESSMENT OF CERTAIN CRIMINAL RESTITUTION.

(a) IN GENERAL.—Subsection (a) of section 6201 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

26 USC 6201.

“(4) CERTAIN ORDERS OF CRIMINAL RESTITUTION.—

“(A) IN GENERAL.—The Secretary shall assess and collect the amount of restitution under an order pursuant to section 3556 of title 18, United States Code, for failure to pay any tax imposed under this title in the same manner as if such amount were such tax.

“(B) TIME OF ASSESSMENT.—An assessment of an amount of restitution under an order described in subparagraph (A) shall not be made before all appeals of such order are concluded and the right to make all such appeals has expired.

“(C) RESTRICTION ON CHALLENGE OF ASSESSMENT.—The amount of such restitution may not be challenged by the person against whom assessed on the basis of the existence or amount of the underlying tax liability in any proceeding

authorized under this title (including in any suit or proceeding in court permitted under section 7422).”.

(b) EXCEPTION FROM CERTAIN RESTRICTIONS ON ASSESSMENT AND COLLECTION.—

(1) NO PETITION TO TAX COURT, NO RESTRICTION ON FURTHER DEFICIENCY LETTERS, ETC.—Subsection (b) of section 6213 of such Code is amended by adding at the end the following new paragraph:

“(5) CERTAIN ORDERS OF CRIMINAL RESTITUTION.—If the taxpayer is notified that an assessment has been or will be made pursuant to section 6201(a)(4)—

“(A) such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and

“(B) subsection (a) shall not apply with respect to the amount of such assessment.”.

(2) TIME LIMITATIONS ON ASSESSMENT AND COLLECTION.—Subsection (c) of section 6501 of such Code is amended by adding at the end the following new paragraph:

“(11) CERTAIN ORDERS OF CRIMINAL RESTITUTION.—In the case of any amount described in section 6201(a)(4), such amount may be assessed, or a proceeding in court for the collection of such amount may be begun without assessment, at any time.”.

26 USC 6201
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to restitution ordered after the date of the enactment of this Act.

SEC. 4. BUDGETARY PROVISIONS.

26 USC 6655
note.

(a) TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.—The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 0.25 percentage points.

(b) PAYGO COMPLIANCE.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman

of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved August 16, 2010.

LEGISLATIVE HISTORY—H.R. 5552:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 29, considered and passed House.

Aug. 5, considered and passed Senate.



Public Law 111–238
111th Congress

An Act

Sept. 27, 2010
[H.R. 6102]

To amend the National Defense Authorization Act for Fiscal Year 2010 to extend the authority of the Secretary of the Navy to enter into multiyear contracts for F/A–18E, F/A–18F, and EA–18G aircraft.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MULTIYEAR PROCUREMENT AUTHORITY FOR F/A–18E, F/A–18F, AND EA–18G AIRCRAFT.

(a) **EXTENSION OF CERTIFICATION.**—Paragraph (2) of section 128(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2217) is amended by striking “a reference to March” and inserting “a reference to September”.

(b) **REQUIRED AUTHORITY.**—Such section 128 is further amended by adding at the end the following:

“(e) **REQUIRED AUTHORITY.**—Notwithstanding any other provision of law, with respect to a multiyear contract entered into under subsection (a), this section shall be deemed to meet the requirements under subsection (i)(3) and (l)(3) of section 2306b of title 10, United States Code.”.

Approved September 27, 2010.

LEGISLATIVE HISTORY—H.R. 6102:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 14, considered and passed House.

Sept. 16, considered and passed Senate.



Public Law 111–239
111th Congress

An Act

To amend the Agricultural Marketing Act of 1946 to improve the reporting on sales of livestock and dairy products, and for other purposes.

Sept. 27, 2010
[S. 3656]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mandatory Price Reporting Act of 2010”.

Mandatory Price
Reporting Act of
2010.
7 USC 1621 note.

SEC. 2. LIVESTOCK MANDATORY REPORTING.

(a) EXTENSION OF AUTHORITY.—

(1) IN GENERAL.—Section 260 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636i) is amended by striking “September 30, 2010” and inserting “September 30, 2015”.

(2) CONFORMING AMENDMENT AND EXTENSION.—Section 942 of the Livestock Mandatory Reporting Act of 1999 (7 U.S.C. 1635 note; Public Law 106–78) is amended by striking “September 30, 2010” and inserting “September 30, 2015”.

(b) WHOLESALE PORK CUTS.—

(1) REPORTING.—Chapter 3 of subtitle B of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635i et seq.) is amended by adding at the end the following new section:

“SEC. 233. MANDATORY REPORTING OF WHOLESALE PORK CUTS.

7 USC 1635k.

“(a) REPORTING.—The corporate officers or officially designated representatives of each packer shall report to the Secretary information concerning the price and volume of wholesale pork cuts, as the Secretary determines is necessary and appropriate.

“(b) PUBLICATION.—The Secretary shall publish information reported under subsection (a) as the Secretary determines necessary and appropriate.”.

(2) NEGOTIATED RULEMAKING.—The Secretary of Agriculture shall establish a negotiated rulemaking process pursuant to subchapter III of chapter 5 of title 5, United States Code, to negotiate and develop a proposed rule to implement the amendment made by paragraph (1).

7 USC 1635k
note.

(3) NEGOTIATED RULEMAKING COMMITTEE.—

(A) REPRESENTATION.—Any negotiated rulemaking committee established by the Secretary of Agriculture pursuant to paragraph (2) shall include representatives from—

(i) organizations representing swine producers;

(ii) organizations representing packers of pork, processors of pork, retailers of pork, and buyers of wholesale pork;

(iii) the Department of Agriculture; and

(iv) among interested parties that participate in swine or pork production.

(B) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Any negotiated rulemaking committee established by the Secretary of Agriculture pursuant to paragraph (2) shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(4) TIMING OF PROPOSED AND FINAL RULES.—In carrying out the negotiated rulemaking process under paragraph (2), the Secretary of Agriculture shall ensure that—

(A) any recommendation for a proposed rule or report is provided to the Secretary of Agriculture not later than 180 days after the date of the enactment of this Act; and

(B) a final rule is promulgated not later than one and a half years after the date of the enactment of this Act.

(c) PORK EXPORT REPORTING.—Section 602(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5712(a)(1)) is amended by striking “cotton,” and inserting “cotton, pork,”.

SEC. 3. DAIRY MANDATORY REPORTING.

(a) ELECTRONIC REPORTING REQUIRED.—Subsection (d) of section 273 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b) is amended to read as follows:

“(d) ELECTRONIC REPORTING.—

“(1) ELECTRONIC REPORTING SYSTEM REQUIRED.—The Secretary shall establish an electronic reporting system to carry out this section.

“(2) PUBLICATION.—Not later than 3:00 p.m. Eastern Time on the Wednesday of each week, the Secretary shall publish a report containing the information obtained under this section for the preceding week.”.

(b) IMPLEMENTATION.—Not later than one year after the date of enactment of this Act, the Secretary of Agriculture shall implement the electronic reporting system required by subsection (d) of section 273 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b), as amended by subsection (a). Until the electronic reporting system is implemented, the Secretary shall continue to conduct mandatory dairy product information reporting under the authority

Recommendations.

7 USC 1637b note.

of such section, as in effect on the day before the date of enactment of this Act.

Approved September 27, 2010.

LEGISLATIVE HISTORY—S. 3656:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 5, considered and passed Senate.

Sept. 15, considered and passed House.



Public Law 111–240
111th Congress

An Act

Sept. 27, 2010
[H.R. 5297]

Small Business
Jobs Act of 2010.
15 USC 631 note.

To create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Jobs Act of 2010”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—SMALL BUSINESSES

Sec. 1001. Definitions.

Subtitle A—Small Business Access to Credit

Sec. 1101. Short title.

PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

Sec. 1111. Section 7(a) business loans.
Sec. 1112. Maximum loan amounts under 504 program.
Sec. 1113. Maximum loan limits under microloan program.
Sec. 1114. Loan guarantee enhancement extensions.
Sec. 1115. New Markets Venture Capital company investment limitations.
Sec. 1116. Alternative size standards.
Sec. 1117. Sale of 7(a) loans in secondary market.
Sec. 1118. Online lending platform.
Sec. 1119. SBA Secondary Market Guarantee Authority.

PART II—SMALL BUSINESS ACCESS TO CAPITAL

Sec. 1122. Low-interest refinancing under the local development business loan program.

PART III—OTHER MATTERS

Sec. 1131. Small business intermediary lending pilot program.
Sec. 1132. Public policy goals.
Sec. 1133. Floor plan pilot program extension.
Sec. 1134. Guarantees for bonds and notes issued for community or economic development purposes.
Sec. 1135. Temporary express loan enhancement.
Sec. 1136. Prohibition on using TARP funds or tax increases.

Subtitle B—Small Business Trade and Exporting

Sec. 1201. Short title.
Sec. 1202. Definitions.

- Sec. 1203. Office of International Trade.
- Sec. 1204. Duties of the Office of International Trade.
- Sec. 1205. Export assistance centers.
- Sec. 1206. International trade finance programs.
- Sec. 1207. State Trade and Export Promotion Grant Program.
- Sec. 1208. Rural export promotion.
- Sec. 1209. International trade cooperation by small business development centers.

Subtitle C—Small Business Contracting

PART I—CONTRACT BUNDLING

- Sec. 1311. Small Business Act.
- Sec. 1312. Leadership and oversight.
- Sec. 1313. Consolidation of contract requirements.
- Sec. 1314. Small business teams pilot program.

PART II—SUBCONTRACTING INTEGRITY

- Sec. 1321. Subcontracting misrepresentations.
- Sec. 1322. Small business subcontracting improvements.

PART III—ACQUISITION PROCESS

- Sec. 1331. Reservation of prime contract awards for small businesses.
- Sec. 1332. Micro-purchase guidelines.
- Sec. 1333. Agency accountability.
- Sec. 1334. Payment of subcontractors.
- Sec. 1335. Repeal of Small Business Competitiveness Demonstration Program.

PART IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

- Sec. 1341. Policy and presumptions.
- Sec. 1342. Annual certification.
- Sec. 1343. Training for contracting and enforcement personnel.
- Sec. 1344. Updated size standards.
- Sec. 1345. Study and report on the mentor-protege program.
- Sec. 1346. Contracting goals reports.
- Sec. 1347. Small business contracting parity.

Subtitle D—Small Business Management and Counseling Assistance

- Sec. 1401. Matching requirements under small business programs.
- Sec. 1402. Grants for SBDCs.

Subtitle E—Disaster Loan Improvement

- Sec. 1501. Aquaculture business disaster assistance.

Subtitle F—Small Business Regulatory Relief

- Sec. 1601. Requirements providing for more detailed analyses.
- Sec. 1602. Office of advocacy.

Subtitle G—Appropriations Provisions

- Sec. 1701. Salaries and expenses.
- Sec. 1702. Business loans program account.
- Sec. 1703. Community Development Financial Institutions Fund program account.
- Sec. 1704. Small business loan guarantee enhancement extensions.

TITLE II—TAX PROVISIONS

- Sec. 2001. Short title.

Subtitle A—Small Business Relief

PART I—PROVIDING ACCESS TO CAPITAL

- Sec. 2011. Temporary exclusion of 100 percent of gain on certain small business stock.
- Sec. 2012. General business credits of eligible small businesses for 2010 carried back 5 years.
- Sec. 2013. General business credits of eligible small businesses in 2010 not subject to alternative minimum tax.
- Sec. 2014. Temporary reduction in recognition period for built-in gains tax.

PART II—ENCOURAGING INVESTMENT

- Sec. 2021. Increased expensing limitations for 2010 and 2011; certain real property treated as section 179 property.

- Sec. 2022. Additional first-year depreciation for 50 percent of the basis of certain qualified property.
- Sec. 2023. Special rule for long-term contract accounting.

PART III—PROMOTING ENTREPRENEURSHIP

- Sec. 2031. Increase in amount allowed as deduction for start-up expenditures in 2010.
- Sec. 2032. Authorization of appropriations for the United States Trade Representative to develop market access opportunities for United States small- and medium-sized businesses and to enforce trade agreements.

PART IV—PROMOTING SMALL BUSINESS FAIRNESS

- Sec. 2041. Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits.
- Sec. 2042. Deduction for health insurance costs in computing self-employment taxes in 2010.
- Sec. 2043. Removal of cellular telephones and similar telecommunications equipment from listed property.

Subtitle B—Revenue Provisions

PART I—REDUCING THE TAX GAP

- Sec. 2101. Information reporting for rental property expense payments.
- Sec. 2102. Increase in information return penalties.
- Sec. 2103. Report on tax shelter penalties and certain other enforcement actions.
- Sec. 2104. Application of continuous levy to tax liabilities of certain Federal contractors.

PART II—PROMOTING RETIREMENT PREPARATION

- Sec. 2111. Participants in government section 457 plans allowed to treat elective deferrals as Roth contributions.
- Sec. 2112. Rollovers from elective deferral plans to designated Roth accounts.
- Sec. 2113. Special rules for annuities received from only a portion of a contract.

PART III—CLOSING UNINTENDED LOOPHOLES

- Sec. 2121. Crude tall oil ineligible for cellulosic biofuel producer credit.
- Sec. 2122. Source rules for income on guarantees.

PART IV—TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

- Sec. 2131. Time for payment of corporate estimated taxes.

TITLE III—STATE SMALL BUSINESS CREDIT INITIATIVE

- Sec. 3001. Short title.
- Sec. 3002. Definitions.
- Sec. 3003. Federal funds allocated to States.
- Sec. 3004. Approving States for participation.
- Sec. 3005. Approving State capital access programs.
- Sec. 3006. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers.
- Sec. 3007. Reports.
- Sec. 3008. Remedies for State program termination or failures.
- Sec. 3009. Implementation and administration.
- Sec. 3010. Regulations.
- Sec. 3011. Oversight and audits.

TITLE IV—ADDITIONAL SMALL BUSINESS PROVISIONS

Subtitle A—Small Business Lending Fund

- Sec. 4101. Purpose.
- Sec. 4102. Definitions.
- Sec. 4103. Small business lending fund.
- Sec. 4104. Additional authorities of the Secretary.
- Sec. 4105. Considerations.
- Sec. 4106. Reports.
- Sec. 4107. Oversight and audits.
- Sec. 4108. Credit reform; funding.
- Sec. 4109. Termination and continuation of authorities.
- Sec. 4110. Preservation of authority.
- Sec. 4111. Assurances.
- Sec. 4112. Study and report with respect to women-owned, veteran-owned, and minority-owned businesses.

Sec. 4113. Sense of Congress.

Subtitle B—Other Provisions

PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES

- Sec. 4221. Short title.
- Sec. 4222. Global business development and promotion activities of the Department of Commerce.
- Sec. 4223. Additional funding to improve access to global markets for rural businesses.
- Sec. 4224. Additional funding for the ExporTech program.
- Sec. 4225. Additional funding for the market development cooperator program of the Department of Commerce.
- Sec. 4226. Hollings Manufacturing Partnership Program; Technology Innovation Program.
- Sec. 4227. Sense of the Senate concerning Federal collaboration with States on export promotion issues.
- Sec. 4228. Report on tariff and nontariff barriers.

PART II—MEDICARE FRAUD

- Sec. 4241. Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the Medicare fee-for-service program.

TITLE V—BUDGETARY PROVISIONS

- Sec. 5001. Determination of budgetary effects.

TITLE I—SMALL BUSINESSES

SEC. 1001. DEFINITIONS.

15 USC 632 note.

In this title—

- (1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively; and
- (2) the term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

Subtitle A—Small Business Access to Credit

Small Business Job Creation and Access to Capital Act of 2010.

SEC. 1101. SHORT TITLE.

15 USC 631 note.

This subtitle may be cited as the “Small Business Job Creation and Access to Capital Act of 2010”.

PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

SEC. 1111. SECTION 7(a) BUSINESS LOANS.

(a) AMENDMENT.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

- (1) in paragraph (2)(A)—
 - (A) in clause (i), by striking “75 percent” and inserting “90 percent”; and
 - (B) in clause (ii), by striking “85 percent” and inserting “90 percent”; and
- (2) in paragraph (3)(A), by striking “\$1,500,000 (or if the gross loan amount would exceed \$2,000,000” and inserting “\$4,500,000 (or if the gross loan amount would exceed \$5,000,000”.

Effective date.
15 USC 636 note.

- (b) PROSPECTIVE REPEAL.—Effective January 1, 2011, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—
- (1) in paragraph (2)(A)—
 - (A) in clause (i), by striking “90 percent” and inserting “75 percent”; and
 - (B) in clause (ii), by striking “90 percent” and inserting “85 percent”; and
 - (2) in paragraph (3)(A), by striking “\$4,500,000” and inserting “\$3,750,000”.

SEC. 1112. MAXIMUM LOAN AMOUNTS UNDER 504 PROGRAM.

Section 502(2)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

- (1) in clause (i), by striking “\$1,500,000” and inserting “\$5,000,000”;
- (2) in clause (ii), by striking “\$2,000,000” and inserting “\$5,000,000”;
- (3) in clause (iii), by striking “\$4,000,000” and inserting “\$5,500,000”;
- (4) in clause (iv), by striking “\$4,000,000” and inserting “\$5,500,000”; and
- (5) in clause (v), by striking “\$4,000,000” and inserting “\$5,500,000”.

SEC. 1113. MAXIMUM LOAN LIMITS UNDER MICROLOAN PROGRAM.

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

- (1) in paragraph (1)(B)(iii), by striking “\$35,000” and inserting “\$50,000”;
- (2) in paragraph (3)—
 - (A) in subparagraph (C), by striking “\$3,500,000” and inserting “\$5,000,000”; and
 - (B) in subparagraph (E), by striking “\$35,000” each place that term appears and inserting “\$50,000”; and
- (3) in paragraph (11)(B), by striking “\$35,000” and inserting “\$50,000”.

SEC. 1114. LOAN GUARANTEE ENHANCEMENT EXTENSIONS.

(a) FEES.—Section 501 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151) is amended by striking “September 30, 2010” each place that term appears and inserting “December 31, 2010”.

(b) LOAN GUARANTEES.—Section 502(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 153) is amended by striking “May 31, 2010” and inserting “December 31, 2010”.

SEC. 1115. NEW MARKETS VENTURE CAPITAL COMPANY INVESTMENT LIMITATIONS.

Section 355 of the Small Business Investment Act of 1958 (15 U.S.C. 689d) is amended by adding at the end the following:

“(e) INVESTMENT LIMITATIONS.—

“(1) DEFINITION.—In this subsection, the term ‘covered New Markets Venture Capital company’ means a New Markets Venture Capital company—

“(A) granted final approval by the Administrator under section 354(e) on or after March 1, 2002; and

“(B) that has obtained a financing from the Administrator.

“(2) LIMITATION.—Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this title for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

“(A) the regulatory capital of the covered New Markets Venture Capital company; and

“(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.”.

SEC. 1116. ALTERNATIVE SIZE STANDARDS.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following:

“(5) ALTERNATIVE SIZE STANDARD.—

“(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

“(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

“(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and

“(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.”.

SEC. 1117. SALE OF 7(a) LOANS IN SECONDARY MARKET.

Section 5(g) of the Small Business Act (15 U.S.C. 634(g)) is amended by adding at the end the following:

“(6) If the amount of the guaranteed portion of any loan under section 7(a) is more than \$500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of \$500,000 and 1 increment of any remaining amount less than \$500,000, in order to permit the maximum amount of any loan in a pool to be not more than \$500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.”.

SEC. 1118. ONLINE LENDING PLATFORM.

It is the sense of Congress that the Administrator of the Small Business Administration should establish a website that—

(1) lists each lender that makes loans guaranteed by the Small Business Administration and provides information about the loan rates of each such lender; and

(2) allows prospective borrowers to compare rates on loans guaranteed by the Small Business Administration.

SEC. 1119. SBA SECONDARY MARKET GUARANTEE AUTHORITY.

Section 503(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 155) is amended by striking “on the date 2 years after the date of enactment of this section” and inserting “2 years after the date of the first sale of a pool of first lien position 504 loans guaranteed under this section to a third-party investor”.

**PART II—SMALL BUSINESS ACCESS TO
CAPITAL**

SEC. 1122. LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.

(a) **REFINANCING.**—Section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by adding at the end the following:

“(C) **REFINANCING NOT INVOLVING EXPANSIONS.**—

“(i) **DEFINITIONS.**—In this subparagraph—

“(I) the term ‘borrower’ means a small business concern that submits an application to a development company for financing under this subparagraph;

“(II) the term ‘eligible fixed asset’ means tangible property relating to which the Administrator may provide financing under this section; and

“(III) the term ‘qualified debt’ means indebtedness—

“(aa) that—

“(AA) was incurred not less than 2 years before the date of the application for assistance under this subparagraph;

“(BB) is a commercial loan;

“(CC) is not subject to a guarantee by a Federal agency;

“(DD) the proceeds of which were used to acquire an eligible fixed asset;

“(EE) was incurred for the benefit of the small business concern; and

“(FF) is collateralized by eligible fixed assets; and

“(bb) for which the borrower has been current on all payments for not less than 1 year before the date of the application.

“(ii) **AUTHORITY.**—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

“(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

“(II) the borrower has been in operation for all of the 2-year period ending on the date of the loan; and

“(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

“(iii) FINANCING FOR BUSINESS EXPENSES.—

“(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

“(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

“(aa) a specific description of the expenses for which the additional financing is requested; and

“(bb) an itemization of the amount of each expense.

“(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for non-business purposes.

“(iv) LOANS BASED ON JOBS.—

“(I) JOB CREATION AND RETENTION GOALS.—

“(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 501.

“(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$65,000.

“(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

“(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

“(bb) the product obtained by multiplying—

“(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by

“(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

“(v) NONDELEGATION.—Notwithstanding section 508(e), the Administrator may not permit a premier certified lender to approve or disapprove an application for assistance under this subparagraph.

“(vi) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of \$7,500,000,000 of financing under this subparagraph for each fiscal year.”.

Effective date.
15 USC 696 note.

(b) PROSPECTIVE REPEAL.—Effective 2 years after the date of enactment of this Act, section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by striking subparagraph (C).

(c) TECHNICAL CORRECTION.—Section 502(2)(A)(i) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)(i)) is amended by striking “subparagraph (B) or (C)” and inserting “clause (ii), (iii), (iv), or (v)”.

PART III—OTHER MATTERS

SEC. 1131. SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.

(a) IN GENERAL.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by striking subsection (l) and inserting the following:

“(l) SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘eligible intermediary’—

“(i) means a private, nonprofit entity that—

“(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

“(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

“(ii) includes—

“(I) a private, nonprofit community development corporation; and

“(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

“(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

“(B) the term ‘Program’ means the small business intermediary lending pilot program established under paragraph (2).

“(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

“(3) PURPOSES.—The purposes of the Program are—

“(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

“(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries

to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

“(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

“(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

“(i) the type of small business concerns to be assisted;

“(ii) the size and range of loans to be made;

“(iii) the interest rate and terms of loans to be made;

“(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

“(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

“(vi) the qualifications of the applicant to carry out this subsection.

“(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

“(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

“(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

“(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

“(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

“(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

“(i) to not more than 20 eligible intermediaries;

and

“(ii) in a total amount of not more than \$20,000,000.

“(5) LOANS TO SMALL BUSINESS CONCERNS.—

“(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

“(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

“(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

“(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

“(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010.”.

Deadline.
15 USC 636 note.

(b) RULEMAKING AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out section 7(l) of the Small Business Act, as amended by subsection (a).

15 USC 636 note.

(c) AVAILABILITY OF FUNDS.—Any amounts provided to the Administrator for the purposes of carrying out section 7(l) of the Small Business Act, as amended by subsection (a), shall remain available until expended.

SEC. 1132. PUBLIC POLICY GOALS.

Section 501(d)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

- (1) in subparagraph (J), by striking “or” at the end;
- (2) in subparagraph (K), by striking the period at the end and inserting “, or”; and
- (3) by adding at the end the following:

“(L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.”.

SEC. 1133. FLOOR PLAN PILOT PROGRAM EXTENSION.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

- (1) by redesignating paragraph (32), relating to increased veteran participation, as added by section 208 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186; 122 Stat. 631), as paragraph (33); and
- (2) by adding at the end the following:

“(34) FLOOR PLAN FINANCING PROGRAM.—

“(A) DEFINITION.—In this paragraph, the term ‘eligible retail good’—

“(i) means a good for which a title may be obtained under State law; and

“(ii) includes an automobile, recreational vehicle, boat, and manufactured home.

“(B) PROGRAM.—The Administrator may guarantee the timely payment of an open-end extension of credit to a small business concern, the proceeds of which may be used for the purchase of eligible retail goods for resale.

“(C) AMOUNT.—An open-end extension of credit guaranteed under this paragraph shall be in an amount not less than \$500,000 and not more than \$5,000,000.

“(D) TERM.—An open-end extension of credit guaranteed under this paragraph shall have a term of not more than 5 years.

“(E) GUARANTEE PERCENTAGE.—The Administrator may guarantee—

“(i) not less than 60 percent of an open-end extension of credit under this paragraph; and

“(ii) not more than 75 percent of an open-end extension of credit under this paragraph.

“(F) ADVANCE RATE.—The lender for an open-end extension of credit guaranteed under this paragraph may allow the borrower to draw funds on the line of credit in an amount equal to not more than 100 percent of the value of the eligible retail goods to be purchased.”

(b) SUNSET.—Effective September 30, 2013, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by striking paragraph (34); and

(2) by redesignating paragraph (35), as added by section 1206 of this Act, as paragraph (34).

Effective date.
15 USC 636 note.

SEC. 1134. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by inserting after section 114 (12 U.S.C. 4713) the following:

“SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

12 USC 4713a.

“(a) DEFINITIONS.—In this section, the following definitions shall apply:

“(1) ELIGIBLE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term ‘eligible community development financial institution’ means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

“(2) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term ‘eligible community or economic development purpose’—

“(A) means any purpose described in section 108(b); and

“(B) includes the provision of community or economic development in low-income or underserved rural areas.

“(3) GUARANTEE.—The term ‘guarantee’ means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

“(4) LOAN.—The term ‘loan’ means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

“(5) MASTER SERVICER.—

- Deadline.
- “(A) IN GENERAL.—The term ‘master servicer’ means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).
- “(B) APPROVAL CRITERIA FOR MASTER SERVICERS.—The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—
- “(i) loan administration, servicing, and loan monitoring;
 - “(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;
 - “(iii) managing regional or national originator communication systems and infrastructure;
 - “(iv) developing and implementing training and other risk management strategies on a regional or national basis; and
 - “(v) compliance monitoring, investor relations, and reporting.
- “(6) PROGRAM.—The term ‘Program’ means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.
- “(7) PROGRAM ADMINISTRATOR.—The term ‘Program administrator’ means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).
- “(8) QUALIFIED ISSUER.—
- “(A) IN GENERAL.—The term ‘qualified issuer’ means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.
- “(B) APPROVAL CRITERIA FOR QUALIFIED ISSUERS.—
- “(i) IN GENERAL.—The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.
 - “(ii) TERMS AND QUALIFICATIONS.—A qualified issuer shall—
 - “(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;
 - “(II) provide to the Secretary—
 - “(aa) an acceptable statement of the proposed sources and uses of the funds; and
 - “(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and
 - “(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.
- Certification.
- Deadlines.
- “(C) DEPARTMENT OPINION; TIMING.—

“(i) DEPARTMENT OPINION.—Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

“(ii) TIMING.—The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

“(9) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(10) SERVICER.—The term ‘servicer’ means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

“(b) GUARANTEES AUTHORIZED.—The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

“(1) for eligible community or economic development purposes; or

“(2) to refinance loans or notes issued for such purposes.

“(c) GENERAL PROGRAM REQUIREMENTS.—

“(1) IN GENERAL.—A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

“(2) RELENDING ACCOUNT.—Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

“(3) LIMITATIONS ON UNPAID PRINCIPAL BALANCES.—The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

“(A) community or economic development loans;

“(B) a relending account, to the extent authorized under paragraph (2); or

“(C) a risk-share pool established under subsection (d).

“(4) REPAYMENT.—If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

“(5) PROHIBITED USES.—The Secretary shall, by regulation— Regulations.

“(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

“(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

“(i) the qualified issuer; or

“(ii) any recipient of amounts from the guarantee of a bond or note.

“(d) RISK-SHARE POOL.—Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

“(e) GUARANTEES.—

“(1) IN GENERAL.—A guarantee issued under the Program shall—

“(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

“(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

“(C) represent the full faith and credit of the United States; and

“(D) not exceed 30 years.

“(2) LIMITATIONS.—

“(A) ANNUAL NUMBER OF GUARANTEES.—The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

“(B) GUARANTEE AMOUNT.—The Secretary may not guarantee any amount under the Program equal to less than \$100,000,000, but the total of all such guarantees in any fiscal year may not exceed \$1,000,000,000.

“(f) SERVICING OF TRANSACTIONS.—

“(1) IN GENERAL.—To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

“(2) DUTIES OF PROGRAM ADMINISTRATOR.—The duties of a Program administrator shall include—

“(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

“(B) compliance monitoring;

“(C) bond packaging in connection with the Program; and

“(D) all other duties and related services that are customarily expected of a Program administrator.

“(3) DUTIES OF SERVICER.—The duties of a servicer shall include—

“(A) billing and collecting loan payments;

“(B) initiating collection activities on past-due loans;

“(C) transferring loan payments to the master servicing accounts;

“(D) loan administration and servicing;

“(E) systematic and timely reporting of loan performance through remittance and servicing reports;

“(F) proper measurement of annual outstanding loan requirements; and

“(G) all other duties and related services that are customarily expected of servicers.

“(4) DUTIES OF MASTER SERVICER.—The duties of a master servicer shall include—

“(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

“(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

“(C) monitoring the collection comments and foreclosure actions;

“(D) aggregating the reporting and distribution of funds to trustees and investors;

“(E) removing and replacing a servicer, as necessary;

“(F) loan administration and servicing;

“(G) systematic and timely reporting of loan performance compiled from all bond servicers’ reports;

“(H) proper distribution of funds to investors; and

“(I) all other duties and related services that are customarily expected of a master servicer.

“(g) FEES.—

“(1) IN GENERAL.—A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

“(2) PAYMENT.—A qualified issuer shall pay the fee required under this subsection on an annual basis.

“(3) USE OF FEES.—Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

“(2) USE OF FEES.—To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

“(i) INVESTMENT IN GUARANTEED BONDS INELIGIBLE FOR COMMUNITY REINVESTMENT ACT PURPOSES.—Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901).

“(j) ADMINISTRATION.—

Deadlines.

“(1) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall promulgate regulations to carry out this section.

“(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall implement this section.

Repeal.

“(k) TERMINATION.—This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.”.

SEC. 1135. TEMPORARY EXPRESS LOAN ENHANCEMENT.

(a) IN GENERAL.—Section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking “\$350,000” and inserting “\$1,000,000”.

Effective date.
15 USC 636 note.

(b) PROSPECTIVE REPEAL.—Effective 1 year after the date of enactment of this Act, section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking “\$1,000,000” and inserting “\$350,000”.

15 USC 632 note.

SEC. 1136. PROHIBITION ON USING TARP FUNDS OR TAX INCREASES.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections, shall be construed to limit the ability of Congress to appropriate funds.

(b) TARP FUNDS AND TAX INCREASES.—

(1) IN GENERAL.—Any covered amounts may not be used to carry out section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections.

(2) DEFINITION.—In this subsection, the term “covered amounts” means—

(A) the amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 (S.C. 5201 et seq.) to purchase (under section 101) or guarantee (under section 102) assets under that Act; and

(B) any revenue increase attributable to any amendment to the Internal Revenue Code of 1986 made during the period beginning on the date of enactment of this Act and ending on December 31, 2010.

Small Business
Export
Enhancement
and International
Trade Act of
2010.
15 USC 631 note.

Subtitle B—Small Business Trade and Exporting

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the “Small Business Export Enhancement and International Trade Act of 2010”.

15 USC 649b
note.

SEC. 1202. DEFINITIONS.

(a) DEFINITIONS.—In this subtitle—

(1) the term “Associate Administrator” means the Associate Administrator for International Trade appointed under section 22(a)(2) of the Small Business Act, as amended by this subtitle;

(2) the term “Export Assistance Center” means a one-stop shop referred to in section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)); and

(3) the term “rural small business concern” means a small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

“(t) SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term ‘small business development center’ means a small business development center described in section 21.

“(u) REGION OF THE ADMINISTRATION.—In this Act, the term ‘region of the Administration’ means the geographic area served by a regional office of the Administration established under section 4(a).”.

(2) CONFORMING AMENDMENT.—Section 4(b)(3)(B)(x) of the Small Business Act (15 U.S.C. 633(b)(3)(B)(x)) is amended by striking “Administration district and region” and inserting “district and region of the Administration”.

SEC. 1203. OFFICE OF INTERNATIONAL TRADE.

(a) ESTABLISHMENT.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking “SEC. 22. (a) There” and inserting the following:

“SEC. 22. OFFICE OF INTERNATIONAL TRADE.

“(a) ESTABLISHMENT.—

“(1) OFFICE.—There”; and

(2) in subsection (a)—

(A) in paragraph (1), as so designated, by striking the period and inserting “for the primary purposes of increasing—

“(A) the number of small business concerns that export;

and

“(B) the volume of exports by small business concerns.”;

and

(B) by adding at the end the following:

“(2) ASSOCIATE ADMINISTRATOR.—The head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator.”.

(b) AUTHORITY FOR ADDITIONAL ASSOCIATE ADMINISTRATOR.—Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended—

(1) in the fifth sentence, by striking “five Associate Administrators” and inserting “Associate Administrators”; and

(2) by adding at the end the following: “One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 22.”.

(c) DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended by adding at the end the following:

“(h) DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—The Administrator shall ensure that—

“(1) the responsibilities of the Administration regarding international trade are carried out by the Associate Administrator;

“(2) the Associate Administrator has sufficient resources to carry out such responsibilities; and

“(3) the Associate Administrator has direct supervision and control over—

“(A) the staff of the Office; and

“(B) any employee of the Administration whose principal duty station is an Export Assistance Center, or any successor entity.”

(d) **ROLE OF ASSOCIATE ADMINISTRATOR IN CARRYING OUT INTERNATIONAL TRADE POLICY.**—Section 2(b)(1) of the Small Business Act (15 U.S.C. 631(b)(1)) is amended in the matter preceding subparagraph (A)—

(1) by inserting “the Administrator of” before “the Small Business Administration”; and

(2) by inserting “through the Associate Administrator for International Trade, and” before “in cooperation with”.

Appointment.
15 USC 649 note.

(e) **IMPLEMENTATION DATE.**—Not later than 90 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section.

SEC. 1204. DUTIES OF THE OFFICE OF INTERNATIONAL TRADE.

(a) **AMENDMENTS TO SECTION 22.**—Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) **TRADE DISTRIBUTION NETWORK.**—The Associate Administrator, working in close cooperation with the Secretary of Commerce, the United States Trade Representative, the Secretary of Agriculture, the Secretary of State, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, Director of the United States Trade and Development Agency, and other relevant Federal agencies, small business development centers engaged in export promotion efforts, Export Assistance Centers, regional and district offices of the Administration, the small business community, and relevant State and local export promotion programs, shall—

“(1) maintain a distribution network, using regional and district offices of the Administration, the small business development center network, networks of women’s business centers, the Service Corps of Retired Executives authorized by section 8(b)(1), and Export Assistance Centers, for programs relating to—

“(A) trade promotion;

“(B) trade finance;

“(C) trade adjustment assistance;

“(D) trade remedy assistance; and

“(E) trade data collection;

“(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on exporting trends, market-specific growth, industry trends, and international prospects for exports;

“(3) promote export assistance programs through the district and regional offices of the Administration, the small business development center network, Export Assistance Centers, the network of women’s business centers, chapters of the Service Corps of Retired Executives, State and local export promotion programs, and partners in the private sector; and

“(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (c)(9) to otherwise qualified applicants who are fluent in a language in addition to English, to—

“(A) accompany small business concerns on foreign trade missions; and

“(B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.”;

(2) in subsection (c)—

(A) by striking “(c) The Office” and inserting the following:

“(c) PROMOTION OF SALES OPPORTUNITIES.—The Associate Administrator”;

(B) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively;

(C) by inserting before paragraph (2), as so redesignated, the following:

“(1) establish annual goals for the Office relating to—

“(A) enhancing the exporting capability of small business concerns and small manufacturers;

“(B) facilitating technology transfers;

“(C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently in foreign markets;

“(D) increasing the ability of small business concerns to access capital; and

“(E) disseminating information concerning Federal, State, and private programs and initiatives;”;

(D) in paragraph (2), as so redesignated, by striking “mechanism for” and all that follows through “(D) assisting” and inserting the following: “mechanism for—

“(A) identifying subsectors of the small business community with strong export potential;

“(B) identifying areas of demand in foreign markets;

“(C) prescreening foreign buyers for commercial and credit purposes; and

“(D) assisting”;

(E) in paragraph (3), as so redesignated, by striking “assist small businesses in the formation and utilization of” and inserting “assist small business concerns in forming and using”;

(F) in paragraph (4), as so redesignated—

(i) by striking “local” and inserting “district”;

(ii) by striking “existing”;

(iii) by striking “Small Business Development Center network” and inserting “small business development center network”; and

(iv) by striking “Small Business Development Center Program” and inserting “small business development center program”;

(G) in paragraph (5), as so redesignated—

(i) in subparagraph (A), by striking “Gross State Produce” and inserting “Gross State Product”;

(ii) in subparagraph (B), by striking “SIC” each place it appears and inserting “North American Industry Classification System”; and

- (iii) in subparagraph (C), by striking “small businesses” and inserting “small business concerns”;
- (H) in paragraph (6), as so redesignated, by striking the period at the end and inserting a semicolon;
- (I) in paragraph (7), as so redesignated—
 - (i) in the matter preceding subparagraph (A)—
 - (I) by inserting “concerns” after “small business”; and
 - (II) by striking “current” and inserting “up to date”;
 - (ii) in subparagraph (A), by striking “Administration’s regional offices” and inserting “regional and district offices of the Administration”;
 - (iii) in subparagraph (B) by striking “current”;
 - (iv) in subparagraph (C), by striking “current”;
- and
- (v) by striking “small businesses” each place that term appears and inserting “small business concerns”;
- (J) in paragraph (8), as so redesignated, by striking and at the end;
- (K) in paragraph (9), as so redesignated—
 - (i) in the matter preceding subparagraph (A)—
 - (I) by striking “full-time export development specialists to each Administration regional office and assigning”; and
 - (II) by striking “person in each district office. Such specialists” and inserting “individual in each district office and providing each Administration regional office with a full-time export development specialist, who”;
 - (ii) in subparagraph (B)—
 - (I) by striking “current”; and
 - (II) by striking “with” and inserting “in”;
 - (iii) in subparagraph (D)—
 - (I) by striking “Administration personnel involved in granting” and inserting “personnel of the Administration involved in making”; and
 - (II) by striking “and” at the end;
 - (iv) in subparagraph (E)—
 - (I) by striking “small businesses’ needs” and inserting “the needs of small business concerns”;
 - and
 - (II) by striking the period at the end and inserting a semicolon;
 - (v) by adding at the end the following:
 - “(F) participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and
 - “(G) develop and conduct training programs for exporters and lenders, in cooperation with the Export Assistance Centers, the Department of Commerce, the Department of Agriculture, small business development centers, women’s business centers, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and other relevant Federal agencies;”;

(vi) by striking “small businesses” each place that term appears and inserting “small business concerns”; and

(L) by adding at the end the following:

“(10) make available on the website of the Administration the name and contact information of each individual described in paragraph (9);” Web posting.

“(11) carry out a nationwide marketing effort using technology, online resources, training, and other strategies to promote exporting as a business development opportunity for small business concerns;

“(12) disseminate information to the small business community through regional and district offices of the Administration, the small business development center network, Export Assistance Centers, the network of women’s business centers, chapters of the Service Corps of Retired Executives authorized by section 8(b)(1), State and local export promotion programs, and partners in the private sector regarding exporting trends, market-specific growth, industry trends, and prospects for exporting; and

“(13) establish and carry out training programs for the staff of the regional and district offices of the Administration and resource partners of the Administration on export promotion and providing assistance relating to exports.”;

(3) in subsection (d)—

(A) by redesignating paragraphs (1) through (5) as clauses (i) through (v), respectively, and adjusting the margins accordingly;

(B) by striking “(d) The Office” and inserting the following:

“(d) EXPORT FINANCING PROGRAMS.—

“(1) IN GENERAL.—The Associate Administrator”; and

(C) by striking “To accomplish this goal, the Office shall work” and inserting the following:

“(2) TRADE FINANCE SPECIALIST.—To accomplish the goal established under paragraph (1), the Associate Administrator shall—” Designation.

“(A) designate at least 1 individual within the Administration as a trade finance specialist to oversee international loan programs and assist Administration employees with trade finance issues; and

“(B) work”;

(4) in subsection (e), by striking “(e) The Office” and inserting the following:

“(e) TRADE REMEDIES.—The Associate Administrator”;

(5) by amending subsection (f) to read as follows:

“(f) REPORTING REQUIREMENT.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

“(1) a description of the progress of the Office in implementing the requirements of this section;

“(2) a detailed account of the results of export growth activities of the Administration, including the activities of each district and regional office of the Administration, based on the performance measures described in subsection (i);

“(3) an estimate of the total number of jobs created or retained as a result of export assistance provided by the Administration and resource partners of the Administration;

“(4) for any travel by the staff of the Office, the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel; and

“(5) a description of the participation by the Office in trade negotiations.”;

(6) in subsection (g), by striking “(g) The Office” and inserting the following:

“(g) STUDIES.—The Associate Administrator”; and

(7) by adding after subsection (h), as added by section 1203 of this subtitle, the following:

“(i) EXPORT AND TRADE COUNSELING.—

“(1) DEFINITION.—In this subsection—

“(A) the term ‘lead small business development center’ means a small business development center that has received a grant from the Administration; and

“(B) the term ‘lead women’s business center’ means a women’s business center that has received a grant from the Administration.

“(2) CERTIFICATION PROGRAM.—The Administrator shall establish an export and trade counseling certification program to certify employees of lead small business development centers and lead women’s business centers in providing export assistance to small business concerns.

“(3) NUMBER OF CERTIFIED EMPLOYEES.—The Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing export assistance is not less than the lesser of—

“(A) 5; or

“(B) 10 percent of the total number of employees of the lead small business development center.

“(4) REIMBURSEMENT FOR CERTIFICATION.—

“(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall reimburse a lead small business development center or a lead women’s business center for costs relating to the certification of an employee of the lead small business center or lead women’s business center in providing export assistance under the program established under paragraph (2).

“(B) LIMITATION.—The total amount reimbursed by the Administrator under subparagraph (A) may not exceed \$350,000 in any fiscal year.

“(j) PERFORMANCE MEASURES.—

“(1) IN GENERAL.—The Associate Administrator shall develop performance measures for the Administration to support export growth goals for the activities of the Office under this section that include—

“(A) the number of small business concerns that—

“(i) receive assistance from the Administration;

“(ii) had not exported goods or services before receiving the assistance described in clause (i); and

“(iii) export goods or services;

“(B) the number of small business concerns receiving assistance from the Administration that export goods or services to a market outside the United States into which

the small business concern did not export before receiving the assistance;

“(C) export revenues by small business concerns assisted by programs of the Administration;

“(D) the number of small business concerns referred to an Export Assistance Center or a small business development center by the staff of the Office;

“(E) the number of small business concerns referred to the Administration by an Export Assistance Center or a small business development center; and

“(F) the number of small business concerns referred to the Department of Commerce, the Department of Agriculture, the Department of State, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the United States Trade and Development Agency by the staff of the Office, an Export Assistance Center, or a small business development center.

“(2) JOINT PERFORMANCE MEASURES.—The Associate Administrator shall develop joint performance measures for the district offices of the Administration and the Export Assistance Centers that include the number of export loans made under—

“(A) section 7(a)(16);

“(B) the Export Working Capital Program established under section 7(a)(14);

“(C) the Preferred Lenders Program, as defined in section 7(a)(2)(C)(ii); and

“(D) the export express program established under section 7(a)(34).

“(3) CONSISTENCY OF TRACKING.—The Associate Administrator, in coordination with the departments and agencies that are represented on the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988 (15 U.S.C. 4727) and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under paragraph (1), that is consistent with systems used by the departments and agencies and the network.”.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on any travel by the staff of the Office of International Trade of the Administration, during the period beginning on October 1, 2004, and ending on the date of enactment of the Act, including the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel.

SEC. 1205. EXPORT ASSISTANCE CENTERS.

(a) EXPORT ASSISTANCE CENTERS.—Section 22 of the Small Business Act (15 U.S.C. 649), as amended by this subtitle, is amended by adding at the end the following:

“(k) EXPORT ASSISTANCE CENTERS.—

“(1) EXPORT FINANCE SPECIALISTS.—

“(A) MINIMUM NUMBER OF EXPORT FINANCE SPECIALISTS.—On and after the date that is 90 days after the

Deadlines.

date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists is not less than the number of such employees so assigned on January 1, 2003.

“(B) EXPORT FINANCE SPECIALISTS ASSIGNED TO EACH REGION OF THE ADMINISTRATION.—On and after the date that is 2 years after the date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that there are not fewer than 3 export finance specialists in each region of the Administration.

“(2) PLACEMENT OF EXPORT FINANCE SPECIALISTS.—

“(A) PRIORITY.—The Administrator shall give priority, to the maximum extent practicable, to placing employees of the Administration at any Export Assistance Center that—

“(i) had an Administration employee assigned to the Export Assistance Center before January 2003; and

“(ii) has not had an Administration employee assigned to the Export Assistance Center during the period beginning January 2003, and ending on the date of enactment of this subsection, either through retirement or reassignment.

“(B) NEEDS OF EXPORTERS.—The Administrator shall, to the maximum extent practicable, strategically assign Administration employees to Export Assistance Centers, based on the needs of exporters.

“(C) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to require the Administrator to reassign or remove an export finance specialist who is assigned to an Export Assistance Center on the date of enactment of this subsection.

“(3) GOALS.—The Associate Administrator shall work with the Department of Commerce, the Export-Import Bank of the United States, and the Overseas Private Investment Corporation to establish shared annual goals for the Export Assistance Centers.

“(4) OVERSIGHT.—The Associate Administrator shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Assistance Centers.

“(1) DEFINITIONS.—In this section—

“(1) the term ‘Associate Administrator’ means the Associate Administrator for International Trade described in subsection (a)(2);

“(2) the term ‘Export Assistance Center’ means a one-stop shop for United States exporters established by the United States and Foreign Commercial Service of the Department of Commerce pursuant to section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8));

“(3) the term ‘export finance specialist’ means a full-time equivalent employee of the Office assigned to an Export Assistance Center to carry out the duties described in subsection (e); and

Time period.

Designation.

“(4) the term ‘Office’ means the Office of International Trade established under subsection (a)(1).”.

(b) STUDY AND REPORT ON FILLING GAPS IN HIGH-AND-LOW-EXPORT VOLUME AREAS.— 15 USC 649 note.

(1) STUDY AND REPORT.—Not later than 6 months after the date of enactment of this Act, and every 2 years thereafter, the Administrator shall—

(A) conduct a study of—

- (i) the volume of exports for each State;
- (ii) the availability of export finance specialists in each State;
- (iii) the number of exporters in each State that are small business concerns;
- (iv) the percentage of exporters in each State that are small business concerns;
- (v) the change, if any, in the number of exporters that are small business concerns in each State—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced;

(vi) the total value of the exports in each State by small business concerns;

(vii) the percentage of the total volume of exports in each State that is attributable to small business concerns; and

(viii) the change, if any, in the percentage of the total volume of exports in each State that is attributable to small business concerns—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced; and

(B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

(i) the results of the study under subparagraph (A);

(ii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the greatest volume of exports, based upon the most recent data available from the Department of Commerce;

(iii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the lowest volume of exports, based upon the most recent data available from the Department of Commerce; and

(iv) such additional information as the Administrator determines is appropriate.

(2) DEFINITION.—In this subsection, the term “export finance specialist” has the meaning given that term in section 22(l) of the Small Business Act, as added by this title.

SEC. 1206. INTERNATIONAL TRADE FINANCE PROGRAMS.

(a) LOAN LIMITS.—

(1) TOTAL AMOUNT OUTSTANDING.—Section 7(a)(3)(B) of the Small Business Act (15 U.S.C. 636(a)(3)(B)) is amended by striking “\$1,750,000, of which not more than \$1,250,000” and inserting “\$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000”.

(2) PARTICIPATION.—Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended—

(A) in subparagraph (A), in the matter preceding clause (i), by striking “subparagraph (B)” and inserting “subparagraphs (B), (D), and (E)”; and

(B) in subparagraph (D), by striking “Notwithstanding subparagraph (A), in” and inserting “In”; and

(C) by adding at the end the following:

“(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.”.

(b) WORKING CAPITAL.—Section 7(a)(16)(A) of the Small Business Act (15 U.S.C. 636(a)(16)(A)) is amended—

(1) in the matter preceding clause (i), by striking “in—” and inserting “—”;

(2) in clause (i)—

(A) by inserting “in” after “(i)”; and

(B) by striking “or” at the end;

(3) in clause (ii)—

(A) by inserting “in” after “(ii)”; and

(B) by striking the period at the end and inserting “, including any debt that qualifies for refinancing under any other provision of this subsection; or”; and

(4) by adding at the end the following:

“(iii) by providing working capital.”.

(c) COLLATERAL.—Section 7(a)(16)(B) of the Small Business Act (15 U.S.C. 636(a)(16)(B)) is amended—

(1) by striking “Each loan” and inserting the following:

“(i) IN GENERAL.—Except as provided in clause (ii), each loan”; and

(2) by adding at the end the following:

“(ii) EXCEPTION.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.”.

(d) EXPORT WORKING CAPITAL PROGRAM.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(D), by striking “not exceed” and inserting “be”; and

(2) in paragraph (14)—

(A) by striking “(A) The Administration” and inserting the following: “EXPORT WORKING CAPITAL PROGRAM.—

“(A) IN GENERAL.—The Administrator”;

(B) by striking “(B) When considering” and inserting the following:

“(C) CONSIDERATIONS.—When considering”;

(C) by striking “(C) The Administration” and inserting the following:

“(D) MARKETING.—The Administrator”; and

(D) by inserting after subparagraph (A) the following:

“(B) TERMS.—

“(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

“(ii) FEES.—

“(I) IN GENERAL.—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

“(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.”.

(e) PARTICIPATION IN PREFERRED LENDERS PROGRAM.—Section 7(a)(2)(C) of the Small Business Act (15 U.S.C. 636(a)(2)(C)) is amended—

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following:

“(ii) EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.”.

(f) EXPORT EXPRESS PROGRAM.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(35) EXPORT EXPRESS PROGRAM.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘export development activity’ includes—

“(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

“(II) participation in a trade show that takes place outside the United States;

“(III) translation of product brochures or catalogues for use in markets outside the United States;

“(IV) obtaining a general line of credit for export purposes;

“(V) performing a service contract from buyers located outside the United States;

“(VI) obtaining transaction-specific financing associated with completing export orders;

“(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

“(VIII) providing term loans or other financing to enable a small business concern, including an

export trading company and an export management company, to develop a market outside the United States; and

“(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

“(ii) the term ‘express loan’ means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

“(B) **AUTHORITY.**—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

“(C) **LEVEL OF PARTICIPATION.**—

“(i) **MAXIMUM AMOUNT.**—The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

“(ii) **PERCENTAGE.**—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

“(I) 90 percent of a loan that is not more than \$350,000; and

“(II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.”.

(g) **ANNUAL LISTING OF EXPORT FINANCE LENDERS.**—Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) is amended by adding at the end the following:

“(F) **LIST OF EXPORT FINANCE LENDERS.**—

“(i) **PUBLICATION OF LIST REQUIRED.**—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

“(I) this paragraph;

“(II) paragraph (14); or

“(III) paragraph (34).

“(ii) **AVAILABILITY OF LIST.**—The Administrator shall—

“(I) post the list published under clause (i) on the website of the Administration; and

“(II) make the list published under clause (i) available, upon request, at each district office of the Administration.”.

Web posting.

15 USC 636 note.

(h) **APPLICABILITY.**—The amendments made by subsections (a) through (f) shall apply with respect to any loan made after the date of enactment of this Act.

15 USC 649b note.

SEC. 1207. STATE TRADE AND EXPORT PROMOTION GRANT PROGRAM.

(a) **DEFINITIONS.**—In this section—

(1) the term “eligible small business concern” means a small business concern that—

(A) has been in business for not less than the 1-year period ending on the date on which assistance is provided using a grant under this section;

(B) is operating profitably, based on operations in the United States;

(C) has demonstrated understanding of the costs associated with exporting and doing business with foreign purchasers, including the costs of freight forwarding, customs brokers, packing and shipping, as determined by the Associate Administrator; and

(D) has in effect a strategic plan for exporting;

(2) the term “program” means the State Trade and Export Promotion Grant Program established under subsection (b);

(3) the term “small business concern owned and controlled by women” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632);

(4) the term “socially and economically disadvantaged small business concern” has the meaning given that term in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 6537(a)(4)(A)); and

(5) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(b) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall establish a 3-year trade and export promotion pilot program to be known as the State Trade and Export Promotion Grant Program, to make grants to States to carry out export programs that assist eligible small business concerns in—

(1) participation in a foreign trade mission;

(2) a foreign market sales trip;

(3) a subscription to services provided by the Department of Commerce;

(4) the payment of website translation fees;

(5) the design of international marketing media;

(6) a trade show exhibition;

(7) participation in training workshops; or

(8) any other export initiative determined appropriate by the Associate Administrator.

(c) GRANTS.—

(1) JOINT REVIEW.—In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State that export or to increase the value of the exports by eligible small business concerns in the State.

(2) CONSIDERATIONS.—In making grants under this section, the Associate Administrator may give priority to an application by a State that proposes a program that—

(A) focuses on eligible small business concerns as part of an export promotion program;

(B) demonstrates success in promoting exports by—

(i) socially and economically disadvantaged small business concerns;

(ii) small business concerns owned or controlled by women; and

(iii) rural small business concerns;

(C) promotes exports from a State that is not 1 of the 10 States with the highest percentage of exporters

that are small business concerns, based upon the latest data available from the Department of Commerce; and

(D) promotes new-to-market export opportunities to the People's Republic of China for eligible small business concerns in the United States.

(3) LIMITATIONS.—

(A) SINGLE APPLICATION.—A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

(B) PROPORTION OF AMOUNTS.—The total value of grants under the program made during a fiscal year to the 10 States with the highest number of exporters that are small business concerns, based upon the latest data available from the Department of Commerce, shall be not more than 40 percent of the amounts appropriated for the program for that fiscal year.

(4) APPLICATION.—A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

(d) COMPETITIVE BASIS.—The Associate Administrator shall award grants under the program on a competitive basis.

(e) FEDERAL SHARE.—The Federal share of the cost of an export program carried out using a grant under the program shall be—

(1) for a State that has a high export volume, as determined by the Associate Administrator, not more than 65 percent; and

(2) for a State that does not have a high export volume, as determined by the Associate Administrator, not more than 75 percent.

(f) NON-FEDERAL SHARE.—The non-Federal share of the cost of an export program carried using a grant under the program shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(g) REPORTS.—

(1) INITIAL REPORT.—Not later than 120 days after the date of enactment of this Act, the Associate Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

(A) a description of the structure of and procedures for the program;

(B) a management plan for the program; and

(C) a description of the merit-based review process to be used in the program.

(2) ANNUAL REPORTS.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the program, which shall include—

(A) the number and amount of grants made under the program during the preceding year;

(B) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with grant; and

(C) the effect of each grant on exports by eligible small business concerns in the State receiving the grant.

(h) **REVIEWS BY INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—The Inspector General of the Administration shall conduct a review of—

(A) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

(B) the overall management and effectiveness of the program.

(2) **REPORT.**—Not later than September 30, 2012, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under paragraph (1).

(i) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out the program \$30,000,000 for each of fiscal years 2011, 2012, and 2013.

(j) **TERMINATION.**—The authority to carry out the program shall terminate 3 years after the date on which the Associate Administrator establishes the program.

SEC. 1208. RURAL EXPORT PROMOTION.

Not later than 6 months after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that contains—

Deadline.
Reports.

(1) a description of each program of the Administration that promotes exports by rural small business concerns, including—

(A) the number of rural small business concerns served by the program;

(B) the change, if any, in the number of rural small business concerns as a result of participation in the program during the 10-year period ending on the date of enactment of this Act;

(C) the volume of exports by rural small business concerns that participate in the program; and

(D) the change, if any, in the volume of exports by rural small businesses that participate in the program during the 10-year period ending on the date of enactment of this Act;

(2) a description of the coordination between programs of the Administration and other Federal programs that promote exports by rural small business concerns;

(3) recommendations, if any, for improving the coordination described in paragraph (2);

(4) a description of any plan by the Administration to market the international trade financing programs of the Administration through lenders that—

- (A) serve rural small business concerns; and
- (B) are associated with financing programs of the Department of Agriculture;
- (5) recommendations, if any, for improving coordination between the counseling programs and export financing programs of the Administration, in order to increase the volume of exports by rural small business concerns; and
- (6) any additional information the Administrator determines is necessary.

SEC. 1209. INTERNATIONAL TRADE COOPERATION BY SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(a) of the Small Business Act (15 U.S.C. 648(a)) is amended—

- (1) by striking “(2) The Small Business Development Centers” and inserting the following:

“(2) COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.—

“(A) INFORMATION AND SERVICES.—The small business development centers”; and

(2) in paragraph (2)—

(A) in subparagraph (A), as so designated, by inserting “(including State trade agencies),” after “local agencies”; and

(B) by adding at the end the following:

“(B) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.—A small business development center that counsels a small business concern on issues relating to international trade shall—

“(i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and

“(ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

“(C) DEFINITION.—In this paragraph, the term ‘Export Assistance Center’ has the same meaning as in section 22.”.

Subtitle C—Small Business Contracting

PART I—CONTRACT BUNDLING

SEC. 1311. SMALL BUSINESS ACT.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1202, is amended by adding at the end the following:

Definition.

“(v) MULTIPLE AWARD CONTRACT.—In this Act, the term ‘multiple award contract’ means—

“(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

“(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.”.

SEC. 1312. LEADERSHIP AND OVERSIGHT.

(a) **IN GENERAL.**—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by adding at the end the following:

“(q) **BUNDLING ACCOUNTABILITY MEASURES.**—

“(1) **TEAMING REQUIREMENTS.**—Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

“(2) **POLICIES ON REDUCTION OF CONTRACT BUNDLING.**—

Deadlines.
Web postings.

“(A) **IN GENERAL.**—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

“(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

“(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

“(B) **RATIONALE FOR CONTRACT BUNDLING.**—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

“(3) **REPORTING.**—Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

“(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

“(B) explain why the Administration selected the areas identified under subparagraph (A); and

“(C) describe the activities performed by procurement center representatives and commercial market representatives.”.

(b) **TECHNICAL CORRECTION.**—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by striking “Administrator of the Office of Federal Procurement Policy” each place it appears and inserting “Administrator for Federal Procurement Policy”.

(c) **REPORT.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report regarding the procurement center representative program of the Administration.

(2) CONTENTS.—The report submitted under paragraph (1) shall—

(A) address ways to improve the effectiveness of the procurement center representative program in helping small business concerns obtain Federal contracts;

(B) evaluate the effectiveness of procurement center representatives and commercial marketing representatives; and

(C) include recommendations, if any, on how to improve the procurement center representative program.

15 USC 644 note.
Deadline.

(d) ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall implement a 3-year pilot electronic procurement center representative program.

(2) REPORT.—Not later than 30 days after the pilot program under paragraph (1) ends, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the pilot program.

SEC. 1313. CONSOLIDATION OF CONTRACT REQUIREMENTS.

(a) IN GENERAL.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

15 USC 631 note.

(1) by redesignating section 44 as section 45; and

(2) by inserting after section 43 the following:

15 USC 657q.

“SEC. 44. CONSOLIDATION OF CONTRACT REQUIREMENTS.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘Chief Acquisition Officer’ means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a));

“(2) the term ‘consolidation of contract requirements’, with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; and

“(3) the term ‘senior procurement executive’ means an official designated under section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c)) as the senior procurement executive for a Federal agency.

“(b) POLICY.—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

“(c) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—

“(1) IN GENERAL.—Subject to paragraph (4), the head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than \$2,000,000,

unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

“(A) conducts market research;

“(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

“(C) makes a written determination that the consolidation of contract requirements is necessary and justified;

Determination.

“(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

“(E) certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy.

Certification.

“(2) DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUSTIFIED.—

“(A) IN GENERAL.—A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

“(B) SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.—For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

“(3) BENEFITS TO BE CONSIDERED.—The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

“(A) quality;

“(B) acquisition cycle;

“(C) terms and conditions; and

“(D) any other benefit.

“(4) DEPARTMENT OF DEFENSE.—

“(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

Compliance.

“(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a military department shall be conducted in accordance with section 2382 of title 10, United States Code.

“(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 15.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 2382(b)(1) of title 10, United States Code, is amended by striking “An official” and inserting “Subject to section 44(c)(4), an official”.

15 USC 644 note. **SEC. 1314. SMALL BUSINESS TEAMS PILOT PROGRAM.**

(a) DEFINITIONS.—In this section—

(1) the term “Pilot Program” means the Small Business Teaming Pilot Program established under subsection (b); and

(2) the term “eligible organization” means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Administrator) relating to—

(A) customer relations and outreach;

(B) team relations and outreach; and

(C) performance measurement and quality assurance.

(b) ESTABLISHMENT.—The Administrator shall establish a Small Business Teaming Pilot Program for teaming and joint ventures involving small business concerns.

(c) GRANTS.—Under the Pilot Program, the Administrator may make grants to eligible organizations to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts.

(d) CONTRACTING OPPORTUNITIES.—The Administrator shall work with eligible organizations receiving a grant under the Pilot Program to recommend appropriate contracting opportunities for teams or joint ventures of small business concerns.

(e) REPORT.—Not later than 1 year before the date on which the authority to carry out the Pilot Program terminates under subsection (f), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of the Pilot Program.

(f) TERMINATION.—The authority to carry out the Pilot Program shall terminate 5 years after the date of enactment of this Act.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (c) \$5,000,000 for each of fiscal years 2010 through 2015.

PART II—SUBCONTRACTING INTEGRITY

Deadline.
Regulations.
15 USC 637 note.

SEC. 1321. SUBCONTRACTING MISREPRESENTATIONS.

Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the Administrator for Federal Procurement Policy, shall promulgate regulations relating to, and the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to establish a policy on, subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities.

SEC. 1322. SMALL BUSINESS SUBCONTRACTING IMPROVEMENTS.

Section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)) is amended—

(1) in subparagraph (E), by striking “and” at the end;

(2) in subparagraph (F), by striking the period at the end and inserting “; and”; and

(3) by adding at the end, the following:

“(G) a representation that the offeror or bidder will—

“(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

“(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).”.

PART III—ACQUISITION PROCESS

SEC. 1331. RESERVATION OF PRIME CONTRACT AWARDS FOR SMALL BUSINESSES.

Section 15 of the Small Business Act (15 U.S.C. 644), as amended by this Act, is amended by adding at the end the following:

“(r) **MULTIPLE AWARD CONTRACTS.**—Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

Deadline.
Regulations.
Guidance.

“(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

“(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

“(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).”.

SEC. 1332. MICRO-PURCHASE GUIDELINES.

Not later than 1 year after the date of enactment of this Act, the Director of the Office of Management and Budget, in coordination with the Administrator of General Services, shall issue guidelines regarding the analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small business concerns in purchases in an amount not in excess of the micro-purchase threshold, as defined in section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) (in this section referred to as “micro-purchases”), consistent with the national policy on small business participation in Federal procurements set forth in sections 2(a) and 15(g) of the Small Business Act (15 U.S.C. 631(a) and 644(g)), and dissemination of best practices for participation of small business concerns in micro-purchases.

Deadline.
41 USC 428 note.

SEC. 1333. AGENCY ACCOUNTABILITY.

Section 15(g)(2) of the Small Business Act (15 U.S.C. 644(g)(2)) is amended—

- (1) by inserting “(A)” after “(2)”;
- (2) by striking “Goals established” and inserting the following:
“(B) Goals established”;
- (3) by striking “Whenever” and inserting the following:
“(C) Whenever”;
- (4) by striking “For the purpose of” and inserting the following:
“(D) For the purpose of”;
- (5) by striking “The head of each Federal agency, in attempting to attain such participation” and inserting the following:
“(E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D)”.
- (6) in subparagraph (E), as so designated—
 - (A) by striking “(A) contracts” and inserting “(i) contracts”; and
 - (B) by striking “(B) contracts” and inserting “(ii) contracts”; and
- (7) by adding at the end the following:
“(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.
“(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.”.

SEC. 1334. PAYMENT OF SUBCONTRACTORS.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended by adding at the end the following:

“(12) PAYMENT OF SUBCONTRACTORS.—

“(A) DEFINITION.—In this paragraph, the term ‘covered contract’ means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

“(B) NOTICE.—

“(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

“(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

“(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

“(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E). Records.

“(E) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to— Deadline.

“(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

“(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and Records.

“(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.”. Public information.

SEC. 1335. REPEAL OF SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Business Opportunity Development Reform Act of 1988 (Public Law 100–656) is amended by striking title VII (15 U.S.C. 644 note).

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendment made by this section— 15 USC 644 note.

(1) shall take effect on the date of enactment of this Act; and

(2) apply to the first full fiscal year after the date of enactment of this Act.

PART IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

SEC. 1341. POLICY AND PRESUMPTIONS.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1311, is amended by adding at the end the following:

“(w) PRESUMPTION.—

“(1) IN GENERAL.—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

“(2) DEEMED CERTIFICATIONS.—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

“(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved,

set aside, or otherwise classified as intended for award to small business concerns.

“(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

“(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

“(3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.—

“(A) IN GENERAL.—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

“(B) CONTENT OF CERTIFICATIONS.—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

“(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.”.

SEC. 1342. ANNUAL CERTIFICATION.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1341, is amended by adding at the end the following:

“(x) ANNUAL CERTIFICATION.—

“(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

“(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

“(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

“(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.”.

Deadline.

SEC. 1343. TRAINING FOR CONTRACTING AND ENFORCEMENT PERSONNEL.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Federal Acquisition Institute, in consultation with the Administrator for Federal Procurement Policy, the Defense Acquisition University, and the Administrator, shall develop courses for acquisition personnel concerning proper classification of business concerns and small business size and status for purposes of Federal contracts, subcontracts, grants, cooperative agreements, and cooperative research and development agreements.

Deadline.
41 USC 433 note.

(b) **POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.**—Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1342, is amended by adding at the end the following:

“(y) **POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.**—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.”.

Deadline.

SEC. 1344. UPDATED SIZE STANDARDS.

15 USC 1632
note.

(a) **ROLLING REVIEW.**—

(1) **IN GENERAL.**—The Administrator shall—

(A) during the 18-month period beginning on the date of enactment of this Act, and during every 18-month period thereafter, conduct a detailed review of not less than $\frac{1}{3}$ of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

Time period.

(B) after completing each review under subparagraph (A) make appropriate adjustments to the size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

(C) make publicly available—

(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

Public
information.

(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and

(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report regarding the review, including why the Administrator—

Deadline.
Public
information.

(i) used the factors and criteria described in subparagraph (C); and

(ii) adjusted or did not adjust each size standard that was reviewed under the review.

(2) **COMPLETE REVIEW OF SIZE STANDARDS.**—The Administrator shall ensure that each size standard for small business concerns established under section 3(a)(2) of the Small Business

Deadlines.

Act (15 U.S.C. 632(a)(2)) is reviewed under paragraph (1) not less frequently than once every 5 years.

(b) RULES.—Not later than 1 year after the date of enactment of this Act, the Administrator shall promulgate rules for conducting the reviews required under subsection (a).

SEC. 1345. STUDY AND REPORT ON THE MENTOR-PROTEGE PROGRAM.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the mentor-protégé program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), and other relationships and strategic alliances pairing a larger business and a small business concern partner to gain access to Federal Government contracts, to determine whether the programs and relationships are effectively supporting the goal of increasing the participation of small business concerns in Government contracting.

(b) MATTERS TO BE STUDIED.—The study conducted under this section shall include—

- (1) a review of a broad cross-section of industries; and
- (2) an evaluation of—

(A) how each Federal agency carrying out a program described in subsection (a) administers and monitors the program;

(B) whether there are systems in place to ensure that the mentor-protégé relationship, or similar affiliation, promotes real gain to the protégé, and is not just a mechanism to enable participants that would not otherwise qualify under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to receive contracts under that section; and

(C) the degree to which protégé businesses become able to compete for Federal contracts without the assistance of a mentor.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of the study conducted under this section.

SEC. 1346. CONTRACTING GOALS REPORTS.

Section 15(h)(2) of the Small Business Act (15 U.S.C. 644(h)(2)) is amended by striking “submit them” and all that follows through “the following:” and inserting “submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the compilation and analysis, which shall include the following:”.

SEC. 1347. SMALL BUSINESS CONTRACTING PARITY.

(a) DEFINITIONS.—In this section—

(1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively; and

(2) the terms “HUBZone small business concern”, “small business concern”, “small business concern owned and controlled by service-disabled veterans”, and “small business concern owned and controlled by women” have the same meanings as in section 3 of the Small Business Act (15 U.S.C. 632).

(b) CONTRACTING IMPROVEMENTS.—

(1) CONTRACTING OPPORTUNITIES.—Section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)) is amended by striking “shall” and inserting “may”.

(2) CONTRACTING GOALS.—Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended in the fourth sentence by inserting “and subcontract” after “not less than 3 percent of the total value of all prime contract”.

(3) MENTOR-PROTEGE PROGRAMS.—The Administrator may establish mentor-protege programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(c) SMALL BUSINESS CONTRACTING PROGRAMS PARITY.—Section 31(b)(2) of the Small Business Act (15 U.S.C. 657a(b)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking “Notwithstanding any other provision of law—”;

(2) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking “a contracting” and inserting “SOLE SOURCE CONTRACTS.—A contracting”; and

(B) in clause (iii), by striking the semicolon at the end and inserting a period;

(3) in subparagraph (B)—

(A) by striking “a contract opportunity shall” and inserting “RESTRICTED COMPETITION.—A contract opportunity may”; and

(B) by striking “; and” and inserting a period; and

(4) in subparagraph (C), by striking “not later” and inserting “APPEALS.—Not later”.

Subtitle D—Small Business Management and Counseling Assistance

SEC. 1401. MATCHING REQUIREMENTS UNDER SMALL BUSINESS PROGRAMS.

(a) MICROLOAN PROGRAM.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (3)(B)—

(A) by striking “As a condition” and inserting the following:

“(i) IN GENERAL.—Subject to clause (ii), as a condition”;

(B) by striking “the Administration” and inserting “the Administrator”; and

(C) by adding at the end the following:

“(ii) WAIVER OF NON-FEDERAL SHARE.—

“(I) IN GENERAL.—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. The Administrator may

waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

“(II) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this clause, the Administrator shall consider—

“(aa) the economic conditions affecting the intermediary;

“(bb) the impact a waiver under this clause would have on the credibility of the microloan program under this subsection;

“(cc) the demonstrated ability of the intermediary to raise non-Federal funds; and

“(dd) the performance of the intermediary.

“(III) LIMITATIONS.—

“(aa) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause if granting the waiver would undermine the credibility of the microloan program under this subsection.

“(bb) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause for fiscal year 2013 or any fiscal year thereafter.”; and

(2) in paragraph (4)(B)—

(A) by striking “As a condition” and all that follows through “the Administration shall require” and inserting the following:

“(i) IN GENERAL.—Subject to clause (ii), as a condition of a grant made under subparagraph (A), the Administrator shall require”; and

(B) by adding at the end the following:

“(ii) WAIVER OF NON-FEDERAL SHARE.—

“(I) IN GENERAL.—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

“(II) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this clause, the Administrator shall consider—

“(aa) the economic conditions affecting the intermediary;

“(bb) the impact a waiver under this clause would have on the credibility of the microloan program under this subsection;

“(cc) the demonstrated ability of the intermediary to raise non-Federal funds; and

“(dd) the performance of the intermediary.

“(III) LIMITATIONS.—

“(aa) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause if granting

the waiver would undermine the credibility of the microloan program under this subsection.

“(bb) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause for fiscal year 2013 or any fiscal year thereafter.”.

(b) WOMEN’S BUSINESS CENTER PROGRAM.—Section 29(c) of the Small Business Act (15 U.S.C. 656(c)) is amended—

(1) in paragraph (1), by striking “As a condition” and inserting “Subject to paragraph (5), as a condition”; and

(2) by adding at the end the following:

“(5) WAIVER OF NON-FEDERAL SHARE RELATING TO TECHNICAL ASSISTANCE AND COUNSELING.—

“(A) IN GENERAL.—Upon request by a recipient organization, and in accordance with this paragraph, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under this subsection for the technical assistance and counseling activities of the recipient organization carried out using financial assistance under this section for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this paragraph for successive fiscal years.

“(B) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this paragraph, the Administrator shall consider—

“(i) the economic conditions affecting the recipient organization;

“(ii) the impact a waiver under this clause would have on the credibility of the women’s business center program under this section;

“(iii) the demonstrated ability of the recipient organization to raise non-Federal funds; and

“(iv) the performance of the recipient organization.

“(C) LIMITATIONS.—

“(i) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this paragraph if granting the waiver would undermine the credibility of the women’s business center program under this section.

“(ii) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this paragraph for fiscal year 2013 or any fiscal year thereafter.”.

(c) PROSPECTIVE REPEALS.—Effective October 1, 2012, the Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) in section 7(m) (15 U.S.C. 636(m))—

(A) in paragraph (3)(B)—

(i) by striking “INTERMEDIARY CONTRIBUTION.—” and all that follows through “Subject to clause (ii), as” and inserting “INTERMEDIARY CONTRIBUTION.—As”; and

(ii) by striking clause (ii); and

(B) in paragraph (4)(B)—

(i) by striking “CONTRIBUTION.—” and all that follows through “Subject to clause (ii), as” and inserting “CONTRIBUTION.—As”; and

Effective date.
15 USC 636 note.

- (ii) by striking clause (ii); and
- (2) in section 29(c) (15 U.S.C. 656(c))—
 - (A) in paragraph (1), by striking “Subject to paragraph (5), as” and inserting “As”; and
 - (B) by striking paragraph (5).

15 USC 648b.

SEC. 1402. GRANTS FOR SBDACS.

(a) **IN GENERAL.**—The Administrator may make grants to small business development centers under section 21 of the Small Business Act (15 U.S.C. 648) to provide targeted technical assistance to small business concerns seeking access to capital or credit, Federal procurement opportunities, energy efficiency audits to reduce energy bills, opportunities to export products or provide services to foreign customers, adopting, making innovations in, and using broadband technologies, or other assistance.

(b) ALLOCATION.—

(1) **IN GENERAL.**—Subject to paragraph (2), and notwithstanding the requirements of section 21(a)(4)(C)(iii) of the Small Business Act (15 U.S.C. 648(a)(4)(C)(iii)), the amount appropriated to carry out this section shall be allocated under the formula under section 21(a)(4)(C)(i) of that Act.

(2) **MINIMUM FUNDING.**—The amount made available under this section to each State shall be not less than \$325,000.

(3) **TYPES OF USES.**—Of the total amount of the grants awarded by the Administrator under this section—

(A) not less than 80 percent shall be used for counseling of small business concerns; and

(B) not more than 20 percent may be used for classes or seminars.

(c) **NO NON-FEDERAL SHARE REQUIRED.**—Notwithstanding section 21(a)(4)(A) of the Small Business Act (15 U.S.C. 648(a)(4)(A)), the recipient of a grant made under this section shall not be required to provide non-Federal matching funds.

Deadline.

(d) **DISTRIBUTION.**—Not later than 30 days after the date on which amounts are appropriated to carry out this section, the Administrator shall disburse the total amount appropriated.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Administrator \$50,000,000 to carry out this section.

Subtitle E—Disaster Loan Improvement

SEC. 1501. AQUACULTURE BUSINESS DISASTER ASSISTANCE.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1343, is amended by adding at the end the following:

“(z) **AQUACULTURE BUSINESS DISASTER ASSISTANCE.**—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.”.

Subtitle F—Small Business Regulatory Relief

SEC. 1601. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

Section 604(a) of title 5, United States Code, is amended—

- (1) in paragraph (1), by striking “succinct”;
- (2) in paragraph (2), by striking “summary” each place it appears and inserting “statement”;
- (3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and
- (4) by inserting after paragraph (2) the following:

“(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;”.

SEC. 1602. OFFICE OF ADVOCACY.

(a) IN GENERAL.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

- (1) in paragraph (4), by striking “and” at the end;
- (2) in paragraph (5), by striking the period and inserting “; and”; and
- (3) by adding at the end the following:

“(6) carry out the responsibilities of the Office of Advocacy under chapter 6 of title 5, United States Code.”.

(b) BUDGETARY LINE ITEM AND AUTHORIZATION OF APPROPRIATIONS.—Title II of Public Law 94–305 (15 U.S.C. 634a et seq.) is amended by striking section 207 and inserting the following:

“SEC. 207. BUDGETARY LINE ITEM AND AUTHORIZATION OF APPROPRIATIONS.

15 USC 634g.

“(a) APPROPRIATION REQUESTS.—Each budget of the United States Government submitted by the President under section 1105 of title 31, United States Code, shall include a separate statement of the amount of appropriations requested for the Office of Advocacy of the Small Business Administration, which shall be designated in a separate account in the General Fund of the Treasury.

“(b) ADMINISTRATIVE OPERATIONS.—The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations, together with such equipment, operating budget, and communications facilities and services as may be necessary, and shall provide necessary maintenance services for such offices and the equipment and facilities located in such offices.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title. Any amount appropriated under this subsection shall remain available, without fiscal year limitation, until expended.”.

Subtitle G—Appropriations Provisions

SEC. 1701. SALARIES AND EXPENSES.

(a) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, \$150,000,000, to remain available until September 30, 2012, for an additional amount for the appropriations account appropriated under the heading “SALARIES AND EXPENSES” under the heading “SMALL BUSINESS ADMINISTRATION”, of which—

(1) \$50,000,000 is for grants to small business development centers authorized under section 1402;

(2) \$1,000,000 is for the costs of administering grants authorized under section 1402;

(3) \$30,000,000 is for grants to States for fiscal year 2011 to carry out export programs that assist small business concerns authorized under section 1207;

(4) \$30,000,000 is for grants to States for fiscal year 2012 to carry out export programs that assist small business concerns authorized under section 1207;

(5) \$2,500,000 is for the costs of administering grants authorized under section 1207;

(6) \$5,000,000 is for grants for fiscal year 2011 under the Small Business Teaming Pilot Program under section 1314; and

(7) \$5,000,000 is for grants for fiscal year 2012 under the Small Business Teaming Pilot Program under section 1314.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives a detailed expenditure plan for using the funds provided under subsection (a).

SEC. 1702. BUSINESS LOANS PROGRAM ACCOUNT.

(a) IN GENERAL.—There is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, for an additional amount for the appropriations account appropriated under the heading “BUSINESS LOANS PROGRAM ACCOUNT” under the heading “SMALL BUSINESS ADMINISTRATION”—

(1) \$8,000,000, to remain available until September 30, 2012, for fiscal year 2011 for the cost of direct loans authorized under section 7(l) of the Small Business Act, as added by section 1131 of this title, including the cost of modifying the loans;

(2) \$8,000,000, to remain available until September 30, 2012, for fiscal year 2012 for the cost of direct loans authorized under section 7(l) of the Small Business Act, as added by section 1131 of this title, including the cost of modifying the loans;

(3) \$6,500,000, to remain available until September 30, 2012, for administrative expenses to carry out the direct loan program authorized under section 7(l) of the Small Business Act, as added by section 1131 of this title, which may be transferred to and merged with the appropriations account appropriated under the heading “SALARIES AND EXPENSES” under the heading “SMALL BUSINESS ADMINISTRATION”; and

(4) \$15,000,000, to remain available until September 30, 2011, for the cost of guaranteed loans as authorized under section 7(a) of the Small Business Act, including the cost of modifying the loans.

(b) DEFINITION.—In this section, the term “cost” has the meaning given that term in section 502 of the Congressional Budget Act of 1974.

SEC. 1703. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT.

Appropriation
authorization.

There is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, for an additional amount for the appropriations account appropriated under the heading “COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT” under the heading “DEPARTMENT OF THE TREASURY”, \$13,500,000, to remain available until September 30, 2012, for the costs of administering guarantees for bonds and notes as authorized under section 114A of the Riegle Community Development and Regulatory Improvement Act of 1994, as added by section 1134 of this Act.

SEC. 1704. SMALL BUSINESS LOAN GUARANTEE ENHANCEMENT EXTENSIONS.

(a) EXTENSION OF PROGRAMS.—

(1) IN GENERAL.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, for an additional amount for “Small Business Administration—Business Loans Program Account”, \$505,000,000, to remain available through December 31, 2010, for the cost of—

(A) fee reductions and eliminations under section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151), as amended by this Act; and

(B) loan guarantees under section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 152), as amended by this Act.

(2) COST.—For purposes of this subsection, the term “cost” has the same meaning as in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

(b) ADMINISTRATIVE EXPENSES.—There is appropriated for an additional amount, out of any funds in the Treasury not otherwise appropriated, for administrative expenses to carry out sections 501 and 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), \$5,000,000, to remain available until expended, which may be transferred and merged with the appropriation for “Small Business Administration—Salaries and Expenses”.

TITLE II—TAX PROVISIONS

Creating Small
Business Jobs
Act of 2010.
26 USC 1 note.

SEC. 2001. SHORT TITLE.

This title may be cited as the “Creating Small Business Jobs Act of 2010”.

Subtitle A—Small Business Relief

PART I—PROVIDING ACCESS TO CAPITAL

SEC. 2011. TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

26 USC 1202. (a) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(4) 100 PERCENT EXCLUSION FOR STOCK ACQUIRED DURING CERTAIN PERIODS IN 2010.—In the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Jobs Act of 2010 and before January 1, 2011—

Applicability. “(A) paragraph (1) shall be applied by substituting ‘100 percent’ for ‘50 percent’,

“(B) paragraph (2) shall not apply, and

“(C) paragraph (7) of section 57(a) shall not apply.”.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 1202(a) of the Internal Revenue Code of 1986 is amended—

(1) by inserting “CERTAIN PERIODS IN” before “2010” in the heading, and

(2) by striking “before January 1, 2011” and inserting “on or before the date of the enactment of the Creating Small Business Jobs Act of 2010”.

26 USC 1202 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired after the date of the enactment of this Act.

SEC. 2012. GENERAL BUSINESS CREDITS OF ELIGIBLE SMALL BUSINESSES FOR 2010 CARRIED BACK 5 YEARS.

26 USC 39. (a) IN GENERAL.—Section 39(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(4) 5-YEAR CARRYBACK FOR ELIGIBLE SMALL BUSINESS CREDITS.—

“(A) IN GENERAL.—Notwithstanding subsection (d), in the case of eligible small business credits determined in the first taxable year of the taxpayer beginning in 2010—

Applicability. “(i) paragraph (1) shall be applied by substituting ‘each of the 5 taxable years’ for ‘the taxable year’ in subparagraph (A) thereof, and

Applicability. “(ii) paragraph (2) shall be applied—

“(I) by substituting ‘25 taxable years’ for ‘21 taxable years’ in subparagraph (A) thereof, and

“(II) by substituting ‘24 taxable years’ for ‘20 taxable years’ in subparagraph (B) thereof.

“(B) ELIGIBLE SMALL BUSINESS CREDITS.—For purposes of this subsection, the term ‘eligible small business credits’ has the meaning given such term by section 38(c)(5)(B).”.

(b) CONFORMING AMENDMENT.—Section 39(a)(3)(A) of the Internal Revenue Code of 1986 is amended by inserting “or the eligible small business credits” after “credit”.

26 USC 39 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to credits determined in taxable years beginning after December 31, 2009.

SEC. 2013. GENERAL BUSINESS CREDITS OF ELIGIBLE SMALL BUSINESSES IN 2010 NOT SUBJECT TO ALTERNATIVE MINIMUM TAX.

(a) **IN GENERAL.**—Section 38(c) of the Internal Revenue Code of 1986 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph: 26 USC 38.

“(5) **SPECIAL RULES FOR ELIGIBLE SMALL BUSINESS CREDITS IN 2010.**—

“(A) **IN GENERAL.**—In the case of eligible small business credits determined in taxable years beginning in 2010—

“(i) this section and section 39 shall be applied separately with respect to such credits, and Applicability.

“(ii) in applying paragraph (1) to such credits—

“(I) the tentative minimum tax shall be treated as being zero, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits).

“(B) **ELIGIBLE SMALL BUSINESS CREDITS.**—For purposes of this subsection, the term ‘eligible small business credits’ means the sum of the credits listed in subsection (b) which are determined for the taxable year with respect to an eligible small business. Such credits shall not be taken into account under paragraph (2), (3), or (4). Definition.

“(C) **ELIGIBLE SMALL BUSINESS.**—For purposes of this subsection, the term ‘eligible small business’ means, with respect to any taxable year— Definition.

“(i) a corporation the stock of which is not publicly traded,

“(ii) a partnership, or

“(iii) a sole proprietorship,

if the average annual gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed \$50,000,000. For purposes of applying the test under the preceding sentence, rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply. Applicability.

“(D) **TREATMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.**—Credits determined with respect to a partnership or S corporation shall not be treated as eligible small business credits by any partner or shareholder unless such partner or shareholder meets the gross receipts test under subparagraph (C) for the taxable year in which such credits are treated as current year business credits.”.

(b) **TECHNICAL AMENDMENT.**—Section 55(e)(5) of the Internal Revenue Code of 1986 is amended by striking “38(c)(3)(B)” and inserting “38(c)(6)(B)”. 26 USC 55.

(c) **CONFORMING AMENDMENTS.**—

(1) Subclause (II) of section 38(c)(2)(A)(ii) of the Internal Revenue Code of 1986 is amended by inserting “the eligible small business credits,” after “the New York Liberty Zone business employee credit,”.

- 26 USC 38. (2) Subclause (II) of section 38(c)(3)(A)(ii) of such Code is amended by inserting “, the eligible small business credits,” after “the New York Liberty Zone business employee credit”.
- (3) Subclause (II) of section 38(c)(4)(A)(ii) of such Code is amended by inserting “the eligible small business credits and” before “the specified credits”.
- 26 USC 38 note. (d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to credits determined in taxable years beginning after December 31, 2009, and to carrybacks of such credits.
- SEC. 2014. TEMPORARY REDUCTION IN RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.**
- 26 USC 1374. (a) IN GENERAL.—Subparagraph (B) of section 1374(d)(7) of the Internal Revenue Code of 1986 is amended to read as follows:
- “(B) SPECIAL RULES FOR 2009, 2010, AND 2011.—No tax shall be imposed on the net recognized built-in gain of an S corporation—
- “(i) in the case of any taxable year beginning in 2009 or 2010, if the 7th taxable year in the recognition period preceded such taxable year, or
- “(ii) in the case of any taxable year beginning in 2011, if the 5th year in the recognition period preceded such taxable year.
- Applicability. The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.”.
- 26 USC 1374. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

PART II—ENCOURAGING INVESTMENT

SEC. 2021. INCREASED EXPENSING LIMITATIONS FOR 2010 AND 2011; CERTAIN REAL PROPERTY TREATED AS SECTION 179 PROPERTY.

- 26 USC 179. (a) INCREASED LIMITATIONS.—Subsection (b) of section 179 of the Internal Revenue Code of 1986 is amended—
- (1) by striking “shall not exceed” and all that follows in paragraph (1) and inserting “shall not exceed—
- “(A) \$250,000 in the case of taxable years beginning after 2007 and before 2010,
- “(B) \$500,000 in the case of taxable years beginning in 2010 or 2011, and
- “(C) \$25,000 in the case of taxable years beginning after 2011.”, and
- (2) by striking “exceeds” and all that follows in paragraph (2) and inserting “exceeds—
- “(A) \$800,000 in the case of taxable years beginning after 2007 and before 2010,
- “(B) \$2,000,000 in the case of taxable years beginning in 2010 or 2011, and
- “(C) \$200,000 in the case of taxable years beginning after 2011.”.
- (b) INCLUSION OF CERTAIN REAL PROPERTY.—Section 179 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:
- “(f) SPECIAL RULES FOR QUALIFIED REAL PROPERTY.—
- “(1) IN GENERAL.—If a taxpayer elects the application of this subsection for any taxable year beginning in 2010 or 2011,

the term ‘section 179 property’ shall include any qualified real property which is—

“(A) of a character subject to an allowance for depreciation,

“(B) acquired by purchase for use in the active conduct of a trade or business, and

“(C) not described in the last sentence of subsection (d)(1).

“(2) QUALIFIED REAL PROPERTY.—For purposes of this subsection, the term ‘qualified real property’ means—

“(A) qualified leasehold improvement property described in section 168(e)(6),

“(B) qualified restaurant property described in section 168(e)(7) (without regard to the dates specified in subparagraph (A)(i) thereof), and

“(C) qualified retail improvement property described in section 168(e)(8) (without regard to subparagraph (E) thereof).

“(3) LIMITATION.—For purposes of applying the limitation under subsection (b)(1)(B), not more than \$250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

“(4) CARRYOVER LIMITATION.—

“(A) IN GENERAL.—Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2011.

“(B) TREATMENT OF DISALLOWED AMOUNTS.—Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2011 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

Applicability.

“(C) AMOUNTS CARRIED OVER FROM 2010.—If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer’s last taxable year beginning in 2011, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer’s last taxable year beginning in 2011.

“(D) ALLOCATION OF AMOUNTS.—For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

“(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

“(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

For purposes of the preceding sentence, only section 179 property with respect to which an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.”.

26 USC 179. (c) REVOCABILITY OF ELECTION.—Paragraph (2) of section 179(c) of the Internal Revenue Code of 1986 is amended by striking “2011” and inserting “2012”.

(d) COMPUTER SOFTWARE TREATED AS 179 PROPERTY.—Clause (ii) of section 179(d)(1)(A) is amended by striking “2011” and inserting “2012”.

Applicability.
26 USC 179 note.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

(2) EXTENSIONS.—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after December 31, 2010.

SEC. 2022. ADDITIONAL FIRST-YEAR DEPRECIATION FOR 50 PERCENT OF THE BASIS OF CERTAIN QUALIFIED PROPERTY.

26 USC 168. (a) IN GENERAL.—Paragraph (2) of section 168(k) of the Internal Revenue Code of 1986 is amended—

(1) by striking “January 1, 2011” in subparagraph (A)(iv) and inserting “January 1, 2012”, and

(2) by striking “January 1, 2010” each place it appears and inserting “January 1, 2011”.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168 of the Internal Revenue Code of 1986 is amended by striking “JANUARY 1, 2010” and inserting “JANUARY 1, 2011”.

(2) The heading for clause (ii) of section 168(k)(2)(B) of such Code is amended by striking “PRE-JANUARY 1, 2010” and inserting “PRE-JANUARY 1, 2011”.

(3) Subparagraph (D) of section 168(k)(4) of such Code is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

“(iv) ‘January 1, 2011’ shall be substituted for ‘January 1, 2012’ in subparagraph (A)(iv) thereof, and

“(v) ‘January 1, 2010’ shall be substituted for ‘January 1, 2011’ each place it appears in subparagraph (A) thereof.”.

(4) Subparagraph (B) of section 168(l)(5) of such Code is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(5) Subparagraph (C) of section 168(n)(2) of such Code is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

26 USC 1400L.

(6) Subparagraph (D) of section 1400L(b)(2) of such Code is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

26 USC 1400N.

(7) Subparagraph (B) of section 1400N(d)(3) of such Code is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after December 31, 2009, in taxable years ending after such date. 26 USC 168 note.

SEC. 2023. SPECIAL RULE FOR LONG-TERM CONTRACT ACCOUNTING.

(a) **IN GENERAL.**—Section 460(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph: 26 USC 460.

“(6) **SPECIAL RULE FOR ALLOCATION OF BONUS DEPRECIATION WITH RESPECT TO CERTAIN PROPERTY.**—

“(A) **IN GENERAL.**—Solely for purposes of determining the percentage of completion under subsection (b)(1)(A), the cost of qualified property shall be taken into account as a cost allocated to the contract as if subsection (k) of section 168 had not been enacted.

“(B) **QUALIFIED PROPERTY.**—For purposes of this paragraph, the term ‘qualified property’ means property described in section 168(k)(2) which—

“(i) has a recovery period of 7 years or less, and

“(ii) is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case of property described in section 168(k)(2)(B)).”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after December 31, 2009. 26 USC 460 note.

PART III—PROMOTING ENTREPRENEURSHIP

SEC. 2031. INCREASE IN AMOUNT ALLOWED AS DEDUCTION FOR START-UP EXPENDITURES IN 2010.

(a) **START-UP EXPENDITURES.**—Subsection (b) of section 195 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph: 26 USC 195.

“(3) **SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 2010.**—

In the case of a taxable year beginning in 2010, paragraph (1)(A)(ii) shall be applied—

“(A) by substituting ‘\$10,000’ for ‘\$5,000’, and

“(B) by substituting ‘\$60,000’ for ‘\$50,000’.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009. 26 USC 195 note.

SEC. 2032. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES TRADE REPRESENTATIVE TO DEVELOP MARKET ACCESS OPPORTUNITIES FOR UNITED STATES SMALL- AND MEDIUM-SIZED BUSINESSES AND TO ENFORCE TRADE AGREEMENTS.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Office of the United States Trade Representative \$5,230,000, to remain available until expended, for—

(1) analyzing and developing opportunities for businesses in the United States to access the markets of foreign countries; and

(2) enforcing trade agreements to which the United States is a party.

(b) **REQUIREMENTS.**—In obligating and expending the funds authorized to be appropriated under subsection (a), the United States Trade Representative shall—

(1) give preference to those initiatives that the United States Trade Representative determines will create or sustain the greatest number of jobs in the United States or result in the greatest benefit to the economy of the United States; and

(2) consider the needs of small- and medium-sized businesses in the United States with respect to—

(A) accessing the markets of foreign countries; and

(B) the enforcement of trade agreements to which the United States is a party.

PART IV—PROMOTING SMALL BUSINESS FAIRNESS

SEC. 2041. LIMITATION ON PENALTY FOR FAILURE TO DISCLOSE REPORTABLE TRANSACTIONS BASED ON RESULTING TAX BENEFITS.

26 USC 6707A. (a) IN GENERAL.—Subsection (b) of section 6707A of the Internal Revenue Code of 1986 is amended to read as follows:

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the penalty under subsection (a) with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes).

“(2) MAXIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any reportable transaction shall not exceed—

“(A) in the case of a listed transaction, \$200,000 (\$100,000 in the case of a natural person), or

“(B) in the case of any other reportable transaction, \$50,000 (\$10,000 in the case of a natural person).

“(3) MINIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any transaction shall not be less than \$10,000 (\$5,000 in the case of a natural person).”.

26 USC 6707A note. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after December 31, 2006.

SEC. 2042. DEDUCTION FOR HEALTH INSURANCE COSTS IN COM- PUTING SELF-EMPLOYMENT TAXES IN 2010.

26 USC 162. (a) IN GENERAL.—Paragraph (4) of section 162(l) of the Internal Revenue Code of 1986 is amended by inserting “for taxable years beginning before January 1, 2010, or after December 31, 2010” before the period.

26 USC 162 note. (b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 2043. REMOVAL OF CELLULAR TELEPHONES AND SIMILAR TELE- COMMUNICATIONS EQUIPMENT FROM LISTED PROPERTY.

26 USC 280F. (a) IN GENERAL.—Subparagraph (A) of section 280F(d)(4) of the Internal Revenue Code of 1986 (defining listed property) is amended by adding “‘and’” at the end of clause (iv), by striking clause (v), and by redesignating clause (vi) as clause (v).

26 USC 280F note. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

Subtitle B—Revenue Provisions

PART I—REDUCING THE TAX GAP

SEC. 2101. INFORMATION REPORTING FOR RENTAL PROPERTY EXPENSE PAYMENTS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006 of the Patient Protection and Affordable Care Act, is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

Ante, p. 855.

“(h) TREATMENT OF RENTAL PROPERTY EXPENSE PAYMENTS.—

“(1) IN GENERAL.—Solely for purposes of subsection (a) and except as provided in paragraph (2), a person receiving rental income from real estate shall be considered to be engaged in a trade or business of renting property.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

Regulations.

“(A) any individual, including any individual who is an active member of the uniformed services or an employee of the intelligence community (as defined in section 121(d)(9)(C)(iv)), if substantially all rental income is derived from renting the principal residence (within the meaning of section 121) of such individual on a temporary basis,

“(B) any individual who receives rental income of not more than the minimal amount, as determined under regulations prescribed by the Secretary, and

“(C) any other individual for whom the requirements of this section would cause hardship, as determined under regulations prescribed by the Secretary.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments made after December 31, 2010.

26 USC 6041
note.

SEC. 2102. INCREASE IN INFORMATION RETURN PENALTIES.

(a) FAILURE TO FILE CORRECT INFORMATION RETURNS.—

(1) IN GENERAL.—Subsections (a)(1), (b)(1)(A), and (b)(2)(A) of section 6721 of the Internal Revenue Code of 1986 are each amended by striking “\$50” and inserting “\$100”.

26 USC 6721.

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (a)(1), (d)(1)(A), and (e)(3)(A) of section 6721 of such Code are each amended by striking “\$250,000” and inserting “\$1,500,000”.

(b) REDUCTION WHERE CORRECTION WITHIN 30 DAYS.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(1) of the Internal Revenue Code of 1986 is amended by striking “\$15” and inserting “\$30”.

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(1)(B) and (d)(1)(B) of section 6721 of such Code are each amended by striking “\$75,000” and inserting “\$250,000”.

(c) REDUCTION WHERE CORRECTION ON OR BEFORE AUGUST

1.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(2) of the Internal Revenue Code of 1986 is amended by striking “\$30” and inserting “\$60”.

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(2)(B) and (d)(1)(C) of section 6721 of such Code are each amended by striking “\$150,000” and inserting “\$500,000”.

(d) AGGREGATE ANNUAL LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN \$5,000,000.—

26 USC 6721. (1) IN GENERAL.—Paragraph (1) of section 6721(d) of the Internal Revenue Code of 1986 is amended—

(A) by striking “\$100,000” in subparagraph (A) and inserting “\$500,000”,

(B) by striking “\$25,000” in subparagraph (B) and inserting “\$75,000”, and

(C) by striking “\$50,000” in subparagraph (C) and inserting “\$200,000”.

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 6721(d) of such Code is amended by striking “such taxable year” and inserting “such calendar year”.

(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—Paragraph (2) of section 6721(e) of the Internal Revenue Code of 1986 is amended by striking “\$100” and inserting “\$250”.

(f) ADJUSTMENT FOR INFLATION.—Section 6721 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) ADJUSTMENT FOR INFLATION.—

“(1) IN GENERAL.—For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d) (other than paragraph (2)(A) thereof), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting ‘calendar year 2011’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) ROUNDING.—If any amount adjusted under paragraph (1)—

“(A) is not less than \$75,000 and is not a multiple of \$500, such amount shall be rounded to the next lowest multiple of \$500, and

“(B) is not described in subparagraph (A) and is not a multiple of \$10, such amount shall be rounded to the next lowest multiple of \$10.”.

(g) FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.—Section 6722 of the Internal Revenue Code of 1986 is amended to read as follows:

26 USC 6722.

“SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.

“(a) IMPOSITION OF PENALTY.—

“(1) GENERAL RULE.—In the case of each failure described in paragraph (2) by any person with respect to a payee statement, such person shall pay a penalty of \$100 for each statement with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed \$1,500,000.

“(2) FAILURES SUBJECT TO PENALTY.—For purposes of paragraph (1), the failures described in this paragraph are—

“(A) any failure to furnish a payee statement on or before the date prescribed therefor to the person to whom such statement is required to be furnished, and

“(B) any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information.

“(b) REDUCTION WHERE CORRECTION IN SPECIFIED PERIOD.—

“(1) CORRECTION WITHIN 30 DAYS.—If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

“(A) the penalty imposed by subsection (a) shall be \$30 in lieu of \$100, and

“(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed \$250,000.

“(2) FAILURES CORRECTED ON OR BEFORE AUGUST 1.—If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

“(A) the penalty imposed by subsection (a) shall be \$60 in lieu of \$100, and

“(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed \$500,000.

“(c) EXCEPTION FOR DE MINIMIS FAILURES.—

“(1) IN GENERAL.—If—

“(A) a payee statement is furnished to the person to whom such statement is required to be furnished,

“(B) there is a failure described in subsection (a)(2)(B) (determined after the application of section 6724(a)) with respect to such statement, and

“(C) such failure is corrected on or before August 1 of the calendar year in which the required filing date occurs,

for purposes of this section, such statement shall be treated as having been furnished with all of the correct required information.

“(2) LIMITATION.—The number of payee statements to which paragraph (1) applies for any calendar year shall not exceed the greater of—

“(A) 10, or

“(B) one-half of 1 percent of the total number of payee statements required to be filed by the person during the calendar year.

“(d) LOWER LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN \$5,000,000.—

“(1) IN GENERAL.—If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such calendar year—

“(A) subsection (a)(1) shall be applied by substituting ‘\$500,000’ for ‘\$1,500,000’,

“(B) subsection (b)(1)(B) shall be applied by substituting ‘\$75,000’ for ‘\$250,000’, and

“(C) subsection (b)(2)(B) shall be applied by substituting ‘\$200,000’ for ‘\$500,000’.

“(2) GROSS RECEIPTS TEST.—A person meets the gross receipts test of this paragraph if such person meets the gross receipts test of section 6721(d)(2).

“(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures to which subsection (a) applies are due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement), then, with respect to each such failure—

“(1) subsections (b), (c), and (d) shall not apply,

“(2) the penalty imposed under subsection (a)(1) shall be \$250, or, if greater—

Applicability.

“(A) in the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c), 10 percent of the aggregate amount of the items required to be reported correctly, or

“(B) in the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate amount of the items required to be reported correctly, and

“(3) in the case of any penalty determined under paragraph (2)—

“(A) the \$1,500,000 limitation under subsection (a) shall not apply, and

“(B) such penalty shall not be taken into account in applying such limitation to penalties not determined under paragraph (2).

“(f) ADJUSTMENT FOR INFLATION.—

“(1) IN GENERAL.—For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d)(1), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting ‘calendar year 2011’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) ROUNDING.—If any amount adjusted under paragraph (1)—

“(A) is not less than \$75,000 and is not a multiple of \$500, such amount shall be rounded to the next lowest multiple of \$500, and

“(B) is not described in subparagraph (A) and is not a multiple of \$10, such amount shall be rounded to the next lowest multiple of \$10.”.

26 USC 6721
note.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to information returns required to be filed on or after January 1, 2011.

26 USC 6662A
note.

SEC. 2103. REPORT ON TAX SHELTER PENALTIES AND CERTAIN OTHER ENFORCEMENT ACTIONS.

(a) IN GENERAL.—The Commissioner of Internal Revenue, in consultation with the Secretary of the Treasury, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on the penalties assessed by the Internal Revenue Service during the preceding year under each of the following provisions of the Internal Revenue Code of 1986:

(1) Section 6662A (relating to accuracy-related penalty on understatements with respect to reportable transactions).

(2) Section 6700(a) (relating to promoting abusive tax shelters).

(3) Section 6707 (relating to failure to furnish information regarding reportable transactions).

(4) Section 6707A (relating to failure to include reportable transaction information with return).

(5) Section 6708 (relating to failure to maintain lists of advisees with respect to reportable transactions).

(b) **ADDITIONAL INFORMATION.**—The report required under subsection (a) shall also include information on the following with respect to each year:

(1) Any action taken under section 330(b) of title 31, United States Code, with respect to any reportable transaction (as defined in section 6707A(c) of the Internal Revenue Code of 1986).

(2) Any extension of the time for assessment of tax enforced, or assessment of any amount under such an extension, under paragraph (10) of section 6501(c) of the Internal Revenue Code of 1986.

(c) **DATE OF REPORT.**—The first report required under subsection (a) shall be submitted not later than December 31, 2010.

SEC. 2104. APPLICATION OF CONTINUOUS LEVY TO TAX LIABILITIES OF CERTAIN FEDERAL CONTRACTORS.

(a) **IN GENERAL.**—Subsection (f) of section 6330 of the Internal Revenue Code of 1986 is amended by striking “or” at the end of paragraph (2), by inserting “or” at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph: 26 USC 6330.

“(4) the Secretary has served a Federal contractor levy.”.

(b) **FEDERAL CONTRACTOR LEVY.**—Subsection (h) of section 6330 of the Internal Revenue Code of 1986 is amended—

(1) by striking all that precedes “any levy in connection with the collection” and inserting the following:

“(h) **DEFINITIONS RELATED TO EXCEPTIONS.**—For purposes of subsection (f)—

“(1) **DISQUALIFIED EMPLOYMENT TAX LEVY.**—A disqualified employment tax levy is”; and

(2) by adding at the end the following new paragraph:

“(2) **FEDERAL CONTRACTOR LEVY.**—A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.”.

(c) **CONFORMING AMENDMENT.**—The heading of subsection (f) of section 6330 of the Internal Revenue Code of 1986 is amended by striking “JEOPARDY AND STATE REFUND COLLECTION” and inserting “EXCEPTIONS”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to levies issued after the date of the enactment of this Act. 26 USC 6330 note.

PART II—PROMOTING RETIREMENT PREPARATION

SEC. 2111. PARTICIPANTS IN GOVERNMENT SECTION 457 PLANS ALLOWED TO TREAT ELECTIVE DEFERRALS AS ROTH CONTRIBUTIONS.

(a) **IN GENERAL.**—Section 402A(e)(1) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following: 26 USC 402A.

“(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).”.

(b) **ELECTIVE DEFERRALS.**—Section 402A(e)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

“(2) ELECTIVE DEFERRAL.—The term ‘elective deferral’ means—

“(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

“(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).”.

26 USC 402A
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 2112. ROLLOVERS FROM ELECTIVE DEFERRAL PLANS TO DESIGNATED ROTH ACCOUNTS.

26 USC 402A.

(a) IN GENERAL.—Section 402A(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(4) TAXABLE ROLLOVERS TO DESIGNATED ROTH ACCOUNTS.—

“(A) IN GENERAL.—Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

“(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

“(ii) section 72(t) shall not apply, and

“(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

“(B) DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

“(C) COORDINATION WITH LIMIT.—Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1).

“(D) OTHER RULES.—The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.”.

26 USC 402A
note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 2113. SPECIAL RULES FOR ANNUITIES RECEIVED FROM ONLY A PORTION OF A CONTRACT.

26 USC 72.

(a) IN GENERAL.—Subsection (a) of section 72 of the Internal Revenue Code of 1986 is amended to read as follows:

“(a) GENERAL RULES FOR ANNUITIES.—

“(1) **INCOME INCLUSION.**—Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

“(2) **PARTIAL ANNUITIZATION.**—If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

“(A) such portion shall be treated as a separate contract for purposes of this section,

“(B) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

“(C) a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to amounts received in taxable years beginning after December 31, 2010. 26 USC 72 note.

PART III—CLOSING UNINTENDED LOOPHOLES

SEC. 2121. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) **IN GENERAL.**—Clause (iii) of section 40(b)(6)(E) of the Internal Revenue Code of 1986, as added by the Health Care and Education Reconciliation Act of 2010, is amended—

Ante, p. 1067.

(1) by striking “or” at the end of subclause (I),

(2) by striking the period at the end of subclause (II) and inserting “, or”,

(3) by adding at the end the following new subclause:

“(III) such fuel has an acid number greater than 25.”, and

(4) by striking “UNPROCESSED” in the heading and inserting “CERTAIN”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fuels sold or used on or after January 1, 2010. 26 USC 40 note.

SEC. 2122. SOURCE RULES FOR INCOME ON GUARANTEES.

(a) **AMOUNTS SOURCED WITHIN THE UNITED STATES.**—Subsection (a) of section 861 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

26 USC 861.

“(9) **GUARANTEES.**—Amounts received, directly or indirectly, from—

“(A) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or

“(B) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.”.

- (b) AMOUNTS SOURCED WITHOUT THE UNITED STATES.—Subsection (a) of section 862 of the Internal Revenue Code of 1986 is amended by striking “and” at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting “; and”, and by adding at the end the following new paragraph:
- “(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).”.
- (c) CONFORMING AMENDMENT.—Clause (ii) of section 864(c)(4)(B) of the Internal Revenue Code of 1986 is amended by striking “dividends or interest” and inserting “dividends, interest, or amounts received for the provision of guarantees of indebtedness”.
- (d) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees issued after the date of the enactment of this Act.

PART IV—TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

- 22 USC 6655 note. **SEC. 2131. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.**
- The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 36 percentage points.

Small Business
Credit Initiative
Act of 2010.

TITLE III—STATE SMALL BUSINESS CREDIT INITIATIVE

- 12 USC 5701 note. **SEC. 3001. SHORT TITLE.**
- This title may be cited as the “State Small Business Credit Initiative Act of 2010”.
- 12 USC 5701. **SEC. 3002. DEFINITIONS.**
- In this title, the following definitions shall apply:
- (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—
- (A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and
- (B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.
- (2) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency”—
- (A) has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and
- (B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which

are insured in accordance with the Federal Credit Union Act.

(3) ENROLLED LOAN.—The term “enrolled loan” means a loan made by a financial institution lender that is enrolled by a participating State in an approved State capital access program in accordance with this title.

(4) FEDERAL CONTRIBUTION.—The term “Federal contribution” means the portion of the contribution made by a participating State to, or for the account of, an approved State program that is made with Federal funds allocated to the State by the Secretary under section 3003.

(5) FINANCIAL INSTITUTION.—The term “financial institution” means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

(6) PARTICIPATING STATE.—The term “participating State” means any State that has been approved for participation in the Program under section 3004.

(7) PROGRAM.—The term “Program” means the State Small Business Credit Initiative established under this title.

(8) QUALIFYING LOAN OR SWAP FUNDING FACILITY.—The term “qualifying loan or swap funding facility” means a contractual arrangement between a participating State and a private financial entity under which—

(A) the participating State delivers funds to the entity as collateral;

(B) the entity provides funding from the arrangement back to the participating State; and

(C) the full amount of resulting funding from the arrangement, less any fees and other costs of the arrangement, is contributed to, or for the account of, an approved State program.

(9) RESERVE FUND.—The term “reserve fund” means a fund, established by a participating State, dedicated to a particular financial institution lender, for the purposes of—

(A) depositing all required premium charges paid by the financial institution lender and by each borrower receiving a loan under an approved State program from that financial institution lender;

(B) depositing contributions made by the participating State, including State contributions made with Federal contributions; and

(C) covering losses on enrolled loans by disbursing accumulated funds.

(10) STATE.—The term “State” means—

(A) a State of the United States;

(B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands;

(C) when designated by a State of the United States, a political subdivision of that State that the Secretary determines has the capacity to participate in the Program; and

(D) under the circumstances described in section 3004(d), a municipality of a State of the United States to which the Secretary has given a special permission under section 3004(d).

(11) STATE CAPITAL ACCESS PROGRAM.—The term “State capital access program” means a program of a State that—

(A) uses public resources to promote private access to credit; and

(B) meets the eligibility criteria in section 3005(c).

(12) STATE OTHER CREDIT SUPPORT PROGRAM.—The term “State other credit support program”—

(A) means a program of a State that—

(i) uses public resources to promote private access to credit;

(ii) is not a State capital access program; and

(iii) meets the eligibility criteria in section 3006(c);

and

(B) includes, collateral support programs, loan participation programs, State-run venture capital fund programs, and credit guarantee programs.

(13) STATE PROGRAM.—The term “State program” means a State capital access program or a State other credit support program.

(14) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

12 USC 5702.

SEC. 3003. FEDERAL FUNDS ALLOCATED TO STATES.

(a) PROGRAM ESTABLISHED; PURPOSE.—There is established the State Small Business Credit Initiative, to be administered by the Secretary. Under the Program, the Secretary shall allocate Federal funds to participating States and make the allocated funds available to the participating States as provided in this section for the uses described in this section.

(b) ALLOCATION FORMULA.—

Deadline.

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary shall allocate Federal funds to participating States so that each State is eligible to receive an amount equal to the average of the respective amounts that the State—

(A) would receive under the 2009 allocation, as determined under paragraph (2); and

(B) would receive under the 2010 allocation, as determined under paragraph (3).

(2) 2009 ALLOCATION FORMULA.—

Determination.

(A) IN GENERAL.—The Secretary shall determine the 2009 allocation by allocating Federal funds among the States in the proportion that each such State’s 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all States.

Adjustment.

(B) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

(C) 2008 STATE EMPLOYMENT DECLINE DEFINED.—In this paragraph and with respect to a State, the term “2008 State employment decline” means the excess (if any) of—

(i) the number of individuals employed in such State determined for December 2007; over

(ii) the number of individuals employed in such State determined for December 2008.

(3) 2010 ALLOCATION FORMULA.—

(A) IN GENERAL.—The Secretary shall determine the 2010 allocation by allocating Federal funds among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

Determination.

(B) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

Adjustment.

(C) 2009 UNEMPLOYMENT NUMBER DEFINED.—In this paragraph and with respect to a State, the term “2009 unemployment number” means the number of individuals within such State who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

(c) AVAILABILITY OF ALLOCATED AMOUNT.—The amount allocated by the Secretary to each participating State under subsection (b) shall be made available to the State as follows:

(1) ALLOCATED AMOUNT GENERALLY TO BE AVAILABLE TO STATE IN ONE-THIRDS.—

(A) IN GENERAL.—The Secretary shall—

(i) apportion the participating State's allocated amount into thirds;

(ii) transfer to the participating State the first $\frac{1}{3}$ when the Secretary approves the State for participation under section 3004; and

(iii) transfer to the participating State each successive $\frac{1}{3}$ when the State has certified to the Secretary that it has expended, transferred, or obligated 80 percent of the last transferred $\frac{1}{3}$ for Federal contributions to, or for the account of, State programs.

(B) AUTHORITY TO WITHHOLD PENDING AUDIT.—The Secretary may withhold the transfer of any successive $\frac{1}{3}$ pending results of a financial audit.

(C) INSPECTOR GENERAL AUDITS.—

(i) IN GENERAL.—The Inspector General of the Department of the Treasury shall carry out an audit of the participating State's use of allocated Federal funds transferred to the State.

(ii) RECOUPMENT OF MISUSED TRANSFERRED FUNDS REQUIRED.—The allocation agreement between the Secretary and the participating State shall provide that the Secretary shall recoup any allocated Federal funds transferred to the participating State if the results of the an audit include a finding that there was an intentional or reckless misuse of transferred funds by the State.

(iii) PENALTY FOR MISSTATEMENT.—Any participating State that is found to have intentionally misstated any report issued to the Secretary under the Program shall be ineligible to receive any additional funds under the Program. Funds that had been allocated or that would otherwise have been allocated to

such participating State shall be paid into the general fund of the Treasury for reduction of the public debt.

(iv) MUNICIPALITIES.—In this subparagraph, the term “participating State” shall include a municipality given special permission to participate in the Program, under section 3004(d).

(D) EXCEPTION.—The Secretary may, in the Secretary’s discretion, transfer the full amount of the participating State’s allocated amount to the State in a single transfer if the participating State applies to the Secretary for approval to use the full amount of the allocation as collateral for a qualifying loan or swap funding facility.

(2) TRANSFERRED AMOUNTS.—Each amount transferred to a participating State under this section shall remain available to the State until used by the State as permitted under paragraph (3).

(3) USE OF TRANSFERRED FUNDS.—Each participating State may use funds transferred to it under this section only—

(A) for making Federal contributions to, or for the account of, an approved State program;

(B) as collateral for a qualifying loan or swap funding facility;

(C) in the case of the first $\frac{1}{3}$ transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 5 percent of that first $\frac{1}{3}$; or

(D) in the case of each successive $\frac{1}{3}$ transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 3 percent of that successive $\frac{1}{3}$.

(4) TERMINATION OF AVAILABILITY OF AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF PARTICIPATION.—Any portion of a participating State’s allocated amount that has not been transferred to the State under this section by the end of the 2-year period beginning on the date that the Secretary approves the State for participation may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the General Fund of the Treasury.

(5) TRANSFERRED AMOUNTS NOT ASSISTANCE.—The amounts transferred to a participating State under this section shall not be considered assistance for purposes of subtitle V of title 31, United States Code.

(6) DEFINITIONS.—In this section—

(A) the term “allocated amount” means the total amount of Federal funds allocated by the Secretary under subsection (b) to the participating State; and

(B) the term “ $\frac{1}{3}$ ” means—

(i) in the case of the first $\frac{1}{3}$ and second $\frac{1}{3}$, an amount equal to 33 percent of a participating State’s allocated amount; and

(ii) in the case of the last $\frac{1}{3}$, an amount equal to 34 percent of a participating State’s allocated amount.

SEC. 3004. APPROVING STATES FOR PARTICIPATION.

12 USC 5703.

(a) **APPLICATION.**—Any State may apply to the Secretary for approval to be a participating State under the Program and to be eligible for an allocation of Federal funds under the Program.

(b) **GENERAL APPROVAL CRITERIA.**—The Secretary shall approve a State to be a participating State, if—

(1) a specific department, agency, or political subdivision of the State has been designated to implement a State program and participate in the Program;

(2) all legal actions necessary to enable such designated department, agency, or political subdivision to implement a State program and participate in the Program have been accomplished;

(3) the State has filed an application with the Secretary for approval of a State capital access program under section 3005 or approval as a State other credit support program under section 3006, in each case within the time period provided in the respective section; and

(4) the State and the Secretary have executed an allocation agreement that—

(A) conforms to the requirements of this title;

(B) ensures that the State program complies with such national standards as are established by the Secretary under section 3009(a)(2);

(C) sets forth internal control, compliance, and reporting requirements as established by the Secretary, and such other terms and conditions necessary to carry out the purposes of this title, including an agreement by the State to allow the Secretary to audit State programs;

(D) requires that the State program be fully positioned, within 90 days of the State's execution of the allocation agreement with the Secretary, to act on providing the kind of credit support that the State program was established to provide; and

(E) includes an agreement by the State to deliver to the Secretary, and update annually, a schedule describing how the State intends to apportion among its State programs the Federal funds allocated to the State.

(c) **CONTRACTUAL ARRANGEMENTS FOR IMPLEMENTATION OF STATE PROGRAMS.**—A State may be approved to be a participating State, and be eligible for an allocation of Federal funds under the Program, if the State has contractual arrangements for the implementation and administration of its State program with—

(1) an existing, approved State program administered by another State; or

(2) an authorized agent of, or entity supervised by, the State, including for-profit and not-for-profit entities.

(d) **SPECIAL PERMISSION.**—

(1) **CIRCUMSTANCES WHEN A MUNICIPALITY MAY APPLY DIRECTLY.**—If a State does not, within 60 days after the date of enactment of this Act, file with the Secretary a notice of its intent to apply for approval by the Secretary of a State program or within 9 months after the date of enactment of this Act, file with the Secretary a complete application for approval of a State program, the Secretary may grant to municipalities of that State a special permission that will allow them

Contracts.

Deadline.

Deadlines.
Notice.

to apply directly to the Secretary without the State for approval to be participating municipalities.

(2) **TIMING REQUIREMENTS APPLICABLE TO MUNICIPALITIES APPLYING DIRECTLY.**—To qualify for the special permission, a municipality of a State shall be required, within 12 months after the date of enactment of this Act, to file with the Secretary a complete application for approval by the Secretary of a State program.

(3) **NOTICES OF INTENT AND APPLICATIONS FROM MORE THAN 1 MUNICIPALITY.**—A municipality of a State may combine with 1 or more other municipalities of that State to file a joint notice of intent to file and a joint application.

Applicability.

(4) **APPROVAL CRITERIA.**—The general approval criteria in paragraphs (2) and (4) shall apply.

(5) **ALLOCATION TO MUNICIPALITIES.**—

(A) **IF MORE THAN 3.**—If more than 3 municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to the 3 municipalities with the largest populations.

(B) **IF 3 OR FEWER.**—If 3 or fewer municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to each applicant municipality or combination of municipalities.

(6) **APPORTIONMENT OF ALLOCATED AMOUNT AMONG PARTICIPATING MUNICIPALITIES.**—If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall apportion the full amount of the Federal funds that are allocated to that State to municipalities that are approved under this subsection in amounts proportionate to the population of those municipalities, based on the most recent available decennial census.

(7) **APPROVING STATE PROGRAMS FOR MUNICIPALITIES.**—If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall take into account the additional considerations in section 3006(d) in making the determination under section 3005 or 3006 that the State program or programs to be implemented by the participating municipalities, including a State capital access program, is eligible for Federal contributions to, or for the account of, the State program.

12 USC 5704.

SEC. 3005. APPROVING STATE CAPITAL ACCESS PROGRAMS.

(a) **APPLICATION.**—A participating State that establishes a new, or has an existing, State capital access program that meets the eligibility criteria in subsection (c) may apply to Secretary to have the State capital access program approved as eligible for Federal contributions to the reserve fund.

(b) **APPROVAL.**—The Secretary shall approve such State capital access program as eligible for Federal contributions to the reserve fund if—

(1) within 60 days after the date of enactment of this Act, the State has filed with the Secretary a notice of intent to apply for approval by the Secretary of a State capital access program; Deadline.

(2) within 9 months after the date of enactment of this Act, the State has filed with the Secretary a complete application for approval by the Secretary of a capital access program; Deadline.

(3) the State satisfies the requirements of subsections (a) and (b) of section 3004; and

(4) the State capital access program meets the eligibility criteria in subsection (c).

(c) ELIGIBILITY CRITERIA FOR STATE CAPITAL ACCESS PROGRAMS.—For a State capital access program to be approved under this section, that program shall be required to be a program of the State that—

(1) provides portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;

(2) requires insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;

(3) provides for contributions to be made by the State to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and

(4) provides its portfolio insurance solely for loans that meet both the following requirements:

(A) The borrower has 500 employees or less at the time that the loan is enrolled in the Program.

(B) The loan amount does not exceed \$5,000,000.

(d) FEDERAL CONTRIBUTIONS TO APPROVED STATE CAPITAL ACCESS PROGRAMS.—A State capital access program approved under this section will be eligible for receiving Federal contributions to the reserve fund in an amount equal to the sum of the amount of the insurance premium charges paid by the borrowers and by the financial institution to the reserve fund for loans that meet the requirements in subsection (c)(4). A participating State may use the Federal contribution to make its contribution to the reserve fund of an approved State capital access program.

(e) MINIMUM PROGRAM REQUIREMENTS FOR STATE CAPITAL ACCESS PROGRAMS.—The Secretary shall, by regulation or other guidance, prescribe Program requirements that meet the following minimum requirements: Regulations.

(1) EXPERIENCE AND CAPACITY.—The participating State shall determine for each financial institution that participates in the State capital access program, after consultation with the appropriate Federal banking agency or, in the case of a financial institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the approved State capital access program. The determination by the State shall not be reviewable by the Secretary. Determination.

(2) INVESTMENT AUTHORITY.—Subject to applicable State law, the participating State may invest, or cause to be invested,

funds held in a reserve fund by establishing a deposit account at the financial institution lender in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(3) LOAN TERMS AND CONDITIONS TO BE DETERMINED BY AGREEMENT.—A loan to be filed for enrollment in an approved State capital access program may be made with such interest rate, fees, and other terms and conditions, and the loan may be enrolled in the approved State capital access program and claims may be filed and paid, as agreed upon by the financial institution lender and the borrower, consistent with applicable law.

(4) LENDER CAPITAL AT-RISK.—A loan to be filed for enrollment in the State capital access program shall require the financial institution lender to have a meaningful amount of its own capital resources at risk in the loan.

(5) PREMIUM CHARGES MINIMUM AND MAXIMUM AMOUNTS.—The insurance premium charges payable to the reserve fund by the borrower and the financial institution lender shall be prescribed by the financial institution lender, within minimum and maximum limits that require that the sum of the insurance premium charges paid in connection with a loan by the borrower and the financial institution lender may not be less than 2 percent nor more than 7 percent of the amount of the loan enrolled in the approved State capital access program.

(6) STATE CONTRIBUTIONS.—In enrolling a loan in an approved State capital access program, the participating State may make a contribution to the reserve fund to supplement Federal contributions made under this Program.

(7) LOAN PURPOSE.—

(A) PARTICULAR LOAN PURPOSE REQUIREMENTS AND PROHIBITIONS.—In connection with the filing of a loan for enrollment in an approved State capital access program, the financial institution lender—

(i) shall obtain an assurance from each borrower that—

(I) the proceeds of the loan will be used for a business purpose;

(II) the loan will not be used to finance such business activities as the Secretary, by regulation, may proscribe as prohibited loan purposes for enrollment in an approved State capital access program; and

(III) the borrower is not—

(aa) an executive officer, director, or principal shareholder of the financial institution lender;

(bb) a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or

(cc) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(ii) shall provide assurances to the participating State that the loan has not been made in order to place under the protection of the approved State capital access program prior debt that is not covered under the approved State capital access program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

(iii) shall not allow the enrollment of a loan to a borrower that is a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender; and

(iv) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this title, including compliance with all applicable Federal and State laws, regulations, ordinances, and Executive orders.

(B) DEFINITIONS.—In this paragraph, the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(8) CAPITAL ACCESS FOR SMALL BUSINESSES IN UNDERSERVED COMMUNITIES.—At the time that a State applies to the Secretary to have the State capital access program approved as eligible for Federal contributions, the State shall deliver to the Secretary a report stating how the State plans to use the Federal contributions to the reserve fund to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses.

SEC. 3006. APPROVING COLLATERAL SUPPORT AND OTHER INNOVATIVE CREDIT ACCESS AND GUARANTEE INITIATIVES FOR SMALL BUSINESSES AND MANUFACTURERS.

12 USC 5705.

(a) APPLICATION.—A participating State that establishes a new, or has an existing, credit support program that meets the eligibility criteria in subsection (c) may apply to the Secretary to have the State other credit support program approved as eligible for Federal contributions to, or for the account of, the State program.

(b) APPROVAL.—The Secretary shall approve such State other credit support program as eligible for Federal contributions to, or for the account of, the program if—

(1) the Secretary determines that the State satisfies the requirements of paragraphs (1) through (3) of section 3005(b);

(2) the Secretary determines that the State other credit support program meets the eligibility criteria in subsection (c);

(3) the Secretary determines the State other credit support program to be eligible based on the additional considerations in subsection (d); and

(4) within 9 months after the date of enactment of this Act, the State has filed with Treasury a complete application for Treasury approval.

Deadline.

(c) ELIGIBILITY CRITERIA FOR STATE OTHER CREDIT SUPPORT PROGRAMS.—For a State other credit support program to be approved under this section, that program shall be required to be a program of the State that—

(1) can demonstrate that, at a minimum, \$1 of public investment by the State program will cause and result in \$1 of new private credit;

(2) can demonstrate a reasonable expectation that, when considered with all other State programs of the State, such State programs together have the ability to use amounts of new Federal contributions to, or for the account of, all such programs in the State to cause and result in amounts of new small business lending at least 10 times the new Federal contribution amount;

(3) for those State other credit support programs that provide their credit support through 1 or more financial institution lenders, requires the financial institution lenders to have a meaningful amount of their own capital resources at risk in their small business lending; and

(4) uses Federal funds allocated under this title to extend credit support that—

(A) targets an average borrower size of 500 employees or less;

(B) does not extend credit support to borrowers that have more than 750 employees;

(C) targets support towards loans with an average principal amount of \$5,000,000 or less; and

(D) does not extend credit support to loans that exceed a principal amount of \$20,000,000.

(d) ADDITIONAL CONSIDERATIONS.—In making a determination that a State other credit support program is eligible for Federal contributions to, or for the account of, the State program, the Secretary shall take into account the following additional considerations:

(1) The anticipated benefits to the State, its businesses, and its residents to be derived from the Federal contributions to, or for the account of, the approved State other credit support program, including the extent to which resulting small business lending will expand economic opportunities.

(2) The operational capacity, skills, and experience of the management team of the State other credit support program.

(3) The capacity of the State other credit support program to manage increases in the volume of its small business lending.

(4) The internal accounting and administrative controls systems of the State other credit support program, and the extent to which they can provide reasonable assurance that funds of the State program are safeguarded against waste, loss, unauthorized use, or misappropriation.

(5) The soundness of the program design and implementation plan of the State other credit support program.

(e) FEDERAL CONTRIBUTIONS TO APPROVED STATE OTHER CREDIT SUPPORT PROGRAMS.—A State other credit support program approved under this section will be eligible for receiving Federal contributions to, or for the account of, the State program in an amount consistent with the schedule describing the apportionment of allocated Federal funds among State programs delivered by the State to the Secretary under the allocation agreement.

(f) **MINIMUM PROGRAM REQUIREMENTS FOR STATE OTHER CREDIT SUPPORT PROGRAMS.—**

(1) **FUND TO PRESCRIBE.**—The Secretary shall, by regulation or other guidance, prescribe Program requirements for approved State other credit support programs. Regulations.

(2) **CONSIDERATIONS FOR FUND.**—In prescribing minimum Program requirements for approved State other credit support programs, the Secretary shall take into consideration, to the extent the Secretary determines applicable and appropriate, the minimum Program requirements for approved State capital access programs in section 3005(e).

SEC. 3007. REPORTS.

12 USC 5706.

(a) **QUARTERLY USE-OF-FUNDS REPORT.**—

(1) **IN GENERAL.**—Not later than 30 days after the beginning of each calendar quarter, beginning after the first full calendar quarter to occur after the date the Secretary approves a State for participation, the participating State shall submit to the Secretary a report on the use of Federal funding by the participating State during the previous calendar quarter.

(2) **REPORT CONTENTS.**—Each report under this subsection shall—

(A) indicate the total amount of Federal funding used by the participating State; and

(B) include a certification by the participating State that—

(i) the information provided in accordance with subparagraph (A) is accurate;

(ii) funds continue to be available and legally committed to contributions by the State to, or for the account of, approved State programs, less any amount that has been contributed by the State to, or for the account of, approved State programs subsequent to the State being approved for participation in the Program; and

(iii) the participating State is implementing its approved State program or programs in accordance with this title and regulations issued under section 3010.

(b) **ANNUAL REPORT.**—Not later than March 31 of each year, beginning March 31, 2011, each participating State shall submit to the Secretary an annual report that shall include the following information:

Effective date.

(1) The number of borrowers that received new loans originated under the approved State program or programs after the State program was approved as eligible for Federal contributions.

(2) The total amount of such new loans.

(3) Breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers that received such new loans.

(4) The zip code of each borrower that received such a new loan.

(5) Such other data as the Secretary, in the Secretary's sole discretion, may require to carry out the purposes of the Program.

(c) FORM.—The reports and data filed under subsections (a) and (b) shall be in such form as the Secretary, in the Secretary's sole discretion, may require.

(d) TERMINATION OF REPORTING REQUIREMENTS.—The requirement to submit reports under subsections (a) and (b) shall terminate for a participating State with the submission of the completed reports due on the first March 31 to occur after 5 complete 12-month periods after the State is approved by the Secretary to be a participating State.

12 USC 5707.

SEC. 3008. REMEDIES FOR STATE PROGRAM TERMINATION OR FAILURES.

(a) REMEDIES.—

(1) IN GENERAL.—If any of the events listed in paragraph

(2) occur, the Secretary, in the Secretary's discretion, may—

(A) reduce the amount of Federal funds allocated to the State under the Program; or

(B) terminate any further transfers of allocated amounts that have not yet been transferred to the State.

(2) CAUSAL EVENTS.—The events referred to in paragraph

(1) are—

(A) termination by a participating State of its participation in the Program;

(B) failure on the part of a participating State to submit complete reports under section 3007 on a timely basis; or

(C) noncompliance by the State with the terms of the allocation agreement between the Secretary and the State.

Time period.

(b) DEALLOCATED AMOUNTS TO BE REALLOCATED.—If, after 13 months, any portion of the amount of Federal funds allocated to a participating State is deemed by the Secretary to be no longer allocated to the State after actions taken by the Secretary under subsection (a)(1), the Secretary shall reallocate that portion among the participating States, excluding the State whose allocated funds were deemed to be no longer allocated, as provided in section 3003(b).

12 USC 5708.

SEC. 3009. IMPLEMENTATION AND ADMINISTRATION.

(a) GENERAL AUTHORITIES AND DUTIES.—The Secretary shall—

Consultation.

(1) consult with the Administrator of the Small Business Administration and the appropriate Federal banking agencies on the administration of the Program;

Standards.

(2) establish minimum national standards for approved State programs;

(3) provide technical assistance to States for starting State programs and generally disseminate best practices;

(4) manage, administer, and perform necessary program integrity functions for the Program; and

(5) ensure adequate oversight of the approved State programs, including oversight of the cash flows, performance, and compliance of each approved State program.

(b) APPROPRIATIONS.—There is hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, \$1,500,000,000 to carry out the Program, including to pay reasonable costs of administering the Program.

(c) **TERMINATION OF SECRETARY'S PROGRAM ADMINISTRATION FUNCTIONS.**—The authorities and duties of the Secretary to implement and administer the Program shall terminate at the end of the 7-year period beginning on the date of enactment of this Act.

Time period.

(d) **EXPEDITED CONTRACTING.**—During the 1-year period beginning on the date of enactment of this Act, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts, for purposes of carrying out this title.

Time period.

SEC. 3010. REGULATIONS.

12 USC 5709.

The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this title including to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this title.

SEC. 3011. OVERSIGHT AND AUDITS.

12 USC 5710.

(a) **INSPECTOR GENERAL OVERSIGHT.**—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the use of funds made available under the Program.

(b) **GAO AUDIT.**—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

(c) **REQUIRED CERTIFICATION.**—

(1) **FINANCIAL INSTITUTIONS CERTIFICATION.**—With respect to funds received by a participating State under the Program, any financial institution that receives a loan, a loan guarantee, or other financial assistance using such funds after the date of the enactment of this Act shall certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in section 5312 (a)(2) and (c)(1)(A) of title 31, United States Code, to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

(2) **SEX OFFENSE CERTIFICATION.**—With respect to funds received by a participating State under the Program, any private entity that receives a loan, a loan guarantee, or other financial assistance using such funds after the date of the enactment of this Act shall certify to the participating State that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

(d) **PROHIBITION ON PORNOGRAPHY.**—None of the funds made available under this title may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including

child pornography, on a Federal Government computer or while performing official Federal Government duties.

TITLE IV—ADDITIONAL SMALL BUSINESS PROVISIONS

12 USC 4741
note.

Subtitle A—Small Business Lending Fund

SEC. 4101. PURPOSE.

The purpose of this subtitle is to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses.

SEC. 4102. DEFINITIONS.

For purposes of this subtitle:

(1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of Congress” means—

(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) **APPROPRIATE FEDERAL BANKING AGENCY.**—The term “appropriate Federal banking agency” has the meaning given such term under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) **BANK HOLDING COMPANY.**—The term “bank holding company” has the meaning given such term under section 2(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(1)).

(4) **CALL REPORT.**—The term “call report” means—

(A) reports of Condition and Income submitted to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(B) the Office of Thrift Supervision Thrift Financial Report;

(C) any report that is designated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, as applicable, as a successor to any report referred to in subparagraph (A) or (B);

(D) reports of Condition and Income as designated through guidance developed by the Secretary, in consultation with the Director of the Community Development Financial Institutions Fund; and

(E) with respect to an eligible institution for which no report exists that is described under subparagraph (A), (B), (C), or (D), such other report or set of information as the Secretary, in consultation with the Administrator of the Small Business Administration, may prescribe.

(5) CDCI.—The term “CDCI” means the Community Development Capital Initiative created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

(6) CDCI INVESTMENT.—The term “CDCI investment” means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CDCI that has not been repaid.

(7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The terms “CDFI” and “community development financial institution” have the meaning given the term “community development financial institution” under the Riegle Community Development and Regulatory Improvement Act of 1994.

(8) CDLF; COMMUNITY DEVELOPMENT LOAN FUND.—The terms “CDLF” and “community development loan fund” mean any entity that—

(A) is certified by the Department of the Treasury as a community development financial institution loan fund;

(B) is exempt from taxation under the Internal Revenue Code of 1986; and

(C) had assets less than or equal to \$10,000,000,000 as of the end of the fourth quarter of calendar year 2009.

(9) CPP.—The term “CPP” means the Capital Purchase Program created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

(10) CPP INVESTMENT.—The term “CPP investment” means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CPP that has not been repaid.

(11) ELIGIBLE INSTITUTION.—The term “eligible institution” means—

(A) any insured depository institution, which—

(i) is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

(ii) has total assets of equal to or less than \$10,000,000,000, as reported in the call report of the insured depository institution as of the end of the fourth quarter of calendar year 2009; and

(iii) is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than \$10,000,000,000, as so reported;

(B) any bank holding company which has total consolidated assets of equal to or less than \$10,000,000,000, as reported in the call report of the bank holding company as of the end of the fourth quarter of calendar year 2009;

(C) any savings and loan holding company which has total consolidated assets of equal to or less than \$10,000,000,000, as reported in the call report of the

savings and loan holding company as of the end of the fourth quarter of calendar year 2009; and

(D) any community development financial institution loan fund which has total assets of equal to or less than \$10,000,000,000, as reported in audited financial statements for the fiscal year of the community development financial institution loan fund that ends in calendar year 2009.

(12) FUND.—The term “Fund” means the Small Business Lending Fund established under section 4103(a)(1).

(13) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” has the meaning given such term under section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(14) MINORITY-OWNED AND WOMEN-OWNED BUSINESS.—The terms “minority-owned business” and “women-owned business” shall have the meaning given the terms “minority-owned business” and “women’s business”, respectively, under section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441A(r)(4)).

(15) PROGRAM.—The term “Program” means the Small Business Lending Fund Program authorized under section 4103(a)(2).

(16) SAVINGS AND LOAN HOLDING COMPANY.—The term “savings and loan holding company” has the meaning given such term under section 10(a)(1)(D) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)(1)(D)).

(17) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(18) SMALL BUSINESS LENDING.—

(A) IN GENERAL.—The term “small business lending” means lending, as defined by and reported in an eligible institutions’ quarterly call report, where each loan comprising such lending is one of the following types:

(i) Commercial and industrial loans.

(ii) Owner-occupied nonfarm, nonresidential real estate loans.

(iii) Loans to finance agricultural production and other loans to farmers.

(iv) Loans secured by farmland.

(B) EXCLUSION.—No loan that has an original amount greater than \$10,000,000 or that goes to a business with more than \$50,000,000 in revenues shall be included in the measure.

(C) TREATMENT OF HOLDING COMPANIES.—In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

(19) VETERAN-OWNED BUSINESS.—

(A) The term “veteran-owned business” means a business—

(i) more than 50 percent of the ownership or control of which is held by 1 or more veterans;

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more veterans; and

(iii) a significant percentage of senior management positions of which are held by veterans.

(B) For purposes of this paragraph, the term “veteran” has the meaning given such term in section 101(2) of title 38, United States Code.

SEC. 4103. SMALL BUSINESS LENDING FUND.

(a) **FUND AND PROGRAM.**—

(1) **FUND ESTABLISHED.**—There is established in the Treasury of the United States a fund to be known as the “Small Business Lending Fund”, which shall be administered by the Secretary.

(2) **PROGRAMS AUTHORIZED.**—The Secretary is authorized to establish the Small Business Lending Fund Program for using the Fund consistent with this subtitle.

(b) **USE OF FUND.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this subtitle. For purposes of this paragraph and with respect to an eligible institution, the term “other financial instruments” shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution. Such debt instruments may be subordinated to the claims of other creditors of the eligible institution.

(2) **MAXIMUM PURCHASE LIMIT.**—The aggregate amount of purchases (and commitments to purchase) made pursuant to paragraph (1) may not exceed \$30,000,000,000.

(3) **PROCEEDS USED TO PAY DOWN PUBLIC DEBT.**—All funds received by the Secretary in connection with purchases made pursuant to paragraph (1), including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.

(4) **LIMITATION ON PURCHASES FROM CDLFS.**—

(A) **IN GENERAL.**—Not more than 1 percent of the maximum purchase limit of the Program, pursuant to paragraph (2), may be used to make purchases from community development loan funds.

(B) **ELIGIBILITY STANDARDS.**—The Secretary, in consultation with the Community Development Financial Institutions Fund, shall develop eligibility criteria to determine the financial ability of a CDLF to participate in the Program and repay the investment. Such criteria shall include the following:

(i) Ratio of net assets to total assets is at least 20 percent.

(ii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent.

(iii) Positive net income measured on a 3-year rolling average.

(iv) Operating liquidity ratio of at least 1.0 for the 4 most recent quarters and for one or both of the two preceding years.

(v) Ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves is less than 40 percent.

(C) REQUIREMENT TO SUBMIT AUDITED FINANCIAL STATEMENTS.—CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least 3 years of operating experience.

(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 4108, to the extent provided by appropriations Acts.

(d) TERMS.—

(1) APPLICATION.—

(A) INSTITUTIONS WITH ASSETS OF \$1,000,000,000 OR LESS.—Eligible institutions having total assets equal to or less than \$1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(B) INSTITUTIONS WITH ASSETS OF MORE THAN \$1,000,000,000 AND LESS THAN OR EQUAL TO \$10,000,000,000.—Eligible institutions having total assets of more than \$1,000,000,000 but less than \$10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(C) TREATMENT OF HOLDING COMPANIES.—In the case of an eligible institution that is a bank holding company or a savings and loan holding company having one or more insured depository institution subsidiaries, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009 and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries as reported in the call report immediately preceding the date of application.

(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other

financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this subparagraph, the term “control” with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this subparagraph, the term “control” with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)(2)).

(E) REQUIREMENT TO PROVIDE A SMALL BUSINESS LENDING PLAN.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency, and, for applicants that are State-chartered banks, to the appropriate State banking regulator, a small business lending plan describing how the applicant’s business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate. In the case of eligible institutions that are community development loan funds, this plan shall be submitted to the Secretary. This plan shall be confidential supervisory information.

Confidentiality.

(F) TREATMENT OF APPLICANTS THAT ARE COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligible institutions that are community development loan funds may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ends in calendar year 2009.

(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall—

(A) consult with the appropriate Federal banking agency or, in the case of an eligible institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, for the eligible institution, to determine whether the eligible institution may receive such capital investment;

(B) in the case of an eligible institution that is a State-chartered bank, consider any views received from the State banking regulator of the State of the eligible institution regarding the financial condition of the eligible institution; and

(C) in the case of a community development financial institution loan fund, consult with the Community Development Financial Institution Fund.

(3) CONSIDERATION OF MATCHED PRIVATE INVESTMENTS.—

(A) IN GENERAL.—For an eligible institution that applies to receive a capital investment under the Program, if the entity to be consulted under paragraph (2) would not otherwise recommend the eligible institution to receive the capital investment, the Secretary, in consultation with the entity to be so consulted, may consider whether the

entity to be consulted would recommend the eligible institution to receive a capital investment based on the financial condition of the institution if the conditions in subparagraph (B) are satisfied.

(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

(i) CAPITAL SOURCES.—The eligible institution shall receive capital both under the Program and from private, nongovernment investors.

(ii) AMOUNT OF CAPITAL.—The amount of capital to be received under the Program shall not exceed 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(iii) TERMS.—The amount of capital to be received from private, nongovernment investors shall be—

(I) equal to or greater than 100 percent of the capital to be received under the Program; and

(II) subordinate to the capital investment made by the Secretary under the Program.

(4) INELIGIBILITY OF INSTITUTIONS ON FDIC PROBLEM BANK LIST.—

(A) IN GENERAL.—An eligible institution may not receive any capital investment under the Program, if—

(i) such institution is on the FDIC problem bank list; or

(ii) such institution has been removed from the FDIC problem bank list for less than 90 days.

(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as limiting the discretion of the Secretary to deny the application of an eligible institution that is not on the FDIC problem bank list.

(C) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this paragraph, the term “FDIC problem bank list” means the list of depository institutions having a current rating of 4 or 5 under the Uniform Financial Institutions Rating System, or such other list designated by the Federal Deposit Insurance Corporation.

(5) INCENTIVES TO LEND.—

(A) REQUIREMENTS ON PREFERRED STOCK AND OTHER FINANCIAL INSTRUMENTS.—Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

(i) the rate at which dividends or interest are payable shall be 5 percent per annum initially;

(ii) within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution’s small business lending. Changes in the amount of small business lending shall be measured against the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters immediately preceding the date of enactment of this Act, minus adjustments from each quarterly balance in respect of—

Time period.

(I) net loan charge offs with respect to small business lending; and

(II) gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after origination and syndication; which adjustments shall be determined in accordance with guidance promulgated by the Secretary; and

(iii) during any calendar quarter during the initial 2-year period referred to in clause (ii), an institution's rate shall be adjusted to reflect the following schedule, based on that institution's change in the amount of small business lending relative to the baseline—

(I) if the amount of small business lending has increased by less than 2.5 percent, the dividend or interest rate shall be 5 percent;

(II) if the amount of small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent;

(III) if the amount of small business lending has increased by 5.0 percent or greater, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent;

(IV) if the amount of small business lending has increased by 7.5 percent or greater, and but by less than 10.0 percent, the dividend or interest rate shall be 2 percent; or

(V) if the amount of small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent.

(B) BASIS OF INITIAL RATE.—The initial dividend or interest rate shall be based on call report data published in the quarter immediately preceding the date of the capital investment under the Program.

(C) TIMING OF RATE ADJUSTMENTS.—Any rate adjustment shall occur in the calendar quarter following the publication of call report data, such that the rate based on call report data from any one calendar quarter, which is published in the first following calendar quarter, shall be adjusted in that first following calendar quarter and payable in the second following quarter.

(D) RATE FOLLOWING INITIAL 2-YEAR PERIOD.—Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 4½-year period that begins on the date of the investment. In the case where the amount of small business lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 4½-year period that begins on the date of the investment.

(E) RATE FOLLOWING INITIAL 4½-YEAR PERIOD.—The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 4½-year period

that begins on the date of the capital investment under the Program.

Applicability.

(F) LIMITATION ON RATE REDUCTIONS WITH RESPECT TO CERTAIN AMOUNT.—The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to a dollar amount of the investment made by Treasury that is greater than the dollar amount increase in the amount of small business lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

(G) RATE ADJUSTMENTS FOR S CORPORATION.—Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term “S corporation” has the same meaning as in section 1361(a) of the Internal Revenue Code of 1986.

(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be evidenced by preferred stock or other financial instrument that—

(i) includes, as a term and condition, that the capital investment will—

(I) be repaid not later than the end of the 10-year period beginning on the date of the capital investment under the Program; or

Terms.

(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which shall include a requirement that the stock or instrument shall carry the highest dividend or interest rate payable; and

(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock or financial instrument under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

(6) **ADDITIONAL INCENTIVES TO REPAY.**—The Secretary may, by regulation or guidance issued under section 4104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with the purposes of this subtitle. Applicability.

(7) **CAPITAL PURCHASE PROGRAM REFINANCE.**—

(A) **IN GENERAL.**—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this subtitle, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program. Regulations.

(B) **PROHIBITION ON PARTICIPATION BY NON-PAYING CPP PARTICIPANTS.**—Subparagraph (A) shall not apply to any eligible institution that has missed more than one dividend payment due under the CPP. For purposes of this subparagraph, a CPP dividend payment that is submitted within 60 days of the due date of such payment shall not be considered a missed dividend payment. Deadline.

(8) **OUTREACH TO MINORITIES, WOMEN, AND VETERANS.**—The Secretary shall require eligible institutions receiving capital investments under the Program to provide linguistically and culturally appropriate outreach and advertising in the applicant pool describing the availability and application process of receiving loans from the eligible institution that are made possible by the Program through the use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that— Requirements.

(A) represent or work within or are members of minority communities;

(B) represent or work with or are women; and

(C) represent or work with or are veterans.

(9) **ADDITIONAL TERMS.**—The Secretary may, by regulation or guidance issued under section 4104(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Fund in a manner consistent with the purposes of this subtitle.

(10) **MINIMUM UNDERWRITING STANDARDS.**—The appropriate Federal banking agency for an eligible institution that receives funds under the Program shall within 60 days issue guidance regarding prudent underwriting standards that must be used for loans made by the eligible institution using such funds. Deadline.

SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.

The Secretary may take such actions as the Secretary deems necessary to carry out the authorities in this subtitle, including, without limitation, the following:

(1) The Secretary may use the services of any agency or instrumentality of the United States or component thereof on a reimbursable basis, and any such agency or instrumentality or component thereof is authorized to provide services as requested by the Secretary using all authorities vested in or delegated to that agency, instrumentality, or component.

(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this subtitle as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act, to perform reasonable duties related to this subtitle.

(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or acquired pursuant to the authorities granted under this subtitle.

(5) Subject to section 4103(b)(3), the Secretary may manage any assets purchased under this subtitle, including revenues and portfolio risks therefrom.

(6) The Secretary may sell, dispose of, transfer, exchange or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any preferred stock or other financial instrument or asset purchased or acquired under this subtitle, upon terms and conditions and at a price determined by the Secretary.

(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this subtitle.

(8) The Secretary may establish and use vehicles, subject to supervision by the Secretary, to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

(9) The Secretary may, in consultation with the Administrator of the Small Business Administration, issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this subtitle.

SEC. 4105. CONSIDERATIONS.

In exercising the authorities granted in this subtitle, the Secretary shall take into consideration—

(1) increasing the availability of credit for small businesses;

(2) providing funding to minority-owned eligible institutions and other eligible institutions that serve small businesses that are minority-, veteran-, and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities;

(3) protecting and increasing American jobs;

(4) increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average;

(5) ensuring that all eligible institutions may apply to participate in the program established under this subtitle, without discrimination based on geography;

(6) providing transparency with respect to use of funds provided under this subtitle;

(7) minimizing the cost to taxpayers of exercising the authorities;

(8) promoting and engaging in financial education to would-be borrowers; and

(9) providing funding to eligible institutions that serve small businesses directly affected by the discharge of oil arising from the explosion on and sinking of the mobile offshore drilling unit Deepwater Horizon and small businesses in communities that have suffered negative economic effects as a result of that discharge with particular consideration to States along the coast of the Gulf of Mexico.

SEC. 4106. REPORTS.

The Secretary shall provide to the appropriate committees of Congress—

(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this subtitle;

(2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Fund, which shall include participating institutions and amounts each institution has received under the Program; and

Effective date.

(3) within 7 days of the end of each calendar quarter commencing with the first calendar quarter in which transactions are made under the Program, a written report detailing how eligible institutions participating in the Program have used the funds such institutions received under the Program.

SEC. 4107. OVERSIGHT AND AUDITS.

(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b).

(b) OFFICE OF SMALL BUSINESS LENDING FUND PROGRAM OVERSIGHT.—

(1) ESTABLISHMENT.—There is hereby established within the Office of the Inspector General of the Department of the Treasury a new office to be named the “Office of Small Business Lending Fund Program Oversight” to provide oversight of the Program.

(2) LEADERSHIP.—The Inspector General shall appoint a Special Deputy Inspector General for SBLF Program Oversight to lead the Office, with commensurate staff, who shall report directly to the Inspector General and who shall be responsible for the performance of all auditing and investigative activities relating to the Program.

Appointment.

(3) REPORTING.—

(A) IN GENERAL.—The Inspector General shall issue a report no less than two times a year to the Congress and the Secretary devoted to the oversight provided by the Office, including any recommendations for improvements to the Program.

- (B) RECOMMENDATIONS.—With respect to any deficiencies identified in a report under subparagraph (A), the Secretary shall either—
- (i) take actions to address such deficiencies; or
 - (ii) certify to the appropriate committees of Congress that no action is necessary or appropriate.
- Certification.
- (4) COORDINATION.—The Inspector General, in maximizing the effectiveness of the Office, shall work with other Offices of Inspector General, as appropriate, to minimize duplication of effort and ensure comprehensive oversight of the Program.
- Time period.
- (5) TERMINATION.—The Office shall terminate at the end of the 6-month period beginning on the date on which all capital investments are repaid under the Program or the date on which the Secretary determines that any remaining capital investments will not be repaid.
- (6) DEFINITIONS.—For purposes of this subsection:
- (A) OFFICE.—The term “Office” means the Office of Small Business Lending Fund Program Oversight established under paragraph (1).
 - (B) INSPECTOR GENERAL.—The term “Inspector General” means the Inspector General of the Department of the Treasury.
- Deadline.
Reports.
- (c) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.
- (d) REQUIRED CERTIFICATIONS.—
- (1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participates in the Program must certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person’s identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.
 - (2) LOAN RECIPIENTS.—With respect to funds received by an eligible institution under the Program, any business receiving a loan from the eligible institution using such funds after the date of the enactment of this Act shall certify to such eligible institution that the principals of such business have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).
- (e) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this subtitle may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

SEC. 4108. CREDIT REFORM; FUNDING.

(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this subtitle shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) FUNDS MADE AVAILABLE.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the costs of \$30,000,000,000 of capital investments in eligible institutions, including the costs of modifying such investments, and reasonable costs of administering the program of making, holding, managing, and selling the capital investments.

Appropriation
authorization.

SEC. 4109. TERMINATION AND CONTINUATION OF AUTHORITIES.

(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this subtitle shall terminate 1 year after the date of enactment of this Act.

(b) CONTINUATION OF OTHER AUTHORITIES.—The authorities of the Secretary under section 4104 shall not be limited by the termination date in subsection (a).

SEC. 4110. PRESERVATION OF AUTHORITY.

Nothing in this subtitle may be construed to limit the authority of the Secretary under any other provision of law.

SEC. 4111. ASSURANCES.

(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

(b) CHANGE IN LAW.—If, after a capital investment has been made in an eligible institution under the Program, there is a change in law that modifies the terms of the investment or program in a materially adverse respect for the eligible institution, the eligible institution may, after consultation with the appropriate Federal banking agency for the eligible institution, repay the investment without impediment.

SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-OWNED, VETERAN-OWNED, AND MINORITY-OWNED BUSINESSES.

(a) STUDY.—The Secretary shall conduct a study of the impact of the Program on women-owned businesses, veteran-owned businesses, and minority-owned businesses.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a). To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.

(c) INFORMATION PROVIDED TO THE SECRETARY.—Eligible institutions that participate in the Program shall provide the Secretary with such information as the Secretary may require to carry out the study required by this section.

SEC. 4113. SENSE OF CONGRESS.

It is the sense of Congress that the Federal Deposit Insurance Corporation and other bank regulators are sending mixed messages to banks regarding regulatory capital requirements and lending standards, which is a contributing cause of decreased small business lending and increased regulatory uncertainty at community banks.

Subtitle B—Other Provisions

PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES

Export
Promotion Act of
2010.

15 USC 271 note.

SEC. 4221. SHORT TITLE.

This part may be cited as the “Export Promotion Act of 2010”.

SEC. 4222. GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DEPARTMENT OF COMMERCE.

(a) INCREASE IN EMPLOYEES WITH RESPONSIBILITY FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES.—

Time period.
Effective date.

(1) IN GENERAL.—During the 24-month period beginning on the date of the enactment of this Act, the Secretary of Commerce shall increase the number of full-time departmental employees whose primary responsibilities involve promoting or facilitating participation by United States businesses in the global marketplace and facilitating the entry into, or expansion of, such participation by United States businesses. In carrying out this subsection, the Secretary shall ensure that—

(A) the cohort of such employees is increased by not less than 80 persons; and

(B) a substantial portion of the increased cohort is stationed outside the United States.

(2) ENHANCED FOCUS ON UNITED STATES SMALL- AND MEDIUM-SIZED BUSINESSES.—In carrying out this subsection, the Secretary shall take such action as may be necessary to ensure that the activities of the Department of Commerce relating to promoting and facilitating participation by United States businesses in the global marketplace include promoting and facilitating such participation by small and medium-sized businesses in the United States.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2011 and 2012 such sums as may be necessary to carry out this section.

(b) ADDITIONAL FUNDING FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DEPARTMENT OF COMMERCE.—

Appropriation
authorization.

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, \$30,000,000 to promote or facilitate participation by United States businesses in the global marketplace and facilitating the entry into, or expansion of, such participation by United States businesses.

(2) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by paragraph (1), the Secretary of Commerce shall give preference to activities that—

(A) assist small- and medium-sized businesses in the United States; and

(B) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4223. ADDITIONAL FUNDING TO IMPROVE ACCESS TO GLOBAL MARKETS FOR RURAL BUSINESSES.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Secretary of Commerce \$5,000,000 for each of the fiscal years 2011 and 2012 for improving access to the global marketplace for goods and services provided by rural businesses in the United States.

(b) **REQUIREMENTS.**—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4224. ADDITIONAL FUNDING FOR THE EXPORTECH PROGRAM.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Secretary of Commerce \$11,000,000 for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, to expand ExporTech, a joint program of the Hollings Manufacturing Partnership Program and the Export Assistance Centers of the Department of Commerce.

Time period.

(b) **REQUIREMENTS.**—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4225. ADDITIONAL FUNDING FOR THE MARKET DEVELOPMENT COOPERATOR PROGRAM OF THE DEPARTMENT OF COMMERCE.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Secretary of Commerce for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, \$15,000,000 for the Manufacturing and Services unit of the International Trade Administration—

Time period.

(1) to establish public-private partnerships under the Market Development Cooperator Program of the International Trade Administration; and

(2) to underwrite a portion of the start-up costs for new projects carried out under that Program to strengthen the competitiveness and market share of United States industry, not to exceed, for each such project, the lesser of—

(A) $\frac{1}{3}$ of the total start-up costs for the project; or

(B) \$500,000.

(b) **REQUIREMENTS.**—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4226. HOLLINGS MANUFACTURING PARTNERSHIP PROGRAM; TECHNOLOGY INNOVATION PROGRAM.

(a) HOLLINGS MANUFACTURING PARTNERSHIP PROGRAM.—Section 25(f) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)) is amended by adding at the end the following:

“(7) GLOBAL MARKETPLACE PROJECTS.—In making awards under this subsection, the Director, in consultation with the Manufacturing Extension Partnership Advisory Board and the Secretary of Commerce, may—

“(A) take into consideration whether an application has significant potential for enhancing the competitiveness of small and medium-sized United States manufacturers in the global marketplace; and

“(B) give a preference to applications for such projects to the extent the Director deems appropriate, taking into account the broader purposes of this subsection.”.

Grants.
Contracts.
15 USC 278n
note.

(b) TECHNOLOGY INNOVATION PROGRAM.—In awarding grants, cooperative agreements, or contracts under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), in addition to the award criteria set forth in subsection (c) of that section, the Director of the National Institute of Standards and Technology may take into consideration whether an application has significant potential for enhancing the competitiveness of small- and medium-sized businesses in the United States in the global marketplace. The Director shall consult with the Technology Innovation Program Advisory Board and the Secretary of Commerce in implementing this subsection.

Consultation.

SEC. 4227. SENSE OF THE SENATE CONCERNING FEDERAL COLLABORATION WITH STATES ON EXPORT PROMOTION ISSUES.

It is the sense of the Senate that the Secretary of Commerce should enhance Federal collaboration with the States on export promotion issues by—

(1) providing the necessary training to the staff at State international trade agencies to enable them to assist the United States and Foreign Commercial Service (established by section 2301 of the Export Enhancement Act of 1988 (15 U.S.C. 4721)) in providing counseling and other export services to businesses in their communities; and

(2) entering into agreements with State international trade agencies for those agencies to deliver export promotion services in their local communities in order to extend the outreach of United States and Foreign Commercial Service programs.

Columbia.
Republic of
Korea.
Panama.

SEC. 4228. REPORT ON TARIFF AND NONTARIFF BARRIERS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the United States Trade Representative and other appropriate entities, shall report to Congress on the tariff and nontariff barriers imposed by Colombia, the Republic of Korea, and Panama with respect

to exports of articles from the United States, including articles exported or produced by small- and medium-sized businesses in the United States.

PART II—MEDICARE FRAUD

SEC. 4241. USE OF PREDICTIVE MODELING AND OTHER ANALYTICS TECHNOLOGIES TO IDENTIFY AND PREVENT WASTE, FRAUD, AND ABUSE IN THE MEDICARE FEE-FOR-SERVICE PROGRAM.

42 USC
1320a–7m.

(a) **USE IN THE MEDICARE FEE-FOR-SERVICE PROGRAM.**—The Secretary shall use predictive modeling and other analytics technologies (in this section referred to as “predictive analytics technologies”) to identify improper claims for reimbursement and to prevent the payment of such claims under the Medicare fee-for-service program.

(b) **PREDICTIVE ANALYTICS TECHNOLOGIES REQUIREMENTS.**—The predictive analytics technologies used by the Secretary shall—

(1) capture Medicare provider and Medicare beneficiary activities across the Medicare fee-for-service program to provide a comprehensive view across all providers, beneficiaries, and geographies within such program in order to—

(A) identify and analyze Medicare provider networks, provider billing patterns, and beneficiary utilization patterns; and

(B) identify and detect any such patterns and networks that represent a high risk of fraudulent activity;

(2) be integrated into the existing Medicare fee-for-service program claims flow with minimal effort and maximum efficiency;

(3) be able to—

(A) analyze large data sets for unusual or suspicious patterns or anomalies or contain other factors that are linked to the occurrence of waste, fraud, or abuse;

(B) undertake such analysis before payment is made; and

(C) prioritize such identified transactions for additional review before payment is made in terms of the likelihood of potential waste, fraud, and abuse to more efficiently utilize investigative resources;

(4) capture outcome information on adjudicated claims for reimbursement to allow for refinement and enhancement of the predictive analytics technologies on the basis of such outcome information, including post-payment information about the eventual status of a claim; and

(5) prevent the payment of claims for reimbursement that have been identified as potentially wasteful, fraudulent, or abusive until such time as the claims have been verified as valid.

(c) **IMPLEMENTATION REQUIREMENTS.**—

(1) **REQUEST FOR PROPOSALS.**—Not later than January 1, 2011, the Secretary shall issue a request for proposals to carry out this section during the first year of implementation. To the extent the Secretary determines appropriate—

Deadline.

(A) the initial request for proposals may include subsequent implementation years; and

- (B) the Secretary may issue additional requests for proposals with respect to subsequent implementation years.
- Contracts. (2) FIRST IMPLEMENTATION YEAR.—The initial request for proposals issued under paragraph (1) shall require the contractors selected to commence using predictive analytics technologies on July 1, 2011, in the 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program.
- Applicability. (3) SECOND IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(1)(B), the Secretary shall expand the use of predictive analytics technologies on October 1, 2012, to apply to an additional 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program, after the States identified under paragraph (2).
- (4) THIRD IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(2), the Secretary shall expand the use of predictive analytics technologies on January 1, 2014, to apply to the Medicare fee-for-service program in any State not identified under paragraph (2) or (3) and the commonwealths and territories.
- (5) FOURTH IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(3), the Secretary shall expand the use of predictive analytics technologies, beginning April 1, 2015, to apply to Medicaid and CHIP. To the extent the Secretary determines appropriate, such expansion may be made on a phased-in basis.
- Certification. Time period. (6) OPTION FOR REFINEMENT AND EVALUATION.—If, with respect to the first, second, or third implementation year, the Inspector General of the Department of Health and Human Services certifies as part of the report required under subsection (e) for that year no or only nominal actual savings to the Medicare fee-for-service program, the Secretary may impose a moratorium, not to exceed 12 months, on the expansion of the use of predictive analytics technologies under this section for the succeeding year in order to refine the use of predictive analytics technologies to achieve more than nominal savings before further expansion. If a moratorium is imposed in accordance with this paragraph, the implementation dates applicable for the succeeding year or years shall be adjusted to reflect the length of the moratorium period.
- (d) CONTRACTOR SELECTION, QUALIFICATIONS, AND DATA ACCESS REQUIREMENTS.—
- (1) SELECTION.—
- (A) IN GENERAL.—The Secretary shall select contractors to carry out this section using competitive procedures as provided for in the Federal Acquisition Regulation.
- (B) NUMBER OF CONTRACTORS.—The Secretary shall select at least 2 contractors to carry out this section with respect to any year.
- (2) QUALIFICATIONS.—
- (A) IN GENERAL.—The Secretary shall enter into a contract under this section with an entity only if the entity—
- (i) has leadership and staff who—

(I) have the appropriate clinical knowledge of, and experience with, the payment rules and regulations under the Medicare fee-for-service program; and

(II) have direct management experience and proficiency utilizing predictive analytics technologies necessary to carry out the requirements under subsection (b); or

(ii) has a contract, or will enter into a contract, with another entity that has leadership and staff meeting the criteria described in clause (i).

(B) CONFLICT OF INTEREST.—The Secretary may only enter into a contract under this section with an entity to the extent that the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(3) DATA ACCESS.—The Secretary shall provide entities with a contract under this section with appropriate access to data necessary for the entity to use predictive analytics technologies in accordance with the contract.

(e) REPORTING REQUIREMENTS.—

Public
information.

(1) FIRST IMPLEMENTATION YEAR REPORT.—Not later than 3 months after the completion of the first implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes the following:

(A) A description of the implementation of the use of predictive analytics technologies during the year.

(B) A certification of the Inspector General of the Department of Health and Human Services that—

(i) specifies the actual and projected savings to the Medicare fee-for-service program as a result of the use of predictive analytics technologies, including estimates of the amounts of such savings with respect to both improper payments recovered and improper payments avoided;

(ii) the actual and projected savings to the Medicare fee-for-service program as a result of such use of predictive analytics technologies relative to the return on investment for the use of such technologies and in comparison to other strategies or technologies used to prevent and detect fraud, waste, and abuse in the Medicare fee-for-service program; and

(iii) includes recommendations regarding—

(I) whether the Secretary should continue to use predictive analytics technologies;

(II) whether the use of such technologies should be expanded in accordance with the requirements of subsection (c); and

(III) any modifications or refinements that should be made to increase the amount of actual or projected savings or mitigate any adverse impact on Medicare beneficiaries or providers.

(C) An analysis of the extent to which the use of predictive analytics technologies successfully prevented and detected waste, fraud, or abuse in the Medicare fee-for-service program.

(D) A review of whether the predictive analytics technologies affected access to, or the quality of, items and services furnished to Medicare beneficiaries.

(E) A review of what effect, if any, the use of predictive analytics technologies had on Medicare providers.

(F) Any other items determined appropriate by the Secretary.

(2) SECOND YEAR IMPLEMENTATION REPORT.—Not later than 3 months after the completion of the second implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes, with respect to such year, the items required under paragraph (1) as well as any other additional items determined appropriate by the Secretary with respect to the report for such year.

(3) THIRD YEAR IMPLEMENTATION REPORT.—Not later than 3 months after the completion of the third implementation year under this section, the Secretary shall submit to the appropriate committees of Congress, and make available to the public, a report that includes with respect to such year, the items required under paragraph (1), as well as any other additional items determined appropriate by the Secretary with respect to the report for such year, and the following:

(A) An analysis of the cost-effectiveness and feasibility of expanding the use of predictive analytics technologies to Medicaid and CHIP.

(B) An analysis of the effect, if any, the application of predictive analytics technologies to claims under Medicaid and CHIP would have on States and the commonwealths and territories.

(C) Recommendations regarding the extent to which technical assistance may be necessary to expand the application of predictive analytics technologies to claims under Medicaid and CHIP, and the type of any such assistance.

(f) INDEPENDENT EVALUATION AND REPORT.—

(1) EVALUATION.—Upon completion of the first year in which predictive analytics technologies are used with respect to claims under Medicaid and CHIP, the Secretary shall, by grant, contract, or interagency agreement, conduct an independent evaluation of the use of predictive analytics technologies under the Medicare fee-for-service program and Medicaid and CHIP. The evaluation shall include an analysis with respect to each such program of the items required for the third year implementation report under subsection (e)(3).

(2) REPORT.—Not later than 18 months after the evaluation required under paragraph (1) is initiated, the Secretary shall submit a report to Congress on the evaluation that shall include the results of the evaluation, the Secretary's response to such results and, to the extent the Secretary determines appropriate, recommendations for legislation or administrative actions.

(g) WAIVER AUTHORITY.—The Secretary may waive such provisions of titles XI, XVIII, XIX, and XXI of the Social Security Act, including applicable prompt payment requirements under titles XVIII and XIX of such Act, as the Secretary determines to be appropriate to carry out this section.

(h) FUNDING.—

Grants.
Contracts.

(1) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this section, \$100,000,000 for the period beginning January 1, 2011, to remain available until expended.

(2) RESERVATIONS.—

(A) INDEPENDENT EVALUATION.—The Secretary shall reserve not more than 5 percent of the funds appropriated under paragraph (1) for purposes of conducting the independent evaluation required under subsection (f).

(B) APPLICATION TO MEDICAID AND CHIP.—The Secretary shall reserve such portion of the funds appropriated under paragraph (1) as the Secretary determines appropriate for purposes of providing assistance to States for administrative expenses in the event of the expansion of predictive analytics technologies to claims under Medicaid and CHIP.

(i) DEFINITIONS.—In this section:

(1) COMMONWEALTHS AND TERRITORIES.—The term “commonwealth and territories” includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States in which the Medicare fee-for-service program, Medicaid, or CHIP operates.

(2) CHIP.—The term “CHIP” means the Children’s Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(3) MEDICAID.—The term “Medicaid” means the program to provide grants to States for medical assistance programs established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(4) MEDICARE BENEFICIARY.—The term “Medicare beneficiary” means an individual enrolled in the Medicare fee-for-service program.

(5) MEDICARE FEE-FOR-SERVICE PROGRAM.—The term “Medicare fee-for-service program” means the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) MEDICARE PROVIDER.—The term “Medicare provider” means a provider of services (as defined in subsection (u) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) and a supplier (as defined in subsection (d) of such section).

(7) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

(8) STATE.—The term “State” means each of the 50 States and the District of Columbia.

TITLE V—BUDGETARY PROVISIONS

SEC. 5001. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved September 27, 2010.

LEGISLATIVE HISTORY—H.R. 5297:

HOUSE REPORTS: No. 111–499 (Comm. on Financial Services).

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 16, 17, considered and passed House.

June 29, July 19, 21, 22, 27–29, Aug. 5, Sept. 14–16, considered and passed Senate, amended.

Sept. 23, House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Sept. 27, Presidential remarks.



Public Law 111–241
111th Congress

An Act

To provide for the issuance of a Multinational Species Conservation Funds
Semipostal Stamp.

Sept. 30, 2010
[H.R. 1454]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Multinational Species Conservation
Funds Semipostal Stamp Act of 2010”.

**SEC. 2. MULTINATIONAL SPECIES CONSERVATION FUNDS SEMIPOSTAL
STAMP.**

(a) **IN GENERAL.**—In order to afford a convenient way for mem-
bers of the public to contribute to funding for the operations sup-
ported by the Multinational Species Conservation Funds, the United
States Postal Service shall issue a semipostal stamp (hereinafter
in this Act referred to as the “Multinational Species Conservation
Funds Semipostal Stamp”) in accordance with succeeding provisions
of this section.

(b) **COST AND USE.**—

(1) **IN GENERAL.**—The Multinational Species Conservation
Funds Semipostal Stamp shall be offered at a cost equal to
the cost of mailing a letter weighing 1 ounce or less at the
nonautomation single-piece first-ounce letter rate, in effect at
the time of purchase, plus a differential of not less than 15
percent.

(2) **VOLUNTARY USE.**—The use of any semipostal issued
under this section shall be voluntary on the part of postal
patrons.

(3) **SPECIAL RATE.**—The special rate of postage of an indi-
vidual stamp under this section shall be an amount that is
evenly divisible by 5.

(c) **OTHER TERMS AND CONDITIONS.**—The issuance and sale
of the Multinational Species Conservation Funds Semipostal Stamp
shall be governed by the provisions of section 416 of title 39,
United States Code, and regulations issued under such section,
subject to subsection (b) and the following:

(1) **DISPOSITION OF PROCEEDS.**—

(A) **IN GENERAL.**—All amounts becoming available from
the sale of the Multinational Species Conservation Funds
Semipostal Stamp (as determined under section 416(d) of
such title 39) shall be transferred to the United States
Fish and Wildlife Service, for the purpose described in
subsection (a), through payments which shall be made at
least twice a year, with the proceeds to be divided equally

Multinational
Species
Conservation
Funds
Semipostal
Stamp Act of
2010.
39 USC 416 note.
39 USC 416 note.

among the African Elephant Conservation Fund, the Asian Elephant Conservation Fund, the Great Ape Conservation Fund, the Marine Turtle Conservation Fund, the Rhinoceros and Tiger Conservation Fund, and other international wildlife conservation funds authorized by the Congress after the date of the enactment of this Act and administered by the Service as part of the Multinational Species Conservation Fund.

(B) PROCEEDS NOT TO BE OFFSET.—In accordance with section 416(d)(4) of such title 39, amounts becoming available from the sale of the Multinational Species Conservation Funds Semipostal Stamp (as so determined) shall not be taken into account in any decision relating to the level of appropriations or other Federal funding to be furnished in any year to—

(i) the United States Fish and Wildlife Service; or

(ii) any of the funds identified in subparagraph (A).

(2) DURATION.—The Multinational Species Conservation Funds Semipostal Stamp shall be made available to the public for a period of at least 2 years, beginning no later than 12 months after the date of the enactment of this Act.

(3) LIMITATION.—The Multinational Species Conservation Funds Semipostal Stamp shall not be subject to, or taken into account for purposes of applying, any limitation under section 416(e)(1)(C) of such title 39.

(4) RESTRICTION ON USE OF FUNDS.—Amounts transferred under paragraph (1) shall not be used to fund or support the Wildlife Without Borders Program or to supplement funds made available for the Neotropical Migratory Bird Conservation Fund.

(d) DEFINITION.—For purposes of this Act, the term “semipostal stamp” refers to a stamp described in section 416(a)(1) of title 39, United States Code.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 1454:

HOUSE REPORTS: No. 111–358, Pt. 1 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–234 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 7, considered and passed House.

Vol. 156 (2010): July 29, considered and passed Senate, amended.
Sept. 22, House concurred in Senate amendment.



Public Law 111–242
111th Congress

An Act

Making continuing appropriations for fiscal year 2011, and for other purposes.

Sept. 30, 2010
[H.R. 3081]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for fiscal year 2011, and for other purposes, namely:

Continuing
Appropriations
Act, 2011.

SEC. 101. Such amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2010 and under the authority and conditions provided in such Acts, for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this Act, that were conducted in fiscal year 2010, and for which appropriations, funds, or other authority were made available in the following appropriations Acts:

(1) The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80).

(2) Division A of the Department of Defense Appropriations Act, 2010 (division A of Public Law 111–118).

(3) The Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111–85).

(4) The Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83) and section 601 of the Supplemental Appropriations Act, 2010 (Public Law 111–212).

(5) The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (division A of Public Law 111–88).

(6) The Legislative Branch Appropriations Act, 2010 (division A of Public Law 111–68).

(7) The Consolidated Appropriations Act, 2010 (Public Law 111–117).

(8) Chapter 3 of title I of the Supplemental Appropriations Act, 2010 (Public Law 111–212), except for appropriations under the heading “Operation and Maintenance” relating to Haiti following the earthquake of January 12, 2010, or the Port of Guam: *Provided*, That the amount provided for the Department of Defense pursuant to this paragraph shall not exceed a rate for operations of \$29,387,401,000: *Provided further*, That the Secretary of Defense shall allocate such amount to each appropriation account, budget activity, activity group, and sub-activity group, and to each program, project, and activity within

each appropriation account, in the same proportions as such appropriations for fiscal year 2010.

(9) Section 102(c) of chapter 1 of title I of the Supplemental Appropriations Act, 2010 (Public Law 111–212) that addresses guaranteed loans in the rural housing insurance fund.

(10) The appropriation under the heading “Department of Commerce—United States Patent and Trademark Office” in the United States Patent and Trademark Office Supplemental Appropriations Act, 2010 (Public Law 111–224).

SEC. 102. (a) No appropriation or funds made available or authority granted pursuant to section 101 for the Department of Defense shall be used for (1) the new production of items not funded for production in fiscal year 2010 or prior years; (2) the increase in production rates above those sustained with fiscal year 2010 funds; or (3) the initiation, resumption, or continuation of any project, activity, operation, or organization (defined as any project, subproject, activity, budget activity, program element, and subprogram within a program element, and for any investment items defined as a P–1 line item in a budget activity within an appropriation account and an R–1 line item that includes a program element and subprogram element within an appropriation account) for which appropriations, funds, or other authority were not available during fiscal year 2010.

Contracts.

(b) No appropriation or funds made available or authority granted pursuant to section 101 for the Department of Defense shall be used to initiate multi-year procurements utilizing advance procurement funding for economic order quantity procurement unless specifically appropriated later.

SEC. 103. Appropriations made by section 101 shall be available to the extent and in the manner that would be provided by the pertinent appropriations Act.

SEC. 104. Except as otherwise provided in section 102, no appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during fiscal year 2010.

SEC. 105. Appropriations made and authority granted pursuant to this Act shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this Act.

Expiration date.

SEC. 106. Unless otherwise provided for in this Act or in the applicable appropriations Act for fiscal year 2011, appropriations and funds made available and authority granted pursuant to this Act shall be available until whichever of the following first occurs: (1) the enactment into law of an appropriation for any project or activity provided for in this Act; (2) the enactment into law of the applicable appropriations Act for fiscal year 2011 without any provision for such project or activity; or (3) December 3, 2010.

SEC. 107. Expenditures made pursuant to this Act shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 108. Appropriations made and funds made available by or authority granted pursuant to this Act may be used without regard to the time limitations for submission and approval of appropriations set forth in section 1513 of title 31, United States Code,

but nothing in this Act may be construed to waive any other provision of law governing the apportionment of funds.

SEC. 109. Notwithstanding any other provision of this Act, except section 106, for those programs that would otherwise have high initial rates of operation or complete distribution of appropriations at the beginning of fiscal year 2011 because of distributions of funding to States, foreign countries, grantees, or others, such high initial rates of operation or complete distribution shall not be made, and no grants shall be awarded for such programs funded by this Act that would impinge on final funding prerogatives.

SEC. 110. This Act shall be implemented so that only the most limited funding action of that permitted in the Act shall be taken in order to provide for continuation of projects and activities.

SEC. 111. (a) For entitlements and other mandatory payments whose budget authority was provided in appropriations Acts for fiscal year 2010, and for activities under the Food and Nutrition Act of 2008, activities shall be continued at the rate to maintain program levels under current law, under the authority and conditions provided in the applicable appropriations Act for fiscal year 2010, to be continued through the date specified in section 106(3).

(b) Notwithstanding section 106, obligations for mandatory payments due on or about the first day of any month that begins after October 2010 but not later than 30 days after the date specified in section 106(3) may continue to be made, and funds shall be available for such payments.

Deadline.

SEC. 112. Amounts made available under section 101 for civilian personnel compensation and benefits in each department and agency may be apportioned up to the rate for operations necessary to avoid furloughs within such department or agency, consistent with the applicable appropriations Act for fiscal year 2010, except that such authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses.

SEC. 113. Funds appropriated by this Act may be obligated and expended notwithstanding section 10 of Public Law 91–672 (22 U.S.C. 2412), section 15 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2680), section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (22 U.S.C. 6212), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

SEC. 114. The following amounts are designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010:

(1) Amounts incorporated by reference in this Act that were previously designated as available for overseas deployments and other activities pursuant to such concurrent resolution.

(2) Amounts made available pursuant to paragraph (8) of section 101 of this Act.

SEC. 115. Notwithstanding any other provision of this Act, funds appropriated under the heading “Food for Peace Title II Grants” in chapter 1 of title I of the Supplemental Appropriations Act, 2010 (Public Law 111–212) may be used to reimburse obligations incurred for the purposes provided therein prior to the enactment of such Act.

Extension date.

SEC. 116. The authority provided by section 18(h)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(h)(5)) shall continue in effect through the earlier of the date of enactment of an authorization Act related to the Richard B. Russell National School Lunch Act or the date specified in section 106(3) of this Act.

SEC. 117. Notwithstanding section 101, amounts are provided for “Department of Commerce—Bureau of the Census—Periodic Censuses and Programs”, for necessary expenses to collect and publish statistics for periodic censuses and programs provided for by law, at a rate for operations of \$964,315,000.

Extension date.

SEC. 118. The authority provided by section 1202 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163), as most recently amended by section 1222 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2518), shall continue in effect through the date specified in section 106(3) of this Act.

Claims.

SEC. 119. Notwithstanding subsection (b) of section 310 of the Supplemental Appropriations Act, 2009 (Public Law 111–32; 123 Stat. 1870), a claim described in that subsection that is submitted before the date specified in section 106(3) of this Act shall be treated as a claim for which payment may be made under such section 310.

SEC. 120. (a) RESCISSION.—The unobligated balance of authority provided for investigations under the heading “Department of Defense—Civil, Department of the Army, Corps of Engineers—Civil, Investigations”, in chapter 4 of title I of the Supplemental Appropriations Act, 2010 (Public Law 111–212; 124 Stat. 2312) is rescinded as of the date of enactment of this Act.

(b) APPROPRIATION.—Notwithstanding any other provision in this Act—

(1) there is appropriated to the Department of the Army, Corps of Engineers, an amount equal to the unobligated balance rescinded by subsection (a), to remain available until expended, for investigations;

(2) that such amount be available on the date of enactment of this Act; and

(3) the amount is designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SEC. 121. (a) RESCISSION.—The unobligated balance of authority provided for in section 401 of chapter 4 of title I of the Supplemental Appropriations Act, 2010 (Public Law 111–212; 124 Stat. 2313) for drought emergency assistance is rescinded as of the date of enactment of this Act.

(b) APPROPRIATION.—Notwithstanding any other provision in this Act—

(1) there is appropriated to the Bureau of Reclamation, an amount equal to the unobligated balance rescinded by subsection (a), to remain available until expended, for drought emergency assistance: *Provided*, That financial assistance may be provided under the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2201 et seq.) and any other applicable Federal law (including regulations) for the optimization and conservation of project water supplies to assist drought-plagued areas of the West;

(2) that such amount be available on the date of enactment of this Act; and

(3) the amount is designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SEC. 122. Notwithstanding section 101, amounts are provided for “Department of Energy—Weapons Activities” at a rate for operations of \$7,008,835,000.

SEC. 123. Notwithstanding any other provision of this Act, except section 106, the District of Columbia may expend local funds for programs and activities under the heading “District of Columbia Funds” for such programs and activities under title IV of S. 3677 (111th Congress), as reported by the Committee on Appropriations of the Senate, at the rate set forth under “District of Columbia Funds” as included in the Fiscal Year 2011 Budget Request Act (D.C. Act 18–448), as modified as of the date of the enactment of this Act.

SEC. 124. Section 550(b) of Public Law 109–295, as amended by section 550 of Public Law 111–83, shall be applied by substituting the date specified in section 106(3) of this Act for “October 4, 2010”. Applicability.

SEC. 125. Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) shall be applied by substituting the date specified in section 106(3) of this Act for “September 30, 2010”. Applicability.

SEC. 126. Any funds made available pursuant to section 101 for the Federal Air Marshals may be obligated at a rate for operations not exceeding that necessary to sustain domestic and international flight coverage at the same level as the final quarter of fiscal year 2010.

SEC. 127. Any funds made available pursuant to section 101 for U.S. Customs and Border Protection may be obligated at a rate for operations not exceeding that necessary to sustain the numbers of personnel in place in the final quarter of fiscal year 2010. The Commissioner of U.S. Customs and Border Protection shall notify the Committees on Appropriations of the House of Representatives and the Senate on each use of the authority provided in this section. Notification.

SEC. 128. Notwithstanding section 101, amounts are provided for “Department of the Interior—Minerals Management Service—Royalty and Offshore Minerals Management” at a rate for operations of \$365,000,000: *Provided*, That amounts provided herein from the general fund shall be reduced in an amount not to exceed \$154,890,000, as receipts from increases to rates in effect on August 5, 1993, and from cost recovery fees are received: *Provided further*, That of the prior-year unobligated balances available for “Department of the Interior—Minerals Management Service—Royalty and Offshore Minerals Management”, \$25,000,000 are rescinded. Rescission.

SEC. 129. Section 2(e)(1)(B) of Public Law 109–129 shall be applied by substituting the date specified in section 106(3) of this Act for “September 30, 2010”. Applicability.

SEC. 130. From funds transferred to “Department of Health and Human Services—Office of the Secretary—Public Health and Social Services Emergency Fund” by Public Law 111–117 in the fourth paragraph under such heading, amounts shall be available through the date specified in section 106(3) of this Act to support

advanced research and development pursuant to section 319L of the Public Health Service Act, at a rate for operations of \$305,000,000.

SEC. 131. (a) EXTENSION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.—Activities authorized by part A of title IV and section 1108(b) of the Social Security Act (other than the Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs established under subsection (c) of section 403 of such Act) shall continue through the date specified in section 106(3) of this Act in the manner authorized for fiscal year 2010, subject to the amendments made by subsection (b) of this section, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the applicable portion of the first quarter of fiscal year 2011 at the pro rata portion of the level provided for such activities through the first quarter of fiscal year 2010.

(b) CONFORMING AMENDMENTS.—

(1) SUPPLEMENTAL GRANTS FOR POPULATION INCREASES.—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended to read as follows:

Applicability.

“(ii) subparagraph (G) shall be applied as if ‘the date specified in section 106(3) of the Continuing Appropriations Act, 2011’ were substituted for ‘fiscal year 2001’; and”.

(2) CONTINGENCY FUND.—

(A) DEPOSIT INTO FUND.—Section 403(b)(2) of such Act (42 U.S.C. 603(b)(2)) is amended—

(i) by striking “fiscal years 1997” and all that follows through “2003” and inserting “fiscal years 2011 and 2012”; and

(ii) by striking “\$2,000,000,000” and inserting “, in the case of fiscal year 2011, \$506,000,000 and in the case of fiscal year 2012, \$612,000,000”.

(B) CONFORMING AMENDMENT.—Section 403(b)(3)(C)(ii) of such Act (42 U.S.C. 603(b)(3)(C)(ii)) is amended by striking “fiscal years 1997 through 2010 shall not exceed the total amount appropriated pursuant to paragraph (2)” and inserting “fiscal year 2011 and 2012, respectively, shall not exceed the total amount appropriated pursuant to paragraph (2) for each such fiscal year”.

(3) MAINTENANCE OF EFFORT.—Section 409(a)(7) of such Act (42 U.S.C. 609(a)(7)) is amended—

(A) in subparagraph (A), by striking “or 2011” and inserting “2011, or 2012”; and

(B) in subparagraph (B)(ii), by striking “2010” and inserting “2011”.

Extension date.

SEC. 132. Activities authorized by section 429 of the Social Security Act shall continue through September 30, 2011, in the manner authorized for fiscal year 2010, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority on a quarterly basis through fiscal year 2011 at the level provided for such activities for the corresponding quarter of fiscal year 2010.

SEC. 133. Effective October 1, 2010, subpart 2 of part B of title IV of the Social Security Act is amended—

Effective date.
42 USC 629f
note.

(1) in section 436 (42 U.S.C. 629f)—

(A) in subsection (a)—

(i) by striking “2011” and inserting “2010”; and

(ii) by inserting before the period the following:

“, and \$365,000,000 for fiscal year 2011”; and

(B) by striking “\$10,000,000” in subsection (b)(2) and inserting “\$30,000,000”; and

(2) in section 438 (42 U.S.C. 629h)—

(A) by striking “2010” in subsection (c)(2)(A) and inserting “2011”; and

(B) by adding at the end of subsection (e) the following flush sentence: “For fiscal year 2011, out of the amount reserved pursuant to section 436(b)(2) for such fiscal year, there are available \$10,000,000 for grants referred to in subsection (b)(2)(B), and \$10,000,000 for grants referred to in subsection (b)(2)(C).”.

SEC. 134. Notwithstanding any other provision of this Act, for payment in equal shares to the children and grandchildren of Robert C. Byrd, \$193,400 is appropriated.

Robert C. Byrd.

SEC. 135. Notwithstanding section 101, amounts are provided for deposit into “Department of Defense Base Closure Account 2005” at a rate for operations of \$2,354,285,000.

SEC. 136. Notwithstanding section 101, amounts are provided for “Department of State—Administration of Foreign Affairs—Diplomatic and Consular Programs” at a rate for operations of \$8,601,000,000.

SEC. 137. Notwithstanding section 101, amounts are provided for “International Security Assistance—Funds Appropriated to the President—Foreign Military Financing Program” at a rate for operations of \$5,160,000,000, of which not less than \$2,775,000,000 shall be available for grants only for Israel, not less than \$1,300,000,000 shall be available for grants only for Egypt, and not less than \$300,000,000 shall be available for assistance for Jordan: *Provided*, That the dollar amount in the fourth proviso under such heading in title IV of division F of Public Law 111–117 shall be deemed to be \$729,825,000.

Grants.
Israel.
Egypt.
Jordan.

SEC. 138. (a) Notwithstanding section 101, amounts are provided for “International Security Assistance—Funds Appropriated to the President—Pakistan Counterinsurgency Capability Fund” at a rate for operations of \$700,000,000.

(b) Amounts provided by subsection (a) shall be available to the Secretary of State under the terms and conditions provided for this Fund in Public Law 111–32 and Public Law 111–212 through the date specified in section 106(3) of this Act.

SEC. 139. Section 1(b)(2) of the Passport Act of June 4, 1920 (22 U.S.C. 214(b)(2)) shall be applied by substituting the date specified in section 106(3) of this Act for “September 30, 2010”.

Applicability.

SEC. 140. (a) Section 1115(d) of Public Law 111–32 shall be applied by substituting the date specified in section 106(3) of this Act for “October 1, 2010”.

Applicability.

(b) Section 824(g) of the Foreign Service Act of 1980 (22 U.S.C. 4064(g)) shall be applied by substituting the date specified in section 106(3) of this Act for “October 1, 2010” in paragraph (2).

(c) Section 61(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2733(a)) shall be applied by substituting

	the date specified in section 106(3) of this Act for “October 1, 2010” in paragraph (2).
Applicability.	(d) Section 625(j)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(j)(1)) shall be applied by substituting the date specified in section 106(3) of this Act for “October 1, 2010” in subparagraph (B).
Extension date.	SEC. 141. The authority provided by section 1334 of the Foreign Affairs Reform and Restructuring Act of 1998 (22 U.S.C. 6553) shall remain in effect through the date specified in section 106(3) of this Act.
Loans.	SEC. 142. Commitments to guarantee loans incurred under the General and Special Risk Insurance Funds, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), shall not exceed a rate for operations of \$20,000,000,000: <i>Provided</i> , That total loan principal, any part of which is to be guaranteed, may be apportioned through the date specified in section 106(3) of this Act, at \$80,000,000 multiplied by the number of days covered by this Act.
Extension date.	SEC. 143. The provisions of title II of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11311 et seq.) shall continue in effect, notwithstanding section 209 of such Act, through the earlier of: (1) the date specified in section 106(3) of this Act; or (2) the date of the enactment into law of an authorization Act relating to the McKinney-Vento Homeless Assistance Act.
	SEC. 144. Notwithstanding any other provision of law or of this Act, for mortgages for which the mortgagee issues credit approval for the borrower during fiscal year 2011, the second sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) shall be considered to require that in no case may the benefits of insurance under such section 255 exceed 150 percent of the maximum dollar amount in effect under the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).
	SEC. 145. (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages for which the mortgagee issues credit approval for the borrower during fiscal year 2011, if the dollar amount limitation on the principal obligation of a mortgage determined under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) for any size residence for any area is less than such dollar amount limitation that was in effect for such size residence for such area for 2008 pursuant to section 202 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620), notwithstanding any other provision of law or of this Act, the maximum dollar amount limitation on the principal obligation of a mortgage for such size residence for such area for purposes of such section 203(b)(2) shall be considered (except for purposes of section 255(g) of such Act (12 U.S.C. 1715z–20(g))) to be such dollar amount limitation in effect for such size residence for such area for 2008.
	(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law or of this Act, if the Secretary of Housing and Urban Development determines, for any geographic area that is smaller than an area for which dollar amount limitations on the principal obligation of a mortgage are determined under section 203(b)(2) of the National Housing Act, that a higher such maximum dollar amount limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Secretary may, for mortgages

for which the mortgagee issues credit approval for the borrower during fiscal year 2011, increase the maximum dollar amount limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section), but in no case to an amount that exceeds the amount specified in section 202(a)(2) of the Economic Stimulus Act of 2008.

SEC. 146. (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages originated during fiscal year 2011, if the limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1754(a)(2)) respectively, for any size residence for any area is less than such maximum original principal obligation limitation that was in effect for such size residence for such area for 2008 pursuant to section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 619), notwithstanding any other provision of law or of this Act, the limitation on the maximum original principal obligation of a mortgage for such Association and Corporation for such size residence for such area shall be such maximum limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law or of this Act, if the Director of the Federal Housing Finance Agency determines, for any geographic area that is smaller than an area for which limitations on the maximum original principal obligation of a mortgage are determined for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, that a higher such maximum original principal obligation limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Director may, for mortgages originated during fiscal year 2011, increase the maximum original principal obligation limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section) for such Association and Corporation, but in no case to an amount that exceeds the amount specified in the matter following the comma in section 201(a)(1)(B) of the Economic Stimulus Act of 2008.

This Act may be cited as the “Continuing Appropriations Act, 2011”.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 3081 (S. 1434):

HOUSE REPORTS: No. 111–187 (Comm. on Appropriations).

SENATE REPORTS: No. 111–44 (Comm. on Appropriations) accompanying S. 1434.

CONGRESSIONAL RECORD:

Vol. 155 (2009): July 9, considered and passed House.

Vol. 156 (2010): Sept. 29, considered and passed Senate, amended. House concurred in Senate amendments.



Public Law 111–243
111th Congress

An Act

To designate the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, as the “James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building”.

Sept. 30, 2010
[H.R. 3562]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BUILDING DESIGNATION.

The Administrator of General Services shall ensure that the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, is known and designated as the “James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building”.

SEC. 2. REFERENCES.

With respect to the period in which the building referred to in section 1 is federally occupied, any reference in a law, map, regulation, document, paper, or other record of the United States to that building shall be deemed to be a reference to the “James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building”.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 3562:

HOUSE REPORTS: No. 111–414 (Comm. on Transportation and Infrastructure).
CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 23, 24, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 15, 16, House considered and concurred in Senate amendments.



Public Law 111–244
111th Congress

An Act

Sept. 30, 2010
[H.R. 3940]

To clarify the availability of existing funds for political status education in the Territory of Guam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SENSE OF CONGRESS REGARDING POLITICAL STATUS EDUCATION IN GUAM.

It is the sense of Congress that the Secretary of the Interior may provide technical assistance to the Government of Guam under section 601(a) of the Act entitled “An Act to authorize appropriations for certain insular areas of the United States, and for other purposes”, approved December 24, 1980 (48 U.S.C. 1469d(a)), for public education regarding political status options only if the political status options are consistent with the Constitution of the United States.

SEC. 2. MINIMUM WAGE IN AMERICAN SAMOA AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) **DELAYED EFFECTIVE DATE.**—Section 8103(b) of the Fair Minimum Wage Act of 2007 (29 U.S.C. 206 note) (as amended by section 520 of division D of Public Law 111–117) is amended—

(1) in paragraph (1)(B), by inserting “(except 2011 when there shall be no increase)” after “thereafter” the second place it appears; and

(2) in paragraph (2)(C), by striking “except that, beginning in 2010” and inserting “except that there shall be no such increase in 2010 or 2011 and, beginning in 2012”.

121 Stat. 189.

(b) **GAO REPORT.**—Section 8104 of such Act (as amended) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) **REPORT.**—The Government Accountability Office shall assess the impact of minimum wage increases that have occurred pursuant to section 8103, and not later than September 1, 2011, shall transmit to Congress a report of its findings. The Government Accountability Office shall submit subsequent reports not later than April 1, 2013, and every 2 years thereafter until the minimum

wage in the respective territory meets the federal minimum wage.”;
and

(2) by redesignating subsection (c) as subsection (b).

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 3940:

HOUSE REPORTS: No. 111–357 (Comm. on Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 7, considered and passed House.

Vol. 156 (2010): Sept. 28, considered and passed Senate, amended.
Sept. 29, House concurred in Senate amendments.



Public Law 111–245
111th Congress

An Act

Sept. 30, 2010
[H.R. 3978]

To amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for a response to terrorism, and for other purposes.

First Responder
Anti-Terrorism
Training
Resources Act.
6 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “First Responder Anti-Terrorism Training Resources Act”.

SEC. 2. ACCEPTANCE OF GIFTS FOR FIRST RESPONDER TERRORISM PREPAREDNESS AND RESPONSE TRAINING.

(a) **IN GENERAL.**—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended—

(1) in title V (6 U.S.C. 311 et seq.), by adding at the end the following:

6 USC 321n.

“SEC. 525. ACCEPTANCE OF GIFTS.

“(a) **AUTHORITY.**—The Secretary may accept and use gifts of property, both real and personal, and may accept gifts of services, including from guest lecturers, for otherwise authorized activities of the Center for Domestic Preparedness that are related to efforts to prevent, prepare for, protect against, or respond to a natural disaster, act of terrorism, or other man-made disaster, including the use of a weapon of mass destruction.

“(b) **PROHIBITION.**—The Secretary may not accept a gift under this section if the Secretary determines that the use of the property or services would compromise the integrity or appearance of integrity of—

“(1) a program of the Department; or

“(2) an individual involved in a program of the Department.

“(c) **REPORT.**—

“(1) **IN GENERAL.**—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report disclosing—

“(A) any gifts that were accepted under this section during the year covered by the report;

“(B) how the gifts contribute to the mission of the Center for Domestic Preparedness; and

“(C) the amount of Federal savings that were generated from the acceptance of the gifts.

“(2) PUBLICATION.—Each report required under paragraph (1) shall be made publically available.”;

Public
information.

(2) in section 873(b) (6 U.S.C. 453(b)), by striking “and by section 93” and all that follows through “or donations” and inserting “by section 93 of title 14, United States Code, or by section 525 or 884 of this Act, gifts or donations”; and

(3) in section 884 (6 U.S.C. 464), by adding at the end the following:

6 USC 454.

“(c) ACCEPTANCE AND USE OF GIFTS.—The Federal Law Enforcement Training Center may accept and use gifts of property, both real and personal, and accept services, for authorized purposes.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) THE HOMELAND SECURITY ACT OF 2002.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended in the table of contents by inserting after the item relating to section 524 the following:

“Sec. 525. Acceptance of gifts.”.

(2) REPEAL.—The matter under the heading “SALARIES AND EXPENSES” under the heading “FEDERAL LAW ENFORCEMENT TRAINING CENTER” under title IV of the Department of Homeland Security Appropriations Act, 2004 (6 U.S.C. 464a) is amended by striking “*Provided*, That in fiscal year 2004 and thereafter, the Center is authorized to accept and use gifts of property, both real and personal, and to accept services, for authorized purposes: *Provided further*,” and inserting “*Provided*,”.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 3978:

HOUSE REPORTS: No. 111–376 (Comm. on Homeland Security).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 15, considered and passed House.

Vol. 156 (2010): Aug. 5, considered and passed Senate, amended.

Sept. 15, House concurred in Senate amendments.



Public Law 111–246
111th Congress

An Act

Sept. 30, 2010
[H.R. 4505]

To enable State homes to furnish nursing home care to parents any of whose children died while serving in the Armed Forces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF STATE HOME CARE FOR PARENTS OF VETERANS WHO DIED WHILE SERVING IN ARMED FORCES.

In administering section 51.210(d) of title 38, Code of Federal Regulations, the Secretary of Veterans Affairs shall permit a State home to provide services to, in addition to non-veterans described in such subsection, a non-veteran any of whose children died while serving in the Armed Forces.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 4505:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 29, 30, considered and passed House.

Sept. 20, considered and passed Senate.



Public Law 111–247
111th Congress

An Act

To increase, effective as of December 1, 2010, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

Sept. 30, 2010
[H.R. 4667]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as “Veterans’ Compensation Cost-of-Living Adjustment Act of 2010”.

Veterans’
Compensation
Cost-of-Living
Adjustment Act
of 2010.
38 USC 101 note.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

38 USC 1114
note.

(a) **RATE ADJUSTMENT.**—Effective on December 1, 2010, the Secretary of Veterans Affairs shall increase, in accordance with subsection (c), the dollar amounts in effect on November 30, 2010, for the payment of disability compensation and dependency and indemnity compensation under the provisions specified in subsection (b).

(b) **AMOUNTS TO BE INCREASED.**—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) **WARTIME DISABILITY COMPENSATION.**—Each of the dollar amounts under section 1114 of title 38, United States Code.

(2) **ADDITIONAL COMPENSATION FOR DEPENDENTS.**—Each of the dollar amounts under section 1115(1) of such title.

(3) **CLOTHING ALLOWANCE.**—The dollar amount under section 1162 of such title.

(4) **DEPENDENCY AND INDEMNITY COMPENSATION TO SURVIVING SPOUSE.**—Each of the dollar amounts under subsections (a) through (d) of section 1311 of such title.

(5) **DEPENDENCY AND INDEMNITY COMPENSATION TO CHILDREN.**—Each of the dollar amounts under sections 1313(a) and 1314 of such title.

(c) **DETERMINATION OF INCREASE.**—

(1) **PERCENTAGE.**—Except as provided in paragraph (2), each dollar amount described in subsection (b) shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2010, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) **ROUNDING.**—Each dollar amount increased under paragraph (1), if not a whole dollar amount, shall be rounded to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary of Veterans Affairs may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons under section 10 of Public Law 85–857 (72 Stat. 1263) who have not received compensation under chapter 11 of title 38, United States Code.

Federal Register,
publication.
38 USC 1114
note.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

The Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in section 2(b), as increased under that section, not later than the date on which the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2011.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 4667 (S. 3107):

HOUSE REPORTS: No. 111–452 (Comm. on Veterans' Affairs).

SENATE REPORTS: No. 111–281 (Comm. on Veterans' Affairs) accompanying S. 3107.

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 22, considered and passed House.

Sept. 22, considered and passed Senate.



Public Law 111–248
111th Congress

An Act

To improve the operation of certain facilities and programs of the House of Representatives, and for other purposes.

Sept. 30, 2010
[H.R. 5682]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEMBERSHIP IN HOUSE OF REPRESENTATIVES EXERCISE FACILITY FOR ACTIVE DUTY ARMED FORCES MEMBERS ASSIGNED TO CONGRESSIONAL LIAISON OFFICE.

2 USC 117m
note.

Any active duty member of the Armed Forces who is assigned to a congressional liaison office of the Armed Forces at the House of Representatives may obtain membership in the exercise facility established for employees of the House of Representatives (as described in section 103(a) of the Legislative Branch Appropriations Act, 2005) in the same manner as an employee of the House of Representatives, in accordance with such regulations as the Committee on House Administration may promulgate.

SEC. 2. REVOLVING FUND FOR HOUSE CHILD CARE CENTER.

(a) CONVERSION OF HOUSE CHILD CARE CENTER ACCOUNT INTO REVOLVING FUND.—

(1) IN GENERAL.—Section 312(d)(1) of the Legislative Branch Appropriations Act, 1992 (2 U.S.C. 2062(d)(1)) is amended to read as follows:

“(1) There is established in the Treasury of the United States a revolving fund for the House of Representatives to be known as the ‘House Child Care Center Revolving Fund’ (hereafter in this section referred to as the ‘Fund’), consisting of the amounts received under subsection (c) and any other funds deposited by the Chief Administrative Officer of the House of Representatives from amounts received by the House of Representatives with respect to the operation of the center. Except as provided in paragraphs (2) and (3), the Fund shall be the exclusive source for all salaries and expenses for activities carried out under this section.”.

(2) TRANSFER OF EXISTING ACCOUNT.—Any amounts in the account established by section 312(d)(1) of such Act as of the day before the effective date of this section, together with any amounts in the House Services Revolving Fund as of the effective date of this section which, at the time of deposit into the House Services Revolving Fund, were designated for purposes of the House Child Care Center, shall be transferred to the House Child Care Center Revolving Fund established by such section, as amended by paragraph (1).

2 USC 2062 note.

(b) TRANSFER AUTHORITY.—Section 312 of such Act (2 U.S.C. 2062) is amended—

- (1) by redesignating subsection (e) as subsection (f); and
 (2) by inserting after subsection (d) the following new sub-

section:

“(e) The Fund shall be treated as a category of allowances and expenses for purposes of section 101(a) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(a)).”.

2 USC 2062 note.

(c) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect October 1, 2010, and shall apply with respect to fiscal year 2011 and each succeeding fiscal year.

SEC. 3. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) The second undesignated paragraph under the heading “Under Superintendent of the Capitol Buildings and Grounds” in the Act of April 28, 1902 (chapter 594; 32 Stat. 125; 2 U.S.C. 2012) is amended to read as follows:

“The Chief Administrative Officer of the House of Representatives shall supervise and direct the care and repair of all furniture in the Hall, cloakrooms, lobby, committee rooms, and offices of the House, and all furniture required for the House of Representatives or for any of its committee rooms or offices shall be procured on designs and specifications made or approved by the Chief Administrative Officer.”.

Effective date.
 2 USC 84–2 note.

(b) Effective as if included in the enactment of Public Law 111–145, section 3 of House Resolution 661, Ninety-fifth Congress, agreed to July 29, 1977 (2 U.S.C. 84–2), is restored into permanent law.

SEC. 4. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 5682:

HOUSE REPORTS: No. 111–569 (Comm. on House Administration).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 27, considered and passed House.

Sept. 22, considered and passed Senate.



Public Law 111–249
111th Congress

An Act

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

Sept. 30, 2010
[H.R. 6190]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Airport and Airway Extension Act of 2010, Part III”.

Airport and
Airway
Extension Act of
2010, Part III.
26 USC 1 note.

SEC. 2. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

(a) **FUEL TAXES.**—Subparagraph (B) of section 4081(d)(2) of the Internal Revenue Code of 1986 is amended by striking “September 30, 2010” and inserting “December 31, 2010”.

26 USC 4081.

(b) **TICKET TAXES.**—

(1) **PERSONS.**—Clause (ii) of section 4261(j)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “September 30, 2010” and inserting “December 31, 2010”.

26 USC 4261.

(2) **PROPERTY.**—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking “September 30, 2010” and inserting “December 31, 2010”.

26 USC 4271.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2010.

26 USC 4081
note.

SEC. 3. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 is amended—

26 USC 9502.

(1) by striking “October 1, 2010” and inserting “January 1, 2011”; and

(2) by inserting “or the Airport and Airway Extension Act of 2010, Part III” before the semicolon at the end of subparagraph (A).

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 9502(e) of such Code is amended by striking “October 1, 2010” and inserting “January 1, 2011”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2010.

26 USC 9502
note.

SEC. 4. EXTENSION OF AIRPORT IMPROVEMENT PROGRAM.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Section 48103 of title 49, United States Code, is amended—

(A) by striking “and” at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting “; and”; and

(C) by inserting after paragraph (7) the following:

“(8) \$925,000,000 for the 3-month period beginning on October 1, 2010.”.

(2) OBLIGATION OF AMOUNTS.—Subject to limitations specified in advance in appropriation Acts, sums made available pursuant to the amendment made by paragraph (1) may be obligated at any time through September 30, 2011, and shall remain available until expended.

(b) PROJECT GRANT AUTHORITY.—Section 47104(c) of such title is amended by striking “September 30, 2010,” and inserting “December 31, 2010,”.

SEC. 5. EXTENSION OF EXPIRING AUTHORITIES.

(a) Section 40117(l)(7) of title 49, United States Code, is amended by striking “October 1, 2010.” and inserting “January 1, 2011.”.

(b) Section 41743(e)(2) of such title is amended by striking “2010” and inserting “2011”.

(c) Section 44302(f)(1) of such title is amended—

(1) by striking “September 30, 2010,” and inserting “December 31, 2010,”; and

(2) by striking “December 31, 2010,” and inserting “March 31, 2011,”.

(d) Section 44303(b) of such title is amended by striking “December 31, 2010,” and inserting “March 31, 2011,”.

(e) Section 47107(s)(3) of such title is amended by striking “October 1, 2010.” and inserting “January 1, 2011.”.

(f) Section 47115(j) of such title is amended by inserting “and for the portion of fiscal year 2011 ending before January 1, 2011,” after “2010,”.

(g) Section 47141(f) of such title is amended by striking “September 30, 2010.” and inserting “December 31, 2010.”.

(h) Section 49108 of such title is amended by striking “September 30, 2010,” and inserting “December 31, 2010,”.

(i) Section 161 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 47109 note) is amended by inserting “, or in the portion of fiscal year 2011 ending before January 1, 2011,” after “fiscal year 2009 or 2010”.

(j) Section 186(d) of such Act (117 Stat. 2518) is amended by inserting “and for the portion of fiscal year 2011 ending before January 1, 2011,” after “October 1, 2010,”.

(k) Section 409(d) of such Act (49 U.S.C. 41731 note) is amended by striking “September 30, 2010.” and inserting “September 30, 2011.”.

(l) The amendments made by this section shall take effect on October 1, 2010.

SEC. 6. TECHNICAL CORRECTIONS.

Effective as of August 1, 2010, and as if included therein as enacted, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Public Law 111–216) is amended as follows:

(1) In section 202(a) (124 Stat. 2351) by inserting “of title 49, United States Code,” before “is amended”.

(2) In section 202(b) (124 Stat. 2351) by inserting “of such title” before “is amended”.

Effective date.
49 USC 40117
note.

49 USC 44701
note.

Effective date.
49 USC 1135
note.

49 USC 1135.

(3) In section 203(c)(1) (124 Stat. 2356) by inserting “of 49 USC 44703. such title” before “(as redesignated)”.

(4) In section 203(c)(2) (124 Stat. 2357) by inserting “of such title” before “(as redesignated)”.

Approved September 30, 2010.

LEGISLATIVE HISTORY—H.R. 6190:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 23, considered and passed House.

Sept. 24, considered and passed Senate.



Public Law 111–250
111th Congress

An Act

Sept. 30, 2010

[S. 3814]

National Flood
Insurance
Program
Reextension Act
of 2010.
42 USC 4001
note.

To extend the National Flood Insurance Program until September 30, 2011.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Flood Insurance Program Reextension Act of 2010”.

SEC. 2. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

(a) PROGRAM EXTENSION.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking “September 30, 2010” and inserting “September 30, 2011”.

(b) FINANCING.—Section 1309(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)) is amended by striking “September 30, 2010” and inserting “September 30, 2011”.

Approved September 30, 2010.

LEGISLATIVE HISTORY—S. 3814:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 21, considered and passed Senate.

Sept. 23, considered and passed House.



Public Law 111–251
111th Congress

An Act

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

Sept. 30, 2010
[S. 3839]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) **IN GENERAL.**—Section 1 of the Act entitled “An Act to extend temporarily certain authorities of the Small Business Administration”, approved October 10, 2006 (Public Law 109–316; 120 Stat. 1742), as most recently amended by section 1 of Public Law 111–214 (124 Stat. 2346), is amended by striking “September 30, 2010” each place it appears and inserting “January 31, 2011”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on September 29, 2010.

Approved September 30, 2010.

LEGISLATIVE HISTORY—S. 3839:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Sept. 24, considered and passed Senate.
Sept. 28, considered and passed House.



Public Law 111–252
111th Congress

An Act

Oct. 5, 2010
[H.R. 1517]

To allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

For purposes of this Act—

(1) the term “Commissioner” means the Commissioner of U.S. Customs and Border Protection;

(2) the term “U.S. Customs and Border Protection” means U.S. Customs and Border Protection of the Department of Homeland Security;

(3) the term “competitive service” has the meaning given such term by section 2102 of title 5, United States Code; and

(4) the term “overseas limited appointment” means an appointment under—

(A) subpart B of part 301 of title 5 of the Code of Federal Regulations, as in effect on January 1, 2008; or

(B) any similar antecedent or succeeding authority, as determined by the Commissioner.

SEC. 2. AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED APPOINTMENTS TO PERMANENT APPOINTMENTS.

(a) **IN GENERAL.**—Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Commissioner may convert an employee serving under an overseas limited appointment within U.S. Customs and Border Protection to a permanent appointment in the competitive service within U.S. Customs and Border Protection, if—

(1) as of the time of conversion, the employee has completed at least 2 years of current continuous service under 1 or more overseas limited appointments; and

(2) the employee’s performance has, throughout the period of continuous service referred to in paragraph (1), been rated at least fully successful or the equivalent.

An employee whose appointment is converted under the preceding sentence acquires competitive status upon conversion.

(b) **INDEMNIFICATION AND PRIVILEGES.**—

(1) INDEMNIFICATION.—The United States shall, in the case of any individual whose appointment is converted under subsection (a), indemnify and hold such individual harmless from any claim arising from any event, act, or omission—

(A) that arises from the exercise of such individual's official duties, including by reason of such individual's residency status, in the foreign country in which such individual resides at the time of conversion;

(B) for which the individual would not have been liable had the individual enjoyed the same privileges and immunities in the foreign country as an individual who either was a permanent employee, or was not a permanent resident, in the foreign country at the time of the event, act, or omission involved; and

(C) that occurs before, on, or after the date of the enactment of this Act, including any claim for taxes owed to the foreign country or a subdivision thereof.

(2) SERVICES AND PAYMENTS.—

(A) IN GENERAL.—In the case of any individual whose appointment is converted under subsection (a), the United States shall provide to such individual (including any dependents) services and monetary payments—

(i) equivalent to the services and monetary payments provided to other U.S. Customs and Border Protection employees in similar positions (and their dependents) in the same country of assignment by international agreement, an exchange of notes, or other diplomatic policy; and

(ii) for which such individual (including any dependents) was not eligible by reason of such individual's overseas limited appointment.

(B) APPLICABILITY.—Services and payments under this paragraph shall be provided to an individual (including any dependents) to the same extent and in the same manner as if such individual had held a permanent appointment in the competitive service throughout the period described in subsection (a)(1).

(c) GUIDANCE ON IMPLEMENTATION.—The Commissioner shall implement the conversion of an employee serving under an overseas limited appointment to a permanent appointment in the competitive service in a manner that—

(1) meets the operational needs of the U.S. Customs and Border Protection; and

(2) to the greatest extent practicable, is not disruptive to the employees affected under this Act.

SEC. 3. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to affect the pay of any individual for services performed by such individual before the date of the conversion of such individual. Salaries.

SEC. 4. TERMINATION.

The authority of the Commissioner to convert an employee serving under an overseas limited appointment within U.S. Customs

and Border Protection to a permanent appointment in the competitive service within U.S. Customs and Border Protection shall terminate on the date that is 2 years after the date of the enactment of this Act.

Approved October 5, 2010.

LEGISLATIVE HISTORY—H.R. 1517:

HOUSE REPORTS: No. 111–373, Pt. 1 (Comm. on Homeland Security).

SENATE REPORTS: No. 111–248 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 15, considered and passed House.

Vol. 156 (2010): Aug. 5, considered and passed Senate, amended.

Sept. 23, House concurred in Senate amendment.



Public Law 111–253
111th Congress

An Act

To award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty.

Oct. 5, 2010
[S. 846]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

31 USC 5111
note.

SECTION 1. FINDINGS.

The Congress finds that—

(1) Dr. Muhammad Yunus is recognized in the United States and throughout the world as a leading figure in the fight against poverty and the effort to promote economic and social change;

(2) Muhammad Yunus is the recognized developer of the concept of microcredit, and Grameen Bank, which he founded, has created a model of lending that has been emulated across the globe;

(3) Muhammad Yunus launched this global movement to create economic and social development from below, beginning in 1976, with a loan of \$27 from his own pocket to 42 crafts persons in a small village in Bangladesh;

(4) Muhammad Yunus has demonstrated the life-changing potential of extending very small loans (at competitive interest rates) to the very poor and the economic feasibility of microcredit and other microfinance and microenterprise practices and services;

(5) Dr. Yunus's work has had a particularly strong impact on improving the economic prospects of women, and on their families, as over 95 percent of microcredit borrowers are women;

(6) Dr. Yunus has pioneered a movement with the potential to assist a significant number of the more than 1,400,000,000 people, mostly women and children, who live on less than \$1.25 a day, and the 2,600,000,000 people who live on less than \$2 a day, and which has already reached 155,000,000, by one estimate;

(7) there are now an estimated 24,000,000 microenterprises in the United States accounting for approximately 18 percent of private (nonfarm) employment and 87 percent of all business in the United States, and the Small Business Administration has made over \$318,000,000 in microloans to entrepreneurs since 1992;

(8) Dr. Yunus, along with the Grameen Bank, was awarded the Nobel Peace Prize in 2006 for his efforts to promote economic and social opportunity and out of recognition that lasting peace cannot be achieved unless large population groups find the means, such as microcredit, to break out of poverty; and

(9) the microcredit ideas developed and put into practice by Muhammad Yunus, along with other bold initiatives, can make a historical breakthrough in the fight against poverty.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) **PRESENTATION AUTHORIZED.**—The Speaker of the House of Representatives and the President pro tempore of the Senate shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design to Dr. Muhammad Yunus, in recognition of his many enduring contributions to the fight against global poverty.

(b) **DESIGN AND STRIKING.**—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 2, under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 4. STATUS OF MEDALS.

(a) **NATIONAL MEDALS.**—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) **NUMISMATIC ITEMS.**—For purposes of sections 5134 and 5136 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

SEC. 5. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.

(a) **AUTHORITY TO USE FUND AMOUNTS.**—There are authorized to be charged against the United States Mint Public Enterprise Fund, such amounts as may be necessary to pay for the costs of the medals struck pursuant to this Act.

(b) **PROCEEDS OF SALE.**—Amounts received from the sale of duplicate bronze medals authorized under section 3 shall be deposited into the United States Mint Public Enterprise Fund.

Approved October 5, 2010.

LEGISLATIVE HISTORY—S. 846:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 13, considered and passed Senate.

Vol. 156 (2010): Sept. 23, considered and passed House.



Public Law 111–254
111th Congress

An Act

To grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

Oct. 5, 2010
[S. 1055]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

31 USC 5111
note.

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) On January 19, 1942, 6 weeks after the December 7, 1941, attack on Pearl Harbor by the Japanese Navy, the United States Army discharged all Japanese-Americans in the Reserve Officers Training Corps and changed their draft status to “4C”—the status of “enemy alien” which is ineligible for the draft.

(2) On January 23, 1942, Japanese-Americans in the military on the mainland were segregated out of their units.

(3) Further, on May 3, 1942, General John L. DeWitt issued Civilian Exclusion Order No. 346, ordering all people of Japanese ancestry, whether citizens or noncitizens, to report to assembly centers, where they would live until being moved to permanent relocation centers.

(4) On June 5, 1942, 1,432 predominantly Nisei (second generation Americans of Japanese ancestry) members of the Hawaii Provisional Infantry Battalion were shipped from the Hawaiian Islands to Oakland, CA, where the 100th Infantry Battalion was activated on June 12, 1942, and then shipped to train at Camp McCoy, Wisconsin.

(5) The excellent training record of the 100th Infantry Battalion and petitions from prominent civilian and military personnel helped convince President Roosevelt and the War Department to reopen military service to Nisei volunteers who were incorporated into the 442nd Regimental Combat Team after it was activated in February of 1943.

(6) In that same month, the 100th Infantry Battalion was transferred to Camp Shelby, Mississippi, where it continued to train, and even though the battalion was ready to deploy shortly thereafter, the battalion was refused by General Eisenhower, due to concerns over the loyalty and patriotism of the Nisei.

(7) The 442nd Regimental Combat Team later trained with the 100th Infantry Battalion at Camp Shelby in May of 1943.

(8) Eventually, the 100th Infantry Battalion was deployed to the Mediterranean and entered combat in Italy on September 26, 1943.

(9) Due to their bravery and valor, members of the Battalion were honored with 6 awards of the Distinguished Service Cross in the first 8 weeks of combat.

(10) The 100th Battalion fought at Cassino, Italy in January 1944, and later accompanied the 34th Infantry Division to Anzio, Italy.

(11) The 442nd Regimental Combat Team arrived in Civitavecchia, Italy on June 7, 1944, and on June 15 of the following week, the 100th Infantry Battalion was formally made an integral part of the 442nd Regimental Combat Team, and fought for the last 11 months of the war with distinction in Italy, southern France, and Germany.

(12) The battalion was awarded the Presidential Unit Citation for its actions in battle on June 26–27, 1944.

(13) The 442nd Regimental became the most decorated unit in United States military history for its size and length of service.

(14) The 100th Battalion and the 442nd Regimental Combat Team, received 7 Presidential Unit Citations, 21 Medals of Honor, 29 Distinguished Service Crosses, 560 Silver Stars, 4,000 Bronze Stars, 22 Legion of Merit Medals, 15 Soldier's Medals, and over 4,000 Purple Hearts, among numerous additional distinctions.

(15) The United States remains forever indebted to the bravery, valor, and dedication to country these men faced while fighting a 2-fronted battle of discrimination at home and fascism abroad.

(16) Their commitment and sacrifice demonstrates a highly uncommon and commendable sense of patriotism and honor.

(17) The Military Intelligence Service (in this Act referred to as the "MIS") was made up of about 6,000 Japanese American soldiers who conducted highly classified intelligence operations that proved to be vital to United States military successes in the Pacific Theatre.

(18) As they were discharged from the Army, MIS soldiers were told not to discuss their wartime work, due to its sensitive nature, and their contributions were not known until passage of the Freedom of Information Act in 1974.

(19) MIS soldiers were attached individually or in small groups to United States and Allied combat units, where they intercepted radio transmissions, translated enemy documents, interrogated enemy prisoners of war, volunteered for reconnaissance and covert intelligence missions, and persuaded enemy combatants to surrender.

(20) Their contributions continued during the Allied post-war occupation of Japan, and MIS linguistic skills and understanding of Japanese customs were invaluable to occupation forces as they assisted Japan in a peaceful transition to a new, democratic form of government.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) AWARD AUTHORIZED.—The Speaker of the House of Representatives and the President pro tempore of the Senate shall make appropriate arrangements for the award, on behalf of the Congress, of a single gold medal of appropriate design to the 100th Infantry Battalion, the 442nd Regimental Combat Team, and the

Military Intelligence Service, United States Army, collectively, in recognition of their dedicated service during World War II.

(b) **DESIGN AND STRIKING.**—For the purposes of the award referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall strike the gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

(c) **SMITHSONIAN INSTITUTION.**—

(1) **IN GENERAL.**—Following the award of the gold medal in honor of the 100th Infantry Battalion, the 442nd Regimental Combat Team, and the Military Intelligence Service, United States Army, under subsection (a), the gold medal shall be given to the Smithsonian Institution, where it will be displayed as appropriate and made available for research.

(2) **SENSE OF CONGRESS.**—It is the sense of the Congress that the Smithsonian Institution should make the gold medal received under paragraph (1) available for display elsewhere, particularly at other appropriate locations associated with the 100th Infantry Battalion, the 442nd Regimental Combat Team, and the Military Intelligence Service, United States Army.

SEC. 3. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck under section 2, at a price sufficient to cover the costs of the medals, including labor, materials, dies, use of machinery, and overhead expenses.

SEC. 4. NATIONAL MEDALS.

Medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. AUTHORITY TO USE FUNDS; PROCEEDS OF SALE.

(a) **AUTHORITY TO USE FUNDS.**—There is authorized to be charged against the United States Mint Public Enterprise Fund, an amount not to exceed \$30,000 to pay for the cost of the medal authorized under section 2.

(b) **PROCEEDS OF SALE.**—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

Approved October 5, 2010.

LEGISLATIVE HISTORY—S. 1055 (H.R. 347):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 2, considered and passed Senate.

Sept. 23, considered and passed House.



Public Law 111–0255
111th Congress

An Act

Oct. 5, 2010
[S. 1674]

To provide for an exclusion under the Supplemental Security Income program and the Medicaid program for compensation provided to individuals who participate in clinical trials for rare diseases or conditions.

Improving Access
to Clinical Trials
Act of 2009.
42 USC 1305
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Improving Access to Clinical Trials Act of 2009”.

42 USC 1382a
note.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Advances in medicine depend on clinical trial research conducted at public and private research institutions across the United States.

(2) The challenges associated with enrolling participants in clinical research studies are especially difficult for studies that evaluate treatments for rare diseases and conditions (defined by the Orphan Drug Act as a disease or condition affecting fewer than 200,000 Americans), where the available number of willing and able research participants may be very small.

(3) In accordance with ethical standards established by the National Institutes of Health, sponsors of clinical research may provide payments to trial participants for out-of-pocket costs associated with trial enrollment and for the time and commitment demanded by those who participate in a study. When offering compensation, clinical trial sponsors are required to provide such payments to all participants.

(4) The offer of payment for research participation may pose a barrier to trial enrollment when such payments threaten the eligibility of clinical trial participants for Supplemental Security Income and Medicaid benefits.

(5) With a small number of potential trial participants and the possible loss of Supplemental Security Income and Medicaid benefits for many who wish to participate, clinical trial research for rare diseases and conditions becomes exceptionally difficult and may hinder research on new treatments and potential cures for these rare diseases and conditions.

SEC. 3. EXCLUSION FOR COMPENSATION FOR PARTICIPATION IN CLINICAL TRIALS FOR RARE DISEASES OR CONDITIONS.

(a) **EXCLUSION FROM INCOME.**—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

- (1) by striking “and” at the end of paragraph (24);
- (2) by striking the period at the end of paragraph (25) and inserting “; and”; and
- (3) by adding at the end the following:

“(26) the first \$2,000 received during a calendar year by such individual (or such spouse) as compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition (as defined in section 5(b)(2) of the Orphan Drug Act), but only if the clinical trial—

“(A) has been reviewed and approved by an institutional review board that is established—

“(i) to protect the rights and welfare of human subjects participating in scientific research; and

“(ii) in accord with the requirements under part 46 of title 45, Code of Federal Regulations; and

“(B) meets the standards for protection of human subjects as provided under part 46 of title 45, Code of Federal Regulations.”.

(b) **EXCLUSION FROM RESOURCES.**—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)) is amended—

- (1) by striking “and” at the end of paragraph (15);
- (2) by striking the period at the end of paragraph (16) and inserting “; and”; and
- (3) by inserting after paragraph (16) the following:

“(17) any amount received by such individual (or such spouse) which is excluded from income under section 1612(b)(26) (relating to compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition).”.

(c) **MEDICAID EXCLUSION.**—

(1) **IN GENERAL.**—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)), is amended by adding at the end the following:

“(14) **EXCLUSION OF COMPENSATION FOR PARTICIPATION IN A CLINICAL TRIAL FOR TESTING OF TREATMENTS FOR A RARE DISEASE OR CONDITION.**—The first \$2,000 received by an individual (who has attained 19 years of age) as compensation for participation in a clinical trial meeting the requirements of section 1612(b)(26) shall be disregarded for purposes of determining the income eligibility of such individual for medical assistance under the State plan or any waiver of such plan.”.

(2) **CONFORMING AMENDMENT.**—Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by inserting “(e)(14),” before “(1)(3)”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date that is the earlier of—

(1) the effective date of final regulations promulgated by the Commissioner of Social Security to carry out this section and such amendments; or

(2) 180 days after the date of enactment of this Act.

(e) **SUNSET PROVISION.**—This Act and the amendments made by this Act are repealed on the date that is 5 years after the date of the enactment of this Act.

42 USC 1382a
note.

Regulations.

42 USC 1382a
note, 1305 note,
1382a, 1382b,
1396a.

SEC. 4. STUDY AND REPORT.

(a) **STUDY.**—Not later than 36 months after the effective date of this Act, the Comptroller General of the United States shall conduct a study to evaluate the impact of this Act on enrollment of individuals who receive Supplemental Security Income benefits under title XVI of the Social Security Act (referred to in this section as “SSI beneficiaries”) in clinical trials for rare diseases or conditions. Such study shall include an analysis of the following:

(1) The percentage of enrollees in clinical trials for rare diseases or conditions who were SSI beneficiaries during the 3-year period prior to the effective date of this Act as compared to such percentage during the 3-year period after the effective date of this Act.

(2) The range and average amount of compensation provided to SSI beneficiaries who participated in clinical trials for rare diseases or conditions.

(3) The overall ability of SSI beneficiaries to participate in clinical trials.

(4) Any additional related matters that the Comptroller General determines appropriate.

(b) **REPORT.**—Not later than 12 months after completion of the study conducted under subsection (a), the Comptroller General shall submit to Congress a report containing the results of such study, together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

Approved October 5, 2010.

LEGISLATIVE HISTORY—S. 1674:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 5, considered and passed Senate.

Sept. 23, considered and passed House.



Public Law 111–256
111th Congress

An Act

To change references in Federal law to mental retardation to references to an intellectual disability, and change references to a mentally retarded individual to references to an individual with an intellectual disability.

Oct. 5, 2010
[S. 2781]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Rosa’s Law.

SECTION 1. SHORT TITLE.

This Act may be cited as “Rosa’s Law”.

20 USC 1400
note.

SEC. 2. INDIVIDUALS WITH INTELLECTUAL DISABILITIES.

(a) **HIGHER EDUCATION ACT OF 1965.**—Section 760(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1140(2)(A)) is amended by striking “mental retardation or”.

(b) **INDIVIDUALS WITH DISABILITIES EDUCATION ACT.**—

(1) Section 601(c)(12)(C) of the Individuals with Disabilities Education Act (20 U.S.C. 1400(c)(12)(C)) is amended by striking “having mental retardation” and inserting “having intellectual disabilities”.

(2) Section 602 of such Act (20 U.S.C. 1401) is amended—

(A) in paragraph (3)(A)(i), by striking “with mental retardation” and inserting “with intellectual disabilities”; and

(B) in paragraph (30)(C), by striking “of mental retardation” and inserting “of intellectual disabilities”.

(c) **ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.**—Section 7202(16)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7512(16)(E)) is amended by striking “mild mental retardation,” and inserting “mild intellectual disabilities,”.

(d) **REHABILITATION ACT OF 1973.**—

(1) Section 7(21)(A)(iii) of the Rehabilitation Act of 1973 (29 U.S.C. 705(21)(A)(iii)) is amended by striking “mental retardation,” and inserting “intellectual disability,”.

(2) Section 204(b)(2)(C)(vi) of such Act (29 U.S.C. 764(b)(2)(C)(vi)) is amended by striking “mental retardation and other developmental disabilities” and inserting “intellectual disabilities and other developmental disabilities”.

(3) Section 501(a) of such Act (29 U.S.C. 791(a)) is amended, in the third sentence, by striking “President’s Committees on Employment of People With Disabilities and on Mental Retardation” and inserting “President’s Disability Employment Partnership Board and the President’s Committee for People with Intellectual Disabilities”.

(e) **HEALTH RESEARCH AND HEALTH SERVICES AMENDMENTS OF 1976.**—Section 1001 of the Health Research and Health Services

Amendments of 1976 (42 U.S.C. 217a–1) is amended by striking “the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,”.

(f) PUBLIC HEALTH SERVICE ACT.—

(1) Section 317C(a)(4)(B)(i) of the Public Health Service Act (42 U.S.C. 247b–4(a)(4)(B)(i)) is amended by striking “mental retardation;” and inserting “intellectual disabilities;”.

(2) Section 448 of such Act (42 U.S.C. 285g) is amended by striking “mental retardation,” and inserting “intellectual disabilities;”.

(3) Section 450 of such Act (42 U.S.C. 285g–2) is amended to read as follows:

“SEC. 450. RESEARCH ON INTELLECTUAL DISABILITIES.

“The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of intellectual disabilities.”.

(4) Section 641(a) of such Act (42 U.S.C. 291k(a)) is amended by striking “matters relating to the mentally retarded” and inserting “matters relating to individuals with intellectual disabilities”.

(5) Section 753(b)(2)(E) of such Act (42 U.S.C. 294c(b)(2)(E)) is amended by striking “elderly mentally retarded individuals” and inserting “elderly individuals with intellectual disabilities”.

(6) Section 1252(f)(3)(E) of such Act (42 U.S.C. 300d–52(f)(3)(E)) is amended by striking “mental retardation/developmental disorders,” and inserting “intellectual disabilities or developmental disorders;”.

(g) HEALTH PROFESSIONS EDUCATION PARTNERSHIPS ACT OF 1998.—Section 419(b)(1) of the Health Professions Education Partnerships Act of 1998 (42 U.S.C. 280f note) is amended by striking “mental retardation” and inserting “intellectual disabilities”.

(h) PUBLIC LAW 110–154.—Section 1(a)(2)(B) of Public Law 110–154 (42 U.S.C. 285g note) is amended by striking “mental retardation” and inserting “intellectual disabilities”.

(i) NATIONAL SICKLE CELL ANEMIA, COOLEY’S ANEMIA, TAY-SACHS, AND GENETIC DISEASES ACT.—Section 402 of the National Sickle Cell Anemia, Cooley’s Anemia, Tay-Sachs, and Genetic Diseases Act (42 U.S.C. 300b–1 note) is amended by striking “leading to mental retardation” and inserting “leading to intellectual disabilities”.

(j) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 2(2) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff note) is amended by striking “mental retardation,” and inserting “intellectual disabilities;”.

(k) REFERENCES.—For purposes of each provision amended by this section—

(1) a reference to “an intellectual disability” shall mean a condition previously referred to as “mental retardation”, or a variation of this term, and shall have the same meaning with respect to programs, or qualifications for programs, for individuals with such a condition; and

(2) a reference to individuals with intellectual disabilities shall mean individuals who were previously referred to as individuals who are “individuals with mental retardation” or “the mentally retarded”, or variations of those terms.

SEC. 3. REGULATIONS.20 USC 1400
note.

For purposes of regulations issued to carry out a provision amended by this Act—

(1) before the regulations are amended to carry out this Act—

(A) a reference in the regulations to mental retardation shall be considered to be a reference to an intellectual disability; and

(B) a reference in the regulations to the mentally retarded, or individuals who are mentally retarded, shall be considered to be a reference to individuals with intellectual disabilities; and

(2) in amending the regulations to carry out this Act, a Federal agency shall ensure that the regulations clearly state—

(A) that an intellectual disability was formerly termed mental retardation; and

(B) that individuals with intellectual disabilities were formerly termed individuals who are mentally retarded.

SEC. 4. RULE OF CONSTRUCTION.20 USC 1400
note.

This Act shall be construed to make amendments to provisions of Federal law to substitute the term “an intellectual disability” for “mental retardation”, and “individuals with intellectual disabilities” for “the mentally retarded” or “individuals who are mentally retarded”, without any intent to—

(1) change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions; or

(2) compel States to change terminology in State laws for individuals covered by a provision amended by this Act.

States.

Approved October 5, 2010.

LEGISLATIVE HISTORY—S. 2781:

SENATE REPORTS: No. 111–244 (Comm. on Health, Education, Labor, and Pensions).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 5, considered and passed Senate.

Sept. 22, considered and passed House.



Public Law 111–257
111th Congress

An Act

Oct. 5, 2010
[S. 3717]

To amend the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to provide for certain disclosures under section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPLICATION OF THE FREEDOM OF INFORMATION ACT TO CERTAIN STATUTES.

(a) AMENDMENTS TO THE SECURITIES AND EXCHANGE ACT.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x), as amended by section 929I(a) of the Dodd-Frank Consumer Financial Protection and Wall Street Reform Act (Public Law 111–203), is amended by striking subsection (e) and inserting the following:

Ante, p. 1857.

“(e) FREEDOM OF INFORMATION ACT.—For purposes of section 552(b)(8) of title 5, United States Code, (commonly referred to as the Freedom of Information Act)—

“(1) the Commission is an agency responsible for the regulation or supervision of financial institutions; and

“(2) any entity for which the Commission is responsible for regulating, supervising, or examining under this title is a financial institution.”.

(b) AMENDMENTS TO THE INVESTMENT COMPANY ACT.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30), as amended by section 929I(b) of the Dodd-Frank Consumer Financial Protection and Wall Street Reform Act (Public Law 111–203), is amended—

Ante, p. 1858.

(1) by striking subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) AMENDMENTS TO THE INVESTMENT ADVISERS ACT.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10),

as amended by section 929I(c) of the Dodd-Frank Consumer Financial Protection and Wall Street Reform Act (Public Law 111–203), *Ante*, p. 1858.
is amended by striking subsection (d).

Approved October 5, 2010.

LEGISLATIVE HISTORY—S. 3717:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 21, considered and passed Senate.

Sept. 23, considered and passed House.



Public Law 111–258
111th Congress

An Act

Oct. 7, 2010
[H.R. 553]

To require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, and for other purposes.

Reducing Over-
Classification
Act.
6 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reducing Over-Classification Act”.

6 USC 124m
note.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Commission on Terrorist Attacks Upon the United States (commonly known as the “9/11 Commission”) concluded that security requirements nurture over-classification and excessive compartmentation of information among agencies.

(2) The 9/11 Commission and others have observed that the over-classification of information interferes with accurate, actionable, and timely information sharing, increases the cost of information security, and needlessly limits stakeholder and public access to information.

(3) Over-classification of information causes considerable confusion regarding what information may be shared with whom, and negatively affects the dissemination of information within the Federal Government and with State, local, and tribal entities, and with the private sector.

(4) Over-classification of information is antithetical to the creation and operation of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(5) Federal departments or agencies authorized to make original classification decisions or that perform derivative classification of information are responsible for developing, implementing, and administering policies, procedures, and programs that promote compliance with applicable laws, executive orders, and other authorities pertaining to the proper use of classification markings and the policies of the National Archives and Records Administration.

50 USC 435d
note.

SEC. 3. DEFINITIONS.

In this Act:

(1) DERIVATIVE CLASSIFICATION AND ORIGINAL CLASSIFICATION.—The terms “derivative classification” and “original classification” have the meanings given those terms in Executive Order No. 13526.

(2) EXECUTIVE AGENCY.—The term “Executive agency” has the meaning given that term in section 105 of title 5, United States Code.

(3) EXECUTIVE ORDER NO. 13526.—The term “Executive Order No. 13526” means Executive Order No. 13526 (75 Fed. Reg. 707; relating to classified national security information) or any subsequent corresponding executive order.

SEC. 4. CLASSIFIED INFORMATION ADVISORY OFFICER.

(a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding at the end the following:

“SEC. 210F. CLASSIFIED INFORMATION ADVISORY OFFICER.

6 USC 124m.

“(a) REQUIREMENT TO ESTABLISH.—The Secretary shall identify and designate within the Department a Classified Information Advisory Officer, as described in this section.

Designation.

“(b) RESPONSIBILITIES.—The responsibilities of the Classified Information Advisory Officer shall be as follows:

“(1) To develop and disseminate educational materials and to develop and administer training programs to assist State, local, and tribal governments (including State, local, and tribal law enforcement agencies) and private sector entities—

“(A) in developing plans and policies to respond to requests related to classified information without communicating such information to individuals who lack appropriate security clearances;

“(B) regarding the appropriate procedures for challenging classification designations of information received by personnel of such entities; and

“(C) on the means by which such personnel may apply for security clearances.

“(2) To inform the Under Secretary for Intelligence and Analysis on policies and procedures that could facilitate the sharing of classified information with such personnel, as appropriate.

“(c) INITIAL DESIGNATION.—Not later than 90 days after the date of the enactment of the Reducing Over-Classification Act, the Secretary shall—

Deadline.

“(1) designate the initial Classified Information Advisory Officer; and

“(2) submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a written notification of the designation.”.

Notification.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 210E the following:

“Sec. 210F. Classified Information Advisory Officer.”.

SEC. 5. INTELLIGENCE INFORMATION SHARING.

(a) DEVELOPMENT OF GUIDANCE FOR INTELLIGENCE PRODUCTS.—Paragraph (1) of section 102A(g) of the National Security Act of 1947 (50 U.S.C. 403–1(g)) is amended—

- (1) in subparagraph (E), by striking “and” at the end;
- (2) in subparagraph (F), by striking the period at the end and inserting a semicolon and “and”; and
- (3) by adding at the end the following:

“(G) in accordance with Executive Order No. 13526 (75 Fed. Reg. 707; relating to classified national security information) (or any subsequent corresponding executive order), and part 2001 of title 32, Code of Federal Regulations (or any subsequent corresponding regulation), establish—

“(i) guidance to standardize, in appropriate cases, the formats for classified and unclassified intelligence products created by elements of the intelligence community for purposes of promoting the sharing of intelligence products; and

“(ii) policies and procedures requiring the increased use, in appropriate cases, and including portion markings, of the classification of portions of information within one intelligence product.”.

(b) CREATION OF UNCLASSIFIED INTELLIGENCE PRODUCTS AS APPROPRIATE FOR STATE, LOCAL, TRIBAL, AND PRIVATE SECTOR STAKEHOLDERS.—

(1) RESPONSIBILITIES OF SECRETARY RELATING TO INTELLIGENCE AND ANALYSIS AND INFRASTRUCTURE PROTECTION.—Paragraph (3) of section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is amended to read as follows:

“(3) To integrate relevant information, analysis, and vulnerability assessments (regardless of whether such information, analysis or assessments are provided by or produced by the Department) in order to—

“(A) identify priorities for protective and support measures regarding terrorist and other threats to homeland security by the Department, other agencies of the Federal Government, State, and local government agencies and authorities, the private sector, and other entities; and

“(B) prepare finished intelligence and information products in both classified and unclassified formats, as appropriate, whenever reasonably expected to be of benefit to a State, local, or tribal government (including a State, local, or tribal law enforcement agency) or a private sector entity.”.

(2) ITACG DETAIL.—Section 210D(d) of the Homeland Security Act of 2002 (6 U.S.C. 124k(d)) is amended—

(A) in paragraph (5)—

(i) in subparagraph (D), by striking “and” at the end;

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following:

“(E) make recommendations, as appropriate, to the Secretary or the Secretary’s designee, for the further dissemination of intelligence products that could likely

inform or improve the security of a State, local, or tribal government, (including a State, local, or tribal law enforcement agency) or a private sector entity; and”;

(B) in paragraph (6)(C), by striking “and” at the end;

(C) in paragraph (7), by striking the period at the end and inserting a semicolon and “and”; and

(D) by adding at the end the following:

“(8) compile an annual assessment of the ITACG Detail’s performance, including summaries of customer feedback, in preparing, disseminating, and requesting the dissemination of intelligence products intended for State, local and tribal government (including State, local, and tribal law enforcement agencies) and private sector entities; and

Assessment.

“(9) provide the assessment developed pursuant to paragraph (8) to the program manager for use in the annual reports required by subsection (c)(2).”

(c) INTERAGENCY THREAT ASSESSMENT AND COORDINATION GROUP ANNUAL REPORT MODIFICATION.—Subsection (c) of section 210D of the Homeland Security Act of 2002 (6 U.S.C. 124k) is amended—

(1) in the matter preceding paragraph (1), by striking “, in consultation with the Information Sharing Council,”;

(2) in paragraph (1), by striking “and” at the end;

(3) in paragraph (2), by striking the period at the end and inserting a semicolon and “and”; and

(4) by adding at the end the following:

“(3) in each report required by paragraph (2) submitted after the date of the enactment of the Reducing Over-Classification Act, include an assessment of whether the detailees under subsection (d)(5) have appropriate access to all relevant information, as required by subsection (g)(2)(C).”

Assessment.

SEC. 6. PROMOTION OF ACCURATE CLASSIFICATION OF INFORMATION.

50 USC 435 note.

(a) INCENTIVES FOR ACCURATE CLASSIFICATIONS.—In making cash awards under chapter 45 of title 5, United States Code, the President or the head of an Executive agency with an officer or employee who is authorized to make original classification decisions or derivative classification decisions may consider such officer’s or employee’s consistent and proper classification of information.

(b) INSPECTOR GENERAL EVALUATIONS.—

(1) REQUIREMENT FOR EVALUATIONS.—Not later than September 30, 2016, the inspector general of each department or agency of the United States with an officer or employee who is authorized to make original classifications, in consultation with the Information Security Oversight Office, shall carry out no less than two evaluations of that department or agency or a component of the department or agency—

Deadline.

(A) to assess whether applicable classification policies, procedures, rules, and regulations have been adopted, followed, and effectively administered within such department, agency, or component; and

(B) to identify policies, procedures, rules, regulations, or management practices that may be contributing to persistent misclassification of material within such department, agency or component.

(2) DEADLINES FOR EVALUATIONS.—

(A) INITIAL EVALUATIONS.—Each first evaluation required by paragraph (1) shall be completed no later than September 30, 2013.

(B) SECOND EVALUATIONS.—Each second evaluation required by paragraph (1) shall review progress made pursuant to the results of the first evaluation and shall be completed no later than September 30, 2016.

(3) REPORTS.—

(A) REQUIREMENT.—Each inspector general who is required to carry out an evaluation under paragraph (1) shall submit to the appropriate entities a report on each such evaluation.

(B) CONTENT.—Each report submitted under subparagraph (A) shall include a description of—

(i) the policies, procedures, rules, regulations, or management practices, if any, identified by the inspector general under paragraph (1)(B); and

(ii) the recommendations, if any, of the inspector general to address any such identified policies, procedures, rules, regulations, or management practices.

(C) COORDINATION.—The inspectors general who are required to carry out evaluations under paragraph (1) shall coordinate with each other and with the Information Security Oversight Office to ensure that evaluations follow a consistent methodology, as appropriate, that allows for cross-agency comparisons.

(4) APPROPRIATE ENTITIES DEFINED.—In this subsection, the term “appropriate entities” means—

(A) the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate;

(B) the Committee on Homeland Security, the Committee on Oversight and Government Reform, and the Permanent Select Committee on Intelligence of the House of Representatives;

(C) any other committee of Congress with jurisdiction over a department or agency referred to in paragraph (1);

(D) the head of a department or agency referred to in paragraph (1); and

(E) the Director of the Information Security Oversight Office.

50 USC 435d.

Requirements.
Deadline.

SEC. 7. CLASSIFICATION TRAINING PROGRAM.

(a) IN GENERAL.—The head of each Executive agency, in accordance with Executive Order 13526, shall require annual training for each employee who has original classification authority. For employees who perform derivative classification, or are responsible for analysis, dissemination, preparation, production, receipt, publication, or otherwise communication of classified information, training shall be provided at least every two years. Such training shall—

(1) educate the employee, as appropriate, regarding—

(A) the guidance established under subparagraph (G) of section 102A(g)(1) of the National Security Act of 1947 (50 U.S.C. 403–1(g)(1)), as added by section 5(a)(3), regarding the formatting of finished intelligence products;

(B) the proper use of classification markings, including portion markings that indicate the classification of portions of information; and

(C) any incentives and penalties related to the proper classification of intelligence information; and

(2) ensure such training is a prerequisite, once completed successfully, as evidenced by an appropriate certificate or other record, for—

(A) obtaining original classification authority or derivatively classifying information; and

(B) maintaining such authority.

(b) RELATIONSHIP TO OTHER PROGRAMS.—The head of each Executive agency shall ensure that the training required by subsection (a) is conducted efficiently and in conjunction with any other required security, intelligence, or other training programs to reduce the costs and administrative burdens associated with carrying out the training required by subsection (a).

Approved October 7, 2010.

LEGISLATIVE HISTORY—H.R. 553:

SENATE REPORTS: No. 111–200 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Feb. 3, considered and passed House.

Vol. 156 (2010): Sept. 27, considered and passed Senate, amended.

Sept. 28, House concurred in Senate amendment.



Public Law 111–259
111th Congress

An Act

Oct. 7, 2010
[H.R. 2701]

Intelligence
Authorization
Act for Fiscal
Year 2010.

To authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

- Sec. 101. Authorization of appropriations.
- Sec. 102. Restriction on conduct of intelligence activities.
- Sec. 103. Budgetary provisions.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM**

- Sec. 201. Technical modification to mandatory retirement provision of the Central Intelligence Agency Retirement Act.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A—Personnel Matters

- Sec. 301. Increase in employee compensation and benefits authorized by law.
- Sec. 302. Enhanced flexibility in nonreimbursable details to elements of the intelligence community.
- Sec. 303. Pay authority for critical positions.
- Sec. 304. Award of rank to members of the Senior National Intelligence Service.
- Sec. 305. Annual personnel level assessments for the intelligence community.
- Sec. 306. Temporary personnel authorizations for critical language training.
- Sec. 307. Conflict of interest regulations for intelligence community employees.

Subtitle B—Education Programs

- Sec. 311. Permanent authorization for the Pat Roberts Intelligence Scholars Program.
- Sec. 312. Modifications to the Louis Stokes Educational Scholarship Program.
- Sec. 313. Intelligence officer training program.
- Sec. 314. Pilot program for intensive language instruction in African languages.

Subtitle C—Acquisition Matters

- Sec. 321. Vulnerability assessments of major systems.
- Sec. 322. Intelligence community business system transformation.
- Sec. 323. Reports on the acquisition of major systems.
- Sec. 324. Critical cost growth in major systems.
- Sec. 325. Future budget projections.

Sec. 326. National Intelligence Program funded acquisitions.

Subtitle D—Congressional Oversight, Plans, and Reports

Sec. 331. Notification procedures.

Sec. 332. Certification of compliance with oversight requirements.

Sec. 333. Report on detention and interrogation activities.

Sec. 334. Summary of intelligence relating to terrorist recidivism of detainees held at United States Naval Station, Guantanamo Bay, Cuba.

Sec. 335. Report and strategic plan on biological weapons.

Sec. 336. Cybersecurity oversight.

Sec. 337. Report on foreign language proficiency in the intelligence community.

Sec. 338. Report on plans to increase diversity within the intelligence community.

Sec. 339. Report on intelligence community contractors.

Sec. 340. Study on electronic waste destruction practices of the intelligence community.

Sec. 341. Review of records relating to potential health risks among Desert Storm veterans.

Sec. 342. Review of Federal Bureau of Investigation exercise of enforcement jurisdiction in foreign nations.

Sec. 343. Public release of information on procedures used in narcotics airbridge denial program in Peru.

Sec. 344. Report on threat from dirty bombs.

Sec. 345. Report on creation of space intelligence office.

Sec. 346. Report on attempt to detonate explosive device on Northwest Airlines flight 253.

Sec. 347. Repeal or modification of certain reporting requirements.

Sec. 348. Information access by the Comptroller General of the United States.

Sec. 349. Conforming amendments for report submission dates.

Subtitle E—Other Matters

Sec. 361. Extension of authority to delete information about receipt and disposition of foreign gifts and decorations.

Sec. 362. Modification of availability of funds for different intelligence activities.

Sec. 363. Protection of certain national security information.

Sec. 364. National Intelligence Program budget.

Sec. 365. Improving the review authority of the Public Interest Declassification Board.

Sec. 366. Authority to designate undercover operations to collect foreign intelligence or counterintelligence.

Sec. 367. Security clearances: reports; reciprocity.

Sec. 368. Correcting long-standing material weaknesses.

Sec. 369. Intelligence community financial improvement and audit readiness.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE
COMMUNITY

Subtitle A—Office of the Director of National Intelligence

Sec. 401. Accountability reviews by the Director of National Intelligence.

Sec. 402. Authorities for intelligence information sharing.

Sec. 403. Location of the Office of the Director of National Intelligence.

Sec. 404. Title and appointment of Chief Information Officer of the Intelligence Community.

Sec. 405. Inspector General of the Intelligence Community.

Sec. 406. Chief Financial Officer of the Intelligence Community.

Sec. 407. Leadership and location of certain offices and officials.

Sec. 408. Protection of certain files of the Office of the Director of National Intelligence.

Sec. 409. Counterintelligence initiatives for the intelligence community.

Sec. 410. Inapplicability of Federal Advisory Committee Act to advisory committees of the Office of the Director of National Intelligence.

Sec. 411. Membership of the Director of National Intelligence on the Transportation Security Oversight Board.

Sec. 412. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive.

Sec. 413. Misuse of the Office of the Director of National Intelligence name, initials, or seal.

Sec. 414. Plan to implement recommendations of the data center energy efficiency reports.

Sec. 415. Director of National Intelligence support for reviews of International Traffic in Arms Regulations and Export Administration Regulations.

Subtitle B—Central Intelligence Agency

Sec. 421. Additional functions and authorities for protective personnel of the Central Intelligence Agency.

- Sec. 422. Appeals from decisions involving contracts of the Central Intelligence Agency.
- Sec. 423. Deputy Director of the Central Intelligence Agency.
- Sec. 424. Authority to authorize travel on a common carrier.
- Sec. 425. Inspector General for the Central Intelligence Agency.
- Sec. 426. Budget of the Inspector General for the Central Intelligence Agency.
- Sec. 427. Public availability of unclassified versions of certain intelligence products.

Subtitle C—Defense Intelligence Components

- Sec. 431. Inspector general matters.
- Sec. 432. Clarification of national security missions of National Geospatial-Intelligence Agency for analysis and dissemination of certain intelligence information.
- Sec. 433. Director of Compliance of the National Security Agency.

Subtitle D—Other Elements

- Sec. 441. Codification of additional elements of the intelligence community.
- Sec. 442. Authorization of appropriations for Coast Guard National Tactical Integration Office.
- Sec. 443. Retention and relocation bonuses for the Federal Bureau of Investigation.
- Sec. 444. Extension of the authority of the Federal Bureau of Investigation to waive mandatory retirement provisions.
- Sec. 445. Report and assessments on transformation of the intelligence capabilities of the Federal Bureau of Investigation.

TITLE V—REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE

- Sec. 501. Reorganization of the Diplomatic Telecommunications Service Program Office.

TITLE VI—FOREIGN INTELLIGENCE AND INFORMATION COMMISSION ACT

- Sec. 601. Short title.
- Sec. 602. Definitions.
- Sec. 603. Establishment and functions of the Commission.
- Sec. 604. Members and staff of the Commission.
- Sec. 605. Powers and duties of the Commission.
- Sec. 606. Report of the Commission.
- Sec. 607. Termination.
- Sec. 608. Nonapplicability of Federal Advisory Committee Act.
- Sec. 609. Authorization of appropriations.

TITLE VII—OTHER MATTERS

- Sec. 701. Extension of National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.
- Sec. 702. Classification review of executive branch materials in the possession of the congressional intelligence committees.

TITLE VIII—TECHNICAL AMENDMENTS

- Sec. 801. Technical amendments to the Foreign Intelligence Surveillance Act of 1978.
- Sec. 802. Technical amendments to the Central Intelligence Agency Act of 1949.
- Sec. 803. Technical amendments to title 10, United States Code.
- Sec. 804. Technical amendments to the National Security Act of 1947.
- Sec. 805. Technical amendments relating to the multiyear National Intelligence Program.
- Sec. 806. Technical amendments to the Intelligence Reform and Terrorism Prevention Act of 2004.
- Sec. 807. Technical amendments to the Executive Schedule.
- Sec. 808. Technical amendments to section 105 of the Intelligence Authorization Act for Fiscal Year 2004.
- Sec. 809. Technical amendments to section 602 of the Intelligence Authorization Act for Fiscal Year 1995.
- Sec. 810. Technical amendments to section 403 of the Intelligence Authorization Act, Fiscal Year 1992.

50 USC 401a
note.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate;
and

(B) the Permanent Select Committee on Intelligence
of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414), appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity as appropriated for fiscal year 2010, as modified by such reprogramming and transfers of funds authorized by and reported to the appropriate congressional committees.

SEC. 102. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or the laws of the United States.

SEC. 103. BUDGETARY PROVISIONS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DIS- ABILITY SYSTEM

SEC. 201. TECHNICAL MODIFICATION TO MANDATORY RETIREMENT PROVISION OF THE CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.

Subparagraph (A) of section 235(b)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2055(b)(1)) is amended by striking “receiving compensation under the Senior Intelligence Service pay schedule at the rate” and inserting “who is at the Senior Intelligence Service rank”.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A—Personnel Matters

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. ENHANCED FLEXIBILITY IN NONREIMBURSABLE DETAILS TO ELEMENTS OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 113 the following new section:

“DETAIL OF OTHER PERSONNEL

50 USC 404h–1.

“SEC. 113A. Except as provided in section 904(g)(2) of the Counterintelligence Enhancement Act of 2002 (50 U.S.C. 402c(g)(2)) and section 113 of this Act, and notwithstanding any other provision of law, an officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a reimbursable or nonreimbursable basis, as jointly agreed to by the head of the receiving element and the head of the detailing element, for a period not to exceed 2 years.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 113 the following new item:

“Sec. 113A. Detail of other personnel.”.

SEC. 303. PAY AUTHORITY FOR CRITICAL POSITIONS.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1) is amended by adding at the end the following new subsection:

“(s) PAY AUTHORITY FOR CRITICAL POSITIONS.—(1) Notwithstanding any pay limitation established under any other provision of law applicable to employees in elements of the intelligence community, the Director of National Intelligence may, in coordination with the Director of the Office of Personnel Management and the Director of the Office of Management and Budget, grant authority to the head of a department or agency to fix the rate of basic pay for one or more positions within the intelligence community at a rate in excess of any applicable limitation, subject to the provisions of this subsection. The exercise of authority so granted is at the discretion of the head of the department or agency employing the individual in a position covered by such authority, subject to the provisions of this subsection and any conditions established by the Director of National Intelligence when granting such authority.

“(2) Authority under this subsection may be granted or exercised only—

“(A) with respect to a position that requires an extremely high level of expertise and is critical to successful accomplishment of an important mission; and

“(B) to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

“(3) The head of a department or agency may not fix a rate of basic pay under this subsection at a rate greater than the rate payable for level II of the Executive Schedule under section 5313 of title 5, United States Code, except upon written approval of the Director of National Intelligence or as otherwise authorized by law.

“(4) The head of a department or agency may not fix a rate of basic pay under this subsection at a rate greater than the rate payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, except upon written approval of the President in response to a request by the Director of National Intelligence or as otherwise authorized by law.

“(5) Any grant of authority under this subsection for a position shall terminate at the discretion of the Director of National Intelligence.

“(6)(A) The Director of National Intelligence shall notify the congressional intelligence committees not later than 30 days after the date on which the Director grants authority to the head of a department or agency under this subsection.

Notifications.
Deadlines.

“(B) The head of a department or agency to which the Director of National Intelligence grants authority under this subsection shall notify the congressional intelligence committees and the Director of the exercise of such authority not later than 30 days after the date on which such head exercises such authority.”.

SEC. 304. AWARD OF RANK TO MEMBERS OF THE SENIOR NATIONAL INTELLIGENCE SERVICE.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1), as amended by section 303 of this Act, is further amended by adding at the end the following new subsection:

“(t) AWARD OF RANK TO MEMBERS OF THE SENIOR NATIONAL INTELLIGENCE SERVICE.—(1) The President, based on the recommendation of the Director of National Intelligence, may award a rank to a member of the Senior National Intelligence Service or other intelligence community senior civilian officer not already covered by such a rank award program in the same manner in which a career appointee of an agency may be awarded a rank under section 4507 of title 5, United States Code.

“(2) The President may establish procedures to award a rank under paragraph (1) to a member of the Senior National Intelligence Service or a senior civilian officer of the intelligence community whose identity as such a member or officer is classified information (as defined in section 606(1)).”.

SEC. 305. ANNUAL PERSONNEL LEVEL ASSESSMENTS FOR THE INTELLIGENCE COMMUNITY.

(a) ASSESSMENT.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 506A the following new section:

“ANNUAL PERSONNEL LEVEL ASSESSMENTS FOR THE INTELLIGENCE
COMMUNITY

50 USC 415a–4.

“SEC. 506B. (a) REQUIREMENT TO PROVIDE.—The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community, prepare an annual personnel level assessment for such element that assesses the personnel levels for such element for the fiscal year following the fiscal year in which the assessment is submitted.

“(b) SCHEDULE.—Each assessment required by subsection (a) shall be submitted to the congressional intelligence committees each year at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, United States Code.

“(c) CONTENTS.—Each assessment required by subsection (a) submitted during a fiscal year shall contain the following information for the element of the intelligence community concerned:

“(1) The budget submission for personnel costs for the upcoming fiscal year.

“(2) The dollar and percentage increase or decrease of such costs as compared to the personnel costs of the current fiscal year.

“(3) The dollar and percentage increase or decrease of such costs as compared to the personnel costs during the prior 5 fiscal years.

“(4) The number of full-time equivalent positions that is the basis for which personnel funds are requested for the upcoming fiscal year.

“(5) The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions of the current fiscal year.

“(6) The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions during the prior 5 fiscal years.

“(7) The best estimate of the number and costs of core contract personnel to be funded by the element for the upcoming fiscal year.

“(8) The numerical and percentage increase or decrease of such costs of core contract personnel as compared to the best estimate of the costs of core contract personnel of the current fiscal year.

“(9) The numerical and percentage increase or decrease of such number and such costs of core contract personnel as compared to the number and cost of core contract personnel during the prior 5 fiscal years.

“(10) A justification for the requested personnel and core contract personnel levels.

“(11) The best estimate of the number of intelligence collectors and analysts employed or contracted by each element of the intelligence community.

“(12) A statement by the Director of National Intelligence that, based on current and projected funding, the element concerned will have sufficient—

“(A) internal infrastructure to support the requested personnel and core contract personnel levels;

“(B) training resources to support the requested personnel levels; and

“(C) funding to support the administrative and operational activities of the requested personnel levels.”.

(b) **APPLICABILITY DATE.**—The first assessment required to be submitted under section 506B(b) of the National Security Act of 1947, as added by subsection (a), shall be submitted to the congressional intelligence committees at the time that the President submits to Congress the budget for fiscal year 2012 pursuant to section 1105 of title 31, United States Code.

50 USC 415a
note.

(c) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in the first section of such Act, as amended by section 302 of this Act, is further amended by inserting after the item relating to section 506A the following new item:

“Sec. 506B. Annual personnel level assessments for the intelligence community.”.

SEC. 306. TEMPORARY PERSONNEL AUTHORIZATIONS FOR CRITICAL LANGUAGE TRAINING.

Section 102A(e) of the National Security Act of 1947 (50 U.S.C. 403–1(e)) is amended by—

(1) redesignating paragraph (3) as paragraph (4); and

(2) inserting after paragraph (2) the following new paragraph:

“(3)(A) In addition to the number of full-time equivalent positions authorized for the Office of the Director of National Intelligence for a fiscal year, there is authorized for such Office for each fiscal year an additional 100 full-time equivalent positions that may be used only for the purposes described in subparagraph (B).

“(B) Except as provided in subparagraph (C), the Director of National Intelligence may use a full-time equivalent position authorized under subparagraph (A) only for the purpose of providing a temporary transfer of personnel made in accordance with paragraph (2) to an element of the intelligence community to enable such element to increase the total number of personnel authorized for such element, on a temporary basis—

“(i) during a period in which a permanent employee of such element is absent to participate in critical language training; or

“(ii) to accept a permanent employee of another element of the intelligence community to provide language-capable services.

“(C) Paragraph (2)(B) shall not apply with respect to a transfer of personnel made under subparagraph (B).

“(D) The Director of National Intelligence shall submit to the congressional intelligence committees an annual report on the use of authorities under this paragraph. Each such report shall include a description of—

Reports.

“(i) the number of transfers of personnel made by the Director pursuant to subparagraph (B), disaggregated by each element of the intelligence community;

“(ii) the critical language needs that were fulfilled or partially fulfilled through the use of such transfers; and

“(iii) the cost to carry out subparagraph (B).”.

SEC. 307. CONFLICT OF INTEREST REGULATIONS FOR INTELLIGENCE COMMUNITY EMPLOYEES.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1), as amended by section 304 of this Act, is further amended by adding at the end the following new subsection:

“(u) CONFLICT OF INTEREST REGULATIONS.—(1) The Director of National Intelligence, in consultation with the Director of the Office of Government Ethics, shall issue regulations prohibiting an officer or employee of an element of the intelligence community from engaging in outside employment if such employment creates a conflict of interest or appearance thereof.

Reports.

“(2) The Director of National Intelligence shall annually submit to the congressional intelligence committees a report describing all outside employment for officers and employees of elements of the intelligence community that was authorized by the head of an element of the intelligence community during the preceding calendar year. Such report shall be submitted each year on the date provided in section 507.”.

Subtitle B—Education Programs**SEC. 311. PERMANENT AUTHORIZATION FOR THE PAT ROBERTS INTELLIGENCE SCHOLARS PROGRAM.**

(a) PERMANENT AUTHORIZATION.—Subtitle C of title X of the National Security Act of 1947 (50 U.S.C. 441m et seq.) is amended by adding at the end the following new section:

“PROGRAM ON RECRUITMENT AND TRAINING

50 USC 441 note.

“SEC. 1022. (a) PROGRAM.—(1) The Director of National Intelligence shall carry out a program to ensure that selected students or former students are provided funds to continue academic training, or are reimbursed for academic training previously obtained, in areas of specialization that the Director, in consultation with the other heads of the elements of the intelligence community, identifies as areas in which the current capabilities of the intelligence community are deficient or in which future capabilities of the intelligence community are likely to be deficient.

“(2) A student or former student selected for participation in the program shall commit to employment with an element of the intelligence community, following completion of appropriate academic training, under such terms and conditions as the Director considers appropriate.

“(3) The program shall be known as the Pat Roberts Intelligence Scholars Program.

“(b) ELEMENTS.—In carrying out the program under subsection (a), the Director shall—

“(1) establish such requirements relating to the academic training of participants as the Director considers appropriate to ensure that participants are prepared for employment as intelligence professionals; and

“(2) periodically review the areas of specialization of the elements of the intelligence community to determine the areas in which such elements are, or are likely to be, deficient in capabilities.

“(c) USE OF FUNDS.—Funds made available for the program under subsection (a) shall be used—

“(1) to provide a monthly stipend for each month that a student is pursuing a course of study;

“(2) to pay the full tuition of a student or former student for the completion of such course of study;

“(3) to pay for books and materials that the student or former student requires or required to complete such course of study;

“(4) to pay the expenses of the student or former student for travel requested by an element of the intelligence community in relation to such program; or

“(5) for such other purposes the Director considers reasonably appropriate to carry out such program.”.

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act, as amended by section 305 of this Act, is further amended—

(A) by transferring the item relating to section 1002 so such item immediately follows the item relating to section 1001; and

(B) by inserting after the item relating to section 1021 the following new item:

“Sec. 1022. Program on recruitment and training.”.

(2) REPEAL OF PILOT PROGRAM.—

(A) AUTHORITY.—Section 318 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108-177; 50 U.S.C. 441g note) is repealed.

(B) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108-177; 117 Stat. 2599) is amended by striking the item relating to section 318.

SEC. 312. MODIFICATIONS TO THE LOUIS STOKES EDUCATIONAL SCHOLARSHIP PROGRAM.

(a) EXPANSION OF THE LOUIS STOKES EDUCATIONAL SCHOLARSHIP PROGRAM TO GRADUATE STUDENTS.—Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended—

(1) in subsection (a)—

(A) by inserting “and graduate” after “undergraduate”; and

(B) by striking “the baccalaureate” and inserting “a baccalaureate or graduate”;

(2) in subsection (b), by inserting “or graduate” after “undergraduate”;

(3) in subsection (e)(2), by inserting “and graduate” after “undergraduate”; and

(4) by adding at the end the following new subsection:

“(h) The undergraduate and graduate training program established under this section shall be known as the Louis Stokes Educational Scholarship Program.”.

(b) AUTHORITY FOR PARTICIPATION BY INDIVIDUALS WHO ARE NOT EMPLOYED BY THE UNITED STATES GOVERNMENT.—

(1) IN GENERAL.—Subsection (b) of section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note), as amended by subsection (a)(2), is further amended by striking

“civilian employees” and inserting “civilians who may or may not be employees”.

(2) CONFORMING AMENDMENTS.—Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note), as amended by subsection (a), is further amended—

(A) in subsection (c), by striking “employees” and inserting “program participants”; and

(B) in subsection (d)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), strike “an employee of the Agency,” and insert “a program participant,”;

(II) in subparagraph (A), by striking “employee” and inserting “program participant”;

(III) in subparagraph (C)—

(aa) by striking “employee” each place that term appears and inserting “program participant”; and

(bb) by striking “employee’s” each place that term appears and inserting “program participant’s”; and

(IV) in subparagraph (D)—

(aa) by striking “employee” each place that term appears and inserting “program participant”; and

(bb) by striking “employee’s” each place that term appears and inserting “program participant’s”; and

(ii) in paragraph (3)(C)—

(I) by striking “employee” both places that term appears and inserting “program participant”; and

(II) by striking “employee’s” and inserting “program participant’s”.

(c) TERMINATION OF PROGRAM PARTICIPANTS.—Subsection (d)(1)(C) of section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note), as amended by subsection (b)(2)(B)(i)(III), is further amended by striking “terminated” and all that follows and inserting “terminated—

“(i) by the Agency due to misconduct by the program participant;

“(ii) by the program participant voluntarily; or

“(iii) by the Agency for the failure of the program participant to maintain such level of academic standing in the educational course of training as the Director of the National Security Agency shall have specified in the agreement of the program participant under this subsection; and”.

(d) AUTHORITY TO WITHHOLD DISCLOSURE OF AFFILIATION WITH NSA.—Subsection (e) of Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking “(1) When an employee” and all that follows through “(2) Agency efforts” and inserting “Agency efforts”.

(e) AUTHORITY OF ELEMENTS OF THE INTELLIGENCE COMMUNITY TO ESTABLISH A STOKES EDUCATIONAL SCHOLARSHIP PROGRAM.—

(1) AUTHORITY.—Subtitle C of title X of the National Security Act of 1947 (50 U.S.C. 441m et seq.), as amended by

section 311 of this Act, is further amended by adding at the end the following new section:

“EDUCATIONAL SCHOLARSHIP PROGRAM

“SEC. 1023. The head of a department or agency containing an element of the intelligence community may establish an undergraduate or graduate training program with respect to civilian employees and prospective civilian employees of such element similar in purpose, conditions, content, and administration to the program that the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).” 50 USC 441o.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 311 of this Act, is further amended by inserting after the item relating to section 1022, as added by such section 311, the following new item:

“Sec. 1023. Educational scholarship program.”.

SEC. 313. INTELLIGENCE OFFICER TRAINING PROGRAM.

(a) PROGRAM.—Subtitle C of title X of the National Security Act of 1947 (50 U.S.C. 441m et seq.), as amended by section 312(e) of this Act, is further amended by adding at the end the following new section:

“INTELLIGENCE OFFICER TRAINING PROGRAM

“SEC. 1024. (a) PROGRAMS.—(1) The Director of National Intelligence may carry out grant programs in accordance with subsection (b) to enhance the recruitment and retention of an ethnically and culturally diverse intelligence community workforce with capabilities critical to the national security interests of the United States. 50 USC 441p.

“(2) In carrying out paragraph (1), the Director shall identify the skills necessary to meet current or emergent needs of the intelligence community and the educational disciplines that will provide individuals with such skills.

“(b) INSTITUTIONAL GRANT PROGRAM.—(1) The Director may provide grants to institutions of higher education to support the establishment or continued development of programs of study in educational disciplines identified under subsection (a)(2).

“(2) A grant provided under paragraph (1) may, with respect to the educational disciplines identified under subsection (a)(2), be used for the following purposes:

“(A) Curriculum or program development.

“(B) Faculty development.

“(C) Laboratory equipment or improvements.

“(D) Faculty research.

“(c) APPLICATION.—An institution of higher education seeking a grant under this section shall submit an application describing the proposed use of the grant at such time and in such manner as the Director may require.

“(d) REPORTS.—An institution of higher education that receives a grant under this section shall submit to the Director regular reports regarding the use of such grant, including—

“(1) a description of the benefits to students who participate in the course of study funded by such grant;

“(2) a description of the results and accomplishments related to such course of study; and

“(3) any other information that the Director may require.

“(e) REGULATIONS.—The Director shall prescribe such regulations as may be necessary to carry out this section.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘Director’ means the Director of National Intelligence.

“(2) The term ‘institution of higher education’ has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).”.

(b) REPEAL OF DUPLICATIVE PROVISIONS.—

(1) IN GENERAL.—The following provisions of law are repealed:

(A) Subsections (b) through (g) of section 319 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403 note).

(B) Section 1003 of the National Security Act of 1947 (50 U.S.C. 441g–2).

(C) Section 922 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 50 U.S.C. 402 note).

(2) EXISTING AGREEMENTS.—Notwithstanding the repeals made by paragraph (1), nothing in this subsection shall be construed to amend, modify, or abrogate any agreement, contract, or employment relationship that was in effect in relation to the provisions repealed under paragraph (1) on the day prior to the date of the enactment of this Act.

(3) TECHNICAL AMENDMENT.—Section 319 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403 note) is amended by striking “(a) FINDINGS.—”.

(c) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 312 of this Act, is further amended by striking the item relating to section 1003 and inserting the following new item:

“Sec. 1024. Intelligence officer training program.”.

SEC. 314. PILOT PROGRAM FOR INTENSIVE LANGUAGE INSTRUCTION IN AFRICAN LANGUAGES.

(a) ESTABLISHMENT.—The Director of National Intelligence, in consultation with the National Security Education Board established under section 803(a) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1903(a)), may establish a pilot program for intensive language instruction in African languages.

(b) PROGRAM.—A pilot program established under subsection (a) shall provide scholarships for programs that provide intensive language instruction—

(1) in any of the five highest priority African languages for which scholarships are not offered under the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.), as determined by the Director of National Intelligence; and

(2) both in the United States and in a country in which the language is the native language of a significant portion of the population, as determined by the Director of National Intelligence.

50 USC 441g–2
note.

50 USC 441j
note.

(c) **TERMINATION.**—A pilot program established under subsection (a) shall terminate on the date that is five years after the date on which such pilot program is established.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There is authorized to be appropriated to carry out this section \$2,000,000.

(2) **AVAILABILITY.**—Funds authorized to be appropriated under paragraph (1) shall remain available until the termination of the pilot program in accordance with subsection (c).

Subtitle C—Acquisition Matters

SEC. 321. VULNERABILITY ASSESSMENTS OF MAJOR SYSTEMS.

(a) **VULNERABILITY ASSESSMENTS OF MAJOR SYSTEMS.**—

(1) **IN GENERAL.**—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 305 of this Act, is further amended by inserting after section 506B, as added by section 305(a), the following new section:

“VULNERABILITY ASSESSMENTS OF MAJOR SYSTEMS

“SEC. 506C. (a) **INITIAL VULNERABILITY ASSESSMENTS.**—(1)(A) Except as provided in subparagraph (B), the Director of National Intelligence shall conduct and submit to the congressional intelligence committees an initial vulnerability assessment for each major system and its significant items of supply—

“(i) except as provided in clause (ii), prior to the completion of Milestone B or an equivalent acquisition decision for the major system; or

“(ii) prior to the date that is 1 year after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010 in the case of a major system for which Milestone B or an equivalent acquisition decision—

“(I) was completed prior to such date of enactment;

or

“(II) is completed on a date during the 180-day period following such date of enactment.

“(B) The Director may submit to the congressional intelligence committees an initial vulnerability assessment required by clause (ii) of subparagraph (A) not later than 180 days after the date such assessment is required to be submitted under such clause if the Director notifies the congressional intelligence committees of the extension of the submission date under this subparagraph and provides a justification for such extension.

“(C) The initial vulnerability assessment of a major system and its significant items of supply shall include use of an analysis-based approach to—

“(i) identify vulnerabilities;

“(ii) define exploitation potential;

“(iii) examine the system’s potential effectiveness;

“(iv) determine overall vulnerability; and

“(v) make recommendations for risk reduction.

“(2) If an initial vulnerability assessment for a major system is not submitted to the congressional intelligence committees as required by paragraph (1), funds appropriated for the acquisition of the major system may not be obligated for a major contract related to the major system. Such prohibition on the obligation

50 USC 415a–5.

Deadline.
Notification.

of funds for the acquisition of the major system shall cease to apply on the date on which the congressional intelligence committees receive the initial vulnerability assessment.

“(b) SUBSEQUENT VULNERABILITY ASSESSMENTS.—(1) The Director of National Intelligence shall, periodically throughout the procurement of a major system or if the Director determines that a change in circumstances warrants the issuance of a subsequent vulnerability assessment, conduct a subsequent vulnerability assessment of each major system and its significant items of supply within the National Intelligence Program.

“(2) Upon the request of a congressional intelligence committee, the Director of National Intelligence may, if appropriate, recertify the previous vulnerability assessment or may conduct a subsequent vulnerability assessment of a particular major system and its significant items of supply within the National Intelligence Program.

“(3) Any subsequent vulnerability assessment of a major system and its significant items of supply shall include use of an analysis-based approach and, if applicable, a testing-based approach, to monitor the exploitation potential of such system and reexamine the factors described in clauses (i) through (v) of subsection (a)(1)(C).

“(c) MAJOR SYSTEM MANAGEMENT.—The Director of National Intelligence shall give due consideration to the vulnerability assessments prepared for a given major system when developing and determining the National Intelligence Program budget.

“(d) CONGRESSIONAL OVERSIGHT.—(1) The Director of National Intelligence shall provide to the congressional intelligence committees a copy of each vulnerability assessment conducted under subsection (a) or (b) not later than 10 days after the date of the completion of such assessment.

“(2) The Director of National Intelligence shall provide the congressional intelligence committees with a proposed schedule for subsequent periodic vulnerability assessments of a major system under subsection (b)(1) when providing such committees with the initial vulnerability assessment under subsection (a) of such system as required by paragraph (1).

“(e) DEFINITIONS.—In this section:

“(1) The term ‘item of supply’ has the meaning given that term in section 4(10) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(10)).

“(2) The term ‘major contract’ means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of \$40,000,000 and that is not a firm, fixed price contract.

“(3) The term ‘major system’ has the meaning given that term in section 506A(e).

“(4) The term ‘Milestone B’ means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director of National Intelligence.

“(5) The term ‘vulnerability assessment’ means the process of identifying and quantifying vulnerabilities in a major system and its significant items of supply.”.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 313 of this Act, is further amended by

Records.
Deadline.

Proposed
schedule.

inserting after the item relating to section 506B, as added by section 305(c) of this Act, the following new item:

“Sec. 506C. Vulnerability assessments of major systems.”.

(b) **DEFINITION OF MAJOR SYSTEM.**—Paragraph (3) of section 506A(e) of the National Security Act of 1947 (50 U.S.C. 415a–1(e)) is amended by striking “(in current fiscal year dollars)” and inserting “(based on fiscal year 2010 constant dollars)”.

SEC. 322. INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.

(a) **INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.**—

(1) **IN GENERAL.**—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 321 of this Act, is further amended by inserting after section 506C, as added by section 321(a), the following new section:

“**INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION**

“**SEC. 506D. (a) LIMITATION ON OBLIGATION OF FUNDS.**—(1) 50 USC 415a–6.
Subject to paragraph (3), no funds appropriated to any element of the intelligence community may be obligated for an intelligence community business system transformation that will have a total cost in excess of \$3,000,000 unless—

“(A) the Director of the Office of Business Transformation of the Office of the Director of National Intelligence makes a certification described in paragraph (2) with respect to such intelligence community business system transformation; and

“(B) such certification is approved by the board established under subsection (f).

“(2) The certification described in this paragraph for an intelligence community business system transformation is a certification made by the Director of the Office of Business Transformation of the Office of the Director of National Intelligence that the intelligence community business system transformation—

“(A) complies with the enterprise architecture under subsection (b) and such other policies and standards that the Director of National Intelligence considers appropriate; or

“(B) is necessary—

“(i) to achieve a critical national security capability or address a critical requirement; or

“(ii) to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration any alternative solutions for preventing such adverse effect.

“(3) With respect to a fiscal year after fiscal year 2010, the amount referred to in paragraph (1) in the matter preceding subparagraph (A) shall be equal to the sum of—

“(A) the amount in effect under such paragraph (1) for the preceding fiscal year (determined after application of this paragraph), plus

“(B) such amount multiplied by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of the previous fiscal year.

“(b) **ENTERPRISE ARCHITECTURE FOR INTELLIGENCE COMMUNITY BUSINESS SYSTEMS.**—(1) The Director of National Intelligence shall, acting through the board established under subsection (f), develop

and implement an enterprise architecture to cover all intelligence community business systems, and the functions and activities supported by such business systems. The enterprise architecture shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable intelligence community business system solutions, consistent with applicable policies and procedures established by the Director of the Office of Management and Budget.

“(2) The enterprise architecture under paragraph (1) shall include the following:

“(A) An information infrastructure that will enable the intelligence community to—

“(i) comply with all Federal accounting, financial management, and reporting requirements;

“(ii) routinely produce timely, accurate, and reliable financial information for management purposes;

“(iii) integrate budget, accounting, and program information and systems; and

“(iv) provide for the measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

“(B) Policies, procedures, data standards, and system interface requirements that apply uniformly throughout the intelligence community.

“(c) RESPONSIBILITIES FOR INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.—The Director of National Intelligence shall be responsible for the entire life cycle of an intelligence community business system transformation, including review, approval, and oversight of the planning, design, acquisition, deployment, operation, and maintenance of the business system transformation.

Deadline.

“(d) INTELLIGENCE COMMUNITY BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Director of the Office of Business Transformation of the Office of the Director of National Intelligence shall establish and implement, not later than 60 days after the enactment of the Intelligence Authorization Act for Fiscal Year 2010, an investment review process for the intelligence community business systems for which the Director of the Office of Business Transformation is responsible.

“(2) The investment review process under paragraph (1) shall—

“(A) meet the requirements of section 11312 of title 40, United States Code; and

“(B) specifically set forth the responsibilities of the Director of the Office of Business Transformation under such review process.

“(3) The investment review process under paragraph (1) shall include the following elements:

“(A) Review and approval by an investment review board (consisting of appropriate representatives of the intelligence community) of each intelligence community business system as an investment before the obligation of funds for such system.

“(B) Periodic review, but not less often than annually, of every intelligence community business system investment.

“(C) Thresholds for levels of review to ensure appropriate review of intelligence community business system investments depending on the scope, complexity, and cost of the system involved.

“(D) Procedures for making certifications in accordance with the requirements of subsection (a)(2).

“(e) BUDGET INFORMATION.—For each fiscal year after fiscal year 2011, the Director of National Intelligence shall include in the materials the Director submits to Congress in support of the budget for such fiscal year that is submitted to Congress under section 1105 of title 31, United States Code, the following information:

“(1) An identification of each intelligence community business system for which funding is proposed in such budget.

“(2) An identification of all funds, by appropriation, proposed in such budget for each such system, including—

“(A) funds for current services to operate and maintain such system;

“(B) funds for business systems modernization identified for each specific appropriation; and

“(C) funds for associated business process improvement or reengineering efforts.

“(3) The certification, if any, made under subsection (a)(2) with respect to each such system.

“(f) INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION GOVERNANCE BOARD.—(1) The Director of National Intelligence shall establish a board within the intelligence community business system transformation governance structure (in this subsection referred to as the ‘Board’).

Establishment.

“(2) The Board shall—

“(A) recommend to the Director policies and procedures necessary to effectively integrate all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the intelligence community;

“(B) review and approve any major update of—

“(i) the enterprise architecture developed under subsection (b); and

“(ii) any plans for an intelligence community business systems modernization;

“(C) manage cross-domain integration consistent with such enterprise architecture;

“(D) coordinate initiatives for intelligence community business system transformation to maximize benefits and minimize costs for the intelligence community, and periodically report to the Director on the status of efforts to carry out an intelligence community business system transformation;

“(E) ensure that funds are obligated for intelligence community business system transformation in a manner consistent with subsection (a); and

“(F) carry out such other duties as the Director shall specify.

“(g) RELATION TO ANNUAL REGISTRATION REQUIREMENTS.—Nothing in this section shall be construed to alter the requirements of section 8083 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 989), with regard to information technology systems (as defined in subsection (d) of such section).

“(h) RELATIONSHIP TO DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.—Nothing in this section shall be construed to exempt funds authorized to be appropriated to the Department of Defense from the requirements of section 2222 of title 10, United

States Code, to the extent that such requirements are otherwise applicable.

“(i) RELATION TO CLINGER-COHEN ACT.—(1) Executive agency responsibilities in chapter 113 of title 40, United States Code, for any intelligence community business system transformation shall be exercised jointly by—

“(A) the Director of National Intelligence and the Chief Information Officer of the Intelligence Community; and

“(B) the head of the executive agency that contains the element of the intelligence community involved and the chief information officer of that executive agency.

“(2) The Director of National Intelligence and the head of the executive agency referred to in paragraph (1)(B) shall enter into a Memorandum of Understanding to carry out the requirements of this section in a manner that best meets the needs of the intelligence community and the executive agency.

“(j) REPORTS.—Not later than March 31 of each of the years 2011 through 2015, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the compliance of the intelligence community with the requirements of this section. Each such report shall—

“(1) describe actions taken and proposed for meeting the requirements of subsection (a), including—

“(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and

“(B) specific actions on the intelligence community business system transformations submitted for certification under such subsection;

“(2) identify the number of intelligence community business system transformations that received a certification described in subsection (a)(2); and

“(3) describe specific improvements in business operations and cost savings resulting from successful intelligence community business systems transformation efforts.

“(k) DEFINITIONS.—In this section:

“(1) The term ‘enterprise architecture’ has the meaning given that term in section 3601(4) of title 44, United States Code.

“(2) The terms ‘information system’ and ‘information technology’ have the meanings given those terms in section 11101 of title 40, United States Code.

“(3) The term ‘intelligence community business system’ means an information system, including a national security system, that is operated by, for, or on behalf of an element of the intelligence community, including a financial system, mixed system, financial data feeder system, and the business infrastructure capabilities shared by the systems of the business enterprise architecture, including people, process, and technology, that build upon the core infrastructure used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

“(4) The term ‘intelligence community business system transformation’ means—

“(A) the acquisition or development of a new intelligence community business system; or

“(B) any significant modification or enhancement of an existing intelligence community business system (other than necessary to maintain current services).

“(5) The term ‘national security system’ has the meaning given that term in section 3542 of title 44, United States Code.

“(6) The term ‘Office of Business Transformation of the Office of the Director of National Intelligence’ includes any successor office that assumes the functions of the Office of Business Transformation of the Office of the Director of National Intelligence as carried out by the Office of Business Transformation on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010.”

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 321 of this Act, is further amended by inserting after the item relating to section 506C, as added by section 321(a)(2), the following new item:

“Sec. 506D. Intelligence community business system transformation.”.

(b) IMPLEMENTATION.—

(1) CERTAIN DUTIES.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall designate a chair and other members to serve on the board established under subsection (f) of such section 506D of the National Security Act of 1947 (as added by subsection (a)).

(2) ENTERPRISE ARCHITECTURE.—

(A) SCHEDULE FOR DEVELOPMENT.—The Director shall develop the enterprise architecture required by subsection (b) of such section 506D (as so added), including the initial Business Enterprise Architecture for business transformation, not later than 60 days after the enactment of this Act.

(B) REQUIREMENT FOR IMPLEMENTATION PLAN.—In developing such an enterprise architecture, the Director shall develop an implementation plan for such enterprise architecture that includes the following:

(i) An acquisition strategy for new systems that are expected to be needed to complete such enterprise architecture, including specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

(ii) An identification of the intelligence community business systems in operation or planned as of the date that is 60 days after the enactment of this Act that will not be a part of such enterprise architecture, together with the schedule for the phased termination of the utilization of any such systems.

(iii) An identification of the intelligence community business systems in operation or planned as of such date, that will be a part of such enterprise architecture, together with a strategy for modifying such systems to ensure that such systems comply with such enterprise architecture.

Deadlines.
50 USC 415a–6
note.

(C) SUBMISSION OF ACQUISITION STRATEGY.—Based on the results of an enterprise process management review and the availability of funds, the Director shall submit the acquisition strategy described in subparagraph (B)(i) to the congressional intelligence committees not later than March 31, 2011.

SEC. 323. REPORTS ON THE ACQUISITION OF MAJOR SYSTEMS.

(a) REPORTS.—

(1) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 322 of this Act, is further amended by inserting after section 506D, as added by section 322(a)(1), the following new section:

“REPORTS ON THE ACQUISITION OF MAJOR SYSTEMS

50 USC 415a–7.

“SEC. 506E. (a) DEFINITIONS.—In this section:

“(1) The term ‘cost estimate’—

“(A) means an assessment and quantification of all costs and risks associated with the acquisition of a major system based upon reasonably available information at the time the Director establishes the 2010 adjusted total acquisition cost for such system pursuant to subsection (h) or restructures such system pursuant to section 506F(c); and

“(B) does not mean an ‘independent cost estimate’.

“(2) The term ‘critical cost growth threshold’ means a percentage increase in the total acquisition cost for a major system of at least 25 percent over the total acquisition cost for the major system as shown in the current Baseline Estimate for the major system.

“(3)(A) The term ‘current Baseline Estimate’ means the projected total acquisition cost of a major system that is—

“(i) approved by the Director, or a designee of the Director, at Milestone B or an equivalent acquisition decision for the development, procurement, and construction of such system;

“(ii) approved by the Director at the time such system is restructured pursuant to section 506F(c); or

“(iii) the 2010 adjusted total acquisition cost determined pursuant to subsection (h).

“(B) A current Baseline Estimate may be in the form of an independent cost estimate.

“(4) Except as otherwise specifically provided, the term ‘Director’ means the Director of National Intelligence.

“(5) The term ‘independent cost estimate’ has the meaning given that term in section 506A(e).

“(6) The term ‘major contract’ means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of \$40,000,000 and that is not a firm, fixed price contract.

“(7) The term ‘major system’ has the meaning given that term in section 506A(e).

“(8) The term ‘Milestone B’ means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director.

“(9) The term ‘program manager’ means—

“(A) the head of the element of the intelligence community that is responsible for the budget, cost, schedule, and performance of a major system; or

“(B) in the case of a major system within the Office of the Director of National Intelligence, the deputy who is responsible for the budget, cost, schedule, and performance of the major system.

“(10) The term ‘significant cost growth threshold’ means the percentage increase in the total acquisition cost for a major system of at least 15 percent over the total acquisition cost for such system as shown in the current Baseline Estimate for such system.

“(11) The term ‘total acquisition cost’ means the amount equal to the total cost for development and procurement of, and system-specific construction for, a major system.

“(b) MAJOR SYSTEM COST REPORTS.—(1) The program manager for a major system shall, on a quarterly basis, submit to the Director a major system cost report as described in paragraph (2).

“(2) A major system cost report shall include the following information (as of the last day of the quarter for which the report is made):

“(A) The total acquisition cost for the major system.

“(B) Any cost variance or schedule variance in a major contract for the major system since the contract was entered into.

“(C) Any changes from a major system schedule milestones or performances that are known, expected, or anticipated by the program manager.

“(D) Any significant changes in the total acquisition cost for development and procurement of any software component of the major system, schedule milestones for such software component of the major system, or expected performance of such software component of the major system that are known, expected, or anticipated by the program manager.

“(3) Each major system cost report required by paragraph (1) shall be submitted not more than 30 days after the end of the reporting quarter.

“(c) REPORTS FOR BREACH OF SIGNIFICANT OR CRITICAL COST GROWTH THRESHOLDS.—If the program manager of a major system for which a report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold and if a report indicating an increase of such percentage or more has not previously been submitted to the Director, then the program manager shall immediately submit to the Director a major system cost report containing the information, determined as of the date of the report, required under subsection (b).

“(d) NOTIFICATION TO CONGRESS OF COST GROWTH.—(1) Whenever a major system cost report is submitted to the Director, the Director shall determine whether the current acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold.

“(2) If the Director determines that the current total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Director shall submit to Congress a Major System Congressional Report pursuant to subsection (e).

“(e) REQUIREMENT FOR MAJOR SYSTEM CONGRESSIONAL REPORT.—(1) Whenever the Director determines under subsection (d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the significant cost growth threshold for the major system, a Major System Congressional Report shall be submitted to Congress not later than 45 days after the date on which the Director receives the major system cost report for such major system.

“(2) If the total acquisition cost of a major system (as determined by the Director under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Director shall take actions consistent with the requirements of section 506F.

“(f) MAJOR SYSTEM CONGRESSIONAL REPORT ELEMENTS.—(1) Except as provided in paragraph (2), each Major System Congressional Report shall include the following:

“(A) The name of the major system.

“(B) The date of the preparation of the report.

“(C) The program phase of the major system as of the date of the preparation of the report.

“(D) The estimate of the total acquisition cost for the major system expressed in constant base-year dollars and in current dollars.

“(E) The current Baseline Estimate for the major system in constant base-year dollars and in current dollars.

“(F) A statement of the reasons for any increase in total acquisition cost for the major system.

“(G) The completion status of the major system—

“(i) expressed as the percentage that the number of years for which funds have been appropriated for the major system is of the number of years for which it is planned that funds will be appropriated for the major system; and

“(ii) expressed as the percentage that the amount of funds that have been appropriated for the major system is of the total amount of funds which it is planned will be appropriated for the major system.

“(H) The fiscal year in which the major system was first authorized and in which funds for such system were first appropriated by Congress.

“(I) The current change and the total change, in dollars and expressed as a percentage, in the total acquisition cost for the major system, stated both in constant base-year dollars and in current dollars.

“(J) The quantity of end items to be acquired under the major system and the current change and total change, if any, in that quantity.

“(K) The identities of the officers responsible for management and cost control of the major system.

“(L) The action taken and proposed to be taken to control future cost growth of the major system.

“(M) Any changes made in the performance or schedule milestones of the major system and the extent to which such

changes have contributed to the increase in total acquisition cost for the major system.

“(N) The following contract performance assessment information with respect to each major contract under the major system:

“(i) The name of the contractor.

“(ii) The phase that the contract is in at the time of the preparation of the report.

“(iii) The percentage of work under the contract that has been completed.

“(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

“(v) The percentage by which the contract is currently ahead of or behind schedule.

“(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the major system, contributing to the changes identified and a discussion of the effect these occurrences will have on the future costs and schedule of the major system.

“(O) In any case in which one or more problems with a software component of the major system significantly contributed to the increase in costs of the major system, the action taken and proposed to be taken to solve such problems.

“(2) A Major System Congressional Report prepared for a major system for which the increase in the total acquisition cost is due to termination or cancellation of the entire major system shall include only—

“(A) the information described in subparagraphs (A) through (F) of paragraph (1); and

“(B) the total percentage change in total acquisition cost for such system.

“(g) PROHIBITION ON OBLIGATION OF FUNDS.—If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Director under subsection (d) and a Major System Congressional Report containing the information described in subsection (f) is not submitted to Congress under subsection (e)(1), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Director under subsection (d) and the Major System Congressional Report containing the information described in subsection (f) and section 506F(b)(3) and the certification required by section 506F(b)(2) are not submitted to Congress under subsection (e)(2), funds appropriated for construction, research, development, test, evaluation, and procurement may not be obligated for a major contract under the major system. The prohibition on the obligation of funds for a major system shall cease to apply at the end of the 45-day period that begins on the date—

Time period.

“(1) on which Congress receives the Major System Congressional Report under subsection (e)(1) with respect to that major system, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

“(2) on which Congress receives both the Major System Congressional Report under subsection (e)(2) and the certification of the Director under section 506F(b)(2) with respect

to that major system, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

Deadline.

“(h) TREATMENT OF COST INCREASES PRIOR TO ENACTMENT OF INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2010.—(1) Not later than 180 days after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010, the Director—

“(A) shall, for each major system, determine if the total acquisition cost of such major system increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date of enactment;

“(B) shall establish for each major system for which the total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date of enactment a revised current Baseline Estimate based upon an updated cost estimate;

“(C) may, for a major system not described in subparagraph (B), establish a revised current Baseline Estimate based upon an updated cost estimate; and

“(D) shall submit to Congress a report describing—

“(i) each determination made under subparagraph (A);

“(ii) each revised current Baseline Estimate established for a major system under subparagraph (B); and

“(iii) each revised current Baseline Estimate established for a major system under subparagraph (C), including the percentage increase of the total acquisition cost of such major system that occurred prior to the date of the enactment of such Act.

“(2) The revised current Baseline Estimate established for a major system under subparagraph (B) or (C) of paragraph (1) shall be the 2010 adjusted total acquisition cost for the major system and may include the estimated cost of conducting any vulnerability assessments for such major system required under section 506C.

“(i) REQUIREMENTS TO USE BASE YEAR DOLLARS.—Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars.

“(j) FORM OF REPORT.—Any report required to be submitted under this section may be submitted in a classified form.”.

50 USC 415a–7
note.

(2) APPLICABILITY DATE OF QUARTERLY REPORTS.—The first report required to be submitted under subsection (b) of section 506E of the National Security Act of 1947, as added by paragraph (1) of this subsection, shall be submitted with respect to the first fiscal quarter that begins on a date that is not less than 180 days after the date of the enactment of this Act.

(3) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 322 of this Act, is further amended by inserting after the item relating to section 506D, as added by section 322(a)(2), the following new item:

“Sec. 506E. Reports on the acquisition of major systems.”.

50 USC 415a–7
note.

(b) MAJOR DEFENSE ACQUISITION PROGRAMS.—Nothing in this section, section 324, or an amendment made by this section or section 324, shall be construed to exempt an acquisition program

of the Department of Defense from the requirements of chapter 144 of title 10, United States Code or Department of Defense Directive 5000, to the extent that such requirements are otherwise applicable.

SEC. 324. CRITICAL COST GROWTH IN MAJOR SYSTEMS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 323 of this Act, is further amended by inserting after section 506E, as added by section 323(a), the following new section:

“CRITICAL COST GROWTH IN MAJOR SYSTEMS

“SEC. 506F. (a) REASSESSMENT OF MAJOR SYSTEM.—If the Director of National Intelligence determines under section 506E(d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the critical cost growth threshold for the major system, the Director shall—

“(1) determine the root cause or causes of the critical cost growth, in accordance with applicable statutory requirements, policies, procedures, and guidance; and

“(2) carry out an assessment of—

“(A) the projected cost of completing the major system if current requirements are not modified;

“(B) the projected cost of completing the major system based on reasonable modification of such requirements;

“(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

“(D) the need to reduce funding for other systems due to the growth in cost of the major system.

“(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major system, the Director shall terminate the major system unless the Director submits to Congress a Major System Congressional Report containing a certification in accordance with paragraph (2) and the information described in paragraph (3). The Director shall submit such Major System Congressional Report and certification not later than 90 days after the date the Director receives the relevant major system cost report under subsection (b) or (c) of section 506E.

“(2) A certification described by this paragraph with respect to a major system is a written certification that—

“(A) the continuation of the major system is essential to the national security;

“(B) there are no alternatives to the major system that will provide acceptable capability to meet the intelligence requirement at less cost;

“(C) the new estimates of the total acquisition cost have been determined by the Director to be reasonable;

“(D) the major system is a higher priority than other systems whose funding must be reduced to accommodate the growth in cost of the major system; and

“(E) the management structure for the major system is adequate to manage and control the total acquisition cost.

“(3) A Major System Congressional Report accompanying a written certification under paragraph (2) shall include, in addition to the requirements of section 506E(e), the root cause analysis and assessment carried out pursuant to subsection (a), the basis

50 USC 415a–8.

Reports.
Certification.

for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), and a description of all funding changes made as a result of the growth in the cost of the major system, including reductions made in funding for other systems to accommodate such cost growth, together with supporting documentation.

“(c) ACTIONS IF MAJOR SYSTEM NOT TERMINATED.—If the Director elects not to terminate a major system pursuant to subsection (b), the Director shall—

“(1) restructure the major system in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the system has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

“(2) rescind the most recent Milestone approval for the major system;

“(3) require a new Milestone approval for the major system before taking any action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the system, except to the extent determined necessary by the Milestone Decision Authority, on a nondelegable basis, to ensure that the system may be restructured as intended by the Director without unnecessarily wasting resources;

“(4) establish a revised current Baseline Estimate for the major system based upon an updated cost estimate; and

“(5) conduct regular reviews of the major system.

Reports.

“(d) ACTIONS IF MAJOR SYSTEM TERMINATED.—If a major system is terminated pursuant to subsection (b), the Director shall submit to Congress a written report setting forth—

“(1) an explanation of the reasons for terminating the major system;

“(2) the alternatives considered to address any problems in the major system; and

“(3) the course the Director plans to pursue to meet any intelligence requirements otherwise intended to be met by the major system.

“(e) FORM OF REPORT.—Any report or certification required to be submitted under this section may be submitted in a classified form.

“(f) WAIVER.—(1) The Director may waive the requirements of subsections (d)(2), (e), and (g) of section 506E and subsections (a)(2), (b), (c), and (d) of this section with respect to a major system if the Director determines that at least 90 percent of the amount of the current Baseline Estimate for the major system has been expended.

Notification.

“(2)(A) If the Director grants a waiver under paragraph (1) with respect to a major system, the Director shall submit to the congressional intelligence committees written notice of the waiver that includes—

“(i) the information described in section 506E(f); and

“(ii) if the current total acquisition cost of the major system has increased by a percentage equal to or greater than the critical cost growth threshold—

“(I) a determination of the root cause or causes of the critical cost growth, as described in subsection (a)(1); and

“(II) a certification that includes the elements described in subparagraphs (A), (B), and (E) of subsection (b)(2). Certification.

“(B) The Director shall submit the written notice required by subparagraph (A) not later than 90 days after the date that the Director receives a major system cost report under subsection (b) or (c) of section 506E that indicates that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold. Deadline.

“(g) DEFINITIONS.—In this section, the terms ‘cost estimate’, ‘critical cost growth threshold’, ‘current Baseline Estimate’, ‘major system’, and ‘total acquisition cost’ have the meaning given those terms in section 506E(a).”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 323 of this Act, is further amended by inserting after the items relating to section 506E, as added by section 323(a)(3), the following new item:

“Sec. 506F. Critical cost growth in major systems.”.

SEC. 325. FUTURE BUDGET PROJECTIONS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 324 of this Act, is further amended by inserting after section 506F, as added by section 324(a), the following new section:

“FUTURE BUDGET PROJECTIONS

“SEC. 506G. (a) FUTURE YEAR INTELLIGENCE PLANS.—(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Future Year Intelligence Plan, as described in paragraph (2), for— 50 USC 415a–9.

“(A) each expenditure center in the National Intelligence Program; and

“(B) each major system in the National Intelligence Program.

“(2)(A) A Future Year Intelligence Plan submitted under this subsection shall include the year-by-year proposed funding for each center or system referred to in subparagraph (A) or (B) of paragraph (1), for the budget year for which the Plan is submitted and not less than the 4 subsequent fiscal years.

“(B) A Future Year Intelligence Plan submitted under subparagraph (B) of paragraph (1) for a major system shall include—

“(i) the estimated total life-cycle cost of such major system; and

“(ii) major milestones that have significant resource implications for such major system.

“(b) LONG-TERM BUDGET PROJECTIONS.—(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Long-term Budget Projection for each element of the intelligence community funded under the National Intelligence Program acquiring a major system that includes the budget for such element for the 5-year period that begins on the day after the end of the last fiscal year for which year-by-year Time period.

proposed funding is included in a Future Year Intelligence Plan for such major system in accordance with subsection (a)(2)(A).

“(2) A Long-term Budget Projection submitted under paragraph (1) shall include—

“(A) projections for the appropriate element of the intelligence community for—

“(i) pay and benefits of officers and employees of such element;

“(ii) other operating and support costs and minor acquisitions of such element;

“(iii) research and technology required by such element;

“(iv) current and planned major system acquisitions for such element;

“(v) any future major system acquisitions for such element; and

“(vi) any additional funding projections that the Director of National Intelligence considers appropriate;

“(B) a budget projection based on effective cost and schedule execution of current or planned major system acquisitions and application of Office of Management and Budget inflation estimates to future major system acquisitions;

“(C) any additional assumptions and projections that the Director of National Intelligence considers appropriate; and

“(D) a description of whether, and to what extent, the total projection for each year exceeds the level that would result from applying the most recent Office of Management and Budget inflation estimate to the budget of that element of the intelligence community.

“(c) SUBMISSION TO CONGRESS.—The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall submit to the congressional intelligence committees each Future Year Intelligence Plan or Long-term Budget Projection required under subsection (a) or (b) for a fiscal year at the time that the President submits to Congress the budget for such fiscal year pursuant section 1105 of title 31, United States Code.

“(d) MAJOR SYSTEM AFFORDABILITY REPORT.—(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall prepare a report on the acquisition of a major system funded under the National Intelligence Program before the time that the President submits to Congress the budget for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

“(2) The report on such major system shall include an assessment of whether, and to what extent, such acquisition, if developed, procured, and operated, is projected to cause an increase in the most recent Future Year Intelligence Plan and Long-term Budget Projection submitted under section 506G for an element of the intelligence community.

“(3) The Director of National Intelligence shall update the report whenever an independent cost estimate must be updated pursuant to section 506A(a)(4).

“(4) The Director of National Intelligence shall submit each report required by this subsection at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, United States Code.

“(e) DEFINITIONS.—In this section:

“(1) BUDGET YEAR.—The term ‘budget year’ means the next fiscal year for which the President is required to submit to Congress a budget pursuant to section 1105 of title 31, United States Code.

“(2) INDEPENDENT COST ESTIMATE; MAJOR SYSTEM.—The terms ‘independent cost estimate’ and ‘major system’ have the meaning given those terms in section 506A(e).”.

(b) APPLICABILITY DATE.—The first Future Year Intelligence Plan and Long-term Budget Projection required to be submitted under subsection (a) and (b) of section 506G of the National Security Act of 1947, as added by subsection (a), shall be submitted to the congressional intelligence committees at the time that the President submits to Congress the budget for fiscal year 2012 pursuant to section 1105 of title 31, United States Code.

50 USC 415a–9
note.

(c) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 324 of this Act, is further amended by inserting after the items relating to section 506F, as added by section 324(b), the following new item:

“Sec. 506G. Future budget projections.”.

(2) REPEAL OF DUPLICATIVE PROVISION.—Section 8104 of the Department of Defense Appropriations Act, 2010 (50 U.S.C. 415a–3; Public Law 111–118; 123 Stat. 3451) is repealed.

SEC. 326. NATIONAL INTELLIGENCE PROGRAM FUNDED ACQUISITIONS.

Subsection (n) of section 102A of the National Security Act of 1947 (50 U.S.C. 403–1) is amended by adding at the end the following new paragraph:

“(4)(A) In addition to the authority referred to in paragraph (1), the Director of National Intelligence may authorize the head of an element of the intelligence community to exercise an acquisition authority referred to in section 3 or 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c and 403j(a)) for an acquisition by such element that is more than 50 percent funded under the National Intelligence Program.

“(B) The head of an element of the intelligence community may not exercise an authority referred to in subparagraph (A) until—

“(i) the head of such element (without delegation) submits to the Director of National Intelligence a written request that includes—

“(I) a description of such authority requested to be exercised;

“(II) an explanation of the need for such authority, including an explanation of the reasons that other authorities are insufficient; and

“(III) a certification that the mission of such element would be—

“(aa) impaired if such authority is not exercised;

or

“(bb) significantly and measurably enhanced if such authority is exercised; and

“(ii) the Director of National Intelligence issues a written authorization that includes—

“(I) a description of the authority referred to in subparagraph (A) that is authorized to be exercised; and

“(II) a justification to support the exercise of such authority.

“(C) A request and authorization to exercise an authority referred to in subparagraph (A) may be made with respect to an individual acquisition or with respect to a specific class of acquisitions described in the request and authorization referred to in subparagraph (B).

“(D)(i) A request from a head of an element of the intelligence community located within one of the departments described in clause (ii) to exercise an authority referred to in subparagraph (A) shall be submitted to the Director of National Intelligence in accordance with any procedures established by the head of such department.

“(ii) The departments described in this clause are the Department of Defense, the Department of Energy, the Department of Homeland Security, the Department of Justice, the Department of State, and the Department of the Treasury.

“(E)(i) The head of an element of the intelligence community may not be authorized to utilize an authority referred to in subparagraph (A) for a class of acquisitions for a period of more than 3 years, except that the Director of National Intelligence (without delegation) may authorize the use of such an authority for not more than 6 years.

“(ii) Each authorization to utilize an authority referred to in subparagraph (A) may be extended in accordance with the requirements of subparagraph (B) for successive periods of not more than 3 years, except that the Director of National Intelligence (without delegation) may authorize an extension period of not more than 6 years.

“(F) Subject to clauses (i) and (ii) of subparagraph (E), the Director of National Intelligence may only delegate the authority of the Director under subparagraphs (A) through (E) to the Principal Deputy Director of National Intelligence or a Deputy Director of National Intelligence.

Notifications.

“(G) The Director of National Intelligence shall submit—

“(i) to the congressional intelligence committees a notification of an authorization to exercise an authority referred to in subparagraph (A) or an extension of such authorization that includes the written authorization referred to in subparagraph (B)(ii); and

“(ii) to the Director of the Office of Management and Budget a notification of an authorization to exercise an authority referred to in subparagraph (A) for an acquisition or class of acquisitions that will exceed \$50,000,000 annually.

Time period.

“(H) Requests and authorizations to exercise an authority referred to in subparagraph (A) shall remain available within the Office of the Director of National Intelligence for a period of at least 6 years following the date of such request or authorization.

“(I) Nothing in this paragraph may be construed to alter or otherwise limit the authority of the Central Intelligence Agency to independently exercise an authority under section 3 or 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c and 403j(a)).”.

Subtitle D—Congressional Oversight, Plans, and Reports

SEC. 331. NOTIFICATION PROCEDURES.

(a) PROCEDURES.—Section 501(c) of the National Security Act of 1947 (50 U.S.C. 413(c)) is amended by striking “such procedures” and inserting “such written procedures”.

(b) INTELLIGENCE ACTIVITIES.—Section 502(a)(2) of such Act (50 U.S.C. 413a(a)(2)) is amended by inserting “(including the legal basis under which the intelligence activity is being or was conducted)” after “concerning intelligence activities”.

(c) COVERT ACTIONS.—Section 503 of such Act (50 U.S.C. 413b) is amended—

(1) in subsection (b)(2), by inserting “(including the legal basis under which the covert action is being or was conducted)” after “concerning covert actions”;

(2) in subsection (c)—

(A) in paragraph (1), by inserting “in writing” after “be reported”;

(B) in paragraph (4), by striking “committee. When” and inserting the following: “committee.”

“(5)(A) When”; and

(C) in paragraph (5), as designated by subparagraph (B)—

(i) in subparagraph (A), as so designated—

(I) by inserting “, or a notification provided under subsection (d)(1),” after “access to a finding”;

(II) by inserting “written” before “statement”;

and

(ii) by adding at the end the following new subparagraph:

“(B) Not later than 180 days after a statement of reasons is submitted in accordance with subparagraph (A) or this subparagraph, the President shall ensure that—

Deadline.
President.

“(i) all members of the congressional intelligence committees are provided access to the finding or notification; or

“(ii) a statement of reasons that it is essential to continue to limit access to such finding or such notification to meet extraordinary circumstances affecting vital interests of the United States is submitted to the Members of Congress specified in paragraph (2).”;

(3) in subsection (d)—

(A) by striking “(d) The President” and inserting “(d)(1) The President”;

(B) in paragraph (1), as designated by subparagraph (A), by inserting “in writing” after “notified”; and

(C) by adding at the end the following new paragraph:

“(2) In determining whether an activity constitutes a significant undertaking for purposes of paragraph (1), the President shall consider whether the activity—

President.

“(A) involves significant risk of loss of life;

“(B) requires an expansion of existing authorities, including authorities relating to research, development, or operations;

“(C) results in the expenditure of significant funds or other resources;

“(D) requires notification under section 504;

“(E) gives rise to a significant risk of disclosing intelligence sources or methods; or

“(F) presents a reasonably foreseeable risk of serious damage to the diplomatic relations of the United States if such activity were disclosed without authorization.”; and

President.
Notification.

(4) by adding at the end the following new subsection:
“(g)(1) In any case where access to a finding reported under subsection (c) or notification provided under subsection (d)(1) is not made available to all members of a congressional intelligence committee in accordance with subsection (c)(2), the President shall notify all members of such committee that such finding or such notification has been provided only to the members specified in subsection (c)(2).

“(2) In any case where access to a finding reported under subsection (c) or notification provided under subsection (d)(1) is not made available to all members of a congressional intelligence committee in accordance with subsection (c)(2), the President shall provide to all members of such committee a general description regarding the finding or notification, as applicable, consistent with the reasons for not yet fully informing all members of such committee.

Records.

“(3) The President shall maintain—

“(A) a record of the members of Congress to whom a finding is reported under subsection (c) or notification is provided under subsection (d)(1) and the date on which each member of Congress receives such finding or notification; and

“(B) each written statement provided under subsection (c)(5).”.

SEC. 332. CERTIFICATION OF COMPLIANCE WITH OVERSIGHT REQUIREMENTS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 325 of this Act, is further amended by adding at the end the following new section:

“CERTIFICATION OF COMPLIANCE WITH OVERSIGHT REQUIREMENTS

Deadline.
50 USC 415d.

“SEC. 508. The head of each element of the intelligence community shall annually submit to the congressional intelligence committees—

“(1) a certification that, to the best of the knowledge of the head of such element—

“(A) the head of such element is in full compliance with the requirements of this title; and

“(B) any information required to be submitted by the head of such element under this Act before the date of the submission of such certification has been properly submitted; or

“(2) if the head of such element is unable to submit a certification under paragraph (1), a statement—

“(A) of the reasons the head of such element is unable to submit such a certification;

“(B) describing any information required to be submitted by the head of such element under this Act before

the date of the submission of such statement that has not been properly submitted; and

“(C) that the head of such element will submit such information as soon as possible after the submission of such statement.”.

(b) **APPLICABILITY DATE.**—The first certification or statement required to be submitted by the head of each element of the intelligence community under section 508 of the National Security Act of 1947, as added by subsection (a), shall be submitted not later than 90 days after the date of the enactment of this Act.

50 USC 415d
note.

(c) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in the first section of the National Security Act of 1947, as amended by section 325 of this Act, is further amended by inserting after the item related to section 507 the following new item:

“Sec. 508. Certification of compliance with oversight requirements.”.

SEC. 333. REPORT ON DETENTION AND INTERROGATION ACTIVITIES.

(a) **REQUIREMENT FOR REPORT.**—Not later than December 1, 2010, the Director of National Intelligence, in coordination with the Attorney General and the Secretary of Defense, shall submit to the congressional intelligence committees a comprehensive report containing—

(1) the policies and procedures of the United States Government governing participation by an element of the intelligence community in the interrogation of individuals detained by the United States who are suspected of international terrorism with the objective, in whole or in part, of acquiring national intelligence, including such policies and procedures of each appropriate element of the intelligence community or inter-agency body established to carry out interrogations;

(2) the policies and procedures relating to any detention by the Central Intelligence Agency of such individuals in accordance with Executive Order 13491;

(3) the legal basis for the policies and procedures referred to in paragraphs (1) and (2);

(4) the training and research to support the policies and procedures referred to in paragraphs (1) and (2); and

(5) any action that has been taken to implement section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1).

(b) **OTHER SUBMISSION OF REPORT.**—

(1) **CONGRESSIONAL ARMED SERVICES COMMITTEES.**—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Defense, the Director of National Intelligence, in consultation with the Secretary of Defense, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

(2) **CONGRESSIONAL JUDICIARY COMMITTEES.**—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Justice,

the Director of National Intelligence, in consultation with the Attorney General, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

(c) FORM OF SUBMISSIONS.—Any submission required under this section may be submitted in classified form.

SEC. 334. SUMMARY OF INTELLIGENCE RELATING TO TERRORIST RECIDIVISM OF DETAINEES HELD AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

Public
information.

Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Director of the Central Intelligence Agency and the Director of the Defense Intelligence Agency, shall make publicly available an unclassified summary of—

(1) intelligence relating to recidivism of detainees currently or formerly held at the Naval Detention Facility at Guantanamo Bay, Cuba, by the Department of Defense; and

(2) an assessment of the likelihood that such detainees will engage in terrorism or communicate with persons in terrorist organizations.

50 USC 404i
note.

SEC. 335. REPORT AND STRATEGIC PLAN ON BIOLOGICAL WEAPONS.

(a) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report on—

(1) the intelligence collection efforts of the United States dedicated to assessing the threat from biological weapons from state, nonstate, or rogue actors, either foreign or domestic; and

(2) efforts to protect the biodefense knowledge and infrastructure of the United States.

(b) CONTENT.—The report required by subsection (a) shall include—

(1) an assessment of the intelligence collection efforts of the United States dedicated to detecting the development or use of biological weapons by state, nonstate, or rogue actors, either foreign or domestic;

(2) information on fiscal, human, technical, open-source, and other intelligence collection resources of the United States dedicated for use to detect or protect against the threat of biological weapons;

(3) an assessment of any problems that may reduce the overall effectiveness of United States intelligence collection and analysis to identify and protect biological weapons targets, including—

(A) intelligence collection gaps or inefficiencies;

(B) inadequate information sharing practices; or

(C) inadequate cooperation among departments or agencies of the United States;

(4) a strategic plan prepared by the Director of National Intelligence, in coordination with the Attorney General, the Secretary of Defense, and the Secretary of Homeland Security, that provides for actions for the appropriate elements of the intelligence community to close important intelligence gaps related to biological weapons;

(5) a description of appropriate goals, schedules, milestones, or metrics to measure the long-term effectiveness of actions implemented to carry out the plan described in paragraph (4); and

(6) any long-term resource and human capital issues related to the collection of intelligence regarding biological weapons, including any recommendations to address shortfalls of experienced and qualified staff possessing relevant scientific, language, and technical skills.

(c) IMPLEMENTATION OF STRATEGIC PLAN.—Not later than 30 days after the date on which the Director of National Intelligence submits the report required by subsection (a), the Director shall begin implementation of the strategic plan referred to in subsection (b)(4).

Deadline.

SEC. 336. CYBERSECURITY OVERSIGHT.

6 USC 121 note.

(a) NOTIFICATION OF CYBERSECURITY PROGRAMS.—

(1) REQUIREMENT FOR NOTIFICATION.—

Deadlines.
President.

(A) EXISTING PROGRAMS.—Not later than 30 days after the date of the enactment of this Act, the President shall submit to Congress a notification for each cybersecurity program in operation on such date that includes the documentation referred to in subparagraphs (A) through (F) of paragraph (2).

(B) NEW PROGRAMS.—Not later than 30 days after the date of the commencement of operations of a new cybersecurity program, the President shall submit to Congress a notification of such commencement that includes the documentation referred to in subparagraphs (A) through (F) of paragraph (2).

(2) DOCUMENTATION.—A notification required by paragraph

(1) for a cybersecurity program shall include—

(A) the legal basis for the cybersecurity program;

(B) the certification, if any, made pursuant to section 2511(2)(a)(ii)(B) of title 18, United States Code, or other statutory certification of legality for the cybersecurity program;

Certification.

(C) the concept for the operation of the cybersecurity program that is approved by the head of the appropriate department or agency of the United States;

(D) the assessment, if any, of the privacy impact of the cybersecurity program prepared by the privacy or civil liberties protection officer or comparable officer of such department or agency;

(E) the plan, if any, for independent audit or review of the cybersecurity program to be carried out by the head of such department or agency, in conjunction with the appropriate inspector general; and

(F) recommendations, if any, for legislation to improve the capabilities of the United States Government to protect the cybersecurity of the United States.

(b) PROGRAM REPORTS.—

(1) REQUIREMENT FOR REPORTS.—The head of a department or agency of the United States with responsibility for a cybersecurity program for which a notification was submitted under subsection (a), in consultation with the inspector general for that department or agency, shall submit to Congress and the President a report on such cybersecurity program that includes—

(A) the results of any audit or review of the cybersecurity program carried out under the plan referred to in subsection (a)(2)(E), if any; and

(B) an assessment of whether the implementation of the cybersecurity program—

(i) is in compliance with—

(I) the legal basis referred to in subsection (a)(2)(A); and

(II) an assessment referred to in subsection (a)(2)(D), if any;

(ii) is adequately described by the concept of operation referred to in subsection (a)(2)(C); and

(iii) includes an adequate independent audit or review system and whether improvements to such independent audit or review system are necessary.

(2) SCHEDULE FOR SUBMISSION OF REPORTS.—

(A) EXISTING PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the head of a department or agency of the United States with responsibility for a cybersecurity program for which a notification is required to be submitted under subsection (a)(1)(A) shall submit a report required under paragraph (1).

(B) NEW PROGRAMS.—Not later than 120 days after the date on which a certification is submitted under subsection (a)(1)(B), and annually thereafter, the head of a department or agency of the United States with responsibility for the cybersecurity program for which such certification is submitted shall submit a report required under paragraph (1).

(3) COOPERATION AND COORDINATION.—

(A) COOPERATION.—The head of each department or agency of the United States required to submit a report under paragraph (1) for a particular cybersecurity program, and the inspector general of each such department or agency, shall, to the extent practicable, work in conjunction with any other such head or inspector general required to submit such a report for such cybersecurity program.

(B) COORDINATION.—The heads of all of the departments and agencies of the United States required to submit a report under paragraph (1) for a particular cybersecurity program shall designate one such head to coordinate the conduct of the reports on such program.

Deadline.

(c) INFORMATION SHARING REPORT.—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security and the Inspector General of the Intelligence Community shall jointly submit to Congress and the President a report on the status of the sharing of cyber-threat information, including—

(1) a description of how cyber-threat intelligence information, including classified information, is shared among the agencies and departments of the United States and with persons responsible for critical infrastructure;

(2) a description of the mechanisms by which classified cyber-threat information is distributed;

(3) an assessment of the effectiveness of cyber-threat information sharing and distribution; and

(4) any other matters identified by either Inspector General that would help to fully inform Congress or the President regarding the effectiveness and legality of cybersecurity programs.

(d) PERSONNEL DETAILS.—

(1) AUTHORITY TO DETAIL.—Notwithstanding any other provision of law, the head of an element of the intelligence community that is funded through the National Intelligence Program may detail an officer or employee of such element to the National Cyber Investigative Joint Task Force or to the Department of Homeland Security to assist the Task Force or the Department with cybersecurity, as jointly agreed by the head of such element and the Task Force or the Department.

(2) BASIS FOR DETAIL.—A personnel detail made under paragraph (1) may be made—

(A) for a period of not more than three years; and

(B) on a reimbursable or nonreimbursable basis.

(e) ADDITIONAL PLAN.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a plan for recruiting, retaining, and training a highly-qualified cybersecurity intelligence community workforce to secure the networks of the intelligence community. Such plan shall include—

Deadline.

(1) an assessment of the capabilities of the current workforce;

(2) an examination of issues of recruiting, retention, and the professional development of such workforce, including the possibility of providing retention bonuses or other forms of compensation;

(3) an assessment of the benefits of outreach and training with both private industry and academic institutions with respect to such workforce;

(4) an assessment of the impact of the establishment of the Department of Defense Cyber Command on such workforce;

(5) an examination of best practices for making the intelligence community workforce aware of cybersecurity best practices and principles; and

(6) strategies for addressing such other matters as the Director of National Intelligence considers necessary to the cybersecurity of the intelligence community.

(f) REPORT ON GUIDELINES AND LEGISLATION TO IMPROVE CYBERSECURITY OF THE UNITED STATES.—

(1) INITIAL.—Not later than one year after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Attorney General, the Director of the National Security Agency, the White House Cybersecurity Coordinator, and any other officials the Director of National Intelligence considers appropriate, shall submit to Congress

a report containing guidelines or legislative recommendations, if appropriate, to improve the capabilities of the intelligence community and law enforcement agencies to protect the cybersecurity of the United States. Such report shall include guidelines or legislative recommendations on—

(A) improving the ability of the intelligence community to detect hostile actions and attribute attacks to specific parties;

(B) the need for data retention requirements to assist the intelligence community and law enforcement agencies;

(C) improving the ability of the intelligence community to anticipate nontraditional targets of foreign intelligence services; and

(D) the adequacy of existing criminal statutes to successfully deter cyber attacks, including statutes criminalizing the facilitation of criminal acts, the scope of laws for which a cyber crime constitutes a predicate offense, trespassing statutes, data breach notification requirements, and victim restitution statutes.

Deadline.

(2) SUBSEQUENT.—Not later than one year after the date on which the initial report is submitted under paragraph (1), and annually thereafter for two years, the Director of National Intelligence, in consultation with the Attorney General, the Director of the National Security Agency, the White House Cybersecurity Coordinator, and any other officials the Director of National Intelligence considers appropriate, shall submit to Congress an update of the report required under paragraph (1).

(g) SUNSET.—The requirements and authorities of subsections (a) through (e) shall terminate on December 31, 2013.

(h) DEFINITIONS.—In this section:

(1) CYBERSECURITY PROGRAM.—The term “cybersecurity program” means a class or collection of similar cybersecurity operations of a department or agency of the United States that involves personally identifiable data that is—

(A) screened by a cybersecurity system outside of the department or agency of the United States that was the intended recipient of the personally identifiable data;

(B) transferred, for the purpose of cybersecurity, outside the department or agency of the United States that was the intended recipient of the personally identifiable data; or

(C) transferred, for the purpose of cybersecurity, to an element of the intelligence community.

(2) NATIONAL CYBER INVESTIGATIVE JOINT TASK FORCE.—The term “National Cyber Investigative Joint Task Force” means the multiagency cyber investigation coordination organization overseen by the Director of the Federal Bureau of Investigation known as the National Cyber Investigative Joint Task Force that coordinates, integrates, and provides pertinent information related to cybersecurity investigations.

(3) CRITICAL INFRASTRUCTURE.—The term “critical infrastructure” has the meaning given that term in section 1016 of the USA PATRIOT Act (42 U.S.C. 5195c).

SEC. 337. REPORT ON FOREIGN LANGUAGE PROFICIENCY IN THE INTELLIGENCE COMMUNITY.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, and biennially thereafter for four years, the Director of National Intelligence shall submit to the congressional intelligence committees and the Committees on Armed Services of the House of Representatives and the Senate a report on the proficiency in foreign languages and, as appropriate, in foreign dialects, of each element of the intelligence community, including—

(1) the number of positions authorized for such element that require foreign language proficiency and a description of the level of proficiency required;

(2) an estimate of the number of such positions that such element will require during the five-year period beginning on the date of the submission of the report;

(3) the number of positions authorized for such element that require foreign language proficiency that are filled by—

(A) military personnel; and

(B) civilian personnel;

(4) the number of applicants for positions in such element in the preceding fiscal year that indicated foreign language proficiency, including the foreign language indicated and the proficiency level;

(5) the number of persons hired by such element with foreign language proficiency, including the foreign language and a description of the proficiency level of such persons;

(6) the number of personnel of such element currently attending foreign language training, including the provider of such training;

(7) a description of the efforts of such element to recruit, hire, train, and retain personnel that are proficient in a foreign language;

(8) an assessment of methods and models for basic, advanced, and intensive foreign language training utilized by such element;

(9) for each foreign language and, as appropriate, dialect of a foreign language—

(A) the number of positions of such element that require proficiency in the foreign language or dialect;

(B) the number of personnel of such element that are serving in a position that requires proficiency in the foreign language or dialect to perform the primary duty of the position;

(C) the number of personnel of such element that are serving in a position that does not require proficiency in the foreign language or dialect to perform the primary duty of the position;

(D) the number of personnel of such element rated at each level of proficiency of the Interagency Language Roundtable;

(E) whether the number of personnel at each level of proficiency of the Interagency Language Roundtable meets the requirements of such element;

(F) the number of personnel serving or hired to serve as linguists for such element that are not qualified as linguists under the standards of the Interagency Language Roundtable;

(G) the number of personnel hired to serve as linguists for such element during the preceding calendar year;

(H) the number of personnel serving as linguists that discontinued serving such element during the preceding calendar year;

(I) the percentage of work requiring linguistic skills that is fulfilled by a foreign country, international organization, or other foreign entity; and

(J) the percentage of work requiring linguistic skills that is fulfilled by contractors;

(10) an assessment of the foreign language capacity and capabilities of the intelligence community as a whole;

(11) an identification of any critical gaps in foreign language proficiency with respect to such element and recommendations for eliminating such gaps;

(12) recommendations, if any, for eliminating required reports relating to foreign-language proficiency that the Director of National Intelligence considers outdated or no longer relevant; and

(13) an assessment of the feasibility of employing foreign nationals lawfully present in the United States who have previously worked as translators or interpreters for the Armed Forces or another department or agency of the United States Government in Iraq or Afghanistan to meet the critical language needs of such element.

(b) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 338. REPORT ON PLANS TO INCREASE DIVERSITY WITHIN THE INTELLIGENCE COMMUNITY.

(a) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the head of each element of the intelligence community, shall submit to the congressional intelligence committees a report on the plans of each such element to increase diversity within the intelligence community.

(b) CONTENT.—The report required by subsection (a) shall include specific implementation plans to increase diversity within each element of the intelligence community, including—

(1) specific implementation plans for each such element designed to achieve the goals articulated in the strategic plan of the Director of National Intelligence on equal employment opportunity and diversity;

(2) specific plans and initiatives for each such element to increase recruiting and hiring of diverse candidates;

(3) specific plans and initiatives for each such element to improve retention of diverse Federal employees at the junior, midgrade, senior, and management levels;

(4) a description of specific diversity awareness training and education programs for senior officials and managers of each such element; and

(5) a description of performance metrics to measure the success of carrying out the plans, initiatives, and programs described in paragraphs (1) through (4).

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 339. REPORT ON INTELLIGENCE COMMUNITY CONTRACTORS.

(a) **REQUIREMENT FOR REPORT.**—Not later than February 1, 2011, the Director of National Intelligence shall submit to the congressional intelligence committees and the Committees on Armed Services of the House of Representatives and the Senate a report describing the use of personal services contracts across the intelligence community, the impact of the use of such contracts on the intelligence community workforce, plans for conversion of contractor employment into United States Government employment, and the accountability mechanisms that govern the performance of such personal services contracts.

(b) **CONTENT.**—

(1) **IN GENERAL.**—The report submitted under subsection (a) shall include—

(A) a description of any relevant regulations or guidance issued by the Director of National Intelligence or the head of an element of the intelligence community and in effect as of February 1, 2011, relating to minimum standards required regarding the hiring, training, security clearance, and assignment of contract personnel and how those standards may differ from those for United States Government employees performing substantially similar functions;

(B) an identification of contracts in effect during the preceding fiscal year under which the contractor is performing substantially similar functions to a United States Government employee;

(C) an assessment of costs incurred or savings achieved during the preceding fiscal year by awarding contracts for the performance of such functions referred to in subparagraph (B) instead of using full-time employees of the elements of the intelligence community to perform such functions;

(D) an assessment of the appropriateness of using contractors to perform the activities described in paragraph (2);

(E) an estimate of the number of contracts, and the number of personnel working under such contracts, related to the performance of activities described in paragraph (2);

(F) a comparison of the compensation of contract employees and United States Government employees performing substantially similar functions during the preceding fiscal year;

(G) an analysis of the attrition of United States Government employees for contractor positions that provide substantially similar functions during the preceding fiscal year;

(H) a description of positions that have been or will be converted from contractor employment to United States Government employment during fiscal years 2011 and 2012;

(I) an analysis of the oversight and accountability mechanisms applicable to personal services contracts awarded for intelligence activities by each element of the intelligence community during fiscal years 2009 and 2010;

(J) an analysis of procedures in use in the intelligence community as of February 1, 2011, for conducting oversight of contractors to ensure identification and prosecution of criminal violations, financial waste, fraud, or other abuses committed by contractors or contract personnel; and

(K) an identification of best practices for oversight and accountability mechanisms applicable to personal services contracts.

(2) **ACTIVITIES.**—Activities described in this paragraph are the following:

(A) Intelligence collection.

(B) Intelligence analysis.

(C) Covert actions, including rendition, detention, and interrogation activities.

SEC. 340. STUDY ON ELECTRONIC WASTE DESTRUCTION PRACTICES OF THE INTELLIGENCE COMMUNITY.

(a) **STUDY.**—The Inspector General of the Intelligence Community shall conduct a study on the electronic waste destruction practices of the intelligence community. Such study shall assess—

(1) the security of the electronic waste disposal practices of the intelligence community, including the potential for counterintelligence exploitation of destroyed, discarded, or recycled materials;

(2) the environmental impact of such disposal practices; and

(3) methods to improve the security and environmental impact of such disposal practices, including steps to prevent the forensic exploitation of electronic waste.

(b) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a report containing the results of the study conducted under subsection (a).

SEC. 341. REVIEW OF RECORDS RELATING TO POTENTIAL HEALTH RISKS AMONG DESERT STORM VETERANS.

(a) **REVIEW.**—The Director of the Central Intelligence Agency shall conduct a classification review of the records of the Agency that are relevant to the known or potential health effects suffered by veterans of Operation Desert Storm as described in the November 2008, report by the Department of Veterans Affairs Research Advisory Committee on Gulf War Veterans' Illnesses.

(b) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall submit to Congress the results of the classification review conducted under subsection (a), including the total number of records of the Agency that are relevant.

(c) **FORM.**—The report required under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

SEC. 342. REVIEW OF FEDERAL BUREAU OF INVESTIGATION EXERCISE OF ENFORCEMENT JURISDICTION IN FOREIGN NATIONS.

Not later than 120 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation, in consultation with the Secretary of State, shall submit to Congress a review of constraints under international law and the laws of foreign nations to the assertion of enforcement jurisdiction with

Deadline.

respect to criminal investigations of terrorism offenses under the laws of the United States conducted by agents of the Federal Bureau of Investigation in foreign nations and using funds made available for the National Intelligence Program, including constraints identified in section 432 of the Restatement (Third) of the Foreign Relations Law of the United States.

SEC. 343. PUBLIC RELEASE OF INFORMATION ON PROCEDURES USED IN NARCOTICS AIRBRIDGE DENIAL PROGRAM IN PERU.

Not later than 30 days after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall make publicly available an unclassified version of the report of the Inspector General of the Central Intelligence Agency entitled “Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995–2001”, dated August 25, 2008.

SEC. 344. REPORT ON THREAT FROM DIRTY BOMBS.

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Nuclear Regulatory Commission, shall submit to Congress a report summarizing intelligence related to the threat to the United States from weapons that use radiological materials, including highly dispersible substances such as cesium-137.

Deadline.
Public
information.

SEC. 345. REPORT ON CREATION OF SPACE INTELLIGENCE OFFICE.

Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a report on the feasibility and advisability of creating a national space intelligence office to manage space-related intelligence assets and access to such assets.

SEC. 346. REPORT ON ATTEMPT TO DETONATE EXPLOSIVE DEVICE ON NORTHWEST AIRLINES FLIGHT 253.

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a report on the attempt to detonate an explosive device aboard Northwest Airlines flight number 253 on December 25, 2009. Such report shall describe the failures, if any, to share or analyze intelligence or other information and the measures that the intelligence community has taken or will take to prevent such failures, including—

(1) a description of the roles and responsibilities of the counterterrorism analytic components of the intelligence community in synchronizing, correlating, and analyzing all sources of intelligence related to terrorism;

(2) an assessment of the technological capabilities of the United States Government to assess terrorist threats, including—

(A) a list of all databases used by counterterrorism analysts;

(B) a description of the steps taken by the intelligence community to integrate all relevant terrorist databases and allow for cross-database searches;

(C) a description of the steps taken by the intelligence community to correlate biographic information with terrorism-related intelligence; and

(D) a description of the improvements to information technology needed to enable the United States Government to better share information;

(3) any recommendations that the Director considers appropriate for legislation to improve the sharing of intelligence or information relating to terrorists;

(4) a description of the steps taken by the intelligence community to train analysts on watchlisting processes and procedures;

(5) a description of the manner in which watchlisting information is entered, reviewed, searched, analyzed, and acted upon by the relevant elements of the United States Government;

(6) a description of the steps the intelligence community is taking to enhance the rigor and raise the standard of tradecraft of intelligence analysis related to uncovering and preventing terrorist plots;

(7) a description of the processes and procedures by which the intelligence community prioritizes terrorism threat leads and the standards used by elements of the intelligence community to determine if follow-up action is appropriate;

(8) a description of the steps taken to enhance record information on possible terrorists in the Terrorist Identities Datamart Environment;

(9) an assessment of how to meet the challenge associated with exploiting the ever-increasing volume of information available to the intelligence community; and

(10) a description of the steps the intelligence community has taken or will take to respond to any findings and recommendations of the congressional intelligence committees, with respect to any such failures, that have been transmitted to the Director of National Intelligence.

SEC. 347. REPEAL OR MODIFICATION OF CERTAIN REPORTING REQUIREMENTS.

(a) **ANNUAL REPORT ON INTELLIGENCE.**—Section 109 of the National Security Act of 1947 (50 U.S.C. 404d) is repealed.

(b) **ANNUAL AND SPECIAL REPORTS ON INTELLIGENCE SHARING WITH THE UNITED NATIONS.**—Section 112 of the National Security Act of 1947 (50 U.S.C. 404g) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) **ANNUAL REPORT ON PROGRESS IN AUDITABLE FINANCIAL STATEMENTS.**—Section 114A of the National Security Act of 1947 (50 U.S.C. 404i–1) is repealed.

(d) **REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST ASSETS.**—Section 118 of the National Security Act of 1947 (50 U.S.C. 404m) is amended—

(1) in the heading, by striking “SEMIANNUAL” and inserting “ANNUAL”;

(2) in subsection (a)—

(A) in the heading, by striking “SEMIANNUAL” and inserting “ANNUAL”;

(B) in the matter preceding paragraph (1)—

(i) by striking “semiannual basis” and inserting “annual basis”; and

- (ii) by striking “preceding six-month period” and inserting “preceding one-year period”;
 - (C) by striking paragraph (2); and
 - (D) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and
- (3) in subsection (d)—
 - (A) in paragraph (1), by inserting “the Committee on Armed Services,” after “the Committee on Appropriations,”; and
 - (B) in paragraph (2), by inserting “the Committee on Armed Services,” after “the Committee on Appropriations,”.
- (e) ANNUAL CERTIFICATION ON COUNTERINTELLIGENCE INITIATIVES.—Section 1102(b) of the National Security Act of 1947 (50 U.S.C. 442a(b)) is amended—
 - (1) by striking “(1)”; and
 - (2) by striking paragraph (2).
- (f) REPORT AND CERTIFICATION UNDER TERRORIST IDENTIFICATION CLASSIFICATION SYSTEM.—Section 343 of the Intelligence Authorization Act for Fiscal Year 2003 (50 U.S.C. 404n–2) is amended—
 - (1) by striking subsection (d); and
 - (2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.
- (g) ANNUAL REPORT ON COUNTERDRUG INTELLIGENCE MATTERS.—Section 826 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 21 U.S.C. 873 note) is repealed. Repeal.
- (h) BIENNIAL REPORT ON FOREIGN INDUSTRIAL ESPIONAGE.—Subsection (b) of section 809 of the Intelligence Authorization Act for Fiscal Year 1995 (50 U.S.C. App. 2170b) is amended—
 - (1) in the heading, by striking “ANNUAL UPDATE” and inserting “BIENNIAL REPORT”;
 - (2) by striking paragraphs (1) and (2) and inserting the following new paragraph:
 - “(1) REQUIREMENT TO SUBMIT.—Not later than February 1, 2011, and once every two years thereafter, the President shall submit to the congressional intelligence committees and congressional leadership a report updating the information referred to in subsection (a)(1)(D).”; and
 - (3) by redesignating paragraph (3) as paragraph (2).
- (i) TABLE OF CONTENTS AMENDMENTS.—
 - (1) NATIONAL SECURITY ACT OF 1947.—The table of contents in the first section of the National Security Act of 1947, as amended by section 332 of this Act, is further amended—
 - (A) by striking the item relating to section 109;
 - (B) by striking the item relating to section 114A; and
 - (C) by striking the item relating to section 118 and inserting the following new item:

Deadlines.
President.
Reports.

“Sec. 118. Annual report on financial intelligence on terrorist assets.”.

(2) INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003.—The table of contents in the first section of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2383) is amended by striking the item relating to section 826.

50 USC 403-9.

SEC. 348. INFORMATION ACCESS BY THE COMPTROLLER GENERAL OF THE UNITED STATES.**(a) DNI DIRECTIVE GOVERNING ACCESS.—**

(1) **REQUIREMENT FOR DIRECTIVE.**—The Director of National Intelligence, in consultation with the Comptroller General of the United States, shall issue a written directive governing the access of the Comptroller General to information in the possession of an element of the intelligence community.

(2) **AMENDMENT TO DIRECTIVE.**—The Director of National Intelligence, in consultation with the Comptroller General, may issue an amendment to the directive issued under paragraph (1) at any time the Director determines such an amendment is appropriate.

(3) **RELATIONSHIP TO OTHER LAWS.**—The directive issued under paragraph (1) and any amendment to such directive issued under paragraph (2) shall be consistent with the provisions of—

(A) chapter 7 of title 31, United States Code; and

(B) the National Security Act of 1947 (50 U.S.C. 401 et seq.).

(b) CONFIDENTIALITY OF INFORMATION.—

(1) **REQUIREMENT FOR CONFIDENTIALITY.**—The Comptroller General of the United States shall ensure that the level of confidentiality of information made available to the Comptroller General pursuant to the directive issued under subsection (a)(1) or an amendment to such directive issued under subsection (a)(2) is not less than the level of confidentiality of such information required of the head of the element of the intelligence community from which such information was obtained.

(2) **PENALTIES FOR UNAUTHORIZED DISCLOSURE.**—An officer or employee of the Government Accountability Office shall be subject to the same statutory penalties for unauthorized disclosure or use of such information as an officer or employee of the element of the intelligence community from which such information was obtained.

(c) SUBMISSION TO CONGRESS.—

Deadline.

(1) **SUBMISSION OF DIRECTIVE.**—The directive issued under subsection (a)(1) shall be submitted to Congress by the Director of National Intelligence, together with any comments of the Comptroller General of the United States, no later than May 1, 2011.

(2) **SUBMISSION OF AMENDMENT.**—Any amendment to such directive issued under subsection (a)(2) shall be submitted to Congress by the Director, together with any comments of the Comptroller General.

(d) **EFFECTIVE DATE.**—The directive issued under subsection (a)(1) and any amendment to such directive issued under subsection (a)(2) shall take effect 60 days after the date such directive or amendment is submitted to Congress under subsection (c), unless the Director determines that for reasons of national security the directive or amendment should take effect sooner.

SEC. 349. CONFORMING AMENDMENTS FOR REPORT SUBMISSION DATES.

Section 507 of the National Security Act of 1947 (50 U.S.C. 415b) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

- (i) by striking subparagraphs (A), (B), and (G);
- (ii) by redesignating subparagraphs (C), (D), (E), (F), (H), (I), and (N) as subparagraphs (A), (B), (C), (D), (E), (F), and (G), respectively; and
- (iii) by adding at the end the following new subparagraphs:

“(H) The annual report on outside employment of employees of elements of the intelligence community required by section 102A(u)(2).

“(I) The annual report on financial intelligence on terrorist assets required by section 118.”; and

(B) in paragraph (2), by striking subparagraphs (C) and (D); and

(2) in subsection (b), by striking paragraph (6).

Subtitle E—Other Matters

SEC. 361. EXTENSION OF AUTHORITY TO DELETE INFORMATION ABOUT RECEIPT AND DISPOSITION OF FOREIGN GIFTS AND DECORATIONS.

Paragraph (4) of section 7342(f) of title 5, United States Code, is amended to read as follows:

“(4)(A) In transmitting such listings for an element of the intelligence community, the head of such element may delete the information described in subparagraph (A) or (C) of paragraph (2) or in subparagraph (A) or (C) of paragraph (3) if the head of such element certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources or methods.

“(B) Any information not provided to the Secretary of State pursuant to the authority in subparagraph (A) shall be transmitted to the Director of National Intelligence who shall keep a record of such information.

Records.

“(C) In this paragraph, the term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”.

SEC. 362. MODIFICATION OF AVAILABILITY OF FUNDS FOR DIFFERENT INTELLIGENCE ACTIVITIES.

Subparagraph (B) of section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) is amended to read as follows:

“(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and”.

SEC. 363. PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION.

(a) INCREASE IN PENALTIES FOR DISCLOSURE OF UNDERCOVER INTELLIGENCE OFFICERS AND AGENTS.—

(1) DISCLOSURE OF AGENT AFTER ACCESS TO INFORMATION IDENTIFYING AGENT.—Subsection (a) of section 601 of the National Security Act of 1947 (50 U.S.C. 421) is amended by striking “ten years” and inserting “15 years”.

(2) DISCLOSURE OF AGENT AFTER ACCESS TO CLASSIFIED INFORMATION.—Subsection (b) of such section is amended by striking “five years” and inserting “10 years”.

(b) MODIFICATIONS TO ANNUAL REPORT ON PROTECTION OF INTELLIGENCE IDENTITIES.—The first sentence of section 603(a) of the National Security Act of 1947 (50 U.S.C. 423(a)) is amended by inserting “including an assessment of the need, if any, for modification of this title for the purpose of improving legal protections for covert agents,” after “measures to protect the identities of covert agents,”.

SEC. 364. NATIONAL INTELLIGENCE PROGRAM BUDGET.

Section 601 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (50 U.S.C. 415c) is amended to read as follows:

50 USC 415c.

“SEC. 601. AVAILABILITY TO PUBLIC OF CERTAIN INTELLIGENCE FUNDING INFORMATION.

President.

“(a) BUDGET REQUEST.—At the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, United States Code, the President shall disclose to the public the aggregate amount of appropriations requested for that fiscal year for the National Intelligence Program.

“(b) AMOUNTS APPROPRIATED EACH FISCAL YEAR.—Not later than 30 days after the end of each fiscal year, the Director of National Intelligence shall disclose to the public the aggregate amount of funds appropriated by Congress for the National Intelligence Program for such fiscal year.

“(c) WAIVER.—

“(1) IN GENERAL.—The President may waive or postpone the disclosure required by subsection (a) or (b) for a fiscal year by submitting to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives—

“(A) a statement, in unclassified form, that the disclosure required in subsection (a) or (b) for that fiscal year would damage national security; and

“(B) a statement detailing the reasons for the waiver or postponement, which may be submitted in classified form.

President.

“(2) SUBMISSION DATES.—The President shall submit the statements required under paragraph (1)—

“(A) in the case of a waiver or postponement of a disclosure required under subsection (a), at the time of the submission of the budget for the fiscal year for which such disclosure is waived or postponed; and

“(B) in the case of a waiver or postponement of a disclosure required under subsection (b), not later than 30 days after the date of the end of the fiscal year for which such disclosure is waived or postponed.

“(d) DEFINITION.—As used in this section, the term ‘National Intelligence Program’ has the meaning given the term in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6)).”.

SEC. 365. IMPROVING THE REVIEW AUTHORITY OF THE PUBLIC INTEREST DECLASSIFICATION BOARD.

Paragraph (5) of section 703(b) of the Public Interest Declassification Act of 2000 (50 U.S.C. 435 note) is amended—

(1) by striking “jurisdiction,” and inserting “jurisdiction or by a member of the committee of jurisdiction,”; and

(2) by inserting “, to evaluate the proper classification of certain records,” after “certain records”.

SEC. 366. AUTHORITY TO DESIGNATE UNDERCOVER OPERATIONS TO COLLECT FOREIGN INTELLIGENCE OR COUNTERINTELLIGENCE.

Paragraph (1) of section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (Public Law 102–395; 28 U.S.C. 533 note) is amended in the flush text following subparagraph (D) by striking “(or, if designated by the Director, the Assistant Director, Intelligence Division) and the Attorney General (or, if designated by the Attorney General, the Assistant Attorney General for National Security)” and inserting “(or a designee of the Director who is in a position not lower than Deputy Assistant Director in the National Security Branch or a similar successor position) and the Attorney General (or a designee of the Attorney General who is in the National Security Division in a position not lower than Deputy Assistant Attorney General or a similar successor position)”.

SEC. 367. SECURITY CLEARANCES: REPORTS; RECIPROCITY.

(a) REPORTS RELATING TO SECURITY CLEARANCES.—

(1) QUADRENNIAL AUDIT; SECURITY CLEARANCE DETERMINATIONS.—

(A) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 325 of this Act, is further amended by inserting after section 506G, as added by section 325(a), the following new section:

“REPORTS ON SECURITY CLEARANCES

“SEC. 506H. (a) QUADRENNIAL AUDIT OF POSITION REQUIREMENTS.—(1) The President shall every four years conduct an audit of the manner in which the executive branch determines whether a security clearance is required for a particular position in the United States Government.

President.
50 USC 415a–10.

“(2) Not later than 30 days after the completion of an audit conducted under paragraph (1), the President shall submit to Congress the results of such audit.

“(b) REPORT ON SECURITY CLEARANCE DETERMINATIONS.—(1) Not later than February 1 of each year, the President shall submit to Congress a report on the security clearance process. Such report shall include, for each security clearance level—

“(A) the number of employees of the United States Government who—

“(i) held a security clearance at such level as of October 1 of the preceding year; and

“(ii) were approved for a security clearance at such level during the preceding fiscal year;

“(B) the number of contractors to the United States Government who—

“(i) held a security clearance at such level as of October 1 of the preceding year; and

“(ii) were approved for a security clearance at such level during the preceding fiscal year; and

“(C) for each element of the intelligence community—

“(i) the total amount of time it took to process the security clearance determination for such level that—

“(I) was among the 80 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and

“(II) took the longest amount of time to complete;

“(ii) the total amount of time it took to process the security clearance determination for such level that—

“(I) was among the 90 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and

“(II) took the longest amount of time to complete;

“(iii) the number of pending security clearance investigations for such level as of October 1 of the preceding year that have remained pending for—

“(I) 4 months or less;

“(II) between 4 months and 8 months;

“(III) between 8 months and one year; and

“(IV) more than one year;

“(iv) the percentage of reviews during the preceding fiscal year that resulted in a denial or revocation of a security clearance;

“(v) the percentage of investigations during the preceding fiscal year that resulted in incomplete information;

“(vi) the percentage of investigations during the preceding fiscal year that did not result in enough information to make a decision on potentially adverse information; and

“(vii) for security clearance determinations completed or pending during the preceding fiscal year that have taken longer than one year to complete—

“(I) the number of security clearance determinations for positions as employees of the United States Government that required more than one year to complete;

“(II) the number of security clearance determinations for contractors that required more than one year to complete;

“(III) the agencies that investigated and adjudicated such determinations; and

“(IV) the cause of significant delays in such determinations.

“(2) For purposes of paragraph (1), the President may consider—

“(A) security clearances at the level of confidential and secret as one security clearance level; and

“(B) security clearances at the level of top secret or higher as one security clearance level.

“(c) FORM.—The results required under subsection (a)(2) and the reports required under subsection (b)(1) shall be submitted in unclassified form, but may include a classified annex.”

50 USC 415a–10
note.

(B) INITIAL AUDIT.—The first audit required to be conducted under section 506H(a)(1) of the National Security Act of 1947, as added by subparagraph (A) of this paragraph, shall be completed not later than February 1, 2011.

(C) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act, as amended by section 347(i) of this Act, is further amended by inserting after the item relating to section 506G, as added by section 325 of this Act, the following new item:

“Sec. 506H. Reports on security clearances.”.

(2) REPORT ON METRICS FOR ADJUDICATION QUALITY.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report on security clearance investigations and adjudications. Such report shall include—

(A) United States Government-wide adjudication guidelines and metrics for adjudication quality;

(B) a plan to improve the professional development of security clearance adjudicators;

(C) metrics to evaluate the effectiveness of interagency clearance reciprocity;

(D) United States Government-wide investigation standards and metrics for investigation quality; and

(E) the advisability, feasibility, counterintelligence risk, and cost effectiveness of—

(i) by not later than January 1, 2012, requiring the investigation and adjudication of security clearances to be conducted by not more than two Federal agencies; and

(ii) by not later than January 1, 2015, requiring the investigation and adjudication of security clearances to be conducted by not more than one Federal agency.

(b) SECURITY CLEARANCE RECIPROCITY.—

(1) AUDIT.—The Inspector General of the Intelligence Community shall conduct an audit of the reciprocity of security clearances among the elements of the intelligence community.

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a report containing the results of the audit conducted under paragraph (1). Such report shall include an assessment of the time required to obtain a reciprocal security clearance for—

(A) an employee of an element of the intelligence community detailed to another element of the intelligence community;

(B) an employee of an element of the intelligence community seeking permanent employment with another element of the intelligence community; and

(C) a contractor seeking permanent employment with an element of the intelligence community.

(3) FORM.—The report required under paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

SEC. 368. CORRECTING LONG-STANDING MATERIAL WEAKNESSES.

(a) DEFINITIONS.—In this section:

50 USC 404i–1
note.

(1) COVERED ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term “covered element of the intelligence community” means—

- (A) the Central Intelligence Agency;
- (B) the Defense Intelligence Agency;
- (C) the National Geospatial-Intelligence Agency;
- (D) the National Reconnaissance Office; or
- (E) the National Security Agency.

(2) INDEPENDENT AUDITOR.—The term “independent auditor” means an individual who—

- (A)(i) is a Federal, State, or local government auditor who meets the independence standards included in generally accepted government auditing standards; or
- (ii) is a public accountant who meets such independence standards; and
- (B) is designated as an auditor by the Director of National Intelligence or the head of a covered element of the intelligence community, as appropriate.

(3) INDEPENDENT REVIEW.—The term “independent review” means an audit, attestation, or examination conducted by an independent auditor in accordance with generally accepted government auditing standards.

(4) LONG-STANDING, CORRECTABLE MATERIAL WEAKNESS.—The term “long-standing, correctable material weakness” means a material weakness—

- (A) that was first reported in the annual financial report of a covered element of the intelligence community for a fiscal year prior to fiscal year 2007; and
- (B) the correction of which is not substantially dependent on a business system that was not implemented prior to the end of fiscal year 2010.

(5) MATERIAL WEAKNESS.—The term “material weakness” has the meaning given that term under the Office of Management and Budget Circular A–123, entitled “Management’s Responsibility for Internal Control,” revised December 21, 2004.

(6) SENIOR INTELLIGENCE MANAGEMENT OFFICIAL.—The term “senior intelligence management official” means an official within a covered element of the intelligence community who is—

- (A)(i) compensated under the Senior Intelligence Service pay scale; or
- (ii) the head of a covered element of the intelligence community; and
- (B) compensated for employment with funds appropriated pursuant to an authorization of appropriations in this Act.

(b) IDENTIFICATION OF SENIOR INTELLIGENCE MANAGEMENT OFFICIALS.—

Deadline.

(1) REQUIREMENT TO IDENTIFY.—Not later than 30 days after the date of the enactment of this Act, the head of a covered element of the intelligence community shall designate a senior intelligence management official of such element to be responsible for correcting each long-standing, correctable material weakness of such element.

(2) HEAD OF A COVERED ELEMENT OF THE INTELLIGENCE COMMUNITY.—The head of a covered element of the intelligence

community may designate himself or herself as the senior intelligence management official responsible for correcting a long-standing, correctable material weakness under paragraph (1).

(3) REQUIREMENT TO UPDATE DESIGNATION.—If the head of a covered element of the intelligence community determines that a senior intelligence management official designated under paragraph (1) is no longer responsible for correcting a long-standing, correctable material weakness, the head of such element shall designate the successor to such official not later than 10 days after the date of such determination. Deadline.

(c) NOTIFICATION.—Not later than 10 days after the date on which the head of a covered element of the intelligence community has designated a senior intelligence management official pursuant to paragraph (1) or (3) of subsection (b), the head of such element shall provide written notification of such designation to the Director of National Intelligence and to such senior intelligence management official. Deadline.

(d) CORRECTION OF LONG-STANDING, MATERIAL WEAKNESS.—

(1) DETERMINATION OF CORRECTION OF DEFICIENCY.—If a long-standing, correctable material weakness is corrected, the senior intelligence management official who is responsible for correcting such long-standing, correctable material weakness shall make and issue a determination of the correction.

(2) BASIS FOR DETERMINATION.—The determination of the senior intelligence management official under paragraph (1) shall be based on the findings of an independent review.

(3) NOTIFICATION AND SUBMISSION OF FINDINGS.—A senior intelligence management official who makes a determination under paragraph (1) shall—

(A) notify the head of the appropriate covered element of the intelligence community of such determination at the time the determination is made; and

(B) ensure that the independent auditor whose findings are the basis of a determination under paragraph (1) submits to the head of the covered element of the intelligence community and the Director of National Intelligence the findings that such determination is based on not later than 5 days after the date on which such determination is made. Deadline.

(e) CONGRESSIONAL OVERSIGHT.—The head of a covered element of the intelligence community shall notify the congressional intelligence committees not later than 30 days after the date— Notification.
Deadline.

(1) on which a senior intelligence management official is designated under paragraph (1) or (3) of subsection (b) and notified under subsection (c); or

(2) of the correction of a long-standing, correctable material weakness, as verified by an independent auditor under subsection (d)(2).

SEC. 369. INTELLIGENCE COMMUNITY FINANCIAL IMPROVEMENT AND AUDIT READINESS. Deadlines.

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall—

(1) conduct a review of the status of the auditability compliance of each element of the intelligence community; and Review.

Plans.

(2) develop a plan and schedule to achieve a full, unqualified audit of each element of the intelligence community not later than September 30, 2013.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

SEC. 401. ACCOUNTABILITY REVIEWS BY THE DIRECTOR OF NATIONAL INTELLIGENCE.

Subsection (f) of section 102A of the National Security Act of 1947 (50 U.S.C. 403–1) is amended—

(1) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

(2) by inserting after paragraph (6) the following new paragraph:

“(7)(A) The Director of National Intelligence shall, if the Director determines it is necessary, or may, if requested by a congressional intelligence committee, conduct an accountability review of an element of the intelligence community or the personnel of such element in relation to a failure or deficiency within the intelligence community.

Guidelines.
Procedures.

“(B) The Director of National Intelligence, in consultation with the Attorney General, shall establish guidelines and procedures for conducting an accountability review under subparagraph (A).

“(C)(i) The Director of National Intelligence shall provide the findings of an accountability review conducted under subparagraph (A) and the Director’s recommendations for corrective or punitive action, if any, to the head of the applicable element of the intelligence community. Such recommendations may include a recommendation for dismissal of personnel.

Notice.

“(ii) If the head of such element does not implement a recommendation made by the Director under clause (i), the head of such element shall submit to the congressional intelligence committees a notice of the determination not to implement the recommendation, including the reasons for the determination.

“(D) The requirements of this paragraph shall not be construed to limit any authority of the Director of National Intelligence under subsection (m) or with respect to supervision of the Central Intelligence Agency.”.

SEC. 402. AUTHORITIES FOR INTELLIGENCE INFORMATION SHARING.

(a) **AUTHORITIES FOR INTERAGENCY FUNDING.**—Section 102A(d)(2) of the National Security Act of 1947 (50 U.S.C. 403–1(d)(2)) is amended by striking “Program to another such program.” and inserting “Program—

“(A) to another such program;

“(B) to other departments or agencies of the United States Government for the development and fielding of systems of common concern related to the collection, processing, analysis, exploitation, and dissemination of intelligence information; or

“(C) to a program funded by appropriations not within the National Intelligence Program to address critical gaps in intelligence information sharing or access capabilities.”.

(b) **AUTHORITIES OF HEADS OF OTHER DEPARTMENTS AND AGENCIES.**—Notwithstanding any other provision of law, the head of any department or agency of the United States is authorized to receive and utilize funds made available to the department or agency by the Director of National Intelligence pursuant to section 102A(d)(2) of the National Security Act of 1947 (50 U.S.C. 403–1(d)(2)), as amended by subsection (a), and receive and utilize any system referred to in such section that is made available to such department or agency.

50 USC 403–1
note.

SEC. 403. LOCATION OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

Subsection (e) of section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) is amended to read as follows:

“(e) **LOCATION OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.**—The headquarters of the Office of the Director of National Intelligence may be located in the Washington metropolitan region, as that term is defined in section 8301 of title 40, United States Code.”.

SEC. 404. TITLE AND APPOINTMENT OF CHIEF INFORMATION OFFICER OF THE INTELLIGENCE COMMUNITY.

Section 103G of the National Security Act of 1947 (50 U.S.C. 403–3g) is amended—

(1) in subsection (a)—

(A) by inserting “of the Intelligence Community” after “Chief Information Officer”; and

(B) by striking “President,” and all that follows and inserting “President.”;

(2) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(3) in subsection (b) (as so redesignated), by inserting “of the Intelligence Community” after “Chief Information Officer”; and

(4) in subsection (c) (as so redesignated), by inserting “of the Intelligence Community” before “may not”.

SEC. 405. INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 347 of this Act, is further amended by inserting after section 103G the following new section:

“INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

“SEC. 103H. (a) **OFFICE OF INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.**—There is within the Office of the Director of National Intelligence an Office of the Inspector General of the Intelligence Community.

50 USC 403–3h.

“(b) **PURPOSE.**—The purpose of the Office of the Inspector General of the Intelligence Community is—

“(1) to create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independent investigations, inspections, audits, and reviews on programs

and activities within the responsibility and authority of the Director of National Intelligence;

“(2) to provide leadership and coordination and recommend policies for activities designed—

“(A) to promote economy, efficiency, and effectiveness in the administration and implementation of such programs and activities; and

“(B) to prevent and detect fraud and abuse in such programs and activities;

“(3) to provide a means for keeping the Director of National Intelligence fully and currently informed about—

“(A) problems and deficiencies relating to the administration of programs and activities within the responsibility and authority of the Director of National Intelligence; and

“(B) the necessity for, and the progress of, corrective actions; and

“(4) in the manner prescribed by this section, to ensure that the congressional intelligence committees are kept similarly informed of—

“(A) significant problems and deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence; and

“(B) the necessity for, and the progress of, corrective actions.

“(c) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.—

President.

(1) There is an Inspector General of the Intelligence Community, who shall be the head of the Office of the Inspector General of the Intelligence Community, who shall be appointed by the President, by and with the advice and consent of the Senate.

“(2) The nomination of an individual for appointment as Inspector General shall be made—

“(A) without regard to political affiliation;

“(B) on the basis of integrity, compliance with security standards of the intelligence community, and prior experience in the field of intelligence or national security; and

“(C) on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or investigations.

“(3) The Inspector General shall report directly to and be under the general supervision of the Director of National Intelligence.

President.
Deadline.

“(4) The Inspector General may be removed from office only by the President. The President shall communicate in writing to the congressional intelligence committees the reasons for the removal not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.

Appointments.

“(d) ASSISTANT INSPECTORS GENERAL.—Subject to the policies of the Director of National Intelligence, the Inspector General of the Intelligence Community shall—

“(1) appoint an Assistant Inspector General for Audit who shall have the responsibility for supervising the performance of auditing activities relating to programs and activities within the responsibility and authority of the Director;

“(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the

performance of investigative activities relating to such programs and activities; and

“(3) appoint other Assistant Inspectors General that, in the judgment of the Inspector General, are necessary to carry out the duties of the Inspector General.

“(e) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General of the Intelligence Community—

“(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the investigations, inspections, audits, and reviews relating to programs and activities within the responsibility and authority of the Director of National Intelligence;

“(2) to keep the Director of National Intelligence fully and currently informed concerning violations of law and regulations, fraud, and other serious problems, abuses, and deficiencies relating to the programs and activities within the responsibility and authority of the Director, to recommend corrective action concerning such problems, and to report on the progress made in implementing such corrective action;

“(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

“(4) in the execution of the duties and responsibilities under this section, to comply with generally accepted government auditing.

“(f) LIMITATIONS ON ACTIVITIES.—(1) The Director of National Intelligence may prohibit the Inspector General of the Intelligence Community from initiating, carrying out, or completing any investigation, inspection, audit, or review if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

“(2) Not later than seven days after the date on which the Director exercises the authority under paragraph (1), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority.

“(3) The Director shall advise the Inspector General at the time a statement under paragraph (2) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such statement.

“(4) The Inspector General may submit to the congressional intelligence committees any comments on the statement of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate.

“(g) AUTHORITIES.—(1) The Inspector General of the Intelligence Community shall have direct and prompt access to the Director of National Intelligence when necessary for any purpose pertaining to the performance of the duties of the Inspector General.

“(2)(A) The Inspector General shall, subject to the limitations in subsection (f), make such investigations and reports relating to the administration of the programs and activities within the

Investigations.
Reports.

authorities and responsibilities of the Director as are, in the judgment of the Inspector General, necessary or desirable.

“(B) The Inspector General shall have access to any employee, or any employee of a contractor, of any element of the intelligence community needed for the performance of the duties of the Inspector General.

“(C) The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section.

“(D) The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under subparagraph (C).

“(E) The Director, or on the recommendation of the Director, another appropriate official of the intelligence community, shall take appropriate administrative actions against an employee, or an employee of a contractor, of an element of the intelligence community that fails to cooperate with the Inspector General. Such administrative action may include loss of employment or the termination of an existing contractual relationship.

“(3) The Inspector General is authorized to receive and investigate, pursuant to subsection (h), complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the intelligence community—

“(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

“(B) no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

“(4) The Inspector General shall have the authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the duties of the Inspector General, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of the Inspector General of the Intelligence Community designated by the Inspector General shall have the same force and effect as if administered or taken by, or before, an officer having a seal.

“(5)(A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically

stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

“(B) In the case of departments, agencies, and other elements of the United States Government, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

“(C) The Inspector General may not issue a subpoena for, or on behalf of, any component of the Office of the Director of National Intelligence or any element of the intelligence community, including the Office of the Director of National Intelligence.

“(D) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.

“(6) The Inspector General may obtain services as authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for grade GS-15 of the General Schedule under section 5332 of title 5, United States Code.

“(7) The Inspector General may, to the extent and in such amounts as may be provided in appropriations, enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this section.

“(h) COORDINATION AMONG INSPECTORS GENERAL.—(1)(A) In the event of a matter within the jurisdiction of the Inspector General of the Intelligence Community that may be subject to an investigation, inspection, audit, or review by both the Inspector General of the Intelligence Community and an inspector general with oversight responsibility for an element of the intelligence community, the Inspector General of the Intelligence Community and such other inspector general shall expeditiously resolve the question of which inspector general shall conduct such investigation, inspection, audit, or review to avoid unnecessary duplication of the activities of the inspectors general.

“(B) In attempting to resolve a question under subparagraph (A), the inspectors general concerned may request the assistance of the Intelligence Community Inspectors General Forum established under paragraph (2). In the event of a dispute between an inspector general within a department or agency of the United States Government and the Inspector General of the Intelligence Community that has not been resolved with the assistance of such Forum, the inspectors general shall submit the question to the Director of National Intelligence and the head of the affected department or agency for resolution.

“(2)(A) There is established the Intelligence Community Inspectors General Forum, which shall consist of all statutory or administrative inspectors general with oversight responsibility for an element of the intelligence community.

Establishment.

“(B) The Inspector General of the Intelligence Community shall serve as the Chair of the Forum established under subparagraph (A). The Forum shall have no administrative authority over any inspector general, but shall serve as a mechanism for informing its members of the work of individual members of the Forum that may be of common interest and discussing questions about

jurisdiction or access to employees, employees of contract personnel, records, audits, reviews, documents, recommendations, or other materials that may involve or be of assistance to more than one of its members.

“(3) The inspector general conducting an investigation, inspection, audit, or review covered by paragraph (1) shall submit the results of such investigation, inspection, audit, or review to any other inspector general, including the Inspector General of the Intelligence Community, with jurisdiction to conduct such investigation, inspection, audit, or review who did not conduct such investigation, inspection, audit, or review.

“(i) COUNSEL TO THE INSPECTOR GENERAL.—(1) The Inspector General of the Intelligence Community shall—

Appointment.

“(A) appoint a Counsel to the Inspector General who shall report to the Inspector General; or

“(B) obtain the services of a counsel appointed by and directly reporting to another inspector general or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

“(2) The counsel appointed or obtained under paragraph (1) shall perform such functions as the Inspector General may prescribe.

“(j) STAFF AND OTHER SUPPORT.—(1) The Director of National Intelligence shall provide the Inspector General of the Intelligence Community with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

“(2)(A) Subject to applicable law and the policies of the Director of National Intelligence, the Inspector General shall select, appoint, and employ such officers and employees as may be necessary to carry out the functions, powers, and duties of the Inspector General. The Inspector General shall ensure that any officer or employee so selected, appointed, or employed has security clearances appropriate for the assigned duties of such officer or employee.

“(B) In making selections under subparagraph (A), the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable the Inspector General to carry out the duties of the Inspector General effectively.

“(C) In meeting the requirements of this paragraph, the Inspector General shall create within the Office of the Inspector General of the Intelligence Community a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General.

“(3) Consistent with budgetary and personnel resources allocated by the Director of National Intelligence, the Inspector General has final approval of—

“(A) the selection of internal and external candidates for employment with the Office of the Inspector General; and

“(B) all other personnel decisions concerning personnel permanently assigned to the Office of the Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of a component of the Office of the Director of National Intelligence.

“(4)(A) Subject to the concurrence of the Director of National Intelligence, the Inspector General may request such information

or assistance as may be necessary for carrying out the duties and responsibilities of the Inspector General from any department, agency, or other element of the United States Government.

“(B) Upon request of the Inspector General for information or assistance under subparagraph (A), the head of the department, agency, or element concerned shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the department, agency, or element, furnish to the Inspector General, such information or assistance.

“(C) The Inspector General of the Intelligence Community may, upon reasonable notice to the head of any element of the intelligence community and in coordination with that element’s inspector general pursuant to subsection (h), conduct, as authorized by this section, an investigation, inspection, audit, or review of such element and may enter into any place occupied by such element for purposes of the performance of the duties of the Inspector General.

“(k) REPORTS.—(1)(A) The Inspector General of the Intelligence Community shall, not later than January 31 and July 31 of each year, prepare and submit to the Director of National Intelligence a classified, and, as appropriate, unclassified semiannual report summarizing the activities of the Office of the Inspector General of the Intelligence Community during the immediately preceding 6-month period ending December 31 (of the preceding year) and June 30, respectively. The Inspector General of the Intelligence Community shall provide any portion of the report involving a component of a department of the United States Government to the head of that department simultaneously with submission of the report to the Director of National Intelligence.

“(B) Each report under this paragraph shall include, at a minimum, the following:

“(i) A list of the title or subject of each investigation, inspection, audit, or review conducted during the period covered by such report.

“(ii) A description of significant problems, abuses, and deficiencies relating to the administration of programs and activities of the intelligence community within the responsibility and authority of the Director of National Intelligence, and in the relationships between elements of the intelligence community, identified by the Inspector General during the period covered by such report.

“(iii) A description of the recommendations for corrective action made by the Inspector General during the period covered by such report with respect to significant problems, abuses, or deficiencies identified in clause (ii).

“(iv) A statement of whether or not corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action.

“(v) A certification of whether or not the Inspector General has had full and direct access to all information relevant to the performance of the functions of the Inspector General.

“(vi) A description of the exercise of the subpoena authority under subsection (g)(5) by the Inspector General during the period covered by such report.

“(vii) Such recommendations as the Inspector General considers appropriate for legislation to promote economy, efficiency, and effectiveness in the administration and implementation of programs and activities within the responsibility and authority of the Director of National Intelligence, and to detect and eliminate fraud and abuse in such programs and activities.

“(C) Not later than 30 days after the date of receipt of a report under subparagraph (A), the Director shall transmit the report to the congressional intelligence committees together with any comments the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of the report involving a component of such department simultaneously with submission of the report to the congressional intelligence committees.

“(2)(A) The Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence.

“(B) The Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of each report under subparagraph (A) that involves a problem, abuse, or deficiency related to a component of such department simultaneously with transmission of the report to the congressional intelligence committees.

“(3)(A) In the event that—

“(i) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

“(ii) an investigation, inspection, audit, or review carried out by the Inspector General focuses on any current or former intelligence community official who—

“(I) holds or held a position in an element of the intelligence community that is subject to appointment by the President, whether or not by and with the advice and consent of the Senate, including such a position held on an acting basis;

“(II) holds or held a position in an element of the intelligence community, including a position held on an acting basis, that is appointed by the Director of National Intelligence; or

“(III) holds or held a position as head of an element of the intelligence community or a position covered by subsection (b) or (c) of section 106;

“(iii) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in clause (ii);

“(iv) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in clause (ii); or

“(v) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, audit, or review,

the Inspector General shall immediately notify, and submit a report to, the congressional intelligence committees on such matter. Notification.

“(B) The Inspector General shall submit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of each report under subparagraph (A) that involves an investigation, inspection, audit, or review carried out by the Inspector General focused on any current or former official of a component of such department simultaneously with submission of the report to the congressional intelligence committees.

“(4) The Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, audit, or review conducted by the office which has been requested by the Chairman or Vice Chairman or ranking minority member of either committee.

“(5)(A) An employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

“(B) Not later than the end of the 14-calendar-day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director a notice of that determination, together with the complaint or information.

“(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate.

“(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly.

“(ii) An employee may contact the congressional intelligence committees directly as described in clause (i) only if the employee—

“(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee’s complaint or information and notice of the employee’s intent to contact the congressional intelligence committees directly; and

“(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the congressional intelligence committees in accordance with appropriate security practices.

“(iii) A member or employee of one of the congressional intelligence committees who receives a complaint or information under

	<p>this subparagraph does so in that member or employee's official capacity as a member or employee of such committee.</p>
Notification.	<p>“(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.</p> <p>“(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.</p>
Definition.	<p>“(G) In this paragraph, the term ‘urgent concern’ means any of the following:</p> <p>“(i) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.</p> <p>“(ii) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.</p> <p>“(iii) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (g)(3)(B) of this section in response to an employee's reporting an urgent concern in accordance with this paragraph.</p> <p>“(H) Nothing in this section shall be construed to limit the protections afforded to an employee under section 17(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)) or section 8H of the Inspector General Act of 1978 (5 U.S.C. App.).</p>
Records.	<p>“(6) In accordance with section 535 of title 28, United States Code, the Inspector General shall expeditiously report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involves a program or operation of an element of the intelligence community, or in the relationships between the elements of the intelligence community, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.</p> <p>“(I) CONSTRUCTION OF DUTIES REGARDING ELEMENTS OF INTELLIGENCE COMMUNITY.—Except as resolved pursuant to subsection (h), the performance by the Inspector General of the Intelligence Community of any duty, responsibility, or function regarding an element of the intelligence community shall not be construed to modify or affect the duties and responsibilities of any other inspector general having duties and responsibilities relating to such element.</p> <p>“(m) SEPARATE BUDGET ACCOUNT.—The Director of National Intelligence shall, in accordance with procedures issued by the Director in consultation with the congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of the Inspector General of the Intelligence Community.</p> <p>“(n) BUDGET.—(1) For each fiscal year, the Inspector General of the Intelligence Community shall transmit a budget estimate and request to the Director of National Intelligence that specifies for such fiscal year—</p>

“(A) the aggregate amount requested for the operations of the Inspector General;

“(B) the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office of the Inspector General; and

“(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

“(2) In transmitting a proposed budget to the President for a fiscal year, the Director of National Intelligence shall include for such fiscal year—

“(A) the aggregate amount requested for the Inspector General of the Intelligence Community;

“(B) the amount requested for Inspector General training;

“(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

“(D) the comments of the Inspector General, if any, with respect to such proposed budget.

“(3) The Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives for each fiscal year—

“(A) a separate statement of the budget estimate transmitted pursuant to paragraph (1);

“(B) the amount requested by the Director for the Inspector General pursuant to paragraph (2)(A);

“(C) the amount requested by the Director for the training of personnel of the Office of the Inspector General pursuant to paragraph (2)(B);

“(D) the amount requested by the Director for support for the Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (2)(C); and

“(E) the comments of the Inspector General under paragraph (2)(D), if any, on the amounts requested pursuant to paragraph (2), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office of the Inspector General.”

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 347 of this Act, is further amended by inserting after the item relating to section 103G the following new item:

“Sec. 103H. Inspector General of the Intelligence Community.”

(b) PAY OF INSPECTOR GENERAL.—Subparagraph (A) of section 4(a)(3) of the Inspector General Reform Act of 2008 (Public Law 110–409; 5 U.S.C. App. note) is amended by inserting “the Inspector General of the Intelligence Community,” after “basic pay of”.

(c) CONSTRUCTION.—Nothing in the amendment made by subsection (a)(1) shall be construed to alter the duties and responsibilities of the General Counsel of the Office of the Director of National Intelligence.

(d) REPEAL OF SUPERSEDED AUTHORITY TO ESTABLISH POSITION.—Section 8K of the Inspector General Act of 1978 (5 U.S.C. App.) shall be repealed on the date that the President appoints,

50 USC
403–3h note.

with the advice and consent of the Senate, the first individual to serve as Inspector General for the Intelligence Community pursuant to section 103H of the National Security Act of 1947, as added by subsection (a), and such individual assumes the duties of the Inspector General.

SEC. 406. CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.

(a) **ESTABLISHMENT.**—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 405 of this Act, is further amended by inserting after section 103H, as added by section 405(a)(1), the following new section:

“CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY

50 USC 403–3i.
Appointment.

“SEC. 103I. (a) **CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.**—To assist the Director of National Intelligence in carrying out the responsibilities of the Director under this Act and other applicable provisions of law, there is within the Office of the Director of National Intelligence a Chief Financial Officer of the Intelligence Community who shall be appointed by the Director.

“(b) **DUTIES AND RESPONSIBILITIES.**—Subject to the direction of the Director of National Intelligence, the Chief Financial Officer of the Intelligence Community shall—

“(1) serve as the principal advisor to the Director of National Intelligence and the Principal Deputy Director of National Intelligence on the management and allocation of intelligence community budgetary resources;

“(2) participate in overseeing a comprehensive and integrated strategic process for resource management within the intelligence community;

“(3) ensure that the strategic plan of the Director of National Intelligence—

“(A) is based on budgetary constraints as specified in the Future Year Intelligence Plans and Long-term Budget Projections required under section 506G; and

“(B) contains specific goals and objectives to support a performance-based budget;

“(4) prior to the obligation or expenditure of funds for the acquisition of any major system pursuant to a Milestone A or Milestone B decision, receive verification from appropriate authorities that the national requirements for meeting the strategic plan of the Director have been established, and that such requirements are prioritized based on budgetary constraints as specified in the Future Year Intelligence Plans and the Long-term Budget Projections for such major system required under section 506G;

“(5) ensure that the collection architectures of the Director are based on budgetary constraints as specified in the Future Year Intelligence Plans and the Long-term Budget Projections required under section 506G;

“(6) coordinate or approve representations made to Congress by the intelligence community regarding National Intelligence Program budgetary resources;

“(7) participate in key mission requirements, acquisitions, or architectural boards formed within or by the Office of the Director of National Intelligence; and

“(8) perform such other duties as may be prescribed by the Director of National Intelligence.

“(c) OTHER LAW.—The Chief Financial Officer of the Intelligence Community shall serve as the Chief Financial Officer of the intelligence community and, to the extent applicable, shall have the duties, responsibilities, and authorities specified in chapter 9 of title 31, United States Code.

“(d) PROHIBITION ON SIMULTANEOUS SERVICE AS OTHER CHIEF FINANCIAL OFFICER.—An individual serving in the position of Chief Financial Officer of the Intelligence Community may not, while so serving, serve as the chief financial officer of any other department or agency, or component thereof, of the United States Government.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘major system’ has the meaning given that term in section 506A(e).

“(2) The term ‘Milestone A’ has the meaning given that term in section 506G(f).

“(3) The term ‘Milestone B’ has the meaning given that term in section 506C(e).”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 405(a), is further amended by inserting after the item relating to section 103H, as added by section 405(a)(2), the following new item:

“Sec. 103I. Chief Financial Officer of the Intelligence Community.”.

SEC. 407. LEADERSHIP AND LOCATION OF CERTAIN OFFICES AND OFFICIALS.

(a) NATIONAL COUNTER PROLIFERATION CENTER.—Section 119A(a) of the National Security Act of 1947 (50 U.S.C. 404o–1(a)) is amended—

(1) by striking “Not later than 18 months after the date of the enactment of the National Security Intelligence Reform Act of 2004, the” and inserting “(1) The”; and

(2) by adding at the end the following new paragraphs:

“(2) The head of the National Counter Proliferation Center shall be the Director of the National Counter Proliferation Center, who shall be appointed by the Director of National Intelligence.

Appointment.

“(3) The National Counter Proliferation Center shall be located within the Office of the Director of National Intelligence.”.

(b) OFFICERS.—Section 103(c) of that Act (50 U.S.C. 403–3(c)) is amended—

(1) by redesignating paragraph (9) as paragraph (14); and

(2) by inserting after paragraph (8) the following new paragraphs:

“(9) The Chief Information Officer of the Intelligence Community.

“(10) The Inspector General of the Intelligence Community.

“(11) The Director of the National Counterterrorism Center.

“(12) The Director of the National Counter Proliferation Center.

“(13) The Chief Financial Officer of the Intelligence Community.”.

SEC. 408. PROTECTION OF CERTAIN FILES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

(a) IN GENERAL.—Title VII of the National Security Act of 1947 (50 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

“PROTECTION OF CERTAIN FILES OF THE OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE

50 USC 432d.

“SEC. 706. (a) INAPPLICABILITY OF FOIA TO EXEMPTED OPERATIONAL FILES PROVIDED TO ODNI.—(1) Subject to paragraph (2), the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of a record shall not apply to a record provided to the Office of the Director of National Intelligence by an element of the intelligence community from the exempted operational files of such element.

“(2) Paragraph (1) shall not apply with respect to a record of the Office that—

“(A) contains information derived or disseminated from an exempted operational file, unless such record is created by the Office for the sole purpose of organizing such exempted operational file for use by the Office;

“(B) is disseminated by the Office to a person other than an officer, employee, or contractor of the Office; or

“(C) is no longer designated as an exempted operational file in accordance with this title.

“(b) EFFECT OF PROVIDING FILES TO ODNI.—Notwithstanding any other provision of this title, an exempted operational file that is provided to the Office by an element of the intelligence community shall not be subject to the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of a record solely because such element provides such exempted operational file to the Office.

“(c) SEARCH AND REVIEW FOR CERTAIN PURPOSES.—Notwithstanding subsection (a) or (b), an exempted operational file shall continue to be subject to search and review for information concerning any of the following:

“(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code.

“(2) Any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code.

“(3) The specific subject matter of an investigation for any impropriety or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity by any of the following:

“(A) The Select Committee on Intelligence of the Senate.

“(B) The Permanent Select Committee on Intelligence of the House of Representatives.

“(C) The Intelligence Oversight Board.

“(D) The Department of Justice.

“(E) The Office of the Director of National Intelligence.

“(F) The Office of the Inspector General of the Intelligence Community.

“(d) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—

(1) Not less than once every 10 years, the Director of National Intelligence shall review the exemptions in force under subsection (a) to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

“(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

“(3) A complainant that alleges that the Director of National Intelligence has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

“(A) Whether the Director has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010 or before the expiration of the 10-year period beginning on the date of the most recent review.

“(B) Whether the Director of National Intelligence, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

“(e) SUPERSEDITION OF OTHER LAWS.—The provisions of this section may not be superseded except by a provision of law that is enacted after the date of the enactment of this section and that specifically cites and repeals or modifies such provisions.

“(f) ALLEGATION; IMPROPER WITHHOLDING OF RECORDS; JUDICIAL REVIEW.—(1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that the Office has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

“(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

“(A) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by the Office, such information shall be examined ex parte, in camera by the court.

“(B) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

“(C)(i) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Office may meet the burden of the Office under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted files likely to contain responsive records are records provided to the Office by an element of the intelligence community from the exempted operational files of such element.

“(ii) The court may not order the Office to review the content of any exempted file in order to make the demonstration required under clause (i), unless the complainant disputes the Office’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

“(D) In proceedings under subparagraph (C), a party may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36 of the Federal Rules of Civil Procedure.

“(E) If the court finds under this subsection that the Office has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Office to search and review each appropriate exempted file for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section.

“(F) If at any time following the filing of a complaint pursuant to this paragraph the Office agrees to search each appropriate exempted file for the requested records, the court shall dismiss the claim based upon such complaint.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘exempted operational file’ means a file of an element of the intelligence community that, in accordance with this title, is exempted from the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of such file.

“(2) Except as otherwise specifically provided, the term ‘Office’ means the Office of the Director of National Intelligence.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 406(b) of this Act, is further amended by inserting after the item relating to section 705 the following new item:

“Sec. 706. Protection of certain files of the Office of the Director of National Intelligence.”.

SEC. 409. COUNTERINTELLIGENCE INITIATIVES FOR THE INTELLIGENCE COMMUNITY.

Section 1102 of the National Security Act of 1947 (50 U.S.C. 442a) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2); and

(B) by striking “(1) In” and inserting “In”; and

(2) in subsection (c)—

(A) by striking paragraph (2); and

(B) by striking “(1) The” and inserting “The”.

SEC. 410. INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT TO ADVISORY COMMITTEES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

(a) IN GENERAL.—Section 4(b) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking “or”;

(2) in paragraph (2), by striking the period and inserting “; or”; and

(3) by adding at the end the following new paragraph:

“(3) the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee cannot comply with the requirements of this Act.”.

(b) ANNUAL REPORT.—

50 USC 405 note.

(1) IN GENERAL.—The Director of National Intelligence and the Director of the Central Intelligence Agency shall each submit to the congressional intelligence committees an annual report on advisory committees created by each such Director. Each report shall include—

(A) a description of each such advisory committee, including the subject matter of the committee; and

(B) a list of members of each such advisory committee.

(2) REPORT ON REASONS FOR ODNI EXCLUSION OF ADVISORY COMMITTEE FROM FACA.—Each report submitted by the Director of National Intelligence in accordance with paragraph (1) shall include the reasons for a determination by the Director under section 4(b)(3) of the Federal Advisory Committee Act (5 U.S.C. App.), as added by subsection (a) of this section, that an advisory committee cannot comply with the requirements of such Act.

SEC. 411. MEMBERSHIP OF THE DIRECTOR OF NATIONAL INTELLIGENCE ON THE TRANSPORTATION SECURITY OVERSIGHT BOARD.

Subparagraph (F) of section 115(b)(1) of title 49, United States Code, is amended to read as follows:

“(F) The Director of National Intelligence, or the Director’s designee.”.

SEC. 412. REPEAL OF CERTAIN AUTHORITIES RELATING TO THE OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) REPEAL OF CERTAIN AUTHORITIES.—Section 904 of the Counterintelligence Enhancement Act of 2002 (50 U.S.C. 402c) is amended—

(1) by striking subsections (d), (h), (i), and (j);

(2) by redesignating subsections (e), (f), (g), (k), (l), and (m) as subsections (d), (e), (f), (g), (h), and (i), respectively; and

(3) in subsection (f), as redesignated by paragraph (2), by striking paragraphs (3) and (4).

(b) CONFORMING AMENDMENTS.—Such section 904 is further amended—

(1) in subsection (d), as redesignated by subsection (a)(2) of this section, by striking “subsection (f)” each place it appears in paragraphs (1) and (2) and inserting “subsection (e)”; and

(2) in subsection (e), as so redesignated—

(A) in paragraph (1), by striking “subsection (e)(1)” and inserting “subsection (d)(1)”; and

(B) in paragraph (2), by striking “subsection (e)(2)” and inserting “subsection (d)(2)”.

SEC. 413. MISUSE OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE NAME, INITIALS, OR SEAL.

(a) **PROHIBITION.**—Title XI of the National Security Act of 1947 (50 U.S.C. 442 et seq.) is amended by adding at the end the following new section:

“MISUSE OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE NAME, INITIALS, OR SEAL

50 USC 442b.

“SEC. 1103. (a) **PROHIBITED ACTS.**—No person may, except with the written permission of the Director of National Intelligence, or a designee of the Director, knowingly use the words ‘Office of the Director of National Intelligence’, the initials ‘ODNI’, the seal of the Office of the Director of National Intelligence, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Director of National Intelligence.

“(b) **INJUNCTION.**—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.”.

(b) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in the first section of such Act, as amended by section 408 of this Act, is further amended by inserting after the item relating to section 1102 the following new item:

“Sec. 1103. Misuse of the Office of the Director of National Intelligence name, initials, or seal.”.

SEC. 414. PLAN TO IMPLEMENT RECOMMENDATIONS OF THE DATA CENTER ENERGY EFFICIENCY REPORTS.

(a) **PLAN.**—The Director of National Intelligence shall develop a plan to implement the recommendations of the report submitted to Congress under section 1 of the Act entitled “An Act to study and promote the use of energy efficient computer servers in the United States” (Public Law 109–431; 120 Stat. 2920) across the intelligence community.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report containing the plan developed under subsection (a).

(2) **FORM.**—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 415. DIRECTOR OF NATIONAL INTELLIGENCE SUPPORT FOR
REVIEWS OF INTERNATIONAL TRAFFIC IN ARMS REGULA-
TIONS AND EXPORT ADMINISTRATION REGULATIONS.**

50 USC app.
2401 note.

The Director of National Intelligence may provide support for any review conducted by a department or agency of the United States Government of the International Traffic in Arms Regulations or Export Administration Regulations, including a review of technologies and goods on the United States Munitions List and Commerce Control List that may warrant controls that are different or additional to the controls such technologies and goods are subject to at the time of such review.

Subtitle B—Central Intelligence Agency

**SEC. 421. ADDITIONAL FUNCTIONS AND AUTHORITIES FOR PROTEC-
TIVE PERSONNEL OF THE CENTRAL INTELLIGENCE
AGENCY.**

Section 5(a)(4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(4)) is amended—

(1) by striking “and the protection” and inserting “the protection”; and

(2) by inserting before the semicolon the following: “, and the protection of the Director of National Intelligence and such personnel of the Office of the Director of National Intelligence as the Director of National Intelligence may designate”.

**SEC. 422. APPEALS FROM DECISIONS INVOLVING CONTRACTS OF THE
CENTRAL INTELLIGENCE AGENCY.**

Section 8(d) of the Contract Disputes Act of 1978 (41 U.S.C. 607(d)) is amended by adding at the end “Notwithstanding any other provision of this section and any other provision of law, an appeal from a decision of a contracting officer of the Central Intelligence Agency relative to a contract made by that Agency may be filed with whichever of the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals is specified by such contracting officer as the Board to which such an appeal may be made and such Board shall have jurisdiction to decide that appeal.”.

**SEC. 423. DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE
AGENCY.**

(a) ESTABLISHMENT AND DUTIES OF DEPUTY DIRECTOR OF THE CIA.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 406 of this Act, is further amended by inserting after section 104A the following new section:

“DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

“SEC. 104B. (a) DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.—There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President.

50 USC 403–4c.
Appointment.

“(b) DUTIES.—The Deputy Director of the Central Intelligence Agency shall—

“(1) assist the Director of the Central Intelligence Agency in carrying out the duties and responsibilities of the Director of the Central Intelligence Agency; and

“(2) during the absence or disability of the Director of the Central Intelligence Agency, or during a vacancy in the position of Director of the Central Intelligence Agency, act for and exercise the powers of the Director of the Central Intelligence Agency.”.

(b) CONFORMING AMENDMENTS.—

(1) EXECUTIVE SCHEDULE III.—Section 5314 of title 5, United States Code, is amended by striking “Deputy Directors of Central Intelligence (2)” and inserting “Deputy Director of the Central Intelligence Agency”.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 414 of this Act, is further amended by inserting after the item relating to section 104A the following new item:

“Sec. 104B. Deputy Director of the Central Intelligence Agency.”.

50 USC 403-4c.

(c) APPLICABILITY.—The amendments made by this section shall apply on the earlier of—

(1) the date of the appointment by the President of an individual to serve as Deputy Director of the Central Intelligence Agency pursuant to section 104B of the National Security Act of 1947, as added by subsection (a), except that the individual administratively performing the duties of the Deputy Director of the Central Intelligence Agency as of the date of the enactment of this Act may continue to perform such duties until the individual appointed to the position of Deputy Director of the Central Intelligence Agency assumes the duties of such position; or

(2) the date of the cessation of the performance of the duties of the Deputy Director of the Central Intelligence Agency by the individual administratively performing such duties as of the date of the enactment of this Act.

SEC. 424. AUTHORITY TO AUTHORIZE TRAVEL ON A COMMON CARRIER.

Subsection (b) of section 116 of the National Security Act of 1947 (50 U.S.C. 404k) is amended by striking the period at the end and inserting “, who may delegate such authority to other appropriate officials of the Central Intelligence Agency.”.

SEC. 425. INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY.

(a) APPOINTMENT AND QUALIFICATIONS OF THE INSPECTOR GENERAL.—Paragraph (1) of section 17(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(b)) is amended by striking the second and third sentences and inserting “This appointment shall be made without regard to political affiliation and shall be on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigation. Such appointment shall also be made on the basis of compliance with the security standards of the Agency and prior experience in the field of foreign intelligence.”.

(b) REMOVAL OF THE INSPECTOR GENERAL.—Paragraph (6) of section 17(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(b)) is amended—

(1) by striking “immediately”; and

(2) by striking the period at the end and inserting “not later than 30 days prior to the effective date of such removal.”.

Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.”.

(c) APPLICATION OF SEMIANNUAL REPORTING REQUIREMENTS WITH RESPECT TO REVIEW REPORTS.—Paragraph (1) of section 17(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)) is amended in the matter preceding subparagraph (A) by inserting “review,” after “investigation.”.

(d) PROTECTION AGAINST REPRISALS.—Subparagraph (B) of section 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(e)(3)) is amended by inserting “or providing such information” after “making such complaint”.

(e) INSPECTOR GENERAL SUBPOENA POWER.—Subparagraph (A) of section 17(e)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(e)(5)) is amended by inserting “in any medium (including electronically stored information or any tangible thing)” after “other data”.

(f) OTHER ADMINISTRATIVE AUTHORITIES.—

(1) IN GENERAL.—Subsection (e) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q), as amended by subsections (d) and (e) of this section, is further amended—

(A) by redesignating paragraph (8) as subparagraph (9);

(B) in paragraph (9), as so redesignated—

(i) by striking “Subject to the concurrence of the Director, the” and inserting “The”; and

(ii) by adding at the end the following: “Consistent with budgetary and personnel resources allocated by the Director, the Inspector General has final approval of—

“(A) the selection of internal and external candidates for employment with the Office of Inspector General; and

“(B) all other personnel decisions concerning personnel permanently assigned to the Office of Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of other Central Intelligence Agency offices.”; and

(C) by inserting after paragraph (7) the following new paragraph:

“(8)(A) The Inspector General shall—

“(i) appoint a Counsel to the Inspector General who shall report to the Inspector General; or

“(ii) obtain the services of a counsel appointed by and directly reporting to another Inspector General or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

“(B) The counsel appointed or obtained under subparagraph (A) shall perform such functions as the Inspector General may prescribe.”.

(2) CONSTRUCTION.—Nothing in the amendment made by paragraph (1)(C) shall be construed to alter the duties and responsibilities of the General Counsel of the Central Intelligence Agency.

Appointment.

50 USC 403q note.

SEC. 426. BUDGET OF THE INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY.

Subsection (f) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) is amended—

(1) by inserting “(1)” before “Beginning”; and

(2) by adding at the end the following new paragraph:

“(2) For each fiscal year, the Inspector General shall transmit a budget estimate and request through the Director to the Director of National Intelligence that specifies for such fiscal year—

“(A) the aggregate amount requested for the operations of the Inspector General;

“(B) the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office; and

“(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

“(3) In transmitting a proposed budget to the President for a fiscal year, the Director of National Intelligence shall include for such fiscal year—

“(A) the aggregate amount requested for the Inspector General of the Central Intelligence Agency;

“(B) the amount requested for Inspector General training;

“(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

“(D) the comments of the Inspector General, if any, with respect to such proposed budget.

“(4) The Director of National Intelligence shall submit to the Committee on Appropriations and the Select Committee on Intelligence of the Senate and the Committee on Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives for each fiscal year—

“(A) a separate statement of the budget estimate transmitted pursuant to paragraph (2);

“(B) the amount requested by the Director of National Intelligence for the Inspector General pursuant to paragraph (3)(A);

“(C) the amount requested by the Director of National Intelligence for training of personnel of the Office of the Inspector General pursuant to paragraph (3)(B);

“(D) the amount requested by the Director of National Intelligence for support for the Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (3)(C); and

“(E) the comments of the Inspector General under paragraph (3)(D), if any, on the amounts requested pursuant to paragraph (3), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office.”.

SEC. 427. PUBLIC AVAILABILITY OF UNCLASSIFIED VERSIONS OF CERTAIN INTELLIGENCE PRODUCTS.

The Director of the Central Intelligence Agency shall make publicly available an unclassified version of any memoranda or finished intelligence products assessing the—

- (1) information gained from high-value detainee reporting;
and
- (2) dated April 3, 2003, July 15, 2004, March 2, 2005,
and June 1, 2005.

Subtitle C—Defense Intelligence Components

SEC. 431. INSPECTOR GENERAL MATTERS.

(a) COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.—Subsection (a)(2) of section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by inserting “the Defense Intelligence Agency,” after “the Corporation for Public Broadcasting,”;

(2) by inserting “the National Geospatial-Intelligence Agency,” after “the National Endowment for the Humanities,”; and

(3) by inserting “the National Reconnaissance Office, the National Security Agency,” after “the National Labor Relations Board,”.

(b) CERTAIN DESIGNATIONS UNDER INSPECTOR GENERAL ACT OF 1978.—Subsection (a) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new paragraph:

“(3) The Inspectors General of the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, and the National Security Agency shall be designees of the Inspector General of the Department of Defense for purposes of this section.”.

(c) POWER OF HEADS OF ELEMENTS OVER INVESTIGATIONS.—Subsection (d) of section 8G of such Act (5 U.S.C. App.) is amended—

(1) by inserting “(1)” after “(d)”;

(2) in the second sentence of paragraph (1), as designated by paragraph (1) of this subsection, by striking “The head” and inserting “Except as provided in paragraph (2), the head”; and

(3) by adding at the end the following new paragraph:

“(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

“(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

“(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector

Notification.

general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

“(D) The elements of the intelligence community specified in this subparagraph are as follows:

“(i) The Defense Intelligence Agency.

“(ii) The National Geospatial-Intelligence Agency.

“(iii) The National Reconnaissance Office.

“(iv) The National Security Agency.

“(E) The committees of Congress specified in this subparagraph are—

“(i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.”.

SEC. 432. CLARIFICATION OF NATIONAL SECURITY MISSIONS OF NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY FOR ANALYSIS AND DISSEMINATION OF CERTAIN INTELLIGENCE INFORMATION.

Section 442(a) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2)(A) As directed by the Director of National Intelligence, the National Geospatial-Intelligence Agency shall develop a system to facilitate the analysis, dissemination, and incorporation of likenesses, videos, and presentations produced by ground-based platforms, including handheld or clandestine photography taken by or on behalf of human intelligence collection organizations or available as open-source information, into the National System for Geospatial Intelligence.

“(B) The authority provided by this paragraph does not include authority for the National Geospatial-Intelligence Agency to manage tasking of handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.”; and

(3) in paragraph (3), as so redesignated, by striking “paragraph (1)” and inserting “paragraphs (1) and (2)”.

SEC. 433. DIRECTOR OF COMPLIANCE OF THE NATIONAL SECURITY AGENCY.

The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by inserting after the first section the following new section:

Appointment.

“SEC. 2. There is a Director of Compliance of the National Security Agency, who shall be appointed by the Director of the National Security Agency and who shall be responsible for the programs of compliance over mission activities of the National Security Agency.”.

Subtitle D—Other Elements

SEC. 441. CODIFICATION OF ADDITIONAL ELEMENTS OF THE INTELLIGENCE COMMUNITY.

Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) in subparagraph (H)—

(A) by inserting “the Coast Guard,” after “the Marine Corps,”; and

(B) by inserting “the Drug Enforcement Administration,” after “the Federal Bureau of Investigation,”; and

(2) in subparagraph (K), by striking “, including the Office of Intelligence of the Coast Guard”.

SEC. 442. AUTHORIZATION OF APPROPRIATIONS FOR COAST GUARD NATIONAL TACTICAL INTEGRATION OFFICE.

Title 14, United States Code, is amended—

(1) in paragraph (4) of section 93(a), by striking “function” and inserting “function, including research, development, test, or evaluation related to intelligence systems and capabilities,”; and 14 USC 93.

(2) in paragraph (4) of section 662, by inserting “intelligence systems and capabilities or” after “related to”. 14 USC 662.

SEC. 443. RETENTION AND RELOCATION BONUSES FOR THE FEDERAL BUREAU OF INVESTIGATION.

Section 5759 of title 5, United States Code, is amended—

(1) in subsection (a)(2), by striking “is transferred to a different geographic area with a higher cost of living” and inserting “is subject to a mobility agreement and is transferred to a position in a different geographical area in which there is a shortage of critical skills”;

(2) in subsection (b)(2), by striking the period at the end and inserting “, including requirements for a bonus recipient’s repayment of a bonus in circumstances determined by the Director of the Federal Bureau of Investigation.”;

(3) in subsection (c), by striking “basic pay.” and inserting “annual rate of basic pay. The bonus may be paid in a lump sum or installments linked to completion of periods of service.”; and

(4) in subsection (d), by striking “retention bonus” and inserting “bonus paid under this section”.

SEC. 444. EXTENSION OF THE AUTHORITY OF THE FEDERAL BUREAU OF INVESTIGATION TO WAIVE MANDATORY RETIREMENT PROVISIONS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Subsection (b) of section 8335 of title 5, United States Code, is amended—

(1) in the paragraph (2) enacted by section 112(a)(2) of the Department of Justice Appropriations Act, 2005 (title I of division B of Public Law 108–447; 118 Stat. 2868), by striking “2009” and inserting “2011”; and

(2) by striking the paragraph (2) enacted by section 2005(a)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3704).

(b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—Subsection (b) of section 8425 of title 5, United States Code, is amended—

(1) in the paragraph (2) enacted by section 112(b)(2) of the Department of Justice Appropriations Act, 2005 (title I of division B of Public Law 108–447; 118 Stat. 2868), by striking “2009” and inserting “2011”; and

(2) by striking the paragraph (2) enacted by section 2005(b)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3704).

SEC. 445. REPORT AND ASSESSMENTS ON TRANSFORMATION OF THE INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) REPORT.—

(1) **REQUIREMENT.**—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation, in consultation with the Director of National Intelligence, shall submit to the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report describing—

(A) a long-term vision for the intelligence capabilities of the National Security Branch of the Bureau;

(B) a strategic plan for the National Security Branch; and

(C) the progress made in advancing the capabilities of the National Security Branch.

(2) **CONTENT.**—The report required by paragraph (1) shall include—

(A) a description of the direction, strategy, and goals for improving the intelligence capabilities of the National Security Branch;

(B) a description of the intelligence and national security capabilities of the National Security Branch that will be fully functional within the five-year period beginning on the date on which the report is submitted;

(C) a description—

(i) of the internal reforms that were carried out at the National Security Branch during the two-year period ending on the date on which the report is submitted; and

(ii) of the manner in which such reforms have advanced the capabilities of the National Security Branch;

(D) an assessment of the effectiveness of the National Security Branch in performing tasks that are critical to the effective functioning of the National Security Branch as an intelligence agency, including—

(i) human intelligence collection, both within and outside the parameters of an existing case file or ongoing investigation, in a manner that protects civil liberties;

(ii) intelligence analysis, including the ability of the National Security Branch to produce, and provide policymakers with, information on national security threats to the United States;

(iii) management, including the ability of the National Security Branch to manage and develop human capital and implement an organizational structure that supports the objectives and strategies of the Branch;

(iv) integration of the National Security Branch into the intelligence community, including an ability to robustly share intelligence and effectively communicate and operate with appropriate Federal, State, local, and tribal partners;

(v) implementation of an infrastructure that supports the national security and intelligence missions of the National Security Branch, including proper information technology and facilities; and

(vi) reformation of the culture of the National Security Branch, including the integration by the Branch of intelligence analysts and other professional staff into intelligence collection operations and the success of the National Security Branch in ensuring that intelligence and threat information drive the operations of the Branch;

(E) performance metrics and specific annual timetables for advancing the performance of the tasks referred to in clauses (i) through (vi) of subparagraph (D) and a description of the activities being undertaken to ensure that the performance of the National Security Branch in carrying out such tasks improves; and

(F) an assessment of the effectiveness of the field office supervisory term limit policy of the Federal Bureau of Investigation that requires the mandatory reassignment of a supervisor of the Bureau after a specific term of years.

(b) ANNUAL ASSESSMENTS.—

(1) REQUIREMENT FOR ASSESSMENTS.—Not later than 180 days after the date on which the report required by subsection (a)(1) is submitted, and annually thereafter for five years, the Director of National Intelligence, in consultation with the Director of the Federal Bureau of Investigation, shall submit to the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives an assessment of the performance of the National Security Branch in carrying out the tasks referred to in clauses (i) through (vi) of subsection (a)(2)(D) in comparison to such performance during previous years.

(2) CONSIDERATIONS.—In conducting each assessment required by paragraph (1), the Director of National Intelligence—

(A) shall use the performance metrics and specific annual timetables for carrying out such tasks referred to in subsection (a)(2)(E); and

(B) may request the assistance of any expert that the Director considers appropriate, including an inspector general of an appropriate department or agency.

TITLE V—REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE

SEC. 501. REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

(a) REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.—

(1) IN GENERAL.—Subtitle B of title III of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567;

22 USC
7301-7304.

22 U.S.C. 7301 et seq.) is amended by striking sections 321, 322, 323, and 324, and inserting the following new sections:

22 USC 7301.

“SEC. 321. DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

“(a) REORGANIZATION.—The Diplomatic Telecommunications Service Program Office established pursuant to title V of Public Law 102-140 shall be reorganized in accordance with this subtitle.

“(b) DUTIES.—The duties of the DTS-PO include implementing a program for the establishment and maintenance of a DTS Network capable of providing multiple levels of service to meet the wide-ranging needs of all United States Government departments and agencies operating from diplomatic and consular facilities outside of the United States, including national security needs for secure, reliable, and robust communications capabilities.

22 USC 7302.

“SEC. 322. ESTABLISHMENT OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE GOVERNANCE BOARD.

“(a) GOVERNANCE BOARD.—

“(1) ESTABLISHMENT.—There is established the Diplomatic Telecommunications Service Governance Board to direct and oversee the activities and performance of the DTS-PO.

“(2) EXECUTIVE AGENT.—

“(A) DESIGNATION.—The Director of the Office of Management and Budget shall designate, from among the departments and agencies of the United States Government that use the DTS Network, a department or agency as the DTS-PO Executive Agent.

“(B) DUTIES.—The Executive Agent designated under subparagraph (A) shall—

“(i) nominate a Director of the DTS-PO for approval by the Governance Board in accordance with subsection (e); and

“(ii) perform such other duties as established by the Governance Board in the determination of written implementing arrangements and other relevant and appropriate governance processes and procedures under paragraph (3).

Determination.

“(3) REQUIREMENT FOR IMPLEMENTING ARRANGEMENTS.—Subject to the requirements of this subtitle, the Governance Board shall determine the written implementing arrangements and other relevant and appropriate governance processes and procedures to manage, oversee, resource, or otherwise administer the DTS-PO.

“(b) MEMBERSHIP.—

“(1) SELECTION.—The Director of the Office of Management and Budget shall designate from among the departments and agencies that use the DTS Network—

“(A) four departments and agencies to each appoint one voting member of the Governance Board from the personnel of such departments and agencies; and

“(B) any other departments and agencies that the Director considers appropriate to each appoint one nonvoting member of the Governance Board from the personnel of such departments and agencies.

“(2) VOTING AND NONVOTING MEMBERS.—The Governance Board shall consist of voting members and nonvoting members as follows:

“(A) VOTING MEMBERS.—The voting members shall consist of a Chair, who shall be designated by the Director of the Office of Management and Budget, and the four members appointed by departments and agencies designated under paragraph (1)(A).

“(B) NONVOTING MEMBERS.—The nonvoting members shall consist of the members appointed by departments and agencies designated under paragraph (1)(B) and shall act in an advisory capacity.

“(c) CHAIR DUTIES AND AUTHORITIES.—The Chair of the Governance Board shall—

“(1) preside over all meetings and deliberations of the Governance Board;

“(2) provide the Secretariat functions of the Governance Board; and

“(3) propose bylaws governing the operation of the Governance Board.

“(d) QUORUM, DECISIONS, MEETINGS.—A quorum of the Governance Board shall consist of the presence of the Chair and four voting members. The decisions of the Governance Board shall require a majority of the voting membership. The Chair shall convene a meeting of the Governance Board not less than four times each year to carry out the functions of the Governance Board. The Chair or any voting member may convene a meeting of the Governance Board.

“(e) GOVERNANCE BOARD DUTIES.—The Governance Board shall have the following duties with respect to the DTS-PO:

“(1) To approve and monitor the plans, services, priorities, policies, and pricing methodology of the DTS-PO for bandwidth costs and projects carried out at the request of a department or agency that uses the DTS Network.

“(2) To provide to the DTS-PO Executive Agent the recommendation of the Governance Board with respect to the approval, disapproval, or modification of each annual budget request for the DTS-PO, prior to the submission of any such request by the Executive Agent.

“(3) To review the performance of the DTS-PO against plans approved under paragraph (1) and the management activities and internal controls of the DTS-PO.

“(4) To require from the DTS-PO any plans, reports, documents, and records the Governance Board considers necessary to perform its oversight responsibilities.

“(5) To conduct and evaluate independent audits of the DTS-PO.

“(6) To approve or disapprove the nomination of the Director of the DTS-PO by the Executive Agent with a majority vote of the Governance Board.

“(7) To recommend to the Executive Agent the replacement of the Director of the DTS-PO with a majority vote of the Governance Board.

“(f) NATIONAL SECURITY INTERESTS.—The Governance Board shall ensure that those enhancements of, and the provision of service for, telecommunication capabilities that involve the national security interests of the United States receive the highest prioritization.

22 USC 7303.

“SEC. 323. FUNDING OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE.

“(a) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for the operations, maintenance, development, enhancement, modernization, and investment costs of the DTS Network and the DTS-PO. Funds appropriated for allocation to the DTS-PO shall remain available to the DTS-PO for a period of two fiscal years.

“(b) **FEES.**—The DTS-PO shall charge a department or agency that uses the DTS Network for only those bandwidth costs attributable to such department or agency and for specific projects carried out at the request of such department or agency, pursuant to the pricing methodology for such bandwidth costs and such projects approved under section 322(e)(1), for which amounts have not been appropriated for allocation to the DTS-PO. The DTS-PO is authorized to directly receive payments from departments or agencies that use the DTS Network and to invoice such departments or agencies for the fees under this section either in advance of, or upon or after, providing the bandwidth or performing such projects. Such funds received from such departments or agencies shall remain available to the DTS-PO for a period of two fiscal years.

22 USC 7304.

“SEC. 324. DEFINITIONS.

“In this subtitle:

“(1) **DTS NETWORK.**—The term ‘DTS Network’ means the worldwide telecommunications network supporting all United States Government agencies and departments operating from diplomatic and consular facilities outside of the United States.

“(2) **DTS-PO.**—The term ‘DTS-PO’ means the Diplomatic Telecommunications Service Program Office.

“(3) **GOVERNANCE BOARD.**—The term ‘Governance Board’ means the Diplomatic Telecommunications Service Governance Board established under section 322(a)(1).”.

(2) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in section 1(b) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106-567; 114 Stat. 2831) is amended by striking the items relating to sections 321, 322, 323, and 324 and inserting the following new items:

“Sec. 321. Diplomatic Telecommunications Service Program Office.

“Sec. 322. Establishment of the Diplomatic Telecommunications Service Governance Board.

“Sec. 323. Funding of the Diplomatic Telecommunications Service.

“Sec. 324. Definitions.”.

(b) CONFORMING AMENDMENTS.—**(1) REPEAL OF SUSPENSION OF REORGANIZATION.—**

(A) **REPEAL.**—The Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107-108; 22 U.S.C. 7301 note) is amended by striking section 311.

(B) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in section 1 of such Act is amended by striking the item relating to section 311.

(2) REPEAL OF REFORM.—

(A) **REPEAL.**—The Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106-113 and contained in appendix G of

that Act; 113 Stat. 1501A–405) is amended by striking section 305.

(B) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 2(b) of such Act is amended by striking the item related to section 305.

(3) REPEAL OF REPORTING REQUIREMENTS.—Section 507(b) of the National Security Act of 1947 (50 U.S.C. 415b(b)), as amended by section 351 of this Act, is further amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

22 USC 7301
note.

TITLE VI—FOREIGN INTELLIGENCE AND INFORMATION COMMISSION ACT

Foreign
Intelligence and
Information
Commission Act.

SEC. 601. SHORT TITLE.

This title may be cited as the “Foreign Intelligence and Information Commission Act”.

SEC. 602. DEFINITIONS.

In this title:

(1) COMMISSION.—The term “Commission” means the Foreign Intelligence and Information Commission established in section 603(a).

(2) FOREIGN INTELLIGENCE; INTELLIGENCE.—The terms “foreign intelligence” and “intelligence” have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(3) INFORMATION.—The term “information” includes information of relevance to the foreign policy of the United States collected and conveyed through diplomatic reporting and other reporting by personnel of the United States Government who are not employed by an element of the intelligence community, including public and open-source information.

SEC. 603. ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION.

(a) ESTABLISHMENT.—There is established in the legislative branch a Foreign Intelligence and Information Commission.

(b) PURPOSE.—The purpose of the Commission is to evaluate systems and processes at the strategic, interagency level and provide recommendations accordingly, and not to seek to duplicate the functions of the Director of National Intelligence.

(c) FUNCTIONS.—The Commission shall—

(1) evaluate the current processes or systems for the strategic integration of the intelligence community, including the Open Source Center, and other elements of the United States Government, including the Department of State, with regard to the collection, reporting, and analysis of foreign intelligence and information;

(2) provide recommendations to improve or develop such processes or systems to integrate the intelligence community with other elements of the United States Government, potentially including the development of an interagency strategy that identifies—

(A) the collection, reporting, and analysis requirements of the United States Government;

(B) the elements of the United States Government best positioned to meet collection and reporting requirements, with regard to missions, comparative institutional advantages, and any other relevant factors; and

(C) interagency budget and resource allocations necessary to achieve such collection, reporting, and analytical requirements;

(3) evaluate the extent to which current intelligence collection, reporting, and analysis strategies are intended to provide global coverage and anticipate future threats, challenges, and crises;

(4) provide recommendations on how to incorporate into the interagency strategy the means to anticipate future threats, challenges, and crises, including by identifying and supporting collection, reporting, and analytical capabilities that are global in scope and directed at emerging, long-term, and strategic targets;

(5) provide recommendations on strategies for sustaining human and budgetary resources to effect the global collection and reporting missions identified in the interagency strategy, including the repositioning of collection and reporting capabilities;

(6) provide recommendations for developing, clarifying, and, if necessary, bolstering current and future collection and reporting roles and capabilities of elements of the United States Government that are not elements of the intelligence community deployed in foreign countries;

(7) provide recommendations related to the role of individual country missions in contributing to the interagency strategy;

(8) evaluate the extent to which the establishment of new embassies and out-of-embassy posts are able to contribute to expanded global coverage and increased collection and reporting and provide recommendations related to the establishment of new embassies and out-of-embassy posts;

(9) provide recommendations on executive or legislative changes necessary to establish any new executive branch entity or to expand the authorities of any existing executive branch entity, as needed to improve the strategic integration referred to in paragraph (1) and develop and oversee the implementation of any interagency strategy;

(10) provide recommendations on processes for developing and presenting to Congress budget requests for each relevant element of the United States Government that reflect the allocations identified in the interagency strategy and for congressional oversight of the development and implementation of the strategy; and

(11) provide recommendations on any institutional reforms related to the collection and reporting roles of individual elements of the United States Government outside the intelligence community, as well as any budgetary, legislative, or other changes needed to achieve such reforms.

SEC. 604. MEMBERS AND STAFF OF THE COMMISSION.

(a) MEMBERS OF THE COMMISSION.—

(1) APPOINTMENT.—The Commission shall be composed of 10 members as follows:

(A) Two members appointed by the majority leader of the Senate.

(B) Two members appointed by the minority leader of the Senate.

(C) Two members appointed by the Speaker of the House of Representatives.

(D) Two members appointed by the minority leader of the House of Representatives.

(E) One nonvoting member appointed by the Director of National Intelligence.

(F) One nonvoting member appointed by the Secretary of State.

(2) SELECTION.—

(A) IN GENERAL.—Members of the Commission shall be individuals who—

(i) are not officers or employees of the United States Government or any State or local government; and

(ii) have knowledge and experience—

(I) in foreign information and intelligence collection, reporting, and analysis, including clandestine collection and classified analysis (such as experience in the intelligence community), diplomatic reporting and analysis, and collection of public and open-source information;

(II) in issues related to the national security and foreign policy of the United States gained by serving as a senior official of the Department of State, a member of the Foreign Service, an employee or officer of an appropriate department or agency of the United States, or an independent organization with expertise in the field of international affairs; or

(III) with foreign policy decision-making.

(B) DIVERSITY OF EXPERIENCE.—The individuals appointed to the Commission should be selected with a view to establishing diversity of experience with regard to various geographic regions, functions, and issues.

(3) CONSULTATION.—The Speaker and the minority leader of the House of Representatives, the majority leader and the minority leader of the Senate, the Director of National Intelligence, and the Secretary of State shall consult among themselves prior to the appointment of the members of the Commission in order to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be considered by the Commission in accordance with this title.

(4) TIME OF APPOINTMENT.—The appointments under subsection (a) shall be made—

(A) after the date on which funds are first appropriated for the Commission pursuant to section 609; and

(B) not later than 60 days after such date.

(5) TERM OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(6) VACANCIES.—Any vacancy of the Commission shall not affect the powers of the Commission and shall be filled in the manner in which the original appointment was made.

(7) CHAIR.—The voting members of the Commission shall designate one of the voting members to serve as the chair of the Commission.

(8) QUORUM.—Five voting members of the Commission shall constitute a quorum for purposes of transacting the business of the Commission.

(9) MEETINGS.—The Commission shall meet at the call of the chair and shall meet regularly, not less than once every 3 months, during the life of the Commission.

(b) STAFF.—

(1) IN GENERAL.—The chair of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of that title relating to classification of positions and General Schedule pay rates, appoint and terminate an executive director and, in consultation with the executive director, appoint and terminate such other additional personnel as may be necessary to enable the Commission to perform its duties. In addition to the executive director and one full-time support staff for the executive director, there shall be additional staff with relevant intelligence and foreign policy experience to support the work of the Commission.

(2) SELECTION OF THE EXECUTIVE DIRECTOR.—The executive director shall be selected with the approval of a majority of the voting members of the Commission.

(3) COMPENSATION.—

(A) EXECUTIVE DIRECTOR.—The executive director shall be compensated at the maximum annual rate payable for an employee of a standing committee of the Senate under section 105(e) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61-1(e)), as adjusted by any order of the President pro tempore of the Senate.

(B) STAFF.—The chair of the Commission may fix the compensation of other personnel of the Commission without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the maximum annual rate payable for an employee of a standing committee of the Senate under section 105(e) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61-1(e)), as adjusted by any order of the President pro tempore of the Senate.

(c) EXPERTS AND CONSULTANTS.—The Commission is authorized to procure temporary or intermittent services of experts and consultants as necessary to the extent authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of such title.

(d) STAFF AND SERVICES OF OTHER AGENCIES OR DEPARTMENTS OF THE UNITED STATES.—Upon the request of the Commission, the head of a department or agency of the United States may detail, on a reimbursable or nonreimbursable basis, any of the personnel of that department or agency to the Commission to assist the Commission in carrying out this title. The detail of any such personnel shall be without interruption or loss of civil service or Foreign Service status or privilege.

(e) **SECURITY CLEARANCE.**—The appropriate departments or agencies of the United States shall cooperate with the Commission in expeditiously providing to the members and staff of the Commission appropriate security clearances to the extent possible pursuant to existing procedures and requirements.

(f) **REPORTS UNDER ETHICS IN GOVERNMENT ACT OF 1978.**—Notwithstanding any other provision of law, for purposes of title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), each member and staff of the Commission—

(1) shall be deemed to be an officer or employee of the Congress (as defined in section 109(13) of such title); and

(2) shall file any report required to be filed by such member or such staff (including by virtue of the application of paragraph (1)) under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) with the Secretary of the Senate.

SEC. 605. POWERS AND DUTIES OF THE COMMISSION.

(a) **HEARINGS AND EVIDENCE.**—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this title.

(b) **INFORMATION FROM FEDERAL AGENCIES.**—The Commission may secure directly from any department or agency of the United States such information as the Commission considers necessary to carry out this title. Upon request of the chair of the Commission, the head of such department or agency shall furnish such information to the Commission, subject to applicable law.

(c) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as a department or agency of the United States.

(d) **ADMINISTRATIVE SUPPORT.**—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis (or, in the discretion of the Administrator, on a nonreimbursable basis) such administrative support services as the Commission may request to carry out this title.

(e) **ADMINISTRATIVE PROCEDURES.**—The Commission may adopt such rules and regulations, relating to administrative procedure, as may be reasonably necessary to enable the Commission to carry out this title.

(f) **TRAVEL.**—

(1) **IN GENERAL.**—The members and staff of the Commission may, with the approval of the Commission, conduct such travel as is necessary to carry out this title.

(2) **EXPENSES.**—Members of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(g) **GIFTS.**—No member or staff of the Commission may receive a gift or benefit by reason of the service of such member or staff to the Commission.

SEC. 606. REPORT OF THE COMMISSION.

(a) **IN GENERAL.**—

(1) **INTERIM REPORT.**—Not later than 300 days after the date on which all members of the Commission are appointed

under section 604(a), the Commission shall submit to the congressional intelligence committees an interim report setting forth the preliminary evaluations and recommendations of the Commission described in section 603(c).

(2) **FINAL REPORT.**—Not later than 60 days after the date of the submission of the report required by paragraph (1), the Commission shall submit a final report setting forth the final evaluations and recommendations of the Commission described in section 603(c) to each of the following:

- (A) The President.
- (B) The Director of National Intelligence.
- (C) The Secretary of State.
- (D) The congressional intelligence committees.
- (E) The Committee on Foreign Relations of the Senate.
- (F) The Committee on Foreign Affairs of the House of Representatives.

(b) **INDIVIDUAL OR DISSENTING VIEWS.**—Each member of the Commission may include that member's individual or dissenting views in a report required by paragraph (1) or (2) of subsection (a).

(c) **FORM OF REPORT.**—The reports required by paragraphs (1) and (2) of subsection (a), including any finding or recommendation of such report, shall be submitted in unclassified form, but may include a classified annex.

SEC. 607. TERMINATION.

(a) **IN GENERAL.**—The Commission shall terminate on the date that is 60 days after the date of the submission of the report required by section 606(a)(2).

(b) **TRANSFER OF RECORDS.**—Upon the termination of the Commission under subsection (a), all records, files, documents, and other materials in the possession, custody, or control of the Commission shall be transferred to the Select Committee on Intelligence of the Senate and deemed to be records of such Committee.

SEC. 608. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There is authorized to be appropriated such sums as may be necessary to carry out this title.

(b) **AVAILABILITY.**—Amounts made available to the Commission pursuant to subsection (a) shall remain available until expended.

TITLE VII—OTHER MATTERS

SEC. 701. EXTENSION OF NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

(a) **EXTENSION.**—

(1) **IN GENERAL.**—Effective on the date on which funds are first appropriated pursuant to subsection (b)(1) and subject to paragraph (3), subsection (a) of section 1007 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law

107–306; 50 U.S.C. 401 note) is amended by striking “September 1, 2004,” and inserting “one year after the date on which all members of the Commission are appointed pursuant to section 701(a)(3) of the Intelligence Authorization Act for Fiscal Year 2010.”.

(2) APPLICABILITY OF AMENDMENT.—The amendment made by paragraph (1) shall take effect as if included in the enactment of such section 1007. 50 USC 401 note.

(3) COMMISSION MEMBERSHIP.—The membership of the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community established under subsection (a) of section 1002 of such Act (Public Law 107–306; 50 U.S.C. 401 note) (referred to in this section as the “Commission”) shall be considered vacant and new members shall be appointed in accordance with such section 1002, as amended by this section. 50 USC 401 note.

(4) CLARIFICATION OF DUTIES.—Section 1002(i) of such Act is amended in the matter preceding paragraph (1) by striking “including—” and inserting “including advanced research and development programs and activities. Such review shall include—”. 50 USC 401 note.

(b) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

(2) AVAILABILITY.—Amounts made available to the Commission pursuant to paragraph (1) shall remain available until expended.

(3) REPEAL OF EXISTING FUNDING AUTHORITY.—Section 1010 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 401 note) is repealed.

(c) TECHNICAL AMENDMENTS.—

(1) DIRECTOR OF CENTRAL INTELLIGENCE.—The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306) is amended by striking “Director of Central Intelligence” each place it appears and inserting “Director of National Intelligence” in the following provisions: 50 USC 401 note.

(A) Section 1002(h)(2).

(B) Section 1003(d)(1).

(C) Section 1006(a)(1).

(D) Section 1006(b).

(E) Section 1007(a).

(F) Section 1008.

(2) DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT.—Paragraph (1) of section 1002(b) of such Act is amended by striking “The Deputy Director of Central Intelligence for Community Management.” and inserting “The Principal Deputy Director of National Intelligence.”.

SEC. 702. CLASSIFICATION REVIEW OF EXECUTIVE BRANCH MATERIALS IN THE POSSESSION OF THE CONGRESSIONAL INTELLIGENCE COMMITTEES.

The Director of National Intelligence is authorized to conduct, at the request of one of the congressional intelligence committees and in accordance with procedures established by that committee, a classification review of materials in the possession of that committee that—

- (1) are not less than 25 years old; and
- (2) were created, or provided to that committee, by an entity in the executive branch.

TITLE VIII—TECHNICAL AMENDMENTS

SEC. 801. TECHNICAL AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

- 50 USC 1801. (1) in section 101—
 - (A) in subsection (a), by moving paragraph (7) two ems to the right; and
 - (B) by moving subsections (b) through (p) two ems to the right;
- 50 USC 1803. (2) in section 103, by redesignating subsection (i) as subsection (h);
- 50 USC 1809. (3) in section 109(a)—
 - (A) in paragraph (1), by striking “section 112.,” and inserting “section 112.”; and
 - (B) in paragraph (2), by striking the second period;
- 50 USC 1821. (4) in section 301(1), by striking “‘United States’” and all that follows through “and ‘State’” and inserting “‘United States’, ‘person’, ‘weapon of mass destruction’, and ‘State’”;
- 50 USC 1824. (5) in section 304(b), by striking “subsection (a)(3)” and inserting “subsection (a)(2)”;
- 50 USC 1862. (6) in section 502(a), by striking “a annual” and inserting “an annual”.

SEC. 802. TECHNICAL AMENDMENTS TO THE CENTRAL INTELLIGENCE AGENCY ACT OF 1949.

The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended—

- 50 USC 403f. (1) in paragraph (1) of section 5(a), by striking “authorized under paragraphs (2) and (3) of section 102(a), subsections (c)(7) and (d) of section 103, subsections (a) and (g) of section 104, and section 303 of the National Security Act of 1947 (50 U.S.C. 403(a)(2), (3), 403–3(c)(7), (d), 403–4(a), (g), and 405)” and inserting “authorized under section 104A of the National Security Act of 1947 (50 U.S.C. 403–4a).”; and
- 50 USC 403q. (2) in section 17(d)(3)(B)—
 - (A) in clause (i), by striking “advise” and inserting “advice”; and
 - (B) by amending clause (ii) to read as follows:
 - “(ii) holds or held the position in the Agency, including such a position held on an acting basis, of—
 - “(I) Deputy Director;
 - “(II) Associate Deputy Director;
 - “(III) Director of the National Clandestine Service;
 - “(IV) Director of Intelligence;
 - “(V) Director of Support; or
 - “(VI) Director of Science and Technology.”.

SEC. 803. TECHNICAL AMENDMENTS TO TITLE 10, UNITED STATES CODE.

Section 528(c) of title 10, United States Code, is amended—

(1) in the heading, by striking “ASSOCIATE DIRECTOR OF CIA FOR MILITARY AFFAIRS” and inserting “ASSOCIATE DIRECTOR OF MILITARY AFFAIRS, CIA”; and

(2) by striking “Associate Director of the Central Intelligence Agency for Military Affairs” and inserting “Associate Director of Military Affairs, Central Intelligence Agency, or any successor position”.

SEC. 804. TECHNICAL AMENDMENTS TO THE NATIONAL SECURITY ACT OF 1947.

The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended—

(1) in section 3(4)(L), by striking “other” the second place it appears; 50 USC 401a.

(2) in section 102A— 50 USC 403–1.

(A) in subsection (c)(3)(A), by striking “annual budgets for the Joint Military Intelligence Program and for Tactical Intelligence and Related Activities” and inserting “annual budget for the Military Intelligence Program or any successor program or programs”;

(B) in subsection (d)—

(i) in paragraph (1)(B), by striking “Joint Military Intelligence Program” and inserting “Military Intelligence Program or any successor program or programs”;

(ii) in paragraph (3) in the matter preceding subparagraph (A), by striking “subparagraph (A)” and inserting “paragraph (1)(A)”; and

(iii) in paragraph (5)—

(I) in subparagraph (A), by striking “or personnel” in the matter preceding clause (i); and

(II) in subparagraph (B), by striking “or agency involved” in the second sentence and inserting “involved or the Director of the Central Intelligence Agency (in the case of the Central Intelligence Agency)”;

(C) in subsection (l)(2)(B), by striking “section” and inserting “paragraph”; and

(D) in subsection (n), by inserting “AND OTHER” after “ACQUISITION”;

(3) in section 103(b), by striking “, the National Security Act of 1947 (50 U.S.C. 401 et seq.)”; 50 USC 403–3.

(4) in section 104A(g)(1) in the matter preceding subparagraph (A), by striking “Directorate of Operations” and inserting “National Clandestine Service”; 50 USC 403–4a.

(5) in section 119(c)(2)(B) (50 U.S.C. 404o(c)(2)(B)), by striking “subsection (h)” and inserting “subsection (i)”;

(6) in section 701(b)(1), by striking “Directorate of Operations” and inserting “National Clandestine Service”; 50 USC 431.

(7) in section 705(e)(2)(D)(i) (50 U.S.C. 432c(e)(2)(D)(i)), by striking “responsible” and inserting “responsive”; and

(8) in section 1003(h)(2) in the matter preceding subparagraph (A), by striking “subsection (i)(2)(B)” and inserting “subsection (g)(2)(B)”. 50 USC 441g–2.

SEC. 805. TECHNICAL AMENDMENTS RELATING TO THE MULTIYEAR NATIONAL INTELLIGENCE PROGRAM.

(a) **IN GENERAL.**—Subsection (a) of section 1403 of the National Defense Authorization Act for Fiscal Year 1991 (50 U.S.C. 404b) is amended—

(1) in the heading, by striking “FOREIGN”; and

(2) by striking “foreign” each place it appears.

(b) **RESPONSIBILITY OF DIRECTOR OF NATIONAL INTELLIGENCE.**—Such section 1403, as amended by subsection (a), is further amended—

(1) in subsections (a) and (c), by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”; and

(2) in subsection (b), by inserting “of National Intelligence” after “Director”.

(c) **FUTURE-YEARS DEFENSE PROGRAM.**—Subsection (c) of such section 1403, as amended by subsection (b), is further amended by striking “multiyear defense program submitted pursuant to section 114a of title 10, United States Code” and inserting “future-years defense program submitted pursuant to section 221 of title 10, United States Code”.

(d) **CONFORMING AMENDMENTS.**—

(1) **IN GENERAL.**—The heading of such section 1403 is amended to read as follows:

“SEC. 1403. MULTIYEAR NATIONAL INTELLIGENCE PROGRAM.”.

(2) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in section 2 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1485) is amended by striking the item relating to section 1403 and inserting the following new item:

“Sec. 1403. Multiyear National Intelligence Program.”.

SEC. 806. TECHNICAL AMENDMENTS TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.

(a) **AMENDMENTS TO THE NATIONAL SECURITY INTELLIGENCE REFORM ACT OF 2004.**—The National Security Intelligence Reform Act of 2004 (title I of Public Law 108–458; 118 Stat. 3643) is amended—

(1) in subparagraph (B) of section 1016(e)(10) (6 U.S.C. 485(e)(10)), by striking “Attorney General” the second place it appears and inserting “Department of Justice”;

(2) in subsection (e) of section 1071, by striking “(1)”;

(3) in subsection (b) of section 1072, in the subsection heading by inserting “AGENCY” after “INTELLIGENCE”.

(b) **OTHER AMENDMENTS TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.**—The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3638) is amended—

(1) in section 2001 (28 U.S.C. 532 note)—

(A) in paragraph (1) of subsection (c)—

(i) by striking “shall,” and inserting “shall”; and

(ii) by inserting “of” before “an institutional culture”;

(B) in paragraph (2) of subsection (e), by striking “the National Intelligence Director in a manner consistent with

50 USC
1802–1805,
1822–1824,
1842.
50 USC 403g.

section 112(e)” and inserting “the Director of National Intelligence in a manner consistent with applicable law”; and

(C) in subsection (f), by striking “shall,” in the matter preceding paragraph (1) and inserting “shall”; and
(2) in section 2006 (28 U.S.C. 509 note)—

(A) in paragraph (2), by striking “the Federal” and inserting “Federal”; and

(B) in paragraph (3), by striking “the specific” and inserting “specific”.

SEC. 807. TECHNICAL AMENDMENTS TO THE EXECUTIVE SCHEDULE.

(a) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Director of Central Intelligence and inserting the following new item:

“Director of the Central Intelligence Agency.”.

(b) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the General Counsel of the Office of the National Intelligence Director and inserting the following new item:

“General Counsel of the Office of the Director of National Intelligence.”.

SEC. 808. TECHNICAL AMENDMENTS TO SECTION 105 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004.

Section 105(b) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2603; 31 U.S.C. 311 note) is amended—

(1) by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”; and

(2) by inserting “or in section 313 of such title,” after “subsection (a)),”.

SEC. 809. TECHNICAL AMENDMENTS TO SECTION 602 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1995.

Section 602 of the Intelligence Authorization Act for Fiscal Year 1995 (50 U.S.C. 403–2b) is amended—

(1) in subsection (a), in paragraph (2), by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”; and

(2) in subsection (b)—

(A) in paragraph (1), by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”;

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”; and

(ii) in subparagraph (B), by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”; and

(C) in paragraph (3), by striking “Director of Central Intelligence” and inserting “Director of the Central Intelligence Agency”.

SEC. 810. TECHNICAL AMENDMENTS TO SECTION 403 OF THE INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1992.

(a) **ROLE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.**—Section 403 of the Intelligence Authorization Act, Fiscal Year 1992 (50 U.S.C. 403–2) is amended by striking “The Director of Central Intelligence” and inserting the following:

“(a) **IN GENERAL.**—The Director of National Intelligence”.

(b) **DEFINITION OF INTELLIGENCE COMMUNITY.**—Section 403 of the Intelligence Authorization Act, Fiscal Year 1992, as amended by subsection (a), is further amended—

(1) by striking “Intelligence Community” and inserting “intelligence community”; and

(2) by striking the second sentence and inserting the following:

“(b) **INTELLIGENCE COMMUNITY DEFINED.**—In this section, the term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”.

Approved October 7, 2010.

LEGISLATIVE HISTORY—H.R. 2701 (S. 1494) (S. 3611):

HOUSE REPORTS: No. 111–186 (Permanent Select Comm. on Intelligence.

SENATE REPORTS: Nos. 111–55 and 111–223 (both from Select Comm. on Intelligence) accompanying S. 1494 and S. 3611.

CONGRESSIONAL RECORD, Vol. 156 (2010):

Feb. 25, 26, considered and passed House.

Sept. 27, considered and passed Senate, amended.

Sept. 29, House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Oct. 7, Presidential statement.



Public Law 111–260
111th Congress

An Act

To increase the access of persons with disabilities to modern communications, and for other purposes.

Oct. 8, 2010
[S. 3304]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Twenty-First Century Communications and Video Accessibility Act of 2010”.

(b) **TABLE OF CONTENTS.**—

Twenty-First
Century
Communications
and Video
Accessibility Act
of 2010.
47 USC 609 note.

Sec. 1. Short title; table of contents.
Sec. 2. Limitation on liability.
Sec. 3. Proprietary technology.

TITLE I—COMMUNICATIONS ACCESS

Sec. 101. Definitions.
Sec. 102. Hearing aid compatibility.
Sec. 103. Relay services.
Sec. 104. Access to advanced communications services and equipment.
Sec. 105. Universal service.
Sec. 106. Emergency Access Advisory Committee.

TITLE II—VIDEO PROGRAMMING

Sec. 201. Video Programming and Emergency Access Advisory Committee.
Sec. 202. Video description and closed captioning.
Sec. 203. Closed captioning decoder and video description capability.
Sec. 204. User interfaces on digital apparatus.
Sec. 205. Access to video programming guides and menus provided on navigation devices.
Sec. 206. Definitions.

SEC. 2. LIMITATION ON LIABILITY.

47 USC 153 note.

(a) **IN GENERAL.**—Except as provided in subsection (b), no person shall be liable for a violation of the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services to the extent such person—

(1) transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or

(2) provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access

to such video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

(b) EXCEPTION.—The limitation on liability under subsection (a) shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

47 USC 153 note.

SEC. 3. PROPRIETARY TECHNOLOGY.

No action taken by the Federal Communications Commission to implement this Act or any amendment made by this Act shall mandate the use or incorporation of proprietary technology.

TITLE I—COMMUNICATIONS ACCESS

SEC. 101. DEFINITIONS.

Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) by adding at the end the following new paragraphs:

“(53) ADVANCED COMMUNICATIONS SERVICES.—The term ‘advanced communications services’ means—

“(A) interconnected VoIP service;

“(B) non-interconnected VoIP service;

“(C) electronic messaging service; and

“(D) interoperable video conferencing service.

“(54) CONSUMER GENERATED MEDIA.—The term ‘consumer generated media’ means content created and made available by consumers to online websites and services on the Internet, including video, audio, and multimedia content.

“(55) DISABILITY.—The term ‘disability’ has the meaning given such term under section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

“(56) ELECTRONIC MESSAGING SERVICE.—The term ‘electronic messaging service’ means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.

“(57) INTERCONNECTED VOIP SERVICE.—The term ‘interconnected VoIP service’ has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

“(58) NON-INTERCONNECTED VOIP SERVICE.—The term ‘non-interconnected VoIP service’—

“(A) means a service that—

“(i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and

“(ii) requires Internet protocol compatible customer premises equipment; and

“(B) does not include any service that is an interconnected VoIP service.

“(59) INTEROPERABLE VIDEO CONFERENCING SERVICE.—The term ‘interoperable video conferencing service’ means a service

that provides real-time video communications, including audio, to enable users to share information of the user's choosing.”; and

(2) by reordering paragraphs (1) through (52) and the paragraphs added by paragraph (1) of this section in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

SEC. 102. HEARING AID COMPATIBILITY.

(a) COMPATIBILITY REQUIREMENTS.—

(1) TELEPHONE SERVICE FOR THE DISABLED.—Section 710(b)(1) of the Communications Act of 1934 (47 U.S.C. 610(b)(1)) is amended to read as follows:

“(b)(1) Except as provided in paragraphs (2) and (3) and subsection (c), the Commission shall require that customer premises equipment described in this paragraph provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility. Customer premises equipment described in this paragraph are the following:

“(A) All essential telephones.

“(B) All telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date.

“(C) All customer premises equipment used with advanced communications services that is designed to provide 2-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone, subject to the regulations prescribed by the Commission under subsection (e).”.

(2) ADDITIONAL AMENDMENTS.—Section 710(b) of the Communications Act of 1934 (47 U.S.C. 610(b)) is further amended—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i)—

(aa) by striking “initial”;

(bb) by striking “of this subsection after the date of enactment of the Hearing Aid Compatibility Act of 1988”; and

(cc) by striking “paragraph (1)(B) of this subsection” and inserting “subparagraphs (B) and (C) of paragraph (1)”;

(II) by inserting “and” at the end of clause

(ii);

(III) by striking clause (iii); and

(IV) by redesignating clause (iv) as clause (iii);

(ii) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(iii) in subparagraph (B) (as so redesignated)—

(I) by striking the first sentence and inserting “The Commission shall periodically assess the appropriateness of continuing in effect the exemptions for telephones and other customer premises

equipment described in subparagraph (A) of this paragraph.”; and

(II) in each of clauses (iii) and (iv), by striking “paragraph (1)(B)” and inserting “subparagraph (B) or (C) of paragraph (1)”;

(B) in paragraph (4)(B)—

(i) by striking “public mobile” and inserting “telephones used with public mobile”;

(ii) by inserting “telephones and other customer premises equipment used in whole or in part with” after “means”;

(iii) by striking “and” after “public land mobile telephone service,” and inserting “or”;

(iv) by striking “part 22 of”; and

(v) by inserting after “Regulations” the following: “, or any functionally equivalent unlicensed wireless services”; and

(C) in paragraph (4)(C)—

(i) by striking “term ‘private radio services’” and inserting “term ‘telephones used with private radio services’”; and

(ii) by inserting “telephones and other customer premises equipment used in whole or in part with” after “means”.

(b) TECHNICAL STANDARDS.—Section 710(c) of the Communications Act of 1934 (47 U.S.C. 610(c)) is amended by adding at the end the following: “A telephone or other customer premises equipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for purposes of this section, until such time as the Commission may determine otherwise. The Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards. The Commission may delegate this authority to an employee pursuant to section 5(c). The Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.”.

Consultation.

(c) RULEMAKING.—Section 710(e) of the Communications Act of 1934 (47 U.S.C. 610(e)) is amended—

(1) by striking “impairments” and inserting “loss”; and

(2) by adding at the end the following sentence: “In implementing the provisions of subsection (b)(1)(C), the Commission shall use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.”.

(d) RULE OF CONSTRUCTION.—Section 710(h) of the Communications Act of 1934 (47 U.S.C. 610(h)) is amended to read as follows:

“(h) RULE OF CONSTRUCTION.—Nothing in the Twenty-First Century Communications and Video Accessibility Act of 2010 shall be construed to modify the Commission’s regulations set forth in section 20.19 of title 47 of the Code of Federal Regulations, as in effect on the date of enactment of such Act.”.

SEC. 103. RELAY SERVICES.

(a) **DEFINITION.**—Paragraph (3) of section 225(a) of the Communications Act of 1934 (47 U.S.C. 225(a)(3)) is amended to read as follows:

“(3) **TELECOMMUNICATIONS RELAY SERVICES.**—The term ‘telecommunications relay services’ means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.”.

(b) **INTERNET PROTOCOL-BASED RELAY SERVICES.**—Title VII of such Act (47 U.S.C. 601 et seq.) is amended by adding at the end the following new section:

“SEC. 715. INTERNET PROTOCOL-BASED RELAY SERVICES.

47 USC 616.

“Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on the date of enactment of such Act, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.”.

Deadline.

SEC. 104. ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT.

(a) **TITLE VII AMENDMENT.**—Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.), as amended by section 103, is further amended by adding at the end the following new sections:

“SEC. 716. ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT.

47 USC 617.

“(a) **MANUFACTURING.**—

“(1) **IN GENERAL.**—With respect to equipment manufactured after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, shall ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

“(2) **INDUSTRY FLEXIBILITY.**—A manufacturer of equipment may satisfy the requirements of paragraph (1) with respect to such equipment by—

“(A) ensuring that the equipment that such manufacturer offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

“(B) if such manufacturer chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

“(b) SERVICE PROVIDERS.—

“(1) IN GENERAL.—With respect to services provided after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a provider of advanced communications services shall ensure that such services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

“(2) INDUSTRY FLEXIBILITY.—A provider of services may satisfy the requirements of paragraph (1) with respect to such services by—

“(A) ensuring that the services that such provider offers are accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

“(B) if such provider chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

“(c) COMPATIBILITY.—Whenever the requirements of subsections (a) or (b) are not achievable, a manufacturer or provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless the requirement of this subsection is not achievable.

“(d) NETWORK FEATURES, FUNCTIONS, AND CAPABILITIES.—Each provider of advanced communications services has the duty not to install network features, functions, or capabilities that do not impede accessibility or usability.

“(e) REGULATIONS.—

“(1) IN GENERAL.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall—

“(A) include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities;

“(B) provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through advanced communications services, equipment used for advanced communications services, or networks used to provide advanced communications services;

Deadline.

“(C) determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks; and

“(D) not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilitate the manufacturers’ and service providers’ compliance with sections (a) through (c).

“(2) PROSPECTIVE GUIDELINES.—The Commission shall issue prospective guidelines for a manufacturer or provider regarding the requirements of this section.

“(f) SERVICES AND EQUIPMENT SUBJECT TO SECTION 255.—The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010. Such services and equipment shall remain subject to the requirements of section 255.

“(g) ACHIEVABLE DEFINED.—For purposes of this section and section 718, the term ‘achievable’ means with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:

“(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question.

“(2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.

“(3) The type of operations of the manufacturer or provider.

“(4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

“(h) COMMISSION FLEXIBILITY.—

“(1) WAIVER.—The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider of advanced communications services or any interested party, to waive the requirements of this section for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, for any provider of advanced communications services, or for any class of such services, that—

“(A) is capable of accessing an advanced communications service; and

“(B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

“(2) SMALL ENTITY EXEMPTION.—The Commission may exempt small entities from the requirements of this section.

“(i) CUSTOMIZED EQUIPMENT OR SERVICES.—The provisions of this section shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of

Determination.

users as to be effectively available directly to the public, regardless of the facilities used.

“(j) **RULE OF CONSTRUCTION.**—This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.

47 USC 618.

Deadline.
Regulations.

“SEC. 717. ENFORCEMENT AND RECORDKEEPING OBLIGATIONS.

“(a) **COMPLAINT AND ENFORCEMENT PROCEDURES.**—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255, 716, or 718, establish procedures for enforcement actions by the Commission with respect to such violations, and implement the recordkeeping obligations of paragraph (5) for manufacturers and providers subject to such sections. Such regulations shall include the following provisions:

“(1) **NO FEE.**—The Commission shall not charge any fee to an individual who files a complaint alleging a violation of section 255, 716, or 718.

“(2) **RECEIPT OF COMPLAINTS.**—The Commission shall establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints filed under section 255, 716, or 718.

“(3) **COMPLAINTS TO THE COMMISSION.**—

“(A) **IN GENERAL.**—Any person alleging a violation of section 255, 716, or 718 by a manufacturer of equipment or provider of service subject to such sections may file a formal or informal complaint with the Commission.

Deadline.
Orders.

“(B) **INVESTIGATION OF INFORMAL COMPLAINT.**—The Commission shall investigate the allegations in an informal complaint and, within 180 days after the date on which such complaint was filed with the Commission, issue an order concluding the investigation, unless such complaint is resolved before such time. The order shall include a determination whether any violation occurred.

“(i) If the Commission determines that a violation has occurred, the Commission may, in the order issued under this subparagraph or in a subsequent order, direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with requirements of those sections within a reasonable time established by the Commission in its order.

“(ii) **NO VIOLATION.**—If a determination is made that a violation has not occurred, the Commission shall provide the basis for such determination.

“(C) **CONSOLIDATION OF COMPLAINTS.**—The Commission may consolidate for investigation and resolution complaints alleging substantially the same violation.

“(4) **OPPORTUNITY TO RESPOND.**—Before the Commission makes a determination pursuant to paragraph (3), the party that is the subject of the complaint shall have a reasonable opportunity to respond to such complaint, and may include

in such response any factors that are relevant to such determination. Before issuing a final order under paragraph (3)(B)(i), the Commission shall provide such party a reasonable opportunity to comment on any proposed remedial action.

“(5) RECORDKEEPING.—(A) Beginning one year after the effective date of regulations promulgated pursuant to section 716(e), each manufacturer and provider subject to sections 255, 716, and 718 shall maintain, in the ordinary course of business and for a reasonable period, records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718, including the following:

Effective date.

“(i) Information about the manufacturer’s or provider’s efforts to consult with individuals with disabilities.

“(ii) Descriptions of the accessibility features of its products and services.

“(iii) Information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

“(B) An officer of a manufacturer or provider shall submit to the Commission an annual certification that records are being kept in accordance with subparagraph (A).

Deadline.
Certification.

“(C) After the filing of a formal or informal complaint against a manufacturer or provider in the manner prescribed in paragraph (3), the Commission may request, and shall keep confidential, a copy of the records maintained by such manufacturer or provider pursuant to subparagraph (A) of this paragraph that are directly relevant to the equipment or service that is the subject of such complaint.

“(6) FAILURE TO ACT.—If the Commission fails to carry out any of its responsibilities to act upon a complaint in the manner prescribed in paragraph (3), the person that filed such complaint may bring an action in the nature of mandamus in the United States Court of Appeals for the District of Columbia to compel the Commission to carry out any such responsibility.

“(7) COMMISSION JURISDICTION.—The limitations of section 255(f) shall apply to any claim that alleges a violation of section 255, 716, or 718. Nothing in this paragraph affects or limits any action for mandamus under paragraph (6) or any appeal pursuant to section 402(b)(10).

Applicability.

“(8) PRIVATE RESOLUTIONS OF COMPLAINTS.—Nothing in the Commission’s rules or this Act shall be construed to preclude a person who files a complaint and a manufacturer or provider from resolving a formal or informal complaint prior to the Commission’s final determination in a complaint proceeding. In the event of such a resolution, the parties shall jointly request dismissal of the complaint and the Commission shall grant such request.

“(b) REPORTS TO CONGRESS.—

“(1) IN GENERAL.—Every two years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes the following:

“(A) An assessment of the level of compliance with sections 255, 716, and 718.

“(B) An evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.

“(C) The number and nature of complaints received pursuant to subsection (a) during the two years that are the subject of the report.

“(D) A description of the actions taken to resolve such complaints under this section, including forfeiture penalties assessed.

“(E) The length of time that was taken by the Commission to resolve each such complaint.

“(F) The number, status, nature, and outcome of any actions for mandamus filed pursuant to subsection (a)(6) and the number, status, nature, and outcome of any appeals filed pursuant to section 402(b)(10).

“(G) An assessment of the effect of the requirements of this section on the development and deployment of new communications technologies.

“(2) PUBLIC COMMENT REQUIRED.—The Commission shall seek public comment on its tentative findings prior to submission to the Committees of the report under this subsection.

“(c) COMPTROLLER GENERAL ENFORCEMENT STUDY.—

“(1) IN GENERAL.—The Comptroller General shall conduct a study to consider and evaluate the following:

“(A) The Commission’s compliance with the requirements of this section, including the Commission’s level of compliance with the deadlines established under and pursuant to this section and deadlines for acting on complaints pursuant to subsection (a).

“(B) Whether the enforcement actions taken by the Commission pursuant to this section have been appropriate and effective in ensuring compliance with this section.

“(C) Whether the enforcement provisions under this section are adequate to ensure compliance with this section.

“(D) Whether, and to what extent (if any), the requirements of this section have an effect on the development and deployment of new communications technologies.

“(2) REPORT.—Not later than 5 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Comptroller General shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study required by paragraph (1), with recommendations for how the enforcement process and measures under this section may be modified or improved.

Deadline.

“(d) CLEARINGHOUSE.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, in consultation with the Architectural and Transportation Barriers Compliance Board, the National Telecommunications and Information Administration, trade associations, and organizations representing individuals with disabilities, establish a clearinghouse of information on the availability of accessible products and services and accessibility

solutions required under sections 255, 716, and 718. Such information shall be made publicly available on the Commission’s website and by other means, and shall include an annually updated list of products and services with access features.

“(e) OUTREACH AND EDUCATION.—Upon establishment of the clearinghouse of information required under subsection (d), the Commission, in coordination with the National Telecommunications and Information Administration, shall conduct an informational and educational program designed to inform the public about the availability of the clearinghouse and the protections and remedies available under sections 255, 716, and 718.

“SEC. 718. INTERNET BROWSERS BUILT INTO TELEPHONES USED WITH PUBLIC MOBILE SERVICES. 47 USC 619.

“(a) ACCESSIBILITY.—If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B)) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subsection shall not impose any requirement on such manufacturer or provider—

“(1) to make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

“(2) to make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications, or services).

“(b) INDUSTRY FLEXIBILITY.—A manufacturer or provider may satisfy the requirements of subsection (a) with respect to such telephone or services by—

“(1) ensuring that the telephone or services that such manufacture or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

“(2) using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.”.

(b) EFFECTIVE DATE FOR SECTION 718.—Section 718 of the Communications Act of 1934, as added by subsection (a), shall take effect 3 years after the date of enactment of this Act. 47 USC 619 note.

(c) TITLE V AMENDMENTS.—Section 503(b)(2) of such Act (47 U.S.C. 503(b)(2)) is amended by adding after subparagraph (E) the following:

“(F) Subject to paragraph (5) of this section, if the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718, and is determined by the Commission to have violated any such requirement, the manufacturer or provider shall be liable to the United States for a forfeiture penalty of not more than \$100,000 for each violation or each day of a continuing violation, except that the amount

assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.”.

(d) REVIEW OF COMMISSION DETERMINATIONS.—Section 402(b) of such Act (47 U.S.C. 402(b)) is amended by adding the following new paragraph:

“(10) By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under section 717(a)(3).”.

SEC. 105. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.

Title VII of the Communications Act of 1934, as amended by section 104, is further amended by adding at the end the following:

47 USC 620.

“SEC. 719. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.

Deadline.
Regulations.

“(a) IN GENERAL.—Within 6 months after the date of enactment of the Equal Access to 21st Century Communications Act, the Commission shall establish rules that define as eligible for relay service support those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by individuals who are deaf-blind.

“(b) INDIVIDUALS WHO ARE DEAF-BLIND DEFINED.—For purposes of this subsection, the term ‘individuals who are deaf-blind’ has the same meaning given such term in the Helen Keller National Center Act, as amended by the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)).

“(c) ANNUAL AMOUNT.—The total amount of support the Commission may provide from its interstate relay fund for any fiscal year may not exceed \$10,000,000.”.

47 USC 615c.

SEC. 106. EMERGENCY ACCESS ADVISORY COMMITTEE.

Deadline.

(a) ESTABLISHMENT.—For the purpose of achieving equal access to emergency services by individuals with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network, not later than 60 days after the date of enactment of this Act, the Chairman of the Commission shall establish an advisory committee, to be known as the Emergency Access Advisory Committee (referred to in this section as the “Advisory Committee”).

(b) MEMBERSHIP.—As soon as practicable after the date of enactment of this Act, the Chairman of the Commission shall appoint the members of the Advisory Committee, ensuring a balance between individuals with disabilities and other stakeholders, and shall designate two such members as the co-chairs of the Committee. Members of the Advisory Committee shall be selected from the following groups:

(1) STATE AND LOCAL GOVERNMENT AND EMERGENCY RESPONDER REPRESENTATIVES.—Representatives of State and local governments and representatives of emergency response providers, selected from among individuals nominated by national organizations representing such governments and representatives.

(2) SUBJECT MATTER EXPERTS.—Individuals who have the technical knowledge and expertise to serve on the Advisory Committee in the fulfillment of its duties, including representatives of—

(A) providers of interconnected and non-interconnected VoIP services;

(B) vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of interconnected and non-interconnected VoIP services;

(C) national organizations representing individuals with disabilities and senior citizens;

(D) Federal agencies or departments responsible for the implementation of the Next Generation E 9–1–1 system;

(E) the National Institute of Standards and Technology; and

(F) other individuals with such technical knowledge and expertise.

(3) REPRESENTATIVES OF OTHER STAKEHOLDERS AND INTERESTED PARTIES.—Representatives of such other stakeholders and interested and affected parties as the Chairman of the Commission determines appropriate.

(c) DEVELOPMENT OF RECOMMENDATIONS.—Within 1 year after the completion of the member appointment process by the Chairman of the Commission pursuant to subsection (b), the Advisory Committee shall conduct a national survey of individuals with disabilities, seeking input from the groups described in subsection (b)(2), to determine the most effective and efficient technologies and methods by which to enable access to emergency services by individuals with disabilities and shall develop and submit to the Commission recommendations to implement such technologies and methods, including recommendations—

Deadline.

(1) with respect to what actions are necessary as a part of the migration to a national Internet protocol-enabled network to achieve reliable, interoperable communication transmitted over such network that will ensure access to emergency services by individuals with disabilities;

(2) for protocols, technical capabilities, and technical requirements to ensure the reliability and interoperability necessary to ensure access to emergency services by individuals with disabilities;

(3) for the establishment of technical standards for use by public safety answering points, designated default answering points, and local emergency authorities;

(4) for relevant technical standards and requirements for communication devices and equipment and technologies to enable the use of reliable emergency access;

(5) for procedures to be followed by IP-enabled network providers to ensure that such providers do not install features, functions, or capabilities that would conflict with technical standards;

(6) for deadlines by which providers of interconnected and non-interconnected VoIP services and manufacturers of equipment used for such services shall achieve the actions required in paragraphs (1) through (5), where achievable, and for the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficient technologies and methods to enable access to emergency services by individuals with disabilities;

(7) for the establishment of rules to update the Commission's rules with respect to 9–1–1 services and E–911 services

(as defined in section 158(e)(4) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(e)(4))), for users of telecommunications relay services as new technologies and methods for providing such relay services are adopted by providers of such relay services; and

(8) that take into account what is technically and economically feasible.

(d) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Advisory Committee shall take place not later than 45 days after the completion of the member appointment process by the Chairman of the Commission pursuant to subsection (b).

(2) OTHER MEETINGS.—After the initial meeting, the Advisory Committee shall meet at the call of the chairs, but no less than monthly until the recommendations required pursuant to subsection (c) are completed and submitted.

Deadline.

(3) NOTICE; OPEN MEETINGS.—Any meetings held by the Advisory Committee shall be duly noticed at least 14 days in advance and shall be open to the public.

(e) RULES.—

(1) QUORUM.—One-third of the members of the Advisory Committee shall constitute a quorum for conducting business of the Advisory Committee.

(2) SUBCOMMITTEES.—To assist the Advisory Committee in carrying out its functions, the chair may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts as determined to be necessary.

(3) ADDITIONAL RULES.—The Advisory Committee may adopt other rules as needed.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

(g) IMPLEMENTING RECOMMENDATIONS.—The Commission shall have the authority to promulgate regulations to implement the recommendations proposed by the Advisory Committee, as well as any other regulations, technical standards, protocols, and procedures as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.

(h) DEFINITIONS.—In this section—

(1) the term “Commission” means the Federal Communications Commission;

(2) the term “Chairman” means the Chairman of the Federal Communications Commission; and

(3) except as otherwise expressly provided, other terms have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

TITLE II—VIDEO PROGRAMMING

47 USC 613 note. **SEC. 201. VIDEO PROGRAMMING AND EMERGENCY ACCESS ADVISORY COMMITTEE.**

Deadline.

(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act, the Chairman shall establish an advisory

committee to be known as the Video Programming and Emergency Access Advisory Committee.

(b) MEMBERSHIP.—As soon as practicable after the date of enactment of this Act, the Chairman shall appoint individuals who have the technical knowledge and engineering expertise to serve on the Advisory Committee in the fulfillment of its duties, including the following:

(1) Representatives of distributors and providers of video programming or a national organization representing such distributors.

(2) Representatives of vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of video programming delivered using Internet protocol or a national organization representing such vendors, developers, or manufacturers.

(3) Representatives of manufacturers of consumer electronics or information technology equipment or a national organization representing such manufacturers.

(4) Representatives of video programming producers or a national organization representing such producers.

(5) Representatives of national organizations representing accessibility advocates, including individuals with disabilities and the elderly.

(6) Representatives of the broadcast television industry or a national organization representing such industry.

(7) Other individuals with technical and engineering expertise, as the Chairman determines appropriate.

(c) COMMISSION OVERSIGHT.—The Chairman shall appoint a member of the Commission's staff to moderate and direct the work of the Advisory Committee.

(d) TECHNICAL STAFF.—The Commission shall appoint a member of the Commission's technical staff to provide technical assistance to the Advisory Committee.

(e) DEVELOPMENT OF RECOMMENDATIONS.—

(1) CLOSED CAPTIONING REPORT.—Within 6 months after the date of the first meeting of the Advisory Committee, the Advisory Committee shall develop and submit to the Commission a report that includes the following:

(A) A recommended schedule of deadlines for the provision of closed captioning service.

(B) An identification of the performance requirement for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render closed captions of video programming, except for consumer generated media, delivered using Internet protocol.

(C) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010 for the delivery of closed captions of video programming, except for consumer generated media, delivered using Internet protocol that are necessary to meet the performance objectives identified under subparagraph (B).

(D) A recommendation for technical standards to address the performance objectives identified in subparagraph (B).

(E) A recommendation for any regulations that may be necessary to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to closed captions.

(2) VIDEO DESCRIPTION, EMERGENCY INFORMATION, USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS.—Within 18 months after the date of enactment of this Act, the Advisory Committee shall develop and submit to the Commission a report that includes the following:

(A) A recommended schedule of deadlines for the provision of video description and emergency information.

(B) An identification of the performance requirement for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol or digital broadcast television.

(C) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010 for the delivery of video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol that are necessary to meet the performance objectives identified under subparagraph (B).

(D) A recommendation for technical standards to address the performance objectives identified in subparagraph (B).

(E) A recommendation for any regulations that may be necessary to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol and devices capable of receiving and displaying such programming, except for consumer generated media, in order to facilitate access to video descriptions and emergency information.

(F) With respect to user interfaces, a recommendation for the standards, protocols, and procedures used to enable the functions of apparatus designed to receive or display video programming transmitted simultaneously with sound (including apparatus designed to receive or display video programming transmitted by means of services using Internet protocol) to be accessible to and usable by individuals with disabilities.

(G) With respect to user interfaces, a recommendation for the standards, protocols, and procedures used to enable on-screen text menus and other visual indicators used to access the functions on an apparatus described in subparagraph (F) to be accompanied by audio output so that such

Deadline.
Reports.

menus or indicators are accessible to and usable by individuals with disabilities.

(H) With respect to video programming guides and menus, a recommendation for the standards, protocols, and procedures used to enable video programming information and selection provided by means of a navigation device, guide, or menu to be accessible in real-time by individuals who are blind or visually impaired.

(3) CONSIDERATION OF WORK BY STANDARD-SETTING ORGANIZATIONS.—The recommendations of the advisory committee shall, insofar as possible, incorporate the standards, protocols, and procedures that have been adopted by recognized industry standard-setting organizations for each of the purposes described in paragraphs (1) and (2).

(f) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Advisory Committee shall take place not later than 180 days after the date of the enactment of this Act. Deadline.

(2) OTHER MEETINGS.—After the initial meeting, the Advisory Committee shall meet at the call of the Chairman.

(3) NOTICE; OPEN MEETINGS.—Any meeting held by the Advisory Committee shall be noticed at least 14 days before such meeting and shall be open to the public. Deadline.

(g) PROCEDURAL RULES.—

(1) QUORUM.—The presence of one-third of the members of the Advisory Committee shall constitute a quorum for conducting the business of the Advisory Committee.

(2) SUBCOMMITTEES.—To assist the Advisory Committee in carrying out its functions, the Chairman may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts.

(3) ADDITIONAL PROCEDURAL RULES.—The Advisory Committee may adopt other procedural rules as needed.

(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

SEC. 202. VIDEO DESCRIPTION AND CLOSED CAPTIONING.

(a) VIDEO DESCRIPTION.—Section 713 of the Communications Act of 1934 (47 U.S.C. 613) is amended—

(1) by striking subsections (f) and (g);

(2) by redesignating subsection (h) as subsection (j); and

(3) by inserting after subsection (e) the following:

“(f) VIDEO DESCRIPTION.—

“(1) REINSTATEMENT OF REGULATIONS.—On the day that is 1 year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, after a rulemaking, reinstate its video description regulations contained in the Implementation of Video Description of Video Programming Report and Order (15 F.C.C.R. 15,230 (2000)), recon. granted in part and denied in part, (16 F.C.C.R. 1251 (2001)), modified as provided in paragraph (2). Deadline.

“(2) MODIFICATIONS TO REINSTATED REGULATIONS.—Such regulations shall be modified only as follows:

Applicability.

Lists.
Deadlines.

“(A) The regulations shall apply to video programming, as defined in subsection (h), insofar as and programming is transmitted for display on television in digital format.

“(B) The Commission shall update the list of the top 25 designated market areas, the list of the top 5 national nonbroadcast networks that at least 50 hours per quarter of prime time programming that is not exempt under this paragraph, and the beginning calendar quarter for which compliance shall be calculated.

“(C) The regulations may permit a provider of video programming or a program owner to petition the Commission for an exemption from the requirements of this section upon a showing that the requirements contained in this section be economically burdensome.

“(D) The Commission may exempt from the regulations established pursuant to paragraph (1) a service, class of services, program, class of programs, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment.

“(E) The regulations shall not apply to live or near-live programming.

“(F) The regulations shall provide for an appropriate phased schedule of deadlines for compliance.

“(G) The Commission shall consider extending the exemptions and limitations in the reinstated regulations for technical capability reasons to all providers and owners of video programming.

Deadlines.
Reports.

“(3) INQUIRIES ON FURTHER VIDEO DESCRIPTION REQUIREMENTS.—The Commission shall commence the following inquiries not later than 1 year after the completion of the phase-in of the reinstated regulations and shall report to Congress 1 year thereafter on the findings for each of the following:

“(A) VIDEO DESCRIPTION IN TELEVISION PROGRAMMING.—The availability, use, and benefits of video description on video programming distributed on television, the technical and creative issues associated with providing such video description, and the financial costs of providing such video description for providers of video programming and program owners.

“(B) VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON THE INTERNET.—The technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol.

“(4) CONTINUING COMMISSION AUTHORITY.—

Determination.

“(A) IN GENERAL.—The Commission may not issue additional regulations unless the Commission determines, at least 2 years after completing the reports required in paragraph (3), that the need for and benefits of providing video description for video programming, insofar as such programming is transmitted for display on television, are greater than the technical and economic costs of providing such additional programming.

“(B) LIMITATION.—If the Commission makes the determination under subparagraph (A) and issues additional

regulations, the Commission may not increase, in total, the hour requirement for additional described programming by more than 75 percent of the requirement in the regulations reinstated under paragraph (1).

“(C) APPLICATION TO DESIGNATED MARKET AREAS.—

“(i) IN GENERAL.—After the Commission completes the reports on video description required in paragraph (3), the Commission shall phase in the video description regulations for the top 60 designated market areas, except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate. Waiver authority.

“(ii) PHASE-IN DEADLINE.—The phase-in described in clause (i) shall be completed not later than 6 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010.

“(iii) REPORT.—Nine years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Energy of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report assessing—

“(I) the types of described video programming that is available to consumers;

“(II) consumer use of such programming;

“(III) the costs to program owners, providers, and distributors of creating such programming;

“(IV) the potential costs to program owners, providers, and distributors in designated market areas outside of the top 60 of creating such programming;

“(V) the benefits to consumers of such programming;

“(VI) the amount of such programming currently available; and

“(VII) the need for additional described programming in designated market areas outside the top 60.

“(iv) ADDITIONAL MARKET AREAS.—Ten years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall have the authority, based upon the findings, conclusions, and recommendations contained in the report under clause (iii), to phase in the video description regulations for up to an additional 10 designated market areas each year—

“(I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and

“(II) except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate. Waiver authority.

- Deadline. “(g) EMERGENCY INFORMATION.—Not later than 1 year after the Advisory Committee report under subsection (e)(2) is submitted to the Commission, the Commission shall complete a proceeding to—
- “(1) identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or visually impaired; and
- Regulations. “(2) promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.
- “(h) DEFINITIONS.—For purposes of this section, section 303, and section 330:
- “(1) VIDEO DESCRIPTION.—The term ‘video description’ means the insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.
- “(2) VIDEO PROGRAMMING.—The term ‘video programming’ means programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 3).
- 47 USC 613. (b) CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—Section 713 of such Act is further amended by striking subsection (c) and inserting the following:
- “(c) DEADLINES FOR CAPTIONING.—
- “(1) IN GENERAL.—The regulations prescribed pursuant to subsection (b) shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming once published or exhibited on television.
- “(2) DEADLINES FOR PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—
- “(A) REGULATIONS ON CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—Not later than 6 months after the submission of the report to the Commission required by subsection (e)(1) of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall revise its regulations to require the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations.
- “(B) SCHEDULE.—The regulations prescribed under this paragraph shall include an appropriate schedule of deadlines for the provision of closed captioning, taking into account whether such programming is prerecorded and edited for Internet distribution, or whether such programming is live or near-live and not edited for Internet distribution.
- Waiver authority. “(C) COST.—The Commission may delay or waive the regulation promulgated under subparagraph (A) to the extent the Commission finds that the application of the regulation to live video programming delivered using Internet protocol with captions after the effective date of such

regulations would be economically burdensome to providers of video programming or program owners.

“(D) REQUIREMENTS FOR REGULATIONS.—The regulations prescribed under this paragraph—

“(i) shall contain a definition of ‘near-live programming’ and ‘edited for Internet distribution’;

“(ii) may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment;

“(iii) shall clarify that, for the purposes of implementation, of this subsection, the terms ‘video programming distribution’ and ‘video programming providers’ include an entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol;

“(iv) and describe the responsibilities of video programming providers or distributors and video programming owners;

“(v) shall establish a mechanism to make available to video programming providers and distributors information on video programming subject to the Act on an ongoing basis;

“(vi) shall consider that the video programming provider or distributor shall be deemed in compliance if such entity enables the rendering or pass through of closed captions and video description signals and make a good faith effort to identify video programming subject to the Act using the mechanism created in (v); and

“(vii) shall provide that de minimis failure to comply with such regulations by a video programming provider or owner shall not be treated as a violation of the regulations.

“(3) ALTERNATE MEANS OF COMPLIANCE.—An entity may meet the requirements of this section through alternate means than those prescribed by regulations pursuant to subsection (b), as revised pursuant to paragraph (2)(A) of this subsection, if the requirements of this section are met, as determined by the Commission.”.

(c) CONFORMING AMENDMENT.—Section 713(d) of such Act is amended by striking paragraph (3) and inserting the following: 47 USC 613.

“(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome. During the pendency of such a petition, such provider or owner shall be exempt from the requirements of this section. The Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome.”.

Deadline.

SEC. 203. CLOSED CAPTIONING DECODER AND VIDEO DESCRIPTION CAPABILITY.

(a) **AUTHORITY TO REGULATE.**—Section 303(u) of the Communications Act of 1934 (47 U.S.C. 303(u)) is amended to read as follows:

“(u) Require that, if technically feasible—

“(1) apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size—

“(A) be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming;

“(B) have the capability to decode and make available the transmission and delivery of video description services as required by regulations reinstated and modified pursuant to section 713(f); and

“(C) have the capability to decode and make available emergency information (as that term is defined in section 79.2 of the Commission’s regulations (47 CFR 79.2)) in a manner that is accessible to individuals who are blind or visually impaired; and

“(2) notwithstanding paragraph (1) of this subsection—

“(A) apparatus described in such paragraph that use a picture screen that is less than 13 inches in size meet the requirements of subparagraph (A), (B), or (C) of such paragraph only if the requirements of such subparagraphs are achievable (as defined in section 716);

“(B) any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements of such paragraph; and

“(C) the Commission shall have the authority, on its own motion or in response to a petition by a manufacturer, to waive the requirements of this subsection for any apparatus or class of apparatus—

“(i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

“(ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.”.

(b) **OTHER DEVICES.**—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding at the end the following new subsection:

“(z) Require that—

“(1) if achievable (as defined in section 716), apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States, enable the rendering or the pass through of closed captions, video description signals, and emergency information (as that term is defined in section 79.2 of title 47,

Waiver authority.

Code of Federal Regulations) such that viewers are able to activate and de-activate the closed captions and video description as the video programming is played back on a picture screen of any size; and

“(2) interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions and to make encoded video description and emergency information audible.”.

(c) SHIPMENT IN COMMERCE.—Section 330(b) of the Communications Act of 1934 (47 U.S.C. 330(b)) is amended—

(1) by striking “303(u)” in the first sentence and inserting “303(u) and (z)”;

(2) by striking the second sentence and inserting the following: “Such rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming, the transmission and delivery of video description services, and the conveyance of emergency information as required by section 303 of this Act.”; and

(3) in the fourth sentence, by striking “closed-captioning service continues” and inserting “closed-captioning service and video description service continue”.

(d) IMPLEMENTING REGULATIONS.—The Federal Communications Commission shall prescribe such regulations as are necessary to implement the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934, as amended by this section, including any technical standards, protocols, and procedures needed for the transmission of—

47 USC 303 note.

(1) closed captioning within 6 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(1); and

(2) video description and emergency information within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2).

(e) ALTERNATE MEANS OF COMPLIANCE.—An entity may meet the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (d) if the requirements of those sections are met, as determined by the Commission.

47 USC 303 note.

SEC. 204. USER INTERFACES ON DIGITAL APPARATUS.

(a) AMENDMENT.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding after subsection (z), as added by section 203 of this Act, the following new subsection:

“(aa) Require—

“(1) if achievable (as defined in section 716) that digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired, except that the Commission may not

specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement;

“(2) that if on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions of the apparatus described in paragraph (1), such functions shall be accompanied by audio output that is either integrated or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time;

“(3) that for such apparatus equipped with the functions described in paragraphs (1) and (2) built in access to those closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated by activating the closed captioning or accessibility features; and

“(4) that in applying this subsection the term ‘apparatus’ does not include a navigation device, as such term is defined in section 76.1200 of the Commission’s rules (47 CFR 76.1200).”.

Deadline.
47 USC 303 note.

(b) **IMPLEMENTING REGULATIONS.**—Within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), the Commission shall prescribe such regulations as are necessary to implement the amendments made by subsection (a).

47 USC 303 note.

(c) **ALTERNATE MEANS OF COMPLIANCE.**—An entity may meet the requirements of section 303(aa) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (b) if the requirements of those sections are met, as determined by the Commission.

47 USC 303 note.
Time period.
Federal Register,
publication.

(d) **DEFERRAL OF COMPLIANCE WITH ATSC MOBILE DTV STANDARD A/153.**—A digital apparatus designed and manufactured to receive or play back the Advanced Television Systems Committee’s Mobile DTV Standards A/153 shall not be required to meet the requirements of the regulations prescribed under subsection (b) for a period of not less than 24 months after the date on which the final regulations are published in the Federal Register.

SEC. 205. ACCESS TO VIDEO PROGRAMMING GUIDES AND MENUS PROVIDED ON NAVIGATION DEVICES.

(a) **AMENDMENT.**—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding after subsection (aa), as added by section 204 of this Act, the following new subsection:

“(bb) **Require—**

“(1) if achievable (as defined in section 716), that the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement; and

“(2) for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism

is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features. With respect to apparatus features and functions delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software. With respect to apparatus features and functions delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.”.

Applicability.

(b) IMPLEMENTING REGULATIONS.—

47 USC 303 note.
Deadline.

(1) IN GENERAL.—Within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), the Commission shall prescribe such regulations as are necessary to implement the amendment made by subsection (a).

(2) EXEMPTION.—Such regulations may provide an exemption from the regulations for cable systems serving 20,000 or fewer subscribers.

(3) RESPONSIBILITY.—An entity shall only be responsible for compliance with the requirements added by this section with respect to navigation devices that it provides to a requesting blind or visually impaired individual.

(4) SEPARATE EQUIPMENT OR SOFTWARE.—

(A) IN GENERAL.—Such regulations shall permit but not require the entity providing the navigation device to the requesting blind or visually impaired individual to comply with section 303(bb)(1) of the Communications Act of 1934 through that entity’s use of software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution, and shall provide the maximum flexibility to select the manner of compliance.

(B) REQUIREMENTS.—If an entity complies with section 303(bb)(1) of the Communications Act of 1934 under subparagraph (A), the entity providing the navigation device to the requesting blind or visually impaired individual shall provide any such software, peripheral device, equipment, service, or solution at no additional charge and within a reasonable time to such individual and shall ensure that such software, device, equipment, service, or solution provides the access required by such regulations.

(5) USER CONTROLS FOR CLOSED CAPTIONING.—Such regulations shall permit the entity providing the navigation device maximum flexibility in the selection of means for compliance with section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section).

(6) PHASE-IN.—

(A) IN GENERAL.—The Commission shall provide affected entities with—

Deadlines.

(i) not less than 2 years after the adoption of such regulations to begin placing in service devices that comply with the requirements of section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section); and

(ii) not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements of section 303(bb)(1) of the Communications Act of 1934 (as added by subsection (a) of this section).

(B) APPLICATION.—Such regulations shall apply only to devices manufactured or imported on or after the respective effective dates established in subparagraph (A).

47 USC 153 note. **SEC. 206. DEFINITIONS.**

In this title:

(1) **ADVISORY COMMITTEE.**—The term “Advisory Committee” means the advisory committee established in section 201.

(2) **CHAIRMAN.**—The term “Chairman” means the Chairman of the Federal Communications Commission.

(3) **COMMISSION.**—The term “Commission” means the Federal Communications Commission.

(4) **EMERGENCY INFORMATION.**—The term “emergency information” has the meaning given such term in section 79.2 of title 47, Code of Federal Regulations.

(5) **INTERNET PROTOCOL.**—The term “Internet protocol” includes Transmission Control Protocol and a successor protocol or technology to Internet protocol.

(6) **NAVIGATION DEVICE.**—The term “navigation device” has the meaning given such term in section 76.1200 of title 47, Code of Federal Regulations.

(7) **VIDEO DESCRIPTION.**—The term “video description” has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

(8) **VIDEO PROGRAMMING.**—The term “video programming” has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

Approved October 8, 2010.

LEGISLATIVE HISTORY—S. 3304:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 5, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 111–261
111th Congress

An Act

To authorize the Secretary of the Interior to lease certain lands in Virgin Islands National Park, and for other purposes.

Oct. 8, 2010
[H.R. 714]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CANEEL BAY LEASE AUTHORIZATION.

16 USC 398d
note.

(a) DEFINITIONS.—In this section:

(1) PARK.—The term “Park” means the Virgin Islands National Park.

(2) RESORT.—The term “resort” means the Caneel Bay resort on the island of St. John in the Park.

(3) RETAINED USE ESTATE.—The term “retained use estate” means the retained use estate for the Caneel Bay property on the island of St. John entered into between the Jackson Hole Preserve and the United States on September 30, 1983 (as amended, assigned, and assumed).

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(b) LEASE AUTHORIZATION.—

(1) IN GENERAL.—If the Secretary determines that the long-term benefit to the Park would be greater by entering into a lease with the owner of the retained use estate than by authorizing a concession contract upon the termination of the retained use estate, the Secretary may enter into a lease with the owner of the retained use estate for the operation and management of the resort.

(2) ACQUISITIONS.—The Secretary may—

(A) acquire associated property from the owner of the retained use estate; and

(B) on the acquisition of property under subparagraph (A), administer the property as part of the Park.

(3) AUTHORITY.—Except as otherwise provided by this section, a lease shall be in accordance with subsection (k) of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(k)), notwithstanding paragraph (2) of that subsection.

(4) TERMS AND CONDITIONS.—A lease authorized under this section shall—

(A) be for the minimum number of years practicable, taking into consideration the need for the lessee to secure financing for necessary capital improvements to the resort, but in no event shall the term of the lease exceed 40 years;

(B) prohibit any transfer, assignment, or sale of the lease or otherwise convey or pledge any interest in the

lease without prior written notification to, and approval by the Secretary;

(C) ensure that the general character of the resort property remains unchanged, including a prohibition against—

(i) any increase in the overall size of the resort;

or

(ii) any increase in the number of guest accommodations available at the resort;

(D) prohibit the sale of partial ownership shares or timeshares in the resort;

(E) include provisions to ensure the protection of the natural, cultural, and historic features of the resort and associated property, consistent with the laws and policies applicable to property managed by the National Park Service; and

(F) include any other provisions determined by the Secretary to be necessary to protect the Park and the public interest.

(5) RENTAL AMOUNTS.—In determining the fair market value rental of the lease required under section 3(k)(4) of Public Law 91-383 (16 U.S.C. 1a-2(k)(4)), the Secretary shall take into consideration—

(A) the value of any associated property conveyed to the United States; and

(B) the value, if any, of the relinquished term of the retained use estate.

(6) USE OF PROCEEDS.—Rental amounts paid to the United States under a lease shall be available to the Secretary, without further appropriation, for visitor services and resource protection within the Park.

Deadline.

(7) CONGRESSIONAL NOTIFICATION.—The Secretary shall submit a proposed lease under this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives at least 60 days before the award of the lease.

(8) RENEWAL.—A lease entered into under this section may not be extended or renewed.

(9) TERMINATION.—Upon the termination of a lease entered into under this section, if the Secretary determines the continuation of commercial services at the resort to be appropriate, the services shall be provided in accordance with the National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. 5951 et seq.).

(c) RETAINED USE ESTATE.—

Transfer
authority.

(1) IN GENERAL.—As a condition of the lease, the owner of the retained use estate shall terminate, extinguish, and relinquish to the Secretary all rights under the retained use estate and shall transfer, without consideration, ownership of improvements on the retained use estate to the National Park Service.

(2) APPRAISAL.—

(A) IN GENERAL.—The Secretary shall require an appraisal by an independent, qualified appraiser who is agreed to by the Secretary and the owner of the retained use estate to determine the value, if any, of the relinquished term of the retained use estate.

(B) REQUIREMENTS.—An appraisal under paragraph (1) shall be conducted in accordance with—

- (i) the Uniform Appraisal Standards for Federal Land Acquisitions; and
- (ii) the Uniform Standards of Professional Appraisal Practice.

Approved October 8, 2010.

LEGISLATIVE HISTORY—H.R. 714:

SENATE REPORTS: No. 111–146 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Feb. 23, considered and passed House.

Vol. 156 (2010): May 13, considered and passed Senate, amended.

Sept. 28, House concurred in Senate amendments.



Public Law 111–262
111th Congress

An Act

Oct. 8, 2010
[H.R. 1177]

5-Star Generals
Commemorative
Coin Act.
31 USC 5112
note.

To require the Secretary of the Treasury to mint coins in recognition of five United States Army 5-Star Generals, George Marshall, Douglas MacArthur, Dwight Eisenhower, Henry “Hap” Arnold, and Omar Bradley, alumni of the United States Army Command and General Staff College, Fort Leavenworth, Kansas, to coincide with the celebration of the 132nd Anniversary of the founding of the United States Army Command and General Staff College.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “5-Star Generals Commemorative Coin Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The United States Army Command and General Staff College, founded in 1881, has in its many evolutionary forms, served this country consistently and well for 127 years.

(2) The Command and General Staff College has played a decisive role in the education and training of officers, particularly in their field grade years of service, in times of war and peace, since its establishment.

(3) The Command and General Staff College has had a salutatory effect on many fields of battle by providing its officer student bodies the necessary skills of battle management, leadership development, and the most modern and effective command and staff action procedures, all of which have been key to this Nations’ success in its many conflicts which, thereby, have preserved its freedoms and way of life.

(4) The Command and General Staff College, the Nations’ oldest military staff college, does not have a commemorative coin cast in celebrating its long and honorable history, displaying its heritage, and serving as a reminder to the holder of such coins the service to the Nation its graduates have provided in war and peace.

(5) The United States Army Command and General Staff College is the Nation’s largest and oldest military staff college, continuing to educate officers from all United States branches of military services, select members of our civil government, and officers from many friendly and allied nations from around the globe. Located in the middle of the American heartland, will continue to serve as a beacon of light to the proposition of intellectual curiosity and professional military excellence in the development of its students, and serve as a link to

American citizenry grateful for the sacrifices, some in the fullest measure of duty and devotion to the Nation, made by the graduates of its Command and Staff College.

(6) The Command and General Staff College Foundation, Inc. (in this Act referred to as the “Foundation”) is dedicated to promoting excellence in the faculty and students of the United States Army Command and General Staff College. Seeking new ways to educate and remind our citizens regarding the capable and selfless service of our military officers, and to imbue in them a sense of pride in those who bear the burden of military leadership in our Nation’s wars and in times of peace.

(7) The Foundation is a nongovernmental, member-based, and publicly supported nonprofit organization that is entirely dependent on funds from members, donations, and grants for its functions and supports exclusively the United States Army Command and General Staff College.

(8) The Foundation uses funding to provide the Margin of Excellence to the programs and activities of the College in support of the educational needs of the Nation’s field grade officer corps, and the faculty and staff attendant thereto.

(9) In 2006, the Secretary of the Army accepted the first Foundation gift to the College in support of the Command and General Staff College.

(10) The Foundation is actively engaged in the initial stages of its first capital campaign to support the Command and General Staff College.

(11) The five 5-Star Generals who attended or taught at the Command and General Staff College; include Douglas MacArthur, George C. Marshall, Henry “Hap” Arnold, Dwight D. Eisenhower, and Omar N. Bradley.

(12) DOUGLAS MACARTHUR, GENERAL OF THE ARMY.—

(A) General MacArthur was a distinguished soldier, scholar, and strategist who gave 61 years of service to his country.

(B) He commanded the 42d Division in World War I, and later served as the Chief of the Army General Staff. Prior to retirement, he was the Military Advisor to the Commonwealth of the Philippines.

(C) In 1941, he was recalled to active duty as Commanding General, United States Army Far East.

(D) He was awarded the Medal of Honor for his heroic defense of the Philippines.

(E) After being ordered to depart the Philippines by the President, he inspired the world with his statement, “I shall return.”

(F) Forces under his command defeated those of the Empire of Japan.

(G) After accepting the Japanese surrender, he directed the highly successful reconstruction of the Japanese nation, and served as the first commander of United Nations Forces during the Korean War.

(H) General MacArthur, son of General Arthur MacArthur, spent time as a child at Ft. Leavenworth and later in his career, he taught as a Captain in the Field

Engineering School, and served as the adjutant, quartermaster, and commanding officer of the 3d Engineer Battalion (later reflagged as the 2d Engineer Battalion).

(13) GEORGE C. MARSHALL, GENERAL OF THE ARMY.—

(A) General George C. Marshall entered the Army from the Virginia Military Institute in 1902.

(B) During a long career of public service, he distinguished himself as a leader, tactician, strategist, statesman, and, truly, as the “Organizer of Victory”.

(C) In World War I, he was regarded as one of the most talented staff officers in the United States Army.

(D) After that war, and throughout the many long and challenging duties of the interwar years, he was appointed United States Army Chief of the General Staff in 1939.

(E) During World War II, he achieved recognition as one of America’s greatest military leaders.

(F) As chief strategist of that global war, he materially assisted in directing the Allied Powers to victory.

(G) In 1947 he was appointed Secretary of State for the United States and his outstanding career as a statesman proved equal to his brilliant military career.

(H) He was awarded the Nobel Peace Prize for his conception and implementation of the European Recovery Program, and, subsequently, he served as the Secretary of Defense for 1 year.

(I) General Marshall’s service at Ft. Leavenworth included graduation from the United States Army School of the Line in 1907, the United States Army Staff College in 1908, followed by instructor duty at Ft. Leavenworth from in 1909 and 1910.

(14) HENRY H. ARNOLD, GENERAL OF THE ARMY.—

(A) General “Hap” Arnold is the only officer in the history of our country to earn the ranks of General of the Army and General of the Air Force.

(B) General Arnold, a graduate of West Point in 1907, received his pilot training in 1911 from the Wright brothers in Dayton, Ohio.

(C) He became one of our Nation’s strongest advocates for air power, and personally held numerous records and trophies for flying achievements, to include the first delivery of United States mail by air.

(D) Accomplishments in and from the air in the World Wars, particularly in World War II, were heavily influenced by his genius.

(E) As a result of General Arnold’s contributions, massed air power gave a third dimension to battles of World War II, swept the skies of the enemy, and denied him mobility on the ground.

(F) One of General Arnold’s citations reads in part: “From conception to execution, General Arnold’s leadership guided the mightiest air force in history”.

(G) General Arnold’s service at Ft. Leavenworth was as a student at the Command and General Staff College, 1928–1929.

(15) DWIGHT D. EISENHOWER, GENERAL OF THE ARMY.—

(A) General Dwight D. Eisenhower, in 1915, began a career of distinguished public service reaching the highest positions of military and civil leadership in the United States.

(B) During World War II, as Commander in Chief, Allied Expeditionary Force, he led the invasion of North Africa and defeated the German force on that continent.

(C) In 1944, as Supreme Allied Commander, Allied Expeditionary Force, he was instructed: "You will enter the continent of Europe, and, in conjunction with other United Nations, undertake operations aimed at the heart of Germany and the destruction of her armed forces".

(D) In accomplishing this mission, he commanded the largest combination of land, sea and air forces in history.

(E) Following World War II, he was instrumental in the development of the North Atlantic Treaty Organization.

(F) After his brilliant military career he was elected 34th President of the United States.

(G) His service at Ft. Leavenworth was 1917-1918 as a tactical instructor officer for a course for lieutenants and in 1925-1926 as a student at the Command and General Staff College from which he was the honor graduate of his class.

(16) OMAR N. BRADLEY, GENERAL OF THE ARMY.—

(A) Throughout his distinguished military career, General Omar N. Bradley was recognized as an exceptional leader, tactician, and educator.

(B) As Commandant of the Infantry School, he developed the officer candidate program through which more than 45,000 combat leaders of World War II were commissioned.

(C) During the war, he successfully commanded a division, corps, army, and army group. While commanding II Corps, he was instrumental in defeating German forces in North Africa and Sicily.

(D) His successful career as a field commander reached a peak when, as commander of the 12th Army Group, he greatly assisted in the liberation of Europe.

(E) This group contained the largest number of American to ever serve under one commander. He became the Army Chief of Staff in 1948 and the first Chairman of the Joint Chiefs of Staff in 1949.

(F) General Bradley's service at Ft. Leavenworth was as a student at the Command and General Staff College, 1928-1929.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—In recognition and celebration of the 5-Star Generals attendance and graduation from the Command and General Staff College, and notwithstanding any other provision of law, the Secretary of the Treasury (hereafter in this act referred to as the "Secretary") shall mint and issue the following coins:

(1) \$5 GOLD COINS.—Not more than 100,000 \$5 coins, which shall—

(A) weigh 8.359 grams;

(B) have diameter of 0.850 inches; and

(C) contain 90 percent gold and 10 percent alloy.

(2) \$1 SILVER COINS.—Not more than 500,000 \$1 coins, which shall—

- (A) weigh 26.73 grams;
- (B) have a diameter of 1.500 inches; and
- (C) contain 90 percent silver and 10 percent copper.

(3) HALF DOLLAR CLAD COINS.—Not more than 750,000 half dollar coins which shall—

- (A) weigh 11.34 grams;
- (B) have a diameter of 1.205 inches; and
- (C) be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall include the portraits of Generals George C. Marshall, Douglas MacArthur, Dwight D. Eisenhower, Henry “Hap” Arnold and Omar N. Bradley.

(2) DESIGNATIONS AND INSCRIPTIONS.—On each coin minted under this Act there shall be—

- (A) a designation of the face value of the coin;
- (B) an inscription of the year “2013”; and
- (C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(b) SELECTION.—The design for the coins minted under this Act shall—

(1) be selected by the Secretary after consultation with the Command and General Staff College Foundation, and the Commission of Fine Arts; and

(2) be reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITIES.—For each of the three coins minted under this Act, at least one facility will be used to strike proof quality coins, while at least one other facility will be used to strike the uncirculated quality coins.

(c) PERIOD FOR ISSUANCE.—The Secretary may issue coins minted under this Act only during the 1-year period beginning on January 1, 2013.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

- (1) the face value of the coins;
- (2) the surcharge provided in section 7(a) with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) IN GENERAL.—All sales of coins minted under this Act shall include a surcharge as follows:

(1) A surcharge of \$35 per coin for the \$5 coin.

(2) A surcharge of \$10 per coin for the \$1 coin.

(3) A surcharge of \$5 per coin for the half dollar coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Command and General Staff College Foundation to help finance its support of the Command and General Staff College.

(c) AUDITS.—The Command and General Staff College Foundation shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Foundation under subsection (b).

(d) LIMITATION.—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

SEC. 8. BUDGET COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the

Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

Approved October 8, 2010.

LEGISLATIVE HISTORY—H.R. 1177:

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 19, 20, considered and passed House.

Sept. 28, considered and passed Senate.



Public Law 111–263
111th Congress

An Act

To provide increased access to the Federal supply schedules of the General Services Administration to the American Red Cross, other qualified organizations, and State and local governments.

Oct. 8, 2010
[S. 2868]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Supply Schedules Usage Act of 2010”.

Federal Supply
Schedules Usage
Act of 2010.
40 USC 101 note.

SEC. 2. AUTHORITY OF THE AMERICAN RED CROSS AND OTHER QUALIFIED ORGANIZATIONS TO USE FEDERAL SUPPLY SCHEDULES FOR CERTAIN GOODS AND SERVICES.

Section 502 of title 40, United States Code, is amended by adding at the end the following new subsection:

“(e) USE OF SUPPLY SCHEDULES BY THE RED CROSS AND OTHER QUALIFIED ORGANIZATIONS.—

“(1) IN GENERAL.—The Administrator may provide for the use by the American National Red Cross and other qualified organizations of Federal supply schedules. Purchases under this authority by the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in section 300102 of title 36, United States Code. Purchases under this authority by other qualified organizations shall be used in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency.

“(2) LIMITATION.—The authority under this subsection may not be used to purchase supplies for resale.

“(3) QUALIFIED ORGANIZATION.—In this subsection, the term ‘qualified organization’ means a relief or disaster assistance organization as described in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152).”.

SEC. 3. DUTY OF USERS REGARDING USE OF FEDERAL SUPPLY SCHEDULES.

Section 502 of title 40, United States Code, as amended by section 2, is further amended by adding at the end the following new subsection:

“(f) DUTY OF USERS REGARDING USE OF SUPPLY SCHEDULES.—All users of Federal supply schedules, including non-Federal users,

shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services.”.

**SEC. 4. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO USE
SUPPLY SCHEDULES FOR CERTAIN GOODS AND SERVICES.**

Subsection (d)(1) of section 502 of title 40, United States Code, is amended by inserting “, to facilitate disaster preparedness or response,” after “Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)”.

SEC. 5. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved October 8, 2010.

LEGISLATIVE HISTORY—S. 2868:

HOUSE REPORTS: No. 111–587 (Comm. on Oversight and Government Reform).

SENATE REPORTS: No. 111–192 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 24, considered and passed Senate.

Sept. 15, considered and passed House, amended.

Sept. 27, Senate concurred in House amendments.



Public Law 111–264
111th Congress

An Act

To amend the Stem Cell Therapeutic and Research Act of 2005.

Oct. 8, 2010

[S. 3751]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Stem Cell
Therapeutic and
Research
Reauthorization
Act of 2010.
42 USC 201 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stem Cell Therapeutic and Research Reauthorization Act of 2010”.

SEC. 2. AMENDMENTS TO THE STEM CELL THERAPEUTIC AND RESEARCH ACT OF 2005.

(a) CORD BLOOD INVENTORY.—Section 2 of the Stem Cell Therapeutic and Research Act of 2005 (42 U.S.C. 274k note) is amended—

(1) in subsection (a), by inserting “the inventory goal of at least” before “150,000”;

(2) in subsection (c)—

(A) in paragraph (2), by striking “or is transferred” and all that follows through the period and inserting “for a first-degree relative.”; and

(B) in paragraph (3), by striking “150,000”;

(3) in subsection (d)—

(A) in paragraph (1), by inserting “beginning on the last date on which the recipient of a contract under this section receives Federal funds under this section” after “10 years”;

(B) in paragraph (2), by striking “; and” and inserting “,”;

(C) by redesignating paragraph (3) as paragraph (5); and

(D) by inserting after paragraph (2) the following:

“(3) will provide a plan to increase cord blood unit collections at collection sites that exist at the time of application, assist with the establishment of new collection sites, or contract with new collection sites;

Plan.

“(4) will annually provide to the Secretary a plan for, and demonstrate, ongoing measurable progress toward achieving self-sufficiency of cord blood unit collection and banking operations; and”;

Deadline.
Plan.

(4) in subsection (e)—

(A) in paragraph (1)—

(i) by striking “10 years” and inserting “a period of at least 10 years beginning on the last date on which the recipient of a contract under this section receives Federal funds under this section”; and

(ii) by striking the second sentence and inserting “The Secretary shall ensure that no Federal funds shall be obligated under any such contract after the date that is 5 years after the date on which the contract is entered into, except as provided in paragraphs (2) and (3).”;

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A)—

(I) by striking “Subject to paragraph (1)(B), the” and inserting “The”; and

(II) by striking “3” and inserting “5”;

(ii) in subparagraph (A) by striking “150,000” and all that follows through “and” at the end and inserting “the inventory goal described in subsection (a) has not yet been met.”;

(iii) in subparagraph (B)—

(I) by inserting “meeting the requirements under subsection (d)” after “receive an application for a contract under this section”; and

(II) by striking “or the Secretary” and all that follows through the period at the end and inserting “; or”; and

(iv) by adding at the end the following:

Determination.

“(C) the Secretary determines that the outstanding inventory need cannot be met by the qualified cord blood banks under contract under this section.”; and

(C) by striking paragraph (3) and inserting the following:

Contracts.

“(3) EXTENSION ELIGIBILITY.—A qualified cord blood bank shall be eligible for a 5-year extension of a contract awarded under this section, as described in paragraph (2), provided that the qualified cord blood bank—

“(A) demonstrates a superior ability to satisfy the requirements described in subsection (b) and achieves the overall goals for which the contract was awarded;

“(B) provides a plan for how the qualified cord blood bank will increase cord blood unit collections at collection sites that exist at the time of consideration for such extension of a contract, assist with the establishment of new collection sites, or contract with new collection sites; and

“(C) annually provides to the Secretary a plan for, and demonstrates, ongoing measurable progress toward achieving self-sufficiency of cord blood unit collection and banking operations.”;

(5) in subsection (g)(4), by striking “or parent”; and

(6) in subsection (h)—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the program under this section \$23,000,000 for each of fiscal years 2011 through 2014 and \$20,000,000 for fiscal year 2015.”;

(B) by redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2), as so redesignated, by striking “in each of fiscal years 2007 through 2009” and inserting “for each of fiscal years 2011 through 2015”.

(b) NATIONAL PROGRAM.—Section 379 of the Public Health Service Act (42 U.S.C. 274k) is amended—

(1) by striking subsection (a)(6) and inserting the following:

“(6) The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall submit to Congress an annual report on the activities carried out under this section.”;

Deadline.
Reports.

(2) in subsection (d)—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking “With respect to cord blood, the Program shall—” and inserting the following:

“(A) IN GENERAL.—With respect to cord blood, the Program shall—”;

(ii) by redesignating subparagraphs (A) through (H) as clauses (i) through (viii) respectively;

(iii) by striking clause (iv), as so redesignated, and inserting the following:

“(iv) support and expand new and existing studies and demonstration and outreach projects for the purpose of increasing cord blood unit donation and collection from a genetically diverse population and expanding the number of cord blood unit collection sites partnering with cord blood banks receiving a contract under the National Cord Blood Inventory program under section 2 of the Stem Cell Therapeutic and Research Act of 2005, including such studies and projects that focus on—

“(I) remote collection of cord blood units, consistent with the requirements under the Program and the National Cord Blood Inventory program goal described in section 2(a) of the Stem Cell Therapeutic and Research Act of 2005; and

“(II) exploring novel approaches or incentives to encourage innovative technological advances that could be used to collect cord blood units, consistent with the requirements under the Program and such National Cord Blood Inventory program goal.”; and

(iv) by adding at the end the following:

“(B) EFFORTS TO INCREASE COLLECTION OF HIGH QUALITY CORD BLOOD UNITS.—In carrying out subparagraph (A)(iv), not later than 1 year after the date of enactment of the Stem Cell Therapeutic and Research Reauthorization Act of 2010 and annually thereafter, the Secretary shall set an annual goal of increasing collections of high quality cord blood units, consistent with the inventory goal described in section 2(a) of the Stem Cell Therapeutic and Research Act of 2005 (referred to in this subparagraph as the ‘inventory goal’), and shall identify at least one project under subparagraph (A)(iv) to replicate and expand nationwide, as appropriate. If the Secretary cannot identify a project as described in the preceding sentence, the Secretary shall submit a plan, not later than 180 days after the date on which the Secretary was required to identify such a project, to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee

Deadlines.

Plan.
Deadline.

Public
information.

on Energy and Commerce of the House of Representatives for expanding remote collection of high quality cord blood units, consistent with the requirements under the National Cord Blood Inventory program under section 2 of the Stem Cell Therapeutic and Research Act of 2005 and the inventory goal. Each such plan shall be made available to the public.

“(C) DEFINITION.—In this paragraph, the term ‘remote collection’ means the collection of cord blood units at locations that do not have written contracts with cord blood banks for collection support.”; and

(B) in paragraph (3)(A), by striking “(2)(A)” and inserting “(2)(A)(i)”;

(3) by striking subsection (f)(5)(A) and inserting the following:

“(A) require the establishment of a system of strict confidentiality to protect the identity and privacy of patients and donors in accordance with Federal and State law; and”.

(c) ADDITIONAL REPORTS.—

(1) INTERIM REPORT.—In addition to the annual report required under section 379(a)(6) of the Public Health Service Act (42 U.S.C. 274k(a)(6)), the Secretary of Health and Human Services (referred to in this subsection as the “Secretary”), in consultation with the Advisory Council established under such section 379, shall submit to Congress an interim report not later than 180 days after the date of enactment of this Act describing—

(A) the methods to distribute Federal funds to cord blood banks used at the time of submission of the report;

(B) how cord blood banks contract with collection sites for the collection of cord blood units; and

(C) recommendations for improving the methods to distribute Federal funds described in subparagraph (A) in order to encourage the efficient collection of high-quality and diverse cord blood units.

(2) RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, the Advisory Council shall submit recommendations to the Secretary with respect to—

(A) whether models for remote collection of cord blood units should be allowed only with limited, scientifically-justified safety protections; and

(B) whether the Secretary should allow for cord blood unit collection from routine deliveries without temperature or humidity monitoring of delivery rooms in hospitals approved by the Joint Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 379B of the Public Health Service Act (42 U.S.C. 274m) is amended by striking “\$34,000,000” and all that follows through the period at the end, and inserting “\$30,000,000 for each of fiscal years 2011 through 2014 and \$33,000,000 for fiscal year 2015.”

(e) REPORT ON CORD BLOOD UNIT DONATION AND COLLECTION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, the Committee on Energy and Commerce and

the Committee on Appropriations of the House of Representatives, and the Secretary of Health and Human Services a report reviewing studies, demonstration programs, and outreach efforts for the purpose of increasing cord blood unit donation and collection for the National Cord Blood Inventory to ensure a high-quality and genetically diverse inventory of cord blood units.

(2) CONTENTS.—The report described in paragraph (1) shall include a review of such studies, demonstration programs, and outreach efforts under section 2 of the Stem Cell Therapeutic and Research Act of 2005 (42 U.S.C. 274k note) (as amended by this Act) and section 379 of the Public Health Service Act (42 U.S.C. 274k) (as amended by this Act), including—

Review.

(A) a description of the challenges and barriers to expanding the number of cord blood unit collection sites, including cost, the cash flow requirements and operations of awarding contracts, the methods by which funds are distributed through contracts, the impact of regulatory and administrative requirements, and the capacity of cord blood banks to maintain high-quality units;

(B) remote collection or other innovative technological advances that could be used to collect cord blood units;

(C) appropriate methods for improving provider education about collecting cord blood units for the national inventory and participation in such collection activities;

(D) estimates of the number of cord blood unit collection sites necessary to meet the outstanding national inventory need and the characteristics of such collection sites that would help increase the genetic diversity and enhance the quality of cord blood units collected;

(E) best practices for establishing and sustaining partnerships for cord blood unit collection at medical facilities with a high number of minority births;

(F) potential and proven incentives to encourage hospitals to become cord blood unit collection sites and partner with cord blood banks participating in the National Cord Blood Inventory under section 2 of the Stem Cell Therapeutic and Research Act of 2005 and to assist cord blood banks in expanding the number of cord blood unit collection sites with which such cord blood banks partner;

(G) recommendations about methods cord blood banks and collection sites could use to lower costs and improve efficiency of cord blood unit collection without decreasing the quality of the cord blood units collected; and

(H) a description of the methods used prior to the date of enactment of this Act to distribute funds to cord blood banks and recommendations for how to improve such methods to encourage the efficient collection of high-quality and diverse cord blood units, consistent with the requirements of the C.W. Bill Young Cell Transplantation Program and the National Cord Blood Inventory program under section 2 of the Stem Cell Therapeutic and Research Act of 2005.

(f) DEFINITION.—In this Act, the term “remote collection” has the meaning given such term in section 379(d)(2)(C) of the Public Health Service Act.

Approved October 8, 2010.

LEGISLATIVE HISTORY—S. 3751:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed Senate.

Sept. 29, considered and passed House.



Public Law 111–265
111th Congress

An Act

To make technical corrections in the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act.

Oct. 8, 2010
[S. 3828]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010.

The Twenty-First Century Communications and Video Accessibility Act of 2010 is amended—

(1) by striking the item relating to section 105 in the table of contents in section 1(b) and inserting the following: *Ante*, p. 2751.

“Sec. 105. Relay services for deaf-blind individuals.”;

(2) by striking “requirement” in section 201(e)(1)(B) and inserting “objectives”; *Ante*, p. 2765.

(3) by striking “requirement” in section 201(e)(2)(B) and inserting “objectives”; *Ante*, p. 2766.

(4) by inserting “or digital broadcast television” after “protocol” in section 201(e)(2)(C); and

(5) by inserting “or digital broadcast television” after “protocol” in section 201(e)(2)(E).

SEC. 2. AMENDMENT OF COMMUNICATIONS ACT OF 1934.

The Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by the Twenty-First Century Communications and Video Accessibility Act of 2010, is amended—

(1) by striking “do not” in section 716(d); 47 USC 617.

(2) by striking “facilities” in section 716(e)(1)(D) and inserting “facilitate”;

(3) by striking “provider in the manner prescribed in paragraph (3),” in section 717(a)(5)(C) and inserting “provider,”; 47 USC 618.

(4) by striking “Equal Access to 21st Century Communications Act” in section 719(a) and inserting “Twenty-First Century Communications and Video Accessibility Act of 2010”; 47 USC 620.

(5) by inserting “low-income” after “accessible by” in section 719(a);

(6) by striking “and” in section 713(f)(2)(A) and inserting “such”; 47 USC 613.

(7) by inserting “have” after “that” the first place it appears in section 713(f)(2)(B);

(8) by inserting “and Commerce” after “Energy” in section 713(f)(4)(C)(iii);

(9) by striking “programming distribution” in section 713(c)(2)(D)(iii) and inserting “programming distributors”;

47 USC 303.

(10) by striking “progamming” in section 713(c)(2)(D)(v) and inserting “programming”;

(11) by striking “and video description signals and make” in section 713(c)(2)(D)(vi) and inserting “and makes”;

(12) by striking “by” in section 303(aa)(3) and inserting “for”;

(13) by striking “and” after the semicolon in section 303(bb)(1);

(14) by striking “features.” in section 303(bb)(2) and inserting “features; and”; and

(15) by striking the matter following subdivision (2) of section 303(bb) and inserting the following:

“(3) that, with respect to navigation device features and functions—

“(A) delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software; and

“(B) delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.”.

Approved October 8, 2010.

LEGISLATIVE HISTORY—S. 3828:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 22, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 111–266
111th Congress

An Act

To implement certain defense trade cooperation treaties, and for other purposes.

Oct. 8, 2010

[S. 3847]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Security Cooperation Act of 2010”.

Security
Cooperation Act
of 2010.
22 USC 2751
note.

**TITLE I—DEFENSE TRADE
COOPERATION TREATIES**

Defense Trade
Cooperation
Treaties
Implementation
Act of 2010.
22 USC 2751
note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Defense Trade Cooperation Treaties Implementation Act of 2010”.

SEC. 102. EXEMPTIONS FROM REQUIREMENTS.

(a) **RETRANSFER REQUIREMENTS.**—Section 3(b) of the Arms Export Control Act (22 U.S.C. 2753(b)) is amended by inserting “a treaty referred to in section 38(j)(1)(C)(i) of this Act permits such transfer without prior consent of the President, or if” after “if”.

(b) **BILATERAL AGREEMENT REQUIREMENTS.**—Section 38(j)(1) of such Act (22 U.S.C. 2778(j)(1)) is amended—

(1) in the subparagraph heading for subparagraph (B), by inserting “FOR CANADA” after “EXCEPTION”; and

(2) by adding at the end the following new subparagraph:

“(C) EXCEPTION FOR DEFENSE TRADE COOPERATION TREATIES.—

“(i) **IN GENERAL.**—The requirement to conclude a bilateral agreement in accordance with subparagraph (A) shall not apply with respect to an exemption from the licensing requirements of this Act for the export of defense items to give effect to any of the following defense trade cooperation treaties, provided that the treaty has entered into force pursuant to article II, section 2, clause 2 of the Constitution of the United States:

“(I) The Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London on

June 21 and 26, 2007 (and any implementing arrangement thereto).

“(II) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney September 5, 2007 (and any implementing arrangement thereto).

“(ii) LIMITATION OF SCOPE.—The United States shall exempt from the scope of a treaty referred to in clause (i)—

“(I) complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or complete unmanned aerial vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram payload to a range of 300 kilometers, and associated production facilities, software, or technology for these systems, as defined in the Missile Technology Control Regime Annex Category I, Item 1;

“(II) individual rocket stages, re-entry vehicles and equipment, solid or liquid propellant motors or engines, guidance sets, thrust vector control systems, and associated production facilities, software, and technology, as defined in the Missile Technology Control Regime Annex Category I, Item 2;

“(III) defense articles and defense services listed in the Missile Technology Control Regime Annex Category II that are for use in rocket systems, as that term is used in such Annex, including associated production facilities, software, or technology;

“(IV) toxicological agents, biological agents, and associated equipment, as listed in the United States Munitions List (part 121.1 of chapter I of title 22, Code of Federal Regulations), Category XIV, subcategories (a), (b), (f)(1), (i), (j) as it pertains to (f)(1), (l) as it pertains to (f)(1), and (m) as it pertains to all of the subcategories cited in this paragraph;

“(V) defense articles and defense services specific to the design and testing of nuclear weapons which are controlled under United States Munitions List Category XVI(a) and (b), along with associated defense articles in Category XVI(d) and technology in Category XVI(e);

“(VI) with regard to the treaty cited in clause (i)(I), defense articles and defense services that the United States controls under the United States Munitions List that are not controlled by the United Kingdom, as defined in the United Kingdom Military List or Annex 4 to the United Kingdom Dual Use List, or any successor lists thereto; and

“(VII) with regard to the treaty cited in clause (i)(II), defense articles for which Australian laws,

regulations, or other commitments would prevent Australia from enforcing the control measures specified in such treaty.”.

SEC. 103. ENFORCEMENT.

(a) **CRIMINAL VIOLATIONS.**—Section 38(c) of such Act (22 U.S.C. 2778(c)) is amended by striking “this section or section 39, or any rule or regulation issued under either section” and inserting “this section, section 39, a treaty referred to in subsection (j)(1)(C)(i), or any rule or regulation issued under this section or section 39, including any rule or regulation issued to implement or enforce a treaty referred to in subsection (j)(1)(C)(i) or an implementing arrangement pursuant to such treaty”.

(b) **ENFORCEMENT POWERS OF PRESIDENT.**—Section 38(e) of such Act (22 U.S.C. 2778(e)) is amended by striking “defense services,” and inserting “defense services, including defense articles and defense services exported or imported pursuant to a treaty referred to in subsection (j)(1)(C)(i).”

22 USC 2778.

(c) **NOTIFICATION REGARDING EXEMPTIONS FROM LICENSING REQUIREMENTS.**—Section 38(f) of such Act (22 U.S.C. 2778(f)) is amended by adding at the end the following new paragraph:

“(4) Paragraph (2) shall not apply with respect to an exemption under subsection (j)(1) to give effect to a treaty referred to in subsection (j)(1)(C)(i) (and any implementing arrangements to such treaty), provided that the President promulgates regulations to implement and enforce such treaty under this section and section 39.”.

(d) **INCENTIVE PAYMENTS.**—Section 39A(a) of such Act (22 U.S.C. 2779a(a)) is amended by inserting “or exported pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act” after “under this Act”.

SEC. 104. CONGRESSIONAL NOTIFICATION.

(a) **RETRANSFERS AND REEXPORTS.**—Section 3(d)(3)(A) of such Act (22 U.S.C. 2753(d)(3)(A)) is amended by inserting “or has been exempted from the licensing requirements of this Act pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act where such treaty does not authorize the transfer without prior United States Government approval” after “approved under section 38 of this Act”.

(b) **DISCRIMINATION.**—Section 5(c) of such Act (22 U.S.C. 2755(c)) is amended by inserting “or any import or export under a treaty referred to in section 38(j)(1)(C)(i) of this Act” after “under this Act”.

(c) **ANNUAL ESTIMATE OF SALES.**—Section 25(a) of such Act (22 U.S.C. 2765(a)) is amended—

(1) in paragraph (1), by inserting “, as well as exports pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act,” after “commercial exports under this Act”; and

(2) in paragraph (2), by inserting “, as well as exports pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act,” after “commercial exports”.

(d) **PRESIDENTIAL CERTIFICATIONS.**—

(1) **EXPORTS.**—Section 36(c) of such Act (22 U.S.C. 2776(c)) is amended by adding at the end the following new paragraph:

“(6) The President shall notify the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate at least 15 days prior to an

Deadlines.
Applicability.

export pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 38(j)(1) of this Act, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.”.

(2) **COMMERCIAL TECHNICAL ASSISTANCE OR MANUFACTURING LICENSING AGREEMENTS.**—Section 36(d) of such Act (22 U.S.C. 2776(d)) is amended by adding at the end the following new paragraph:

“(6) The President shall notify the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate at least 15 days prior to an export pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 38(j)(1) of this Act, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.”.

(e) **FEES AND POLITICAL CONTRIBUTIONS.**—Section 39(a) of such Act (22 U.S.C. 2779(a)) is amended—

(1) in paragraph (1), by striking “; or” and inserting a semicolon;

(2) in paragraph (2), by inserting “or” after the semicolon; and

(3) by adding at the end the following new paragraph:
“(3) exports of defense articles or defense services pursuant to a treaty referenced in section 38(j)(1)(C)(i) of this Act;”.

22 USC 2778
note.

SEC. 105. LIMITATION ON IMPLEMENTING ARRANGEMENTS.

(a) **IN GENERAL.**—No amendment to an implementing arrangement concluded pursuant to a treaty referred to in section 38(j)(1)(C)(i) of the Arms Export Control Act, as added by this Act, shall enter into effect for the United States unless the Congress adopts, and there is enacted, legislation approving the entry into effect of that amendment for the United States.

Applicability.

(b) **COVERED AMENDMENTS.**—

(1) **IN GENERAL.**—The requirements specified in subsection (a) shall apply to any amendment other than an amendment that addresses an administrative or technical matter. The requirements in subsection (a) shall not apply to any amendment that solely addresses an administrative or technical matter.

(2) **U.S.-UK IMPLEMENTING ARRANGEMENT.**—In the case of the Implementing Arrangement Pursuant to the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed at Washington February 14, 2008, amendments to which the requirements specified in subsection (a) apply shall include—

(A) any amendment to section 2, paragraphs (1), (2), or (3) that modifies the criteria governing operations, programs, and projects to which the treaty applies;

(B) any amendment to section 3, paragraphs (1) or (2) that modifies the criteria governing end-use requirements and the requirements for approved community members responding to United States Government solicitations;

(C) any amendment to section 4, paragraph (4) that modifies the criteria for including items on the list of defense articles exempt from the treaty;

(D) any amendment to section 4, paragraph (7) that modifies licensing and other applicable requirements relating to items added to the list of defense articles exempt from the scope of the treaty;

(E) any amendment to section 7, paragraph (4) that modifies the criteria for eligibility in the approved community under the treaty for nongovernmental United Kingdom entities and facilities;

(F) any amendment to section 7, paragraph (9) that modifies the conditions for suspending or removing a United Kingdom entity from the approved community under the treaty;

(G) any amendment to section 7, paragraphs (11) or (12) that modifies the conditions under which individuals may be granted access to defense articles exported under the treaty;

(H) any amendment to section 9, paragraphs (1), (3), (7), (8), (9), (12), or (13) that modifies the circumstances under which United States Government approval is required for the re-transfer or re-export of a defense article, or to exceptions to such requirement; and

(I) any amendment to section 11, paragraph (4)(b) that modifies conditions of entry to the United Kingdom community under the treaty.

(3) U.S.-AUSTRALIA IMPLEMENTING ARRANGEMENT.—In the case of the Implementing Arrangement Pursuant to the Treaty Between the Government of the United States of America and the Government of the Australia Concerning Defense Trade Cooperation, signed at Washington March 14, 2008, amendments to which the requirements specified in subsection (a) apply shall include—

(A) any amendment to section 2, paragraphs (1), (2), or (3) that modifies the criteria governing operations, programs, and projects to which the treaty applies;

(B) any amendment to section 3, paragraphs (1) or (2) that modifies the criteria governing end-use requirements and the requirements for approved community members responding to United States Government solicitations;

(C) any amendment to section 4, paragraph (4) that modifies criteria for including items on the list of defense articles exempt from the scope of the treaty;

(D) any amendment to section 4, paragraph (7) that modifies licensing and other applicable requirements relating to items added to the list of defense articles exempt from the scope of the treaty;

(E) any amendment to section 6, paragraph (4) that modifies the criteria for eligibility in the approved community under the treaty for nongovernmental Australian entities and facilities;

(F) any amendment to section 6, paragraph (9) that modifies the conditions for suspending or removing an Australian entity from the Australia community under the treaty;

(G) any amendment to section 6, paragraphs (11), (12), (13), or (14) that modifies the conditions under which individuals may be granted access to defense articles exported under the treaty;

(H) any amendment to section 9, paragraphs (1), (2), (4), (7), or (8) that modifies the circumstances under which United States Government approval is required for the re-transfer or re-export of a defense article, or to exceptions to such requirement; and

(I) any amendment to section 11, paragraph (6) that modifies conditions of entry to the Australian community under the treaty.

Deadline.
President.
Reports.

(c) CONGRESSIONAL NOTIFICATION FOR OTHER AMENDMENTS TO IMPLEMENTING ARRANGEMENTS.—Not later than 15 days before any amendment to an implementing arrangement to which subsection (a) does not apply shall take effect, the President shall provide to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report containing—

(1) the text of the amendment; and

(2) an analysis of the amendment's effect, including an analysis regarding why subsection (a) does not apply.

President.
22 USC 2778
note.

SEC. 106. IMPLEMENTING REGULATIONS.

The President is authorized to issue regulations pursuant to the Arms Export Control Act (22 U.S.C. 2751 et seq.) to implement and enforce the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London on June 21 and 26, 2007 (and any implementing arrangement thereto) and the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007 (and any implementing arrangement thereto), consistent with other applicable provisions of the Arms Export Control Act, as amended by this Act, and with the terms of any resolution of advice and consent adopted by the Senate with respect to either treaty.

22 USC 2778
note.

SEC. 107. RULE OF CONSTRUCTION.

Nothing in this title, the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London on June 21 and 26, 2007 (and any implementing arrangement thereto), the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007 (and any implementing arrangement thereto), or in any regulation issued to implement either treaty, shall be construed to modify or supersede any provision of law or regulation other than the Arms Export Control Act (22 U.S.C. 2751 et seq.), as amended by this Act, and the International Traffic in Arms Regulations (subchapter M of chapter I of title 22, Code of Federal Regulations).

TITLE II—AUTHORITY TO TRANSFER NAVAL VESSELS

Naval Vessel
Transfer Act of
2010.

SEC. 201. SHORT TITLE.

This title may be cited as the “Naval Vessel Transfer Act of 2010”.

SEC. 202. TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.

(a) TRANSFERS BY GRANT.—The President is authorized to transfer vessels to foreign countries on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), as follows:

(1) INDIA.—To the Government of India, the OSPREY class minehunter coastal ships KINGFISHER (MHC–56) and CORMORANT (MHC–57).

(2) GREECE.—To the Government of Greece, the OSPREY class minehunter coastal ships OSPREY (MHC–51), BLACKHAWK (MHC–58), and SHRIKE (MHC–62).

(3) CHILE.—To the Government of Chile, the NEWPORT class amphibious tank landing ship TUSCALOOSA (LST–1187).

(4) MOROCCO.—To the Government of Morocco, the NEWPORT class amphibious tank landing ship BOULDER (LST–1190).

(b) TRANSFER BY SALE.—The President is authorized to transfer the OSPREY class minehunter coastal ship ROBIN (MHC–54) to the Taipei Economic and Cultural Representative Office of the United States (which is the Taiwan instrumentality designated pursuant to section 10(a) of the Taiwan Relations Act (22 U.S.C. 3309(a)) on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761).

(c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE ARTICLES.—The value of a vessel transferred to another country on a grant basis pursuant to authority provided by subsection (a) shall not be counted against the aggregate value of excess defense articles transferred in any fiscal year under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

(d) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection with a transfer authorized by this section shall be charged to the recipient (notwithstanding section 516(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(e))).

(e) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the recipient to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of the recipient, performed at a shipyard located in the United States, including a United States Navy shipyard.

(f) EXPIRATION OF AUTHORITY.—The authority to transfer a vessel under this section shall expire at the end of the 2-year period beginning on the date of the enactment of this Act.

TITLE III—OTHER MATTERS**SEC. 301. EXPEDITED CONGRESSIONAL DEFENSE EXPORT REVIEW PERIOD FOR ISRAEL.**

The Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended—

22 USC 2753,
2761, 2776,
2796a, 2796b.

(1) in sections 3(d)(2)(B), 3(d)(3)(A)(i), 3(d)(5), 21(e)(2)(A), 36(b), 36(c), 36(d)(2)(A), 62(c)(1), and 63(a)(2), by inserting “Israel,” before “or New Zealand” each place it appears; and

(2) in section 3(b)(2), by inserting “the Government of Israel,” before “or the Government of New Zealand”.

SEC. 302. EXTENSION OF WAR RESERVES STOCKPILE AUTHORITY.

(a) DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005.—Section 12001(d) of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 1011) is amended by striking “more than 4 years after” and inserting “more than 8 years after”.

(b) FOREIGN ASSISTANCE ACT OF 1961.—Section 514(b)(2)(A) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321h(b)(2)(A)) is amended by striking “fiscal years 2007 and 2008” and inserting “fiscal years 2011 and 2012”.

Approved October 8, 2010.

LEGISLATIVE HISTORY—S. 3847:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 27, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 111–267
111th Congress

An Act

To authorize the programs of the National Aeronautics and Space Administration for fiscal years 2011 through 2013, and for other purposes.

Oct. 11, 2010
[S. 3729]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “National Aeronautics and Space Administration Authorization Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

National
Aeronautics and
Space
Administration
Authorization
Act of 2010.
42 USC 18301
note.

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

Sec. 101. Fiscal year 2011.
Sec. 102. Fiscal year 2012.
Sec. 103. Fiscal year 2013.

**TITLE II—POLICY, GOALS, AND OBJECTIVES FOR HUMAN SPACE FLIGHT
AND EXPLORATION**

Sec. 201. United States human space flight policy.
Sec. 202. Goals and objectives.
Sec. 203. Assurance of core capabilities.
Sec. 204. Independent study on human exploration of space.

**TITLE III—EXPANSION OF HUMAN SPACE FLIGHT BEYOND THE
INTERNATIONAL SPACE STATION AND LOW-EARTH ORBIT**

Sec. 301. Human space flight beyond low-Earth orbit.
Sec. 302. Space Launch System as follow-on launch vehicle to the Space Shuttle.
Sec. 303. Multi-purpose crew vehicle.
Sec. 304. Utilization of existing workforce and assets in development of Space Launch System and multi-purpose crew vehicle.
Sec. 305. NASA launch support and infrastructure modernization program.
Sec. 306. Report on effects of transition to Space Launch System on the solid and liquid rocket motor industrial bases.
Sec. 307. Sense of Congress on other technology and robotic elements in human space flight and exploration.
Sec. 308. Development of technologies and in-space capabilities for beyond near-Earth space missions.
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**TITLE IV—DEVELOPMENT AND USE OF COMMERCIAL CREW AND CARGO
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Sec. 401. Commercial Cargo Development program.
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Sec. 403. Requirements applicable to development of commercial crew transportation capabilities and services.
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TITLE V—CONTINUATION, SUPPORT, AND EVOLUTION OF THE
INTERNATIONAL SPACE STATION

- Sec. 501. Continuation of the International Space Station through 2020.
- Sec. 502. Maximum utilization of the International Space Station.
- Sec. 503. Maintenance of the United States segment and assurance of continued operations of the International Space Station.
- Sec. 504. Management of the ISS national laboratory.

TITLE VI—SPACE SHUTTLE RETIREMENT AND TRANSITION

- Sec. 601. Sense of Congress on the Space Shuttle program.
- Sec. 602. Retirement of Space Shuttle orbiters and transition of Space Shuttle program.
- Sec. 603. Disposition of orbiter vehicles.

TITLE VII—EARTH SCIENCE

- Sec. 701. Sense of Congress.
- Sec. 702. Interagency collaboration implementation approach.
- Sec. 703. Transitioning experimental research to operations.
- Sec. 704. Decadal survey missions implementation for Earth observation.
- Sec. 705. Expansion of Earth science applications.
- Sec. 706. Instrument test-beds and venture class missions.
- Sec. 707. Sense of Congress on NPOESS follow-on program.

TITLE VIII—SPACE SCIENCE

- Sec. 801. Technology development.
- Sec. 802. Suborbital research activities.
- Sec. 803. Overall science portfolio-sense of the Congress.
- Sec. 804. In-space servicing.
- Sec. 805. Decadal results.
- Sec. 806. On-going restoration of radioisotope thermoelectric generator material production.
- Sec. 807. Collaboration with ESMD and SOMD on robotic missions.
- Sec. 808. Near-Earth object survey and policy with respect to threats posed.
- Sec. 809. Space weather.

TITLE IX—AERONAUTICS AND SPACE TECHNOLOGY

- Sec. 901. Sense of Congress.
- Sec. 902. Aeronautics research goals.
- Sec. 903. Research collaboration.
- Sec. 904. Goal for agency space technology.
- Sec. 905. Implementation plan for agency space technology.
- Sec. 906. National space technology policy.
- Sec. 907. Commercial reusable suborbital research program.

TITLE X—EDUCATION

- Sec. 1001. Report on education implementation outcomes.
- Sec. 1002. Sense of Congress on the Experimental Program to Stimulate Competitive Research.
- Sec. 1003. Science, technology, engineering, and mathematics commercial orbital platform program.

TITLE XI—RESCOPING AND REVITALIZING INSTITUTIONAL CAPABILITIES

- Sec. 1101. Sense of Congress.
- Sec. 1102. Institutional requirements study.
- Sec. 1103. NASA capabilities study requirement.
- Sec. 1104. Sense of Congress on community transition support.
- Sec. 1105. Workforce stabilization and critical skills preservation.

TITLE XII—OTHER MATTERS

- Sec. 1201. Report on space traffic management.
- Sec. 1202. National and international orbital debris mitigation.
- Sec. 1203. Reports on program and cost assessment and control assessment.
- Sec. 1204. Eligibility for service of individual currently serving as Administrator of NASA.
- Sec. 1205. Sense of Congress on independent verification and validation of NASA software.
- Sec. 1206. Counterfeit parts.
- Sec. 1207. Information security.
- Sec. 1208. National Center for Human Performance.

Sec. 1209. Enhanced-use Leasing.

Sec. 1210. Sense of Congress concerning the Stennis Space Center.

TITLE XIII—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

Sec. 1301. Compliance provision.

SEC. 2. FINDINGS.

42 USC 18301.

Congress makes the following findings:

(1) The United States human space flight program has, since the first Mercury flight on May 5, 1961, been a source of pride and inspiration for the Nation.

(2) The establishment of and commitment to human exploration goals is essential for providing the necessary long term focus and programmatic consistency and robustness of the United States civilian space program.

(3) The National Aeronautics and Space Administration is and should remain a multi-mission agency with a balanced and robust set of core missions in science, aeronautics, and human space flight and exploration.

(4) In the 50 years since the establishment of NASA, the arena of space has evolved substantially. As the uses and users of space continue to expand, the issues and operations in the regions closest to Earth have become increasingly complex, with a growing number of overlaps between civil, commercial and national security activities. These developments present opportunities and challenges to the space activities of NASA and the United States.

(5) The extraordinary challenges of achieving access to space both motivated and accelerated the development of technologies and industrial capabilities that have had widespread applications which have contributed to the technological excellence of the United States. It is essential to tie space activity to human challenges ranging from enhancing the influence, relationships, security, economic development, and commerce of the United States to improving the overall human condition.

(6) It is essential to the economic well-being of the United States that the aerospace industrial capacity, highly skilled workforce, and embedded expertise remain engaged in demanding, challenging, and exciting efforts that ensure United States leadership in space exploration and related activities.

(7) Crewmembers provide the essential component to ensure the return on investment from and the growth and safe operation of the ISS. The Russian Soyuz vehicle has allowed continued human presence on the ISS for United States crewmembers with its ability to serve as both a routine and backup capability for crew delivery, rescue, and return. With the impending retirement of the Space Shuttle, the United States will find itself with no national crew delivery and return system. Without any other system, the United States and all the ISS partners will have no redundant system for human access to and from the ISS. It is therefore essential that a United States capability be developed as soon as possible.

(8) Existing and emerging United States commercial launch capabilities and emerging launch capabilities offer the potential for providing crew support assets. New capabilities for human crew access to the ISS should be developed in a manner that ensures ISS mission assurance and safety. Commercial services

offer the potential to broaden the availability and access to space at lower costs.

(9) While commercial transportation systems have the promise to contribute valuable services, it is in the United States national interest to maintain a government operated space transportation system for crew and cargo delivery to space.

(10) Congress restates its commitment, expressed in the National Aeronautics and Space Administration Authorization Act of 2005 (Public Law 109–155) and the National Aeronautics and Space Administration Authorization Act of 2008 (Public Law 110–422), to the development of commercially developed launch and delivery systems to the ISS for crew and cargo missions. Congress reaffirms that NASA shall make use of United States commercially provided ISS crew transfer and crew rescue services to the maximum extent practicable.

(11) It is critical to identify an appropriate combination of NASA and related United States Government programs, while providing a framework that allows partnering, leveraging and stimulation of the existing and emerging commercial and international efforts in both near Earth space and the regions beyond.

(12) The designation of the United States segment of the ISS as a National Laboratory, as provided by the National Aeronautics and Space Administration Authorization Act of 2005 and the National Aeronautics and Space Administration Authorization Act of 2008, provides an opportunity for multiple United States Government agencies, university-based researchers, research organizations, and others to utilize the unique environment of microgravity for fundamental scientific research and potential economic development.

(13) For some potential replacement elements necessary for ISS sustainability, the Space Shuttle may represent the only vehicle, existing or planned, capable of carrying those elements to the ISS in the near term. Additional or alternative transportation capabilities must be identified as contingency delivery options, and accompanied by an independent analysis of projected availability of such capabilities.

(14) The United States must develop, as rapidly as possible, replacement vehicles capable of providing both human and cargo launch capability to low-Earth orbit and to destinations beyond low-Earth orbit.

(15) There is a need for national space and export control policies that protect the national security of the United States while also enabling the United States and its aerospace industry to undertake cooperative programs in science and human space flight in an effective and efficient manner and to compete effectively in the global market place.

42 USC 18302.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the National Aeronautics and Space Administration.

(2) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of Congress” means—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Science of the House of Representatives.

(3) CIS-LUNAR SPACE.—The term “cis-lunar space” means the region of space from the Earth out to and including the region around the surface of the Moon.

(4) DEEP SPACE.—The term “deep space” means the region of space beyond cis-lunar space.

(5) ISS.—The term “ISS” means the International Space Station.

(6) NASA.—The term “NASA” means the National Aeronautics and Space Administration.

(7) NEAR-EARTH SPACE.—The term “near-Earth space” means the region of space that includes low-Earth orbit and extends out to and includes geo-synchronous orbit.

(8) NOAA.—The term “NOAA” means the National Oceanic and Atmospheric Administration.

(9) OSTP.—The term “OSTP” means the Office of Science and Technology Policy.

(10) SPACE LAUNCH SYSTEM.—The term “Space Launch System” means the follow-on government-owned civil launch system developed, managed, and operated by NASA to serve as a key component to expand human presence beyond low-Earth orbit.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

SEC. 101. FISCAL YEAR 2011.

There are authorized to be appropriated to NASA for fiscal year 2011, \$19,000,000,000, as follows:

(1) For Exploration, \$3,868,000,000, of which—

(A) \$1,120,000,000 shall be for a multi-purpose crew vehicle, and associated program and other necessary support;

(B) \$1,631,000,000 shall be for Space Launch System and associated program and other necessary support;

(C) \$250,000,000 shall be for Exploration Technology Development;

(D) \$155,000,000 shall be for Human Research;

(E) \$300,000,000 shall be for Commercial Cargo;

(F) \$312,000,000 shall be for Commercial Crew Development activities and studies related to commercial crew services; and

(G) \$100,000,000 shall be for Robotic Precursor Studies and Instruments.

(2) For Space Operations, \$5,508,500,000, of which—

(A) \$2,779,800,000 shall be for the ISS program;

(B) \$1,609,700,000 shall be for Space Shuttle, to support Space Shuttle flight operations and related activities; and

(C) \$1,119,000,000 for Space and Flight Services, of which \$428,600,000 shall be directed toward NASA launch support and infrastructure modernization program.

(3) For Science, \$5,005,600,000, of which—

- (A) \$1,801,800,000 shall be for Earth Sciences;
- (B) \$1,485,700,000 shall be for Planetary Science;
- (C) \$1,076,300,000 shall be for Astrophysics; and
- (D) \$641,900,000 shall be for Heliophysics.
- (4) For Aeronautics, \$929,600,000, of which—
 - (A) \$579,600,000 shall be for Aeronautics Research; and
 - (B) \$350,000,000 shall be for Space Technology.
- (5) For Education, \$145,800,000, of which—
 - (A) \$25,000,000 shall be for the Experimental Program to Stimulate Competitive Research; and
 - (B) \$45,600,000 shall be for the Space Grant program.
- (6) For Cross-Agency Support Programs, \$3,111,400,000.
- (7) For Construction and Environmental Compliance and Restoration, \$394,300,000.
- (8) For Inspector General, \$37,000,000.

SEC. 102. FISCAL YEAR 2012.

There are authorized to be appropriated to NASA for fiscal year 2012, \$19,450,000,000, as follows:

- (1) For Exploration, \$5,252,300,000, of which—
 - (A) \$1,400,000,000 shall be for a multi-purpose crew vehicle and associated program and other necessary support;
 - (B) \$2,650,000,000 shall be for Space Launch System and associated program and other necessary support;
 - (C) \$437,300,000 shall be for Exploration Technology Development;
 - (D) \$165,000,000 shall be for Human Research;
 - (E) \$500,000,000 shall be for commercial crew capabilities; and
 - (F) \$100,000,000 shall be for Robotic Precursor Instruments and Low-Cost Missions.
- (2) For Space Operations, \$4,141,500,000, of which—
 - (A) \$2,952,250,000 shall be for the ISS operations and crew/cargo support; and
 - (B) \$1,189,250,000 shall be for Space and Flight Services, of which \$500,000,000 shall be directed toward the NASA launch support and infrastructure modernization program.
- (3) For Science, \$5,248,600,000, of which—
 - (A) \$1,944,500,000 shall be for Earth Sciences;
 - (B) \$1,547,200,000 shall be for Planetary Science;
 - (C) \$1,109,300,000 shall be for Astrophysics; and
 - (D) \$647,600,000 shall be for Heliophysics.
- (4) For Aeronautics, \$1,070,600,000, of which—
 - (A) \$584,700,000 shall be for Aeronautics Research; and
 - (B) \$486,000,000 shall be for Space Technology.
- (5) For Education, \$145,800,000, of which—
 - (A) \$25,000,000 shall be for the Experimental Program to Stimulate Competitive Research; and
 - (B) \$45,600,000 shall be for the Space Grant program.
- (6) For Cross-Agency Support Programs, \$3,189,600,000.
- (7) For Construction and Environmental Compliance and Restoration, \$363,800,000.
- (8) For Inspector General, \$37,800,000.

SEC. 103. FISCAL YEAR 2013.

There are authorized to be appropriated to NASA for fiscal year 2013, \$19,960,000,000, as follows:

- (1) For Exploration, \$5,264,000,000, of which—
 - (A) \$1,400,000,000 shall be for a multi-purpose crew vehicle and associated program and other necessary support;
 - (B) \$2,640,000,000 shall be for Space Launch System and associated program and other necessary support;
 - (C) \$449,000,000 shall be for Exploration Technology Development;
 - (D) \$175,000,000 shall be for Human Research;
 - (E) \$500,000,000 shall be for commercial crew capabilities; and
 - (F) \$100,000,000 shall be for Robotic Precursor Instruments and Low-Cost Missions.
- (2) For Space Operations, \$4,253,300,000, of which—
 - (A) \$3,129,400,000 shall be for the ISS operations and crew/cargo support; and
 - (B) \$1,123,900,000 shall be for Space and Flight Services, of which \$400,000,000 shall be directed toward the NASA launch support and infrastructure modernization program.
- (3) For Science, \$5,509,600,000, of which—
 - (A) \$2,089,500,000 shall be for Earth Sciences;
 - (B) \$1,591,200,000 shall be for Planetary Science;
 - (C) \$1,149,100,000 shall be for Astrophysics; and
 - (D) \$679,800,000 shall be for Heliophysics.
- (4) For Aeronautics, \$1,105,000,000, of which—
 - (A) \$590,000,000 shall be for Aeronautics Research; and
 - (B) \$515,000,000 shall be for Space Technology.
- (5) For Education, \$145,700,000, of which—
 - (A) \$25,000,000 shall be for the Experimental Program to Stimulate Competitive Research; and
 - (B) \$45,600,000 shall be for the Space Grant program.
- (6) For Cross-Agency Support Programs, \$3,276,800,000.
- (7) For Construction and Environmental Compliance and Restoration, \$366,900,000.
- (8) For Inspector General, \$38,700,000.

TITLE II—POLICY, GOALS, AND OBJECTIVES FOR HUMAN SPACE FLIGHT AND EXPLORATION

SEC. 201. UNITED STATES HUMAN SPACE FLIGHT POLICY.

42 USC 18311.

(a) **USE OF NON-UNITED STATES HUMAN SPACE FLIGHT TRANSPORTATION CAPABILITIES.**—It is the policy of the United States that reliance upon and use of non-United States human space flight capabilities shall be undertaken only as a contingency in circumstances where no United States-owned and operated human space flight capability is available, operational, and certified for flight by appropriate Federal agencies.

(b) **UNITED STATES HUMAN SPACE FLIGHT CAPABILITIES.**—Congress reaffirms the policy stated in section 501(a) of the National

Aeronautics and Space Administration Authorization Act of 2005 (42 U.S.C. 16761(a)), that the United States shall maintain an uninterrupted capability for human space flight and operations in low-Earth orbit, and beyond, as an essential instrument of national security and of the capacity to ensure continued United States participation and leadership in the exploration and utilization of space.

42 USC 18312.

SEC. 202. GOALS AND OBJECTIVES.

(a) **LONG TERM GOAL.**—The long term goal of the human space flight and exploration efforts of NASA shall be to expand permanent human presence beyond low-Earth orbit and to do so, where practical, in a manner involving international partners.

(b) **KEY OBJECTIVES.**—The key objectives of the United States for human expansion into space shall be—

(1) to sustain the capability for long-duration presence in low-Earth orbit, initially through continuation of the ISS and full utilization of the United States segment of the ISS as a National Laboratory, and through assisting and enabling an expanded commercial presence in, and access to, low-Earth orbit, as elements of a low-Earth orbit infrastructure;

(2) to determine if humans can live in an extended manner in space with decreasing reliance on Earth, starting with utilization of low-Earth orbit infrastructure, to identify potential roles that space resources such as energy and materials may play, to meet national and global needs and challenges, such as potential cataclysmic threats, and to explore the viability of and lay the foundation for sustainable economic activities in space;

(3) to maximize the role that human exploration of space can play in advancing overall knowledge of the universe, supporting United States national and economic security and the United States global competitive posture, and inspiring young people in their educational pursuits; and

(4) to build upon the cooperative and mutually beneficial framework established by the ISS partnership agreements and experience in developing and undertaking programs and meeting objectives designed to realize the goal of human space flight set forth in subsection (a).

42 USC 18313.

SEC. 203. ASSURANCE OF CORE CAPABILITIES.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the ISS, technology developments, the current Space Shuttle program, and follow-on transportation systems authorized by this Act form the foundation of initial capabilities for missions beyond low-Earth orbit to a variety of lunar and Lagrangian orbital locations; and

(2) these initial missions and related capabilities should be utilized to provide operational experience, technology development, and the placement and assured use of in-space infrastructure and in-space servicing of existing and future assets.

(b) **SPACE SHUTTLE CAPABILITY ASSURANCE.**—

(1) **DEVELOPMENT OF FOLLOW-ON SPACE TRANSPORTATION SYSTEMS.**—The Administrator shall proceed with the development of follow-on space transportation systems in a manner that ensures that the national capability to restart and fly Space Shuttle missions can be initiated if required by the

Congress, in an Act enacted after the date of enactment of this Act, or by a Presidential determination transmitted to the Congress, before the last Space Shuttle mission authorized by this Act is completed.

(2) **REQUIRED ACTIONS.**—In carrying out the requirement in paragraph (1), the Administrator shall authorize refurbishment of the manufactured external tank of the Space Shuttle, designated as ET–94, and take all actions necessary to enable its readiness for use in the Space Launch System development as a critical skills and capability retention effort or for test purposes, while preserving the ability to use this tank if needed for an ISS contingency if deemed necessary under paragraph (1).

SEC. 204. INDEPENDENT STUDY ON HUMAN EXPLORATION OF SPACE.

(a) **IN GENERAL.**—In fiscal year 2012 the Administrator shall contract with the National Academies for a review of the goals, core capabilities, and direction of human space flight, using the goals set forth in the National Aeronautics and Space Act of 1958, the National Aeronautics and Space Administration Authorization Act of 2005, and the National Aeronautics and Space Administration Authorization Act of 2008, the goals set forth in this Act, and goals set forth in any existing statement of space policy issued by the President.

Contracts.

(b) **ELEMENTS.**—The review shall include—

(1) a broad spectrum of participation with representatives of a range of disciplines, backgrounds, and generations, including civil, commercial, international, scientific, and national security interests;

(2) input from NASA’s international partner discussions and NASA’s Human Exploration Framework Team;

(3) an examination of the relationship of national goals to foundational capabilities, robotic activities, technologies, and missions authorized by this Act;

(4) a review and prioritization of scientific, engineering, economic, and social science questions to be addressed by human space exploration to improve the overall human condition; and

(5) findings and recommendations for fiscal years 2014 through 2023.

TITLE III—EXPANSION OF HUMAN SPACE FLIGHT BEYOND THE INTERNATIONAL SPACE STATION AND LOW-EARTH ORBIT

SEC. 301. HUMAN SPACE FLIGHT BEYOND LOW-EARTH ORBIT.

42 USC 18321.

(a) **FINDINGS.**—Congress makes the following findings:

(1) The extension of the human presence from low-Earth orbit to other regions of space beyond low-Earth orbit will enable missions to the surface of the Moon and missions to deep space destinations such as near-Earth asteroids and Mars.

(2) The regions of cis-lunar space are accessible to other national and commercial launch capabilities, and such access raises a host of national security concerns and economic

implications that international human space endeavors can help to address.

(3) The ability to support human missions in regions beyond low-Earth orbit and on the surface of the Moon can also drive developments in emerging areas of space infrastructure and technology.

(4) Developments in space infrastructure and technology can stimulate and enable increased space applications, such as in-space servicing, propellant resupply and transfer, and in situ resource utilization, and open opportunities for additional users of space, whether national, commercial, or international.

(5) A long term objective for human exploration of space should be the eventual international exploration of Mars.

(6) Future international missions beyond low-Earth orbit should be designed to incorporate capability development and availability, affordability, and international contributions.

(7) Human space flight and future exploration beyond low-Earth orbit should be based around a pay-as-you-go approach. Requirements in new launch and crew systems authorized in this Act should be scaled to the minimum necessary to meet the core national mission capability needed to conduct cis-lunar missions. These initial missions, along with the development of new technologies and in-space capabilities can form the foundation for missions to other destinations. These initial missions also should provide operational experience prior to the further human expansion into space.

(b) REPORT ON INTERNATIONAL COLLABORATION.—

(1) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report on the following assets and capabilities:

(A) Any effort by NASA to expand and ensure effective international collaboration on the ISS.

(B) The efforts of NASA, including its approach and progress, in defining near-term, cis-lunar space human missions.

(2) NASA CONTRIBUTIONS.—In preparing the report required by paragraph (1), the Administrator shall assume that NASA will contribute to the efforts described in that paragraph the following:

(A) A Space Launch System.

(B) A multi-purpose crew vehicle.

(C) Such other technology elements the Administrator may consider appropriate, and which the Administrator shall specifically identify in the report.

42 USC 18322.

SEC. 302. SPACE LAUNCH SYSTEM AS FOLLOW-ON LAUNCH VEHICLE TO THE SPACE SHUTTLE.

(a) UNITED STATES POLICY.—It is the policy of the United States that NASA develop a Space Launch System as a follow-on to the Space Shuttle that can access cis-lunar space and the regions of space beyond low-Earth orbit in order to enable the United States to participate in global efforts to access and develop this increasingly strategic region.

(b) INITIATION OF DEVELOPMENT.—

(1) IN GENERAL.—The Administrator shall, as soon as practicable after the date of the enactment of this Act, initiate development of a Space Launch System meeting the minimum capabilities requirements specified in subsection (c).

(2) MODIFICATION OF CURRENT CONTRACTS.—In order to limit NASA's termination liability costs and support critical capabilities, the Administrator shall, to the extent practicable, extend or modify existing vehicle development and associated contracts necessary to meet the requirements in paragraph (1), including contracts for ground testing of solid rocket motors, if necessary, to ensure their availability for development of the Space Launch System.

(c) MINIMUM CAPABILITY REQUIREMENTS.—

(1) IN GENERAL.—The Space Launch System developed pursuant to subsection (b) shall be designed to have, at a minimum, the following:

(A) The initial capability of the core elements, without an upper stage, of lifting payloads weighing between 70 tons and 100 tons into low-Earth orbit in preparation for transit for missions beyond low-Earth orbit.

(B) The capability to carry an integrated upper Earth departure stage bringing the total lift capability of the Space Launch System to 130 tons or more.

(C) The capability to lift the multipurpose crew vehicle.

(D) The capability to serve as a backup system for supplying and supporting ISS cargo requirements or crew delivery requirements not otherwise met by available commercial or partner-supplied vehicles.

(2) FLEXIBILITY.—The Space Launch System shall be designed from inception as a fully-integrated vehicle capable of carrying a total payload of 130 tons or more into low-Earth orbit in preparation for transit for missions beyond low-Earth orbit. The Space Launch System shall, to the extent practicable, incorporate capabilities for evolutionary growth to carry heavier payloads. Developmental work and testing of the core elements and the upper stage should proceed in parallel subject to appropriations. Priority should be placed on the core elements with the goal for operational capability for the core elements not later than December 31, 2016.

Deadline.

(3) TRANSITION NEEDS.—The Administrator shall ensure critical skills and capabilities are retained, modified, and developed, as appropriate, in areas related to solid and liquid engines, large diameter fuel tanks, rocket propulsion, and other ground test capabilities for an effective transition to the follow-on Space Launch System.

(4) The capacity for efficient and timely evolution, including the incorporation of new technologies, competition of sub-elements, and commercial operations.

SEC. 303. MULTI-PURPOSE CREW VEHICLE.

42 USC 18323.

(a) INITIATION OF DEVELOPMENT.—

(1) IN GENERAL.—The Administrator shall continue the development of a multi-purpose crew vehicle to be available as soon as practicable, and no later than for use with the Space Launch System. The vehicle shall continue to advance development of the human safety features, designs, and systems in the Orion project.

Deadline.

(2) **GOAL FOR OPERATIONAL CAPABILITY.**—It shall be the goal to achieve full operational capability for the transportation vehicle developed pursuant to this subsection by not later than December 31, 2016. For purposes of meeting such goal, the Administrator may undertake a test of the transportation vehicle at the ISS before that date.

(b) **MINIMUM CAPABILITY REQUIREMENTS.**—The multi-purpose crew vehicle developed pursuant to subsection (a) shall be designed to have, at a minimum, the following:

(1) The capability to serve as the primary crew vehicle for missions beyond low-Earth orbit.

(2) The capability to conduct regular in-space operations, such as rendezvous, docking, and extra-vehicular activities, in conjunction with payloads delivered by the Space Launch System developed pursuant to section 302, or other vehicles, in preparation for missions beyond low-Earth orbit or servicing of assets described in section 804, or other assets in cis-lunar space.

(3) The capability to provide an alternative means of delivery of crew and cargo to the ISS, in the event other vehicles, whether commercial vehicles or partner-supplied vehicles, are unable to perform that function.

(4) The capacity for efficient and timely evolution, including the incorporation of new technologies, competition of sub-elements, and commercial operations.

42 USC 18324.

SEC. 304. UTILIZATION OF EXISTING WORKFORCE AND ASSETS IN DEVELOPMENT OF SPACE LAUNCH SYSTEM AND MULTI-PURPOSE CREW VEHICLE.

(a) **IN GENERAL.**—In developing the Space Launch System pursuant to section 302 and the multi-purpose crew vehicle pursuant to section 303, the Administrator shall, to the extent practicable utilize—

Contracts.

(1) existing contracts, investments, workforce, industrial base, and capabilities from the Space Shuttle and Orion and Ares 1 projects, including—

(A) space-suit development activities for application to, and coordinated development of, a multi-purpose crew vehicle suit and associated life-support requirements with potential development of standard NASA-certified suit and life support systems for use in alternative commercially-developed crew transportation systems; and

(B) Space Shuttle-derived components and Ares 1 components that use existing United States propulsion systems, including liquid fuel engines, external tank or tank-related capability, and solid rocket motor engines; and

(2) associated testing facilities, either in being or under construction as of the date of enactment of this Act.

(b) **DISCHARGE OF REQUIREMENTS.**—In meeting the requirements of subsection (a), the Administrator—

(1) shall, to the extent practicable, utilize ground-based manufacturing capability, ground testing activities, launch and operations infrastructure, and workforce expertise;

(2) shall, to the extent practicable, minimize the modification and development of ground infrastructure and maximize the utilization of existing software, vehicle, and mission operations processes;

- (3) shall complete construction and activation of the A–3 test stand with a completion goal of September 30, 2013; Deadline.
- (4) may procure, develop, and flight test applicable components; and
- (5) shall take appropriate actions to ensure timely and cost-effective development of the Space Launch System and the multi-purpose crew vehicle, including the use of a procurement approach that incorporates adequate and effective oversight, the facilitation of contractor efficiencies, and the streamlining of contract and procurement requirements.

SEC. 305. NASA LAUNCH SUPPORT AND INFRASTRUCTURE MODERNIZATION PROGRAM. 42 USC 18325.

(a) **IN GENERAL.**—The Administrator shall carry out a program the primary purpose of which is to prepare infrastructure at the Kennedy Space Center that is needed to enable processing and launch of the Space Launch System. Vehicle interfaces and other ground processing and payload integration areas should be simplified to minimize overall costs, enhance safety, and complement the purpose of this section.

(b) **ELEMENTS.**—The program required by this section shall include—

- (1) investments to improve civil and national security operations at the Kennedy Space Center, to enhance the overall capabilities of the Center, and to reduce the long term cost of operations and maintenance;
- (2) measures to provide multi-vehicle support, improvements in payload processing, and partnering at the Kennedy Space Center; and
- (3) such other measures, including investments to improve launch infrastructure at NASA flight facilities scheduled to launch cargo to the ISS under the commercial orbital transportation services program as the Administrator may consider appropriate.

(c) REPORT ON NASA LAUNCH SUPPORT AND INFRASTRUCTURE MODERNIZATION PROGRAM.—

(1) **REPORT REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report on the plan for the implementation of the NASA launch support and infrastructure modernization program.

(2) **ELEMENTS.**—The report required by this subsection shall include—

- (A) a description of the ground infrastructure plan tied to the Space Launch System and potential ground investment activities at other NASA centers related to supporting the development of the Space Launch System;
- (B) a description of proposed initiatives intended to be conducted jointly or in cooperation with Cape Canaveral Air Force Station, Florida, or other installations or components of the United States Government; and
- (C) a description of plans to use funds authorized to be appropriated by this Act to improve non-NASA facilities, which plans shall include a business plan outlining the nature and scope of investments planned by other parties.

SEC. 306. REPORT ON EFFECTS OF TRANSITION TO SPACE LAUNCH SYSTEM ON THE SOLID AND LIQUID ROCKET MOTOR INDUSTRIAL BASES.

(a) **REPORT REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Administrator shall submit to Congress a report setting forth an assessment, prepared by the Administrator, in consultation with the Secretary of Defense and the Secretary of Commerce, of the effects of the retirement of the Space Shuttle, and of the transition to the Space Launch System developed pursuant to section 302, on the solid rocket motor industrial base and the liquid rocket motor industrial base in the United States.

(b) **MATTERS TO BE ADDRESSED.**—In preparing the assessment required by subsection (a), the Administrator shall address the following:

(1) The effects of efficiencies and efforts to stream-line the industrial bases referred to in subsection (a) for support of civil, military, and commercial users.

(2) The extent to which the United States is reliant on non-United States systems, including foreign rocket motors and foreign launch vehicles.

(3) Such other matters as the Administrator, in consultation with the Secretary of Defense and the Secretary of Commerce, may consider appropriate.

SEC. 307. SENSE OF CONGRESS ON OTHER TECHNOLOGY AND ROBOTIC ELEMENTS IN HUMAN SPACE FLIGHT AND EXPLORATION.

It is the sense of Congress that a balance is needed in human space flight between using and building upon existing capabilities and investing in and enabling new capabilities. Technology development provides the potential to develop an increased ability to operate and extend human presence in space, while at the same time enhance the nation's economic development and aid in addressing challenges here on Earth. Additionally, the establishment of in-space capabilities, use of space resources, and the ability to repair and reuse systems in space can contribute to the overall goals of extending human presence in space in an international manner, consistent with section 301(a).

42 USC 18326.

SEC. 308. DEVELOPMENT OF TECHNOLOGIES AND IN-SPACE CAPABILITIES FOR BEYOND NEAR-EARTH SPACE MISSIONS.

(a) **DEVELOPMENT AUTHORIZED.**—The Administrator may initiate activities to develop the following:

(1) Technologies identified as necessary elements of missions beyond low-Earth orbit.

(2) In-space capabilities such as refueling and storage technology, orbital transfer stages, innovative in-space propulsion technology, communications, and data management that facilitate a broad range of users (including military and commercial) and applications defining the architecture and design of such missions.

(3) Spacesuit development and associated life support technology.

(4) Flagship missions.

(b) **INVESTMENTS.**—In developing technologies and capabilities under subsection (a), the Administrator may make investments—

(1) in space technologies such as advanced propulsion, propellant depots, in situ resource utilization, and robotic payloads or capabilities that enable human missions beyond low-Earth orbit ultimately leading to Mars;

(2) in a space-based transfer vehicle including these technologies with an ability to conduct space-based operations that provide capabilities—

(A) to integrate with the Space Launch System and other space-based systems;

(B) to provide opportunities for in-space servicing of and delivery to multiple space-based platforms; and

(C) to facilitate international efforts to expand human presence to deep space destinations;

(3) in advanced life support technologies and capabilities;

(4) in technologies and capabilities relating to in-space power, propulsion, and energy systems;

(5) in technologies and capabilities relating to in-space propellant transfer and storage;

(6) in technologies and capabilities relating to in situ resource utilization; and

(7) in expanded research to understand the greatest biological impediments to human deep space missions, especially the radiation challenge.

(c) UTILIZATION OF ISS AS TESTBED.—The Administrator may utilize the ISS as a testbed for any technology or capability developed under subsection (a) in a manner consistent with the provisions of this Act.

(d) COORDINATION.—The Administrator shall coordinate development of technologies and capabilities under this section through an overall agency technology approach, as authorized by section 905 of this Act.

SEC. 309. REPORT REQUIREMENT.

42 USC 18327.

Within 90 days after the date of enactment of this Act, or upon completion of reference designs for the Space Launch System and Multi-purpose Crew Vehicle authorized by this Act, whichever occurs first, the Administrator shall provide a detailed report to the appropriate committees of Congress that provides an overall description of the reference vehicle design, the assumptions, description, data, and analysis of the systems trades and resolution process, justification of trade decisions, the design factors which implement the essential system and vehicle capability requirements established by this Act, the explanation and justification of any deviations from those requirements, the plan for utilization of existing contracts, civil service and contract workforce, supporting infrastructure utilization and modifications, and procurement strategy to expedite development activities through modification of existing contract vehicles, and the schedule of design and development milestones and related schedules leading to the accomplishment of operational goals established by this Act. The Administrator shall provide an update of this report as part of the President's annual Budget Request.

TITLE IV—DEVELOPMENT AND USE OF COMMERCIAL CREW AND CARGO TRANSPORTATION CAPABILITIES

42 USC 18341.

SEC. 401. COMMERCIAL CARGO DEVELOPMENT PROGRAM.

The Administrator shall continue to support the existing Commercial Orbital Transportation Services program, aimed at enabling the commercial space industry in support of NASA to develop reliable means of launching cargo and supplies to the ISS throughout the duration of the facility's operation. The Administrator may apply funds towards the reduction of risk to the timely start of these services, specifically—

- (1) efforts to conduct a flight test;
- (2) accelerate development; and
- (3) develop the ground infrastructure needed for commercial cargo capability.

SEC. 402. COMMERCIAL CREW DEVELOPMENT PROGRAM.

(a) CONTINUATION OF PROGRAM DURING FISCAL YEAR 2011.—The Administrator shall continue, and may expand the number of participants and the activities of, the Commercial Crew Development (CCDEV) program in fiscal year 2011, subject to the provisions of this title.

(b) CONTINUATION OF ACTIVITIES AND AGREEMENTS OF FISCAL YEAR 2010.—In carrying out subsection (a), the Administrator may continue or expand activities and agreements initiated in fiscal year 2010 that reduce risk, develop technologies, and lead to other advancements that will help determine the most effective and efficient means of advancing the development of commercial crew services.

42 USC 18342.

SEC. 403. REQUIREMENTS APPLICABLE TO DEVELOPMENT OF COMMERCIAL CREW TRANSPORTATION CAPABILITIES AND SERVICES.

(a) FY 2011 CONTRACTS AND PROCUREMENT AGREEMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator may not execute a contract or procurement agreement with respect to follow-on commercial crew services during fiscal year 2011.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Administrator may execute a contract or procurement agreement with respect to follow-on commercial crew services during fiscal year 2011 if—

(A) the requirements of paragraphs (1), (2), and (3) of subsection (b) are met; and

(B) the total amount involved for all such contracts and procurement agreements executed during fiscal year 2011 does not exceed \$50,000,000 for fiscal year 2011.

(b) SUPPORT.—The Administrator may, beginning in fiscal year 2012 through the duration of the program, support follow-on commercially-developed crew transportation systems dependent upon the completion of each of the following:

(1) HUMAN RATING REQUIREMENTS.—Not later than 60 days after the date of the enactment of this Act, the Administrator shall develop and make available to the public detailed human

Deadline.
Public
information.

rating processes and requirements to guide the design of commercially-developed crew transportation capabilities, which requirements shall be at least equivalent to proven requirements for crew transportation in use as of the date of the enactment of this Act.

(2) **COMMERCIAL MARKET ASSESSMENT.**—Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of Congress an assessment, conducted, in coordination with the Federal Aviation Administration’s Office of Commercial Space Transportation, for purposes of this paragraph, of the potential non-Government market for commercially-developed crew and cargo transportation systems and capabilities, including an assessment of the activities associated with potential private sector utilization of the ISS research and technology development capabilities and other potential activities in low-Earth orbit. Deadline.

(3) **PROCUREMENT SYSTEM REVIEW.**—The Administrator shall review current Government procurement and acquisition practices and processes, including agreement authorities under the National Aeronautics and Space Act of 1958, to determine the most cost-effective means of procuring commercial crew transportation capabilities and related services in a manner that ensures appropriate accountability, transparency, and maximum efficiency in the procurement of such capabilities and services, which review shall include an identification of proposed measures to address risk management and means of indemnification of commercial providers of such capabilities and services, and measures for quality control, safety oversight, and the application of Federal oversight processes within the jurisdiction of other Federal agencies. A description of the proposed procurement process and justification of the proposed procurement for its selection shall be included in any proposed initiation of procurement activity for commercially-developed crew transportation capabilities and services and shall be subject to review by the appropriate committees of Congress before the initiation of any competitive process to procure such capabilities or services. In support of the review by such committees, the Comptroller General shall undertake an assessment of the proposed procurement process and provide a report to the appropriate committees of Congress within 90 days after the date on which the Administrator provides the description and justification to such committees. Reports.
Deadline.

(4) **USE OF GOVERNMENT-SUPPLIED CAPABILITIES AND INFRASTRUCTURE.**—In evaluating any proposed development activity for commercially-developed crew or cargo launch capabilities, the Administrator shall identify the anticipated contribution of government personnel, expertise, technologies, and infrastructure to be utilized in support of design, development, or operations of such capabilities. This assessment shall include a clear delineation of the full requirements for the commercial crew service (including the contingency for crew rescue). The Administrator shall include details and associated costs of such support as part of any proposed development initiative for the procurement of commercially-developed crew or cargo launch capabilities or services.

Standards.

(5) **FLIGHT DEMONSTRATION AND READINESS REQUIREMENTS.**—The Administrator shall establish appropriate milestones and minimum performance objectives to be achieved before authority is granted to proceed to the procurement of commercially-developed crew transportation capabilities or systems. The guidelines shall include a procedure to provide independent assurance of flight safety and flight readiness before the authorization of United States government personnel to participate as crew onboard any commercial launch vehicle developed pursuant to this section.

(6) **COMMERCIAL CREW RESCUE CAPABILITIES.**—The provision of a commercial capability to provide ISS crew services shall include crew rescue requirements, and shall be undertaken through the procurement process initiated in conformance with this section. In the event such development is initiated, the Administrator shall make available any relevant government-owned intellectual property deriving from the development of a multi-purpose crew vehicle authorized by this Act to commercial entities involved with such crew rescue capability development which shall be relevant to the design of a crew rescue capability. In addition, the Administrator shall seek to ensure that contracts for development of the multi-purpose crew vehicle contain provisions for the licensing of relevant intellectual property to participating commercial providers of any crew rescue capability development undertaken pursuant to this section. If one or more contractors involved with development of the multi-purpose crew vehicle seek to compete in development of a commercial crew service with crew rescue capability, separate legislative authority must be enacted to enable the Administrator to provide funding for any modifications of the multi-purpose crew vehicle necessary to fulfill the ISS crew rescue function.

SEC. 404. REPORT ON INTERNATIONAL SPACE STATION CARGO RETURN CAPABILITY.

Not later than 120 days after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report on potential alternative commercially-developed means for the capability for a soft-landing return on land from the ISS of—

- (1) research samples or other derivative materials; and
- (2) small to mid-sized (up to 1,000 kilograms) equipment for return and analysis, or for refurbishment and redelivery, to the ISS.

TITLE V—CONTINUATION, SUPPORT, AND EVOLUTION OF THE INTERNATIONAL SPACE STATION

42 USC 18351.

SEC. 501. CONTINUATION OF THE INTERNATIONAL SPACE STATION THROUGH 2020.

(a) **POLICY OF THE UNITED STATES.**—It shall be the policy of the United States, in consultation with its international partners in the ISS program, to support full and complete utilization of the ISS through at least 2020.

(b) **NASA ACTIONS.**—In furtherance of the policy set forth in subsection (a), NASA shall pursue international, commercial, and intragovernmental means to maximize ISS logistics supply, maintenance, and operational capabilities, reduce risks to ISS systems sustainability, and offset and minimize United States operations costs relating to the ISS.

SEC. 502. MAXIMUM UTILIZATION OF THE INTERNATIONAL SPACE STATION. 42 USC 18352.

(a) **IN GENERAL.**—With assembly of the ISS complete, NASA shall take steps to maximize the productivity and use of the ISS with respect to scientific and technological research and development, advancement of space exploration, and international collaboration.

(b) **NASA ACTIONS.**—In carrying out subsection (a), NASA shall, at a minimum, undertake the following:

(1) **INNOVATIVE USE OF U.S. SEGMENT.**—The United States segment of the ISS, which has been designated as a National Laboratory, shall be developed, managed and utilized in a manner that enables the effective and innovative use of such facility, as provided in section 504.

(2) **INTERNATIONAL COOPERATION.**—The ISS shall continue to be utilized as a key component of international efforts to build missions and capabilities that further the development of a human presence beyond near-Earth space and advance United States security and economic goals. The Administrator shall actively seek ways to encourage and enable the use of ISS capabilities to support these efforts.

(3) **DOMESTIC COLLABORATION.**—The operations, management, and utilization of the ISS shall be conducted in a manner that provides opportunities for collaboration with other research programs and objectives of the United States Government in cooperation with commercial suppliers, users, and developers.

SEC. 503. MAINTENANCE OF THE UNITED STATES SEGMENT AND ASSURANCE OF CONTINUED OPERATIONS OF THE INTERNATIONAL SPACE STATION. 42 USC 18353.

(a) **IN GENERAL.**—The Administrator shall take all actions necessary to ensure the safe and effective operation, maintenance, and maximum utilization of the United States segment of the ISS through at least September 30, 2020.

(b) **VEHICLE AND COMPONENT REVIEW.**—

(1) **IN GENERAL.**—In carrying out subsection (a), the Administrator shall, as soon as is practicable after the date of the enactment of this Act, carry out a comprehensive assessment of the essential modules, operational systems and components, structural elements, and permanent scientific equipment on board or planned for delivery and installation aboard the ISS, including both United States and international partner elements, for purposes of identifying the spare or replacement modules, systems and components, elements, and equipment that are required to ensure complete, effective, and safe functioning and full scientific utilization of the ISS through September 30, 2020. Assessment.

(2) **DATA.**—In carrying out the assessment, the Administrator shall assemble any existing data, and provide for the development of any data or analysis not currently available, that is necessary for purposes of the assessment.

(c) REPORTS.—

(1) REPORT ON ASSESSMENT.—

(A) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report on the assessment required by subsection (b).

(B) ELEMENTS.—The report required by this paragraph shall include, at minimum, the following:

(i) A description of the spare or replacement modules, systems and components, elements, and equipment identified pursuant to the assessment that are currently produced, in inventory, or on order, a description of the state of their readiness, and a schedule for their delivery to the ISS (including the planned transportation means for such delivery), including for each such module, system or component, element, or equipment a description of—

(I) its specifications, including size, weight, and necessary configuration for launch and delivery to the ISS;

(II) its function;

(III) its location; and

(IV) its criticality for ISS system integrity.

(ii) A description of the spare or replacement modules, systems and components, elements, and equipment identified pursuant to the assessment that are not currently produced, in inventory, or on order, including for each such module, system or component, element, or equipment a description of—

(I) its specifications, including size, weight, and necessary configuration for launch and delivery to the ISS;

(II) its function;

(III) its location;

(IV) its criticality for ISS system integrity; and

(V) the anticipated cost and schedule for its design, procurement, manufacture, and delivery to the ISS.

(iii) A detailed summary of the delivery schedule and associated delivery vehicle requirements necessary to transport all spare and replacement elements considered essential for the ongoing and sustained functionality of all critical systems of the ISS, both in and of themselves and as an element of an integrated, mutually dependent essential capability, including an assessment of the current schedule for delivery, the availability of delivery vehicles to meet that schedule, and the likelihood of meeting that schedule through such vehicles.

(2) GAO REPORT.—

(A) REPORT REQUIRED.—Not later than 90 days after the submittal to Congress under paragraph (1) of the assessment required by subsection (b), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the assessment. The report shall set forth an evaluation of the assessment

by the Comptroller General, including an evaluation of the accuracy and level of confidence in the findings of the assessment.

(B) COOPERATION WITH GAO.—The Administrator shall provide for the monitoring and participation of the Comptroller General in the assessment in a manner that permits the Comptroller General to prepare and submit the report required by subparagraph (A).

(d) UTILIZATION OF RESEARCH FACILITIES AND CAPABILITIES.—Utilization of research facilities and capabilities aboard the ISS (other than exploration-related research and technology development facilities and capabilities, and associated ground support and logistics), shall be planned, managed, and supported as provided in section 504. Exploration-related research and technology development facilities, capabilities, and associated ground support and logistics shall be planned, managed, and supported by the appropriate NASA organizations and officials in a manner that does not interfere with other activities under section 504.

(e) SPACE SHUTTLE MISSION TO ISS.—

(1) SPACE SHUTTLE MISSION.—The Administrator shall fly the Launch-On-Need Shuttle mission currently designated in the Shuttle Flight Manifest dated February 28, 2010, to the ISS in fiscal year 2011, but no earlier than June 1, 2011, unless required earlier by an operations contingency, and pending the results of the assessment required by paragraph (2) and the determination under paragraph (3)(A).

Time period.

(2) ASSESSMENT OF SAFE MEANS OF RETURN.—The Administrator shall provide for an assessment by the NASA Engineering and Safety Center of the procedures and plans developed to ensure the safety of the Space Shuttle crew, and alternative means of return, in the event the Space Shuttle is damaged or otherwise unable to return safely to Earth.

(3) SCHEDULE AND PAYLOAD.—The determination of the schedule and payload for the mission authorized by paragraph (1) shall take into account the following:

(A) The supply and logistics delivery requirements of the ISS.

(B) The findings of the study required by paragraph (2).

(4) FUNDS.—Amounts authorized to be appropriated by section 101(2)(B) shall be available for the mission authorized by paragraph (1).

(f) SPACE SHUTTLE MANIFEST FLIGHT ASSURANCE.—

(1) IN GENERAL.—The Administrator shall take all actions necessary to preserve Space Shuttle launch capability through fiscal year 2011 in a manner that enables the launch, at a minimum, of missions and primary payloads in the Shuttle flight manifest as of February 28, 2010.

(2) CONTINUATION OF CONTRACTOR SUPPORT.—The Administrator may not terminate any contract that provides the system transitions necessary for shuttle-derived hardware to be used on either the multi-purpose crew vehicle described in section 303 or the Space Launch System described in section 302.

SEC. 504. MANAGEMENT OF THE ISS NATIONAL LABORATORY.

42 USC 18354.

(a) COOPERATIVE AGREEMENT WITH NOT-FOR PROFIT ENTITY FOR MANAGEMENT OF NATIONAL LABORATORY.—

(1) IN GENERAL.—The Administrator shall provide initial financial assistance and enter into a cooperative agreement with an appropriate organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 to manage the activities of the ISS national laboratory in accordance with this section.

(2) QUALIFICATIONS.—The organization with which the Administrator enters into the cooperative agreement shall develop the capabilities to implement research and development projects utilizing the ISS national laboratory and to otherwise manage the activities of the ISS national laboratory.

(3) PROHIBITION ON OTHER ACTIVITIES.—The cooperative agreement shall require the organization entering into the agreement to engage exclusively in activities relating to the management of the ISS national laboratory and activities that promote its long term research and development mission as required by this section, without any other organizational objectives or responsibilities on behalf of the organization or any parent organization or other entity.

(b) NASA LIAISON.—

(1) DESIGNATION.—The Administrator shall designate an official or employee of the Space Operations Mission Directorate of NASA to act as liaison between NASA and the organization with which the Administrator enters into a cooperative agreement under subsection (a) with regard to the management of the ISS national laboratory.

(2) CONSULTATION WITH LIAISON.—The cooperative agreement shall require the organization entering into the agreement to carry out its responsibilities under the agreement in cooperation and consultation with the official or employee designated under paragraph (1).

(c) PLANNING AND COORDINATION OF ISS NATIONAL LABORATORY RESEARCH ACTIVITIES.—The Administrator shall provide initial financial assistance to the organization with which the Administrator enters into a cooperative agreement under subsection (a), in order for the organization to initiate the following:

(1) Planning and coordination of the ISS national laboratory research activities.

(2) Development and implementation of guidelines, selection criteria, and flight support requirements for non-NASA scientific utilization of ISS research capabilities and facilities available in United States-owned modules of the ISS or in partner-owned facilities of the ISS allocated to United States utilization by international agreement.

(3) Interaction with and integration of the International Space Station National Laboratory Advisory Committee established under section 602 of the National Aeronautics and Space Administration Authorization Act of 2008 (42 U.S.C. 17752) with the governance of the organization, and review recommendations provided by that Committee regarding agreements with non-NASA departments and agencies of the United States Government, academic institutions and consortia, and commercial entities leading to the utilization of the ISS national laboratory facilities.

(4) Coordination of transportation requirements in support of the ISS national laboratory research and development objectives, including provision for delivery of instruments, logistics

support, and related experiment materials, and provision for return to Earth of collected samples, materials, and scientific instruments in need of replacement or upgrade.

(5) Cooperation with NASA, other departments and agencies of the United States Government, the States, and commercial entities in ensuring the enhancement and sustained operations of non-exploration-related research payload ground support facilities for the ISS, including the Space Life Sciences Laboratory, the Space Station Processing Facility and Payload Operations Integration Center.

(6) Development and implementation of scientific outreach and education activities designed to ensure effective utilization of ISS research capabilities including the conduct of scientific assemblies, conferences, and other fora for the presentation of research findings, methods, and mechanisms for the dissemination of non-restricted research findings and the development of educational programs, course supplements, interaction with educational programs at all grade levels, including student-focused research opportunities for conduct of research in the ISS national laboratory facilities.

(7) Such other matters relating to the utilization of the ISS national laboratory facilities for research and development as the Administrator may consider appropriate.

(d) RESEARCH CAPACITY ALLOCATION AND INTEGRATION OF RESEARCH PAYLOADS.—

(1) ALLOCATION OF ISS RESEARCH CAPACITY.—As soon as practicable after the date of the enactment of this Act, but not later than October 1, 2011, ISS national laboratory managed experiments shall be guaranteed access to, and utilization of, not less than 50 percent of the United States research capacity allocation, including power, cold stowage, and requisite crew time onboard the ISS through September 30, 2020. Access to the ISS research capacity includes provision for the adequate upmass and downmass capabilities to utilize the ISS research capacity, as available. The Administrator may allocate additional capacity to the ISS national laboratory should such capacity be in excess of NASA research requirements.

Deadline.

(2) ADDITIONAL RESEARCH CAPABILITIES.—If any NASA research plan is determined to require research capacity onboard the ISS beyond the percentage allocated under paragraph (1), such research plan shall be prepared in the form of a requested research opportunity to be submitted to the process established under this section for the consideration of proposed research within the capacity allocated to the ISS national laboratory. A proposal for such a research plan may include the establishment of partnerships with non-NASA institutions eligible to propose research to be conducted within the ISS national laboratory capacity. Until September 30, 2020, the official or employee designated under subsection (b) may grant an exception to this requirement in the case of a proposed experiment considered essential for purposes of preparing for exploration beyond low-Earth orbit, as determined by joint agreement between the organization with which the Administrator enters into a cooperative agreement under subsection (a) and the official or employee designated under subsection (b).

(3) **RESEARCH PRIORITIES AND ENHANCED CAPACITY.**—The organization with which the Administrator enters into the cooperative agreement shall consider recommendations of the National Academies Decadal Survey on Biological and Physical Sciences in Space in establishing research priorities and in developing proposed enhancements of research capacity and opportunities for the ISS national laboratory.

(4) **RESPONSIBILITY FOR RESEARCH PAYLOAD.**—NASA shall retain its roles and responsibilities in providing research payload physical, analytical, and operations integration during pre-flight, post-flight, transportation, and orbital phases essential to ensure safe and effective flight readiness and vehicle integration of research activities approved and prioritized by the organization with which the Administrator enters into the cooperative agreement and the official or employee designated under subsection (b).

TITLE VI—SPACE SHUTTLE RETIREMENT AND TRANSITION

42 USC 18361.

SEC. 601. SENSE OF CONGRESS ON THE SPACE SHUTTLE PROGRAM.

(a) **FINDINGS.**—Congress makes the following findings:

(1) The Space Shuttle program represents a national asset consisting of critical skills and capabilities, including the ability to lift large payloads into space and return them to Earth.

(2) The Space Shuttle has carried more than 355 people from 16 nations into space.

(3) The Space Shuttle has projected the best of American values around the world, and Space Shuttle crews have sparked the imagination and dreams of the world's youth and young at heart.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) it is essential that the retirement of the Space Shuttle and the transition to new human space flight capabilities be done in a manner that builds upon the legacy of this national asset; and

(2) it is imperative for the United States to retain the skills and the industrial capability to provide a follow-on Space Launch System that is primarily designed for missions beyond near-Earth space, while offering some potential for supplanting shuttle delivery capabilities to low-Earth orbit, particularly in support of ISS requirements, if necessary.

42 USC 18362.

SEC. 602. RETIREMENT OF SPACE SHUTTLE ORBITERS AND TRANSITION OF SPACE SHUTTLE PROGRAM.

Schedule.

(a) **IN GENERAL.**—The Administrator shall retire the Space Shuttle orbiters pursuant to a schedule established by the Administrator and in a manner consistent with provisions of this Act regarding potential requirements for contingency utilization of Space Shuttle orbiters for ISS requirements.

(b) **UTILIZATION OF WORKFORCE AND ASSETS IN FOLLOW-ON SPACE LAUNCH SYSTEM.**—

(1) **UTILIZATION OF VEHICLE ASSETS.**—In carrying out subsection (a), the Administrator shall, to the maximum extent practicable, utilize workforce, assets, and infrastructure of the Space Shuttle program in efforts relating to the initiation of

a follow-on Space Launch System developed pursuant to section 302 of this Act.

(2) OTHER ASSETS.—With respect to the workforce, assets, and infrastructure not utilized as described in paragraph (1), the Administrator shall work closely with other departments and agencies of the Federal Government, and the private sector, to divest unneeded assets and to assist displaced workers with retraining and other placement efforts. Amounts authorized to be appropriated by section 101(2)(B) shall be available for activities pursuant to this paragraph.

SEC. 603. DISPOSITION OF ORBITER VEHICLES.

42 USC 18363.

(a) IN GENERAL.—Upon the termination of the Space Shuttle program as provided in section 602, the Administrator shall decommission any remaining Space Shuttle orbiter vehicles according to established safety and historic preservation procedures prior to their designation as surplus government property. The orbiter vehicles shall be made available and located for display and maintenance through a competitive procedure established pursuant to the disposition plan developed under section 613(a) of the National Aeronautics and Space Administration Authorization Act of 2008 (42 U.S.C. 17761(a)), with priority consideration given to eligible applicants meeting all conditions of that plan which would provide for the display and maintenance of orbiters at locations with the best potential value to the public, including where the location of the orbiters can advance educational opportunities in science, technology, engineering, and mathematics disciplines, and with an historical relationship with either the launch, flight operations, or processing of the Space Shuttle orbiters or the retrieval of NASA manned space vehicles, or significant contributions to human space flight. The Smithsonian Institution, which, as of the date of enactment of this Act, houses the Space Shuttle Enterprise, shall determine any new location for the Enterprise.

Determination.

(b) DISPLAY AND MAINTENANCE.—The orbiter vehicles made available under subsection (a) shall be displayed and maintained through agreements and procedures established pursuant to section 613(a) of the National Aeronautics and Space Administration Authorization Act of 2008 (42 U.S.C. 17761(a)).

Contracts.
Procedures.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to NASA such sums as may be necessary to carry out this section. The amounts authorized to be appropriated by this subsection shall be in addition to any amounts authorized to be appropriated by title I, and may be requested by the President as supplemental requirements, if needed, in the appropriate fiscal years.

TITLE VII—EARTH SCIENCE

SEC. 701. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) Earth observations are critical to scientific understanding and monitoring of the Earth system, to protecting human health and property, to growing the economy of the United States, and to strengthening the national security and

international posture of the United States. Additionally, recognizing the number of relevant participants and activities involved with Earth observations within the United States Government and internationally, Congress supports the strengthening of collaboration across these areas;

(2) NASA plays a critical role through its ability to provide data on solar output, sea level rise, atmospheric and ocean temperature, ozone depletion, air pollution, and observation of human and environment relationships;

(3) programs should utilize open standards consistent with international data-sharing principles and obtain and convert data from other government agencies, including data from the United States Geological Survey, and data derived from satellites operated by NOAA as well as from international satellites are important to the study of climate science and such cooperative relationships and programs should be maintained;

(4) Earth-observing satellites and sustained monitoring programs will continue to play a vital role in climate science, environmental understanding, mitigation of destructive environmental impacts, and contributing to the general national welfare; and

(5) land remote sensing observation plays a critical role in Earth science, and the national space policy supports this role by requiring operational land remote sensing capabilities.

42 USC 18371.

SEC. 702. INTERAGENCY COLLABORATION IMPLEMENTATION APPROACH.

Deadline.

The Director of OSTP shall establish a mechanism to ensure greater coordination of the research, operations, and activities relating to civilian Earth observation of those Agencies, including NASA, that have active programs that either contribute directly or indirectly to these areas. This mechanism should include the development of a strategic implementation plan that is updated at least every 3 years, and includes a process for external independent advisory input. This plan should include a description of the responsibilities of the various Agency roles in Earth observations, recommended cost-sharing and procurement arrangements between Agencies and other entities, including international arrangements, and a plan for ensuring the provision of sustained, long term space-based climate observations. The Director shall provide a report to Congress within 90 days after the date of enactment of this Act on the implementation plan for this mechanism.

Reports.
Deadline.

42 USC 18372.

SEC. 703. TRANSITIONING EXPERIMENTAL RESEARCH TO OPERATIONS.

Implementation
plan.
Deadline.

The Administrator shall coordinate with the Administrator of NOAA and the Director of the United States Geological Survey to establish a formal mechanism that plans, coordinates, and supports the transitioning of NASA research findings, assets, and capabilities to NOAA operations and United States Geological Survey operations. In defining this mechanism, NASA should consider the establishment of a formal or informal Interagency Transition Office. The Administrator of NASA shall provide an implementation plan for this mechanism to Congress within 90 days after the date of enactment of this Act.

SEC. 704. DECADAL SURVEY MISSIONS IMPLEMENTATION FOR EARTH OBSERVATION. 42 USC 18373.

The Administrator shall undertake to implement, as appropriate, missions identified in the National Research Council's Earth Science Decadal Survey within the scope of the funds authorized for the Earth Science Mission Directorate.

SEC. 705. EXPANSION OF EARTH SCIENCE APPLICATIONS.

It is the sense of the Congress that the role of NASA in Earth Science applications shall be expanded with other departments and agencies of the Federal government, State and local governments, tribal governments, academia, the private sector, non-profit organizations, and international partners. NASA's Earth science data can increasingly aid efforts to improve the human condition and provide greater security.

SEC. 706. INSTRUMENT TEST-BEDS AND VENTURE CLASS MISSIONS.

The Administrator shall pursue innovative ways to fly instrument-level payloads for early demonstration or as co-manifested payloads. The Congress encourages the use of the ISS as an accessible platform for the conduct of such activities. Additionally, in order to address the cost and schedule challenges associated with large flight systems, NASA should pursue smaller systems where practicable and warranted.

SEC. 707. SENSE OF CONGRESS ON NPOESS FOLLOW-ON PROGRAM.

It is the Sense of the Congress that—

(1) polar orbiting satellites are vital for weather prediction, climate and environmental monitoring, national security, emergency response, and climate research;

(2) the National Polar Orbiting Environmental Satellite System has suffered from years of steadily rising cost estimates and schedule delays and an independent review team recommended that the System be restructured to improve the probability of success and protect the continuity of weather and climate data;

(3) the Congress supports the decision made by OSTP in February, 2010, to restructure the program to minimize schedule slips and cost overruns, clarify the responsibilities and accountability of NASA, NOAA, and the Department of Defense, and retain necessary coordination across civil and defense weather and climate programs;

(4) the Administrator of NOAA and the Secretary of Defense should maximize the use of assets from the NPOESS program as they establish the NOAA Joint Polar Satellite System at NASA's Goddard Space Flight Center, and the Department of Defense's Defense Weather Satellite System;

(5) the Administrator of NOAA and the Secretary of Defense should structure their programs in order to maintain satellite data continuity for the Nation's weather and climate requirements; and

(6) the Administrator of NOAA and the Secretary of Defense should provide immediate notification to the Congress of any impediments that may require Congressional intervention in order for the agencies to meet launch readiness dates, together with any recommended actions.

TITLE VIII—SPACE SCIENCE

42 USC 18381. SEC. 801. TECHNOLOGY DEVELOPMENT.

The Administrator shall ensure that the Science Mission Directorate maintains a long term technology development program for space and Earth science. This effort should be coordinated with an overall Agency technology investment approach, as authorized in section 905 of this Act.

42 USC 18382. SEC. 802. SUBORBITAL RESEARCH ACTIVITIES.

(a) IN GENERAL.—The report of the National Academy of Sciences, Revitalizing NASA’s Suborbital Program: Advancing Science, Driving Innovation and Developing Workforce, found that suborbital science missions were absolutely critical to building an aerospace workforce capable of meeting the needs of current and future human and robotic space exploration.

Designation. (b) MANAGEMENT.—The Administrator shall designate an officer or employee of the Science Mission Directorate to act as the responsible official for all Suborbital Research in the Science Mission Directorate. The designee shall be responsible for the development of short- and long term strategic plans for maintaining, renewing and extending suborbital facilities and capabilities, monitoring progress towards goals in the plans, and be responsible for integration of suborbital activities and workforce development within the agency, thereby ensuring the long term recognition of their combined value to the directorate, to NASA, and to the Nation.

(c) ESTABLISHMENT OF SUBORBITAL RESEARCH PROGRAM.—The Administrator shall establish a Suborbital Research Program within the Science Mission Directorate that shall include the use of sounding rockets, aircraft, high altitude balloons, suborbital reusable launch vehicles, and commercial launch vehicles to advance science and train the next generation of scientists and engineers in systems engineering and systems integration which are vital to maintaining critical skills in the aerospace workforce. The program shall integrate existing suborbital research programs with orbital missions at the discretion of the designated officer or employee and shall emphasize the participation of undergraduate and graduate students and post-doctoral researchers when formulating announcements of opportunity.

(d) REPORT.—The Administrator shall report to the appropriate committees of Congress on the number and type of suborbital missions conducted in each fiscal year and the number of undergraduate and graduate students participating in the missions. The report shall be made annually for each fiscal year under this section.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this section.

SEC. 803. OVERALL SCIENCE PORTFOLIO-SENSE OF THE CONGRESS.

Congress reaffirms its sense that a balanced and adequately funded set of activities, consisting of research and analysis grants programs, technology development, small, medium, and large space missions, and suborbital research activities, contributes to a robust and productive science program and serves as a catalyst for innovation.

SEC. 804. IN-SPACE SERVICING.

42 USC 18383.

The Administrator shall continue to take all necessary steps to ensure that provisions are made for in-space or human servicing and repair of all future observatory-class scientific spacecraft intended to be deployed in Earth-orbit or at a Lagrangian point to the extent practicable and appropriate. The Administrator should ensure that agency investments and future capabilities for space technology, robotics, and human space flight take the ability to service and repair these spacecraft into account, where appropriate, and incorporate such capabilities into design and operational plans.

SEC. 805. DECADAL RESULTS.

42 USC 18384.

NASA shall take into account the current decadal surveys from the National Academies' Space Studies Board when submitting the President's budget request to the Congress.

SEC. 806. ON-GOING RESTORATION OF RADIOISOTOPE THERMOELECTRIC GENERATOR MATERIAL PRODUCTION.

42 USC 18385.

(a) FINDINGS.—The Congress finds the following:

(1) The United States has led the world in the scientific exploration of space for nearly 50 years.

(2) Missions such as Viking, Voyager, Cassini, and New Horizons have greatly expanded knowledge of our solar system and planetary characteristics and evolution.

(3) Radioisotope power systems are the only available power sources for deep space missions making it possible to travel to such distant destinations as Mars, Jupiter, Saturn, Pluto, and beyond and maintain operational control and systems viability for extended mission durations.

(4) Current radioisotope power systems supplies and production will not fully support NASA missions planned even in the next decade and, without a new domestic production capability, the United States will no longer have the means to explore the majority of the solar system by the end of this decade.

(5) Continuing to rely on Russia or other foreign sources for radioisotope power system fuel production is not a secure option.

(6) Reestablishing domestic production will require a long lead-time. Thus, meeting future space exploration mission needs requires that a restart project begin at the earliest opportunity.

(b) IN GENERAL.—The Administrator shall, in coordination with the Secretary of Energy, pursue a joint approach beginning in fiscal year 2011 towards restarting and sustaining the domestic production of radioisotope thermoelectric generator material for deep space and other science and exploration missions. Funds authorized by this Act for NASA shall be made available under a reimbursable agreement with the Department of Energy for the purpose of reestablishing facilities to produce fuel required for radioisotope thermoelectric generators to enable future missions.

Contracts.

(c) REPORT.—Within 120 days after the date of enactment of this Act, the Administrator and the Secretary of Energy shall submit a joint report to the appropriate committees of Congress on coordinated agreements, planned implementation, and anticipated schedule, production quantities, and mission applications under this section.

42 USC 18386. **SEC. 807. COLLABORATION WITH ESMD AND SOMD ON ROBOTIC MISSIONS.**

Deadline.
Plans.

The Administrator shall ensure that the Exploration Systems Mission Directorate and the Space Operations Mission Directorate coordinate with the Science Mission Directorate on an overall approach and plan for interagency and international collaboration on robotic missions that are NASA or internationally developed, including lunar, Lagrangian, near-Earth orbit, and Mars spacecraft, such as the International Lunar Network. Within 90 days after the date of enactment of this Act, the Administrator shall provide a plan to the appropriate committees of Congress for implementation of the collaborative approach required by this section. The Administrator may not cancel or initiate any Exploration Systems Mission Directorate or Science Mission Directorate robotic project before the plan is submitted to the appropriate committees of Congress.

42 USC 18387. **SEC. 808. NEAR-EARTH OBJECT SURVEY AND POLICY WITH RESPECT TO THREATS POSED.**

Deadline.

(a) **POLICY REAFFIRMATION.**—Congress reaffirms the policy set forth in section 102(g) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451(g)) relating to surveying near-Earth asteroids and comets.

(b) **IMPLEMENTATION.**—The Director of the OSTP shall implement, before September 30, 2012, a policy for notifying Federal agencies and relevant emergency response institutions of an impending near-Earth object threat if near-term public safety is at risk, and assign a Federal agency or agencies to be responsible for protecting the United States and working with the international community on such threats.

42 USC 18388. **SEC. 809. SPACE WEATHER.**

(a) **FINDINGS.**—The Congress finds the following:

(1) Space weather events pose a significant threat to modern technological systems.

(2) The effects of severe space weather events on the electric power grid, telecommunications and entertainment satellites, airline communications during polar routes, and space-based position, navigation and timing systems could have significant societal, economic, national security, and health impacts.

(3) Earth and Space Observing satellites, such as the Advanced Composition Explorer, Geostationary Operational Environmental Satellites, Polar Operational Environmental Satellites, and Defense Meteorological Satellites, provide crucial data necessary to predict space weather events.

(b) **ACTION REQUIRED.**—The Director of OSTP shall—

(1) improve the Nation's ability to prepare, avoid, mitigate, respond to, and recover from potentially devastating impacts of space weather events;

(2) coordinate the operational activities of the National Space Weather Program Council members, including the NOAA Space Weather Prediction Center and the U.S. Air Force Weather Agency; and

(3) submit a report to the appropriate committees of Congress within 180 days after the date of enactment of this Act that—

(A) details the current data sources, both space- and ground-based, that are necessary for space weather forecasting; and

(B) details the space- and ground-based systems that will be required to gather data necessary for space weather forecasting for the next 10 years.

TITLE IX—AERONAUTICS AND SPACE TECHNOLOGY

SEC. 901. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) aeronautics research remains vital to NASA’s mission and deserves continued support;

(2) NASA aeronautics research should be guided by, and consistent with, the National Aeronautics Research and Development Policy that guides the Nation’s aeronautics research and development activities;

(3) the OSTP-led National Science and Technology Council Aeronautics Science and Technology subcommittee remains essential to developing and coordinating national aeronautics research and development plans and their prioritization for funding, and that it is also important that the plans include a focus on research, development, test, and evaluation infrastructure plans, as well as research and development goals and objectives; and

(4) technology research conducted by NASA as part of the larger national aeronautics effort would help to secure, sustain, and advance the leadership role of the United States in global aviation.

SEC. 902. AERONAUTICS RESEARCH GOALS.

42 USC 18401.

The Administrator should ensure that NASA maintains a strong aeronautics research portfolio ranging from fundamental research through systems research with specific research goals, including the following:

(1) **AIRSPACE CAPACITY.**—NASA’s Aeronautics Research Mission Directorate shall address research needs of the Next Generation Air Transportation System, including the ability of the National Airspace System to handle up to 3 times the current travel demand by 2025.

(2) **ENVIRONMENTAL SUSTAINABILITY.**—The Directorate shall consider and pursue concepts to reduce noise, emissions, and fuel consumption while maintaining high safety standards and shall pursue research related to alternative fuels.

(3) **AVIATION SAFETY.**—The Directorate shall proactively address safety challenges with new and current air vehicles and with operations in the Nation’s current and future air transportation system.

SEC. 903. RESEARCH COLLABORATION.

42 USC 18402.

(a) **DEPARTMENT OF DEFENSE.**—The Administrator shall continue to coordinate with the Secretary of Defense, through the National Partnership for Aeronautics Testing, to develop and implement joint plans for those elements of the Nation’s research,

Plans.

development, testing, and engineering infrastructure that are of common interest and use.

(b) **FEDERAL AVIATION ADMINISTRATION.**—The Administrator shall continue to coordinate with, and work closely with, the Administrator of the Federal Aviation Administration, under the framework of the Senior Policy Council, in development of the Next Generation Air Transportation Program. The Administrator shall encourage the Council to explore areas for greater collaboration, including areas where NASA can help to accelerate the development and demonstration of NextGen technologies.

42 USC 18403.

SEC. 904. GOAL FOR AGENCY SPACE TECHNOLOGY.

It is critical that NASA maintain an Agency space technology base that helps align mission directorate investments and supports long term needs to complement mission-directorate funded research and support, where appropriate, multiple users, building upon its Innovative Partnerships Program and other partnering approaches.

SEC. 905. IMPLEMENTATION PLAN FOR AGENCY SPACE TECHNOLOGY.

Deadline.

Within 120 days after the date of enactment of this Act, NASA shall submit a plan to the appropriate committees of Congress that outlines how NASA’s space technology program will meet the goal described in section 904, including an explanation of how the plan will link to other mission-directorate technology efforts outlined in sections 608, 801, and 802 of this Act.

42 USC 18404.

SEC. 906. NATIONAL SPACE TECHNOLOGY POLICY.

President.

(a) **IN GENERAL.**—The President or the President’s designee, in consultation with appropriate Federal agencies, shall develop a national policy to guide the space technology development programs of the United States through 2020. The policy shall include national goals for technology development and shall describe the role and responsibilities of each Federal agency that will carry out the policy. In developing the policy, the President or the President’s designee shall utilize external studies that have been conducted on the state of United States technology development and have suggested policies to ensure continued competitiveness.

(b) **CONTENT.**—

(1) At a minimum, the national space technology development policy shall describe for NASA—

(A) the priority areas of research for technology investment;

(B) the basis on which and the process by which priorities for ensuing fiscal years will be selected;

(C) the facilities and personnel needed to carry out the technology development program; and

(D) the budget assumptions on which the policy is based, which for fiscal years 2011, 2012, and 2013 shall be the authorized level for NASA’s technology program authorized by this Act.

(2) The policy shall be based on the premise that the Federal Government has an established interest in conducting research and development programs that help preserve the role of the United States as a global leader in space technologies and their application.

President.

(3) **CONSIDERATIONS.**—In developing the national space technology development policy, the President or the President’s

designee shall consider, and include a discussion in the report required by subsection (c), of the following issues:

(A) The extent to which NASA should focus on long term, high-risk research or more incremental technology development, and the expected impact of that decision on the United States economy.

(B) The extent to which NASA should address military and commercial needs.

(C) How NASA will coordinate its technology program with other Federal agencies.

(D) The extent to which NASA will conduct research in-house, fund university research, and collaborate on industry research and the expected impact of that mix of funding on the supply of United States workers for industry.

(4) CONSULTATION.—In the development of the national space technology development policy, the President or the President's designee shall consult widely with academic and industry experts and with other Federal agencies. The Administrator may enter into an arrangement with the National Academy of Sciences to help develop the policy.

President.

(c) REPORT.—

(1) POLICY.—Not later than 1 year after the date of enactment of this Act, the President shall transmit a report setting forth national space technology policy to the appropriate committees of Congress and to the Senate Committee on Appropriations and the House of Representatives Committee on Appropriations.

(2) IMPLEMENTATION.—Not later than 60 days after the President transmits the report required by paragraph (1) to the Congress, the Administrator shall transmit a report to the same committees describing how NASA will carry out the policy.

SEC. 907. COMMERCIAL REUSABLE SUBORBITAL RESEARCH PROGRAM.

42 USC 18405.

(a) IN GENERAL.—The report of the National Academy of Sciences, Revitalizing NASA's Suborbital Program: Advancing Science, Driving Innovation and Developing Workforce, found that suborbital science missions were absolutely critical to building an aerospace workforce capable of meeting the needs of current and future human and robotic space exploration.

(b) MANAGEMENT.—The Administrator shall designate an officer or employee of the Space Technology Program to act as the responsible official for the Commercial Reusable Suborbital Research Program in the Space Technology Program. The designee shall be responsible for the development of short- and long term strategic plans for maintaining, renewing and extending suborbital facilities and capabilities.

Designation.

(c) ESTABLISHMENT.—The Administrator shall establish a Commercial Reusable Suborbital Research Program within the Space Technology Program that shall fund the development of payloads for scientific research, technology development, and education, and shall provide flight opportunities for those payloads to microgravity environments and suborbital altitudes. The Commercial Reusable Suborbital Research Program may fund engineering and integration demonstrations, proofs of concept, or educational experiments for commercial reusable vehicle flights. The program shall

endeavor to work with NASA's Mission Directorates to help achieve NASA's research, technology, and education goals.

(d) **REPORT.**—The Administrator shall submit a report annually to the appropriate committees of Congress describing progress in carrying out the Commercial Reusable Suborbital Research program, including the number and type of suborbital missions planned in each fiscal year.

(e) **AUTHORIZATION.**—There are authorized to be appropriated to the Administrator \$15,000,000 for each of fiscal years 2011 through 2013 to carry out this section.

TITLE X—EDUCATION

SEC. 1001. REPORT ON EDUCATION IMPLEMENTATION OUTCOMES.

Not later than 120 days after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report on the metrics, internal and external relationships, and resources committed by NASA to each of the following:

- (1) The development of a national STEM workforce.
- (2) The retention of students in STEM disciplines as reflected by their education progression over time.
- (3) The development of strategic partnerships and linkages between STEM formal and informal education providers.

SEC. 1002. SENSE OF CONGRESS ON THE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH.

It is the sense of Congress that—

(1) the Experimental Program to Stimulate Competitive Research of NASA strengthens the research capabilities of jurisdictions that historically have not participated equally in competitive aerospace and aerospace-related research activities;

(2) the Experimental Program to Stimulate Competitive Research of NASA has provided the American taxpayer with an excellent return on investment;

(3) the Experimental Program to Stimulate Competitive Research of NASA has been successful in helping to achieve broader geographical distribution of research and development support by improving the research infrastructure in States that historically have received limited Federal research and development funds; and

(4) in order to continue improvement and to increase efficiency the award of grants under the Experimental Program to Stimulate Competitive Research of NASA should be coordinated with the award of grants under the Experimental Program to Stimulate Competitive Research of the National Science Foundation, the Department of Energy, the Department of Agriculture, the Department of Defense, the Environmental Protection Agency, and the National Institutes of Health.

42 USC 18421.

SEC. 1003. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS COMMERCIAL ORBITAL PLATFORM PROGRAM.

A fundamental and unique capability of NASA is in stimulating science, technology, engineering, and mathematics education in the United States. In ensuring maximum use of that capability, NASA shall—

(1) establish a program to annually sponsor scientific and educational payloads developed with United States student and educator involvement to be flown on commercially available orbital platforms, when available and operational, with the goal of launching at least 50 such payloads (with at least one from each of the 50 States) to orbit on at least one mission per year;

Establishment.
Deadline.

(2) contract with providers of commercial orbital platform services for their use by the STEM-Commercial Orbital Platform program, preceded by the issuance of a request for proposal, not later than 90 days after the date of enactment of this Act, to enter into at least one funded, competitively-awarded contract for commercial orbital platform services and make awards within 180 days after such date; and

Contracts.
Deadline.

(3) engage with United States students and educators and make available NASA’s science, engineering, payload development, and payload operations expertise to student teams selected to participate in the STEM-Commercial Orbital Platform program.

TITLE XI—RE-SCOPING AND REVITALIZING INSTITUTIONAL CAPABILITIES

SEC. 1101. SENSE OF CONGRESS.

It is the sense of Congress that NASA needs to re-scope, and as appropriate, down-size, to fit current and future missions and expected funding levels. Eighty percent of NASA’s facilities are over 40 years old. Additionally, in a number of areas NASA finds itself “holding onto” facilities and capabilities scaled to another era.

SEC. 1102. INSTITUTIONAL REQUIREMENTS STUDY.

Within 1 year after the date of enactment of this Act, the Administrator shall provide to the appropriate committees of Congress a comprehensive study that, taking into account the long term direction provided by this Act, carefully examines NASA’s structure, organization, and institutional assets and identifies a strategy to evolve toward the most efficient retention, sizing, and distribution of facilities, laboratories, test capabilities, and other infrastructure consistent with NASA’s missions and mandates. The Administrator should pay particular attention to identifying and removing unneeded or duplicative infrastructure. The Administrator should include in the study a suggested reconfiguration and reinvestment strategy that would conform the needed equipment, facilities, test equipment, and related organizational alignment that would best meet the requirements of missions and priorities authorized and directed by this Act. As part of this strategy, the Administrator should include consideration and application of the findings and recommendations of the National Research Council report, Capabilities for the Future: An Assessment of NASA Laboratories for Basic Research, prepared in response to section 1003 of the National Aeronautics and Space Administration Authorization Act of 2008 (42 U.S.C. 17812).

Deadline.

SEC. 1103. NASA CAPABILITIES STUDY REQUIREMENT.

Panel.

Upon completion of the study required by Section 1102, the Administrator shall establish an independent panel to examine alternative management models for NASA's workforce, centers, and related facilities in order to improve efficiency and productivity, while nonetheless maintaining core Federal competencies and keeping appropriately governmental functions internal to NASA. The study shall include a recommended implementation strategy, which shall identify any additional legislative authorities necessary to enable implementation of the recommended strategy, including recommended actions to provide aid and assistance to eligible communities to mitigate adverse impacts resulting from implementation of the proposed strategy. The Administrator shall provide the results of this study to the appropriate committees of Congress within 1 year after the date on which the study is begun.

Deadline.

SEC. 1104. SENSE OF CONGRESS ON COMMUNITY TRANSITION SUPPORT.

The Congress recognizes and supports current executive branch efforts to assist and provide aid to communities that are adversely impacted by NASA program changes, contract or program cancellations, or proposed institutional changes, so as to minimize the social and economic impacts to those communities, workers, and businesses. Communities eligible for such aid would be those in close proximity to NASA mission-related centers and their component facilities located in Alabama, California, Florida, Louisiana, Maryland, Mississippi, New Mexico, Ohio, Texas, and Virginia which may be impacted by program changes authorized or directed by this Act or by the implementation strategy developed pursuant to section 1103.

42 USC 18431.

SEC. 1105. WORKFORCE STABILIZATION AND CRITICAL SKILLS PRESERVATION.

Prior to receipt by the Congress of the study, recommendations, and implementation strategy developed pursuant to section 1103, none of the funds authorized for use under this Act may be used to transfer the functions, missions, or activities, and associated civil service and contractor positions, from any NASA facility without authorization by the Congress to implement the proposed strategy. The Administrator shall preserve the critical skills and competencies in place at NASA centers prior to enactment of this Act in order to facilitate timely implementation of the requirements of this Act and to minimize disruption to the workforce. The Administrator may not implement any reduction-in-force or other involuntary separations of permanent, non-Senior-Executive-Service, civil servant employees before September 30, 2013, except for cause on charges of misconduct, delinquency, or inefficiency.

TITLE XII—OTHER MATTERS**SEC. 1201. REPORT ON SPACE TRAFFIC MANAGEMENT.**

The Administrator shall submit to the appropriate committees of Congress a report on a status on the initiation of discussions

with other nations on a framework to address space traffic management concerns, as required by section 1102 of the National Aeronautics and Space Administration Act Authorization Act of 2008 (42 U.S.C. 17821).

SEC. 1202. NATIONAL AND INTERNATIONAL ORBITAL DEBRIS MITIGATION. 42 USC 18441.

(a) FINDINGS.—Congress makes the following findings:

(1) A national and international effort is needed to develop a coordinated approach towards the prevention, negation, and removal of orbital debris.

(2) The guidelines issued by the Inter-Agency Space Debris Coordination Committee provide a consensus understanding of 10 national space agencies (including NASA) plus the European Space Agency on the necessity of mitigating the creation of space debris and measures for doing so. NASA's participation on the Committee should be robust, and NASA should urge other space-relevant Federal agencies (including the Departments of State, Defense, and Commerce) to work to ensure that their counterpart agencies in foreign governments are aware of these national commitments and the importance in which the United States holds them.

(3) Key components of such an approach should include—

(A) a process for debris prevention through agreements regarding spacecraft design, operations, and end-of-life disposition plans to minimize orbiting vehicles or elements which are nonfunctional;

(B) the development of a robust Space Situational Awareness network that can identify potential collisions and provide sufficient trajectory and orbital data to enable avoidance maneuvers;

(C) the interagency development of an overall strategy for review by the President, with recommendations for proposed international collaborative efforts to address this challenge.

(b) INTERNATIONAL DISCUSSION.—

(1) IN GENERAL.—The Administrator shall, in consultation with such other departments and agencies of the Federal Government as the Administrator considers appropriate, continue and strengthen discussions with the representatives of other space-faring countries, within the Inter-Agency Space Debris Coordination Committee and elsewhere, to deal with this orbital debris mitigation.

(2) INTERAGENCY EFFORT.—For purposes of carrying out this subsection, the Director of OSTP, in coordination with the Director of the National Security Council and using the President's Council of Advisors on Science and Technology coordinating mechanism, shall develop an overall strategy for review by the President, with recommendations for proposed international collaborative efforts to address this challenge.

SEC. 1203. REPORTS ON PROGRAM AND COST ASSESSMENT AND CONTROL ASSESSMENT. 42 USC 18442.

(a) FINDINGS.—Congress makes the following findings:

(1) The adherence of NASA to program cost and schedule targets and discipline across NASA programs remains a concern.

(2) The James Webb Space Telescope has exceeded its cost estimate.

(3) In 2007 the Government Accountability Office issued a report on NASA's high risk acquisition performance.

(4) In response, NASA prepared a corrective action plan two years ago.

(b) REPORTS.—

(1) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and not later than April 30 of each year thereafter, the Administrator shall submit to the appropriate committees of Congress a report on the implementation during the preceding year for the corrective action plan referred to in subsection (a)(4).

(2) ELEMENTS.—Each report under this subsection shall set forth, for the year covered by such report, the following:

(A) A description of each NASA program that has exceeded its cost baseline by 15 percent or more or is more than 2 years behind its projected development schedule.

(B) For each program specified under subparagraph (A), a plan for such decrease in scope or requirements, or other measures, to be undertaken to control cost and schedule, including any cost monitoring or corrective actions undertaken pursuant to the National Aeronautics and Space Administration Authorization Act of 2005 (Public Law 109-155), and the amendments made by that Act.

42 USC 18443.

SEC. 1204. ELIGIBILITY FOR SERVICE OF INDIVIDUAL CURRENTLY SERVING AS ADMINISTRATOR OF NASA.

The individual serving in the position of Administrator of the National Aeronautics and Space Administration as of the date of the enactment of this Act comes from civilian life and is therefore eligible to serve in such position, in conformance with section 202 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2472(a)).

SEC. 1205. SENSE OF CONGRESS ON INDEPENDENT VERIFICATION AND VALIDATION OF NASA SOFTWARE.

It is the sense of Congress that—

(1) safety is at the heart of every NASA mission;

(2) the Office of Safety and Mission Assurance remains vital to assuring the safety of all NASA activities;

(3) among the most important activities of the Office of Safety and Mission Assurance is the performance of independent safety and mission assurance assessments and process verification reviews;

(4) as NASA embarks on a new path, independent verification and validation of software must be of the highest priority to ensure safety throughout all NASA programs;

(5) NASA's activities depend on software integrity to achieve their goals and deliver a successful mission to the American people;

(6) independent verification and validation is necessary to ensure that safety-critical software will operate dependably and support mission success;

(7) the creation of the Independent Verification and Validation Facility of NASA was the direct result of recommendations made by the National Research Council and the Report of

the Presidential Commission on the Space Shuttle Challenger Accident;

(8) the mission-critical software of NASA must operate dependably and safely;

(9) the Independent Verification and Validation Facility of NASA plays an important role in assuring the safety of all NASA activities by improving methodologies for risk identification and assessment, and providing recommendations for risk mitigation and acceptance; and

(10) the Independent Verification and Validation Facility shall be the sole provider of independent verification and validation services for software created by or for NASA.

SEC. 1206. COUNTERFEIT PARTS.

42 USC 18444.

(a) IN GENERAL.—The Administrator shall plan, develop, and implement a program, in coordination with other Federal agencies, to detect, track, catalog, and reduce the number of counterfeit electronic parts in the NASA supply chain.

Plans.

(b) REQUIREMENTS.—In carrying out the program, the Administrator shall establish—

(1) counterfeit part identification training for all employees that procure, process, distribute, and install electronic parts that will—

(A) teach employees how to identify counterfeit parts;

(B) educate employees on procedures to follow if they suspect a part is counterfeit;

(C) regularly update employees on new threats, identification techniques, and reporting requirements; and

(D) integrate industry associations, manufacturers, suppliers, and other Federal agencies, as appropriate;

(2) an internal database to track all suspected and confirmed counterfeit electronic parts that will maintain, at a minimum—

Database.

(A) companies and individuals known and suspected of selling counterfeit parts;

(B) parts known and suspected of being counterfeit, including lot and date codes, part numbers, and part images;

(C) countries of origin;

(D) sources of reporting;

(E) United States Customs seizures; and

(F) Government-Industry Data Exchange Program reports and other public or private sector database notifications; and

(3) a mechanism to report all information on suspected and confirmed counterfeit electronic parts to law enforcement agencies, industry associations, and other databases, and to issue bulletins to industry on counterfeit electronic parts and related counterfeit activity.

(c) REVIEW OF PROCUREMENT AND ACQUISITION POLICY.—

(1) IN GENERAL.—In establishing the program, the Administrator shall amend existing acquisition and procurement policy to purchase electronic parts from trusted or approved manufacturers. To determine trusted or approved manufacturers, the Administrator shall establish a list, assessed and adjusted at least annually, and create criteria for manufacturers to meet in order to be placed onto the list.

List.
Deadline.
Criteria.

- (2) CRITERIA.—The criteria may include—
- (A) authentication or encryption codes;
 - (B) embedded security markings in parts;
 - (C) unique, harder to copy labels and markings;
 - (D) identifying distinct lot and serial codes on external packaging;
 - (E) radio frequency identification embedded into high-value parts;
 - (F) physical destruction of all defective, damaged, and sub-standard parts that are by-products of the manufacturing process;
 - (G) testing certifications;
 - (H) maintenance of procedures for handling any counterfeit parts that slip through;
 - (I) maintenance of secure facilities to prevent unauthorized access to proprietary information; and
 - (J) maintenance of product return, buy back, and inventory control practices that limit counterfeiting.

(d) REPORT TO CONGRESS.—Within one year after the date of enactment of this Act, the Administrator shall report on the progress of implementing this section to the appropriate committees of Congress.

42 USC 18445.

SEC. 1207. INFORMATION SECURITY.**(a) MONITORING RISK.—**

(1) UPDATE ON SYSTEM IMPLEMENTATION.—Not later than 120 days after the date of enactment of this Act, and on a biennial basis thereafter, the chief information officer of NASA, in coordination with other national security agencies, shall provide to the appropriate committees of Congress—

(A) an update on efforts to implement a system to provide dynamic, comprehensive, real-time information regarding risk of unauthorized remote, proximity, and insider use or access, for all information infrastructure under the responsibility of the chief information officer, and mission-related networks, including contractor networks;

(B) an assessment of whether the system has demonstrably and quantifiably reduced network risk compared to alternative methods of measuring security; and

(C) an assessment of the progress that each center and facility has made toward implementing the system.

(2) EXISTING ASSESSMENTS.—The assessments required of the Inspector General under section 3545 of title 44, United States Code, shall evaluate the effectiveness of the system described in this subsection.

(b) INFORMATION SECURITY AWARENESS AND EDUCATION.—

(1) IN GENERAL.—In consultation with the Department of Education, other national security agencies, and other agency directorates, the chief information officer shall institute an information security awareness and education program for all operators and users of NASA information infrastructure, with the goal of reducing unauthorized remote, proximity, and insider use or access.

(2) PROGRAM REQUIREMENTS.—

Deadlines.
Assessments.

(A) The program shall include, at a minimum, ongoing classified and unclassified threat-based briefings, and automated exercises and examinations that simulate common attack techniques.

(B) All agency employees and contractors engaged in the operation or use of agency information infrastructure shall participate in the program.

(C) Access to NASA information infrastructure shall only be granted to operators and users who regularly satisfy the requirements of the program.

(D) The chief human capital officer of NASA, in consultation with the chief information officer, shall create a system to reward operators and users of agency information infrastructure for continuous high achievement in the program.

(c) **INFORMATION INFRASTRUCTURE DEFINED.**—In this section, the term “information infrastructure” means the underlying framework that information systems and assets rely on to process, transmit, receive, or store information electronically, including programmable electronic devices and communications networks and any associated hardware, software, or data.

SEC. 1208. NATIONAL CENTER FOR HUMAN PERFORMANCE.

(a) **IN GENERAL.**—The National Center for Human Performance is located in Houston’s Texas Medical Center which is home to 49 non-profit and academic patient care, biomedical research, and health educational institutions serving 6 million patients each year, and works collaboratively with individuals and organizations, including NASA, to advance science and research on human performance in space, health, the military, athletics, and the arts.

(b) **DESIGNATION AS INSTITUTION OF EXCELLENCE.**—The National Center for Human Performance is designated as an Institution of Excellence for Human Performance dedicated to understanding and improving all aspects of human performance.

SEC. 1209. ENHANCED-USE LEASING.

(a) **SENSE OF THE CONGRESS.**—It is the sense of the Congress that the NASA enhanced-use leasing program is a fiscally responsible program to further maintain the exploration-related infrastructure of our Nation’s space centers while ensuring continued private utilization of these Federal assets, and every effort should be made to ensure effective utilization of this program.

SEC. 1210. SENSE OF CONGRESS CONCERNING THE STENNIS SPACE CENTER.

It is the sense of the Congress that the Stennis Space Center represents the national capability for development and certification of liquid propulsion technologies vital to our Nation’s space flight program, and that the Federal government should fully utilize that resource and continue to make the testing facility available for further development of commercial aerospace capabilities.

TITLE XIII—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

SEC. 1301. COMPLIANCE PROVISION.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved October 11, 2010.

LEGISLATIVE HISTORY—S. 3729:

HOUSE REPORTS: No. 111–576 (Comm. on Science and Technology).

SENATE REPORTS: No. 111–278 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 5, considered and passed Senate.

Sept. 29, considered and passed House.



Public Law 111–268
111th Congress

An Act

To enhance the ability to combat methamphetamine.

Oct. 12, 2010

[H.R. 2923]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Combat Methamphetamine Enhancement Act of 2010”.

Combat
Methampheta-
mine
Enhancement
Act of 2010.
21 USC 801 note.

SEC. 2. REQUIREMENT OF SELF-CERTIFICATION BY ALL REGULATED PERSONS SELLING SCHEDULED LISTED CHEMICALS.

Section 310(e)(2) of the Controlled Substances Act (21 U.S.C. 830(e)(2)) is amended by inserting at the end the following:

“(C) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under subsection (b)(3) to submit a report of the sales transaction to the Attorney General may not sell any scheduled listed chemical product at retail unless such regulated person has submitted to the Attorney General a self-certification including a statement that the seller understands each of the requirements that apply under this paragraph and under subsection (d) and agrees to comply with the requirements. The Attorney General shall by regulation establish criteria for certifications of mail-order distributors that are consistent with the criteria established for the certifications of regulated sellers under paragraph (1)(B).”.

Reports.

Regulations.
Criteria.

SEC. 3. PUBLICATION OF SELF-CERTIFIED REGULATED SELLERS AND REGULATED PERSONS LISTS.

Section 310(e)(1)(B) of the Controlled Substances Act (21 U.S.C. 830(e)(1)(B)) is amended by inserting at the end the following:

“(v) PUBLICATION OF LIST OF SELF-CERTIFIED PERSONS.—The Attorney General shall develop and make available a list of all persons who are currently self-certified in accordance with this section. This list shall be made publicly available on the website of the Drug Enforcement Administration in an electronically downloadable format.”.

Web posting.

SEC. 4. REQUIREMENT THAT DISTRIBUTORS OF LISTED CHEMICALS SELL ONLY TO SELF-CERTIFIED REGULATED SELLERS AND REGULATED PERSONS.

Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (13), by striking “or” after the semicolon;

(2) in paragraph (14), by striking the period and inserting “; or”;

(3) by inserting after paragraph (14) the following:

“(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 310(b)(3)(B), unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 310(e)(1)(B)(v).”; and

Deadline.

(4) by inserting at the end the following: “For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 310(e)(1)(B)(v), the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 310(e)(1)(B)(v).”.

SEC. 5. NEGLIGENT FAILURE TO SELF-CERTIFY AS REQUIRED.

Section 402(a)(10) of the Controlled Substances Act (21 U.S.C. 842(a)(10)) is amended by inserting before the semicolon the following: “or negligently to fail to self-certify as required under section 310”.

SEC. 6. EFFECTIVE DATE AND REGULATIONS.

21 USC 830 note.

(a) **EFFECTIVE DATE.**—This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

21 USC 830 note.

(b) **REGULATIONS.**—In promulgating the regulations authorized by section 2, the Attorney General may issue regulations on an interim basis as necessary to ensure the implementation of this Act by the effective date.

SEC. 7. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved October 12, 2010.

LEGISLATIVE HISTORY—H.R. 2923:

HOUSE REPORTS: No. 111-615, Pt. 1 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 22, considered and passed House.

Sept. 27, considered and passed Senate.



Public Law 111–269
111th Congress

An Act

Oct. 12, 2010
[H.R. 3553]

To exclude from consideration as income under the Native American Housing Assistance and Self-Determination Act of 1996 amounts received by a family from the Department of Veterans Affairs for service-related disabilities of a member of the family.

Indian Veterans
Housing
Opportunity Act
of 2010.
25 USC 4101
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Veterans Housing Opportunity Act of 2010”.

SEC. 2. EXCLUSION FROM INCOME.

Paragraph (9) of section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(9)) is amended by adding at the end the following new subparagraph:

“(C) Any amounts received by any member of the family as disability compensation under chapter 11 of title 38, United States Code, or dependency and indemnity compensation under chapter 13 of such title.”.

Approved October 12, 2010.

LEGISLATIVE HISTORY—H.R. 3553:

SENATE REPORTS: No. 111–299 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 20, considered and passed House.

Sept. 27, considered and passed Senate.



Public Law 111–270
111th Congress

An Act

To provide for an extension of the legislative authority of the Vietnam Veterans Memorial Fund, Inc. to establish a Vietnam Veterans Memorial visitor center, and for other purposes.

Oct. 12, 2010
[H.R. 3689]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF LEGISLATIVE AUTHORITY FOR VIETNAM MEMORIAL VISITOR CENTER.

Section 6(b) of Public Law 96–297 (16 U.S.C. 431 note) is amended—

- (1) in paragraph (3), by striking “and” at the end;
- (2) in paragraph (4), by striking the period and inserting “; and”; and
- (3) by inserting after paragraph (4) the following:

“(5) any reference in section 8903(e) of title 40, United States Code, to the expiration at the end of or extension beyond a seven-year period shall be considered to be a reference to an expiration on or extension beyond November 17, 2014.”.

Approved October 12, 2010.

LEGISLATIVE HISTORY—H.R. 3689:

SENATE REPORTS: No. 111–198 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 13, considered and passed House.

Vol. 156 (2010): Sept. 28, considered and passed Senate.



Public Law 111–271
111th Congress

An Act

Oct. 12, 2010
[H.R. 3980]

To provide for identifying and eliminating redundant reporting requirements and developing meaningful performance metrics for homeland security preparedness grants, and for other purposes.

Redundancy
Elimination and
Enhanced
Performance for
Preparedness
Grants Act.
6 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Redundancy Elimination and Enhanced Performance for Preparedness Grants Act”.

SEC. 2. IDENTIFICATION OF REPORTING REDUNDANCIES AND DEVELOPMENT OF PERFORMANCE METRICS FOR HOMELAND SECURITY PREPAREDNESS GRANT PROGRAMS.

(a) IN GENERAL.—Title XX of the Homeland Security Act of 2002 (6 U.S.C. 601 et seq.) is amended by adding at the end the following:

6 USC 613.

“SEC. 2023. IDENTIFICATION OF REPORTING REDUNDANCIES AND DEVELOPMENT OF PERFORMANCE METRICS.

“(a) DEFINITION.—In this section, the term ‘covered grants’ means grants awarded under section 2003, grants awarded under section 2004, and any other grants specified by the Administrator.

“(b) INITIAL REPORT.—Not later than 90 days after the date of enactment of the Redundancy Elimination and Enhanced Performance for Preparedness Grants Act, the Administrator shall submit to the appropriate committees of Congress a report that includes—

“(1) an assessment of redundant reporting requirements imposed by the Administrator on State, local, and tribal governments in connection with the awarding of grants, including—

“(A) a list of each discrete item of data requested by the Administrator from grant recipients as part of the process of administering covered grants;

“(B) identification of the items of data from the list described in subparagraph (A) that are required to be submitted by grant recipients on multiple occasions or to multiple systems; and

“(C) identification of the items of data from the list described in subparagraph (A) that are not necessary to be collected in order for the Administrator to effectively and efficiently administer the programs under which covered grants are awarded;

“(2) a plan, including a specific timetable, for eliminating any redundant and unnecessary reporting requirements identified under paragraph (1); and

“(3) a plan, including a specific timetable, for promptly developing a set of quantifiable performance measures and metrics to assess the effectiveness of the programs under which covered grants are awarded.

“(c) BIENNIAL REPORTS.—Not later than 1 year after the date on which the initial report is required to be submitted under subsection (b), and once every 2 years thereafter, the Administrator shall submit to the appropriate committees of Congress a grants management report that includes—

“(1) the status of efforts to eliminate redundant and unnecessary reporting requirements imposed on grant recipients, including—

“(A) progress made in implementing the plan required under subsection (b)(2);

“(B) a reassessment of the reporting requirements to identify and eliminate redundant and unnecessary requirements;

“(2) the status of efforts to develop quantifiable performance measures and metrics to assess the effectiveness of the programs under which the covered grants are awarded, including—

“(A) progress made in implementing the plan required under subsection (b)(3);

“(B) progress made in developing and implementing additional performance metrics and measures for grants, including as part of the comprehensive assessment system required under section 649 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 749); and

“(3) a performance assessment of each program under which the covered grants are awarded, including—

“(A) a description of the objectives and goals of the program;

“(B) an assessment of the extent to which the objectives and goals described in subparagraph (A) have been met, based on the quantifiable performance measures and metrics required under this section, section 2022(a)(4), and section 649 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 749);

“(C) recommendations for any program modifications to improve the effectiveness of the program, to address changed or emerging conditions; and

“(D) an assessment of the experience of recipients of covered grants, including the availability of clear and accurate information, the timeliness of reviews and awards, and the provision of technical assistance, and recommendations for improving that experience.

“(d) GRANTS PROGRAM MEASUREMENT STUDY.—

“(1) IN GENERAL.—Not later than 30 days after the enactment of Redundancy Elimination and Enhanced Performance for Preparedness Grants Act, the Administrator shall enter into a contract with the National Academy of Public Administration under which the National Academy of Public Administration shall assist the Administrator in studying, developing, and implementing—

Contracts.

“(A) quantifiable performance measures and metrics to assess the effectiveness of grants administered by the Department, as required under this section and section 649 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 749); and

“(B) the plan required under subsection (b)(3).

“(2) REPORT.—Not later than 1 year after the date on which the contract described in paragraph (1) is awarded, the Administrator shall submit to the appropriate committees of Congress a report that describes the findings and recommendations of the study conducted under paragraph (1).

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this subsection.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by adding at the end the following:

“Sec. 2023. Identification of reporting redundancies and development of performance metrics.”.

Approved October 12, 2010.

LEGISLATIVE HISTORY—H.R. 3980:

HOUSE REPORTS: No. 111–346 (Comm. on Homeland Security).

SENATE REPORTS: No. 111–291 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Dec. 2, considered and passed House.

Vol. 156 (2010): Sept. 22, considered and passed Senate, amended.
Sept. 28, House concurred in Senate amendment.



Public Law 111–272
111th Congress

An Act

To amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes.

Oct. 12, 2010
[S. 1132]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Law Enforcement Officers Safety Act Improvements Act of 2010”.

Law Enforcement
Officers Safety
Act
Improvements
Act of 2010.
18 USC 1 note.

SEC. 2. AMENDMENTS TO LAW ENFORCEMENT OFFICER SAFETY PROVISIONS OF TITLE 18.

(a) IN GENERAL.—Section 926B of title 18, United States Code, is amended—

(1) in subsection (c)(3), by inserting “which could result in suspension or loss of police powers” after “agency”; and

(2) by adding at the end the following:

“(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.”.

(b) ACTIVE LAW ENFORCEMENT OFFICERS.—Section 926B of title 18, United States Code is amended by striking subsection (e) and inserting the following:

“(e) As used in this section, the term ‘firearm’—

“(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

“(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

“(3) does not include—

“(A) any machinegun (as defined in section 5845 of the National Firearms Act);

“(B) any firearm silencer (as defined in section 921 of this title); and

“(C) any destructive device (as defined in section 921 of this title).”.

(c) RETIRED LAW ENFORCEMENT OFFICERS.—Section 926C of title 18, United States Code is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

- (i) by striking “retired” and inserting “separated from service”; and
- (ii) by striking “, other than for reasons of mental instability”;
- (B) in paragraph (2), by striking “retirement” and inserting “separation”;
- (C) in paragraph (3)—
 - (i) in subparagraph (A), by striking “retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more” and inserting “separation, served as a law enforcement officer for an aggregate of 10 years or more”; and
 - (ii) in subparagraph (B), by striking “retired” and inserting “separated”;
- (D) by striking paragraph (4) and inserting the following:

“(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;”;
- (E) by striking paragraph (5) and replacing it with the following:

“(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

“(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);”;
- (2) in subsection (d)—
 - (A) paragraph (1)—
 - (i) by striking “retired” and inserting “separated”; and
 - (ii) by striking “to meet the standards” and all that follows through “concealed firearm” and inserting “to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm”;
 - (B) paragraph (2)—
 - (i) in subparagraph (A), by striking “retired” and inserting “separated”; and
 - (ii) in subparagraph (B), by striking “that indicates” and all that follows through the period and inserting “or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates

that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met—

“(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

“(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.”; and

(3) by striking subsection (e) and inserting the following:
“(e) As used in this section—

“(1) the term ‘firearm’—

“(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

“(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

“(C) does not include—

“(i) any machinegun (as defined in section 5845 of the National Firearms Act);

“(ii) any firearm silencer (as defined in section 921 of this title); and

“(iii) any destructive device (as defined in section 921 of this title); and

“(2) the term ‘service with a public agency as a law enforcement officer’ includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.”.

Approved October 12, 2010.

LEGISLATIVE HISTORY—S. 1132:

SENATE REPORTS: No. 111-233 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 13, considered and passed Senate.

Sept. 29, considered and passed House.



Public Law 111–273
111th Congress

An Act

Oct. 12, 2010
[S. 3397]

To amend the Controlled Substances Act to provide for take-back disposal of controlled substances in certain instances, and for other purposes.

Secure and
Responsible Drug
Disposal Act of
2010.
21 USC 801 note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secure and Responsible Drug Disposal Act of 2010”.

21 USC 822 note.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The nonmedical use of prescription drugs is a growing problem in the United States, particularly among teenagers.

(2) According to the Department of Justice’s 2009 National Prescription Drug Threat Assessment—

(A) the number of deaths and treatment admissions for controlled prescription drugs (CPDs) has increased significantly in recent years;

(B) unintentional overdose deaths involving prescription opioids, for example, increased 114 percent from 2001 to 2005, and the number of treatment admissions for prescription opioids increased 74 percent from 2002 to 2006; and

(C) violent crime and property crime associated with abuse and diversion of CPDs has increased in all regions of the United States over the past 5 years.

(3) According to the Office of National Drug Control Policy’s 2008 Report “Prescription for Danger”, prescription drug abuse is especially on the rise for teens—

(A) one-third of all new abusers of prescription drugs in 2006 were 12- to 17-year-olds;

(B) teens abuse prescription drugs more than any illicit drug except marijuana—more than cocaine, heroin, and methamphetamine combined; and

(C) responsible adults are in a unique position to reduce teen access to prescription drugs because the drugs often are found in the home.

(4)(A) Many State and local law enforcement agencies have established drug disposal programs (often called “take-back” programs) to facilitate the collection and destruction of unused, unwanted, or expired medications. These programs help get outdated or unused medications off household shelves and out of the reach of children and teenagers.

(B) However, take-back programs often cannot dispose of the most dangerous pharmaceutical drugs—controlled substance medications—because Federal law does not permit take-back programs to accept controlled substances unless they get specific permission from the Drug Enforcement Administration and arrange for full-time law enforcement officers to receive the controlled substances directly from the member of the public who seeks to dispose of them.

(C) Individuals seeking to reduce the amount of unwanted controlled substances in their household consequently have few disposal options beyond discarding or flushing the substances, which may not be appropriate means of disposing of the substances. Drug take-back programs are also a convenient and effective means for individuals in various communities to reduce the introduction of some potentially harmful substances into the environment, particularly into water.

(D) Long-term care facilities face a distinct set of obstacles to the safe disposal of controlled substances due to the increased volume of controlled substances they handle.

(5) This Act gives the Attorney General authority to promulgate new regulations, within the framework of the Controlled Substances Act, that will allow patients to deliver unused pharmaceutical controlled substances to appropriate entities for disposal in a safe and effective manner consistent with effective controls against diversion.

(6) The goal of this Act is to encourage the Attorney General to set controlled substance diversion prevention parameters that will allow public and private entities to develop a variety of methods of collection and disposal of controlled substances, including some pharmaceuticals, in a secure, convenient, and responsible manner. This will also serve to reduce instances of diversion and introduction of some potentially harmful substances into the environment.

SEC. 3. DELIVERY OF CONTROLLED SUBSTANCES BY ULTIMATE USERS FOR DISPOSAL.

(a) **REGULATORY AUTHORITY.**—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended by adding at the end the following:

“(g)(1) An ultimate user who has lawfully obtained a controlled substance in accordance with this title may, without being registered, deliver the controlled substance to another person for the purpose of disposal of the controlled substance if—

“(A) the person receiving the controlled substance is authorized under this title to engage in such activity; and

“(B) the disposal takes place in accordance with regulations issued by the Attorney General to prevent diversion of controlled substances.

Regulations.

“(2) In developing regulations under this subsection, the Attorney General shall take into consideration the public health and safety, as well as the ease and cost of program implementation and participation by various communities. Such regulations may not require any entity to establish or operate a delivery or disposal program.

“(3) The Attorney General may, by regulation, authorize long-term care facilities, as defined by the Attorney General by regulation, to dispose of controlled substances on behalf of ultimate users

who reside, or have resided, at such long-term care facilities in a manner that the Attorney General determines will provide effective controls against diversion and be consistent with the public health and safety.

“(4) If a person dies while lawfully in possession of a controlled substance for personal use, any person lawfully entitled to dispose of the decedent’s property may deliver the controlled substance to another person for the purpose of disposal under the same conditions as provided in paragraph (1) for an ultimate user.”.

(b) CONFORMING AMENDMENT.—Section 308(b) of the Controlled Substances Act (21 U.S.C. 828(b)) is amended—

(1) by striking the period at the end of paragraph (2) and inserting “; or”; and

(2) by adding at the end the following:

“(3) the delivery of such a substance for the purpose of disposal by an ultimate user, long-term care facility, or other person acting in accordance with section 302(g).”.

28 USC 994.

SEC. 4. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure that the guidelines and policy statements provide an appropriate penalty increase of up to 2 offense levels above the sentence otherwise applicable in Part D of the Guidelines Manual if a person is convicted of a drug offense resulting from the authorization of that person to receive scheduled substances from an ultimate user or long-term care facility as set forth in the amendments made by section 3.

Approved October 12, 2010.

LEGISLATIVE HISTORY—S. 3397:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 3, considered and passed Senate.

Sept. 29, considered and passed House, amended. Senate concurred in House amendment.



Public Law 111–274
111th Congress

An Act

To enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes.

Oct. 13, 2010
[H.R. 946]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Plain Writing Act
of 2010.
5 USC 301 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Plain Writing Act of 2010”.

SEC. 2. PURPOSE.

5 USC 301 note.

The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.

SEC. 3. DEFINITIONS.

In this Act:

(1) **AGENCY.**—The term “agency” means an Executive agency, as defined under section 105 of title 5, United States Code.

(2) **COVERED DOCUMENT.**—The term “covered document”—
(A) means any document that—
(i) is necessary for obtaining any Federal Government benefit or service or filing taxes;
(ii) provides information about any Federal Government benefit or service; or
(iii) explains to the public how to comply with a requirement the Federal Government administers or enforces;
(B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and
(C) does not include a regulation.

(3) **PLAIN WRITING.**—The term “plain writing” means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.

SEC. 4. RESPONSIBILITIES OF FEDERAL AGENCIES.

5 USC 301 note.

(a) **PREPARATION FOR IMPLEMENTATION OF PLAIN WRITING REQUIREMENTS.**—

(1) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the head of each agency shall—

Deadline.

(A) designate 1 or more senior officials within the agency to oversee the agency implementation of this Act;

Designation.

	(B) communicate the requirements of this Act to the employees of the agency;
	(C) train employees of the agency in plain writing;
	(D) establish a process for overseeing the ongoing compliance of the agency with the requirements of this Act;
Web site.	(E) create and maintain a plain writing section of the agency's website as required under paragraph (2) that is accessible from the homepage of the agency's website; and
Designation.	(F) designate 1 or more agency points-of-contact to receive and respond to public input on— (i) agency implementation of this Act; and (ii) the agency reports required under section 5.
	(2) WEBSITE.—The plain writing section described under paragraph (1)(E) shall— (A) inform the public of agency compliance with the requirements of this Act; and (B) provide a mechanism for the agency to receive and respond to public input on— (i) agency implementation of this Act; and (ii) the agency reports required under section 5.
Public comment.	(b) REQUIREMENT TO USE PLAIN WRITING IN NEW DOCUMENTS.—Beginning not later than 1 year after the date of enactment of this Act, each agency shall use plain writing in every covered document of the agency that the agency issues or substantially revises.
Effective date.	(c) GUIDANCE.— (1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director of the Office of Management and Budget shall develop and issue guidance on implementing the requirements of this section. The Director may designate a lead agency, and may use interagency working groups to assist in developing and issuing the guidance. (2) INTERIM GUIDANCE.—Before the issuance of guidance under paragraph (1), agencies may follow the guidance of— (A) the writing guidelines developed by the Plain Language Action and Information Network; or (B) guidance provided by the head of the agency that is consistent with the guidelines referred to in subparagraph (A).
Deadline.	
Publication. Web posting. 5 USC 301 note.	SEC. 5. REPORTS TO CONGRESS. (a) INITIAL REPORT.—Not later than 9 months after the date of enactment of this Act, the head of each agency shall publish on the plain writing section of the agency's website a report that describes the agency plan for compliance with the requirements of this Act. (b) ANNUAL COMPLIANCE REPORT.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the head of each agency shall publish on the plain writing section of the agency's website a report on agency compliance with the requirements of this Act.
5 USC 301 note.	SEC. 6. JUDICIAL REVIEW AND ENFORCEABILITY. (a) JUDICIAL REVIEW.—There shall be no judicial review of compliance or noncompliance with any provision of this Act.

(b) **ENFORCEABILITY.**—No provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any administrative or judicial action.

SEC. 7. BUDGETARY EFFECTS OF PAYGO LEGISLATION FOR THIS ACT. 5 USC 301 note.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 946:

HOUSE REPORTS: No. 111-432 (Comm. on Oversight and Government Reform).
CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 17, considered and passed House.
Sept. 27, considered and passed Senate, amended.
Sept. 29, House concurred in Senate amendments.



Public Law 111–275
111th Congress

An Act

Oct. 13, 2010
[H.R. 3219]

Veterans’
Benefits Act of
2010.
38 USC 101 note.

To amend title 38, United States Code, and the Servicemembers Civil Relief Act to make certain improvements in the laws administered by the Secretary of Veterans Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Veterans’ Benefits Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

TITLE I—EMPLOYMENT, SMALL BUSINESS, AND EDUCATION MATTERS

Sec. 101. Extension and expansion of authority for certain qualifying work-study activities for purposes of the educational assistance programs of the Department of Veterans Affairs.

Sec. 102. Reauthorization of Veterans’ Advisory Committee on Education.

Sec. 103. 18-month period for training of new disabled veterans’ outreach program specialists and local veterans’ employment representatives by National Veterans’ Employment and Training Services Institute.

Sec. 104. Clarification of responsibility of Secretary of Veterans Affairs to verify small business ownership.

Sec. 105. Demonstration project for referral of USERRA claims against Federal agencies to the Office of Special Counsel.

Sec. 106. Veterans Energy-Related Employment Program.

Sec. 107. Pat Tillman Veterans’ Scholarship Initiative.

TITLE II—HOUSING AND HOMELESSNESS MATTERS

Sec. 201. Reauthorization of appropriations for Homeless Veterans Reintegration Program.

Sec. 202. Homeless women veterans and homeless veterans with children reintegration grant program.

Sec. 203. Specially Adapted Housing assistive technology grant program.

Sec. 204. Waiver of housing loan fee for certain veterans with service-connected disabilities called to active service.

TITLE III—SERVICEMEMBERS CIVIL RELIEF ACT MATTERS

Sec. 301. Residential and motor vehicle leases.

Sec. 302. Termination of telephone service contracts.

Sec. 303. Enforcement by the Attorney General and by private right of action.

TITLE IV—INSURANCE MATTERS

Sec. 401. Increase in amount of supplemental insurance for totally disabled veterans.

Sec. 402. Permanent extension of duration of Servicemembers’ Group Life Insurance coverage for totally disabled veterans.

Sec. 403. Adjustment of coverage of dependents under Servicemembers’ Group Life Insurance.

Sec. 404. Opportunity to increase amount of Veterans’ Group Life Insurance.

- Sec. 405. Elimination of reduction in amount of accelerated death benefit for terminally-ill persons insured under Servicemembers' Group Life Insurance and Veterans' Group Life Insurance.
- Sec. 406. Consideration of loss of dominant hand in prescription of schedule of severity of traumatic injury under Servicemembers' Group Life Insurance.
- Sec. 407. Enhancement of veterans' mortgage life insurance.
- Sec. 408. Expansion of individuals qualifying for retroactive benefits from traumatic injury protection coverage under Servicemembers' Group Life Insurance.

TITLE V—BURIAL AND CEMETERY MATTERS

- Sec. 501. Increase in certain burial and funeral benefits and plot allowances for veterans.
- Sec. 502. Interment in national cemeteries of parents of certain deceased veterans.
- Sec. 503. Reports on selection of new national cemeteries.

TITLE VI—COMPENSATION AND PENSION

- Sec. 601. Enhancement of disability compensation for certain disabled veterans with difficulties using prostheses and disabled veterans in need of regular aid and attendance for residuals of traumatic brain injury.
- Sec. 602. Cost-of-living increase for temporary dependency and indemnity compensation payable for surviving spouses with dependent children under the age of 18.
- Sec. 603. Payment of dependency and indemnity compensation to survivors of former prisoners of war who died on or before September 30, 1999.
- Sec. 604. Exclusion of certain amounts from consideration as income for purposes of veterans pension benefits.
- Sec. 605. Commencement of period of payment of original awards of compensation for veterans retired or separated from the uniformed services for catastrophic disability.
- Sec. 606. Applicability of limitation to pension payable to certain children of veterans of a period of war.
- Sec. 607. Extension of reduced pension for certain veterans covered by Medicaid plans for services furnished by nursing facilities.
- Sec. 608. Codification of 2009 cost-of-living adjustment in rates of pension for disabled veterans and surviving spouses and children.

TITLE VII—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

- Sec. 701. Clarification that USERRA prohibits wage discrimination against members of the Armed Forces.
- Sec. 702. Clarification of the definition of “successor in interest”.
- Sec. 703. Technical amendments.

TITLE VIII—BENEFITS MATTERS

- Sec. 801. Increase in number of veterans for which programs of independent living services and assistance may be initiated.
- Sec. 802. Payment of unpaid balances of Department of Veterans Affairs guaranteed loans.
- Sec. 803. Eligibility of disabled veterans and members of the Armed Forces with severe burn injuries for automobiles and adaptive equipment.
- Sec. 804. Enhancement of automobile assistance allowance for veterans.
- Sec. 805. National Academies review of best treatments for chronic multisymptom illness in Persian Gulf War veterans.
- Sec. 806. Extension and modification of National Academy of Sciences reviews and evaluations on illness and service in Persian Gulf War and Post-9/11 Global Operations Theaters.
- Sec. 807. Extension of authority for regional office in Republic of the Philippines.
- Sec. 808. Extension of an annual report on equitable relief.
- Sec. 809. Authority for the performance of medical disability examinations by contract physicians.

TITLE IX—AUTHORIZATION OF MEDICAL FACILITY PROJECTS AND MAJOR MEDICAL FACILITY LEASES

- Sec. 901. Authorization of fiscal year 2011 major medical facility leases.
- Sec. 902. Modification of authorization amount for major medical facility construction project previously authorized for the Department of Veterans Affairs Medical Center, New Orleans, Louisiana.
- Sec. 903. Modification of authorization amount for major medical facility construction project previously authorized for the Department of Veterans Affairs Medical Center, Long Beach, California.

Sec. 904. Authorization of appropriations.

Sec. 905. Requirement that bid savings on major medical facility projects of Department of Veterans Affairs be used for other major medical facility construction projects of the Department.

TITLE X—OTHER MATTERS

Sec. 1001. Technical corrections.

Sec. 1002. Statutory Pay-As-You-Go Act compliance.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—EMPLOYMENT, SMALL BUSINESS, AND EDUCATION MATTERS

SEC. 101. EXTENSION AND EXPANSION OF AUTHORITY FOR CERTAIN QUALIFYING WORK-STUDY ACTIVITIES FOR PURPOSES OF THE EDUCATIONAL ASSISTANCE PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS.

38 USC 3485.

(a) EXTENSION.—Paragraph (4) of section 3485(a) is amended by striking “June 30, 2010” each place it appears and inserting “June 30, 2013”.

(b) ACTIVITIES IN STATE VETERANS AGENCIES.—Such paragraph is further amended by adding at the end the following new subparagraphs:

“(G) Any activity of a State veterans agency related to providing assistance to veterans in obtaining any benefit under the laws administered by the Secretary or the laws of the State.

“(H) A position working in a Center of Excellence for Veteran Student Success, as established pursuant to part T of title VIII of the Higher Education Act of 1965 (20 U.S.C. 1161t et seq.).

“(I) A position working in a cooperative program carried out jointly by the Department and an institution of higher learning.

“(J) Any other veterans-related position in an institution of higher learning.”.

38 USC 3485
note.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on October 1, 2011.

SEC. 102. REAUTHORIZATION OF VETERANS’ ADVISORY COMMITTEE ON EDUCATION.

Section 3692(c) is amended by striking “December 31, 2009” and inserting “December 31, 2013”.

SEC. 103. 18-MONTH PERIOD FOR TRAINING OF NEW DISABLED VETERANS’ OUTREACH PROGRAM SPECIALISTS AND LOCAL VETERANS’ EMPLOYMENT REPRESENTATIVES BY NATIONAL VETERANS’ EMPLOYMENT AND TRAINING SERVICES INSTITUTE.

(a) 18-MONTH PERIOD.—Section 4102A(c)(8)(A) is amended by striking “three-year period” and inserting “18-month period”.

38 USC 4102A
note.

(b) EFFECTIVE DATE.—

(1) **APPLICABILITY TO NEW EMPLOYEES.**—The amendment made by subsection (a) shall apply with respect to a State employee assigned to perform the duties of a disabled veterans’ outreach program specialist or a local veterans’ employment representative under chapter 41 of title 38, United States Code, who is so assigned on or after the date of the enactment of this Act.

(2) **APPLICABILITY TO PREVIOUSLY-HIRED EMPLOYEES.**—In the case of such a State employee who is so assigned on or after January 1, 2006, and before the date of the enactment of this Act, the Secretary of Labor shall require the State to require, as a condition of a grant or contract under which funds are made available to the State in order to carry out section 4103A or 4104 of title 38, United States Code, each such employee to satisfactorily complete the training described in section 4102A(c)(8)(A) of such title by not later than the date that is 18 months after the date of the enactment of this Act.

Deadline.

SEC. 104. CLARIFICATION OF RESPONSIBILITY OF SECRETARY OF VETERANS AFFAIRS TO VERIFY SMALL BUSINESS OWNERSHIP.

Veterans Small
Business
Verification Act.
38 USC 101 note.

(a) **SHORT TITLE.**—This section may be cited as the “Veterans Small Business Verification Act”.

(b) **CLARIFICATION OF RESPONSIBILITY OF SECRETARY OF VETERANS AFFAIRS TO VERIFY SMALL BUSINESS OWNERSHIP.**—

(1) **CLARIFICATION.**—Section 8127(f) is amended—

38 USC 8127.

(A) in paragraph (2)—

(i) by inserting “(A)” before “To be eligible”;

(ii) by inserting after “or the veteran.” the following new sentence: “Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.”; and

(iii) by inserting after the sentence added by clause

(ii) the following new subparagraph:

“(B) If the Secretary receives an application for inclusion in the database from an individual whose status as a veteran cannot be verified because the Secretary does not maintain information with respect to the veteran status of the individual, the Secretary may not include the small business concern owned and controlled by the individual in the database maintained by the Secretary until the Secretary receives such information as may be necessary to verify that the individual is a veteran.”; and

(B) by striking paragraph (4) and inserting the following new paragraph (4):

“(4) No small business concern may be listed in the database until the Secretary has verified that—

“(A) the small business concern is owned and controlled by veterans; and

“(B) in the case of a small business concern for which the person who owns and controls the concern indicates that the person is a veteran with a service-connected disability, that the person is a veteran with a service-connected disability.”.

Deadline.
Notification.

(2) **APPLICABILITY.**—In the case of a small business concern included in the database as of the date of the enactment of this Act for which, as of such date, the Secretary of Veterans Affairs has not verified the status of such concern in accordance with paragraph (4) of subsection (f) of section 8127 of title 38, United States Code, as amended by paragraph (1), not later than 60 days after the date of the enactment of this Act, the Secretary shall notify the person who owns and controls the concern that—

(A) the Secretary is required to verify the status of the concern in accordance with such paragraph, as so amended;

(B) verification of such status shall require that the person who owns and controls the concern apply for inclusion in the database in accordance with such subsection, as so amended;

(C) application for inclusion in the database shall constitute permission under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application; and

Deadline.

(D) the person who owns and controls the concern must submit to the Secretary all information required by the Secretary under this paragraph within 90 days of receiving the Secretary's notice of such requirement or the concern shall be removed from the database.

38 USC 4301
note.

SEC. 105. DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL.

Deadline.

(a) **ESTABLISHMENT OF PROJECT.**—The Secretary of Labor and the Office of Special Counsel shall carry out a 36-month demonstration project under which certain claims against Federal executive agencies under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim. The demonstration program shall begin not later than 60 days after the Comptroller General of the United States submits the report required under subsection (e)(3).

(b) **REFERRAL OF ALL PROHIBITED PERSONNEL PRACTICE CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.**—

(1) **IN GENERAL.**—Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under chapter 43 of title 38, United States Code, with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

(2) **RELATED CLAIMS.**—For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under chapter 43 of title 38, United States Code.

(c) **REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.**—

(1) IN GENERAL.—Under the demonstration project, the Secretary—

(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

(2) CLAIMS DESCRIBED.—A claim described in this paragraph is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

(2) TREATMENT OF CERTAIN TERMS IN CHAPTER 43 OF TITLE 38, UNITED STATES CODE.—In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, any reference to the “Secretary” in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed to be a reference to the “Office of Special Counsel”.

(3) ADMINISTRATIVE JURISDICTION.—In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

(e) DATA COMPARABILITY FOR REVIEWING AGENCY PERFORMANCE.—

(1) IN GENERAL.—To facilitate the review of the relative performance of the Office of Special Counsel and the Department of Labor during the demonstration project, the Office of Special Counsel and the Department of Labor shall jointly establish methods and procedures to be used by both the Office and the Department during the demonstration project. Such methods and procedures shall include each of the following:

(A) Definitions of performance measures, including—

(i) customer satisfaction;

(ii) cost (such as, but not limited to, average cost per claim);

(iii) timeliness (such as, but not limited to, average processing time, case age);

(iv) capacity (such as, but not limited to, staffing levels, education, grade level, training received, case-load); and

(v) case outcomes.

(B) Definitions of case outcomes.

(C) Data collection methods and timing of collection.

(D) Data quality assurance processes.

(2) JOINT REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Special Counsel

Procedures.

and the Secretary of Labor shall jointly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives and to the Comptroller General of the United States a report describing the methods and procedures established under paragraph (1).

(3) **COMPTROLLER GENERAL REPORT.**—Not later than 30 days after the date of the submittal of the report under paragraph (2), the Comptroller General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the report submitted under paragraph (2) and may provide recommendations for improving the methods and procedures described therein.

(f) **AGENCY DATA TO GOVERNMENT ACCOUNTABILITY OFFICE.**—The Office of Special Counsel and the Secretary of Labor shall submit to the Comptroller General such information and data about the demonstration project as may be required by the Comptroller General, from time to time during the course of the demonstration project and at the conclusion, in order for the Comptroller General to assess the reliability of the demonstration data maintained by both the Office of Special Counsel and the Department of Labor and to review the relative performance of the Office and Department under the demonstration project.

(g) **GOVERNMENT ACCOUNTABILITY OFFICE REPORT.**—The Comptroller General shall review the relative performance of the Office of Special Counsel and the Department of Labor under the demonstration project and—

(1) not later than one year after the commencement of the demonstration project, and annually thereafter during the period when the demonstration project is conducted, submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an interim report on the demonstration project; and

(2) not later than 90 days after the conclusion of the demonstration project, submit to such committees a final report that includes the findings and conclusions of the Comptroller General regarding the relative performance of the Office and the Department under the demonstration project and such recommendations as the Comptroller General determines are appropriate.

29 USC 2913
note.

Grants.
States.

SEC. 106. VETERANS ENERGY-RELATED EMPLOYMENT PROGRAM.

(a) **ESTABLISHMENT OF PILOT PROGRAM.**—To encourage the employment of eligible veterans in the energy industry, the Secretary of Labor, as part of the Veterans Workforce Investment Program, shall carry out a pilot program to be known as the “Veterans Energy-Related Employment Program”. Under the pilot program, the Secretary shall award competitive grants to not more than three States for the establishment and administration of a State program to make grants to energy employers that provide covered training, on-job training, apprenticeships, and certification classes to eligible veterans. Such a program shall be known as a “State Energy-Related Employment Program”.

(b) **ELIGIBILITY FOR GRANTS.**—To be eligible to receive a grant under the pilot program, a State shall submit to the Secretary an application that includes each of the following:

(1) A proposal for the expenditure of grant funds to establish and administer a public-private partnership program

designed to provide covered training, on-job training, apprenticeships, and certification classes to a significant number of eligible veterans and ensure lasting and sustainable employment in well-paying jobs in the energy industry.

(2) Evidence that the State has—

(A) a population of eligible veterans of an appropriate size to carry out the State program;

(B) a robust and diverse energy industry; and

(C) the ability to carry out the State program described in the proposal under paragraph (1).

(3) Such other information and assurances as the Secretary may require.

(c) **USE OF FUNDS.**—A State that is the recipient of a grant under this section shall use the grant for the following purposes:

(1) Making grants to energy employers to reimburse such employers for the cost of providing covered training, on-job training, apprenticeships, and certification classes to eligible veterans who are first hired by the employer on or after November 1, 2010.

(2) Conducting outreach to inform energy employers and veterans, including veterans in rural areas, of their eligibility or potential eligibility for participation in the State program.

(d) **CONDITIONS.**—Under the pilot program, each grant to a State shall be subject to the following conditions:

(1) The State shall repay to the Secretary, on such date as shall be determined by the Secretary, any amount received under the pilot program that is not used for the purposes described in subsection (c). Payments.

(2) The State shall submit to the Secretary, at such times and containing such information as the Secretary shall require, reports on the use of grant funds. Reports.

(e) **EMPLOYER REQUIREMENTS.**—In order to receive a grant made by a State under the pilot program, an energy employer shall—

(1) submit to the administrator of the State Energy-Related Employment Program an application that includes—

(A) the rate of pay, during and after training, for each eligible veteran proposed to be trained using grant funds;

(B) the average rate of pay for an individual employed by the energy employer in a similar position who is not an eligible veteran; and

(C) such other information and assurances as the administrator may require; and

(2) agree to submit to the administrator, for each quarter, a report containing such information as the Secretary may specify. Reports.
Deadlines.

(f) **LIMITATION.**—None of the funds made available to an energy employer through a grant under the pilot program may be used to provide training of any kind to—

(1) a person who is not an eligible veteran; or

(2) an eligible veteran for whom the employer has received a grant, credit, or subsidy under any other provision of law.

(g) **REPORT TO CONGRESS.**—Together with the report required to be submitted annually under section 4107(c) of title 38, United States Code, the Secretary shall submit to Congress a report on the pilot program for the year covered by such report. The report

on the pilot program shall include a detailed description of activities carried out under this section and an evaluation of the program.

Determination.

(h) ADMINISTRATIVE AND REPORTING COSTS.—Of the amounts appropriated pursuant to the authorization of appropriations under subsection (j), two percent shall be made available to the Secretary for administrative costs associated with implementing and evaluating the pilot program under this section and for preparing and submitting the report required under subsection (f). The Secretary shall determine the appropriate maximum amount of each grant awarded under this section that may be used by the recipient for administrative and reporting costs.

(i) DEFINITIONS.—For purposes of this section:

(1) The term “covered training, on-job training, apprenticeships, and certification classes” means training, on-job training, apprenticeships, and certification classes that are—

(A) designed to provide the veteran with skills that are particular to an energy industry and not directly transferable to employment in another industry; and

(B) approved as provided in paragraph (1) or (2), as appropriate, of subsection (a) of section 3687 of title 38, United States Code.

(2) The term “eligible veteran” means a veteran, as that term is defined in section 101(2) of title 38, United States Code, who is employed by an energy employer and enrolled or participating in a covered training, on-job training, apprenticeship, or certification class.

(3) The term “energy employer” means an entity that employs individuals in a trade or business in an energy industry.

(4) The term “energy industry” means any of the following industries:

(A) The energy-efficient building, construction, or retrofits industry.

(B) The renewable electric power industry, including the wind and solar energy industries.

(C) The biofuels industry.

(D) The energy efficiency assessment industry that serves the residential, commercial, or industrial sectors.

(E) The oil and natural gas industry.

(F) The nuclear industry.

(j) APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2012 through 2014, for the purpose of carrying out the pilot program under this section.

38 USC 3317
note.
Deadline.
Web postings.
Lists.

SEC. 107. PAT TILLMAN VETERANS' SCHOLARSHIP INITIATIVE.

(a) AVAILABILITY OF SCHOLARSHIP INFORMATION.—By not later than June 1, 2011, the Secretary of Veterans Affairs shall include on the Internet website of the Department of Veterans Affairs a list of organizations that provide scholarships to veterans and their survivors and, for each such organization, a link to the Internet website of the organization.

Notification.

(b) MAINTENANCE OF SCHOLARSHIP INFORMATION.—The Secretary of Veterans Affairs shall make reasonable efforts to notify schools and other appropriate entities of the opportunity to be included on the Internet website of the Department of Veterans Affairs pursuant to subsection (a).

TITLE II—HOUSING AND HOMELESSNESS MATTERS

SEC. 201. REAUTHORIZATION OF APPROPRIATIONS FOR HOMELESS VETERANS REINTEGRATION PROGRAM.

Section 2021(e)(1)(F) is amended by striking “2009” and inserting “2011”. 38 USC 2021.

SEC. 202. HOMELESS WOMEN VETERANS AND HOMELESS VETERANS WITH CHILDREN REINTEGRATION GRANT PROGRAM.

(a) GRANT PROGRAM.—Chapter 20 is amended by inserting after section 2021 the following new section:

“§ 2021A. Homeless women veterans and homeless veterans with children reintegration grant program

“(a) GRANTS.—Subject to the availability of appropriations provided for such purpose, the Secretary of Labor shall make grants to programs and facilities that the Secretary determines provide dedicated services for homeless women veterans and homeless veterans with children.

“(b) USE OF FUNDS.—Grants under this section shall be used to provide job training, counseling, placement services (including job readiness and literacy and skills training) and child care services to expedite the reintegration of homeless women veterans and homeless veterans with children into the labor force.

“(c) REQUIREMENT TO MONITOR EXPENDITURES OF FUNDS.—(1) The Secretary of Labor shall collect such information as that Secretary considers appropriate to monitor and evaluate the distribution and expenditure of funds appropriated to carry out this section. The information shall include data with respect to the results or outcomes of the services provided to each homeless veteran under this section.

“(2) Information under paragraph (1) shall be furnished in such form and manner as the Secretary of Labor may specify.

“(d) ADMINISTRATION THROUGH THE ASSISTANT SECRETARY OF LABOR FOR VETERANS’ EMPLOYMENT AND TRAINING.—The Secretary of Labor shall carry out this section through the Assistant Secretary of Labor for Veterans’ Employment and Training.

“(e) BIENNIAL REPORT TO CONGRESS.—The Secretary of Labor shall include as part of the report required under section 2021(d) of this title an evaluation of the grant program under this section, which shall include an evaluation of services furnished to veterans under this section and an analysis of the information collected under subsection (c).

“(f) AUTHORIZATION OF APPROPRIATIONS.—(1) In addition to any amount authorized to be appropriated to carry out section 2021 of this title, there is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2011 through 2015.

“(2) Funds appropriated to carry out this section shall remain available until expended. Funds obligated in any fiscal year to carry out this section may be expended in that fiscal year and the succeeding fiscal year.”.

38 USC 2001.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2021 the following new item:

“2021A. Homeless women veterans and homeless veterans with children reintegration grant program.”.

SEC. 203. SPECIALLY ADAPTED HOUSING ASSISTIVE TECHNOLOGY GRANT PROGRAM.

(a) IN GENERAL.—Chapter 21 is amended by adding at the end the following new section:

“§ 2108. Specially adapted housing assistive technology grant program

“(a) AUTHORITY TO MAKE GRANTS.—The Secretary shall make grants to encourage the development of new assistive technologies for specially adapted housing.

“(b) APPLICATION.—A person or entity seeking a grant under this section shall submit to the Secretary an application for the grant in such form and manner as the Secretary shall specify.

“(c) GRANT FUNDS.—(1) Each grant awarded under this section shall be in an amount of not more than \$200,000 per fiscal year.

Deadline.

“(2) For each fiscal year in which the Secretary makes a grant under this section, the Secretary shall make the grant by not later than April 1 of that year.

“(d) USE OF FUNDS.—The recipient of a grant under this section shall use the grant to develop assistive technologies for use in specially adapted housing.

“(e) REPORT.—Not later than March 1 of each fiscal year following a fiscal year in which the Secretary makes a grant, the Secretary shall submit to Congress a report containing information related to each grant awarded under this section during the preceding fiscal year, including—

“(1) the name of the grant recipient;

“(2) the amount of the grant; and

“(3) the goal of the grant.

“(f) FUNDING.—From amounts appropriated to the Department for readjustment benefits for each fiscal year for which the Secretary is authorized to make a grant under this section, \$1,000,000 shall be available for that fiscal year for the purposes of the program under this section.

“(g) DURATION.—The authority to make a grant under this section shall begin on October 1, 2011, and shall terminate on September 30, 2016.”.

38 USC 2101.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2108. Specially adapted housing assistive technology grant program.”.

SEC. 204. WAIVER OF HOUSING LOAN FEE FOR CERTAIN VETERANS WITH SERVICE-CONNECTED DISABILITIES CALLED TO ACTIVE SERVICE.

38 USC 3729.

Section 3729(c)(1) is amended by inserting after “retirement pay” the following: “or active service pay”.

TITLE III—SERVICEMEMBERS CIVIL RELIEF ACT MATTERS

SEC. 301. RESIDENTIAL AND MOTOR VEHICLE LEASES.

Subsection (e) of section 305 of the Servicemembers Civil Relief Act (50 U.S.C. App. 535) is amended to read as follows:

“(e) ARREARAGES AND OTHER OBLIGATIONS AND LIABILITIES.—

“(1) LEASES OF PREMISES.—Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

“(2) LEASES OF MOTOR VEHICLES.—Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.”.

SEC. 302. TERMINATION OF TELEPHONE SERVICE CONTRACTS.

(a) IN GENERAL.—Section 305A of the Servicemembers Civil Relief Act (50 U.S.C. App. 535a) is amended to read as follows:

“SEC. 305A. TERMINATION OF TELEPHONE SERVICE CONTRACTS.

“(a) TERMINATION BY SERVICEMEMBER.—

“(1) TERMINATION.—A servicemember may terminate a contract described in subsection (b) at any time after the date the servicemember receives military orders to relocate for a period of not less than 90 days to a location that does not support the contract.

“(2) NOTICE.—In the case that a servicemember terminates a contract as described in paragraph (1), the service provider under the contract shall provide such servicemember with written or electronic notice of the servicemember’s rights under such paragraph.

“(3) MANNER OF TERMINATION.—Termination of a contract under paragraph (1) shall be made by delivery of a written or electronic notice of such termination and a copy of the servicemember’s military orders to the service provider, delivered in accordance with industry standards for notification of terminations, together with the date on which the service is to be terminated.

Notice.

“(b) COVERED CONTRACTS.—A contract described in this subsection is a contract for cellular telephone service or telephone exchange service entered into by the servicemember before receiving the military orders referred to in subsection (a)(1).

“(c) RETENTION OF TELEPHONE NUMBER.—In the case of a contract terminated under subsection (a) by a servicemember whose

period of relocation is for a period of three years or less, the service provider under the contract shall, notwithstanding any other provision of law, allow the servicemember to keep the telephone number the servicemember has under the contract if the servicemember re-subscribes to the service during the 90-day period beginning on the last day of such period of relocation.

“(d) FAMILY PLANS.—In the case of a contract for cellular telephone service entered into by any individual in which a servicemember is a designated beneficiary of the contract, the individual who entered into the contract may terminate the contract—

“(1) with respect to the servicemember if the servicemember is eligible to terminate contracts pursuant to subsection (a); and

“(2) with respect to all of the designated beneficiaries of such contract if all such beneficiaries accompany the servicemember during the servicemember’s period of relocation.

“(e) OTHER OBLIGATIONS AND LIABILITIES.—For any contract terminated under this section, the service provider under the contract may not impose an early termination charge, but any tax or any other obligation or liability of the servicemember that, in accordance with the terms of the contract, is due and unpaid or unperformed at the time of termination of the contract shall be paid or performed by the servicemember. If the servicemember re-subscribes to the service provided under a covered contract during the 90-day period beginning on the last day of the servicemember’s period of relocation, the service provider may not impose a charge for reinstating service, other than the usual and customary charges for the installation or acquisition of customer equipment imposed on any other subscriber.

Deadline.

“(f) RETURN OF ADVANCE PAYMENTS.—Not later than 60 days after the effective date of the termination of a contract under this section, the service provider under the contract shall refund to the servicemember any fee or other amount to the extent paid for a period extending until after such date, except for the remainder of the monthly or similar billing period in which the termination occurs.

“(g) DEFINITIONS.—For purposes of this section:

“(1) The term ‘cellular telephone service’ means commercial mobile service, as that term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

“(2) The term ‘telephone exchange service’ has the meaning given that term under section 3 of the Communications Act of 1934 (47 U.S.C. 153).”.

50 USC app. 531.

(b) TECHNICAL AMENDMENT.—The heading for title III of such Act is amended by inserting “, **TELEPHONE SERVICE CONTRACTS**” after “**LEASES**”.

(c) CLERICAL AMENDMENTS.—The table of contents in section 1(b) of such Act is amended—

(1) by striking the item relating to title III and inserting the following new item:

“TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES, TELEPHONE SERVICE CONTRACTS”; AND

(2) by striking the item relating to section 305A and inserting the following new item:

“Sec. 305A. Termination of telephone service contracts.”.

SEC. 303. ENFORCEMENT BY THE ATTORNEY GENERAL AND BY PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—The Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.) is amended by adding at the end the following new title:

“TITLE VIII—CIVIL LIABILITY**“SEC. 801. ENFORCEMENT BY THE ATTORNEY GENERAL.**

50 USC app. 597.

“(a) CIVIL ACTION.—The Attorney General may commence a civil action in any appropriate district court of the United States against any person who—

“(1) engages in a pattern or practice of violating this Act;

or

“(2) engages in a violation of this Act that raises an issue of significant public importance.

“(b) RELIEF.—In a civil action commenced under subsection (a), the court may—

“(1) grant any appropriate equitable or declaratory relief with respect to the violation of this Act;

“(2) award all other appropriate relief, including monetary damages, to any person aggrieved by the violation; and

“(3) may, to vindicate the public interest, assess a civil penalty—

“(A) in an amount not exceeding \$55,000 for a first violation; and

“(B) in an amount not exceeding \$110,000 for any subsequent violation.

“(c) INTERVENTION.—Upon timely application, a person aggrieved by a violation of this Act with respect to which the civil action is commenced may intervene in such action, and may obtain such appropriate relief as the person could obtain in a civil action under section 802 with respect to that violation, along with costs and a reasonable attorney fee.

“SEC. 802. PRIVATE RIGHT OF ACTION.50 USC app.
597a.

“(a) IN GENERAL.—Any person aggrieved by a violation of this Act may in a civil action—

“(1) obtain any appropriate equitable or declaratory relief with respect to the violation; and

“(2) recover all other appropriate relief, including monetary damages.

“(b) COSTS AND ATTORNEY FEES.—The court may award to a person aggrieved by a violation of this Act who prevails in an action brought under subsection (a) the costs of the action, including a reasonable attorney fee.

“SEC. 803. PRESERVATION OF REMEDIES.50 USC app.
597b.
Fines.

“Nothing in section 801 or 802 shall be construed to preclude or limit any remedy otherwise available under other law, including consequential and punitive damages.”.

(b) CONFORMING AMENDMENTS.—Such Act is further amended as follows:

(1) Section 207 (50 U.S.C. App. 527) is amended by striking subsection (f).

(2) Section 301(c) (50 U.S.C. App. 531(c)) is amended to read as follows:

“(c) MISDEMEANOR.—Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”.

(3) Section 302(b) (50 U.S.C. App. 532(b)) is amended to read as follows:

“(b) MISDEMEANOR.—A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”.

(4) Section 303(d) (50 U.S.C. App. 533(d)) is amended to read as follows:

“(d) MISDEMEANOR.—A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”.

(5) Section 305(h) (50 U.S.C. App. 535(h)) is amended to read as follows:

“(h) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember’s dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”.

(6) Section 306(e) (50 U.S.C. App. 536(e)) is amended to read as follows:

“(e) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”.

(7) Section 307(c) (50 U.S.C. App. 537(c)) is amended to read as follows:

“(c) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”.

(c) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end the following new items:

“TITLE VIII—CIVIL LIABILITY

“Sec. 801. Enforcement by the Attorney General.

“Sec. 802. Private right of action.

“Sec. 803. Preservation of remedies.”.

TITLE IV—INSURANCE MATTERS

SEC. 401. INCREASE IN AMOUNT OF SUPPLEMENTAL INSURANCE FOR TOTALLY DISABLED VETERANS.

(a) IN GENERAL.—Section 1922A(a) is amended by striking “\$20,000” and inserting “\$30,000”. 38 USC 1922.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2011.

SEC. 402. PERMANENT EXTENSION OF DURATION OF SERVICEMEMBERS’ GROUP LIFE INSURANCE COVERAGE FOR TOTALLY DISABLED VETERANS.

(a) EXTENSION.—Section 1968(a) is amended—

(1) in paragraph (1)(A), by striking clause (ii) and inserting the following new clause (ii):

“(ii) The date that is two years after the date of separation or release from such active duty or active duty for training.”; and

(2) in paragraph (4), by striking subparagraph (B) and inserting the following new subparagraph (B):

“(B) The date that is two years after the date of separation or release from such assignment.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to a person who is separated or released on or after June 15, 2005. 38 USC 1968 note.

SEC. 403. ADJUSTMENT OF COVERAGE OF DEPENDENTS UNDER SERVICEMEMBERS’ GROUP LIFE INSURANCE.

Clause (ii) of section 1968(a)(5)(B) is amended to read as follows:

“(ii)(I) in the case of a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title, 120 days after separation or release from such assignment; or

“(II) in the case of any other member of the uniformed services, 120 days after the date of the member’s separation or release from the uniformed services; or”.

SEC. 404. OPPORTUNITY TO INCREASE AMOUNT OF VETERANS’ GROUP LIFE INSURANCE.

(a) OPPORTUNITY TO INCREASE AMOUNT.—Section 1977(a) is amended—

(1) in paragraph (1), by inserting “Except as provided in paragraph (3),” before “Veterans’ Group Life Insurance shall be”; and

(2) by adding after paragraph (2) the following new paragraph:

“(3) Not more than once in each five-year period beginning on the one-year anniversary of the date a person becomes insured under Veterans’ Group Life Insurance, such person may elect in writing to increase by \$25,000 the amount for which the person is insured if—

“(A) the person is under the age of 60; and

“(B) the total amount for which the person is insured does not exceed the amount provided for under section 1967(a)(3)(A)(i) of this title.”.

38 USC 1977
note.

(b) **EFFECTIVE DATE.**—Paragraph (3) of section 1977(a) of title 38, United States Code, as added by subsection (a), shall take effect on the date that is 180 days after the date of the enactment of this Act.

SEC. 405. ELIMINATION OF REDUCTION IN AMOUNT OF ACCELERATED DEATH BENEFIT FOR TERMINALLY-ILL PERSONS INSURED UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE.

38 USC 1980.

(a) **ELIMINATION OF REDUCTION.**—Section 1980(b)(1) is amended by striking “reduced by” and all that follows through “the Secretary”.

38 USC 1980
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to a payment of an accelerated death benefit under section 1980 of title 38, United States Code, made on or after the date of the enactment of this Act.

SEC. 406. CONSIDERATION OF LOSS OF DOMINANT HAND IN PRESCRIPTION OF SCHEDULE OF SEVERITY OF TRAUMATIC INJURY UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE.

(a) **SCHEDULE.**—

(1) **IN GENERAL.**—Section 1980A(d) is amended—

(A) by striking “Payments under” and inserting “(1) Payments under”; and

(B) by adding at the end the following new paragraph:

“(2) As the Secretary considers appropriate, the schedule required by paragraph (1) may distinguish in specifying payments for qualifying losses between the severity of a qualifying loss of a dominant hand and of a qualifying loss of a nondominant hand.”.

38 USC 1980A
note.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph

(1) shall take effect on October 1, 2011.

38 USC 1980A
note.

(b) **PAYMENTS FOR QUALIFYING LOSSES INCURRED BEFORE DATE OF ENACTMENT.**—

Regulations.

(1) **IN GENERAL.**—To the extent necessary, the Secretary of Veterans Affairs shall prescribe in regulations mechanisms for payments under section 1980A of title 38, United States Code, for qualifying losses incurred before the date of the enactment of this Act, by reason of paragraph (2) of subsection (d) of such section (as added by subsection (a)(1) of this section).

(2) **QUALIFYING LOSS DEFINED.**—In this subsection, the term “qualifying loss” means—

(A) a loss specified in the second sentence of subsection (b)(1) of section 1980A of title 38, United States Code; and

(B) any other loss specified by the Secretary of Veterans Affairs pursuant to the first sentence of that subsection.

SEC. 407. ENHANCEMENT OF VETERANS' MORTGAGE LIFE INSURANCE.

(a) **IN GENERAL.**—Section 2106(b) is amended by striking “\$90,000” and inserting “\$150,000, or after January 1, 2012, \$200,000.”.

38 USC 2106
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on October 1, 2011.

SEC. 408. EXPANSION OF INDIVIDUALS QUALIFYING FOR RETROACTIVE BENEFITS FROM TRAUMATIC INJURY PROTECTION COVERAGE UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE.

(a) **IN GENERAL.**—Paragraph (1) of section 501(b) of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Public Law 109–233; 120 Stat. 414; 38 U.S.C. 1980A note) is amended by striking “, if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom”.

(b) **CONFORMING AMENDMENT.**—The heading of such section is amended by striking “IN OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2011.

38 USC 1980A
note.

TITLE V—BURIAL AND CEMETERY MATTERS

SEC. 501. INCREASE IN CERTAIN BURIAL AND FUNERAL BENEFITS AND PLOT ALLOWANCES FOR VETERANS.

(a) **INCREASE IN BURIAL AND FUNERAL EXPENSES FOR DEATHS IN DEPARTMENT FACILITIES.**—Paragraph (1)(A) of subsection (a) of section 2303 is amended by striking “\$300” and inserting “\$700 (as increased from time to time under subsection (c))”.

38 USC 2303.

(b) **INCREASE IN AMOUNT OF PLOT ALLOWANCES.**—Subsection (b) of such section is amended by striking “\$300” both places it appears and inserting “\$700 (as increased from time to time under subsection (c))”.

(c) **ANNUAL ADJUSTMENT.**—Such section is further amended by adding at the end the following new subsection:

“(c) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the maximum amount of burial and funeral expenses payable under subsection (a) and in the maximum amount of the plot or internment allowance payable under subsection (b), equal to the percentage by which—

“(1) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

“(2) the Consumer Price Index for the 12-month period preceding the 12-month period described in paragraph (1).”.

(d) **EFFECTIVE DATE.**—

38 USC 2303
note.

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to deaths occurring on or after October 1, 2011.

(2) **PROHIBITION ON COST-OF-LIVING ADJUSTMENT FOR FISCAL YEAR 2012.**—No adjustments shall be made under section 2303(c) of title 38, United States Code, as added by subsection (c), for fiscal year 2012.

Corey Shea Act.	SEC. 502. INTERMENT IN NATIONAL CEMETERIES OF PARENTS OF CERTAIN DECEASED VETERANS.
38 USC 101 note.	(a) SHORT TITLE. —This section may be cited as the “Corey Shea Act”.
38 USC 2402.	(b) INTERMENT OF PARENTS OF CERTAIN DECEASED VETERANS. —Section 2402 is amended—
	(1) in the matter preceding paragraph (1), by striking “Under such regulations” and inserting “(a) Under such regulations”;
	(2) by moving the margins of paragraphs (1) through (8) two ems to the right;
	(3) by inserting after paragraph (8) the following new paragraph:
	“(9)(A) The parent of a person described in subparagraph (B), if the Secretary determines that there is available space at the gravesite where the person described in subparagraph (B) is interred.
	“(B) A person described in this subparagraph is a person described in paragraph (1) who—
	“(i) is a hostile casualty or died from a training-related injury;
	“(ii) is interred in a national cemetery; and
	“(iii) at the time of the person’s parent’s death, did not have a spouse, surviving spouse, or child who is buried or who, upon death, may be eligible for burial in a national cemetery pursuant to paragraph (5).”; and
	(4) by adding at the end the following new subsection:
Definitions.	“(b) For purposes of subsection (a)(9) of this section:
	“(1) The term ‘parent’ means a biological father or a biological mother or, in the case of adoption, a father through adoption or a mother through adoption.
	“(2) The term ‘hostile casualty’ means a person who, as a member of the Armed Forces, dies as the direct result of hostile action with the enemy, while in combat, while going to or returning from a combat mission if the cause of death was directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat, and includes a person killed mistakenly or accidentally by friendly fire directed at a hostile force or what is thought to be a hostile force, but does not include a person who dies due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the person was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.
	“(3) The term ‘training-related injury’ means an injury incurred by a member of the Armed Forces while performing authorized training activities in preparation for a combat mission.”.
38 USC 2402 note.	(c) GUIDANCE REQUIRED. —The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall develop guidance under which the parent of a person described in paragraph (9)(B) of subsection (a) of section 2402 of title 38, United States Code, as added by subsection (b), may be designated for interment in a national cemetery under that section.
	(d) CONFORMING AMENDMENTS. —

(1) CROSS-REFERENCE CORRECTION.—Section 107 is amended by striking “section 2402(8)” both places it appears and inserting “section 2402(a)(8)”.

(2) CROSS-REFERENCE CORRECTION.—Section 2301(e) is amended by striking “section 2402(6)” and inserting “section 2402(a)(6)”.

(3) CROSS-REFERENCE CORRECTION.—Section 2306(a) is amended—

(A) in paragraph (2), by striking “section 2402(4)” and inserting “section 2402(a)(4)”; and

(B) in paragraph (4), by striking “section 2402(5)” and inserting “section 2402(a)(5)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the death, on or after the date of the enactment of this Act, of the parent of a person described in paragraph (9)(B) of subsection (a) of section 2402 of title 38, United States Code, as added by subsection (b), who dies on or after October 7, 2001.

38 USC 107 note.

SEC. 503. REPORTS ON SELECTION OF NEW NATIONAL CEMETERIES.

38 USC 2400 note.

(a) INITIAL REPORT.—

(1) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report on the selection of the sites described in paragraph (2) for the purpose of establishing new national cemeteries.

(2) SITES.—The sites described in this paragraph are the following:

(A) An area in southern Colorado.

(B) An area near Melbourne, Florida, and Daytona, Florida.

(C) An area near Omaha, Nebraska.

(D) An area near Buffalo, New York, and Rochester, New York.

(E) An area near Tallahassee, Florida.

(3) SITE SELECTION.—In carrying out this section, the Secretary shall solicit advice and views of representatives of State and local veterans organizations and other individuals as the Secretary considers appropriate.

(4) MATTERS INCLUDED.—The report under paragraph (1) shall include the following:

(A) A schedule for the establishment of each cemetery at each site described in paragraph (2) and an estimate of the costs associated with the establishment of each such cemetery.

(B) As of the date of the submittal of the report, the amount of funds that are available to establish each cemetery at each site described in paragraph (2) from amounts appropriated to the Department of Veterans Affairs for Advance Planning.

(b) ANNUAL REPORTS.—Not later than two years after the date of the enactment of this Act, and each year thereafter until the date on which each cemetery at each site described in subsection (a)(2) is established, the Secretary shall submit to Congress an annual report that includes updates to the information provided in the report under subsection (a).

TITLE VI—COMPENSATION AND PENSION

SEC. 601. ENHANCEMENT OF DISABILITY COMPENSATION FOR CERTAIN DISABLED VETERANS WITH DIFFICULTIES USING PROSTHESES AND DISABLED VETERANS IN NEED OF REGULAR AID AND ATTENDANCE FOR RESIDUALS OF TRAUMATIC BRAIN INJURY.

38 USC 1114. (a) VETERANS SUFFERING ANATOMICAL LOSS OF HANDS, ARMS, OR LEGS.—Section 1114 is amended—

(1) in subsection (m)—

(A) by striking “at a level, or with complications,” and inserting “with factors”; and

(B) by striking “at levels, or with complications,” and inserting “with factors”;

(2) in subsection (n)—

(A) by striking “at levels, or with complications,” and inserting “with factors”;

(B) by striking “so near the hip as to” and inserting “with factors that”; and

(C) by striking “so near the shoulder and hip as to” and inserting “with factors that”; and

(3) in subsection (o), by striking “so near the shoulder as to” and inserting “with factors that”.

(b) VETERANS WITH SERVICE-CONNECTED DISABILITIES IN NEED OF REGULAR AID AND ATTENDANCE FOR RESIDUALS OF TRAUMATIC BRAIN INJURY.—

(1) IN GENERAL.—Such section is further amended—

(A) in subsection (p), by striking the semicolon at the end and inserting a period; and

(B) by adding at the end the following new subsection:

“(t) Subject to section 5503(c) of this title, if any veteran, as the result of service-connected disability, is in need of regular aid and attendance for the residuals of traumatic brain injury, is not eligible for compensation under subsection (r)(2), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care, the veteran shall be paid, in addition to any other compensation under this section, a monthly aid and attendance allowance equal to the rate described in subsection (r)(2), which for purposes of section 1134 of this title shall be considered as additional compensation payable for disability. An allowance authorized under this subsection shall be paid in lieu of any allowance authorized by subsection (r)(1).”.

(2) CONFORMING AMENDMENT.—Section 5503(c) is amended by striking “in section 1114(r)” and inserting “in subsection (r) or (t) of section 1114”.

38 USC 1114
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2011.

SEC. 602. COST-OF-LIVING INCREASE FOR TEMPORARY DEPENDENCY AND INDEMNITY COMPENSATION PAYABLE FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN UNDER THE AGE OF 18.

Section 1311(f) is amended—

(1) in paragraph (1), by inserting “(as increased from time to time under paragraph (4))” after “\$250”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph (4):

“(4) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the amount payable under paragraph (1), as such amount was in effect immediately prior to the date of such increase in benefit amounts, by the same percentage as the percentage by which such benefit amounts are increased. Any increase in a dollar amount under this paragraph shall be rounded down to the next lower whole dollar amount.”.

SEC. 603. PAYMENT OF DEPENDENCY AND INDEMNITY COMPENSATION TO SURVIVORS OF FORMER PRISONERS OF WAR WHO DIED ON OR BEFORE SEPTEMBER 30, 1999.

(a) **IN GENERAL.**—Section 1318(b)(3) is amended by striking “who died after September 30, 1999,”. 38 USC 1318.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on October 1, 2011. 38 USC 1318 note.

SEC. 604. EXCLUSION OF CERTAIN AMOUNTS FROM CONSIDERATION AS INCOME FOR PURPOSES OF VETERANS PENSION BENEFITS.

(a) **EXCLUSION.**—Section 1503(a) is amended—

(1) by striking “and” at the end of paragraph (10);

(2) by redesignating paragraph (11) as paragraph (12);

and

(3) by inserting after paragraph (10) the following new paragraph (11):

“(11) payment of a monetary amount of up to \$5,000 to a veteran from a State or municipality that is paid as a veterans’ benefit due to injury or disease; and”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply with respect to determinations of income for calendar years beginning after October 1, 2011. 38 USC 1503 note.

SEC. 605. COMMENCEMENT OF PERIOD OF PAYMENT OF ORIGINAL AWARDS OF COMPENSATION FOR VETERANS RETIRED OR SEPARATED FROM THE UNIFORMED SERVICES FOR CATASTROPHIC DISABILITY.

(a) **COMMENCEMENT OF PERIOD OF PAYMENT.**—Subsection (a) of section 5111 is amended—

(1) by inserting “(1)” after “(a)”;

(2) in paragraph (1), as so designated by paragraph (1) of this subsection, by striking “in subsection (c) of this section” and inserting “in paragraph (2) and subsection (c)”;

and

(3) by adding at the end the following new paragraph:

“(2)(A) In the case of a veteran who is retired or separated from the active military, naval, or air service for a catastrophic disability or disabilities, payment of monetary benefits based on an award of compensation based on an original claim shall be made as of the date on which such award becomes effective as provided under section 5110 of this title or another applicable provision of law.

Definition.

“(B) For the purposes of this paragraph, the term ‘catastrophic disability’, with respect to a veteran, means a permanent, severely disabling injury, disorder, or disease that compromises the ability of the veteran to carry out the activities of daily living to such a degree that the veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.”.

38 USC 5111
note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on October 1, 2011, and shall apply with respect to awards of compensation based on original claims that become effective on or after that date.

SEC. 606. APPLICABILITY OF LIMITATION TO PENSION PAYABLE TO CERTAIN CHILDREN OF VETERANS OF A PERIOD OF WAR.

38 USC 5503.

Section 5503(d)(5) is amended—

(1) by inserting “(A)” after “(5)”; and

(2) by adding at the end the following new subparagraph:

“(B) The provisions of this subsection shall apply with respect to a child entitled to pension under section 1542 of this title in the same manner as they apply to a veteran having neither spouse nor child.”.

SEC. 607. EXTENSION OF REDUCED PENSION FOR CERTAIN VETERANS COVERED BY MEDICAID PLANS FOR SERVICES FURNISHED BY NURSING FACILITIES.

Section 5503(d)(7) is amended by striking “September 30, 2011” and inserting “May 31, 2015”.

SEC. 608. CODIFICATION OF 2009 COST-OF-LIVING ADJUSTMENT IN RATES OF PENSION FOR DISABLED VETERANS AND SURVIVING SPOUSES AND CHILDREN.

(a) **DISABLED VETERANS.**—Section 1521 of title 38, United States Code, is amended—

(1) in subsection (b), by striking “\$3,550” and inserting “\$11,830”;

(2) in subsection (c)—

(A) by striking “\$4,651” and inserting “\$15,493”; and

(B) by striking “\$600” and inserting “\$2,020”;

(3) in subsection (d)—

(A) in paragraph (1), by striking “\$5,680” and inserting “\$19,736”; and

(B) in paragraph (2)—

(i) by striking “\$6,781” and inserting “\$23,396”;

and

(ii) by striking “\$600” and inserting “\$2,020”;

(4) in subsection (e)—

(A) by striking “\$4,340” and inserting “\$14,457”;

(B) by striking “\$5,441” and inserting “\$18,120”; and

(C) by striking “\$600” and inserting “\$2,020”;

(5) in subsection (f)—

(A) in paragraph (1), by striking “\$4,651” and inserting “\$15,493”;

(B) in paragraph (2)—

(i) by striking “\$6,781” and inserting “\$23,396”;

and

(ii) by striking “\$8,911” and inserting “\$30,480”;

(C) in paragraph (3)—

- (i) by striking “\$5,441” and inserting “\$18,120”; and
 - (ii) by striking “\$6,231” and inserting “\$20,747”;
- (D) in paragraph (4), by striking “\$7,571” and inserting “\$26,018”; and
- (E) in paragraph (5), by striking “\$600” and inserting “\$2,020”; and
- (6) in subsection (g), by striking “\$800” and inserting “\$2,686”.
- (b) SURVIVING SPOUSES.—Section 1541 of such title is amended— 38 USC 1541.
 - (1) in subsection (b), by striking “\$2,379” and inserting “\$7,933”;
 - (2) in subsection (c)—
 - (A) by striking “\$3,116” and inserting “\$10,385”; and
 - (B) by striking “\$600” and inserting “\$2,020”;
 - (3) in subsection (d)—
 - (A) in paragraph (1), by striking “\$3,806” and inserting “\$12,681”; and
 - (B) in paragraph (2)—
 - (i) by striking “\$4,543” and inserting “\$15,128”; and
 - (ii) by striking “\$600” and inserting “\$2,020”; and
 - (4) in subsection (e)(1)—
 - (A) by striking “\$2,908” and inserting “\$9,696”;
 - (B) by striking “\$3,645” and inserting “\$12,144”; and
 - (C) by striking “\$600” and inserting “\$2,020”.
- (c) SURVIVING CHILDREN.—Section 1542 of such title is amended by striking “\$600” and inserting “\$2,020” both places it appears.
- (d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to pensions paid on or after December 1, 2009. 38 USC 1521 note.

TITLE VII—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

SEC. 701. CLARIFICATION THAT USERRA PROHIBITS WAGE DISCRIMINATION AGAINST MEMBERS OF THE ARMED FORCES.

- (a) IN GENERAL.—Section 4303(2) is amended by striking “other than” and inserting “including”.
- (b) APPLICATION.—The amendment made by subsection (a) shall apply to— 38 USC 4303 note.
 - (1) any failure to comply with a provision of or any violation of chapter 43 of title 38, United States Code, that occurs before, on, or after the date of the enactment of this Act; and
 - (2) all actions or complaints filed under such chapter 43 that are pending on or after the date of the enactment of this Act.

SEC. 702. CLARIFICATION OF THE DEFINITION OF “SUCCESSOR IN INTEREST”.

- (a) IN GENERAL.—Section 4303(4) is amended by adding at the end the following new subparagraph:

Applicability.

“(D)(i) Whether the term ‘successor in interest’ applies with respect to an entity described in subparagraph (A) for purposes of clause (iv) of such subparagraph shall be determined on a case-by-case basis using a multi-factor test that considers the following factors:

“(I) Substantial continuity of business operations.

“(II) Use of the same or similar facilities.

“(III) Continuity of work force.

“(IV) Similarity of jobs and working conditions.

“(V) Similarity of supervisory personnel.

“(VI) Similarity of machinery, equipment, and production methods.

“(VII) Similarity of products or services.

“(ii) The entity’s lack of notice or awareness of a potential or pending claim under this chapter at the time of a merger, acquisition, or other form of succession shall not be considered when applying the multi-factor test under clause (i).”.

38 USC 4303
note.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to—

(1) any failure to comply with a provision of or any violation of chapter 43 of title 38, United States Code, that occurs before, on, or after the date of the enactment of this Act; and

(2) all actions or complaints filed under such chapter 43 that are pending on or after the date of the enactment of this Act.

SEC. 703. TECHNICAL AMENDMENTS.

(a) AMENDMENT TO SECTION 4324 OF TITLE 38, UNITED STATES CODE.—Section 4324(b)(4) is amended by inserting before the period the following: “declining to initiate an action and represent the person before the Merit Systems Protection Board”.

(b) AMENDMENT TO CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—Section 206(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1316(b)) is amended by striking “under paragraphs (1), (2)(A), and (3) of section 4323(c) of title 38, United States Code” and inserting “under section 4323(d) of title 38, United States Code”.

(c) AMENDMENT TO SECTION 416 OF TITLE 3, UNITED STATES CODE.—Section 416(b) of title 3, United States Code, is amended by striking “under paragraphs (1) and (2)(A) of section 4323(c) of title 38” and inserting “under section 4323(d) of title 38”.

TITLE VIII—BENEFITS MATTERS

SEC. 801. INCREASE IN NUMBER OF VETERANS FOR WHICH PROGRAMS OF INDEPENDENT LIVING SERVICES AND ASSISTANCE MAY BE INITIATED.

38 USC 3120.

(a) INCREASE.—Section 3120(e) is amended by striking “2600” and inserting “2,700”.

38 USC 3120
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to fiscal years beginning after the date of the enactment of this Act.

SEC. 802. PAYMENT OF UNPAID BALANCES OF DEPARTMENT OF VETERANS AFFAIRS GUARANTEED LOANS.

(a) IN GENERAL.—Section 3732(a)(2) is amended—

(1) by striking “Before suit” and inserting “(A) Before suit”;
and

(2) by adding at the end the following new subparagraph:
“(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, the Secretary may pay the holder of the obligation the unpaid principal balance of the obligation due, plus accrued interest, as of the date of the filing of the petition under title 11, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply with respect to a housing loan guaranteed after the date of the enactment of this Act. 38 USC 3732 note.

SEC. 803. ELIGIBILITY OF DISABLED VETERANS AND MEMBERS OF THE ARMED FORCES WITH SEVERE BURN INJURIES FOR AUTOMOBILES AND ADAPTIVE EQUIPMENT.

(a) **ELIGIBILITY.**—Paragraph (1) of section 3901 is amended— 38 USC 3901.
(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking “the disabilities described in subclause (i), (ii), or (iii) below” and inserting “the following disabilities”; and

(B) by adding at the end the following new clause:
“(iv) A severe burn injury (as determined pursuant to regulations prescribed by the Secretary).”; and

(2) in subparagraph (B), by striking “subclause (i), (ii), or (iii) of clause (A) of this paragraph” and inserting “clause (i), (ii), (iii), or (iv) of subparagraph (A)”. Regulations.

(b) **STYLISTIC AMENDMENTS.**—Such section is further amended—

(1) in the matter preceding paragraph (1), by striking “chapter—” and inserting “chapter.”;

(2) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “means—” and inserting “means the following.”;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking “any veteran” and inserting “Any veteran”;

(ii) in each of clauses (i) and (ii), by striking the semicolon at the end and inserting a period; and

(iii) in clause (iii), by striking “; or” and inserting a period; and

(C) in subparagraph (B), by striking “any member” and inserting “Any member”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2011. 38 USC 3901 note.

SEC. 804. ENHANCEMENT OF AUTOMOBILE ASSISTANCE ALLOWANCE FOR VETERANS.

(a) **INCREASE IN AMOUNT OF ALLOWANCE.**—Subsection (a) of section 3902 is amended by striking “\$11,000” and inserting “\$18,900 (as adjusted from time to time under subsection (e))”.

(b) **ANNUAL ADJUSTMENT.**—Such section is further amended by adding at the end the following new subsection:

“(e) Effective on October 1 of each year (beginning in 2011), the Secretary shall increase the dollar amount in effect under Effective date.

subsection (a) by a percentage equal to the percentage by which the Consumer Price Index for all urban consumers (U.S. city average) increased during the 12-month period ending with the last month for which Consumer Price Index data is available. In the event that such Consumer Price Index does not increase during such period, the Secretary shall maintain the dollar amount in effect under subsection (a) during the previous fiscal year.”.

38 USC 3902
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2011.

SEC. 805. NATIONAL ACADEMIES REVIEW OF BEST TREATMENTS FOR CHRONIC MULTISYMPTOM ILLNESS IN PERSIAN GULF WAR VETERANS.

Contracts.

(a) **IN GENERAL.**—The Secretary of Veterans Affairs shall seek to enter into an agreement with the Institute of Medicine of the National Academies to carry out a comprehensive review of the best treatments for chronic multisymptom illness in Persian Gulf War veterans and an evaluation of how such treatment approaches could best be disseminated throughout the Department of Veterans Affairs to improve the care and benefits provided to veterans.

(b) **GROUP OF MEDICAL PROFESSIONALS.**—Under any agreement entered into under subsection (a), the Institute of Medicine shall convene a group of medical professionals who are experienced in treating individuals who served as members of the Armed Forces in the Southwest Asia Theater of Operations of the Persian Gulf War during 1990 or 1991 and who have been diagnosed with chronic multisymptom illness or another health condition related to chemical and environmental exposure that may have occurred during such service.

(c) **REPORT.**—Any agreement entered into under subsection (a) shall require the Institute of Medicine to submit to the Secretary and to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report on the review and evaluation described in subsection (a) by not later than December 31, 2012. The report shall include such recommendations for legislative or administrative action as the Institute considers appropriate in light of the results of the review.

(d) **FUNDING.**—Pursuant to any agreement entered into under subsection (a), the Secretary shall provide the Institute of Medicine with such funds as are necessary to ensure the timely completion of the review described that subsection.

(e) **DEFINITIONS.**—For purposes of this section:

(1) The term “chronic multisymptom illness in Persian Gulf War veterans” means a chronic multisymptom illness defined by a cluster of signs or symptoms relating to service in the Persian Gulf War, typically including widespread pain, persistent memory and concentration problems, chronic headaches, gastrointestinal problems, and other abnormalities not explained by well-established diagnoses.

(2) The term “Persian Gulf War” has the meaning given that term in section 101(33) of title 38, United States Code.

SEC. 806. EXTENSION AND MODIFICATION OF NATIONAL ACADEMY OF SCIENCES REVIEWS AND EVALUATIONS ON ILLNESS AND SERVICE IN PERSIAN GULF WAR AND POST-9/11 GLOBAL OPERATIONS THEATERS.

(a) **REVIEW AND EVALUATION OF AGENTS AND ILLNESSES ASSOCIATED WITH PERSIAN GULF WAR SERVICE.**—

(1) EXTENSION OF REVIEW AND EVALUATION.—Subsection (j) of section 1603 of the Persian Gulf War Veterans Act of 1998 (Public Law 105-277; 38 U.S.C. 1117 note), as amended by section 202(d)(2) of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107-173; 115 Stat. 989), is amended by striking “October 1, 2010” and inserting “October 1, 2015”.

(2) DISAGGREGATION OF RESULTS BY THEATERS OF OPERATIONS BEFORE AND AFTER SEPTEMBER 11, 2001.—Such section is further amended—

(A) in subsection (c)(1)(A), by striking “who served in the Southwest Asia theater of operations” and all that follows and inserting “who may have been exposed by reason of service in the Southwest Asia theater of operations during the Persian Gulf War or, after September 11, 2001, in another Post-9/11 Global Theater of Operations; and”;

(B) in subsection (g)(1), by striking “Gulf War service” and inserting “service described in subsection (c)(1)(A)”;

(C) in subsection (i)—

(i) in paragraph (1), by striking “paragraph (5)” and inserting “paragraph (6)”;

(ii) by redesignating paragraph (5) as paragraph (6); and

(iii) by inserting after paragraph (4) the following new paragraph (5):

“(5) In each report under this subsection submitted after the date of the enactment of this paragraph, any determinations, results, and recommendations as described in paragraph (2) shall be submitted separately as follows:

“(A) For the Southwest Asia theater of operations for the period of the Persian Gulf War ending on September 11, 2001.

“(B) For the Post-9/11 Global Theaters of Operations for the period of the Persian Gulf War beginning on September 11, 2001.”; and

(D) by adding at the end the following new subsection:

“(1) DEFINITIONS.—In this section:

“(1) The term ‘Persian Gulf War’ has the meaning given that term in section 101(33) of title 38, United States Code.

“(2) The term ‘Post-9/11 Global Theater of Operations’ means Afghanistan, Iraq, and any other theater of operations for which the Global War on Terrorism Expeditionary Medal is awarded for service.”

(b) REVIEW AND EVALUATION OF AVAILABLE EVIDENCE REGARDING ILLNESS AND SERVICE IN PERSIAN GULF WAR.— 38 USC 1117 note.

(1) IN GENERAL.—Subsection (j) of section 101 of the Veterans Programs Enhancement Act of 1998 (Public Law 105-368; 112 Stat. 3321) is amended by striking “11 years after” and all that follows through “under subsection (b)” and inserting “on October 1, 2018”.

(2) DISAGGREGATION OF RESULTS BY THEATERS OF OPERATIONS BEFORE AND AFTER SEPTEMBER 11, 2001.—Such section is further amended—

(A) in subsection (c)(1)—

(i) in the matter preceding subparagraph (A), by striking “Gulf war veterans” and all that follows through “Persian Gulf War” and inserting “veterans who served in the Armed Forces in the Southwest

Asia theater of operations during the Persian Gulf War or, after September 11, 2001, in another Post-9/11 Global Theater of Operations and the health consequences of exposures to risk factors during such service”; and

(ii) in subparagraph (A), by striking “who served” and all that follows through “such service” and inserting “who may have been exposed by reason of service in the Southwest Asia theater of operations during the Persian Gulf War or, after September 11, 2001, in another Post-9/11 Global Theater of Operations”;

(B) in subsection (e)(1)—

(i) in the matter preceding subparagraph (A), by striking “Gulf War service or exposure during Gulf War service” and inserting “service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War or, after September 11, 2001, in another Post-9/11 Global Theater of Operations or exposure during such service”; and

(ii) in subparagraphs (E) and (F), by striking “Gulf War veterans” each place it appears and inserting “veterans described in subsection (c)(1)”;

(C) in subsection (f)(1)—

(i) by striking “service in the Persian Gulf War” and inserting “service described in subsection (c)(1)(A)”;

and

(ii) by striking “Gulf War service” and inserting “such service”;

(D) in subsection (h), by adding at the end the following new paragraph:

“(5) In each report under this subsection submitted after the date of the enactment of this paragraph, any determinations, discussions, and recommendations as described in paragraph (2) shall be submitted separately as follows:

“(A) For the Southwest Asia theater of operations for the period of the Persian Gulf War ending on September 11, 2001.

“(B) For the Post-9/11 Global Theaters of Operations for the period of the Persian Gulf War beginning on September 11, 2001.”;

(E) in subsection (i)—

(i) in paragraph (2)—

(I) by striking “Persian Gulf War service” and inserting “service described in subsection (c)(1)(A)”;

(II) by striking “service in the Persian Gulf War” and inserting “such service”; and

(III) by striking “Gulf War veterans” and inserting “veterans described in subsection (c)(1)(A)”;

and

(ii) by adding at the end the following new paragraph:

“(4) In each report under this subsection submitted after the date of the enactment of this paragraph, any recommendations as described in paragraph (2) shall be submitted separately as follows:

“(A) For the Southwest Asia theater of operations for the period of the Persian Gulf War ending on September 11, 2001.

“(B) For the Post-9/11 Global Theaters of Operations for the period of the Persian Gulf War beginning on September 11, 2001.”; and

(F) in subsection (k)—

(i) by striking “In this section, the term” and inserting the following: “In this section:

“(1) The term ‘Persian Gulf War’ has the meaning given that term in section 101(33) of title 38, United States Code.

“(2) The term ‘Post-9/11 Global Theater of Operations’ means Afghanistan, Iraq, and any other theater of operations for which the Global War on Terrorism Expeditionary Medal is awarded for service.

“(3) The term”; and

(ii) in paragraph (3), as designated by clause (i)—

(I) by striking “vaccine associated with Gulf War service’ means” and inserting “vaccine’, with respect to service described in subsection (c)(1)(A), means”; and

(II) by striking “service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War” and inserting “service described in such subsection (c)(1)(A)”.

(3) CONFORMING AMENDMENT.—Section 1604 of the Persian Gulf War Veterans Act of 1998 (Public Law 105–277; 38 U.S.C. 1117 note) is repealed.

SEC. 807. EXTENSION OF AUTHORITY FOR REGIONAL OFFICE IN REPUBLIC OF THE PHILIPPINES.

(a) EXTENSION OF AUTHORITY.—Section 315(b) is amended by striking “December 31, 2010” and inserting “December 31, 2011”. 38 USC 315.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Veterans’ Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans’ Affairs and the Committee on Appropriations of the House of Representatives a report on the regional office of the Department of Veterans Affairs in the Republic of the Philippines.

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) A description of the activities of the office described in such paragraph, including activities relating to the administration of benefits provided under laws administered by the Secretary of Veterans Affairs and benefits provided under the Social Security Act (42 U.S.C. 301 et seq.).

(B) An assessment of the costs and benefits of maintaining such office in the Republic of the Philippines in comparison with the costs and benefits of moving the activities of such office to the United States.

SEC. 808. EXTENSION OF AN ANNUAL REPORT ON EQUITABLE RELIEF.

Section 503(c) is amended by striking “December 31, 2009” and inserting “December 31, 2014”.

SEC. 809. AUTHORITY FOR THE PERFORMANCE OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS.

Section 704(c) of the Veterans Benefits Act of 2003 (Public Law 108–183; 38 U.S.C. 5101 note), as amended by section 105 of the Veterans' Benefits Improvement Act of 2008 (Public Law 110–389; 122 Stat. 4149) is amended by striking “December 31, 2010” and inserting “December 31, 2012”.

TITLE IX—AUTHORIZATION OF MEDICAL FACILITY PROJECTS AND MAJOR MEDICAL FACILITY LEASES**SEC. 901. AUTHORIZATION OF FISCAL YEAR 2011 MAJOR MEDICAL FACILITY LEASES.**

The Secretary of Veterans Affairs may carry out the following fiscal year 2011 major medical facility leases at the locations specified, in an amount not to exceed the amount shown for each such location:

- (1) Billings, Montana, Community Based Outpatient Clinic, in an amount not to exceed \$7,149,000.
- (2) Boston, Massachusetts, Outpatient Clinic, in an amount not to exceed \$3,316,000.
- (3) San Diego, California, Community Based Outpatient Clinic, in an amount not to exceed \$21,495,000.
- (4) San Francisco, California, Research Lab, in an amount not to exceed \$10,055,000.
- (5) San Juan, Puerto Rico, Mental Health Facility, in an amount not to exceed \$5,323,000.

SEC. 902. MODIFICATION OF AUTHORIZATION AMOUNT FOR MAJOR MEDICAL FACILITY CONSTRUCTION PROJECT PREVIOUSLY AUTHORIZED FOR THE DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, NEW ORLEANS, LOUISIANA.

Section 801(a)(1) of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109–461; 120 Stat. 3442), as amended by section 702(a)(1) of the Veterans' Mental Health and Other Care Improvements Act of 2008 (Public Law 110–387; 122 Stat. 4137), is amended by striking “\$625,000,000” and inserting “\$995,000,000”.

SEC. 903. MODIFICATION OF AUTHORIZATION AMOUNT FOR MAJOR MEDICAL FACILITY CONSTRUCTION PROJECT PREVIOUSLY AUTHORIZED FOR THE DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, LONG BEACH, CALIFORNIA.

Section 802(9) of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109–461; 120 Stat. 3443) is amended by striking “\$107,845,000” and inserting “\$117,845,000”.

SEC. 904. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR CONSTRUCTION.—There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2011 for the Construction, Major Projects account \$1,112,845,000, of which—

(1) \$995,000,000 is for the increased amounts authorized for the project whose authorization is modified by section 902; and

(2) \$117,845,000 is for the increased amounts authorized for the project whose authorization is modified by section 903.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR MEDICAL FACILITY LEASES.**—There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2011 for the Medical Facilities account \$47,338,000 for the leases authorized in section 901.

(c) **LIMITATIONS.**—The projects whose authorizations are modified under sections 902 and 903 may only be carried out using—

(1) funds appropriated for fiscal year 2011 pursuant to the authorization of appropriations in subsection (a) of this section;

(2) funds available for Construction, Major Projects, for a fiscal year before fiscal year 2011 that remain available for obligation;

(3) funds available for Construction, Major Projects, for a fiscal year after fiscal year 2011 that remain available for obligation;

(4) funds appropriated for Construction, Major Projects, for fiscal year 2011 for a category of activity not specific to a project;

(5) funds appropriated for Construction, Major Projects, for a fiscal year before 2011 for a category of activity not specific to a project; and

(6) funds appropriated for Construction, Major Projects, for a fiscal year after 2011 for a category of activity not specific to a project.

SEC. 905. REQUIREMENT THAT BID SAVINGS ON MAJOR MEDICAL FACILITY PROJECTS OF DEPARTMENT OF VETERANS AFFAIRS BE USED FOR OTHER MAJOR MEDICAL FACILITY CONSTRUCTION PROJECTS OF THE DEPARTMENT.

Section 8104(d) is amended—

38 USC 8104.

(1) by striking “In any case” and inserting “(1) Except as provided in paragraph (2), in any case”; and

(2) by adding at the end the following new paragraph:

“(2)(A) In any fiscal year, unobligated amounts in the Construction, Major Projects account that are a direct result of bid savings from a major medical facility project may only be obligated for major medical facility projects authorized for that fiscal year or a previous fiscal year.

“(B) Whenever the Secretary obligates amounts for a major medical facility under subparagraph (A), the Secretary shall submit to the Committee on Veterans’ Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans’ Affairs and the Committee on Appropriations of the House of Representatives notice of the following:

Notice.

“(i) The major medical facility project that is the source of the bid savings.

“(ii) The other major medical facility project for which the amounts are being obligated.

“(iii) The amounts being obligated for such other major medical facility project.”.

TITLE X—OTHER MATTERS

SEC. 1001. TECHNICAL CORRECTIONS.

38 USC 101. (a) CHAPTER 1.—The table of sections at the beginning of chapter 1 is amended by striking the item relating to section 118 and inserting the following new item:

“118. Submission of reports to Congress in electronic form.”.

38 USC 1114. (b) CHAPTER 11.—Section 1114(r)(2) is amended by striking “\$2,983” and inserting “\$2,983”.

(c) CHAPTER 17.—Chapter 17 is amended as follows:

(1) In each of subparagraphs (A) and (B) of section 1717(a)(2), by striking “the date of the Caregivers and Veterans Omnibus Health Services Act of 2010” each place it appears and inserting “May 5, 2010”.

(2) In section 1785—

(A) by striking “section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh–11(b))” and inserting “section 2812 of the Public Health Service Act (42 U.S.C. 300hh)”; and

(B) by striking “paragraph (3)(A) of”.

(d) CHAPTER 19.—Chapter 19 is amended as follows:

(1) In the third sentence of section 1967(a)(3)(B), by striking “spouse,” and inserting “spouse,”.

(2) In the second sentence of section 1980A(h), by inserting “section” before “1968(a)”.

(e) CHAPTER 20.—Section 2044(e)(3) is amended by striking “fiscal year” and inserting “fiscal years”.

38 USC 3001. (f) CHAPTER 30.—The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3020 and inserting the following new item:

“3020. Authority to transfer unused education benefits to family members for career service members.”.

(g) CHAPTER 33.—Chapter 33 is amended as follows:

(1) In section 3313(c)(1), by striking “higher education” each place it appears and inserting “higher learning”

(2) In section 3313(d)(3), by striking “assistance this chapter” and inserting “assistance under this chapter”.

(3) In section 3313(e)(2)(B), by inserting a period at the end.

(4) In section 3316(b)(2), by striking “supplement” and inserting “supplemental”.

(5) In section 3316(b)(3), by striking “educational payable” and inserting “educational assistance payable”.

(6) In section 3318(b)(2)(B), by striking “higher education” and inserting “higher learning”.

(7) In section 3319(b)(2), by striking “section (k)” and inserting “subsection (j)”.

(8) In section 3321(b)(2), by striking “3312” and inserting “section 3312 of this title”.

(h) CHAPTER 35.—Section 3512(a)(6) is amended by striking “this clause” and inserting “this paragraph”.

(i) CHAPTER 36.—Section 3684(a)(1) is amended by striking “,” and inserting a comma.

(j) CHAPTER 37.—Section 3733(a)(7) is amended by inserting a comma after “2003”. 38 USC 3733.

(k) CHAPTER 41.—Section 4102A(b)(8) is amended by striking “Employment and Training” and inserting “Employment, Training”.

(l) CHAPTER 55.—Chapter 55 is amended as follows:

(1) In section 5510, in the second sentence of the matter preceding paragraph (1) by striking “following: —” and inserting “following”.

(2) In section 5510(9), by striking “government” and inserting “Government”.

(m) CHAPTER 57.—Chapter 57 is amended as follows:

(1) In section 5723(g)(2), by inserting “the” before “Department”.

(2) In section 5727(20), by striking “subordinate plan defines” and inserting “plan that defines”.

(n) CHAPTER 73.—Chapter 73 is amended as follows:

(1) The table of sections at the beginning of such chapter is amended by striking the item relating to section 7333 and inserting the following new item: 38 USC 7301.

“7333. Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus.”.

(2) In section 7325(b)(2), by striking “section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh–11(b))” and inserting “section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11)”.

(o) CHAPTER 79.—Section 7903(a) is amended by striking “paragraph (2)” and inserting “paragraph (3)”.

(p) CHAPTER 81.—Chapter 81 is amended as follows:

(1) In section 8111A(a)(2)(B)(ii)—

(A) by striking “section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh–11(b))” and inserting “section 2812 of the Public Health Service Act (42 U.S.C. 300hh); and

(B) by striking “paragraph (3)(A) of”.

(2) In section 8117(e)—

(A) in paragraph (1), by striking “(42 U.S.C. 300hh–11(b))” and inserting “(42 U.S.C. 300hh–11)”; and

(B) in paragraph (2), by striking “(42 U.S.C. 247d–6(a))” and inserting “(42 U.S.C. 247d–6)”.

SEC. 1002. STATUTORY PAY-AS-YOU-GO ACT COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 3219:

HOUSE REPORTS: No. 111-223 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): July 27, considered and passed House.

Vol. 156 (2010): Sept. 28, considered and passed Senate, amended.
Sept. 29, House concurred in Senate amendments.



Public Law 111–276
111th Congress

An Act

To designate the facility of the United States Postal Service located at 4285 Payne Avenue in San Jose, California, as the “Anthony J. Cortese Post Office Building”.

Oct. 13, 2010
[H.R. 4543]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ANTHONY J. CORTESE POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 4285 Payne Avenue in San Jose, California, shall be known and designated as the “Anthony J. Cortese Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Anthony J. Cortese Post Office Building”.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 4543:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 26, considered and passed House.

Sept. 29, considered and passed Senate.



Public Law 111–277
111th Congress

An Act

Oct. 13, 2010
[H.R. 5341]

To designate the facility of the United States Postal Service located at 100 Orndorf Drive in Brighton, Michigan, as the “Joyce Rogers Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JOYCE ROGERS POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 100 Orndorf Drive in Brighton, Michigan, shall be known and designated as the “Joyce Rogers Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Joyce Rogers Post Office Building”.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 5341:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 20, 22, considered and passed House.

Sept. 29, considered and passed Senate.



Public Law 111–278
111th Congress

An Act

To designate the facility of the United States Postal Service located at 13301 Smith Road in Cleveland, Ohio, as the “David John Donafée Post Office Building”.

Oct. 13, 2010
[H.R. 5390]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DAVID JOHN DONAFEE POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 13301 Smith Road in Cleveland, Ohio, shall be known and designated as the “David John Donafée Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “David John Donafée Post Office Building”.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 5390:

CONGRESSIONAL RECORD, Vol. 156 (2010):
July 14, considered and passed House.
Sept. 29, considered and passed Senate.



Public Law 111–279
111th Congress

An Act

Oct. 13, 2010
[H.R. 5450]

To designate the facility of the United States Postal Service located at 3894 Crenshaw Boulevard in Los Angeles, California, as the “Tom Bradley Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TOM BRADLEY POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 3894 Crenshaw Boulevard in Los Angeles, California, shall be known and designated as the “Tom Bradley Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Tom Bradley Post Office Building”.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 5450:

CONGRESSIONAL RECORD, Vol. 156 (2010):
July 14, considered and passed House.
Sept. 29, considered and passed Senate.



Public Law 111–280
111th Congress

An Act

To amend part A of title XI of the Social Security Act to provide for a 1-year extension of the authorizations for the Work Incentives Planning and Assistance program and the Protection and Advocacy for Beneficiaries of Social Security program.

Oct. 13, 2010
[H.R. 6200]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “WIPA and PABSS Extension Act of 2010”.

WIPA and
PABSS
Extension Act of
2010.
42 USC 1305
note.

SEC. 2. EXTENSION OF AUTHORIZATIONS FOR THE WORK INCENTIVES PLANNING AND ASSISTANCE PROGRAM AND THE PROTECTION AND ADVOCACY FOR BENEFICIARIES OF SOCIAL SECURITY PROGRAM.

(a) **WORK INCENTIVES PLANNING AND ASSISTANCE.**—Section 1149(d) of the Social Security Act (42 U.S.C. 1320b–20(d)) is amended by striking “2010” and inserting “2011”.

(b) **PROTECTION AND ADVOCACY FOR BENEFICIARIES OF SOCIAL SECURITY.**—Section 1150(h) of such Act (42 U.S.C. 1320b–21(h)) is amended by striking “2010” and inserting “2011”.

SEC. 3. CONFORMING CHANGES TO THE WORK INCENTIVES PLANNING AND ASSISTANCE PROGRAM.

(a) **ANNUAL REPORTS.**—Section 1149 of the Social Security Act (as amended by section 2(a)) is further amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

“(c) **ANNUAL REPORT.**—Each entity awarded a grant, cooperative agreement, or contract under this section shall submit an annual report to the Commissioner on the benefits planning and assistance provided to individuals under such grant, agreement, or contract.”.

(b) **ONE-YEAR CARRYOVER.**—

(1) **IN GENERAL.**—Section 1149(b)(4) of such Act (42 U.S.C. 1320b–20(b)(4)) is amended—

(A) by striking “(4) **ALLOCATION OF COSTS.**—The costs” and inserting the following:

“(4) **FUNDING.**—

“(A) **ALLOCATION OF COSTS.**—The costs”; and

(B) by adding at the end the following:

“(B) **CARRYOVER.**—An amount not in excess of 10 percent of the total amount obligated through a grant, cooperative agreement, or contract awarded under this section

for a fiscal year to a State or a private agency or organization shall remain available for obligation to such State or private agency or organization until the end of the succeeding fiscal year. Any such amount remaining available for obligation during such succeeding fiscal year shall be available for providing benefits planning and assistance only for individuals who are within the caseload of the recipient of the grant, agreement, or contract as of immediately before the beginning of such fiscal year.”.

42 USC
1320b-20 note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to amounts allotted under section 1149 of the Social Security Act for payment for a fiscal year after fiscal year 2010.

Approved October 13, 2010.

LEGISLATIVE HISTORY—H.R. 6200:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed House.

Sept. 29, considered and passed Senate.



Public Law 111–281
111th Congress

An Act

To authorize appropriations for the Coast Guard for fiscal year 2011, and for other purposes.

Oct. 15, 2010
[H.R. 3619]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Coast Guard
Authorization
Act of 2010.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Coast Guard Authorization Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AUTHORIZATION

Sec. 101. Authorization of appropriations.

Sec. 102. Authorized levels of military strength and training.

TITLE II—COAST GUARD

Sec. 201. Appointment of civilian Coast Guard judges.

Sec. 202. Industrial activities.

Sec. 203. Reimbursement for medical-related travel expenses.

Sec. 204. Commissioned officers.

Sec. 205. Coast Guard participation in the Armed Forces Retirement Home (AFRH) system.

Sec. 206. Grants to international maritime organizations.

Sec. 207. Leave retention authority.

Sec. 208. Enforcement authority.

Sec. 209. Repeal.

Sec. 210. Merchant Mariner Medical Advisory Committee.

Sec. 211. Reserve commissioned warrant officer to lieutenant program.

Sec. 212. Enhanced status quo officer promotion system.

Sec. 213. Coast Guard vessels and aircraft.

Sec. 214. Coast Guard District Ombudsmen.

Sec. 215. Coast Guard commissioned officers: compulsory retirement.

Sec. 216. Enforcement of coastwise trade laws.

Sec. 217. Report on sexual assaults in the Coast Guard.

Sec. 218. Home port of Coast Guard vessels in Guam.

Sec. 219. Supplemental positioning system.

Sec. 220. Assistance to foreign governments and maritime authorities.

Sec. 221. Coast guard housing.

Sec. 222. Child development services.

Sec. 223. Chaplain activity expense.

Sec. 224. Coast Guard cross; silver star medal.

TITLE III—SHIPPING AND NAVIGATION

Sec. 301. Seaward extension of anchorage grounds jurisdiction.

Sec. 302. Maritime Drug Law Enforcement Act amendment-simple possession.

Sec. 303. Technical amendments to tonnage measurement law.

Sec. 304. Merchant mariner document standards.

Sec. 305. Ship emission reduction technology demonstration project.

Sec. 306. Phaseout of vessels supporting oil and gas development.

Sec. 307. Arctic marine shipping assessment implementation.

TITLE IV—ACQUISITION REFORM

- Sec. 401. Chief Acquisition Officer.
- Sec. 402. Acquisitions.
- Sec. 403. National Security Cutters.
- Sec. 404. Acquisition workforce expedited hiring authority.

TITLE V—COAST GUARD MODERNIZATION

- Sec. 501. Short title.

Subtitle A—Coast Guard Leadership

- Sec. 511. Vice admirals.

Subtitle B—Workforce Expertise

- Sec. 521. Prevention and response staff.
- Sec. 522. Marine safety mission priorities and long-term goals.
- Sec. 523. Powers and duties.
- Sec. 524. Appeals and waivers.
- Sec. 525. Coast Guard Academy.
- Sec. 526. Report regarding civilian marine inspectors.

TITLE VI—MARINE SAFETY

- Sec. 601. Short title.
- Sec. 602. Vessel size limits.
- Sec. 603. Cold weather survival training.
- Sec. 604. Fishing vessel safety.
- Sec. 605. Mariner records.
- Sec. 606. Deletion of exemption of license requirement for operators of certain towing vessels.
- Sec. 607. Log books.
- Sec. 608. Safe operations and equipment standards.
- Sec. 609. Approval of survival craft.
- Sec. 610. Safety management.
- Sec. 611. Protection against discrimination.
- Sec. 612. Oil fuel tank protection.
- Sec. 613. Oaths.
- Sec. 614. Duration of licenses, certificates of registry, and merchant mariners' documents.
- Sec. 615. Authorization to extend the duration of licenses, certificates of registry, and merchant mariners' documents.
- Sec. 616. Merchant mariner assistance report.
- Sec. 617. Offshore supply vessels.
- Sec. 618. Associated equipment.
- Sec. 619. Lifesaving devices on uninspected vessels.
- Sec. 620. Study of blended fuels in marine application.
- Sec. 621. Renewal of advisory committees.
- Sec. 622. Delegation of authority.

TITLE VII—OIL POLLUTION PREVENTION

- Sec. 701. Rulemakings.
- Sec. 702. Oil transfers from vessels.
- Sec. 703. Improvements to reduce human error and near miss incidents.
- Sec. 704. Olympic Coast National Marine Sanctuary.
- Sec. 705. Prevention of small oil spills.
- Sec. 706. Improved coordination with tribal governments.
- Sec. 707. Report on availability of technology to detect the loss of oil.
- Sec. 708. Use of oil spill liability trust fund.
- Sec. 709. International efforts on enforcement.
- Sec. 710. Higher volume port area regulatory definition change.
- Sec. 711. Tug escorts for laden oil tankers.
- Sec. 712. Extension of financial responsibility.
- Sec. 713. Liability for use of single-hull vessels.

TITLE VIII—PORT SECURITY

- Sec. 801. America's Waterway Watch Program.
- Sec. 802. Transportation Worker Identification Credential.
- Sec. 803. Interagency operational centers for port security.
- Sec. 804. Deployable, specialized forces.
- Sec. 805. Coast Guard detection canine team program expansion.
- Sec. 806. Coast Guard port assistance Program.
- Sec. 807. Maritime biometric identification.

- Sec. 808. Pilot Program for fingerprinting of maritime workers.
- Sec. 809. Transportation security cards on vessels.
- Sec. 810. Maritime Security Advisory Committees.
- Sec. 811. Seamen's shoreside access.
- Sec. 812. Waterside security of especially hazardous cargo.
- Sec. 813. Review of liquefied natural gas facilities.
- Sec. 814. Use of secondary authentication for transportation security cards.
- Sec. 815. Assessment of transportation security card enrollment sites.
- Sec. 816. Assessment of the feasibility of efforts to mitigate the threat of small boat attack in major ports.
- Sec. 817. Report and recommendation for uniform security background checks.
- Sec. 818. Transportation security cards: access pending issuance; deadlines for processing; receipt.
- Sec. 819. Harmonizing security card expirations.
- Sec. 820. Clarification of rulemaking authority.
- Sec. 821. Port security training and certification.
- Sec. 822. Integration of security plans and systems with local port authorities, State harbor divisions, and law enforcement agencies.
- Sec. 823. Transportation security cards.
- Sec. 824. Pre-positioning interoperable communications equipment at interagency operational centers.
- Sec. 825. International port and facility inspection coordination.
- Sec. 826. Area transportation security incident mitigation plan.
- Sec. 827. Risk based resource allocation.
- Sec. 828. Port security zones.

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Waivers.
- Sec. 902. Crew wages on passenger vessels.
- Sec. 903. Technical corrections.
- Sec. 904. Manning requirement.
- Sec. 905. Study of bridges over navigable waters.
- Sec. 906. Limitation on jurisdiction of States to tax certain seamen.
- Sec. 907. Land conveyance, Coast Guard property in Marquette County, Michigan, to the City of Marquette, Michigan.
- Sec. 908. Mission requirement analysis for navigable portions of the Rio Grande River, Texas, international water boundary.
- Sec. 909. Conveyance of Coast Guard property in Cheboygan, Michigan.
- Sec. 910. Alternative licensing program for operators of uninspected passenger vessels on Lake Texoma in Texas and Oklahoma.
- Sec. 911. Strategy regarding drug trafficking vessels.
- Sec. 912. Use of force against piracy.
- Sec. 913. Technical amendments to chapter 313 of title 46, United States Code.
- Sec. 914. Conveyance of Coast Guard vessels for public purposes.
- Sec. 915. Assessment of certain aids to navigation and traffic flow.
- Sec. 916. Fresnel Lens from Presque Isle Light Station in Presque Isle, Michigan.
- Sec. 917. Maritime Law Enforcement.
- Sec. 918. Capital investment plan.
- Sec. 919. Reports.
- Sec. 920. Compliance provision.
- Sec. 921. Conveyance of Coast Guard property in Portland, Maine.

TITLE X—CLEAN HULLS

Subtitle A—General Provisions

- Sec. 1011. Definitions.
- Sec. 1012. Covered vessels.
- Sec. 1013. Administration and enforcement.
- Sec. 1014. Compliance with international law.
- Sec. 1015. Utilization of personnel, facilities or equipment of other Federal departments and agencies.

Subtitle B—Implementation of the Convention

- Sec. 1021. Certificates.
- Sec. 1022. Declaration.
- Sec. 1023. Other compliance documentation.
- Sec. 1024. Process for considering additional controls.
- Sec. 1025. Scientific and technical research and monitoring; communication and information.
- Sec. 1026. Communication and exchange of information.

Subtitle C—Prohibitions and Enforcement Authority

- Sec. 1031. Prohibitions.

- Sec. 1032. Investigations and inspections by Secretary.
- Sec. 1033. EPA enforcement.
- Sec. 1034. Additional authority of the Administrator.

Subtitle D—Action on Violation, Penalties, and Referrals

- Sec. 1041. Criminal enforcement.
- Sec. 1042. Civil enforcement.
- Sec. 1043. Liability in rem.
- Sec. 1044. Vessel clearance or permits; refusal or revocation; bond or other surety.
- Sec. 1045. Warnings, detentions, dismissals, exclusion.
- Sec. 1046. Referrals for appropriate action by foreign country.
- Sec. 1047. Remedies not affected.
- Sec. 1048. Repeal.

TITLE I—AUTHORIZATION

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for fiscal year 2011 for necessary expenses of the Coast Guard as follows:

(1) For the operation and maintenance of the Coast Guard, \$6,970,681,000 of which \$24,500,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)).

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, \$1,640,000,000, of which—

(A) \$20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended;

(B) \$1,233,502,000 is authorized for the Integrated Deepwater System Program; and

(C) \$100,000,000 is authorized for shore facilities and aids to navigation.

(3) To the Commandant of the Coast Guard for research, development, test, and evaluation of technologies, materials, and human factors directly relating to improving the performance of the Coast Guard's mission in search and rescue, aids to navigation, marine safety, marine environmental protection, enforcement of laws and treaties, ice operations, oceanographic research, and defense readiness, \$28,034,000, to remain available until expended, of which \$500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$1,400,700,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, \$16,000,000.

(6) For environmental compliance and restoration at Coast Guard facilities (other than parts and equipment associated

with operation and maintenance), \$13,329,000, to remain available until expended.

(7) For the Coast Guard Reserve program, including personnel and training costs, equipment, and services, \$135,675,000.

SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) **ACTIVE DUTY STRENGTH.**—The Coast Guard is authorized an end-of-year strength for active duty personnel of 47,000 for the fiscal year ending on September 30, 2011.

(b) **MILITARY TRAINING STUDENT LOADS.**—For fiscal year 2011, the Coast Guard is authorized average military training student loads as follows:

- (1) For recruit and special training, 2,500 student years.
- (2) For flight training, 165 student years.
- (3) For professional training in military and civilian institutions, 350 student years.
- (4) For officer acquisition, 1,200 student years.

TITLE II—COAST GUARD

SEC. 201. APPOINTMENT OF CIVILIAN COAST GUARD JUDGES.

(a) **IN GENERAL.**—Chapter 7 of title 14, United States Code, is amended by adding at the end the following:

“§ 153. Appointment of judges

“The Secretary may appoint civilian employees of the department in which the Coast Guard is operating as appellate military judges, available for assignment to the Coast Guard Court of Criminal Appeals as provided for in section 866(a) of title 10.”.

(b) **CLERICAL AMENDMENT.**—The analysis for such chapter is amended by adding at the end the following: 14 USC 141.

“153. Appointment of judges.”.

SEC. 202. INDUSTRIAL ACTIVITIES.

Section 151 of title 14, United States Code, is amended—

(1) by inserting “(a) **IN GENERAL.**—” before “All orders”; and

(2) by adding at the end the following:

“(b) **ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.**—Under this section, the Coast Guard industrial activities may accept orders from and enter into reimbursable agreements with establishments, agencies, and departments of the Department of Defense and the Department of Homeland Security.”.

SEC. 203. REIMBURSEMENT FOR MEDICAL-RELATED TRAVEL EXPENSES.

(a) **IN GENERAL.**—Chapter 13 of title 14, United States Code, is amended by adding at the end the following:

“§ 518. Reimbursement for medical-related travel expenses for certain persons residing on islands in the continental United States

“In any case in which a covered beneficiary (as defined in section 1072(5) of title 10) resides on an island that is located

in the 48 contiguous States and the District of Columbia and that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider (as defined in section 1074i(b) of title 10) on the mainland who provides services less than 100 miles from the location where the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age.”.

14 USC 461.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

“518. Reimbursement for medical-related travel expenses for certain persons residing on islands in the continental United States.”.

SEC. 204. COMMISSIONED OFFICERS.

(a) ACTIVE DUTY PROMOTION LIST.—Section 42 of title 14, United States Code, is amended to read as follows:

“§ 42. Number and distribution of commissioned officers on active duty promotion list

“(a) MAXIMUM TOTAL NUMBER.—The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 7,200; except that the Commandant may temporarily increase that number by up to 2 percent for no more than 60 days following the date of the commissioning of a Coast Guard Academy class.

“(b) DISTRIBUTION PERCENTAGES BY GRADE.—

“(1) REQUIRED.—The total number of commissioned officers authorized by this section shall be distributed in grade in the following percentages: 0.375 percent for rear admiral; 0.375 percent for rear admiral (lower half); 6.0 percent for captain; 15.0 percent for commander; and 22.0 percent for lieutenant commander.

“(2) DISCRETIONARY.—The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign.

“(3) AUTHORITY OF SECRETARY TO REDUCE PERCENTAGE.—The Secretary—

“(A) may reduce, as the needs of the Coast Guard require, any of the percentages set forth in paragraph (1); and

“(B) shall apply that total percentage reduction to any other lower grade or combination of lower grades.

“(c) COMPUTATIONS.—

“(1) IN GENERAL.—The Secretary shall compute, at least once each year, the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages established by or under this section to the total number of commissioned officers listed on the current active duty promotion list.

“(2) ROUNDING FRACTIONS.—Subject to subsection (a), in making the computations under paragraph (1), any fraction shall be rounded to the nearest whole number.

“(3) TREATMENT OF OFFICERS SERVING OUTSIDE COAST GUARD.—The number of commissioned officers on the active duty promotion list below the rank of rear admiral (lower

Applicability.

half) serving with other Federal departments or agencies on a reimbursable basis or excluded under section 324(d) of title 49 shall not be counted against the total number of commissioned officers authorized to serve in each grade.

“(d) USE OF NUMBERS; TEMPORARY INCREASES.—The numbers resulting from computations under subsection (c) shall be, for all purposes, the authorized number in each grade; except that the authorized number for a grade is temporarily increased during the period between one computation and the next by the number of officers originally appointed in that grade during that period and the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

“(e) OFFICERS SERVING COAST GUARD ACADEMY AND RESERVE.—The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 3 of such title is amended by striking the item relating to section 42 and inserting the following:

14 USC 41.

“42. Number and distribution of commissioned officers on active duty promotion list.”.

SEC. 205. COAST GUARD PARTICIPATION IN THE ARMED FORCES RETIREMENT HOME (AFRH) SYSTEM.

(a) IN GENERAL.—Section 1502 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 401) is amended—

- (1) by striking paragraph (4);
- (2) in paragraph (5)—
 - (A) by striking “and” at the end of subparagraph (C);
 - (B) by striking the period at the end of subparagraph (D) and inserting “; and”; and
 - (C) by inserting at the end the following:

“(E) the Assistant Commandant of the Coast Guard for Human Resources.”; and
- (3) by adding at the end of paragraph (6) the following:

“(E) The Master Chief Petty Officer of the Coast Guard.”.

(b) CONFORMING AMENDMENTS.—(1) Section 2772 of title 10, United States Code, is amended—

- (A) in subsection (a) by inserting “or, in the case of the Coast Guard, the Commandant” after “concerned”; and
 - (B) by striking subsection (c).
- (2) Section 1007(i) of title 37, United States Code, is amended—
- (A) in paragraph (3) by inserting “or, in the case of the Coast Guard, the Commandant” after “Secretary of Defense”;
 - (B) by striking paragraph (4); and
 - (C) by redesignating paragraph (5) as paragraph (4).

SEC. 206. GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.

Section 149 of title 14, United States Code, is amended by adding at the end the following:

“(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—After consultation with the Secretary of State, the Commandant may make grants to, or enter into cooperative agreements, contracts,

or other agreements with, international maritime organizations for the purpose of acquiring information or data about merchant vessel inspections, security, safety, environmental protection, classification, and port state or flag state law enforcement or oversight.”.

SEC. 207. LEAVE RETENTION AUTHORITY.

(a) **IN GENERAL.**—Chapter 11 of title 14, United States Code, is amended by inserting after section 425 the following:

“§ 426. Emergency leave retention authority

“(a) **IN GENERAL.**—A duty assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or in response to a spill of national significance shall be treated, for the purpose of section 701(f)(2) of title 10, as a duty assignment in support of a contingency operation.

“(b) **DEFINITIONS.**—In this section:

“(1) **SPILL OF NATIONAL SIGNIFICANCE.**—The term ‘spill of national significance’ means a discharge of oil or a hazardous substance that is declared by the Commandant to be a spill of national significance.

“(2) **DISCHARGE.**—The term ‘discharge’ has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).”.

14 USC 211.

(b) **CLERICAL AMENDMENT.**—The analysis for such chapter is amended by inserting after the item relating to section 425 the following:

“426. Emergency leave retention authority.”.

Effective date.
14 USC 426 note.

(c) **APPLICATION.**—The amendments made by this section shall be deemed to have been enacted on April 19, 2010.

SEC. 208. ENFORCEMENT AUTHORITY.

(a) **IN GENERAL.**—Chapter 5 of title 14, United States Code, is amended by adding at the end the following:

“§ 99. Enforcement authority

“Subject to guidelines approved by the Secretary, members of the Coast Guard, in the performance of official duties, may—

“(1) carry a firearm; and

“(2) while at a facility (as defined in section 70101 of title 46)—

“(A) make an arrest without warrant for any offense against the United States committed in their presence; and

“(B) seize property as otherwise provided by law.”.

(b) **CONFORMING REPEAL.**—Section 70117 of title 46, United States Code, and the item relating to such section in the analysis at the beginning of chapter 701 of such title, are repealed.

14 USC 81.

(c) **CLERICAL AMENDMENT.**—The analysis for such chapter is amended by adding at the end the following:

“99. Enforcement authority.”.

14 USC 211.

SEC. 209. REPEAL.

Section 216 of title 14, United States Code, and the item relating to such section in the analysis for chapter 11 of such title, are repealed.

SEC. 210. MERCHANT MARINER MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—Chapter 71 of title 46, United States Code, is amended by adding at the end the following new section:

“§ 7115. Merchant Mariner Medical Advisory Committee

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established a Merchant Mariner Medical Advisory Committee (in this section referred to as the ‘Committee’).

“(2) FUNCTIONS.—The Committee shall advise the Secretary on matters relating to—

“(A) medical certification determinations for issuance of licences, certificates of registry, and merchant mariners’ documents;

“(B) medical standards and guidelines for the physical qualifications of operators of commercial vessels;

“(C) medical examiner education; and

“(D) medical research.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Committee shall consist of 14 members, none of whom is a Federal employee, and shall include—

“(A) ten who are health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine; and

“(B) four who are professional mariners with knowledge and experience in mariner occupational requirements.

“(2) STATUS OF MEMBERS.—Members of the Committee shall not be considered Federal employees or otherwise in the service or the employment of the Federal Government, except that members shall be considered special Government employees, as defined in section 202(a) of title 18, United States Code, and shall be subject to any administrative standards of conduct applicable to the employees of the department in which the Coast Guard is operating.

“(c) APPOINTMENTS; TERMS; VACANCIES.—

“(1) APPOINTMENTS.—The Secretary shall appoint the members of the Committee, and each member shall serve at the pleasure of the Secretary.

“(2) TERMS.—Each member shall be appointed for a term of five years, except that, of the members first appointed, three members shall be appointed for a term of two years.

“(3) VACANCIES.—Any member appointed to fill the vacancy prior to the expiration of the term for which that member’s predecessor was appointed shall be appointed for the remainder of that term.

“(d) CHAIRMAN AND VICE CHAIRMAN.—The Secretary shall designate one member of the Committee as the Chairman and one member as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

“(e) COMPENSATION; REIMBURSEMENT.—Members of the Committee shall serve without compensation, except that, while engaged in the performance of duties away from their homes or regular places of business of the member, the member of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

Deadline.
14 USC 7115
note.

14 USC 7101.

“(f) STAFF; SERVICES.—The Secretary shall furnish to the Committee the personnel and services as are considered necessary for the conduct of its business.”.

(b) FIRST MEETING.—No later than six months after the date of enactment of this Act, the Merchant Mariner Medical Advisory Committee established by the amendment made by this section shall hold its first meeting.

(c) CLERICAL AMENDMENT.—The analysis for chapter 71 of that title is amended by adding at the end the following:

“7115. Merchant Mariner Medical Advisory Committee.”.

SEC. 211. RESERVE COMMISSIONED WARRANT OFFICER TO LIEUTENANT PROGRAM.

Section 214(a) of title 14, United States Code, is amended to read as follows:

“(a) The president may appoint temporary commissioned officers—

“(1) in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from holders of licenses issued under chapter 71 of title 46; and

“(2) in the Coast Guard Reserve in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers of the Coast Guard Reserve.”.

SEC. 212. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.

Chapter 11 of title 14, United States Code, is amended—

(1) in section 253(a)—

(A) by inserting “and” after “considered.”; and

(B) by striking “, and the number of officers the board may recommend for promotion”;

(2) in section 258—

(A) by inserting “(a) IN GENERAL.—” before “The Secretary shall”;

(B) in subsection (a) (as so designated) by striking the colon at the end of the material preceding paragraph (1) and inserting “—”; and

(C) by adding at the end the following:

“(b) PROVISION OF DIRECTION AND GUIDANCE.—

“(1) In addition to the information provided pursuant to subsection (a), the Secretary may furnish the selection board—

“(A) specific direction relating to the needs of the Coast Guard for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and

“(B) any other guidance that the Secretary believes may be necessary to enable the board to properly perform its functions.

“(2) Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.”;

(3) in section 259(a), by inserting after “whom the board” the following: “, giving due consideration to the needs of the Coast Guard for officers with particular skills so noted in specific direction furnished to the board by the Secretary under section 258 of this title,”; and

(4) in section 260(b), by inserting after “qualified for promotion” the following: “to meet the needs of the service (as noted in specific direction furnished the board by the Secretary under section 258 of this title)”.

SEC. 213. COAST GUARD VESSELS AND AIRCRAFT.

(a) **AUTHORITY TO FIRE AT OR INTO A VESSEL.**—Section 637(c) of title 14, United States Code, is amended—

(1) in paragraph (1), by striking “; or” and inserting a semicolon;

(2) in paragraph (2), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(3) any other vessel or aircraft on government noncommercial service when—

“(A) the vessel or aircraft is under the tactical control of the Coast Guard; and

“(B) at least one member of the Coast Guard is assigned and conducting a Coast Guard mission on the vessel or aircraft.”.

(b) **AUTHORITY TO DISPLAY COAST GUARD ENSIGNS AND PENNANTS.**—Section 638(a) of title 14, United States Code, is amended by striking “Coast Guard vessels and aircraft” and inserting “Vessels and aircraft authorized by the Secretary”.

SEC. 214. COAST GUARD DISTRICT OMBUDSMEN.

(a) **IN GENERAL.**—Chapter 3 of title 14, United States Code, is amended by adding at the end the following new section:

“§ 55. District Ombudsmen

“(a) **IN GENERAL.**—The Commandant shall appoint in each Coast Guard District a District Ombudsman to serve as a liaison between ports, terminal operators, shipowners, and labor representatives and the Coast Guard.

Appointment.

“(b) **PURPOSE.**—The purpose of the District Ombudsman shall be the following:

“(1) To support the operations of the Coast Guard in each port in the District for which the District Ombudsman is appointed.

“(2) To improve communications between and among port stakeholders including, port and terminal operators, ship owners, labor representatives, and the Coast Guard.

“(3) To seek to resolve disputes between the Coast Guard and all petitioners regarding requirements imposed or services provided by the Coast Guard.

“(c) **FUNCTIONS.**—

“(1) **COMPLAINTS.**—The District Ombudsman may examine complaints brought to the attention of the District Ombudsman by a petitioner operating in a port or by Coast Guard personnel.

“(2) **GUIDELINES FOR DISPUTES.**—

“(A) **IN GENERAL.**—The District Ombudsman shall develop guidelines regarding the types of disputes with

respect to which the District Ombudsman will provide assistance.

“(B) LIMITATION.—The District Ombudsman shall not provide assistance with respect to a dispute unless it involves the impact of Coast Guard requirements on port business and the flow of commerce.

“(C) PRIORITY.—In providing such assistance, the District Ombudsman shall give priority to complaints brought by petitioners who believe they will suffer a significant hardship as the result of implementing a Coast Guard requirement or being denied a Coast Guard service.

“(3) CONSULTATION.—The District Ombudsman may consult with any Coast Guard personnel who can aid in the investigation of a complaint.

“(4) ACCESS TO INFORMATION.—The District Ombudsman shall have access to any Coast Guard document, including any record or report, that will aid the District Ombudsman in obtaining the information needed to conduct an investigation of a complaint.

“(5) REPORTS.—At the conclusion of an investigation, the District Ombudsman shall submit a report on the findings and recommendations of the District Ombudsman, to the Commander of the District in which the petitioner who brought the complaint is located or operating.

“(6) DEADLINE.—The District Ombudsman shall seek to resolve each complaint brought in accordance with the guidelines—

“(A) in a timely fashion; and

“(B) not later than 4 months after the complaint is officially accepted by the District Ombudsman.

“(d) APPOINTMENT.—The Commandant shall appoint as the District Ombudsman an individual who has experience in port and transportation systems and knowledge of port operations or of maritime commerce (or both).

“(e) ANNUAL REPORTS.—The Secretary shall report annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the matters brought before the District Ombudsmen, including—

“(1) the number of matters brought before each District Ombudsman;

“(2) a brief summary of each such matter; and

“(3) the eventual resolution of each such matter.”.

14 USC 41.

(b) CLERICAL AMENDMENT.—The analysis at the beginning of that chapter is amended by adding at the end the following new item:

“55. District Ombudsmen.”.

SEC. 215. COAST GUARD COMMISSIONED OFFICERS: COMPULSORY RETIREMENT.

(a) IN GENERAL.—Chapter 11 of title 14, United States Code, is amended by striking section 293 and inserting the following:

“§ 293. Compulsory retirement

“(a) REGULAR COMMISSIONED OFFICERS.—Any regular commissioned officer, except a commissioned warrant officer, serving in a grade below rear admiral (lower half) shall be retired on the

first day of the month following the month in which the officer becomes 62 years of age.

“(b) FLAG-OFFICER GRADES.—(1) Except as provided in paragraph (2), any regular commissioned officer serving in a grade of rear admiral (lower half) or above shall be retired on the first day of the month following the month in which the officer becomes 64 years of age.

“(2) The retirement of an officer under paragraph (1) may be deferred—

“(A) by the President, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age; or

“(B) by the Secretary of the department in which the Coast Guard is operating, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 66 years of age.”.

(b) CLERICAL AMENDMENT.—The analysis at the beginning of such chapter is amended by striking the item relating to such section and inserting the following: 14 USC 211.

“293. Compulsory retirement.”.

SEC. 216. ENFORCEMENT OF COASTWISE TRADE LAWS.

(a) IN GENERAL.—Chapter 5 of title 14, United States Code, is further amended by adding at the end the following:

“§ 100. Enforcement of coastwise trade laws

“Officers and members of the Coast Guard are authorized to enforce chapter 551 of title 46. The Secretary shall establish a program for these officers and members to enforce that chapter.”.

(b) CLERICAL AMENDMENT.—The analysis for that chapter is further amended by adding at the end the following new item: 14 USC 81.

“100. Enforcement of coastwise trade laws.”.

(c) REPORT.—The Secretary of the department in which the Coast Guard is operating shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of this Act on the enforcement strategies and enforcement actions taken to enforce the coastwise trade laws.

SEC. 217. REPORT ON SEXUAL ASSAULTS IN THE COAST GUARD.

14 USC 93 note.

(a) IN GENERAL.—Not later than January 15 of each year, the Commandant of the Coast Guard shall submit a report on the sexual assaults involving members of the Coast Guard to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) CONTENTS.—The report required under subsection (a) shall contain the following:

(1) The number of sexual assaults against members of the Coast Guard, and the number of sexual assaults by members of the Coast Guard, that were reported to military officials during the year covered by such report, and the number of the cases so reported that were substantiated.

(2) A synopsis of, and the disciplinary action taken in, each substantiated case.

(3) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by such report in response to incidents of sexual assault involving members of the Coast Guard concerned.

(4) A plan for the actions that are to be taken in the year following the year covered by such report on the prevention of and response to sexual assault involving members of the Coast Guard concerned.

SEC. 218. HOME PORT OF COAST GUARD VESSELS IN GUAM.

Section 96 of title 14, United States Code, is amended—

(1) by striking “a State of the United States” and inserting “the United States or Guam”; and

(2) by inserting “or Guam” after “outside the United States”.

Deadline.
Study.
Notification.

SEC. 219. SUPPLEMENTAL POSITIONING SYSTEM.

Not later than 180 days after date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating in consultation with the Commandant of the Coast Guard shall conclude their study of whether a single, domestic system is needed as a back-up navigation system to the Global Positioning System and notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the results of such determination.

SEC. 220. ASSISTANCE TO FOREIGN GOVERNMENTS AND MARITIME AUTHORITIES.

Section 149 of title 14, United States Code, as amended by section 206, is further amended by adding at the end the following:

“(d) AUTHORIZED ACTIVITIES.—

“(1) The Commandant may use funds for—

“(A) the activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

“(B) the activities of maritime authority liaison teams of foreign governments making reciprocal visits to Coast Guard units, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

“(C) seminars and conferences involving members of maritime authorities of foreign governments;

“(D) distribution of publications pertinent to engagement with maritime authorities of foreign governments; and

“(E) personnel expenses for Coast Guard civilian and military personnel to the extent that those expenses relate to participation in an activity described in subparagraph (C) or (D).

“(2) An activity may not be conducted under this subsection with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.”.

SEC. 221. COAST GUARD HOUSING.

(a) IN GENERAL.—Chapter 18 of title 14, United States Code, is amended—

(1) in section 680—

(A) by striking paragraphs (1), (2), and (3) and inserting the following new paragraphs:

“(1) The term ‘construct’ means to build, renovate, or improve military family housing and military unaccompanied housing.

“(2) The term ‘construction’ means building, renovating, or improving military family housing and military unaccompanied housing.”; and

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively;

(2) in section 681(a)—

(A) in the matter preceding paragraph (1), by striking “exercise any authority or any combination of authorities provided under this chapter in order to provide for the acquisition or construction by private persons, including a small business concern qualified under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), of the following:” and inserting “acquire or construct the following:”;

(B) in paragraph (1), by striking “Family housing units” and inserting “Military family housing”; and

(C) in paragraph (2), by striking “Unaccompanied housing units” and inserting “Military unaccompanied housing”;

(3) by repealing sections 682, 683, and 684;

(4) by amending section 685 to read as follows:

“§ 685. Conveyance of real property

“(a) CONVEYANCE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary may convey, at fair market value, real property, owned or under the administrative control of the Coast Guard, for the purpose of expending the proceeds from such conveyance to acquire and construct military family housing and military unaccompanied housing.

“(b) TERMS AND CONDITIONS.—

“(1) The conveyance of real property under this section shall be by sale, for cash. The Secretary shall deposit the proceeds from the sale in the Coast Guard Housing Fund established under section 687 of this title, for the purpose of expending such proceeds to acquire and construct military family housing and military unaccompanied housing.

“(2) The conveyance of real property under this section shall not diminish the mission capacity of the Coast Guard, but further the mission support capability of the Coast Guard with regard to military family housing or military unaccompanied housing.

“(c) RELATIONSHIP TO ENVIRONMENTAL LAW.—This section does not affect or limit the application of or obligation to comply with any environmental law, including section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).”;

(5) by repealing section 686;

(6) in section 687—

(A) in subsection (b)—

(i) in paragraph (2), by striking “or unaccompanied” and inserting “or military unaccompanied”;

(ii) in paragraph (3)—

(I) by striking “or lease”;

(II) by striking “or facilities”; and

(III) by striking “military family and” and inserting “military family housing and”; and

(iii) by repealing paragraph (4);

(B) subsection (c), by amending paragraph (1) to read as follows: (1) In such amounts as provided in appropriations Acts, and except as provided in subsection (d), the Secretary may use amounts in the Coast Guard Housing Fund to carry out activities under this chapter with respect to military family housing and military unaccompanied housing, including—

“(A) the planning, execution, and administration of the conveyance of real property;

“(B) all necessary expenses, including expenses for environmental compliance and restoration, to prepare real property for conveyance; and

“(C) the conveyance of real property.”;

(C) in subsection (e), by striking “or (b)(3)”; and

(D) by repealing subsections (f) and (g);

14 USC 687a.

(7) by repealing 687a;

(8) by amending section 688 to read as follows:

“§ 688. Reports

“The Secretary shall prepare and submit to Congress, concurrent with the budget submitted pursuant to section 1105 of title 31, a report identifying the contracts or agreements for the conveyance of properties pursuant to this chapter executed during the prior calendar year.”; and

(9) by repealing section 689.

14 USC 680 note.

(b) SAVINGS CLAUSE.—This section shall not affect any action commenced prior to the date of enactment of this Act.

14 USC 680.

(c) CLERICAL AMENDMENT.—The chapter analysis at the beginning of such chapter is amended—

(1) by striking the items relating to sections 682, 683, 684, 686, 687a, and 689; and

(2) by amending the item relating to section 685 to read as follows:

“685. Conveyance of real property.”.

SEC. 222. CHILD DEVELOPMENT SERVICES.

Section 515 of title 14, United States Code, is amended—

(1) by striking subsection (b) and inserting the following:

“(b)(1) The Commandant is authorized to use appropriated funds available to the Coast Guard to provide child development services.

Regulations.
Fees.

“(2)(A) The Commandant is authorized to establish, by regulations, fees to be charged parents for the attendance of children at Coast Guard child development centers.

“(B) Fees to be charged, pursuant to subparagraph (A), shall be based on family income, except that the Commandant may, on a case-by-base basis, establish fees at lower rates if such rates would not be competitive with rates at local child development centers.

“(C) The Commandant is authorized to collect and expend fees, established pursuant to this subparagraph, and such fees shall, without further appropriation, remain available until expended for the purpose of providing services, including the compensation of employees and the purchase of consumable and disposable items, at Coast Guard child development centers.

“(3) The Commandant is authorized to use appropriated funds available to the Coast Guard to provide assistance to family home daycare providers so that family home daycare services can be provided to uniformed service members and civilian employees of the Coast Guard at a cost comparable to the cost of services provided by Coast Guard child development centers.”;

(2) by repealing subsections (d) and (e); and

(3) by redesignating subsections (f) and (g) as subsections (d) and (e), respectively.

SEC. 223. CHAPLAIN ACTIVITY EXPENSE.

Section 145 of title 14, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “and” at the end;

(B) in paragraph (3), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(4) detail personnel from the Chaplain Corps to provide services, pursuant to section 1789 of title 10, to the Coast Guard.”; and

(2) by adding at the end the following new subsection:

“(d)(1) As part of the services provided by the Secretary of the Navy pursuant to subsection (a)(4), the Secretary may provide support services to chaplain-led programs to assist members of the Coast Guard on active duty and their dependents, and members of the reserve component in an active status and their dependents, in building and maintaining a strong family structure.

“(2) In this subsection, the term ‘support services’ include transportation, food, lodging, child care, supplies, fees, and training materials for members of the Coast Guard on active duty and their dependents, and members of the reserve component in an active status and their dependents, while participating in programs referred to in paragraph (1), including participation at retreats and conferences.

“(3) In this subsection, the term ‘dependents’ has the same meaning as defined in section 1072(2) of title 10.”.

SEC. 224. COAST GUARD CROSS; SILVER STAR MEDAL.

(a) COAST GUARD CROSS.—Chapter 13 of title 14, United States Code, is amended by inserting after section 491 the following new section:

“§ 491a. Coast Guard cross

“The President may award a Coast Guard cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Coast Guard, when the Coast Guard is not operating under the Department of the Navy, distinguishes himself or herself by extraordinary heroism not justifying the award of a medal of honor—

“(1) while engaged in an action against an enemy of the United States;

“(2) while engaged in military operations involving conflict with an opposing foreign force or international terrorist organization; or

“(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.”.

(b) SILVER STAR MEDAL.—Such chapter is further amended—

(1) by striking the designation and heading of section 492a and inserting the following:

“§ 492b. Distinguished flying cross”;

and

(2) by inserting after section 492 the following new section:

“§ 492a. Silver star medal

“The President may award a silver star medal of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Coast Guard, when the Coast Guard is not operating under the Department of the Navy, is cited for gallantry in action that does not warrant a medal of honor or Coast Guard cross—

“(1) while engaged in an action against an enemy of the United States;

“(2) while engaged in military operations involving conflict with an opposing foreign force or international terrorist organization; or

“(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.”.

(c) CONFORMING AMENDMENTS.—Such chapter is further amended—

(1) in section 494, by striking “distinguished service medal, distinguished flying cross,” and inserting “Coast Guard cross, distinguished service medal, silver star medal, distinguished flying cross,” in both places it appears;

(2) in section 496—

(A) in the matter preceding paragraph (1) of subsection (a), by striking “distinguished service medal, distinguished flying cross,” and inserting “Coast Guard cross, distinguished service medal, silver star medal, distinguished flying cross,”; and

(B) in subsection (b)(2), by striking “distinguished service medal, distinguished flying cross,” and inserting “Coast Guard cross, distinguished service medal, silver star medal, distinguished flying cross,”; and

(3) in section 497, by striking “distinguished service medal, distinguished flying cross,” and inserting “Coast Guard cross, distinguished service medal, silver star medal, distinguished flying cross,”.

14 USC 461.

(d) CLERICAL AMENDMENTS.—The analysis at the beginning of such chapter is amended—

(1) by inserting after the item relating to section 491 the following new item:

“491a. Coast Guard cross.”.

(2) by striking the item relating to section 492a and inserting the following new items:

“492a. Silver star medal.

“492b. Distinguished flying cross.”.

TITLE III—SHIPPING AND NAVIGATION

SEC. 301. SEAWARD EXTENSION OF ANCHORAGE GROUNDS JURISDICTION.

Section 7 of the Rivers and Harbors Appropriations Act of 1915 (33 U.S.C. 471) is amended—

(1) by striking “That the” and inserting the following:

“(a) IN GENERAL.—The”.

(2) in subsection (a) (as designated by paragraph (1)) by striking “\$100; and the” and inserting “up to \$10,000. Each day during which a violation continues shall constitute a separate violation. The”; and

(3) by adding at the end the following:

“(b) DEFINITION.—As used in this section ‘navigable waters of the United States’ includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.”.

SEC. 302. MARITIME DRUG LAW ENFORCEMENT ACT AMENDMENT—SIMPLE POSSESSION.

Section 70506 of title 46, United States Code, is amended by adding at the end the following:

“(c) SIMPLE POSSESSION.—

“(1) IN GENERAL.—Any individual on a vessel subject to the jurisdiction of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance within the meaning of the Controlled Substances Act (21 U.S.C. 812) shall be liable to the United States for a civil penalty of not to exceed 5,000 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty.

Penalty.

“(2) DETERMINATION OF AMOUNT.—In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

Notification.

“(3) TREATMENT OF CIVIL PENALTY ASSESSMENT.—Assessment of a civil penalty under this subsection shall not be considered a conviction for purposes of State or Federal law but may be considered proof of possession if such a determination is relevant.”.

SEC. 303. TECHNICAL AMENDMENTS TO TONNAGE MEASUREMENT LAW.

(a) DEFINITIONS.—Section 14101(4) of title 46, United States Code, is amended—

(1) by striking “engaged” the first place it appears and inserting “that engages”;

(2) in subparagraph (A), by striking “arriving” and inserting “that arrives”;

(3) in subparagraph (B)—

(A) by striking “making” and inserting “that makes”;

and

(B) by striking “(except a foreign vessel engaged on that voyage)”;

(4) in subparagraph (C), by striking “departing” and inserting “that departs”; and

(5) in subparagraph (D), by striking “making” and inserting “that makes”.

(b) DELEGATION OF AUTHORITY.—Section 14103(c) of that title is amended by striking “intended to be engaged on” and inserting “that engages on”.

(c) APPLICATION.—Section 14301 of that title is amended—

(1) by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this section, this chapter applies to any vessel for which the application of an international agreement or other law of the United States to the vessel depends on the vessel’s tonnage.”;

(2) in subsection (b)—

(A) in paragraph (1), by striking the period at the end and inserting “, unless the government of the country to which the vessel belongs elects to measure the vessel under this chapter.”;

(B) in paragraph (3), by inserting “of United States or Canadian registry or nationality, or a vessel operated under the authority of the United States or Canada, and that is” after “vessel”;

(C) in paragraph (4), by striking “a vessel (except a vessel engaged)” and inserting “a vessel of United States registry or nationality, or one operated under the authority of the United States (except a vessel that engages)”;

(D) by striking paragraph (5);

(E) by redesignating paragraph (6) as paragraph (5);

and

(F) by amending paragraph (5), as so redesignated, to read as follows:

“(5) a barge of United States registry or nationality, or a barge operated under the authority of the United States (except a barge that engages on a foreign voyage) unless the owner requests.”;

(3) by striking subsection (c);

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(5) in subsection (c), as redesignated, by striking “After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5)(A) or (B) of this section)” and inserting “An existing vessel that has not undergone a change that the Secretary finds substantially affects the vessel’s gross tonnage (or a vessel to which IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, or A.541 (XIII) of November 17, 1983, apply)”.

(d) MEASUREMENT.—Section 14302(b) of that title is amended to read as follows:

“(b) A vessel measured under this chapter may not be required to be measured under another law.”.

(e) TONNAGE CERTIFICATE.—

(1) ISSUANCE.—Section 14303 of title 46, United States Code, is amended—

(A) in subsection (a), by adding at the end the following:

“For a vessel to which the Convention does not apply, the Secretary shall prescribe a certificate to be issued as evidence of a vessel’s measurement under this chapter.”;

(B) in subsection (b), by inserting “issued under this section” after “certificate”; and

(C) in the section heading by striking “**International**” and “(1969)”.

(2) MAINTENANCE.—Section 14503 of that title is amended—

(A) by designating the existing text as subsection (a); and

(B) by adding at the end the following new subsection:

“(b) The certificate shall be maintained as required by the Secretary.”.

(3) CLERICAL AMENDMENT.—The analysis at the beginning of chapter 143 of that title is amended by striking the item relating to section 14303 and inserting the following:

“14303. Tonnage Certificate.”.

(f) OPTIONAL REGULATORY MEASUREMENT.—Section 14305(a) of that title is amended by striking “documented vessel measured under this chapter,” and inserting “vessel measured under this chapter that is of United States registry or nationality, or a vessel operated under the authority of the United States,”.

(g) APPLICATION.—Section 14501 of that title is amended—

(1) by amending paragraph (1) to read as follows:

“(1) A vessel not measured under chapter 143 of this title if the application of an international agreement or other law of the United States to the vessel depends on the vessel’s tonnage.”; and

(2) in paragraph (2), by striking “a vessel” and inserting “A vessel”.

(h) DUAL TONNAGE MEASUREMENT.—Section 14513(c) of that title is amended—

(1) in paragraph (1)—

(A) by striking “vessel’s tonnage mark is below the uppermost part of the load line marks,” and inserting “vessel is assigned two sets of gross and net tonnages under this section.”; and

(B) by inserting “vessel’s tonnage” before “mark” the second place such term appears; and

(2) in paragraph (2), by striking the period at the end and inserting “as assigned under this section.”.

(i) RECIPROCITY FOR FOREIGN VESSELS.—Subchapter II of chapter 145 of that title is amended by adding at the end the following:

“§ 14514. Reciprocity for foreign vessels

“For a foreign vessel not measured under chapter 143, if the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are substantially similar to those of this chapter and the regulations prescribed under this chapter, the Secretary may accept the measurement and certificate of a

vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.”.

46 USC 14501.

(j) CLERICAL AMENDMENT.—The analysis for subchapter II of chapter 145 of such title is amended by adding at the end the following:

“14514. Reciprocity for foreign vessels.”.

Deadline.

SEC. 304. MERCHANT MARINER DOCUMENT STANDARDS.

Not later than 270 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

Plans.

(1) a plan, including estimated costs, to ensure that the process for an application, by an individual who has, or has applied for, a transportation security card under section 70105 of title 46, United States Code, for a merchant mariner document can be completed entirely by mail; and

Reports.

(2) a report on the feasibility of, and a timeline to, redesign the merchant mariner document to comply with the requirements of such section, including a biometric identifier, and all relevant international conventions, including the International Labour Organization Convention Number 185 concerning the seafarers identity document, and include a review on whether or not such redesign will eliminate the need for separate identity credentials and background screening and streamline the application process for mariners.

SEC. 305. SHIP EMISSION REDUCTION TECHNOLOGY DEMONSTRATION PROJECT.

(a) STUDY.—The Commandant of the Coast Guard, in conjunction with the Administrator of the Environmental Protection Agency, shall conduct a study—

(1) that surveys new technology and new applications of existing technology for reducing air emissions from cargo or passenger vessels that operate in United States waters and ports; and

(2) that identifies the impediments, including any laws or regulations, to demonstrating the technology identified in paragraph (1).

(b) REPORT.—Within 180 days after the date of enactment of this Act, the Commandant shall submit a report on the results of the study conducted under subsection (a) to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate.

SEC. 306. PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT.

Determination.
Federal Register,
publication.

(a) IN GENERAL.—Notwithstanding section 12111(d) of title 46, United States Code, foreign-flag vessels may be chartered by, or on behalf of, a lessee to be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit that is located over the Outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf

Lands Act (43 U.S.C. 1331(a)) for operations in support of exploration, or flow-testing and stimulation of wells, for offshore mineral or energy resources in the Beaufort Sea or the Chukchi Sea adjacent to Alaska—

(1) for a 1-year period from the date the lessee gives the Secretary of Transportation written notice of the commencement of such exploration drilling if the Secretary determines, after publishing notice in the Federal Register, that insufficient vessels documented under section 12111(d) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations; and

(2) for an additional period until such vessels are available if the Secretary of Transportation determines—

(A) that, by April 30 of the year following the commencement of exploration drilling, the lessee has entered into a binding agreement to employ a suitable vessel or vessels to be documented under section 12111(d) of title 46, United States Code, in sufficient numbers and with sufficient suitability to replace any foreign-flag vessel or vessels operating under this section; and

(B) after publishing notice in the Federal Register, that insufficient vessels documented under section 12111(d) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations.

(b) EXPIRATION.—Irrespective of the year in which the commitment referred to in subsection (a)(2)(A) occurs, foreign-flag anchor handling vessels may not be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit after December 31, 2017.

(c) LESSEE DEFINED.—In this section, the term “lessee” means the holder of a lease (as defined in section 1331(c) of title 43, United States Code), who, prior to giving the written notice in subsection (a)(1), has entered into a binding agreement to employ a suitable vessel documented or to be documented under 12111(d) of title 46, United States Code.

(d) SAVINGS PROVISION.—Nothing in subsection (a) may be construed to authorize the employment in the coastwise trade of a vessel that does not meet the requirements of 12111 of title 46, United States Code.

SEC. 307. ARCTIC MARINE SHIPPING ASSESSMENT IMPLEMENTATION.

14 USC 92 note.

(a) PURPOSE.—The purpose of this section is to ensure safe and secure maritime shipping in the Arctic including the availability of aids to navigation, vessel escorts, spill response capability, and maritime search and rescue in the Arctic.

(b) INTERNATIONAL MARITIME ORGANIZATION AGREEMENTS.—To carry out the purpose of this section, the Secretary of the department in which the Coast Guard is operating is encouraged to enter into negotiations through the International Maritime Organization to conclude and execute agreements to promote coordinated action among the United States, Russia, Canada, Iceland, Norway, and Denmark and other seafaring and Arctic nations to ensure, in the Arctic—

(1) placement and maintenance of aids to navigation;

- (2) appropriate marine safety, tug, and salvage capabilities;
- (3) oil spill prevention and response capability;
- (4) maritime domain awareness, including long-range vessel tracking; and
- (5) search and rescue.

(c) COORDINATION BY COMMITTEE ON THE MARITIME TRANSPORTATION SYSTEM.—The Committee on the Maritime Transportation System established under a directive of the President in the Ocean Action Plan, issued December 17, 2004, shall coordinate the establishment of domestic transportation policies in the Arctic necessary to carry out the purpose of this section.

(d) AGREEMENTS AND CONTRACTS.—The Secretary of the department in which the Coast Guard is operating may, subject to the availability of appropriations, enter into cooperative agreements, contracts, or other agreements with, or make grants to individuals and governments to carry out the purpose of this section or any agreements established under subsection (b).

(e) ICEBREAKING.—The Secretary of the department in which the Coast Guard is operating shall promote safe maritime navigation by means of icebreaking where necessary, feasible, and effective to carry out the purposes of this section.

(f) INDEPENDENT ICE BREAKER ANALYSES.—

Deadline.

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall require a non-governmental, independent third party (other than the National Academy of Sciences) that has extensive experience in the analysis of military procurements, to—

(A) conduct a comparative cost-benefit analysis, taking into account future Coast Guard budget projections (which assume Coast Guard budget growth of no more than inflation) and other recapitalization needs, of—

(i) rebuilding, renovating, or improving the existing fleet of polar icebreakers for operation by the Coast Guard;

(ii) constructing new polar icebreakers for operation by the Coast Guard;

(iii) construction of new polar icebreakers by the National Science Foundation for operation by the Foundation;

(iv) rebuilding, renovating, or improving the existing fleet of polar icebreakers by the National Science Foundation for operation by the Foundation; and

(v) any combination of the activities described in clause (i), (ii), (iii), or (iv) to carry out the missions of the Coast Guard and the National Science Foundation; and

(B) conduct a comprehensive analysis of the impact on all Coast Guard activities, including operations, maintenance, procurements, and end strength, of the acquisition of polar icebreakers described in subparagraph (A) by the Coast Guard or the National Science Foundation assuming that total Coast Guard funding will not increase more than the annual rate of inflation.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the department in which

the Coast Guard is operating shall submit a report containing the results of the analyses required under paragraph (1), together with recommendations the Commandant considers appropriate under section 93(a)(24) of title 14, United States Code, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(g) **HIGH-LATITUDE STUDY.**—Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High-Latitude Study to assess polar icebreaking mission requirements for all Coast Guard missions including search and rescue, marine pollution response and prevention, fisheries enforcement, and maritime commerce, whichever occurs later, the Commandant of the Coast Guard shall submit a report containing the results of the study, together with recommendations the Commandant considers appropriate under section 93(a)(24) of title 14, United States Code, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. Deadline.

(h) **ARCTIC DEFINITION.**—In this section the term “Arctic” has the same meaning as in section 112 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4111).

TITLE IV—ACQUISITION REFORM

SEC. 401. CHIEF ACQUISITION OFFICER.

(a) **IN GENERAL.**—Chapter 3 of title 14, United States Code, is further amended by adding at the end the following:

“§ 56. Chief Acquisition Officer

“(a) **IN GENERAL.**—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved) and who meets the qualifications set forth under subsection (b). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual’s primary duty.

“(b) **QUALIFICATIONS.**—

“(1) The Chief Acquisition Officer and any flag officer serving in the Acquisition Directorate shall be an acquisition professional with a Level III acquisition management certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent as—

“(A) the program executive officer;

“(B) the program manager of a Level 1 or Level 2 acquisition project or program;

“(C) the deputy program manager of a Level 1 or Level 2 acquisition;

“(D) the project manager of a Level 1 or Level 2 acquisition; or

“(E) any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

“(2) The Commandant shall periodically publish a list of the positions designated under paragraph (1). Lists.

“(3) In this subsection each of the terms ‘Level 1 acquisition’ and ‘Level 2 acquisition’ has the meaning that term has in chapter 15 of this title.

“(c) FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.—The functions of the Chief Acquisition Officer include—

“(1) monitoring the performance of acquisition projects and programs on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;

“(2) maximizing the use of full and open competition at the prime contract and subcontract levels in the acquisition of property, capabilities, assets, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government’s requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property, capability, asset, or service procured;

“(3) making acquisition decisions in concurrence with the technical authority, or technical authorities, of the Coast Guard, as designated by the Commandant, consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;

“(4) ensuring the use of detailed performance specifications in instances in which performance-based contracting is used;

“(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

“(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;

“(7) assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

“(8) developing strategies and specific plans for hiring, training, and professional development; and

“(9) reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.”.

14 USC 41.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of title 14, United States Code, is amended by adding at the end the following:

“56. Chief Acquisition Officer.”.

14 USC 56 note.

(c) SELECTION DEADLINE.—As soon as practicable after the date of enactment of this Act, but no later than October 1, 2011, the Commandant of the Coast Guard shall select a Chief Acquisition Officer under section 56 of title 14, United States Code, as amended by this section.

14 USC 56 note.
Deadline.

(d) SPECIAL RATE SUPPLEMENTS.—

(1) REQUIREMENT TO ESTABLISH.—Not later than 1 year after the date of enactment of this Act and in accordance with part 9701.333 of title 5, Code of Federal Regulations,

the Commandant of the Coast Guard shall establish special rate supplements that provide higher pay levels for employees necessary to carry out the amendment made by this section.

(2) SUBJECT TO APPROPRIATIONS.—The requirement under paragraph (1) is subject to the availability of appropriations.

(e) ELEVATION OF DISPUTES TO THE CHIEF ACQUISITION OFFICER.—If, after 90 days following the elevation to the Chief Acquisition Officer of any design or other dispute regarding Level 1 or Level 2 acquisition, the dispute remains unresolved, the Commandant shall provide to the appropriate congressional committees a detailed description of the issue and the rationale underlying the decision taken by the Chief Acquisition Officer to resolve the issue.

14 USC 56 note.
Deadline.

SEC. 402. ACQUISITIONS.

(a) IN GENERAL.—Part I of title 14, United States Code, is amended by inserting after chapter 13 the following:

14 USC 561.

“CHAPTER 15—ACQUISITIONS

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“561. Acquisition directorate.

“562. Improvements in Coast Guard acquisition management.

“563. Recognition of Coast Guard personnel for excellence in acquisition.

“564. Prohibition on use of lead systems integrators.

“565. Required contract terms.

“566. Department of Defense consultation.

“567. Undefinitized contractual actions.

“568. Guidance on excessive pass-through charges.

“569. Report on former Coast Guard officials employed by contractors to the agency.

“SUBCHAPTER II—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

“571. Identification of major system acquisitions.

“572. Acquisition.

“573. Preliminary development and demonstration.

“574. Acquisition, production, deployment, and support.

“575. Acquisition program baseline breach.

“576. Acquisition approval authority.

“SUBCHAPTER III—DEFINITIONS

“581. Definitions.

“SUBCHAPTER I—GENERAL PROVISIONS

“§ 561. Acquisition directorate

“(a) ESTABLISHMENT.—The Commandant of the Coast Guard shall establish an acquisition directorate to provide guidance and oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

“(b) MISSION.—The mission of the acquisition directorate is—

“(1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment; and

“(2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard’s missions and deliver the best-value products and services to the Nation.

“§ 562. Improvements in Coast Guard acquisition management

“(a) PROJECT OR PROGRAM MANAGERS.—

“(1) LEVEL 1 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.

“(2) LEVEL 2 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.

“(b) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.—

Deadline.

“(1) ISSUANCE OF GUIDANCE.—Not later than one year after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program and project managers for the management of acquisition projects and programs. The guidance shall address, at a minimum—

“(A) the qualifications required for project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions;

“(B) authorities available to project or program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program; and

“(C) the extent to which a project or program manager who initiates a new acquisition project or program will continue in management of that project or program without interruption until the delivery of the first production units of the program.

“(2) STRATEGY.—

Deadline.

“(A) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Commandant shall develop a comprehensive strategy for enhancing the role of Coast Guard project or program managers in developing and carrying out acquisition programs.

“(B) MATTERS TO BE ADDRESSED.—The strategy required by this section shall address, at a minimum—

“(i) the creation of a specific career path and career opportunities for individuals who are or may become project or program managers, including the rotational assignments that will be provided to project or program managers;

“(ii) the provision of enhanced training and educational opportunities for individuals who are or may become project or program managers;

“(iii) the provision of mentoring support to current and future project or program managers by experienced senior executives and program managers within the Coast Guard, and through rotational assignments to the Department of Defense;

“(iv) the methods by which the Coast Guard will collect and disseminate best practices and lessons learned on systems acquisition to enhance project and program management throughout the Coast Guard;

“(v) the templates and tools that will be used to support improved data gathering and analysis for project and program management and oversight purposes, including the metrics that will be utilized to assess the effectiveness of Coast Guard project or program managers in managing systems acquisition efforts; and

“(vi) the methods by which the accountability of project or program managers for the results of acquisition projects and programs will be increased.

“(c) ACQUISITION WORKFORCE.—

“(1) IN GENERAL.—The Commandant shall designate a sufficient number of positions to be in the Coast Guard’s acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

“(2) REQUIRED POSITIONS.—In designating positions under subsection (a), the Commandant shall include, at a minimum, positions encompassing the following competencies and functions:

“(A) Program management.

“(B) Systems planning, research, development, engineering, and testing.

“(C) Procurement, including contracting.

“(D) Industrial and contract property management.

“(E) Life-cycle logistics.

“(F) Quality control and assurance.

“(G) Manufacturing and production.

“(H) Business, cost estimating, financial management, and auditing.

“(I) Acquisition education, training, and career development.

“(J) Construction and facilities engineering.

“(K) Testing and evaluation.

“(3) ACQUISITION MANAGEMENT HEADQUARTER ACTIVITIES.—The Commandant shall also designate as positions in the acquisition workforce under paragraph (1) those acquisition-related positions located at Coast Guard headquarters units.

“(4) APPROPRIATE EXPERTISE REQUIRED.—The Commandant shall ensure that each individual assigned to a position in the acquisition workforce has the appropriate expertise to carry out the responsibilities of that position.

“(d) MANAGEMENT INFORMATION SYSTEM.—

“(1) IN GENERAL.—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.

“(2) INFORMATION MAINTAINED.—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

“(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

“(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

“(e) REPORT ON ADEQUACY OF ACQUISITION WORKFORCE.—

“(1) IN GENERAL.—The Commandant shall report to the appropriate congressional committees and the Committee on

Homeland Security of the House of Representatives by July 1 of each year on the scope of the acquisition activities to be performed in the next fiscal year and on the adequacy of the current acquisition workforce to meet that anticipated workload.

“(2) CONTENTS.—The report shall—

“(A) specify the number of officers, members, and employees of the Coast Guard currently and planned to be assigned to each position designated under subsection (c); and

“(B) identify positions that are understaffed to meet the anticipated acquisition workload, and actions that will be taken to correct such understaffing.

“(f) APPOINTMENTS TO ACQUISITION POSITIONS.—The Commandant shall ensure that no requirement or preference for officers or members of the Coast Guard is used in the consideration of persons for positions in the acquisition workforce.

“(g) CAREER PATHS.—

“(1) IDENTIFICATION OF CAREER PATHS.—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

“(A) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

“(B) publish information on such career paths.

“(2) PROMOTION PARITY.—The Commandant shall ensure that promotion parity is established for officers and members of the Coast Guard who have been assigned to the acquisition workforce relative to officers and members who have not been assigned to the acquisition workforce.

Publication.

“§ 563. Recognition of Coast Guard personnel for excellence in acquisition

Deadline.

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall commence implementation of a program to recognize excellent performance by individuals and teams comprised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition project or program.

“(b) ELEMENTS.—The program shall include—

“(1) specific award categories, criteria, and eligibility and manners of recognition;

“(2) procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program; and

“(3) procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

“(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any civilian employee recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

“§ 564. Prohibition on use of lead systems integrators

“(a) IN GENERAL.—

“(1) USE OF LEAD SYSTEMS INTEGRATOR.—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

“(2) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), shall use full and open competition for any acquisition contract awarded after the date of enactment of that Act, unless otherwise excepted in accordance with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation.

“(3) NO EFFECT ON SMALL BUSINESS ACT.—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

“(b) EXCEPTIONS.—

“(1) NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; C4ISR; NATIONAL SECURITY CUTTERS 2 AND 3.—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program (otherwise known as the ‘Rescue 21’ program), the C4ISR projects directly related to the Integrated Deepwater program, and National Security Cutters 2 and 3, if the Secretary of the department in which the Coast Guard is operating certifies that—

Certification.

“(A) the acquisition is in accordance with Federal law and the Federal Acquisition Regulation; and

“(B) the acquisition and the use of a private sector lead systems integrator for the acquisition is in the best interest of the Federal Government.

“(2) REPORT ON DECISIONMAKING PROCESS.—If the Commandant uses a private sector lead systems integrator for an acquisition, the Commandant shall notify in writing the appropriate congressional committees of the Commandant’s determination and shall provide to such committees a detailed rationale for the determination, at least 30 days before the award of a contract or issuance of a delivery order or task order, using a private sector lead systems integrator, including a comparison of the cost of the acquisition through the private sector lead systems integrator with the expected cost if the acquisition were awarded directly to the manufacturer or shipyard. For purposes of that comparison, the cost of award directly to a manufacturer or shipyard shall include the costs of Government contract management and oversight.

“(c) **LIMITATION ON LEAD SYSTEMS INTEGRATORS.**—Neither an entity performing lead systems integrator functions for a Coast Guard acquisition nor a Tier 1 subcontractor for any acquisition may have a financial interest in a subcontractor below the Tier 1 subcontractor level unless—

“(1) the subcontractor was selected by the prime contractor through full and open competition for such procurement;

“(2) the procurement was awarded by the lead systems integrator or a subcontractor through full and open competition;

“(3) the procurement was awarded by a subcontractor through a process over which the lead systems integrator and a Tier 1 subcontractor exercised no control; or

“(4) the Commandant has determined that the procurement was awarded in a manner consistent with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation.

“(d) **TERMINATION DATE FOR EXCEPTIONS.**—Except as described in subsection (b)(1), the Commandant may not use a private sector entity as a lead systems integrator for acquisition contracts awarded, or task orders or delivery orders issued, after the earlier of—

“(1) September 30, 2011; or

“(2) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient acquisition workforce personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead systems integrator in an efficient and cost-effective manner.

Certification.

“§ 565. Required contract terms

“(a) **IN GENERAL.**—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 or more years and with a total acquisition cost that is equal to or exceeds \$10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—

“(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;

“(2) provides that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;

“(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;

“(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or

shore standard then used by the Department of the Navy for that type of capability or asset; and

“(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

“(b) PROHIBITED PROVISIONS.—

“(1) IN GENERAL.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act of 2010 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

“(2) EXTENSION OF PROGRAM.—A contract, contract modification, or award term extending a contract with a lead systems integrator—

“(A) may not include any minimum requirements for the purchase of a given or determinable number of specific capabilities or assets; and

“(B) shall be reviewed by an independent third party with expertise in acquisition management, and the results of that review shall be submitted to the appropriate congressional committees at least 60 days prior to the award of the contract, contract modification, or award term.

Review.
Deadline.

“(c) INTEGRATED PRODUCT TEAMS.—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

“(d) TECHNICAL AUTHORITY.—The Commandant shall maintain or designate the technical authority to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 56 of this title.

“§ 566. Department of Defense consultation

“(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

“(b) INTERSERVICE TECHNICAL ASSISTANCE.—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

Memorandum.

“(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

“(2) the use, as appropriate, of Navy technical expertise; and

“(3) the temporary assignment or exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Command, to facilitate the development of organic capabilities in the Coast Guard.

“(c) TECHNICAL REQUIREMENT APPROVAL PROCEDURES.—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

Deadline.
Reports.

“(d) ASSESSMENT.—Within 180 days after the date of enactment of the Coast Guard Authorization Act for fiscal years 2010 and 2011, the Comptroller General of the United States shall transmit a report to the appropriate congressional committees that—

“(1) contains an assessment of current Coast Guard acquisition and management capabilities to manage Level 1 and Level 2 acquisitions;

“(2) includes recommendations as to how the Coast Guard can improve its acquisition management, either through internal reforms or by seeking acquisition expertise from the Department of Defense; and

“(3) addresses specifically the question of whether the Coast Guard can better leverage Department of Defense or other agencies’ contracts that would meet the needs of Level 1 or Level 2 acquisitions in order to obtain the best possible price.

“§ 567. Undefinitized contractual actions

“(a) IN GENERAL.—The Coast Guard may not enter into an undefinitized contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

“(b) REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—Any request to the Head of Contracting Activity for approval of an undefinitized contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

“(c) REQUIREMENTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

“(1) DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.—A contracting officer of the Coast Guard may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

“(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

“(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

“(2) LIMITATION ON OBLIGATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall

ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefinitized contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

“(3) WAIVER.—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

“(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

“(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6) of title 46);

“(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

“(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

“(4) LIMITATION ON APPLICATION.—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

“(d) INCLUSION OF NONURGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

“(1) good business practice; and

“(2) in the best interests of the United States.

“(e) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

“(1) good business practice; and

“(2) in the best interests of the United States.

“(f) ALLOWABLE PROFIT.—The Commandant shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

“(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

“(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

“(g) DEFINITIONS.—In this section:

“(1) UNDEFINITIZED CONTRACTUAL ACTION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘undefinitized contractual action’ means a

new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

“(B) EXCLUSION.—The term ‘undefinitized contractual action’ does not include contractual actions with respect to—

“(i) foreign military sales;

“(ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or

“(iii) special access programs.

“(2) QUALIFYING PROPOSAL.—The term ‘qualifying proposal’ means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

“§ 568. Guidance on excessive pass-through charges

Deadline.

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall issue guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are entered into with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

“(1) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

“(2) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

“(3) identify any exceptions determined by the Commandant to be in the best interest of the Government.

“(b) EXCESSIVE PASS-THROUGH CHARGE DEFINED.—In this section the term ‘excessive pass-through charge’, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower tier contractors and subcontracts and overhead and profit based on such direct costs.

“(c) APPLICATION OF GUIDANCE.—The guidance under this subsection shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

“§ 569. Report on former Coast Guard officials employed by contractors to the agency

“(a) REPORT REQUIRED.—Not later than December 31, 2011, and annually thereafter, the Comptroller General of the United States shall submit a report to the appropriate congressional committees on the employment during the preceding year by Coast Guard contractors of individuals who were Coast Guard officials in the previous 5-year period. The report shall assess the extent

to which former Coast Guard officials were provided compensation by Coast Guard contractors in the preceding calendar year.

“(b) OBJECTIVES OF REPORT.—At a minimum, the report required by this section shall assess the extent to which former Coast Guard officials who receive compensation from Coast Guard contractors have been assigned by those contractors to work on contracts or programs between the contractor and the Coast Guard, including contracts or programs for which the former official personally had oversight responsibility or decisionmaking authority when they served in or worked for the Coast Guard.

“(c) CONFIDENTIALITY REQUIREMENT.—The report required by this subsection shall not include the names of the former Coast Guard officials who receive compensation from Coast Guard contractors.

“(d) ACCESS TO INFORMATION.—A Coast Guard contractor shall provide the Comptroller General access to information requested by the Comptroller General for the purpose of conducting the study required by this section.

“(e) DEFINITIONS.—In this section:

“(1) COAST GUARD CONTRACTOR.—The term ‘Coast Guard contractor’ includes any person that received at least \$10,000,000 in contractor awards from the Coast Guard in the calendar year covered by the annual report.

“(2) COAST GUARD OFFICIAL.—The term ‘Coast Guard official’ includes former officers of the Coast Guard who were compensated at a rate of pay for grade O-7 or above during the calendar year prior to the date on which they separated from the Coast Guard, and former civilian employees of the Coast Guard who served at any Level of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code, during the calendar year prior to the date on which they separated from the Coast Guard.

“SUBCHAPTER II—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“§ 571. Identification of major system acquisitions

“(a) IN GENERAL.—

“(1) SUPPORT MECHANISMS.—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for all acquisitions.

“(2) MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

“(A) completes a mission analysis that—

“(i) identifies the specific capability gaps to be addressed by the project or program; and

“(ii) develops a clear mission need to be addressed by the project or program; and

“(B) prepares a preliminary affordability assessment for the project or program.

“(b) ELEMENTS.—

“(1) REQUIREMENTS.—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and

resource proposal for the initial project or program funding, and shall ensure the project or program is included in the Coast Guard Capital Investment Plan.

“(2) ASSESSMENT OF TRADE-OFFS.—In conducting an affordability assessment under subsection (a)(2)(B), the Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

“(c) HUMAN RESOURCE CAPITAL PLANNING.—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs required to implement each Level 1 and Level 2 acquisition project and program.

“§ 572. Acquisition

“(a) IN GENERAL.—The Commandant may not establish a Level 1 or Level 2 acquisition project or program until the Commandant—

“(1) clearly defines the operational requirements for the project or program;

“(2) establishes the feasibility of alternatives;

“(3) develops an acquisition project or program baseline;

“(4) produces a life-cycle cost estimate; and

“(5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.

“(b) SUBMISSION REQUIRED BEFORE PROCEEDING.—Any Coast Guard Level 1 or Level 2 acquisition project or program may not begin to obtain any capability or asset or proceed beyond that phase of its development that entails approving the supporting acquisition until the Commandant submits to the appropriate congressional committees the following:

“(1) The key performance parameters, the key system attributes, and the operational performance attributes of the capability or asset to be acquired under the proposed acquisition project or program.

“(2) A detailed list of the systems or other capabilities with which the capability or asset to be acquired is intended to be interoperable, including an explanation of the attributes of interoperability.

“(3) The anticipated acquisition project or program baseline and acquisition unit cost for the capability or asset to be acquired under the project or program.

“(4) A detailed schedule for the acquisition process showing when all capability and asset acquisitions are to be completed and when all acquired capabilities and assets are to be initially and fully deployed.

“(c) ANALYSIS OF ALTERNATIVES.—

“(1) IN GENERAL.—The Coast Guard may not acquire an experimental or technically immature capability or asset or implement a Level 1 or Level 2 acquisition project or program, unless it has prepared an analysis of alternatives for the capability or asset to be acquired in the concept and technology development phase of the acquisition process for the capability or asset.

“(2) REQUIREMENTS.—The analysis of alternatives shall be prepared by a federally funded research and development center, a qualified entity of the Department of Defense, or a similar independent third-party entity that has appropriate acquisition expertise and has no financial interest in any part of the acquisition project or program that is the subject of the analysis. At a minimum, the analysis of alternatives shall include—

“(A) an assessment of the technical maturity of the capability or asset, and technical and other risks;

“(B) an examination of capability, interoperability, and other advantages and disadvantages;

“(C) an evaluation of whether different combinations or quantities of specific assets or capabilities could meet the Coast Guard’s overall performance needs;

“(D) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;

“(E) when an alternative is an existing capability, asset, or prototype, an evaluation of relevant safety and performance records and costs;

“(F) a calculation of life-cycle costs including—

“(i) an examination of likely research and development costs and the levels of uncertainty associated with such estimated costs;

“(ii) an examination of likely production and deployment costs and the levels of uncertainty associated with such estimated costs;

“(iii) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs;

“(iv) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and

“(v) such additional measures as the Commandant or the Secretary of the department in which the Coast Guard is operating determines to be necessary for appropriate evaluation of the capability or asset; and

“(G) the business case for each viable alternative.

“(d) TEST AND EVALUATION MASTER PLAN.—

“(1) IN GENERAL.—For any Level 1 or Level 2 acquisition project or program the Chief Acquisition Officer must approve a test and evaluation master plan specific to the acquisition project or program for the capability, asset, or subsystems of the capability or asset and intended to minimize technical, cost, and schedule risk as early as practicable in the development of the project or program.

“(2) TEST AND EVALUATION STRATEGY.—The master plan shall—

“(A) set forth an integrated test and evaluation strategy that will verify that capability-level or asset-level and subsystem-level design and development, including performance and supportability, have been sufficiently proven before the capability, asset, or subsystem of the capability or asset is approved for production; and

“(B) require that adequate developmental tests and evaluations and operational tests and evaluations established under subparagraph (A) are performed to inform production decisions.

“(3) OTHER COMPONENTS OF THE MASTER PLAN.—At a minimum, the master plan shall identify—

“(A) the key performance parameters to be resolved through the integrated test and evaluation strategy;

“(B) critical operational issues to be assessed in addition to the key performance parameters;

“(C) specific development test and evaluation phases and the scope of each phase;

“(D) modeling and simulation activities to be performed, if any, and the scope of such activities;

“(E) early operational assessments to be performed, if any, and the scope of such assessments;

“(F) operational test and evaluation phases;

“(G) an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and

“(H) the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.

“(4) UPDATE.—The Chief Acquisition Officer must approve an updated master plan whenever there is a revision to project or program test and evaluation strategy, scope, or phasing.

“(5) LIMITATION.—The Coast Guard may not—

“(A) proceed beyond that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the master plan is approved by the Chief Acquisition Officer; or

“(B) award any production contract for a capability, asset, or subsystem for which a master plan is required under this subsection before the master plan is approved by the Chief Acquisition Officer.

“(e) LIFE-CYCLE COST ESTIMATES.—

“(1) IN GENERAL.—The Commandant shall implement mechanisms to ensure the development and regular updating of life-cycle cost estimates for each acquisition with a total acquisition cost that equals or exceeds \$10,000,000 and an expected service life of 10 or more years, and to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

“(2) TYPES OF ESTIMATES.—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant shall require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition project or program.

“(3) REQUIRED UPDATES.—For each Level 1 or Level 2 acquisition project or program the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the project or program enters a new acquisition phase.

“§ 573. Preliminary development and demonstration

“(a) IN GENERAL.—The Commandant shall ensure that developmental test and evaluation, operational test and evaluation, life-

cycle cost estimates, and the development and demonstration requirements applied by this chapter to acquisition projects and programs are met to confirm that the projects or programs meet the requirements identified in the mission-analysis and affordability assessment prepared under section 571(a)(2), the operational requirements developed under section 572(a)(1) and the following development and demonstration objectives:

“(1) To demonstrate that the design, manufacturing, and production solution is based upon a stable, producible, and cost-effective product design.

“(2) To ensure that the product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

“(3) To ensure that the product design is mature enough to commit to full production and deployment.

“(b) TESTS AND EVALUATIONS.—

“(1) IN GENERAL.—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the subsystems of the capability or asset in accordance with the master plan prepared for the capability or asset under section 572(d)(1).

“(2) USE OF THIRD PARTIES.—The Commandant shall ensure that the Coast Guard uses independent third parties with expertise in testing and evaluating the capabilities or assets and the subsystems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a master plan.

“(3) COMMUNICATION OF SAFETY CONCERNS.—The Commandant shall require that safety concerns identified during developmental or operational tests and evaluations or through independent or Government-conducted design assessments of capabilities or assets and subsystems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the subsystems concerned and to the Chief Acquisition Officer.

Deadline.

“(4) REPORTING OF SAFETY CONCERNS.—Any safety concerns that have been reported to the Chief Acquisition Officer for an acquisition program or project shall be reported by the Commandant to the appropriate congressional committees at least 90 days before the award of any contract or issuance of any delivery order or task order for low, initial, or full-rate production of the capability or asset concerned if they will remain uncorrected or unmitigated at the time such a contract is awarded or delivery order or task order is issued. The report shall include a justification for the approval of that level of production of the capability or asset before the safety concerns are corrected or mitigated. The report shall also include an explanation of the actions that will be taken to correct or mitigate the safety concerns, the date by which those actions will be taken, and the adequacy of current funding to correct or mitigate the safety concerns.

Deadline.

Notifications.

“(5) ASSET ALREADY IN LOW, INITIAL, OR FULL-RATE PRODUCTION.—If operational test and evaluation of a capability or asset already in low, initial, or full-rate production identifies a safety concern with the capability or asset or any subsystems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—

Deadline.

“(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practicable, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and

“(B) notify the Chief Acquisition Officer and include in such notification—

“(i) an explanation of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and subsystems of the capabilities or assets yet to be produced, and the date by which those actions will be taken;

“(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and subsystems of the capabilities or assets, and the date by which those actions will be taken; and

“(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and subsystems of the capabilities or assets and in previously produced capabilities or assets and subsystems.

“(c) TECHNICAL CERTIFICATION.—

“(1) IN GENERAL.—The Commandant shall ensure that any Level 1 or Level 2 acquisition project or program is certified by the technical authority of the Coast Guard after review by an independent third party with capabilities in the mission area, asset, or particular asset component.

“(2) TEMPEST TESTING.—The Commandant shall—

“(A) cause all electronics on all aircraft, surface, and shore capabilities and assets that require TEMPEST certification and that are delivered after the date of enactment of the Coast Guard Authorization Act of 2010 to be tested in accordance with TEMPEST standards and communications security (comsec) standards by an independent third party that is authorized by the Federal Government to perform such testing; and

“(B) certify that the assets meet all applicable TEMPEST requirements.

“(3) CUTTER CLASSIFICATION.—

“(A) IN GENERAL.—The Commandant shall cause each cutter, other than a National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act of 2010 to be classed by the American Bureau of Shipping before final acceptance.

“(B) REPORTS.—Not later than December 31, 2011, and biennially thereafter, the Commandant shall provide a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee

on Commerce, Science, and Transportation of the Senate identifying which, if any, Coast Guard cutters that have been issued a certificate of classification by the American Bureau of Shipping have not been maintained in class and detailing the reasons why they have not been maintained in class.

“(4) OTHER VESSELS.—The Commandant shall cause the design and construction of each National Security Cutter, other than National Security Cutters 1, 2, and 3, to be assessed by an independent third party with expertise in vessel design and construction certification.

“(5) AIRCRAFT AIRWORTHINESS.—The Commandant shall cause all aircraft and aircraft engines acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act of 2010 to be assessed for airworthiness by an independent third party with expertise in aircraft and aircraft engine certification before final acceptance.

“§ 574. Acquisition, production, deployment, and support

“(a) IN GENERAL.—The Commandant shall—

“(1) ensure there is a stable and efficient production and support capability to develop an asset or capability for the Coast Guard;

“(2) conduct follow-on testing to confirm and monitor performance and correct deficiencies; and

“(3) conduct acceptance tests and trials prior to the delivery of each asset or system to ensure the delivered asset or system achieves full operational capability.

“(b) ELEMENTS.—The Commandant shall—

“(1) execute production contracts;

“(2) ensure that delivered assets and capabilities meet operational cost and schedules requirements established in the acquisition program baseline;

“(3) validate manpower and training requirements to meet system needs to operate, maintain, support, and instruct the assets or capabilities; and

“(4) prepare an acquisition project or program transition plan to enter into programmatic sustainment, operations, and support.

“§ 575. Acquisition program baseline breach

“(a) IN GENERAL.—The Commandant shall submit a report to the appropriate congressional committees and the Committee on Homeland Security of the House of Representatives as soon as possible, but not later than 30 days, after the Chief Acquisition Officer of the Coast Guard becomes aware of the breach of an acquisition program baseline for any Level 1 or Level 2 acquisition program, by—

“(1) a likely cost overrun greater than 15 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;

“(2) a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or

“(3) an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key

Reports.

Deadline.

performance threshold or parameter under the acquisition program baseline.

“(b) CONTENT.—The report submitted under subsection (a) shall include—

“(1) a detailed description of the breach and an explanation of its cause;

“(2) the projected impact to performance, cost, and schedule;

“(3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;

“(4) the updated acquisition schedule and the complete history of changes to the original schedule;

“(5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;

“(6) a remediation plan identifying corrective actions and any resulting issues or risks; and

“(7) a description of how progress in the remediation plan will be measured and monitored.

Certification.

“(c) SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.—If a likely cost overrun is greater than 20 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition project or program of the Coast Guard, the Commandant shall include in the report a written certification, with a supporting explanation, that—

“(1) the capability or asset or capability or asset class to be acquired under the project or program is essential to the accomplishment of Coast Guard missions;

“(2) there are no alternatives to such capability or asset or capability or asset class that will provide equal or greater capability in both a more cost-effective and timely manner;

“(3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

“(4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

“§ 576. Acquisition approval authority

“Nothing in this subchapter shall be construed as altering or diminishing in any way the statutory authority and responsibility of the Secretary of the department in which the Coast Guard is operating, or the Secretary’s designee, to—

“(1) manage and administer department procurements, including procurements by department components, as required by section 701 of the Homeland Security Act of 2002 (6 U.S.C. 341); or

“(2) manage department acquisition activities and act as the Acquisition Decision Authority with regard to the review or approval of a Coast Guard Level 1 or Level 2 acquisition project or program, as required by section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) and related implementing regulations and directives.

“SUBCHAPTER III—DEFINITIONS

“§ 581. Definitions

“In this chapter:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

“(2) CHIEF ACQUISITION OFFICER.—The term ‘Chief Acquisition Officer’ means the officer appointed under section 56 of this title.

“(3) COMMANDANT.—The term ‘Commandant’ means the Commandant of the Coast Guard.

“(4) LEVEL 1 ACQUISITION.—The term ‘Level 1 acquisition’ means—

“(A) an acquisition by the Coast Guard—

“(i) the estimated life-cycle costs of which exceed \$1,000,000,000; or

“(ii) the estimated total acquisition costs of which exceed \$300,000,000; or

“(B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

“(i) due to—

“(I) the experimental or technically immature nature of the asset;

“(II) the technological complexity of the asset;

“(III) the commitment of resources; or

“(IV) the nature of the capability or set of capabilities to be achieved; or

“(ii) because such acquisition is a joint acquisition.

“(5) LEVEL 2 ACQUISITION.—The term ‘Level 2 acquisition’ means an acquisition by the Coast Guard—

“(A) the estimated life-cycle costs of which are equal to or less than \$1,000,000,000, but greater than \$300,000,000; or

“(B) the estimated total acquisition costs of which are equal to or less than \$300,000,000, but greater than \$100,000,000.

“(6) LIFE-CYCLE COST.—The term ‘life-cycle cost’ means all costs for development, procurement, construction, and operations and support for a particular capability or asset, without regard to funding source or management control.

“(7) PROJECT OR PROGRAM MANAGER DEFINED.—The term ‘project or program manager’ means an individual designated—

“(A) to develop, produce, and deploy a new asset to meet identified operational requirements; and

“(B) to manage cost, schedule, and performance of the acquisition, project, or program.

“(8) SAFETY CONCERN.—The term ‘safety concern’ means any hazard associated with a capability or asset or a subsystem of a capability or asset that is likely to cause serious bodily injury or death to a typical Coast Guard user in testing, maintaining, repairing, or operating the capability, asset, or subsystem or any hazard associated with the capability, asset, or subsystem that is likely to cause major damage to the capability, asset, or subsystem during the course of its normal operation by a typical Coast Guard user.

“(9) DEVELOPMENTAL TEST AND EVALUATION.—The term ‘developmental test and evaluation’ means—

“(A) the testing of a capability or asset and the subsystems of the capability or asset to determine whether they meet all contractual performance requirements, including technical performance requirements, supportability requirements, and interoperability requirements and related specifications; and

“(B) the evaluation of the results of such testing.

“(10) OPERATIONAL TEST AND EVALUATION.—The term ‘operational test and evaluation’ means—

“(A) the testing of a capability or asset and the subsystems of the capability or asset, under conditions similar to those in which the capability or asset and subsystems will actually be deployed, for the purpose of determining the effectiveness and suitability of the capability or asset and subsystems for use by typical Coast Guard users to conduct those missions for which the capability or asset and subsystems are intended to be used; and

“(B) the evaluation of the results of such testing.”.

14 USC 1.

(b) CONFORMING AMENDMENT.—The part analysis for part I of title 14, United States Code, is amended by inserting after the item relating to chapter 13 the following:

“15. Acquisitions 561”.

SEC. 403. NATIONAL SECURITY CUTTERS.

Deadline.
Assessment.

(a) NATIONAL SECURITY CUTTERS 1 AND 2.—Not later than 90 days before the Coast Guard awards any contract or issues any delivery order or task order to strengthen the hull of either of National Security Cutter 1 or 2 to resolve the structural design and performance issues identified in the Department of Homeland Security Inspector General’s Report OIG–07–23 dated January 2007, the Commandant shall submit to the appropriate congressional committees all results of an assessment of the proposed hull strengthening design conducted by the Coast Guard, including—

(1) a description in detail of the extent to which the hull strengthening measures to be implemented on those cutters will enable the cutters to meet contract and performance requirements;

(2) a cost-benefit analysis of the proposed hull strengthening measures for National Security Cutters 1 and 2; and

(3) a description of any operational restrictions that would have to be applied to either National Security Cutter 1 or 2 if the proposed hull strengthening measures were not implemented on either cutter.

Definition.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section the term “appropriate congressional committees” means the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 404. ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.

(a) IN GENERAL.—For purposes of sections 3304, 5333, and 5753 of title 5, United States Code, the Commandant of the Coast Guard may—

(1) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

(2) use the authorities in such sections to recruit and appoint highly qualified persons directly to positions so designated.

(b) **LIMITATION.**—The Commandant may not appoint a person to a position of employment under this paragraph after September 30, 2012.

(c) **REPORTS.**—The Commandant shall include in reports under section 562(d) of title 14, United States Code, as added by this title, information described in that section regarding positions designated under this section.

TITLE V—COAST GUARD MODERNIZATION

Coast Guard
Modernization
Act of 2010.

SEC. 501. SHORT TITLE.

14 USC 1 note.

This title may be cited as the “Coast Guard Modernization Act of 2010”.

Subtitle A—Coast Guard Leadership

SEC. 511. VICE ADMIRALS.

(a) **VICE ADMIRALS.**—Section 50 of such title is amended to read as follows:

“§ 50. Vice admirals

“(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

“(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and

“(B) shall perform such duties as the Commandant may prescribe.

“(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.

“(3) (A) Except as provided in subparagraph (B), one of the vice admirals designated under paragraph (1) must have at least 10 years experience in vessel inspection, marine casualty investigations, mariner licensing, or an equivalent technical expertise in the design and construction of commercial vessels, with at least 4 years of leadership experience at a staff or unit carrying out marine safety functions and shall serve as the principal advisor to the Commandant on these issues.

“(B) The requirements of subparagraph (A) do not apply to such vice admiral if the subordinate officer serving in the grade of rear admiral with responsibilities for marine safety, security, and stewardship possesses that experience.

“(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.

Effective date.
Termination
date.

“(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—

“(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;

“(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and

“(C) while awaiting retirement, beginning on the date the officer is detached from duty and ending on the day before the officer’s retirement, but not for more than 60 days.

“(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

“(2) An officer serving in a grade above rear admiral who holds the permanent grade of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer’s permanent grade.

“(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.”.

14 USC 50a.

14 USC 51.

(b) REPEAL.—Section 50a of such title is repealed.

(c) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

“(a) An officer, other than the Commandant, who, while serving in the grade of vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.

“(b) An officer, other than the Commandant, who is retired while serving in the grade of vice admiral, or who, after serving at least 2½ years in the grade of vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

“(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.”; and

(2) by striking “Area Commander, or Chief of Staff” in subsection (d)(2) and inserting “or Vice Admiral”.

(d) CONTINUITY OF GRADE.—Section 52 of title 14, United States Code, is amended by inserting “or admiral” after “vice admiral” the first place it appears.

(e) CONTINUATION ON ACTIVE DUTY.—The second sentence of section 290(a) of title 14, United States Code, is amended to read as follows: “Officers, other than the Commandant, serving for the time being or who have served in the grade of vice admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued at the grade of rear admiral.”.

(f) CLERICAL AMENDMENTS.—

(1) The section caption for section 47 of such title is amended to read as follows:

“§ 47. Vice commandant; appointment”.

(2) The section caption for section 52 of title 14, United States Code, is amended to read as follows:

“§ 52. Vice admirals and admiral, continuity of grade”.

(3) The table of contents for chapter 3 of such title is amended—

(A) by striking the item relating to section 47 and inserting the following:

“47. Vice Commandant; appointment.”;

(B) by striking the item relating to section 50a;

(C) by striking the item relating to section 50 and inserting the following:

“50. Vice admirals.”; and

(D) by striking the item relating to section 52 and inserting the following:

“52. Vice admirals and admiral, continuity of grade.”.

(g) TECHNICAL CORRECTION.—Section 47 of such title is further amended by striking “subsection” in the fifth sentence and inserting “section”.

(h) TREATMENT OF INCUMBENTS; TRANSITION.—

14 USC 50 note.

(1) Notwithstanding any other provision of law, an officer who, on the date of enactment of this Act, is serving as Chief of Staff, Commander, Atlantic Area, or Commander, Pacific Area—

(A) shall continue to have the grade of vice admiral with pay and allowance of that grade until such time that the officer is relieved of his duties and appointed and confirmed to another position as a vice admiral or admiral; or

(B) for the purposes of transition, may continue at the grade of vice admiral with pay and allowance of that grade, for not more than 1 year after the date of enactment of this Act, to perform the duties of the officer’s former position and any other such duties that the Commandant prescribes.

Subtitle B—Workforce Expertise**SEC. 521. PREVENTION AND RESPONSE STAFF.**

(a) IN GENERAL.—Chapter 3 of title 14, United States Code, is amended by adding at the end the following new sections:

“§ 57. Prevention and response workforces

“(a) CAREER PATHS.—The Secretary, acting through the Commandant, shall ensure that appropriate career paths for civilian and military Coast Guard personnel who wish to pursue career paths in prevention or response positions are identified in terms of the education, training, experience, and assignments necessary for career progression of civilians and members of the Armed Forces to the most senior prevention or response positions, as appropriate. The Secretary shall make available published information on such career paths.

Availability.

“(b) QUALIFICATIONS FOR CERTAIN ASSIGNMENTS.—An officer, member, or civilian employee of the Coast Guard assigned as a—

“(1) marine inspector shall have the training, experience, and qualifications equivalent to that required for a similar position at a classification society recognized by the Secretary under section 3316 of title 46 for the type of vessel, system, or equipment that is inspected;

“(2) marine casualty investigator shall have the training, experience, and qualifications in investigation, marine casualty reconstruction, evidence collection and preservation, human factors, and documentation using best investigation practices by Federal and non-Federal entities; or

“(3) marine safety engineer shall have knowledge, skill, and practical experience in—

“(A) the construction and operation of commercial vessels;

“(B) judging the character, strength, stability, and safety qualities of such vessels and their equipment; or

“(C) the qualifications and training of vessel personnel.

“(c) APPRENTICESHIP REQUIREMENT TO QUALIFY FOR CERTAIN CAREERS.—The Commandant may require an officer, member, or employee of the Coast Guard in training for a specialized prevention or response career path to serve an apprenticeship under the guidance of a qualified individual. However, an individual in training to become a marine inspector, marine casualty investigator, or marine safety engineer shall serve a minimum of one-year as an apprentice unless the Commandant authorizes a shorter period for certain qualifications.

“(d) MANAGEMENT INFORMATION SYSTEM.—The Secretary, acting through the Commandant, shall establish a management information system for the prevention and response workforces that shall provide, at a minimum, the following standardized information on persons serving in those workforces:

“(1) Qualifications, assignment history, and tenure in assignments.

“(2) Promotion rates for military and civilian personnel.

“(e) ASSESSMENT OF ADEQUACY OF MARINE SAFETY WORKFORCE.—

“(1) REPORT.—The Secretary, acting through the Commandant, shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by December 1 of each year on the adequacy of the current marine safety workforce to meet that anticipated workload.

“(2) CONTENTS.—The report shall specify the number of civilian and military Coast Guard personnel currently assigned to marine safety positions and shall identify positions that are understaffed to meet the anticipated marine safety workload.

“(f) SECTOR CHIEF OF PREVENTION.—There shall be in each Coast Guard sector a Chief of Prevention who shall be at least a Lieutenant Commander or civilian employee within the grade GS-13 of the General Schedule, and who shall be a—

“(1) marine inspector, qualified to inspect vessels, vessel systems, and equipment commonly found in the sector; and

“(2) qualified marine casualty investigator or marine safety engineer.

“(g) SIGNATORIES OF LETTER OF QUALIFICATION FOR CERTAIN PREVENTION PERSONNEL.—Each individual signing a letter of qualification for marine safety personnel must hold a letter of qualification for the type being certified.

“(h) SECTOR CHIEF OF RESPONSE.—There shall be in each Coast Guard sector a Chief of Response who shall be at least a Lieutenant Commander or civilian employee within the grade GS-13 of the General Schedule in each Coast Guard sector.

“§ 58. Centers of expertise for Coast Guard prevention and response

“(a) ESTABLISHMENT.—The Commandant of the Coast Guard may establish and operate one or more centers of expertise for prevention and response missions of the Coast Guard (in this section referred to as a ‘center’).

“(b) MISSIONS.—Each center shall—

“(1) promote and facilitate education, training, and research;

“(2) develop a repository of information on its missions and specialties; and

“(3) perform any other missions as the Commandant may specify.

“(c) JOINT OPERATION WITH EDUCATIONAL INSTITUTION AUTHORIZED.—The Commandant may enter into an agreement with an appropriate official of an institution of higher education to—

“(1) provide for joint operation of a center; and

“(2) provide necessary administrative services for a center, including administration and allocation of funds.

“(d) ACCEPTANCE OF DONATIONS.—

“(1) Except as provided in paragraph (2), the Commandant may accept, on behalf of a center, donations to be used to defray the costs of the center or to enhance the operation of the center. Those donations may be accepted from any State or local government, any foreign government, any foundation or other charitable organization (including any that is organized or operates under the laws of a foreign country), or any individual.

“(2) The Commandant may not accept a donation under paragraph (1) if the acceptance of the donation would compromise or appear to compromise—

“(A) the ability of the Coast Guard or the department in which the Coast Guard is operating, any employee of the Coast Guard or the department, or any member of the Armed Forces to carry out any responsibility or duty in a fair and objective manner; or

“(B) the integrity of any program of the Coast Guard, the department in which the Coast Guard is operating, or of any person involved in such a program.

“(3) The Commandant shall prescribe written guidance setting forth the criteria to be used in determining whether or not the acceptance of a donation from a foreign source would have a result described in paragraph (2).

Guidelines.

“§ 59. Marine industry training program

“(a) IN GENERAL.—The Commandant shall, by policy, establish a program under which an officer, member, or employee of the Coast Guard may be assigned to a private entity to further the institutional interests of the Coast Guard with regard to marine safety, including for the purpose of providing training to an officer, member, or employee. Policies to carry out the program—

“(1) with regard to an employee of the Coast Guard, shall include provisions, consistent with sections 3702 through 3704 of title 5, as to matters concerning—

“(A) the duration and termination of assignments;

“(B) reimbursements; and

“(C) status, entitlements, benefits, and obligations of program participants; and

“(2) shall require the Commandant, before approving the assignment of an officer, member, or employee of the Coast Guard to a private entity, to determine that the assignment is an effective use of the Coast Guard’s funds, taking into account the best interests of the Coast Guard and the costs and benefits of alternative methods of achieving the same results and objectives.

“(b) ANNUAL REPORT.—Not later than the date of the submission each year of the President’s budget request under section 1105 of title 31, the Commandant shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that describes—

“(1) the number of officers, members, and employees of the Coast Guard assigned to private entities under this section; and

“(2) the specific benefit that accrues to the Coast Guard for each assignment.”.

14 USC 41.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by adding at the end the following new items:

“57. Prevention and response workforces.

“58. Centers of expertise for Coast Guard prevention and response.

“59. Marine industry training programs.”.

SEC. 522. MARINE SAFETY MISSION PRIORITIES AND LONG-TERM GOALS.

(a) IN GENERAL.—Chapter 21 of title 46, United States Code, is amended by adding at the end the following new section:

“§ 2116. Marine safety strategy, goals, and performance assessments

“(a) LONG-TERM STRATEGY AND GOALS.—In conjunction with existing federally required strategic planning efforts, the Secretary shall develop a long-term strategy for improving vessel safety and the safety of individuals on vessels. The strategy shall include the issuance each year of an annual plan and schedule for achieving the following goals:

“(1) Reducing the number and rates of marine casualties.

“(2) Improving the consistency and effectiveness of vessel and operator enforcement and compliance programs.

“(3) Identifying and targeting enforcement efforts at high-risk vessels and operators.

“(4) Improving research efforts to enhance and promote vessel and operator safety and performance.

“(b) CONTENTS OF STRATEGY AND ANNUAL PLANS.—

“(1) MEASURABLE GOALS.—The strategy and annual plans shall include specific numeric or measurable goals designed to achieve the goals set forth in subsection (a). The purposes of the numeric or measurable goals are the following:

“(A) To increase the number of safety examinations on all high-risk vessels.

“(B) To eliminate the backlog of marine safety-related rulemakings.

“(C) To improve the quality and effectiveness of marine safety information databases by ensuring that all Coast Guard personnel accurately and effectively report all safety, casualty, and injury information.

“(D) To provide for a sufficient number of Coast Guard marine safety personnel, and provide adequate facilities and equipment to carry out the functions referred to in section 93(c).

“(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of—

“(A) the funds and staff resources needed to accomplish each activity included in the strategy and plans; and

“(B) the staff skills and training needed for timely and effective accomplishment of each goal.

“(c) SUBMISSION WITH THE PRESIDENT’S BUDGET.—Beginning with fiscal year 2011 and each fiscal year thereafter, the Secretary shall submit to Congress the strategy and annual plan not later than 60 days following the transmission of the President’s budget submission under section 1105 of title 31.

Effective date.
Deadline.
Plans.

“(d) ACHIEVEMENT OF GOALS.—

“(1) PROGRESS ASSESSMENT.—No less frequently than semi-annually, the Coast Guard Commandant shall assess the progress of the Coast Guard toward achieving the goals set forth in subsection (b). The Commandant shall convey the Commandant’s assessment to the employees of the marine safety workforce and shall identify any deficiencies that should be remedied before the next progress assessment.

Deadline.

“(2) REPORT TO CONGRESS.—The Secretary shall report annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

“(A) on the performance of the marine safety program in achieving the goals of the marine safety strategy and annual plan under subsection (a) for the year covered by the report;

“(B) on the program’s mission performance in achieving numerical measurable goals established under subsection (b); and

“(C) recommendations on how to improve performance of the program.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following new item: 46 USC 2101.

“2116. Marine safety strategy, goals, and performance assessments.”.

(c) CERTIFICATES OF INSPECTION.—Section 3309 of title 46, United States Code, is amended by adding at the end the following:

“(d) A certificate of inspection issued under this section shall be signed by the senior Coast Guard member or civilian employee who inspected the vessel, in addition to the officer in charge of marine inspection.”.

SEC. 523. POWERS AND DUTIES.

Section 93 of title 14, United States Code, is amended by adding at the end the following new subsections:

“(c) **MARINE SAFETY RESPONSIBILITIES.**—In exercising the Commandant’s duties and responsibilities with regard to marine safety, the individual with the highest rank who meets the experience qualifications set forth in section 50(a)(3) shall serve as the principal advisor to the Commandant regarding—

“(1) the operation, regulation, inspection, identification, manning, and measurement of vessels, including plan approval and the application of load lines;

“(2) approval of materials, equipment, appliances, and associated equipment;

“(3) the reporting and investigation of marine casualties and accidents;

“(4) the licensing, certification, documentation, protection and relief of merchant seamen;

“(5) suspension and revocation of licenses and certificates;

“(6) enforcement of manning requirements, citizenship requirements, control of log books;

“(7) documentation and numbering of vessels;

“(8) State boating safety programs;

“(9) commercial instruments and maritime liens;

“(10) the administration of bridge safety;

“(11) administration of the navigation rules;

“(12) the prevention of pollution from vessels;

“(13) ports and waterways safety;

“(14) waterways management; including regulation for regattas and marine parades;

“(15) aids to navigation; and

“(16) other duties and powers of the Secretary related to marine safety and stewardship.

“(d) **OTHER AUTHORITY NOT AFFECTED.**—Nothing in subsection (c) affects—

“(1) the authority of Coast Guard officers and members to enforce marine safety regulations using authority under section 89 of this title; or

“(2) the exercise of authority under section 91 of this title and the provisions of law codified at sections 191 through 195 of title 50 on the date of enactment of this paragraph.”.

SEC. 524. APPEALS AND WAIVERS.

(a) **IN GENERAL.**—Chapter 5 of title 14, United States Code, is further amended by inserting at the end the following new section:

“§ 102. Appeals and waivers

“Except for the Commandant of the Coast Guard, any individual adjudicating an appeal or waiver of a decision regarding marine safety, including inspection or manning and threats to the environment, shall—

“(1) be a qualified specialist with the training, experience, and qualifications in marine safety to effectively judge the

facts and circumstances involved in the appeal and make a judgment regarding the merits of the appeal; or

“(2) have a senior staff member who—

“(A) meets the requirements of paragraph (1);

“(B) actively advises the individual adjudicating the appeal; and

“(C) concurs in writing on the decision on appeal.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following new item: “102. Appeals and waivers.”.

14 USC 81.

SEC. 525. COAST GUARD ACADEMY.

(a) IN GENERAL.—Chapter 9 of title 14, United States Code, is further amended by adding at the end the following new section:

“§ 200. Marine safety curriculum

“The Commandant of the Coast Guard shall ensure that professional courses of study in marine safety are provided at the Coast Guard Academy, and during other officer accession programs, to give Coast Guard cadets and other officer candidates a background and understanding of the marine safety program. These courses may include such topics as program history, vessel design and construction, vessel inspection, casualty investigation, and administrative law and regulations.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following new item: “200. Marine safety curriculum.”.

14 USC 181.

SEC. 526. REPORT REGARDING CIVILIAN MARINE INSPECTORS.

Not later than 1 year after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on Coast Guard’s efforts to recruit and retain civilian marine inspectors and investigators and the impact of such recruitment and retention efforts on Coast Guard organizational performance.

TITLE VI—MARINE SAFETY

Maritime Safety
Act of 2010.

SEC. 601. SHORT TITLE.

This title may be cited as the “Maritime Safety Act of 2010”.

46 USC 101 note.

SEC. 602. VESSEL SIZE LIMITS.

(a) LENGTH, TONNAGE, AND HORSEPOWER.—Section 12113(d)(2) of title 46, United States Code, is amended—

(1) by inserting “and” after the semicolon at the end of subparagraph (A)(i);

(2) by striking “and” at the end of subparagraph (A)(ii);

(3) by striking subparagraph (A)(iii);

(4) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(5) by inserting at the end the following:

“(C) the vessel is either a rebuilt vessel or a replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112

Stat. 2681–627) and is eligible for a fishery endorsement under this section; or

“(D) the vessel is a fish tender vessel that is not engaged in the harvesting or processing of fish.”.

(b) CONFORMING AMENDMENTS.—

(1) VESSEL REBUILDING AND REPLACEMENT.—Section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–627) is amended to read as follows:

“(g) VESSEL REBUILDING AND REPLACEMENT.—

“(1) IN GENERAL.—

“(A) REBUILD OR REPLACE.—Notwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), (d), or (e), in order to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficiency) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.

“(B) SAME REQUIREMENTS.—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.

“(C) TRANSFER OF PERMITS AND LICENSES.—Each fishing permit and license held by the owner of a vessel or vessels to be rebuilt or replaced under subparagraph (A) shall be transferred to the rebuilt or replacement vessel or its owner, as necessary to permit such rebuilt or replacement vessel to operate in the same manner as the vessel prior to the rebuilding or the vessel it replaced, respectively.

“(2) RECOMMENDATIONS OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.—The North Pacific Fishery Management Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with the Magnuson-Stevens Act as it considers necessary to ensure that this subsection does not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

“(3) SPECIAL RULE FOR REPLACEMENT OF CERTAIN VESSELS.—

“(A) IN GENERAL.—Notwithstanding the requirements of subsections (b)(2), (c)(1), and (c)(2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a), (b), (c), or (e) and that qualifies to be documented with a fishery endorsement pursuant to section 213(g) may be replaced with a replacement vessel under paragraph (1) if the vessel that is replaced is validly documented with a fishery endorsement pursuant to section 213(g) before the replacement vessel is documented with

a fishery endorsement under section 12113 of title 46, United States Code.

“(B) APPLICABILITY.—A replacement vessel under subparagraph (A) and its owner and mortgagee are subject to the same limitations under section 213(g) that are applicable to the vessel that has been replaced and its owner and mortgagee.

“(4) SPECIAL RULES FOR CERTAIN CATCHER VESSELS.—

“(A) IN GENERAL.—A replacement for a covered vessel described in subparagraph (B) is prohibited from harvesting fish in any fishery (except for the Pacific whiting fishery) managed under the authority of any Regional Fishery Management Council (other than the North Pacific Fishery Management Council) established under section 302(a) of the Magnuson-Stevens Act.

“(B) COVERED VESSELS.—A covered vessel referred to in subparagraph (A) is—

“(i) a vessel eligible under subsection (a), (b), or (c) that is replaced under paragraph (1); or

“(ii) a vessel eligible under subsection (a), (b), or (c) that is rebuilt to increase its registered length, gross tonnage, or shaft horsepower.

“(5) LIMITATION ON FISHERY ENDORSEMENTS.—Any vessel that is replaced under this subsection shall thereafter not be eligible for a fishery endorsement under section 12113 of title 46, United States Code, unless that vessel is also a replacement vessel described in paragraph (1).

“(6) GULF OF ALASKA LIMITATION.—Notwithstanding paragraph (1), the Secretary shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010.

“(7) AUTHORITY OF PACIFIC COUNCIL.—Nothing in this section shall be construed to diminish or otherwise affect the authority of the Pacific Council to recommend to the Secretary conservation and management measures to protect fisheries under its jurisdiction (including the Pacific whiting fishery) and participants in such fisheries from adverse impacts caused by this Act.”.

(2) REPEAL OF EXEMPTION OF CERTAIN VESSELS.—Section 203(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-620) is repealed.

(3) FISHERY COOPERATIVE EXIT PROVISIONS.—Section 210(b) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-629) is amended—

(A) by moving the matter beginning with “the Secretary shall” in paragraph (1) 2 ems to the right; and

(B) by adding at the end the following:

“(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

“(A) FISHING ALLOWANCE DETERMINATION.—For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher

16 USC 1851
note.

vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—

“(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010; and

“(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.

“(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.

“(C) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—

“(i) to make the vessels AJ (United States official number 905625), DONA MARTITA (United States official number 651751), NORDIC EXPLORER (United States official number 678234), and PROVIDIAN (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or

“(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.”.

Reports.

SEC. 603. COLD WEATHER SURVIVAL TRAINING.

The Commandant of the Coast Guard shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the efficacy of cold weather survival training conducted by the Coast Guard over the preceding 5 years. The report shall include plans for conducting such training in fiscal years 2010 through 2013.

SEC. 604. FISHING VESSEL SAFETY.

(a) SAFETY STANDARDS.—Section 4502 of title 46, United States Code, is amended—

(1) in subsection (a), by—

(A) striking paragraphs (6) and (7) and inserting the following:

“(6) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment; and”;

(B) redesignating paragraph (8) as paragraph (7);

(2) in subsection (b)—

(A) in paragraph (1) in the matter preceding subparagraph (A), by striking “documented”;

(B) in paragraph (1)(A), by striking “the Boundary Line” and inserting “3 nautical miles from the baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes”;

(C) in paragraph (2)(B), by striking “lifeboats or life rafts” and inserting “a survival craft that ensures that no part of an individual is immersed in water”;

(D) in paragraph (2)(D), by inserting “marine” before “radio”;

(E) in paragraph (2)(E), by striking “radar reflectors, nautical charts, and anchors” and inserting “nautical charts, and publications”;

(F) in paragraph (2)(F), by striking “, including medicine chests” and inserting “and medical supplies sufficient for the size and area of operation of the vessel”; and

(G) by amending paragraph (2)(G) to read as follows: “(G) ground tackle sufficient for the vessel.”;

(3) by amending subsection (f) to read as follows:

“(f) To ensure compliance with the requirements of this chapter, the Secretary—

“(1) shall require the individual in charge of a vessel described in subsection (b) to keep a record of equipment maintenance, and required instruction and drills; and

Records.

“(2) shall examine at dockside a vessel described in subsection (b) at least once every 2 years, and shall issue a certificate of compliance to a vessel meeting the requirements of this chapter.”; and

Deadline.

Certification.

(4) by adding at the end the following:

“(g)(1) The individual in charge of a vessel described in subsection (b) must pass a training program approved by the Secretary that meets the requirements in paragraph (2) of this subsection and hold a valid certificate issued under that program.

“(2) The training program shall—

“(A) be based on professional knowledge and skill obtained through sea service and hands-on training, including training in seamanship, stability, collision prevention, navigation, fire fighting and prevention, damage control, personal survival, emergency medical care, emergency drills, and weather;

“(B) require an individual to demonstrate ability to communicate in an emergency situation and understand information found in navigation publications;

“(C) recognize and give credit for recent past experience in fishing vessel operation; and

“(D) provide for issuance of a certificate to an individual that has successfully completed the program.

Regulations.
Certification.
Deadline.

“(3) The Secretary shall prescribe regulations implementing this subsection. The regulations shall require that individuals who are issued a certificate under paragraph (2)(D) must complete refresher training at least once every 5 years as a condition of maintaining the validity of the certificate.

Public
information.
Database.

“(4) The Secretary shall establish a publicly accessible electronic database listing the names of individuals who have participated in and received a certificate confirming successful completion of a training program approved by the Secretary under this section.

“(h) A vessel to which this chapter applies shall be constructed in a manner that provides a level of safety equivalent to the minimum safety standards the Secretary may establish for recreational vessels under section 4302, if—

“(1) subsection (b) of this section applies to the vessel;

“(2) the vessel is less than 50 feet overall in length; and

“(3) the vessel is built after January 1, 2010.

Grants.

“(i)(1) The Secretary shall establish a Fishing Safety Training Grants Program to provide funding to municipalities, port authorities, other appropriate public entities, not-for-profit organizations, and other qualified persons that provide commercial fishing safety training—

“(A) to conduct fishing vessel safety training for vessel operators and crewmembers that—

“(i) in the case of vessel operators, meets the requirements of subsection (g); and

“(ii) in the case of crewmembers, meets the requirements of subsection (g)(2)(A), such requirements of subsection (g)(2)(B) as are appropriate for crewmembers, and the requirements of subsections (g)(2)(D), (g)(3), and (g)(4); and

“(B) for purchase of safety equipment and training aids for use in those fishing vessel safety training programs.

“(2) The Secretary shall award grants under this subsection on a competitive basis.

“(3) The Federal share of the cost of any activity carried out with a grant under this subsection shall not exceed 75 percent.

“(4) There is authorized to be appropriated \$3,000,000 for each of fiscal years 2010 through 2014 for grants under this subsection.

Grants.

“(j)(1) The Secretary shall establish a Fishing Safety Research Grant Program to provide funding to individuals in academia, members of non-profit organizations and businesses involved in fishing and maritime matters, and other persons with expertise in fishing safety, to conduct research on methods of improving the safety of the commercial fishing industry, including vessel design, emergency and survival equipment, enhancement of vessel monitoring systems, communications devices, de-icing technology, and severe weather detection.

“(2) The Secretary shall award grants under this subsection on a competitive basis.

“(3) The Federal share of the cost of any activity carried out with a grant under this subsection shall not exceed 75 percent.

“(4) There is authorized to be appropriated \$3,000,000 for each fiscal years 2010 through 2014 for activities under this subsection.”.

(b) CONFORMING AMENDMENT.—Section 4506(b) of title 46, United States Code, is repealed.

(c) ADVISORY COMMITTEE.—

(1) CHANGE OF NAME.—Section 4508 of title 46, United States Code, is amended—

(A) by striking the section heading and inserting the following:

“§ 4508. Commercial Fishing Safety Advisory Committee”;

and

(B) in subsection (a) by striking “Industry Vessel”.

(2) MEMBERSHIP REQUIREMENTS.—Section 4508(b)(1) of that title is amended—

(A) by striking “seventeen” and inserting “eighteen”;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking “from the commercial fishing industry who—” and inserting “who shall represent the commercial fishing industry and who—”; and

(ii) in clause (ii), by striking “an uninspected” and inserting “a”;

(C) by striking subparagraph (B) and inserting the following:

“(B) three members who shall represent the general public, including, whenever possible—

“(i) an independent expert or consultant in maritime safety;

“(ii) a marine surveyor who provides services to vessels to which this chapter applies; and

“(iii) a person familiar with issues affecting fishing communities and families of fishermen;” and

(D) in subparagraph (C)—

(i) in the matter preceding clause (i), by striking “representing each of—”

and inserting “each of whom shall represent—”;

(ii) in clause (i), by striking “or marine surveyors;” and inserting “and marine engineers;”;

(iii) in clause (iii), by striking “and” after the semicolon at the end;

(iv) in clause (iv), by striking the period at the end and inserting “; and”; and

(v) by adding at the end the following new clause: “(v) owners of vessels to which this chapter applies.”.

(3) TERMINATION.—Section 4508(e)(1) of that title is amended by striking “September 30, 2010.” and inserting “September 30, 2020.”.

(4) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 45 of title 46, United States Code, is amended by striking the item relating to such section and inserting the following: 46 USC 4501.

“4508. Commercial Fishing Safety Advisory Committee.”.

(d) LOADLINES FOR VESSELS 79 FEET OR GREATER IN LENGTH.—

(1) LIMITATION ON EXEMPTION FOR FISHING VESSELS.—Section 5102(b)(3) of title 46, United States Code, is amended by inserting after “vessel” the following “, unless the vessel is built after July 1, 2012”.

(2) ALTERNATE PROGRAM FOR CERTAIN FISHING VESSELS.—Section 5103 of title 46, United States Code, is amended by adding at the end the following:

“(c) A fishing vessel built on or before July 1, 2012, that undergoes a substantial change to the dimension of or type of the vessel completed after the later of July 1, 2012, or the date the Secretary establishes standards for an alternate loadline compliance program, shall comply with such an alternative loadline compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary.”.

(e) CLASSING OF VESSELS.—

(1) IN GENERAL.—Section 4503 of title 46, United States Code, is amended—

(A) by striking the section heading and inserting the following:

“§ 4503. Fishing, fish tender, and fish processing vessel certification”;

(B) in subsection (a) by striking “fish processing”; and

(C) by adding at the end the following:

Applicability.

“(c) This section applies to a vessel to which section 4502(b) of this title applies that is at least 50 feet overall in length and is built after July 1, 2012.

Effective date.

“(d)(1) After January 1, 2020, a fishing vessel, fish processing vessel, or fish tender vessel to which section 4502(b) of this title applies shall comply with an alternate safety compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary, if the vessel—

“(A) is at least 50 feet overall in length;

“(B) is built before July 1, 2012; and

“(C) is 25 years of age or older.

“(2) A fishing vessel, fish processing vessel, or fish tender vessel built before July 1, 2012, that undergoes a substantial change to the dimension of or type of vessel completed after the later of July 1, 2012, or the date the Secretary establishes standards for an alternate safety compliance program, shall comply with such an alternative safety compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary.

“(3) Alternative safety compliance programs may be developed for purposes of paragraph (1) for specific regions and fisheries.

Effective date.
Contracts.

“(4) Notwithstanding paragraph (1), vessels owned by a person that owns more than 30 vessels subject to that paragraph are not required to meet the alternate safety compliance requirements of that paragraph until January 1, 2030, if that owner enters into a compliance agreement with the Secretary that provides for a fixed schedule for all of the vessels owned by that person to meet requirements of that paragraph by that date and the vessel owner is meeting that schedule.

Applicability.

“(5) A fishing vessel, fish processing vessel, or fish tender vessel to which section 4502(b) of this title applies that was classed before July 1, 2012, shall—

“(A) remain subject to the requirements of a classification society approved by the Secretary; and

“(B) have on board a certificate from that society.”.

Certification.
46 USC 4501.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 45 of title 46, United States Code, is amended by striking the item relating to such section and inserting the following:

“4503. Fishing, fish tender, and fish processing vessel certification.”.

(f) **ALTERNATIVE SAFETY COMPLIANCE PROGRAM.**—No later than January 1, 2017, the Secretary of the department in which the Coast Guard is operating shall prescribe an alternative safety compliance program referred to in section 4503(d)(1) of the title 46, United States Code, as amended by this section.

Deadline.
46 USC 4503
note.

SEC. 605. MARINER RECORDS.

Section 7502 of title 46, United States Code, is amended—

(1) by inserting “(a)” before “The”;

(2) by striking “computerized records” and inserting “records, including electronic records,”; and

(3) by adding at the end the following:

“(b) The Secretary may prescribe regulations requiring a vessel owner or managing operator of a commercial vessel, or the employer of a seaman on that vessel, to maintain records of each individual engaged on the vessel subject to inspection under chapter 33 on matters of engagement, discharge, and service for not less than 5 years after the date of the completion of the service of that individual on the vessel. The regulations may require that a vessel owner, managing operator, or employer shall make these records available to the individual and the Coast Guard on request.

Time period.

“(c) A person violating this section, or a regulation prescribed under this section, is liable to the United States Government for a civil penalty of not more than \$5,000.”.

Penalty.

SEC. 606. DELETION OF EXEMPTION OF LICENSE REQUIREMENT FOR OPERATORS OF CERTAIN TOWING VESSELS.

Section 8905 of title 46, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

SEC. 607. LOG BOOKS.

(a) **IN GENERAL.**—Chapter 113 of title 46, United States Code, is amended by adding at the end the following:

“§ 11304. Additional logbook and entry requirements

“(a) A vessel of the United States that is subject to inspection under section 3301 of this title, except a vessel on a voyage from a port in the United States to a port in Canada, shall have an official logbook, which shall be kept available for review by the Secretary on request.

“(b) The log book required by subsection (a) shall include the following entries:

“(1) The time when each seaman and each officer assumed or relieved the watch.

“(2) The number of hours in service to the vessels of each seaman and each officer.

“(3) An account of each accident, illness, and injury that occurs during each watch.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following:

46 USC 11301.

“11304. Additional logbook and entry requirements.”.

SEC. 608. SAFE OPERATIONS AND EQUIPMENT STANDARDS.

(a) **IN GENERAL.**—Chapter 21 of title 46, United States Code, is further amended by adding at the end the following new sections:

“§ 2117. Termination for unsafe operation

“An individual authorized to enforce this title—

“(1) may remove a certificate required by this title from a vessel that is operating in a condition that does not comply with the provisions of the certificate;

“(2) may order the individual in charge of a vessel that is operating that does not have on board the certificate required by this title to return the vessel to a mooring and to remain there until the vessel is in compliance with this title; and

“(3) may direct the individual in charge of a vessel to which this title applies to immediately take reasonable steps necessary for the safety of individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes creates an especially hazardous condition, including ordering the individual in charge to return the vessel to a mooring and to remain there until the situation creating the hazard is corrected or ended.

“§ 2118. Establishment of equipment standards

“(a) In establishing standards for approved equipment required on vessels subject to part B of this title, the Secretary shall establish standards that are—

“(1) based on performance using the best available technology that is economically achievable; and

“(2) operationally practical.

“(b) Using the standards established under subsection (a), the Secretary may also certify lifesaving equipment that is not required to be carried on vessels subject to part B of this title to ensure that such equipment is suitable for its intended purpose.

“(c) At least once every 10 years the Secretary shall review and revise the standards established under subsection (a) to ensure that the standards meet the requirements of this section.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by adding at the end the following:

“2117. Termination for unsafe operation.

“2118. Establishment of equipment standards.”.

SEC. 609. APPROVAL OF SURVIVAL CRAFT.

(a) IN GENERAL.—Chapter 31 of title 46, United States Code, is amended by adding at the end the following new section:

“§ 3104. Survival craft

“(a) Except as provided in subsection (b), the Secretary may not approve a survival craft as a safety device for purposes of this part, unless the craft ensures that no part of an individual is immersed in water.

“(b) The Secretary may authorize a survival craft that does not provide protection described in subsection (a) to remain in service until not later than January 1, 2015, if—

“(1) it was approved by the Secretary before January 1, 2010; and

“(2) it is in serviceable condition.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

“3104. Survival craft.”.

Deadline.
Review.

46 USC 2101.

46 USC 3101.

SEC. 610. SAFETY MANAGEMENT.

(a) **VESSELS TO WHICH REQUIREMENTS APPLY.**—Section 3202 of title 46, United States Code, is amended—

(1) in subsection (a) by striking the heading and inserting “FOREIGN VOYAGES AND FOREIGN VESSELS.—”;

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(3) by inserting after subsection (a) the following:

“(b) **OTHER PASSENGER VESSELS.**—This chapter applies to a vessel that is—

“(1) a passenger vessel or small passenger vessel; and

“(2) is transporting more passengers than a number prescribed by the Secretary based on the number of individuals on the vessel that could be killed or injured in a marine casualty.”;

(4) in subsection (d), as so redesignated, by striking “subsection (b)” and inserting “subsection (c)”; and

(5) in subsection (d)(4), as so redesignated, by inserting “that is not described in subsection (b) of this section” after “waters”.

(b) **SAFETY MANAGEMENT SYSTEM.**—Section 3203 of title 46, United States Code, is amended by adding at the end the following new subsection:

“(c) In prescribing regulations for passenger vessels and small passenger vessels, the Secretary shall consider—

“(1) the characteristics, methods of operation, and nature of the service of these vessels; and

“(2) with respect to vessels that are ferries, the sizes of the ferry systems within which the vessels operate.”.

Regulations.

SEC. 611. PROTECTION AGAINST DISCRIMINATION.

(a) **IN GENERAL.**—Section 2114 of title 46, United States Code, is amended—

(1) in subsection (a)(1)(A), by striking “or” after the semicolon;

(2) in subsection (a)(1)(B), by striking the period at the end and inserting a semicolon;

(3) by adding at the end of subsection (a)(1) the following new subparagraphs:

“(C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;

“(D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

“(E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;

“(F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or

“(G) the seaman accurately reported hours of duty under this part.”; and

(4) by amending subsection (b) to read as follows:

“(b) A seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman’s request, may file a complaint with respect to such allegation in

Notification.

the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint shall be subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.”

46 USC 2114
note.

(b) EXISTING ACTIONS.—This section shall not affect the application of section 2114(b) of title 46, United States Code, as in effect before the date of enactment of this Act, to an action filed under that section before that date.

SEC. 612. OIL FUEL TANK PROTECTION.

Section 3306 of title 46, United States Code, is amended by adding at the end the following new subsection:

Compliance.

“(k)(1) Each vessel of the United States that is constructed under a contract entered into after the date of enactment of the Maritime Safety Act of 2010, or that is delivered after January 1, 2011, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled ‘Oil Fuel Tank Protection’.

“(2) The Secretary may prescribe regulations to apply the requirements described in Regulation 12A to vessels described in paragraph (1) that are not otherwise subject to that convention. Any such regulation shall be considered to be an interpretive rule for the purposes of section 553 of title 5.

Definition.

“(3) In this subsection the term ‘oil fuel’ means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.”

SEC. 613. OATHS.

Section 7105 of title 46, United States Code, is amended by striking “before a designated official”.

SEC. 614. DURATION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS’ DOCUMENTS.

(a) MERCHANT MARINER’S DOCUMENTS.—Section 7302(f) of title 46, United States Code, is amended to read as follows:

“(f) PERIODS OF VALIDITY AND RENEWAL OF MERCHANT MARINERS’ DOCUMENTS.—

“(1) IN GENERAL.—Except as provided in subsection (g), a merchant mariner’s document issued under this chapter is valid for a 5-year period and may be renewed for additional 5-year periods.

“(2) ADVANCE RENEWALS.—A renewed merchant mariner’s document may be issued under this chapter up to 8 months in advance but is not effective until the date that the previously issued merchant mariner’s document expires or until the completion of any active suspension or revocation of that previously issued merchant mariner’s document, whichever is later.”

(b) DURATION OF LICENSES.—Section 7106 of such title is amended to read as follows:

“§ 7106. Duration of licenses

“(a) IN GENERAL.—A license issued under this part is valid for a 5-year period and may be renewed for additional 5-year periods; except that the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

“(b) ADVANCE RENEWALS.—A renewed license issued under this part may be issued up to 8 months in advance but is not effective until the date that the previously issued license expires or until the completion of any active suspension or revocation of that previously issued merchant mariner’s document, whichever is later.”.

(c) CERTIFICATES OF REGISTRY.—Section 7107 of such title is amended to read as follows:

“§ 7107. Duration of certificates of registry

“(a) IN GENERAL.—A certificate of registry issued under this part is valid for a 5-year period and may be renewed for additional 5-year periods; except that the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

“(b) ADVANCE RENEWALS.—A renewed certificate of registry issued under this part may be issued up to 8 months in advance but is not effective until the date that the previously issued certificate of registry expires or until the completion of any active suspension or revocation of that previously issued merchant mariner’s document, whichever is later.”.

SEC. 615. AUTHORIZATION TO EXTEND THE DURATION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS’ DOCUMENTS.

(a) MERCHANT MARINER LICENSES AND DOCUMENTS.—Chapter 75 of title 46, United States Code, is amended by adding at the end the following:

“§ 7507. Authority to extend the duration of licenses, certificates of registry, and merchant mariner documents

“(a) LICENSES AND CERTIFICATES OF REGISTRY.—Notwithstanding sections 7106 and 7107, the Secretary of the department in which the Coast Guard is operating may—

“(1) extend for not more than one year an expiring license or certificate of registry issued for an individual under chapter 73 if the Secretary determines that the extension is required to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry or in response to a national emergency or natural disaster, as deemed necessary by the Secretary; or

“(2) issue for not more than five years an expiring license or certificate of registry issued for an individual under chapter 73 for the exclusive purpose of aligning the expiration date of such license or certificate of registry with the expiration date of a merchant mariner’s document.

“(b) MERCHANT MARINER DOCUMENTS.—Notwithstanding section 7302(g), the Secretary may—

“(1) extend for not more than one year an expiring merchant mariner’s document issued for an individual under

chapter 73 if the Secretary determines that the extension is required to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry or in response to a national emergency or natural disaster, as deemed necessary by the Secretary; or

“(2) issue for not more than five years an expiring merchant mariner’s document issued for an individual under chapter 73 for the exclusive purpose of aligning the expiration date of such merchant mariner’s document with the expiration date of a merchant mariner’s document.

“(c) MANNER OF EXTENSION.—Any extensions granted under this section may be granted to individual seamen or a specifically identified group of seamen.”.

46 USC 7501.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

“7507. Authority to extend the duration of licenses, certificates of registry, and merchant mariner documents.”.

SEC. 616. MERCHANT MARINER ASSISTANCE REPORT.

Not later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report regarding the feasibility of—

(1) expanding the streamlined evaluation process program that was affiliated with the Houston Regional Examination Center of the Coast Guard to all processing centers of the Coast Guard nationwide;

(2) including proposals to simplify the application process for a license as an officer, staff officer, or operator and for a merchant mariner’s document to help eliminate errors by merchant mariners when completing the application form (CG–719B), including instructions attached to the application form and a modified application form for renewals with questions pertaining only to the period of time since the previous application;

(3) providing notice to an applicant of the status of the pending application, including a process to allow the applicant to check on the status of the application by electronic means; and

(4) ensuring that all information collected with respect to applications for new or renewed licenses, merchant mariner documents, and certificates of registry is retained in a secure electronic format.

SEC. 617. OFFSHORE SUPPLY VESSELS.

(a) REMOVAL OF TONNAGE LIMITS.—

(1) DEFINITION.—

(A) IN GENERAL.—Section 2101(19) of title 46, United States Code, is amended by striking “of more than 15 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title”.

(B) EXEMPTION.—Section 5209(b)(1) of the Oceans Act of 1992 (Public Law 102–587; 46 U.S.C. 2101 note) is

amended by striking “vessel.” and inserting “vessel of less than 500 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 of such title as prescribed by the Secretary under section 14104 of such title.”.

(2) APPLICATION.—Section 3702(b) of title 46, United States Code, is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(b) SCALE OF EMPLOYMENT: ABLE SEAMEN.—Section 7312(d) of title 46, United States Code, is amended to read as follows:

“(d) Individuals qualified as able seamen—offshore. supply vessel under section 7310 of this title may constitute all of the able seamen required on board a vessel of less than 500 gross tons as measured under section 14502 of this title or 6,000 gross tons as measured under section 14302 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources. Individuals qualified as able seamen—limited under section 7308 of this title may constitute all of the able seamen required on board a vessel of at least 500 gross tons as measured under section 14502 of this title or 6,000 gross tons as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.”.

(c) MINIMUM NUMBER OF LICENSED INDIVIDUALS.—Section 8301(b) of title 46, United States Code, is amended to read as follows:

“(b)(1) An offshore supply vessel of less than 500 gross tons as measured under section 14502 of this title or 6,000 gross tons as measured under section 14302 of this title on a voyage of less than 600 miles shall have a licensed mate. If the vessel is on a voyage of at least 600 miles, however, the vessel shall have 2 licensed mates.

“(2) An offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title on a voyage of less than 600 miles shall have at least two licensed mates, provided the offshore supply vessel meets the requirements of section 8104(g)(2). An offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title on a voyage of at least 600 miles shall have three licensed mates.

“(3) An offshore supply vessel of more than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, may not be operated without a licensed engineer.”.

(d) WATCHES.—Section 8104(g) of title 46, United States Code, is amended—

(1) by inserting “(1)” after “(g)”; and

(2) by adding at the end the following:

“(2) Paragraph (1) applies to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the individuals engaged on the vessel are in compliance with hours of service requirements (including recording and record-keeping of that service) as prescribed by the Secretary.”.

(e) OIL FUEL TANK PROTECTION.—

(1) APPLICATION.—An offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of title

Applicability.

46 USC 3703
note.
Compliance.

46, United States Code, that is constructed under a contract entered into after the date of enactment of this Act, or that is delivered after August 1, 2010, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled Oil Fuel Tank Protection, regardless of whether such vessel is engaged in the coastwise trade or on an international voyage.

(2) DEFINITION.—In this subsection the term “oil fuel” means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.

(f) REGULATIONS.—

46 USC 3703
note.
Deadline.

(1) IN GENERAL.—Not later than January 1, 2012, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations to implement the amendments and authorities enacted by this section for offshore supply vessels of at least 6,000 gross tons as measured under section 14302 of title 46, United States Code, and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on such vessels. The final rule issued pursuant to such rulemaking may supersede the interim final rule promulgated under paragraph (2) of this subsection. In promulgating regulations under this subsection, the Secretary shall take into consideration the characteristics of offshore supply vessels, their methods of operation, and their service in support of exploration, exploitation, or production of offshore mineral or energy resources.

(2) INTERIM FINAL RULE AUTHORITY.—As soon as is practicable and without regard to the provisions of chapters 5 and 6 of title 5, United States Code, the Secretary shall issue an interim final rule as a temporary regulation implementing this section (including the amendments made by this section) for offshore supply vessels of at least 6,000 gross tons as measured under section 14302 of title 46, United States Code, and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on such vessels.

(3) INTERIM PERIOD.—After the effective date of this Act, prior to the effective date of the regulations prescribed by paragraph (2) of this subsection, and without regard to the provisions of chapters 5 and 6 of title 5, United States Code, and the offshore supply vessel tonnage limits of applicable regulations and policy guidance promulgated prior to the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating may—

(A) issue a certificate of inspection under section 3309 of title 46, United States Code, to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of that title if the Secretary determines that such vessel’s arrangements and equipment meet the current Coast Guard requirements for certification as a cargo and miscellaneous vessel;

(B) authorize a master, mate, or engineer who possesses an ocean or near coastal license and endorsement under part 11 of subchapter B of title 46, Code of Federal Regulations, (or any successor regulation) that qualifies

the licensed officer for service on offshore supply vessels of at least 3,000 gross tons but less than 6,000 gross tons, as measured under section 14302 of title 46, United States Code, to operate offshore supply vessels of at least 6,000 gross tons, as measured under such section; and

(C) authorize any such master, mate, or engineer who also possesses an ocean or near coastal license and endorsement under such part that qualifies the licensed officer for service on non trade-restricted vessels of at least 1,600 gross tons but less than 3,000 gross tons, as measured under such section, to increase the tonnage limitation of such license and endorsement under section 402(c) of such part, using service on vessels certificated under both subchapters I and L of such title and measured only under such section, except that such tonnage limitation shall not exceed 10,000 gross tons as measured under such section.

SEC. 618. ASSOCIATED EQUIPMENT.

Section 2101(1)(B) of title 46, United States Code, is amended by inserting “with the exception of emergency locator beacons for recreational vessels operating beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lake,” before “does”.

SEC. 619. LIFESAVING DEVICES ON UNINSPECTED VESSELS.

Section 4102(b) of title 46, United States Code, is amended to read as follows:

“(b) The Secretary shall prescribe regulations requiring the installation, maintenance, and use of life preservers and other lifesaving devices for individuals on board uninspected vessels.”.

Regulations.

SEC. 620. STUDY OF BLENDED FUELS IN MARINE APPLICATION.

Deadlines.

(a) SURVEY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, acting through the Commandant of the Coast Guard, shall submit a survey of published data and reports, pertaining to the use, safety, and performance of blended fuels in marine applications, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committees on Commerce, Science, and Transportation of the Senate.

(2) INCLUDED INFORMATION.—To the extent possible, the survey required in subsection (a), shall include data and reports on—

(A) the impact of blended fuel on the operation, durability, and performance of recreational and commercial marine engines, vessels, and marine engine and vessel components and associated equipment;

(B) the safety impacts of blended fuels on consumers that own and operate recreational and commercial marine engines and marine engine components and associated equipment; and

(C) to the extent available, fires and explosions on board vessels propelled by engines using blended fuels.

(b) STUDY.—

(1) **IN GENERAL.**—Not later than 36 months after the date of enactment of this Act, the Secretary, acting through the Commandant, shall conduct a comprehensive study on the use, safety, and performance of blended fuels in marine applications. The Secretary is authorized to conduct such study in conjunction with—

- (A) any other Federal agency;
- (B) any State government or agency;
- (C) any local government or agency, including local police and fire departments; and
- (D) any private entity, including engine and vessel manufacturers.

(2) **EVALUATION.**—The study shall include an evaluation of—

(A) the impact of blended fuel on the operation, durability and performance of recreational and commercial marine engines, vessels, and marine engine and vessel components and associated equipment;

(B) the safety impacts of blended fuels on consumers that own and operate recreational and commercial marine engines and marine engine components and associated equipment; and

(C) fires and explosions on board vessels propelled by engines using blended fuels.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Homeland Security to carry out the survey and study under this section \$1,000,000.

SEC. 621. RENEWAL OF ADVISORY COMMITTEES.

(a) **GREAT LAKES PILOTAGE ADVISORY COMMITTEE.**—Section 9307(f)(1) of title 46, United States Code, is amended by striking “September 30, 2010.” and inserting “September 30, 2020.”.

(b) **NATIONAL BOATING SAFETY ADVISORY COUNCIL.**—Section 13110 of title 46, United States Code, is amended—

(1) in subsection (d), by striking the first sentence; and

(2) in subsection (e), by striking “September 30, 2010.” and inserting “September 30, 2020.”.

(c) **HOUSTON-GALVESTON NAVIGATION SAFETY ADVISORY COMMITTEE.**—Section 18(h) of the Coast Guard Authorization Act of 1991 (Public Law 102–241 as amended by Public Law 104–324) is amended by striking “September 30, 2010.” and inserting “September 30, 2020.”.

105 Stat. 2213.

(d) **LOWER MISSISSIPPI RIVER WATERWAY SAFETY ADVISORY COMMITTEE.**—Section 19 of the Coast Guard Authorization Act of 1991 (Public Law 102–241) is amended—

105 Stat. 2215.

(1) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “twenty-four” and inserting “twenty-five”; and

(B) by adding at the end the following new paragraph: “(12) One member representing the Associated Federal Pilots and Docking Masters of Louisiana.”; and

(2) in subsection (g), by striking “September 30, 2010.” and inserting “September 30, 2020.”.

(e) **TOWING SAFETY ADVISORY COMMITTEE.**—The Act entitled “An Act To establish a Towing Safety Advisory Committee in the Department of Transportation”, approved October 6, 1980, (33 U.S.C. 1231a) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) There is established a Towing Safety Advisory Committee (hereinafter referred to as the ‘Committee’). The Committee shall consist of eighteen members with particular expertise, knowledge, and experience regarding shallow-draft inland and coastal waterway navigation and towing safety as follows:

Establishment.

“(1) Seven members representing the barge and towing industry, reflecting a regional geographic balance.

“(2) One member representing the offshore mineral and oil supply vessel industry.

“(3) One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.

“(4) One member representing the holders of active licensed Masters of towing vessels in offshore service.

“(5) One member representing Masters who are active ship-docking or harbor towing vessel.

“(6) One member representing licensed or unlicensed towing vessel engineers with formal training and experience.

“(7) Two members representing each of the following groups:

“(A) Port districts, authorities, or terminal operators.

“(B) Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge).

“(8) Two members representing the general public.”; and

(2) in subsection (e), by striking “September 30, 2010.”

and inserting “September 30, 2020.”

(f) NAVIGATION SAFETY ADVISORY COUNCIL.—Section 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) ESTABLISHMENT OF COUNCIL.—

“(1) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall establish a Navigation Safety Advisory Council (hereinafter referred to as the ‘Council’), consisting of not more than 21 members. All members shall have expertise in Inland and International vessel navigation Rules of the Road, aids to maritime navigation, maritime law, vessel safety, port safety, or commercial diving safety. Upon appointment, all non-Federal members shall be designated as representative members to represent the viewpoints and interests of one of the following groups or organizations:

Designation.

“(A) Commercial vessel owners or operators.

“(B) Professional mariners.

“(C) Recreational boaters.

“(D) The recreational boating industry.

“(E) State agencies responsible for vessel or port safety.

“(F) The Maritime Law Association.

“(2) PANELS.—Additional persons may be appointed to panels of the Council to assist the Council in performance of its functions.

“(3) NOMINATIONS.—The Secretary, through the Coast Guard Commandant, shall not less often than once a year publish a notice in the Federal Register soliciting nominations for membership on the Council.

Deadline.
Federal Register,
publication.
Notice.

Consultation.
Recommendations.

Deadlines.

Records.
Public
information.

“(b) FUNCTIONS.—The Council shall advise, consult with, and make recommendations to the Secretary, through the Coast Guard Commandant, on matters relating to maritime collisions, rammings, groundings, Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. Any advice and recommendations made by the Council to the Secretary shall reflect the independent judgment of the Council on the matter concerned. The Council shall meet at the call of the Coast Guard Commandant, but in any event not less than twice during each calendar year. All proceedings of the Council shall be public, and a record of the proceedings shall be made available for public inspection.”; and

(2) in subsection (d), by striking “September 30, 2010.” and inserting “September 30, 2020.”.

(g) DELAWARE RIVER AND BAY OIL SPILL ADVISORY COMMITTEE.—

(1) IN GENERAL.—Section 607 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; 120 Stat. 556) is amended—

(A) in subsection (c)(2), by striking “Not later than 18 months after the date that the Commandant completes appointment of the members of the Committee,” and inserting “Not later than December 31, 2010,”;

(B) in subsection (h), by striking “2007” and inserting “2011”; and

(C) by striking subsection (i) and inserting the following:

Deadlines.

“(i) TERMINATION.—The Committee shall terminate 30 days after it transmits its report, pursuant to subsection (c)(2), but no later than December 31, 2010, whichever is earlier.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection are deemed to have taken effect as if they were enacted on July 11, 2006.

(3) CHARTER.—Any charter pertaining to the Delaware River and Bay Oil Spill Advisory Committee is deemed not to have lapsed, and to have remained in effect, and, notwithstanding any other provision of law or policy, shall terminate 30 days after the date the Committee transmits its report, pursuant to section 607(c)(2) of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; 120 Stat. 557), but not later than December 31, 2010, whichever is earlier.

(4) APPOINTMENTS TO COMMITTEE.—Any appointment to the Delaware River and Bay Oil Spill Advisory Committee is deemed not to have lapsed, and to have remained in effect, and, notwithstanding any other provision of law or policy, shall terminate 30 days after the Committee transmits its report, pursuant to section 607(c)(2) of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; 120 Stat. 557), but not later than December 31, 2010, whichever is earlier.

SEC. 622. DELEGATION OF AUTHORITY.

(a) IN GENERAL.—Section 3316 of title 46, United States Code, is amended by adding at the end the following new subsection:

“(d)(1) The Secretary may delegate to the American Bureau of Shipping or another classification society recognized by the Secretary as meeting acceptable standards for such a society, for a United States offshore facility, the authority to—

“(A) review and approve plans required for issuing a certificate of inspection, a certificate of compliance, or any other certification and related documents issued by the Coast Guard pursuant to regulations issued under section 30 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356); and

“(B) conduct inspections and examinations.

“(2) The Secretary may make a delegation under paragraph (1) to a foreign classification society only if—

“(A) the foreign society has offices and maintains records in the United States; and

“(B)(i) the government of the foreign country in which the foreign society is headquartered delegates that authority to the American Bureau of Shipping; or

“(ii) the Secretary has entered into an agreement with the government of the foreign country in which the foreign society is headquartered that—

Contracts.

“(I) ensures the government of the foreign country will accept plan review, inspections, or examinations conducted by the American Bureau of Shipping and provide equivalent access to inspect, certify, and provide related services to offshore facilities located in that country or operating under the authority of that country; and

“(II) is in full accord with principles of reciprocity in regards to any delegation contemplated by the Secretary under paragraph (1).

“(3) If an inspection or examination is conducted under authority delegated under this subsection, the person to which the authority was delegated—

“(A) shall maintain in the United States complete files of all information derived from or necessarily connected with the inspection or examination for at least 2 years after the United States offshore facility ceases to be certified; and

Records.

“(B) shall permit access to those files at all reasonable times to any officer, employee, or member of the Coast Guard designated—

“(i) as a marine inspector and serving in a position as a marine inspector; or

“(ii) in writing by the Secretary to have access to those files.

“(4) For purposes of this subsection—

Definitions.

“(A) the term ‘offshore facility’ means any installation, structure, or other device (including any vessel not documented under chapter 121 of this title or the laws of another country), fixed or floating, that dynamically holds position or is temporarily or permanently attached to the seabed or subsoil under the sea; and

“(B) the term ‘United States offshore facility’ means any offshore facility, fixed or floating, that dynamically holds position or is temporarily or permanently attached to the seabed or subsoil under the territorial sea of the United States or the outer Continental Shelf (as that term is defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)), including any vessel, rig, platform, or other vehicle or structure

subject to regulation under section 30 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356).”.

(b) REVIEW AND APPROVAL OF CLASSIFICATION SOCIETY REQUIRED.—Section 3316(c) of title 46, United States Code, is amended by striking so much as precedes paragraph (2) and inserting the following:

“(c)(1) A classification society (including an employee or agent of that society) may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless the society has applied for approval under this subsection and the Secretary has reviewed and approved that society with respect to the conduct of that society under paragraph (2).”.

TITLE VII—OIL POLLUTION PREVENTION

Deadlines.

33 USC 1321
note.

SEC. 701. RULEMAKINGS.

(a) STATUS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of all Coast Guard rulemakings required or otherwise being developed (but for which no final rule has been issued as of the date of enactment of this Act) under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

(2) INFORMATION REQUIRED.—The Secretary shall include in the report required in paragraph (1)—

(A) a detailed explanation with respect to each such rulemaking as to—

- (i) what steps have been completed;
- (ii) what areas remain to be addressed; and
- (iii) the cause of any delays; and

(B) the date by which a final rule may reasonably be expected to be issued.

33 USC 1321
note.

(b) FINAL RULES.—The Secretary shall issue a final rule in each pending rulemaking described in subsection (a) as soon as practicable, but in no event later than 18 months after the date of enactment of this Act.

46 USC 3306
note.

(c) TOWING VESSELS.—No later than 90 days after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding inspection requirements for towing vessels required under section 3306(j) of title 46, United States Code. The Secretary shall issue a final rule pursuant to that rulemaking no later than 1 year after the date of enactment of this Act.

46 USC 3703
note.
Deadline.

SEC. 702. OIL TRANSFERS FROM VESSELS.

(a) REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations to reduce the risks of oil spills in operations involving the transfer of oil from or to a tank vessel. The regulations—

(1) shall focus on operations that have the highest risks of discharge, including operations at night and in inclement weather;

(2) shall consider—

(A) requirements for the use of equipment, such as putting booms in place for transfers, safety, and environmental impacts;

(B) operational procedures such as manning standards, communications protocols, and restrictions on operations in high-risk areas; or

(C) both such requirements and operational procedures; and

(3) shall take into account the safety of personnel and effectiveness of available procedures and equipment for preventing or mitigating transfer spills.

(b) APPLICATION WITH STATE LAWS.—The regulations promulgated under subsection (a) do not preclude the enforcement of any State law or regulation the requirements of which are at least as stringent as requirements under the regulations (as determined by the Secretary) that—

(1) applies in State waters; and

(2) does not conflict with, or interfere with the enforcement of, requirements and operational procedures under the regulations.

SEC. 703. IMPROVEMENTS TO REDUCE HUMAN ERROR AND NEAR MISS INCIDENTS.

46 USC 3703
note.

(a) REPORT.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure that, using available data—

(1) identifies the types of human errors that, combined, could cause oil spills, with particular attention to human error caused by fatigue, in the past 10 years;

(2) in consultation with representatives of industry and labor and experts in the fields of marine casualties and human factors, identifies the most frequent types of near-miss oil spill incidents involving vessels such as collisions, allisions, groundings, and loss of propulsion in the past 10 years;

(3) describes the extent to which there are gaps in the data required under paragraphs (1) and (2), including gaps in the ability to define and identify fatigue, and explains the reason for those gaps; and

(4) includes recommendations by the Secretary and representatives of industry and labor and experts in the fields of marine casualties and human factors to address the identified types of errors and any such gaps in the data.

(b) MEASURES.—Based on the findings contained in the report required by subsection (a), the Secretary shall take appropriate action to reduce the risk of oil spills caused by human error.

(c) CONFIDENTIALITY OF VOLUNTARILY SUBMITTED INFORMATION.—The identity of a person making a voluntary disclosure under this section, and any information obtained from any such voluntary disclosure, shall be treated as confidential.

(d) DISCOVERY OF VOLUNTARILY SUBMITTED INFORMATION.—

(1) **IN GENERAL.**—Except as provided in this subsection, a party in a judicial proceeding may not use discovery to obtain information or data collected or received by the Secretary for use in the report required in subsection (a).

(2) **EXCEPTION.**—

(A) Notwithstanding paragraph (1), a court may allow discovery by a party in a judicial proceeding of data described in paragraph (1) if, after an in camera review of the information or data, the court decides that there is a compelling reason to allow the discovery.

(B) When a court allows discovery in a judicial proceeding as permitted under this paragraph, the court shall issue a protective order—

(i) to limit the use of the data to the judicial proceeding; and

(ii) to prohibit dissemination of the data to any person who does not need access to the data for the proceeding.

(C) A court may allow data it has decided is discoverable under this paragraph to be admitted into evidence in a judicial proceeding only if the court places the data under seal to prevent the use of the data for a purpose other than for the proceeding.

(3) **APPLICATION.**—Paragraph (1) shall not apply to—

(A) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or

(B) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

(e) **RESTRICTION ON USE OF DATA.**—Data that is voluntarily submitted for the purpose of the study required under subsection (a) shall not be used in an administrative action under chapter 77 of title 46, United States Code.

SEC. 704. OLYMPIC COAST NATIONAL MARINE SANCTUARY.

The Secretary of the Department in which the Coast Guard is operating and the Under Secretary of Commerce for Oceans and Atmosphere shall revise the area to be avoided off the coast of the State of Washington so that restrictions apply to all vessels required to prepare a response plan pursuant to section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) (other than fishing or research vessels while engaged in fishing or research within the area to be avoided).

33 USC 1321a.

SEC. 705. PREVENTION OF SMALL OIL SPILLS.

(a) **PREVENTION AND EDUCATION PROGRAM.**—The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department in which the Coast Guard is operating and other appropriate agencies, shall establish an oil spill prevention and education program for small vessels. The program shall provide for assessment, outreach, and training and voluntary compliance activities to prevent and improve the effective response to oil spills from vessels and facilities not required to prepare a vessel response plan under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including recreational vessels, commercial fishing vessels, marinas, and aquaculture facilities. The Under Secretary may provide grants to sea grant colleges and institutes designated under section 207 of the National Sea Grant

College Program Act (33 U.S.C. 1126) and to State agencies, tribal governments, and other appropriate entities to carry out—

(1) regional assessments to quantify the source, incidence and volume of small oil spills, focusing initially on regions in the country where, in the past 10 years, the incidence of such spills is estimated to be the highest;

(2) voluntary, incentive-based clean marina programs that encourage marina operators, recreational boaters, and small commercial vessel operators to engage in environmentally sound operating and maintenance procedures and best management practices to prevent or reduce pollution from oil spills and other sources;

(3) cooperative oil spill prevention education programs that promote public understanding of the impacts of spilled oil and provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, prevent accidental spills during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances; and

(4) support for programs, including outreach and education to address derelict vessels and the threat of such vessels sinking and discharging oil and other hazardous substances, including outreach and education to involve efforts to the owners of such vessels.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and Atmosphere to carry out this section, \$10,000,000 for each of fiscal years 2010 through 2014.

SEC. 706. IMPROVED COORDINATION WITH TRIBAL GOVERNMENTS.

33 USC 1321b.

(a) **IN GENERAL.**—Within 6 months after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

Deadline.
Consultation
policy.

(b) **INCLUSION OF TRIBAL GOVERNMENT.**—The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

(1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;

(2) share information about the oil spill with the tribal government of the affected tribe; and

(3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

(c) **COOPERATIVE ARRANGEMENTS.**—The Coast Guard may enter into memoranda of agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such

memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team co-chaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

(d) **FUNDING FOR TRIBAL PARTICIPATION.**—Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant \$500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

SEC. 707. REPORT ON AVAILABILITY OF TECHNOLOGY TO DETECT THE LOSS OF OIL.

Within 1 year after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the availability, feasibility, and potential cost of technology to detect the loss of oil carried as cargo or as fuel on tank and non-tank vessels greater than 400 gross tons.

SEC. 708. USE OF OIL SPILL LIABILITY TRUST FUND.

(a) **IN GENERAL.**—Section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(2) by inserting after subparagraph (A) the following:

“(B) not more than \$15,000,000 in each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, response and damage assessment capabilities of the National Oceanic and Atmospheric Administration;”.

(b) AUDITS; ANNUAL REPORTS.—Section 1012 of the Oil Pollution Act of 1990 (33 U.S.C. 2712) is amended—

(1) by striking subsection (g) and inserting the following:

“(g) AUDITS.—

“(1) IN GENERAL.—The Comptroller General of the United States shall conduct an audit, including a detailed accounting of each disbursement from the Fund in excess of \$500,000 that is—

“(A) disbursed by the National Pollution Fund Center and not reimbursed by the responsible party; and

“(B) administered and managed by the receiving Federal agencies, including final payments made to agencies and contractors and, to the extent possible, subcontractors.

“(2) FREQUENCY.—The audits shall be conducted—

“(A) at least once every 3 years after the date of enactment of the Coast Guard Authorization Act of 2010 until 2016; and

“(B) at least once every 5 years after the last audit conducted under subparagraph (A).

“(3) SUBMISSION OF RESULTS.—The Comptroller shall submit the results of each audit conducted under paragraph (1) to—

“(A) the Senate Committee on Commerce, Science, and Transportation;

“(B) the House of Representatives Committee on Transportation and Infrastructure; and

“(C) the Secretary or Administrator of each agency referred to in paragraph (1)(B).”; and

(2) by adding at the end thereof the following:

“(1) REPORTS.—

“(1) IN GENERAL.—Within one year after the date of enactment of the Coast Guard Authorization Act of 2010, and annually thereafter, the President, through the Secretary of the Department in which the Coast Guard is operating, shall—

“(A) provide a report on disbursements for the preceding fiscal year from the Fund, regardless of whether those disbursements were subject to annual appropriations, to—

“(i) the Senate Committee on Commerce, Science, and Transportation; and

“(ii) the House of Representatives Committee on Transportation and Infrastructure; and

“(B) make the report available to the public on the National Pollution Funds Center Internet website.

“(2) CONTENTS.—The report shall include—

“(A) a list of each disbursement of \$250,000 or more from the Fund during the preceding fiscal year; and

“(B) a description of how each such use of the Fund meets the requirements of subsection (a).

“(3) AGENCY RECORDKEEPING.—Each Federal agency that receives amounts from the Fund shall maintain records describing the purposes for which such funds were obligated or expended in such detail as the Secretary may require for purposes of the report required under paragraph (1).”.

33 USC 1321c.

SEC. 709. INTERNATIONAL EFFORTS ON ENFORCEMENT.

The Secretary of the department in which the Coast Guard is operating, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

Deadlines.

SEC. 710. HIGHER VOLUME PORT AREA REGULATORY DEFINITION CHANGE.

(a) **IN GENERAL.**—Within 1 year after the date of enactment of this Act, the Commandant shall initiate a rulemaking proceeding to modify the definition of the term “higher volume port area” in section 155.1020 of the Coast Guard regulations (33 C.F.R. 155.1020) by striking “Port Angeles, WA” in paragraph (13) of that section and inserting “Cape Flattery, WA”.

(b) **VESSEL RESPONSE PLAN REVIEWS.**—Within 5 years after the date of enactment of this Act, the Coast Guard shall complete its review of any changes to vessel response plans under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) resulting from the modification of the higher volume port area definition required by subsection (a).

SEC. 711. TUG ESCORTS FOR LADEN OIL TANKERS.Deadlines.
Canada.**(a) COMPARABILITY ANALYSIS.—**

(1) **IN GENERAL.**—Within 1 year after the date of enactment of this Act, the Commandant, in consultation with the Secretary of State, is strongly encouraged to enter into negotiations with the Government of Canada to update the comparability analysis which serves as the basis for the Cooperative Vessel Traffic Service agreement between the United States and Canada for the management of maritime traffic in Puget Sound, the Strait of Georgia, Haro Strait, Rosario Strait, and the Strait of Juan de Fuca. The updated analysis shall, at a minimum, consider—

(A) requirements for laden tank vessels to be escorted by tug boats;

(B) vessel emergency response towing capability at the entrance to the Strait of Juan de Fuca; and

(C) spill response capability throughout the shared water, including oil spill response planning requirements for vessels bound for one nation transiting through the waters of the other nation.

(2) **CONSULTATION REQUIREMENT.**—In conducting the analysis required under this subsection, the Commandant shall consult with the State of Washington and affected tribal governments.

(3) **RECOMMENDATIONS.**—Within 18 months after the date of enactment of this Act, the Commandant shall submit recommendations based on the analysis required under this subsection to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The recommendations shall consider a full range of options for the management of maritime traffic, including Federal legislation, promulgation of Federal rules, and the establishment of cooperative agreements for shared funding of spill prevention and response systems.

(b) DUAL ESCORT VESSELS FOR DOUBLE HULLED TANKERS IN PRINCE WILLIAM SOUND, ALASKA.—

(1) IN GENERAL.—Section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note) is amended—

(A) by striking “Not later than 6 months after the date of the enactment of this Act, the” and inserting “(1) IN GENERAL.—The”; and

(B) by adding at the end the following:

“(2) PRINCE WILLIAM SOUND, ALASKA.—

“(A) IN GENERAL.—The requirement in paragraph (1) relating to single hulled tankers in Prince William Sound, Alaska, described in that paragraph being escorted by at least 2 towing vessels or other vessels considered to be appropriate by the Secretary (including regulations promulgated in accordance with section 3703(a)(3) of title 46, United States Code, as set forth in part 168 of title 33, Code of Federal Regulations (as in effect on March 1, 2009) implementing this subsection with respect to those tankers) shall apply to double hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound, Alaska.

Applicability.

“(B) IMPLEMENTATION OF REQUIREMENTS.—The Secretary of the department in which the Coast Guard is operating shall prescribe interim final regulations to carry out subparagraph (A) as soon as practicable without notice and hearing pursuant to section 553 of title 5 of the United States Code.”

Regulations.

(2) EFFECTIVE DATE.—The amendments made by subsection (b) take effect on the date that is 90 days after the date of enactment of this Act.

46 USC 3703 note.

(c) PRESERVATION OF STATE AUTHORITY.—Nothing in this Act or in any other provision of Federal law related to the regulation of maritime transportation of oil shall affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof which require the escort by one or more tugs of laden oil tankers in the areas which are specified in section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note).

46 USC 3703 note.

(d) VESSEL TRAFFIC RISK ASSESSMENT.—

(1) REQUIREMENT.—The Commandant of the Coast Guard, acting through the appropriate Area Committee established under section 311(j)(4) of the Federal Water Pollution Control Act, shall prepare a vessel traffic risk assessment for Cook Inlet, Alaska, within 1 year after the date of enactment of this Act.

Alaska.
Deadline.

(2) CONTENTS.—The assessment shall describe, for the region covered by the assessment—

(A) the amount and character of present and estimated future shipping traffic in the region; and

(B) the current and projected use and effectiveness in reducing risk, of—

(i) traffic separation schemes and routing measures;

(ii) long-range vessel tracking systems developed under section 70115 of title 46, United States Code;

(iii) towing, response, or escort tugs;

(iv) vessel traffic services;

(v) emergency towing packages on vessels;

(vi) increased spill response equipment including equipment appropriate for severe weather and sea conditions;

(vii) the Automatic Identification System developed under section 70114 of title 46, United States Code;

(viii) particularly sensitive sea areas, areas to be avoided, and other traffic exclusion zones;

(ix) aids to navigation; and

(x) vessel response plans.

(3) **RECOMMENDATIONS.**—

(A) **IN GENERAL.**—The assessment shall include any appropriate recommendations to enhance the safety, or lessen potential adverse environmental impacts, of marine shipping.

(B) **CONSULTATION.**—Before making any recommendations under paragraph (1) for a region, the Area Committee shall consult with affected local, State, and Federal government agencies, representatives of the fishing industry, Alaska Natives from the region, the conservation community, and the merchant shipping and oil transportation industries.

(4) **PROVISION TO CONGRESS.**—The Commandant shall provide a copy of the assessment to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 712. EXTENSION OF FINANCIAL RESPONSIBILITY.

Section 1016(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2716(a)) is amended—

(1) by striking “or” after the semicolon in paragraph (1);

(2) by inserting “or” after the semicolon in paragraph (2);

and

(3) by inserting after paragraph (2) the following:

“(3) any tank vessel over 100 gross tons using any place subject to the jurisdiction of the United States;”.

SEC. 713. LIABILITY FOR USE OF SINGLE-HULL VESSELS.

Section 1001(32)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)(A)) is amended by inserting “In the case of a vessel, the term ‘responsible party’ also includes the owner of oil being transported in a tank vessel with a single hull after December 31, 2010 (other than a vessel described in section 3703a(b)(3) of title 46, United States Code).” after “vessel.”.

TITLE VIII—PORT SECURITY

SEC. 801. AMERICA’S WATERWAY WATCH PROGRAM.

(a) **IN GENERAL.**—Chapter 701 of title 46, United States Code, is amended by adding at the end thereof the following:

“§ 70122. Waterway watch program

“(a) **PROGRAM ESTABLISHED.**—There is hereby established, within the Coast Guard, the America’s Waterway Watch Program.

“(b) **PURPOSE.**—The Secretary shall administer the Program in a manner that promotes voluntary reporting of activities that may indicate that a person or persons may be preparing to engage

or engaging in a violation of law relating to a threat or an act of terrorism (as that term is defined in section 3077 of title 18) against a vessel, facility, port, or waterway.

“(c) INFORMATION; TRAINING.—

“(1) INFORMATION.—The Secretary may establish, as an element of the Program, a network of individuals and community-based organizations that encourage the public and industry to recognize activities referred to in subsection (b), promote voluntary reporting of such activity, and enhance the situational awareness within the Nation’s ports and waterways. Such network shall, to the extent practicable, be conducted in cooperation with Federal, State, and local law enforcement agencies.

“(2) TRAINING.—The Secretary may provide training in—

“(A) observing and reporting on covered activities; and

“(B) sharing such reports and coordinating the response by Federal, State, and local law enforcement agencies.

“(d) VOLUNTARY PARTICIPATION.—Participation in the Program—

“(1) shall be wholly voluntary;

“(2) shall not be a prerequisite to eligibility for, or receipt of, any other service or assistance from, or to participation in, any other program of any kind; and

“(3) shall not require disclosure of information regarding the individual reporting covered activities or, for proprietary purposes, the location of such individual.

“(e) COORDINATION.—The Secretary shall coordinate the Program with other like watch programs. The Secretary shall submit, concurrent with the President’s budget submission for each fiscal year, a report on coordination of the Program and like watch programs within the Department of Homeland Security to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives.

Reports.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section \$3,000,000 for each of fiscal years 2011 through 2016. Such funds shall remain available until expended.”

(b) CLERICAL AMENDMENT.—The table of contents for chapter 701 of title 46, United States Code, is amended by inserting after the item relating to section 70121 the following:

46 USC 70101.

“70122. Waterway watch program.”.

SEC. 802. TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL.

(a) IN GENERAL.—Not later than 120 days after completing the pilot program under section 70105(k)(1) of title 46, United States Code, to test TWIC access control technologies at port facilities and vessels nationwide, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and to the Comptroller General a report containing an assessment of the results of the pilot. The report shall include—

Deadline.

(1) the findings of the pilot program with respect to key technical and operational aspects of implementing TWIC technologies in the maritime sector;

(2) a comprehensive listing of the extent to which established metrics were achieved during the pilot program; and

(3) an analysis of the viability of those technologies for use in the maritime environment, including any challenges to implementing those technologies and strategies for mitigating identified challenges.

(b) GAO ASSESSMENT.—The Comptroller General shall review the report and submit to the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate an assessment of the report’s findings and recommendations.

SEC. 803. INTERAGENCY OPERATIONAL CENTERS FOR PORT SECURITY.

Section 70107A(b) of title 46, United States Code, is amended—

(1) by striking paragraph (3);

(2) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(3) by inserting before paragraph (2), as so redesignated, the following:

“(1)(A) include—

“(i) information management systems, and

“(ii) sensor management systems; and

“(B) where practicable, provide for the physical co-location of the Coast Guard and, as the Secretary determines appropriate, representatives of the United States Customs and Border Protection, the United States Immigration and Customs Enforcement, the Transportation Security Administration, the Department of Justice, the Department of Defense, and other Federal agencies, State and local law enforcement or port security personnel, members of the Area Maritime Security Committee, and other public and private sector stakeholders adversely affected by a transportation security incident or transportation disruption;” and

(4) in paragraph (2), as so redesignated—

(A) by striking “existing centers, including—” and inserting “existing centers;” and

(B) by striking subparagraph (A) and (B); and

(5) by adding “and” at the end of paragraph (3), as so redesignated.

SEC. 804. DEPLOYABLE, SPECIALIZED FORCES.

(a) IN GENERAL.—Section 70106 of title 46, United States Code, is amended to read as follows:

“§ 70106. Deployable, specialized forces

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—To enhance the domestic maritime security capability of the United States, the Secretary shall establish deployable specialized forces of varying capabilities as are needed to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with the transportation security plans developed under section 70103.

“(2) ENHANCED TEAMS.—Such specialized forces shall include no less than two enhanced teams to serve as deployable

forces capable of combating terrorism, engaging in interdiction, law enforcement, and advanced tactical maritime security operations to address known or potentially armed security threats (including non-compliant actors at sea), and participating in homeland security, homeland defense, and counterterrorism exercises in the maritime environment.

“(b) MISSION.—The combined force of the specialized forces established under subsection (a) shall be trained, equipped, and capable of being deployed to—

“(1) deter, protect against, and rapidly respond to threats of maritime terrorism;

“(2) conduct maritime operations to protect against and disrupt illegal use, access to, or proliferation of weapons of mass destruction;

“(3) enforce moving or fixed safety or security zones established pursuant to law;

“(4) conduct high speed intercepts;

“(5) board, search, and seize any article or thing on or at, respectively, a vessel or facility found to present a risk to the vessel or facility, or to a port;

“(6) rapidly deploy to supplement United States armed forces domestically or overseas;

“(7) respond to criminal or terrorist acts so as to minimize, insofar as possible, the disruption caused by such acts;

“(8) assist with facility vulnerability assessments required under this chapter; and

“(9) carry out any other missions of the Coast Guard as are assigned to it by the Secretary.

“(c) MINIMIZATION OF RESPONSE TIMES.—The enhanced teams established under subsection (a)(2) shall, to the extent practicable, be stationed in such a way so as to minimize the response time to maritime terrorist threats and potential or actual transportation security incidents.

“(d) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, the combined force of the specialized forces established under subsection (a) shall coordinate their activities with other Federal, State, and local law enforcement and emergency response agencies.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 701 of title 46, United States Code, is amended by striking the item relating to section 70106 and inserting the following:

46 USC 70101.

“70106. Deployable, specialized forces.”.

SEC. 805. COAST GUARD DETECTION CANINE TEAM PROGRAM EXPANSION.

46 USC 70106 note.

(a) DEFINITIONS.—For purposes of this section:

(1) CANINE DETECTION TEAM.—The term “detection canine team” means a canine and a canine handler that are trained to detect narcotics or explosives, or other threats as defined by the Secretary.

(2) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(b) DETECTION CANINE TEAMS.—

(1) INCREASED CAPACITY.—Not later than 1 year after the date of enactment of this Act, and subject to the availability of appropriations, the Secretary shall—

Deadline.

(A) begin to increase the number of detection canine teams certified by the Coast Guard for the purposes of maritime-related security by no fewer than 10 canine teams annually through fiscal year 2012; and

(B) encourage owners and operators of port facilities, passenger cruise liners, oceangoing cargo vessels, and other vessels identified by the Secretary to strengthen security through the use of highly trained detection canine teams.

(2) CANINE PROCUREMENT.—The Secretary, acting through the Commandant of the Coast Guard, shall procure detection canine teams as efficiently as possible, including, to the greatest extent possible, through increased domestic breeding, while meeting the performance needs and criteria established by the Commandant.

(c) DEPLOYMENT.—The Secretary shall prioritize deployment of the additional canine teams to ports based on risk, consistent with the Security and Accountability For Every Port Act of 2006 (Public Law 109–347).

SEC. 806. COAST GUARD PORT ASSISTANCE PROGRAM.

(a) FOREIGN PORT ASSESSMENT.—Chapter 701 of title 46, United States Code, is amended—

(1) by adding at the end of section 70108 the following:

“(e) LIMITATION ON STATUTORY CONSTRUCTION.—The absence of an inspection of a foreign port shall not bar the Secretary from making a finding that a port in a foreign country does not maintain effective antiterrorism measures.”;

(2) by striking “If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures,” in section 70109(a) and inserting “Unless the Secretary finds that a port in a foreign country maintains effective antiterrorism measures,”; and

(3) by striking “If the Secretary finds that a foreign port does not maintain effective antiterrorism measures,” in section 70110(a) and inserting “Unless the Secretary finds that a foreign port maintains effective antiterrorism measures,”.

(b) ASSISTANCE PROGRAM.—Section 70110 of title 46, United States Code, is amended by adding at the end the following:

“(f) COAST GUARD ASSISTANCE PROGRAM.—

“(1) IN GENERAL.—The Secretary may lend, lease, donate, or otherwise provide equipment, and provide technical training and support, to the owner or operator of a foreign port or facility—

“(A) to assist in bringing the port or facility into compliance with applicable International Ship and Port Facility Code standards; and

“(B) to assist the port or facility in correcting deficiencies identified in periodic port assessments and reassessments required under section 70108 of this title.

“(2) CONDITIONS.—The Secretary—

“(A) may provide such assistance based upon an assessment of the risks to the security of the United States and the inability of the owner or operator of the port or facility to bring the port or facility into compliance with those standards and to maintain compliance with, or exceed, such standards;

“(B) may not provide such assistance unless the port or facility has been subjected to a comprehensive port security assessment by the Coast Guard; and

“(C) may only lend, lease, or otherwise provide equipment that the Secretary has first determined is not required by the Coast Guard for the performance of its missions.”.

(c) **SAFETY AND SECURITY ASSISTANCE FOR FOREIGN PORTS.**—

(1) **IN GENERAL.**—Section 70110(e)(1) of title 46, United States Code, is amended by striking the second sentence and inserting the following: “The Secretary shall establish a strategic plan to utilize those assistance programs to assist ports and facilities that are found by the Secretary under subsection (a) not to maintain effective antiterrorism measures in the implementation of port security antiterrorism measures.”.

(2) **CONFORMING AMENDMENTS.**—

(A) Section 70110 of title 46, United States Code, is amended—

(i) by inserting “**OR FACILITIES**” after “**PORTS**” in the section heading;

(ii) by inserting “or facility” after “port” each place it appears; and

(iii) by striking “PORTS” in the heading for subsection (e) and inserting “PORTS, FACILITIES,”.

(B) Section 70108(c) of such title is amended—

(i) by striking paragraph (2); and

(ii) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(C) The table of contents for chapter 701 of title 46, United States Code, is amended by striking the item relating to section 70110 and inserting the following: 46 USC 70101.

“70110. Actions and assistance for foreign ports or facilities and United States territories.”.

SEC. 807. MARITIME BIOMETRIC IDENTIFICATION.

(a) **IN GENERAL.**—Chapter 701 of title 46, United States Code, is further amended by adding at the end the following:

“§ 70123. Mobile biometric identification

“(a) **IN GENERAL.**—Within one year after the date of the enactment of the Coast Guard Authorization Act of 2010, the Secretary shall conduct, in the maritime environment, a program for the mobile biometric identification of suspected individuals, including terrorists, to enhance border security and for other purposes. Deadline.

“(b) **REQUIREMENTS.**—The Secretary shall ensure the program required in this section is coordinated with other biometric identification programs within the Department of Homeland Security.

“(c) **DEFINITION.**—For the purposes of this section, the term ‘biometric identification’ means use of fingerprint and digital photography images and facial and iris scan technology and any other technology considered applicable by the Department of Homeland Security.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following: 46 USC 70101.

“70123. Mobile biometric identification.”.

Deadline.

(c) **COST ANALYSIS.**—Within 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit to the Committees on Homeland Security and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an analysis of the cost of expanding the Coast Guard’s biometric identification capabilities for use by the Coast Guard’s Deployable Operations Group, cutters, stations, and other deployable maritime teams considered appropriate by the Secretary, and any other appropriate Department of Homeland Security maritime vessels and units. The analysis may include a tiered plan for the deployment of this program that gives priority to vessels and units more likely to encounter individuals suspected of making illegal border crossings through the maritime environment.

(d) **STUDY ON EMERGING BIOMETRIC CAPABILITIES.**—

(1) **STUDY REQUIRED.**—The Secretary of Homeland Security shall submit to the Committees on Homeland Security and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a study on the use by the Coast Guard and other departmental entities of the combination of biometric technologies to rapidly identify individuals for security purposes. Such study shall focus on—

(A) increased accuracy of facial recognition;

(B) enhancement of existing iris recognition technology;

and

(C) other emerging biometric technologies capable of assisting in confirming the identification of individuals.

(2) **PURPOSE OF STUDY.**—The purpose of the study required by paragraph (1) is to facilitate the use of a combination biometrics, including facial and iris recognition, to provide a higher probability of success in identification than a single approach and to achieve transformational advances in the flexibility, authenticity, and overall capability of integrated biometric detectors. The operational goal of the study should be to provide the capability to nonintrusively collect biometrics in an accurate and expeditious manner to assist the Coast Guard and the Department of Homeland Security in fulfilling its mission to protect and support national security.

46 USC 70105
note.

SEC. 808. PILOT PROGRAM FOR FINGERPRINTING OF MARITIME WORKERS.

Deadline.
Procedures.

(a) **IN GENERAL.**—Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall establish procedures providing for an individual who is required to be fingerprinted for purposes of obtaining a transportation security card under section 70105 of title 46, United States Code, the ability to be fingerprinted at any of not less than 20 facilities operated by or under contract with an agency of the Department of Homeland Security that fingerprints the public for the Department. These facilities shall be in addition to facilities established under section 70105 of title 46, United States Code.

(b) **EXPIRATION.**—The requirement made by subsection (a) expires 1 year after the date the Secretary establishes the facilities required under that subsection.

SEC. 809. TRANSPORTATION SECURITY CARDS ON VESSELS.

Section 70105(b)(2) of title 46, United States Code, is amended—

(1) in subparagraph (B), by inserting after “title” the following: “allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of this title”; and

(2) in subparagraph (D), by inserting after “tank vessel” the following: “allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of this title”.

SEC. 810. MARITIME SECURITY ADVISORY COMMITTEES.

Section 70112 of title 46, United States Code, is amended—

(1) by amending subsection (b)(5) to read as follows:

“(5)(A) The National Maritime Security Advisory Committee shall be composed of—

“(i) at least 1 individual who represents the interests of the port authorities;

“(ii) at least 1 individual who represents the interests of the facilities owners or operators;

“(iii) at least 1 individual who represents the interests of the terminal owners or operators;

“(iv) at least 1 individual who represents the interests of the vessel owners or operators;

“(v) at least 1 individual who represents the interests of the maritime labor organizations;

“(vi) at least 1 individual who represents the interests of the academic community;

“(vii) at least 1 individual who represents the interests of State or local governments; and

“(viii) at least 1 individual who represents the interests of the maritime industry.

“(B) Each Area Maritime Security Advisory Committee shall be composed of individuals who represents the interests of the port industry, terminal operators, port labor organizations, and other users of the port areas.”; and

(2) in subsection (g)—

(A) in paragraph (1)(A), by striking “2008,” and inserting “2020;”;

(B) in paragraph (2), by striking “2006” and inserting “2018”.

SEC. 811. SEAMEN'S SHORESIDE ACCESS.

Each facility security plan approved under section 70103(c) of title 46, United States Code, shall provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.

46 USC 70103
note.

SEC. 812. WATERSIDE SECURITY OF ESPECIALLY HAZARDOUS CARGO.

46 USC 70101
note.

(a) NATIONAL STUDY.—

(1) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall—

(A) initiate a national study to identify measures to improve the security of maritime transportation of especially hazardous cargo; and

(B) coordinate with other Federal agencies, the National Maritime Security Advisory Committee, and appropriate State and local government officials through the Area Maritime Security Committees and other existing coordinating committees, to evaluate the waterside security of vessels carrying, and waterfront facilities handling, especially hazardous cargo.

(2) MATTERS TO BE INCLUDED.—The study conducted under this subsection shall include—

(A) an analysis of existing risk assessment information relating to waterside security generated by the Coast Guard and Area Maritime Security Committees as part of the Maritime Security Risk Analysis Model;

(B) a review and analysis of appropriate roles and responsibilities of maritime stakeholders, including Federal, State, and local law enforcement and industry security personnel, responsible for waterside security of vessels carrying, and waterfront facilities handling, especially hazardous cargo, including—

(i) the number of ports in which State and local law enforcement entities are providing any services to enforce Coast Guard-imposed security zones around vessels transiting to, through, or from United States ports or to conduct security patrols in United States ports;

(ii) the number of formal agreements entered into between the Coast Guard and State and local law enforcement entities to engage State and local law enforcement entities in the enforcement of Coast Guard-imposed security zones around vessels transiting to, through, or from United States ports or the conduct of port security patrols in United States ports, the duration of those agreements, and the aid that State and local entities are engaged to provide through such agreements;

(iii) the extent to which the Coast Guard has set national standards for training, equipment, and resources to ensure that State and local law enforcement entities engaged in enforcing Coast Guard-imposed security zones around vessels transiting to, through, or from United States ports or in conducting port security patrols in United States ports (or both) can deter to the maximum extent practicable a transportation security incident;

(iv) the extent to which the Coast Guard has assessed the ability of State and local law enforcement entities to carry out the security assignments that they have been engaged to perform, including their ability to meet any national standards for training, equipment, and resources that have been established by the Coast Guard in order to ensure that those entities can deter to the maximum extent practicable a transportation security incident;

(v) the extent to which State and local law enforcement entities are able to meet national standards for training, equipment, and resources established by the Coast Guard to ensure that those entities can deter

to the maximum extent practicable a transportation security incident;

(vi) the differences in law enforcement authority, and particularly boarding authority, between the Coast Guard and State and local law enforcement entities, and the impact that these differences have on the ability of State and local law enforcement entities to provide the same level of security that the Coast Guard provides during the enforcement of Coast Guard-imposed security zones and the conduct of security patrols in United States ports; and

(vii) the extent of resource, training, and equipment differences between State and local law enforcement entities and the Coast Guard units engaged in enforcing Coast Guard-imposed security zones around vessels transiting to, through, or from United States ports or conducting security patrols in United States ports;

(C) recommendations for risk-based security measures to improve waterside security of vessels carrying, and waterfront facilities handling, especially hazardous cargo; and

(D) identification of security funding alternatives, including an analysis of the potential for cost-sharing by the public and private sectors as well as any challenges associated with such cost-sharing.

(3) INFORMATION PROTECTION.—In carrying out the coordination necessary to effectively complete the study, the Commandant shall implement measures to ensure the protection of any sensitive security information, proprietary information, or classified information collected, reviewed, or shared during collaborative engagement with maritime stakeholders and other Government entities, except that nothing in this paragraph shall constitute authority to withhold information from—

(A) the Congress; or

(B) first responders requiring such information for the protection of life or property.

(4) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall submit to the Committees on Homeland Security and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study under this subsection.

(b) NATIONAL STRATEGY.—Not later than 6 months after submission of the report required by subsection (a), the Secretary of the department in which the Coast Guard is operating shall develop, in conjunction with appropriate Federal agencies, a national strategy for the waterside security of vessels carrying, and waterfront facilities handling, especially hazardous cargo. The strategy shall utilize the results of the study required by subsection (a). Deadline.

(c) SECURITY OF ESPECIALLY HAZARDOUS CARGO.—Section 70103 of title 46, United States Code, is amended by adding at the end the following:

“(e) ESPECIALLY HAZARDOUS CARGO.—

“(1) ENFORCEMENT OF SECURITY ZONES.—Consistent with other provisions of Federal law, the Coast Guard shall coordinate and be responsible for the enforcement of any Federal security zone established by the Coast Guard around a vessel containing especially hazardous cargo. The Coast Guard shall allocate available resources so as to deter and respond to a transportation security incident, to the maximum extent practicable, and to protect lives or protect property in danger.

“(2) RESOURCE DEFICIENCY REPORTING.—

“(A) IN GENERAL.—When the Secretary submits the annual budget request for a fiscal year for the department in which the Coast Guard is operating to the Office of Management and Budget, the Secretary shall provide to the Committees on Homeland Security and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

“(i) for the last full fiscal year preceding the report, a statement of the number of security zones established for especially hazardous cargo shipments;

“(ii) for the last full fiscal year preceding the report, a statement of the number of especially hazardous cargo shipments provided a waterborne security escort, subdivided by Federal, State, local, or private security; and

“(iii) an assessment as to any additional vessels, personnel, infrastructure, and other resources necessary to provide waterborne escorts to those especially hazardous cargo shipments for which a security zone is established.

“(B) ESPECIALLY HAZARDOUS CARGO DEFINED.—In this subsection, the term ‘especially hazardous cargo’ means anhydrous ammonia, ammonium nitrate, chlorine, liquefied natural gas, liquefied petroleum gas, and any other substance, material, or group or class of material, in a particular amount and form that the Secretary determines by regulation poses a significant risk of creating a transportation security incident while being transported in maritime commerce.”.

(d) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) ESPECIALLY HAZARDOUS CARGO.—The term “especially hazardous cargo” means anhydrous ammonia, ammonium nitrate, chlorine, liquefied natural gas, liquefied petroleum gas, and any other substance, material, or group or class of material, in a particular amount and form that the Secretary determines by regulation poses a significant risk of creating a transportation security incident while being transported in maritime commerce.

(2) AREA MARITIME SECURITY COMMITTEE.—The term “Area Maritime Security Committee” means each of those committees responsible for producing Area Maritime Transportation Security Plans under chapter 701 of title 46, United States Code.

(3) TRANSPORTATION SECURITY INCIDENT.—The term “transportation security incident” has the same meaning as that term has in section 70101 of title 46, United States Code.

SEC. 813. REVIEW OF LIQUEFIED NATURAL GAS FACILITIES.

Consistent with other provisions of law, the Secretary of the department in which the Coast Guard is operating shall make a recommendation, after considering recommendations made by the States, to the Federal Energy Regulatory Commission as to whether the waterway to a proposed waterside liquefied natural gas facility is suitable or unsuitable for the marine traffic associated with such facility.

SEC. 814. USE OF SECONDARY AUTHENTICATION FOR TRANSPORTATION SECURITY CARDS.

Section 70105 of title 46, United States Code, is amended by adding at the end the following new subsection:

“(n) The Secretary may use a secondary authentication system to verify the identification of individuals using transportation security cards when the individual’s fingerprints are not able to be taken or read.”.

SEC. 815. ASSESSMENT OF TRANSPORTATION SECURITY CARD ENROLLMENT SITES.

46 USC 70105
note.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall prepare an assessment of the enrollment sites for transportation security cards issued under section 70105 of title 46, United States Code, including—

Deadline.

(1) the feasibility of keeping those enrollment sites open after the date of enactment of this Act; and

(2) the quality of customer service, including the periods of time individuals are kept on hold on the telephone, whether appointments are kept, and processing times for applications.

(b) TIMELINES AND BENCHMARKS.—The Secretary shall develop timelines and benchmarks for implementing the findings of the assessment as the Secretary deems necessary.

SEC. 816. ASSESSMENT OF THE FEASIBILITY OF EFFORTS TO MITIGATE THE THREAT OF SMALL BOAT ATTACK IN MAJOR PORTS.

Reports.

The Secretary of the department in which the Coast Guard is operating shall assess and report to Congress on the feasibility of efforts to mitigate the threat of small boat attack in security zones of major ports, including specifically the use of transponders, radio frequency identification devices, and high-frequency surface radar systems to track small boats.

SEC. 817. REPORT AND RECOMMENDATION FOR UNIFORM SECURITY BACKGROUND CHECKS.

Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains—

(1) a review of background checks and forms of identification required under State and local transportation security programs;

(2) a determination as to whether the background checks and forms of identification required under such programs duplicate or conflict with Federal programs; and

(3) recommendations on limiting the number of background checks and forms of identification required under such programs to reduce or eliminate duplication with Federal programs.

SEC. 818. TRANSPORTATION SECURITY CARDS: ACCESS PENDING ISSUANCE; DEADLINES FOR PROCESSING; RECEIPT.

(a) ACCESS; DEADLINES.—Section 70105 of title 46, United States Code, is further amended by adding at the end the following new subsections:

“(o) ESCORTING.—The Secretary shall coordinate with owners and operators subject to this section to allow any individual who has a pending application for a transportation security card under this section or is waiting for reissuance of such card, including any individual whose card has been lost or stolen, and who needs to perform work in a secure or restricted area to have access to such area for that purpose through escorting of such individual in accordance with subsection (a)(1)(B) by another individual who holds a transportation security card. Nothing in this subsection shall be construed as requiring or compelling an owner or operator to provide escorted access.

Review.

“(p) PROCESSING TIME.—The Secretary shall review an initial transportation security card application and respond to the applicant, as appropriate, including the mailing of an Initial Determination of Threat Assessment letter, within 30 days after receipt of the initial application. The Secretary shall, to the greatest extent practicable, review appeal and waiver requests submitted by a transportation security card applicant, and send a written decision or request for additional information required for the appeal or waiver determination, within 30 days after receipt of the applicant’s appeal or waiver written request. For an applicant that is required to submit additional information for an appeal or waiver determination, the Secretary shall send a written decision, to the greatest extent practicable, within 30 days after receipt of all requested information.”.

46 USC 70105
note.

(b) RECEIPT OF CARDS.—

(1) REPORT BY COMPTROLLER GENERAL.—Within 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report assessing the costs, technical feasibility, and security measures associated with implementing procedures to deliver a transportation security card to an approved applicant’s place of residence in a secure manner or to allow an approved applicant to receive the card at an enrollment center of the individual’s choosing.

(2) PROCESS FOR ALTERNATIVE MEANS OF RECEIPT.—If the Comptroller General finds in the final report under paragraph (1) that it is feasible for a transportation security card to be sent to an approved applicant’s place of residence in a secure manner, the Secretary shall, within 1 year after the date of issuance of the final report by the Comptroller General, implement a secure process to permit an individual approved for a transportation security card to receive the card at the applicant’s place of residence or at the enrollment center of the individual’s choosing. The individual shall be responsible

for any additional cost associated with the secure delivery of a transportation security card.

SEC. 819. HARMONIZING SECURITY CARD EXPIRATIONS.

Section 70105(b) of title 46, United States Code, is amended by adding at the end the following new paragraph:

“(6) The Secretary may extend for up to one year the expiration of a biometric transportation security card required by this section to align the expiration with the expiration of a license, certificate of registry, or merchant mariner document required under chapter 71 or 73.”.

SEC. 820. CLARIFICATION OF RULEMAKING AUTHORITY.

(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is further amended by adding at the end the following:

“SEC. 70124. REGULATIONS.

“Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 701 of such title is further amended by adding at the end the following new item:

“70124. Regulations.”.

46 USC 70101.

SEC. 821. PORT SECURITY TRAINING AND CERTIFICATION.

(a) PORT SECURITY TRAINING PROGRAM.—Chapter 701 of title 46, United States Code, is further amended by adding at the end the following:

“§ 70125. Port security training for facility security officers

“(a) FACILITY SECURITY OFFICERS.—The Secretary shall establish comprehensive facility security officer training requirements designed to provide full security training that would lead to certification of such officers. In establishing the requirements, the Secretary shall—

“(1) work with affected industry stakeholders; and

“(2) evaluate—

“(A) the requirements of subsection (b);

“(B) existing security training programs employed at marine terminal facilities; and

“(C) existing port security training programs developed by the Federal Government.

“(b) REQUIREMENTS.—The training program shall provide validated training that—

“(1) provides training at the awareness, performance, management, and planning levels;

“(2) utilizes multiple training mediums and methods;

“(3) establishes a validated provisional on-line certification methodology;

“(4) provide for continuing education and training for facility security officers beyond certification requirements, including a program to educate on the dangers and issues associated with the shipment of hazardous and especially hazardous cargo;

“(5) addresses port security topics, including—

“(A) facility security plans and procedures, including how to develop security plans and security procedure requirements when threat levels are elevated;

- “(B) facility security force operations and management;
- “(C) physical security and access control at facilities;
- “(D) methods of security for preventing and countering cargo theft;
- “(E) container security;
- “(F) recognition and detection of weapons, dangerous substances, and devices;
- “(G) operation and maintenance of security equipment and systems;
- “(H) security threats and patterns;
- “(I) security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers; and
- “(J) evacuation procedures;

“(6) is consistent with, and supports implementation of, the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other such national initiatives;

“(7) is evaluated against clear and consistent performance measures;

“(8) addresses security requirements under facility security plans;

“(9) addresses requirements under the International Code for the Security of Ships and Port Facilities to address shore leave for mariners and access to visitors, representatives of seafarers’ welfare organizations, and labor organizations; and

“(10) such other subject matters as may be prescribed by the Secretary.

“(c) CONTINUING SECURITY TRAINING.—The Secretary, in coordination with the Secretary of Transportation, shall work with State and local law enforcement agencies and industry stakeholders to develop and certify the following additional security training requirements for Federal, State, and local officials with security responsibilities at United States seaports:

“(1) A program to familiarize them with port and shipping operations, requirements of the Maritime Transportation Security Act of 2002 (Public Law 107–295), and other port and cargo security programs that educates and trains them with respect to their roles and responsibilities.

“(2) A program to familiarize them with dangers and potential issues with respect to shipments of hazardous and especially hazardous cargoes.

“(3) A program of continuing education as deemed necessary by the Secretary.

“(d) TRAINING PARTNERS.—In developing curriculum and delivering training established pursuant to subsections (a) and (c), the Secretary, in coordination with the Maritime Administrator of the Department of Transportation and consistent with section 109 of the Maritime Transportation Security Act of 2002 [46 U.S.C. 70101 note], shall work with institutions with maritime expertise and with industry stakeholders with security expertise to develop appropriate training capacity to ensure that training can be provided in a geographically balanced manner to personnel seeking certification under subsection (a) or education and training under subsection (c).

“(e) ESTABLISHED GRANT PROGRAM.—The Secretary shall issue regulations or grant solicitations for grants for homeland security or port security to ensure that activities surrounding the development of curriculum and the provision of training and these activities are eligible grant activities under both grant programs.”. Regulations.

(b) CONFORMING AMENDMENT.—Section 113 of the SAFE Port Act (6 U.S.C. 911) is repealed. Repeal.

(c) TABLE OF CONTENTS AMENDMENT.—The table of contents for chapter 701 of title 46, United States Code, is further amended by adding at the end the following: 46 USC 70101.

“70125. Port security training for facility security officers.”.

SEC. 822. INTEGRATION OF SECURITY PLANS AND SYSTEMS WITH LOCAL PORT AUTHORITIES, STATE HARBOR DIVISIONS, AND LAW ENFORCEMENT AGENCIES.

Section 70102 of title 46, United States Code, is amended by adding at the end thereof the following:

“(c) SHARING OF ASSESSMENT INTEGRATION OF PLANS AND EQUIPMENT.—The owner or operator of a facility, consistent with any Federal security restrictions, shall—

“(1) make a current copy of the vulnerability assessment conducted under subsection (b) available to the port authority with jurisdiction of the facility and appropriate State or local law enforcement agencies; and Records.

“(2) integrate, to the maximum extent practical, any security system for the facility with compatible systems operated or maintained by the appropriate State, law enforcement agencies, and the Coast Guard.”.

SEC. 823. TRANSPORTATION SECURITY CARDS.

Section 70105 of title 46, United States Code, is further amended by adding at the end thereof the following:

“(q) RECEIPT AND ACTIVATION OF TRANSPORTATION SECURITY CARD.—

“(1) IN GENERAL.—Not later than one year after the date of publication of final regulations required by subsection (k)(3) of this section the Secretary shall develop a plan to permit the receipt and activation of transportation security cards at any vessel or facility described in subsection (a) of this section that desires to implement this capability. This plan shall comply, to the extent possible, with all appropriate requirements of Federal standards for personal identity verification and credential. Deadline. Plan.

“(2) LIMITATION.—The Secretary may not require any such vessel or facility to provide on-site activation capability.”.

SEC. 824. PRE-POSITIONING INTEROPERABLE COMMUNICATIONS EQUIPMENT AT INTERAGENCY OPERATIONAL CENTERS.

Section 70107A of title 46, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

“(e) DEPLOYMENT OF INTEROPERABLE COMMUNICATIONS EQUIPMENT AT INTERAGENCY OPERATIONAL CENTERS.—The Secretary, subject to the availability of appropriations, shall ensure that interoperable communications technology is deployed at all interagency operational centers established under subsection (a) and that such technology and equipment has been tested in live operational environments before deployment.”.

6 USC 945 note.

SEC. 825. INTERNATIONAL PORT AND FACILITY INSPECTION COORDINATION.

(a) COORDINATION.—The Secretary of the department in which the Coast Guard is operating shall, to the extent practicable, conduct the assessments required by the following provisions of law concurrently, or develop a process by which they are integrated and conducted by the Coast Guard:

- (1) Section 205 of the SAFE Port Act (6 U.S.C. 945).
- (2) Section 213 of that Act (6 U.S.C. 964).
- (3) Section 70108 of title 46, United States Code.

(b) LIMITATION.—Nothing in subsection (a) shall be construed to affect or diminish the Secretary’s authority or discretion—

- (1) to conduct an assessment of a foreign port at any time;
- (2) to compel the Secretary to conduct an assessment of a foreign port so as to ensure that 2 or more assessments are conducted concurrently; or
- (3) to cancel an assessment of a foreign port if the Secretary is unable to conduct 2 or more assessments concurrently.

Notification.

(c) MULTIPLE ASSESSMENT REPORT.—The Secretary shall provide written notice to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives whenever the Secretary conducts 2 or more assessments of the same port within a 3-year period.

SEC. 826. AREA TRANSPORTATION SECURITY INCIDENT MITIGATION PLAN.

Section 70103(b)(2) of title 46, United States Code, is amended—

- (1) by redesignating subparagraphs (E) through (G) as subparagraphs (F) through (H), respectively; and
- (2) by inserting after subparagraph (D) the following:

“(E) establish area response and recovery protocols to prepare for, respond to, mitigate against, and recover from a transportation security incident consistent with section 202 of the SAFE Port Act of 2006 (6 U.S.C. 942) and subsection (a) of this section;”.

Deadlines.

SEC. 827. RISK BASED RESOURCE ALLOCATION.

46 USC 70101 note.

(a) NATIONAL STANDARD.—Within 1 year after the date of enactment of this Act, in carrying out chapter 701 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating shall develop and utilize a national standard and formula for prioritizing and addressing assessed security risks at United State ports and facilities on or adjacent to the waterways of the United States, such as the Maritime Security Risk Assessment Model that has been tested by the Department of Homeland Security.

(b) **USE BY MARITIME SECURITY COMMITTEES.**—Within 2 years after the date of enactment of this Act, the Secretary shall require each Area Maritime Security Committee to use this standard to regularly evaluate each port’s assessed risk and prioritize how to mitigate the most significant risks.

(c) **OTHER USES OF STANDARD.**—The Secretary shall utilize the standard when considering departmental resource allocations and grant making decisions.

(d) **USE OF MARITIME RISK ASSESSMENT MODEL.**—Within 180 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall make the United States Coast Guard’s Maritime Security Risk Assessment Model available, in an unclassified version, on a limited basis to regulated vessels and facilities to conduct true risk assessments of their own facilities and vessels using the same criteria employed by the Coast Guard when evaluating a port area, facility, or vessel.

SEC. 828. PORT SECURITY ZONES.

(a) **IN GENERAL.**—Section 701 of title 46, United States Code, is amended by adding at the end the following:

“SUBCHAPTER II—PORT SECURITY ZONES

“§ 70131. Definitions

“In this subchapter:

“(1) **LAW ENFORCEMENT AGENCY.**—The term ‘law enforcement agency’ means an agency of a State, a political subdivision of a State, or a Federally recognized tribe that is authorized by law to supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

“(2) **SECURITY ZONE.**—The term ‘security zone’ means a security zone, established by the Commandant of the Coast Guard or the Commandant’s designee pursuant to section 1 of title II of the Act of June 15, 1917 (50 U.S.C. 191) or section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)), for a vessel carrying especially hazardous cargo when such vessel—

“(A) enters, or operates within, the internal waters of the United States and the territorial sea of the United States; or

“(B) transfers such cargo or residue in any port or place, under the jurisdiction of the United States, within the territorial sea of the United States or the internal waters of the United States.

“§ 70132. Credentialing standards, training, and certification for State and local support for the enforcement of security zones for the transportation of especially hazardous cargo

“(a) **STANDARD.**—The Commandant of the Coast Guard shall establish, by regulation, national standards for training and credentialing of law enforcement personnel—

Regulations.

“(1) to enforce a security zone; or

“(2) to assist in the enforcement of a security zone.

“(b) **TRAINING.**—

“(1) The Commandant of the Coast Guard—

Publication.

“(A) shall develop and publish a training curriculum for—

“(i) law enforcement personnel to enforce a security zone;

“(ii) law enforcement personnel to enforce or assist in the enforcement of a security zone; and

“(iii) personnel who are employed or retained by a facility or vessel owner to assist in the enforcement of a security zone; and

“(B) may—

“(i) test and deliver such training, the curriculum for which is developed pursuant to subparagraph (A);

“(ii) enter into an agreement under which a public entity (including a Federal agency) or private entity may test and deliver such training, the curriculum for which has been developed pursuant to subparagraph (A); and

“(iii) may accept a program, conducted by a public entity (including a Federal agency) or private entity, through which such training is delivered the curriculum for which is developed pursuant to subparagraph (A).

“(2) Any Federal agency that provides such training, and any public or private entity that receives moneys, pursuant to section 70107(b)(8) of this title, to provide such training, shall provide such training—

“(A) to law enforcement personnel who enforce or assist in the enforcement of a security zone; and

“(B) on an availability basis to—

“(i) law enforcement personnel who assist in the enforcement of a security zone; and

“(ii) personnel who are employed or retained by a facility or vessel owner or operator to assist in the enforcement of a security zone.

“(3) If a Federal agency provides the training, the head of such agency may, notwithstanding any other provision of law, accept payment from any source for such training, and any amount received as payment shall be credited to the appropriation, current at the time of collection, charged with the cost thereof and shall be merged with, and available for, the same purposes of such appropriation.

“(4) Notwithstanding any other provision of law, any moneys, awarded by the Department of Homeland Security in the form of awards or grants, may be used by the recipient to pay for training of personnel to assist in the enforcement of security zones and limited access areas.

“(c) CERTIFICATION; TRAINING PARTNERS.—In developing and delivering training under the training program, the Secretary, in coordination with the Maritime Administrator of the Department of Transportation, and consistent with section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note), shall—

“(1) work with government training facilities, academic institutions, private organizations, employee organizations, and other entities that provide specialized, state-of-the-art training for governmental and nongovernmental emergency responder providers or commercial seaport personnel and management;

“(2) utilize, as appropriate, government training facilities, courses provided by community colleges, public safety academies, State and private universities, and other facilities; and

“(3) certify organizations that offer the curriculum for training and certification.”.

(b) GRANTS; ADMINISTRATION.—Section 70107 of title 46, United States Code, is amended—

(1) by striking “services.” in subsection (a) and inserting “services and to train law enforcement personnel under section 70132 of this title.”;

(2) by adding at the end of subsection (b) the following:

“(8) The cost of training law enforcement personnel—

“(A) to enforce a security zone under section 70132 of this title; or

“(B) assist in the enforcement of a security zone.”;

(3) by adding at the end of subsection (c)(2) the following:

“(C) TRAINING.—There are no matching requirements for grants under subsection (a) to train law enforcement agency personnel in the enforcement of security zones under section 70132 of this title or in assisting in the enforcement of such security zones.”; and

(4) by striking “2011” in subsection (l) and inserting “2013”.

(c) CONFORMING AMENDMENTS.—

(1) SUBCHAPTER I DESIGNATION.—Chapter 701 of title 46, United States Code, is amended by inserting before section 70101 the following:

46 USC 70101.

“SUBCHAPTER I—GENERAL”.

(2) TABLE OF CONTENTS AMENDMENTS.—The table of contents for chapter 701 of title 46, United States Code, is amended—

(3) by inserting before the item relating to section 70101 the following:

“Subchapter I—General”;

and

(4) by adding at the end the following:

“SUBCHAPTER II—PORT SECURITY ZONES

“70131. Definitions.

“70132. Credentialing standards, training, and certification for State and local support for the enforcement of security zones for the transportation of especially hazardous cargo.”.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. WAIVERS.

(a) GENERAL COASTWISE WAIVER.—Notwithstanding section 12112 and chapter 551 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation with a coastwise endorsement for the following vessels:

(1) ZIPPER (State of New York regulation number NY3205EB).

(2) GULF DIVER IV (United States official number 553457).

(b) GALLANT LADY.—Section 1120(c) of the Coast Guard Authorization Act of 1996 (110 Stat. 3977) is amended—

(1) in paragraph (1)—

(A) by striking “of Transportation” and inserting “of the department in which the Coast Guard is operating”; and

(B) by striking subparagraph (A) and inserting the following:

“(A) the vessel GALLANT LADY (Feadship hull number 672, approximately 168 feet in length).”;

(2) by amending paragraph (3) to read as follows:

“(3) CONDITION.—The only nonrecreational activity authorized for the vessel referred to in subparagraph (A) of paragraph (1) is the transportation of individuals on behalf of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, for which the owner of the vessel receives no compensation.”;

(3) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4); and

(4) in paragraph (4) (as so redesignated) by striking all after “shall expire” and inserting “on the date of the sale of the vessel by the owner.”.

(c) ACTIVITY OF CERTAIN VESSELS.—

(1) IN GENERAL.—Section 12102 of title 46, United States Code, is amended by adding at the end the following:

“(d) AQUACULTURE WAIVER.—

“(1) PERMITTING OF NONQUALIFIED VESSELS TO PERFORM CERTAIN AQUACULTURE SUPPORT OPERATIONS.—Notwithstanding section 12113 and any other law, the Secretary of Transportation may issue a waiver allowing a documented vessel with a registry endorsement or a foreign flag vessel to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the Federal Register, that a suitable vessel of the United States is not available that could perform those services.

“(2) PROHIBITION.—Vessels operating under a waiver issued under this subsection may not engage in any coastwise transportation.”.

(2) IMPLEMENTING AND INTERIM REGULATIONS.—The Secretary of the department in which the Coast Guard is operating shall, in accordance with section 553 of title 5, United States Code, and after public notice and comment, promulgate regulations necessary and appropriate to implement this subsection. The Secretary may grant interim permits pending the issuance of such regulations upon receipt of applications containing the required information.

SEC. 902. CREW WAGES ON PASSENGER VESSELS.

(a) FOREIGN AND INTERCOASTAL VOYAGES.—

(1) CAP ON PENALTY WAGES.—Section 10313(g) of title 46, United States Code, is amended—

(A) by striking “When” and inserting “(1) Subject to paragraph (2), when”; and

Federal Register,
publication.
Notice.

Notice.
Public comments.
46 USC 12102
note.

(B) by adding at the end the following:

“(2) The total amount required to be paid under paragraph (1) with respect to all claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed ten times the unpaid wages that are the subject of the claims.

“(3) A class action suit for wages under this subsection must be commenced within three years after the later of—

Deadline.

“(A) the date of the end of the last voyage for which the wages are claimed; or

“(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.”.

(2) DEPOSITS.—Section 10315 of such title is amended by adding at the end the following:

“(f) DEPOSITS IN SEAMAN ACCOUNT.—By written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

“(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

“(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

“(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

“(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.”.

(b) COASTWISE VOYAGES.—

(1) CAP ON PENALTY WAGES.—Section 10504(c) of such title is amended—

(A) by striking “When” and inserting “(1) Subject to subsection (d), and except as provided in paragraph (2), when”; and

(B) by inserting at the end the following:

“(2) The total amount required to be paid under paragraph (1) with respect to all claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed ten times the unpaid wages that are the subject of the claims.

“(3) A class action suit for wages under this subsection must be commenced within three years after the later of—

Deadline.

“(A) the date of the end of the last voyage for which the wages are claimed; or

“(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.”.

(2) DEPOSITS.—Section 10504 of such title is amended by adding at the end the following:

“(f) DEPOSITS IN SEAMAN ACCOUNT.—On written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize, the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

“(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

“(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

“(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

“(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.”.

SEC. 903. TECHNICAL CORRECTIONS.

(a) COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006.—Effective with enactment of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241), such Act is amended—

Effective date.
16 USC 460kkk
note.

46 USC 8104.

33 USC 2704.

16 USC 777m.

41 USC 11.

41 USC 11.

46 USC 2109.

46 USC 6308.

46 USC 6308.

16 USC 460kkk.

33 USC 494.

(1) in section 311(b) (120 Stat. 530) by inserting “paragraphs (1) and (2) of” before “section 8104(o)”;

(2) in section 603(a)(2) (120 Stat. 554) by striking “33 U.S.C. 2794(a)(2)” and inserting “33 U.S.C. 2704(a)(2)”;

(3) in section 901(r)(2) (120 Stat. 566) by striking “the” the second place it appears;

(4) in section 902(c) (120 Stat. 566) by inserting “of the United States” after “Revised Statutes”;

(5) in section 902(e) (120 Stat. 567) is amended—

(A) by inserting “and” after the semicolon at the end of paragraph (1);

(B) by striking “and” at the end of paragraph (2)(A); and

(C) by redesignating paragraphs (3) and (4) as subparagraphs (C) and (D) of paragraph (2), respectively, and aligning the left margin of such subparagraphs with the left margin of subparagraph (A) of paragraph (2);

(6) in section 902(e)(2)(C) (as so redesignated) by striking “this section” and inserting “this paragraph”;

(7) in section 902(e)(2)(D) (as so redesignated) by striking “this section” and inserting “this paragraph”;

(8) in section 902(h)(1) (120 Stat. 567)—

(A) by striking “Bisti/De-Na-Zin” and all that follows through “Protection” and inserting “Omnibus Parks and Public Lands Management”; and

(B) by inserting a period after “Commandant of the Coast Guard”; and

(9) in section 902(k) (120 Stat. 568) is amended—

(A) by inserting “the Act of March 23, 1906, commonly known as” before “the General Bridge”;

(B) by striking “491” and inserting “494.”; and

(C) by inserting “each place it appears” before “and inserting”.

(b) TITLE 14.—

(1) The analysis for chapter 7 of title 14, United States Code, is amended by adding a period at the end of the item relating to section 149. 14 USC 141.

(2) The analysis for chapter 17 of title 14, United States Code, is amended by adding a period at the end of the item relating to section 677. 14 USC 631.

(3) The analysis for chapter 9 of title 14, United States Code, is amended by adding a period at the end of the item relating to section 198. 14 USC 181.

(4) Section 182 of title 14, United States Code, is amended by striking the third sentence.

(c) TITLE 46.—

(1) The analysis for chapter 81 of title 46, United States Code, is amended by adding a period at the end of the item relating to section 8106. 14 USC 8101.

(2) Section 70105(c)(3)(C) of such title is amended by striking “National Intelligence Director” and inserting “Director of National Intelligence”.

(d) DEEPWATER PORT ACT OF 1974.—Section 5(c)(2) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(c)(2)) is amended by aligning the left margin of subparagraph (K) with the left margin of subparagraph (L).

(e) OIL POLLUTION ACT OF 1990.—

(1) Section 1004(a)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2704(a)(2)) is amended by striking the first comma following “\$800,000”.

(2) The table of sections in section 2 of such Act is amended by inserting a period at the end of the item relating to section 7002.

(f) COAST GUARD AUTHORIZATION ACT OF 1996.—The table of sections in section 2 of the Coast Guard Authorization Act of 1996 is amended in the item relating to section 103 by striking “reports” and inserting “report”.

SEC. 904. MANNING REQUIREMENT.

Section 421 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; 120 Stat. 547) is amended—

(1) in subsection (a), by striking “in the 48-month period beginning on the date of enactment of this Act if,” and inserting “until the date of expiration of this section if,”;

(2) in subsection (b), by striking “Subsection (a)(1)” and inserting “Subsection (a)”;

(3) in subsection (d), by striking “48 months after the date of enactment of this Act.” and inserting “on December 31, 2012.”; and

(4) by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following:

“(e) SAFETY INSPECTIONS.—A vessel may not engage a foreign citizen to meet a manning requirement under this section unless it has an annual safety examination by an individual authorized to enforce part B of subtitle II of title 46, United States Code.”. Deadline.

33 USC 494a.

SEC. 905. STUDY OF BRIDGES OVER NAVIGABLE WATERS.

The Commandant of the Coast Guard shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a comprehensive study on the proposed construction or alteration of any bridge, drawbridge, or causeway over navigable waters with a channel depth of 25 feet or greater of the United States that may impede or obstruct future navigation to or from port facilities.

SEC. 906. LIMITATION ON JURISDICTION OF STATES TO TAX CERTAIN SEAMEN.

Section 11108(b)(2)(B) of title 46, United States Code, is amended to read as follows:

“(B) who performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on navigable waters in 2 or more States.”.

SEC. 907. LAND CONVEYANCE, COAST GUARD PROPERTY IN MARQUETTE COUNTY, MICHIGAN, TO THE CITY OF MARQUETTE, MICHIGAN.**(a) CONVEYANCE AUTHORIZED.—**

(1) **IN GENERAL.**—The Commandant of the Coast Guard may convey as surplus property, under section 550 of title 40, United States Code, and other relevant Federal Laws governing the disposal of Federal surplus property, to the City of Marquette, Michigan (in this section referred to as the “City”), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, located in Marquette County, Michigan, that is under the administrative control of the Coast Guard, consisting of approximately 5.5 acres of real property, as depicted on the Van Neste survey (#204072), dated September 7, 2006, together with the land between the intermediate traverse line as shown on such survey and the ordinary high water mark, the total comprising 9 acres, more or less, and commonly identified as Coast Guard Station Marquette and Lighthouse Point.

Determination.

(2) **COSTS OF CONVEYANCE.**—The responsibility for all reasonable and necessary costs, including real estate transaction and environmental documentation costs, associated with the transaction shall be determined by the Commandant of the Coast Guard and the City.

(b) **RETENTION OF CERTAIN EASEMENTS.**—In conveying the property under subsection (a), the Commandant of the Coast Guard may retain such easements over the property as the Commandant considers appropriate for access to aids to navigation.

(c) **LIMITATIONS.**—The property to be conveyed under subsection (a) may not be conveyed under that subsection until—

(1) the Coast Guard has relocated Coast Guard Station Marquette to a newly constructed station;

(2) any environmental remediation required under Federal law with respect to the property has been completed; and

(3) the Commandant of the Coast Guard determines that retention of the property by the United States is not required to carry out Coast Guard missions or functions.

(d) **CONDITIONS OF TRANSFER.**—All conditions placed within the deed of title of the property to be conveyed under subsection (a) shall be construed as covenants running with the land.

(e) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Commandant of the Coast Guard.

(f) **ADDITIONAL TERMS AND CONDITIONS.**—The Commandant of the Coast Guard may require such additional terms and conditions in connection with the conveyance authorized by subsection (a) as the Commandant considers appropriate to protect the interests of the United States.

SEC. 908. MISSION REQUIREMENT ANALYSIS FOR NAVIGABLE PORTIONS OF THE RIO GRANDE RIVER, TEXAS, INTERNATIONAL WATER BOUNDARY.

Not later than 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall prepare a mission requirement analysis for the navigable portions of the Rio Grande River, Texas, international water boundary. The analysis shall take into account the Coast Guard's involvement on the Rio Grande River by assessing Coast Guard missions, assets, and personnel assigned along the Rio Grande River. The analysis shall also identify what would be needed for the Coast Guard to increase search and rescue operations, migrant interdiction operations, and drug interdiction operations. In carrying out this section, the Secretary shall work with all appropriate entities to facilitate the collection of information under this section as necessary and shall report the analysis to the Congress.

Deadline.

Reports.

SEC. 909. CONVEYANCE OF COAST GUARD PROPERTY IN CHEBOYGAN, MICHIGAN.

(a) **CONVEYANCE AUTHORIZED.**—Notwithstanding any other provision of law, the Commandant of the Coast Guard is authorized to convey, at fair market value, all right, title, and interest of the United States in and to a parcel of real property, consisting of approximately 3 acres, more or less, that is under the administrative control of the Coast Guard and located at 900 S. Western Avenue in Cheboygan, Michigan.

(b) **RIGHT OF FIRST REFUSAL.**—The Cornerstone Christian Academy, located in Cheboygan, MI, shall have the right of first refusal to purchase, at fair market value, all or a portion of the real property described in subsection (a).

(c) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Commandant of the Coast Guard.

(d) **FAIR MARKET VALUE.**—The fair market value of the property shall be—

(1) determined by appraisal, in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice; and

(2) subject to the approval of the Commandant.

(e) **COSTS OF CONVEYANCE.**—The responsibility for all reasonable and necessary costs, including real estate transaction and environmental documentation costs, associated with the transaction

Determination.

shall be determined by the Commandant of the Coast Guard and the purchaser.

(f) **ADDITIONAL TERMS AND CONDITIONS.**—The Commandant of the Coast Guard may require such additional terms and conditions in connection with the conveyance under subsection (a) as is considered appropriate to protect the interests of the United States.

SEC. 910. ALTERNATIVE LICENSING PROGRAM FOR OPERATORS OF UNINSPECTED PASSENGER VESSELS ON LAKE TEXOMA IN TEXAS AND OKLAHOMA.

Contracts.

(a) **IN GENERAL.**—Upon the request of the Governor of the State of Texas or the Governor of the State of Oklahoma, the Secretary of the department in which the Coast Guard is operating shall enter into an agreement with the Governor of the State whereby the State shall license operators of uninspected passenger vessels operating on Lake Texoma in Texas and Oklahoma in lieu of the Secretary issuing the license pursuant to section 8903 of title 46, United States Code, and the regulations issued thereunder, but only if the State plan for licensing the operators of uninspected passenger vessels—

(1) meets the equivalent standards of safety and protection of the environment as those contained in subtitle II of title 46, United States Code, and regulations issued thereunder;

(2) includes—

(A) standards for chemical testing for such operators;

(B) physical standards for such operators;

(C) professional service and training requirements for such operators; and

(D) criminal history background check for such operators;

(3) provides for the suspension and revocation of State licenses;

(4) makes an individual, who is ineligible for a license issued under title 46, United States Code, ineligible for a State license; and

(5) provides for a report that includes—

(A) the number of applications that, for the preceding year, the State rejected due to failure to—

(i) meet chemical testing standards;

(ii) meet physical standards;

(iii) meet professional service and training requirements; and

(iv) pass criminal history background check for such operators;

(B) the number of licenses that, for the preceding year, the State issued;

(C) the number of license investigations that, for the preceding year, the State conducted;

(D) the number of licenses that, for the preceding year, the State suspended or revoked, and the cause for such suspensions or revocations; and

(E) the number of injuries, deaths, collisions, and loss or damage associated with uninspected passenger vessels operations that, for the preceding year, the State investigated.

(b) **ADMINISTRATION.**—

(1) The Governor of the State may delegate the execution and enforcement of the State plan, including the authority to license and the duty to report information pursuant to subsection (a), to any subordinate State officer. The Governor shall provide, to the Secretary, written notice of any delegation.

(2) The Governor (or the Governor's designee) shall provide written notice of any amendment to the State plan no less than 45 days prior to the effective date of such amendment.

(3) At the request of the Secretary, the Governor of the State (or the Governor's designee) shall grant, on a biennial basis, the Secretary access to State records and State personnel for the purpose of auditing State execution and enforcement of the State plan.

(c) APPLICATION.—

(1) The requirements of section 8903 of title 46, United States Code, and the regulations issued thereunder shall not apply to any person operating under the authority of a State license issued pursuant to an agreement under this section.

(2) The State shall not compel a person, operating under the authority of a license issued either by another State, pursuant to a valid agreement under this section, or by the Secretary, pursuant to section 8903 of title 46, United States Code, to—

(A) hold a license issued by the State, pursuant to an agreement under this section; or

(B) pay any fee, associated with licensing, because the person does not hold a license issued by the State, pursuant to an agreement under this section.

Nothing in this paragraph shall limit the authority of the State to impose requirements or fees for privileges, other than licensing, that are associated with the operation of uninspected passenger vessels on Lake Texoma.

(3) For the purpose of enforcement, if an individual is issued a license—

(A) by a State, pursuant to an agreement entered into under to this section; or

(B) by the Secretary, pursuant to section 8903 of title 46, United States Code,

then the individual shall be entitled to lawfully operate an uninspected passenger vessel on Lake Texoma in Texas and Oklahoma without further requirement to hold an additional operator's license.

(d) TERMINATION.—

(1) If—

(A) the Secretary finds that the State plan for the licensing the operators of uninspected passenger vessels—

(i) does not meet the equivalent standards of safety and protection of the environment as those contained in subtitle II of title 46, United States Code, and regulations issued thereunder;

(ii) does not include—

(I) standards for chemical testing for such operators,

(II) physical standards for such operators,

(III) professional service and training requirements for such operators, or

(IV) background and criminal investigations for such operators;

Notice.
Deadline.

Records.

Notices.
Deadlines.

(iii) does not provide for the suspension and revocation of State licenses; or

(iv) does not make an individual, who is ineligible for a license issued under title 46, United States Code, ineligible for a State license; or

(B) the Governor (or the Governor’s designee) fails to report pursuant to subsection (b), the Secretary shall terminate the agreement authorized by this section, provided that the Secretary provides written notice to the Governor of the State 60 days in advance of termination. The findings of fact and conclusions of the Secretary, if based on a preponderance of the evidence, shall be conclusive.

(2) The Governor of the State may terminate the agreement authorized by this section, provided that the Governor provides written notice to the Secretary 60 days in advance of the termination date.

(e) EXISTING AUTHORITY.—Nothing in this section shall affect or diminish the authority or jurisdiction of any Federal or State officer to investigate, or require reporting of, marine casualties.

(f) DEFINITIONS.—For the purposes of this section, the term “uninspected passenger vessel” has the same meaning such term has in section 2101(42)(B) of title 46, United States Code.

Deadline.
Reports.

SEC. 911. STRATEGY REGARDING DRUG TRAFFICKING VESSELS.

Within 180 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, shall submit a report to Congress on its comprehensive strategy to combat the illicit flow of narcotics, weapons, bulk cash, and other contraband through the use of submersible and semi-submersible vessels. The strategy shall be developed in coordination with other Federal agencies engaged in detection, interdiction, or apprehension of such vessels. At a minimum, the report shall include the following:

(1) An assessment of the threats posed by submersible and semi-submersible vessels, including the number of such vessels that have been detected or interdicted.

(2) Information regarding the Federal personnel, technology and other resources available to detect and interdict such vessels.

(3) An explanation of the Coast Guard’s plan, working with other Federal agencies as appropriate, to detect and interdict such vessels.

(4) An assessment of additional personnel, technology, or other resources necessary to address such vessels.

SEC. 912. USE OF FORCE AGAINST PIRACY.

(a) IN GENERAL.—Chapter 81 of title 46, United States Code, is amended by adding at the end the following new section:

“§ 8107. Use of force against piracy

Regulations.

“(a) LIMITATION ON LIABILITY.—An owner, operator, time charterer, master, mariner, or individual who uses force or authorizes the use of force to defend a vessel of the United States against an act of piracy shall not be liable for monetary damages for any injury or death caused by such force to any person engaging in an act of piracy if such force was in accordance with standard rules for the use of force in self-defense of vessels prescribed by the Secretary.

“(b) **PROMOTION OF COORDINATED ACTION.**—To carry out the purpose of this section, the Secretary of the department in which the Coast Guard is operating shall work through the International Maritime Organization to establish agreements to promote coordinated action among flag- and port-states to deter, protect against, and rapidly respond to piracy against the vessels of, and in the waters under the jurisdiction of, those nations, and to ensure limitations on liability similar to those established by subsection (a). Contracts.

“(c) **DEFINITION.**—For the purpose of this section, the term ‘act of piracy’ means any act of aggression, search, restraint, depredation, or seizure attempted against a vessel of the United States by an individual not authorized by the United States, a foreign government, or an international organization recognized by the United States to enforce law on the high seas.”

(b) **CLERICAL AMENDMENT.**—The analysis at the beginning of such chapter is amended by adding at the end the following new item: 46 USC 8101.

“8107. Use of force against piracy.”

(c) **STANDARD RULES FOR THE USE OF FORCE FOR SELF-DEFENSE OF VESSELS OF THE UNITED STATES.**—Not later than 180 days after the date of enactment of this act, the secretary of the department in which the coast guard is operating, in consultation with representatives of industry and labor, shall develop standard rules for the use of force for self-defense of vessels of the United States. 46 USC 8107
note.
Deadline.

SEC. 913. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46, UNITED STATES CODE.

(a) **IN GENERAL.**—Chapter 313 of title 46, United States Code, is amended—

(1) by striking “of Transportation” in sections 31302, 31306, 31321, 31330, and 31343 each place it appears;

(2) by striking “and” after the semicolon in section 31301(5)(F);

(3) by striking “office.” in section 31301(6) and inserting “office; and”; and

(4) by adding at the end of section 31301 the following:

“(7) ‘Secretary’ means the Secretary of the Department of Homeland Security, unless otherwise noted.” Definition.

(b) **SECRETARY AS MORTGAGEE.**—Section 31308 of such title is amended by striking “When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary” and inserting “The Secretary of Commerce or Transportation, as a mortgagee under this chapter,”.

(c) **SECRETARY OF TRANSPORTATION.**—Section 31329(d) of such title is amended by striking “Secretary.” and inserting “Secretary of Transportation.”.

(d) **MORTGAGEE.**—

(1) Section 31330(a)(1) of such title, as amended by subsection (a)(1) of this section, is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “Secretary; or” in subparagraph (C) and inserting “Secretary.”; and

(C) by striking subparagraph (D).

(2) Section 31330(a)(2) is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “faith; or” in subparagraph (C) and inserting “faith.”; and

(C) by striking subparagraph (D).

14 USC 92 note.

SEC. 914. CONVEYANCE OF COAST GUARD VESSELS FOR PUBLIC PURPOSES.

(a) **IN GENERAL.**—Whenever the transfer of ownership of a Coast Guard vessel or aircraft to an eligible entity for use for educational, cultural, historical, charitable, recreational, or other public purposes is authorized by law or declared excess by the Commandant, the Coast Guard shall transfer the vessel or aircraft to the General Services Administration for conveyance to the eligible entity.

(b) **CONDITIONS OF CONVEYANCE.**—The General Services Administration may not convey a vessel or aircraft to an eligible entity as authorized by law unless the eligible entity agrees—

(1) to provide the documentation needed by the General Services Administration to process a request for aircraft or vessels under section 102.37.225 of title 41, Code of Federal Regulations;

(2) to comply with the special terms, conditions, and restrictions imposed on aircraft and vessels under section 102.37.460 of such title;

(3) to make the vessel available to the United States Government if it is needed for use by the Commandant of the Coast Guard in time of war or a national emergency; and

(4) to hold the United States Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls, that occurs after conveyance of the vessel, except for claims arising from use of the vessel by the United States Government under paragraph (3).

(c) **OTHER OBLIGATIONS UNAFFECTED.**—Nothing in this section amends or affects any obligation of the Coast Guard or any other person under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or any other law regarding use or disposal of hazardous materials including asbestos and polychlorinated biphenyls.

(d) **ELIGIBLE ENTITY DEFINED.**—In this section, the term “eligible entity” means a State or local government, nonprofit corporation, educational agency, community development organization, or other entity that agrees to comply with the conditions established under this section.

SEC. 915. ASSESSMENT OF CERTAIN AIDS TO NAVIGATION AND TRAFFIC FLOW.

Deadline.

(a) **INFORMATION ON USAGE.**—Within 60 days after the date of enactment of this Act, the Commandant of the Coast Guard shall—

Determination.

(1) determine the types and numbers of vessels typically transiting or utilizing that portion of the Atlantic Intracoastal Waterway beginning at a point that is due East of the outlet of the Cutler Drain Canal C–100 in Dade County, Florida, and ending at the Dade County line, during a period of 30 days; and

(2) provide the information on usage compiled under this subsection to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(b) ASSESSMENT OF CERTAIN AIDS TO NAVIGATION.—Within 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall—

Deadline.

(1) review and assess the buoys, markers, and other aids to navigation in and along that portion of the Atlantic Intracoastal Waterway specified in subsection (a), to determine the adequacy and sufficiency of such aids, and the need to replace such aids, install additional aids, or both; and

(2) submit a report on the assessment required by this section to the committees.

Reports.

(c) SUBMISSION OF PLAN.—Within 180 days after the date of enactment of this Act, the Commandant shall submit a plan to the committees to address the needs identified under subsection (b).

Deadline.

SEC. 916. FRESNEL LENS FROM PRESQUE ISLE LIGHT STATION IN PRESQUE ISLE, MICHIGAN.

(a) DETERMINATION; ANALYSES.—

(1) DETERMINATION.—The Commandant of the Coast Guard shall determine the necessity and adequacy of the existing Federal aids to navigation at Presque Isle Light Station, Presque Isle, Michigan (hereinafter “Light Station”), and submit such determination to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The Commandant may base such determination on the Waterways Analysis and Management System study of such Federal aid to navigation, provided that such study was completed not more than 1 year prior to the date of enactment of this section.

(2) ANALYSES.—The Commandant of the Coast Guard shall conduct—

(A) an analysis of the feasibility of restoring the Fresnel Lens from the Light Station to operating condition, the capacity of the Coast Guard to maintain the Fresnel Lens as a Federal aid to navigation, and the impact on the Fresnel Lens as an artifact if used as a Federal aid to navigation; and

(B) a comparative analysis of the cost of restoring, reinstalling, operating, and maintaining the Fresnel Lens (including life-cycle costs) and the cost of operating and maintaining the existing Federal aid to navigation at the Light Station (including life-cycle costs).

(3) SUBMISSION.—Not later than 1 year after the date of enactment of this section, the Commandant of the Coast Guard shall submit the determination and analyses, conducted pursuant to this subsection, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

Deadline.

(b) TRANSFER POSSESSION OF LENS AUTHORIZED.—

(1) TRANSFER OF POSSESSION.—Notwithstanding any other provision of law, the Commandant of the Coast Guard may

transfer to the Township of Presque Isle, Michigan (hereinafter “Township”), possession of the Fresnel Lens from the Light Station for the purpose of conserving and displaying such Fresnel Lens as an artifact in an exhibition facility at or near the Light Station.

(2) **CONDITION.**—As a condition of the transfer of possession pursuant to paragraph (1)—

(A) all Federal aids to navigation located at, on, or in the Light Station in operation on the date of transfer of possession shall remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(B) there is reserved to the United States the right to maintain, remove, replace, or install any Federal aid to navigation located at, on, or in the Light Station as may be necessary for navigational purposes; and

(C) the Township shall neither interfere nor allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the operation and maintenance of any Federal aid to navigation.

(3) **ALTERNATIVE DISPLAY.**—

(A) In the event that—

(i) the Commandant of the Coast Guard, pursuant to a Waterways Analysis and Management System study, discontinues the existing Federal aids to navigation at, on, or in the Light Station; and

(ii) the Township demonstrates to the satisfaction of the Commandant that the Township can restore, reinstall, and display the Fresnel Lens from the Light Station in the lantern room of such Light Station in a manner that conserves such Fresnel Lens as an artifact,

the Township is authorized, notwithstanding paragraph (1), to display such Fresnel Lens in the lantern room of such Light Station.

(B) Nothing in this paragraph shall be construed to prevent the Township from installing a replica of the Fresnel Lens in the lantern room of such Light Station.

(c) **CONVEYANCE, TRANSFER OF ADDITIONAL PERSONAL PROPERTY.**—Notwithstanding any other provision of law, the Commandant may convey or transfer possession of any personal property of the United States, pertaining to the Fresnel Lens or the Light Station, as an artifact to the Township.

(d) **TERMS; REVERSIONARY INTEREST.**—As a condition of transfer of possession of personal property of the United States, pursuant to subsection (c), the Commandant may require the Township to comply with terms and conditions necessary to protect and conserve such personal property. Upon notice that the Commandant has determined that the Township has not complied with such terms and conditions, the Township shall immediately transfer possession of such personal property to the Coast Guard, except to the extent otherwise approved by the Commandant.

(e) **CONVEYANCE WITHOUT CONSIDERATION.**—The conveyance or transfer of possession of any personal property of the United States (including the Fresnel Lens) under this section shall be without consideration.

(f) **DELIVERY OF PROPERTY.**—The Commandant shall deliver any personal property, conveyed or transferred pursuant to this section (including the Fresnel Lens)—

- (1) at the place where such property is located on the date of the conveyance;
- (2) in condition on the date of conveyance; and
- (3) without cost to the United States.

(g) **MAINTENANCE OF PROPERTY.**—As a condition of the transfer of possession of the Fresnel Lens and any other personal property of the United States to the Township under this section, the Commandant shall enter into an agreement with the Township under which the Township agrees to hold the United States harmless for any claim arising with respect to the Fresnel Lens or such personal property.

Contracts.

(h) **LIMITATION ON FUTURE TRANSFERS.**—The instruments providing for the transfer of possession of the Fresnel Lens or any other personal property of the United States under this section shall—

- (1) require that any further transfer of an interest in the Fresnel Lens or personal property may not be made without the advance approval of the Commandant; and

- (2) provide that, if the Commandant determines that an interest in the Fresnel Lens or personal property was transferred without such approval—

Determination.

- (A) all right, title, and interest in the Fresnel Lens or personal property shall revert to the United States, and the United States shall have the right to immediate possession of the Fresnel Lens or personal property; and

- (B) the recipient of the Fresnel Lens or personal property shall pay the United States for costs incurred by the United States in recovering the Fresnel Lens or personal property.

Payments.

(i) **ADDITIONAL TERMS AND CONDITIONS.**—The Commandant may require such additional terms and conditions in connection with the conveyance or transfer of personal property of the United States (including the Fresnel Lens) authorized by this section as the Commandant considers appropriate to protect the interests of the United States.

SEC. 917. MARITIME LAW ENFORCEMENT.

(a) **PENALTIES.**—Subsection (b) of section 2237 of title 18, United States Code, is amended to read as follows:

“(b)(1) Except as otherwise provided in this subsection, whoever knowingly violates subsection (a) shall be fined under this title or imprisoned for not more than 5 years, or both.

“(2)(A) If the offense is one under paragraph (1) or (2)(A) of subsection (a) and has an aggravating factor set forth in subparagraph (B) of this paragraph, the offender shall be fined under this title or imprisoned for any term of years or life, or both.

“(B) The aggravating factor referred to in subparagraph (A) is that the offense—

- “(i) results in death; or

- “(ii) involves—

“(I) an attempt to kill;

“(II) kidnapping or an attempt to kidnap; or

“(III) an offense under section 2241.

“(3) If the offense is one under paragraph (1) or (2)(A) of subsection (a) and results in serious bodily injury (as defined in section 1365), the offender shall be fined under this title or imprisoned for not more than 15 years, or both.

“(4) If the offense is one under paragraph (1) or (2)(A) of subsection (a), involves knowing transportation under inhumane conditions, and is committed in the course of a violation of section 274 of the Immigration and Nationality Act, or chapter 77 or section 113 (other than under subsection (a)(4) or (a)(5) of such section) or 117 of this title, the offender shall be fined under this title or imprisoned for not more than 15 years, or both.”.

(b) DEFINITION.—Section 2237(e) of title 18, United States Code, is amended—

(1) by amending paragraph (3) to read as follows:

“(3) the term ‘vessel subject to the jurisdiction of the United States’ has the meaning given the term in section 70502 of title 46;”;

(2) in paragraph (4), by striking “section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903).” and inserting “section 70502 of title 46; and”; and

(3) by adding at the end the following new paragraph:

“(5) the term ‘transportation under inhumane conditions’ means—

“(A) transportation—

“(i) of one or more persons in an engine compartment, storage compartment, or other confined space;

“(ii) at an excessive speed; or

“(iii) of a number of persons in excess of the rated capacity of the vessel; or

“(B) intentional grounding of a vessel in which persons are being transported.”.

14 USC 663 note.

SEC. 918. CAPITAL INVESTMENT PLAN.

The Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure and the Committee on Commerce, Science, and Transportation of the Senate the Coast Guard’s 5-year capital investment plan concurrent with the President’s budget submission for each fiscal year.

SEC. 919. REPORTS.

Notwithstanding any other provision of law, in fiscal year 2011 the total amount of appropriated funds obligated or expended by the Coast Guard during any fiscal year in connection with any study or report required by law may not exceed the total amount of appropriated funds obligated or expended by the Coast Guard for such purpose in fiscal year 2010. In order to comply with the requirements of this limitation, the Commandant of the Coast Guard shall establish for each fiscal year a rank order of priority for studies and reports that can be conducted or completed during the fiscal year consistent with this limitation and shall post the list on the Coast Guard’s public website.

SEC. 920. COMPLIANCE PROVISION.

The budgetary effects of this Act, for purposes of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and

Web posting.

Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendments between the Houses.

SEC. 921. CONVEYANCE OF COAST GUARD PROPERTY IN PORTLAND, MAINE.

Section 347 of the Maritime Transportation Security Act of 2002 (116 Stat. 2108; as amended by section 706 of Public Law 109–347 (120 Stat. 1946)) is amended in subsection (i), by adding at the end the following new paragraph:

“(3) PUBLIC AQUARIUM.—For purposes of this section, the term ‘aquarium’ or ‘public aquarium’ as used in this section or in the deed delivered to the Corporation or any agreement entered into pursuant to this section, means any new building constructed by the Corporation adjacent to the pier and bulkhead in compliance with the waterfront provisions of the City of Portland Code of Ordinances.”.

Definition.

TITLE X—CLEAN HULLS

Subtitle A—General Provisions

SEC. 1011. DEFINITIONS.

33 USC 3801.

In this title:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) ANTIFOULING SYSTEM.—The term “antifouling system” means a coating, paint, surface treatment, surface, or device that is used or intended to be used on a vessel to control or prevent attachment of unwanted organisms.

(3) CONVENTION.—The term “Convention” means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, including its annexes, and including any amendments to the Convention or annexes which have entered into force for the United States.

(4) FPSO.—The term “FPSO” means a floating production, storage, or offloading unit.

(5) FSU.—The term “FSU” means a floating storage unit.

(6) GROSS TONNAGE.—The term “gross tonnage” as defined in chapter 143 of title 46, United States Code, means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in annex 1 to the International Convention on Tonnage Measurement of Ships, 1969.

(7) INTERNATIONAL VOYAGE.—The term “international voyage” means a voyage by a vessel entitled to fly the flag of one country to or from a port, shipyard, offshore terminal, or other place under the jurisdiction of another country.

(8) ORGANOTIN.—The term “organotin” means any compound or additive of tin bound to an organic ligand, that is used or intended to be used as biocide in an antifouling system.

(9) PERSON.—The term “person” means—

(A) any individual, partnership, association, corporation, or organized group of persons whether incorporated or not;

(B) any department, agency, or instrumentality of the United States, except as provided in section 3(b)(2); or

(C) any other government entity.

(10) SECRETARY.—The term “Secretary” means the Secretary of the department in which the Coast Guard is operating.

(11) SELL OR DISTRIBUTE.—The term “sell or distribute” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, import, export, hold for import, hold for export, or receive and (having so received) deliver or offer to deliver.

(12) VESSEL.—The term “vessel” has the meaning given that term in section 3 of title 1, United States Code, including hydrofoil boats, air cushion watercraft, submersibles, floating craft, fixed or floating platforms, floating storage units, and floating production, storage, and offloading units.

(13) TERRITORIAL SEA.—The term “territorial sea” means the territorial sea as described in Presidential Proclamation No. 5928 on December 27, 1988.

(14) UNITED STATES.—The term “United States” means the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(15) USE.—The term “use” includes application, reapplication, installation, or any other employment of an antifouling system.

33 USC 3802.

SEC. 1012. COVERED VESSELS.

(a) INCLUDED VESSEL.—Except as provided in subsection (b), after the Convention enters into force for the United States, the following vessels are subject to the requirements of this title:

(1) A vessel documented under chapter 121 of title 46, United States Code, or one operated under the authority of the United States, wherever located.

(2) Any vessel permitted by a Federal agency to operate on the Outer Continental Shelf.

(3) Any other vessel when—

(A) in the internal waters of the United States;

(B) in any port, shipyard, offshore terminal, or other place in the United States;

(C) lightering in the territorial sea; or

(D) to the extent consistent with international law, anchoring in the territorial sea of the United States.

(b) EXCLUDED VESSELS.—

(1) IN GENERAL.—The following vessels are not subject to the requirements of this title:

(A) Any warship, naval auxiliary, or other vessel owned or operated by a foreign state, and used, for the time being, only on government noncommercial service.

(B) Except as provided in paragraph (2), any warship, naval auxiliary, or other vessel owned or operated by the United States and used for the time being only on government noncommercial service.

(2) APPLICATION TO UNITED STATES GOVERNMENT VESSELS.—

(A) IN GENERAL.—The Administrator may apply any requirement of this title to one or more classes of vessels described in paragraph (1)(B), if the head of the Federal

department or agency under which those vessels operate concurs in that application.

(B) LIMITATION FOR COMBAT-RELATED VESSEL.—Subparagraph (A) shall not apply to combat-related vessels.

SEC. 1013. ADMINISTRATION AND ENFORCEMENT.

(a) IN GENERAL.—Unless otherwise specified in this title, with respect to a vessel, the Secretary shall administer and enforce the Convention and this title.

(b) ADMINISTRATOR.—Except with respect to section 1031(b) and (c), the Administrator shall administer and enforce subtitle C.

(c) REGULATIONS.—The Administrator and the Secretary may each prescribe and enforce regulations as may be necessary to carry out their respective responsibilities under this title.

SEC. 1014. COMPLIANCE WITH INTERNATIONAL LAW.

Any action taken under this title shall be taken in accordance with treaties to which the United States is a party and other international obligations of the United States.

SEC. 1015. UTILIZATION OF PERSONNEL, FACILITIES OR EQUIPMENT OF OTHER FEDERAL DEPARTMENTS AND AGENCIES.

The Secretary and the Administrator may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the Convention, this title, or any regulations prescribed under this title.

Subtitle B—Implementation of the Convention

SEC. 1021. CERTIFICATES.

33 USC 3821.

(a) CERTIFICATE REQUIRED.—On entry into force of the Convention for the United States, any vessel of at least 400 gross tons that engages in one or more international voyages (except fixed or floating platforms, FSUs, and FPSOs) shall carry an International Antifouling System Certificate.

(b) ISSUANCE OF CERTIFICATE.—On entry into force of the Convention, on a finding that a successful survey required by the Convention has been completed, a vessel of at least 400 gross tons that engages in at least one international voyage (except fixed or floating platforms, FSUs, and FPSOs) shall be issued an International Antifouling System Certificate. The Secretary may issue the Certificate required by this section. The Secretary may delegate this authority to an organization that the Secretary determines is qualified to undertake that responsibility.

(c) MAINTENANCE OF CERTIFICATE.—The Certificate required by this section shall be maintained as required by the Secretary.

(d) CERTIFICATES ISSUED BY OTHER PARTY COUNTRIES.—A Certificate issued by any country that is a party to the Convention has the same validity as a Certificate issued by the Secretary under this section.

(e) VESSELS OF NONPARTY COUNTRIES.—Notwithstanding subsection (a), a vessel of at least 400 gross tons, having the nationality of or entitled to fly the flag of a country that is not a party

to the Convention, may demonstrate compliance with this title through other appropriate documentation considered acceptable by the Secretary.

33 USC 3822.

SEC. 1022. DECLARATION.

(a) **REQUIREMENTS.**—On entry into force of the Convention for the United States, a vessel of at least 24 meters in length, but less than 400 gross tons engaged on an international voyage (except fixed or floating platforms, FSUs, and FPSOs) must carry a declaration described in subsection (b) that is signed by the owner or owner's authorized agent. That declaration shall be accompanied by appropriate documentation, such as a paint receipt or a contractor invoice, or contain an appropriate endorsement.

(b) **CONTENT OF DECLARATION.**—The declaration must contain a clear statement that the antifouling system on the vessel complies with the Convention. The Secretary may prescribe the form and other requirements of the declaration.

33 USC 3823.

SEC. 1023. OTHER COMPLIANCE DOCUMENTATION.

In addition to the requirements under sections 1021 and 1022, the Secretary may require vessels to hold other documentation considered necessary to verify compliance with this title.

33 USC 3824.

SEC. 1024. PROCESS FOR CONSIDERING ADDITIONAL CONTROLS.

(a) **ACTIONS BY ADMINISTRATOR.**—The Administrator may—

(1) participate in the technical group described in Article 7 of the Convention, and in any other body convened pursuant to the Convention for the consideration of new or additional controls on antifouling systems;

(2) evaluate any risks of adverse effects on nontarget organisms or human health presented by a given antifouling system such that the amendment of annex 1 of the Convention may be warranted;

(3) undertake an assessment of relevant environmental, technical, and economic considerations necessary to evaluate any proposals for new or additional controls of antifouling systems under the Convention, including benefits in the United States and elsewhere associated with the production and use in the United States and elsewhere, of the subject antifouling system; and

(4) develop recommendations based on that assessment.

(b) **REFERRALS TO TECHNICAL GROUP.**—

Public
information.

(1) **CONVENING OF SHIPPING COORDINATING COMMITTEE.**—On referral of any antifouling system to the technical group described in article 7 of the Convention for consideration of new or additional controls, the Secretary of State shall convene a public meeting of the Shipping Coordinating Committee for the purpose of receiving information and comments regarding controls on such antifouling system. The Secretary of State shall publish advance notice of such meeting in the Federal Register and on the State Department's Web site. The Administrator shall assemble and maintain a public docket containing notices pertaining to that meeting, any comments responding to those notices, the minutes of that meeting, and materials presented at that meeting.

Federal Register,
publication.
Notice.
Web posting.

(2) **REPORT BY TECHNICAL GROUP.**—The Administrator shall promptly make any report by the technical group described in the Convention available to the public through the docket

established pursuant to subsection (b) and announce the availability of that report in the Federal Register. The Administrator shall provide an opportunity for public comment on the report for a period of not less than 30 days from the time the availability of the report is announced in the Federal Register.

Public comments.

(3) **CONSIDERATION OF COMMENTS.**—To the extent practicable, the Administrator shall take any comments into consideration in developing recommendations under subsection (a).

SEC. 1025. SCIENTIFIC AND TECHNICAL RESEARCH AND MONITORING; COMMUNICATION AND INFORMATION. 33 USC 3825.

The Secretary, the Administrator, and the Administrator of the National Oceanic and Atmospheric Administration may each undertake scientific and technical research and monitoring pursuant to article 8 of the Convention and to promote the availability of relevant information concerning—

- (1) scientific and technical activities undertaken in accordance with the Convention;
- (2) marine scientific and technological programs and their objectives; and
- (3) the effects observed from any monitoring and assessment programs relating to antifouling systems.

SEC. 1026. COMMUNICATION AND EXCHANGE OF INFORMATION. 33 USC 3826.

(a) **IN GENERAL.**—Except as provided in subsection (b), with respect to those antifouling systems regulated by the Administrator, the Administrator shall provide to any party to the Convention that requests it, relevant information on which the decision to regulate was based, including information provided for in annex 3 to the Convention, or other information suitable for making an appropriate evaluation of the antifouling system.

(b) **LIMITATION.**—This section shall not be construed to authorize the provision of information the disclosure of which is otherwise prohibited by law.

Subtitle C—Prohibitions and Enforcement Authority

SEC. 1031. PROHIBITIONS. 33 USC 3841.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, it is unlawful for any person—

- (1) to act in violation of this title, or any regulation prescribed under this title;
- (2) to sell or distribute in domestic or international commerce organotin or an antifouling system containing organotin;
- (3) to manufacture, process, or use organotin to formulate an antifouling system;
- (4) to apply an antifouling system containing organotin on any vessel to which this title applies; or
- (5) after the Convention enters into force for the United States, to apply or otherwise use in a manner inconsistent with the Convention, an antifouling system on any vessel that is subject to this title.

(b) **VESSEL HULLS.**—Except as provided in subsection (c), no vessel shall bear on its hull or outer surface any antifouling system containing organotin, regardless of when such system was applied,

unless that vessel bears an overcoating which forms a barrier to organotin leaching from the underlying antifouling system.

(c) LIMITATIONS.—

(1) EXCEPTED VESSEL.—Subsection (b) does not apply to fixed or floating platforms, FSUs, or FPSOs that were constructed prior to January 1, 2003, and that have not been in dry dock on or after that date.

(2) SALE, MANUFACTURE, ETC.—This section does not apply to—

(A) the sale, distribution, or use pursuant to any agreement between the Administrator and any person that results in an earlier prohibition or cancellation date than specified in this title; or

(B) the manufacture, processing, formulation, sale, distribution, or use of organotin or antifouling systems containing organotin used or intended for use only for sonar domes or in conductivity sensors in oceanographic instruments.

33 USC 3842.

SEC. 1032. INVESTIGATIONS AND INSPECTIONS BY SECRETARY.

(a) IN GENERAL.—The Secretary may conduct investigations and inspections regarding a vessel's compliance with this title or the Convention.

(b) VIOLATIONS; SUBPOENAS.—

(1) IN GENERAL.—In any investigation under this section, the Secretary may issue a subpoena to require the attendance of a witness or the production of documents or other evidence if—

(A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with a criminal investigation; and

(B) the Attorney General—

Determination.

(i) determines that the subpoena will not interfere with a criminal investigation; or

Deadline.

(ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A).

(2) ENFORCEMENT.—In the case of refusal to obey a subpoena issued to any person under this subsection, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.

(c) FURTHER ACTION.—On completion of an investigation, the Secretary may take whatever further action the Secretary considers appropriate under the Convention or this title.

(d) COOPERATION.—The Secretary may cooperate with other parties to the Convention in the detection of violations and in enforcement of the Convention. Nothing in this section affects or alters requirements under any other laws.

33 USC 3843.

SEC. 1033. EPA ENFORCEMENT.

(a) INSPECTIONS, SUBPOENAS.—

(1) IN GENERAL.—For purposes of enforcing this title or any regulation prescribed under this title, officers or employees of the Environmental Protection Agency or of any State designated by the Administrator may enter at reasonable times

any location where there is being held or may be held organotin or any other substance or antifouling system regulated under the Convention, for the purpose of inspecting and obtaining samples of any containers or labeling for organotin or other substance or system regulated under the Convention.

(2) SUBPOENAS.—

(A) IN GENERAL.—In any investigation under this section, the Administrator may issue a subpoena to require the attendance of a witness or the production of documents or other evidence if—

(i) before the issuance of the subpoena, the Administrator requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with a criminal investigation; and

Determination.

(ii) the Attorney General—

(I) determines that the subpoena will not interfere with a criminal investigation; or

(II) fails to make a determination under subclause (I) before the date that is 30 days after the date on which the Administrator makes a request under clause (i).

Deadline.

(B) ENFORCEMENT.—In the case of refusal to obey a subpoena issued to any person under this paragraph, the Administrator may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.

(b) STOP MANUFACTURE, SALE, USE, OR REMOVAL ORDERS.—Consistent with section 1013, whenever any organotin or other substance or system regulated under the Convention is found by the Administrator and there is reason to believe that a manufacturer, seller, distributor, or user has violated or is in violation of any provision of this title, or that such organotin or other substance or system regulated under the Convention has been or is intended to be manufactured, distributed, sold, or used in violation of this title, the Administrator may issue a stop manufacture, sale, use, or removal order to any person that owns, controls, or has custody of such organotin or other substance or system regulated under the Convention. After receipt of that order the person may not manufacture, sell, distribute, use, or remove the organotin or other substance or system regulated under the Convention described in the order except in accordance with the order.

SEC. 1034. ADDITIONAL AUTHORITY OF THE ADMINISTRATOR.

The Administrator, in consultation with the Secretary, may establish, as necessary, terms and conditions regarding the removal and disposal of antifouling systems prohibited or restricted under this title.

Subtitle D—Action on Violation, Penalties, and Referrals

SEC. 1041. CRIMINAL ENFORCEMENT.

33 USC 3851.

Any person who knowingly violates paragraph (2), (3), (4), or (5) of section 1031(a) or section 1031(b) shall be fined under

title 18, United States Code, or imprisoned not more than 6 years, or both.

33 USC 3852.

SEC. 1042. CIVIL ENFORCEMENT.

(a) CIVIL PENALTY.—

(1) IN GENERAL.—Any person who is found by the Secretary or the Administrator, as appropriate, after notice and an opportunity for a hearing, to have—

(A) violated the Convention, this title, or any regulation prescribed under this title, is liable to the United States Government for a civil penalty of not more than \$37,500 for each violation; or

(B) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the Convention, this title, or any regulations prescribed under this title, is liable to the United States for a civil penalty of not more than \$50,000 for each such statement or representation.

(2) RELATIONSHIP TO OTHER LAW.—This subsection shall not limit or affect the authority of the Government under section 1001 of title 18, United States Code.

Notice.

(b) ASSESSMENT OF PENALTY.—The amount of the civil penalty shall be assessed by the Secretary or Administrator, as appropriate, by written notice.

(c) LIMITATION FOR RECREATIONAL VESSEL.—A civil penalty imposed under subsection (a) against the owner or operator of a recreational vessel, as that term is defined in section 2101 of title 46, United States Code, for a violation of the Convention, this title, or any regulation prescribed under this title involving that recreational vessel, may not exceed \$5,000 for each violation.

(d) DETERMINATION OF PENALTY.—For purposes of penalties under this section, each day of a continuing violation constitutes a separate violation. In determining the amount of the penalty, the Secretary or Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, the economic impact of the penalty on the violator, the economic benefit to the violator and other matters as justice may require.

(e) REWARD.—An amount equal to not more than one-half of any civil penalty assessed by the Secretary or Administrator under this section may, subject to the availability of appropriations, be paid by the Secretary or Administrator, respectively, to any person who provided information that led to the assessment or imposition of the penalty.

(f) REFERRAL TO ATTORNEY GENERAL.—If any person fails to pay a civil penalty assessed under this section after it has become final, or comply with an order issued under this title, the Secretary or Administrator, as appropriate, may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(g) COMPROMISE, MODIFICATION, OR REMISSION.—Before referring any civil penalty that is subject to assessment or has been assessed under this section to the Attorney General, the Secretary, or Administrator, as appropriate, may compromise, modify, or remit, with or without conditions, the civil penalty.

(h) **NONPAYMENT PENALTY.**—Any person who fails to pay on a timely basis a civil penalty assessed under this section shall also be liable to the United States for interest on the penalty at an annual rate equal to 11 percent compounded quarterly, attorney fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. That nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of that person’s penalties and nonpayment penalties that are unpaid as of the beginning of that quarter.

SEC. 1043. LIABILITY IN REM.

33 USC 3853.

A vessel operated in violation of the Convention, this title, or any regulation prescribed under this title, is liable in rem for any fine imposed under section 18, United States Code, or civil penalty assessed pursuant to section 1042, and may be proceeded against in the United States district court of any district in which the vessel may be found.

SEC. 1044. VESSEL CLEARANCE OR PERMITS; REFUSAL OR REVOCATION; BOND OR OTHER SURETY.

33 USC 3854.

If any vessel that is subject to the Convention or this title, or its owner, operator, or person in charge, is liable for a fine or civil penalty under section 1042 or 1043, or if reasonable cause exists to believe that the vessel, its owner, operator, or person in charge may be subject to a fine or civil penalty under section 1042 or 1043, the Secretary may refuse or revoke the clearance required by section 60105 of title 46, United States Code. Clearance may be granted upon the filing of a bond or other surety satisfaction to the Secretary.

SEC. 1045. WARNINGS, DETENTIONS, DISMISSALS, EXCLUSION.

33 USC 3855.

(a) **IN GENERAL.**—If a vessel is detected to be in violation of the Convention, this title, or any regulation prescribed under this title, the Secretary may warn, detain, dismiss, or exclude the vessel from any port or offshore terminal under the jurisdiction of the United States.

(b) **NOTIFICATIONS.**—If action is taken under subsection (a), the Secretary, in consultation with the Secretary of State, shall make the notifications required by the Convention.

SEC. 1046. REFERRALS FOR APPROPRIATE ACTION BY FOREIGN COUNTRY.

33 USC 3856.

Notwithstanding sections 1041, 1042, 1043, and 1045, if a violation of the Convention is committed by a vessel registered in or of the nationality of a country that is a party to the Convention, or by a vessel operated under the authority of a country that is a party to the Convention, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the vessel’s registry or nationality, or under whose authority the vessel is operating, for appropriate action, rather than taking the actions otherwise required or authorized by this subtitle.

SEC. 1047. REMEDIES NOT AFFECTED.

33 USC 3857.

(a) **IN GENERAL.**—Nothing in this title limits, denies, amends, modifies, or repeals any other remedy available to the United States.

(b) RELATIONSHIP TO STATE AND LOCAL LAW.—Nothing in this title limits, denies, amends, modifies, or repeals any rights under existing law, of any State, territory, or possession of the United States, or any political subdivision thereof, to regulate any antifouling system. Compliance with the requirements of a State, territory, or possession of the United States, or political subdivision thereof related to antifouling paint or any other antifouling system does not relieve any person of the obligation to comply with this title.

SEC. 1048. REPEAL.

The Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2401 et seq.) is repealed.

33 USC
2401–2410,
2401 note.

Approved October 15, 2010.

LEGISLATIVE HISTORY—H.R. 3619 (S. 1194):

HOUSE REPORTS: No. 111–303, Pt. 1 (Comm. on Transportation and Infrastructure).

SENATE REPORTS: No. 111–95 (Comm. on Commerce, Science, and Transportation) accompanying S. 1194.

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 22, 23, considered and passed House.

Vol. 156 (2010): May 7, considered and passed Senate, amended, in lieu of S. 1194.

Sept. 28, House concurred in Senate amendment with amendments.

Sept. 29, Senate concurred in House amendments with amendments. House concurred in Senate amendments.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Oct. 15, Presidential statement.



Public Law 111–282
111th Congress

An Act

An Act to transfer statutory entitlements to pay and hours of work authorized by laws codified in the District of Columbia Official Code for current members of the United States Secret Service Uniformed Division from such laws to the United States Code, and for other purposes.

Oct. 15, 2010
[S. 1510]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; PURPOSE.

(a) **SHORT TITLE.**—This Act may be cited as the “United States Secret Service Uniformed Division Modernization Act of 2010”.

(b) **PURPOSE.**—The purpose of this Act is to transfer statutory entitlements to pay and hours of work authorized by laws codified in the District of Columbia Official Code for current members of the United States Secret Service Uniformed Division from such laws to the United States Code.

United States
Secret Service
Uniformed
Division
Modernization
Act of 2010.
5 USC 101 note.
5 USC 10201
note.

SEC. 2. HUMAN RESOURCES FOR UNITED STATES SECRET SERVICE UNIFORMED DIVISION.

(a) **PAY FOR MEMBERS OF THE UNITED STATES SECRET SERVICE UNIFORMED DIVISION.**—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**“CHAPTER 102—UNITED STATES SECRET SERVICE
UNIFORMED DIVISION PERSONNEL**

“Sec.
“10201. Definitions.
“10202. Authorities.
“10203. Basic pay.
“10204. Rate of pay for original appointments.
“10205. Service step adjustments.
“10206. Technician positions.
“10207. Promotions.
“10208. Demotions.
“10209. Clothing allowances.
“10210. Reporting requirement.

“§ 10201. Definitions

“In this chapter—

“(1) the term ‘member’ means an employee of the United States Secret Service Uniformed Division having the authorities described under section 3056A(b) of title 18;

“(2) the term ‘Secretary’ means the Secretary of the Department of Homeland Security; and

“(3) the term ‘United States Secret Service Uniformed Division’ has the meaning given that term under section 3056A of title 18.

“§ 10202. Authorities

“(a) IN GENERAL.—The Secretary is authorized to—

“(1) fix and adjust rates of basic pay for members of the United States Secret Service Uniformed Division, subject to the requirements of this chapter;

“(2) determine what constitutes an acceptable level of competence for the purposes of section 10205;

“(3) establish and determine the positions at the Officer and Sergeant ranks to be included as technician positions; and

“(4) determine the rate of basic pay of a member who is changed or demoted to a lower rank, in accordance with section 10208.

“(b) DELEGATION OF AUTHORITY.—The Secretary is authorized to delegate to the designated agent or agents of the Secretary, any power or function vested in the Secretary under in this chapter.

“(c) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to administer this chapter.

“§ 10203. Basic pay

“(a) IN GENERAL.—The annual rates of basic pay of members of the United States Secret Service Uniformed Division shall be fixed in accordance with the following schedule of rates, except that the payable annual rate of basic pay for positions at the Lieutenant, Captain, and Inspector ranks is limited to 95 percent of the rate of pay for level V of the Executive Schedule under subchapter II of chapter 53.

[illegible]

Effective date.

“(b) SCHEDULE ADJUSTMENT.—

“(1)(A) Effective at the beginning of the first pay period commencing on or after the first day of the month in which an adjustment in the rates of basic pay under the General Schedule takes effect under section 5303 or other authority, the schedule of annual rates of basic pay of members (except the Deputy Chiefs, Assistant Chief and Chief) shall be adjusted by the Secretary by a percentage amount corresponding to the percentage adjustment made in the rates of pay under the General Schedule.

“(B) The Secretary may establish a methodology of schedule adjustment that—

“(i) results in uniform fixed-dollar step increments within any given rank; and

“(ii) preserves the established percentage differences among rates of different ranks at the same step position.

“(2) Notwithstanding paragraph (1), the payable annual rate of basic pay for positions at the Lieutenant, Captain, and Inspector ranks after adjustment under paragraph (1) may not exceed 95 percent of the rate of pay for level V of the Executive Schedule under subchapter II of chapter 53.

“(3) Locality-based comparability payments authorized under section 5304 shall be applicable to the basic pay for all ranks under this section, except locality-based comparability payments may not be paid at a rate which, when added to the rate of basic pay otherwise payable to the member, would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

“§ 10204. Rate of pay for original appointments

“(a) IN GENERAL.—Except as provided in subsection (b), all original appointments shall be made at the minimum rate of basic pay for the Officer rank set forth in the schedule in section 10203.

“(b) EXCEPTION FOR SUPERIOR QUALIFICATIONS OR SPECIAL NEED.—The Director of the United States Secret Service or the designee of the Director may appoint an individual at a rate above the minimum rate of basic pay for the Officer rank based on the individual’s superior qualifications or a special need of the Government for the individual’s services.

“§ 10205. Service step adjustments

“(a) DEFINITION.—In this section, the term ‘calendar week of active service’ includes all periods of leave with pay or other paid time off, and periods of non-pay status which do not cumulatively equal one 40-hour workweek.

“(b) ADJUSTMENTS.—Each member whose current performance is at an acceptable level of competence shall have a service step adjustment as follows:

“(1) Each member in service step 1, 2, or 3 shall be advanced successively to the next higher service step at the beginning of the first pay period immediately following the completion of 52 calendar weeks of active service in the member’s service step.

“(2) Each member in service step 4, 5, 6, 7, 8, 9, 10, or 11 shall be advanced successively to the next higher service

step at the beginning of the first pay period immediately following the completion of 104 calendar weeks of active service in the member's service step.

"(3) Each member in service step 12 shall be advanced successively to the next higher service step at the beginning of the first pay period immediately following the completion of 156 calendar weeks of active service in the member's service step.

"§ 10206. Technician positions

"(a) IN GENERAL.—(1) Each member whose position is determined under section 10202(a)(3) to be included as a technician position shall, on or after such date, receive, in addition to the member's scheduled rate of basic pay, an amount equal to 6 percent of the sum of such member's rate of basic pay and the applicable locality-based comparability payment.

"(2) A member described in this subsection shall receive the additional compensation authorized by this subsection until such time as the member's position is determined under section 10202(a)(3) not to be a technician position, or until the member no longer occupies such position, whichever occurs first.

"(3) The additional compensation authorized by this subsection shall be paid to a member in the same manner and at the same time as the member's basic pay is paid.

"(b) EXCEPTIONS.—(1) Except as provided in paragraph (2), the additional compensation authorized by subsection (a)(1) shall be considered as basic pay for all purposes, including section 8401(4).

"(2) The additional compensation authorized by subsection (a)(1) shall not be considered as basic pay for the purposes of—

"(A) section 5304; or

"(B) section 7511(a)(4).

"(3) The loss of the additional compensation authorized by subsection (a)(1) shall not constitute an adverse action for the purposes of section 7512.

"§ 10207. Promotions

"(a) IN GENERAL.—Each member who is promoted to a higher rank shall receive basic pay at the same step at which such member was being compensated prior to the date of the promotion.

"(b) CREDIT FOR SERVICE.—For the purposes of a service step adjustment under section 10205, periods of service at the lower rank shall be credited in the same manner as if it was service at the rank to which the employee is promoted.

"§ 10208. Demotions

"When a member is changed or demoted from any rank to a lower rank, the Secretary may fix the member's rate of basic pay at the rate of pay for any step in the lower rank which does not exceed the lowest step in the lower rank for which the rate of basic pay is equal to or greater than the member's existing rate of basic pay.

"§ 10209. Clothing allowances

"(a) IN GENERAL.—In addition to the benefits provided under section 5901, the Director of the United States Secret Service or the designee of the Director is authorized to provide a clothing

allowance to a member assigned to perform duties in normal business or work attire purchased at the discretion of the employee. Such clothing allowance shall not be treated as part of the member's basic pay for any purpose (including retirement purposes) and shall not be used for the purpose of computing the member's overtime pay, pay during leave or other paid time off, lump-sum payments under section 5551 or section 5552, workers' compensation, or any other benefit. Such allowance for any member may be discontinued at any time upon written notification by the Director of the United States Secret Service or the designee of the Director.

“(b) MAXIMUM AMOUNT AUTHORIZED.—A clothing allowance authorized under this section shall not exceed \$500 per annum.

“§ 10210. Reporting requirement

“Not later than 3 years after the date of the enactment of this chapter, the Secretary shall prepare and transmit to Congress a report on the operation of this chapter. The report shall include—

“(1) an assessment of the effectiveness of this chapter with respect to efforts of the Secretary to recruit and retain well-qualified personnel; and

“(2) recommendations for any legislation or administrative action which the Secretary considers appropriate.”.

(b) ANNUAL LEAVE LIMITATION FOR MEMBERS IN THE DEPUTY CHIEF, ASSISTANT CHIEF, AND CHIEF RANKS.—Section 6304(f)(1) of title 5, United States Code, is amended—

(1) in subparagraph (F), by striking “or” after the semicolon;

(2) in subparagraph (G), by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(H) a position in the United States Secret Service Uniformed Division at the rank of Deputy Chief, Assistant Chief, or Chief.”.

(c) SICK LEAVE FOR WORK-RELATED INJURIES AND ILLNESSES.—Section 6324 of title 5, United States Code, is amended—

(1) in subsection (a), by striking “Executive Protective Service force” and inserting “United States Secret Service Uniformed Division”;

(2) in subsection (b)(3), by striking “the Treasury for the Executive Protective Service force” and inserting “Homeland Security for the United States Secret Service Uniformed Division”; and

(3) by adding at the end the following:

“(c) This section shall not apply to members of the United States Secret Service Uniformed Division who are covered under chapter 84 for the purpose of retirement benefits.”.

5 USC 10201
note.

Effective date.

SEC. 3. MISCELLANEOUS PROVISIONS.

(a) CONVERSION TO NEW SALARY SCHEDULE.—

(1) IN GENERAL.—

(A) RATES OF PAY FIXED.—Effective the first day of the first pay period which begins after the date of the enactment of this Act, the Secretary shall fix the rates of basic pay for members of the United States Secret Service Uniformed Division, as defined under section 10201 of title 5, United States Code, (as added by section 2(a)) in accordance with the provisions of this subsection.

(B) RATE BASED ON CREDITABLE SERVICE.—

(i) IN GENERAL.—Each member shall be placed in and receive basic pay at the corresponding scheduled rate under chapter 102 of title 5, United States Code, as added by section 2(a) (after any adjustment under paragraph (3) of this subsection) in accordance with the member's total years of creditable service, as provided in the table in this clause. If the scheduled rate of basic pay for the step to which the member would be assigned in accordance with this paragraph is lower than the member's rate of basic pay immediately before the date of enactment of this paragraph, the member shall be placed in and receive basic pay at the next higher service step, subject to the provisions of clause (iv). If the member's rate of pay exceeds the highest step of the rank, the rate of basic pay shall be determined in accordance with clause (iv).

Full Years of Creditable Service	Step Assigned Upon Conversion
0	1
1	2
2	3
3	4
5	5
7	6
9	7
11	8
13	9
15	10
17	11
19	12
22	13

(ii) CREDITABLE SERVICE.—For the purposes of this subsection, a member's creditable service is any police service in pay status with the United States Secret Service Uniformed Division, the United States Park

Police, or the District of Columbia Metropolitan Police Department.

(iii) STEP 13 CONVERSION MAXIMUM RATE.—

(I) IN GENERAL.—A member who, at the time of conversion, is in step 13 of any rank below Deputy Chief, is entitled to that rate of basic pay which is the greater of—

(aa) the rate of pay for step 13 under the new salary schedule; or

(bb) the rate of pay for step 14 under the pay schedule in effect immediately before conversion.

Applicability.

(II) STEP 14 RATE.—Clause (iv) shall apply to a member whose pay is set in accordance with subclause (I)(bb).

(iv) ADJUSTMENT BASED ON FORMER RATE OF PAY.—

(I) DEFINITION.—In this clause, the term “former rate of basic pay” means the rate of basic pay last received by a member before the conversion.

(II) IN GENERAL.—If, as a result of conversion to the new salary schedule, the member’s former rate of basic pay is greater than the maximum rate of basic pay payable for the rank of the member’s position immediately after the conversion, the member is entitled to basic pay at a rate equal to the member’s former rate of basic pay, and increased at the time of any increase in the maximum rate of basic pay payable for the rank of the member’s position by 50 percent of the dollar amount of each such increase.

(III) PROMOTIONS.—For the purpose of applying section 10207 of title 5, United States Code, relating to promotions, (as added by section 2(a)) an employee receiving a rate above the maximum rate as provided under this clause shall be deemed to be at step 13.

(2) CREDIT FOR SERVICE.—Each member whose position is converted to the salary schedule under chapter 102 of title 5, United States Code, (as added by section 2(a)) in accordance with this subsection shall be granted credit for purposes of such member’s first service step adjustment made after conversion to the salary schedule under that chapter for all satisfactory service performed by the member since the member’s last increase in basic pay before the adjustment under this section.

(3) ADJUSTMENTS DURING TRANSITION.—The schedule of rates of basic pay shall be increased by the percentage of any annual adjustment applicable to the General Schedule authorized under section 5303 of title 5, United States Code, or any other authority, which takes effect during the period beginning on January 1, 2010, through the last day of the last pay period preceding the first pay period which begins after the date of the enactment of this Act. The Secretary of Homeland Security may establish a methodology of schedule adjustment that results in uniform fixed-dollar step increments within any given rank and preserves the established percentage

differences among rates of different ranks at the same step position.

(b) **IMPACT ON BENEFITS UNDER THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT AND DISABILITY SYSTEM.**—

(1) **SALARY INCREASES FOR PURPOSES OF CERTAIN PENSIONS AND ALLOWANCES.**—For purposes of section 3 of the Act entitled “An Act to provide increased pensions for widows and children of deceased members of the Police Department and the Fire Department of the District of Columbia”, approved August 4, 1949 (sec. 5-744, D.C. Official Code) and section 301 of the District of Columbia Police and Firemen's Salary Act of 1953 (sec. 5-745, D.C. Official Code)—

(A) the conversion of positions and members of the United States Secret Service Uniformed Division to appropriate ranks in the salary schedule set forth in this Act and the amendments made by this Act shall not be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act; and

(B) any adjustment of rates of basic pay of those positions and individuals in accordance with this Act and the amendments made by this Act which is made after such conversion shall be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act.

(2) **TREATMENT OF RETIREMENT BENEFITS AND PENSIONS OF CURRENT AND FORMER MEMBERS.**—Except as otherwise provided in this Act, nothing in this Act shall affect retirement benefits and pensions of current members and former members who have retired under the District of Columbia Police and Firefighters' Retirement and Disability System.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) **IN GENERAL.**—To the extent that any provision of any law codified in the District of Columbia Official Code that authorizes an entitlement to pay or hours of work for current members of the United States Secret Service Uniformed Division is not expressly revoked by this Act, such provision shall not apply to such members after the effective date of this Act.

5 USC 10201
note.

(b) **TECHNICAL AND CONFORMING AMENDMENTS TO LAWS CODIFIED IN DISTRICT OF COLUMBIA OFFICIAL CODE.**—The following laws codified in the District of Columbia Official Code are amended as follows:

(1) The Act entitled “An Act to provide for granting to officers and members of the Metropolitan Police force, the Fire Department of the District of Columbia, and the White House and United States Park Police forces additional compensation for working on holidays”, approved October 24, 1951, is amended—

(A) in the second sentence of section 1 (sec. 5-521.01, D.C. Official Code), by striking “the Fire Department of the District of Columbia,” and all that follows through “and the United States Park Police Force” and inserting “the Fire Department of the District of Columbia, and the United States Park Police Force”;

(B) in section 2 (sec. 5-521.02, D.C. Official Code), by striking “and with respect” and all that follows through “United States Park Police force” and inserting “and with respect to officers and members of the United States Park Police force”; and

(C) in section 3 (sec. 5-521.03, D.C. Official Code), by striking “shall be applicable” and all that follows and inserting the following: “shall be applicable to the United States Park Police force under regulations promulgated by the Secretary of the Interior.”.

(2) The District of Columbia Police and Firemen’s Salary Act of 1958 is amended as follows:

(A) In section 202 (sec. 5-542.02, D.C. Official Code), by striking “United States Secret Service Uniformed Division,”.

(B) In section 301(b) (sec. 5-543.01(b), D.C. Official Code), by striking “the United States Secret Service Uniformed Division,”.

(C) In section 302 (sec. 5-543.02, D.C. Official Code)—

(i) in subsection (a), by striking “the Secretary of Treasury, in the case of the United States Secret Service Uniformed Division,”;

(ii) in subsection (b), by striking “the United States Secret Service Uniformed Division or”; and

(iii) in subsection (e), by striking “the United States Secret Service Uniformed Division or”.

(D) In section 303(a)(5) (sec. 5-543.03(a)(5), D.C. Official Code), by striking “the United States Secret Service Uniformed Division and”.

(E) In section 304(d)(1) (sec. 5-543.04(d)(1)), by striking “the United States Secret Service Uniformed Division or”.

(F) In section 305 (sec. 5-543.05, D.C. Official Code)—

(i) by striking “the United States Secret Service Uniformed Division,”; and

(ii) by striking “or the Secretary of the Treasury,”.

(G) In section 501 (sec. 5-545.01, D.C. Official Code)—

(i) in subsection (a), by striking “and the United States Secret Service Uniformed Division”;

(ii) in subsection (c)(1)—

(I) by striking “the United States Secret Service Uniformed Division and”; and

(II) in the schedule set forth in such subsection, by striking “United States Secret Service Uniformed Division”;

(iii) in subsection (c)(2), by striking “the annual rates of basic compensation” and all that follows through “the Secretary of the Treasury, and”;

(iv) in subsection (c)(5), by striking “officers and members of the United States Secret Service Uniformed Division or”;

(v) in subsection (c)(6)(A), by striking “the United States Secret Service Uniformed Division or”; and

(vi) in subsection (c)(7)(A), by striking “the United States Secret Service Uniformed Division or”.

(H) In section 506 (sec. 5-545.06, D.C. Official Code), by striking “, the Secretary of the Treasury,”.

(3) Section 118 of the Treasury and General Government Appropriations Act, 1998, is amended by striking subsection (b) (sec. 5-561.01, D.C. Official Code).

18 USC 3056A
note.

(4) Section 905(a)(1) of the Law Enforcement Pay Equity Act of 2000 (Public Law 106-554; sec. 5-561.02(a)(1), D.C. Official Code) is amended by striking “the Secretary of Treasury” and all that follows through “United States Secret Service Uniformed Division, and”.

18 USC 3056A
note.

(5) Subsection (k)(2)(B) of the Policemen and Firemen’s Retirement and Disability Act (sec. 5-716(b)(2), D.C. Official Code) is amended by inserting “, or, for a member who was an officer or member of the United States Secret Service Uniformed Division, or the United States Secret Service Division, 40 percent of the corresponding salary for step 5 of the Officer rank in section 10203 of title 5, United States Code” after “member’s death”.

(6) Section 1 of the Act entitled “An Act to provide a 5-day week for officers and members of the Metropolitan Police force, the United States Park Police force, and the White House Police force, and for other purposes”, approved August 15, 1950 (sec. 5-1304, D.C. Official Code), is amended—

(A) in subsection (a)(1)—

(i) by inserting “and” before “the Secretary of the Interior”; and

(ii) by striking “, and the Secretary of the Treasury in the case of the United States Secret Service Uniformed Division”;

(B) in subsection (a)(9)—

(i) by inserting “or” before “the United States Park Police force”; and

(ii) by striking “or the United States Secret Service Uniformed Division”;

(C) in subsection (b)—

(i) by inserting “or” before “the Secretary of the Interior”; and

(ii) by striking “or the Secretary of the Treasury,”;

(D) in subsection (h)(3)(A), by striking “of the United States Secret Service Uniformed Division or”; and

(E) in subsection (h)(3)(B), by striking “of the United States Secret Service Uniformed Division or”.

(7) Section 117(a) of the District of Columbia Police and Firemen’s Salary Act Amendments of 1972 (sec. 5-1305, D.C. Official Code) is amended—

(A) by striking “the Fire Department of the District of Columbia,” and all that follows through “or the United States Park Police force” and inserting “the Fire Department of the District of Columbia, or the United States Park Police force”; and

(B) by striking “, the Secretary of the Treasury,”.

(c) TECHNICAL AND CONFORMING AMENDMENTS TO THE UNITED STATES CODE.—Title 5 of the United States Code is amended—

(1) in section 5102(c)(5), by striking “the Executive Protective Service” and inserting “the United States Secret Service Uniformed Division”;

(2) in section 5541(2)(iv)(II), by striking “a member of the United States Secret Service Uniformed Division,”; and

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5 USC 9501.

(3) in the table of chapters for subpart I of part III by adding at the end the following:

“102. United States Secret Service Uniformed Division Personnel10201”.

5 USC 5102 note.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the first day of the first pay period which begins after the date of the enactment of this Act.

Approved October 15, 2010.

LEGISLATIVE HISTORY—S. 1510:

SENATE REPORTS: No. 111-86 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Oct. 13, considered and passed Senate.

Vol. 156 (2010): June 28, considered and passed House, amended.

Sept. 27, Senate concurred in House amendments with an amendment.

Sept. 29, House concurred in Senate amendment.



Public Law 111–283
111th Congress

An Act

To amend the Presidential Transition Act of 1963 to provide that certain transition services shall be available to eligible candidates before the general election.

Oct. 15, 2010
[S. 3196]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pre-Election Presidential Transition Act of 2010”.

Pre-Election
Presidential
Transition Act of
2010.
3 USC 1 note.

SEC. 2. CERTAIN PRESIDENTIAL TRANSITION SERVICES MAY BE PROVIDED TO ELIGIBLE CANDIDATES BEFORE GENERAL ELECTION.

(a) IN GENERAL.—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended by adding at the end the following new subsection:

“(h)(1)(A) In the case of an eligible candidate, the Administrator—

“(i) shall notify the candidate of the candidate’s right to receive the services and facilities described in paragraph (2) and shall provide with such notice a description of the nature and scope of each such service and facility; and

Notification.

“(ii) upon notification by the candidate of which such services and facilities such candidate will accept, shall, notwithstanding subsection (b), provide such services and facilities to the candidate during the period beginning on the date of the notification and ending on the date of the general elections described in subsection (b)(1).

The Administrator shall also notify the candidate that sections 7601(c) and 8403(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 provide additional services.

Notification.

“(B) The Administrator shall provide the notice under subparagraph (A)(i) to each eligible candidate—

“(i) in the case of a candidate of a major party (as defined in section 9002(6) of the Internal Revenue Code of 1986), on one of the first 3 business days following the last nominating convention for such major parties; and

“(ii) in the case of any other candidate, as soon as practicable after an individual becomes an eligible candidate (or, if later, at the same time as notice is provided under clause (i)).

“(C)(i) The Administrator shall, not later than 12 months before the date of each general election for President and Vice-

Deadline.
Reports.

Public
information.

President (beginning with the election to be held in 2012), prepare a report summarizing modern presidential transition activities, including a bibliography of relevant resources.

“(ii) The Administrator shall promptly make the report under clause (i) generally available to the public (including through electronic means) and shall include such report with the notice provided to each eligible candidate under subparagraph (A)(i).

“(2)(A) Except as provided in subparagraph (B), the services and facilities described in this paragraph are the services and facilities described in subsection (a) (other than paragraphs (2), (3), (4), (7), and 8(A)(v) thereof), but only to the extent that the use of the services and facilities is for use in connection with the eligible candidate’s preparations for the assumption of official duties as President or Vice-President.

“(B) The Administrator—

“(i) shall determine the location of any office space provided to an eligible candidate under this subsection;

“(ii) shall, as appropriate, ensure that any computers or communications services provided to an eligible candidate under this subsection are secure;

“(iii) shall offer information and other assistance to eligible candidates on an equal basis and without regard to political affiliation; and

“(iv) may modify the scope of any services to be provided under this subsection to reflect that the services are provided to eligible candidates rather than the President-elect or Vice-President-elect, except that any such modification must apply to all eligible candidates.

“(C) An eligible candidate, or any person on behalf of the candidate, shall not use any services or facilities provided under this subsection other than for the purposes described in subparagraph (A), and the candidate or the candidate’s campaign shall reimburse the Administrator for any unauthorized use of such services or facilities.

“(3)(A) Notwithstanding any other provision of law, an eligible candidate may establish a separate fund for the payment of expenditures in connection with the eligible candidate’s preparations for the assumption of official duties as President or Vice-President, including expenditures in connection with any services or facilities provided under this subsection (whether before such services or facilities are available under this section or to supplement such services or facilities when so provided). Such fund shall be established and maintained in such manner as to qualify such fund for purposes of section 501(c)(4) of the Internal Revenue Code of 1986.

“(B)(i) The eligible candidate may—

“(I) transfer to any separate fund established under subparagraph (A) contributions (within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8))) the candidate received for the general election for President or Vice-President or payments from the Presidential Election Campaign Fund under chapter 95 of the Internal Revenue Code of 1986 the candidate received for the general election; and

“(II) solicit and accept amounts for receipt by such separate fund.

“(ii) Any expenditures from the separate fund that are made from such contributions or payments described in clause (i)(I) shall be treated as expenditures (within the meaning of section 301(9) of such Act (2 U.S.C. 431(9))) or qualified campaign expenses (within the meaning of section 9002(11) of such Code), whichever is applicable.

“(iii) An eligible candidate establishing a separate fund under subparagraph (A) shall (as a condition for receiving services and facilities described in paragraph (2)) comply with all requirements and limitations of section 5 in soliciting or expending amounts in the same manner as the President-elect or Vice-President-elect, including reporting on the transfer and expenditure of amounts described in subparagraph (B)(i) in the disclosures required by section 5.

“(4)(A) In this subsection, the term ‘eligible candidate’ means, with respect to any presidential election (as defined in section 9002(10) of the Internal Revenue Code of 1986)—

Definition.

“(i) a candidate of a major party (as defined in section 9002(6) of such Code) for President or Vice-President of the United States; and

“(ii) any other candidate who has been determined by the Administrator to be among the principal contenders for the general election to such offices.

“(B) In making a determination under subparagraph (A)(ii), the Administrator shall—

“(i) ensure that any candidate determined to be an eligible candidate under such subparagraph—

“(I) meets the requirements described in Article II, Section 1, of the United States Constitution for eligibility to the office of President;

“(II) has qualified to have his or her name appear on the ballots of a sufficient number of States such that the total number of electors appointed in those States is greater than 50 percent of the total number of electors appointed in all of the States; and

“(III) has demonstrated a significant level of public support in national public opinion polls, so as to be realistically considered among the principal contenders for President or Vice-President of the United States; and

“(ii) consider whether other national organizations have recognized the candidate as being among the principal contenders for the general election to such offices, including whether the Commission on Presidential Debates has determined that the candidate is eligible to participate in the candidate debates for the general election to such offices.”.

(b) ADMINISTRATOR REQUIRED TO PROVIDE TECHNOLOGY COORDINATION UPON REQUEST.—Section 3(a)(10) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended to read as follows:

“(10) Notwithstanding subsection (b), consultation by the Administrator with any President-elect, Vice-President-elect, or eligible candidate (as defined in subsection (h)(4)) to develop a systems architecture plan for the computer and communications systems of the candidate to coordinate a transition to Federal systems if the candidate is elected.”.

(c) COORDINATION WITH OTHER TRANSITION SERVICES.—

(1) **SECURITY CLEARANCES.**—Section 7601(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 435b note) is amended—

(A) by striking paragraph (1) and inserting:

“(1) **DEFINITION.**—In this section, the term ‘eligible candidate’ has the meaning given such term by section 3(h)(4) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note).”, and

(B) by striking “major party candidate” in paragraph (2) and inserting “eligible candidate”.

(2) **PRESIDENTIALLY APPOINTED POSITIONS.**—Section 8403(b)(2)(B) of such Act (5 U.S.C. 1101 note) is amended to read as follows:

Records.

“(B) **OTHER CANDIDATES.**—After making transmittals under subparagraph (A), the Office of Personnel Management shall transmit such electronic record to any other candidate for President who is an eligible candidate described in section 3(h)(4)(B) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) and may transmit such electronic record to any other candidate for President.”.

(d) **CONFORMING AMENDMENTS.**—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(1) in subsection (a)(8)(B), by striking “President-elect” and inserting “President-elect or eligible candidate (as defined in subsection (h)(4)) for President”; and

(2) in subsection (e), by inserting “, or eligible candidate (as defined in subsection (h)(4)) for President or Vice-President,” before “may designate”.

3 USC 102 note.

SEC. 3. AUTHORIZATION OF TRANSITION ACTIVITIES BY THE INCUMBENT ADMINISTRATION.

(a) **IN GENERAL.**—The President of the United States, or the President’s delegate, may take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President, including—

(1) the establishment and operation of a transition coordinating council comprised of—

(A) high-level officials of the Executive branch selected by the President, which may include the Chief of Staff to the President, any Cabinet officer, the Director of the Office of Management and Budget, the Administrator of the General Services Administration, the Director of the Office of Personnel Management, the Director of the Office of Government Ethics, and the Archivist of the United States, and

(B) any other persons the President determines appropriate;

(2) the establishment and operation of an agency transition directors council which includes career employees designated to lead transition efforts within Executive Departments or agencies;

(3) the development of guidance to Executive Departments and agencies regarding briefing materials for an incoming administration, and the development of such materials; and

(4) the development of computer software, publications, contingency plans, issue memoranda, memoranda of understanding, training and exercises (including crisis training and exercises), programs, lessons learned from previous transitions, and other items appropriate for improving the effectiveness and efficiency of a Presidential transition that may be disseminated to eligible candidates (as defined in section 3(h)(4) of the Presidential Transition Act of 1963, as added by section 2(a)) and to the President-elect and Vice-President-elect.

Any information and other assistance under this subsection shall be offered on an equal basis and without regard to political affiliation.

(b) **REPORTS.**—

(1) **IN GENERAL.**—The President of the United States, or the President's delegate, shall provide to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate reports describing the activities undertaken by the President and the Executive Departments and agencies to prepare for the transfer of power to a new President.

(2) **TIMING.**—The reports under paragraph (1) shall be provided six months and three months before the date of the general election for the Office of President of the United States.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Approved October 15, 2010.

LEGISLATIVE HISTORY—S. 3196:

SENATE REPORTS: No. 111-239 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 24, considered and passed Senate.

Sept. 28, 29, considered and passed House.



Public Law 111–284
111th Congress

An Act

Oct. 18, 2010
[S. 3802]

To designate a mountain and icefield in the State of Alaska as the “Mount Stevens” and “Ted Stevens Icefield”, respectively.

Mount Stevens
and Ted Stevens
Icefield
Designation Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mount Stevens and Ted Stevens Icefield Designation Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) Theodore “Ted” Fulton Stevens, who began serving in the Senate 9 years after Alaska was admitted to Statehood, represented the people of the State of Alaska with distinction in the Senate for over 40 years from 1968 to 2009 and played a significant role in the transformation of the State of Alaska from an impoverished territory to a full-fledged State through the assistance he provided in building energy facilities, hospitals and clinics, roads, docks, airports, water and sewer facilities, schools, and other community facilities in the State of Alaska, which earned him recognition as “Alaskan of the Century” from the Alaska Legislature in 2000;

(2) Ted Stevens distinguished himself as a transport pilot during World War II in support of the “Flying Tigers” of the United States Army Air Corps, 14th Air Force, earning 2 Distinguished Flying Crosses and other decorations for his skill and bravery;

(3) Ted Stevens, after serving as a United States Attorney in the territory of Alaska, came to Washington, District of Columbia in 1956 to serve in the Eisenhower Administration in the Department of the Interior, where he was a leading force in securing the legislation that led to the admission of Alaska as the 49th State on January 3, 1959, and then as Solicitor of the Department of the Interior;

(4) in 1961, Ted Stevens returned to the State of Alaska and, in 1964, was elected to the Alaska House of Representatives, where he was subsequently elected as Speaker pro tempore and majority leader until his appointment on December 24, 1968, to the Senate to fill the vacancy caused by the death of Senator E.L. Bartlett;

(5) Ted Stevens, the longest-serving Republican Senator in the history of the Senate, served as President pro tempore of the Senate from 2003 through 2007 and as President pro tempore emeritus from 2008 to 2009, and over the course

of his career in the Senate, Ted Stevens served as assistant Republican leader, Chairman of the Select Committee on Ethics, Chairman of the Committee on Rules and Administration, Chairman of the Committee on Governmental Affairs, Chairman of the Committee on Appropriations, and Chairman of the Committee on Commerce, Science, and Transportation;

(6) Ted Stevens worked tirelessly for the enactment of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which provided for the conveyance of approximately 44,000,000 acres of land in the State of Alaska to the Aleut, Eskimo, and Indian peoples and created Native Corporations to secure the long-term economic, cultural, and political empowerment of the Native peoples of the State of Alaska;

(7) Ted Stevens was a leader in shaping the communications policies of the United States, as he helped to establish the spectrum auction policy, negotiated the Telecommunications Act of 1996, authored the Digital Television Transition and Public Safety Act of 2005 (47 U.S.C. 309 note; Public Law 109-171), and passionately advocated for the connection of rural America to the rest of the world and to improve the lives of the people of the United States through the use of telemedicine and distance learning;

(8) Ted Stevens was a conservationist who championed the safe development of the natural resources of the United States, as illustrated by his authorship of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), which established the 200-mile exclusive economic zone and led to a reduction in the dominance of foreign fishing fleets in the fisheries of the United States, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109-479; 120 Stat. 3575), which established conservation measures designed to end overfishing, and the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a et seq.), which provided for the denial of entry into ports of the United States and the imposition of sanctions on vessels carrying out large-scale driftnet fishing beyond the exclusive economic zone of any nation;

(9) Ted Stevens was committed to health and fitness in his personal life and in his legislative accomplishments, as illustrated by his authorship of the Ted Stevens Amateur and Olympic Sports Act (36 U.S.C. 220501 et seq.), his encouragement of providing equality to female athletes through the enactment of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), and his leadership in improving physical education programs in schools through the Carol M. White Physical Education Program (20 U.S.C. 7261 et seq.);

(10) Ted Stevens unconditionally supported the needs of the Armed Forces of the United States through visits to soldiers, sailors, airmen, marines, and Coast Guardsmen in every major military conflict and war zone where United States military personnel have been assigned during his service in the Senate, including Vietnam, Kuwait, Bosnia, Kosovo, Iraq, and Afghanistan, and in his role as Chairman and Ranking Member of the Subcommittee on Defense Appropriations for more than 20 years;

(11) Ted Stevens was a devoted husband, father, and grandfather who worked to promote family-friendly policies in the Federal government;

(12) Ted Stevens was well-respected for reaching across the aisle to forge bipartisan alliances and enjoyed many close friendships with colleagues in both political parties and with his staff, who were deeply loyal to him; and

(13) the designation of the unnamed highest peak in the State of Alaska, along with an icefield in the Chugach National Forest in that State, in honor of Ted Stevens would be a fitting tribute to his honorable life and legacy.

SEC. 3. DESIGNATION OF MOUNT STEVENS.

Deadline.

(a) DESIGNATION.—Not later than 30 days after the date of enactment of this Act, the United States Board on Geographic Names (referred to in this Act as the “Board”) shall designate the unnamed, 13,895-foot peak in the Alaska Range in Denali National Park and Preserve in the State of Alaska, located at latitude 62.920469308 and longitude –151.066510314, as the “Mount Stevens”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the peak referred to in subsection (a) shall be deemed to be a reference to the “Mount Stevens”.

SEC. 4. DESIGNATION OF TED STEVENS ICEFIELD.

(a) DEFINITION OF ICEFIELD.—In this section, the term “icefield” means the icefield in the northern Chugach National Forest in the State of Alaska—

(1) comprising approximately 8,340 square miles, as delineated by the map entitled “Ice Field Name Proposal in Honor of Stevens” dated September 24, 2010, as prepared by the Forest Service and available for inspection at Forest Service headquarters in Washington, District of Columbia; and

(2) including the Harvard, Yale, Columbia, Nelchina, Tazlina, Valdez, and Shoup Glaciers.

Deadline.

(b) DESIGNATION.—Not later than 30 days after the date of enactment of this Act, the Board shall designate the icefield as the “Ted Stevens Icefield”.

(c) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the icefield shall be deemed to be a reference to the “Ted Stevens Icefield”.

Approved October 18, 2010.

LEGISLATIVE HISTORY—S. 3802:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 27, considered and passed Senate.

Sept. 29, considered and passed House.



Public Law 111–285
111th Congress

An Act

Nov. 24, 2010
[S. 3774]

To extend the deadline for Social Services Block Grant expenditures of supplemental funds appropriated following disasters occurring in 2008.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF EXPENDITURE DEADLINE OF SOCIAL SERVICES BLOCK GRANT DISASTER FUNDING.

Notwithstanding any other provision of law, amounts made available to the Department of Health and Human Services, Administration for Children and Families, under the heading “Social Services Block Grant” under chapter 7 of division B of Public Law 110–329, shall remain available for expenditure through September 30, 2011.

SEC. 2. BUDGETARY PROVISIONS.

(a) **STATUTORY PAYGO.**—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) **EMERGENCY DESIGNATIONS.**—This Act—

(1) is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g));

(2) in the House of Representatives, is designated as an emergency for purposes of pay-as-you-go principles; and

(3) in the Senate, is designated as an emergency requirement and necessary to meet emergency needs pursuant to

section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

Approved November 24, 2010.

LEGISLATIVE HISTORY—S. 3774:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 29, considered and passed Senate.

Nov. 17, 18, considered and passed House.



Public Law 111–286
111th Congress

An Act

Nov. 30, 2010
[H.R. 5712]

The Physician
Payment and
Therapy Relief
Act of 2010.
42 USC 1305
note.

Entitled The Physician Payment and Therapy Relief Act of 2010.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “The Physician Payment and
Therapy Relief Act of 2010”.

SEC. 2. PHYSICIAN PAYMENT UPDATE.

Section 1848(d)(11) of the Social Security Act (42 U.S.C. 1395w–
4(d)(11)) is amended—

(1) in the heading, by striking “NOVEMBER” and inserting
“DECEMBER”;

(2) in subparagraph (A), by striking “November 30” and
inserting “December 31”; and

(3) in subparagraph (B)—

(A) in the heading, by striking “REMAINING PORTION
OF 2010” and inserting “2011”; and

(B) by striking “the period beginning on December
1, 2010, and ending on December 31, 2010, and for”.

**SEC. 3. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR
THERAPY SERVICES.**

(a) **SMALLER PAYMENT DISCOUNT FOR CERTAIN MULTIPLE
THERAPY SERVICES.**—Section 1848(b) of the Social Security Act (42
U.S.C. 1395w–4(b)) is amended by adding at the end the following
new paragraph:

“(7) **ADJUSTMENT IN DISCOUNT FOR CERTAIN MULTIPLE
THERAPY SERVICES.**—In the case of therapy services furnished
on or after January 1, 2011, and for which payment is made
under fee schedules established under this section, instead
of the 25 percent multiple procedure payment reduction speci-
fied in the final rule published by the Secretary in the Federal
Register on November 29, 2010, the reduction percentage shall
be 20 percent.”.

(b) **EXEMPTION OF PAYMENT REDUCTION FROM BUDGET-NEU-
TRALITY.**—Section 1848(c)(2)(B)(v) of the Social Security Act (42
U.S.C. 1395w–4(c)(2)(B)(v)) is amended by adding at the end the
following new subclause:

“(VII) **REDUCED EXPENDITURES FOR MULTIPLE
THERAPY SERVICES.**—Effective for fee schedules

Effective date.

established beginning with 2011, reduced expenditures attributable to the multiple procedure payment reduction for therapy services (as described in subsection (b)(7)).”.

SEC. 4. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved November 30, 2010.

LEGISLATIVE HISTORY—H.R. 5712:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 14, considered and passed House.

Nov. 18, considered and passed Senate, amended.

Nov. 29, House concurred in Senate amendments.



Public Law 111–287
111th Congress

An Act

Nov. 30, 2010
[S. 1376]

To restore immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention on Intercountry Adoption to allow their admission into the United States.

International
Adoption
Simplification
Act.
8 USC 1101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as “International Adoption Simplification Act”.

SEC. 2. EXEMPTION FROM VACCINATION DOCUMENTATION REQUIREMENT.

Section 212(a)(1)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(C)(ii)) is amended by striking “section 101(b)(1)(F),” and inserting “subparagraph (F) or (G) of section 101(b)(1);”.

SEC. 3. SIBLING ADOPTIONS.

Section 101(b)(1)(G) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(G)) is amended to read as follows:

“(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child’s behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—

“(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

“(II) the child’s natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child’s emigration and adoption;

“(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

“(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

“(V) in the case of a child who has not been adopted—

“(aa) the competent authority of the foreign state has approved the child’s emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

“(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child’s proposed residence; and

“(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

“(iii) subject to the same provisos as in clauses (i) and (ii), a child who—

“(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

“(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

“(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b).”.

SEC. 4. EFFECTIVE DATE.

8 USC 1101 note.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) EXCEPTION.—An alien who is described in section 101(b)(1)(G)(iii) of the Immigration and Nationality Act, as added by section 3, and attained 18 years of age on or after April 1, 2008, shall be deemed to meet the age requirement specified in subclause (III) of such section if a petition for classification of the alien as an immediate relative under section 201(b) of the

Deadline.

Immigration and Nationality Act (8 U.S.C. 1151(b)) is filed not later than 2 years after the date of the enactment of this Act.

Approved November 30, 2010.

LEGISLATIVE HISTORY—S. 1376:

SENATE REPORTS: No. 111–220 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 21, considered and passed Senate.

Nov. 15, considered and passed House.



Public Law 111–288
111th Congress

An Act

To designate the facility of the United States Postal Service located at 100 Broadway in Lynbrook, New York, as the “Navy Corpsman Jeffrey L. Wiener Post Office Building”.

Nov. 30, 2010
[S. 3567]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NAVY CORPSMAN JEFFREY L. WIENER POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 100 Broadway in Lynbrook, New York, shall be known and designated as the “Navy Corpsman Jeffrey L. Wiener Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Navy Corpsman Jeffrey L. Wiener Post Office Building”.

Approved November 30, 2010.

LEGISLATIVE HISTORY—S. 3567:

CONGRESSIONAL RECORD, Vol. 156 (2010):
July 30, considered and passed Senate.
Nov. 16, considered and passed House.



Public Law 111–289
111th Congress

Joint Resolution

Nov. 30, 2010
[S.J. Res. 40]

Appointing the day for the convening of the first session of the One Hundred
Twelfth Congress.

*Resolved by the Senate and House of Representatives of the
United States of America in Congress assembled,* That the first
regular session of the One Hundred Twelfth Congress shall begin
at noon on Wednesday, January 5, 2011.

Approved November 30, 2010.

LEGISLATIVE HISTORY—S.J. Res. 40:
CONGRESSIONAL RECORD, Vol. 156 (2010):
Nov. 15, considered and passed Senate.
Nov. 17, considered and passed House.



Public Law 111–290
111th Congress

Joint Resolution

Making further continuing appropriations for fiscal year 2011, and for other purposes.

Dec. 4, 2010
[H.J. Res. 101]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Continuing Appropriations Act, 2011 (Public Law 111–242) is amended by striking the date specified in section 106(3) and inserting “December 18, 2010”.

Ante, p. 2608.

Approved December 4, 2010.

LEGISLATIVE HISTORY—H.J. Res. 101:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 1, considered and passed House.

Dec. 2, considered and passed Senate.



Public Law 111–291
111th Congress

An Act

Dec. 8, 2010

[H.R. 4783]

Claims
Resolution Act
of 2010.

42 USC 1305
note.

This Act may be cited as “The Claims Resettlement Act of 2010.”.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Claims Resolution Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION SETTLEMENT

Sec. 101. Individual Indian Money Account Litigation Settlement.

**TITLE II—FINAL SETTLEMENT OF CLAIMS FROM IN RE BLACK FARMERS
DISCRIMINATION LITIGATION**

Sec. 201. Appropriation of funds for final settlement of claims from In re Black Farmers Discrimination Litigation.

**TITLE III—WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS
QUANTIFICATION**

Sec. 301. Short title.

Sec. 302. Purposes.

Sec. 303. Definitions.

Sec. 304. Approval of Agreement.

Sec. 305. Water rights.

Sec. 306. Contract.

Sec. 307. Authorization of WMAT rural water system.

Sec. 308. Satisfaction of claims.

Sec. 309. Waivers and releases of claims.

Sec. 310. White Mountain Apache Tribe Water Rights Settlement Subaccount.

Sec. 311. Miscellaneous provisions.

Sec. 312. Funding.

Sec. 313. Antideficiency.

Sec. 314. Compliance with environmental laws.

TITLE IV—CROW TRIBE WATER RIGHTS SETTLEMENT

Sec. 401. Short title.

Sec. 402. Purposes.

Sec. 403. Definitions.

Sec. 404. Ratification of Compact.

Sec. 405. Rehabilitation and improvement of Crow Irrigation Project.

Sec. 406. Design and construction of MR&I System.

Sec. 407. Tribal water rights.

Sec. 408. Storage allocation from Bighorn Lake.

Sec. 409. Satisfaction of claims.

Sec. 410. Waivers and releases of claims.

Sec. 411. Crow Settlement Fund.

Sec. 412. Yellowtail Dam, Montana.

Sec. 413. Miscellaneous provisions.

- Sec. 414. Funding.
- Sec. 415. Repeal on failure to meet enforceability date.
- Sec. 416. Antideficiency.

TITLE V—TAOS PUEBLO INDIAN WATER RIGHTS

- Sec. 501. Short title.
- Sec. 502. Purposes.
- Sec. 503. Definitions.
- Sec. 504. Pueblo rights.
- Sec. 505. Taos Pueblo Water Development Fund.
- Sec. 506. Marketing.
- Sec. 507. Mutual-Benefit Projects.
- Sec. 508. San Juan-Chama Project contracts.
- Sec. 509. Authorizations, ratifications, confirmations, and conditions precedent.
- Sec. 510. Waivers and releases of claims.
- Sec. 511. Interpretation and enforcement.
- Sec. 512. Disclaimer.
- Sec. 513. Antideficiency.

TITLE VI—AAMODT LITIGATION SETTLEMENT

- Sec. 601. Short title.
- Sec. 602. Definitions.

Subtitle A—Pojoaque Basin Regional Water System

- Sec. 611. Authorization of Regional Water System.
- Sec. 612. Operating Agreement.
- Sec. 613. Acquisition of Pueblo water supply for Regional Water System.
- Sec. 614. Delivery and allocation of Regional Water System capacity and water.
- Sec. 615. Aamodt Settlement Pueblos' Fund.
- Sec. 616. Environmental compliance.
- Sec. 617. Funding.

Subtitle B—Pojoaque Basin Indian Water Rights Settlement

- Sec. 621. Settlement Agreement and contract approval.
- Sec. 622. Environmental compliance.
- Sec. 623. Conditions precedent and enforcement date.
- Sec. 624. Waivers and releases of claims.
- Sec. 625. Effect.
- Sec. 626. Antideficiency.

TITLE VII—RECLAMATION WATER SETTLEMENTS FUND

- Sec. 701. Mandatory appropriation.

TITLE VIII—GENERAL PROVISIONS

Subtitle A—Unemployment Compensation Program Integrity

- Sec. 801. Collection of past-due, legally enforceable State debts.
- Sec. 802. Reporting of first day of earnings to directory of new hires.

Subtitle B—TANF

- Sec. 811. Extension of the Temporary Assistance for Needy Families program.
- Sec. 812. Modifications to TANF data reporting.

Subtitle C—Customs User Fees; Continued Dumping and Subsidy Offset

- Sec. 821. Customs user fees.
- Sec. 822. Limitation on distributions relating to repeal of continued dumping and subsidy offset.

Subtitle D—Emergency Fund for Indian Safety and Health

- Sec. 831. Emergency Fund for Indian Safety and Health.

Subtitle E—Rescission of Funds From WIC Program

- Sec. 841. Rescission of funds from WIC program.

Subtitle F—Budgetary Effects

- Sec. 851. Budgetary effects.

TITLE I—INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION SETTLEMENT

SEC. 101. INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION SETTLEMENT.

(a) DEFINITIONS.—In this section:

(1) AGREEMENT ON ATTORNEYS' FEES, EXPENSES, AND COSTS.—The term “Agreement on Attorneys' Fees, Expenses, and Costs” means the agreement dated December 7, 2009, between Class Counsel (as defined in the Settlement) and the Defendants (as defined in the Settlement) relating to attorneys' fees, expenses, and costs incurred by Class Counsel in connection with the Litigation and implementation of the Settlement, as modified by the parties to the Litigation.

(2) AMENDED COMPLAINT.—The term “Amended Complaint” means the Amended Complaint attached to the Settlement.

(3) FINAL APPROVAL.—The term “final approval” has the meaning given the term in the Settlement.

(4) LAND CONSOLIDATION PROGRAM.—The term “Land Consolidation Program” means a program conducted in accordance with the Settlement, the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), and subsection (e)(2) under which the Secretary may purchase fractional interests in trust or restricted land.

(5) LITIGATION.—The term “Litigation” means the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, United States District Court, District of Columbia, Civil Action No. 96–1285 (TFH).

(6) PLAINTIFF.—The term “Plaintiff” means a member of any class certified in the Litigation.

(7) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(8) SETTLEMENT.—The term “Settlement” means the Class Action Settlement Agreement dated December 7, 2009, in the Litigation, as modified by the parties to the Litigation.

(9) TRUST ADMINISTRATION ADJUSTMENT FUND.—The term “Trust Administration Adjustment Fund” means the \$100,000,000 deposited in the Settlement Account (as defined in the Settlement) pursuant to subsection (j)(1) for use in making the adjustments authorized by that subsection.

(10) TRUST ADMINISTRATION CLASS.—The term “Trust Administration Class” means the Trust Administration Class as defined in the Settlement.

(b) PURPOSE.—The purpose of this section is to authorize the Settlement.

(c) AUTHORIZATION.—

(1) IN GENERAL.—The Settlement is authorized, ratified, and confirmed.

(2) AMENDMENTS.—Any amendment to the Settlement is authorized, ratified, and confirmed, to the extent that such amendment is executed to make the Settlement consistent with this section.

(d) JURISDICTIONAL PROVISIONS.—

(1) IN GENERAL.—Notwithstanding the limitation on the jurisdiction of the district courts of the United States in section 1346(a)(2) of title 28, United States Code, the United States

District Court for the District of Columbia shall have jurisdiction of the claims asserted in the Amended Complaint for purposes of the Settlement.

(2) CERTIFICATION OF TRUST ADMINISTRATION CLASS.—

(A) IN GENERAL.—Notwithstanding the requirements of the Federal Rules of Civil Procedure, the court in the Litigation may certify the Trust Administration Class.

(B) TREATMENT.—On certification under subparagraph (A), the Trust Administration Class shall be treated as a class certified under rule 23(b)(3) of the Federal Rules of Civil Procedure for purposes of the Settlement.

(e) TRUST LAND CONSOLIDATION.—

(1) TRUST LAND CONSOLIDATION FUND.—

(A) ESTABLISHMENT.—On final approval of the Settlement, there shall be established in the Treasury of the United States a fund, to be known as the “Trust Land Consolidation Fund”.

(B) AVAILABILITY OF AMOUNTS.—Amounts in the Trust Land Consolidation Fund shall be made available to the Secretary during the 10-year period beginning on the date of final approval of the Settlement—

(i) to conduct the Land Consolidation Program; and

(ii) for other costs specified in the Settlement.

(C) DEPOSITS.—

(i) IN GENERAL.—On final approval of the Settlement, the Secretary of the Treasury shall deposit in the Trust Land Consolidation Fund \$1,900,000,000 out of the amounts appropriated to pay final judgments, awards, and compromise settlements under section 1304 of title 31, United States Code.

(ii) CONDITIONS MET.—The conditions described in section 1304 of title 31, United States Code, shall be deemed to be met for purposes of clause (i).

(D) TRANSFERS.—In a manner designed to encourage participation in the Land Consolidation Program, the Secretary may transfer, at the discretion of the Secretary, not more than \$60,000,000 of amounts in the Trust Land Consolidation Fund to the Indian Education Scholarship Holding Fund established under paragraph (3).

(2) OPERATION.—The Secretary shall consult with Indian tribes to identify fractional interests within the respective jurisdictions of the Indian tribes for purchase in a manner that is consistent with the priorities of the Secretary.

Consultation.

(3) INDIAN EDUCATION SCHOLARSHIP HOLDING FUND.—

(A) ESTABLISHMENT.—On final approval of the Settlement, there shall be established in the Treasury of the United States a fund, to be known as the “Indian Education Scholarship Holding Fund”.

(B) AVAILABILITY.—Notwithstanding any other provision of law governing competition, public notification, or Federal procurement or assistance, amounts in the Indian Education Scholarship Holding Fund shall be made available, without further appropriation, to the Secretary to contribute to an Indian Education Scholarship Fund, as described in the Settlement, to provide scholarships for Native Americans.

(4) ACQUISITION OF TRUST OR RESTRICTED LAND.—The Secretary may acquire, at the discretion of the Secretary and in accordance with the Land Consolidation Program, any fractional interest in trust or restricted land.

(5) TREATMENT OF UNLOCATABLE PLAINTIFFS.—A Plaintiff, the whereabouts of whom are unknown and who, after reasonable efforts by the Secretary, cannot be located during the 5-year period beginning on the date of final approval of the Settlement, shall be considered to have accepted an offer made pursuant to the Land Consolidation Program.

(f) TAXATION AND OTHER BENEFITS.—

(1) INTERNAL REVENUE CODE.—For purposes of the Internal Revenue Code of 1986, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be—

(A) included in gross income; or

(B) taken into consideration for purposes of applying any provision of the Internal Revenue Code that takes into account excludable income in computing adjusted gross income or modified adjusted gross income, including section 86 of that Code (relating to Social Security and tier 1 railroad retirement benefits).

(2) OTHER BENEFITS.—Notwithstanding any other provision of law, for purposes of determining initial eligibility, ongoing eligibility, or level of benefits under any Federal or federally assisted program, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be treated for any household member, during the 1-year period beginning on the date of receipt—

(A) as income for the month during which the amounts were received; or

(B) as a resource.

(g) INCENTIVE AWARDS AND AWARD OF ATTORNEYS' FEES, EXPENSES, AND COSTS UNDER SETTLEMENT AGREEMENT.—

Determination.

(1) IN GENERAL.—Subject to paragraph (3), the court in the Litigation shall determine the amount to which the Plaintiffs in the Litigation may be entitled for incentive awards and for attorneys' fees, expenses, and costs—

(A) in accordance with controlling law, including, with respect to attorneys' fees, expenses, and costs, any applicable rule of law requiring counsel to produce contemporaneous time, expense, and cost records in support of a motion for such fees, expenses, and costs; and

(B) giving due consideration to the special status of Class Members (as defined in the Settlement) as beneficiaries of a federally created and administered trust.

(2) NOTICE OF AGREEMENT ON ATTORNEYS' FEES, EXPENSES, AND COSTS.—The description of the request of Class Counsel for an amount of attorneys' fees, expenses, and costs required under paragraph C.1.d. of the Settlement shall include a description of all material provisions of the Agreement on Attorneys' Fees, Expenses, and Costs.

(3) EFFECT ON AGREEMENT.—Nothing in this subsection limits or otherwise affects the enforceability of the Agreement on Attorneys' Fees, Expenses, and Costs.

(h) SELECTION OF QUALIFYING BANK.—The United States District Court for the District of Columbia, in exercising the discretion

of the Court to approve the selection of any proposed Qualifying Bank (as defined in the Settlement) under paragraph A.1. of the Settlement, may consider any factors or circumstances regarding the proposed Qualifying Bank that the Court determines to be appropriate to protect the rights and interests of Class Members (as defined in the Settlement) in the amounts to be deposited in the Settlement Account (as defined in the Settlement).

(i) APPOINTEES TO SPECIAL BOARD OF TRUSTEES.—The 2 members of the special board of trustees to be selected by the Secretary under paragraph G.3. of the Settlement shall be selected only after consultation with, and after considering the names of possible candidates timely offered by, federally recognized Indian tribes.

(j) TRUST ADMINISTRATION CLASS ADJUSTMENTS.—

(1) FUNDS.—

(A) IN GENERAL.—In addition to the amounts deposited pursuant to paragraph E.2. of the Settlement, on final approval, the Secretary of the Treasury shall deposit in the Trust Administration Adjustment Fund of the Settlement Account (as defined in the Settlement) \$100,000,000 out of the amounts appropriated to pay final judgments, awards, and compromise settlements under section 1304 of title 31, United States Code, to be allocated and paid by the Claims Administrator (as defined in the Settlement and pursuant to paragraph E.1.e of the Settlement) in accordance with this subsection.

(B) CONDITIONS MET.—The conditions described in section 1304 of title 31, United States Code, shall be deemed to be met for purposes of subparagraph (A).

(2) ADJUSTMENT.—

(A) IN GENERAL.—After the calculation of the pro rata share in Section E.4.b of the Settlement, the Trust Administration Adjustment Fund shall be used to increase the minimum payment to each Trust Administration Class Member whose pro rata share is—

(i) zero; or

(ii) greater than zero, but who would, after adjustment under this subparagraph, otherwise receive a smaller Stage 2 payment than those Trust Administration Class Members described in clause (i).

(B) RESULT.—The amounts in the Trust Administration Adjustment Fund shall be applied in such a manner as to ensure, to the extent practicable (as determined by the court in the Litigation), that each Trust Administration Class Member receiving amounts from the Trust Administration Adjustment Fund receives the same total payment under Stage 2 of the Settlement after making the adjustments required by this subsection.

(3) TIMING OF PAYMENTS.—The payments authorized by this subsection shall be included with the Stage 2 payments under paragraph E.4. of the Settlement.

(k) EFFECT OF ADJUSTMENT PROVISIONS.—Notwithstanding any provision of this section, in the event that a court determines that the application of subsection (j) is unfair to the Trust Administration Class—

(1) subsection (j) shall not go into effect; and

(2) on final approval of the Settlement, in addition to the amounts deposited into the Trust Land Consolidation Fund

pursuant to subsection (e), the Secretary of the Treasury shall deposit in that Fund \$100,000,000 out of amounts appropriated to pay final judgments, awards, and compromise settlements under section 1304 of title 31, United States Code (the conditions of which section shall be deemed to be met for purposes of this paragraph) to be used by the Secretary in accordance with subsection (e).

TITLE II—FINAL SETTLEMENT OF CLAIMS FROM IN RE BLACK FARMERS DISCRIMINATION LITIGATION

SEC. 201. APPROPRIATION OF FUNDS FOR FINAL SETTLEMENT OF CLAIMS FROM IN RE BLACK FARMERS DISCRIMINATION LITIGATION.

(a) DEFINITIONS.—In this section:

(1) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means the settlement agreement dated February 18, 2010 (including any modifications agreed to by the parties and approved by the court under that agreement) between certain plaintiffs, by and through their counsel, and the Secretary of Agriculture to resolve, fully and forever, the claims raised or that could have been raised in the cases consolidated in *In re Black Farmers Discrimination Litigation*, Misc. No. 08–mc–0511 (PLF), including Pigford claims asserted under section 14012 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2209).

(2) PIGFORD CLAIM.—The term “Pigford claim” has the meaning given that term in section 14012(a)(3) of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2210).

(b) APPROPRIATION OF FUNDS.—There is appropriated to the Secretary of Agriculture \$1,150,000,000, to remain available until expended, to carry out the terms of the Settlement Agreement if the Settlement Agreement is approved by a court order that is or becomes final and nonappealable, and the court finds that the Settlement Agreement is modified to incorporate the additional terms contained in subsection (g). The funds appropriated by this subsection are in addition to the \$100,000,000 of funds of the Commodity Credit Corporation made available by section 14012(i) of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2212) and shall be available for obligation only after those Commodity Credit Corporation funds are fully obligated. If the Settlement Agreement is not approved as provided in this subsection, the \$100,000,000 of funds of the Commodity Credit Corporation made available by section 14012(i) of the Food, Conservation, and Energy Act of 2008 shall be the sole funding available for Pigford claims.

(c) USE OF FUNDS.—The use of the funds appropriated by subsection (b) shall be subject to the express terms of the Settlement Agreement.

(d) TREATMENT OF REMAINING FUNDS.—If any of the funds appropriated by subsection (b) are not obligated and expended to carry out the Settlement Agreement, the Secretary of Agriculture shall return the unused funds to the Treasury and may not make

the unused funds available for any purpose related to section 14012 of the Food, Conservation, and Energy Act of 2008, for any other settlement agreement executed in *In re Black Farmers Discrimination Litigation*, No. 08–511 (D.D.C.), or for any other purpose.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the United States, any of its officers or agencies, or any other party to enter into the Settlement Agreement or any other settlement agreement. Nothing in this section shall be construed as creating the basis for a Pigford claim.

(f) CONFORMING AMENDMENTS.—Section 14012 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2209) is amended—

(1) in subsection (c)(1)—

(A) by striking “subsection (h)” and inserting “subsection (g)”; and

(B) by striking “subsection (i)” and inserting “subsection (h)”;

(2) by striking subsection (e);

(3) in subsection (g), by striking “subsection (f)” and inserting “subsection (e)”;

(4) in subsection (i)—

(A) by striking “(1) IN GENERAL.—Of the funds” and inserting “Of the funds”;

(B) by striking paragraph (2); and

(C) by striking “subsection (g)” and inserting “subsection (f)”;

(5) by striking subsection (j); and

(6) by redesignating subsections (f), (g), (h), (i), and (k) as subsections (e), (f), (g), (h), and (i), respectively.

(g) ADDITIONAL SETTLEMENT TERMS.—For the purposes of this section and funding for the Settlement Agreement, the following are additional terms:

(1) DEFINITIONS.—In this subsection:

(A) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means the settlement, including any modifications agreed to by the parties and approved by the court, between the Secretary of Agriculture and certain plaintiffs, by and through their counsel in litigation titled *Black Farmers Discrimination Litigation*, Misc. No. 08–mc–0511 (PLF).

(B) NEUTRAL ADJUDICATOR.—

(i) IN GENERAL.—The term “Neutral Adjudicator” means a Track A Neutral or a Track B Neutral as those terms are defined in the Settlement Agreement, who have been hired by Lead Class Counsel as that term is defined in the Settlement Agreement.

(ii) REQUIREMENT.—The Track A and B Neutrals called for in the Settlement Agreement shall be approved by the Secretary of the United States Department of Agriculture, the Attorney General, and the court.

(2) OATH.—Every Neutral Adjudicator shall take an oath administered by the court prior to hearing claims.

(3) ADDITIONAL DOCUMENTATION OR EVIDENCE.—Any Neutral Adjudicator may, during the course of hearing claims, require claimants to provide additional documentation and evidence if, in the Neutral Adjudicator’s judgment, the additional

documentation and evidence would be necessary or helpful in deciding the merits of the claim, or if the adjudicator suspects fraud regarding the claim.

(4) ATTORNEYS FEES, EXPENSES, AND COSTS.—

(A) IN GENERAL.—Subject to subparagraph (B) and the provisions of the Settlement Agreement regarding attorneys' fee caps and maximum and minimum percentages for awards of attorneys fees, the court shall make any determination as to the amount of attorneys' fees, expenses, and costs in accordance with controlling law, including, with respect to attorneys' fees, expenses, and costs, any applicable rule of law requiring counsel to produce contemporaneous time, expenses, and cost records in support of a motion for such fees, expenses, and costs.

(B) EFFECT ON AGREEMENT.—Nothing in this paragraph limits or otherwise affects the enforceability of provisions regarding attorneys' fees, expenses, and costs that may be contained in the Settlement Agreement.

(5) CERTIFICATION.—An attorney filing a claim on behalf of a claimant shall swear, under penalty of perjury, that: "to the best of the attorney's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, the claim is supported by existing law and the factual contentions have evidentiary support".

(6) DISTRIBUTION OF CLAIMS DETERMINATIONS AND SETTLEMENT FUNDS.—In order to ensure full transparency of the administration of claims under the Settlement Agreement, the Claims Administrator as that term is defined in the Settlement Agreement, shall provide to the Secretary of Agriculture, the Inspector General of the Department of Agriculture, the Attorney General, and Lead Class Counsel as that term is defined in the Settlement Agreement, all information regarding Distribution of Claims Determinations and Settlement Funds described in the Settlement Agreement.

(h) REPORTS.—

(1) GOVERNMENT ACCOUNTABILITY OFFICE.—

(A) IN GENERAL.—The Comptroller General of the United States shall evaluate the internal controls (including internal controls concerning fraud and abuse) created to carry out the terms of the Settlement Agreement, and report to the Congress at least 2 times throughout the duration of the claims adjudication process on the results of this evaluation.

(B) ACCESS TO INFORMATION.—Solely for purposes of conducting the evaluation under subparagraph (A), the Comptroller General shall have access, upon request, to the claims administrator, the claims adjudicators, and related officials, appointed in connection with the aforementioned settlement, and to any information and records generated, used, or received by them, including names and addresses.

(2) USDA INSPECTOR GENERAL.—

(A) PERFORMANCE AUDIT.—The Inspector General of the Department of Agriculture shall, within 180 days of the initial adjudication of claims, and subsequently as appropriate, perform a performance audit based on a statistical sampling of adjudicated claims.

(B) **AUDIT RECIPIENTS.**—The audits described in clause (i) shall be provided to Secretary of Agriculture and the Attorney General.

TITLE III—WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION

White Mountain
Apache Tribe
Water Rights
Quantification
Act of 2010.

SEC. 301. SHORT TITLE.

This title may be cited as the “White Mountain Apache Tribe Water Rights Quantification Act of 2010”.

SEC. 302. PURPOSES.

The purposes of this title are—

- (1) to authorize, ratify, and confirm the Agreement;
- (2) to authorize and direct the Secretary to execute the Agreement and take any other action necessary to carry out all obligations of the Secretary under the Agreement in accordance with this title;
- (3) to authorize the amounts necessary for the United States to meet the obligations of the United States under the Agreement and this title; and
- (4) to permanently resolve certain damage claims and all water rights claims among—
 - (A) the Tribe and its members;
 - (B) the United States, acting as trustee for the Tribe and its members;
 - (C) the parties to the Agreement; and
 - (D) all other claimants seeking to determine the nature and extent of the water rights of the Tribe, its members, the United States, acting as trustee for the Tribe and its members, and other claimants in—
 - (i) the consolidated civil action in the Superior Court of the State of Arizona for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W–1 (Salt), W–2 (Verde), W–3 (Upper Gila), W–4 (San Pedro)*; and
 - (ii) the civil action pending in the Superior Court of the State of Arizona for the County of Apache styled *In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source* and numbered CIV–6417.

SEC. 303. DEFINITIONS.

In this title:

- (1) **AGREEMENT.**—The term “Agreement” means—
 - (A) the WMAT Water Rights Quantification Agreement dated January 13, 2009; and
 - (B) any amendment or exhibit (including exhibit amendments) to that Agreement that are—
 - (i) made in accordance with this title; or
 - (ii) otherwise approved by the Secretary.
- (2) **BUREAU.**—The term “Bureau” means the Bureau of Reclamation.

(3) CAP.—The term “CAP” means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(4) CAP CONTRACTOR.—The term “CAP contractor” means an individual or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(5) CAP FIXED OM&R CHARGE.—The term “CAP fixed OM&R charge” has the meaning given the term in the repayment stipulation.

(6) CAP M&I PRIORITY WATER.—The term “CAP M&I priority water” means the CAP water having a municipal and industrial delivery priority under the repayment contract.

(7) CAP SUBCONTRACTOR.—The term “CAP subcontractor” means an individual or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the District for the delivery of water through the CAP system.

(8) CAP SYSTEM.—The term “CAP system” means—

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;

(C) the Fannin-McFarland Aqueduct;

(D) the Tucson Aqueduct;

(E) any pumping plant or appurtenant works of a feature described in any of subparagraphs (A) through (D); and

(F) any extension of, addition to, or replacement for a feature described in any of subparagraphs (A) through (E).

(9) CAP WATER.—The term “CAP water” means “Project Water” (as that term is defined in the repayment stipulation).

(10) CONTRACT.—The term “Contract” means—

(A) the proposed contract between the Tribe and the United States attached as exhibit 7.1 to the Agreement and numbered 08–XX–30–W0529; and

(B) any amendments to that contract.

(11) DISTRICT.—The term “District” means the Central Arizona Water Conservation District, a political subdivision of the State that is the contractor under the repayment contract.

(12) ENFORCEABILITY DATE.—The term “enforceability date” means the date described in section 309(d)(1).

(13) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(14) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term “injury to water rights” means an interference with, diminution of, or deprivation of, a water right under Federal, State, or other law.

(B) INCLUSIONS.—The term “injury to water rights” includes—

(i) a change in the groundwater table; and

(ii) any effect of such a change.

(C) EXCLUSION.—The term “injury to water rights” does not include any injury to water quality.

(15) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term “Lower Colorado River Basin Development Fund”

means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(16) OFF-RESERVATION TRUST LAND.—The term “off-reservation trust land” means land—

(A) located outside the exterior boundaries of the reservation that is held in trust by the United States for the benefit of the Tribe as of the enforceability date; and

(B) depicted on the map attached to the Agreement as exhibit 2.57.

(17) OPERATING AGENCY.—The term “Operating Agency” means the 1 or more entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(18) REPAYMENT CONTRACT.—The term “repayment contract” means—

(A) the contract between the United States and the District for delivery of water and repayment of the costs of the CAP, numbered 14–06–W–245 (Amendment No. 1), and dated December 1, 1988; and

(B) any amendment to, or revision of, that contract.

(19) REPAYMENT STIPULATION.—The term “repayment stipulation” means the stipulated judgment and the stipulation for judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95–625–TUC–WDB (EHC) and CIV 95–1720–PHX–EHC.

(20) RESERVATION.—

(A) IN GENERAL.—The term “reservation” means the land within the exterior boundary of the White Mountain Indian Reservation established by the Executive order dated November 9, 1871, as modified by subsequent Executive orders and Acts of Congress—

(i) known on the date of enactment of this Act as the “Fort Apache Reservation” pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and

(ii) generally depicted on the map attached to the Agreement as exhibit 2.81.

(B) NO EFFECT ON DISPUTE OR AS ADMISSION.—The depiction of the reservation described in subparagraph (A)(ii) shall not—

(i) be used to affect any dispute between the Tribe and the United States concerning the legal boundary of the reservation; or

(ii) constitute an admission by the Tribe with regard to any dispute between the Tribe and the United States concerning the legal boundary of the reservation.

(21) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(22) STATE.—The term “State” means the State of Arizona.

(23) TRIBAL CAP WATER.—The term “tribal CAP water” means the CAP water to which the Tribe is entitled pursuant to the Contract.

(24) **TRIBAL WATER RIGHTS.**—The term “tribal water rights” means the water rights of the Tribe described in paragraph 4.0 of the Agreement.

(25) **TRIBE.**—The term “Tribe” means the White Mountain Apache Tribe organized under section 16 of the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 476).

(26) **WATER RIGHT.**—The term “water right” means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(27) **WMAT RURAL WATER SYSTEM.**—The term “WMAT rural water system” means the municipal, rural, and industrial water diversion, storage, and delivery system described in section 307.

(28) **YEAR.**—The term “year” means a calendar year.

SEC. 304. APPROVAL OF AGREEMENT.

(a) APPROVAL.—

(1) **IN GENERAL.**—Except to the extent that any provision of the Agreement conflicts with a provision of this title, the Agreement is authorized, ratified, and confirmed.

(2) **AMENDMENTS.**—Any amendment to the Agreement is authorized, ratified, and confirmed, to the extent that such amendment is executed to make the Agreement consistent with this title.

(b) EXECUTION OF AGREEMENT.—

(1) **IN GENERAL.**—To the extent that the Agreement does not conflict with this title, the Secretary shall promptly—

(A) execute the Agreement, including all exhibits to the Agreement requiring the signature of the Secretary; and

(B) in accordance with the Agreement, execute any amendment to the Agreement, including any amendment to any exhibit to the Agreement requiring the signature of the Secretary, that is not inconsistent with this title; and

(2) **DISCRETION OF THE SECRETARY.**—The Secretary may execute any other amendment to the Agreement, including any amendment to any exhibit to the Agreement requiring the signature of the Secretary, that is not inconsistent with this title if the amendment does not require congressional approval pursuant to the Trade and Intercourse Act (25 U.S.C. 177) or other applicable Federal law (including regulations).

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) **ENVIRONMENTAL COMPLIANCE.**—In implementing the Agreement and carrying out this title, the Secretary shall promptly comply with all applicable requirements of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(C) all other applicable Federal environmental laws; and

(D) all regulations promulgated under the laws described in subparagraphs (A) through (C).

(2) EXECUTION OF AGREEMENT.—

(A) IN GENERAL.—Execution of the Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ENVIRONMENTAL COMPLIANCE.—The Secretary shall carry out all necessary environmental compliance activities required by Federal law in implementing the Agreement.

(3) LEAD AGENCY.—The Bureau shall serve as the lead agency with respect to ensuring environmental compliance associated with the WMAT rural water system.

SEC. 305. WATER RIGHTS.

(a) TREATMENT OF TRIBAL WATER RIGHTS.—The tribal water rights—

(1) shall be held in trust by the United States on behalf of the Tribe; and

(2) shall not be subject to forfeiture or abandonment.

(b) REALLOCATION.—

(1) IN GENERAL.—In accordance with this title and the Agreement, the Secretary shall reallocate to the Tribe, and offer to enter into a contract with the Tribe for the delivery in accordance with this section of—

(A) an entitlement to 23,782 acre-feet per year of CAP water that has a non-Indian agricultural delivery priority (as defined in the Contract) in accordance with section 104(a)(1)(A)(iii) of the Arizona Water Settlements Act (Public Law 108–451; 118 Stat. 3488), of which—

(i) 3,750 acre-feet per year shall be firmed by the United States for the benefit of the Tribe for the 100-year period beginning on January 1, 2008, with priority equivalent to CAP M&I priority water, in accordance with section 105(b)(1)(B) of that Act (118 Stat. 3492); and

(ii) 3,750 acre-feet per year shall be firmed by the State for the benefit of the Tribe for the 100-year period beginning on January 1, 2008, with priority equivalent to CAP M&I priority water, in accordance with section 105(b)(2)(B) of that Act (118 Stat. 3492); and

(B) an entitlement to 1,218 acre-feet per year of the water—

(i) acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP subcontract entitlement in accordance with the contract numbered 3–07–30–W0290 among the District, Harquahala Valley Irrigation District, and the United States; and

(ii) converted to CAP Indian Priority water (as defined in the Contract) pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (Public Law 101–628; 104 Stat. 4480).

(2) AUTHORITY OF TRIBE.—Subject to approval by the Secretary under section 306(a)(1), the Tribe shall have the sole authority to lease, distribute, exchange, or allocate the tribal CAP water described in paragraph (1).

(c) **WATER SERVICE CAPITAL CHARGES.**—The Tribe shall not be responsible for any water service capital charge for tribal CAP water.

(d) **ALLOCATION AND REPAYMENT.**—For the purpose of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of water described in subsection (b), regardless of whether the water is delivered for use by the Tribe or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Tribe, shall be—

(1) nonreimbursable; and

(2) excluded from the repayment obligation of the District.

Deadline.

(e) **WATER CODE.**—Not later than 18 months after the enforceability date, the Tribe shall enact a water code that—

(1) governs the tribal water rights; and

(2) includes, at a minimum—

(A) provisions requiring the measurement, calculation, and recording of all diversions and depletions of water on the reservation and on off-reservation trust land;

(B) terms of a water conservation plan, including objectives, conservation measures, and an implementation timeline;

(C) provisions requiring the approval of the Tribe for the severance and transfer of rights to the use of water from historically irrigated land identified in paragraph 11.3.2.1 of the Agreement to diversions and depletions on other non-historically irrigated land not located on the watershed of the same water source; and

(D) provisions requiring the authorization of the Tribe for all diversions of water on the reservation and on off-reservation trust land by any individual or entity other than the Tribe.

SEC. 306. CONTRACT.

(a) **IN GENERAL.**—The Secretary shall enter into the Contract, in accordance with the Agreement, to provide, among other things, that—

(1) the Tribe, on approval of the Secretary, may—

(A) enter into contracts or options to lease, contracts to exchange, or options to exchange tribal CAP water in Maricopa, Pinal, Pima, and Yavapai Counties in the State providing for the temporary delivery to any individual or entity of any portion of the tribal CAP water, subject to the condition that—

(i) the term of the contract or option to lease shall not be longer than 100 years;

(ii) the contracts or options to exchange shall be for the term provided in the contract or option; and

(iii) a lease or option to lease providing for the temporary delivery of tribal CAP water shall require the lessee to pay to the Operating Agency all CAP fixed OM&R charges and all CAP pumping energy charges (as defined in the repayment stipulation) associated with the leased water; and

(B) renegotiate any lease at any time during the term of the lease, subject to the condition that the term of the renegotiated lease shall not exceed 100 years;

(2) no portion of the tribal CAP water may be permanently alienated;

(3)(A) the Tribe (and not the United States in any capacity) shall be entitled to all consideration due to the Tribe under any contract or option to lease or exchange tribal CAP water entered into by the Tribe; and

(B) the United States (in any capacity) has no trust or other obligation to monitor, administer, or account for, in any manner—

(i) any funds received by the Tribe as consideration under a contract or option to lease or exchange tribal CAP water; or

(ii) the expenditure of those funds;

(4)(A) all tribal CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or anticipated to be significantly reduced for an extended period of time, the Tribe shall have the same CAP delivery rights as a CAP contractor or CAP subcontractor that is allowed to take delivery of water other than through the CAP system;

(5) the Tribe may use tribal CAP water on or off the reservation for any purpose;

(6) as authorized by subsection (f)(2)(A) of section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the United States shall pay to the Operating Agency the CAP fixed OM&R charges associated with the delivery of tribal CAP water (except in the case of tribal CAP water leased by any individual or entity);

(7) the Secretary shall waive the right of the Secretary to capture all return flow from project exchange water flowing from the exterior boundary of the reservation; and

(8) no CAP water service capital charge shall be due or payable for the tribal CAP water, regardless of whether the water is delivered for use by the Tribe or pursuant to a contract or option to lease or exchange tribal CAP water entered into by the Tribe.

(b) REQUIREMENTS.—The Contract shall be—

(1) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(2) without limit as to term.

(c) RATIFICATION.—

(1) IN GENERAL.—Except to the extent that any provision of the Contract conflicts with a provision of this title, the Contract is authorized, ratified, and confirmed.

(2) AMENDMENTS.—Any amendment to the Contract is authorized, ratified, and confirmed, to the extent that such amendment is executed to make the Contract consistent with this title.

(d) EXECUTION OF CONTRACT.—To the extent that the Contract does not conflict with this title, the Secretary shall execute the Contract.

Waiver authority.

(e) **PAYMENT OF CHARGES.**—The Tribe, and any recipient of tribal CAP water through a contract or option to lease or exchange, shall not be obligated to pay a water service capital charge or any other charge, payment, or fee for CAP water, except as provided in an applicable lease or exchange agreement.

(f) **PROHIBITIONS.**—

(1) **USE OUTSIDE STATE.**—No tribal CAP water may be leased, exchanged, forborne, or otherwise transferred by the Tribe in any way for use directly or indirectly outside the State.

(2) **USE OFF RESERVATION.**—Except as authorized by this section and paragraph 4.7 of the Agreement, no tribal water rights under this title may be sold, leased, transferred, or used outside the boundaries of the reservation or off-reservation trust land other than pursuant to an exchange.

(3) **AGREEMENTS WITH ARIZONA WATER BANKING AUTHORITY.**—Nothing in this title or the Agreement limits the right of the Tribe to enter into an agreement with the Arizona Water Banking Authority (or any successor entity) established by section 45-2421 of the Arizona Revised Statutes in accordance with State law.

(g) **LEASES.**—

(1) **IN GENERAL.**—To the extent that the leases of tribal CAP Water by the Tribe to the District and to any of the cities in the State, attached as exhibits to the Agreement, are not in conflict with the provisions of this title—

(A) those leases are authorized, ratified, and confirmed;

and

(B) the Secretary shall execute the leases.

(2) **AMENDMENTS.**—To the extent that amendments are executed to make the leases described in paragraph (1) consistent with this title, those amendments are authorized, ratified, and confirmed.

SEC. 307. AUTHORIZATION OF WMAT RURAL WATER SYSTEM.

(a) **IN GENERAL.**—Consistent with subsections (a) and (e) of section 312 and subsection (h) of this section, the Secretary, acting through the Bureau, shall plan, design, and construct the WMAT rural water system to divert, store, and distribute water from the North Fork of the White River to the Tribe that shall consist of—

(1) a dam and storage reservoir, pumping plant, and treatment facilities located along the North Fork of the White River near the community of Whiteriver;

(2) a distribution system consisting of pipelines extending from the treatment facilities to existing water distribution systems serving the communities of Whiteriver, Fort Apache, Canyon Day, Cedar Creek, Carrizo, and Cibecue;

(3) connections to existing distribution facilities for the communities described in paragraph (2), but not including any upgrades of, or improvements to, existing or future public water systems for the communities described in paragraph (2) that may be necessary to accommodate increased demand and flow rates (and any associated changes in water quality);

(4) connections to additional communities along the pipeline, provided that the additional connections may be added

to the distribution system described in paragraph (2) at the expense of the Tribe;

(5) appurtenant buildings and access roads;

(6) electrical power transmission and distribution facilities necessary for operation of the project; and

(7) any other project components that the Secretary, in consultation with the Tribe, determines to be necessary.

(b) MODIFICATIONS.—The Secretary and the Tribe—

(1) may modify the components of the WMAT rural water system described in subsection (a) by mutual agreement; and

(2) shall make all modifications required under subsection (c)(2).

(c) FINAL PROJECT DESIGN.—

(1) IN GENERAL.—The Secretary shall issue a final project design of the WMAT rural water system, including the dam, pumping plants, pipeline, and treatment plant, that is generally consistent with the project extension report dated February 2007 after the completion of—

(A) any appropriate environmental compliance activity; and

(B) the review process described in paragraph (2).

(2) REVIEW.—

(A) IN GENERAL.—The Secretary shall review the proposed design of the WMAT rural water system and perform value engineering analyses.

(B) RESULTS.—Taking into consideration the review under subparagraph (A), the Secretary, in consultation with the Tribe, shall require appropriate changes to the design, so that the final design—

(i) meets Bureau of Reclamation design standards;

(ii) to the maximum extent practicable, incorporates any changes that would improve the cost-effectiveness of the delivery of water through the WMAT rural water system; and

(iii) may be constructed for the amounts made available under section 312.

(d) CONVEYANCE OF TITLE.—

(1) IN GENERAL.—Title to the WMAT rural water system shall be held by the United States until title to the WMAT rural water system is conveyed by the Secretary to the Tribe pursuant to paragraph (2).

(2) CONVEYANCE TO TRIBE.—The Secretary shall convey to the Tribe title to the WMAT rural water system not later than 30 days after the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A) the operating criteria, standing operating procedures, emergency action plan, and first filling and monitoring criteria of the designers have been established and are in place;

(B) the WMAT rural water system has operated under the standing operating procedures of the designers, with the participation of the Tribe, for a period of 3 years;

(C) the Secretary has provided the Tribe with technical assistance on the manner by which to operate and maintain the WMAT rural water system;

Deadline.
Federal Register,
publication.

(D) the funds made available under section 312(b)(3)(B) have been deposited in the WMAT Maintenance Fund; and

(E) the WMAT rural water system—

(i) is substantially complete, as determined by the Secretary; and

(ii) satisfies the requirement that—

(I) the infrastructure constructed is capable of storing, diverting, treating, transmitting, and distributing a supply of water as set forth in the final project design described in subsection (c); and

(II) the Secretary has consulted with the Tribe regarding the proposed finding that the WMAT rural water system is substantially complete.

(e) ALIENATION AND TAXATION.—

(1) IN GENERAL.—Conveyance of title to the Tribe pursuant to subsection (d) does not waive or alter any applicable Federal law (including regulations) prohibiting alienation or taxation of the WMAT rural water system or the underlying reservation land.

(2) ALIENATION OF WMAT RURAL WATER SYSTEM.—The WMAT rural water system, including the components of the WMAT rural water system, shall not be alienated, encumbered, or conveyed in any manner by the Tribe, unless a reconveyance is authorized by an Act of Congress enacted after the date of enactment of this Act.

(f) OPERATION AND MAINTENANCE.—

(1) IN GENERAL.—Consistent with subsections (d) and (e) of section 312, the Secretary, acting through the Bureau and in cooperation with the Tribe, shall operate, maintain, and replace the WMAT rural water system until the date on which title to the WMAT rural water system is transferred to the Tribe pursuant to subsection (d)(2).

(2) LIMITATION.—

(A) IN GENERAL.—Beginning on the date on which title to the WMAT rural water system is transferred to the Tribe pursuant to subsection (d)(2), the United States shall have no obligation to pay for the operation, maintenance, or replacement costs of the WMAT rural water system.

(B) LIMITATION ON LIABILITY.—Effective on the date on which the Secretary publishes a statement of findings in the Federal Register pursuant to subsection (d)(2), the United States shall not be held liable by any court for damages arising out of any act, omission, or occurrence relating to the land or facilities conveyed, other than damages caused by any intentional act or act of negligence committed by the United States, or by employees or agents of the United States, prior to the date on which the Secretary publishes a statement of findings in the Federal Register pursuant to subsection (d)(2).

(g) RIGHT TO REVIEW.—

(1) IN GENERAL.—The statement of findings published by the Secretary pursuant to subsection (d)(2) shall be considered to be a final agency action subject to judicial review under sections 701 through 706 of title 5, United States Code.

Effective date.

(2) **EFFECT OF TITLE.**—Nothing in this title gives the Tribe or any other party the right to judicial review of the determination by the Secretary under subsection (d) except under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(h) **APPLICABILITY OF ISDEAA.**—

(1) **AGREEMENT FOR SPECIFIC ACTIVITIES.**—On receipt of a request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into 1 or more agreements with the Tribe to carry out the activities authorized by this section.

(2) **CONTRACTS.**—Any contract entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for the purpose of carrying out any provision of this title shall incorporate such provisions regarding periodic payment of funds, timing for use of funds, transparency, oversight, reporting, and accountability as the Secretary determines to be necessary (at the sole discretion of the Secretary) to ensure appropriate stewardship of Federal funds.

(i) **FINAL DESIGNS; PROJECT CONSTRUCTION.**—

(1) **FINAL DESIGNS.**—All designs for the WMAT rural water system shall—

(A) conform to Bureau design standards; and

(B) be subject to review and approval by the Secretary.

(2) **PROJECT CONSTRUCTION.**—Each project component of the WMAT rural water system shall be constructed pursuant to designs and specifications approved by the Secretary, and all construction work shall be subject to inspection and approval by the Secretary.

(j) **CONDITION.**—As a condition of construction of the facilities authorized by this section, the Tribe shall provide, at no cost to the Secretary, all land or interests in land that the Secretary identifies as necessary for the construction, operation, and maintenance of those facilities.

SEC. 308. SATISFACTION OF CLAIMS.

(a) **IN GENERAL.**—Except as set forth in the Agreement, the benefits realized by the Tribe and its members under this title shall be in full satisfaction of all claims of the Tribe, its members, and the United States, acting as trustee for the benefit of the Tribe and its members, for water rights and injury to water rights under Federal, State, or other law with respect to the reservation and off-reservation trust land.

(b) **USES OF WATER.**—All uses of water on land outside of the reservation, if and when that land is subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe and the United States over the location of the reservation boundary, and any fee land within the reservation placed into trust and made part of the reservation, shall be subject to the maximum annual diversion amounts and the maximum annual depletion amounts specified in the Agreement.

(c) **NO RECOGNITION OF WATER RIGHTS.**—Notwithstanding subsection (a), nothing in this title recognizes or establishes any right of a member of the Tribe to water on the reservation.

SEC. 309. WAIVERS AND RELEASES OF CLAIMS.**(a) IN GENERAL.—**

(1) **CLAIMS AGAINST THE STATE AND OTHERS.**—Except for the specifically retained claims described in subsection (b)(1), the Tribe, on behalf of itself and its members, and the United States, acting in its capacity as trustee for the Tribe and its members, as part of the performance of the respective obligations of the United States and the Tribe under the Agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all—

(A)(i) past, present, and future claims for water rights for the reservation and off-reservation trust land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors;

(B)(i) past and present claims for injury to water rights for the reservation and off-reservation trust land arising from time immemorial through the enforceability date;

(ii) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors; and

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from off-reservation diversion or use of water in a manner that is not in violation of the Agreement or State law; and

(C) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this title.

(2) **CLAIMS AGAINST TRIBE.**—Except for the specifically retained claims described in subsection (b)(3), the United States, in all capacities (except as trustee for an Indian tribe other than the Tribe), as part of the performance of its obligations under the Agreement, is authorized to execute a waiver and release of any and all claims against the Tribe, its members, or any agency, official, or employee of the Tribe, under Federal, State, or any other law for all—

(A) past and present claims for injury to water rights resulting from the diversion or use of water on the reservation and on off-reservation trust land arising from time immemorial through the enforceability date;

(B) claims for injury to water rights arising after the enforceability date resulting from the diversion or use of water on the reservation and on off-reservation trust land in a manner that is not in violation of the Agreement; and

(C) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this title.

(3) CLAIMS AGAINST UNITED STATES.—Except for the specifically retained claims described in subsection (b)(2), the Tribe, on behalf of itself and its members, as part of the performance of the obligations of the Tribe under the Agreement, is authorized to execute a waiver and release of any claim against the United States, including agencies, officials, or employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all—

(A)(i) past, present, and future claims for water rights for the reservation and off-reservation trust land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors;

(B)(i) past and present claims relating in any manner to damages, losses, or injuries to water, water rights, land, or other resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, or develop water, water rights, or water infrastructure) within the reservation and off-reservation trust land that first accrued at any time prior to the enforceability date;

(ii) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors; and

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from the off-reservation diversion or use of water in a manner that is not in violation of the Agreement or applicable law;

(C) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or this title;

(D) past and present claims relating in any manner to pending litigation of claims relating to the water rights of the Tribe for the reservation and off-reservation trust land;

(E) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the reservation constructed prior to the enforceability date that first accrued at any time prior to the enforceability date, which waiver shall only become effective on the full appropriation and payment to the Tribe of \$4,950,000 of the amounts made available under section 312(b)(2)(B);

(F) any claims relating to operation, maintenance, and replacement of the WMAT rural water system, which waiver shall only become effective on the date on which funds are made available under section 312(b)(3)(B) and deposited in the WMAT Maintenance Fund;

(G) past and present breach of trust and negligence claims for damage to the land and natural resources of the Tribe caused by riparian and other vegetative manipulation by the United States for the purpose of increasing water runoff from the reservation that first accrued at any time prior to the enforceability date; and

(H) past and present claims for trespass, use, and occupancy of the reservation in, on, and along the Black River that first accrued at any time prior to the enforceability date.

(4) EFFECT ON BOUNDARY CLAIMS.—Nothing in this title expands, diminishes, or impacts any claims the Tribe may assert, or any defense the United States may assert, concerning title to land outside the most current survey, as of the date of enactment of this Act, of the northern boundary of the reservation.

(b) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—

(1) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY TRIBE AND UNITED STATES.—

(A) IN GENERAL.—Notwithstanding the waiver and release of claims authorized under subsection (a)(1), the Tribe, on behalf of itself and its members, and the United States, acting as trustee for the Tribe and its members, shall retain any right—

(i) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and its members under the Agreement or this title in any Federal or State court of competent jurisdiction;

(ii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(iii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(iv) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(v) to participate in the Gila River adjudication proceedings and the Little Colorado River adjudication proceedings to the extent provided in subparagraph 14.1 of the Agreement;

(vi) to assert any claims arising after the enforceability date for injury to water rights not specifically waived under this section;

(vii) to assert any past, present, or future claim for injury to water rights against any other Indian tribe, Indian community or nation, dependent Indian community, allottee, or the United States on behalf of such a tribe, community, nation, or allottee;

(viii) to assert any past, present, or future claim for trespass, use, and occupancy of the reservation in, on, or along the Black River against Freeport-

McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities; and

(ix) to assert claims arising after the enforceability date for injury to water rights resulting from the pumping of water from land located within national forest land as of the date of the Agreement in the south $\frac{1}{2}$ of T. 9 N., R. 24 E., the south $\frac{1}{2}$ of T. 9 N., R. 25 E., the north $\frac{1}{2}$ of T. 8 N., R. 24 E., or the north $\frac{1}{2}$ of T. 8 N., R. 25 E., if water from the land is used on the land or is transported off the land for municipal, commercial, or industrial use.

(B) AGREEMENT.—On terms acceptable to the Tribe and the United States, the Tribe and the United States are authorized to enter into an agreement with Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities, to resolve the claims of the Tribe relating to the trespass, use, and occupancy of the reservation in, on, and along the Black River.

(2) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY TRIBE AGAINST UNITED STATES.—Notwithstanding the waiver and release of claims authorized under subsection (a)(3), the Tribe, on behalf of itself and its members, shall retain any right—

(A) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and its members under the Agreement or this title, in any Federal or State court of competent jurisdiction;

(B) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(C) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(D) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(E) to assert past, present, or future claims for injury to water rights or any other claims other than a claim to water rights, against any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(F) to assert claims arising after the enforceability date for injury to water rights resulting from the pumping of water from land located within national forest land as of the date of the Agreement in the south $\frac{1}{2}$ of T. 9 N., R. 24 E., the south $\frac{1}{2}$ of T. 9 N., R. 25 E., the north $\frac{1}{2}$ of T. 8 N., R. 24 E., or the north $\frac{1}{2}$ of T. 8 N., R. 25 E., if water from that land is used on the land

or is transported off the land for municipal, commercial, or industrial use;

(G) to assert any claims arising after the enforceability date for injury to water rights not specifically waived under this section;

(H) to seek remedies and to assert any other claims not specifically waived under this section; and

(I) to assert any claim arising after the enforceability date for a future taking by the United States of reservation land, off-reservation trust land, or any property rights appurtenant to that land, including any water rights set forth in paragraph 4.0 of the Agreement.

(3) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY UNITED STATES.—Notwithstanding the waiver and release of claims authorized under subsection (a)(2), the United States shall retain any right to assert any claim not specifically waived in that subsection.

(c) EFFECTIVENESS OF WAIVER AND RELEASES.—Except as otherwise specifically provided in subparagraphs (E) and (F) of subsection (a)(3), the waivers and releases under subsection (a) shall become effective on the enforceability date.

(d) ENFORCEABILITY DATE.—

(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A)(i) to the extent that the Agreement conflicts with this title, the Agreement has been revised through an amendment to eliminate the conflict; and

(ii) the Agreement, as so revised, has been executed by the Secretary, the Tribe, and the Governor of the State;

(B) the Secretary has fulfilled the requirements of sections 305 and 306;

(C) the amount made available under section 312(a) has been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(D) the State funds described in subparagraph 13.3 of the Agreement have been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(E) the Secretary has issued a record of decision approving the construction of the WMAT rural water system in a configuration substantially similar to that described in section 307;

(F) the judgments and decrees substantially in the form of those attached to the Agreement as exhibits 12.9.6.1 and 12.9.6.2 have been approved by the respective trial courts; and

(G) the waivers and releases authorized and set forth in subsection (a) have been executed by the Tribe and the Secretary.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If the Secretary does not publish a statement of findings under paragraph (1) by April 30, 2021—

(A) this title is repealed effective May 1, 2021, and any activity by the Secretary to carry out this title shall cease;

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(B) any amounts made available under section 312 shall immediately revert to the general fund of the Treasury;

(C) any other amounts deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount (including any amounts paid by the State in accordance with the Agreement), together with any interest accrued on those amounts, shall immediately be returned to the respective sources of those funds; and

(D) the Tribe and its members, and the United States, acting as trustee for the Tribe and its members, shall retain the right to assert past, present, and future water rights claims and claims for injury to water rights for the reservation and off-reservation trust land.

(3) NO ADDITIONAL RIGHTS TO WATER.—Beginning on the enforceability date, all land held by the United States in trust for the Tribe and its members shall have no rights to water other than those specifically quantified for the Tribe and the United States, acting as trustee for the Tribe and its members, for the reservation and off-reservation trust land pursuant to paragraph 4.0 of the Agreement.

(e) UNITED STATES ENFORCEMENT AUTHORITY.—Nothing in this title or the Agreement affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(f) NO EFFECT ON WATER RIGHTS.—Except as provided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and (3)(B)(ii) of subsection (a), nothing in this title affects any rights to water of the Tribe, its members, or the United States, acting as trustee for the Tribe and its members, for land outside the boundaries of the reservation or the off-reservation trust land.

(g) ENTITLEMENTS.—Any entitlement to water of the Tribe, its members, or the United States, acting as trustee for the Tribe and its members, relating to the reservation or off-reservation trust land shall be satisfied from the water resources granted, quantified, confirmed, or recognized with respect to the Tribe, its members, and the United States by the Agreement and this title.

(h) OBJECTION PROHIBITED.—Except as provided in paragraphs (1)(A)(ix) and (2)(F) of subsection (b), the Tribe and the United States, acting as trustee for the Tribe shall not—

(1) object to the use of any well located outside the boundaries of the reservation or the off-reservation trust land in existence on the enforceability date; or

(2) object to, dispute, or challenge after the enforceability date the drilling of any well or the withdrawal and use of water from any well in the Little Colorado River adjudication proceedings, the Gila River adjudication proceedings, or any other judicial or administrative proceeding.

SEC. 310. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS SETTLEMENT SUBACCOUNT.

(a) ESTABLISHMENT.—There is established in the Lower Colorado River Basin Development Fund a subaccount to be known as the “White Mountain Apache Tribe Water Rights Settlement Subaccount”, consisting of—

(1) the amounts deposited in the subaccount pursuant to section 312(a); and

(2) such other amounts as are available, including the amounts provided in subparagraph 13.3 of the Agreement.

(b) USE OF FUNDS.—

(1) **IN GENERAL.**—Subject to paragraph (2), the Secretary shall use amounts from the White Mountain Apache Tribe Water Rights Settlement Subaccount for the planning, design, and construction of the WMAT rural water system, in accordance with section 307(a).

(2) **REQUIREMENTS.**—In carrying out the activities described in paragraph (1), the Secretary shall use such sums as are necessary from the White Mountain Apache Tribe Water Rights Settlement Subaccount—

(A) to provide the Bureau with amounts sufficient to carry out oversight of the planning, design, and construction of the WMAT rural water system;

(B) to repay to the Treasury (or the United States) any outstanding balance on the loan authorized by the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Public Law 110–390; 122 Stat. 4191), after which repayment, the Tribe shall have no further liability for the balance on that loan; and

(C) to carry out all required environmental compliance activities associated with the planning, design, and construction of the WMAT rural water system.

(c) ISDEAA CONTRACT.—

(1) **IN GENERAL.**—If the Tribe so requests, the planning, design, and construction of the WMAT rural water system shall be carried out pursuant to the terms of an agreement or agreements entered into under section 307(h).

(2) **ENFORCEMENT.**—The Secretary may pursue any judicial remedies and carry out any administrative actions that are necessary to enforce an agreement described in paragraph (1) to ensure that amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount are used in accordance with this section.

(d) **PROHIBITION ON PER CAPITA DISTRIBUTIONS.**—No amount of the principal, or the interest or income accruing on the principal, of the White Mountain Apache Tribe Water Rights Settlement Subaccount shall be distributed to any member of the Tribe on a per capita basis.

(e) AVAILABILITY OF FUNDS.—

(1) **IN GENERAL.**—Amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount shall not be available for expenditure by the Secretary until the enforceability date.

(2) **INVESTMENT.**—The Secretary shall invest the amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount in accordance with section 403(f)(4) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(4)).

(3) **USE OF INTEREST.**—The interest accrued on amounts invested under paragraph (2) shall not be available for expenditure or withdrawal until the enforceability date.

SEC. 311. MISCELLANEOUS PROVISIONS.

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

(1) IN GENERAL.—In the case of a civil action described in paragraph (2)—

(A) the United States or the Tribe, or both, may be joined in the civil action; and

(B) any claim by the United States or the Tribe to sovereign immunity from the civil action is waived for the sole purpose of resolving any issue regarding the interpretation or enforcement of this title or the Agreement.

(2) DESCRIPTION OF CIVIL ACTION.—A civil action referred to in paragraph (1) is a civil action filed—

(A) by any party to the Agreement or signatory to an exhibit to the Agreement in a United States or State court that—

(i) relates solely and directly to the interpretation or enforcement of this title or the Agreement; and

(ii) names as a party the United States or the Tribe; or

(B) by a landowner or water user in the Gila River basin or Little Colorado River basin in the State that—

(i) relates solely and directly to the interpretation or enforcement of section 309 of this title and paragraph 12.0 of the Agreement; and

(ii) names as a party the United States or the Tribe.

(b) EFFECT OF TITLE.—Nothing in this title quantifies or otherwise affects any water right or claim or entitlement to water of any Indian tribe, band, or community other than the Tribe.

(c) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any amount paid to the Tribe by any party to the Agreement other than the United States; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Tribe shall indemnify the United States, and hold the United States harmless, with respect to any claim (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(d) APPLICABILITY OF RECLAMATION REFORM ACT.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full-cost pricing provision under Federal law shall not apply to any individual, entity, or land solely on the basis of—

(1) receipt of any benefit under this title;

(2) the execution or performance of the Agreement; or

(3) the use, storage, delivery, lease, or exchange of CAP water.

(e) SECRETARIAL POWER SITES.—The portions of the following named secretarial power site reserves that are located on the Fort Apache Indian Reservation or the San Carlos Apache Reservation, as applicable, shall be transferred and restored into the name of the Tribe or the San Carlos Apache Tribe, respectively:

(1) Lower Black River (T. 3 N., R. 26 E.; T. 3 N., R. 27 E.).

(2) Black River Pumps (T. 2 N., R. 25 E.; T. 2 N., R. 26 E.; T. 3 N., R. 26 E.).

(3) Carrizo (T. 4 N., R. 20 E.; T. 4 N., R. 21 E.; T. 4½ N., R. 19 E.; T. 4½ N., R. 20 E.; T. 4½ N., R. 21 E.; T. 5 N., R. 19 E.).

(4) Knob (T. 5 N., R. 18 E.; T. 5 N., R. 19 E.).

(5) Walnut Canyon (T. 5 N., R. 17 E.; T. 5 N., R. 18 E.).

(6) Gleason Flat (T. 4½ N., R. 16 E.; T. 5 N., R. 16 E.).

(f) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of tribal CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

(g) AFTER-ACQUIRED TRUST LAND.—

(1) REQUIREMENT OF ACT OF CONGRESS.—

(A) LEGAL TITLE.—Subject to subparagraph (B), after the enforceability date, if the Tribe seeks to have legal title to additional land in the State located outside the exterior boundaries of the reservation taken into trust by the United States for the benefit of the Tribe, the Tribe may do so only pursuant to an Act of Congress specifically authorizing the transfer for the benefit of the Tribe.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

(i) the restoration of land to the reservation subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe and the United States over the location of the reservation boundary, unless required by Federal law; or

(ii) off-reservation trust land acquired prior to January 1, 2008.

(2) WATER RIGHTS.—

(A) IN GENERAL.—After-acquired trust land that is located outside the reservation shall not include federally reserved rights to surface water or groundwater.

(B) RESTORED LAND.—Land that is restored to the reservation as the result of the resolution of any reservation boundary dispute between the Tribe and the United States, or any fee simple land within the reservation that is placed into trust, shall have water rights pursuant to section 308(b).

(3) ACCEPTANCE OF LAND IN TRUST STATUS.—

(A) IN GENERAL.—If the Tribe acquires legal fee title to land that is located within the exterior boundaries of the reservation, the Secretary shall accept the land in trust status for the benefit of the Tribe in accordance with applicable Federal law (including regulations) for such real estate acquisitions.

(B) RESERVATION STATUS.—Land held in trust by the Secretary under subparagraph (A), or restored to the reservation as a result of resolution of a boundary dispute between the Tribe and the United States, shall be deemed to be part of the reservation.

(h) CONFORMING AMENDMENT.—Section 3(b)(2) of the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Public Law 110–390; 122 Stat. 4191) is amended by striking “January 1, 2013” and inserting “May 1, 2021”.

SEC. 312. FUNDING.**(a) RURAL WATER SYSTEM.—**

(1) **MANDATORY APPROPRIATIONS.**—Subject to paragraph (2), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out the planning, engineering, design, environmental compliance, and construction of the WMAT rural water system \$126,193,000.

(2) **INCLUSIONS.**—The amount made available under paragraph (1) shall include such sums as are necessary, but not to exceed 4 percent of the construction contract costs, for the Bureau to carry out oversight of activities for planning, design, environmental compliance, and construction of the rural water system.

(b) WMAT SETTLEMENT AND MAINTENANCE FUNDS.—

(1) **DEFINITION OF FUNDS.**—In this subsection, the term “Funds” means—

(A) the WMAT Settlement Fund established by paragraph (2)(A); and

(B) the WMAT Maintenance Fund established by paragraph (3)(A).

(2) WMAT SETTLEMENT FUND.—

(A) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “WMAT Settlement Fund”, to be administered by the Secretary, consisting of the amounts deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) TRANSFERS TO FUND.—

(i) **IN GENERAL.**—There are authorized to be appropriated to the Secretary for deposit in the WMAT Settlement Fund—

(I) \$78,500,000; and

(II) any additional amounts described in clause

(ii), if applicable.

(ii) **AUTHORIZATION OF ADDITIONAL AMOUNTS.**—In accordance with subsection (e)(4)(B), if the WMAT rural water system is conveyed to the Tribe before the date on which the \$35,000,000 described in subsection (e)(2) is completely made available, there is authorized to be appropriated to the Secretary, for deposit in the WMAT Settlement Fund, any remaining amounts that would otherwise have been made available for expenditure from the Cost Overrun Sub-account.

(C) USE OF FUNDS.—

(i) **IN GENERAL.**—The Tribe shall use amounts in the WMAT Settlement Fund for any of the following purposes:

(I) Fish production, including hatcheries.

(II) Rehabilitation of recreational lakes and existing irrigation systems.

(III) Water-related economic development projects.

(IV) Protection, restoration, and economic development of forest and watershed health.

Appropriations
authorization.

(ii) EXISTING IRRIGATION SYSTEMS.—Of the amounts deposited in the Fund under subparagraph (B), not less than \$4,950,000 shall be used for the rehabilitation of existing irrigation systems.

(3) WMAT MAINTENANCE FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “WMAT Maintenance Fund”, to be administered by the Secretary, consisting of the amounts deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) MANDATORY APPROPRIATIONS.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$50,000,000 for deposit in the WMAT Maintenance Fund.

(C) USE OF FUNDS.—The Tribe shall use amounts in the WMAT Maintenance Fund only for the operation, maintenance, and replacement costs associated with the delivery of water through the WMAT rural water system.

(4) ADMINISTRATION.—The Secretary shall manage the Funds in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), including by investing amounts in the Funds in accordance with—

(A) the Act of April 1, 1880 (25 U.S.C. 161); and

(B) the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(5) AVAILABILITY OF AMOUNTS FROM FUNDS.—Amounts in the Funds shall be available for expenditure or withdrawal only after the enforceability date and in accordance with subsection (f).

(6) EXPENDITURE AND WITHDRAWAL.—

(A) TRIBAL MANAGEMENT PLAN.—

(i) IN GENERAL.—The Tribe may withdraw all or part of the amounts in the Funds on approval by the Secretary of a tribal management plan, as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(ii) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), a tribal management plan under this subparagraph shall require the Tribe to use any amounts withdrawn from the Funds in accordance with paragraph (2)(C) or (3)(C), as applicable.

(iii) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of a tribal management plan described in clause (i) to ensure that any amounts withdrawn from the Funds under the tribal management plan are used in accordance with this title and the Agreement.

(iv) LIABILITY.—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(B) EXPENDITURE PLAN.—

(i) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Funds that the Tribe does not withdraw under the tribal management plan.

(ii) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Funds will be used.

(iii) APPROVAL.—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan, if the Secretary determines that the plan is reasonable and consistent with this title and the Agreement.

(iv) ANNUAL REPORT.—For each of the Funds, the Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(C) CERTAIN PER CAPITA DISTRIBUTIONS PROHIBITED.—

No amount in the Funds shall be distributed to any member of the Tribe on a per capita basis.

(c) COST INDEXING.—All amounts made available under subsections (a), (b), and (e) shall be adjusted as necessary to reflect the changes since October 1, 2007, in the construction cost indices applicable to the types of construction involved in the construction of the WMAT rural water supply system, the maintenance of the rural water supply system, and the construction or rehabilitation of the other development projects described in subsection (b)(2)(C).

(d) OPERATION, MAINTENANCE, AND REPLACEMENT.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$2,500,000 for the operation, maintenance, and replacement costs of the WMAT rural water system, to remain available until the conditions described in section 307(f) have been met.

(e) COST OVERRUN SUBACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Lower Colorado River Basin Development Fund a subaccount to be known as the “WMAT Cost Overrun Subaccount”, to be administered by the Secretary, consisting of the amounts deposited in the subaccount under paragraph (2), together with any interest accrued on those amounts, for use by the Secretary in accordance with paragraph (4).

(2) MANDATORY APPROPRIATIONS; AUTHORIZATION OF APPROPRIATIONS.—

(A) MANDATORY APPROPRIATIONS.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$24,000,000 for deposit in the WMAT Cost Overrun Subaccount.

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for deposit in the WMAT Cost Overrun Subaccount \$11,000,000.

(3) AVAILABILITY OF FUNDS.—

(A) IN GENERAL.—Amounts in the WMAT Cost Overrun Subaccount shall not be available for expenditure by the Secretary until the enforceability date.

(B) INVESTMENT.—The Secretary shall invest the amounts in the WMAT Cost Overrun Subaccount in accordance with section 403(f)(4) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(4)).

(C) **USE OF INTEREST.**—The interest accrued on the amounts invested under subparagraph (B) shall not be available for expenditure or withdrawal until the enforceability date.

(4) **USE OF COST OVERRUN SUBACCOUNT.**—

(A) **INITIAL USE.**—The Secretary shall use the amounts in the WMAT Cost Overrun Subaccount to complete the WMAT rural water system or to carry out activities relating to the operation, maintenance, or replacement of facilities of the WMAT rural water system, as applicable, if the Secretary determines that the amounts made available under subsections (a) and (d) will be insufficient in the period before title to the WMAT rural water system is conveyed to the Tribe—

(i) to complete the WMAT rural water system;
or

(ii) to operate and maintain the WMAT rural water system.

(B) **TRANSFER OF FUNDS.**—All unobligated amounts remaining in the Cost Overrun Subaccount on the date on which title to the WMAT rural water system is conveyed to the Tribe shall be—

(i) returned to the general fund of the Treasury;
and

(ii) on an appropriation pursuant to subsection (b)(2)(B)(ii), deposited in the WMAT Settlement Fund and made available to the Tribe for use in accordance with subsection (b)(2)(C).

(f) **CONDITIONS.**—The amounts made available to the Secretary for deposit in the WMAT Maintenance Fund, together with any interest accrued on those amounts under subsection (b)(3) and any interest accruing on the WMAT Settlement Fund under subsection (b)(2), shall not be available for expenditure or withdrawal until the WMAT rural water system is transferred to the Tribe under section 307(d)(2).

(g) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under subsections (a), (b), (d), and (e), without further appropriation, to remain available until expended.

SEC. 313. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under this title (including any such obligation or activity under the Agreement) if adequate appropriations are not provided by Congress expressly to carry out the purposes of this title.

SEC. 314. COMPLIANCE WITH ENVIRONMENTAL LAWS.

In implementing the Agreement and carrying out this title, the Secretary shall promptly comply with all applicable requirements of—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(3) all other applicable Federal environmental laws; and

(4) all regulations promulgated under the laws described in paragraphs (1) through (3).

TITLE IV—CROW TRIBE WATER RIGHTS SETTLEMENT

Crow Tribe
Water Rights
Settlement Act
of 2010.
Montana.
31 USC 1101
note.

SEC. 401. SHORT TITLE.

This title may be cited as the “Crow Tribe Water Rights Settlement Act of 2010”.

SEC. 402. PURPOSES.

The purposes of this title are—

- (1) to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for—
 - (A) the Crow Tribe; and
 - (B) the United States for the benefit of the Tribe and allottees;
- (2) to authorize, ratify, and confirm the Crow Tribe-Montana Water Rights Compact entered into by the Tribe and the State of Montana on June 22, 1999;
- (3) to authorize and direct the Secretary of the Interior—
 - (A) to execute the Crow Tribe-Montana Water Rights Compact; and
 - (B) to take any other action necessary to carry out the Compact in accordance with this title; and
- (4) to ensure the availability of funds necessary for the implementation of the Compact and this title.

SEC. 403. DEFINITIONS.

In this title:

- (1) ALLOTTEE.—The term “allottee” means any individual who holds a beneficial real property interest in an allotment of Indian land that is—
 - (A) located within the Reservation or the ceded strip; and
 - (B) held in trust by the United States.
- (2) CEDED STRIP.—The term “ceded strip” means the area identified as the ceded strip on the map included in appendix 5 of the Compact.
- (3) CIP OM&R.—The term “CIP OM&R” means—
 - (A) any recurring or ongoing activity associated with the day-to-day operation of the Crow Irrigation Project;
 - (B) any activity relating to scheduled or unscheduled maintenance of the Crow Irrigation Project; and
 - (C) any activity relating to replacement of a feature of the Crow Irrigation Project.
- (4) COMPACT.—The term “Compact” means the water rights compact between the Tribe and the State of Montana contained in section 85–20–901 of the Montana Code Annotated (2009) (including any exhibit, part, or amendment to the Compact).
- (5) CROW IRRIGATION PROJECT.—
 - (A) IN GENERAL.—The term “Crow Irrigation Project” means the irrigation project—
 - (i) authorized by section 31 of the Act of March 3, 1891 (26 Stat. 1040);
 - (ii) managed by the Secretary (acting through the Bureau of Indian Affairs); and
 - (iii) consisting of the project units of—
 - (I) Agency;

- (II) Bighorn;
- (III) Forty Mile;
- (IV) Lodge Grass #1;
- (V) Lodge Grass #2;
- (VI) Pryor;
- (VII) Reno;
- (VIII) Soap Creek; and
- (IX) Upper Little Horn.

(B) INCLUSION.—The term “Crow Irrigation Project” includes land held in trust by the United States for the Tribe and the allottees in the Bozeman Trail and Two Leggings irrigation districts.

(6) ENFORCEABILITY DATE.—The term “enforceability date” means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 410(e).

(7) FINAL.—The term “final” with reference to approval of the decree described in section 410(e)(1)(A), means—

(A) completion of any direct appeal to the Montana Supreme Court of a decree by the Montana Water Court pursuant to section 85–2–235 of the Montana Code Annotated (2009), including the expiration of time for filing of any such appeal; or

(B) completion of any appeal to the appropriate United States Court of Appeals, including the expiration of time in which a petition for certiorari may be filed in the United States Supreme Court, denial of such petition, or issuance of a final judgment of the United States Supreme Court, whichever occurs last.

(8) FUND.—The term “Fund” means the Crow Settlement Fund established by section 411.

(9) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(10) JOINT STIPULATION OF SETTLEMENT.—The term “joint stipulation of settlement” means the joint stipulation of settlement relating to the civil action styled Crow Tribe of Indians v. Norton, No. 02–284 (D.D.C. 2006).

(11) MR&I SYSTEM.—

(A) IN GENERAL.—The term “MR&I System” means the municipal, rural, and industrial water system of the Reservation, generally described in the document entitled “Crow Indian Reservation Municipal, Rural and Industrial Water System Engineering Report” prepared by DOWL HKM, and dated July 2008 and updated in a status report prepared by DOWL HKM dated December 2009.

(B) INCLUSIONS.—The term “MR&I System” includes—

(i) the raw water intake, water treatment plant, pipelines, storage tanks, pumping stations, pressure-reducing valves, electrical transmission facilities, and other items (including real property and easements necessary to deliver potable water to the Reservation) appurtenant to the system described in subparagraph (A); and

(ii) in descending order of construction priority—

(I) the Bighorn River Valley Subsystem;

(II) the Little Bighorn River Valley Subsystem;

and

(III) Pryor Extension.

(12) MR&I SYSTEM OM&R.—The term “MR&I System OM&R” means—

(A) any recurring or ongoing activity associated with the day-to-day operation of the MR&I System;

(B) any activity relating to scheduled or unscheduled maintenance of the MR&I System; and

(C) any activity relating to replacement of project features of the MR&I System.

(13) RESERVATION.—The term “Reservation” means the area identified as the Reservation on the map in appendix 4 of the Compact.

(14) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(15) TRIBAL COMPACT ADMINISTRATION.—The term “Tribal Compact Administration” means any activity relating to—

(A) the development or enactment by the Tribe of the tribal water code;

(B) establishment by the Tribe of a water resources department; and

(C) the operation by the Tribe of that water resources department (or a successor agency) during the 10-year period beginning on the date of establishment of the department.

(16) TRIBAL WATER CODE.—The term “tribal water code” means a water code adopted by the Tribe in accordance with section 407(f).

(17) TRIBAL WATER RIGHTS.—The term “tribal water rights” means—

(A) the water rights of the Tribe described in article III of the Compact; and

(B) the water rights provided to the Tribe under section 408.

(18) TRIBE.—The term “Tribe” means the Crow Tribe of Indians of the State of Montana on behalf of itself and its members (but not its members in their capacities as allottees).

SEC. 404. RATIFICATION OF COMPACT.

(a) RATIFICATION OF COMPACT.—

(1) IN GENERAL.—Except as modified by this title, and to the extent the Compact does not conflict with this title, the Compact is authorized, ratified, and confirmed.

(2) AMENDMENTS TO COMPACT.—If amendments are executed to make the Compact consistent with this title, those amendments are also authorized, ratified, and confirmed to the extent such amendments are consistent with this title.

(b) EXECUTION OF COMPACT.—

(1) IN GENERAL.—To the extent that the Compact does not conflict with this title, the Secretary is directed to and shall promptly execute the Compact, including all exhibits to or parts of the Compact requiring the signature of the Secretary.

(2) MODIFICATIONS.—Nothing in this title precludes the Secretary from approving modifications to appendices or exhibits to the Compact not inconsistent with this title, to

the extent such modifications do not otherwise require Congressional approval pursuant to section 2116 of the Revised Statutes (25 U.S.C. 177) or other applicable Federal law.

(c) ENVIRONMENTAL COMPLIANCE.—

(1) IN GENERAL.—In implementing the Compact, the Secretary shall promptly comply with all applicable aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE COMPACT.—

(A) IN GENERAL.—Execution of the Compact by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) COMPLIANCE.—The Secretary shall carry out all Federal compliance activities necessary to implement the Compact.

SEC. 405. REHABILITATION AND IMPROVEMENT OF CROW IRRIGATION PROJECT.

(a) IN GENERAL.—Notwithstanding any other provision of law, and without altering applicable law (including regulations) under which the Bureau of Indian Affairs collects assessments and carries out CIP OM&R, other than the rehabilitation and improvement carried out under this section, the Secretary, acting through the Commissioner of Reclamation, shall carry out such activities as are necessary to rehabilitate and improve the water diversion and delivery features of the Crow Irrigation Project, in accordance with an agreement to be negotiated between the Secretary and the Tribe.

(b) LEAD AGENCY.—The Bureau of Reclamation shall serve as the lead agency with respect to any activity to rehabilitate or improve the water diversion or delivery features of the Crow Irrigation Project.

(c) SCOPE.—

Review.

(1) IN GENERAL.—The scope of the rehabilitation and improvement under this section shall be as generally described in the document entitled “Engineering Evaluation of Existing Conditions, Crow Agency Rehabilitation Study” prepared by DOWL HKM, and dated August 2007 and updated in a status report dated December 2009 by DOWL HKM, on the condition that prior to beginning construction activities, the Secretary shall review the design of the proposed rehabilitation or improvement and perform value engineering analyses.

(2) NEGOTIATION WITH TRIBE.—On the basis of the review described in paragraph (1), the Secretary shall negotiate with the Tribe appropriate changes to the final design so that the final design meets applicable industry standards, as well as changes, if any, that would improve the cost-effectiveness of the delivery of irrigation water and take into consideration the equitable distribution of water to allottees.

(d) NONREIMBURSABILITY OF COSTS.—All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(e) FUNDING.—The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed \$131,843,000, except that the total amount of \$131,843,000 shall be increased

or decreased, as appropriate, based on ordinary fluctuations from May 1, 2008, in construction cost indices applicable to the types of construction involved in the rehabilitation and improvement.

(f) TRIBAL IMPLEMENTATION AGREEMENT.—

(1) IN GENERAL.—At the request of the Tribe, in accordance with applicable Federal law, the Secretary shall enter into 1 or more agreements with the Tribe to implement the provisions of this section by which the Tribe shall plan, design, and construct any or all of the rehabilitation and improvement required by this section.

(2) OVERSIGHT COSTS.—The Bureau of Reclamation and the Tribe shall negotiate the cost of any oversight activities carried out by the Bureau of Reclamation for each agreement under this section, provided that the total cost for that oversight shall not exceed 4 percent of the total project costs.

(g) ACQUISITION OF LAND.—

(1) TRIBAL EASEMENTS AND RIGHTS-OF-WAY.—

(A) IN GENERAL.—Upon request, and in partial consideration for the funding provided under section 414(a), the Tribe shall consent to the grant of such easements and rights-of-way over tribal land as may be necessary for the rehabilitation and improvement of the Crow Irrigation Project authorized by this section at no cost to the United States.

(B) JURISDICTION.—The Tribe shall retain criminal and civil jurisdiction over any lands that were subject to tribal jurisdiction prior to the granting of an easement or right-of-way in connection with the rehabilitation and improvement of the Crow Irrigation Project.

(2) USER EASEMENTS AND RIGHTS-OF-WAY.—In partial consideration of the rehabilitation and improvement of the Crow Irrigation Project authorized by this section and as a condition of continued service from the Crow Irrigation Project after the enforceability date, any water user of the Crow Irrigation Project shall consent to the grant of such easements and rights-of-way as may be necessary for the rehabilitation and improvements authorized under this section at no cost to the Secretary.

(3) LAND ACQUIRED BY THE UNITED STATES.—Land acquired by the United States in connection with rehabilitation and improvement of the Crow Irrigation Project authorized by this section shall be held in trust by the United States on behalf of the Tribe as part of the Reservation of the Tribe.

(h) PROJECT MANAGEMENT COMMITTEE.—The Secretary shall facilitate the formation of a project management committee composed of representatives from the Bureau of Reclamation, the Bureau of Indian Affairs, and the Tribe—

Establishment.

(1) to review cost factors and budgets for construction, operation, and maintenance activities relating to the Crow Irrigation Project;

(2) to improve management of inherently governmental activities through enhanced communication; and

(3) to seek additional ways to reduce overall costs for the rehabilitation and improvement of the Crow Irrigation Project.

SEC. 406. DESIGN AND CONSTRUCTION OF MR&I SYSTEM.

(a) **IN GENERAL.**—The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct the water diversion and delivery features of the MR&I System, in accordance with 1 or more agreements between the Secretary and the Tribe.

(b) **LEAD AGENCY.**—The Bureau of Reclamation shall serve as the lead agency with respect to any activity to design and construct the water diversion and delivery features of the MR&I System.

(c) **SCOPE.**—

Review.

(1) **IN GENERAL.**—The scope of the design and construction under this section shall be as generally described in the document entitled “Crow Indian Reservation Municipal, Rural and Industrial Water System Engineering Report” prepared by DOWL HKM, and dated July 2008 and updated in a status report dated December 2009 by DOWL HKM, on the condition that prior to beginning construction activities, the Secretary shall review the design of the proposed MR&I System and perform value engineering analyses.

(2) **NEGOTIATION WITH TRIBE.**—On the basis of the review described in paragraph (1), the Secretary shall negotiate with the Tribe appropriate changes to the final design so that the final design meets applicable industry standards, as well as changes, if any, that would improve the cost-effectiveness of the delivery of MR&I System water and take into consideration the equitable distribution of water to allottees.

(d) **NONREIMBURSABILITY OF COSTS.**—All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(e) **FUNDING.**—The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed \$246,381,000, except that the total amount of \$246,381,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations from May 1, 2008, in construction cost indices applicable to the types of construction involved in the design and construction of the MR&I System.

(f) **TRIBAL IMPLEMENTATION AGREEMENT.**—

(1) **IN GENERAL.**—At the request of the Tribe, in accordance with applicable Federal law, the Secretary shall enter into 1 or more agreements with the Tribe to implement the provisions of this section by which the Tribe shall plan, design, and construct any or all of the rehabilitation and improvement required by this section.

(2) **OVERSIGHT COSTS.**—The Bureau of Reclamation and the Tribe shall negotiate the cost of any oversight activities carried out by the Bureau of Reclamation for each agreement under this section, provided that the total cost for that oversight shall not exceed 4 percent of the total project costs.

(g) **ACQUISITION OF LAND.**—

(1) **TRIBAL EASEMENTS AND RIGHTS-OF-WAY.**—

(A) **IN GENERAL.**—Upon request, and in partial consideration for the funding provided under section 414(b), the Tribe shall consent to the grant of such easements and rights-of-way over tribal land as may be necessary for the construction of the MR&I System authorized by this section at no cost to the United States.

(B) **JURISDICTION.**—The Tribe shall retain criminal and civil jurisdiction over any lands that were subject to tribal

jurisdiction prior to the granting of an easement or right-of-way in connection with the construction of the MR&I System.

(2) LAND ACQUIRED BY THE UNITED STATES.—Land acquired by the United States in connection with the construction of the MR&I System authorized by this section shall be held in trust by the United States on behalf of the Tribe as part of the Reservation of the Tribe.

(h) CONVEYANCE OF TITLE TO MR&I SYSTEM FACILITIES.—

(1) IN GENERAL.—The Secretary shall convey title to each MR&I System facility or section of a MR&I System facility authorized under subsection (a) to the Tribe after completion of construction of a MR&I System facility or a section of a MR&I System facility that is operating and delivering water.

(2) LIABILITY.—

(A) IN GENERAL.—Effective on the date of the conveyance authorized by this subsection, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land, buildings, or facilities conveyed under this subsection, other than damages caused by acts of negligence committed by the United States, or by employees or agents of the United States, prior to the date of conveyance.

Effective date.

(B) TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

(3) NOTICE OF PROPOSED CONVEYANCE.—Not later than 45 days before the date of a proposed conveyance of title to any MR&I System facility, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate notice of the conveyance of each such MR&I System facility or section of a MR&I System facility.

Deadline.

(4) MR&I SYSTEM OM&R OBLIGATION OF THE FEDERAL GOVERNMENT AFTER CONVEYANCE.—The Federal Government shall have no obligation to pay for the operation, maintenance, or replacement costs of the MR&I System beginning on the date on which—

(A) title to any MR&I System facility or section of a MR&I System facility under this subsection is conveyed to the Tribe; and

(B) the amounts required to be deposited in the MR&I System OM&R Account pursuant to section 411 have been deposited in that account.

(i) AUTHORITY OF TRIBE.—Upon transfer of title to the MR&I System or any section of a MR&I System facility to the Tribe in accordance with subsection (h), the Tribe is authorized to collect water use charges from customers of the MR&I System to cover—

(1) MR&I System OM&R costs; and

(2) any other costs relating to the construction and operation of the MR&I System.

(j) ALIENATION AND TAXATION.—Conveyance of title to the Tribe pursuant to subsection (h) does not waive or alter any applicable Federal law prohibiting alienation or taxation of the MR&I System or the underlying Reservation land.

- (k) **TECHNICAL ASSISTANCE.**—The Secretary shall provide technical assistance to prepare the Tribe for operation of the MR&I System, including operation and management training.
- Establishment. (l) **PROJECT MANAGEMENT COMMITTEE.**—The Secretary shall facilitate the formation of a project management committee composed of representatives from the Bureau of Reclamation, the Bureau of Indian Affairs, and the Tribe—
- (1) to review cost factors and budgets for construction, operation and maintenance activities for the MR&I System;
 - (2) to improve management of inherently governmental activities through enhanced communication; and
 - (3) to seek additional ways to reduce overall costs for the MR&I System.
- (m) **NON-FEDERAL CONTRIBUTION.**—
- Consultation. (1) **IN GENERAL.**—Prior to completion of the final design of the MR&I System required by subsection (c), the Secretary shall consult with the Tribe, the State of Montana, and other affected non-Federal parties to discuss the possibility of receiving non-Federal contributions to the cost of the MR&I System.
- (2) **NEGOTIATIONS.**—If, based on the extent to which non-Federal parties are expected to use the MR&I System, a non-Federal contribution to the MR&I System is determined by the parties described in paragraph (1) to be appropriate, the Secretary shall initiate negotiations for an agreement on the means by which such contributions may be provided.
- SEC. 407. TRIBAL WATER RIGHTS.**
- (a) **INTENT OF CONGRESS.**—It is the intent of Congress to provide to each allottee benefits that are equivalent to or exceed the benefits allottees possess as of the date of enactment of this Act, taking into consideration—
- (1) the potential risks, cost, and time delay associated with litigation that would be resolved by the Compact and this title;
 - (2) the availability of funding under this title and from other sources;
 - (3) the availability of water from the tribal water rights; and
 - (4) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381) and this title to protect the interests of allottees.
- (b) **CONFIRMATION OF TRIBAL WATER RIGHTS.**—
- (1) **IN GENERAL.**—The tribal water rights are ratified, confirmed, and declared to be valid.
 - (2) **USE.**—Use of the tribal water rights shall be subject to the terms and conditions established by the Compact.
- (c) **HOLDING IN TRUST.**—The tribal water rights—
- (1) shall be held in trust by the United States for the use and benefit of the Tribe and the allottees in accordance with this section; and
 - (2) shall not be subject to forfeiture or abandonment.
- (d) **ALLOTTEES.**—
- (1) **APPLICABILITY OF ACT OF FEBRUARY 8, 1887.**—The provisions of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), relating to the use of water for irrigation purposes shall apply to the tribal water rights.

(2) ENTITLEMENT TO WATER.—Any entitlement to water of an allottee under Federal law shall be satisfied from the tribal water rights.

(3) ALLOCATIONS.—Allottees shall be entitled to a just and equitable allocation of water for irrigation purposes.

(4) EXHAUSTION OF REMEDIES.—Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or any other applicable law, an allottee shall exhaust remedies available under the tribal water code or other applicable tribal law.

(5) CLAIMS.—Following exhaustion of remedies available under the tribal water code or other applicable tribal law, an allottee may seek relief under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or other applicable law.

(6) AUTHORITY.—The Secretary shall have the authority to protect the rights of allottees as specified in this section.

(e) AUTHORITY OF TRIBE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Tribe shall have authority to allocate, distribute, and lease the tribal water rights—

(A) in accordance with the Compact; and

(B) subject to approval of the Secretary of the tribal water code under subsection (f)(3)(B).

(2) LEASES BY ALLOTTEES.—Notwithstanding paragraph (1), an allottee may lease any interest in land held by the allottee, together with any water right determined to be appurtenant to the interest in land.

(f) TRIBAL WATER CODE.—

(1) IN GENERAL.—Notwithstanding the time period set forth in article IV(A)(2)(b) of the Compact, not later than 3 years after the date on which the Tribe ratifies the Compact as set forth in section 410(e)(1)(E), the Tribe shall enact a tribal water code, that provides for—

Deadline.

(A) the management, regulation, and governance of all uses of the tribal water rights in accordance with the Compact; and

(B) establishment by the Tribe of conditions, permit requirements, and other limitations relating to the storage, recovery, and use of the tribal water rights in accordance with the Compact.

(2) INCLUSIONS.—Subject to the approval of the Secretary, the tribal water code shall provide that—

(A) tribal allocations of water to allottees shall be satisfied with water from the tribal water rights;

(B) charges for delivery of water for irrigation purposes for allottees shall be assessed on a just and equitable basis;

(C) there is a process by which an allottee may request that the Tribe provide water for irrigation use in accordance with this title;

(D) there is a due process system for the consideration and determination by the Tribe of any request by an allottee, or any successor in interest to an allottee, for an allocation of such water for irrigation purposes on allotted land, including a process for—

(i) appeal and adjudication of any denied or disputed distribution of water; and

(ii) resolution of any contested administrative decision; and

(E) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the tribal water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under tribal law and the tribal water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (d)(6).

(3) ACTION BY SECRETARY.—

(A) IN GENERAL.—The Secretary shall administer the tribal water rights until the tribal water code is enacted in accordance with paragraph (1) and those provisions requiring approval pursuant to paragraph (2).

(B) APPROVAL.—The tribal water code shall not be valid unless—

(i) the provisions of the tribal water code required by paragraph (2) are approved by the Secretary; and

(ii) each amendment to the tribal water code that affects a right of an allottee is approved by the Secretary.

(C) APPROVAL PERIOD.—The Secretary shall approve or disapprove the tribal water code within a reasonable period of time after the date on which the Tribe submits it to the Secretary.

(g) EFFECT.—Except as otherwise specifically provided in this section, nothing in this title—

(1) authorizes any action by an allottee against any individual or entity, or against the Tribe, under Federal, State, tribal, or local law; or

(2) alters or affects the status of any action pursuant to section 1491(a) of title 28, United States Code.

SEC. 408. STORAGE ALLOCATION FROM BIGHORN LAKE.

(a) STORAGE ALLOCATION TO TRIBE.—

(1) IN GENERAL.—As described in and subject to article III(A)(1)(b) of the Compact, the Secretary shall allocate to the Tribe 300,000 acre-feet per year of water stored in Bighorn Lake, Yellowtail Unit, Lower Bighorn Division, Pick Sloan Missouri Basin Program, Montana, under a water right held by the United States and managed by the Bureau of Reclamation, as measured at the outlet works of Yellowtail Dam, including—

(A) not more than 150,000 acre-feet per year of the allocation, which may be used in addition to the natural flow right described in article III(A)(1)(a) of the Compact; and

(B) 150,000 acre-feet per year of the allocation, which may be used only as supplemental water for the natural flow right described in article III(A)(1)(a) of the Compact for use in times of natural flow shortage.

(2) TREATMENT.—

(A) IN GENERAL.—The allocation under paragraph (1) shall be considered to be part of the tribal water rights.

(B) PRIORITY DATE.—The priority date of the allocation under paragraph (1) shall be the priority date of the water right held by the Bureau of Reclamation.

(C) ADMINISTRATION.—

(i) IN GENERAL.—The Tribe shall administer the water allocated under paragraph (1) in accordance with the Compact.

(ii) TEMPORARY TRANSFER.—In accordance with subsection (c), the Tribe may temporarily transfer by service contract, lease, exchange, or other agreement, not more than 50,000 acre-feet of water allocated under paragraph (1)(A) off the Reservation, subject to the approval of the Secretary and the requirements of the Compact.

(b) ALLOCATION AGREEMENT.—

(1) IN GENERAL.—As a condition of receiving an allocation under this section, the Tribe shall enter into an allocation agreement with the Secretary to establish the terms and conditions of the allocation, in accordance with the terms and conditions of the Compact and this title.

(2) INCLUSIONS.—The allocation agreement under paragraph (1) shall include, among other things, a provision that—

(A) the agreement is without limit as to term;

(B) the Tribe, and not the United States, shall be entitled to all consideration due to the Tribe under any lease, contract, or agreement the Tribe may enter into pursuant to the authority in subsection (c);

(C) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Tribe as consideration under any lease, contract, or agreement the Tribe may enter into pursuant to the authority in subsection (c);

or

(ii) the expenditure of such funds;

(D) if the facilities at Yellowtail Dam are significantly reduced or are anticipated to be significantly reduced for an extended period of time, the Tribe shall have the same storage rights as other storage contractors with respect to the allocation under this section;

(E) the costs associated with the construction of the storage facilities at Yellowtail Dam allocable to the Tribe—

(i) shall be nonreimbursable; and

(ii) shall be excluded from any repayment obligation of the Tribe;

(F) no water service capital charges shall be due or payable for any water allocated to the Tribe pursuant to this title and the allocation agreement, regardless of whether that water is delivered for use by the Tribe or is delivered under any leases, contracts, or agreements the Tribe may enter into pursuant to the authority in subsection (c);

(G) the Tribe shall not be required to make payments to the United States for any water allocated to the Tribe pursuant to this title and the allocation agreement except for each acre-foot of stored water leased or sold for industrial purposes; and

(H) for each acre-foot of stored water leased or sold by the Tribe for industrial purposes—

(i) the Tribe shall pay annually to the United States an amount to cover the proportionate share Payment.

of the annual operation, maintenance, and replacement costs for the Yellowtail Unit allocable to the amount of water for industrial purposes leased or sold by the Tribe; and

(ii) the annual payments of the Tribe shall be reviewed and adjusted, as appropriate, to reflect the actual operation, maintenance, and replacement costs for the Yellowtail Unit.

(c) TEMPORARY TRANSFER FOR USE OFF RESERVATION.—

(1) IN GENERAL.—Notwithstanding any other provision of statutory or common law and subject to paragraph (2), on approval of the Secretary and subject to the terms and conditions of the Compact, the Tribe may enter into a service contract, lease, exchange, or other agreement providing for the temporary delivery, use, or transfer of not more than 50,000 acre-feet per year of water allocated under subsection (a)(1)(A) for use off the Reservation.

(2) REQUIREMENT.—An agreement under paragraph (1) shall not permanently alienate any portion of the water allocated under subsection (a)(1)(A).

(d) REMAINING STORAGE.—

(1) IN GENERAL.—As of the date of enactment of this Act, water in Bighorn Lake shall be considered to be fully allocated and no further storage allocations shall be made by the Secretary.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection prevents the Secretary from—

(A) renewing the storage contract with Pennsylvania Power and Light Company consistent with the allocation to Pennsylvania Power and Light Company in existence on the date of enactment of this Act; or

(B) entering into future agreements with either the Northern Cheyenne Tribe or the Crow Tribe facilitating either tribe's use of its respective allocation of water from Bighorn Lake.

SEC. 409. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—

(1) SATISFACTION OF TRIBAL CLAIMS.—The benefits realized by the Tribe under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Tribe against the United States under paragraphs (1) and (3) of section 410(a).

(2) SATISFACTION OF ALLOTTEE CLAIMS.—The benefits realized by the allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of—

(A) all claims waived and released under section 410(a)(2); and

(B) any claims of the allottees against the United States that the allottees have or could have asserted that are similar in nature to those described in section 410(a)(3).

(b) SATISFACTION OF CLAIMS RELATING TO CROW IRRIGATION PROJECT.—

(1) IN GENERAL.—Subject to paragraph (3), the funds made available under subsections (a) and (f) of section 414 shall be used to satisfy any claim of the Tribe or the allottees with respect to the appropriation of funds for the rehabilitation,

Effective date.

expansion, improvement, repair, operation, or maintenance of the Crow Irrigation Project.

(2) **SATISFACTION OF CLAIMS.**—Upon complete transfer of the funds described in subsections (a) and (f) of section 414 any claim of the Tribe or the allottees with respect to the transfer of funds for the rehabilitation, expansion, improvement, repair, operation, or maintenance of the Crow Irrigation Project shall be deemed to have been satisfied.

(3) **EFFECT.**—Except as provided in section 405, nothing in this title affects any applicable law (including regulations) under which the United States collects irrigation assessments from—

(A) non-Indian users of the Crow Irrigation Project; and

(B) the Tribe, tribal entities and instrumentalities, tribal members, allottees, and entities owned by the Tribe, tribal members, or allottees, to the extent that annual irrigation assessments on such tribal water users exceed the amount of funds available under section 411(e)(3)(D) for costs relating to CIP OM&R.

(c) **NO RECOGNITION OF WATER RIGHTS.**—Notwithstanding subsection (a) and except as provided in section 407, nothing in this title recognizes or establishes any right of a member of the Tribe or an allottee to water within the Reservation or the ceded strip.

SEC. 410. WAIVERS AND RELEASES OF CLAIMS.

(a) **IN GENERAL.**—

(1) **WAIVER AND RELEASE OF CLAIMS BY THE TRIBE AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE TRIBE.**—Subject to the retention of rights set forth in subsection (c), in return for recognition of the tribal water rights and other benefits as set forth in the Compact and this title, the Tribe, on behalf of itself and the members of the Tribe (but not tribal members in their capacities as allottees), and the United States, acting as trustee for the Tribe and the members of the Tribe (but not tribal members in their capacities as allottees), are authorized and directed to execute a waiver and release of all claims for water rights within the State of Montana that the Tribe, or the United States acting as trustee for the Tribe, asserted, or could have asserted, in any proceeding, including the State of Montana stream adjudication, prior to and including the enforceability date, except to the extent that such rights are recognized in the Compact or this title.

(2) **WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR ALLOTTEES.**—Subject to the retention of rights set forth in subsection (c), in return for recognition of the water rights of the Tribe and other benefits as set forth in the Compact and this title, the United States, acting as trustee for allottees, is authorized and directed to execute a waiver and release of all claims for water rights within the Reservation and the ceded strip that the United States, acting as trustee for the allottees, asserted, or could have asserted, in any proceeding, including the State of Montana stream adjudication, prior to and including the enforceability date, except to the extent that such rights are recognized in the Compact or this title.

(3) WAIVER AND RELEASE OF CLAIMS BY THE TRIBE AGAINST THE UNITED STATES.—Subject to the retention of rights set forth in subsection (c), the Tribe, on behalf of itself and the members of the Tribe (but not Tribal members in their capacities as allottees), is authorized to execute a waiver and release of—

(A) all claims against the United States, including the agencies and employees of the United States, relating to claims for water rights within the State of Montana that the United States, acting as trustee for the Tribe, asserted, or could have asserted, in any proceeding, including the State of Montana stream adjudication, except to the extent that such rights are recognized as tribal water rights in this title, including all claims relating in any manner to the claims reserved against the United States or agencies or employees of the United States in section 4(e) of the joint stipulation of settlement;

(B) all claims against the United States, including the agencies and employees of the United States, relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) within the State of Montana that first accrued at any time prior to and including the enforceability date, including all claims relating to the failure to establish or provide a municipal rural or industrial water delivery system on the Reservation and all claims relating to the failure to provide for, operate, or maintain the Crow Irrigation Project, or any other irrigation system or irrigation project on the Reservation;

(C) all claims against the United States, including the agencies and employees of the United States, relating to the pending litigation of claims relating to the water rights of the Tribe in the State of Montana;

(D) all claims against the United States, including the agencies and employees of the United States, relating to the negotiation, execution, or the adoption of the Compact (including exhibits) or this title;

(E) subject to the retention of rights set forth in subsection (c), all claims for monetary damages against the United States that first accrued at any time prior to and including the enforceability date with respect to—

(i) the failure to recognize or enforce the claim of the Tribe of title to land created by the movement of the Bighorn River; and

(ii) the failure to make productive use of that land created by the movement of the Bighorn River to which the Tribe has claimed title;

(F) all claims against the United States that first accrued at any time prior to and including the enforceability date arising from the taking or acquisition of the land of the Tribe or resources for the construction of the Yellowtail Dam;

(G) all claims against the United States that first accrued at any time prior to and including the enforceability date relating to the construction and operation of Yellowtail Dam and the management of Bighorn Lake; and

(H) all claims that first accrued at any time prior to and including the enforceability date relating to the generation, or the lack thereof, of power from Yellowtail Dam.

(b) EFFECTIVENESS OF WAIVERS AND RELEASES.—The waivers under subsection (a) shall take effect on the enforceability date.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this title, the Tribe on behalf of itself and the members of the Tribe and the United States, acting as trustee for the Tribe and allottees, retain—

(1) all claims for enforcement of the Compact, any final decree, or this title;

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all claims relating to activities affecting the quality of water, including any claims the Tribe may have under—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including for damages to natural resources;

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(D) any regulations implementing the Acts described in subparagraphs (A) through (C);

(4) all claims relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including hunting, fishing, gathering, or cultural rights);

(5) all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this title or article VII(E) of the Compact;

(6) all claims against any person or entity other than the United States, including claims for monetary damages, with respect to—

(A) the claim of the Tribe of title to land created by the movement of the Bighorn River; and

(B) the productive use of that land created by the movement of the Bighorn River to which the Tribe has claimed title; and

(7) all claims that first accrued after the enforceability date with respect to claims otherwise waived in accordance with subparagraphs (B) and (E) through (H) of subsection (a)(3).

(d) EFFECT OF COMPACT AND TITLE.—Nothing in the Compact or this title—

(1) affects the ability of the United States, acting as sovereign, to take actions authorized by law, including any laws relating to health, safety, or the environment, including—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(D) any regulations implementing the Acts described in subparagraphs (A) through (C);

(2) affects the ability of the United States to take actions acting as trustee for any other Indian tribe or allottee of any other Indian tribe;

(3) confers jurisdiction on any State court—

(A) to interpret Federal law regarding health, safety, or the environment;

(B) to determine the duties of the United States or other parties pursuant to Federal law regarding health, safety, or the environment; or

(C) to conduct judicial review of Federal agency action;

(4) waives any claim of a member of the Tribe in an individual capacity that does not derive from a right of the Tribe; or

(5) revives any claims waived by the Tribe in the joint stipulation of settlement.

(e) ENFORCEABILITY DATE.—

(1) IN GENERAL.—The enforceability date shall be the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A)(i) the Montana Water Court has issued a final judgment and decree approving the Compact; or

(ii) if the Montana Water Court is found to lack jurisdiction, the district court of jurisdiction has approved the Compact as a consent decree and such approval is final;

(B) all of the funds made available under subsections (c) through (f) of section 414 have been deposited in the Fund;

(C) the Secretary has executed the agreements with the Tribe required by sections 405(a) and 406(a);

(D) the State of Montana has appropriated and paid into an interest-bearing escrow account any payments due as of the date of enactment of this Act to the Tribe under the Compact;

(E)(i) the Tribe has ratified the Compact by submitting this title and the Compact to a vote by the tribal membership for approval or disapproval; and

(ii) the tribal membership has voted to approve this title and the Compact by a majority of votes cast on the day of the vote, as certified by the Secretary and the Tribe;

(F) the Secretary has fulfilled the requirements of section 408(a); and

(G) the waivers and releases authorized and set forth in subsection (a) have been executed by the Tribe and the Secretary.

(f) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the date on which

Federal Register,
publication.

Time period.

the amounts made available to carry out this title are transferred to the Secretary.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(g) EXPIRATION AND TOLLING.—In the event that all appropriations authorized by this Act have not been made available to the Secretary by June 30, 2030—

(1) the waivers authorized in this section shall expire and be of no further force or effect; and

(2) all statutes of limitations applicable to any claim otherwise waived shall be tolled until June 30, 2030.

(h) VOIDING OF WAIVERS.—If the waivers pursuant to this section are void under subsection (g)—

(1) the United States' approval of the Compact under section 404 shall no longer be effective;

(2) any unexpended Federal funds appropriated or made available to carry out the activities authorized in this Act, together with any interest earned on those funds, and any water rights or contracts to use water and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized in this Act shall be returned to the Federal Government, unless otherwise agreed to by the Tribe and the United States and approved by Congress; and

(3) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (2), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized in this Act that were expended or withdrawn, together with any interest accrued, against any claims against the United States relating to water rights in the State of Montana asserted by the Tribe or in any future settlement of the water rights of the Crow Tribe.

SEC. 411. CROW SETTLEMENT FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as “the Crow Settlement Fund”, to be administered by the Secretary for the purpose of carrying out this title.

(b) TRANSFERS TO FUND.—The Fund shall consist of such amounts as are deposited in the Fund under subsections (c) through (h) of section 414.

(c) ACCOUNTS OF CROW SETTLEMENT FUND.—The Secretary shall establish in the Fund the following accounts:

(1) The Tribal Compact Administration account, consisting of amounts made available pursuant to section 414(c).

(2) The Energy Development Projects account, consisting of amounts made available pursuant to section 414(d).

(3) The MR&I System OM&R Account, consisting of amounts made available pursuant to section 414(e).

(4) The CIP OM&R Account, consisting of amounts made available pursuant to section 414(f).

(d) DEPOSITS TO CROW SETTLEMENT FUND.—

(1) IN GENERAL.—The Secretary of the Treasury shall promptly deposit in the Fund any amounts appropriated for that purpose.

(2) PRIORITY OF DEPOSITS TO ACCOUNTS.—Of the amounts appropriated for deposit in the Fund, the Secretary of the Treasury shall deposit amounts in the accounts listed in subsection (c)—

(A) in full; and

(B) in the order listed in subsection (c).

(e) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Fund, make investments from the Fund, and make amounts available from the Fund for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) INVESTMENT OF CROW SETTLEMENT FUND.—Beginning on the enforceability date, the Secretary shall invest amounts in the Fund in accordance with—

(A) the Act of April 1, 1880 (25 U.S.C. 161);

(B) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

(C) the obligations of Federal corporations and Federal Government-sponsored entities, the charter documents of which provide that the obligations of the entities are lawful investments for federally managed funds, including—

(i) the obligations of the United States Postal Service described in section 2005 of title 39, United States Code;

(ii) bonds and other obligations of the Tennessee Valley Authority described in section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4);

(iii) mortgages, obligations, and other securities of the Federal Home Loan Mortgage Corporation described in section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452); and

(iv) bonds, notes, and debentures of the Commodity Credit Corporation described in section 4 of the Act of March 8, 1938 (15 U.S.C. 713a–4).

(3) DISTRIBUTIONS FROM CROW SETTLEMENT FUND.—

(A) IN GENERAL.—Amounts from the Fund shall be used for each purpose described in subparagraphs (B) through (E).

(B) TRIBAL COMPACT ADMINISTRATION ACCOUNT.—The Tribal Compact Administration account shall be used for expenditures by the Tribe for Tribal Compact Administration.

(C) ENERGY DEVELOPMENT PROJECTS ACCOUNT.—The Energy Development Projects account shall be used for expenditures by the Tribe for the following types of energy development on the Reservation, the ceded strip, and land owned by the Tribe:

(i) Development and marketing of power generation on the Yellowtail Afterbay Dam authorized in section 412(b).

(ii) Development of clean coal conversion projects.

Effective date.

(iii) Renewable energy projects other than the project described in clause (i).

(D) CIP OM&R ACCOUNT.—

(i) IN GENERAL.—Amounts in the CIP OM&R Account shall be used for CIP OM&R costs.

(ii) REDUCTION OF COSTS TO TRIBAL WATER USERS.—

(I) IN GENERAL.—Subject to subclause (II), the funds described in clause (i) shall be used to reduce the CIP OM&R costs to all tribal water users on a proportional basis for a given year.

(II) LIMITATION ON USE OF FUNDS.—Funds in the CIP OM&R Account shall be used to pay irrigation assessments only for the Tribe, tribal entities and instrumentalities, tribal members, allottees, and entities owned by the Tribe, tribal members, or allottees.

(E) MR&I SYSTEM OM&R ACCOUNT.—Funds from the MR&I System OM&R Account shall be used to assist the Tribe in paying MR&I System OM&R costs.

(4) WITHDRAWALS BY TRIBE.—

(A) IN GENERAL.—The Tribe may withdraw any portion of amounts in the Fund on approval by the Secretary of a tribal management plan in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(B) REQUIREMENTS.—

(i) IN GENERAL.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan of the Tribe under subparagraph (A) shall require that the Tribe spend any amounts withdrawn from the Fund in accordance with this title.

(ii) ENFORCEMENT.—The Secretary may carry out such judicial or administrative actions as the Secretary determines to be necessary to enforce a tribal management plan to ensure that amounts withdrawn by the Tribe from the Fund under this paragraph are used in accordance with this title.

(C) LIABILITY.—The Secretary and the Secretary of the Treasury shall not be liable for the expenditure or investment of amounts withdrawn from the Fund by the Tribe under this paragraph.

(D) EXPENDITURE PLAN.—

(i) IN GENERAL.—For each fiscal year, the Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts described in subparagraph (A) that the Tribe elects not to withdraw under this paragraph during the fiscal year.

(ii) INCLUSION.—An expenditure plan under clause (i) shall include a description of the manner in which, and the purposes for which, amounts of the Tribe remaining in the Fund will be used during subsequent fiscal years.

(iii) APPROVAL.—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan if the Secretary determines that the plan is—

(I) reasonable; and

(II) consistent with this title.

(5) ANNUAL REPORTS.—The Tribe shall submit to the Secretary annual reports describing each expenditure by the Tribe of amounts in the Fund during the preceding calendar year.

(6) CERTAIN PER CAPITA DISTRIBUTIONS PROHIBITED.—No amount in the Fund shall be distributed to any member of the Tribe on a per capita basis.

(f) AVAILABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amounts in the Fund shall be available for use by the Secretary and withdrawal by the Tribe beginning on the enforceability date.

(2) EXCEPTION.—The amounts made available under section 414(c) shall be available for use by the Secretary and withdrawal by the Tribe beginning on the date on which the Tribe ratifies the Compact as provided in section 410(e)(1)(E).

(g) STATE CONTRIBUTION.—The State of Montana contribution to the Fund shall be provided in accordance with article VI(A) of the Compact.

(h) SEPARATE APPROPRIATIONS ACCOUNT.—Section 1105(a) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (35) and (36) as paragraphs (36) and (37), respectively;

(2) by redesignating the second paragraph (33) (relating to obligational authority and outlays requested for homeland security) as paragraph (35); and

(3) by adding at the end the following:

“(38) a separate statement for the Crow Settlement Fund established under section 411 of the Crow Tribe Water Rights Settlement Act of 2010, which shall include the estimated amount of deposits into the Fund, obligations, and outlays from the Fund.”.

SEC. 412. YELLOWTAIL DAM, MONTANA.

(a) STREAMFLOW AND LAKE LEVEL MANAGEMENT PLAN.—

(1) IN GENERAL.—Nothing in this title, the Compact, or the Streamflow and Lake Level Management Plan referred to in article III(A)(7) of the Compact—

(A) limits the discretion of the Secretary under the section 4F of that plan; or

(B) requires the Secretary to give priority to any factor described in section 4F of that plan over any other factor described in that section.

(2) BIGHORN LAKE MANAGEMENT.—Bighorn Lake water management, including the Streamflow and Lake Level Management Plan, is a Federal activity, and the review and enforcement of any water management decisions relating to Bighorn Lake shall be as provided by Federal law.

(3) APPLICABILITY OF PARAGRAPHS (1) AND (2).—The Streamflow and Lake Level Management Plan referred to in and part of the Compact shall be interpreted to clearly reflect paragraphs (1) and (2).

(4) APPLICABILITY OF INSTREAM FLOW REQUIREMENTS IN PLAN.—Notwithstanding any term (including any defined term) or provision in the Streamflow and Lake Level Management Plan, for purposes of this title, the Compact, and the Streamflow

and Lake Level Management Plan, any requirement in the Streamflow and Lake Level Management Plan that the Tribe dedicate a specified percentage, portion, or number of acre-feet of water per year of the tribal water rights to instream flow means (and is limited in meaning and effect to) an obligation on the part of the Tribe to withhold from development or otherwise refrain from diverting or removing from the Big-horn River the specified quantity of water for the duration, at the locations, and under the conditions set forth in the applicable requirement.

(b) POWER GENERATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Tribe shall have the exclusive right to develop and market power generation on the Yellowtail Afterbay Dam, provided that this exclusive right shall expire 15 years after the date of enactment of this Act if construction has not been substantially completed on the power generation project of the Tribe.

Expiration date.

(2) BUREAU OF RECLAMATION COOPERATION.—The Bureau of Reclamation shall cooperate with the Tribe on the development of any power generation project under this subsection.

(3) AGREEMENT.—Before construction of a power generation project under this subsection, the Tribe shall enter into an agreement with the Bureau of Reclamation that contains provisions that—

(A) allocate the responsibilities for the design, construction, and operations of the project;

(B) assure the compatibility of the power generation project with the operations of the Yellowtail Unit and the Yellowtail Afterbay Dam, which shall include entering into agreements—

(i) regarding operating criteria and emergency procedures, as they relate to dam safety; and

(ii) under which, should the Tribe propose any modifications to facilities owned by the Bureau of Reclamation, the proposed modifications shall be subject to review and approval by the Secretary, acting through the Bureau of Reclamation;

(C) beginning 10 years after the date on which the Tribe begins marketing power generated from the Yellowtail Afterbay Dam, the Tribe shall make annual payments for operation, maintenance, and replacement costs in amounts determined in accordance with the guidelines and methods of the Bureau of Reclamation for assessing operation, maintenance, and replacement charges, provided that such annual payments shall not exceed 3 percent of gross annual revenue produced by the sale of electricity generated by such project; and

Effective date.
Payments.

(D) the Secretary—

(i) shall review the charges established in the agreement on the date that is 5 years after the date on which the Tribe makes the first payment described in subparagraph (C) to the Secretary under the agreement and at 5 year intervals thereafter; and

Review.
Deadlines.

(ii) may increase or decrease the charges in proportion to the amount of any increase or decrease in the costs of operation, maintenance, and replacement

for the Yellowtail Afterbay Dam, provided that any increase in operation, maintenance, and replacement costs assessed to the Tribe may not exceed—

(I) 5 percent in any 5 year period; and

(II) 3 percent of the gross annual revenue produced by the sale of electricity generated by such project.

(4) **USE OF POWER BY TRIBE.**—Any hydroelectric power generated in accordance with this subsection shall be used or marketed by the Tribe.

(5) **REVENUES.**—The Tribe shall retain any revenues from the sale of hydroelectric power generated by a project under this subsection.

(6) **LIABILITY OF UNITED STATES.**—The United States shall have no trust obligation to monitor, administer, or account for—

(A) the revenues received by the Tribe under this subsection; or

(B) the expenditure of the revenues received by the Tribe under this subsection.

Deadline.

(c) **CONSULTATION WITH TRIBE.**—The Bureau of Reclamation shall consult with the Tribe on at least a quarterly basis on all issues relating to the management of Yellowtail Dam by the Bureau of Reclamation.

Applicability.

(d) **AMENDMENTS TO COMPACT AND PLAN.**—The provisions of subsection (a) apply to any amendment to—

(1) the Compact; or

(2) the Streamflow and Lake Level Management Plan.

SEC. 413. MISCELLANEOUS PROVISIONS.

(a) **WAIVER OF SOVEREIGN IMMUNITY BY THE UNITED STATES.**—Except as provided in subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666), nothing in this title waives the sovereign immunity of the United States.

(b) **OTHER TRIBES NOT ADVERSELY AFFECTED.**—Nothing in this title quantifies or diminishes any land or water right, or any claim or entitlement to land or water, of an Indian tribe, band, or community other than the Tribe.

(c) **LIMITATION ON CLAIMS FOR REIMBURSEMENT.**—With respect to Indian land within the Reservation or the ceded strip—

(1) the United States shall not submit against any Indian-owned land located within the Reservation or the ceded strip any claim for reimbursement of the cost to the United States of carrying out this title and the Compact; and

(2) no assessment of any Indian-owned land located within the Reservation or the ceded strip shall be made regarding that cost.

(d) **LIMITATION ON LIABILITY OF UNITED STATES.**—

(1) **IN GENERAL.**—The United States has no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any funds provided to the Tribe by any party to the Compact other than the United States; or

(B) to review or approve any expenditure of those funds.

(2) INDEMNIFICATION.—The Tribe shall indemnify the United States, and hold the United States harmless, with respect to all claims (including claims for takings or breach of trust) arising from the receipt or expenditure of amounts described in paragraph (1)(A).

(e) EFFECT ON CURRENT LAW.—Nothing in this section affects any provision of law (including regulations) in effect on the day before the date of enactment of this Act with respect to preenforcement review of any Federal environmental enforcement action.

(f) LIMITATIONS ON EFFECT.—

(1) IN GENERAL.—Nothing in this title, the Compact, or the Streamflow and Lake Level Management Plan referred to in article III(A)(7) of the Compact—

(A) limits, expands, alters, or otherwise affects—

(i) the meaning, interpretation, implementation, application, or effect of any article, provision, or term of the Yellowstone River Compact;

(ii) any right, requirement, or obligation under the Yellowstone River Compact;

(iii) any allocation (or manner of determining any allocation) of water under the Yellowstone River Compact; or

(iv) any present or future claim, defense, or other position asserted in any legal, administrative, or other proceeding arising under or relating to the Yellowstone River Compact (including the original proceeding between the State of Montana and the State of Wyoming pending as of the date of enactment of this Act before the United States Supreme Court);

(B) makes an allocation or apportionment of water between or among States;

(C) addresses or implies whether, how, or to what extent (if any)—

(i) the tribal water rights, or any portion of the tribal water rights, should be accounted for as part of or otherwise charged against any allocation of water made to a State under the provisions of the Yellowstone River Compact; or

(ii) the Yellowstone River Compact includes the tribal water rights or the water right of any Indian tribe as part of any allocation or other disposition of water under that compact; or

(D) waives the sovereign immunity from suit of any State under the Eleventh Amendment to the Constitution of the United States, except as expressly authorized in Article IV(F)(8) of the Compact.

(2) EFFECT OF CERTAIN PROVISIONS IN COMPACT.—The provisions in paragraphs (1) and (2) of article III (A)(6)(a), paragraphs (1) and (2) of article III(B)(6)(a), paragraphs (1) and (2) of article III(E)(6)(a), and paragraphs (1) and (2) of article III (F)(6)(a) of the Compact that provide protections to certain water rights recognized under the laws of the State of Montana do not affect in any way, either directly or indirectly, existing or future water rights (including the exercise of any such rights) outside of the State of Montana.

(g) EFFECT ON RECLAMATION LAW.—The activities carried out by the Bureau of Reclamation under this title shall not establish a precedent or impact the authority provided under any other provision of Federal reclamation law, including—

(1) the Rural Supply Act of 2006 (Public Law 109–451; 120 Stat. 3345); and

(2) the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 991).

SEC. 414. FUNDING.

(a) REHABILITATION AND IMPROVEMENT OF CROW IRRIGATION PROJECT.—

(1) MANDATORY APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$73,843,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the rehabilitation and improvement of the Crow Irrigation Project, for the rehabilitation and improvement of the Crow Irrigation Project.

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amount made available under paragraph (1), there is authorized to be appropriated to the Secretary for the rehabilitation and improvement of the Crow Irrigation Project \$58,000,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the rehabilitation and improvement of the Crow Irrigation Project.

(b) DESIGN AND CONSTRUCTION OF MR&I SYSTEM.—

(1) MANDATORY APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$146,000,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the design and construction of the MR&I System, for the design and construction of the MR&I System.

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amount made available under paragraph (1), there is authorized to be appropriated to the Secretary for the design and construction of the MR&I System \$100,381,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the design and construction of the MR&I System.

(c) TRIBAL COMPACT ADMINISTRATION.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$4,776,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for Tribal Compact Administration.

(d) ENERGY DEVELOPMENT PROJECTS.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$20,000,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for Energy Development Projects as set forth in section 411(e)(3)(C).

(e) MR&I SYSTEM OM&R.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall

transfer to the Secretary \$47,000,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for MR&I System OM&R.

(f) CIP OM&R.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$10,000,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for CIP OM&R.

(g) USE.—In addition to the uses authorized under subsections (a) and (b), such amounts as may be necessary of the amounts made available under those subsections may be used to carry out related activities necessary to comply with Federal environmental and cultural resource laws.

(h) ACCOUNT TRANSFERS.—

(1) IN GENERAL.—The Secretary may transfer from the amounts made available under subsection (a) such amounts as the Secretary, with the concurrence of the Tribe, determines to be necessary to supplement the amounts made available under subsection (b), on a determination of the Secretary, in consultation with the Tribe, that such a transfer is in the best interest of the Tribe.

(2) OTHER APPROVED TRANSFERS.—The Secretary may transfer from the amounts made available under subsection (b) such amounts as the Secretary, with the concurrence of the Tribe, determines to be necessary to supplement the amounts made available under subsection (a), on a determination of the Secretary, in consultation with the Tribe, that such a transfer is in the best interest of the Tribe.

(i) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under subsections (a) through (f), without further appropriation.

SEC. 415. REPEAL ON FAILURE TO MEET ENFORCEABILITY DATE.

If the Secretary does not publish a statement of findings under section 410(e) not later than March 31, 2016, or the extended date agreed to by the Tribe and the Secretary, after reasonable notice to the State of Montana, as applicable—

(1) this title is repealed effective April 1, 2016, or the day after the extended date agreed to by the Tribe and the Secretary after reasonable notice to the State of Montana, whichever is later;

(2) any action taken by the Secretary and any contract or agreement pursuant to the authority provided under any provision of this title shall be void;

(3) any amounts made available under section 414, together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

(4) any amounts made available under section 414 that remain unexpended shall immediately revert to the general fund of the Treasury; and

(5) the United States shall be entitled to set off against any claims asserted by the Tribe against the United States relating to water rights—

(A) any funds expended or withdrawn from the amounts made available pursuant to this title; and

31 USC 1105 and
note.
Deadline.
Notification.

Effective date.

(B) any funds made available to carry out the activities authorized in this title from other authorized sources.

SEC. 416. ANTIDEFICIENCY.

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this title (including any such obligation or activity under the Settlement Agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111–11 or the “Emergency Fund for Indian Safety and Health” established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

Taos Pueblo
Indian Water
Rights
Settlement Act.

TITLE V—TAOS PUEBLO INDIAN WATER RIGHTS

SEC. 501. SHORT TITLE.

This title may be cited as the “Taos Pueblo Indian Water Rights Settlement Act”.

SEC. 502. PURPOSES.

The purposes of this title are—

(1) to approve, ratify, and confirm the Taos Pueblo Indian Water Rights Settlement Agreement;

(2) to authorize and direct the Secretary to execute the Settlement Agreement and to perform all obligations of the Secretary under the Settlement Agreement and this title; and

(3) to authorize all actions and appropriations necessary for the United States to meet its obligations under the Settlement Agreement and this title.

SEC. 503. DEFINITIONS.

In this title:

(1) **ELIGIBLE NON-PUEBLO ENTITIES.**—The term “Eligible Non-Pueblo Entities” means the Town of Taos, the El Prado Water and Sanitation District, and the New Mexico Department of Finance and Administration Local Government Division on behalf of the Acequia Madre del Rio Lucero y del Arroyo Seco, the Acequia Madre del Prado, the Acequia del Monte, the Acequia Madre del Rio Chiquito, the Upper Ranchitos Mutual Domestic Water Consumers Association, the Upper Arroyo Hondo Mutual Domestic Water Consumers Association, and the Llano Quemado Mutual Domestic Water Consumers Association.

(2) **ENFORCEMENT DATE.**—The term “Enforcement Date” means the date upon which the Secretary publishes the notice required by section 509(f)(1).

(3) **MUTUAL-BENEFIT PROJECTS.**—The term “Mutual-Benefit Projects” means the projects described and identified in articles 6 and 10.1 of the Settlement Agreement.

(4) **PARTIAL FINAL DECREE.**—The term “Partial Final Decree” means the Decree entered in *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S. D.N.M.) (consolidated), for the resolution

of the Pueblo's water right claims and which is substantially in the form agreed to by the Parties and attached to the Settlement Agreement as Attachment 5.

(5) PARTIES.—The term “Parties” means the Parties to the Settlement Agreement, as identified in article 1 of the Settlement Agreement.

(6) PUEBLO.—The term “Pueblo” means the Taos Pueblo, a sovereign Indian tribe duly recognized by the United States of America.

(7) PUEBLO LANDS.—The term “Pueblo lands” means those lands located within the Taos Valley to which the Pueblo, or the United States in its capacity as trustee for the Pueblo, holds title subject to Federal law limitations on alienation. Such lands include Tracts A, B, and C, the Pueblo's land grant, the Blue Lake Wilderness Area, and the Tenorio and Karavas Tracts and are generally depicted in Attachment 2 to the Settlement Agreement.

(8) SAN JUAN-CHAMA PROJECT.—The term “San Juan-Chama Project” means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96 and 97), and the Act of April 11, 1956 (70 Stat. 105).

(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(10) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means the contract dated March 31, 2006, between and among—

- (A) the United States, acting solely in its capacity as trustee for Taos Pueblo;
- (B) the Taos Pueblo, on its own behalf;
- (C) the State of New Mexico;
- (D) the Taos Valley Acequia Association and its 55 member ditches;
- (E) the Town of Taos;
- (F) the El Prado Water and Sanitation District; and
- (G) the 12 Taos area Mutual Domestic Water Consumers Associations, as amended to conform with this title.

(11) STATE ENGINEER.—The term “State Engineer” means the New Mexico State Engineer.

(12) TAOS VALLEY.—The term “Taos Valley” means the geographic area depicted in Attachment 4 of the Settlement Agreement.

SEC. 504. PUEBLO RIGHTS.

(a) IN GENERAL.—Those rights to which the Pueblo is entitled under the Partial Final Decree shall be held in trust by the United States on behalf of the Pueblo and shall not be subject to forfeiture, abandonment, or permanent alienation.

(b) SUBSEQUENT ACT OF CONGRESS.—The Pueblo shall not be denied all or any part of its rights held in trust absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted.

SEC. 505. TAOS PUEBLO WATER DEVELOPMENT FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “Taos Pueblo Water Development Fund” (referred to in this section as the “Fund”) to be used to pay or reimburse costs incurred by the Pueblo for—

- (1) acquiring water rights;

(2) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure, on-farm improvements, or wastewater infrastructure;

(3) restoring, preserving and protecting the Buffalo Pasture, including planning, permitting, designing, engineering, constructing, operating, managing and replacing the Buffalo Pasture Recharge Project;

(4) administering the Pueblo's water rights acquisition program and water management and administration system; and

(5) watershed protection and enhancement, support of agriculture, water-related Pueblo community welfare and economic development, and costs related to the negotiation, authorization, and implementation of the Settlement Agreement.

(b) **MANAGEMENT OF FUND.**—The Secretary shall manage the Fund, invest amounts in the Fund, and make monies available from the Fund for distribution to the Pueblo consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (hereinafter, “Trust Fund Reform Act”), this title, and the Settlement Agreement.

(c) **INVESTMENT OF FUND.**—Upon the Enforcement Date, the Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) **AVAILABILITY OF AMOUNTS FROM FUND.**—Upon the Enforcement Date, all monies deposited in the Fund pursuant to section 509(c)(1) or made available from other authorized sources shall be available to the Pueblo for expenditure or withdrawal after the requirements of subsection (e) have been met.

(e) **EXPENDITURES AND WITHDRAWAL.**—

(1) **TRIBAL MANAGEMENT PLAN.**—

(A) **IN GENERAL.**—The Pueblo may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) **REQUIREMENTS.**—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Pueblo spend any funds in accordance with the purposes described in subsection (a).

(2) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the requirement that monies withdrawn from the Fund are used for the purposes specified in subsection (a).

(3) **LIABILITY.**—If the Pueblo exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Pueblo shall submit to the Secretary for approval an expenditure plan for any portions of the funds made available under this title that the Pueblo does not withdraw under paragraph (1)(A).

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this title.

(5) ANNUAL REPORT.—The Pueblo shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) AMOUNTS AVAILABLE ON APPROPRIATION.—Notwithstanding subsection (d), \$15,000,000 of the monies deposited in the Fund—

(1) shall be available upon appropriation or availability of the funds from other authorized sources for the Pueblo's acquisition of water rights pursuant to Article 5.1.1.2.3 of the Settlement Agreement, the Buffalo Pasture Recharge Project, implementation of the Pueblo's water rights acquisition program and water management and administration system, the design, planning, engineering, permitting or construction of water or wastewater infrastructure eligible for funding under subsection (a), or costs related to the negotiation, authorization, and implementation of the Settlement Agreement, provided that such funds may be expended prior to the Enforcement Date only for activities which are determined by the Secretary to be more cost effective when implemented as early as possible; and

(2) shall be distributed by the Secretary to the Pueblo on receipt by the Secretary from the Pueblo of a written notice and a Tribal Council resolution that describes the purposes under paragraph (1) for which the monies will be used after a cost-effectiveness determination by the Secretary has been made as described in paragraph (1). The Secretary shall make the determination described in paragraph (1) within a reasonable period of time after receipt of the notice and resolution.

Notice.

Determination.

(g) NO PER CAPITA DISTRIBUTIONS.—No portion of the Fund shall be distributed on a per capita basis to members of the Pueblo.

SEC. 506. MARKETING.

(a) PUEBLO WATER RIGHTS.—Subject to the approval of the Secretary in accordance with subsection (e), the Pueblo may market water rights secured to it under the Settlement Agreement and Partial Final Decree, provided that such marketing is in accordance with this section.

(b) PUEBLO CONTRACT RIGHTS TO SAN JUAN-CHAMA PROJECT WATER.—Subject to the approval of the Secretary in accordance with subsection (e), the Pueblo may subcontract water made available to the Pueblo under the contract authorized under section 508(b)(1)(A) to third parties to supply water for use within or without the Taos Valley, provided that the delivery obligations under such subcontract are not inconsistent with the Secretary's existing San Juan-Chama Project obligations and such subcontract is in accordance with this section.

(c) LIMITATION.—

(1) IN GENERAL.—Diversion or use of water off Pueblo lands pursuant to Pueblo water rights or Pueblo contract rights to San Juan-Chama Project water shall be subject to and not inconsistent with the same requirements and conditions of State

law, any applicable Federal law, and any applicable interstate compact as apply to the exercise of water rights or contract rights to San Juan-Chama Project water held by non-Federal, non-Indian entities, including all applicable State Engineer permitting and reporting requirements.

(2) EFFECT ON WATER RIGHTS.—Such diversion or use off Pueblo lands under paragraph (1) shall not impair water rights or increase surface water depletions within the Taos Valley.

(d) MAXIMUM TERM.—

(1) IN GENERAL.—The maximum term of any water use lease or subcontract, including all renewals, shall not exceed 99 years in duration.

(2) ALIENATION OF RIGHTS.—The Pueblo shall not permanently alienate any rights it has under the Settlement Agreement, the Partial Final Decree, and this title.

(e) APPROVAL OF SECRETARY.—The Secretary shall approve or disapprove any lease or subcontract submitted by the Pueblo for approval within a reasonable period of time after submission, provided that no Secretarial approval shall be required for any water use lease for less than 10 acre-feet per year with a term of less than 7 years, including all renewals.

(f) NO FORFEITURE OR ABANDONMENT.—The nonuse by a lessee or subcontractor of the Pueblo of any right to which the Pueblo is entitled under the Partial Final Decree shall in no event result in a forfeiture, abandonment, relinquishment, or other loss of all or any part of those rights.

(g) NO PREEMPTION.—

(1) IN GENERAL.—The approval authority of the Secretary provided under subsection (e) shall not amend, construe, supersede, or preempt any State or Federal law, interstate compact, or international treaty that pertains to the Colorado River, the Rio Grande, or any of their tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quantity of those waters.

(2) APPLICABLE LAW.—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water made available under the Settlement Agreement.

(h) NO PREJUDICE.—Nothing in this title shall be construed to establish, address, prejudice, or prevent any party from litigating whether or to what extent any applicable State law, Federal law, or interstate compact does or does not permit, govern, or apply to the use of the Pueblo's water outside of New Mexico.

SEC. 507. MUTUAL-BENEFIT PROJECTS.

(a) IN GENERAL.—Upon the Enforcement Date, the Secretary, acting through the Commissioner of Reclamation, shall provide financial assistance in the form of grants on a nonreimbursable basis to Eligible Non-Pueblo Entities to plan, permit, design, engineer, and construct the Mutual-Benefit Projects in accordance with the Settlement Agreement—

(1) to minimize adverse impacts on the Pueblo's water resources by moving future non-Indian ground water pumping away from the Pueblo's Buffalo Pasture; and

(2) to implement the resolution of a dispute over the allocation of certain surface water flows between the Pueblo and non-Indian irrigation water right owners in the community of Arroyo Seco Arriba.

(b) COST-SHARING.—

(1) FEDERAL SHARE.—The Federal share of the total cost of planning, designing, and constructing the Mutual-Benefit Projects authorized in subsection (a) shall be 75 percent and shall be nonreimbursable.

(2) NON-FEDERAL SHARE.—The non-Federal share of the total cost of planning, designing, and constructing the Mutual-Benefit Projects shall be 25 percent and may be in the form of in-kind contributions, including the contribution of any valuable asset or service that the Secretary determines would substantially contribute to completing the Mutual-Benefit Projects.

(3) ADDITIONAL STATE CONTRIBUTION.—As a condition of expenditure by the Secretary of the funds made available under section 509(c)(2), the State shall—

(A) appropriate and make available the non-Federal share described in paragraph (2); and

(B) agree to provide additional funding associated with the Mutual-Benefit Projects as described in paragraph 10 of the Settlement Agreement.

SEC. 508. SAN JUAN-CHAMA PROJECT CONTRACTS.

(a) IN GENERAL.—Contracts issued under this section shall be in accordance with this title and the Settlement Agreement.

(b) CONTRACTS FOR SAN JUAN-CHAMA PROJECT WATER.—

(1) IN GENERAL.—The Secretary shall enter into 3 repayment contracts within a reasonable period after the date of enactment of this Act, for the delivery of San Juan-Chama Project water in the following amounts:

(A) 2,215 acre-feet/annum to the Pueblo.

(B) 366 acre-feet/annum to the Town of Taos.

(C) 40 acre-feet/annum to the El Prado Water and Sanitation District.

(2) REQUIREMENTS.—Each such contract shall provide that if the conditions precedent set forth in section 509(f)(2) have not been fulfilled by March 31, 2017, the contract shall expire on that date.

(3) APPLICABLE LAW.—Public Law 87–483 (76 Stat. 97) applies to the contracts entered into under paragraph (1) and no preference shall be applied as a result of section 504(a) with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.

(c) WAIVER.—With respect to the contract authorized and required by subsection (b)(1)(A) and notwithstanding the provisions of Public Law 87–483 (76 Stat. 96) or any other provision of law—

(1) the Secretary shall waive the entirety of the Pueblo's share of the construction costs, both principal and the interest, for the San Juan-Chama Project and pursuant to that waiver, the Pueblo's share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest shall be nonreimbursable; and

(2) the Secretary's waiver of the Pueblo's share of the construction costs for the San Juan-Chama Project will not result in an increase in the pro rata shares of other San Juan-Chama Project water contractors, but such costs shall

Deadline.
Expiration date.

be absorbed by the United States Treasury or otherwise appropriated to the Department of the Interior.

SEC. 509. AUTHORIZATIONS, RATIFICATIONS, CONFIRMATIONS, AND CONDITIONS PRECEDENT.

(a) RATIFICATION.—

(1) **IN GENERAL.**—Except to the extent that any provision of the Settlement Agreement conflicts with any provision of this title, the Settlement Agreement is authorized, ratified, and confirmed.

(2) **AMENDMENTS.**—To the extent amendments are executed to make the Settlement Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) **EXECUTION OF SETTLEMENT AGREEMENT.**—To the extent that the Settlement Agreement does not conflict with this title, the Secretary shall execute the Settlement Agreement, including all exhibits to the Settlement Agreement requiring the signature of the Secretary and any amendments necessary to make the Settlement Agreement consistent with this title, after the Pueblo has executed the Settlement Agreement and any such amendments.

(c) FUNDING.—

(1) TAOS PUEBLO WATER DEVELOPMENT FUND.—

(A) **MANDATORY APPROPRIATION.**—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary for deposit in the Taos Pueblo Water Development Fund established by section 505(a), for the period of fiscal years 2011 through 2016, \$50,000,000, as adjusted by such amounts as may be required due to increases since April 1, 2007, in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

(B) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to the amount made available under subparagraph (A), there is authorized to be appropriated to the Secretary for deposit in the Taos Pueblo Water Development Fund established by section 505(a) \$38,000,000, as adjusted by such amounts as may be required due to increases since April 1, 2007, in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved, for the period of fiscal years 2011 through 2016.

(2) MUTUAL-BENEFIT PROJECTS FUNDING.—

(A) FUNDING.—

(i) **MANDATORY APPROPRIATION.**—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to provide grants pursuant to section 507 \$16,000,000 for the period of fiscal years 2011 through 2016.

(ii) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to the amount made available under clause (i), there is authorized to be appropriated to the Secretary to provide grants pursuant to section 507 \$20,000,000 for the period of fiscal years 2011 through 2016.

(B) **DEPOSIT IN FUND.**—The Secretary shall deposit the funds made available pursuant to subparagraph (A) into a noninterest-bearing fund, to be known as the “Taos

Settlement Fund”, to be established in the Treasury of the United States so that such funds may be made available on the Enforcement Date as set forth in section 507(a).

(3) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraphs (1)(A) and (2)(A)(i), without further appropriation, to remain available until expended.

(d) AUTHORITY OF SECRETARY.—The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Agreement and this title.

Contracts.

(e) ENVIRONMENTAL COMPLIANCE.—

(1) EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.—The Secretary’s execution of the Settlement Agreement shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In carrying out this title, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(f) CONDITIONS PRECEDENT AND SECRETARIAL FINDING.—

(1) IN GENERAL.—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register a statement of finding that the conditions have been fulfilled.

Federal Register,
publication.

(2) CONDITIONS.—The conditions precedent referred to in paragraph (1) are the following:

(A) The President has signed into law the Taos Pueblo Indian Water Rights Settlement Act.

(B) To the extent that the Settlement Agreement conflicts with this title, the Settlement Agreement has been revised to conform with this title.

(C) The Settlement Agreement, so revised, including waivers and releases pursuant to section 510, has been executed by the Parties and the Secretary prior to the Parties’ motion for entry of the Partial Final Decree.

(D) Congress has fully appropriated or the Secretary has provided from other authorized sources all funds made available under paragraphs (1) and (2) of subsection (c).

(E) The Legislature of the State of New Mexico has fully appropriated the funds for the State contributions as specified in the Settlement Agreement, and those funds have been deposited in appropriate accounts.

New Mexico.

(F) The State of New Mexico has enacted legislation that amends NMSA 1978, section 72-6-3 to state that a water use due under a water right secured to the Pueblo under the Settlement Agreement or the Partial Final Decree may be leased for a term, including all renewals, not to exceed 99 years, provided that this condition shall not be construed to require that said amendment state that any State law based water rights acquired by the

Pueblo or by the United States on behalf of the Pueblo may be leased for said term.

(G) A Partial Final Decree that sets forth the water rights and contract rights to water to which the Pueblo is entitled under the Settlement Agreement and this title and that substantially conforms to the Settlement Agreement and Attachment 5 thereto has been approved by the Court and has become final and nonappealable.

Publication.
Notice.

(g) **ENFORCEMENT DATE.**—The Settlement Agreement shall become enforceable, and the waivers and releases executed pursuant to section 510 and the limited waiver of sovereign immunity set forth in section 511(a) shall become effective, as of the date that the Secretary publishes the notice required by subsection (f)(1).

(h) **EXPIRATION DATE.**—

(1) **IN GENERAL.**—If all of the conditions precedent described in section (f)(2) have not been fulfilled by March 31, 2017, the Settlement Agreement shall be null and void, the waivers and releases executed pursuant to section 510 and the sovereign immunity waivers in section 511(a) shall not become effective, and any unexpended Federal funds, together with any income earned thereon, and title to any property acquired or constructed with expended Federal funds, shall be returned to the Federal Government, unless otherwise agreed to by the Parties in writing and approved by Congress.

(2) **EXCEPTION.**—Notwithstanding subsection (h)(1) or any other provision of law, except as provided in subsection (i), title to any property acquired or constructed with expended Federal funds made available under section 505(f) shall be retained by the Pueblo.

(i) **RIGHT TO SET-OFF.**—If the conditions precedent described in subsection (f)(2) have not been fulfilled by March 31, 2017, and the Settlement Agreement is null and void under subsection (h)(1)—

(1) the United States shall be entitled to set off any Federal funds made available under section 505(f) that were used for purposes other than the purchase of water rights against any claim of the Pueblo against the United States described in section 510(b) (but excluding any claim retained under section 510(c)); and

(2) the Pueblo shall have the option either—

(A) to accept an equitable credit for any water rights acquired with funds made available under section 505(f) against any water rights secured for the Pueblo by the Pueblo, or by the United States on behalf of the Pueblo, in any litigation or future settlement of the case styled *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S. D.N.M.) (consolidated); or

(B) to convey to the United States any water rights acquired with funds made available under section 505(f).

(j) **EXTENSION.**—The dates in subsections (h) and (i) and section 510(e) may be extended if the Parties agree that an extension is reasonably necessary.

SEC. 510. WAIVERS AND RELEASES OF CLAIMS.

(a) **CLAIMS BY THE PUEBLO AND THE UNITED STATES.**—In return for recognition of the Pueblo's water rights and other benefits,

including but not limited to the commitments by non-Pueblo parties, as set forth in the Settlement Agreement and this title, the Pueblo, on behalf of itself and its members, and the United States acting in its capacity as trustee for the Pueblo are authorized to execute a waiver and release of claims against the parties to *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated) from—

(1) all claims for water rights in the Taos Valley that the Pueblo, or the United States acting in its capacity as trustee for the Pueblo, asserted, or could have asserted, in any proceeding, including but not limited to in *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated), up to and including the Enforcement Date, except to the extent that such rights are recognized in the Settlement Agreement or this title;

(2) all claims for water rights, whether for consumptive or nonconsumptive use, in the Rio Grande mainstream or its tributaries that the Pueblo, or the United States acting in its capacity as trustee for the Pueblo, asserted or could assert in any water rights adjudication proceedings except those claims based on Pueblo or United States ownership of lands or water rights acquired after the Enforcement Date, provided that nothing in this paragraph shall prevent the Pueblo or the United States from fully participating in the inter se phase of any such water rights adjudication proceedings;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including but not limited to claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking) in the Rio Grande mainstream or its tributaries or for lands within the Taos Valley that accrued at any time up to and including the Enforcement Date; and

(4) all claims against the State of New Mexico, its agencies, or employees relating to the negotiation or the adoption of the Settlement Agreement.

(b) CLAIMS BY THE PUEBLO AGAINST THE UNITED STATES.—The Pueblo, on behalf of itself and its members, is authorized to execute a waiver and release of—

(1) all claims against the United States, its agencies, or employees relating to claims for water rights in or water of the Taos Valley that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including but not limited to in *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated);

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including but not limited to damages, losses or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion or taking of water or water rights, or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) in the Rio Grande mainstream or its tributaries or within the Taos

Valley that first accrued at any time up to and including the Enforcement Date;

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by the Act of March 4, 1929 (45 Stat. 1562), the Act of March 4, 1931 (46 Stat. 1552), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of this Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblo's water rights in *New Mexico v. Abeyta and New Mexico v. Arellano*, Civil Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S. D.N.M.) (consolidated); and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Final Decree, or this title.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this title, the Pueblo on behalf of itself and its members and the United States acting in its capacity as trustee for the Pueblo retain—

(1) all claims for enforcement of the Settlement Agreement, the Final Decree, including the Partial Final Decree, the San Juan-Chama Project contract between the Pueblo and the United States, or this title;

(2) all claims against persons other than the Parties to the Settlement Agreement for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water rights (including but not limited to claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) within the Taos Valley arising out of activities occurring outside the Taos Valley or the Taos Valley Stream System;

(3) all rights to use and protect water rights acquired after the date of enactment of this Act;

(4) all rights to use and protect water rights acquired pursuant to State law, to the extent not inconsistent with the Partial Final Decree and the Settlement Agreement (including water rights for the land the Pueblo owns in Questa, New Mexico);

(5) all claims relating to activities affecting the quality of water including but not limited to any claims the Pueblo might have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (including but not limited to claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations implementing those Acts;

(6) all claims relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including but not limited to hunting, fishing, gathering, or cultural rights); and

(7) all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to this title and the Settlement Agreement.

(d) EFFECT.—Nothing in the Settlement Agreement or this title—

(1) affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including but not limited to any laws relating to health, safety, or the environment, including but not limited to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), and the regulations implementing such Acts;

(2) affects the ability of the United States to take actions acting in its capacity as trustee for any other Indian tribe or allottee;

(3) confers jurisdiction on any State court to—

(A) interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; or

(B) conduct judicial review of Federal agency action;

or

(4) waives any claim of a member of the Pueblo in an individual capacity that does not derive from a right of the Pueblo.

(e) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the earlier of—

(A) March 31, 2017; or

(B) the Enforcement Date.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(3) LIMITATION.—Nothing in this subsection precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

Time period.

SEC. 511. INTERPRETATION AND ENFORCEMENT.

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—Upon and after the Enforcement Date, if any Party to the Settlement Agreement brings an action in any court of competent jurisdiction over the subject matter relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, and names the United States or the Pueblo as a party, then the United States, the Pueblo, or both may be added as a party to any such action, and any claim by the United States or the Pueblo to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement, and no waiver of sovereign immunity is made for any action against the United States or the Pueblo that seeks money damages.

(b) SUBJECT MATTER JURISDICTION NOT AFFECTED.—Nothing in this title shall be deemed as conferring, restricting, enlarging, or determining the subject matter jurisdiction of any court,

including the jurisdiction of the court that enters the Partial Final Decree adjudicating the Pueblo's water rights.

(c) REGULATORY AUTHORITY NOT AFFECTED.—Nothing in this title shall be deemed to determine or limit any authority of the State or the Pueblo to regulate or administer waters or water rights now or in the future.

SEC. 512. DISCLAIMER.

Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of any other Indian tribe.

SEC. 513. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under this title (including any such obligation or activity under the Agreement) if adequate appropriations are not provided expressly to carry out the purposes of this title by Congress or there are not enough monies available to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111–11 or the “Emergency Fund for Indian Safety and Health” established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

Aamodt
Litigation
Settlement Act.

TITLE VI—AAMODT LITIGATION SETTLEMENT

SEC. 601. SHORT TITLE.

This title may be cited as the “Aamodt Litigation Settlement Act”.

SEC. 602. DEFINITIONS.

In this title:

(1) AAMODT CASE.—The term “Aamodt Case” means the civil action entitled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.).

(2) ACRE-FEET.—The term “acre-feet” means acre-feet of water per year.

(3) AUTHORITY.—The term “Authority” means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement or an alternate entity acceptable to the Pueblos and the County to operate and maintain the diversion and treatment facilities, certain transmission pipelines, and other facilities of the Regional Water System.

(4) CITY.—The term “City” means the city of Santa Fe, New Mexico.

(5) COST-SHARING AND SYSTEM INTEGRATION AGREEMENT.—The term “Cost-Sharing and System Integration Agreement” means the agreement, dated August 27, 2009, to be executed by the United States, the State, the Pueblos, the County, and the City that—

(A) describes the location, capacity, and management (including the distribution of water to customers) of the Regional Water System; and

(B) allocates the costs of the Regional Water System with respect to—

(i) the construction, operation, maintenance, and repair of the Regional Water System;

(ii) rights-of-way for the Regional Water System; and

(iii) the acquisition of water rights.

(6) COUNTY.—The term “County” means Santa Fe County, New Mexico.

(7) COUNTY DISTRIBUTION SYSTEM.—The term “County Distribution System” means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.

(8) COUNTY WATER UTILITY.—The term “County Water Utility” means the water utility organized by the County to—

(A) receive water distributed by the Authority; and

(B) provide the water received under subparagraph

(A) to customers on non-Pueblo land in the Pojoaque Basin.

(9) ENGINEERING REPORT.—The term “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” dated September 2008 and any amendments thereto, including any modifications which may be required by section 611(d)(2).

(10) FUND.—The term “Fund” means the Aamodt Settlement Pueblos’ Fund established by section 615(a).

(11) OPERATING AGREEMENT.—The term “Operating Agreement” means the agreement between the Pueblos and the County executed under section 612(a).

(12) OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—The term “operations, maintenance, and replacement costs” means all costs for the operation of the Regional Water System that are necessary for the safe, efficient, and continued functioning of the Regional Water System to produce the benefits described in the Settlement Agreement.

(B) EXCLUSION.—The term “operations, maintenance, and replacement costs” does not include construction costs or costs related to construction design and planning.

(13) POJOAQUE BASIN.—

(A) IN GENERAL.—The term “Pojoaque Basin” means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to—

(i) the Rio Pojoaque; or

(ii) the 2 unnamed arroyos immediately south; and

(iii) 2 arroyos (including the Arroyo Alamo) that are north of the confluence of the Rio Pojoaque and the Rio Grande.

(B) INCLUSION.—The term “Pojoaque Basin” includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87-231 (75 Stat. 505).

(14) PUEBLO.—The term “Pueblo” means each of the pueblos of Nambe, Pojoaque, San Ildefonso, or Tesuque.

(15) PUEBLOS.—The term “Pueblos” means collectively the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

(16) PUEBLO LAND.—The term “Pueblo land” means any real property that is—

(A) held by the United States in trust for a Pueblo within the Pojoaque Basin;

(B)(i) owned by a Pueblo within the Pojoaque Basin before the date on which a court approves the Settlement Agreement; or

(ii) acquired by a Pueblo on or after the date on which a court approves the Settlement Agreement, if the real property is located—

(I) within the exterior boundaries of the Pueblo, as recognized and conformed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

(II) within the exterior boundaries of any territory set aside for the Pueblo by law, executive order, or court decree;

(C) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the Pojoaque Basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

(D) within the exterior boundaries of any real property located outside the Pojoaque Basin set aside for a Pueblo by law, executive order, or court decree, if the land is within or contiguous to land held by the United States in trust for the Pueblo as of January 1, 2005.

(17) PUEBLO WATER FACILITY.—

(A) IN GENERAL.—The term “Pueblo Water Facility” means—

(i) a portion of the Regional Water System that serves only water customers on Pueblo land; and

(ii) portions of a Pueblo water system in existence on the date of enactment of this Act that serve water customers on non-Pueblo land, also in existence on the date of enactment of this Act, or their successors, that are—

(I) depicted in the final project design, as modified by the drawings reflecting the completed Regional Water System; and

(II) described in the Operating Agreement.

(B) INCLUSIONS.—The term “Pueblo Water Facility” includes—

(i) the barrier dam and infiltration project on the Rio Pojoaque described in the Engineering Report; and

(ii) the Tesuque Pueblo infiltration pond described in the Engineering Report.

(18) REGIONAL WATER SYSTEM.—

(A) IN GENERAL.—The term “Regional Water System” means the Regional Water System described in section 611(a).

(B) EXCLUSIONS.—The term “Regional Water System” does not include the County or Pueblo water supply delivered through the Regional Water System.

(19) SAN JUAN-CHAMA PROJECT.—The term “San Juan-Chama Project” means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97), and the Act of April 11, 1956 (70 Stat. 105).

(20) SAN JUAN-CHAMA PROJECT ACT.—The term “San Juan-Chama Project Act” means sections 8 through 18 of the Act of June 13, 1962 (76 Stat. 96, 97).

(21) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(22) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means the agreement among the State, the Pueblos, the United States, the County, and the City dated January 19, 2006, and signed by all of the government parties to the Settlement Agreement (other than the United States) on May 3, 2006, as amended in conformity with this title.

(23) STATE.—The term “State” means the State of New Mexico.

Subtitle A—Pojoaque Basin Regional Water System

SEC. 611. AUTHORIZATION OF REGIONAL WATER SYSTEM.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct a regional water system in accordance with the Settlement Agreement, to be known as the “Regional Water System”—

(1) to divert and distribute water to the Pueblos and to the County Water Utility, in accordance with the Engineering Report; and

(2) that consists of—

(A) surface water diversion facilities at San Ildefonso Pueblo on the Rio Grande; and

(B) any treatment, transmission, storage and distribution facilities and wellfields for the County Distribution System and Pueblo Water Facilities that are necessary to supply 4,000 acre-feet of water within the Pojoaque Basin, unless modified in accordance with subsection (d)(2).

(b) FINAL PROJECT DESIGN.—The Secretary shall issue a final project design within 90 days of completion of the environmental compliance described in section 616 for the Regional Water System that—

(1) is consistent with the Engineering Report; and

(2) includes a description of any Pueblo Water Facilities.

(c) ACQUISITION OF LAND; WATER RIGHTS.—

(1) ACQUISITION OF LAND.—Upon request, and in exchange for the funding which shall be provided in section 617(c), the Pueblos shall consent to the grant of such easements and rights-of-way as may be necessary for the construction of the Regional Water System at no cost to the Secretary. To the extent that the State or County own easements or rights-of-way that may be used for construction of the Regional Water System, the State or County shall provide that land or interest in land as necessary for construction at no cost to the Secretary.

Deadline.

The Secretary shall acquire any other land or interest in land that is necessary for the construction of the Regional Water System.

(2) WATER RIGHTS.—The Secretary shall not condemn water rights for purposes of the Regional Water System.

(d) CONDITIONS FOR CONSTRUCTION.—

(1) IN GENERAL.—The Secretary shall not begin construction of the Regional Water System facilities until the date on which—

(A) the Secretary executes—

(i) the Settlement Agreement; and

(ii) the Cost-Sharing and System Integration Agreement; and

(B) the State and the County have entered into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction in accordance with the Cost-Sharing and System Integration Agreement.

(2) MODIFICATIONS TO REGIONAL WATER SYSTEM.—

(A) IN GENERAL.—The State and the County, in agreement with the Pueblos, the City, and other signatories to the Cost-Sharing and System Integration Agreement, may modify the extent, size, and capacity of the County Distribution System as set forth in the Cost-Sharing and System Integration Agreement.

(B) EFFECT.—A modification under subparagraph (A)—

(i) shall not affect implementation of the Settlement Agreement so long as the provisions in section 623 are satisfied; and

(ii) may result in an adjustment of the State and County cost-share allocation as set forth in the Cost-Sharing and System Integration Agreement.

(e) APPLICABLE LAW.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to the design and construction of the Regional Water System.

(f) CONSTRUCTION COSTS.—

(1) PUEBLO WATER FACILITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the expenditures of the Secretary to construct the Pueblo Water Facilities under this section shall not exceed \$106,400,000.

(B) EXCEPTION.—The amount described in subparagraph (A) shall be increased or decreased, as appropriate, based on ordinary fluctuations in construction costs since October 1, 2006, as determined using applicable engineering cost indices.

(2) COSTS TO PUEBLO.—The costs incurred by the Secretary in carrying out activities to construct the Pueblo Water Facilities under this section shall not be reimbursable to the United States.

(3) COUNTY DISTRIBUTION SYSTEM.—As a condition of the Secretary using the funds made available pursuant to section 617(a)(1), the costs of constructing the County Distribution System shall be a State and local expense pursuant to the Cost-Sharing and System Integration Agreement.

(g) INITIATION OF DISCUSSIONS.—

(1) IN GENERAL.—If the Secretary determines that the cost of constructing the Regional Water System exceed the amounts

described in the Cost-Sharing and System Integration Agreement for construction of the Regional Water System and would necessitate funds in excess of the amount made available pursuant to section 617(a)(1), the Secretary shall initiate negotiations with the parties to the Cost-Sharing and System Integration Agreement for an agreement regarding non-Federal contributions to ensure that the Regional Water System can be completed as required by section 623(e).

(2) JOINT RESPONSIBILITIES.—The United States shall not bear the entire amount of any cost overrun, nor shall the State be responsible to pay any amounts in addition to the amounts specified in the Cost-Sharing and System Integration Agreement.

(h) CONVEYANCE OF REGIONAL WATER SYSTEM FACILITIES.—

(1) IN GENERAL.—Subject to paragraph (2), on completion of the construction of the Regional Water System as defined in section 623(e), the Secretary, in accordance with the Operating Agreement, shall convey to—

(A) each Pueblo the portion of any Pueblo Water Facility that is located within the boundaries of the Pueblo, including any land or interest in land located within the boundaries of the Pueblo that is acquired by the United States for the construction of the Pueblo Water Facility;

(B) the County the County Distribution System, including any land or interest in land acquired by the United States for the construction of the County Distribution System; and

(C) the Authority any portions of the Regional Water System that remain after making the conveyances under subparagraphs (A) and (B), including any land or interest in land acquired by the United States for the construction of the portions of the Regional Water System.

(2) CONDITIONS FOR CONVEYANCE.—The Secretary shall not convey any portion of the Regional Water System facilities under paragraph (1) until the date on which—

(A) construction of the Regional Water System is substantially complete, as defined in section 623(e); and

(B) the Operating Agreement is executed in accordance with section 612.

(3) SUBSEQUENT CONVEYANCE.—On conveyance by the Secretary under paragraph (1), the Pueblos, the County, and the Authority shall not reconvey any portion of the Regional Water System conveyed to the Pueblos, the County, and the Authority, respectively, unless the reconveyance is authorized by an Act of Congress enacted after the date of enactment of this Act.

(4) INTEREST OF THE UNITED STATES.—On conveyance of a portion of the Regional Water System under paragraph (1), the United States shall have no further right, title, or interest in and to the portion of the Regional Water System conveyed.

(5) ADDITIONAL CONSTRUCTION.—On conveyance of a portion of the Regional Water System under paragraph (1), the Pueblos, County, or the Authority, as applicable, may, at the expense of the Pueblos, County, or the Authority, construct any additional infrastructure that is necessary to fully use the water delivered by the Regional Water System.

(6) TAXATION.—Conveyance of title to any portion of the Regional Water System, the Pueblo Water Facilities, or the

County Distribution System under paragraph (1) does not waive or alter any applicable Federal law prohibiting taxation of such facilities or the underlying land.

(7) **LIABILITY.**—

(A) **IN GENERAL.**—Effective on the date of conveyance of any land or facility under this section, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land and facilities conveyed, other than damages caused by acts of negligence by the United States, or by employees or agents of the United States, prior to the date of conveyance.

(B) **TORT CLAIMS.**—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

(8) **EFFECT.**—Nothing in any transfer of ownership provided or any conveyance thereto as provided in this section shall extinguish the right of any Pueblo, the County, or the Regional Water Authority to the continuous use and benefit of each easement or right of way for the use, operation, maintenance, repair, and replacement of Pueblo Water Facilities, the County Distribution System or the Regional Water System or for wastewater purposes as provided in the Cost-Sharing and System Integration Agreement.

SEC. 612. OPERATING AGREEMENT.

Deadline.

(a) **IN GENERAL.**—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) **APPROVAL.**—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) **CONTENTS.**—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

(d) **EFFECT.**—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

SEC. 613. ACQUISITION OF PUEBLO WATER SUPPLY FOR REGIONAL WATER SYSTEM.

(a) **IN GENERAL.**—For the purpose of providing a reliable firm supply of water from the Regional Water System for the Pueblos in accordance with the Settlement Agreement, the Secretary, on behalf of the Pueblos, shall—

(1) acquire water rights to—

(A) 302 acre-feet of Nambe reserved water described in section 2.6.2 of the Settlement Agreement; and

(B) 1141 acre-feet from water acquired by the County for water rights commonly referred to as “Top of the World” rights in the Aamodt Case;

(2) enter into a contract with the Pueblos for 1,079 acre-feet in accordance with section 11 of the San Juan-Chama Project Act; and

(3) by application to the State Engineer, seek approval to divert the water acquired and made available under paragraphs (1) and (2) at the points of diversion for the Regional Water System, consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement.

(b) **FORFEITURE.**—The nonuse of the water supply secured by the Secretary for the Pueblos under subsection (a) shall in no event result in forfeiture, abandonment, relinquishment, or other loss thereof.

(c) **TRUST.**—The Pueblo water rights secured under subsection (a) shall be held by the United States in trust for the Pueblos.

(d) **APPLICABLE LAW.**—The water supply made available pursuant to subsection (a)(2) shall be subject to the San Juan-Chama Project Act, and no preference shall be provided to the Pueblos as a result of subsection (c) with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.

(e) **CONTRACT FOR SAN JUAN-CHAMA PROJECT WATER SUPPLY.**—With respect to the contract for the water supply required by subsection (a)(2), such San Juan-Chama Project contract shall be pursuant to the following terms:

(1) **WAIVERS.**—Notwithstanding the provisions of the San Juan-Chama Project Act, or any other provision of law—

(A) the Secretary shall waive the entirety of the Pueblos’ share of the construction costs for the San Juan-Chama Project, and pursuant to that waiver, the Pueblos’ share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest, due from 1972 to the execution of the contract required by subsection (a)(2), shall be nonreimbursable;

(B) the Secretary’s waiver of each Pueblo’s share of the construction costs for the San Juan-Chama Project will not result in an increase in the pro rata shares of other San Juan-Chama Project water contractors, but such costs shall be absorbed by the United States Treasury or otherwise appropriated to the Department of the Interior; and

Contracts.

(C) the construction costs associated with any water made available from the San Juan-Chama Project which were determined nonreimbursable and nonreturnable pursuant to Public Law No. 88-293, 78 Stat. 171 (March 26, 1964), shall remain nonreimbursable and nonreturnable.

(2) **TERMINATION.**—The contract shall provide that it shall terminate only on—

(A) failure of the United States District Court for the District of New Mexico to enter a final decree for the Aamodt Case by the expiration date described in section 623(b), or within the time period of any extension of that deadline granted by the court; or

(B) entry of an order by the United States District Court for the District of New Mexico voiding the final decree and Settlement Agreement for the Aamodt Case pursuant to section 10.3 of the Settlement Agreement.

(f) **LIMITATION.**—The Secretary shall use the water supply secured under subsection (a) only for the purposes described in the Settlement Agreement.

(g) **FULFILLMENT OF WATER SUPPLY ACQUISITION OBLIGATIONS.**—Compliance with subsections (a) through (f) shall satisfy any and all obligations of the Secretary to acquire or secure a water supply for the Pueblos pursuant to the Settlement Agreement.

(h) **RIGHTS OF PUEBLOS IN SETTLEMENT AGREEMENT UNAFFECTED.**—Notwithstanding the provisions of subsections (a) through (g), the Pueblos, the County or the Regional Water Authority may acquire any additional water rights to ensure all parties to the Settlement Agreement receive the full allocation of water provided by the Settlement Agreement and nothing in this title amends or modifies the quantities of water allocated to the Pueblos thereunder.

SEC. 614. DELIVERY AND ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY AND WATER.

(a) **ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY.**—

(1) **IN GENERAL.**—The Regional Water System shall have the capacity to divert from the Rio Grande a quantity of water sufficient to provide—

(A) up to 4,000 acre-feet of consumptive use of water; and

(B) the requisite peaking capacity described in—

(i) the Engineering Report; and

(ii) the final project design.

(2) **ALLOCATION TO THE PUEBLOS AND COUNTY WATER UTILITY.**—Of the capacity described in paragraph (1)—

(A) there shall be allocated to the Pueblos—

(i) sufficient capacity for the conveyance of 2,500 acre-feet consumptive use; and

(ii) the requisite peaking capacity for the quantity of water described in clause (i); and

(B) there shall be allocated to the County Water Utility—

(i) sufficient capacity for the conveyance of up to 1,500 acre-feet consumptive use; and

(ii) the requisite peaking capacity for the quantity of water described in clause (i).

(3) APPLICABLE LAW.—Water shall be allocated to the Pueblos and the County Water Utility under this subsection in accordance with—

- (A) this subtitle;
- (B) the Settlement Agreement; and
- (C) the Operating Agreement.

(b) DELIVERY OF REGIONAL WATER SYSTEM WATER.—The Authority shall deliver water from the Regional Water System—

(1) to the Pueblos water in a quantity sufficient to allow full consumptive use of up to 2,500 acre-feet per year of water rights by the Pueblos in accordance with—

- (A) the Settlement Agreement;
- (B) the Operating Agreement; and
- (C) this subtitle; and

(2) to the County water in a quantity sufficient to allow full consumptive use of up to 1,500 acre-feet per year of water rights by the County Water Utility in accordance with—

- (A) the Settlement Agreement;
- (B) the Operating Agreement; and
- (C) this subtitle.

(c) ADDITIONAL USE OF ALLOCATION QUANTITY AND UNUSED CAPACITY.—The Regional Water System may be used to—

(1) provide for use of return flow credits to allow for full consumptive use of the water allocated in the Settlement Agreement to each of the Pueblos and to the County; and

(2) convey water allocated to one of the Pueblos or the County Water Utility for the benefit of another Pueblo or the County Water Utility or allow use of unused capacity by each other through the Regional Water System in accordance with an intergovernmental agreement between the Pueblos, or between a Pueblo and County Water Utility, as applicable, if—

(A) such intergovernmental agreements are consistent with the Operating Agreement, the Settlement Agreement, and this title;

(B) capacity is available without reducing water delivery to any Pueblo or the County Water Utility in accordance with the Settlement Agreement, unless the County Water Utility or Pueblo contracts for a reduction in water delivery or Regional Water System capacity;

(C) the Pueblo or County Water Utility contracting for use of the unused capacity or water has the right to use the water under applicable law; and

(D) any agreement for the use of unused capacity or water provides for payment of the operation, maintenance, and replacement costs associated with the use of capacity or water.

(d) INTERIM USE OF COUNTY CAPACITY.—In accordance with section 9.6.4 of the Settlement Agreement, the County may use unused capacity and water rights of the County Water Utility to supply water within the County outside of the Pojoaque Basin—

- (1) on approval by the State and the Authority; and
- (2) subject to the issuance of a permit by the New Mexico State Engineer.

SEC. 615. AAMODT SETTLEMENT PUEBLOS' FUND.

(a) **ESTABLISHMENT OF THE AAMODT SETTLEMENT PUEBLOS' FUND.**—There is established in the Treasury of the United States a fund, to be known as the “Aamodt Settlement Pueblos' Fund,” consisting of—

(1) such amounts as are made available to the Fund under section 617(c) or other authorized sources; and

(2) any interest earned from investment of amounts in the Fund under subsection (b).

(b) **MANAGEMENT OF THE FUND.**—The Secretary shall manage the Fund, invest amounts in the Fund, and make amounts available from the Fund for distribution to the Pueblos in accordance with—

(1) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(2) this title.

(c) **INVESTMENT OF THE FUND.**—On the date on which the waivers become effective as set forth in section 623(d), the Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

(3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) **TRIBAL MANAGEMENT PLAN.**—

(1) **IN GENERAL.**—A Pueblo may withdraw all or part of the Pueblo's portion of the Fund on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) **REQUIREMENTS.**—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that a Pueblo spend any amounts withdrawn from the Fund in accordance with the purposes described in section 617(c).

(3) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Fund under an approved tribal management plan are used in accordance with this subtitle.

(4) **LIABILITY.**—If a Pueblo or the Pueblos exercise the right to withdraw amounts from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts withdrawn.

(5) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Pueblos shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Fund that the Pueblos do not withdraw under this subsection.

(B) **DESCRIPTION.**—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

(C) **APPROVAL.**—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable

and consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(D) ANNUAL REPORT.—The Pueblos shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(6) NO PER CAPITA PAYMENTS.—No part of the principal of the Fund, or the interest or income accruing on the principal shall be distributed to any member of a Pueblo on a per capita basis.

(7) AVAILABILITY OF AMOUNTS FROM THE FUND.—

(A) APPROVAL OF SETTLEMENT AGREEMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), amounts made available under section 617(c)(1), or from other authorized sources, shall be available for expenditure or withdrawal only after the publication of the statement of findings required by section 623(a)(1).

(ii) EXCEPTION.—Notwithstanding clause (i), the amounts described in that clause may be expended before the date of publication of the statement of findings under section 623(a)(1) for any activity that is more cost-effective when implemented in conjunction with the construction of the Regional Water System, as determined by the Secretary.

(B) COMPLETION OF CERTAIN PORTIONS OF REGIONAL WATER SYSTEM.—Amounts made available under section 617(c)(1) or from other authorized sources shall be available for expenditure or withdrawal only after those portions of the Regional Water System described in section 1.5.24 of the Settlement Agreement have been declared substantially complete by the Secretary.

SEC. 616. ENVIRONMENTAL COMPLIANCE.

(a) IN GENERAL.—In carrying out this subtitle, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(b) NATIONAL ENVIRONMENTAL POLICY ACT.—Nothing in this title affects the outcome of any analysis conducted by the Secretary or any other Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 617. FUNDING.

(a) REGIONAL WATER SYSTEM.—

(1) FUNDING.—

(A) MANDATORY APPROPRIATION.—Subject to paragraph (5), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary for the planning, design, and construction of the Regional Water System and the conduct of environmental compliance activities under section 616 an amount not to exceed \$56,400,000, as adjusted under paragraph (4), for the period of fiscal years 2011 through 2016, to remain available until expended.

(B) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amount made available under subparagraph (A), there is authorized to be appropriated to the Secretary for the planning, design, and construction of the Regional Water System and the conduct of environmental compliance activities under section 616 \$50,000,000, as adjusted under paragraph (4), for the period of fiscal years 2011 through 2024.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraph (1)(A), without further appropriation, to remain available until expended.

(3) PRIORITY OF FUNDING.—Of the amounts made available under paragraph (1), the Secretary shall give priority to funding—

(A) the construction of the San Ildefonso portion of the Regional Water System, consisting of—

- (i) the surface water diversion, treatment, and transmission facilities at San Ildefonso Pueblo; and
- (ii) the San Ildefonso Pueblo portion of the Pueblo Water Facilities; and

(B) that part of the Regional Water System providing 475 acre-feet to Pojoaque Pueblo pursuant to section 2.2 of the Settlement Agreement.

(4) ADJUSTMENT.—The amounts made available under paragraph (1) shall be adjusted annually to account for increases in construction costs since October 1, 2006, as determined using applicable engineering cost indices.

(5) LIMITATIONS.—

(A) IN GENERAL.—No amounts shall be made available under paragraph (1) for the construction of the Regional Water System until the date on which the United States District Court for the District of New Mexico issues an order approving the Settlement Agreement.

(B) RECORD OF DECISION.—No amounts made available under paragraph (1) shall be expended for construction unless the record of decision issued by the Secretary after completion of an environmental impact statement provides for a preferred alternative that is in substantial compliance with the proposed Regional Water System, as defined in the Engineering Report.

(b) ACQUISITION OF WATER RIGHTS.—

(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary for the acquisition of the water rights under section 613(a)(1)(B) \$5,400,000.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraph (1), without further appropriation, to remain available until expended.

(c) AAMODT SETTLEMENT PUEBLOS' FUND.—

(1) FUNDING.—

(A) MANDATORY APPROPRIATIONS.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary the following amounts for the period of fiscal years 2011 through 2015:

(i) \$15,000,000, as adjusted according to the CPI Urban Index beginning on October 1, 2006, which shall be allocated to the Pueblos, in accordance with section 2.7.1 of the Settlement Agreement, for the rehabilitation, improvement, operation, maintenance, and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the applicable Pueblo.

(ii) \$5,000,000, as adjusted according to the CPI Urban Index beginning on January 1, 2011, and any interest on that amount, which shall be allocated to the Pueblo of Nambe only for the acquisition land, other real property interests, or economic development for the Nambe reserved water rights in accordance with section 613(a)(1)(A).

(B) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available under clauses (i) and (ii) of subparagraph (A), respectively, there are authorized to be appropriated to the Secretary for the period of fiscal years 2011 through 2024, \$37,500,000 to assist the Pueblos in paying the Pueblos' share of the cost of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—Prior to conveyance of the Regional Water System pursuant to section 611, the Secretary is authorized to and shall pay any operation, maintenance, and replacement costs associated with the Pueblo Water Facilities or the Regional Water System, up to the amount made available under subparagraph (B).

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subparagraph (A) \$5,000,000.

(C) OBLIGATION OF FEDERAL GOVERNMENT AFTER COMPLETION.—After the date on which construction of the Regional Water System is completed and the amounts required to be deposited in the Aamodt Settlement Pueblos' Fund pursuant to paragraph (1) have been deposited by the Federal Government—

(i) the Federal Government shall have no obligation to pay for the operation, maintenance, and replacement costs associated with the Pueblo Water Facilities or the Regional Water System; and

(ii) the authorization for the Secretary to expend funds for the operation, maintenance, and replacement costs of those systems under subparagraph (A) shall expire.

(3) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraphs (1)(A), without further appropriation, to remain available until expended or until the authorization for the Secretary to expend funds pursuant to paragraph (2) expires.

Subtitle B—Pojoaque Basin Indian Water Rights Settlement

SEC. 621. SETTLEMENT AGREEMENT AND CONTRACT APPROVAL.

(a) **APPROVAL.**—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this title, the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments to the Settlement Agreement and the Cost-Sharing and System Integration Agreement that are executed to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this title) are authorized, ratified, and confirmed.

(b) **EXECUTION.**—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this title, the Secretary shall execute the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments that are necessary to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this title).

(c) **AUTHORITIES OF THE PUEBLOS.**—

(1) **IN GENERAL.**—Each of the Pueblos may enter into leases or contracts to exchange water rights or to forebear undertaking new or expanded water uses for water rights recognized in section 2.1 of the Settlement Agreement for use within the Pojoaque Basin, in accordance with the other limitations of section 2.1.5 of the Settlement Agreement, provided that section 2.1.5 is amended accordingly.

(2) **APPROVAL BY SECRETARY.**—Consistent with the Settlement Agreement, the Secretary shall approve or disapprove a lease or contract entered into under paragraph (1).

(3) **PROHIBITION ON PERMANENT ALIENATION.**—No lease or contract under paragraph (1) shall be for a term exceeding 99 years, nor shall any such lease or contract provide for permanent alienation of any portion of the water rights made available to the Pueblos under the Settlement Agreement.

(4) **APPLICABLE LAW.**—Section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any lease or contract entered into under paragraph (1).

(5) **LEASING OR MARKETING OF WATER SUPPLY.**—The water supply provided on behalf of the Pueblos pursuant to section 613(a)(1) may only be leased or marketed by any of the Pueblos pursuant to the intergovernmental agreements described in section 614(c)(2).

(d) **AMENDMENTS TO CONTRACTS.**—The Secretary shall amend the contracts relating to the Nambe Falls Dam and Reservoir that are necessary to use water supplied from the Nambe Falls Dam and Reservoir in accordance with the Settlement Agreement.

SEC. 622. ENVIRONMENTAL COMPLIANCE.

(a) **EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.**—The execution of the Settlement Agreement under section 611(b) shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) **COMPLIANCE WITH ENVIRONMENTAL LAWS.**—In carrying out this title, the Secretary shall comply with each law of the Federal

Government relating to the protection of the environment, including—

- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 623. CONDITIONS PRECEDENT AND ENFORCEMENT DATE.

(a) CONDITIONS PRECEDENT.—

Federal Register,
publication.

(1) **IN GENERAL.**—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register by September 15, 2017, a statement of findings that the conditions have been fulfilled.

(2) **REQUIREMENTS.**—The conditions precedent referred to in paragraph (1) are the conditions that—

(A) to the extent that the Settlement Agreement conflicts with this subtitle, the Settlement Agreement has been revised to conform with this subtitle;

(B) the Settlement Agreement, so revised, including waivers and releases pursuant to section 624, has been executed by the appropriate parties and the Secretary;

(C) Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized by section 617, with the exception of subsection (a)(1) of that section;

(D) the Secretary has acquired and entered into appropriate contracts for the water rights described in section 613(a);

(E) for purposes of section 613(a), permits have been issued by the New Mexico State Engineer to the Regional Water Authority to change the points of diversion to the mainstem of the Rio Grande for the diversion and consumptive use of at least 2,381 acre-feet by the Pueblos as part of the water supply for the Regional Water System, subject to the conditions that—

(i) the permits shall be free of any condition that materially adversely affects the ability of the Pueblos or the Regional Water Authority to divert or use the Pueblo water supply described in section 613(a), including water rights acquired in addition to those described in section 613(a), in accordance with section 613(g); and

(ii) the Settlement Agreement shall establish the means to address any permit conditions to ensure the ability of the Pueblos to fully divert and consume at least 2,381 acre-feet as part of the water supply for the Regional Water System, including defining the conditions that will not constitute a material adverse affect;

(F) the State has enacted any necessary legislation and provided any funding that may be required under the Settlement Agreement;

(G) a partial final decree that sets forth the water rights and other rights to water to which the Pueblos are entitled under the Settlement Agreement and this subtitle and that substantially conforms to the Settlement

Agreement has been approved by the United States District Court for the District of New Mexico;

(H) a final decree that sets forth the water rights for all parties to the Aamodt Case and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico; and

(I) the waivers and releases described in section 624 have been executed.

(b) EXPIRATION DATE.—If all the conditions precedent described in subsection (a)(2) have not been fulfilled by September 15, 2017—

(1) the Settlement Agreement shall no longer be effective;

(2) the waivers and releases described in the Settlement Agreement and section 624 shall not be effective;

(3) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this title, together with any interest earned on those funds, any water rights or contracts to use water, and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this title shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress; and

(4) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (3), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized by this title that were expended or withdrawn, together with any interest accrued on those funds, against any claims against the United States—

(A) relating to water rights in the Pojoaque Basin asserted by any Pueblo that benefitted from the use of expended or withdrawn Federal funds; or

(B) in any future settlement of the Aamodt Case.

(c) ENFORCEMENT DATE.—The Settlement Agreement shall become enforceable beginning on the date on which the United States District Court for the District of New Mexico enters a partial final decree pursuant to subsection (a)(2)(G) and an Interim Administrative Order consistent with the Settlement Agreement.

(d) EFFECTIVENESS OF WAIVERS.—The waivers and releases executed pursuant to section 624 shall become effective as of the date that the Secretary publishes the notice required by subsection (a)(1).

(e) REQUIREMENTS FOR DETERMINATION OF SUBSTANTIAL COMPLETION OF THE REGIONAL WATER SYSTEM.—

(1) CRITERIA FOR SUBSTANTIAL COMPLETION OF REGIONAL WATER SYSTEM.—Subject to the provisions in section 611(d) concerning the extent, size, and capacity of the County Distribution System, the Regional Water System shall be determined to be substantially completed if the infrastructure has been constructed capable of—

(A) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos; and

(B) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System.

Deadlines.

(2) CONSULTATION.—On or after June 30, 2021, at the request of 1 or more of the Pueblos, the Secretary shall consult with the Pueblos and confer with the County and the State on whether the criteria in paragraph (1) for substantial completion of the Regional Water System have been met or will be met by June 30, 2024.

Deadline.

(3) WRITTEN DETERMINATION BY SECRETARY.—Not earlier than June 30, 2021, at the request of 1 or more of the Pueblos and after the consultation required by paragraph (2), the Secretary shall—

(A) determine whether the Regional Water System has been substantially completed based on the criteria described in paragraph (1); and

Notice.

(B) submit a written notice of the determination under subparagraph (A) to—

- (i) the Pueblos;
- (ii) the County; and
- (iii) the State.

(4) RIGHT TO REVIEW.—

(A) IN GENERAL.—A determination by the Secretary under paragraph (3)(A) shall be considered to be a final agency action subject to judicial review by the Decree Court under sections 701 through 706 of title 5, United States Code.

(B) FAILURE TO MAKE TIMELY DETERMINATION.—

(i) IN GENERAL.—If a Pueblo requests a written determination under paragraph (3) and the Secretary fails to make such a written determination by the date described in clause (ii), there shall be a rebuttable presumption that the failure constitutes agency action unlawfully withheld or unreasonably delayed under section 706 of title 5, United States Code.

(ii) DATE.—The date referred to in clause (i) is the date that is the later of—

(I) the date that is 180 days after the date of receipt by the Secretary of the request by the Pueblo; and

(II) June 30, 2023.

(C) EFFECT OF TITLE.—Nothing in this title gives any Pueblo or Settlement Party the right to judicial review of a determination of the Secretary regarding whether the Regional Water System has been substantially completed except under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(5) RIGHT TO VOID FINAL DECREE.—

Deadline.

(A) IN GENERAL.—Not later than June 30, 2024, on a determination by the Secretary, after consultation with the Pueblos, that the Regional Water System is not substantially complete, 1 or more of the Pueblos, or the United States acting on behalf of a Pueblo, shall have the right to notify the Decree Court of the determination.

(B) EFFECT.—The Final Decree shall have no force or effect on a finding by the Decree Court that a Pueblo, or the United States acting on behalf of a Pueblo, has submitted proper notification under subparagraph (A).

(f) VOIDING OF WAIVERS.—If the Final Decree is void under subsection (e)(5)—

(1) the Settlement Agreement shall no longer be effective;

(2) the waivers and releases executed pursuant to section 624 shall no longer be effective;

(3) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this title, together with any interest earned on those funds, any water rights or contracts to use water, and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this title shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress; and

(4) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (3), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized by this title that were expended or withdrawn, together with any interest accrued on those funds, against any claims against the United States—

(A) relating to water rights in the Pojoaque Basin asserted by any Pueblo that benefitted from the use of expended or withdrawn Federal funds; or

(B) in any future settlement of the Aamodt Case.

(g) EXTENSION.—The dates in subsections (a)(1) and (b) may be extended if the parties to the Cost-Sharing and System Integration Agreement agree that an extension is reasonably necessary.

SEC. 624. WAIVERS AND RELEASES OF CLAIMS.

(a) CLAIMS BY THE PUEBLOS AND THE UNITED STATES.—In return for recognition of the Pueblos' water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and this title, the Pueblos, on behalf of themselves and their members, and the United States acting in its capacity as trustee for the Pueblos are authorized to execute a waiver and release of—

(1) all claims for water rights in the Pojoaque Basin that the Pueblos, or the United States acting in its capacity as trustee for the Pueblos, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d), except to the extent that such rights are recognized in the Settlement Agreement or this title;

(2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblos, or the United States acting in its capacity as trustee for the Pueblos, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or this title;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time

up to and including the waiver effectiveness date identified in section 623(d);

(4) their defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;

(5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;

(6) all pending and future inter se challenges against other parties to the Settlement Agreement;

(7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin, provided that this waiver shall not be effective by the Pueblo of Tesuque unless there is a water resources agreement executed between the Pueblo of Tesuque and the City of Santa Fe; and

(8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin.

(b) CLAIMS BY THE PUEBLOS AGAINST THE UNITED STATES.—The Pueblos, on behalf of themselves and their members, are authorized to execute a waiver and release of—

(1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblos asserted, or could have asserted, in any proceeding, including the Aamodt Case;

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d);

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo

Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of Trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of this Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or this title.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this title, the Pueblos on behalf of themselves and their members and the United States acting in its capacity as trustee for the Pueblos retain.—

(1) all claims for enforcement of the Settlement Agreement, the Cost-Sharing and System Integration Agreement, the Final Decree, including the Partial Final Decree, the San Juan-Chama Project contract between the Pueblos and the United States or this title;

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all rights to use and protect water rights acquired pursuant to state law to the extent not inconsistent with the Partial Final Decree, Final Decree, and the Settlement Agreement;

(4) all claims against persons other than Parties to the Settlement Agreement for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water) within the Pojoaque Basin arising out of activities occurring outside the Pojoaque Basin;

(5) all claims relating to activities affecting the quality of water including any claims the Pueblos may have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (including claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations implementing those laws;

(6) all claims against the United States relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including hunting, fishing, gathering or cultural rights);

(7) all claims for water rights from water sources outside the Pojoaque Basin for land outside the Pojoaque Basin owned by a Pueblo or held by the United States for the benefit of any of the Pueblos; and

(8) all rights, remedies, privileges, immunities, powers and claims not specifically waived and released pursuant to this title or the Settlement Agreement.

(d) EFFECT.—Nothing in the Settlement Agreement or this title—

(1) affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), and the regulations implementing those laws;

(2) affects the ability of the United States to take actions acting in its capacity as trustee for any other Indian tribe or allottee; or

(3) confers jurisdiction on any State court to—

(A) interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; or

(B) conduct judicial review of Federal agency action;

(e) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on June 30, 2021.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(3) LIMITATION.—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

Time period.

SEC. 625. EFFECT.

Nothing in this title or the Settlement Agreement affects the land and water rights, claims, or entitlements to water of any Indian tribe, pueblo, or community other than the Pueblos.

SEC. 626. ANTIDEFICIENCY.

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this title (including any such obligation or activity under the Settlement Agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111–11 or the “Emergency Fund for Indian Safety and Health” established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

TITLE VII—RECLAMATION WATER SETTLEMENTS FUND

SEC. 701. MANDATORY APPROPRIATION.

(a) IN GENERAL.—Notwithstanding any other provision of law, out of any funds in the Treasury not otherwise appropriated, for each of fiscal years 2012 through 2014, the Secretary of the Treasury shall transfer to the Secretary of the Interior \$60,000,000

for deposit in the Reclamation Water Settlements Fund established in section 10501 of Public Law 111–11.

(b) RECEIPT AND ACCEPTANCE.—Starting in fiscal year 2012, the Secretary of the Interior shall be entitled to receive, shall accept, and shall use to carry out subtitle B of title X of Public Law 111–11 the funds transferred under subsection (a), without further appropriation, to remain available until expended.

TITLE VIII—GENERAL PROVISIONS

Subtitle A—Unemployment Compensation Program Integrity

SEC. 801. COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE DEBTS.

(a) UNEMPLOYMENT COMPENSATION DEBTS.—Section 6402(f) of the Internal Revenue Code of 1986 is amended—

26 USC 6402.

(1) in the heading, by striking “RESULTING FROM FRAUD”;

(2) by striking paragraphs (3) and (8) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively;

(3) in paragraph (3), as so redesignated—

(A) in subparagraph (A), by striking “by certified mail with return receipt”;

(B) in subparagraph (B), by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”;

(C) in subparagraph (C), by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”; and

(4) in paragraph (4), as so redesignated—

(A) in subparagraph (A)—

(i) by inserting “or the person’s failure to report earnings” after “due to fraud”; and

(ii) by striking “for not more than 10 years”; and

(B) in subparagraph (B)—

(i) by striking “due to fraud”; and

(ii) by striking “for not more than 10 years”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of the enactment of this Act.

26 USC 6402
note.

SEC. 802. REPORTING OF FIRST DAY OF EARNINGS TO DIRECTORY OF NEW HIRES.

(a) ADDITION OF REQUIREMENT.—Section 453A(b)(1)(A) of the Social Security Act (42 U.S.C. 653a(b)(1)(A)) is amended by inserting “the date services for remuneration were first performed by the employee,” after “of the employee.”

(b) CONFORMING AMENDMENT REGARDING REPORTING FORMAT AND METHOD.—Section 453A(c) of the Social Security Act (42 U.S.C. 653a(c)) is amended by inserting “, to the extent practicable,” after “Each report required by subsection (b) shall”.

(c) EFFECTIVE DATE.—

42 USC 653a
note.

(1) **IN GENERAL.**—Subject to paragraph (2), the amendments made by this section shall take effect 6 months after the date of the enactment of this Act.

(2) **COMPLIANCE TRANSITION PERIOD.**—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part D of title IV of the Social Security Act to meet the additional requirements imposed by the amendment made by subsection (a), the plan shall not be regarded as failing to meet such requirements before the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of such amendment. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

Subtitle B—TANF

SEC. 811. EXTENSION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.

(a) **IN GENERAL.**—Activities authorized by part A of title IV and section 1108(b) of the Social Security Act (other than the Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs established under subsection (c) of section 403 of such Act) shall continue through September 30, 2011, in the manner authorized for fiscal year 2010, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority on a quarterly basis through fiscal year 2011 at the level provided for such activities for the corresponding quarter of fiscal year 2010, except that—

(1) in the case of healthy marriage promotion and responsible fatherhood grants under section 403(a)(2) of such Act, such grants and payments shall be made in accordance with the amendments made by subsection (b) of this section;

(2) in the case of supplemental grants under section 403(a)(3) of such Act—

(A) such grants and payments for the period beginning on October 1, 2010, and ending on December 3, 2010, shall not exceed the level provided for such grants and payments under the Continuing Appropriations Act, 2011; and

(B) such grants and payments for the period beginning on December 4, 2010, and ending on June 30, 2011, shall not exceed the amount equal to the difference between \$490,000,000 and such sums as are necessary for amounts obligated under section 403(b) of the Social Security Act on or after October 1, 2010, and before the date of enactment of this Act; and

(3) in the case of the Contingency Fund for State Welfare Programs established under section 403(b) of such Act, grants and payments may be made in the manner authorized for fiscal year 2010 through fiscal year 2012, in accordance with the amendments made by subsection (c) of this section.

Time periods.

(b) **HEALTHY MARRIAGE PROMOTION AND RESPONSIBLE FATHERHOOD GRANTS.**—Section 403(a)(2) of the Social Security Act (42 U.S.C. 603(a)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking “and (C)” and inserting “, (C), and (E)”;

(B) in clause (ii), in the matter preceding subclause (I), by inserting “(or, in the case of an entity seeking funding to carry out healthy marriage promotion activities and activities promoting responsible fatherhood, a combined application that contains assurances that the entity will carry out such activities under separate programs and shall not combine any funds awarded to carry out either such activities)” after “an application”; and

(C) in clause (iii), by striking subclause (III) and inserting the following:

“(III) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement.”;

(2) in subparagraph (C)(i), by striking “\$50,000,000” and inserting “\$75,000,000”;

(3) by striking subparagraph (D) and inserting the following:

“(D) **APPROPRIATION.**—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2011 for expenditure in accordance with this paragraph—

“(i) \$75,000,000 for awarding funds for the purpose of carrying out healthy marriage promotion activities; and

“(ii) \$75,000,000 for awarding funds for the purpose of carrying out activities promoting responsible fatherhood.

If the Secretary makes an award under subparagraph (B)(i) for fiscal year 2011, the funds for such award shall be taken in equal portion from the amounts appropriated under clauses (i) and (ii).”; and

(4) by adding at the end the following:

“(E) **PREFERENCE.**—In awarding funds under this paragraph for fiscal year 2011, the Secretary shall give preference to entities that were awarded funds under this paragraph for any prior fiscal year and that have demonstrated the ability to successfully carry out the programs funded under this paragraph.”.

(c) **CONTINGENCY FUND.**—Section 403(b)(2) of the Social Security Act (42 U.S.C. 603(b)(2)), as amended by section 131(b)(2)(A) of the Continuing Appropriations Act, 2011, is amended—

(1) by striking “\$506,000,000” and inserting “such sums as are necessary for amounts obligated on or after October 1, 2010, and before the date of enactment of the Claims Resolution Act of 2010.”; and

(2) by striking “, reduced” and all that follows up to the period.

(d) **CONFORMING AMENDMENTS.**—Section 403(a)(3) of the Social Security Act (42 U.S.C. 603(a)(3)), as amended by section 131(b)(1) of the Continuing Appropriations Act, 2011, is amended—

(1) in subparagraph (F)—

(A) by inserting “(or portion of a fiscal year)” after “a fiscal year”; and

(B) by inserting “(or portion of the fiscal year)” after “the fiscal year” each place it appears; and

(2) by striking clause (ii) of subparagraph (H) and inserting the following:

“(ii) subparagraph (G) shall be applied as if ‘fiscal year 2011’ were substituted for ‘fiscal year 2001’.”.

SEC. 812. MODIFICATIONS TO TANF DATA REPORTING.

(a) IN GENERAL.—Section 411 of the Social Security Act (42 U.S.C. 611) is amended by adding at the end the following new subsection:

“(c) PRE-REAUTHORIZATION STATE-BY-STATE REPORTS ON ENGAGEMENT IN ADDITIONAL WORK ACTIVITIES AND EXPENDITURES FOR OTHER BENEFITS AND SERVICES.—

“(1) STATE REPORTING REQUIREMENTS.—

“(A) REPORTING PERIODS AND DEADLINES.—Each eligible State shall submit to the Secretary the following reports:

“(i) MARCH 2011 REPORT.—Not later than May 31, 2011, a report for the period that begins on March 1, 2011, and ends on March 31, 2011, that contains the information specified in subparagraphs (B) and (C).

“(ii) APRIL-JUNE, 2011 REPORT.—Not later than August 31, 2011, a report for the period that begins on April 1, 2011, and ends on June 30, 2011, that contains with respect to the 3 months that occur during that period—

“(I) the average monthly numbers for the information specified in subparagraph (B); and

“(II) the information specified in subparagraph (C).

“(B) ENGAGEMENT IN ADDITIONAL WORK ACTIVITIES.—

“(i) With respect to each work-eligible individual in a family receiving assistance during a reporting period specified in subparagraph (A), whether the individual engages in any activities directed toward attaining self-sufficiency during a month occurring in a reporting period, and if so, the specific activities—

“(I) that do not qualify as a work activity under section 407(d) but that are otherwise reasonably calculated to help the family move toward self-sufficiency; or

“(II) that are of a type that would be counted toward the State participation rates under section 407 but for the fact that—

“(aa) the work-eligible individual did not engage in sufficient hours of the activity;

“(bb) the work-eligible individual has reached the maximum time limit allowed for having participation in the activity counted toward the State’s work participation rate; or

“(cc) the number of work-eligible individuals engaged in such activity exceeds a limitation under such section.

“(ii) Any other information that the Secretary determines appropriate with respect to the information required under clause (i), including if the individual has no hours of participation, the principal reason or reasons for such non-participation.

“(C) EXPENDITURES ON OTHER BENEFITS AND SERVICES.—

“(i) Detailed, disaggregated information regarding the types of, and amounts of, expenditures made by the State during a reporting period specified in subparagraph (A) using—

“(I) Federal funds provided under section 403 that are (or will be) reported by the State on Form ACF–196 (or any successor form) under the category of other expenditures or the category of benefits or services provided in accordance with the authority provided under section 404(a)(2); or

“(II) State funds expended to meet the requirements of section 409(a)(7) and reported by the State in the category of other expenditures on Form ACF–196 (or any successor form).

“(ii) Any other information that the Secretary determines appropriate with respect to the information required under clause (i).

“(2) PUBLICATION OF SUMMARY AND ANALYSIS OF ENGAGEMENT IN ADDITIONAL ACTIVITIES.—Concurrent with the submission of each report required under paragraph (1)(A), an eligible State shall publish on an Internet website maintained by the State agency responsible for administering the State program funded under this part (or such State-maintained website as the Secretary may approve)—

“(A) a summary of the information submitted in the report:

“(B) an analysis statement regarding the extent to which the information changes measures of total engagement in work activities from what was (or will be) reported by the State in the quarterly report submitted under subsection (a) for the comparable period; and

“(C) a narrative describing the most common activities contained in the report that are not countable toward the State participation rates under section 407.

“(3) APPLICATION OF AUTHORITY TO USE SAMPLING.—Subparagraph (B) of subsection (a)(1) shall apply to the reports required under paragraph (1) of this subsection in the same manner as subparagraph (B) of subsection (a)(1) applies to reports required under subparagraph (A) of subsection (a)(1).

“(4) SECRETARIAL REPORTS TO CONGRESS.—

“(A) MARCH 2011 REPORT.—Not later than June 30, 2011, the Secretary shall submit to Congress a report on the information submitted by eligible States for the March 2011 reporting period under paragraph (1)(A)(i). The report shall include a State-by-State summary and analysis of such information, identification of any States with missing or incomplete reports, and recommendations for such

administrative or legislative changes as the Secretary determines are necessary to require eligible States to report the information on a recurring basis.

“(B) APRIL-JUNE, 2011 REPORT.—Not later than September 30, 2011, the Secretary shall submit to Congress a report on the information submitted by eligible States for the April-June 2011 reporting period under paragraph (1)(A)(ii). The report shall include a State-by-State summary and analysis of such information, identification of any States with missing or incomplete reports, and recommendations for such administrative or legislative changes as the Secretary determines are necessary to require eligible States to report the information on a recurring basis

“(5) AUTHORITY FOR EXPEDITIOUS IMPLEMENTATION.—The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ‘Administrative Procedure Act’) or any other law relating to rulemaking or publication in the Federal Register shall not apply to the issuance of guidance or instructions by the Secretary with respect to the implementation of this subsection to the extent the Secretary determines that compliance with any such requirement would impede the expeditious implementation of this subsection.”.

(b) APPLICATION OF PENALTY FOR FAILURE TO FILE REPORT.—

(1) IN GENERAL.—Section 409(a)(2) of such Act (42 U.S.C. 609(a)(2)) is amended—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(B) by inserting before clause (i) (as redesignated by paragraph (1)), the following:

“(A) QUARTERLY REPORTS.—”;

(C) in clause (ii) of subparagraph (A) (as redesignated by paragraphs (1) and (2)), by striking “subparagraph (A)” and inserting “clause (i)”; and

(D) by adding at the end the following:

“(B) REPORT ON ENGAGEMENT IN ADDITIONAL WORK ACTIVITIES AND EXPENDITURES FOR OTHER BENEFITS AND SERVICES.—

“(i) IN GENERAL.—If the Secretary determines that a State has not submitted the report required by section 411(c)(1)(A)(i) by May 31, 2011, or the report required by section 411(c)(1)(A)(ii) by August 31, 2011, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 4 percent of the State family assistance grant.

“(ii) RESCISSION OF PENALTY.—The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report required by section 411(c)(1)(A) if the State submits the report not later than—

“(I) in the case of the report required under section 411(c)(1)(A)(i), June 15, 2011; and

“(II) in the case of the report required under section 411(c)(1)(A)(ii), September 15, 2011.

“(iii) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose a reduction under clause

(i) with respect to a fiscal year based on the degree of noncompliance.”.

(2) APPLICATION OF REASONABLE CAUSE EXCEPTION.—Section 409(b)(2) of such Act (42 U.S.C. 609(b)(2)) is amended by inserting before the period the following: “and, with respect to the penalty under paragraph (2)(B) of subsection (a), shall only apply to the extent the Secretary determines that the reasonable cause for failure to comply with a requirement of that paragraph is as a result of a one-time, unexpected event, such as a widespread data system failure or a natural or man-made disaster”.

(3) NONAPPLICATION OF CORRECTIVE COMPLIANCE PLAN PROVISIONS.—Section 409(c)(4) of such Act (42 U.S.C. 609(c)(4)) is amended by inserting “(2)(B),” after “paragraph”.

Subtitle C—Customs User Fees; Continued Dumping and Subsidy Offset

SEC. 821. CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—

(1) in subparagraph (A), by striking “December 10, 2018” and inserting “September 30, 2019”; and

(2) in subparagraph (B)(i), by striking “November 30, 2018” and inserting “September 30, 2019”.

SEC. 822. LIMITATION ON DISTRIBUTIONS RELATING TO REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET.

Notwithstanding section 1701(b) of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 154 (19 U.S.C. 1675c note)) or any other provision of law, no payments shall be distributed under section 754 of the Tariff Act of 1930, as in effect on the day before the date of the enactment of such section 1701, with respect to the entries of any goods that are, on the date of the enactment of this Act—

(1) unliquidated; and

(2)(A) not in litigation; or

(B) not under an order of liquidation from the Department of Commerce.

Subtitle D—Emergency Fund for Indian Safety and Health

SEC. 831. EMERGENCY FUND FOR INDIAN SAFETY AND HEALTH.

Section 601 of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/ AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c) is amended—

(1) in subsection (b)(1), by striking “\$2,000,000,000” and inserting “\$1,602,619,000”; and

(2) in subsection (f)(2)(B), by striking “50 percent” and inserting “not more than \$602,619,000”.

Subtitle E—Rescission of Funds From WIC Program

SEC. 841. RESCISSION OF FUNDS FROM WIC PROGRAM.

Notwithstanding any other provision of law, of the amounts made available in appropriations Acts to provide grants to States under the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), \$562,000,000 is rescinded.

Subtitle F—Budgetary Effects

SEC. 851. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 8, 2010.

LEGISLATIVE HISTORY—H.R. 4783:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 10, considered and passed House.

Nov. 19, considered and passed Senate, amended.

Nov. 30, House concurred in Senate amendments.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Dec. 8, Presidential remarks and statement.



Public Law 111–292
111th Congress

An Act

To require the head of each executive agency to establish and implement a policy under which employees shall be authorized to telework, and for other purposes.

Dec. 9, 2010
[H.R. 1722]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Telework Enhancement Act of 2010”.

Telework
Enhancement
Act of 2010.
5 USC 101 note.

SEC. 2. TELEWORK.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by inserting after chapter 63 the following:

“CHAPTER 65—TELEWORK

“Sec.
“6501. Definitions.
“6502. Executive agencies telework requirement.
“6503. Training and monitoring.
“6504. Policy and support.
“6505. Telework Managing Officer.
“6506. Reports.

“§ 6501. Definitions

5 USC 6501.

“In this chapter:

“(1) EMPLOYEE.—The term ‘employee’ has the meaning given that term under section 2105.

“(2) EXECUTIVE AGENCY.—Except as provided in section 6506, the term ‘executive agency’ has the meaning given that term under section 105.

“(3) TELEWORK.—The term ‘telework’ or ‘teleworking’ refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

“§ 6502. Executive agencies telework requirement

5 USC 6502.

“(a) TELEWORK ELIGIBILITY.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this chapter, the head of each executive agency shall—

Deadline.

“(A) establish a policy under which eligible employees of the agency may be authorized to telework;

“(B) determine the eligibility for all employees of the agency to participate in telework; and

Determination.

Notification.

“(C) notify all employees of the agency of their eligibility to telework.

“(2) LIMITATION.—An employee may not telework under a policy established under this section if—

“(A) the employee has been officially disciplined for being absent without permission for more than 5 days in any calendar year; or

“(B) the employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

“(b) PARTICIPATION.—The policy described under subsection (a) shall—

“(1) ensure that telework does not diminish employee performance or agency operations;

Contracts.

“(2) require a written agreement that—

“(A) is entered into between an agency manager and an employee authorized to telework, that outlines the specific work arrangement that is agreed to; and

“(B) is mandatory in order for any employee to participate in telework;

“(3) provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and that employee;

“(4) except in emergency situations as determined by the head of an agency, not apply to any employee of the agency whose official duties require on a daily basis (every work day)—

“(A) direct handling of secure materials determined to be inappropriate for telework by the agency head; or

“(B) on-site activity that cannot be handled remotely or at an alternate worksite; and

“(5) be incorporated as part of the continuity of operations plans of the agency in the event of an emergency.

5 USC 6503.

“§ 6503. Training and monitoring

“(a) IN GENERAL.—The head of each executive agency shall ensure that—

“(1) an interactive telework training program is provided to—

“(A) employees eligible to participate in the telework program of the agency; and

“(B) all managers of teleworkers;

“(2) except as provided under subsection (b), an employee has successfully completed the interactive telework training program before that employee enters into a written agreement to telework described under section 6502(b)(2);

“(3) teleworkers and nonteleworkers are treated the same for purposes of—

“(A) periodic appraisals of job performance of employees;

“(B) training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

“(C) work requirements; or

“(D) other acts involving managerial discretion; and

“(4) when determining what constitutes diminished employee performance, the agency shall consult the performance management guidelines of the Office of Personnel Management.

“(b) TRAINING REQUIREMENT EXEMPTIONS.—The head of an executive agency may provide for an exemption from the training requirements under subsection (a), if the head of that agency determines that the training would be unnecessary because the employee is already teleworking under a work arrangement in effect before the date of enactment of this chapter.

“§ 6504. Policy and support

5 USC 6504.

“(a) AGENCY CONSULTATION WITH THE OFFICE OF PERSONNEL MANAGEMENT.—Each executive agency shall consult with the Office of Personnel Management in developing telework policies.

“(b) GUIDANCE AND CONSULTATION.—The Office of Personnel Management shall—

“(1) provide policy and policy guidance for telework in the areas of pay and leave, agency closure, performance management, official worksite, recruitment and retention, and accommodations for employees with disabilities;

“(2) assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals; and

“(3) consult with—

“(A) the Federal Emergency Management Agency on policy and policy guidance for telework in the areas of continuation of operations and long-term emergencies;

“(B) the General Services Administration on policy and policy guidance for telework in the areas of telework centers, travel, technology, equipment, and dependent care; and

“(C) the National Archives and Records Administration on policy and policy guidance for telework in the areas of efficient and effective records management and the preservation of records, including Presidential and Vice-Presidential records.

“(c) SECURITY GUIDELINES.—

“(1) IN GENERAL.—The Director of the Office of Management and Budget, in coordination with the Department of Homeland Security and the National Institute of Standards and Technology, shall issue guidelines not later than 180 days after the date of the enactment of this chapter to ensure the adequacy of information and security protections for information and information systems used while teleworking.

Deadline.

“(2) CONTENTS.—Guidelines issued under this subsection shall, at a minimum, include requirements necessary to—

“(A) control access to agency information and information systems;

“(B) protect agency information (including personally identifiable information) and information systems;

“(C) limit the introduction of vulnerabilities;

“(D) protect information systems not under the control of the agency that are used for teleworking;

“(E) safeguard wireless and other telecommunications capabilities that are used for teleworking; and

“(F) prevent inappropriate use of official time or resources that violates subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch by viewing, downloading, or exchanging pornography, including child pornography.

“(d) CONTINUITY OF OPERATIONS PLANS.—

“(1) INCORPORATION INTO CONTINUITY OF OPERATIONS PLANS.—Each executive agency shall incorporate telework into the continuity of operations plan of that agency.

“(2) CONTINUITY OF OPERATIONS PLANS SUPERSEDE TELEWORK POLICY.—During any period that an executive agency is operating under a continuity of operations plan, that plan shall supersede any telework policy.

“(e) TELEWORK WEBSITE.—The Office of Personnel Management shall—

“(1) maintain a central telework website; and

“(2) include on that website related—

“(A) telework links;

“(B) announcements;

“(C) guidance developed by the Office of Personnel Management; and

Deadline.

“(D) guidance submitted by the Federal Emergency Management Agency, and the General Services Administration to the Office of Personnel Management not later than 10 business days after the date of submission.

Deadline.

“(f) POLICY GUIDANCE ON PURCHASING COMPUTER SYSTEMS.—Not later than 120 days after the date of the enactment of this chapter, the Director of the Office of Management and Budget shall issue policy guidance requiring each executive agency when purchasing computer systems, to purchase computer systems that enable and support telework, unless the head of the agency determines that there is a mission-specific reason not to do so.

5 USC 6505.

“§ 6505. Telework Managing Officer

“(a) DESIGNATION.—The head of each executive agency shall designate an employee of the agency as the Telework Managing Officer. The Telework Managing Officer shall be established within the Office of the Chief Human Capital Officer or a comparable office with similar functions.

“(b) DUTIES.—The Telework Managing Officer shall—

“(1) be devoted to policy development and implementation related to agency telework programs;

“(2) serve as—

“(A) an advisor for agency leadership, including the Chief Human Capital Officer;

“(B) a resource for managers and employees; and

“(C) a primary agency point of contact for the Office of Personnel Management on telework matters; and

“(3) perform other duties as the applicable delegating authority may assign.

“(c) STATUS WITHIN AGENCY.—The Telework Managing Officer of an agency shall be a senior official of the agency who has direct access to the head of the agency.

“(d) RULE OF CONSTRUCTION REGARDING STATUS OF TELEWORK MANAGING OFFICER.—Nothing in this section shall be construed to prohibit an individual who holds another office or position in

an agency from serving as the Telework Managing Officer for the agency under this chapter.

“§ 6506. Reports

5 USC 6506.

“(a) DEFINITION.—In this section, the term ‘executive agency’ shall not include the Government Accountability Office.

“(b) REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT.—

“(1) SUBMISSION OF REPORTS.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Director of the Office of Personnel Management, in consultation with Chief Human Capital Officers Council, shall—

“(A) submit a report addressing the telework programs of each executive agency to—

“(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(ii) the Committee on Oversight and Government Reform of the House of Representatives; and

“(B) transmit a copy of the report to the Comptroller General and the Office of Management and Budget.

“(2) CONTENTS.—Each report submitted under this subsection shall include—

“(A) the degree of participation by employees of each executive agency in teleworking during the period covered by the report (and for each executive agency whose head is referred to under section 5312, the degree of participation in each bureau, division, or other major administrative unit of that agency), including—

“(i) the total number of employees in the agency;

“(ii) the number and percent of employees in the agency who are eligible to telework; and

“(iii) the number and percent of eligible employees in the agency who are teleworking—

“(I) 3 or more days per pay period;

“(II) 1 or 2 days per pay period;

“(III) once per month; and

“(IV) on an occasional, episodic, or short-term basis;

“(B) the method for gathering telework data in each agency;

“(C) if the total number of employees teleworking is 10 percent higher or lower than the previous year in any agency, the reasons for the positive or negative variation;

“(D) the agency goal for increasing participation to the extent practicable or necessary for the next reporting period, as indicated by the percent of eligible employees teleworking in each frequency category described under subparagraph (A)(iii);

“(E) an explanation of whether or not the agency met the goals for the last reporting period and, if not, what actions are being taken to identify and eliminate barriers to maximizing telework opportunities for the next reporting period;

“(F) an assessment of the progress each agency has made in meeting agency participation rate goals during the reporting period, and other agency goals relating to telework, such as the impact of telework on—

“(i) emergency readiness;
 “(ii) energy use;
 “(iii) recruitment and retention;
 “(iv) performance;
 “(v) productivity; and
 “(vi) employee attitudes and opinions regarding telework; and
 “(G) the best practices in agency telework programs.
 “(c) COMPTROLLER GENERAL REPORTS.—

“(1) REPORT ON GOVERNMENT ACCOUNTABILITY OFFICE TELEWORK PROGRAM.—

“(A) IN GENERAL.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Comptroller General shall submit a report addressing the telework program of the Government Accountability Office to—

“(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(ii) the Committee on Oversight and Government Reform of the House of Representatives.

“(B) CONTENTS.—Each report submitted by the Comptroller General shall include the same information as required under subsection (b) applicable to the Government Accountability Office.

“(2) REPORT TO CONGRESS ON OFFICE OF PERSONNEL MANAGEMENT REPORT.—Not later than 6 months after the submission of the first report to Congress required under subsection (b), the Comptroller General shall review that report required under subsection (b) and submit a report to Congress on the progress each executive agency has made towards the goals established under section 6504(b)(2).

“(d) CHIEF HUMAN CAPITAL OFFICER REPORTS.—

“(1) IN GENERAL.—Each year the Chief Human Capital Officer of each executive agency, in consultation with the Telework Managing Officer of that agency, shall submit a report to the Chair and Vice Chair of the Chief Human Capital Officers Council on agency management efforts to promote telework.

“(2) REVIEW AND INCLUSION OF RELEVANT INFORMATION.—The Chair and Vice Chair of the Chief Human Capital Officers Council shall—

“(A) review the reports submitted under paragraph (1);

“(B) include relevant information from the submitted reports in the annual report to Congress required under subsection (b); and

“(C) use that relevant information for other purposes related to the strategic management of human capital.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 63 the following:

65. Telework 6501

(2) TELEWORK COORDINATORS.—

(A) APPROPRIATIONS ACT, 2003.—Section 623 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2003

(Public Law 108–7; 117 Stat. 103) is amended by striking “designate a ‘Telework Coordinator’ to be” and inserting “designate a Telework Managing Officer to be”. 5 USC 6120 note.

(B) APPROPRIATIONS ACT, 2004.—Section 627 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 99) is amended by striking “designate a ‘Telework Coordinator’ to be” and inserting “designate a Telework Managing Officer to be”. 5 USC 6120 note.

(C) APPROPRIATIONS ACT, 2005.—Section 622 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2919) is amended by striking “designate a ‘Telework Coordinator’ to be” and inserting “designate a Telework Managing Officer to be”. 5 USC 6120 note.

(D) APPROPRIATIONS ACT, 2006.—Section 617 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2340) is amended by striking “maintain a ‘Telework Coordinator’ to be” and inserting “maintain a Telework Managing Officer to be”. 5 USC 6120 note.

SEC. 3. AUTHORITY FOR TELEWORK TRAVEL EXPENSES TEST PROGRAMS.

(a) IN GENERAL.—Chapter 57 of title 5, United States Code, is amended by inserting after section 5710 the following:

“§ 5711. Authority for telework travel expenses test programs 5 USC 5711.

“(a) Except as provided under subsection (f)(1), in this section, the term ‘appropriate committees of Congress’ means— Definition.

“(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(2) the Committee on Oversight and Government Reform of the House of Representatives.

“(b)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an employing agency may pay through the proper disbursing official any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter for employees participating in a telework program. Under an approved test program, an agency may provide an employee with the option to waive any payment authorized or required under this subchapter. An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

“(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

“(3) Under any test program, if an agency employee voluntarily relocates from the pre-existing duty station of that employee, the Administrator may authorize the employing agency to establish a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by that agency.

	<p>“(4) Nothing in this section is intended to limit the authority of any agency to conduct test programs.</p>
Deadline.	<p>“(c) The Administrator shall transmit a copy of any test program approved by the Administrator under this section, and the rationale for approval, to the appropriate committees of Congress at least 30 days before the effective date of the program.</p>
Reports. Deadline.	<p>“(d)(1) An agency authorized to conduct a test program under subsection (b) shall provide to the Administrator, the Telework Managing Officer of that agency, and the appropriate committees of Congress a report on the results of the program not later than 3 months after completion of the program.</p> <p>“(2) The results in a report described under paragraph (1) may include—</p> <ul style="list-style-type: none"> “(A) the number of visits an employee makes to the pre-existing duty station of that employee; “(B) the travel expenses paid by the agency; “(C) the travel expenses paid by the employee; or “(D) any other information the agency determines useful to aid the Administrator, Telework Managing Officer, and Congress in understanding the test program and the impact of the program. <p>“(e) No more than 10 test programs under this section may be conducted simultaneously.</p>
Definition.	<p>“(f)(1) In this subsection, the term ‘appropriate committee of Congress’ means—</p> <ul style="list-style-type: none"> “(A) the Committee on Homeland Security and Governmental Affairs of the Senate; “(B) the Committee on Oversight and Government Reform of the House of Representatives; “(C) the Committee on the Judiciary of the Senate; and “(D) the Committee on the Judiciary of the House of Representatives. <p>“(2) The Patent and Trademark Office shall conduct a test program under this section, including the provision of reports in accordance with subsection (d)(1).</p> <p>“(3) In conducting the program under this subsection, the Patent and Trademark Office may pay any travel expenses of an employee for travel to and from a Patent and Trademark Office worksite or provide an employee with the option to waive any payment authorized or required under this subchapter, if—</p> <ul style="list-style-type: none"> “(A) the employee is employed at a Patent and Trademark Office worksite and enters into an approved telework arrangement; “(B) the employee requests to telework from a location beyond the local commuting area of the Patent and Trademark Office worksite; and “(C) the Patent and Trademark Office approves the requested arrangement for reasons of employee convenience instead of an agency need for the employee to relocate in order to perform duties specific to the new location. <p>“(4)(A) The Patent and Trademark Office shall establish an oversight committee comprising an equal number of members representing management and labor, including representatives from each collective bargaining unit.</p>
Procedures.	<p>“(B) The oversight committee shall develop the operating procedures for the program under this subsection to—</p>

“(i) provide for the effective and appropriate functioning of the program; and

“(ii) ensure that—

“(I) reasonable technological or other alternatives to employee travel are used before requiring employee travel, including teleconferencing, videoconferencing or internet-based technologies;

“(II) the program is applied consistently and equitably throughout the Patent and Trademark Office; and

“(III) an optimal operating standard is developed and implemented for maximizing the use of the telework arrangement described under paragraph (2) while minimizing agency travel expenses and employee travel requirements.

“(5)(A) The test program under this subsection shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

“(B) The Director of the Patent and Trademark Office shall—

“(i) prepare an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program; and

“(ii) before the test program is implemented, submit the analysis and criteria to the Administrator of General Services and to the appropriate committees of Congress.

“(C) With respect to an employee of the Patent and Trademark Office who voluntarily relocates from the pre-existing duty station of that employee, the operating procedures of the program may include a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by the Office.

“(g) The authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Telework Enhancement Act of 2010.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5710 the following:

“5711. Authority for telework travel expenses test programs.”

SEC. 4. TELEWORK RESEARCH.

(a) RESEARCH BY OPM ON TELEWORK.—The Director of the Office of Personnel Management shall—

(1) research the utilization of telework by public and private sector entities that identify best practices and recommendations for the Federal Government;

(2) review the outcomes associated with an increase in telework, including the effects of telework on energy consumption, job creation and availability, urban transportation patterns, and the ability to anticipate the dispersal of work during periods of emergency; and

(3) make any studies or reviews performed under this subsection available to the public.

(b) USE OF CONTRACT TO CARRY OUT RESEARCH.—The Director of the Office of Personnel Management may carry out subsection (a) under a contract entered into by the Director using competitive procedures under section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253).

Cost analysis.

Criteria.

Expiration date.

5 USC 6501 note.

(c) **USE OF OTHER FEDERAL AGENCIES.**—The heads of Federal agencies with relevant jurisdiction over the subject matters in subsection (a)(2) shall work cooperatively with the Director of the Office of Personnel Management to carry out that subsection, if the Director determines that coordination is necessary to fulfill obligations under that subsection.

Approved December 9, 2010.

LEGISLATIVE HISTORY—H.R. 1722:

HOUSE REPORTS: No. 111–474 (Comm. on Oversight and Government Reform).
CONGRESSIONAL RECORD, Vol. 156 (2010):

May 5, 6, considered and failed House.

July 14, considered and passed House.

Sept. 29, considered and passed Senate, amended.

Nov. 18, House concurred in Senate amendment.



Public Law 111–293
111th Congress

An Act

To provide for adjustment of status for certain Haitian orphans paroled into the United States after the earthquake of January 12, 2010.

Dec. 9, 2010
[H.R. 5283]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as—

- (1) the “Help Haitian Adoptees Immediately to Integrate Act of 2010”; or
- (2) the “Help HAITI Act of 2010”.

Help Haitian
Adoptees
Immediately to
Integrate Act of
2010.
8 USC 1255 note.

SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN HAITIAN ORPHANS.

(a) **IN GENERAL.**—The Secretary of Homeland Security may adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien—

- (1) was inspected and granted parole into the United States pursuant to the humanitarian parole policy for certain Haitian orphans announced by the Secretary of Homeland Security on January 18, 2010, and suspended as to new applications on April 15, 2010;
- (2) is physically present in the United States;
- (3) is admissible to the United States as an immigrant, except as provided in subsection (c); and
- (4) files an application for an adjustment of status under this section not later than 3 years after the date of the enactment of this Act.

Deadline.

(b) **NUMERICAL LIMITATION.**—The number of aliens who are granted the status of an alien lawfully admitted for permanent residence under this section shall not exceed 1400.

(c) **GROUND OF INADMISSIBILITY.**—Section 212(a)(7)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(A)) shall not apply to an alien seeking an adjustment of status under this section.

(d) **VISA AVAILABILITY.**—The Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for any alien granted the status of having been lawfully admitted for permanent residence under this section.

(e) **ALIENS DEEMED TO MEET DEFINITION OF CHILD.**—An unmarried alien described in subsection (a) who is under the age of 18 years shall be deemed to satisfy the requirements applicable to adopted children under section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) if—

- (1) the alien obtained adjustment of status under this section; and

(2) a citizen of the United States adopted the alien prior to, on, or after the date of the decision granting such adjustment of status.

(f) **NO IMMIGRATION BENEFITS FOR BIRTH PARENTS.**—No birth parent of an alien who obtains adjustment of status under this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 3. COMPLIANCE WITH PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 9, 2010.

LEGISLATIVE HISTORY—H.R. 5283:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 20, considered and passed House.

Aug. 4, considered and passed Senate, amended.

Dec. 1, House concurred in Senate amendment.



Public Law 111–294
111th Congress

An Act

To amend title 18, United States Code, to prohibit interstate commerce in animal crush videos, and for other purposes.

Dec. 9, 2010

[H.R. 5566]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Animal Crush
Video Prohibition
Act of 2010.
18 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Animal Crush Video Prohibition Act of 2010”.

SEC. 2. FINDINGS.

18 USC 48 note.

The Congress finds the following:

(1) The United States has a long history of prohibiting the interstate sale, marketing, advertising, exchange, and distribution of obscene material and speech that is integral to criminal conduct.

(2) The Federal Government and the States have a compelling interest in preventing intentional acts of extreme animal cruelty.

(3) Each of the several States and the District of Columbia criminalize intentional acts of extreme animal cruelty, such as the intentional crushing, burning, drowning, suffocating, or impaling of animals for no socially redeeming purpose.

(4) There are certain extreme acts of animal cruelty that appeal to a specific sexual fetish. These acts of extreme animal cruelty are videotaped, and the resulting video tapes are commonly referred to as “animal crush videos”.

(5) The Supreme Court of the United States has long held that obscenity is an exception to speech protected under the First Amendment to the Constitution of the United States.

(6) In the judgment of Congress, many animal crush videos are obscene in the sense that the depictions, taken as a whole—

(A) appeal to the prurient interest in sex;

(B) are patently offensive; and

(C) lack serious literary, artistic, political, or scientific value.

(7) Serious criminal acts of extreme animal cruelty are integral to the creation, sale, distribution, advertising, marketing, and exchange of animal crush videos.

(8) The creation, sale, distribution, advertising, marketing, and exchange of animal crush videos is intrinsically related and integral to creating an incentive for, directly causing, and perpetuating demand for the serious acts of extreme animal cruelty the videos depict. The primary reason for those criminal

acts is the creation, sale, distribution, advertising, marketing, and exchange of the animal crush video image.

(9) The serious acts of extreme animal cruelty necessary to make animal crush videos are committed in a clandestine manner that—

(A) allows the perpetrators of such crimes to remain anonymous;

(B) makes it extraordinarily difficult to establish the jurisdiction within which the underlying criminal acts of extreme animal cruelty occurred; and

(C) often precludes proof that the criminal acts occurred within the statute of limitations.

(10) Each of the difficulties described in paragraph (9) seriously frustrates and impedes the ability of State authorities to enforce the criminal statutes prohibiting such behavior.

SEC. 3. ANIMAL CRUSH VIDEOS.

(a) IN GENERAL.—Section 48 of title 18, United States Code, is amended to read as follows:

18 USC 48.

“§ 48. Animal crush videos

“(a) DEFINITION.—In this section the term ‘animal crush video’ means any photograph, motion-picture film, video or digital recording, or electronic image that—

“(1) depicts actual conduct in which 1 or more living non-human mammals, birds, reptiles, or amphibians is intentionally crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury (as defined in section 1365 and including conduct that, if committed against a person and in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242); and

“(2) is obscene.

“(b) PROHIBITIONS.—

“(1) CREATION OF ANIMAL CRUSH VIDEOS.—It shall be unlawful for any person to knowingly create an animal crush video, if—

“(A) the person intends or has reason to know that the animal crush video will be distributed in, or using a means or facility of, interstate or foreign commerce; or

“(B) the animal crush video is distributed in, or using a means or facility of, interstate or foreign commerce.

“(2) DISTRIBUTION OF ANIMAL CRUSH VIDEOS.—It shall be unlawful for any person to knowingly sell, market, advertise, exchange, or distribute an animal crush video in, or using a means or facility of, interstate or foreign commerce.

“(c) EXTRATERRITORIAL APPLICATION.—Subsection (b) shall apply to the knowing sale, marketing, advertising, exchange, distribution, or creation of an animal crush video outside of the United States, if—

“(1) the person engaging in such conduct intends or has reason to know that the animal crush video will be transported into the United States or its territories or possessions; or

“(2) the animal crush video is transported into the United States or its territories or possessions.

“(d) PENALTY.—Any person who violates subsection (b) shall be fined under this title, imprisoned for not more than 7 years, or both.

“(e) EXCEPTIONS.—

“(1) IN GENERAL.—This section shall not apply with regard to any visual depiction of—

“(A) customary and normal veterinary or agricultural husbandry practices;

“(B) the slaughter of animals for food; or

“(C) hunting, trapping, or fishing.

“(2) GOOD-FAITH DISTRIBUTION.—This section shall not apply to the good-faith distribution of an animal crush video to—

“(A) a law enforcement agency; or

“(B) a third party for the sole purpose of analysis to determine if referral to a law enforcement agency is appropriate.

“(f) NO PREEMPTION.—Nothing in this section shall be construed to preempt the law of any State or local subdivision thereof to protect animals.”.

(b) CLERICAL AMENDMENT.—The item relating to section 48 in the table of sections for chapter 3 of title 18, United States Code, is amended to read as follows:

“48. Animal crush videos.”.

(c) SEVERABILITY.—If any provision of section 48 of title 18, United States Code (as amended by this section), or the application of the provision to any person or circumstance, is held to be unconstitutional, the provision and the application of the provision to other persons or circumstances shall not be affected thereby. 18 USC 48 note.

SEC. 4. PAYGO COMPLIANCE.

The budgetary effects of this Act, for purposes of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendments between the Houses.

Approved December 9, 2010.

LEGISLATIVE HISTORY—H.R. 5566:

HOUSE REPORTS: No. 111–549 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 20, 21, considered and passed House.

Sept. 28, considered and passed Senate, amended.

Nov. 15, House concurred in Senate amendment with an amendment pursuant to H. Res. 1712.

Nov. 19, Senate concurred in House amendment.



Public Law 111–295
111th Congress

An Act

Dec. 9, 2010
[S. 3689]

To clarify, improve, and correct the laws relating to copyrights, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Copyright
Cleanup,
Clarification, and
Corrections Act
of 2010.
17 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Cleanup, Clarification, and Corrections Act of 2010”.

SEC. 2. REFERENCE.

Except as otherwise specifically provided, whenever in this Act a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT OFFICE PROCEDURES.

17 USC 512.

(a) DIRECTORY OF AGENTS OF SERVICE PROVIDERS.—Section 512(c)(2) is amended, in the matter following subparagraph (B), by striking “, in both electronic and hard copy formats”.

Regulations.

(b) RECORDATION OF DOCUMENTS.—Section 205(a) is amended by adding at the end the following: “A sworn or official certification may be submitted to the Copyright Office electronically, pursuant to regulations established by the Register of Copyrights.”.

SEC. 4. REPEAL OF EXPIRED PROVISIONS.

(a) REPEAL.—Section 601, and the item relating to such section in the table of sections for chapter 6, are repealed.

(b) CONFORMING AMENDMENTS.—

(1) CLERICAL AMENDMENT.—(A) The heading for chapter 6 is amended to read as follows:

“CHAPTER 6—IMPORTATION AND EXPORTATION”.

(B) The item relating to chapter 6 in the table of chapters is amended to read as follows:

“6. Importation and Exportation 601”.

(2) APPLICATION FOR COPYRIGHT REGISTRATION.—Section 409 is amended—

(A) in paragraph (9), by adding “and” after the semicolon;

(B) by striking paragraph (10); and

(C) by redesignating paragraph (11) as paragraph (10).

(c) INFRINGING IMPORTATION OR EXPORTATION.—The second sentence of section 602(b) is amended by striking “unless the provisions of section 601 are applicable”. 17 USC 602.

SEC. 5. CLARIFICATIONS.

(a) CERTAIN DISTRIBUTIONS OF PHONORECORDS.—Section 303(b) is amended by striking “the musical work” and inserting “any musical work, dramatic work, or literary work”.

(b) PROCEEDINGS OF COPYRIGHT ROYALTY JUDGES.—Section 803(b)(6)(A) is amended by striking the second sentence and inserting the following: “All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress and are subject to judicial review pursuant to chapter 7 of title 5, except as set forth in subsection (d).”

(c) LICENSES FOR CERTAIN NONEXEMPT TRANSMISSIONS.—Section 114(f)(2)(C) is amended by striking “preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services” and inserting “eligible nonsubscription services and new subscription services”.

SEC. 6. TECHNICAL CORRECTIONS.

(a) DEFINITIONS.—Section 101 is amended—

(1) by moving the definition of “Copyright Royalty Judges” to follow the definition of “Copyright owner”;

(2) by moving the definition of “motion picture exhibition facility” to follow the definition of “Literary works”; and

(3) by moving the definition of “food service or drinking establishment” to follow the definition of “fixed”;

(b) LICENSES FOR WEBCASTING.—Section 114(f)(2)(B) is amended in the fourth sentence, in the matter preceding clause (i), by striking “Judges shall base its decision” and inserting “Judges shall base their decision”.

(c) SATELLITE CARRIERS.—Section 119(g)(4)(B)(vi) is amended by striking “the examinations” and inserting “an examination”.

(d) REMEDIES FOR INFRINGEMENT.—Section 503(a)(1)(B) is amended by striking “copies of phonorecords” and inserting “copies or phonorecords”.

(e) RETENTION OF COPIES IN COPYRIGHT OFFICE.—Section 704(e) is amended, in the second sentence, by striking “section 708(a)(10)” and inserting “section 708(a)”.

(f) CORRECTION OF INTERNAL REFERENCES.—(1) Section 114(b) is amended by striking “118(g)” and inserting “118(f)”.

(2) Section 504(c)(2) is amended by striking “subsection (g) of section 118” and inserting “section 118(f)”.

(3) Sections 1203(c)(5)(B)(i) and 1204(b) are each amended by striking “118(g)” and inserting “118(f)”.

(g) PRO-IP ACT.—Section 209(a)(3)(A) of Public Law 110–403 is amended by striking “by striking ‘and 509’” and inserting “by striking ‘and section 509’”. 17 USC 115.

(h) TRADEMARK TECHNICAL AMENDMENTS ACT.—Section 4(a)(1) of Public Law 111–146 is amended by striking “by corporations attempting” and inserting “the purpose of which is”. *Ante*, p. 70.

(i) **TRAFFICKING.**—Section 2318(e)(6) of title 18, United States Code, is amended by striking “under section” and inserting “under this subsection”.

Approved December 9, 2010.

LEGISLATIVE HISTORY—S. 3689:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 2, considered and passed Senate.

Nov. 15, considered and passed House, amended.

Nov. 19, Senate concurred in House amendments.



Public Law 111–296
111th Congress

An Act

To reauthorize child nutrition programs, and for other purposes.

Dec. 13, 2010

[S. 3307]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Healthy, Hunger-Free Kids Act of 2010.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Healthy, Hunger-Free Kids Act of 2010”.

42 USC 1751 note.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definition of Secretary.

TITLE I—A PATH TO END CHILDHOOD HUNGER

Subtitle A—National School Lunch Program

Sec. 101. Improving direct certification.

Sec. 102. Categorical eligibility of foster children.

Sec. 103. Direct certification for children receiving Medicaid benefits.

Sec. 104. Eliminating individual applications through community eligibility.

Sec. 105. Grants for expansion of school breakfast programs.

Subtitle B—Summer Food Service Program

Sec. 111. Alignment of eligibility rules for public and private sponsors.

Sec. 112. Outreach to eligible families.

Sec. 113. Summer food service support grants.

Subtitle C—Child and Adult Care Food Program

Sec. 121. Simplifying area eligibility determinations in the child and adult care food program.

Sec. 122. Expansion of afterschool meals for at-risk children.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

Sec. 131. Certification periods.

Subtitle E—Miscellaneous

Sec. 141. Childhood hunger research.

Sec. 142. State childhood hunger challenge grants.

Sec. 143. Review of local policies on meal charges and provision of alternate meals.

TITLE II—REDUCING CHILDHOOD OBESITY AND IMPROVING THE DIETS OF CHILDREN

Subtitle A—National School Lunch Program

Sec. 201. Performance-based reimbursement rate increases for new meal patterns.

Sec. 202. Nutrition requirements for fluid milk.

Sec. 203. Water.

Sec. 204. Local school wellness policy implementation.

Sec. 205. Equity in school lunch pricing.

Sec. 206. Revenue from nonprogram foods sold in schools.

- Sec. 207. Reporting and notification of school performance.
- Sec. 208. Nutrition standards for all foods sold in school.
- Sec. 209. Information for the public on the school nutrition environment.
- Sec. 210. Organic food pilot program.

Subtitle B—Child and Adult Care Food Program

- Sec. 221. Nutrition and wellness goals for meals served through the child and adult care food program.
- Sec. 222. Interagency coordination to promote health and wellness in child care licensing.
- Sec. 223. Study on nutrition and wellness quality of child care settings.

Subtitle C—Special Supplemental Nutrition Program for Women, Infants, and Children

- Sec. 231. Support for breastfeeding in the WIC Program.
- Sec. 232. Review of available supplemental foods.

Subtitle D—Miscellaneous

- Sec. 241. Nutrition education and obesity prevention grant program.
- Sec. 242. Procurement and processing of food service products and commodities.
- Sec. 243. Access to Local Foods: Farm to School Program.
- Sec. 244. Research on strategies to promote the selection and consumption of healthy foods.

TITLE III—IMPROVING THE MANAGEMENT AND INTEGRITY OF CHILD NUTRITION PROGRAMS

Subtitle A—National School Lunch Program

- Sec. 301. Privacy protection.
- Sec. 302. Applicability of food safety program on entire school campus.
- Sec. 303. Fines for violating program requirements.
- Sec. 304. Independent review of applications.
- Sec. 305. Program evaluation.
- Sec. 306. Professional standards for school food service.
- Sec. 307. Indirect costs.
- Sec. 308. Ensuring safety of school meals.

Subtitle B—Summer Food Service Program

- Sec. 321. Summer food service program permanent operating agreements.
- Sec. 322. Summer food service program disqualification.

Subtitle C—Child and Adult Care Food Program

- Sec. 331. Renewal of application materials and permanent operating agreements.
- Sec. 332. State liability for payments to aggrieved child care institutions.
- Sec. 333. Transmission of income information by sponsored family or group day care homes.
- Sec. 334. Simplifying and enhancing administrative payments to sponsoring organizations.
- Sec. 335. Child and adult care food program audit funding.
- Sec. 336. Reducing paperwork and improving program administration.
- Sec. 337. Study relating to the child and adult care food program.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

- Sec. 351. Sharing of materials with other programs.
- Sec. 352. WIC program management.

Subtitle E—Miscellaneous

- Sec. 361. Full use of Federal funds.
- Sec. 362. Disqualified schools, institutions, and individuals.

TITLE IV—MISCELLANEOUS

Subtitle A—Reauthorization of Expiring Provisions

PART I—RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

- Sec. 401. Commodity support.
- Sec. 402. Food safety audits and reports by States.
- Sec. 403. Procurement training.

- Sec. 404. Authorization of the summer food service program for children.
- Sec. 405. Year-round services for eligible entities.
- Sec. 406. Training, technical assistance, and food service management institute.
- Sec. 407. Federal administrative support.
- Sec. 408. Compliance and accountability.
- Sec. 409. Information clearinghouse.

PART II—CHILD NUTRITION ACT OF 1966

- Sec. 421. Technology infrastructure improvement.
- Sec. 422. State administrative expenses.
- Sec. 423. Special supplemental nutrition program for women, infants, and children.
- Sec. 424. Farmers market nutrition program.

Subtitle B—Technical Amendments

- Sec. 441. Technical amendments.
- Sec. 442. Use of unspent future funds from the American Recovery and Reinvestment Act of 2009.
- Sec. 443. Equipment assistance technical correction.
- Sec. 444. Budgetary effects.
- Sec. 445. Effective date.

SEC. 2. DEFINITION OF SECRETARY.

7 USC 3179 note.

In this Act, the term “Secretary” means the Secretary of Agriculture.

TITLE I—A PATH TO END CHILDHOOD HUNGER

Subtitle A—National School Lunch Program

SEC. 101. IMPROVING DIRECT CERTIFICATION.

(a) PERFORMANCE AWARDS.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) is amended—

(1) in the paragraph heading, by striking “FOOD STAMP” and inserting “SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM”; and

(2) by adding at the end the following:

“(E) PERFORMANCE AWARDS.—

“(i) IN GENERAL.—Effective for each of the school years beginning July 1, 2011, July 1, 2012, and July 1, 2013, the Secretary shall offer performance awards to States to encourage the States to ensure that all children eligible for direct certification under this paragraph are certified in accordance with this paragraph.

Effective dates.

“(ii) REQUIREMENTS.—For each school year described in clause (i), the Secretary shall—

“(I) consider State data from the prior school year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a); and

“(II) make performance awards to not more than 15 States that demonstrate, as determined by the Secretary—

“(aa) outstanding performance; and

“(bb) substantial improvement.

“(iii) USE OF FUNDS.—A State agency that receives a performance award under clause (i)—

Effective dates.

“(I) shall treat the funds as program income; and

“(II) may transfer the funds to school food authorities for use in carrying out the program.

“(iv) FUNDING.—

“(I) IN GENERAL.—On October 1, 2011, and each subsequent October 1 through October 1, 2013, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—

“(aa) \$2,000,000 to carry out clause

(ii)(II)(aa); and

“(bb) \$2,000,000 to carry out clause

(ii)(II)(bb).

“(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this clause the funds transferred under subclause (I), without further appropriation.

“(v) PAYMENTS NOT SUBJECT TO JUDICIAL REVIEW.—

A determination by the Secretary whether, and in what amount, to make a performance award under this subparagraph shall not be subject to administrative or judicial review.”.

(b) CONTINUOUS IMPROVEMENT PLANS.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) (as amended by subsection (a)) is amended by adding at the end the following:

“(F) CONTINUOUS IMPROVEMENT PLANS.—

“(i) DEFINITION OF REQUIRED PERCENTAGE.—In this subparagraph, the term ‘required percentage’ means—

“(I) for the school year beginning July 1, 2011, 80 percent;

“(II) for the school year beginning July 1, 2012, 90 percent; and

“(III) for the school year beginning July 1, 2013, and each school year thereafter, 95 percent.

“(ii) REQUIREMENTS.—Each school year, the Secretary shall—

“(I) identify, using data from the prior year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a), States that directly certify less than the required percentage of the total number of children in the State who are eligible for direct certification under this paragraph;

“(II) require the States identified under subclause (I) to implement a continuous improvement plan to fully meet the requirements of this paragraph, which shall include a plan to improve direct certification for the following school year; and

“(III) assist the States identified under subclause (I) to develop and implement a continuous improvement plan in accordance with subclause (II).

“(iii) FAILURE TO MEET PERFORMANCE STANDARD.—

“(I) IN GENERAL.—A State that is required to develop and implement a continuous improvement plan under clause (ii)(II) shall be required to submit the continuous improvement plan to the Secretary, for the approval of the Secretary.

“(II) REQUIREMENTS.—At a minimum, a continuous improvement plan under subclause (I) shall include—

“(aa) specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;

“(bb) a timeline for the State to implement those measures; and

“(cc) goals for the State to improve direct certification results.”.

(c) WITHOUT FURTHER APPLICATION.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) (as amended by subsection (b)) is amended by adding at the end the following:

“(G) WITHOUT FURTHER APPLICATION.—

“(i) IN GENERAL.—In this paragraph, the term ‘without further application’ means that no action is required by the household of the child.

Definition.

“(ii) CLARIFICATION.—A requirement that a household return a letter notifying the household of eligibility for direct certification or eligibility for free school meals does not meet the requirements of clause (i).”.

SEC. 102. CATEGORICAL ELIGIBILITY OF FOSTER CHILDREN.

(a) DISCRETIONARY CERTIFICATION.—Section 9(b)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(5)) is amended—

(1) in subparagraph (C), by striking “or” at the end;

(2) in subparagraph (D), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(E)(i) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

“(ii) a foster child who a court has placed with a caretaker household.”.

(b) CATEGORICAL ELIGIBILITY.—Section 9(b)(12)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(12)(A)) is amended—

(1) in clause (iv), by adding “)” before the semicolon at the end;

(2) in clause (v), by striking “or” at the end;

(3) in clause (vi), by striking the period at the end and inserting “; or”; and

(4) by adding at the end the following:

“(vii)(I) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

“(II) a foster child who a court has placed with a caretaker household.”.

(c) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) is amended—

(1) in subparagraph (D), by striking “or” at the end;

(2) in subparagraph (E), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(F)(i) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

“(ii) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child who a court has placed with a caretaker household.”.

SEC. 103. DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end the following:

“(15) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.—

“(A) DEFINITIONS.—In this paragraph:

“(i) ELIGIBLE CHILD.—The term ‘eligible child’ means a child—

“(I)(aa) who is eligible for and receiving medical assistance under the Medicaid program; and

“(bb) who is a member of a family with an income as measured by the Medicaid program before the application of any expense, block, or other income disregard, that does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by such section)) applicable to a family of the size used for purposes of determining eligibility for the Medicaid program; or

“(II) who is a member of a household (as that term is defined in section 245.2 of title 7, Code of Federal Regulations (or successor regulations) with a child described in subclause (I).

“(ii) MEDICAID PROGRAM.—The term ‘Medicaid program’ means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

“(B) DEMONSTRATION PROJECT.—

“(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service and in cooperation with selected State agencies, shall conduct a demonstration project in selected local educational agencies to determine whether direct certification of eligible children is an effective method of certifying children for free lunches and breakfasts

under section 9(b)(1)(A) of this Act and section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)).

“(ii) SCOPE OF PROJECT.—The Secretary shall carry out the demonstration project under this subparagraph—

“(I) for the school year beginning July 1, 2012, in selected local educational agencies that collectively serve 2.5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data;

“(II) for the school year beginning July 1, 2013, in selected local educational agencies that collectively serve 5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data; and

“(III) for the school year beginning July 1, 2014, and each subsequent school year, in selected local educational agencies that collectively serve 10 percent of students certified for free and reduced price meals nationwide, based on the most recent available data.

“(iii) PURPOSES OF THE PROJECT.—At a minimum, the purposes of the demonstration project shall be—

“(I) to determine the potential of direct certification with the Medicaid program to reach children who are eligible for free meals but not certified to receive the meals;

“(II) to determine the potential of direct certification with the Medicaid program to directly certify children who are enrolled for free meals based on a household application; and

“(III) to provide an estimate of the effect on Federal costs and on participation in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) of direct certification with the Medicaid program.

“(iv) COST ESTIMATE.—For each of 2 school years of the demonstration project, the Secretary shall estimate the cost of the direct certification of eligible children for free school meals through data derived from—

“(I) the school meal programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(II) the Medicaid program; and

“(III) interviews with a statistically representative sample of households.

“(C) AGREEMENT.—

“(i) IN GENERAL.—Not later than July 1 of the first school year during which a State agency will participate in the demonstration project, the State agency shall enter into an agreement with the 1 or more State agencies conducting eligibility determinations for the Medicaid program.

Deadline.

Procedures.

“(ii) WITHOUT FURTHER APPLICATION.—Subject to paragraph (6), the agreement described in subparagraph (D) shall establish procedures under which an eligible child shall be certified for free lunches under this Act and free breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), without further application (as defined in paragraph (4)(G)).

Effective date.

“(D) CERTIFICATION.—For the school year beginning on July 1, 2012, and each subsequent school year, subject to paragraph (6), the local educational agencies participating in the demonstration project shall certify an eligible child as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application (as defined in paragraph (4)(G)).

“(E) SITE SELECTION.—

“(i) IN GENERAL.—To be eligible to participate in the demonstration project under this subsection, a State agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(ii) CONSIDERATIONS.—In selecting States and local educational agencies for participation in the demonstration project, the Secretary may take into consideration such factors as the Secretary considers to be appropriate, which may include—

“(I) the rate of direct certification;

“(II) the share of individuals who are eligible for benefits under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) who participate in the program, as determined by the Secretary;

“(III) the income eligibility limit for the Medicaid program;

“(IV) the feasibility of matching data between local educational agencies and the Medicaid program;

“(V) the socioeconomic profile of the State or local educational agencies; and

“(VI) the willingness of the State and local educational agencies to comply with the requirements of the demonstration project.

“(F) ACCESS TO DATA.—For purposes of conducting the demonstration project under this paragraph, the Secretary shall have access to—

“(i) educational and other records of State and local educational and other agencies and institutions receiving funding or providing benefits for 1 or more programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

“(ii) income and program participation information from public agencies administering the Medicaid program.

“(G) REPORT TO CONGRESS.—

“(i) IN GENERAL.—Not later than October 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, an interim report that describes the results of the demonstration project required under this paragraph.

“(ii) FINAL REPORT.—Not later than October 1, 2015, the Secretary shall submit a final report to the committees described in clause (i).

“(H) FUNDING.—

“(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subparagraph (G) \$5,000,000, to remain available until expended.

Effective date.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subparagraph (G) the funds transferred under clause (i), without further appropriation.”.

(b) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) (as amended by section 102(c)) is amended—

- (1) in subparagraph (E), by striking “or” at the end;
- (2) in subparagraph (F)(ii), by striking the period at the end and inserting “; or”; and
- (3) by adding at the end the following:

“(G) documentation has been provided to the appropriate local educational agency showing the status of the child as an eligible child (as defined in subsection (b)(15)(A)).”.

(c) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION BY STATE MEDICAID AGENCIES.—

(1) IN GENERAL.—Section 1902(a)(7) of the Social Security Act (42 U.S.C. 1396a(a)(7)) is amended to read as follows:

“(7) provide—

“(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

“(i) the administration of the plan; and

“(ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 and free or reduced price lunches under the Richard B. Russell National School Lunch Act, in accordance with section 9(b) of that Act, using data standards and formats established by the State agency; and

“(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act under which the State shall establish procedures to ensure that—

“(i) a child receiving medical assistance under the State plan under this title whose family income does not exceed 133 percent of the poverty line (as defined

in section 673(2) of the Community Services Block Grant Act, including any revision required by such section), as determined without regard to any expense, block, or other income disregard, applicable to a family of the size involved, may be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act and free breakfasts under the Child Nutrition Act of 1966 without further application; and

“(ii) the State agencies responsible for administering the State plan under this title, and for carrying out the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), cooperate in carrying out paragraphs (3)(F) and (15) of section 9(b) of that Act;”.

42 USC 1396a
note.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect on the date of enactment of this Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of the amendments made by this section solely on the basis of its failure to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(d) CONFORMING AMENDMENTS.—Section 444(b)(1) of the General Education Provisions Act (20 U.S.C. 1232g(b)(1)) is amended—

(1) in subparagraph (I), by striking “and” at the end;

(2) in subparagraph (J)(ii), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following:

Confidentiality.

“(K) the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational and other agencies and institutions receiving funding or providing benefits of 1 or more programs authorized under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that—

“(i) any data collected under this subparagraph shall be protected in a manner that will not permit the personal

identification of students and their parents by other than the authorized representatives of the Secretary; and

“(ii) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements.”.

SEC. 104. ELIMINATING INDIVIDUAL APPLICATIONS THROUGH COMMUNITY ELIGIBILITY.

(a) UNIVERSAL MEAL SERVICE IN HIGH POVERTY AREAS.—

(1) ELIGIBILITY.—Section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended by adding at the end the following:

“(F) UNIVERSAL MEAL SERVICE IN HIGH POVERTY AREAS.—

“(i) DEFINITION OF IDENTIFIED STUDENTS.—The term ‘identified students’ means students certified based on documentation of benefit receipt or categorical eligibility as described in section 245.6a(c)(2) of title 7, Code of Federal Regulations (or successor regulations).

“(ii) ELECTION OF SPECIAL ASSISTANCE PAYMENTS.—

“(I) IN GENERAL.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to receive special assistance payments under this subparagraph in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if—

“(aa) during a period of 4 successive school years, the local educational agency elects to serve all children in the applicable schools free lunches and breakfasts under the school lunch program under this Act and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

“(bb) the local educational agency pays, from sources other than Federal funds, the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(cc) the local educational agency is not a residential child care institution (as that term is used in section 210.2 of title 7, Code of Federal Regulations (or successor regulations)); and

“(dd) during the school year prior to the first year of the period for which the local educational agency elects to receive special assistance payments under this subparagraph, the local educational agency or school had a percentage of enrolled students who were identified students that meets or exceeds the threshold described in clause (viii).

Notification.
Deadline.

“(II) ELECTION TO STOP RECEIVING PAYMENTS.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to stop receiving special assistance payments under this subparagraph for the following school year by notifying the State agency not later than June 30 of the current school year of the intention to stop receiving special assistance payments under this subparagraph.

“(iii) FIRST YEAR OF OPTION.—

“(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the first school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

“(aa) the multiplier described in clause (vii); by

“(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

“(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 4.

“(iv) SECOND, THIRD, OR FOURTH YEAR OF OPTION.—

“(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the second, third, or fourth school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

“(aa) the multiplier described in clause (vii); by

“(bb) the higher of the percentage of identified students at the school or local educational agency as of April 1 of the prior school year or the percentage of identified students at the school or local educational agency as of April 1 of the school year prior to the first year that the school or local educational agency elected to receive special assistance payments under this subparagraph, up to a maximum of 100 percent.

“(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 4.

“(v) GRACE YEAR.—

“(I) IN GENERAL.—If, not later than April 1 of the fourth year of a 4-year period described in clause (ii)(I), a school or local educational agency has a percentage of enrolled students who are identified students that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii), the school or local educational agency may elect to receive special assistance payments under subclause (II) for an additional grace year. Deadline.

“(II) SPECIAL ASSISTANCE PAYMENT.—For each month of a grace year, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

“(aa) the multiplier described in clause (vii); by

“(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

“(III) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (II) shall be reimbursed at the rate provided under section 4.

“(vi) APPLICATIONS.—A school or local educational agency that receives special assistance payments under this subparagraph may not be required to collect applications for free and reduced price lunches.

“(vii) MULTIPLIER.—

“(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the multiplier shall be 1.6.

“(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use, as determined by the Secretary—

“(aa) a multiplier between 1.3 and 1.6; and

“(bb) subject to item (aa), a different multiplier for different schools or local educational agencies.

“(viii) THRESHOLD.—

“(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the threshold shall be 40 percent.

“(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use a threshold that is less than 40 percent.

“(ix) PHASE-IN.—

“(I) IN GENERAL.—In selecting States for participation during the phase-in period, the Secretary shall select States with an adequate number and variety of schools and local educational agencies that could benefit from the option under this subparagraph, as determined by the Secretary.

“(II) LIMITATION.—The Secretary may not approve additional schools and local educational agencies to receive special assistance payments under this subparagraph after the Secretary has approved schools and local educational agencies in—

“(aa) for the school year beginning on July 1, 2011, 3 States; and

“(bb) for each of the school years beginning July 1, 2012 and July 1, 2013, an additional 4 States per school year.

“(x) ELECTION OF OPTION.—

“(I) IN GENERAL.—For each school year beginning on or after July 1, 2014, any local educational agency eligible to make the election described in clause (ii) for all schools in the district or on behalf of certain schools in the district may elect to receive special assistance payments under clause (iii) for the next school year if, not later than June 30 of the current school year, the local educational agency submits to the State agency the percentage of identified students at the school or local educational agency.

Deadline.

“(II) STATE AGENCY NOTIFICATION.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with schools or local educational agencies that may be eligible to elect to receive special assistance payments under this subparagraph shall notify—

“(aa) each local educational agency that meets or exceeds the threshold described in clause (viii) that the local educational agency is eligible to elect to receive special assistance payments under clause (iii) for the next 4 school years, of the blended reimbursement rate the local educational agency would receive under clause (iii), and of the procedures for the local educational agency to make the election;

“(bb) each local educational agency that receives special assistance payments under clause (iii) of the blended reimbursement rate the local educational agency would receive under clause (iv);

“(cc) each local educational agency in the fourth year of electing to receive special assistance payments under this subparagraph that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that receives special assistance payments under clause (iv), that the local educational agency may continue to receive such payments for the next school year, of the blended reimbursement rate the local educational agency would receive under clause (v), and of the procedures for the local educational agency to make the election; and

“(dd) each local educational agency that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) that the local educational agency may be eligible to elect to receive special assistance payments under clause (iii) if the threshold described in clause (viii) is met by April 1 of the school year or if the threshold is met for a subsequent school year.

“(III) PUBLIC NOTIFICATION OF LOCAL EDUCATIONAL AGENCIES.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with 1 or more schools or local educational agencies eligible to elect to receive special assistance payments under clause (iii) shall submit to the Secretary, and the Secretary shall publish, lists of the local educational agencies receiving notices under subclause (II).

Deadline.
Publication.
Lists.

“(IV) PUBLIC NOTIFICATION OF SCHOOLS.—Not later than May 1 of each school year beginning on or after July 1, 2011, each local educational agency in a State with 1 or more schools eligible to elect to receive special assistance payments under clause (iii) shall submit to the State agency, and the State agency shall publish—

Deadline.
Publication.
Lists.

“(aa) a list of the schools that meet or exceed the threshold described in clause (viii);

“(bb) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that are in the fourth year of receiving special assistance payments under clause (iv); and

“(cc) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii).

“(xi) IMPLEMENTATION.—

“(I) GUIDANCE.—Not later than 90 days after the date of enactment of this subparagraph, the Secretary shall issue guidance to implement this subparagraph.

Deadline.

“(II) REGULATIONS.—Not later than December 31, 2013, the Secretary shall promulgate regulations that establish procedures for State agencies, local educational agencies, and schools to meet the requirements of this subparagraph, including exercising the option described in this subparagraph.

Deadline.

“(III) PUBLICATION.—If the Secretary uses the authority provided in clause (vii)(II)(bb) to use a different multiplier for different schools or local educational agencies, for each school year beginning on or after July 1, 2014, not later than April 1, 2014, the Secretary shall publish on the website of the Secretary a table that indicates—

Deadline.
Web site.

“(aa) each local educational agency that may elect to receive special assistance payments under clause (ii);

“(bb) the blended reimbursement rate that each local educational agency would receive; and

“(cc) an explanation of the methodology used to calculate the multiplier or threshold for each school or local educational agency.

Publication.

“(xii) REPORT.—Not later than December 31, 2013, the Secretary shall publish a report that describes—

“(I) an estimate of the number of schools and local educational agencies eligible to elect to receive special assistance payments under this subparagraph that do not elect to receive the payments;

“(II) for schools and local educational agencies described in subclause (I)—

“(aa) barriers to participation in the special assistance option under this subparagraph, as described by the nonparticipating schools and local educational agencies; and

“(bb) changes to the special assistance option under this subparagraph that would make eligible schools and local educational agencies more likely to elect to receive special assistance payments;

“(III) for schools and local educational agencies that elect to receive special assistance payments under this subparagraph—

“(aa) the number of schools and local educational agencies;

“(bb) an estimate of the percentage of identified students and the percentage of enrolled students who were certified to receive free or reduced price meals in the school year prior to the election to receive special assistance payments under this subparagraph, and a description of how the ratio between those percentages compares to 1.6;

“(cc) an estimate of the number and share of schools and local educational agencies in which more than 80 percent of students are certified for free or reduced price meals that elect to receive special assistance payments under that clause; and

“(dd) whether any of the schools or local educational agencies stopped electing to receive special assistance payments under this subparagraph;

“(IV) the impact of electing to receive special assistance payments under this subparagraph on—

“(aa) program integrity;

“(bb) whether a breakfast program is offered;

“(cc) the type of breakfast program offered;

“(dd) the nutritional quality of school meals; and

“(ee) program participation; and

“(V) the multiplier and threshold, as described in clauses (vii) and (viii) respectively, that the Secretary will use for each school year beginning on or after July 1, 2014 and the rationale for any change in the multiplier or threshold.

“(xiii) FUNDING.—

“(I) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out clause (xii) \$5,000,000, to remain available until September 30, 2014.

Effective date.

“(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out clause (xii) the funds transferred under subclause (I), without further appropriation.”

(2) CONFORMING AMENDMENTS.—Section 11(a)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(B)) is amended by striking “or (E)” and inserting “(E), or (F)”.

(b) UNIVERSAL MEAL SERVICE THROUGH CENSUS DATA.—Section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a) is amended by adding at the end the following:

“(g) UNIVERSAL MEAL SERVICE THROUGH CENSUS DATA.—

“(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall identify alternatives to—

“(A) the daily counting by category of meals provided by school lunch programs under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(B) the use of annual applications as the basis for eligibility to receive free meals or reduced price meals under this Act.

“(2) RECOMMENDATIONS.—

“(A) CONSIDERATIONS.—

“(i) IN GENERAL.—In identifying alternatives under paragraph (1), the Secretary shall consider the recommendations of the Committee on National Statistics of the National Academy of Sciences relating to use of the American Community Survey of the Bureau of the Census and other data sources.

“(ii) SOCIOECONOMIC SURVEY.—The Secretary shall consider use of a periodic socioeconomic survey of households of children attending school in the school food authority in not more than 3 school food authorities participating in the school lunch program under this Act.

“(iii) SURVEY PARAMETERS.—The Secretary shall establish requirements for the use of a socioeconomic survey under clause (ii), which shall—

“(I) include criteria for survey design, sample frame validity, minimum level of statistical precision, minimum survey response rates, frequency

of data collection, and other criteria as determined by the Secretary;

“(II) be consistent with the Standards and Guidelines for Statistical Surveys, as published by the Office of Management and Budget;

“(III) be consistent with standards and requirements that ensure proper use of Federal funds; and

“(IV) specify that the socioeconomic survey be conducted at least once every 4 years.

“(B) USE OF ALTERNATIVES.—Alternatives described in subparagraph (A) that provide accurate and effective means of providing meal reimbursement consistent with the eligibility status of students may be—

“(i) implemented for use in schools or by school food authorities that agree—

“(I) to serve all breakfasts and lunches to students at no cost in accordance with regulations issued by the Secretary; and

“(II) to pay, from sources other than Federal funds, the costs of serving any lunches and breakfasts that are in excess of the value of assistance received under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches and breakfasts served during the applicable period; or

“(ii) further tested through demonstration projects carried out by the Secretary in accordance with subparagraph (C).

“(C) DEMONSTRATION PROJECTS.—

“(i) IN GENERAL.—For the purpose of carrying out demonstration projects described in subparagraph (B), the Secretary may waive any requirement of this Act relating to—

“(I) counting of meals provided by school lunch or breakfast programs;

“(II) applications for eligibility for free or reduced priced meals; or

“(III) required direct certification under section 9(b)(4).

“(ii) NUMBER OF PROJECTS.—The Secretary shall carry out demonstration projects under this paragraph in not more than 5 local educational agencies for each alternative model that is being tested.

“(iii) LIMITATION.—A demonstration project carried out under this paragraph shall have a duration of not more than 3 years.

“(iv) EVALUATION.—The Secretary shall evaluate each demonstration project carried out under this paragraph in accordance with procedures established by the Secretary.

“(v) REQUIREMENT.—In carrying out evaluations under clause (iv), the Secretary shall evaluate, using comparisons with local educational agencies with similar demographic characteristics—

“(I) the accuracy of the 1 or more methodologies adopted as compared to the daily counting

by category of meals provided by school meal programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the use of annual applications as the basis for eligibility to receive free or reduced price meals under those Acts;

“(II) the effect of the 1 or more methodologies adopted on participation in programs under those Acts;

“(III) the effect of the 1 or more methodologies adopted on administration of programs under those Acts; and

“(IV) such other matters as the Secretary determines to be appropriate.”

SEC. 105. GRANTS FOR EXPANSION OF SCHOOL BREAKFAST PROGRAMS.

The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) is amended by adding at the end the following:

“SEC. 23. GRANTS FOR EXPANSION OF SCHOOL BREAKFAST PROGRAMS. 42 USC 1793.

“(a) **DEFINITION OF QUALIFYING SCHOOL.**—In this section, the term ‘qualifying school’ means a school in severe need, as described in section 4(d)(1).

“(b) **ESTABLISHMENT.**—Subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section, the Secretary shall establish a program under which the Secretary shall provide grants, on a competitive basis, to State educational agencies for the purpose of providing subgrants to local educational agencies for qualifying schools to establish, maintain, or expand the school breakfast program in accordance with this section.

“(c) **GRANTS TO STATE EDUCATIONAL AGENCIES.**—

“(1) **APPLICATION.**—To be eligible to receive a grant under this section, a State educational agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(2) **ADMINISTRATION.**—In carrying out this section, the Secretary shall—

“(A) develop an appropriate competitive application process; and

“(B) make information available to State educational agencies concerning the availability of funds under this section.

“(3) **ALLOCATION.**—The amount of grants provided by the Secretary to State educational agencies for a fiscal year under this section shall not exceed the lesser of—

“(A) the product obtained by multiplying—

“(i) the number of qualifying schools receiving subgrants or other benefits under subsection (d) for the fiscal year; and

“(ii) the maximum amount of a subgrant provided to a qualifying school under subsection (d)(4)(B); or
“(B) \$2,000,000.

“(d) **SUBGRANTS TO QUALIFYING SCHOOLS.**—

“(1) **IN GENERAL.**—A State educational agency receiving a grant under this section shall use funds made available

under the grant to award subgrants to local educational agencies for a qualifying school or groups of qualifying schools to carry out activities in accordance with this section.

“(2) PRIORITY.—In awarding subgrants under this subsection, a State educational agency shall give priority to local educational agencies with qualifying schools in which at least 75 percent of the students are eligible for free or reduced price school lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(3) STATE AND DISTRICT TRAINING AND TECHNICAL SUPPORT.—A local educational agency or State educational agency may allocate a portion of each subgrant to provide training and technical assistance to the staff of qualifying schools to carry out the purposes of this section.

“(4) AMOUNT; TERM.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, a subgrant provided by a State educational agency to a local educational agency or qualifying school under this section shall be in such amount, and shall be provided for such term, as the State educational agency determines appropriate.

“(B) MAXIMUM AMOUNT.—The amount of a subgrant provided by a State educational agency to a local educational agency for a qualifying school or a group of qualifying schools under this subsection shall not exceed \$10,000 for each school year.

“(C) MAXIMUM GRANT TERM.—A local educational agency or State educational agency shall not provide subgrants to a qualifying school under this subsection for more than 2 fiscal years.

“(e) BEST PRACTICES.—

“(1) IN GENERAL.—Prior to awarding grants under this section, the Secretary shall make available to State educational agencies information regarding the most effective mechanisms by which to increase school breakfast participation among eligible children at qualifying schools.

“(2) PREFERENCE.—In awarding subgrants under this section, a State educational agency shall give preference to local educational agencies for qualifying schools or groups of qualifying schools that have adopted, or provide assurances that the subgrant funds will be used to adopt, the most effective mechanisms identified by the Secretary under paragraph (1).

“(f) USE OF FUNDS.—

“(1) IN GENERAL.—A qualifying school may use a grant provided under this section—

“(A) to establish, promote, or expand a school breakfast program of the qualifying school under this section, which shall include a nutritional education component;

“(B) to extend the period during which school breakfast is available at the qualifying school;

“(C) to provide school breakfast to students of the qualifying school during the school day; or

“(D) for other appropriate purposes, as determined by the Secretary.

“(2) REQUIREMENT.—Each activity of a qualifying school under this subsection shall be carried out in accordance with

applicable nutritional guidelines and regulations issued by the Secretary.

“(g) MAINTENANCE OF EFFORT.—Grants made available under this section shall not diminish or otherwise affect the expenditure of funds from State and local sources for the maintenance of the school breakfast program.

“(h) REPORTS.—Not later than 18 months following the end of a school year during which subgrants are awarded under this section, the Secretary shall submit to Congress a report describing the activities of the qualifying schools awarded subgrants.

“(i) EVALUATION.—Not later than 180 days before the end of a grant term under this section, a local educational agency that receives a subgrant under this section shall—

Deadline.

“(1) evaluate whether electing to provide universal free breakfasts under the school breakfast program in accordance with Provision 2 as established under subsections (b) through (k) of section 245.9 of title 7, Code of Federal Regulations (or successor regulations), would be cost-effective for the qualified schools based on estimated administrative savings and economies of scale; and

“(2) submit the results of the evaluation to the State educational agency.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2010 through 2015.”.

Subtitle B—Summer Food Service Program

SEC. 111. ALIGNMENT OF ELIGIBILITY RULES FOR PUBLIC AND PRIVATE SPONSORS.

Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by striking paragraph (7) and inserting the following:

“(7) PRIVATE NONPROFIT ORGANIZATIONS.—

“(A) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—In this paragraph, the term ‘private nonprofit organization’ means an organization that—

“(i) exercises full control and authority over the operation of the program at all sites under the sponsorship of the organization;

“(ii) provides ongoing year-round activities for children or families;

“(iii) demonstrates that the organization has adequate management and the fiscal capacity to operate a program under this section;

“(iv) is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

“(v) meets applicable State and local health, safety, and sanitation standards.

“(B) ELIGIBILITY.—Private nonprofit organizations (other than organizations eligible under paragraph (1)) shall be eligible for the program under the same terms and conditions as other service institutions.”.

SEC. 112. OUTREACH TO ELIGIBLE FAMILIES.

Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by adding at the end the following:

“(11) OUTREACH TO ELIGIBLE FAMILIES.—

“(A) IN GENERAL.—The Secretary shall require each State agency that administers the national school lunch program under this Act to ensure that, to the maximum extent practicable, school food authorities participating in the school lunch program under this Act cooperate with participating service institutions to distribute materials to inform families of—

“(i) the availability and location of summer food service program meals; and

“(ii) the availability of reimbursable breakfasts served under the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(B) INCLUSIONS.—Informational activities carried out under subparagraph (A) may include—

“(i) the development or dissemination of printed materials, to be distributed to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals;

“(ii) the development or dissemination of materials, to be distributed using electronic means to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals; and

“(iii) such other activities as are approved by the applicable State agency to promote the availability and location of summer food service program meals to school children and the families of school children.

“(C) MULTIPLE STATE AGENCIES.—If the State agency administering the program under this section is not the same State agency that administers the school lunch program under this Act, the 2 State agencies shall work cooperatively to implement this paragraph.”.

SEC. 113. SUMMER FOOD SERVICE SUPPORT GRANTS.

Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by section 112) is amended by adding at the end the following:

“(12) SUMMER FOOD SERVICE SUPPORT GRANTS.—

“(A) IN GENERAL.—The Secretary shall use funds made available to carry out this paragraph to award grants on a competitive basis to State agencies to provide to eligible service institutions—

“(i) technical assistance;

“(ii) assistance with site improvement costs; or

“(iii) other innovative activities that improve and encourage sponsor retention.

“(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph, a State agency shall submit an application to the Secretary in such manner, at such time,

and containing such information as the Secretary may require.

“(C) PRIORITY.—In making grants under this paragraph, the Secretary shall give priority to—

“(i) applications from States with significant low-income child populations; and

“(ii) State plans that demonstrate innovative approaches to retain and support summer food service programs after the expiration of the start-up funding grants.

“(D) USE OF FUNDS.—A State and eligible service institution may use funds made available under this paragraph to pay for such costs as the Secretary determines are necessary to establish and maintain summer food service programs.

“(E) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

“(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph \$20,000,000 for fiscal years 2011 through 2015.”.

Subtitle C—Child and Adult Care Food Program

SEC. 121. SIMPLIFYING AREA ELIGIBILITY DETERMINATIONS IN THE CHILD AND ADULT CARE FOOD PROGRAM.

Section 17(f)(3)(A)(ii)(I)(bb) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(A)(ii)(I)(bb)) is amended by striking “elementary”.

SEC. 122. EXPANSION OF AFTERSCHOOL MEALS FOR AT-RISK CHILDREN.

Section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)) is amended by striking paragraph (5) and inserting the following:

“(5) LIMITATION.—An institution participating in the program under this subsection may not claim reimbursement for meals and snacks that are served under section 18(h) on the same day.

“(6) HANDBOOK.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary shall—

Deadline.

“(i) issue guidelines for afterschool meals for at-risk school children; and

“(ii) publish a handbook reflecting those guidelines.

“(B) REVIEW.—Each year after the issuance of guidelines under subparagraph (A), the Secretary shall—

“(i) review the guidelines; and

“(ii) issue a revised handbook reflecting changes made to the guidelines.”.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

SEC. 131. CERTIFICATION PERIODS.

Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)) is amended by adding at the end the following:

“(iii) CHILDREN.—A State may elect to certify participant children for a period of up to 1 year, if the State electing the option provided under this clause ensures that participant children receive required health and nutrition assessments.”.

Subtitle E—Miscellaneous

SEC. 141. CHILDHOOD HUNGER RESEARCH.

The Richard B. Russell National School Lunch Act is amended by inserting after section 22 (42 U.S.C. 1769c) the following:

42 USC 1769d.

“SEC. 23. CHILDHOOD HUNGER RESEARCH.

“(a) RESEARCH ON CAUSES AND CONSEQUENCES OF CHILDHOOD HUNGER.—

“(1) IN GENERAL.—The Secretary shall conduct research on—

“(A) the causes of childhood hunger and food insecurity;

“(B) the characteristics of households with childhood hunger and food insecurity; and

“(C) the consequences of childhood hunger and food insecurity.

“(2) AUTHORITY.—In carrying out research under paragraph (1), the Secretary may—

“(A) enter into competitively awarded contracts or cooperative agreements; or

“(B) provide grants to States or public or private agencies or organizations, as determined by the Secretary.

“(3) APPLICATION.—To be eligible to enter into a contract or cooperative agreement or receive a grant under this subsection, a State or public or private agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall require.

“(4) AREAS OF INQUIRY.—The Secretary shall design the research program to advance knowledge and understanding of information on the issues described in paragraph (1), such as—

“(A) economic, health, social, cultural, demographic, and other factors that contribute to childhood hunger or food insecurity;

“(B) the geographic distribution of childhood hunger and food insecurity;

“(C) the extent to which—

“(i) existing Federal assistance programs, including the Internal Revenue Code of 1986, reduce childhood hunger and food insecurity; and

“(ii) childhood hunger and food insecurity persist due to—

“(I) gaps in program coverage;

“(II) the inability of potential participants to access programs; or

“(III) the insufficiency of program benefits or services;

“(D) the public health and medical costs of childhood hunger and food insecurity;

“(E) an estimate of the degree to which the Census Bureau measure of food insecurity underestimates childhood hunger and food insecurity because the Census Bureau excludes certain households, such as homeless, or other factors;

“(F) the effects of childhood hunger on child development, well-being, and educational attainment; and

“(G) such other critical outcomes as are determined by the Secretary.

“(5) FUNDING.—

“(A) IN GENERAL.—On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$10,000,000, to remain available until expended.

Effective date.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

“(b) DEMONSTRATION PROJECTS TO END CHILDHOOD HUNGER.—

“(1) DEFINITIONS.—In this subsection:

“(A) CHILD.—The term ‘child’ means a person under the age of 18.

“(B) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—The term ‘supplemental nutrition assistance program’ means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

“(2) PURPOSE.—Under such terms and conditions as are established by the Secretary, the Secretary shall carry out demonstration projects that test innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger and food insecurity.

“(3) PROJECTS.—Demonstration projects carried out under this subsection may include projects that—

“(A) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

“(B) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

“(C) target Federal, State, or local assistance, including emergency housing or family preservation services, at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal

authority establishing those assistance programs and services.

“(4) GRANTS.—

“(A) DEMONSTRATION PROJECTS.—

“(i) IN GENERAL.—In carrying out this subsection, the Secretary may enter into competitively awarded contracts or cooperative agreements with, or provide grants to, public or private organizations or agencies (as determined by the Secretary), for use in accordance with demonstration projects that meet the purposes of this subsection.

“(ii) REQUIREMENT.—At least 1 demonstration project funded under this subsection shall be carried out on an Indian reservation in a rural area with a service population with a prevalence of diabetes that exceeds 15 percent, as determined by the Director of the Indian Health Service.

“(B) APPLICATION.—To be eligible to receive a contract, cooperative agreement, or grant under this subsection, an organization or agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(C) SELECTION CRITERIA.—Demonstration projects shall be selected based on publicly disseminated criteria that may include—

“(i) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

“(ii) a commitment to a demonstration project that allows for a rigorous outcome evaluation as described in paragraph (6);

“(iii) a focus on innovative strategies to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

“(iv) such other criteria as are determined by the Secretary.

“(5) CONSULTATION.—In determining the range of projects and defining selection criteria under this subsection, the Secretary shall consult with—

“(A) the Secretary of Health and Human Services;

“(B) the Secretary of Labor; and

“(C) the Secretary of Housing and Urban Development.

“(6) EVALUATION AND REPORTING.—

“(A) INDEPENDENT EVALUATION.—The Secretary shall provide for an independent evaluation of each demonstration project carried out under this subsection that—

“(i) measures the impact of each demonstration project on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and

“(ii) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the

incidence of food insecurity and hunger in the community, especially among children.

“(B) REPORTING.—Not later than December 31, 2013 and each December 31 thereafter until the date on which the last evaluation under subparagraph (A) is completed, the Secretary shall—

“(i) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

“(I) the status of each demonstration project; and

“(II) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

“(ii) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

“(7) FUNDING.—

“(A) IN GENERAL.—On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$40,000,000, to remain available until September 30, 2017.

Effective date.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

“(C) USE OF FUNDS.—

“(i) IN GENERAL.—Funds made available under subparagraph (A) may be used to carry out this subsection, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this subsection.

“(ii) INDIAN RESERVATIONS.—Of amounts made available under subparagraph (A), the Secretary shall use a portion of the amounts to carry out research relating to hunger, obesity and type 2 diabetes on Indian reservations, including research to determine the manner in which Federal nutrition programs can help to overcome those problems.

“(iii) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that—

“(I) describes the manner in which Federal nutrition programs can help to overcome child hunger nutrition problems on Indian reservations; and

“(II) contains proposed administrative and legislative recommendations to strengthen and streamline all relevant Department of Agriculture

nutrition programs to reduce childhood hunger, obesity, and type 2 diabetes on Indian reservations.

“(D) LIMITATIONS.—

“(i) DURATION.—No project may be funded under this subsection for more than 5 years.

“(ii) PROJECT REQUIREMENTS.—No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this subsection unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

“(iii) HUNGER-FREE COMMUNITIES.—No project may be funded under this subsection that receives funding under section 4405 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7517).

“(iv) OTHER BENEFITS.—Funds made available under this subsection may not be used for any project in a manner that is inconsistent with—

“(I) this Act;

“(II) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(III) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

“(IV) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).”.

SEC. 142. STATE CHILDHOOD HUNGER CHALLENGE GRANTS.

The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by inserting after section 23 (as added by section 141) the following:

42 USC 1769e.

“SEC. 24. STATE CHILDHOOD HUNGER CHALLENGE GRANTS.

“(a) DEFINITIONS.—In this section:

“(1) CHILD.—The term ‘child’ means a person under the age of 18.

“(2) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—The term ‘supplemental nutrition assistance program’ means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

“(b) PURPOSE.—Under such terms and conditions as are established by the Secretary, funds made available under this section may be used to competitively award grants to or enter into cooperative agreements with Governors to carry out comprehensive and innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger by 2015.

“(c) PROJECTS.—State demonstration projects carried out under this section may include projects that—

“(1) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

“(2) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(3) target Federal, State, or local assistance, including emergency housing, family preservation services, child care,

or temporary assistance at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services;

“(4) enhance outreach to increase access and participation in Federal nutrition assistance programs; and

“(5) improve the coordination of Federal, State, and community resources and services aimed at preventing food insecurity and hunger, including through the establishment and expansion of State food policy councils.

“(d) GRANTS.—

“(1) IN GENERAL.—In carrying out this section, the Secretary may competitively award grants or enter into competitively awarded cooperative agreements with Governors for use in accordance with demonstration projects that meet the purposes of this section.

“(2) APPLICATION.—To be eligible to receive a grant or cooperative agreement under this section, a Governor shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(3) SELECTION CRITERIA.—The Secretary shall evaluate proposals based on publicly disseminated criteria that may include—

“(A) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

“(B) a commitment to approaches that allow for a rigorous outcome evaluation as described in subsection (f);

“(C) a comprehensive and innovative strategy to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

“(D) such other criteria as are determined by the Secretary.

“(4) REQUIREMENTS.—Any project funded under this section shall provide for—

“(A) a baseline assessment, and subsequent annual assessments, of the prevalence and severity of very low food security among children in the State, based on a methodology prescribed by the Secretary;

“(B) a collaborative planning process including key stakeholders in the State that results in a comprehensive agenda to eliminate childhood hunger that is—

“(i) described in a detailed project plan; and

“(ii) provided to the Secretary for approval;

“(C) an annual budget;

“(D) specific performance goals, including the goal to sharply reduce or eliminate food insecurity among children in the State by 2015, as determined through a methodology prescribed by the Secretary and carried out by the Governor; and

“(E) an independent outcome evaluation of not less than 1 major strategy of the project that measures—

“(i) the specific impact of the strategy on food insecurity among children in the State; and

“(ii) if applicable, the nutrition assistance participation rate among children in the State.

“(e) CONSULTATION.—In determining the range of projects and defining selection criteria under this section, the Secretary shall consult with—

“(1) the Secretary of Health and Human Services;

“(2) the Secretary of Labor;

“(3) the Secretary of Education; and

“(4) the Secretary of Housing and Urban Development.

“(f) EVALUATION AND REPORTING.—

“(1) GENERAL PERFORMANCE ASSESSMENT.—Each project authorized under this section shall require an independent assessment that—

“(A) measures the impact of any activities carried out under the project on the level of food insecurity in the State that—

“(i) focuses particularly on the level of food insecurity among children in the State; and

“(ii) includes a preimplementation baseline and annual measurements taken during the project of the level of food insecurity in the State; and

“(B) is carried out using a methodology prescribed by the Secretary.

“(2) INDEPENDENT EVALUATION.—Each project authorized under this section shall provide for an independent evaluation of not less than 1 major strategy that—

“(A) measures the impact of the strategy on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and

“(B) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.

“(3) REPORTING.—Not later than December 31, 2011 and each December 31 thereafter until the date on which the last evaluation under paragraph (1) is completed, the Secretary shall—

“(A) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

“(i) the status of each State demonstration project; and

“(ii) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

“(B) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

“(g) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary for each

of fiscal years 2011 through 2014, to remain available until expended.

“(2) USE OF FUNDS.—Funds made available under paragraph (1) may be used to carry out this section, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this section.

“(3) LIMITATIONS.—

“(A) DURATION.—No project may be funded under this section for more than 5 years.

“(B) PERFORMANCE BASIS.—Funds provided under this section shall be made available to each Governor on an annual basis, with the amount of funds provided for each year contingent on the satisfactory implementation of the project plan and progress towards the performance goals defined in the project year plan.

“(C) ALTERING NUTRITION ASSISTANCE PROGRAM REQUIREMENTS.—No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this section unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

“(D) OTHER BENEFITS.—Funds made available under this section may not be used for any project in a manner that is inconsistent with—

“(i) this Act;

“(ii) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(iii) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

“(iv) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).”.

SEC. 143. REVIEW OF LOCAL POLICIES ON MEAL CHARGES AND PROVISION OF ALTERNATE MEALS.

42 USC 1758
note.

(a) IN GENERAL.—

(1) REVIEW.—The Secretary, in conjunction with States and participating local educational agencies, shall examine the current policies and practices of States and local educational agencies regarding extending credit to children to pay the cost to the children of reimbursable school lunches and breakfasts.

(2) SCOPE.—The examination under paragraph (1) shall include the policies and practices in effect as of the date of enactment of this Act relating to providing to children who are without funds a meal other than the reimbursable meals.

(3) FEASIBILITY.—In carrying out the examination under paragraph (1), the Secretary shall—

(A) prepare a report on the feasibility of establishing national standards for meal charges and the provision of alternate meals; and

(B) provide recommendations for implementing those standards.

Reports.

Recommendations.

(b) FOLLOWUP ACTIONS.—

(1) IN GENERAL.—Based on the findings and recommendations under subsection (a), the Secretary may—

(A) implement standards described in paragraph (3) of that subsection through regulation;

(B) test recommendations through demonstration projects; or

(C) study further the feasibility of recommendations.

(2) FACTORS FOR CONSIDERATION.—In determining how best to implement recommendations described in subsection (a)(3), the Secretary shall consider such factors as—

(A) the impact of overt identification on children;

(B) the manner in which the affected households will be provided with assistance in establishing eligibility for free or reduced price school meals; and

(C) the potential financial impact on local educational agencies.

TITLE II—REDUCING CHILDHOOD OBESITY AND IMPROVING THE DIETS OF CHILDREN

Subtitle A—National School Lunch Program

SEC. 201. PERFORMANCE-BASED REIMBURSEMENT RATE INCREASES FOR NEW MEAL PATTERNS.

Section 4(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)) is amended by adding at the end the following:

“(3) ADDITIONAL REIMBURSEMENT.—

“(A) REGULATIONS.—

“(i) PROPOSED REGULATIONS.—Notwithstanding section 9(f), not later than 18 months after the date of enactment of this paragraph, the Secretary shall promulgate proposed regulations to update the meal patterns and nutrition standards for the school lunch program authorized under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) based on recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

“(ii) INTERIM OR FINAL REGULATIONS.—

“(I) IN GENERAL.—Not later than 18 months after promulgation of the proposed regulations under clause (i), the Secretary shall promulgate interim or final regulations.

“(II) DATE OF REQUIRED COMPLIANCE.—The Secretary shall establish in the interim or final regulations a date by which all school food authorities participating in the school lunch program authorized under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) are required to comply with the meal pattern and nutrition

Deadlines.

standards established in the interim or final regulations.

“(iii) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this paragraph, and each 90 days thereafter until the Secretary has promulgated interim or final regulations under clause (ii), the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a quarterly report on progress made toward promulgation of the regulations described in this subparagraph.

“(B) PERFORMANCE-BASED REIMBURSEMENT RATE INCREASE.—Beginning on the later of the date of promulgation of the implementing regulations described in subparagraph (A)(ii), the date of enactment of this paragraph, or October 1, 2012, the Secretary shall provide additional reimbursement for each lunch served in school food authorities determined to be eligible under subparagraph (D). Effective date.

“(C) ADDITIONAL REIMBURSEMENT.—

“(i) IN GENERAL.—Each lunch served in school food authorities determined to be eligible under subparagraph (D) shall receive an additional 6 cents, adjusted in accordance with section 11(a)(3), to the national lunch average payment for each lunch served.

“(ii) DISBURSEMENT.—The State agency shall disburse funds made available under this paragraph to school food authorities eligible to receive additional reimbursement.

“(D) ELIGIBLE SCHOOL FOOD AUTHORITY.—To be eligible to receive an additional reimbursement described in this paragraph, a school food authority shall be certified by the State to be in compliance with the interim or final regulations described in subparagraph (A)(ii).

“(E) FAILURE TO COMPLY.—Beginning on the later of the date described in subparagraph (A)(ii)(II), the date of enactment of this paragraph, or October 1, 2012, school food authorities found to be out of compliance with the meal patterns or nutrition standards established by the implementing regulations shall not receive the additional reimbursement for each lunch served described in this paragraph. Effective date.

“(F) ADMINISTRATIVE COSTS.—

“(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Secretary shall make funds available to States for State activities related to training, technical assistance, certification, and oversight activities of this paragraph.

“(ii) PROVISION OF FUNDS.—The Secretary shall provide funds described in clause (i) to States administering a school lunch program in a manner proportional to the administrative expense allocation of each State during the preceding fiscal year.

“(iii) FUNDING.—

“(I) IN GENERAL.—In the later of the fiscal year in which the implementing regulations described in subparagraph (A)(ii) are promulgated

or the fiscal year in which this paragraph is enacted, and in the subsequent fiscal year, the Secretary shall use not more than \$50,000,000 of funds made available under section 3 to make payments to States described in clause (i).

“(II) RESERVATION.—In providing funds to States under clause (i), the Secretary may reserve not more than \$3,000,000 per fiscal year to support Federal administrative activities to carry out this paragraph.”.

SEC. 202. NUTRITION REQUIREMENTS FOR FLUID MILK.

Section 9(a)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(2)(A)) is amended by striking clause (i) and inserting the following:

“(i) shall offer students a variety of fluid milk. Such milk shall be consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);”.

SEC. 203. WATER.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by adding at the end the following:

“(5) WATER.—Schools participating in the school lunch program under this Act shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.”.

SEC. 204. LOCAL SCHOOL WELLNESS POLICY IMPLEMENTATION.

(a) IN GENERAL.—The Richard B. Russell National School Lunch Act is amended by inserting after section 9 (42 U.S.C. 1758) the following:

42 USC 1758b.

“SEC. 9A. LOCAL SCHOOL WELLNESS POLICY.

“(a) IN GENERAL.—Each local educational agency participating in a program authorized by this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for all schools under the jurisdiction of the local educational agency.

Regulations.

“(b) GUIDELINES.—The Secretary shall promulgate regulations that provide the framework and guidelines for local educational agencies to establish local school wellness policies, including, at a minimum,—

“(1) goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness;

“(2) for all foods available on each school campus under the jurisdiction of the local educational agency during the school day, nutrition guidelines that—

“(A) are consistent with sections 9 and 17 of this Act, and sections 4 and 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779); and

“(B) promote student health and reduce childhood obesity;

“(3) a requirement that the local educational agency permit parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy;

“(4) a requirement that the local educational agency inform and update the public (including parents, students, and others in the community) about the content and implementation of the local school wellness policy; and

“(5) a requirement that the local educational agency—

“(A) periodically measure and make available to the public an assessment on the implementation of the local school wellness policy, including—

“(i) the extent to which schools under the jurisdiction of the local educational agency are in compliance with the local school wellness policy;

“(ii) the extent to which the local school wellness policy of the local educational agency compares to model local school wellness policies; and

“(iii) a description of the progress made in attaining the goals of the local school wellness policy; and

“(B) designate 1 or more local educational agency officials or school officials, as appropriate, to ensure that each school complies with the local school wellness policy.

“(c) LOCAL DISCRETION.—The local educational agency shall use the guidelines promulgated by the Secretary under subsection (b) to determine specific policies appropriate for the schools under the jurisdiction of the local educational agency.

“(d) TECHNICAL ASSISTANCE AND BEST PRACTICES.—

“(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Education and the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall provide information and technical assistance to local educational agencies, school food authorities, and State educational agencies for use in establishing healthy school environments that are intended to promote student health and wellness.

“(2) CONTENT.—The Secretary shall provide technical assistance that—

“(A) includes resources and training on designing, implementing, promoting, disseminating, and evaluating local school wellness policies and overcoming barriers to the adoption of local school wellness policies;

“(B) includes model local school wellness policies and best practices recommended by Federal agencies, State agencies, and nongovernmental organizations;

“(C) includes such other technical assistance as is required to promote sound nutrition and establish healthy school nutrition environments; and

“(D) is consistent with the specific needs and requirements of local educational agencies.

“(3) STUDY AND REPORT.—

“(A) IN GENERAL.—Subject to the availability of appropriations, the Secretary, in conjunction with the Director of the Centers for Disease Control and Prevention, shall

prepare a report on the implementation, strength, and effectiveness of the local school wellness policies carried out in accordance with this section.

“(B) STUDY OF LOCAL SCHOOL WELLNESS POLICIES.—The study described in subparagraph (A) shall include—

“(i) an analysis of the strength and weaknesses of local school wellness policies and how the policies compare with model local wellness policies recommended under paragraph (2)(B); and

“(ii) an assessment of the impact of the local school wellness policies in addressing the requirements of subsection (b).

“(C) REPORT.—Not later than January 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the findings of the study.

“(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph \$3,000,000 for fiscal year 2011, to remain available until expended.”.

(b) REPEAL.—Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1751 note; Public Law 108–265) is repealed.

SEC. 205. EQUITY IN SCHOOL LUNCH PRICING.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following:

“(p) PRICE FOR A PAID LUNCH.—

“(1) DEFINITION OF PAID LUNCH.—In this subsection, the term ‘paid lunch’ means a reimbursable lunch served to students who are not certified to receive free or reduced price meals.

“(2) REQUIREMENT.—

“(A) IN GENERAL.—For each school year beginning July 1, 2011, each school food authority shall establish a price for paid lunches in accordance with this subsection.

“(B) LOWER PRICE.—

“(i) IN GENERAL.—In the case of a school food authority that established a price for a paid lunch in the previous school year that was less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the price charged in the previous school year, as adjusted by a percentage equal to the sum obtained by adding—

“(I) 2 percent; and

“(II) the percentage change in the Consumer Price Index for All Urban Consumers (food away from home index) used to increase the Federal reimbursement rate under section 11 for the most recent school year for which data are available, as published in the Federal Register.

Effective date.

“(ii) ROUNDING.—A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

“(iii) MAXIMUM REQUIRED PRICE INCREASE.—

“(I) IN GENERAL.—The maximum annual average price increase required to meet the requirements of this subparagraph shall not exceed 10 cents for any school food authority.

“(II) DISCRETIONARY INCREASE.—A school food authority may increase the average price for a paid lunch for a school year by more than 10 cents.

“(C) EQUAL OR GREATER PRICE.—

“(i) IN GENERAL.—In the case of a school food authority that established an average price for a paid lunch in the previous school year that was equal to or greater than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch.

“(ii) ROUNDING.—A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

“(3) EXCEPTIONS.—

“(A) REDUCTION IN PRICE.—A school food authority may reduce the average price of a paid lunch established under this subsection if the State agency ensures that funding from non-Federal sources (other than in-kind contributions) is added to the nonprofit school food service account of the school food authority in an amount estimated to be equal to at least the difference between—

“(i) the average price required of the school food authority for the paid lunches under paragraph (2); and

“(ii) the average price charged by the school food authority for the paid lunches.

“(B) NON-FEDERAL SOURCES.—For the purposes of subparagraph (A), non-Federal sources does not include revenue from the sale of foods sold in competition with meals served under the school lunch program authorized under this Act or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(C) OTHER PROGRAMS.—This subsection shall not apply to lunches provided under section 17 of this Act.

“(4) REGULATIONS.—The Secretary shall establish procedures to carry out this subsection, including collecting and publishing the prices that school food authorities charge for paid meals on an annual basis and procedures that allow school food authorities to average the pricing of paid lunches at schools throughout the jurisdiction of the school food authority.”.

Procedures.

SEC. 206. REVENUE FROM NONPROGRAM FOODS SOLD IN SCHOOLS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 205) is amended by adding at the end the following:

“(q) NONPROGRAM FOOD SALES.—

“(1) DEFINITION OF NONPROGRAM FOOD.—In this subsection:

“(A) IN GENERAL.—The term ‘nonprogram food’ means food that is—

“(i) sold in a participating school other than a reimbursable meal provided under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

“(ii) purchased using funds from the nonprofit school food service account of the school food authority of the school.

“(B) INCLUSION.—The term ‘nonprogram food’ includes food that is sold in competition with a program established under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(2) REVENUES.—

“(A) IN GENERAL.—The proportion of total school food service revenue provided by the sale of nonprogram foods to the total revenue of the school food service account shall be equal to or greater than the proportion of total food costs associated with obtaining nonprogram foods to the total costs associated with obtaining program and nonprogram foods from the account.

“(B) ACCRUAL.—All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.

“(C) EFFECTIVE DATE.—This subsection shall be effective beginning on July 1, 2011.”.

SEC. 207. REPORTING AND NOTIFICATION OF SCHOOL PERFORMANCE.

Section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) UNIFIED ACCOUNTABILITY SYSTEM.—

“(1) IN GENERAL.—There shall be a unified system prescribed and administered by the Secretary to ensure that local food service authorities participating in the school lunch program established under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) comply with those Acts, including compliance with—

“(A) the nutritional requirements of section 9(f) of this Act for school lunches; and

“(B) as applicable, the nutritional requirements for school breakfasts under section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).”; and

(2) in subsection (b)(1), by striking subparagraphs (A) and (B) and inserting the following:

“(A) require that local food service authorities comply with the nutritional requirements described in subparagraphs (A) and (B) of paragraph (1);

“(B) to the maximum extent practicable, ensure compliance through reasonable audits and supervisory assistance reviews;

“(C) in conducting audits and reviews for the purpose of determining compliance with this Act, including the nutritional requirements of section 9(f)—

Audits.

“(i) conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary;

“(ii) select schools for review in each local educational agency using criteria established by the Secretary;

“(iii) report the final results of the reviews to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary; and

Reports.

“(iv) submit to the Secretary each year a report containing the results of the reviews in accordance with procedures developed by the Secretary; and

Reports.

“(D) when any local food service authority is reviewed under this section, ensure that the final results of the review by the State educational agency are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.”.

SEC. 208. NUTRITION STANDARDS FOR ALL FOODS SOLD IN SCHOOL.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) by striking the section heading and all that follows through “(a) The Secretary” and inserting the following:

“SEC. 10. REGULATIONS.

“(a) IN GENERAL.—The Secretary”; and

(2) by striking subsection (b) and inserting the following:

“(b) NATIONAL SCHOOL NUTRITION STANDARDS.—

“(1) PROPOSED REGULATIONS.—

“(A) IN GENERAL.—The Secretary shall—

“(i) establish science-based nutrition standards for foods sold in schools other than foods provided under this Act and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); and

“(ii) not later than 1 year after the date of enactment of this paragraph, promulgate proposed regulations to carry out clause (i).

Deadline.

“(B) APPLICATION.—The nutrition standards shall apply to all foods sold—

“(i) outside the school meal programs;

“(ii) on the school campus; and

“(iii) at any time during the school day.

“(C) REQUIREMENTS.—In establishing nutrition standards under this paragraph, the Secretary shall—

“(i) establish standards that are consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), including the food groups to encourage and nutrients of concern identified in the Dietary Guidelines; and

“(ii) consider—

“(I) authoritative scientific recommendations for nutrition standards;

“(II) existing school nutrition standards, including voluntary standards for beverages and snack foods and State and local standards;

“(III) the practical application of the nutrition standards; and

“(IV) special exemptions for school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the Secretary), if the fundraisers are approved by the school and are infrequent within the school.

“(D) UPDATING STANDARDS.—As soon as practicable after the date of publication by the Department of Agriculture and the Department of Health and Human Services of a new edition of the Dietary Guidelines for Americans under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), the Secretary shall review and update as necessary the school nutrition standards and requirements established under this subsection.

“(2) IMPLEMENTATION.—

Regulations.

“(A) EFFECTIVE DATE.—The interim or final regulations under this subsection shall take effect at the beginning of the school year that is not earlier than 1 year and not later than 2 years following the date on which the regulations are finalized.

“(B) REPORTING.—The Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representatives a quarterly report that describes progress made toward promulgating final regulations under this subsection.”.

SEC. 209. INFORMATION FOR THE PUBLIC ON THE SCHOOL NUTRITION ENVIRONMENT.

Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end the following:

“(k) INFORMATION ON THE SCHOOL NUTRITION ENVIRONMENT.—

Requirements.

“(1) IN GENERAL.—The Secretary shall—

“(A) establish requirements for local educational agencies participating in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to report information about the school nutrition environment, for all schools under the jurisdiction of the local educational agencies, to the Secretary and to the public in the State on a periodic basis; and

“(B) provide training and technical assistance to States and local educational agencies on the assessment and reporting of the school nutrition environment, including the use of any assessment materials developed by the Secretary.

“(2) REQUIREMENTS.—In establishing the requirements for reporting on the school nutrition environment under paragraph (1), the Secretary shall—

“(A) include information pertaining to food safety inspections, local wellness policies, meal program participation, the nutritional quality of program meals, and other information as determined by the Secretary; and

“(B) ensure that information is made available to the public by local educational agencies in an accessible, easily understood manner in accordance with guidelines established by the Secretary.

Public
information.
Guidelines.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.”.

SEC. 210. ORGANIC FOOD PILOT PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

“(j) ORGANIC FOOD PILOT PROGRAM.—

“(1) ESTABLISHMENT.—The Secretary shall establish an organic food pilot program (referred to in this subsection as the ‘pilot program’) under which the Secretary shall provide grants on a competitive basis to school food authorities selected under paragraph (3).

“(2) USE OF FUNDS.—

“(A) IN GENERAL.—The Secretary shall use funds provided under this section—

“(i) to enter into competitively awarded contracts or cooperative agreements with school food authorities selected under paragraph (3); or

“(ii) to make grants to school food authority applicants selected under paragraph (3).

“(B) SCHOOL FOOD AUTHORITY USES OF FUNDS.—A school food authority that receives a grant under this section shall use the grant funds to establish a pilot program that increases the quantity of organic foods provided to schoolchildren under the school lunch program established under this Act.

“(3) APPLICATION.—

“(A) IN GENERAL.—A school food authority seeking a contract, grant, or cooperative agreement under this subsection shall submit to the Secretary an application in such form, containing such information, and at such time as the Secretary shall prescribe.

“(B) CRITERIA.—In selecting contract, grant, or cooperative agreement recipients, the Secretary shall consider—

“(i) the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section)) applicable to a family of the size involved of the households in the district served by the school food authority, giving preference to school food authority applicants in which not less than 50 percent of the households in the district are at or below the Federal poverty line;

“(ii) the commitment of each school food authority applicant—

“(I) to improve the nutritional value of school meals;

“(II) to carry out innovative programs that improve the health and wellness of schoolchildren; and

“(III) to evaluate the outcome of the pilot program; and

“(iii) any other criteria the Secretary determines to be appropriate.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal years 2011 through 2015.”.

Subtitle B—Child and Adult Care Food Program

SEC. 221. NUTRITION AND WELLNESS GOALS FOR MEALS SERVED THROUGH THE CHILD AND ADULT CARE FOOD PROGRAM.

Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (a), by striking “(a) GRANT AUTHORITY” and all that follows through the end of paragraph (1) and inserting the following:

“(a) PROGRAM PURPOSE, GRANT AUTHORITY AND INSTITUTION ELIGIBILITY.—

“(1) IN GENERAL.—

“(A) PROGRAM PURPOSE.—

“(i) FINDINGS.—Congress finds that—

“(I) eating habits and other wellness-related behavior habits are established early in life; and

“(II) good nutrition and wellness are important contributors to the overall health of young children and essential to cognitive development.

“(ii) PURPOSE.—The purpose of the program authorized by this section is to provide aid to child and adult care institutions and family or group day care homes for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.

“(B) GRANT AUTHORITY.—The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.”;

(2) by striking subsection (g) and inserting the following:

“(g) NUTRITIONAL REQUIREMENTS FOR MEALS AND SNACKS SERVED IN INSTITUTIONS AND FAMILY OR GROUP DAY CARE HOMES.—

“(1) DEFINITION OF DIETARY GUIDELINES.—In this subsection, the term ‘Dietary Guidelines’ means the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

“(2) NUTRITIONAL REQUIREMENTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), reimbursable meals and snacks served by institutions, family or group day care homes, and sponsored centers

participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.

“(B) CONFORMITY WITH THE DIETARY GUIDELINES AND AUTHORITATIVE SCIENCE.—

“(i) IN GENERAL.—Not less frequently than once every 10 years, the Secretary shall review and, as appropriate, update requirements for meals served under the program under this section to ensure that the meals—

Deadline.
Review.
Requirements.

“(I) are consistent with the goals of the most recent Dietary Guidelines; and

“(II) promote the health of the population served by the program authorized under this section, as indicated by the most recent relevant nutrition science and appropriate authoritative scientific agency and organization recommendations.

“(ii) COST REVIEW.—The review required under clause (i) shall include a review of the cost to child care centers and group or family day care homes resulting from updated requirements for meals and snacks served under the program under this section.

“(iii) REGULATIONS.—Not later than 18 months after the completion of the review of the meal pattern under clause (i), the Secretary shall promulgate proposed regulations to update the meal patterns for meals and snacks served under the program under this section.

Deadline.

“(C) EXCEPTIONS.—

“(i) SPECIAL DIETARY NEEDS.—The minimum nutritional requirements prescribed under subparagraph (A) shall not prohibit institutions, family or group day care homes, and sponsored centers from substituting foods to accommodate the medical or other special dietary needs of individual participants.

“(ii) EXEMPT INSTITUTIONS.—The Secretary may elect to waive all or part of the requirements of this subsection for emergency shelters participating in the program under this section.

Waiver authority.

“(3) MEAL SERVICE.—Institutions, family or group day care homes, and sponsored centers shall ensure that reimbursable meal service contributes to the development and socialization of enrolled children by providing that food is not used as a punishment or reward.

“(4) FLUID MILK.—

“(A) IN GENERAL.—If an institution, family or group day care home, or sponsored center provides fluid milk as part of a reimbursable meal or supplement, the institution, family or group day care home, or sponsored center shall provide the milk in accordance with the most recent version of the Dietary Guidelines.

“(B) MILK SUBSTITUTES.—In the case of children who cannot consume fluid milk due to medical or other special dietary needs other than a disability, an institution, family or group day care home, or sponsored center may substitute

for the fluid milk required in meals served, a nondairy beverage that—

“(i) is nutritionally equivalent to fluid milk; and

“(ii) meets nutritional standards established by the Secretary, including, among other requirements established by the Secretary, fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow’s milk.

“(C) APPROVAL.—

“(i) IN GENERAL.—A substitution authorized under subparagraph (B) may be made—

“(I) at the discretion of and on approval by the participating day care institution; and

“(II) if the substitution is requested by written statement of a medical authority, or by the parent or legal guardian of the child, that identifies the medical or other special dietary need that restricts the diet of the child.

“(ii) EXCEPTION.—An institution, family or group day care home, or sponsored center that elects to make a substitution authorized under this paragraph shall not be required to provide beverages other than beverages the State has identified as acceptable substitutes.

“(D) EXCESS EXPENSES BORNE BY INSTITUTION.—A participating institution, family or group day care home, or sponsored center shall be responsible for any expenses that—

“(i) are incurred by the institution, family or group day care home, or sponsored center to provide substitutions under this paragraph; and

“(ii) are in excess of expenses covered under reimbursements under this Act.

“(5) NONDISCRIMINATION POLICY.—No physical segregation or other discrimination against any person shall be made because of the inability of the person to pay, nor shall there be any overt identification of any such person by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

“(6) USE OF ABUNDANT AND DONATED FOODS.—To the maximum extent practicable, each institution shall use in its food service foods that are—

“(A) designated from time to time by the Secretary as being in abundance, either nationally or in the food service area; or

“(B) donated by the Secretary.”;

(3) by adding at the end the following:

“(u) PROMOTING HEALTH AND WELLNESS IN CHILD CARE.—

“(1) PHYSICAL ACTIVITY AND ELECTRONIC MEDIA USE.—The Secretary shall encourage participating child care centers and family or group day care homes—

“(A) to provide to all children under the supervision of the participating child care centers and family or group day care homes daily opportunities for structured and unstructured age-appropriate physical activity; and

“(B) to limit among children under the supervision of the participating child care centers and family or group

day care homes the use of electronic media to an appropriate level.

“(2) WATER CONSUMPTION.—Participating child care centers and family or group day care homes shall make available to children, as nutritionally appropriate, potable water as an acceptable fluid for consumption throughout the day, including at meal times.

“(3) TECHNICAL ASSISTANCE AND GUIDANCE.—

“(A) IN GENERAL.—The Secretary shall provide technical assistance to institutions participating in the program under this section to assist participating child care centers and family or group day care homes in complying with the nutritional requirements and wellness recommendations prescribed by the Secretary in accordance with this subsection and subsection (g).

“(B) GUIDANCE.—Not later than January 1, 2012, the Secretary shall issue guidance to States and institutions to encourage participating child care centers and family or group day care homes serving meals and snacks under this section to—

Deadline.

“(i) include foods that are recommended for increased serving consumption in amounts recommended by the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), including fresh, canned, dried, or frozen fruits and vegetables, whole grain products, lean meat products, and low-fat and non-fat dairy products; and

“(ii) reduce sedentary activities and provide opportunities for regular physical activity in quantities recommended by the most recent Dietary Guidelines for Americans described in clause (i).

“(C) NUTRITION.—Technical assistance relating to the nutritional requirements of this subsection and subsection (g) shall include—

“(i) nutrition education, including education that emphasizes the relationship between nutrition, physical activity, and health;

“(ii) menu planning;

“(iii) interpretation of nutrition labels; and

“(iv) food preparation and purchasing guidance to produce meals and snacks that are—

“(I) consistent with the goals of the most recent Dietary Guidelines; and

“(II) promote the health of the population served by the program under this section, as recommended by authoritative scientific organizations.

“(D) PHYSICAL ACTIVITY.—Technical assistance relating to the physical activity requirements of this subsection shall include—

“(i) education on the importance of regular physical activity to overall health and well being; and

“(ii) sharing of best practices for physical activity plans in child care centers and homes as recommended by authoritative scientific organizations.

“(E) ELECTRONIC MEDIA USE.—Technical assistance relating to the electronic media use requirements of this subsection shall include—

“(i) education on the benefits of limiting exposure to electronic media by children; and

“(ii) sharing of best practices for the development of daily activity plans that limit use of electronic media.

Handbook.

“(F) MINIMUM ASSISTANCE.—At a minimum, the technical assistance required under this paragraph shall include a handbook, developed by the Secretary in coordination with the Secretary for Health and Human Services, that includes recommendations, guidelines, and best practices for participating institutions and family or group day care homes that are consistent with the nutrition, physical activity, and wellness requirements and recommendations of this subsection.

“(G) ADDITIONAL ASSISTANCE.—In addition to the requirements of this paragraph, the Secretary shall develop and provide such appropriate training and education materials, guidance, and technical assistance as the Secretary considers to be necessary to comply with the nutritional and wellness requirements of this subsection and subsection (g).

“(H) FUNDING.—

Effective date.

“(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to provide technical assistance under this subsection \$10,000,000, to remain available until expended.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under clause (i), without further appropriation.”.

42 USC 1766
note.

SEC. 222. INTERAGENCY COORDINATION TO PROMOTE HEALTH AND WELLNESS IN CHILD CARE LICENSING.

The Secretary shall coordinate with the Secretary of Health and Human Services to encourage State licensing agencies to include nutrition and wellness standards within State licensing standards that ensure, to the maximum extent practicable, that licensed child care centers and family or group day care homes—

(1) provide to all children under the supervision of the child care centers and family or group day care homes daily opportunities for age-appropriate physical activity;

(2) limit among children under the supervision of the child care centers and family or group day care homes the use of electronic media and the quantity of time spent in sedentary activity to an appropriate level;

(3) serve meals and snacks that are consistent with the requirements of the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766); and

(4) promote such other nutrition and wellness goals as the Secretaries determine to be necessary.

SEC. 223. STUDY ON NUTRITION AND WELLNESS QUALITY OF CHILD CARE SETTINGS.

(a) IN GENERAL.—Not less than 3 years after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall enter into a contract for the conduct of a nationally representative study of child care centers and family or group day care homes that includes an assessment of—

Deadline.
Contracts.

(1) the nutritional quality of all foods provided to children in child care settings as compared to the recommendations in most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(2) the quantity and type of opportunities for physical activity provided to children in child care settings;

(3) the quantity of time spent by children in child care settings in sedentary activities;

(4) an assessment of barriers and facilitators to—

(A) providing foods to children in child care settings that meet the recommendations of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(B) providing the appropriate quantity and type of opportunities of physical activity for children in child care settings; and

(C) participation by child care centers and family or group day care homes in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766); and

(5) such other assessment measures as the Secretary may determine to be necessary.

(b) REPORT TO CONGRESS.—The Secretary shall submit to Congress a report that includes a detailed description of the results of the study conducted under subsection (a).

(c) FUNDING.—

(1) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section \$5,000,000, to remain available until expended.

Effective date.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

Subtitle C—Special Supplemental Nutrition Program for Women, Infants, and Children

SEC. 231. SUPPORT FOR BREASTFEEDING IN THE WIC PROGRAM.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (a), in the second sentence, by striking “supplemental foods and nutrition education through any eligible local agency” and inserting “supplemental foods and

nutrition education, including breastfeeding promotion and support, through any eligible local agency”;

(2) in subsection (b)(4), by inserting “breastfeeding support and promotion,” after “nutrition education,”;

(3) in subsection (c)(1), in the first sentence, by striking “supplemental foods and nutrition education to” and inserting “supplemental foods, nutrition education, and breastfeeding support and promotion to”;

(4) in subsection (e)(2), in the second sentence, by inserting “, including breastfeeding support and education,” after “nutrition education”;

(5) in subsection (f)(6)(B), in the first sentence, by inserting “and breastfeeding” after “nutrition education”;

(6) in subsection (h)—

(A) in paragraph (4)—

(i) by striking “(4) The Secretary” and all that follows through “(A) in consultation” and inserting the following:

“(4) REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary shall—

“(i) in consultation”;

(ii) by redesignating subparagraphs (B) through (F) as clauses (ii) through (vi), respectively, and indenting appropriately;

(iii) in clause (v) (as so redesignated), by striking “and” at the end;

(iv) in clause (vi) (as so redesignated), by striking “2010 initiative.” and inserting “initiative; and”; and

(v) by adding at the end the following:

“(vii) annually compile and publish breastfeeding performance measurements based on program participant data on the number of partially and fully breastfed infants, including breastfeeding performance measurements for—

“(I) each State agency; and

“(II) each local agency;

“(viii) in accordance with subparagraph (B), implement a program to recognize exemplary breastfeeding support practices at local agencies or clinics participating in the special supplemental nutrition program established under this section; and

“(ix) in accordance with subparagraph (C), implement a program to provide performance bonuses to State agencies.

“(B) EXEMPLARY BREASTFEEDING SUPPORT PRACTICES.—

“(i) IN GENERAL.—In evaluating exemplary practices under subparagraph (A)(viii), the Secretary shall consider—

“(I) performance measurements of breastfeeding;

“(II) the effectiveness of a peer counselor program;

“(III) the extent to which the agency or clinic has partnered with other entities to build a supportive breastfeeding environment for women participating in the program; and

“(IV) such other criteria as the Secretary considers appropriate after consultation with State and local program agencies.

“(ii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the activities described in clause (viii) of subparagraph (A) such sums as are necessary.

“(C) PERFORMANCE BONUSES.—

Payments.

“(i) IN GENERAL.—Following the publication of breastfeeding performance measurements under subparagraph (A)(vii), the Secretary shall provide performance bonus payments to not more than 15 State agencies that demonstrate, as compared to other State agencies participating in the program—

“(I) the highest proportion of breast-fed infants; or

“(II) the greatest improvement in proportion of breast-fed infants.

“(ii) CONSIDERATION.—In providing performance bonus payments to State agencies under this subparagraph, the Secretary shall consider the proportion of fully breast-fed infants in the States.

“(iii) USE OF FUNDS.—A State agency that receives a performance bonus under clause (i)—

“(I) shall treat the funds as program income; and

“(II) may transfer the funds to local agencies for use in carrying out the program.

“(iv) IMPLEMENTATION.—The Secretary shall provide the first performance bonuses not later than 1 year after the date of enactment of this clause and may subsequently revise the criteria for awarding performance bonuses; and”; and

Deadline.

(B) by striking paragraph (10) and inserting the following:

“(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

“(A) IN GENERAL.—For each of fiscal years 2010 through 2015, the Secretary shall use for the purposes specified in subparagraph (B) \$139,000,000 (as adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B)).

“(B) PURPOSES.—Subject to subparagraph (C), of the amount made available under subparagraph (A) for a fiscal year—

“(i) \$14,000,000 shall be used for—

“(I) infrastructure for the program under this section;

“(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

“(III) special State projects of regional or national significance to improve the services of the program;

“(ii) \$35,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program, of which up to \$5,000,000 may be used for Federal administrative costs; and

“(iii) \$90,000,000 shall be used for special nutrition education (such as breastfeeding peer counselors and other related activities), of which not more than \$10,000,000 of any funding provided in excess of \$50,000,000 shall be used to make performance bonus payments under paragraph (4)(C).

“(C) ADJUSTMENT.—Each of the amounts referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B).

“(D) PROPORTIONAL DISTRIBUTION.—The Secretary shall distribute funds made available under subparagraph (A) in accordance with the proportional distribution described in subparagraphs (B) and (C).”; and

(7) in subsection (j), by striking “supplemental foods and nutrition education” each place it appears in paragraphs (1) and (2) and inserting “supplemental foods, nutrition education, and breastfeeding support and promotion”.

SEC. 232. REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.

Section 17(f)(11)(D) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11)(D)) is amended in the matter preceding clause (i) by inserting “but not less than every 10 years,” after “scientific knowledge,”.

Subtitle D—Miscellaneous

SEC. 241. NUTRITION EDUCATION AND OBESITY PREVENTION GRANT PROGRAM.

(a) IN GENERAL.—The Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) is amended by adding at the end the following:

7 USC 2036a.

“SEC. 28. NUTRITION EDUCATION AND OBESITY PREVENTION GRANT PROGRAM.

“(a) DEFINITION OF ELIGIBLE INDIVIDUAL.—In this section, the term ‘eligible individual’ means an individual who is eligible to receive benefits under a nutrition education and obesity prevention program under this section as a result of being—

“(1) an individual eligible for benefits under—

“(A) this Act;

“(B) sections 9(b)(1)(A) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1)(A), 1766(c)(4)); or

“(C) section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A));

“(2) an individual who resides in a community with a significant low-income population, as determined by the Secretary; or

“(3) such other low-income individual as is determined to be eligible by the Secretary.

“(b) PROGRAMS.—Consistent with the terms and conditions of grants awarded under this section, State agencies may implement a nutrition education and obesity prevention program for eligible individuals that promotes healthy food choices consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

“(c) DELIVERY OF NUTRITION EDUCATION AND OBESITY PREVENTION SERVICES.—

“(1) IN GENERAL.—State agencies may deliver nutrition education and obesity prevention services under a program described in subsection (b)—

“(A) directly to eligible individuals; or

“(B) through agreements with other State or local agencies or community organizations.

“(2) NUTRITION EDUCATION STATE PLANS.—

“(A) IN GENERAL.—A State agency that elects to provide nutrition education and obesity prevention services under this subsection shall submit to the Secretary for approval a nutrition education State plan.

“(B) REQUIREMENTS.—Except as provided in subparagraph (C), a nutrition education State plan shall—

“(i) identify the uses of the funding for local projects;

“(ii) ensure that the interventions are appropriate for eligible individuals who are members of low-income populations by recognizing the constrained resources, and the potential eligibility for Federal food assistance programs, of members of those populations; and

“(iii) conform to standards established by the Secretary through regulations, guidance, or grant award documents.

“(C) TRANSITION PERIOD.—During each of fiscal years 2011 and 2012, a nutrition education State plan under this section shall be consistent with the requirements of section 11(f) (as that section, other than paragraph (3)(C), existed on the day before the date of enactment of this section).

“(3) USE OF FUNDS.—

“(A) IN GENERAL.—A State agency may use funds provided under this section for any evidence-based allowable use of funds identified by the Administrator of the Food and Nutrition Service of the Department of Agriculture in consultation with the Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services, including—

“(i) individual and group-based nutrition education, health promotion, and intervention strategies;

“(ii) comprehensive, multilevel interventions at multiple complementary organizational and institutional levels; and

“(iii) community and public health approaches to improve nutrition.

“(B) CONSULTATION.—In identifying allowable uses of funds under subparagraph (A) and in seeking to strengthen

delivery, oversight, and evaluation of nutrition education, the Administrator of the Food and Nutrition Service shall consult with the Director of the Centers for Disease Control and Prevention and outside stakeholders and experts, including—

“(i) representatives of the academic and research communities;

“(ii) nutrition education practitioners;

“(iii) representatives of State and local governments; and

“(iv) community organizations that serve low-income populations.

“(4) NOTIFICATION.—To the maximum extent practicable, State agencies shall notify applicants, participants, and eligible individuals under this Act of the availability of nutrition education and obesity prevention services under this section in local communities.

“(5) COORDINATION.—Subject to the approval of the Secretary, projects carried out with funds received under this section may be coordinated with other health promotion or nutrition improvement strategies, whether public or privately funded, if the projects carried out with funds received under this section remain under the administrative control of the State agency.

“(d) FUNDING.—

“(1) IN GENERAL.—Of funds made available each fiscal year under section 18(a)(1), the Secretary shall reserve for allocation to State agencies to carry out the nutrition education and obesity prevention grant program under this section, to remain available for obligation for a period of 2 fiscal years—

“(A) for fiscal year 2011, \$375,000,000; and

“(B) for fiscal year 2012 and each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

“(2) ALLOCATION.—

“(A) INITIAL ALLOCATION.—Of the funds set aside under paragraph (1), as determined by the Secretary—

“(i) for each of fiscal years 2011 through 2013, 100 percent shall be allocated to State agencies in direct proportion to the amount of funding that the State received for carrying out section 11(f) (as that section existed on the day before the date of enactment of this section) during fiscal year 2009, as reported to the Secretary as of February 2010; and

“(ii) subject to a reallocation under subparagraph (B)—

“(I) for fiscal year 2014—

“(aa) 90 percent shall be allocated to State agencies in accordance with clause (i); and

“(bb) 10 percent shall be allocated to State agencies based on the respective share of each

State of the number of individuals participating in the supplemental nutrition assistance program during the 12-month period ending the preceding January 31;

“(II) for fiscal year 2015—

“(aa) 80 percent shall be allocated to State agencies in accordance with clause (i); and

“(bb) 20 percent shall be allocated in accordance with subclause (I)(bb);

“(III) for fiscal year 2016—

“(aa) 70 percent shall be allocated to State agencies in accordance with clause (i); and

“(bb) 30 percent shall be allocated in accordance with subclause (I)(bb);

“(IV) for fiscal year 2017—

“(aa) 60 percent shall be allocated to State agencies in accordance with clause (i); and

“(bb) 40 percent shall be allocated in accordance with subclause (I)(bb); and

“(V) for fiscal year 2018 and each fiscal year thereafter—

“(aa) 50 percent shall be allocated to State agencies in accordance with clause (i); and

“(bb) 50 percent shall be allocated in accordance with subclause (I)(bb).

“(B) REALLOCATION.—

“(i) IN GENERAL.—If the Secretary determines that a State agency will not expend all of the funds allocated to the State agency for a fiscal year under paragraph (1) or in the case of a State agency that elects not to receive the entire amount of funds allocated to the State agency for a fiscal year, the Secretary shall reallocate the unexpended funds to other States during the fiscal year or the subsequent fiscal year (as determined by the Secretary) that have approved State plans under which the State agencies may expend the reallocated funds.

“(ii) EFFECT OF ADDITIONAL FUNDS.—

“(I) FUNDS RECEIVED.—Any reallocated funds received by a State agency under clause (i) for a fiscal year shall be considered to be part of the fiscal year 2009 base allocation of funds to the State agency for that fiscal year for purposes of determining allocation under subparagraph (A) for the subsequent fiscal year.

“(II) FUNDS SURRENDERED.—Any funds surrendered by a State agency under clause (i) shall not be considered to be part of the fiscal year 2009 base allocation of funds to a State agency for that fiscal year for purposes of determining allocation under subparagraph (A) for the subsequent fiscal year.

“(3) LIMITATION ON FEDERAL FINANCIAL PARTICIPATION.—

“(A) IN GENERAL.—Grants awarded under this section shall be the only source of Federal financial participation under this Act in nutrition education and obesity prevention.

“(B) EXCLUSION.—Any costs of nutrition education and obesity prevention in excess of the grants authorized under this section shall not be eligible for reimbursement under section 16(a).

Deadline.
Federal Register,
publication.

“(e) IMPLEMENTATION.—Not later than January 1, 2012, the Secretary shall publish in the Federal Register a description of the requirements for the receipt of a grant under this section.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 4(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(a)) is amended in the first sentence by striking “and, through an approved State plan, nutrition education”.

(2) Section 11 of the Food and Nutrition Act of 2008 (7 U.S.C. 2020) is amended by striking subsection (f).

SEC. 242. PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.

Section 9(a)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(4)) is amended by adding at the end the following:

“(C) PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.—The Secretary shall—

“(i) identify, develop, and disseminate to State departments of agriculture and education, school food authorities, local educational agencies, and local processing entities, model product specifications and practices for foods offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to ensure that the foods reflect the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

Deadline.

“(ii) not later than 1 year after the date of enactment of this subparagraph—

“(I) carry out a study to analyze the quantity and quality of nutritional information available to school food authorities about food service products and commodities; and

Reports.

“(II) submit to Congress a report on the results of the study that contains such legislative recommendations as the Secretary considers necessary to ensure that school food authorities have access to the nutritional information needed for menu planning and compliance assessments; and

“(iii) to the maximum extent practicable, in purchasing and processing commodities for use in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), purchase the widest variety of healthful foods that reflect the most recent Dietary Guidelines for Americans.”.

SEC. 243. ACCESS TO LOCAL FOODS: FARM TO SCHOOL PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended—

(1) by redesignating subsections (h) and (i) and subsection (j) (as added by section 210) as subsections (i) through (k), respectively;

(2) in subsection (g), by striking “(g) ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.—” and all that follows through “(3) PILOT PROGRAM FOR HIGH-POVERTY SCHOOLS.—” and inserting the following:

“(g) ACCESS TO LOCAL FOODS: FARM TO SCHOOL PROGRAM.—

“(1) DEFINITION OF ELIGIBLE SCHOOL.—In this subsection, the term ‘eligible school’ means a school or institution that participates in a program under this Act or the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(2) PROGRAM.—The Secretary shall carry out a program to assist eligible schools, State and local agencies, Indian tribal organizations, agricultural producers or groups of agricultural producers, and nonprofit entities through grants and technical assistance to implement farm to school programs that improve access to local foods in eligible schools.

“(3) GRANTS.—

“(A) IN GENERAL.—The Secretary shall award competitive grants under this subsection to be used for—

- “(i) training;
- “(ii) supporting operations;
- “(iii) planning;
- “(iv) purchasing equipment;
- “(v) developing school gardens;
- “(vi) developing partnerships; and
- “(vii) implementing farm to school programs.

“(B) REGIONAL BALANCE.—In making awards under this subsection, the Secretary shall, to the maximum extent practicable, ensure—

- “(i) geographical diversity; and
- “(ii) equitable treatment of urban, rural, and tribal communities.

“(C) MAXIMUM AMOUNT.—The total amount provided to a grant recipient under this subsection shall not exceed \$100,000.

“(4) FEDERAL SHARE.—

“(A) IN GENERAL.—The Federal share of costs for a project funded through a grant awarded under this subsection shall not exceed 75 percent of the total cost of the project.

“(B) FEDERAL MATCHING.—As a condition of receiving a grant under this subsection, a grant recipient shall provide matching support in the form of cash or in-kind contributions, including facilities, equipment, or services provided by State and local governments, nonprofit organizations, and private sources.

“(5) CRITERIA FOR SELECTION.—To the maximum extent practicable, in providing assistance under this subsection, the Secretary shall give the highest priority to funding projects that, as determined by the Secretary—

- “(A) make local food products available on the menu of the eligible school;
- “(B) serve a high proportion of children who are eligible for free or reduced price lunches;

“(C) incorporate experiential nutrition education activities in curriculum planning that encourage the participation of school children in farm and garden-based agricultural education activities;

“(D) demonstrate collaboration between eligible schools, nongovernmental and community-based organizations, agricultural producer groups, and other community partners;

“(E) include adequate and participatory evaluation plans;

“(F) demonstrate the potential for long-term program sustainability; and

“(G) meet any other criteria that the Secretary determines appropriate.

“(6) EVALUATION.—As a condition of receiving a grant under this subsection, each grant recipient shall agree to cooperate in an evaluation by the Secretary of the program carried out using grant funds.

“(7) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance and information to assist eligible schools, State and local agencies, Indian tribal organizations, and non-profit entities—

“(A) to facilitate the coordination and sharing of information and resources in the Department that may be applicable to the farm to school program;

“(B) to collect and share information on best practices; and

“(C) to disseminate research and data on existing farm to school programs and the potential for programs in underserved areas.

“(8) FUNDING.—

“(A) IN GENERAL.—On October 1, 2012, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$5,000,000, to remain available until expended.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

“(9) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available under paragraph (8), there are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

“(h) PILOT PROGRAM FOR HIGH-POVERTY SCHOOLS.—

“(1) IN GENERAL.—”; and

(3) in subsection (h) (as redesignated by paragraph (2))—

(A) in subparagraph (F) of paragraph (1) (as so redesignated), by striking “in accordance with paragraph (1)(H)” and inserting “carried out by the Secretary”;

(B) by redesignating paragraph (4) as paragraph (2); and

(C) in paragraph (2) (as so redesignated), by striking “2009” and inserting “2015”.

Effective dates.

SEC. 244. RESEARCH ON STRATEGIES TO PROMOTE THE SELECTION AND CONSUMPTION OF HEALTHY FOODS. 7 USC 3179.

(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of Health and Human Services, shall establish a research, demonstration, and technical assistance program to promote healthy eating and reduce the prevalence of obesity, among all population groups but especially among children, by applying the principles and insights of behavioral economics research in schools, child care programs, and other settings.

(b) **PRIORITIES.**—The Secretary shall—

(1) identify and assess the impacts of specific presentation, placement, and other strategies for structuring choices on selection and consumption of healthful foods in a variety of settings, consistent with the most recent version of the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(2) demonstrate and rigorously evaluate behavioral economics-related interventions that hold promise to improve diets and promote health, including through demonstration projects that may include evaluation of the use of portion size, labeling, convenience, and other strategies to encourage healthy choices; and

(3) encourage adoption of the most effective strategies through outreach and technical assistance.

(c) **AUTHORITY.**—In carrying out the program under subsection (a), the Secretary may—

(1) enter into competitively awarded contracts or cooperative agreements; or

(2) provide grants to States or public or private agencies or organizations, as determined by the Secretary.

(d) **APPLICATION.**—To be eligible to enter into a contract or cooperative agreement or receive a grant under this section, a State or public or private agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) **COORDINATION.**—The solicitation and evaluation of contracts, cooperative agreements, and grant proposals considered under this section shall be coordinated with the Food and Nutrition Service as appropriate to ensure that funded projects are consistent with the operations of Federally supported nutrition assistance programs and related laws (including regulations).

(f) **ANNUAL REPORTS.**—Not later than 90 days after the end of each fiscal year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

(1) the policies, priorities, and operations of the program carried out by the Secretary under this section during the fiscal year;

(2) the results of any evaluations completed during the fiscal year; and

(3) the efforts undertaken to disseminate successful practices through outreach and technical assistance.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2011 through 2015.

(2) **USE OF FUNDS.**—The Secretary may use up to 5 percent of the funds made available under paragraph (1) for Federal administrative expenses incurred in carrying out this section.

TITLE III—IMPROVING THE MANAGEMENT AND INTEGRITY OF CHILD NUTRITION PROGRAMS

Subtitle A—National School Lunch Program

SEC. 301. PRIVACY PROTECTION.

Section 9(d)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(1)) is amended—

- (1) in the first sentence, by inserting “the last 4 digits of” before “the social security account number”; and
- (2) by striking the second sentence.

SEC. 302. APPLICABILITY OF FOOD SAFETY PROGRAM ON ENTIRE SCHOOL CAMPUS.

Section 9(h)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)(5)) is amended—

- (1) by striking “Each school food” and inserting the following:

“(A) **IN GENERAL.**—Each school food”; and

- (2) by adding at the end the following:

“(B) **APPLICABILITY.**—Subparagraph (A) shall apply to any facility or part of a facility in which food is stored, prepared, or served for the purposes of the school nutrition programs under this Act or section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).”.

SEC. 303. FINES FOR VIOLATING PROGRAM REQUIREMENTS.

Section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c) is amended by adding at the end the following:

“(e) **FINES FOR VIOLATING PROGRAM REQUIREMENTS.**—

“(1) **SCHOOL FOOD AUTHORITIES AND SCHOOLS.**—

“(A) **IN GENERAL.**—The Secretary shall establish criteria by which the Secretary or a State agency may impose a fine against any school food authority or school administering a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary or the State agency determines that the school food authority or school has—

“(i) failed to correct severe mismanagement of the program;

“(ii) disregarded a program requirement of which the school food authority or school had been informed; or

“(iii) failed to correct repeated violations of program requirements.

“(B) **LIMITS.**—

“(i) IN GENERAL.—In calculating the fine for a school food authority or school, the Secretary shall base the amount of the fine on the reimbursement earned by school food authority or school for the program in which the violation occurred.

“(ii) AMOUNT.—The amount under clause (i) shall not exceed—

“(I) 1 percent of the amount of meal reimbursements earned for the fiscal year for the first finding of 1 or more program violations under subparagraph (A);

“(II) 5 percent of the amount of meal reimbursements earned for the fiscal year for the second finding of 1 or more program violations under subparagraph (A); and

“(III) 10 percent of the amount of meal reimbursements earned for the fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

“(2) STATE AGENCIES.—

“(A) IN GENERAL.—The Secretary shall establish criteria by which the Secretary may impose a fine against any State agency administering a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary determines that the State agency has—

“(i) failed to correct severe mismanagement of the program;

“(ii) disregarded a program requirement of which the State had been informed; or

“(iii) failed to correct repeated violations of program requirements.

“(B) LIMITS.—In the case of a State agency, the amount of a fine under subparagraph (A) shall not exceed—

“(i) 1 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the first finding of 1 or more program violations under subparagraph (A);

“(ii) 5 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the second finding of 1 or more program violations under subparagraph (A); and

“(iii) 10 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

“(3) SOURCE OF FUNDING.—Funds to pay a fine imposed under paragraph (1) or (2) shall be derived from non-Federal sources.”.

SEC. 304. INDEPENDENT REVIEW OF APPLICATIONS.

Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)) is amended by adding at the end the following:

“(6) **ELIGIBILITY DETERMINATION REVIEW FOR SELECTED LOCAL EDUCATIONAL AGENCIES.**—

“(A) **IN GENERAL.**—A local educational agency that has demonstrated a high level of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, as determined by the Secretary, shall ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying a household of the eligibility or ineligibility of the household for free or reduced price meals.

“(B) **TIMELINESS.**—The review of initial eligibility determinations—

“(i) shall be completed in a timely manner; and

“(ii) shall not result in the delay of an eligibility determination for more than 10 operating days after the date on which the application is submitted.

Standards.

“(C) **ACCEPTABLE TYPES OF REVIEW.**—Subject to standards established by the Secretary, the system used to review eligibility determinations for accuracy shall be conducted by an individual or entity that did not make the initial eligibility determination.

“(D) **NOTIFICATION OF HOUSEHOLD.**—Once the review of an eligibility determination has been completed under this paragraph, the household shall be notified immediately of the determination of eligibility or ineligibility for free or reduced price meals.

“(E) **REPORTING.**—

Procedures.

“(i) **LOCAL EDUCATIONAL AGENCIES.**—In accordance with procedures established by the Secretary, each local educational agency required to review initial eligibility determinations shall submit to the relevant State agency a report describing the results of the reviews, including—

“(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

“(II) such other information as the Secretary determines to be necessary.

Procedures.

“(ii) **STATE AGENCIES.**—In accordance with procedures established by the Secretary, each State agency shall submit to the Secretary a report describing the results of the reviews of initial eligibility determinations, including—

“(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

“(II) such other information as the Secretary determines to be necessary.

Publication.

“(iii) **TRANSPARENCY.**—The Secretary shall publish annually the results of the reviews of initial eligibility determinations by State, number, percentage, and type of error.”.

SEC. 305. PROGRAM EVALUATION.

Section 28 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769i) is amended by adding at the end the following:

“(c) COOPERATION WITH PROGRAM RESEARCH AND EVALUATION.—States, State educational agencies, local educational agencies, schools, institutions, facilities, and contractors participating in programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall cooperate with officials and contractors acting on behalf of the Secretary, in the conduct of evaluations and studies under those Acts.”.

SEC. 306. PROFESSIONAL STANDARDS FOR SCHOOL FOOD SERVICE.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended by striking subsection (g) and inserting the following:

“(g) PROFESSIONAL STANDARDS FOR SCHOOL FOOD SERVICE.—

“(1) CRITERIA FOR SCHOOL FOOD SERVICE AND STATE AGENCY DIRECTORS.—

“(A) SCHOOL FOOD SERVICE DIRECTORS.—

“(i) IN GENERAL.—The Secretary shall establish a program of required education, training, and certification for all school food service directors responsible for the management of a school food authority.

“(ii) REQUIREMENTS.—The program shall include—

“(I) minimum educational requirements necessary to successfully manage the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act;

“(II) minimum program training and certification criteria for school food service directors; and

“(III) minimum periodic training criteria to maintain school food service director certification.

“(B) SCHOOL NUTRITION STATE AGENCY DIRECTORS.—

The Secretary shall establish criteria and standards for States to use in the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

“(C) TRAINING PROGRAM PARTNERSHIP.—The Secretary may provide financial and other assistance to 1 or more professional food service management organizations—

“(i) to establish and manage the program under this paragraph; and

“(ii) to develop voluntary training and certification programs for other school food service workers.

“(D) REQUIRED DATE OF COMPLIANCE.—

“(i) SCHOOL FOOD SERVICE DIRECTORS.—The Secretary shall establish a date by which all school food service directors whose local educational agencies are participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act shall be required to comply with the education, training, and

certification criteria established in accordance with subparagraph (A).

“(ii) SCHOOL NUTRITION STATE AGENCY DIRECTORS.—The Secretary shall establish a date by which all State agencies shall be required to comply with criteria and standards established in accordance with subparagraph (B) for the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

“(2) TRAINING AND CERTIFICATION OF FOOD SERVICE PERSONNEL.—

“(A) TRAINING FOR INDIVIDUALS CONDUCTING OR OVERSEEING ADMINISTRATIVE PROCEDURES.—

Deadline.

“(i) IN GENERAL.—At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority personnel and other appropriate personnel.

“(ii) FEDERAL ROLE.—The Secretary shall—

“(I) provide training and technical assistance described in clause (i) to the State; or

“(II) at the option of the Secretary, directly provide training and technical assistance described in clause (i).

Procedures.

“(iii) REQUIRED PARTICIPATION.—In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in clause (i) receives training at least annually, unless determined otherwise by the Secretary.

“(B) TRAINING AND CERTIFICATION OF ALL LOCAL FOOD SERVICE PERSONNEL.—

“(i) IN GENERAL.—The Secretary shall provide training designed to improve—

“(I) the accuracy of approvals for free and reduced price meals; and

“(II) the identification of reimbursable meals at the point of service.

“(ii) CERTIFICATION OF LOCAL PERSONNEL.—In accordance with criteria established by the Secretary, local food service personnel shall complete annual training and receive annual certification—

“(I) to ensure program compliance and integrity; and

“(II) to demonstrate competence in the training provided under clause (i).

“(iii) TRAINING MODULES.—In addition to the topics described in clause (i), a training program carried out under this subparagraph shall include training modules on—

“(I) nutrition;

“(II) health and food safety standards and methodologies; and

“(III) any other appropriate topics, as determined by the Secretary.

“(3) FUNDING.—

“(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection, to remain available until expended—

Effective dates.

“(i) on October 1, 2010, \$5,000,000; and

“(ii) on each October 1 thereafter, \$1,000,000.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.”

SEC. 307. INDIRECT COSTS.

42 USC 1751
note.
Deadline.

(a) GUIDANCE ON INDIRECT COSTS RULES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall issue guidance to school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) covering program rules pertaining to indirect costs, including allowable indirect costs that may be charged to the nonprofit school food service account.

(b) INDIRECT COST STUDY.—The Secretary shall—

(1) conduct a study to assess the extent to which school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) pay indirect costs, including assessments of—

(A) the allocation of indirect costs to, and the methodologies used to establish indirect cost rates for, school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(B) the impact of indirect costs charged to the nonprofit school food service account;

(C) the types and amounts of indirect costs charged and recovered by school districts;

(D) whether the indirect costs charged or recovered are consistent with requirements for the allocation of indirect costs and school food service operations; and

(E) the types and amounts of indirect costs that could be charged or recovered under requirements for the allocation of indirect costs and school food service operations but are not charged or recovered; and

(2) after completing the study required under paragraph (1), issue additional guidance relating to the types of costs that are reasonable and necessary to provide meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(c) **REGULATIONS.**—After conducting the study under subsection (b)(1) and identifying costs under subsection (b)(2), the Secretary may promulgate regulations to address—

(1) any identified deficiencies in the allocation of indirect costs; and

(2) the authority of school food authorities to reimburse only those costs identified by the Secretary as reasonable and necessary under subsection (b)(2).

(d) **REPORT.**—Not later than October 1, 2013, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study under subsection (b).

(e) **FUNDING.**—

Effective date.

(1) **IN GENERAL.**—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section \$2,000,000, to remain available until expended.

(2) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

SEC. 308. ENSURING SAFETY OF SCHOOL MEALS.

The Richard B. Russell National School Lunch Act is amended by after section 28 (42 U.S.C. 1769i) the following:

Deadlines.
42 USC 1769j.

“SEC. 29. ENSURING SAFETY OF SCHOOL MEALS.

“(a) **FOOD AND NUTRITION SERVICE.**—Not later than 1 year after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall—

Guidelines.

“(1) in consultation with the Administrator of the Agricultural Marketing Service and the Administrator of the Farm Service Agency, develop guidelines to determine the circumstances under which it is appropriate for the Secretary to institute an administrative hold on suspect foods purchased by the Secretary that are being used in school meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(2) work with States to explore ways for the States to increase the timeliness of notification of food recalls to schools and school food authorities;

“(3) improve the timeliness and completeness of direct communication between the Food and Nutrition Service and States about holds and recalls, such as through the commodity alert system of the Food and Nutrition Service; and

“(4) establish a timeframe to improve the commodity hold and recall procedures of the Department of Agriculture to address the role of processors and determine the involvement of distributors with processed products that may contain recalled ingredients, to facilitate the provision of more timely and complete information to schools.

“(b) **FOOD SAFETY AND INSPECTION SERVICE.**—Not later than 1 year after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary, acting through the Administrator

of the Food Safety and Inspection Service, shall revise the procedures of the Food Safety and Inspection Service to ensure that schools are included in effectiveness checks.”.

Subtitle B—Summer Food Service Program

SEC. 321. SUMMER FOOD SERVICE PROGRAM PERMANENT OPERATING AGREEMENTS.

Section 13(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)) is amended by striking paragraph (3) and inserting the following:

“(3) PERMANENT OPERATING AGREEMENTS AND BUDGET FOR ADMINISTRATIVE COSTS.—

“(A) PERMANENT OPERATING AGREEMENTS.—

“(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the program, a service institution that meets the conditions of eligibility described in this section and in regulations promulgated by the Secretary, shall be required to enter into a permanent agreement with the applicable State agency.

Regulations.

“(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the service institution is in compliance with all requirements established in this section or by the Secretary.

“(iii) TERMINATION.—A permanent agreement described in clause (i)—

“(I) may be terminated for convenience by the service institution and State agency that is a party to the permanent agreement; and

“(II) shall be terminated—

“(aa) for cause by the applicable State agency in accordance with subsection (q) and with regulations promulgated by the Secretary; or

Regulations.

“(bb) on termination of participation of the service institution in the program.

“(B) BUDGET FOR ADMINISTRATIVE COSTS.—

“(i) IN GENERAL.—When applying for participation in the program, and not less frequently than annually thereafter, each service institution shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State.

“(ii) AMOUNT.—Payment to service institutions for administrative costs shall equal the levels determined by the Secretary pursuant to the study required in paragraph (4).”.

SEC. 322. SUMMER FOOD SERVICE PROGRAM DISQUALIFICATION.

Section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761) is amended—

- (1) by redesignating subsection (q) as subsection (r); and
- (2) by inserting after subsection (p) the following:

“(q) TERMINATION AND DISQUALIFICATION OF PARTICIPATING ORGANIZATIONS.—

Procedures.

“(1) IN GENERAL.—Each State agency shall follow the procedures established by the Secretary for the termination of participation of institutions under the program.

“(2) FAIR HEARING.—The procedures described in paragraph (1) shall include provision for a fair hearing and prompt determination for any service institution aggrieved by any action of the State agency that affects—

“(A) the participation of the service institution in the program; or

“(B) the claim of the service institution for reimbursement under this section.

“(3) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

“(A) IN GENERAL.—The Secretary shall maintain a list of service institutions and individuals that have been terminated or otherwise disqualified from participation in the program under the procedures established pursuant to paragraph (1).

“(B) AVAILABILITY.—The Secretary shall make the list available to States for use in approving or renewing applications by service institutions for participation in the program.”.

Subtitle C—Child and Adult Care Food Program

SEC. 331. RENEWAL OF APPLICATION MATERIALS AND PERMANENT OPERATING AGREEMENTS.

(a) PERMANENT OPERATING AGREEMENTS.—Section 17(d)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(d)(1)) is amended by adding at the end the following:

“(E) PERMANENT OPERATING AGREEMENTS.—

“(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the child and adult care food program, an institution that meets the conditions of eligibility described in this subsection shall be required to enter into a permanent agreement with the applicable State agency.

“(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the institution is in compliance with all requirements established in this section or by the Secretary.

“(iii) TERMINATION.—A permanent agreement described in clause (i)—

“(I) may be terminated for convenience by the institution or State agency that is a party to the permanent agreement; and

“(II) shall be terminated—

“(aa) for cause by the applicable State agency in accordance with paragraph (5); or

“(bb) on termination of participation of the institution in the child and adult care food program.”.

(b) APPLICATIONS AND REVIEWS.—Section 17(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(d)) is amended by striking paragraph (2) and inserting the following:

“(2) PROGRAM APPLICATIONS.—

“(A) IN GENERAL.—The Secretary shall develop a policy under which each institution providing child care that participates in the program under this section shall—

Regulations.
Deadlines.

“(i) submit to the State agency an initial application to participate in the program that meets all requirements established by the Secretary by regulation;

“(ii) annually confirm to the State agency that the institution, and any facilities of the institution in which the program is operated by a sponsoring organization, is in compliance with subsection (a)(5); and

“(iii) annually submit to the State agency any additional information necessary to confirm that the institution is in compliance with all other requirements to participate in the program, as established in this Act and by the Secretary by regulation.

“(B) REQUIRED REVIEWS OF SPONSORED FACILITIES.—

Deadlines.

“(i) IN GENERAL.—The Secretary shall develop a policy under which each sponsoring organization participating in the program under this section shall conduct—

“(I) periodic unannounced site visits at not less than 3-year intervals to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program; and

“(II) at least 1 scheduled site visit each year to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations.

“(ii) VARIED TIMING.—Sponsoring organizations shall vary the timing of unannounced reviews under clause (i)(I) in a manner that makes the reviews unpredictable to sponsored facilities.

“(C) REQUIRED REVIEWS OF INSTITUTIONS.—The Secretary shall develop a policy under which each State agency shall conduct—

“(i) at least 1 scheduled site visit at not less than 3-year intervals to each institution under the State agency participating in the program under this section—

Deadline.

“(I) to identify and prevent management deficiencies and fraud and abuse under the program; and

“(II) to improve program operations; and

“(ii) more frequent reviews of any institution that—

“(I) sponsors a significant share of the facilities participating in the program;

“(II) conducts activities other than the program authorized under this section;

“(III) has serious management problems, as identified in a prior review, or is at risk of having serious management problems; or

“(IV) meets such other criteria as are defined by the Secretary.

“(D) DETECTION AND DETERRENCE OF ERRONEOUS PAYMENTS AND FALSE CLAIMS.—

“(i) IN GENERAL.—The Secretary may develop a policy to detect and deter, and recover erroneous payments to, and false claims submitted by, institutions, sponsored child and adult care centers, and family or group day care homes participating in the program under this section.

“(ii) BLOCK CLAIMS.—

“(I) DEFINITION OF BLOCK CLAIM.—In this clause, the term ‘block claim’ has the meaning given the term in section 226.2 of title 7, Code of Federal Regulations (or successor regulations).

“(II) PROGRAM EDIT CHECKS.—The Secretary may not require any State agency, sponsoring organization, or other institution to perform edit checks or on-site reviews relating to the detection of block claims by any child care facility.

“(III) ALLOWANCE.—Notwithstanding subclause (II), the Secretary may require any State agency, sponsoring organization, or other institution to collect, store, and transmit to the appropriate entity information necessary to develop any other policy developed under clause (i).”

(c) AGREEMENTS.—Section 17(j)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(j)(1)) is amended—

(1) by striking “may” and inserting “shall”;

(2) by striking “family or group day care” the first place it appears; and

(3) by inserting “or sponsored day care centers” before “participating”.

SEC. 332. STATE LIABILITY FOR PAYMENTS TO AGGRIEVED CHILD CARE INSTITUTIONS.

Section 17(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) in paragraph (3), by striking “(3) If a State” and inserting the following:

“(5) SECRETARIAL HEARING.—If a State”; and

(2) by striking “(e) Except as provided” and all that follows through “(2) A State” and inserting the following:

“(e) HEARINGS.—

“(1) IN GENERAL.—Except as provided in paragraph (4), each State agency shall provide, in accordance with regulations promulgated by the Secretary, an opportunity for a fair hearing and a prompt determination to any institution aggrieved by any action of the State agency that affects—

“(A) the participation of the institution in the program authorized by this section; or

“(B) the claim of the institution for reimbursement under this section.

Regulations.

“(2) REIMBURSEMENT.—In accordance with paragraph (3), a State agency that fails to meet timeframes for providing an opportunity for a fair hearing and a prompt determination to any institution under paragraph (1) in accordance with regulations promulgated by the Secretary, shall pay, from non-Federal sources, all valid claims for reimbursement to the institution and the facilities of the institution during the period beginning on the day after the end of any regulatory deadline for providing the opportunity and making the determination and ending on the date on which a hearing determination is made.

Regulations.
Time period.

“(3) NOTICE TO STATE AGENCY.—The Secretary shall provide written notice to a State agency at least 30 days prior to imposing any liability for reimbursement under paragraph (2).

Deadline.

“(4) FEDERAL AUDIT DETERMINATION.—A State”.

SEC. 333. TRANSMISSION OF INCOME INFORMATION BY SPONSORED FAMILY OR GROUP DAY CARE HOMES.

Section 17(f)(3)(A)(iii)(III) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(A)(iii)(III)) is amended by adding at the end the following:

“(dd) TRANSMISSION OF INCOME INFORMATION BY SPONSORED FAMILY OR GROUP DAY CARE HOMES.—If a family or group day care home elects to be provided reimbursement factors described in subclause (II), the family or group day care home may assist in the transmission of necessary household income information to the family or group day care home sponsoring organization in accordance with the policy described in item (ee).

“(ee) POLICY.—The Secretary shall develop a policy under which a sponsored family or group day care home described in item (dd) may, under terms and conditions specified by the Secretary and with the written consent of the parents or guardians of a child in a family or group day care home participating in the program, assist in the transmission of the income information of the family to the family or group day care home sponsoring organization.”.

SEC. 334. SIMPLIFYING AND ENHANCING ADMINISTRATIVE PAYMENTS TO SPONSORING ORGANIZATIONS.

Section 17(f)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)) is amended by striking subparagraph (B) and inserting the following:

“(B) ADMINISTRATIVE FUNDS.—

“(i) IN GENERAL.—In addition to reimbursement factors described in subparagraph (A), a family or group day care home sponsoring organization shall receive reimbursement for the administrative expenses of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying—

“(I) the number of family and group day care homes of the sponsoring organization submitting a claim for reimbursement during the month; by

“(II) the appropriate administrative rate determined by the Secretary.

“(ii) ANNUAL ADJUSTMENT.—The administrative reimbursement levels specified in clause (i) shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the most recent 12-month period for which such data are available.

Procedures.

“(iii) CARRYOVER FUNDS.—The Secretary shall develop procedures under which not more than 10 percent of the amount made available to sponsoring organizations under this section for administrative expenses for a fiscal year may remain available for obligation or expenditure in the succeeding fiscal year.”.

SEC. 335. CHILD AND ADULT CARE FOOD PROGRAM AUDIT FUNDING.

Section 17(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(i)) is amended by striking paragraph (2) and inserting the following:

“(2) FUNDING.—

“(A) IN GENERAL.—The Secretary shall make available for each fiscal year to each State agency administering the child and adult care food program, for the purpose of conducting audits of participating institutions, an amount of up to 1.5 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

“(B) ADDITIONAL FUNDING.—

“(i) IN GENERAL.—Subject to clause (ii), for fiscal year 2016 and each fiscal year thereafter, the Secretary may increase the amount of funds made available to any State agency under subparagraph (A), if the State agency demonstrates that the State agency can effectively use the funds to improve program management under criteria established by the Secretary.

“(ii) LIMITATION.—The total amount of funds made available to any State agency under this paragraph shall not exceed 2 percent of the funds used by each State agency in the program under this section, during the second preceding fiscal year.”.

42 USC 1766
note.

SEC. 336. REDUCING PAPERWORK AND IMPROVING PROGRAM ADMINISTRATION.

(a) DEFINITION OF PROGRAM.—In this section, the term “program” means the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(b) ESTABLISHMENT.—The Secretary, in conjunction with States and participating institutions, shall continue to examine the feasibility of reducing unnecessary or duplicative paperwork resulting from regulations and recordkeeping requirements for State agencies, institutions, family and group day care homes, and sponsored centers participating in the program.

(c) DUTIES.—At a minimum, the examination shall include—

(1) review and evaluation of the recommendations, guidance, and regulatory priorities developed and issued to comply with section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766 note; Public Law 108–265); and

(2) examination of additional paperwork and administrative requirements that have been established since February 23, 2007, that could be reduced or simplified.

(d) ADDITIONAL DUTIES.—The Secretary, in conjunction with States and institutions participating in the program, may also examine any aspect of administration of the program.

(e) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the actions that have been taken to carry out this section, including—

(1) actions taken to address administrative and paperwork burdens identified as a result of compliance with section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766 note; Public Law 108–265);

(2) administrative and paperwork burdens identified as a result of compliance with section 119(i) of that Act for which no regulatory action or policy guidance has been taken;

(3) additional steps that the Secretary is taking or plans to take to address any administrative and paperwork burdens identified under subsection (c)(2) and paragraph (2), including—

(A) new or updated regulations, policy, guidance, or technical assistance; and

(B) a timeframe for the completion of those steps;

and

(4) recommendations to Congress for modifications to existing statutory authorities needed to address identified administrative and paperwork burdens.

SEC. 337. STUDY RELATING TO THE CHILD AND ADULT CARE FOOD PROGRAM.

(a) STUDY.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall carry out a study of States participating in an afterschool supper program under the child and adult care food program established under section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)).

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress, and make available on the website of the Food and Nutrition Service, a report that describes—

(1) best practices of States in soliciting sponsors for an afterschool supper program described in subsection (a); and

(2) any Federal or State laws or requirements that may be a barrier to participation in the program.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

SEC. 351. SHARING OF MATERIALS WITH OTHER PROGRAMS.

Section 17(e)(3) of the Child Nutrition Act (42 U.S.C. 1786(e)(3)) is amended by striking subparagraph (B) and inserting the following:

“(B) SHARING OF MATERIALS WITH OTHER PROGRAMS.—

“(i) COMMODITY SUPPLEMENTAL FOOD PROGRAM.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program established under section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93–86) at no cost to that program.

“(ii) CHILD AND ADULT CARE FOOD PROGRAM.—A State agency may allow the local agencies or clinics under the State agency to share nutrition educational materials with institutions participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) at no cost to that program, if a written materials sharing agreement exists between the relevant agencies.”.

SEC. 352. WIC PROGRAM MANAGEMENT.

(a) WIC EVALUATION FUNDS.—Section 17(g)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(5)) is amended by striking “\$5,000,000” and inserting “\$15,000,000”.

(b) WIC REBATE PAYMENTS.—Section 17(h)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)) is amended by adding at the end the following:

“(K) REPORTING.—Effective beginning October 1, 2011, each State agency shall report rebate payments received from manufacturers in the month in which the payments are received, rather than in the month in which the payments were earned.”.

(c) COST CONTAINMENT MEASURE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended—

(1) in paragraph (8)(A)(iv)(III), by striking “Any” and inserting “Except as provided in paragraph (9)(B)(i)(II), any”; and

(2) by striking paragraph (9) and inserting the following:

“(9) COST CONTAINMENT MEASURE.—

“(A) DEFINITION OF COST CONTAINMENT MEASURE.—In this subsection, the term ‘cost containment measure’ means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in the approved State plan of operation and administration of the State agency.

Effective date.

“(B) SOLICITATION AND REBATE BILLING REQUIREMENTS.—Any State agency instituting a cost containment measure for any authorized food, including infant formula, shall—

“(i) in the bid solicitation—

“(I) identify the composition of State alliances for the purposes of a cost containment measure; and

“(II) verify that no additional States shall be added to the State alliance between the date of the bid solicitation and the end of the contract;

“(ii) have a system to ensure that rebate invoices under competitive bidding provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section;

“(iii) open and read aloud all bids at a public proceeding on the day on which the bids are due; and

“(iv) unless otherwise exempted by the Secretary, provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due.

“(C) STATE ALLIANCES FOR AUTHORIZED FOODS OTHER THAN INFANT FORMULA.—Program requirements relating to the size of State alliances under paragraph (8)(A)(iv) shall apply to cost containment measures established for any authorized food under this section.”

Applicability.

(d) ELECTRONIC BENEFIT TRANSFER.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (12) and inserting the following:

“(12) ELECTRONIC BENEFIT TRANSFER.—

“(A) DEFINITIONS.—In this paragraph:

“(i) ELECTRONIC BENEFIT TRANSFER.—The term ‘electronic benefit transfer’ means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits.

“(ii) PROGRAM.—The term ‘program’ means the special supplemental nutrition program established by this section.

“(B) REQUIREMENTS.—

“(i) IN GENERAL.—Not later than October 1, 2020, each State agency shall be required to implement electronic benefit transfer systems throughout the State, unless the Secretary grants an exemption under subparagraph (C) for a State agency that is facing unusual barriers to implement an electronic benefit transfer system.

Deadline.

“(ii) RESPONSIBILITY.—The State agency shall be responsible for the coordination and management of the electronic benefit transfer system of the agency.

“(C) EXEMPTIONS.—

“(i) IN GENERAL.—To be eligible for an exemption from the statewide implementation requirements of subparagraph (B)(i), a State agency shall demonstrate to the satisfaction of the Secretary 1 or more of the following:

“(I) There are unusual technological barriers to implementation.

“(II) Operational costs are not affordable within the nutrition services and administration grant of the State agency.

“(III) It is in the best interest of the program to grant the exemption.

“(ii) SPECIFIC DATE.—A State agency requesting an exemption under clause (i) shall specify a date by which the State agency anticipates statewide implementation described in subparagraph (B)(i).

“(D) REPORTING.—

“(i) IN GENERAL.—Each State agency shall submit to the Secretary electronic benefit transfer project status reports to demonstrate the progress of the State toward statewide implementation.

“(ii) CONSULTATION.—If a State agency plans to incorporate additional programs in the electronic benefit transfer system of the State, the State agency shall consult with the State agency officials responsible for administering the programs prior to submitting the planning documents to the Secretary for approval.

“(iii) REQUIREMENTS.—At a minimum, a status report submitted under clause (i) shall contain—

“(I) an annual outline of the electronic benefit transfer implementation goals and objectives of the State;

“(II) appropriate updates in accordance with approval requirements for active electronic benefit transfer State agencies; and

“(III) such other information as the Secretary may require.

“(E) IMPOSITION OF COSTS ON VENDORS.—

“(i) COST PROHIBITION.—Except as otherwise provided in this paragraph, the Secretary may not impose, or allow a State agency to impose, the costs of any equipment or system required for electronic benefit transfers on any authorized vendor in order to transact electronic benefit transfers if the vendor equipment or system is used solely to support the program.

“(ii) COST-SHARING.—The Secretary shall establish criteria for cost-sharing by State agencies and vendors of costs associated with any equipment or system that is not solely dedicated to transacting electronic benefit transfers for the program.

“(iii) FEES.—

“(I) IN GENERAL.—A vendor that elects to accept electronic benefit transfers using multi-function equipment shall pay commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the electronic benefit transfer system of the State.

“(II) INTERCHANGE FEES.—No interchange fees shall apply to electronic benefit transfer transactions under this paragraph.

“(iv) STATEWIDE OPERATIONS.—After completion of statewide expansion of a system for transaction of electronic benefit transfers—

“(I) a State agency may not be required to incur ongoing maintenance costs for vendors using multifunction systems and equipment to support electronic benefit transfers; and

“(II) any retail store in the State that applies for authorization to become a program vendor shall be required to demonstrate the capability to accept program benefits electronically prior to authorization, unless the State agency determines that the vendor is necessary for participant access.

“(F) MINIMUM LANE COVERAGE.—

Guidelines.

“(i) IN GENERAL.—The Secretary shall establish minimum lane coverage guidelines for vendor equipment and systems used to support electronic benefit transfers.

“(ii) PROVISION OF EQUIPMENT.—If a vendor does not elect to accept electronic benefit transfers using its own multifunction equipment, the State agency shall provide such equipment as is necessary to solely support the program to meet the established minimum lane coverage guidelines.

“(G) TECHNICAL STANDARDS.—The Secretary shall—

“(i) establish technical standards and operating rules for electronic benefit transfer systems; and

“(ii) require each State agency, contractor, and authorized vendor participating in the program to demonstrate compliance with the technical standards and operating rules.”.

(e) UNIVERSAL PRODUCT CODES DATABASE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (13) and inserting the following:

“(13) UNIVERSAL PRODUCT CODES DATABASE.—

“(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary shall establish a national universal product code database to be used by all State agencies in carrying out the requirements of paragraph (12).

Deadline.

“(B) FUNDING.—

“(i) IN GENERAL.—On October 1, 2010, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this paragraph \$1,000,000, to remain available until expended.

Effective dates.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

“(iii) USE OF FUNDS.—The Secretary shall use the funds provided under clause (i) for development, hosting, hardware and software configuration, and support of the database required under subparagraph (A).”.

(f) TEMPORARY SPENDING AUTHORITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended by adding at the end the following:

“(8) TEMPORARY SPENDING AUTHORITY.—During each of fiscal years 2012 and 2013, the Secretary may authorize a State agency to expend more than the amount otherwise authorized under paragraph (3)(C) for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that—

“(A) there has been a significant reduction in reported infant formula cost containment savings for the preceding fiscal year due to the implementation of subsection (h)(8)(K); and

“(B) the reduction would affect the ability of the State agency to serve all eligible participants.”.

Subtitle E—Miscellaneous

SEC. 361. FULL USE OF FEDERAL FUNDS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (b) and inserting the following:

“(b) AGREEMENTS.—

“(1) IN GENERAL.—The Secretary shall incorporate, in the agreement of the Secretary with the State agencies administering programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the express requirements with respect to the operation of the programs to the extent applicable and such other provisions as in the opinion of the Secretary are reasonably necessary or appropriate to effectuate the purposes of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(2) EXPECTATIONS FOR USE OF FUNDS.—Agreements described in paragraph (1) shall include a provision that—

“(A) supports full use of Federal funds provided to State agencies for the administration of programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

“(B) excludes the Federal funds from State budget restrictions or limitations including, at a minimum—

“(i) hiring freezes;

“(ii) work furloughs; and

“(iii) travel restrictions.”.

SEC. 362. DISQUALIFIED SCHOOLS, INSTITUTIONS, AND INDIVIDUALS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 206) is amended by adding at the end the following:

“(r) DISQUALIFIED SCHOOLS, INSTITUTIONS, AND INDIVIDUALS.—

Any school, institution, service institution, facility, or individual that has been terminated from any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and is on a list of disqualified institutions and individuals under section 13 or section 17(d)(5)(E) of this Act may not be approved to participate in or administer any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).”.

TITLE IV—MISCELLANEOUS**Subtitle A—Reauthorization of Expiring Provisions****PART I—RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT****SEC. 401. COMMODITY SUPPORT.**

Section 6(e)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(e)(1)(B)) is amended by striking “September 30, 2010” and inserting “September 30, 2020”.

SEC. 402. FOOD SAFETY AUDITS AND REPORTS BY STATES.

Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)) is amended—

(1) in paragraph (3), by striking “2006 through 2010” and inserting “2011 through 2015”; and

(2) in paragraph (4), by striking “2006 through 2010” and inserting “2011 through 2015”.

SEC. 403. PROCUREMENT TRAINING.

Section 12(m)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(m)(4)) is amended by striking “2005 through 2009” and inserting “2010 through 2015”.

SEC. 404. AUTHORIZATION OF THE SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Subsection (r) of section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761) (as redesignated by section 322(1)) is amended by striking “September 30, 2009” and inserting “September 30, 2015”.

SEC. 405. YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.

Subsection (i)(5) of section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as redesignated by section 243(1)) is amended by striking “2005 through 2010” and inserting “2011 through 2015”.

SEC. 406. TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.

Section 21(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)) is amended—

(1) by striking “(e) AUTHORIZATION OF APPROPRIATIONS” and all that follows through the end of paragraph (2)(A) and inserting the following:

“(e) FOOD SERVICE MANAGEMENT INSTITUTE.—

“(1) FUNDING.—

“(A) IN GENERAL.—In addition to any amounts otherwise made available for fiscal year 2011, on October 1, 2010, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subsection (a)(2) \$5,000,000, to remain available until expended.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subsection (a)(2) the funds transferred under subparagraph (A), without further appropriation.”;

(2) by redesignating subparagraphs (B) and (C) as paragraphs (2) and (3), respectively, and indenting appropriately;

(3) in paragraph (2) (as so redesignated), by striking “subparagraph (A)” each place it appears and inserting “paragraph (1)”; and

(4) in paragraph (3) (as so redesignated), by striking “subparagraphs (A) and (B)” and inserting “paragraphs (1) and (2)”.

SEC. 407. FEDERAL ADMINISTRATIVE SUPPORT.

Section 21(g)(1)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(g)(1)(A)) is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii), by striking the period at the end and inserting “; and”

(3) and by adding at the end the following:

“(iii) on October 1, 2010, and every October 1 thereafter, \$4,000,000.”.

SEC. 408. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking “\$6,000,000 for each of fiscal years 2004 through 2009” and inserting “\$10,000,000 for each of fiscal years 2011 through 2015”.

SEC. 409. INFORMATION CLEARINGHOUSE.

Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) is amended in the first sentence by striking “2005 through 2010” and inserting “2010 through 2015”.

PART II—CHILD NUTRITION ACT OF 1966

SEC. 421. TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.

Section 7(i)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)(4)) is amended by striking “2005 through 2009” and inserting “2010 through 2015”.

SEC. 422. STATE ADMINISTRATIVE EXPENSES.

Section 7(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(j)) is amended by striking “October 1, 2009” and inserting “October 1, 2015”.

SEC. 423. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17(g)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(1)(A)) is amended by striking “each of fiscal years 2004 through 2009” and inserting “each of fiscal years 2010 through 2015”.

SEC. 424. FARMERS MARKET NUTRITION PROGRAM.

Section 17(m)(9) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)) is amended by striking subparagraph (A) and inserting the following:

“(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection

such sums as are necessary for each of fiscal years 2010 through 2015.”.

Subtitle B—Technical Amendments

SEC. 441. TECHNICAL AMENDMENTS.

(a) RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT.—

(1) NUTRITIONAL REQUIREMENTS.—Section 9(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)) is amended—

(A) by striking “(f)” and all that follows through the end of paragraph (1) and inserting the following:

“(f) NUTRITIONAL REQUIREMENTS.—

“(1) IN GENERAL.—Schools that are participating in the school lunch program or school breakfast program shall serve lunches and breakfasts that—

“(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

“(B) consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity.”;

(B) by striking paragraph (2); and

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

(2) ROUNDING RULES FOR COMPUTATION OF ADJUSTMENT.—Section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) is amended by striking “ROUNDING.—” and all that follows through “On July” in subclause (II) and inserting “ROUNDING.—On July”.

(3) INFORMATION AND ASSISTANCE CONCERNING REIMBURSEMENT OPTIONS.—Section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a) is amended by striking subsection (f).

(4) 1995 REGULATIONS TO IMPLEMENT DIETARY GUIDELINES.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (k).

(5) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—

(A) IN GENERAL.—Section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761) is amended by striking the section heading and all that follows through the end of subsection (a)(1) and inserting the following:

“SEC. 13. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

“(a) IN GENERAL.—

“(1) DEFINITIONS.—In this section:

“(A) AREA IN WHICH POOR ECONOMIC CONDITIONS EXIST.—

“(i) IN GENERAL.—Subject to clause (ii), the term ‘area in which poor economic conditions exist’, as the term relates to an area in which a program food service site is located, means—

“(I) the attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price

school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(II) a geographic area, as defined by the Secretary based on the most recent census data available, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(III) an area—

“(aa) for which the program food service site documents the eligibility of enrolled children through the collection of income eligibility statements from the families of enrolled children or other means; and

“(bb) at least 50 percent of the children enrolled at the program food service site meet the income standards for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

“(IV) a geographic area, as defined by the Secretary based on information provided from a department of welfare or zoning commission, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

“(V) an area for which the program food service site demonstrates through other means approved by the Secretary that at least 50 percent of the children enrolled at the program food service site are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(ii) DURATION OF DETERMINATION.—A determination that an area is an ‘area in which poor economic conditions exist’ under clause (i) shall be in effect for—

“(I) in the case of an area described in clause (i)(I), 5 years;

“(II) in the case of an area described in clause (i)(II), until more recent census data are available;

“(III) in the case of an area described in clause (i)(III), 1 year; and

“(IV) in the case of an area described in subclause (IV) or (V) of clause (i), a period of time to be determined by the Secretary, but not less than 1 year.

“(B) CHILDREN.—The term ‘children’ means—

“(i) individuals who are 18 years of age and under; and

“(ii) individuals who are older than 18 years of age who are—

“(I) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations promulgated by the Secretary, to have a disability, and

Regulations.

“(II) participating in a public or nonprofit private school program established for individuals who have a disability.

“(C) PROGRAM.—The term ‘program’ means the summer food service program for children authorized by this section.

“(D) SERVICE INSTITUTION.—The term ‘service institution’ means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp, that develops special summer or school vacation programs providing food service similar to food service made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(E) STATE.—The term ‘State’ means—

“(i) each of the several States of the United States;

“(ii) the District of Columbia;

“(iii) the Commonwealth of Puerto Rico;

“(iv) Guam;

“(v) American Samoa;

“(vi) the Commonwealth of the Northern Mariana Islands; and

“(vii) the United States Virgin Islands.”

(B) CONFORMING AMENDMENTS.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended—

(i) in paragraph (2)—

(I) by striking “(2) To the maximum extent feasible,” and inserting the following:

“(2) PROGRAM AUTHORIZATION.—

“(A) IN GENERAL.—The Secretary may carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit summer food service programs for children in service institutions.

“(B) PREPARATION OF FOOD.—

“(i) IN GENERAL.—To the maximum extent feasible,”; and

(II) by striking “The Secretary shall” and inserting the following:

“(ii) INFORMATION AND TECHNICAL ASSISTANCE.—The Secretary shall”;

(ii) in paragraph (3)—

(I) by striking “(3) Eligible service institutions” and inserting the following:

“(3) ELIGIBLE SERVICE INSTITUTIONS.—Eligible service institutions”; and

(II) by indenting subparagraphs (A) through (D) appropriately;

(iii) in paragraph (4)—

(I) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and indenting appropriately;

(II) by striking “(4) The following” and inserting the following:

“(4) PRIORITY.—

“(A) IN GENERAL.—The following”; and
 (III) by striking “The Secretary and the States”
 and inserting the following:

“(B) RURAL AREAS.—The Secretary and the States”;
 (iv) by striking “(5) Camps” and inserting the fol-
 lowing:

“(5) CAMPS.—Camps”; and
 (v) by striking “(6) Service institutions” and
 inserting the following:

“(6) GOVERNMENT INSTITUTIONS.—Service institutions”.

(6) REPORT ON IMPACT OF PROCEDURES TO SECURE STATE
 SCHOOL INPUT ON COMMODITY SELECTION.—Section 14(d) of the
 Richard B. Russell National School Lunch Act (42 U.S.C.
 1762a(d)) is amended by striking the matter that follows para-
 graph (5).

(7) RURAL AREA DAY CARE HOME PILOT PROGRAM.—Section
 17 of the Richard B. Russell National School Lunch Act (42
 U.S.C. 1766) is amended by striking subsection (p).

(8) CHILD AND ADULT CARE FOOD PROGRAM TRAINING AND
 TECHNICAL ASSISTANCE.—Section 17(q) of the Richard B. Russell
 National School Lunch Act (42 U.S.C. 1766(q)) is amended
 by striking paragraph (3).

(9) PILOT PROJECT FOR PRIVATE NONPROFIT STATE AGEN-
 CIES.—Section 18 of the Richard B. Russell National School
 Lunch Act (42 U.S.C. 1769) is amended by striking subsection
 (a).

(10) MEAL COUNTING AND APPLICATION PILOT PROGRAMS.—
 Section 18(c) of the Richard B. Russell National School Lunch
 Act (42 U.S.C. 1769(c)) is amended—

(A) by striking paragraphs (1) and (2);

(B) by redesignating paragraphs (3) and (4) as para-
 graphs (1) and (2), respectively; and

(C) in paragraph (1) (as so redesignated), by striking
 “In addition to the pilot projects described in this sub-
 section, the Secretary may conduct other” and inserting
 “The Secretary may conduct”.

(11) MILK FORTIFICATION PILOT.—Section 18 of the Richard
 B. Russell National School Lunch Act (42 U.S.C. 1769) is
 amended by striking subsection (d).

(12) FREE BREAKFAST PILOT PROJECT.—Section 18 of the
 Richard B. Russell National School Lunch Act (42 U.S.C. 1769)
 is amended by striking subsection (e).

(13) SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGI-
 BILITY.—Section 18 of the Richard B. Russell National School
 Lunch Act (42 U.S.C. 1769) is amended by striking subsection
 (f).

Repeal.

(14) ACCOMMODATION OF THE SPECIAL DIETARY NEEDS OF
 INDIVIDUALS WITH DISABILITIES.—Section 27 of the Richard B.
 Russell National School Lunch Act (42 U.S.C. 1769h) is
 repealed.

(b) CHILD NUTRITION ACT OF 1966.—

(1) STATE ADMINISTRATIVE EXPENSES MINIMUM LEVELS FOR
 2005 THROUGH 2007.—Section 7(a)(1) of the Child Nutrition Act
 of 1966 (42 U.S.C. 1776(a)(1)) is amended—

(A) in subparagraph (A), by striking “Except as pro-
 vided in subparagraph (B), each fiscal year” and inserting
 “Each fiscal year”;

(B) by striking subparagraph (B); and
(C) by redesignating subparagraph (C) as subparagraph (B).

(2) FRUIT AND VEGETABLE GRANTS UNDER THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—Section 17(f)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11)) is amended—

(A) by striking subparagraph (C); and
(B) by redesignating subparagraph (D) as subparagraph (C).

SEC. 442. USE OF UNSPENT FUTURE FUNDS FROM THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

Section 101(a) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 120) is amended—

(1) in paragraph (1), by inserting before the period at the end “, if the value of the benefits and block grants would be greater under that calculation than in the absence of this subsection”; and

(2) by striking paragraph (2) and inserting the following:

“(2) TERMINATION.—The authority provided by this subsection shall terminate after October 31, 2013.”.

SEC. 443. EQUIPMENT ASSISTANCE TECHNICAL CORRECTION.

Grants.

(a) IN GENERAL.—Notwithstanding any other provision of law, school food authorities that received a grant for equipment assistance under the grant program carried out under the heading “FOOD AND NUTRITION SERVICE CHILD NUTRITION PROGRAMS” in title I of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 119) shall be eligible to receive a grant under section 749(j) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80; 123 Stat. 2134).

(b) USE OF GRANT.—A school food authority receiving a grant for equipment assistance described in subsection (a) may use the grant only to make equipment available to schools that did not previously receive equipment from a grant under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115).

SEC. 444. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

42 USC 1751
note.

SEC. 445. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or any of the amendments made by this Act, this Act and the amendments made by this Act take effect on October 1, 2010.

Approved December 13, 2010.

LEGISLATIVE HISTORY—S. 3307:

SENATE REPORTS: No. 111–178 (Comm. on Agriculture, Nutrition, and Forestry).
CONGRESSIONAL RECORD, Vol. 156 (2010):

Aug. 5, considered and passed Senate.

Dec. 1, 2, considered and passed House.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Dec. 13, Presidential remarks.



Public Law 111–297
111th Congress

An Act

To designate the Federal building located at 100 North Palafox Street in Pensacola, Florida, as the “Winston E. Arnow Federal Building”.

Dec. 14, 2010
[H.R. 4387]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building located at 100 North Palafox Street in Pensacola, Florida, shall be known and designated as the “Winston E. Arnow Federal Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the “Winston E. Arnow Federal Building”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 4387:

HOUSE REPORTS: No. 111–610 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed House.

Dec. 1, considered and passed Senate.



Public Law 111–298
111th Congress

An Act

Dec. 14, 2010
[H.R. 5651]

To designate the Federal building and United States courthouse located at 515 9th Street in Rapid City, South Dakota, as the “Andrew W. Bogue Federal Building and United States Courthouse”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ANDREW W. BOGUE FEDERAL BUILDING AND UNITED STATES COURTHOUSE.

(a) DESIGNATION.—The Federal building and United States courthouse located at 515 9th Street in Rapid City, South Dakota, shall be known and designated as the “Andrew W. Bogue Federal Building and United States Courthouse”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in subsection (a) shall be deemed to be a reference to the “Andrew W. Bogue Federal Building and United States Courthouse”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 5651:

HOUSE REPORTS: No. 111–590 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 15, considered and passed House.

Dec. 1, considered and passed Senate.



Public Law 111–299
111th Congress

An Act

To designate the building occupied by the Government Printing Office located at 31451 East United Avenue in Pueblo, Colorado, as the “Frank Evans Government Printing Office Building”.

Dec. 14, 2010
[H.R. 5706]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The building occupied by the Government Printing Office located at 31451 East United Avenue in Pueblo, Colorado, shall be known and designated as the “Frank Evans Government Printing Office Building” during the period in which the building is occupied by the Government Printing Office.

SEC. 2. REFERENCES.

With respect to the period in which the building referred to in section 1 is occupied by the Government Printing Office, any reference in a law, map, regulation, document, record, or other paper of the United States to that building shall be deemed to be a reference to the “Frank Evans Government Printing Office Building”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 5706:

HOUSE REPORTS: No. 111–591 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 15, considered and passed House.

Dec. 1, considered and passed Senate.



Public Law 111–300
111th Congress

An Act

Dec. 14, 2010
[H.R. 5758]

To designate the facility of the United States Postal Service located at 2 Government Center in Fall River, Massachusetts, as the “Sergeant Robert Barrett Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SERGEANT ROBERT BARRETT POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 2 Government Center in Fall River, Massachusetts, shall be known and designated as the “Sergeant Robert Barrett Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Sergeant Robert Barrett Post Office Building”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 5758:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 16, 17, considered and passed House.

Dec. 2, considered and passed Senate.



Public Law 111–301
111th Congress

An Act

To designate the Federal building located at 6401 Security Boulevard in Baltimore, Maryland, commonly known as the Social Security Administration Operations Building, as the “Robert M. Ball Federal Building”.

Dec. 14, 2010
[H.R. 5773]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building located at 6401 Security Boulevard in Baltimore, Maryland, commonly known as the Social Security Administration Operations Building, shall be known and designated as the “Robert M. Ball Federal Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the “Robert M. Ball Federal Building”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 5773:

HOUSE REPORTS: No. 111–592 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 15, considered and passed House.

Dec. 1, considered and passed Senate.



Public Law 111–302
111th Congress

An Act

Dec. 14, 2010
[H.R. 6162]

Coin
Modernization,
Oversight, and
Continuity Act of
2010.
31 USC 5101
note.
31 USC 5112
note.

To provide research and development authority for alternative coinage materials to the Secretary of the Treasury, increase congressional oversight over coin production, and ensure the continuity of certain numismatic items.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coin Modernization, Oversight, and Continuity Act of 2010”.

SEC. 2. AUTHORITY TO CONDUCT RESEARCH AND DEVELOPMENT ON ALL CIRCULATING COINS.

(a) IN GENERAL.—To accomplish the goals of this Act and the requirements of subchapter II of chapter 51 of title 31, United States Code, the Secretary of the Treasury may—

(1) conduct any appropriate testing of appropriate coinage metallic materials within or outside of the Department of the Treasury; and

(2) solicit input from or otherwise work in conjunction with entities within or outside of the Federal Government including independent research facilities or current or potential suppliers of the metallic material used in volume production of circulating coins,

to complete the report referred to in this Act and to develop and evaluate the use of new metallic materials.

(b) FACTORS TO BE CONSIDERED.—In the conduct of research, development, and the solicitation of input or work in conjunction with entities within and outside the Federal Government, and in reporting to the Congress with recommendations, as required by this Act, the Secretary of the Treasury shall consider the following:

(1) Factors relevant to the potential impact of any revisions to the composition of the material used in coin production on the current coinage material suppliers.

(2) Factors relevant to the ease of use and ability to co-circulate of new coinage materials, including the effect on vending machines and commercial coin processing equipment and making certain, to the greatest extent practicable, that any new coins work without interruption in existing coin acceptance equipment without modification.

(3) Such other factors that the Secretary of the Treasury, in consultation with merchants who would be affected by any change in the composition of circulating coins, vending machine and other coin acceptor manufacturers, vending machine

owners and operators, transit officials, municipal parking officials, depository institutions, coin and currency handlers, armored-car operators, car wash operators, and American-owned manufacturers of commercial coin processing equipment, considers to be appropriate and in the public interest, after notice and opportunity for comment.

SEC. 3. BIENNIAL REPORT TO THE CONGRESS ON THE CURRENT STATUS OF COIN PRODUCTION COSTS AND ANALYSIS OF ALTERNATIVE CONTENT.

31 USC 5112
note.

(a) **REPORT REQUIRED.**—Before the end of the 2-year period beginning on the date of the enactment of this Act, and at 2-year intervals following the end of such period, the Secretary of the Treasury shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate analyzing production costs for each circulating coin, cost trends for such production, and possible new metallic materials or technologies for the production of circulating coins.

(b) **DETAILED RECOMMENDATIONS.**—In preparing and submitting the reports required under subsection (a), the Secretary of the Treasury shall include detailed recommendations for any appropriate changes to the metallic content of circulating coins in such a form that the recommendations could be enacted into law as appropriate.

(c) **IMPROVED PRODUCTION EFFICIENCY.**—In preparing and submitting the reports required under subsection (a), the Secretary of the Treasury shall include recommendations for changes in the methods of producing coins that would further reduce the costs to produce circulating coins, and include notes on the legislative changes that are necessary to achieve such goals.

(d) **MINIMIZING CONVERSION COSTS.**—In preparing and submitting the reports required under subsection (a), the Secretary of the Treasury, to the greatest extent possible, may not include any recommendation for new specifications for producing a circulating coin that would require any significant change to coin-accepting and coin-handling equipment to accommodate changes to all circulating coins simultaneously.

(e) **FRAUD PREVENTION.**—The reports required under this section shall make no recommendation for a specification change that would facilitate or allow the use of a coin with a lesser value produced, minted, or issued by another country, or the use of any token or other easily or regularly produced metal device of minimal value, in the place of a circulating coin produced by the Secretary.

(f) **RULE OF CONSTRUCTION.**—No provision of this Act shall be construed as requiring that additional research and development be conducted for any report under this Act but any such report shall include information on any such research and development during the period covered by the report.

SEC. 4. MEETING DEMAND FOR SILVER AND GOLD NUMISMATIC ITEMS.

Subsections (e) and (i) of section 5112 of title 31, United States Code are each amended by striking “quantities” and inserting “qualities and quantities that the Secretary determines are”.

SEC. 5. TECHNICAL CORRECTIONS.

Section 5112(u)(1) of title 31, United States Code is amended—

- (1) by striking “exact duplicates” and inserting “likenesses”;
- (2) by striking subparagraph (C);
- (3) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and
- (4) in subparagraph (A), by striking “of 3.0 inches” and inserting “determined by the Secretary that is no less than 2.5 inches and no greater than 3.0 inches”.

SEC. 6. BUDGETARY EFFECT.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 6162:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 29, considered and passed House.

Nov. 30, considered and passed Senate.



Public Law 111–303
111th Congress

An Act

To authorize the production of palladium bullion coins to provide affordable opportunities for investments in precious metals, and for other purposes.

Dec. 14, 2010
[H.R. 6166]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Eagle Palladium Bullion Coin Act of 2010”.

American Eagle
Palladium
Bullion Coin Act
of 2010.
31 USC 5101
note.

SEC. 2. PALLADIUM COIN.

Section 5112 of title 31, United States Code, is amended—

(1) in subsection (a), by adding at the end the following new paragraph;

“(12) A \$25 coin of an appropriate size and thickness, as determined by the Secretary, that weighs 1 troy ounce and contains .9995 fine palladium.”; and

(2) by adding at the end the following new subsection:

“(v) PALLADIUM BULLION INVESTMENT COINS.—

“(1) IN GENERAL.—Subject to the submission to the Secretary and the Congress of a marketing study described in paragraph (8), beginning not more than 1 year after the submission of the study to the Secretary and the Congress, the Secretary shall mint and issue the palladium coins described in paragraph (12) of subsection (a) in such quantities as the Secretary may determine to be appropriate to meet demand.

Deadline.

“(2) SOURCE OF BULLION.—

“(A) IN GENERAL.—The Secretary shall acquire bullion for the palladium coins issued under this subsection by purchase of palladium mined from natural deposits in the United States, or in a territory or possession of the United States, within 1 year after the month in which the ore from which it is derived was mined. If no such palladium is available or if it is not economically feasible to obtain such palladium, the Secretary may obtain palladium for the palladium coins described in paragraph (12) of subsection (a) from other available sources.

Deadline.

“(B) PRICE OF BULLION.—The Secretary shall pay not more than the average world price for the palladium under subparagraph (A).

“(3) SALE OF COINS.—Each coin issued under this subsection shall be sold for an amount the Secretary determines to be appropriate, but not less than the sum of—

“(A) the market value of the bullion at the time of sale; and

“(B) the cost of designing and issuing the coins, including labor, materials, dies, use of machinery, overhead expenses, marketing, distribution, and shipping.

“(4) TREATMENT.—For purposes of section 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.

“(5) QUALITY.—The Secretary may issue the coins described in paragraph (1) in both proof and uncirculated versions, except that, should the Secretary determine that it is appropriate to issue proof or uncirculated versions of such coin, the Secretary shall, to the greatest extent possible, ensure that the surface treatment of each year’s proof or uncirculated version differs in some material way from that of the preceding year.

“(6) DESIGN.—Coins minted and issued under this subsection shall bear designs on the obverse and reverse that are close likenesses of the work of famed American coin designer and medallic artist Adolph Alexander Weinman—

“(A) the obverse shall bear a high-relief likeness of the ‘Winged Liberty’ design used on the obverse of the so-called ‘Mercury dime’;

“(B) the reverse shall bear a high-relief version of the reverse design of the 1907 American Institute of Architects medal; and

“(C) the coin shall bear such other inscriptions, including ‘Liberty’, ‘In God We Trust’, ‘United States of America’, the denomination and weight of the coin and the fineness of the metal, as the Secretary determines to be appropriate and in keeping with the original design.

“(7) MINT FACILITY.—Any United States mint, other than the United States Mint at West Point, New York, may be used to strike coins minted under this subsection other than any proof version of any such coin. If the Secretary determines that it is appropriate to issue any proof version of such coin, coins of such version shall be struck only at the United States Mint at West Point, New York.

“(8) MARKETING STUDY DEFINED.—The market study described in paragraph (1) means an analysis of the market for palladium bullion investments conducted by a reputable, independent third party that demonstrates that there would be adequate demand for palladium bullion coins produced by the United States Mint to ensure that such coins could be minted and issued at no net cost to taxpayers.”.

SEC. 3. BUDGETARY EFFECT.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 6166:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 29, considered and passed House.

Nov. 30, considered and passed Senate.



Public Law 111–304
111th Congress

An Act

Dec. 14, 2010
[H.R. 6237]

To designate the facility of the United States Postal Service located at 1351 2nd Street in Napa, California, as the “Tom Kongsgaard Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TOM KONGSGAARD POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1351 2nd Street in Napa, California, shall be known and designated as the “Tom Kongsgaard Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Tom Kongsgaard Post Office Building”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 6237:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Nov. 16, considered and passed House.
Dec. 2, considered and passed Senate.



Public Law 111–305
111th Congress

An Act

To designate the facility of the United States Postal Service located at 337 West Clark Street in Eureka, California, as the “Sam Sacco Post Office Building”.

Dec. 14, 2010
[H.R. 6387]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SAM SACCO POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 337 West Clark Street in Eureka, California, shall be known and designated as the “Sam Sacco Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Sam Sacco Post Office Building”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—H.R. 6387:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 16, considered and passed House.

Dec. 2, considered and passed Senate.



Public Law 111–306
111th Congress

An Act

Dec. 14, 2010
[S. 1338]

To require the accreditation of English language training programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACCREDITATION OF ENGLISH LANGUAGE TRAINING PROGRAMS.

(a) IN GENERAL.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(F)(i), by striking “a language” and inserting “an accredited language”; and

(2) by adding at the end the following:

Definition.

“(52) The term ‘accredited language training program’ means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.”.

8 USC 1101 note.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall—

(A) take effect on the date that is 180 days after the date of the enactment of this Act; and

Applicability.

(B) apply with respect to applications for a nonimmigrant visa under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)) that are filed on or after the effective date described in subparagraph (A).

(2) TEMPORARY EXCEPTION.—

Time period.

(A) IN GENERAL.—Notwithstanding section 101(a)(15)(F)(i) of the Immigration and Nationality Act, as amended by subsection (a), during the 3-year period beginning on the date of the enactment of this Act, an alien seeking to enter the United States to pursue a course of study at a language training program that has been certified by the Secretary of Homeland Security and has not been accredited or denied accreditation by an entity described in section 101(a)(52) of such Act may be granted a nonimmigrant visa under such section 101(a)(15)(F)(i).

(B) ADDITIONAL REQUIREMENT.—An alien may not be granted a nonimmigrant visa under subparagraph (A) if the sponsoring institution of the language training program to which the alien seeks to enroll does not—

Deadline.

(i) submit an application for the accreditation of such program to a regional or national accrediting agency recognized by the Secretary of Education within

1 year after the date of the enactment of this Act;
and

(ii) comply with the applicable accrediting requirements of such agency.

Approved December 14, 2010.

LEGISLATIVE HISTORY—S. 1338:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 27, considered and passed Senate.

Dec. 1, considered and passed House.



Public Law 111–307
111th Congress

An Act

Dec. 14, 2010
[S. 1421]

To amend section 42 of title 18, United States Code, to prohibit the importation and shipment of certain species of carp.

Asian Carp
Prevention and
Control Act.
18 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Asian Carp Prevention and Control Act”.

SEC. 2. ADDITION OF SPECIES OF CARP TO THE LIST OF INJURIOUS SPECIES THAT ARE PROHIBITED FROM BEING IMPORTED OR SHIPPED.

Section 42(a)(1) of title 18, United States Code, is amended by inserting “of the bighead carp of the species *Hypophthalmichthys nobilis*,” after “*Dreissena polymorpha*”.

Approved December 14, 2010.

LEGISLATIVE HISTORY—S. 1421:

SENATE REPORTS: No. 111–181 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 17, considered and passed Senate.

Dec. 1, considered and passed House.



Public Law 111–308
111th Congress

An Act

To provide for the training of Federal building personnel, and for other purposes.

Dec. 14, 2010

[S. 3250]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Buildings Personnel Training Act of 2010”.

Federal
Buildings
Personnel
Training Act of
2010.
40 USC 581 note.

SEC. 2. TRAINING OF FEDERAL BUILDING PERSONNEL.

(a) **IDENTIFICATION OF CORE COMPETENCIES.**—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Administrator of General Services, in consultation with representatives of relevant professional societies, industry associations, and apprenticeship training providers, and after providing notice and an opportunity for comment, shall identify the core competencies necessary for Federal personnel performing building operations and maintenance, energy management, safety, and design functions to comply with requirements under Federal law. The core competencies identified shall include competencies relating to building operations and maintenance, energy management, sustainability, water efficiency, safety (including electrical safety), and building performance measures.

Deadlines.
Notice.
Comment period.

(b) **DESIGNATION OF RELEVANT COURSES, CERTIFICATIONS, DEGREES, LICENSES, AND REGISTRATIONS.**—The Administrator, in consultation with representatives of relevant professional societies, industry associations, and apprenticeship training providers, shall identify a course, certification, degree, license, or registration to demonstrate each core competency, and for ongoing training with respect to each core competency, identified for a category of personnel specified in subsection (a).

(c) **IDENTIFIED COMPETENCIES.**—An individual shall demonstrate each core competency identified by the Administrator under subsection (a) for the category of personnel that includes such individual. An individual shall demonstrate each core competency through the means identified under subsection (b) not later than one year after the date on which such core competency is identified under subsection (a) or, if the date of hire of such individual occurs after the date of such identification, not later than one year after such date of hire. In the case of an individual hired for an employment period not to exceed one year, such individual shall demonstrate each core competency at the start of the employment period.

Deadline.

(d) **CONTINUING EDUCATION.**—The Administrator, in consultation with representatives of relevant professional societies, industry

associations, and apprenticeship training providers, shall develop or identify comprehensive continuing education courses to ensure the operation of Federal buildings in accordance with industry best practices and standards.

Deadlines.

(e) CURRICULUM WITH RESPECT TO FACILITY MANAGEMENT AND OPERATION OF HIGH-PERFORMANCE BUILDINGS.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Administrator, acting through the head of the Office of Federal High-Performance Green Buildings, and the Secretary of Energy, acting through the head of the Office of Commercial High-Performance Green Buildings, in consultation with the heads of other appropriate Federal departments and agencies and representatives of relevant professional societies, industry associations, and apprenticeship training providers, shall develop a recommended curriculum relating to facility management and the operation of high-performance buildings.

Certification.

(f) APPLICABILITY OF THIS SECTION TO FUNCTIONS PERFORMED UNDER CONTRACT.—Training requirements under this section shall apply to non-Federal personnel performing building operations and maintenance, energy management, safety, and design functions under a contract with a Federal department or agency. A contractor shall provide training to, and certify the demonstration of core competencies for, non-Federal personnel in a manner that is approved by the Administrator.

Approved December 14, 2010.

LEGISLATIVE HISTORY—S. 3250:

SENATE REPORTS: No. 111–212 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 20, considered and passed Senate.

Dec. 1, considered and passed House.



Public Law 111–309
111th Congress

An Act

To extend certain expiring provisions of the Medicare and Medicaid programs,
and for other purposes.

Dec. 15, 2010
[H.R. 4994]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Medicare
and Medicaid Extenders Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act
is as follows:

Medicare and
Medicaid
Extenders Act of
2010.
42 USC 1305
note.

Sec. 1. Short title; table of contents.

TITLE I—EXTENSIONS

- Sec. 101. Physician payment update.
- Sec. 102. Extension of MMA section 508 reclassifications.
- Sec. 103. Extension of Medicare work geographic adjustment floor.
- Sec. 104. Extension of exceptions process for Medicare therapy caps.
- Sec. 105. Extension of payment for technical component of certain physician pathology services.
- Sec. 106. Extension of ambulance add-ons.
- Sec. 107. Extension of physician fee schedule mental health add-on payment.
- Sec. 108. Extension of outpatient hold harmless provision.
- Sec. 109. Extension of Medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 110. Extension of the qualifying individual (QI) program.
- Sec. 111. Extension of Transitional Medical Assistance (TMA).
- Sec. 112. Special diabetes programs.

TITLE II—OTHER PROVISIONS

- Sec. 201. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 202. Repeal of delay of RUG–IV.
- Sec. 203. Clarification for affiliated hospitals for distribution of additional residency positions.
- Sec. 204. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children’s hospitals under the 340B drug discount program.
- Sec. 205. Medicaid and CHIP technical corrections.
- Sec. 206. Funding for claims reprocessing.
- Sec. 207. Revision to the Medicare Improvement Fund.
- Sec. 208. Limitations on aggregate amount recovered on reconciliation of the health insurance tax credit and the advance of that credit.
- Sec. 209. Determination of budgetary effects.

TITLE I—EXTENSIONS

SEC. 101. PHYSICIAN PAYMENT UPDATE.

Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

“(12) UPDATE FOR 2011.—

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), and (11)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2011, the update to the single conversion factor shall be 0 percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2012 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2012 and subsequent years as if subparagraph (A) had never applied.”.

SEC. 102. EXTENSION OF MMA SECTION 508 RECLASSIFICATIONS.

(a) EXTENSION.—

42 USC 1395ww
note.

(1) IN GENERAL.—Section 106(a) of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), and sections 3137(a) and 10317 of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “September 30, 2010” and inserting “September 30, 2011”.

42 USC 1395ww
note.

(2) SPECIAL RULE FOR FISCAL YEAR 2011.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of implementation of the amendment made by paragraph (1), including (notwithstanding paragraph (3) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), as amended by section 124(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275)) for purposes of the implementation of paragraph (2) of such section 117(a), during fiscal year 2011, the Secretary of Health and Human Services shall use the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 16, 2010 (75 Fed. Reg. 50042), and any subsequent corrections.

Effective date.

(B) EXCEPTION.—Beginning on April 1, 2011, in determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by paragraph (1) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this subparagraph shall not be effected in a budget neutral manner.

42 USC 1395ww
note.

(3) ADJUSTMENT FOR CERTAIN HOSPITALS IN FISCAL YEAR 2011.—

Payments.

(A) IN GENERAL.—In the case of a subsection (d) hospital (as defined in subsection (d)(1)(B) of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which—

(i) a reclassification of its wage index for purposes of such section was extended pursuant to the amendment made by paragraph (1); and

Time periods.

(ii) the wage index applicable for such hospital for the period beginning on October 1, 2010, and ending

on March 31, 2011, was lower than for the period beginning on April 1, 2011, and ending on September 30, 2011, by reason of the application of paragraph (2)(B);

the Secretary shall pay such hospital an additional payment that reflects the difference between the wage index for such periods.

(B) TIMEFRAME FOR PAYMENTS.—The Secretary shall make payments required under subparagraph (A) by not later than December 31, 2011.

(b) CONFORMING AMENDMENT.—Section 117(a)(3) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) is amended by inserting “in fiscal years 2008 and 2009” after “For purposes of implementation of this subsection”.

42 USC 1395ww
note.

SEC. 103. EXTENSION OF MEDICARE WORK GEOGRAPHIC ADJUSTMENT FLOOR.

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(E)) is amended by striking “before January 1, 2011” and inserting “before January 1, 2012”.

SEC. 104. EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by striking “and ending on” and all that follows through “2010” and inserting “and ending on December 31, 2011”.

SEC. 105. EXTENSION OF PAYMENT FOR TECHNICAL COMPONENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES.

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106–554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w–4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w–4 note), section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), and section 3104 of the Patient Protection and Affordable Care Act (Public Law 111–148) is amended by striking “and 2010” and inserting “2010, and 2011”.

SEC. 106. EXTENSION OF AMBULANCE ADD-ONS.

(a) GROUND AMBULANCE.—Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)) is amended—

(1) in the matter preceding clause (i), by striking “2011” and inserting “2012,”; and

(2) in each of clauses (i) and (ii), by striking “January 1, 2011” and inserting “January 1, 2012” each place it appears.

(b) AIR AMBULANCE.—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), as amended by sections 3105(b) and 10311(b) of Public Law 111–148, is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

42 USC 1395m
note.

(c) SUPER RURAL AMBULANCE.—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended by striking “2011” and inserting “2012”.

SEC. 107. EXTENSION OF PHYSICIAN FEE SCHEDULE MENTAL HEALTH ADD-ON PAYMENT.

42 USC 1395w–4
note.

Section 138(a)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), as amended by section 3107 of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

SEC. 108. EXTENSION OF OUTPATIENT HOLD HARMLESS PROVISION.

Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)), as amended by section 3121(a) of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended—

(1) in subclause (II)—

(A) in the first sentence, by striking “2011” and inserting “2012”; and

(B) in the second sentence, by striking “or 2010” and inserting “2010, or 2011”; and

(2) in subclause (III), by striking “January 1, 2011” and inserting “January 1, 2012”.

42 USC 1395l
note.

SEC. 109. EXTENSION OF MEDICARE REASONABLE COSTS PAYMENTS FOR CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL PATIENTS IN CERTAIN RURAL AREAS.

Section 416(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395l–4), as amended by section 105 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l note), section 107 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395l note), and section 3122 of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended by striking “the 1-year period beginning on July 1, 2010” and inserting “the 2-year period beginning on July 1, 2010”.

SEC. 110. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking “December 2010” and inserting “December 2011”.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking “and” at the end of subparagraph (M);

(B) in subparagraph (N), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

Time period.

“(O) for the period that begins on January 1, 2011, and ends on September 30, 2011, the total allocation amount is \$720,000,000; and

Time period.

“(P) for the period that begins on October 1, 2011, and ends on December 31, 2011, the total allocation amount is \$280,000,000.”; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking “or (N)” and inserting “(N), or (P)”.

SEC. 111. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking “December 31, 2010” and inserting “December 31, 2011”.

SEC. 112. SPECIAL DIABETES PROGRAMS.

(1) SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES.—Section 330B(b)(2)(C) of the Public Health Service Act (42 U.S.C. 254c–2(b)(2)(C)) is amended by striking “2011” and inserting “2013”.

(2) SPECIAL DIABETES PROGRAMS FOR INDIANS.—Section 330C(c)(2)(C) of the Public Health Service Act (42 U.S.C. 254c–3(c)(2)(C)) is amended by striking “2011” and inserting “2013”.

TITLE II—OTHER PROVISIONS

SEC. 201. CLARIFICATION OF EFFECTIVE DATE OF PART B SPECIAL ENROLLMENT PERIOD FOR DISABLED TRICARE BENEFICIARIES.

Effective as if included in the enactment of Public Law 111–148, section 3110(a)(2) of such Act is amended to read as follows:

“(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to elections made on and after the date of the enactment of this Act.”.

42 USC 1395p
note.

SEC. 202. REPEAL OF DELAY OF RUG–IV.

Effective as if included in the enactment of Public Law 111–148, section 10325 of such Act is repealed.

Ante, p. 960.

SEC. 203. CLARIFICATION FOR AFFILIATED HOSPITALS FOR DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

Effective as if included in the enactment of section 5503(a) of Public Law 111–148, section 1886(h)(8) of the Social Security Act (42 U.S.C. 1395ww(h)(8)), as added by such section 5503(a), is amended by adding at the end the following new subparagraph:

“(I) AFFILIATION.—The provisions of this paragraph shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) and the reference resident level for each such hospital shall be the reference resident level with respect to the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.”.

42 USC 1395ww
note.

Applicability.

SEC. 204. CONTINUED INCLUSION OF ORPHAN DRUGS IN DEFINITION OF COVERED OUTPATIENT DRUGS WITH RESPECT TO CHILDREN’S HOSPITALS UNDER THE 340B DRUG DISCOUNT PROGRAM.

(a) DEFINITION OF COVERED OUTPATIENT DRUG.—

(1) AMENDMENT.—Subsection (e) of section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended by striking “covered entities described in subparagraph (M)” and inserting “covered entities described in subparagraph (M) (other than a children’s hospital described in subparagraph (M))”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of section

42 USC 256b
note.

2302 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152).

(b) **TECHNICAL AMENDMENT.**—Subparagraph (B) of section 1927(a)(5) of the Social Security Act (42 U.S.C. 1396r–8(a)(5)) is amended by striking “and a children’s hospital” and all that follows through the end of the subparagraph and inserting a period.

SEC. 205. MEDICAID AND CHIP TECHNICAL CORRECTIONS.

(a) **REPEAL OF EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM MEDICAID.**—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended by striking paragraph (78).

(b) **INCOME LEVEL FOR CERTAIN CHILDREN UNDER MEDICAID.**—Section 1902(l)(2)(C) of the Social Security Act (42 U.S.C. 1396a(l)(2)(C)) is amended by striking “133 percent” and inserting “100 percent (or, beginning January 1, 2014, 133 percent)”.

Ante, p. 96.

(c) **CALCULATION AND PUBLICATION OF PAYMENT ERROR RATE MEASUREMENT FOR CERTAIN YEARS.**—Section 601(b) of the Children’s Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3) is amended by adding at the end the following: “The Secretary is not required under this subsection to calculate or publish a national or a State-specific error rate for fiscal year 2009 or fiscal year 2010.”.

(d) **CORRECTIONS TO EXCEPTIONS TO EXCLUSION OF CHILDREN OF CERTAIN EMPLOYEES.**—Section 2110(b)(6) of the Social Security Act (42 U.S.C. 1397jj(b)(6)) is amended—

(1) in subparagraph (B)—

(A) by striking “PER PERSON” in the heading; and

(B) by striking “each employee” and inserting “employees”; and

(2) in subparagraph (C), by striking “, on a case-by-case basis,”.

42 USC 1396b
note.

(e) **ELECTRONIC HEALTH RECORDS.**—Effective as if included in the enactment of section 4201(a)(2) of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), section 1903(t) of the Social Security Act (42 U.S.C. 1396b(t)) is amended—

(1) in paragraph (3)(E), by striking “reduced by any payment that is made to such Medicaid provider from any other source (other than under this subsection or by a State or local government)” and inserting “reduced by the average payment the Secretary estimates will be made to such Medicaid providers (determined on a percentage or other basis for such classes or types of providers as the Secretary may specify) from other sources (other than under this subsection, or by the Federal government or a State or local government)”;

(2) in paragraph (6)(B), by inserting before the period the following: “and shall be determined to have met such responsibility to the extent that the payment to the Medicaid provider is not in excess of 85 percent of the net average allowable cost”.

(f) **CORRECTIONS OF DESIGNATIONS.**—

(1) Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10), in the matter following subparagraph (G), by striking “and” before “(XVI) the medical” and by striking “(XVI) if” and inserting “(XVII) if”;

(B) in subsection (a)(23), by striking “(ii)” and inserting “(kk)”;

(C) in subsection (a)(77), by striking “(ii)” and inserting “(kk)”;

(D) in subsection (ii)(2), as added by section 2303(a)(2) of Public Law 111–148, by striking “(XV)” and inserting “(XVI)”;

(E) by redesignating subsection (ii), as added by section 6401(b)(1)(B) of Public Law 111–148, as subsection (kk) and transferring such subsection so as to appear after subsection (jj) of that section.

(2) Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) in subparagraph (D), as added by section 6401(c) of Public Law 111–148, by striking “(ii)” and inserting “(kk)”;

(B) by redesignating the subparagraph (N) of that section added by 2101(e) of Public Law 111–148 as subparagraph (O).

SEC. 206. FUNDING FOR CLAIMS REPROCESSING.

For purposes of carrying out the provisions of, and amendments made by, this Act that relate to title XVIII of the Social Security Act, and other provisions of, or relating to, such title that ensure appropriate payment of claims, there are appropriated to the Secretary of Health and Human Services for the Centers for Medicare & Medicaid Services Program Management Account, from amounts in the general fund of the Treasury not otherwise appropriated, \$200,000,000. Amounts appropriated under the preceding sentence shall be in addition to any other funds available for such purposes, shall remain available until expended, and shall not be used to implement changes to title XVIII of the Social Security Act made by Public Laws 111-148 and 111-152.

SEC. 207. REVISION TO THE MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1)(B) of the Social Security Act (42 U.S.C. 1395iii(b)(1)(B)) is amended by striking “\$550,000,000” and inserting “\$275,000,000”.

SEC. 208. LIMITATIONS ON AGGREGATE AMOUNT RECOVERED ON RECONCILIATION OF THE HEALTH INSURANCE TAX CREDIT AND THE ADVANCE OF THAT CREDIT.

(a) IN GENERAL.—So much of section 36B(f)(2)(B) of the Internal Revenue Code of 1986 as precedes clause (ii) thereof is amended to read as follows: 26 USC 36B.

“(B) LIMITATION ON INCREASE.—

“(i) IN GENERAL.—In the case of a taxpayer whose household income is less than 500 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed the applicable dollar amount determined in accordance with the following table (one-half of such amount in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year):

“If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200%	\$600
At least 200% but less than 250%	\$1,000
At least 250% but less than 300%	\$1,500
At least 300% but less than 350%	\$2,000
At least 350% but less than 400%	\$2,500
At least 400% but less than 450%	\$3,000
At least 450% but less than 500%	\$3,500”.

26 USC 36B. (b) CONFORMING AMENDMENT.—Section 36B(f)(2)(B)(ii) of such Code is amended by inserting “in the table contained” after “each of the dollar amounts”.

26 USC 36B note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

SEC. 209. DETERMINATION OF BUDGETARY EFFECTS.

(a) IN GENERAL.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the House of Representatives, this Act, with the exception of section 101, is designated as an emergency for purposes of pay-as-you-go principles.

Approved December 15, 2010.

LEGISLATIVE HISTORY—H.R. 4994:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 14, considered and passed House.

Dec. 8, considered and passed Senate, amended.

Dec. 9, House concurred in Senate amendments.



Public Law 111–310
111th Congress

An Act

To designate the facility of the United States Postal Service located at 2 Massachusetts Avenue, NE, in Washington, D.C., as the “Dorothy I. Height Post Office”.

Dec. 15, 2010
[H.R. 6118]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DOROTHY I. HEIGHT POST OFFICE.

2 USC 2021 note.

(a) DESIGNATION.—The facility of the United States Postal Service located at 2 Massachusetts Avenue, NE, in Washington, D.C., shall be known and designated as the “Dorothy I. Height Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Dorothy I. Height Post Office”.

Approved December 15, 2010.

LEGISLATIVE HISTORY—H.R. 6118:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, 29, considered and passed House.

Dec. 2, considered and passed Senate.



Public Law 111–311
111th Congress

An Act

Dec. 15, 2010

[S. 2847]

To regulate the volume of audio on commercials.

Commercial
Advertisement
Loudness
Mitigation Act.
47 USC 609 note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercial Advertisement Loudness Mitigation Act” or the “CALM Act”.

47 USC 621.

SEC. 2. RULEMAKING ON LOUD COMMERCIALS REQUIRED.

Deadline.

(a) **RULEMAKING REQUIRED.**—Within 1 year after the date of enactment of this Act, the Federal Communications Commission shall prescribe pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.) a regulation that is limited to incorporating by reference and making mandatory (subject to any waivers the Commission may grant) the “Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television” (A/85), and any successor thereto, approved by the Advanced Television Systems Committee, only insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor.

(b) **IMPLEMENTATION.**—

(1) **EFFECTIVE DATE.**—The Federal Communications Commission shall prescribe that the regulation adopted pursuant to subsection (a) shall become effective 1 year after the date of its adoption.

(2) **WAIVER.**—For any television broadcast station, cable operator, or other multichannel video programming distributor that demonstrates that obtaining the equipment to comply with the regulation adopted pursuant to subsection (a) would result in financial hardship, the Federal Communications Commission may grant a waiver of the effective date set forth in paragraph (1) for 1 year and may renew such waiver for 1 additional year.

(3) **WAIVER AUTHORITY.**—Nothing in this section affects the Commission’s authority under section 1.3 of its rules (47 C.F.R. 1.3) to waive any rule required by this Act, or the application of any such rule, for good cause shown to a television broadcast station, cable operator, or other multichannel video programming distributor, or to a class of such stations, operators, or distributors.

(c) **COMPLIANCE.**—Any broadcast television operator, cable operator, or other multichannel video programming distributor that installs, utilizes, and maintains in a commercially reasonable

manner the equipment and associated software in compliance with the regulations issued by the Federal Communications Commission in accordance with subsection (a) shall be deemed to be in compliance with such regulations.

(d) DEFINITIONS.—For purposes of this section—

(1) the term “television broadcast station” has the meaning given such term in section 325 of the Communications Act of 1934 (47 U.S.C. 325); and

(2) the terms “cable operator” and “multi-channel video programming distributor” have the meanings given such terms in section 602 of Communications Act of 1934 (47 U.S.C. 522).

Approved December 15, 2010.

LEGISLATIVE HISTORY—S. 2847:

SENATE REPORTS: No. 111–340 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 29, considered and passed Senate.

Nov. 30, Dec. 2, considered and passed House.



Public Law 111–312
111th Congress

An Act

Dec. 17, 2010
[H.R. 4853]

Tax Relief,
Unemployment
Insurance
Reauthorization,
and Job Creation
Act of 2010.
26 USC 1 note.

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—TEMPORARY EXTENSION OF TAX RELIEF

Sec. 101. Temporary extension of 2001 tax relief.

Sec. 102. Temporary extension of 2003 tax relief.

Sec. 103. Temporary extension of 2009 tax relief.

TITLE II—TEMPORARY EXTENSION OF INDIVIDUAL AMT RELIEF

Sec. 201. Temporary extension of increased alternative minimum tax exemption amount.

Sec. 202. Temporary extension of alternative minimum tax relief for nonrefundable personal credits.

TITLE III—TEMPORARY ESTATE TAX RELIEF

Sec. 301. Reinstatement of estate tax; repeal of carryover basis.

Sec. 302. Modifications to estate, gift, and generation-skipping transfer taxes.

Sec. 303. Applicable exclusion amount increased by unused exclusion amount of deceased spouse.

Sec. 304. Application of EGTRRA sunset to this title.

TITLE IV—TEMPORARY EXTENSION OF INVESTMENT INCENTIVES

Sec. 401. Extension of bonus depreciation; temporary 100 percent expensing for certain business assets.

Sec. 402. Temporary extension of increased small business expensing.

TITLE V—TEMPORARY EXTENSION OF UNEMPLOYMENT INSURANCE AND RELATED MATTERS

Sec. 501. Temporary extension of unemployment insurance provisions.

Sec. 502. Temporary modification of indicators under the extended benefit program.

Sec. 503. Technical amendment relating to collection of unemployment compensation debts.

- Sec. 504. Technical correction relating to repeal of continued dumping and subsidy offset.
- Sec. 505. Additional extended unemployment benefits under the Railroad Unemployment Insurance Act.

TITLE VI—TEMPORARY EMPLOYEE PAYROLL TAX CUT

- Sec. 601. Temporary employee payroll tax cut.

TITLE VII—TEMPORARY EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Energy

- Sec. 701. Incentives for biodiesel and renewable diesel.
- Sec. 702. Credit for refined coal facilities.
- Sec. 703. New energy efficient home credit.
- Sec. 704. Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures.
- Sec. 705. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
- Sec. 706. Suspension of limitation on percentage depletion for oil and gas from marginal wells.
- Sec. 707. Extension of grants for specified energy property in lieu of tax credits.
- Sec. 708. Extension of provisions related to alcohol used as fuel.
- Sec. 709. Energy efficient appliance credit.
- Sec. 710. Credit for nonbusiness energy property.
- Sec. 711. Alternative fuel vehicle refueling property.

Subtitle B—Individual Tax Relief

- Sec. 721. Deduction for certain expenses of elementary and secondary school teachers.
- Sec. 722. Deduction of State and local sales taxes.
- Sec. 723. Contributions of capital gain real property made for conservation purposes.
- Sec. 724. Above-the-line deduction for qualified tuition and related expenses.
- Sec. 725. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 726. Look-thru of certain regulated investment company stock in determining gross estate of nonresidents.
- Sec. 727. Parity for exclusion from income for employer-provided mass transit and parking benefits.
- Sec. 728. Refunds disregarded in the administration of Federal programs and federally assisted programs.

Subtitle C—Business Tax Relief

- Sec. 731. Research credit.
- Sec. 732. Indian employment tax credit.
- Sec. 733. New markets tax credit.
- Sec. 734. Railroad track maintenance credit.
- Sec. 735. Mine rescue team training credit.
- Sec. 736. Employer wage credit for employees who are active duty members of the uniformed services.
- Sec. 737. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Sec. 738. 7-year recovery period for motorsports entertainment complexes.
- Sec. 739. Accelerated depreciation for business property on an Indian reservation.
- Sec. 740. Enhanced charitable deduction for contributions of food inventory.
- Sec. 741. Enhanced charitable deduction for contributions of book inventories to public schools.
- Sec. 742. Enhanced charitable deduction for corporate contributions of computer inventory for educational purposes.
- Sec. 743. Election to expense mine safety equipment.
- Sec. 744. Special expensing rules for certain film and television productions.
- Sec. 745. Expensing of environmental remediation costs.
- Sec. 746. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 747. Modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 748. Treatment of certain dividends of regulated investment companies.
- Sec. 749. RIC qualified investment entity treatment under FIRPTA.
- Sec. 750. Exceptions for active financing income.
- Sec. 751. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.

- Sec. 752. Basis adjustment to stock of S corps making charitable contributions of property.
- Sec. 753. Empowerment zone tax incentives.
- Sec. 754. Tax incentives for investment in the District of Columbia.
- Sec. 755. Temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
- Sec. 756. American Samoa economic development credit.
- Sec. 757. Work opportunity credit.
- Sec. 758. Qualified zone academy bonds.
- Sec. 759. Mortgage insurance premiums.
- Sec. 760. Temporary exclusion of 100 percent of gain on certain small business stock.

Subtitle D—Temporary Disaster Relief Provisions

SUBPART A—NEW YORK LIBERTY ZONE

- Sec. 761. Tax-exempt bond financing.

SUBPART B—GO ZONE

- Sec. 762. Increase in rehabilitation credit.
- Sec. 763. Low-income housing credit rules for buildings in GO zones.
- Sec. 764. Tax-exempt bond financing.
- Sec. 765. Bonus depreciation deduction applicable to the GO Zone.

TITLE VIII—BUDGETARY PROVISIONS

- Sec. 801. Determination of budgetary effects.
- Sec. 802. Emergency designations.

TITLE I—TEMPORARY EXTENSION OF TAX RELIEF

SEC. 101. TEMPORARY EXTENSION OF 2001 TAX RELIEF.

(a) TEMPORARY EXTENSION.—

26 USC 1 note. (1) IN GENERAL.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking “December 31, 2010” both places it appears and inserting “December 31, 2012”.

26 USC 1 note. (2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001.

(b) SEPARATE SUNSET FOR EXPANSION OF ADOPTION BENEFITS UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT.—

Ante, p. 1023. (1) IN GENERAL.—Subsection (c) of section 10909 of the Patient Protection and Affordable Care Act is amended to read as follows:

Applicability. “(c) SUNSET PROVISION.—Each provision of law amended by this section is amended to read as such provision would read if this section had never been enacted. The amendments made by the preceding sentence shall apply to taxable years beginning after December 31, 2011.”.

Ante, p. 1024. (2) CONFORMING AMENDMENT.—Subsection (d) of section 10909 of such Act is amended by striking “The amendments” and inserting “Except as provided in subsection (c), the amendments”.

SEC. 102. TEMPORARY EXTENSION OF 2003 TAX RELIEF.

26 USC 1 note. (a) IN GENERAL.—Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking “December 31, 2010” and inserting “December 31, 2012”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003. 26 USC 1 note.

SEC. 103. TEMPORARY EXTENSION OF 2009 TAX RELIEF.

(a) **AMERICAN OPPORTUNITY TAX CREDIT.**—

(1) **IN GENERAL.**—Section 25A(i) is amended by striking “or 2010” and inserting “, 2010, 2011, or 2012”. 26 USC 25A.

(2) **TREATMENT OF POSSESSIONS.**—Section 1004(c)(1) of the American Recovery and Reinvestment Tax Act of 2009 is amended by striking “and 2010” each place it appears and inserting “, 2010, 2011, and 2012”. 26 USC 25A note.

(b) **CHILD TAX CREDIT.**—Section 24(d)(4) is amended—

(1) by striking “2009 AND 2010” in the heading and inserting “2009, 2010, 2011, AND 2012”, and

(2) by striking “or 2010” and inserting “, 2010, 2011, or 2012”.

(c) **EARNED INCOME TAX CREDIT.**—Section 32(b)(3) is amended—

(1) by striking “2009 AND 2010” in the heading and inserting “2009, 2010, 2011, AND 2012”, and

(2) by striking “or 2010” and inserting “, 2010, 2011, or 2012”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2010. 26 USC 24 note.

TITLE II—TEMPORARY EXTENSION OF INDIVIDUAL AMT RELIEF

SEC. 201. TEMPORARY EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

(a) **IN GENERAL.**—Paragraph (1) of section 55(d) is amended—

(1) by striking “\$70,950” and all that follows through “2009” in subparagraph (A) and inserting “\$72,450 in the case of taxable years beginning in 2010 and \$74,450 in the case of taxable years beginning in 2011”, and

(2) by striking “\$46,700” and all that follows through “2009” in subparagraph (B) and inserting “\$47,450 in the case of taxable years beginning in 2010 and \$48,450 in the case of taxable years beginning in 2011”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2009. 26 USC 55 note.

(c) **REPEAL OF EGTRRA SUNSET.**—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to title VII of such Act (relating to alternative minimum tax). 26 USC 1 note.

SEC. 202. TEMPORARY EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

(a) **IN GENERAL.**—Paragraph (2) of section 26(a) is amended—

(1) by striking “or 2009” and inserting “2009, 2010, or 2011”, and

(2) by striking “2009” in the heading thereof and inserting “2011”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2009. 26 USC 26 note.

TITLE III—TEMPORARY ESTATE TAX RELIEF

SEC. 301. REINSTATEMENT OF ESTATE TAX; REPEAL OF CARRYOVER BASIS.

(a) IN GENERAL.—Each provision of law amended by subtitle A or E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended to read as such provision would read if such subtitle had never been enacted.

(b) CONFORMING AMENDMENT.—On and after January 1, 2011, paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 is amended to read as such paragraph would read if section 521(b)(2) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted.

(c) SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.—Notwithstanding subsection (a), in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.

(d) EXTENSION OF TIME FOR PERFORMING CERTAIN ACTS.—

(1) ESTATE TAX.—In the case of the estate of a decedent dying after December 31, 2009, and before the date of the enactment of this Act, the due date for—

(A) filing any return under section 6018 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) as such section is in effect after the date of the enactment of this Act without regard to any election under subsection (c),

(B) making any payment of tax under chapter 11 of such Code, and

(C) making any disclaimer described in section 2518(b) of such Code of an interest in property passing by reason of the death of such decedent, shall not be earlier than the date which is 9 months after the date of the enactment of this Act.

(2) GENERATION-SKIPPING TAX.—In the case of any generation-skipping transfer made after December 31, 2009, and before the date of the enactment of this Act, the due date for filing any return under section 2662 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) shall not be earlier than the date which is 9 months after the date of the enactment of this Act.

26 USC 121, 684,
1014, 1022, 1040,
1221, 1246, 1291,
1296, 2210, 2664,
6018, 6019, 6075,
6716, 7701.
Effective date.
26 USC 2505
note.
26 USC 2505.
Time period.
26 USC 2001
note.

26 USC 6075
note.

Deadline.
26 USC 2662
note.

(e) **EFFECTIVE DATE.**—Except as otherwise provided in this section, the amendments made by this section shall apply to estates of decedents dying, and transfers made, after December 31, 2009. 26 USC 121 note.

SEC. 302. MODIFICATIONS TO ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES.

(a) **MODIFICATIONS TO ESTATE TAX.**—

(1) **\$5,000,000 APPLICABLE EXCLUSION AMOUNT.**—Subsection (c) of section 2010 is amended to read as follows:

26 USC 2010.

“(c) **APPLICABLE CREDIT AMOUNT.**—

“(1) **IN GENERAL.**—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

“(2) **APPLICABLE EXCLUSION AMOUNT.**—

“(A) **IN GENERAL.**—For purposes of this subsection, the applicable exclusion amount is \$5,000,000.

“(B) **INFLATION ADJUSTMENT.**—In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2010’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”.

(2) **MAXIMUM ESTATE TAX RATE EQUAL TO 35 PERCENT.**—Subsection (c) of section 2001 is amended—

(A) by striking “Over \$500,000” and all that follows in the table contained in paragraph (1) and inserting the following:

“Over \$500,000	\$155,800, plus 35 percent of the excess of such amount over \$500,000.”,
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(B) by striking “(1) **IN GENERAL.**—”, and

(C) by striking paragraph (2).

(b) **MODIFICATIONS TO GIFT TAX.**—

(1) **RESTORATION OF UNIFIED CREDIT AGAINST GIFT TAX.**—

(A) **IN GENERAL.**—Paragraph (1) of section 2505(a), after the application of section 301(b), is amended by striking “(determined as if the applicable exclusion amount were \$1,000,000)”.

(B) **EFFECTIVE DATE.**—The amendment made by this paragraph shall apply to gifts made after December 31, 2010.

26 USC 2505 note.

(2) **MODIFICATION OF GIFT TAX RATE.**—On and after January 1, 2011, subsection (a) of section 2502 is amended to read as such subsection would read if section 511(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted.

Effective date.
26 USC 2502 note.

Time period.
26 USC 2641
note.

(c) MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX.—In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.

(d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO REFLECT DIFFERENCES IN CREDIT RESULTING FROM DIFFERENT TAX RATES.—

(1) ESTATE TAX.—

26 USC 2001.

(A) IN GENERAL.—Section 2001(b)(2) is amended by striking “if the provisions of subsection (c) (as in effect at the decedent’s death)” and inserting “if the modifications described in subsection (g)”.

(B) MODIFICATIONS.—Section 2001 is amended by adding at the end the following new subsection:

Applicability.

“(g) MODIFICATIONS TO GIFT TAX PAYABLE TO REFLECT DIFFERENT TAX RATES.—For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent’s death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

“(1) the tax imposed by chapter 12 with respect to such gifts, and

“(2) the credit allowed against such tax under section 2505, including in computing—

“(A) the applicable credit amount under section 2505(a)(1), and

“(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).”.

(2) GIFT TAX.—Section 2505(a) is amended by adding at the end the following new flush sentence:

Applicability.

“For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.”.

(e) CONFORMING AMENDMENT.—Section 2511 is amended by striking subsection (c).

26 USC 2001
note.

(f) EFFECTIVE DATE.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

SEC. 303. APPLICABLE EXCLUSION AMOUNT INCREASED BY UNUSED EXCLUSION AMOUNT OF DECEASED SPOUSE.

(a) IN GENERAL.—Section 2010(c), as amended by section 302(a), is amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) APPLICABLE EXCLUSION AMOUNT.—For purposes of this subsection, the applicable exclusion amount is the sum of—

“(A) the basic exclusion amount, and

“(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

“(3) BASIC EXCLUSION AMOUNT.—

“(A) IN GENERAL.—For purposes of this subsection, the basic exclusion amount is \$5,000,000.

“(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2011, the dollar

amount in subparagraph (A) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2010’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.

“(4) DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term ‘deceased spousal unused exclusion amount’ means the lesser of—

“(A) the basic exclusion amount, or

“(B) the excess of—

“(i) the basic exclusion amount of the last such deceased spouse of such surviving spouse, over

“(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

“(5) SPECIAL RULES.—

“(A) ELECTION REQUIRED.—A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

“(B) EXAMINATION OF PRIOR RETURNS AFTER EXPIRATION OF PERIOD OF LIMITATIONS WITH RESPECT TO DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

“(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.”.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 2505(a), as amended by section 302(b)(1), is amended to read as follows:

26 USC 2505.

“(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by”.

(2) Section 2631(c) is amended by striking “the applicable exclusion amount” and inserting “the basic exclusion amount”.

(3) Section 6018(a)(1) is amended by striking “applicable exclusion amount” and inserting “basic exclusion amount”.

(c) EFFECTIVE DATES.—

Applicability.
26 USC 2010
note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to estates of decedents dying and gifts made after December 31, 2010.

(2) CONFORMING AMENDMENT RELATING TO GENERATION-SKIPPING TRANSFERS.—The amendment made by subsection (b)(2) shall apply to generation-skipping transfers after December 31, 2010.

26 USC 121 note. **SEC. 304. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.**

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall apply to the amendments made by this title.

TITLE IV—TEMPORARY EXTENSION OF INVESTMENT INCENTIVES

SEC. 401. EXTENSION OF BONUS DEPRECIATION; TEMPORARY 100 PERCENT EXPENSING FOR CERTAIN BUSINESS ASSETS.

26 USC 168. (a) IN GENERAL.—Paragraph (2) of section 168(k) is amended—
(1) by striking “January 1, 2012” in subparagraph (A)(iv) and inserting “January 1, 2014”, and

(2) by striking “January 1, 2011” each place it appears and inserting “January 1, 2013”.

(b) TEMPORARY 100 PERCENT EXPENSING.—Subsection (k) of section 168 is amended by adding at the end the following new paragraph:

Applicability. “(5) SPECIAL RULE FOR PROPERTY ACQUIRED DURING CERTAIN PRE-2012 PERIODS.—In the case of qualified property acquired by the taxpayer (under rules similar to the rules of clauses (ii) and (iii) of paragraph (2)(A)) after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012 (January 1, 2013, in the case of property described in subparagraph (2)(B) or (2)(C)), paragraph (1)(A) shall be applied by substituting ‘100 percent’ for ‘50 percent’.”

(c) EXTENSION OF ELECTION TO ACCELERATE THE AMT CREDIT IN LIEU OF BONUS DEPRECIATION.—

Time periods. (1) EXTENSION.—Clause (iii) of section 168(k)(4)(D) is amended by striking “or production” and all that follows and inserting “or production—

“(I) after March 31, 2008, and before January 1, 2010, and

“(II) after December 31, 2010, and before January 1, 2013,
shall be taken into account under subparagraph (B)(ii) thereof.”

(2) RULES FOR ROUND 2 EXTENSION PROPERTY.—Paragraph (4) of section 168(k) is amended by adding at the end the following new subparagraph:

“(I) SPECIAL RULES FOR ROUND 2 EXTENSION PROPERTY.—

Applicability. “(i) IN GENERAL.—In the case of round 2 extension property, this paragraph shall be applied without regard to—

“(I) the limitation described in subparagraph (B)(i) thereof, and

“(II) the business credit increase amount under subparagraph (E)(iii) thereof.

“(ii) TAXPAYERS PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, or a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

“(I) the taxpayer may elect not to have this paragraph apply to round 2 extension property, but

“(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 2 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 2 extension property.

“(iii) TAXPAYERS NOT PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

“(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2010, and each subsequent taxable year, and

“(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is round 2 extension property.

“(iv) ROUND 2 EXTENSION PROPERTY.—For purposes of this subparagraph, the term ‘round 2 extension property’ means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 401(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (and the application of such extension to this paragraph pursuant to the amendment made by section 401(c)(1) of such Act).”.

(d) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168 is amended by striking “JANUARY 1, 2011” and inserting “JANUARY 1, 2013”. 26 USC 168.

(2) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking “PRE-JANUARY 1, 2011” and inserting “PRE-JANUARY 1, 2013”.

(3) Subparagraph (D) of section 168(k)(4) is amended—
 (A) by striking clauses (iv) and (v),
 (B) by inserting “and” at the end of clause (ii), and
 (C) by striking the comma at the end of clause (iii) and inserting a period.

(4) Paragraph (5) of section 168(l) is amended—

(A) by inserting “and” at the end of subparagraph (A),

(B) by striking subparagraph (B), and

(C) by redesignating subparagraph (C) as subparagraph (B).

26 USC 168.

(5) Subparagraph (C) of section 168(n)(2) is amended by striking “January 1, 2011” and inserting “January 1, 2013”.

(6) Subparagraph (D) of section 1400L(b)(2) is amended by striking “January 1, 2011” and inserting “January 1, 2013”.

(7) Subparagraph (B) of section 1400N(d)(3) is amended by striking “January 1, 2011” and inserting “January 1, 2013”.

Applicability.
26 USC 168 note.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2010, in taxable years ending after such date.

(2) TEMPORARY 100 PERCENT EXPENSING.—The amendment made by subsection (b) shall apply to property placed in service after September 8, 2010, in taxable years ending after such date.

SEC. 402. TEMPORARY EXTENSION OF INCREASED SMALL BUSINESS EXPENSING.

(a) DOLLAR LIMITATION.—Section 179(b)(1) is amended by striking “and” at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

“(C) \$125,000 in the case of taxable years beginning in 2012, and

“(D) \$25,000 in the case of taxable years beginning after 2012.”.

(b) REDUCTION IN LIMITATION.—Section 179(b)(2) is amended by striking “and” at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

“(C) \$500,000 in the case of taxable years beginning in 2012, and

“(D) \$200,000 in the case of taxable years beginning after 2012.”.

(c) INFLATION ADJUSTMENT.—Subsection (b) of section 179 is amended by adding at the end the following new paragraph:

“(6) INFLATION ADJUSTMENT.—

“(A) IN GENERAL.—In the case of any taxable year beginning in calendar year 2012, the \$125,000 and \$500,000 amounts in paragraphs (1)(C) and (2)(C) shall each be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 2006’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) ROUNDING.—

“(i) DOLLAR LIMITATION.—If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of \$1,000, such amount shall be rounded to the nearest multiple of \$1,000.

“(ii) PHASEOUT AMOUNT.—If the amount in paragraph (2) as increased under subparagraph (A) is not

a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”.

(d) **COMPUTER SOFTWARE.**—Section 179(d)(1)(A)(ii) is amended by striking “2012” and inserting “2013”. 26 USC 179.

(e) **CONFORMING AMENDMENT.**—Section 179(c)(2) is amended by striking “2012” and inserting “2013”.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2011. 26 USC 179 note.

TITLE V—TEMPORARY EXTENSION OF UNEMPLOYMENT INSURANCE AND RELATED MATTERS

SEC. 501. TEMPORARY EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) **IN GENERAL.**—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking “November 30, 2010” each place it appears and inserting “January 3, 2012”;

(B) in the heading for subsection (b)(2), by striking “NOVEMBER 30, 2010” and inserting “JANUARY 3, 2012”; and

(C) in subsection (b)(3), by striking “April 30, 2011” and inserting “June 9, 2012”.

(2) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking “December 1, 2010” each place it appears and inserting “January 4, 2012”; and

(B) in subsection (c), by striking “May 1, 2011” and inserting “June 11, 2012”.

(3) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “April 30, 2011” and inserting “June 10, 2012”.

(b) **FUNDING.**—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (E), by striking “and” at the end; and

(2) by inserting after subparagraph (F) the following:

“(G) the amendments made by section 501(a)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; and”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2010 (Public Law 111–205). 26 USC 3304 note.

SEC. 502. TEMPORARY MODIFICATION OF INDICATORS UNDER THE EXTENDED BENEFIT PROGRAM. 26 USC 3304.

(a) **INDICATOR.**—Section 203(d) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended, in the flush matter following paragraph (2), by inserting after the first sentence the following sentence: “Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance

Effective date.

Reauthorization, and Job Creation Act of 2010 (or, if later, the date established pursuant to State law), and ending on or before December 31, 2011, the State may by law provide that the determination of whether there has been a state ‘on’ or ‘off’ indicator beginning or ending any extended benefit period shall be made under this subsection as if the word ‘two’ were ‘three’ in subparagraph (1)(A).”.

(b) **ALTERNATIVE TRIGGER.**—Section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

Effective date.

“(2) Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (or, if later, the date established pursuant to State law), and ending on or before December 31, 2011, the State may by law provide that the determination of whether there has been a state ‘on’ or ‘off’ indicator beginning or ending any extended benefit period shall be made under this subsection as if the word ‘either’ were ‘any’, the word ‘both’ were ‘all’, and the figure ‘2’ were ‘3’ in clause (1)(A)(ii).”.

SEC. 503. TECHNICAL AMENDMENT RELATING TO COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS.

(a) **IN GENERAL.**—Section 6402(f)(3)(C), as amended by section 801 of the Claims Resolution Act of 2010, is amended by striking “is not a covered unemployment compensation debt” and inserting “is a covered unemployment compensation debt”.

26 USC 6402
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in section 801 of the Claims Resolution Act of 2010.

SEC. 504. TECHNICAL CORRECTION RELATING TO REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET.

(a) **IN GENERAL.**—Section 822(2)(A) of the Claims Resolution Act of 2010 is amended by striking “or” and inserting “and”.

Ante, p. 3163.
19 USC 1675c
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in the provisions of the Claims Resolution Act of 2010.

SEC. 505. ADDITIONAL EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) **EXTENSION.**—Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111–92), is amended—

Ante, p. 2988.

(1) by striking “June 30, 2010” and inserting “June 30, 2011”; and

(2) by striking “December 31, 2010” and inserting “December 31, 2011”.

(b) **CLARIFICATION ON AUTHORITY TO USE FUNDS.**—Funds appropriated under either the first or second sentence of clause (iv) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended

unemployment benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D), as in effect on the day before the date of the enactment of this Act.

TITLE VI—TEMPORARY EMPLOYEE PAYROLL TAX CUT

SEC. 601. TEMPORARY EMPLOYEE PAYROLL TAX CUT.

26 USC 1401
note.

(a) IN GENERAL.—Notwithstanding any other provision of law—
(1) with respect to any taxable year which begins in the payroll tax holiday period, the rate of tax under section 1401(a) of the Internal Revenue Code of 1986 shall be 10.40 percent, and

(2) with respect to remuneration received during the payroll tax holiday period, the rate of tax under 3101(a) of such Code shall be 4.2 percent (including for purposes of determining the applicable percentage under sections 3201(a) and 3211(a)(1) of such Code).

(b) COORDINATION WITH DEDUCTIONS FOR EMPLOYMENT TAXES.—

(1) DEDUCTION IN COMPUTING NET EARNINGS FROM SELF-EMPLOYMENT.—For purposes of applying section 1402(a)(12) of the Internal Revenue Code of 1986, the rate of tax imposed by subsection 1401(a) of such Code shall be determined without regard to the reduction in such rate under this section.

(2) INDIVIDUAL DEDUCTION.—In the case of the taxes imposed by section 1401 of such Code for any taxable year which begins in the payroll tax holiday period, the deduction under section 164(f) with respect to such taxes shall be equal to the sum of—

(A) 59.6 percent of the portion of such taxes attributable to the tax imposed by section 1401(a) (determined after the application of this section), plus

(B) one-half of the portion of such taxes attributable to the tax imposed by section 1401(b).

(c) PAYROLL TAX HOLIDAY PERIOD.—The term “payroll tax holiday period” means calendar year 2011. Definition.

(d) EMPLOYER NOTIFICATION.—The Secretary of the Treasury shall notify employers of the payroll tax holiday period in any manner the Secretary deems appropriate.

(e) TRANSFERS OF FUNDS.—

(1) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

(2) TRANSFERS TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—There are hereby appropriated to the Social Security Appropriation.

Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a)(2). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Account had such amendments not been enacted.

Applicability.

(3) COORDINATION WITH OTHER FEDERAL LAWS.—For purposes of applying any provision of Federal law other than the provisions of the Internal Revenue Code of 1986, the rate of tax in effect under section 3101(a) of such Code shall be determined without regard to the reduction in such rate under this section.

TITLE VII—TEMPORARY EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Energy

SEC. 701. INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.

(a) CREDITS FOR BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.—Subsection (g) of section 40A is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIXTURES.—

(1) Paragraph (6) of section 6426(c) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

Claims.
Deadline.
26 USC 6426
note.

(c) SPECIAL RULE FOR 2010.—Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under section 6426(c) of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary’s delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code.

Guidance.

Time period.

26 USC 40A note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after December 31, 2009.

SEC. 702. CREDIT FOR REFINED COAL FACILITIES.

(a) IN GENERAL.—Subparagraph (B) of section 45(d)(8) is amended by striking “January 1, 2010” and inserting “January 1, 2012”. 26 USC 45.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to facilities placed in service after December 31, 2009. 26 USC 45 note.

SEC. 703. NEW ENERGY EFFICIENT HOME CREDIT.

(a) IN GENERAL.—Subsection (g) of section 45L is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to homes acquired after December 31, 2009. 26 USC 45L note.

SEC. 704. EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.

(a) IN GENERAL.—Sections 6426(d)(5), 6426(e)(3), and 6427(e)(6)(C) are each amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EXCLUSION OF BLACK LIQUOR FROM CREDIT ELIGIBILITY.—The last sentence of section 6426(d)(2) is amended by striking “or biodiesel” and inserting “biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp”.

(c) SPECIAL RULE FOR 2010.—Notwithstanding any other provision of law, in the case of any alternative fuel credit or any alternative fuel mixture credit properly determined under subsection (d) or (e) of section 6426 of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary’s delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code. Claims. Deadline. 26 USC 6426 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after December 31, 2009. Guidance. Time period. 26 USC 6426 note.

SEC. 705. SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.

(a) IN GENERAL.—Paragraph (3) of section 451(i) is amended by striking “January 1, 2010” and inserting “January 1, 2012”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after December 31, 2009. 26 USC 451 note.

SEC. 706. SUSPENSION OF LIMITATION ON PERCENTAGE DEPLETION FOR OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Clause (ii) of section 613A(c)(6)(H) is amended by striking “January 1, 2010” and inserting “January 1, 2012”.

26 USC 613A
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 707. EXTENSION OF GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS.

26 USC 48 note.

(a) **IN GENERAL.**—Subsection (a) of section 1603 of division B of the American Recovery and Reinvestment Act of 2009 is amended—

(1) in paragraph (1), by striking “2009 or 2010” and inserting “2009, 2010, or 2011”, and

(2) in paragraph (2)—

(A) by striking “after 2010” and inserting “after 2011”, and

(B) by striking “2009 or 2010” and inserting “2009, 2010, or 2011”.

(b) **CONFORMING AMENDMENT.**—Subsection (j) of section 1603 of division B of such Act is amended by striking “2011” and inserting “2012”.

SEC. 708. EXTENSION OF PROVISIONS RELATED TO ALCOHOL USED AS FUEL.

(a) **EXTENSION OF INCOME TAX CREDIT FOR ALCOHOL USED AS FUEL.**—

(1) **IN GENERAL.**—Paragraph (1) of section 40(e) is amended—

(A) by striking “December 31, 2010” in subparagraph

(A) and inserting “December 31, 2011”, and

(B) by striking “January 1, 2011” in subparagraph (B) and inserting “January 1, 2012”.

(2) **REDUCED AMOUNT FOR ETHANOL BLENDERS.**—Subsection (h) of section 40 is amended by striking “2010” both places it appears and inserting “2011”.

26 USC 40 note.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to periods after December 31, 2010.

(b) **EXTENSION OF EXCISE TAX CREDIT FOR ALCOHOL USED AS FUEL.**—

(1) **IN GENERAL.**—Paragraph (6) of section 6426(b) is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

26 USC 6426
note.

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall apply to periods after December 31, 2010.

(c) **EXTENSION OF PAYMENT FOR ALCOHOL FUEL MIXTURE.**—

(1) **IN GENERAL.**—Subparagraph (A) of section 6427(e)(6) is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

26 USC 6427
note.

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall apply to sales and uses after December 31, 2010.

(d) **EXTENSION OF ADDITIONAL DUTIES ON ETHANOL.**—

(1) **IN GENERAL.**—Headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States are each amended in the effective period column by striking “1/1/2011” and inserting “1/1/2012”.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on January 1, 2011.

SEC. 709. ENERGY EFFICIENT APPLIANCE CREDIT.

(a) **DISHWASHERS.**—Paragraph (1) of section 45M(b) is amended by striking “and” at the end of subparagraph (A), by striking the

period at the end of subparagraph (B) and inserting a comma, and by adding at the end the following new subparagraphs:

“(C) \$25 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

“(D) \$50 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 295 kilowatt hours per year and 4.25 gallons per cycle (4.75 gallons per cycle for dishwashers designed for greater than 12 place settings), and

“(E) \$75 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 280 kilowatt hours per year and 4 gallons per cycle (4.5 gallons per cycle for dishwashers designed for greater than 12 place settings).”.

(b) CLOTHES WASHERS.—Paragraph (2) of section 45M(b) is amended by striking “and” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by adding at the end the following new subparagraphs: 26 USC 45M.

“(E) \$175 in the case of a top-loading clothes washer manufactured in calendar year 2011 which meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor, and

“(F) \$225 in the case of a clothes washer manufactured in calendar year 2011—

“(i) which is a top-loading clothes washer and which meets or exceeds a 2.4 modified energy factor and does not exceed a 4.2 water consumption factor, or

“(ii) which is a front-loading clothes washer and which meets or exceeds a 2.8 modified energy factor and does not exceed a 3.5 water consumption factor.”.

(c) REFRIGERATORS.—Paragraph (3) of section 45M(b) is amended by striking “and” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by adding at the end the following new subparagraphs:

“(E) \$150 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 30 percent less energy than the 2001 energy conservation standards, and

“(F) \$200 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 35 percent less energy than the 2001 energy conservation standards.”.

(d) REBASING OF LIMITATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 45M(e) is amended—

(A) by striking “\$75,000,000” and inserting “\$25,000,000”, and

(B) by striking “December 31, 2007” and inserting “December 31, 2010”.

(2) EXCEPTION FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Paragraph (2) of section 45M(e) is amended—

(A) by striking “subsection (b)(3)(D)” and inserting “subsection (b)(3)(F)”, and

(B) by striking “subsection (b)(2)(D)” and inserting “subsection (b)(2)(F)”.

26 USC 45M.

(3) GROSS RECEIPTS LIMITATION.—Paragraph (3) of section 45M(e) is amended by striking “2 percent” and inserting “4 percent”.

Applicability.
26 USC 45M
note.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply to appliances produced after December 31, 2010.

(2) LIMITATIONS.—The amendments made by subsection (d) shall apply to taxable years beginning after December 31, 2010.

SEC. 710. CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) EXTENSION.—Section 25C(g)(2) is amended by striking “2010” and inserting “2011”.

(b) RETURN TO PRE-ARRA LIMITATIONS AND STANDARDS.—

(1) IN GENERAL.—Subsections (a) and (b) of section 25C are amended to read as follows:

“(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

“(1) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year, and

“(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

“(b) LIMITATIONS.—

“(1) LIFETIME LIMITATION.—The credit allowed under this section with respect to any taxpayer for any taxable year shall not exceed the excess (if any) of \$500 over the aggregate credits allowed under this section with respect to such taxpayer for all prior taxable years ending after December 31, 2005.

“(2) WINDOWS.—In the case of amounts paid or incurred for components described in subsection (c)(2)(B) by any taxpayer for any taxable year, the credit allowed under this section with respect to such amounts for such year shall not exceed the excess (if any) of \$200 over the aggregate credits allowed under this section with respect to such amounts for all prior taxable years ending after December 31, 2005.

“(3) LIMITATION ON RESIDENTIAL ENERGY PROPERTY EXPENDITURES.—The amount of the credit allowed under this section by reason of subsection (a)(2) shall not exceed—

“(A) \$50 for any advanced main air circulating fan,

“(B) \$150 for any qualified natural gas, propane, or oil furnace or hot water boiler, and

“(C) \$300 for any item of energy-efficient building property.”.

(2) MODIFICATION OF STANDARDS.—

(A) IN GENERAL.—Paragraph (1) of section 25C(c) is amended by striking “2000” and all that follows through “this section” and inserting “2009 International Energy Conservation Code, as such Code (including supplements)

is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009”.

(B) WOOD STOVES.—Subparagraph (E) of section 25C(d)(3) is amended by striking “, as measured using a lower heating value”.

26 USC 25C.

(C) OIL FURNACES AND HOT WATER BOILERS.—

(i) IN GENERAL.—Paragraph (4) of section 25C(d) is amended to read as follows:

“(4) QUALIFIED NATURAL GAS, PROPANE, OR OIL FURNACE OR HOT WATER BOILER.—The term ‘qualified natural gas, propane, or oil furnace or hot water boiler’ means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.”

Definition.

(ii) CONFORMING AMENDMENT.—Clause (ii) of section 25C(d)(2)(A) is amended to read as follows:

“(ii) a qualified natural gas, propane, or oil furnace or hot water boiler, or”.

(D) EXTERIOR WINDOWS, DOORS, AND SKYLIGHTS.—

(i) IN GENERAL.—Subsection (c) of section 25C is amended by striking paragraph (4).

(ii) APPLICATION OF ENERGY STAR STANDARDS.—Paragraph (1) of section 25C(c) is amended by inserting “an exterior window, a skylight, an exterior door,” after “in the case of” in the matter preceding subparagraph (A).

(E) INSULATION.—Subparagraph (A) of section 25C(c)(2) is amended by striking “and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009”.

(3) SUBSIDIZED ENERGY FINANCING.—Subsection (e) of section 25C is amended by adding at the end the following new paragraph:

“(3) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any property, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2010.

26 USC 25C note.

SEC. 711. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) EXTENSION OF CREDIT.—Paragraph (2) of section 30C(g) is amended by striking “December 31, 2010” and inserting “December 31, 2011.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2010.

26 USC 30C note.

Subtitle B—Individual Tax Relief

SEC. 721. DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

26 USC 62. (a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking “or 2009” and inserting “2009, 2010, or 2011”.
26 USC 62 note. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 722. DEDUCTION OF STATE AND LOCAL SALES TAXES.

(a) IN GENERAL.—Subparagraph (I) of section 164(b)(5) is amended by striking “January 1, 2010” and inserting “January 1, 2012”.
26 USC 164 note. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 723. CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) IN GENERAL.—Clause (vi) of section 170(b)(1)(E) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.
(b) CONTRIBUTIONS BY CERTAIN CORPORATE FARMERS AND RANCHERS.—Clause (iii) of section 170(b)(2)(B) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.
26 USC 170 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

SEC. 724. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.

(a) IN GENERAL.—Subsection (e) of section 222 is amended by striking “December 31, 2009” and inserting “December 31, 2011”.
26 USC 222 note. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 725. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subparagraph (F) of section 408(d)(8) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.
26 USC 408 note. (b) EFFECTIVE DATE; SPECIAL RULE.—
(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2009.
(2) SPECIAL RULE.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury) any qualified charitable distribution made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010.

SEC. 726. LOOK-THRU OF CERTAIN REGULATED INVESTMENT COMPANY STOCK IN DETERMINING GROSS ESTATE OF NON-RESIDENTS.

(a) IN GENERAL.—Paragraph (3) of section 2105(d) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to estates of decedents dying after December 31, 2009. 26 USC 2105 note.

SEC. 727. PARITY FOR EXCLUSION FROM INCOME FOR EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS.

(a) **IN GENERAL.**—Paragraph (2) of section 132(f) is amended by striking “January 1, 2011” and inserting “January 1, 2012”. 26 USC 132.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to months after December 31, 2010. 26 USC 132 note.

SEC. 728. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

(a) **IN GENERAL.**—Subchapter A of chapter 65 is amended by adding at the end the following new section:

“**SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.** 26 USC 6409.

“(a) **IN GENERAL.**—Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

“(b) **TERMINATION.**—Subsection (a) shall not apply to any amount received after December 31, 2012.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for such subchapter is amended by adding at the end the following new item:

“Sec. 6409. Refunds disregarded in the administration of Federal programs and federally assisted programs.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts received after December 31, 2009. 26 USC 6409 note.

Subtitle C—Business Tax Relief

SEC. 731. RESEARCH CREDIT.

(a) **IN GENERAL.**—Subparagraph (B) of section 41(h)(1) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) **CONFORMING AMENDMENT.**—Subparagraph (D) of section 45C(b)(1) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2009. 26 USC 41 note.

SEC. 732. INDIAN EMPLOYMENT TAX CREDIT.

(a) **IN GENERAL.**—Subsection (f) of section 45A is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2009. 26 USC 45A note.

SEC. 733. NEW MARKETS TAX CREDIT.

(a) **IN GENERAL.**—Paragraph (1) of section 45D(f) is amended—
(1) by striking “and” at the end of subparagraph (E),

(2) by striking the period at the end of subparagraph (F), and

(3) by adding at the end the following new subparagraph:
“(G) \$3,500,000,000 for 2010 and 2011.”.

26 USC 45D.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 45D(f) is amended by striking “2014” and inserting “2016”.

26 USC 45D
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2009.

SEC. 734. RAILROAD TRACK MAINTENANCE CREDIT.

(a) IN GENERAL.—Subsection (f) of section 45G is amended by striking “January 1, 2010” and inserting “January 1, 2012”.

26 USC 45G
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.

SEC. 735. MINE RESCUE TEAM TRAINING CREDIT.

(a) IN GENERAL.—Subsection (e) of section 45N is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 45N
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 736. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.

(a) IN GENERAL.—Subsection (f) of section 45P is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 45P note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2009.

SEC. 737. 15-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.

(a) IN GENERAL.—Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking “January 1, 2010” and inserting “January 1, 2012”.

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 168(e)(7)(A) is amended by striking “if such building is placed in service after December 31, 2008, and before January 1, 2010,”.

(2) Paragraph (8) of section 168(e) is amended by striking subparagraph (E).

(3) Section 179(f)(2) is amended—

(A) by striking “(without regard to the dates specified in subparagraph (A)(i) thereof)” in subparagraph (B), and

(B) by striking “(without regard to subparagraph (E) thereof)” in subparagraph (C).

26 USC 168 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2009.

SEC. 738. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.

(a) IN GENERAL.—Subparagraph (D) of section 168(i)(15) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 168 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

SEC. 739. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.

(a) IN GENERAL.—Paragraph (8) of section 168(j) is amended by striking “December 31, 2009” and inserting “December 31, 2011”. 26 USC 168.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009. 26 USC 168 note.

SEC. 740. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2009. 26 USC 170 note.

SEC. 741. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORIES TO PUBLIC SCHOOLS.

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(D) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2009. 26 USC 170 note.

SEC. 742. ENHANCED CHARITABLE DEDUCTION FOR CORPORATE CONTRIBUTIONS OF COMPUTER INVENTORY FOR EDUCATIONAL PURPOSES.

(a) IN GENERAL.—Subparagraph (G) of section 170(e)(6) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009. 26 USC 170 note.

SEC. 743. ELECTION TO EXPENSE MINE SAFETY EQUIPMENT.

(a) IN GENERAL.—Subsection (g) of section 179E is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009. 26 USC 179E note.

SEC. 744. SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Subsection (f) of section 181 is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to productions commencing after December 31, 2009. 26 USC 181 note.

SEC. 745. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.—Subsection (h) of section 198 is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred after December 31, 2009. 26 USC 198 note.

SEC. 746. DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.

(a) IN GENERAL.—Subparagraph (C) of section 199(d)(8) is amended—

(1) by striking “first 4 taxable years” and inserting “first 6 taxable years”; and

(2) by striking “January 1, 2010” and inserting “January 1, 2012”.

26 USC 199 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 747. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.

26 USC 512.

(a) IN GENERAL.—Clause (iv) of section 512(b)(13)(E) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 512.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments received or accrued after December 31, 2009.

SEC. 748. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraphs (1)(C) and (2)(C) of section 871(k) are each amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 871 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 749. RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.

(a) IN GENERAL.—Clause (ii) of section 897(h)(4)(A) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 897 note.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act.

(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act; and

(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code, such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.

SEC. 750. EXCEPTIONS FOR ACTIVE FINANCING INCOME.

(a) IN GENERAL.—Sections 953(e)(10) and 954(h)(9) are each amended by striking “January 1, 2010” and inserting “January 1, 2012”.

(b) CONFORMING AMENDMENT.—Section 953(e)(10) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

26 USC 953 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

SEC. 751. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.

(a) **IN GENERAL.**—Subparagraph (C) of section 954(c)(6) is amended by striking “January 1, 2010” and inserting “January 1, 2012”. 26 USC 954.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. 26 USC 954 note.

SEC. 752. BASIS ADJUSTMENT TO STOCK OF S CORPS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) **IN GENERAL.**—Paragraph (2) of section 1367(a) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009. 26 USC 1367 note.

SEC. 753. EMPOWERMENT ZONE TAX INCENTIVES.

(a) **IN GENERAL.**—Section 1391 is amended—

- (1) by striking “December 31, 2009” in subsection (d)(1)(A)(i) and inserting “December 31, 2011”; and
- (2) by striking the last sentence of subsection (h)(2).

(b) **INCREASED EXCLUSION OF GAIN ON STOCK OF EMPOWERMENT ZONE BUSINESSES.**—Subparagraph (C) of section 1202(a)(2) is amended—

- (1) by striking “December 31, 2014” and inserting “December 31, 2016”; and
- (2) by striking “2014” in the heading and inserting “2016”.

(c) **TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS.**—In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide. 26 USC 1391 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to periods after December 31, 2009. 26 USC 1202 note.

SEC. 754. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) **IN GENERAL.**—Subsection (f) of section 1400 is amended by striking “December 31, 2009” each place it appears and inserting “December 31, 2011”.

(b) **TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.**—Subsection (b) of section 1400A is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(c) **ZERO-PERCENT CAPITAL GAINS RATE.**—

- (1) **ACQUISITION DATE.**—Paragraphs (2)(A)(i), (3)(A), (4)(A)(i), and (4)(B)(i)(I) of section 1400B(b) are each amended by striking “January 1, 2010” and inserting “January 1, 2012”.

(2) **LIMITATION ON PERIOD OF GAINS.**—

26 USC 1400B.

(A) IN GENERAL.—Paragraph (2) of section 1400B(e) is amended—

(i) by striking “December 31, 2014” and inserting “December 31, 2016”; and

(ii) by striking “2014” in the heading and inserting “2016”.

(B) PARTNERSHIPS AND S-CORPS.—Paragraph (2) of section 1400B(g) is amended by striking “December 31, 2014” and inserting “December 31, 2016”.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking “January 1, 2010” and inserting “January 1, 2012”.

Applicability.
26 USC 1400m.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to periods after December 31, 2009.

(2) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—The amendment made by subsection (b) shall apply to bonds issued after December 31, 2009.

(3) ACQUISITION DATES FOR ZERO-PERCENT CAPITAL GAINS RATE.—The amendments made by subsection (c) shall apply to property acquired or substantially improved after December 31, 2009.

(4) HOMEBUYER CREDIT.—The amendment made by subsection (d) shall apply to homes purchased after December 31, 2009.

SEC. 755. TEMPORARY INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE VIRGIN ISLANDS.

26 USC 7652
note.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking “January 1, 2010” and inserting “January 1, 2012”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2009.

SEC. 756. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.

26 USC 30A.

(a) IN GENERAL.—Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended—

(1) by striking “first 4 taxable years” and inserting “first 6 taxable years”, and

(2) by striking “January 1, 2010” and inserting “January 1, 2012”.

26 USC 30A.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 757. WORK OPPORTUNITY CREDIT.

26 USC 51 note.

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking “August 31, 2011” and inserting “December 31, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

SEC. 758. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Section 54E(c)(1) is amended—

(1) by striking “2008 and” and inserting “2008,” and

(2) by inserting “and \$400,000,000 for 2011” after “2010,”.

(b) **REPEAL OF REFUNDABLE CREDIT FOR QZABS.**—Paragraph (3) of section 6431(f) is amended by inserting “determined without regard to any allocation relating to the national zone academy bond limitation for 2011 or any carryforward of such allocation” after “54E)” in subparagraph (A)(iii). 26 USC 6431.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to obligations issued after December 31, 2010. 26 USC 54E.

SEC. 759. MORTGAGE INSURANCE PREMIUMS.

(a) **IN GENERAL.**—Clause (iv) of section 163(h)(3)(E) is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to amounts paid or accrued after December 31, 2010. 26 USC 163 note.

SEC. 760. TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) **IN GENERAL.**—Paragraph (4) of section 1202(a) is amended—

(1) by striking “January 1, 2011” and inserting “January 1, 2012”, and

(2) by inserting “AND 2011” after “2010” in the heading thereof.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to stock acquired after December 31, 2010. 26 USC 1202 note.

Subtitle D—Temporary Disaster Relief Provisions

PART

Subpart A—New York Liberty Zone

SEC. 761. TAX-EXEMPT BOND FINANCING.

(a) **IN GENERAL.**—Subparagraph (D) of section 1400L(d)(2) is amended by striking “January 1, 2010” and inserting “January 1, 2012”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to bonds issued after December 31, 2009. 26 USC 1400L note.

Subpart B—GO Zone

SEC. 762. INCREASE IN REHABILITATION CREDIT.

(a) **IN GENERAL.**—Subsection (h) of section 1400N is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to amounts paid or incurred after December 31, 2009. 26 USC 1400N note.

SEC. 763. LOW-INCOME HOUSING CREDIT RULES FOR BUILDINGS IN GO ZONES.

Section 1400N(c)(5) is amended by striking “January 1, 2011” and inserting “January 1, 2012”.

SEC. 764. TAX-EXEMPT BOND FINANCING.

26 USC 1400N. (a) IN GENERAL.—Paragraphs (2)(D) and (7)(C) of section 1400N(a) are each amended by striking “January 1, 2011” and inserting “January 1, 2012”.

(b) CONFORMING AMENDMENTS.—Sections 702(d)(1) and 704(a) of the Heartland Disaster Tax Relief Act of 2008 are each amended by striking “January 1, 2011” each place it appears and inserting “January 1, 2012”.

SEC. 765. BONUS DEPRECIATION DEDUCTION APPLICABLE TO THE GO ZONE.

(a) IN GENERAL.—Paragraph (6) of section 1400N(d) is amended—

(1) by striking “December 31, 2010” both places it appears in subparagraph (B) and inserting “December 31, 2011”, and

(2) by striking “January 1, 2010” in the heading and the text of subparagraph (D) and inserting “January 1, 2012”.

26 USC 1400N. (b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

TITLE VIII—BUDGETARY PROVISIONS**SEC. 801. DETERMINATION OF BUDGETARY EFFECTS.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

SEC. 802. EMERGENCY DESIGNATIONS.

(a) STATUTORY PAYGO.—This Act is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)) except to the extent that the budgetary effects of this Act are determined to be subject to the current policy adjustments under sections 4(c) and 7 of the Statutory Pay-As-You-Go Act.

(b) SENATE.—In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(c) HOUSE OF REPRESENTATIVES.—In the House of Representatives, every provision of this Act is expressly designated as an emergency for purposes of pay-as-you-go principles except to the extent that any such provision is subject to the current policy adjustments under section 4(c) of the Statutory Pay-As-You-Go Act of 2010.

Approved December 17, 2010.

LEGISLATIVE HISTORY—H.R. 4853:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Mar. 17, considered and passed House.

Sept. 23, considered and passed Senate, amended.

Dec. 2, House concurred in Senate amendment with an amendment. Senate considered concurring in House amendment with an amendment.

Dec. 4, 9, 13–15, Senate considered and concurred in House amendment with an amendment.

Dec. 16, House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Dec. 18, Presidential remarks.



Public Law 111–313
111th Congress

An Act

Dec. 18, 2010
[H.R. 2480]

To improve the accuracy of fur product labeling, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Truth in Fur
Labeling Act of
2010.
15 USC 69 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Truth in Fur Labeling Act of 2010”.

SEC. 2. ELIMINATION OF EXEMPTION TO FUR PRODUCT LABELING REQUIREMENTS FOR PRODUCTS CONTAINING RELATIVELY SMALL QUANTITIES OR VALUES OF FUR.

(a) IN GENERAL.—Section 2(d) of the Fur Products Labeling Act (15 U.S.C. 69(d)) is amended by striking “; except that” and all that follows through “contained therein”.

15 USC 69 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 90 days after the date of the enactment of this Act.

SEC. 3. EXEMPTION FOR DISCRETE SALES BY NON-RETAILERS.

Section 3 of the Fur Products Labeling Act (15 U.S.C. 69a) is amended by adding at the end the following:

“(g) No provision of this Act shall apply to a fur product—
“(1) the fur of which was obtained from an animal through trapping or hunting; and

“(2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.”.

Deadline.
Federal Register,
publication.
Notice.

SEC. 4. FEDERAL TRADE COMMISSION REVIEW OF FUR PRODUCTS NAME GUIDE.

Not later than 90 days after the date of the enactment of this Act, the Federal Trade Commission shall publish in the Federal Register notice of, and an opportunity to comment on, a review of the Fur Products Name Guide (16 CFR 301.0).

SEC. 5. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 18, 2010.

LEGISLATIVE HISTORY—H.R. 2480:

HOUSE REPORTS: No. 111–571 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 28, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 111–314
111th Congress

An Act

Dec. 18, 2010
[H.R. 3237]

To enact certain laws relating to national and commercial space programs as title 51, United States Code, “National and Commercial Space Programs”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; conformity with original intent.
- Sec. 3. Enactment of title 51, United States Code.
- Sec. 4. Conforming amendments to other laws.
- Sec. 5. Transitional and savings provisions.
- Sec. 6. Repeals.

5 USC note prec.
10101.

SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.

(a) **PURPOSE.**—The purpose of this Act is to codify certain existing laws related to national and commercial space programs as a positive law title of the United States Code.

(b) **CONFORMITY WITH ORIGINAL INTENT.**—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).

5 USC note prec.
10101.

SEC. 3. ENACTMENT OF TITLE 51, UNITED STATES CODE.

Title 51, United States Code, “National and Commercial Space Programs”, is enacted as follows:

**TITLE 51—NATIONAL AND COMMERCIAL
SPACE PROGRAMS**

Subtitle I—General

Chap.	Sec.
101. Definitions	10101

Subtitle II—General Program and Policy Provisions

201. National Aeronautics and Space Program	20101
203. Responsibilities and Vision	20301

Subtitle III—Administrative Provisions

301. Appropriations, Budgets, and Accounting	30101
303. Contracting and Procurement	30301
305. Management and Review	30501
307. International Cooperation and Competition	30701
309. Awards	30901
311. Safety	31101
313. Healthcare	31301
315. Miscellaneous	31501

Subtitle IV—Aeronautics and Space Research and Education

401. Aeronautics	40101
403. National Space Grant College and Fellowship Program	40301
405. Biomedical Research in Space	40501
407. Environmentally Friendly Aircraft	40701
409. Miscellaneous	40901

Subtitle V—Programs Targeting Commercial Opportunities

501. Space Commerce	50101
503. Commercial Reusable In-Space Transportation	50301
505. Commercial Space Competitiveness	50501
507. Office of Space Commercialization	50701

Subtitle VI—Earth Observations

601. Land Remote Sensing Policy	60101
603. Remote Sensing	60301
605. Earth Science	60501

Subtitle VII—Access to Space

701. Use of Space Shuttle or Alternatives	70101
703. Shuttle Pricing Policy for Commercial and Foreign Users	70301
705. Exploration Initiatives	70501
707. Human Space Flight Independent Investigation Commission	70701
709. International Space Station	70901
711. Near-Earth Objects	71101
713. Cooperation for Safety Among Spacefaring Nations	71301

Subtitle I—General**CHAPTER 101—DEFINITIONS**

Sec.

10101. Definitions.

§ 10101. Definitions

In this title:

(1) **ADMINISTRATION.**—The term “Administration” means the National Aeronautics and Space Administration.

(2) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the National Aeronautics and Space Administration.

Subtitle II—General Program and Policy Provisions

CHAPTER 201—NATIONAL AERONAUTICS AND SPACE PROGRAM

SUBCHAPTER I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

Sec.

- 20101. Short title.
- 20102. Congressional declaration of policy and purpose.
- 20103. Definitions.

SUBCHAPTER II—COORDINATION OF AERONAUTICAL AND SPACE ACTIVITIES

- 20111. National Aeronautics and Space Administration.
- 20112. Functions of the Administration.
- 20113. Powers of the Administration in performance of functions.
- 20114. Administration and Department of Defense coordination.
- 20115. International cooperation.
- 20116. Reports to Congress.
- 20117. Disposal of excess land.

SUBCHAPTER III—GENERAL ADMINISTRATIVE PROVISIONS

- 20131. Public access to information.
- 20132. Security requirements.
- 20133. Permission to carry firearms.
- 20134. Arrest authority.
- 20135. Property rights in inventions.
- 20136. Contributions awards.
- 20137. Malpractice and negligence suits against United States.
- 20138. Insurance and indemnification.
- 20139. Insurance for experimental aerospace vehicles.
- 20140. Appropriations.
- 20141. Misuse of agency name and initials.
- 20142. Contracts regarding expendable launch vehicles.
- 20143. Full cost appropriations account structure.
- 20144. Prize authority.
- 20145. Lease of non-excess property.
- 20146. Retrocession of jurisdiction.
- 20147. Recovery and disposition authority.

SUBCHAPTER IV—UPPER ATMOSPHERE RESEARCH

- 20161. Congressional declaration of purpose and policy.
- 20162. Definition of upper atmosphere.
- 20163. Program authorized.
- 20164. International cooperation.

SUBCHAPTER I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

§ 20101. Short title

This chapter may be cited as the “National Aeronautics and Space Act”.

§ 20102. Congressional declaration of policy and purpose

(a) DEVOTION OF SPACE ACTIVITIES TO PEACEFUL PURPOSES FOR BENEFIT OF ALL HUMANKIND.—Congress declares that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all humankind.

(b) AERONAUTICAL AND SPACE ACTIVITIES FOR WELFARE AND SECURITY OF UNITED STATES.—Congress declares that the general

welfare and security of the United States require that adequate provision be made for aeronautical and space activities. Congress further declares that such activities shall be the responsibility of, and shall be directed by, a civilian agency exercising control over aeronautical and space activities sponsored by the United States, except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States (including the research and development necessary to make effective provision for the defense of the United States) shall be the responsibility of, and shall be directed by, the Department of Defense; and that determination as to which agency has responsibility for and direction of any such activity shall be made by the President.

(c) **COMMERCIAL USE OF SPACE.**—Congress declares that the general welfare of the United States requires that the Administration seek and encourage, to the maximum extent possible, the fullest commercial use of space.

(d) **OBJECTIVES OF AERONAUTICAL AND SPACE ACTIVITIES.**—The aeronautical and space activities of the United States shall be conducted so as to contribute materially to one or more of the following objectives:

(1) The expansion of human knowledge of the Earth and of phenomena in the atmosphere and space.

(2) The improvement of the usefulness, performance, speed, safety, and efficiency of aeronautical and space vehicles.

(3) The development and operation of vehicles capable of carrying instruments, equipment, supplies, and living organisms through space.

(4) The establishment of long-range studies of the potential benefits to be gained from, the opportunities for, and the problems involved in the utilization of aeronautical and space activities for peaceful and scientific purposes.

(5) The preservation of the role of the United States as a leader in aeronautical and space science and technology and in the application thereof to the conduct of peaceful activities within and outside the atmosphere.

(6) The making available to agencies directly concerned with national defense of discoveries that have military value or significance, and the furnishing by such agencies, to the civilian agency established to direct and control nonmilitary aeronautical and space activities, of information as to discoveries which have value or significance to that agency.

(7) Cooperation by the United States with other nations and groups of nations in work done pursuant to this chapter and in the peaceful application of the results thereof.

(8) The most effective utilization of the scientific and engineering resources of the United States, with close cooperation among all interested agencies of the United States in order to avoid unnecessary duplication of effort, facilities, and equipment.

(9) The preservation of the United States preeminent position in aeronautics and space through research and technology development related to associated manufacturing processes.

(e) **GROUND PROPULSION SYSTEMS RESEARCH AND DEVELOPMENT.**—Congress declares that the general welfare of the United States requires that the unique competence in scientific and engineering systems of the Administration also be directed toward

ground propulsion systems research and development. Such development shall be conducted so as to contribute to the objectives of developing energy and petroleum-conserving ground propulsion systems, and of minimizing the environmental degradation caused by such systems.

(f) **BIOENGINEERING RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.**—Congress declares that the general welfare of the United States requires that the unique competence of the Administration in science and engineering systems be directed to assisting in bioengineering research, development, and demonstration programs designed to alleviate and minimize the effects of disability.

(g) **WARNING AND MITIGATION OF POTENTIAL HAZARDS OF NEAR-EARTH OBJECTS.**—Congress declares that the general welfare and security of the United States require that the unique competence of the Administration be directed to detecting, tracking, cataloguing, and characterizing near-Earth asteroids and comets in order to provide warning and mitigation of the potential hazard of such near-Earth objects to the Earth.

(h) **PURPOSE OF CHAPTER.**—It is the purpose of this chapter to carry out and effectuate the policies declared in subsections (a) to (g).

§ 20103. Definitions

In this chapter:

(1) **AERONAUTICAL AND SPACE ACTIVITIES.**—The term “aeronautical and space activities” means—

(A) research into, and the solution of, problems of flight within and outside the Earth’s atmosphere;

(B) the development, construction, testing, and operation for research purposes of aeronautical and space vehicles;

(C) the operation of a space transportation system including the space shuttle, upper stages, space platforms, and related equipment; and

(D) such other activities as may be required for the exploration of space.

(2) **AERONAUTICAL AND SPACE VEHICLES.**—The term “aeronautical and space vehicles” means aircraft, missiles, satellites, and other space vehicles, manned and unmanned, together with related equipment, devices, components, and parts.

SUBCHAPTER II—COORDINATION OF AERONAUTICAL AND SPACE ACTIVITIES

§ 20111. National Aeronautics and Space Administration

(a) **ESTABLISHMENT AND APPOINTMENT OF ADMINISTRATOR.**—There is established the National Aeronautics and Space Administration. The Administration shall be headed by an Administrator, who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. Under the supervision and direction of the President, the Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Administration and shall have authority and control over all personnel and activities thereof.

(b) **DEPUTY ADMINISTRATOR.**—There shall be in the Administration a Deputy Administrator, who shall be appointed from civilian life by the President by and with the advice and consent of the

Senate. The Deputy Administrator shall perform such duties and exercise such powers as the Administrator may prescribe. The Deputy Administrator shall act for, and exercise the powers of, the Administrator during the Administrator's absence or disability.

(c) **RESTRICTION ON OTHER BUSINESS OR EMPLOYMENT.**—The Administrator and the Deputy Administrator shall not engage in any other business, vocation, or employment while serving as such.

§ 20112. Functions of the Administration

(a) **PLANNING, DIRECTING, AND CONDUCTING AERONAUTICAL AND SPACE ACTIVITIES.**—The Administration, in order to carry out the purpose of this chapter, shall—

(1) plan, direct, and conduct aeronautical and space activities;

(2) arrange for participation by the scientific community in planning scientific measurements and observations to be made through use of aeronautical and space vehicles, and conduct or arrange for the conduct of such measurements and observations;

(3) provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof;

(4) seek and encourage, to the maximum extent possible, the fullest commercial use of space; and

(5) encourage and provide for Federal Government use of commercially provided space services and hardware, consistent with the requirements of the Federal Government.

(b) **RESEARCH AND DEVELOPMENT IN CERTAIN TECHNOLOGIES.**—

(1) **GROUND PROPULSION TECHNOLOGIES.**—The Administration shall, to the extent of appropriated funds, initiate, support, and carry out such research, development, demonstration, and other related activities in ground propulsion technologies as are provided for in sections 4 to 10 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2503 to 2509).

(2) **SOLAR HEATING AND COOLING TECHNOLOGIES.**—The Administration shall initiate, support, and carry out such research, development, demonstrations, and other related activities in solar heating and cooling technologies (to the extent that funds are appropriated therefor) as are provided for in sections 5, 6, and 9 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5503, 5504, 5507).

§ 20113. Powers of the Administration in performance of functions

(a) **RULES AND REGULATIONS.**—In the performance of its functions, the Administration is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

(b) **OFFICERS AND EMPLOYEES.**—In the performance of its functions, the Administration is authorized to appoint and fix the compensation of officers and employees as may be necessary to carry out such functions. The officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, except that—

(1) to the extent the Administrator deems such action necessary to the discharge of the Administrator's responsibilities, the Administrator may appoint not more than 425 of the scientific, engineering, and administrative personnel of the Administration without regard to such laws, and may fix the compensation of such personnel not in excess of the rate of basic pay payable for level III of the Executive Schedule; and

(2) to the extent the Administrator deems such action necessary to recruit specially qualified scientific and engineering talent, the Administrator may establish the entrance grade for scientific and engineering personnel without previous service in the Federal Government at a level up to 2 grades higher than the grade provided for such personnel under the General Schedule, and fix their compensation accordingly.

(c) PROPERTY.—In the performance of its functions, the Administration is authorized—

(1) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, aeronautical and space vehicles, quarters and related accommodations for employees and dependents of employees of the Administration, and such other real and personal property (including patents), or any interest therein, as the Administration deems necessary within and outside the continental United States;

(2) to acquire by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia for the use of the Administration for a period not to exceed 10 years without regard to section 8141 of title 40;

(3) to lease to others such real and personal property;

(4) to sell and otherwise dispose of real and personal property (including patents and rights thereunder) in accordance with the provisions of chapters 1 to 11 of title 40 and in accordance with title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.); and

(5) to provide by contract or otherwise for cafeterias and other necessary facilities for the welfare of employees of the Administration at its installations and purchase and maintain equipment therefor.

(d) GIFTS.—In the performance of its functions, the Administration is authorized to accept unconditional gifts or donations of services, money, or property, real, personal, or mixed, tangible or intangible.

(e) CONTRACTS, LEASES, AND AGREEMENTS.—In the performance of its functions, the Administration is authorized, without regard to subsections (a) and (b) of section 3324 of title 31, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its work and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution. To the maximum extent practicable and consistent with the accomplishment of the purpose of this chapter, such contracts, leases, agreements, and other transactions shall be allocated by the Administrator in a manner which will enable small-business

concerns to participate equitably and proportionately in the conduct of the work of the Administration.

(f) COOPERATION WITH FEDERAL AGENCIES AND OTHERS.—In the performance of its functions, the Administration is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, and facilities. Each department and agency of the Federal Government shall cooperate fully with the Administration in making its services, equipment, personnel, and facilities available to the Administration, and any such department or agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, aeronautical and space vehicles, and supplies and equipment other than administrative supplies or equipment.

(g) ADVISORY COMMITTEES.—In the performance of its functions, the Administration is authorized to appoint such advisory committees as may be appropriate for purposes of consultation and advice to the Administration.

(h) OFFICES AND PROCEDURES.—In the performance of its functions, the Administration is authorized to establish within the Administration such offices and procedures as may be appropriate to provide for the greatest possible coordination of its activities under this chapter with related scientific and other activities being carried on by other public and private agencies and organizations.

(i) TEMPORARY OR INTERMITTENT SERVICES OF EXPERTS OR CONSULTANTS.—In the performance of its functions, the Administration is authorized to obtain services as provided by section 3109 of title 5, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under section 5376 of title 5.

(j) ALIENS.—In the performance of its functions, the Administration is authorized, when determined by the Administrator to be necessary, and subject to such security investigations as the Administrator may determine to be appropriate, to employ aliens without regard to statutory provisions prohibiting payment of compensation to aliens.

(k) CONCESSIONS FOR VISITORS' FACILITIES.—

(1) IN GENERAL.—In the performance of its functions, the Administration is authorized to provide by concession, without regard to section 1302 of title 40, on such terms as the Administrator may deem to be appropriate and necessary to protect the concessioner against loss of the concessioner's investment in property (but not anticipated profits) resulting from the Administration's discretionary acts and decisions, for the construction, maintenance, and operation of all manner of facilities and equipment for visitors to the several installations of the Administration and, in connection therewith, to provide services incident to the dissemination of information concerning its activities to such visitors, without charge or with a reasonable charge therefor (with this authority being in addition to any other authority that the Administration may have to provide facilities, equipment, and services for visitors to its installations).

(2) **PUBLIC NOTICE AND DUE CONSIDERATION OF PROPOSALS.**—A concession agreement under this subsection may be negotiated with any qualified proposer following due consideration of all proposals received after reasonable public notice of the intention to contract.

(3) **REASONABLE OPPORTUNITY FOR PROFIT.**—The concessioner shall be afforded a reasonable opportunity to make a profit commensurate with the capital invested and the obligations assumed. The consideration paid by the concessioner for the concession shall be based on the probable value of the opportunity and not on maximizing revenue to the United States.

(4) **RECORDS AND ACCESS TO RECORDS.**—Each concession agreement shall specify the manner in which the concessioner's records are to be maintained, and shall provide for access to the records by the Administration and the Comptroller General of the United States for a period of 5 years after the close of the business year to which the records relate.

(5) **POSSESSORY INTERESTS.**—A concessioner may be accorded a possessory interest, consisting of all incidents of ownership except legal title (which shall vest in the United States), in any structure, fixture, or improvement the concessioner constructs or locates upon land owned by the United States. With the approval of the Administration, such possessory interest may be assigned, transferred, encumbered, or relinquished by the concessioner, and, unless otherwise provided by contract, shall not be extinguished by the expiration or other termination of the concession and may not be taken for public use without just compensation.

(l) **DETAILING MEMBERS OF ARMED SERVICES.**—In the performance of its functions, the Administration is authorized, with the approval of the President, to enter into cooperative agreements under which members of the Army, Navy, Air Force, and Marine Corps may be detailed by the appropriate Secretary for services in the performance of functions under this chapter to the same extent as that to which they might be lawfully assigned in the Department of Defense.

(m) **CLAIMS AGAINST THE UNITED STATES.**—In the performance of its functions, the Administration is authorized—

(1) to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for \$25,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of the Administration's functions as specified in section 20112(a) of this title, where such claim is presented to the Administration in writing within 2 years after the accident or incident out of which the claim arises; and

(2) if the Administration considers that a claim in excess of \$25,000 is meritorious and would otherwise be covered by this subsection, to report the facts and circumstances to Congress for its consideration.

§ 20114. Administration and Department of Defense coordination

(a) **ADVISE AND CONSULT.**—The Administration and the Department of Defense, through the President, shall advise and consult with each other on all matters within their respective jurisdictions

related to aeronautical and space activities and shall keep each other fully and currently informed with respect to such activities.

(b) REFERRAL TO THE PRESIDENT.—If the Secretary of Defense concludes that any request, action, proposed action, or failure to act on the part of the Administrator is adverse to the responsibilities of the Department of Defense, or the Administrator concludes that any request, action, proposed action, or failure to act on the part of the Department of Defense is adverse to the responsibilities of the Administration, and the Administrator and the Secretary of Defense are unable to reach an agreement with respect to the matter, either the Administrator or the Secretary of Defense may refer the matter to the President for a decision (which shall be final).

§ 20115. International cooperation

The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this chapter, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

§ 20116. Reports to Congress

(a) PRESIDENTIAL REPORT.—The President shall transmit to Congress in May of each year a report, which shall include—

(1) a comprehensive description of the programmed activities and the accomplishments of all agencies of the United States in the field of aeronautics and space activities during the preceding fiscal year; and

(2) an evaluation of such activities and accomplishments in terms of the attainment of, or the failure to attain, the objectives described in section 20102(d) of this title.

(b) RECOMMENDATIONS FOR ADDITIONAL LEGISLATION.—Any report made under this section shall contain such recommendations for additional legislation as the Administrator or the President may consider necessary or desirable for the attainment of the objectives described in section 20102(d) of this title.

(c) CLASSIFIED INFORMATION.—No information that has been classified for reasons of national security shall be included in any report made under this section, unless the information has been declassified by, or pursuant to authorization given by, the President.

§ 20117. Disposal of excess land

Notwithstanding the provisions of this or any other law, the Administration may not report to a disposal agency as excess to the needs of the Administration any land having an estimated value in excess of \$50,000 that is owned by the United States and under the jurisdiction and control of the Administration, unless—

(1) a period of 30 days has passed after the receipt by the Speaker and the Committee on Science and Technology of the House of Representatives and the President and the Committee on Commerce, Science, and Transportation of the Senate of a report by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such action; or

(2) each such committee before the expiration of that period has transmitted to the Administrator written notice to the effect that the committee has no objection to the proposed action.

SUBCHAPTER III—GENERAL ADMINISTRATIVE PROVISIONS

§ 20131. Public access to information

(a) PUBLIC INSPECTION.—Information obtained or developed by the Administrator in the performance of the Administrator's functions under this chapter shall be made available for public inspection, except information—

- (1) authorized or required by Federal statute to be withheld;
- (2) classified to protect the national security; or
- (3) described in subsection (b).

(b) SPECIAL HANDLING OF TRADE SECRET OR CONFIDENTIAL INFORMATION.—

(1) IN GENERAL.—The Administrator, for a period of up to 5 years after the development of information described in paragraph (2), may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(2) INFORMATION DESCRIBED.—Information referred to in paragraph (1) is information that results from activities conducted under an agreement entered into under subsections (e) and (f) of section 20113 of this title, and that would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of section 552(b)(4) of title 5 if the information had been obtained from a non-Federal party participating in such an agreement.

(c) COMMITTEES OF CONGRESS.—Nothing in this chapter authorizes the withholding of information by the Administrator from the duly authorized committees of Congress.

§ 20132. Security requirements

The Administrator shall establish such security requirements, restrictions, and safeguards as the Administrator deems necessary in the interest of the national security. The Administrator may arrange with the Director of the Office of Personnel Management for the conduct of such security or other personnel investigations of the Administration's officers, employees, and consultants, and its contractors and subcontractors and their officers and employees, actual or prospective, as the Administrator deems appropriate. If any such investigation develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the matter shall be referred to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Administrator.

§ 20133. Permission to carry firearms

As the Administrator deems necessary in the public interest, the Administrator may—

- (1) direct officers and employees of the Administration to carry firearms while in the conduct of their official duties; and
- (2) authorize employees of contractors and subcontractors of the Administration who are engaged in the protection of

property owned by the United States, and located at facilities owned by or contracted to the United States, to carry firearms while in the conduct of their official duties.

§ 20134. Arrest authority

Under regulations prescribed by the Administrator and approved by the Attorney General, employees of the Administration and of its contractors and subcontractors authorized to carry firearms under section 20133 of this title may arrest without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. Persons granted authority to make arrests by this section may exercise that authority only while guarding and protecting property owned or leased by, or under the control of, the United States under the administration and control of the Administration or one of its contractors or subcontractors, at facilities owned by or contracted to the Administration.

§ 20135. Property rights in inventions

(a) DEFINITIONS.—In this section:

(1) CONTRACT.—The term “contract” means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(2) MADE.—The term “made”, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(3) PERSON.—The term “person” means any individual, partnership, corporation, association, institution, or other entity.

(b) EXCLUSIVE PROPERTY OF UNITED STATES.—

(1) IN GENERAL.—An invention shall be the exclusive property of the United States if it is made in the performance of any work under any contract of the Administration, and the Administrator determines that—

(A) the person who made the invention was employed or assigned to perform research, development, or exploration work and the invention is related to the work the person was employed or assigned to perform, or was within the scope of the person’s employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(B) the person who made the invention was not employed or assigned to perform research, development, or exploration work, but the invention is nevertheless related to the contract, or to the work or duties the person was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in subparagraph (A).

(2) PATENT TO UNITED STATES.—If an invention is the exclusive property of the United States under paragraph (1), and if such invention is patentable, a patent therefor shall be issued

to the United States upon application made by the Administrator, unless the Administrator waives all or any part of the rights of the United States to such invention in conformity with the provisions of subsection (g).

(c) CONTRACT PROVISIONS FOR FURNISHING REPORTS OF INVENTIONS, DISCOVERIES, IMPROVEMENTS, OR INNOVATIONS.—Each contract entered into by the Administrator with any party for the performance of any work shall contain effective provisions under which the party shall furnish promptly to the Administrator a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the performance of any such work.

(d) PATENT APPLICATION.—No patent may be issued to any applicant other than the Administrator for any invention which appears to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (hereafter in this section referred to as the “Director”) to have significant utility in the conduct of aeronautical and space activities unless the applicant files with the Director, with the application or within 30 days after request therefor by the Director, a written statement executed under oath setting forth the full facts concerning the circumstances under which the invention was made and stating the relationship (if any) of the invention to the performance of any work under any contract of the Administration. Copies of each such statement and the application to which it relates shall be transmitted forthwith by the Director to the Administrator.

(e) ISSUANCE OF PATENT TO APPLICANT.—Upon any application as to which any such statement has been transmitted to the Administrator, the Director may, if the invention is patentable, issue a patent to the applicant unless the Administrator, within 90 days after receipt of the application and statement, requests that the patent be issued to the Administrator on behalf of the United States. If, within such time, the Administrator files such a request with the Director, the Director shall transmit notice thereof to the applicant, and shall issue such patent to the Administrator unless the applicant within 30 days after receipt of the notice requests a hearing before the Board of Patent Appeals and Interferences on the question whether the Administrator is entitled under this section to receive the patent. The Board may hear and determine, in accordance with rules and procedures established for interference cases, the question so presented, and its determination shall be subject to appeal by the applicant or by the Administrator to the United States Court of Appeals for the Federal Circuit in accordance with procedures governing appeals from decisions of the Board of Patent Appeals and Interferences in other proceedings.

(f) SUBSEQUENT TRANSFER OF PATENT IN CASE OF FALSE REPRESENTATIONS.—Whenever a patent has been issued to an applicant in conformity with subsection (e), and the Administrator thereafter has reason to believe that the statement filed by the applicant in connection with the patent contained a false representation of a material fact, the Administrator, within 5 years after the date of issuance of the patent, may file with the Director a request for the transfer to the Administrator of title to the patent on the records of the Director. Notice of any such request shall be transmitted by the Director to the owner of record of the patent,

and title to the patent shall be so transferred to the Administrator unless, within 30 days after receipt of notice, the owner of record requests a hearing before the Board of Patent Appeals and Interferences on the question whether any such false representation was contained in the statement filed in connection with the patent. The question shall be heard and determined, and the determination shall be subject to review, in the manner prescribed by subsection (e) for questions arising thereunder. A request made by the Administrator under this subsection for the transfer of title to a patent, and prosecution for the violation of any criminal statute, shall not be barred by the failure of the Administrator to make a request under subsection (e) for the issuance of the patent to the Administrator, or by any notice previously given by the Administrator stating that the Administrator had no objection to the issuance of the patent to the applicant.

(g) **WAIVER OF RIGHTS TO INVENTIONS.**—Under such regulations in conformity with this subsection as the Administrator shall prescribe, the Administrator may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the performance of any work required by any contract of the Administration if the Administrator determines that the interests of the United States will be served thereby. Any such waiver may be made upon such terms and under such conditions as the Administrator shall determine to be required for the protection of the interests of the United States. Each such waiver made with respect to any invention shall be subject to the reservation by the Administrator of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States. Each proposal for any waiver under this subsection shall be referred to an Inventions and Contributions Board which shall be established by the Administrator within the Administration. Such Board shall accord to each interested party an opportunity for hearing, and shall transmit to the Administrator its findings of fact with respect to such proposal and its recommendations for action to be taken with respect thereto.

(h) **PROTECTION OF TITLE.**—The Administrator is authorized to take all suitable and necessary steps to protect any invention or discovery to which the Administrator has title, and to require contractors or persons who retain title to inventions or discoveries under this section to protect the inventions or discoveries to which the Administration has or may acquire a license of use.

(i) **ADMINISTRATION AS DEFENSE AGENCY.**—The Administration shall be considered a defense agency of the United States for the purpose of chapter 17 of title 35.

(j) **OBJECTS INTENDED FOR LAUNCH, LAUNCHED, OR ASSEMBLED IN OUTER SPACE.**—Any object intended for launch, launched, or assembled in outer space shall be considered a vehicle for the purpose of section 272 of title 35.

(k) **USE OR MANUFACTURE OF PATENTED INVENTIONS INCORPORATED IN SPACE VEHICLES LAUNCHED FOR PERSONS OTHER THAN UNITED STATES.**—The use or manufacture of any patented invention incorporated in a space vehicle launched by the United States Government for a person other than the United States shall not be considered to be a use or manufacture by or for the United

States within the meaning of section 1498(a) of title 28, unless the Administration gives an express authorization or consent for such use or manufacture.

§ 20136. Contributions awards

(a) APPLICATIONS.—Subject to the provisions of this section, the Administrator is authorized, on the Administrator's own initiative or on application of any person, to make a monetary award, in an amount and on terms the Administrator determines to be warranted, to any person (as defined by section 20135(a) of this title) for any scientific or technical contribution to the Administration which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities. Each application made for such an award shall be referred to the Inventions and Contributions Board established under section 20135 of this title. Such Board shall accord to each applicant an opportunity for hearing on the application, and shall transmit to the Administrator its recommendation as to the terms of the award, if any, to be made to the applicant for the contribution. In determining the terms and conditions of an award the Administrator shall take into account—

- (1) the value of the contribution to the United States;
- (2) the aggregate amount of any sums which have been expended by the applicant for the development of the contribution;
- (3) the amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of the contribution by the United States; and
- (4) any other factors the Administrator determines to be material.

(b) APPORTIONMENT OF AWARDS.—If more than one applicant under subsection (a) claims an interest in the same contribution, the Administrator shall ascertain and determine the respective interests of the applicants, and shall apportion any award to be made among the applicants in amounts the Administrator determines to be equitable.

(c) SURRENDER OF OTHER CLAIMS.—No award may be made under subsection (a) unless the applicant surrenders, by means the Administrator determines to be effective, all claims that the applicant may have to receive any compensation (other than the award made under this section) for the use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to a treaty or agreement with the United States, within the United States or at any other place.

(d) REPORT AND WAITING PERIOD.—No award may be made under subsection (a) in an amount exceeding \$100,000 unless the Administrator transmits to the appropriate committees of Congress a full and complete report concerning the amount and terms of, and the basis for, the proposed award, and a period of 30 calendar days of regular session of Congress expires after receipt of the report by the committees.

§ 20137. Malpractice and negligence suits against United States

(a) **EXCLUSIVE REMEDY.**—The remedy against the United States provided by sections 1346(b) and 2672 of title 28, for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the Administration in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties or employment therein or therefor shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such person (or the estate of such person) whose act or omission gave rise to the action or proceeding.

(b) **ATTORNEY GENERAL TO DEFEND ANY CIVIL ACTION OR PROCEEDING FOR MALPRACTICE OR NEGLIGENCE.**—The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Administrator to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States Attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Administrator.

(c) **REMOVAL OF ACTIONS.**—Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, and all references thereto. Should a district court of the United States determine, on a hearing on a motion to remand held before a trial on the merits, that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) **COMPROMISE OR SETTLEMENT OF CLAIMS.**—The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) **APPLICABILITY OF OTHER PROVISIONS OF LAW.**—For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f) **LIABILITY INSURANCE FOR PERSONS ASSIGNED TO FOREIGN COUNTRIES OR NON-FEDERAL AGENCIES.**—The Administrator or the Administrator's designee may, to the extent that the Administrator

or the designee deems appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

§ 20138. Insurance and indemnification

(a) DEFINITIONS.—In this section:

(1) SPACE VEHICLE.—The term “space vehicle” means an object intended for launch, launched, or assembled in outer space, including the space shuttle and other components of a space transportation system, together with related equipment, devices, components, and parts.

(2) THIRD PARTY.—The term “third party” means any person who may institute a claim against a user for death, bodily injury, or loss of or damage to property.

(3) USER.—The term “user” includes anyone who enters into an agreement with the Administration for use of all or a portion of a space vehicle, who owns or provides property to be flown on a space vehicle, or who employs a person to be flown on a space vehicle.

(b) AUTHORIZATION.—The Administration is authorized on such terms and to the extent it may deem appropriate to provide liability insurance for any user of a space vehicle to compensate all or a portion of claims by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations, or recovery of the space vehicle. Appropriations available to the Administration may be used to acquire such insurance, but such appropriations shall be reimbursed to the maximum extent practicable by the users under reimbursement policies established pursuant to section 20113 of this title.

(c) INDEMNIFICATION.—Under such regulations in conformity with this section as the Administrator shall prescribe taking into account the availability, cost, and terms of liability insurance, any agreement between the Administration and a user of a space vehicle may provide that the United States will indemnify the user against claims (including reasonable expenses of litigation or settlement) by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations, or recovery of the space vehicle, but only to the extent that such claims are not compensated by liability insurance of the user. Such indemnification may be limited to claims resulting from other than the actual negligence or willful misconduct of the user.

(d) TERMS OF INDEMNIFICATION AGREEMENT.—An agreement made under subsection (c) that provides indemnification must also provide for—

(1) notice to the United States of any claim or suit against the user for the death, bodily injury, or loss of or damage to the property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(e) CERTIFICATION OF JUST AND REASONABLE AMOUNT.—No payment may be made under subsection (c) unless the Administrator or the Administrator's designee certifies that the amount is just and reasonable.

(f) PAYMENTS.—Upon the approval by the Administrator, payments under subsection (c) may be made, at the Administrator's election, either from funds available for research and development not otherwise obligated or from funds appropriated for such payments.

§ 20139. Insurance for experimental aerospace vehicles

(a) DEFINITIONS.—In this section:

(1) COOPERATING PARTY.—The term “cooperating party” means any person who enters into an agreement with the Administration for the performance of cooperative scientific, aeronautical, or space activities to carry out the purposes of this chapter.

(2) DEVELOPER.—The term “developer” means a United States person (other than a natural person) who—

(A) is a party to an agreement with the Administration for the purpose of developing new technology for an experimental aerospace vehicle;

(B) owns or provides property to be flown or situated on that vehicle; or

(C) employs a natural person to be flown on that vehicle.

(3) EXPERIMENTAL AEROSPACE VEHICLE.—The term “experimental aerospace vehicle” means an object intended to be flown in, or launched into, orbital or suborbital flight for the purpose of demonstrating technologies necessary for a reusable launch vehicle, developed under an agreement between the Administration and a developer.

(4) RELATED ENTITY.—The term “related entity” includes a contractor or subcontractor at any tier, a supplier, a grantee, and an investigator or detailee.

(b) IN GENERAL.—The Administrator may provide liability insurance for, or indemnification to, the developer of an experimental aerospace vehicle developed or used in execution of an agreement between the Administration and the developer.

(c) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as otherwise provided in this section, the insurance and indemnification provided by the Administration under subsection (b) to a developer shall be provided on the same terms and conditions as insurance and indemnification is provided by the Administration under section 20138 of this title to the user of a space vehicle.

(2) INSURANCE.—

(A) IN GENERAL.—A developer shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(i) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with the development or use of an experimental aerospace vehicle; and

(ii) the United States Government for damage or loss to Government property resulting from such an activity.

(B) MAXIMUM REQUIRED.—The Administrator shall determine the amount of insurance required, but, except as provided in subparagraph (C), that amount shall not be greater than the amount required under section 50914(a)(3) of this title for a launch. The Administrator shall publish notice of the Administrator's determination and the applicable amount or amounts in the Federal Register within 10 days after making the determination.

(C) INCREASE IN DOLLAR AMOUNTS.—The Administrator may increase the dollar amounts set forth in section 50914(a)(3)(A) of this title for the purpose of applying that section under this section to a developer after consultation with the Comptroller General and such experts and consultants as may be appropriate, and after publishing notice of the increase in the Federal Register not less than 180 days before the increase goes into effect. The Administrator shall make available for public inspection, not later than the date of publication of such notice, a complete record of any correspondence received by the Administration, and a transcript of any meetings in which the Administration participated, regarding the proposed increase.

(D) SAFETY REVIEW REQUIRED BEFORE ADMINISTRATOR PROVIDES INSURANCE.—The Administrator may not provide liability insurance or indemnification under subsection (b) unless the developer establishes to the satisfaction of the Administrator that appropriate safety procedures and practices are being followed in the development of the experimental aerospace vehicle.

(3) NO INDEMNIFICATION WITHOUT CROSS-WAIVER.—Notwithstanding subsection (b), the Administrator may not indemnify a developer of an experimental aerospace vehicle under this section unless there is an agreement between the Administration and the developer described in subsection (d).

(4) APPLICATION OF CERTAIN PROCEDURES.—If the Administrator requests additional appropriations to make payments under this section, like the payments that may be made under section 20138(c) of this title, then the request for those appropriations shall be made in accordance with the procedures established by subsections (d) and (e) of section 50915 of this title.

(d) CROSS-WAIVERS.—

(1) ADMINISTRATOR AUTHORIZED TO WAIVE.—The Administrator, on behalf of the United States, and its departments, agencies, and instrumentalities, may reciprocally waive claims with a developer or cooperating party and with the related entities of that developer or cooperating party under which each party to the waiver agrees to be responsible, and agrees to ensure that its own related entities are responsible, for damage or loss to its property for which it is responsible, or for losses resulting from any injury or death sustained by its own employees or agents, as a result of activities connected to the agreement or use of the experimental aerospace vehicle.

(2) LIMITATIONS.—

(A) CLAIMS.—A reciprocal waiver under paragraph (1) may not preclude a claim by any natural person (including, but not limited to, a natural person who is an employee of the United States, the developer, the cooperating party, or their respective subcontractors) or that natural person's estate, survivors, or subrogees for injury or death, except with respect to a subrogee that is a party to the waiver or has otherwise agreed to be bound by the terms of the waiver.

(B) LIABILITY FOR NEGLIGENCE.—A reciprocal waiver under paragraph (1) may not absolve any party of liability to any natural person (including, but not limited to, a natural person who is an employee of the United States, the developer, the cooperating party, or their respective subcontractors) or such a natural person's estate, survivors, or subrogees for negligence, except with respect to a subrogee that is a party to the waiver or has otherwise agreed to be bound by the terms of the waiver.

(C) INDEMNIFICATION FOR DAMAGES.—A reciprocal waiver under paragraph (1) may not be used as the basis of a claim by the Administration, or the developer or cooperating party, for indemnification against the other for damages paid to a natural person, or that natural person's estate, survivors, or subrogees, for injury or death sustained by that natural person as a result of activities connected to the agreement or use of the experimental aerospace vehicle.

(D) WILLFUL MISCONDUCT.—A reciprocal waiver under paragraph (1) may not relieve the United States, the developer, the cooperating party, or the related entities of the developer or cooperating party, of liability for damage or loss resulting from willful misconduct.

(3) EFFECT ON PREVIOUS WAIVERS.—This subsection applies to any waiver of claims entered into by the Administration without regard to the date on which the Administration entered into the waiver.

(e) RELATIONSHIP TO OTHER LAWS.—

(1) SECTION 20138.—This section does not apply to any object, transaction, or operation to which section 20138 of this title applies.

(2) SECTION 50919(g)(1).—The Administrator may not provide indemnification to a developer under this section for launches subject to license under section 50919(g)(1) of this title.

(f) TERMINATION.—

(1) IN GENERAL.—The provisions of this section shall terminate on December 31, 2010.

(2) EFFECT OF TERMINATION ON AGREEMENT.—The termination of this section shall not terminate or otherwise affect any cross-waiver agreement, insurance agreement, indemnification agreement, or other agreement entered into under this section, except as may be provided in that agreement.

§ 20140. Appropriations

(a) AUTHORIZATION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this chapter,

except that nothing in this chapter shall authorize the appropriation of any amount for—

(A) the acquisition or condemnation of any real property; or

(B) any other item of a capital nature (such as plant or facility acquisition, construction, or expansion) which exceeds \$250,000.

(2) AVAILABILITY.—Sums appropriated pursuant to this subsection for the construction of facilities, or for research and development activities, shall remain available until expended.

(b) USE OF FUNDS FOR EMERGENCY REPAIRS OF EXISTING FACILITIES.—Any funds appropriated for the construction of facilities may be used for emergency repairs of existing facilities when such existing facilities are made inoperative by major breakdown, accident, or other circumstances and such repairs are deemed by the Administrator to be of greater urgency than the construction of new facilities.

(c) TERMINATION.—Notwithstanding any other provision of law, the authorization of any appropriation to the Administration shall expire (unless an earlier expiration is specifically provided) at the close of the third fiscal year following the fiscal year in which the authorization was enacted, to the extent that such appropriation has not theretofore actually been made.

§ 20141. Misuse of agency name and initials

(a) IN GENERAL.—No person (as defined by section 20135(a) of this title) may knowingly use the words “National Aeronautics and Space Administration” or the letters “NASA”, or any combination, variation, or colorable imitation of those words or letters either alone or in combination with other words or letters—

(1) as a firm or business name in a manner reasonably calculated to convey the impression that the firm or business has some connection with, endorsement of, or authorization from, the Administration which does not, in fact, exist; or

(2) in connection with any product or service being offered or made available to the public in a manner reasonably calculated to convey the impression that the product or service has the authorization, support, sponsorship, or endorsement of, or the development, use, or manufacture by or on behalf of the Administration which does not, in fact, exist.

(b) CIVIL PROCEEDING TO ENJOIN.—Whenever it appears to the Attorney General that any person is engaged in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice.

§ 20142. Contracts regarding expendable launch vehicles

(a) COMMITMENTS BEYOND AVAILABLE APPROPRIATIONS.—The Administrator may enter into contracts for expendable launch vehicle services that are for periods in excess of the period for which funds are otherwise available for obligation, provide for the payment for contingent liability which may accrue in excess of available appropriations in the event the Federal Government for its convenience terminates such contracts, and provide for advance payments reasonably related to launch vehicle and related equipment, fabrication, and acquisition costs, if any such contract limits the amount of the payments that the Government is allowed to

make under such contract to amounts provided in advance in appropriation Acts. Such contracts may be limited to sources within the United States when the Administrator determines that such limitation is in the public interest.

(b) **TERMINATION IF FUNDS NOT AVAILABLE.**—If funds are not available to continue any such contract, the contract shall be terminated for the convenience of the Government, and the costs of such contract shall be paid from appropriations originally available for performance of the contract, from other unobligated appropriations currently available for the procurement of launch services, or from funds appropriated for such payments.

§ 20143. Full cost appropriations account structure

(a) **ACCOUNTS FOR APPROPRIATIONS.**—

(1) **DESIGNATION OF 3 ACCOUNTS.**—Appropriations for the Administration shall be made in 3 accounts, “Science, Aeronautics, and Education”, “Exploration Systems and Space Operations”, and an account for amounts appropriated for the necessary expenses of the Office of the Inspector General.

(2) **REPROGRAMMING.**—Within the Exploration Systems and Space Operations account, no more than 10 percent of the funds for a fiscal year for Exploration Systems may be reprogrammed for Space Operations, and no more than 10 percent of the funds for a fiscal year for Space Operations may be reprogrammed for Exploration Systems. This paragraph shall not apply to reprogramming for the purposes described in subsection (b)(2).

(3) **AVAILABILITY.**—Appropriations shall remain available for 2 fiscal years, unless otherwise specified in law. Each account shall include the planned full costs of Administration activities.

(b) **TRANSFERS AMONG ACCOUNTS.**—

(1) **IN GENERAL.**—To ensure the safe, timely, and successful accomplishment of Administration missions, the Administration may transfer among accounts as necessary, amounts for—

- (A) Federal salaries and benefits;
- (B) training, travel, and awards;
- (C) facility and related costs;
- (D) information technology services;
- (E) publishing services;
- (F) science, engineering, fabricating, and testing services;

and

- (G) other administrative services.

(2) **DISASTER, ACT OF TERRORISM, EMERGENCY RESCUE.**—The Administration may also transfer amounts among accounts for the immediate costs of recovering from damage caused by a major disaster (as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) or by an act of terrorism, or for the immediate costs associated with an emergency rescue of astronauts.

(c) **TRANSFER OF UNEXPIRED BALANCES.**—The unexpired balances of prior appropriations to the Administration for activities authorized under this chapter may be transferred to the new account established for such activity in subsection (a). Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.

§ 20144. Prize authority

(a) **IN GENERAL.**—The Administration may carry out a program to competitively award cash prizes to stimulate innovation in basic and applied research, technology development, and prototype demonstration that have the potential for application to the performance of the space and aeronautical activities of the Administration. The Administration may carry out a program to award prizes only in conformity with this section.

(b) **TOPICS.**—In selecting topics for prize competitions, the Administrator shall consult widely both within and outside the Federal Government, and may empanel advisory committees. The Administrator shall give consideration to prize goals such as the demonstration of the ability to provide energy to the lunar surface from space-based solar power systems, demonstration of innovative near-Earth object survey and deflection strategies, and innovative approaches to improving the safety and efficiency of aviation systems.

(c) **ADVERTISING.**—The Administrator shall widely advertise prize competitions to encourage participation.

(d) **REQUIREMENTS AND REGISTRATION.**—For each prize competition, the Administrator shall publish a notice in the Federal Register announcing the subject of the competition, the rules for being eligible to participate in the competition, the amount of the prize, and the basis on which a winner will be selected.

(e) **ELIGIBILITY.**—To be eligible to win a prize under this section, an individual or entity—

(1) shall have registered to participate in the competition pursuant to any rules promulgated by the Administrator under subsection (d);

(2) shall have complied with all the requirements under this section;

(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) shall not be a Federal entity or Federal employee acting within the scope of their employment.

(f) **LIABILITY.**—

(1) **ASSUMPTION OF RISK.**—Registered participants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether such injury, death, damage, or loss arises through negligence or otherwise. For the purposes of this paragraph, the term “related entity” means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(2) **LIABILITY INSURANCE.**—Participants must obtain liability insurance or demonstrate financial responsibility, in amounts determined by the Administrator, for claims by—

(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under

the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(B) the Federal Government for damage or loss to Government property resulting from such an activity.

(g) JUDGES.—For each competition, the Administration, either directly or through an agreement under subsection (h), shall assemble a panel of qualified judges to select the winner or winners of the prize competition on the basis described pursuant to subsection (d). Judges for each competition shall include individuals from outside the Administration, including from the private sector. A judge may not—

(1) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or

(2) have a familial or financial relationship with an individual who is a registered participant.

(h) ADMINISTERING THE COMPETITION.—The Administrator may enter into an agreement with a private, nonprofit entity to administer the prize competition, subject to the provisions of this section.

(i) FUNDING.—

(1) SOURCES.—Prizes under this section may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The Administrator may accept funds from other Federal agencies for such cash prizes. The Administrator may not give any special consideration to any private sector entity in return for a donation.

(2) AVAILABILITY.—

(A) DEFINITION OF PROVISIONS KNOWN AS THE ANTI-DEFICIENCY ACT.—In this paragraph, the term “provisions known as the Anti-Deficiency Act” means sections 1341, 1342, 1349(a), 1350, 1351, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, and 1519 of title 31.

(B) IN GENERAL.—Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended, and may be transferred, reprogrammed, or expended for other purposes only after the expiration of 10 fiscal years after the fiscal year for which the funds were originally appropriated. No provision in this section permits obligation or payment of funds in violation of the provisions known as the Anti-Deficiency Act.

(3) APPROPRIATION OR COMMITMENT OF FUNDS REQUIRED BEFORE ANNOUNCEMENT OF PRIZE OR INCREASE.—

(A) IN GENERAL.—No prize may be announced under subsection (d) until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source.

(B) INCREASE.—The Administrator may increase the amount of a prize after an initial announcement is made under subsection (d) if—

(i) notice of the increase is provided in the same manner as the initial notice of the prize; and

(ii) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.

(4) NOTICE TO COMMITTEES FOR PRIZE GREATER THAN \$50,000,000.—No prize competition under this section may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(5) APPROVAL OF ADMINISTRATOR FOR PRIZE GREATER THAN \$1,000,000.—No prize competition under this section may result in the award of more than \$1,000,000 in cash prizes without the approval of the Administrator.

(j) USE OF ADMINISTRATION NAME OR INSIGNIA.—A registered participant in a competition under this section may use the Administration's name, initials, or insignia only after prior review and written approval by the Administration.

(k) COMPLIANCE WITH EXISTING LAW.—The Federal Government shall not, by virtue of offering or providing a prize under this section, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and non-proliferation laws, and related regulations.

§ 20145. Lease of non-excess property

(a) IN GENERAL.—The Administrator may enter into a lease under this section with any person or entity (including another department or agency of the Federal Government or an entity of a State or local government) with regard to any non-excess real property and related personal property under the jurisdiction of the Administrator.

(b) CASH CONSIDERATION.—

(1) FAIR MARKET VALUE.—A person or entity entering into a lease under this section shall provide cash consideration for the lease at fair market value as determined by the Administrator.

(2) UTILIZATION.—

(A) IN GENERAL.—The Administrator may utilize amounts of cash consideration received under this subsection for a lease entered into under this section to cover the full costs to the Administration in connection with the lease. These funds shall remain available until expended.

(B) CAPITAL REVITALIZATION AND IMPROVEMENTS.—Of any amounts of cash consideration received under this subsection that are not utilized in accordance with subparagraph (A)—

(i) 35 percent shall be deposited in a capital asset account to be established by the Administrator, shall be available for maintenance, capital revitalization, and improvements of the real property assets and related personal property under the jurisdiction of the Administrator, and shall remain available until expended; and

(ii) the remaining 65 percent shall be available to the respective center or facility of the Administration engaged in the lease of nonexcess real property, and shall remain available until expended for maintenance, capital revitalization, and improvements of the real property assets and related personal property at the

respective center or facility subject to the concurrence of the Administrator.

(C) NO UTILIZATION FOR DAILY OPERATING COSTS.—Amounts utilized under subparagraph (B) may not be utilized for daily operating costs.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may require such terms and conditions in connection with a lease under this section as the Administrator considers appropriate to protect the interests of the United States.

(d) RELATIONSHIP TO OTHER LEASE AUTHORITY.—The authority under this section to lease property of the Administration is in addition to any other authority to lease property of the Administration under law.

(e) LEASE RESTRICTIONS.—

(1) NO LEASE BACK OR OTHER CONTRACT.—The Administration is not authorized to lease back property under this section during the term of the out-lease or enter into other contracts with the lessee respecting the property.

(2) CERTIFICATION THAT OUT-LEASE WILL NOT HAVE NEGATIVE IMPACT ON MISSION.—The Administration is not authorized to enter into an out-lease under this section unless the Administrator certifies that the out-lease will not have a negative impact on the mission of the Administration.

(f) REPORTING REQUIREMENTS.—The Administrator shall submit an annual report by January 31st of each year. The report shall include the following:

(1) VALUE OF ARRANGEMENTS AND EXPENDITURES OF REVENUES.—Information that identifies and quantifies the value of the arrangements and expenditures of revenues received under this section.

(2) AVAILABILITY AND USE OF FUNDS FOR OPERATING PLAN.—The availability and use of funds received under this section for the Administration's operating plan.

(g) SUNSET.—The authority to enter into leases under this section shall expire 10 years after December 26, 2007. The expiration under this subsection of authority to enter into leases under this section shall not affect the validity or term of leases or the Administration's retention of proceeds from leases entered into under this section before the expiration of the authority.

§ 20146. Retrocession of jurisdiction

(a) DEFINITION OF STATE.—In this section, the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(b) RELINQUISHING LEGISLATIVE JURISDICTION.—Notwithstanding any other provision of law, the Administrator may relinquish to a State all or part of the legislative jurisdiction of the United States over lands or interests under the control of the Administrator in that State.

§ 20147. Recovery and disposition authority

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATION HUMAN SPACE FLIGHT VEHICLE.—The term “Administration human space flight vehicle” means a space vehicle, as defined in section 20138(a) of this title, that—

- (A) is intended to transport one or more persons;
- (B) is designed to operate in outer space; and
- (C) is either—

- (i) owned by the Administration; or
- (ii) owned by an Administration contractor or cooperating party and operated as part of an Administration mission or a joint mission with the Administration.

(2) CREWMEMBER.—The term “crewmember” means an astronaut or other person assigned to an Administration human space flight vehicle.

(b) CONTROL OF REMAINS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), when there is an accident or mishap resulting in the death of a crewmember of an Administration human space flight vehicle, the Administrator may take control over the remains of the crewmember and order autopsies and other scientific or medical tests.

(2) TREATMENT.—Each crewmember shall provide the Administrator with the crewmember’s preferences regarding the treatment accorded to the crewmember’s remains and the Administrator shall, to the extent possible, respect those stated preferences.

(3) CONSTRUCTION.—This section shall not be construed to permit the Administrator to interfere with any Federal investigation of a mishap or accident.

SUBCHAPTER IV—UPPER ATMOSPHERE RESEARCH

§ 20161. Congressional declaration of purpose and policy

(a) PURPOSE.—The purpose of this subchapter is to authorize and direct the Administration to develop and carry out a comprehensive program of research, technology, and monitoring of the phenomena of the upper atmosphere so as to provide for an understanding of and to maintain the chemical and physical integrity of the Earth’s upper atmosphere.

(b) POLICY.—Congress declares that it is the policy of the United States to undertake an immediate and appropriate research, technology, and monitoring program that will provide for understanding the physics and chemistry of the Earth’s upper atmosphere.

§ 20162. Definition of upper atmosphere

In this subchapter, the term “upper atmosphere” means that portion of the Earth’s sensible atmosphere above the troposphere.

§ 20163. Program authorized

(a) IN GENERAL.—In order to carry out the purposes of this subchapter, the Administration, in cooperation with other Federal agencies, shall initiate and carry out a program of research, technology, monitoring, and other appropriate activities directed to understand the physics and chemistry of the upper atmosphere.

(b) ACTIVITIES.—In carrying out the provisions of this subchapter, the Administration shall—

- (1) arrange for participation by the scientific and engineering community, of both the Nation’s industrial organizations and institutions of higher education, in planning and carrying out appropriate research, in developing necessary technology, and in making necessary observations and measurements;

(2) provide, by way of grant, contract, scholarships, or other arrangements, to the maximum extent practicable and consistent with other laws, for the widest practicable and appropriate participation of the scientific and engineering community in the program authorized by this subchapter; and

(3) make all results of the program authorized by this subchapter available to the appropriate regulatory agencies and provide for the widest practicable dissemination of such results.

§ 20164. International cooperation

In carrying out the provisions of this subchapter, the Administration, subject to the direction of the President and after consultation with the Secretary of State, shall make every effort to enlist the support and cooperation of appropriate scientists and engineers of other countries and international organizations.

CHAPTER 203—RESPONSIBILITIES AND VISION

Sec.

20301. General responsibilities.

20302. Vision for space exploration.

20303. Contribution to innovation.

20304. Basic research enhancement.

20305. National Academies decadal surveys.

§ 20301. General responsibilities

(a) PROGRAMS.—The Administrator shall ensure that the Administration carries out a balanced set of programs that shall include, at a minimum, programs in—

(1) human space flight, in accordance with section 20302 of this title;

(2) aeronautics research and development; and

(3) scientific research, which shall include, at a minimum—

(A) robotic missions to study the Moon and other planets and their moons, and to deepen understanding of astronomy, astrophysics, and other areas of science that can be productively studied from space;

(B) Earth science research and research on the Sun-Earth connection through the development and operation of research satellites and other means;

(C) support of university research in space science, Earth science, and microgravity science; and

(D) research on microgravity, including research that is not directly related to human exploration.

(b) CONSULTATION AND COORDINATION.—In carrying out the programs of the Administration, the Administrator shall—

(1) consult and coordinate to the extent appropriate with other relevant Federal agencies, including through the National Science and Technology Council;

(2) work closely with the private sector, including by—

(A) encouraging the work of entrepreneurs who are seeking to develop new means to launch satellites, crew, or cargo;

(B) contracting with the private sector for crew and cargo services, including to the International Space Station, to the extent practicable;

(C) using commercially available products (including software) and services to the extent practicable to support all Administration activities; and

(D) encouraging commercial use and development of space to the greatest extent practicable; and

(3) involve other nations to the extent appropriate.

§ 20302. Vision for space exploration

(a) IN GENERAL.—The Administrator shall establish a program to develop a sustained human presence on the Moon, including a robust precursor program, to promote exploration, science, commerce, and United States preeminence in space, and as a stepping-stone to future exploration of Mars and other destinations. The Administrator is further authorized to develop and conduct appropriate international collaborations in pursuit of these goals.

(b) MILESTONES.—The Administrator shall manage human space flight programs to strive to achieve the following milestones (in conformity with section 70502 of this title):

(1) Returning Americans to the Moon no later than 2020.

(2) Launching the Crew Exploration Vehicle as close to 2010 as possible.

(3) Increasing knowledge of the impacts of long duration stays in space on the human body using the most appropriate facilities available, including the International Space Station.

(4) Enabling humans to land on and return from Mars and other destinations on a timetable that is technically and fiscally possible.

§ 20303. Contribution to innovation

(a) PARTICIPATION IN INTERAGENCY ACTIVITIES.—The Administration shall be a full participant in any interagency effort to promote innovation and economic competitiveness through near-term and long-term basic scientific research and development and the promotion of science, technology, engineering, and mathematics education, consistent with the Administration's mission, including authorized activities.

(b) HISTORIC FOUNDATION.—In order to carry out the participation described in subsection (a), the Administrator shall build on the historic role of the Administration in stimulating excellence in the advancement of physical science and engineering disciplines and in providing opportunities and incentives for the pursuit of academic studies in science, technology, engineering, and mathematics.

(c) BALANCED SCIENCE PROGRAM AND ROBUST AUTHORIZATION LEVELS.—The balanced science program authorized by section 101(d) of the National Aeronautics and Space Administration Authorization Act of 2005 (42 U.S.C. 16611(d)) shall be an element of the contribution by the Administration to the interagency programs.

(d) ANNUAL REPORT.—

(1) REQUIREMENT.—The Administrator shall submit to Congress and the President an annual report describing the activities conducted pursuant to this section, including a description of the goals and the objective metrics upon which funding decisions were made.

(2) CONTENT.—Each report submitted pursuant to paragraph (1) shall include, with regard to science, technology,

engineering, and mathematics education programs, at a minimum, the following:

- (A) A description of each program.
- (B) The amount spent on each program.
- (C) The number of students or teachers served by each program.

§ 20304. Basic research enhancement

(a) **DEFINITION OF BASIC RESEARCH.**—In this section, the term “basic research” has the meaning given the term in Office of Management and Budget Circular No. A–11.

(b) **COORDINATION.**—The Administrator, the Director of the National Science Foundation, the Secretary of Energy, the Secretary of Defense, and the Secretary of Commerce shall, to the extent practicable, coordinate basic research activities related to physical sciences, technology, engineering, and mathematics.

§ 20305. National Academies decadal surveys

(a) **IN GENERAL.**—The Administrator shall enter into agreements on a periodic basis with the National Academies for independent assessments, also known as decadal surveys, to take stock of the status and opportunities for Earth and space science discipline fields and Aeronautics research and to recommend priorities for research and programmatic areas over the next decade.

(b) **INDEPENDENT COST ESTIMATES.**—The agreements described in subsection (a) shall include independent estimates of the life cycle costs and technical readiness of missions assessed in the decadal surveys whenever possible.

(c) **REEXAMINATION.**—The Administrator shall request that each National Academies decadal survey committee identify any conditions or events, such as significant cost growth or scientific or technological advances, that would warrant the Administration asking the National Academies to reexamine the priorities that the decadal survey had established.

Subtitle III—Administrative Provisions

CHAPTER 301—APPROPRIATIONS, BUDGETS, AND ACCOUNTING

Sec.

30101. Prior authorization of appropriations required.

30102. Working capital fund.

30103. Budgets.

30104. Baselines and cost controls.

§ 30101. Prior authorization of appropriations required

Notwithstanding the provisions of any other law, no appropriation may be made to the Administration unless previously authorized by legislation enacted by Congress.

§ 30102. Working capital fund

(a) **ESTABLISHMENT.**—There is hereby established in the United States Treasury an Administration working capital fund.

(b) **AVAILABILITY OF AMOUNTS.**—

(1) IN GENERAL.—Amounts in the fund are available for financing activities, services, equipment, information, and facilities as authorized by law to be provided—

(A) within the Administration;

(B) to other agencies or instrumentalities of the United States;

(C) to any State, territory, or possession or political subdivision thereof;

(D) to other public or private agencies; or

(E) to any person, firm, association, corporation, or educational institution on a reimbursable basis.

(2) CAPITAL REPAIRS.—The fund shall also be available for the purpose of funding capital repairs, renovations, rehabilitation, sustainment, demolition, or replacement of Administration real property, on a reimbursable basis within the Administration.

(3) NO FISCAL YEAR LIMITATION.—Amounts in the fund are available without regard to fiscal year limitation.

(c) CONTENTS.—The capital of the fund consists of—

(1) amounts appropriated to the fund;

(2) the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Administrator transfers to the fund, less the related liabilities and unpaid obligations; and

(3) payments received for loss or damage to property of the fund.

(d) REIMBURSEMENT.—The fund shall be reimbursed, in advance, for supplies and services at rates that will approximate the expenses of operation, such as the accrual of annual leave, depreciation of plant, property, and equipment, and overhead.

§ 30103. Budgets

(a) CATEGORIES.—The proposed budget for the Administration submitted by the President for each fiscal year shall be accompanied by documents showing—

(1) by program—

(A) the budget for space operations, including the International Space Station and the space shuttle;

(B) the budget for exploration systems;

(C) the budget for aeronautics;

(D) the budget for space science;

(E) the budget for Earth science;

(F) the budget for microgravity science;

(G) the budget for education;

(H) the budget for safety oversight; and

(I) the budget for public relations;

(2) the budget for technology transfer programs;

(3) the budget for the Integrated Enterprise Management Program, by individual element;

(4) the budget for the Independent Technical Authority, both total and by center;

(5) the total budget for the prize program under section 20144 of this title, and the administrative budget for that program; and

(6) the comparable figures for at least the 2 previous fiscal years for each item in the proposed budget.

(b) **ADDITIONAL BUDGET INFORMATION UPON REQUEST BY COMMITTEES.**—The Administration shall make available, upon request from the Committee on Science and Technology of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate—

(1) information on corporate and center general and administrative costs and service pool costs, including—

(A) the total amount of funds being allocated for those purposes for any fiscal year for which the President has submitted an annual budget request to Congress;

(B) the amount of funds being allocated for those purposes for each center, for headquarters, and for each directorate; and

(C) the major activities included in each cost category; and

(2) the figures on the amount of unobligated funds and unexpended funds, by appropriations account—

(A) that remained at the end of the fiscal year prior to the fiscal year in which the budget is being presented that were carried over into the fiscal year in which the budget is being presented;

(B) that are estimated will remain at the end of the fiscal year in which the budget is being presented that are proposed to be carried over into the fiscal year for which the budget is being presented; and

(C) that are estimated will remain at the end of the fiscal year for which the budget is being presented.

(c) **INFORMATION IN ANNUAL BUDGET JUSTIFICATION.**—The Administration shall provide, at a minimum, the following information in its annual budget justification:

(1) The actual, current, proposed funding level, and estimated budgets for the next 5 fiscal years by directorate, theme, program, project and activity within each appropriations account.

(2) The proposed programmatic and non-programmatic construction of facilities.

(3) The budget for headquarters including—

(A) the budget by office, and any division thereof, for the actual, current, proposed funding level, and estimated budgets for the next 5 fiscal years;

(B) the travel budget for each office, and any division thereof, for the actual, current, and proposed funding level; and

(C) the civil service full time equivalent assignments per headquarters office, and any division thereof, including the number of Senior Executive Service, noncareer, detailee, and contract personnel per office.

(4) Within 14 days of the submission of the budget to Congress an accompanying volume shall be provided to the Committees on Appropriations containing the following information for each center, facility managed by any center, and federally funded research and development center operated on behalf of the Administration:

(A) The actual, current, proposed funding level, and estimated budgets for the next 5 fiscal years by directorate, theme, program, project, and activity.

(B) The proposed programmatic and non-programmatic construction of facilities.

(C) The number of civil service full time equivalent positions per center for each identified fiscal year.

(D) The number of civil service full time equivalent positions considered to be uncovered capacity at each location for each identified fiscal year.

(5) The proposed budget as designated by object class for each directorate, theme, and program.

(6) Sufficient narrative shall be provided to explain the request for each program, project, and activity, and an explanation for any deviation to previously adopted baselines for all justification materials provided to the Committees.

(d) ESTIMATE OF GROSS RECEIPTS AND PROPOSED USE OF FUNDS RELATED TO LEASE OF PROPERTY.—Each annual budget request shall include an annual estimate of gross receipts and collections and proposed use of all funds collected pursuant to section 20145 of this title.

§ 30104. Baselines and cost controls

(a) DEFINITIONS.—In this section:

(1) DEVELOPMENT.—The term “development” means the phase of a program following the formulation phase and beginning with the approval to proceed to implementation, as defined in the Administration’s Procedural Requirements 7120.5c, dated March 22, 2005.

(2) DEVELOPMENT COST.—The term “development cost” means the total of all costs, including construction of facilities and civil servant costs, from the period beginning with the approval to proceed to implementation through the achievement of operational readiness, without regard to funding source or management control, for the life of the program.

(3) LIFE-CYCLE COST.—The term “life-cycle cost” means the total of the direct, indirect, recurring, and nonrecurring costs, including the construction of facilities and civil servant costs, and other related expenses incurred or estimated to be incurred in the design, development, verification, production, operation, maintenance, support, and retirement of a program over its planned lifespan, without regard to funding source or management control.

(4) MAJOR PROGRAM.—The term “major program” means an activity approved to proceed to implementation that has an estimated life-cycle cost of more than \$250,000,000.

(b) CONDITIONS FOR DEVELOPMENT.—

(1) IN GENERAL.—The Administration shall not enter into a contract for the development of a major program unless the Administrator determines that—

(A) the technical, cost, and schedule risks of the program are clearly identified and the program has developed a plan to manage those risks;

(B) the technologies required for the program have been demonstrated in a relevant laboratory or test environment; and

(C) the program complies with all relevant policies, regulations, and directives of the Administration.

(2) REPORT.—The Administrator shall transmit a report describing the basis for the determination required under paragraph (1) to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce,

Science, and Transportation of the Senate at least 30 days before entering into a contract for development under a major program.

(3) NONDELEGATION.—The Administrator may not delegate the determination requirement under this subsection, except in cases in which the Administrator has a conflict of interest.

(c) MAJOR PROGRAM ANNUAL REPORTS.—

(1) REQUIREMENT.—Annually, at the same time as the President's annual budget submission to Congress, the Administrator shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes the information required by this section for each major program for which the Administration proposes to expend funds in the subsequent fiscal year. Reports under this paragraph shall be known as Major Program Annual Reports.

(2) BASELINE REPORT.—The first Major Program Annual Report for each major program shall include a Baseline Report that shall, at a minimum, include—

(A) the purposes of the program and key technical characteristics necessary to fulfill those purposes;

(B) an estimate of the life-cycle cost for the program, with a detailed breakout of the development cost, program reserves, and an estimate of the annual costs until development is completed;

(C) the schedule for development, including key program milestones;

(D) the plan for mitigating technical, cost, and schedule risks identified in accordance with subsection (b)(1)(A); and

(E) the name of the person responsible for making notifications under subsection (d), who shall be an individual whose primary responsibility is overseeing the program.

(3) INFORMATION UPDATES.—For major programs for which a Baseline Report has been submitted, each subsequent Major Program Annual Report shall describe any changes to the information that had been provided in the Baseline Report, and the reasons for those changes.

(d) NOTIFICATION.—

(1) REQUIREMENT.—The individual identified under subsection (c)(2)(E) shall immediately notify the Administrator any time that individual has reasonable cause to believe that, for the major program for which he or she is responsible—

(A) the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more; or

(B) a milestone of the program is likely to be delayed by 6 months or more from the date provided for it in the Baseline Report of the program.

(2) REASONS.—Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (c)(2)(E) shall transmit to the Administrator a written notification explaining the reasons for the change in the cost or milestone of the program for which notification was provided under paragraph (1).

(3) NOTIFICATION OF CONGRESS.—Not later than 15 days after the Administrator receives a written notification under paragraph (2), the Administrator shall transmit the notification to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(e) FIFTEEN PERCENT THRESHOLD.—

(1) DETERMINATION, REPORT, AND INITIATION OF ANALYSIS.—Not later than 30 days after receiving a written notification under subsection (d)(2), the Administrator shall determine whether the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more, or whether a milestone is likely to be delayed by 6 months or more. If the determination is affirmative, the Administrator shall—

(A) transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 15 days after making the determination, a report that includes—

(i) a description of the increase in cost or delay in schedule and a detailed explanation for the increase or delay;

(ii) a description of actions taken or proposed to be taken in response to the cost increase or delay; and

(iii) a description of any impacts the cost increase or schedule delay, or the actions described under clause (ii), will have on any other program within the Administration; and

(B) if the Administrator intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(i) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(ii) the projected cost and the schedule for completing the program after instituting the actions described under subparagraph (A)(ii); and

(iii) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

(2) COMPLETION OF ANALYSIS AND TRANSMITTAL TO COMMITTEES.—The Administration shall complete an analysis initiated under paragraph (1)(B) not later than 6 months after the Administrator makes a determination under this subsection. The Administrator shall transmit the analysis to the Committee on Science and Technology of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate not later than 30 days after its completion.

(f) THIRTY PERCENT THRESHOLD.—If the Administrator determines under subsection (e) that the development cost of a program will exceed the estimate provided in the Baseline Report of the program by more than 30 percent, then, beginning 18 months after the date the Administrator transmits a report under subsection (e)(1)(A), the Administrator shall not expend any additional funds on the program, other than termination costs, unless Congress

has subsequently authorized continuation of the program by law. An appropriation for the specific program enacted subsequent to a report being transmitted shall be considered an authorization for purposes of this subsection. If the program is continued, the Administrator shall submit a new Baseline Report for the program no later than 90 days after the date of enactment of the Act under which Congress has authorized continuation of the program.

CHAPTER 303—CONTRACTING AND PROCUREMENT

Sec.

- 30301. Guaranteed customer base.
- 30302. Quality assurance personnel.
- 30303. Tracking and data relay satellite services.
- 30304. Award of contracts to small businesses and disadvantaged individuals.
- 30305. Outreach program.
- 30306. Small business contracting.
- 30307. Requirement for independent cost analysis.
- 30308. Cost effectiveness calculations.
- 30309. Use of abandoned and underutilized buildings, grounds, and facilities.
- 30310. Exception to alternative fuel procurement requirement.

§ 30301. Guaranteed customer base

No amount appropriated to the Administration may be used to fund grants, contracts, or other agreements with an expected duration of more than one year, when a primary effect of the grant, contract, or agreement is to provide a guaranteed customer base for or establish an anchor tenancy in new commercial space hardware or services unless an appropriations Act specifies the new commercial space hardware or services to be developed or used, or the grant, contract, or agreement is otherwise identified in such Act.

§ 30302. Quality assurance personnel

(a) EXCLUSION OF ADMINISTRATION PERSONNEL.—A person providing articles to the Administration under a contract entered into after December 9, 1991, may not exclude Administration quality assurance personnel from work sites except as provided in a contract provision that has been submitted to Congress as provided in subsection (b).

(b) CONTRACT PROVISIONS.—The Administration shall not enter into any contract which permits the exclusion of Administration quality assurance personnel from work sites unless the Administrator has submitted a copy of the provision permitting such exclusion to Congress at least 60 days before entering into the contract.

§ 30303. Tracking and data relay satellite services

(a) CONTRACTS.—The Administration is authorized, when so provided in an appropriation Act, to enter into and to maintain a contract for tracking and data relay satellite services. Such services shall be furnished to the Administration in accordance with applicable authorization and appropriations Acts. The Government shall incur no costs under such contract prior to the furnishing of such services except that the contract may provide for the payment for contingent liability of the Government which may accrue in the event the Government should decide for its convenience to terminate the contract before the end of the period of the contract. Facilities which may be required in the performance of the contract may be constructed on Government-owned lands if there is included

in the contract a provision under which the Government may acquire title to the facilities, under terms and conditions agreed upon in the contract, upon termination of the contract.

(b) **REPORTS TO CONGRESS.**—The Administrator shall in January of each year report to the Committee on Science and Technology and the Committee on Appropriations of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate the projected aggregate contingent liability of the Government under termination provisions of any contract authorized in this section through the next fiscal year. The authority of the Administration to enter into and to maintain the contract authorized hereunder shall remain in effect unless repealed by legislation enacted by Congress.

§ 30304. Award of contracts to small businesses and disadvantaged individuals

The Administrator shall annually establish a goal of at least 8 percent of the total value of prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, which funds will be made available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of paragraphs (5) and (6) of section 8(a) of the Small Business Act (15 U.S.C. 637(a))), including Historically Black Colleges and Universities that are part B institutions (as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2))), Hispanic-serving institutions (as defined in section 502(a)(5) of that Act (20 U.S.C. 1101a(a)(5))), Tribal Colleges or Universities (as defined in section 316(b)(3) of that Act (20 U.S.C. 1059c(b)(3))), Alaska Native-serving institutions (as defined in section 317(b)(2) of that Act (20 U.S.C. 1059d(b)(2))), Native Hawaiian-serving institutions (as defined in section 317(b)(4) of that Act (20 U.S.C. 1059d(b)(4))), and minority educational institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.)).

§ 30305. Outreach program

(a) **ESTABLISHMENT.**—The Administration shall competitively select an organization to partner with Administration centers, aerospace contractors, and academic institutions to carry out a program to help promote the competitiveness of small, minority-owned, and women-owned businesses in communities across the United States through enhanced insight into the technologies of the Administration's space and aeronautics programs. The program shall support the mission of the Administration's Innovative Partnerships Program with its emphasis on joint partnerships with industry, academia, government agencies, and national laboratories.

(b) **PROGRAM STRUCTURE.**—In carrying out the program described in subsection (a), the organization shall support the mission of the Administration's Innovative Partnerships Program by undertaking the following activities:

(1) **FACILITATING ENHANCED INSIGHT.**—Facilitating the enhanced insight of the private sector into the Administration's technologies in order to increase the competitiveness of the private sector in producing viable commercial products.

(2) **CREATING NETWORK.**—Creating a network of academic institutions, aerospace contractors, and Administration centers

that will commit to donating appropriate technical assistance to small businesses, giving preference to socially and economically disadvantaged small business concerns, small business concerns owned and controlled by service-disabled veterans, and HUBZone small business concerns. This paragraph shall not apply to any contracting actions entered into or taken by the Administration.

(3) CREATING NETWORK OF ECONOMIC DEVELOPMENT ORGANIZATIONS.—Creating a network of economic development organizations to increase the awareness and enhance the effectiveness of the program nationwide.

(c) REPORT.—Not later than one year after October 15, 2008, and annually thereafter, the Administrator shall submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the efforts and accomplishments of the program established under subsection (a) in support of the Administration's Innovative Partnerships Program. As part of the report, the Administrator shall provide—

(1) data on the number of small businesses receiving assistance, jobs created and retained, and volunteer hours donated by the Administration, contractors, and academic institutions nationwide;

(2) an estimate of the total dollar value of the economic impact made by small businesses that received technical assistance through the program; and

(3) an accounting of the use of funds appropriated for the program.

§ 30306. Small business contracting

(a) PLAN.—In consultation with the Small Business Administration, the Administrator shall develop a plan to maximize the number and amount of contracts awarded to small business concerns (within the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632)) and to meet established contracting goals for such concerns.

(b) PRIORITY.—The Administrator shall establish as a priority meeting the contracting goals developed in conjunction with the Small Business Administration to maximize the amount of prime contracts, as measured in dollars, awarded in each fiscal year by the Administration to small business concerns (within the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632)).

§ 30307. Requirement for independent cost analysis

(a) DEFINITION OF IMPLEMENTATION.—In this section, the term “implementation” means all activity in the life cycle of a project after preliminary design, independent assessment of the preliminary design, and approval to proceed into implementation, including critical design, development, certification, launch, operations, disposal of assets, and, for technology programs, development, testing, analysis, and communication of the results.

(b) REQUIREMENT.—Before any funds may be obligated for implementation of a project that is projected to cost more than \$250,000,000 in total project costs, the Administrator shall conduct and consider an independent life-cycle cost analysis of the project and shall report the results to Congress. In developing cost

accounting and reporting standards for carrying out this section, the Administrator shall, to the extent practicable and consistent with other laws, solicit the advice of experts outside of the Administration.

§ 30308. Cost effectiveness calculations

(a) DEFINITIONS.—In this section:

(1) COMMERCIAL PROVIDER.—The term “commercial provider” means any person providing space transportation services or other space-related activities, the primary control of which is held by persons other than a Federal, State, local, or foreign government.

(2) STATE.—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(b) IN GENERAL.—Except as otherwise required by law, in calculating the cost effectiveness of the cost of the Administration engaging in an activity as compared to a commercial provider, the Administrator shall compare the cost of the Administration engaging in the activity using full cost accounting principles with the price the commercial provider will charge for such activity.

§ 30309. Use of abandoned and underutilized buildings, grounds, and facilities

(a) DEFINITION OF DEPRESSED COMMUNITIES.—In this section, the term “depressed communities” means rural and urban communities that are relatively depressed, in terms of age of housing, extent of poverty, growth of per capita income, extent of unemployment, job lag, or surplus labor.

(b) IN GENERAL.—In any case in which the Administrator considers the purchase, lease, or expansion of a facility to meet requirements of the Administration, the Administrator shall consider whether those requirements could be met by the use of one of the following:

(1) Abandoned or underutilized buildings, grounds, and facilities in depressed communities that can be converted to Administration usage at a reasonable cost, as determined by the Administrator.

(2) Any military installation that is closed or being closed, or any facility at such an installation.

(3) Any other facility or part of a facility that the Administrator determines to be—

(A) owned or leased by the United States for the use of another agency of the Federal Government; and

(B) considered by the head of the agency involved to be—

(i) excess to the needs of that agency; or

(ii) underutilized by that agency.

§ 30310. Exception to alternative fuel procurement requirement

Section 526(a) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17142(a)) does not prohibit the Administration from entering into a contract to purchase a generally available

fuel that is not an alternative or synthetic fuel or predominantly produced from a nonconventional petroleum source, if—

(1) the contract does not specifically require the contractor to provide an alternative or synthetic fuel or fuel from a nonconventional petroleum source;

(2) the purpose of the contract is not to obtain an alternative or synthetic fuel or fuel from a nonconventional petroleum source; and

(3) the contract does not provide incentives for a refinery upgrade or expansion to allow a refinery to use or increase its use of fuel from a nonconventional petroleum source.

CHAPTER 305—MANAGEMENT AND REVIEW

Sec.

30501. Lessons learned and best practices.

30502. Whistleblower protection.

30503. Performance assessments.

30504. Assessment of science mission extensions.

§ 30501. Lessons learned and best practices

(a) IN GENERAL.—The Administrator shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an implementation plan describing the Administration's approach for obtaining, implementing, and sharing lessons learned and best practices for its major programs and projects not later than 180 days after December 30, 2005. The implementation plan shall be updated and maintained to ensure that it is current and consistent with the burgeoning culture of learning and safety that is emerging at the Administration.

(b) REQUIRED CONTENT.—The implementation plan shall contain at a minimum the lessons learned and best practices requirements for the Administration, the organizations or positions responsible for enforcement of the requirements, the reporting structure, and the objective performance measures indicating the effectiveness of the activity.

(c) INCENTIVES.—The Administrator shall provide incentives to encourage sharing and implementation of lessons learned and best practices by employees, projects, and programs, as well as penalties for programs and projects that are determined not to have demonstrated use of those resources.

§ 30502. Whistleblower protection

(a) IN GENERAL.—Not later than 1 year after December 30, 2005, the Administrator shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan describing steps to be taken by the Administration to protect from retaliation Administration employees who raise concerns about substantial and specific dangers to public health and safety or about substantial and specific factors that could threaten the success of a mission. The plan shall be designed to ensure that Administration employees have the full protection required by law. The Administrator shall implement the plan not more than 1 year after its transmittal.

(b) GOAL.—The Administrator shall ensure that the plan describes a system that will protect employees who wish to raise or have raised concerns described in subsection (a).

(c) PLAN.—At a minimum, the plan shall include, consistent with Federal law—

(1) a reporting structure that ensures that the officials who are the subject of a whistleblower's complaint will not learn the identity of the whistleblower;

(2) a single point to which all complaints can be made without fear of retribution;

(3) procedures to enable the whistleblower to track the status of the case;

(4) activities to educate employees about their rights as whistleblowers and how they are protected by law;

(5) activities to educate employees about their obligations to report concerns and their accountability before and after receiving the results of the investigations into their concerns; and

(6) activities to educate all appropriate Administration Human Resources professionals, and all Administration managers and supervisors, regarding personnel laws, rules, and regulations.

(d) REPORT.—Not later than February 15 of each year beginning February 15, 2007, the Administrator shall transmit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the concerns described in subsection (a) that were raised during the previous fiscal year. At a minimum, the report shall provide—

(1) the number of concerns that were raised, divided into the categories of safety and health, mission assurance, and mismanagement, and the disposition of those concerns, including whether any employee was disciplined as a result of a concern having been raised; and

(2) any recommendations for reforms to further prevent retribution against employees who raise concerns.

§ 30503. Performance assessments

(a) IN GENERAL.—The performance of each division in the Science directorate of the Administration shall be reviewed and assessed by the National Academy of Sciences at 5-year intervals.

(b) TIMING.—Beginning with the first fiscal year following December 30, 2005, the Administrator shall select at least one division for review under this section. The Administrator shall select divisions so that all disciplines will have received their first review within 6 fiscal years of December 30, 2005.

(c) REPORTS.—Not later than March 1 of each year, beginning with the first fiscal year after December 30, 2005, the Administrator shall transmit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) setting forth in detail the results of any external review under subsection (a);

(2) setting forth in detail actions taken by the Administration in response to any external review; and

(3) including a summary of findings and recommendations from any other relevant external reviews of the Administration's science mission priorities and programs.

§ 30504. Assessment of science mission extensions

(a) ASSESSMENT.—The Administrator shall carry out biennial reviews within each of the Science divisions to assess the cost and benefits of extending the date of the termination of data collection for those missions that have exceeded their planned mission lifetime.

(b) CONSULTATION AND CONSIDERATION OF POTENTIAL BENEFITS OF INSTRUMENTS ON MISSIONS.—For those missions that have an operational component, the National Oceanic and Atmospheric Administration or any other affected agency shall be consulted and the potential benefits of instruments on missions that are beyond their planned mission lifetime taken into account.

CHAPTER 307—INTERNATIONAL COOPERATION AND COMPETITION

Sec.

30701. Competitiveness and international cooperation.

30702. Foreign contract limitation.

30703. Foreign launch vehicles.

30704. Offshore performance of contracts for the procurement of goods and services.

§ 30701. Competitiveness and international cooperation

(a) LIMITATION.—

(1) SOLICITATION OF COMMENT.—As part of the evaluation of the costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, the Administrator shall solicit comment on the potential impact of such participation through notice published in Commerce Business Daily at least 45 days before entering into such an obligation.

(2) AGREEMENTS WITH PEOPLE'S REPUBLIC OF CHINA.—The Administrator shall certify to Congress at least 15 days in advance of any cooperative agreement with the People's Republic of China, or any company owned by the People's Republic of China or incorporated under the laws of the People's Republic of China, involving spacecraft, spacecraft systems, launch systems, or scientific or technical information, that—

(A) the agreement is not detrimental to the United States space launch industry; and

(B) the agreement, including any indirect technical benefit that could be derived from the agreement, will not improve the missile or space launch capabilities of the People's Republic of China.

(3) ANNUAL AUDIT.—The Inspector General of the Administration, in consultation with appropriate agencies, shall conduct an annual audit of the policies and procedures of the Administration with respect to the export of technologies and the transfer of scientific and technical information, to assess the extent to which the Administration is carrying out its activities in compliance with Federal export control laws and with paragraph (2).

(b) NATIONAL INTERESTS.—

(1) DEFINITION OF UNITED STATES COMMERCIAL PROVIDER.—In this subsection, the term “United States commercial provider” means a commercial provider (as defined in section 30308(a) of this title), organized under the laws of the United States or of a State (as defined in section 30308(a) of this title), which is—

(A) more than 50 percent owned by United States nationals; or

(B) a subsidiary of a foreign company and the Secretary of Commerce finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(II) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company’s subsidiary in the United States, as evidenced by—

(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government sponsored research and development similar to that authorized under this section, section 30307, 30308, 30309, or 30702 of this title, or the National Aeronautics and Space Administration Authorization Act of 2000 (Public Law 106–391, 114 Stat. 1577);

(II) providing no barriers to companies described in subparagraph (A) with respect to local investment opportunities that are not provided to foreign companies in the United States; and

(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).

(2) IN GENERAL.—Before entering into an obligation described in subsection (a), the Administrator shall consider the national interests of the United States described in paragraph (3) of this subsection.

(3) DESCRIPTION OF NATIONAL INTERESTS.—International cooperation in space exploration and science activities most effectively serves the United States national interest when it—

(A)(i) reduces the cost of undertaking missions the United States Government would pursue unilaterally;

(ii) enables the United States to pursue missions that it could not otherwise afford to pursue unilaterally; or

(iii) enhances United States capabilities to use and develop space for the benefit of United States citizens;

(B) is undertaken in a manner that is sensitive to the desire of United States commercial providers to develop or explore space commercially;

(C) is consistent with the need for Federal agencies to use space to complete their missions; and

(D) is carried out in a manner consistent with United States export control laws.

§ 30702. Foreign contract limitation

The Administration shall not enter into any agreement or contract with a foreign government that grants the foreign government the right to recover profit in the event that the agreement or contract is terminated.

§ 30703. Foreign launch vehicles

(a) **ACCORD WITH SPACE TRANSPORTATION POLICY.**—The Administration shall not launch a payload on a foreign launch vehicle except in accordance with the Space Transportation Policy announced by the President on December 21, 2004. This subsection shall not be construed to prevent the President from waiving the Space Transportation Policy.

(b) **INTERAGENCY COORDINATION.**—The Administration shall not launch a payload on a foreign launch vehicle unless the Administration commenced the interagency coordination required by the Space Transportation Policy announced by the President on December 21, 2004, at least 90 days before entering into a development contract for the payload.

(c) **APPLICATION.**—This section shall not apply to any payload for which development has begun prior to December 30, 2005, including the James Webb Space Telescope.

§ 30704. Offshore performance of contracts for the procurement of goods and services

The Administrator shall submit to Congress, not later than 120 days after the end of each fiscal year, a report on the contracts and subcontracts performed overseas and the amount of purchases directly or indirectly by the Administration from foreign entities in that fiscal year. The report shall separately indicate—

(1) the contracts and subcontracts and their dollar values for which the Administrator determines that essential goods or services under the contract are available only from a source outside the United States; and

(2) the items and their dollar values for which the Buy American Act (41 U.S.C. 10a et seq.) was waived pursuant to obligations of the United States under international agreements.

CHAPTER 309—AWARDS

Sec.

30901. Congressional Space Medal of Honor.

30902. Charles “Pete” Conrad Astronomy Awards.

§ 30901. Congressional Space Medal of Honor

(a) **AUTHORITY TO AWARD.**—The President may award, and present in the name of Congress, a medal of appropriate design, which shall be known as the Congressional Space Medal of Honor,

to any astronaut who in the performance of the astronaut's duties has distinguished himself or herself by exceptionally meritorious efforts and contributions to the welfare of the Nation and of humankind.

(b) APPROPRIATIONS.—There is authorized to be appropriated from time to time such sums of money as may be necessary to carry out the purposes of this section.

§ 30902. Charles “Pete” Conrad Astronomy Awards

(a) SHORT TITLE.—This section may be cited as the “Charles ‘Pete’ Conrad Astronomy Awards Act”.

(b) DEFINITIONS.—In this section:

(1) AMATEUR ASTRONOMER.—The term “amateur astronomer” means an individual whose employer does not provide any funding, payment, or compensation to the individual for the observation of asteroids and other celestial bodies, and does not include any individual employed as a professional astronomer.

(2) MINOR PLANET CENTER.—The term “Minor Planet Center” means the Minor Planet Center of the Smithsonian Astrophysical Observatory.

(3) NEAR-EARTH ASTEROID.—The term “near-Earth asteroid” means an asteroid with a perihelion distance of less than 1.3 Astronomical Units from the Sun.

(4) PROGRAM.—The term “Program” means the Charles “Pete” Conrad Astronomy Awards Program established under subsection (c).

(c) CHARLES “PETE” CONRAD ASTRONOMY AWARDS PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish the Charles “Pete” Conrad Astronomy Awards Program.

(2) AWARDS.—The Administrator shall make awards under the Program based on the recommendations of the Minor Planet Center.

(3) AWARD CATEGORIES.—The Administrator shall make one annual award, unless there are no eligible discoveries or contributions, for each of the following categories:

(A) DISCOVERY OF BRIGHTEST NEAR-EARTH ASTEROID.—The amateur astronomer or group of amateur astronomers who in the preceding calendar year discovered the intrinsically brightest near-Earth asteroid among the near-Earth asteroids that were discovered during that year by amateur astronomers or groups of amateur astronomers.

(B) GREATEST CONTRIBUTION TO CATALOGUING NEAR-EARTH ASTEROIDS.—The amateur astronomer or group of amateur astronomers who made the greatest contribution to the Minor Planet Center's mission of cataloguing near-Earth asteroids during the preceding year.

(4) AWARD AMOUNT.—An award under the Program shall be in the amount of \$3,000.

(5) GUIDELINES.—

(A) CITIZEN OR PERMANENT RESIDENT.—No individual who is not a citizen or permanent resident of the United States at the time of the individual's discovery or contribution may receive an award under this section.

(B) FINALITY.—The decisions of the Administrator in making awards under this section are final.

CHAPTER 311—SAFETY

Sec.

31101. Aerospace Safety Advisory Panel.

31102. Drug and alcohol testing.

§ 31101. Aerospace Safety Advisory Panel

(a) **ESTABLISHMENT AND MEMBERS.**—There is established an Aerospace Safety Advisory Panel consisting of a maximum of 9 members who shall be appointed by the Administrator for terms of 6 years each. Not more than 4 such members shall be chosen from among the officers and employees of the Administration.

(b) **CHAIRMAN.**—One member shall be designated by the Panel as its Chairman.

(c) **DUTIES.**—The Panel shall—

(1) review safety studies and operations plans referred to it, including evaluating the Administration's compliance with the return-to-flight and continue-to-fly recommendations of the Columbia Accident Investigation Board, and make reports thereon;

(2) advise the Administrator and Congress with respect to—
(A) the hazards of proposed or existing facilities and proposed operations;

(B) the adequacy of proposed or existing safety standards; and

(C) management and culture related to safety; and

(3) perform such other duties as the Administrator may request.

(d) **COMPENSATION AND EXPENSES.**—

(1) **COMPENSATION.**—

(A) **FEDERAL OFFICERS AND EMPLOYEES.**—A member of the Panel who is an officer or employee of the Federal Government shall receive no compensation for the member's services as such.

(B) **MEMBERS APPOINTED FROM OUTSIDE THE FEDERAL GOVERNMENT.**—A member of the Panel appointed from outside the Federal Government shall receive compensation, at a rate not to exceed the per diem rate equivalent to the maximum rate payable under section 5376 of title 5, for each day the member is engaged in the actual performance of duties vested in the Panel.

(2) **EXPENSES.**—A member of the Panel shall be allowed necessary travel expenses (or in the alternative, mileage for use of a privately owned vehicle and a per diem in lieu of subsistence not to exceed the rate and amount prescribed in sections 5702 and 5704 of title 5), and other necessary expenses incurred by the member in the performance of duties vested in the Panel, without regard to the provisions of subchapter I of chapter 57 of title 5, the Standardized Government Travel Regulations, or section 5731 of title 5.

(e) **ANNUAL REPORT.**—The Panel shall submit an annual report to the Administrator and to Congress. In the first annual report submitted after December 30, 2005, the Panel shall include an evaluation of the Administration's management and culture related to safety. Each annual report shall include an evaluation of the Administration's compliance with the recommendations of the Columbia Accident Investigation Board through retirement of the space shuttle.

§ 31102. Drug and alcohol testing

(a) **DEFINITION OF CONTROLLED SUBSTANCE.**—In this section, the term “controlled substance” means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.

(b) **TESTING PROGRAM.**—

(1) **EMPLOYEES OF ADMINISTRATION.**—The Administrator shall establish a program applicable to employees of the Administration whose duties include responsibility for safety-sensitive, security, or national security functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, security, and national security, for the conduct of periodic recurring testing of such employees for such use in violation of applicable law or Federal regulation.

(2) **EMPLOYEES OF CONTRACTORS.**—The Administrator shall, in the interest of safety, security, and national security, prescribe regulations. Such regulations shall establish a program that requires Administration contractors to conduct preemployment, reasonable suspicion, random, and post-accident testing of contractor employees responsible for safety-sensitive, security, or national security functions (as determined by the Administrator) for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, security, and national security, for the conduct of periodic recurring testing of such employees for such use in violation of applicable law or Federal regulation.

(3) **SUSPENSION, DISQUALIFICATION, OR DISMISSAL.**—In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension, disqualification, or dismissal of any employee to which paragraph (1) or (2) applies, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(c) **PROHIBITION ON SERVICE.**—

(1) **PROHIBITION UNLESS PROGRAM OF REHABILITATION COMPLETED.**—No individual who is determined by the Administrator under this section to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after December 9, 1991, shall serve as an Administration employee with responsibility for safety-sensitive, security, or national security functions (as determined by the Administrator), or as an Administration contractor employee with such responsibility, unless such individual has completed a program of rehabilitation described in subsection (d).

(2) **UNCONDITIONAL PROHIBITION.**—Any such individual determined by the Administrator under this section to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after December 9, 1991, shall not

be permitted to perform the duties that the individual performed prior to the date of the determination, if the individual—

(A) engaged in such use while on duty;

(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (d);

(C) following such determination refuses to undertake such a rehabilitation program; or

(D) following such determination fails to complete such a rehabilitation program.

(d) PROGRAM FOR REHABILITATION.—

(1) REGULATIONS AND AVAILABILITY OF PROGRAM FOR CONTRACTOR EMPLOYEES.—The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (b) in need of assistance in resolving problems with the use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. Each contractor is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (b)(2). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any Administration contractor from establishing a program under this subsection in cooperation with any other such contractor.

(2) ESTABLISHMENT AND MAINTENANCE OF PROGRAM FOR ADMINISTRATION EMPLOYEES.—The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Administration whose duties include responsibility for safety-sensitive, security, or national security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) PROCEDURES FOR TESTING.—In establishing the programs required under subsection (b), the Administrator shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the initial confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information of employees; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(f) EFFECT ON OTHER LAWS AND REGULATIONS.—

(1) CONSISTENCY WITH FEDERAL REGULATION.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section.

(2) CONTINUANCE OF REGULATIONS ISSUED BEFORE DECEMBER 9, 1991.—Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before December 9, 1991, that govern the use of alcohol and controlled substances by Administration employees with responsibility for safety-sensitive, security, and national security functions (as determined by the Administrator), or by Administration contractor employees with such responsibility.

CHAPTER 313—HEALTHCARE

Sec.

31301. Healthcare program.

31302. Astronaut healthcare survey.

§ 31301. Healthcare program

The Administrator shall develop a plan to better understand the longitudinal health effects of space flight on humans. In the development of the plan, the Administrator shall consider the need

for the establishment of a lifetime healthcare program for Administration astronauts and their families or other methods to obtain needed health data from astronauts and retired astronauts.

§ 31302. Astronaut healthcare survey

(a) SURVEY.—The Administrator shall administer an anonymous survey of astronauts and flight surgeons to evaluate communication, relationships, and the effectiveness of policies. The survey questions and the analysis of results shall be evaluated by experts independent of the Administration. The survey shall be administered on at least a biennial basis.

(b) REPORT.—The Administrator shall transmit a report of the results of the survey to Congress not later than 90 days following completion of the survey.

CHAPTER 315—MISCELLANEOUS

Sec.

31501. Orbital debris.

31502. Maintenance of facilities.

31503. Laboratory productivity.

31504. Cooperative unmanned aerial vehicle activities.

31505. Development of enhanced-use lease policy.

§ 31501. Orbital debris

The Administrator, in conjunction with the heads of other Federal agencies, shall take steps to develop or acquire technologies that will enable the Administration to decrease the risks associated with orbital debris.

§ 31502. Maintenance of facilities

In order to sustain healthy Centers that are capable of carrying out the Administration's missions, the Administrator shall ensure that adequate maintenance and upgrading of those Center facilities is performed on a regular basis.

§ 31503. Laboratory productivity

The Administration's laboratories are a critical component of the Administration's research capabilities, and the Administrator shall ensure that those laboratories remain productive.

§ 31504. Cooperative unmanned aerial vehicle activities

The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration and in coordination with other agencies that have existing civil capabilities, shall continue to utilize the capabilities of unmanned aerial vehicles as appropriate in support of Administration and interagency cooperative missions. The Administrator may enter into cooperative agreements with universities with unmanned aerial vehicle programs and related assets to conduct collaborative research and development activities, including development of appropriate applications of small unmanned aerial vehicle technologies and systems in remote areas.

§ 31505. Development of enhanced-use lease policy

(a) IN GENERAL.—The Administrator shall develop an agency-wide enhanced-use lease policy that—

(1) is based upon sound business practices and lessons learned from the demonstration centers; and

(2) establishes controls and procedures to ensure accountability and protect the interests of the Government.

(b) CONTENTS.—The policy required by subsection (a) shall include the following:

(1) CRITERIA FOR DETERMINING ECONOMIC VALUE.—Criteria for determining whether enhanced-use lease provides better economic value to the Government than other options, such as—

(A) Federal financing through appropriations; or

(B) sale of the property.

(2) SECURITY AND ACCESS.—Requirement for the identification of proposed physical and procedural changes needed to ensure security and restrict access to specified areas, coordination of proposed changes with existing site tenants, and development of estimated costs of such changes.

(3) MEASURES OF EFFECTIVENESS.—Measures of effectiveness for the enhanced-use lease program.

(4) ACCOUNTING CONTROLS.—Accounting controls and procedures to ensure accountability, such as an audit trail and documentation to readily support financial transactions.

Subtitle IV—Aeronautics and Space Research and Education

CHAPTER 401—AERONAUTICS

SUBCHAPTER I—GENERAL

Sec.

40101. Definition of institution of higher education.

40102. Governmental interest in aeronautics research and development.

40103. Cooperation with other agencies on aeronautics activities.

40104. Cooperation among Mission Directorates.

SUBCHAPTER II—HIGH PRIORITY AERONAUTICS RESEARCH AND DEVELOPMENT PROGRAMS

40111. Fundamental research program.

40112. Research and technology programs.

40113. Airspace systems research.

40114. Aviation safety and security research.

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40116. University-based Centers for Research on Aviation Training.

SUBCHAPTER III—SCHOLARSHIPS

40131. Aeronautics scholarships.

SUBCHAPTER IV—DATA REQUESTS

40141. Aviation data requests.

SUBCHAPTER I—GENERAL

§ 40101. Definition of institution of higher education

In this chapter, the term “institution of higher education” has the meaning given the term by section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

§ 40102. Governmental interest in aeronautics research and development

Congress reaffirms the national commitment to aeronautics research made in chapter 201 of this title. Aeronautics research and development remains a core mission of the Administration. The Administration is the lead agency for civil aeronautics research. Further, the government of the United States shall promote aeronautics research and development that will expand the capacity, ensure the safety, and increase the efficiency of the Nation's air transportation system, promote the security of the Nation, protect the environment, and retain the leadership of the United States in global aviation.

§ 40103. Cooperation with other agencies on aeronautics activities

The Administrator shall coordinate, as appropriate, the Administration's aeronautics activities with relevant programs in the Department of Transportation, the Department of Defense, the Department of Commerce, and the Department of Homeland Security, including the activities of the Next Generation Air Transportation System Joint Planning and Development Office established under section 709 of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176, 49 U.S.C. 40101 note).

§ 40104. Cooperation among Mission Directorates

Research and development activities performed by the Aeronautics Research Mission Directorate with the primary objective of assisting in the development of a flight project in another Mission Directorate shall be funded by the Mission Directorate seeking assistance.

SUBCHAPTER II—HIGH PRIORITY AERONAUTICS RESEARCH AND DEVELOPMENT PROGRAMS**§ 40111. Fundamental research program**

(a) **OBJECTIVE.**—In order to ensure that the Nation maintains needed capabilities in fundamental areas of aeronautics research, the Administrator shall establish a program of long-term fundamental research in aeronautical sciences and technologies that is not tied to specific development projects.

(b) **OPERATION.**—The Administrator shall conduct the program under this section, in part by awarding grants to institutions of higher education. The Administrator shall encourage the participation of institutions of higher education located in States that participate in the Experimental Program to Stimulate Competitive Research. All grants to institutions of higher education under this section shall be awarded through merit review. Grants.

§ 40112. Research and technology programs

(a) **SUPERSONIC TRANSPORT RESEARCH AND DEVELOPMENT.**—The Administrator may establish an initiative with the objective of developing and demonstrating, in a relevant environment, airframe and propulsion technologies to enable efficient, economical overland flight of supersonic civil transport aircraft with no significant impact on the environment.

(b) **ROTORCRAFT AND OTHER RUNWAY-INDEPENDENT AIR VEHICLES.**—The Administrator may establish a rotorcraft and other

runway-independent air vehicles initiative with the objective of developing and demonstrating improved safety, noise, and environmental impact in a relevant environment.

(c) **HYPERSONICS RESEARCH.**—The Administrator may establish a hypersonics research program with the objective of exploring the science and technology of hypersonic flight using air-breathing propulsion concepts, through a mix of theoretical work, basic and applied research, and development of flight research demonstration vehicles. The program may also include the transition to the hypersonic range of Mach 3 to Mach 5.

(d) **REVOLUTIONARY AERONAUTICAL CONCEPTS.**—The Administrator may establish a research program which covers a unique range of subsonic, fixed wing vehicles and propulsion concepts. This research is intended to push technology barriers beyond current subsonic technology. Propulsion concepts include advanced materials, morphing engines, hybrid engines, and fuel cells.

(e) **FUEL CELL-POWERED AIRCRAFT RESEARCH.**—

(1) **OBJECTIVE.**—The Administrator may establish a fuel cell-powered aircraft research program whose objective shall be to develop and test concepts to enable a hydrogen fuel cell-powered aircraft that would have no hydrocarbon or nitrogen oxide emissions into the environment.

(2) **APPROACH.**—The Administrator may establish a program of competitively awarded grants available to teams of researchers that may include the participation of individuals from universities, industry, and government for the conduct of this research.

(f) **MARS AIRCRAFT RESEARCH.**—

(1) **OBJECTIVE.**—The Administrator may establish a Mars Aircraft project whose objective shall be to develop and test concepts for an uncrewed aircraft that could operate for sustained periods in the atmosphere of Mars.

(2) **APPROACH.**—The Administrator may establish a program of competitively awarded grants available to teams of researchers that may include the participation of individuals from universities, industry, and government for the conduct of this research.

§ 40113. Airspace systems research

(a) **OBJECTIVE.**—The Airspace Systems Research program shall pursue research and development to enable revolutionary improvements to and modernization of the National Airspace System, as well as to enable the introduction of new systems for vehicles that can take advantage of an improved, modern air transportation system.

(b) **ALIGNMENT.**—Not later than 1 year after December 30, 2005, the Administrator shall align the projects of the Airspace Systems Research program so that they directly support the objectives of the Joint Planning and Development Office's Next Generation Air Transportation System Integrated Plan.

§ 40114. Aviation safety and security research

(a) **OBJECTIVE.**—The Aviation Safety and Security Research program shall pursue research and development activities that directly address the safety and security needs of the National Airspace System and the aircraft that fly in it. The program shall develop

prevention, intervention, and mitigation technologies aimed at causal, contributory, or circumstantial factors of aviation accidents.

(b) **ALIGNMENT.**—Not later than 1 year after December 30, 2005, the Administrator shall align the projects of the Aviation Safety and Security Research program so that they directly support the objectives of the Joint Planning and Development Office's Next Generation Air Transportation System Integrated Plan.

§ 40115. Aviation weather research

The Administrator may carry out a program of collaborative research with the National Oceanic and Atmospheric Administration on convective weather events, with the goal of significantly improving the reliability of 2-hour to 6-hour aviation weather forecasts.

§ 40116. University-based Centers for Research on Aviation Training

(a) **IN GENERAL.**—The Administrator shall award grants to institutions of higher education (or consortia thereof) to establish one or more Centers for Research on Aviation Training under cooperative agreements with appropriate Administration Centers.

(b) **PURPOSE.**—The purpose of the Centers for Research on Aviation Training shall be to investigate the impact of new technologies and procedures, particularly those related to the aircraft flight deck and to the air traffic management functions, on training requirements for pilots and air traffic controllers.

(c) **APPLICATION.**—An institution of higher education (or a consortium of such institutions) seeking funding under this section shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require, including, at a minimum, a 5-year research plan.

(d) **AWARD DURATION.**—An award made by the Administrator under this section shall be for a period of 5 years and may be renewed on the basis of—

- (1) satisfactory performance in meeting the goals of the research plan proposed in the application submitted under subsection (c); and
- (2) other requirements as specified by the Administrator.

SUBCHAPTER III—SCHOLARSHIPS

§ 40131. Aeronautics scholarships

(a) **ESTABLISHMENT.**—The Administrator shall establish a program of scholarships for full-time graduate students who are United States citizens and are enrolled in, or have been accepted by and have indicated their intention to enroll in, accredited Masters degree programs in aeronautical engineering or equivalent programs at institutions of higher education. Each such scholarship shall cover the costs of room, board, tuition, and fees, and may be provided for a maximum of 2 years.

(b) **IMPLEMENTATION.**—Not later than 180 days after December 30, 2005, the Administrator shall publish regulations governing the scholarship program under this section.

(c) **COOPERATIVE TRAINING OPPORTUNITIES.**—Students who have been awarded a scholarship under this section shall have the opportunity for paid employment at one of the Administration Centers engaged in aeronautics research and development during the

summer prior to the first year of the student's Masters program, and between the first and second year, if applicable.

SUBCHAPTER IV—DATA REQUESTS

§ 40141. Aviation data requests

The Administrator shall make available upon request satellite imagery and aerial photography of remote terrain that the Administration owns at the time of the request to the Administrator of the Federal Aviation Administration or the Director of the Five Star Medallion Program, to assist and train pilots in navigating challenging topographical features of such terrain.

CHAPTER 403—NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

Sec.

- 40301. Purposes.
- 40302. Definitions.
- 40303. National space grant college and fellowship program.
- 40304. Grants or contracts.
- 40305. Specific national needs.
- 40306. Space grant college and space grant regional consortium.
- 40307. Space grant fellowship program.
- 40308. Space grant review panel.
- 40309. Availability of other Federal personnel and data.
- 40310. Designation or award to be on competitive basis.
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§ 40301. Purposes

The purposes of this chapter are to—

- (1) increase the understanding, assessment, development, and utilization of space resources by promoting a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques;
- (2) utilize the abilities and talents of the universities of the Nation to support and contribute to the exploration and development of the resources and opportunities afforded by the space environment;
- (3) encourage and support, within the university community of the Nation, the existence of interdisciplinary and multidisciplinary programs of space research that—
 - (A) engage in integrated activities of training, research, and public service;
 - (B) have cooperative programs with industry; and
 - (C) are coordinated with the overall program of the Administration;
- (4) encourage and support the existence of consortia, made up of university and industry members, in order to advance the exploration and development of space resources in cases in which national objectives can be better fulfilled through such consortia than through the programs of single universities;
- (5) encourage and support Federal funding for graduate fellowships in fields related to space; and
- (6) support activities in colleges and universities generally for the purpose of creating and operating a network of institutional programs that will enhance achievements resulting from efforts under this chapter.

§ 40302. Definitions

In this chapter:

(1) **AERONAUTICAL AND SPACE ACTIVITIES.**—The term “aeronautical and space activities” has the meaning given the term in section 20103 of this title.

(2) **FIELD RELATED TO SPACE.**—The term “field related to space” means any academic discipline or field of study (including the physical, natural, and biological sciences, and engineering, space technology, education, economics, sociology, communications, planning, law, international affairs, and public administration) which is concerned with or likely to improve the understanding, assessment, development, and utilization of space.

(3) **PANEL.**—The term “panel” means the space grant review panel established pursuant to section 40308 of this title.

(4) **PERSON.**—The term “person” means any individual, any public or private corporation, partnership, or other association or entity (including any space grant college, space grant regional consortium, institution of higher education, institute, or laboratory), or any State, political subdivision of a State, or agency or officer of a State or political subdivision of a State.

(5) **SPACE ENVIRONMENT.**—The term “space environment” means the environment beyond the sensible atmosphere of the Earth.

(6) **SPACE GRANT COLLEGE.**—The term “space grant college” means any public or private institution of higher education which is designated as such by the Administrator pursuant to section 40306 of this title.

(7) **SPACE GRANT PROGRAM.**—The term “space grant program” means any program that—

(A) is administered by any space grant college, space grant regional consortium, institution of higher education, institute, laboratory, or State or local agency; and

(B) includes 2 or more projects involving education and one or more of the following activities in the fields related to space:

(i) Research.

(ii) Training.

(iii) Advisory services.

(8) **SPACE GRANT REGIONAL CONSORTIUM.**—The term “space grant regional consortium” means any association or other alliance that is designated as a space grant regional consortium by the Administrator pursuant to section 40306 of this title.

(9) **SPACE RESOURCE.**—The term “space resource” means any tangible or intangible benefit which can be realized only from—

(A) aeronautical and space activities; or

(B) advancements in any field related to space.

(10) **STATE.**—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

§ 40303. National space grant college and fellowship program

(a) **ESTABLISHMENT.**—The Administrator shall establish and maintain, within the Administration, a program to be known as

the national space grant college and fellowship program. The national space grant college and fellowship program shall consist of the financial assistance and other activities provided for in this chapter. The Administrator shall establish long-range planning guidelines and priorities, and adequately evaluate the program.

(b) FUNCTIONS.—Within the Administration, the program shall—

(1) apply the long-range planning guidelines and the priorities established by the Administrator under subsection (a);

(2) advise the Administrator with respect to the expertise and capabilities which are available through the national space grant college and fellowship program, and make such expertise available to the Administration as directed by the Administrator;

(3) evaluate activities conducted under grants and contracts awarded pursuant to sections 40304 and 40305 of this title to ensure that the purposes set forth in section 40301 of this title are implemented;

(4) encourage other Federal departments, agencies, and instrumentalities to use and take advantage of the expertise and capabilities which are available through the national space grant college and fellowship program, on a cooperative or other basis;

(5) encourage cooperation and coordination with other Federal programs concerned with the development of space resources and fields related to space;

(6) advise the Administrator on the designation of recipients supported by the national space grant college and fellowship program and, in appropriate cases, on the termination or suspension of any such designation; and

(7) encourage the formation and growth of space grant and fellowship programs.

(c) GENERAL AUTHORITIES.—To carry out the provisions of this chapter, the Administrator may—

(1) accept conditional or unconditional gifts or donations of services, money, or property, real, personal or mixed, tangible or intangible;

(2) accept and use funds from other Federal departments, agencies, and instrumentalities to pay for fellowships, grants, contracts, and other transactions; and

(3) issue such rules and regulations as may be necessary and appropriate.

§ 40304. Grants or contracts

(a) AUTHORITY OF ADMINISTRATOR.—The Administrator may make grants and enter into contracts or other transactions under this subsection to assist any space grant and fellowship program or project if the Administrator finds that the program or project will carry out the purposes set forth in section 40301 of this title. The total amount paid pursuant to a grant or contract may equal not more than 66 percent of the total cost of the space grant and fellowship program or project involved, except in the case of grants or contracts paid for with funds accepted by the Administrator pursuant to section 40303(c)(2) of this title.

(b) SPECIAL GRANTS.—The Administrator may make special grants under this subsection to carry out the purposes set forth in section 40301 of this title. The amount of a special grant may equal up to 100 percent of the total cost of the project involved.

A special grant may be made under this subsection only if the Administrator finds that—

(1) no reasonable means is available through which the applicant can meet the matching requirement for a grant under subsection (a);

(2) the probable benefit of the project outweighs the public interest in the matching requirement; and

(3) the same or equivalent benefit cannot be obtained through the award of a contract or grant under subsection (a) or section 40305 of this title.

(c) APPLICATION.—Any person may apply to the Administrator for a grant or contract under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Administrator shall by regulation prescribe.

(d) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in paragraphs (2) and (3) and to such other terms, conditions, and requirements as the Administrator considers necessary or appropriate.

(2) LIMITATIONS.—No payment under any grant or contract under this section may be applied to—

(A) the purchase of any land;

(B) the purchase, construction, preservation, or repair of any building; or

(C) the purchase or construction of any launch facility or launch vehicle.

(3) LEASES.—Notwithstanding paragraph (2), the items in subparagraphs (A), (B), and (C) of such paragraph may be leased upon written approval of the Administrator.

(4) RECORDS.—Any person that receives or utilizes any proceeds of any grant or contract under this section shall keep such records as the Administrator shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such cost which was provided through other sources. Such records shall be maintained for 3 years after the completion of such a program or project. The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and evaluation, to any books, documents, papers, and records of receipts which, in the opinion of the Administrator or the Comptroller General, may be related or pertinent to such grants and contracts.

§ 40305. Specific national needs

(a) IDENTIFICATION OF SPECIFIC NEEDS AND GRANT-MAKING AND CONTRACTING AUTHORITY.—The Administrator shall identify specific national needs and problems relating to space. The Administrator may make grants or enter into contracts under this section with respect to such needs or problems. The amount of any such grant or contract may equal up to 100 percent of the total cost of the project involved.

(b) APPLICATIONS FOR GRANTS OR CONTRACTS.—Any person may apply to the Administrator for a grant or contract under this section. In addition, the Administrator may invite applications with respect to specific national needs or problems identified under subsection (a). Application shall be made in such form and manner, and with such content and other submissions, as the Administrator shall by regulation prescribe. Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in paragraphs (2) and (4) of section 40304(d) of this title and to such other terms, conditions, and requirements as the Administrator considers necessary or appropriate.

§ 40306. Space grant college and space grant regional consortium

(a) DESIGNATION AND QUALIFICATIONS.—

(1) AUTHORITY TO DESIGNATE.—The Administrator may designate—

(A) any institution of higher education as a space grant college; and

(B) any association or other alliance of 2 or more persons, other than individuals, as a space grant regional consortium.

(2) SPACE GRANT COLLEGE REQUIREMENTS.—No institution of higher education may be designated as a space grant college unless the Administrator finds that such institution—

(A) is maintaining a balanced program of research, education, training, and advisory services in fields related to space;

(B) will act in accordance with such guidelines as are prescribed under subsection (b)(2); and

(C) meets such other qualifications as the Administrator considers necessary or appropriate.

(3) SPACE GRANT REGIONAL CONSORTIUM REQUIREMENTS.—No association or other alliance of 2 or more persons may be designated as a space grant regional consortium unless the Administrator finds that such association or alliance—

(A) is established for the purpose of sharing expertise, research, educational facilities or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services in any field related to space;

(B) will encourage and follow a regional approach to solving problems or meeting needs relating to space, in cooperation with appropriate space grant colleges, space grant programs, and other persons in the region;

(C) will act in accordance with such guidelines as are prescribed under subsection (b)(2); and

(D) meets such other qualifications as the Administrator considers necessary or appropriate.

(b) QUALIFICATIONS AND GUIDELINES.—The Administrator shall by regulation prescribe—

(1) the qualifications required to be met under paragraphs (2)(C) and (3)(D) of subsection (a); and

(2) guidelines relating to the activities and responsibilities of space grant colleges and space grant regional consortia.

(c) SUSPENSION OR TERMINATION OF DESIGNATION.—The Administrator may, for cause and after an opportunity for hearing, suspend or terminate any designation under subsection (a).

§ 40307. Space grant fellowship program

(a) AWARD OF FELLOWSHIPS.—The Administrator shall support a space grant fellowship program to provide educational and training assistance to qualified individuals at the graduate level of education in fields related to space. Such fellowships shall be awarded pursuant to guidelines established by the Administrator. Space grant fellowships shall be awarded to individuals at space grant colleges, space grant regional consortia, other colleges and institutions of higher education, professional associations, and institutes in such a manner as to ensure wide geographic and institutional diversity in the pursuit of research under the fellowship program.

(b) LIMITATION ON AMOUNT PROVIDED.—The total amount which may be provided for grants under the space grant fellowship program during any fiscal year shall not exceed an amount equal to 50 percent of the total funds appropriated for such year pursuant to this chapter.

(c) AUTHORITY TO SPONSOR OTHER RESEARCH FELLOWSHIP PROGRAMS UNAFFECTED.—Nothing in this section shall be construed to prohibit the Administrator from sponsoring any research fellowship program, including any special emphasis program, which is established under an authority other than this chapter.

§ 40308. Space grant review panel

(a) ESTABLISHMENT.—The Administrator shall establish an independent committee known as the space grant review panel, which shall not be subject to the provisions of the Federal Advisory Committee Act (5 App. U.S.C.).

(b) DUTIES.—The panel shall take such steps as may be necessary to review, and shall advise the Administrator with respect to—

(1) applications or proposals for, and performance under, grants and contracts awarded pursuant to sections 40304 and 40305 of this title;

(2) the space grant fellowship program;

(3) the designation and operation of space grant colleges and space grant regional consortia, and the operation of space grant and fellowship programs;

(4) the formulation and application of the planning guidelines and priorities pursuant to subsections (a) and (b)(1) of section 40303 of this title; and

(5) such other matters as the Administrator refers to the panel for review and advice.

(c) PERSONNEL AND ADMINISTRATIVE SERVICES.—The Administrator shall make available to the panel any information, personnel, and administrative services and assistance which is reasonable to carry out the duties of the panel.

(d) MEMBERS.—

(1) APPOINTMENT.—The Administrator shall appoint the voting members of the panel. A majority of the voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields related to space. The other voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning, or any other activity related to efforts to enhance the understanding, assessment, development, or

utilization of space resources. The Administrator shall consider the potential conflict of interest of any individual in making appointments to the panel.

(2) CHAIRMAN AND VICE CHAIRMAN.—The Administrator shall select one voting member to serve as the Chairman and another voting member to serve as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman.

(3) REIMBURSEMENT FOR EXPENSES.—Voting members of the panel who are not Federal employees shall be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

(4) MEETINGS.—The panel shall meet on a biannual basis and, at any other time, at the call of the Chairman or upon the request of a majority of the voting members or of the Administrator.

(5) POWERS.—The panel may exercise such powers as are reasonably necessary in order to carry out the duties enumerated in subsection (b).

§ 40309. Availability of other Federal personnel and data

Each department, agency, or other instrumentality of the Federal Government that is engaged in or concerned with, or that has authority over, matters relating to space—

(1) may, upon a written request from the Administrator, make available, on a reimbursable basis or otherwise, any personnel (with their consent and without prejudice to their position and rating), service, or facility which the Administrator considers necessary to carry out any provision of this chapter;

(2) may, upon a written request from the Administrator, furnish any available data or other information which the Administrator considers necessary to carry out any provision of this chapter; and

(3) may cooperate with the Administration.

§ 40310. Designation or award to be on competitive basis

The Administrator shall not under this chapter designate any space grant college or space grant regional consortium or award any fellowship, grant, or contract unless such designation or award is made in accordance with the competitive, merit-based review process employed by the Administration on October 30, 1987.

§ 40311. Continuing emphasis

The Administration shall continue its emphasis on the importance of education to expand opportunities for Americans to understand and participate in the Administration's aeronautics and space projects by supporting and enhancing science and engineering education, research, and public outreach efforts.

CHAPTER 405—BIOMEDICAL RESEARCH IN SPACE

Sec.

40501. Biomedical research joint working group.

40502. Biomedical research grants.

40503. Biomedical research fellowships.

40504. Establishment of electronic data archive.

40505. Establishment of emergency medical service telemedicine capability.

§ 40501. Biomedical research joint working group

(a) ESTABLISHMENT.—The Administrator and the Director of the National Institutes of Health shall jointly establish a working group to coordinate biomedical research activities in areas where a microgravity environment may contribute to significant progress in the understanding and treatment of diseases and other medical conditions. The joint working group shall formulate joint and complementary programs in such areas of research.

(b) MEMBERSHIP.—The joint working group shall include equal representation from the Administration and the National Institutes of Health, and shall include representation from National Institutes of Health councils, as selected by the Director of the National Institutes of Health, and from the National Aeronautics and Space Administration Advisory Council.

(c) ANNUAL BIOMEDICAL RESEARCH SYMPOSIA.—The joint working group shall organize annual symposia on biomedical research described in subsection (a) under the joint sponsorship of the Administration and the National Institutes of Health.

(d) ANNUAL REPORTING REQUIREMENT.—The joint working group shall report annually to Congress on its progress in carrying out this section.

§ 40502. Biomedical research grants

(a) ESTABLISHMENT OF PROGRAM.—The Administrator and the Director of the National Institutes of Health shall establish a joint program of biomedical research grants in areas described in section 40501(a) of this title, where such research requires access to a microgravity environment. Such program shall be consistent with actions taken by the joint working group under section 40501 of this title.

(b) RESEARCH OPPORTUNITY ANNOUNCEMENTS.—The grants program established under subsection (a) shall annually issue joint research opportunity announcements under the sponsorship of the National Institutes of Health and the Administration. Responses to the announcements shall be evaluated by a peer review committee whose members shall be selected by the Director of the National Institutes of Health and the Administrator, and shall include individuals not employed by the Administration or the National Institutes of Health.

§ 40503. Biomedical research fellowships

The Administrator and the Director of the National Institutes of Health shall create a joint program of graduate research fellowships in biomedical research described in section 40501(a) of this title. Fellowships under such program may provide for participation in approved research conferences and symposia.

§ 40504. Establishment of electronic data archive

The Administrator shall create and maintain a national electronic data archive for biomedical research data obtained from space-based experiments.

§ 40505. Establishment of emergency medical service telemedicine capability

The Administrator, the Administrator of the Federal Emergency Management Agency, the Director of the Office of Foreign Disaster Assistance, and the Surgeon General of the United States shall

jointly create and maintain an international telemedicine satellite consultation capability to support emergency medical services in disaster-stricken areas.

CHAPTER 407—ENVIRONMENTALLY FRIENDLY AIRCRAFT

Sec.

40701. Research and development initiative.

40702. Additional research and development initiative.

40703. Research alignment.

40704. Research program on perceived impact of sonic booms.

§ 40701. Research and development initiative

The Administrator may establish an initiative with the objective of developing, and demonstrating in a relevant environment, technologies to enable the following commercial aircraft performance characteristics:

(1) **NOISE LEVELS.**—Noise levels on takeoff and on airport approach and landing that do not exceed ambient noise levels in the absence of flight operations in the vicinity of airports from which such commercial aircraft would normally operate.

(2) **ENERGY CONSUMPTION.**—Twenty-five percent reduction in the energy required for medium- to long-range flights, compared to aircraft in commercial service as of December 30, 2005.

(3) **EMISSIONS.**—Nitrogen oxides on take-off and landing that are significantly reduced, without adversely affecting hydrocarbons and smoke, relative to aircraft in commercial service as of December 30, 2005.

§ 40702. Additional research and development initiative

The Administrator shall establish an initiative involving the Administration, universities, industry, and other research organizations as appropriate, of research, development, and demonstration, in a relevant environment, of technologies to enable the following commercial aircraft performance characteristics:

(1) **NOISE LEVELS.**—Noise levels on takeoff and on airport approach and landing that do not exceed ambient noise levels in the absence of flight operations in the vicinity of airports from which such commercial aircraft would normally operate, without increasing energy consumption or nitrogen oxide emissions compared to aircraft in commercial service as of October 15, 2008.

(2) **GREENHOUSE GAS EMISSIONS.**—Significant reductions in greenhouse gas emissions compared to aircraft in commercial services as of October 15, 2008.

§ 40703. Research alignment

In addition to pursuing the research and development initiative described in section 40702 of this title, the Administrator shall, to the maximum extent practicable within available funding, align the fundamental aeronautics research program to address high priority technology challenges of the National Academies' Decadal Survey of Civil Aeronautics, and shall work to increase the degree of involvement of external organizations, and especially of universities, in the fundamental aeronautics research program.

§ 40704. Research program on perceived impact of sonic booms

(a) ESTABLISHMENT.—The Administrator shall establish a cooperative research program with industry, including the conduct of flight demonstrations in a relevant environment, to collect data on the perceived impact of sonic booms. The data could enable the promulgation of appropriate standards for overland commercial supersonic flight operations.

(b) COORDINATION.—The Administrator shall ensure that sonic boom research is coordinated as appropriate with the Administrator of the Federal Aviation Administration, and as appropriate make use of the expertise of the Partnership for Air Transportation Noise and Emissions Reduction Center of Excellence sponsored by the Administration and the Federal Aviation Administration.

CHAPTER 409—MISCELLANEOUS

Sec.

- 40901. Science, Space, and Technology Education Trust Fund.
- 40902. National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund.
- 40903. Experimental Program to Stimulate Competitive Research—merit grant competition requirements.
- 40904. Microgravity research.
- 40905. Program to expand distance learning in rural underserved areas.
- 40906. Equal access to the Administration's education programs.
- 40907. Museums.
- 40908. Continuation of certain education programs.
- 40909. Compliance with title IX of Education Amendments of 1972.

§ 40901. Science, Space, and Technology Education Trust Fund

There is appropriated, by transfer from funds appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Public Law 100-404, 102 Stat. 1014), for “Construction of facilities”, the sum of \$15,000,000 to the “Science, Space, and Technology Education Trust Fund”, which is hereby established in the Treasury of the United States. The Secretary of the Treasury shall invest these funds in the United States Treasury special issue securities, and interest shall be credited to the Trust Fund on a quarterly basis. Such interest shall be available for the purpose of making grants for programs directed at improving science, space, and technology education in the United States. The Administrator, after consultation with the Director of the National Science Foundation, shall review applications made for such grants and determine the distribution of available funds on a competitive basis. Grants shall be made available to any awardee only to the extent that the awardee provides matching funds from non-Federal sources to carry out the program for which grants from this Trust Fund are made. Of the funds made available by this Trust Fund, \$250,000 shall be disbursed each calendar quarter to the Challenger Center for Space Science Education. The Administrator shall submit to Congress an annual report on the grants made pursuant to this section.

§ 40902. National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States, in tribute to the dedicated crew of the Space

Shuttle Challenger, a trust fund to be known as the National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund (hereafter in this section referred to as the “Trust Fund”). The Trust Fund shall consist of amounts which may from time to time, at the discretion of the Administrator, be transferred from the National Aeronautics and Space Administration Gifts and Donations Trust Fund.

(b) INVESTMENT OF TRUST FUND.—The Administrator shall direct the Secretary of the Treasury to invest and reinvest funds in the Trust Fund in public debt securities with maturities suitable for the needs of the Trust Fund, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Interest earned shall be credited to the Trust Fund.

(c) PURPOSE.—Income accruing from the Trust Fund principal shall be used to create the National Aeronautics and Space Administration Endeavor Teacher Fellowship Program, to the extent provided in advance in appropriation Acts. The Administrator is authorized to use such funds to award fellowships to selected United States nationals who are undergraduate students pursuing a course of study leading to certified teaching degrees in elementary education or in secondary education in mathematics, science, or technology disciplines. Awards shall be made pursuant to standards established for the fellowship program by the Administrator.

§ 40903. Experimental Program to Stimulate Competitive Research—merit grant competition requirements

(a) DEFINITION OF ELIGIBLE STATE.—In this section, the term “eligible State” means a State designated by the Administrator as eligible to compete in the National Science Foundation’s Experimental Program to Stimulate Competitive Research.

(b) COMPETITION.—Making use of the existing infrastructure established in eligible States by the National Science Foundation, the Administrator shall conduct a merit grant competition among the eligible States in areas of research important to the mission of the Administration. With respect to a grant application by an eligible State, the Administrator shall consider—

(1) the application’s merit and relevance to the mission of the Administration;

(2) the potential for the grant to serve as a catalyst to enhance the ability of researchers in the State to become more competitive for regular Administration funding;

(3) the potential for the grant to improve the environment for science, mathematics, and engineering education in the State; and

(4) the need to ensure the maximum distribution of grants among eligible States, consistent with merit.

(c) SUPPLEMENTAL GRANTS.—The Administrator shall endeavor, where appropriate, to supplement grants made under subsection (b) with such grants for fellowships, traineeships, equipment, or instrumentation as are available.

(d) INFORMATION IN ANNUAL BUDGET SUBMISSION.—In order to ensure that research expertise and talent throughout the Nation is developed and engaged in Administration research and education activities, the Administration shall, as part of its annual budget submission, detail additional steps that can be taken to further

integrate the participating eligible States in both existing and new or emerging Administration research programs and center activities.

§ 40904. Microgravity research

The Administrator shall—

- (1) ensure the capacity to support ground-based research leading to space-based basic and applied scientific research in a variety of disciplines with potential direct national benefits and applications that can be advanced significantly from the uniqueness of microgravity and the space environment; and
- (2) carry out, to the maximum extent practicable, basic, applied, and commercial International Space Station research in fields such as molecular crystal growth, animal research, basic fluid physics, combustion research, cellular biotechnology, low-temperature physics, and cellular research at a level that will sustain the existing United States scientific expertise and research capability in microgravity research.

§ 40905. Program to expand distance learning in rural underserved areas

(a) **IN GENERAL.**—The Administrator shall develop or expand programs to extend science and space educational outreach to rural communities and schools through video conferencing, interpretive exhibits, teacher education, classroom presentations, and student field trips.

(b) **PRIORITIES.**—In carrying out subsection (a), the Administrator shall give priority to existing programs, including Challenger Learning Centers—

- (1) that utilize community-based partnerships in the field;
- (2) that build and maintain video conference and exhibit capacity;
- (3) that travel directly to rural communities and serve low-income populations; and
- (4) with a special emphasis on increasing the number of women and minorities in the science and engineering professions.

§ 40906. Equal access to the Administration's education programs

(a) **IN GENERAL.**—The Administrator shall strive to ensure equal access for minority and economically disadvantaged students to the Administration's education programs.

(b) **REPORT.**—Every 2 years, the Administrator shall submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the efforts by the Administrator to ensure equal access for minority and economically disadvantaged students under this section and the results of such efforts. As part of the report, the Administrator shall provide—

- (1) data on minority participation in the Administration's education programs, at a minimum in the categories of—
 - (A) elementary and secondary education;
 - (B) undergraduate education; and
 - (C) graduate education; and
- (2) the total value of grants the Administration made to Historically Black Colleges and Universities and to Hispanic

Serving Institutions through education programs during the period covered by the report.

(c) PROGRAM.—The Administrator shall establish the Dr. Mae C. Jemison Grant Program to work with Minority Serving Institutions to bring more women of color into the field of space and aeronautics.

§ 40907. Museums

The Administrator may provide grants to, and enter into cooperative agreements with, museums and planetariums to enable them to enhance programs related to space exploration, aeronautics, space science, Earth science, or microgravity.

§ 40908. Continuation of certain education programs

From amounts appropriated to the Administration for education programs, the Administrator shall ensure the continuation of the Space Grant Program, the Experimental Program to Stimulate Competitive Research, and, consistent with the results of the review under section 614 of the National Aeronautics and Space Administration Authorization Act of 2005 (Public Law 109–155, 119 Stat. 2933), the Administration Explorer School program, to motivate and develop the next generation of explorers.

§ 40909. Compliance with title IX of Education Amendments of 1972

To comply with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Administrator shall conduct compliance reviews of at least 2 grantees annually.

Subtitle V—Programs Targeting Commercial Opportunities

CHAPTER 501—SPACE COMMERCE

SUBCHAPTER I—GENERAL

Sec.

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SUBCHAPTER II—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

- 50111. Commercialization of Space Station.
- 50112. Promotion of United States Global Positioning System standards.
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SUBCHAPTER III—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

- 50131. Requirement to procure commercial space transportation services.
- 50132. Acquisition of commercial space transportation services.
- 50133. Shuttle privatization.
- 50134. Use of excess intercontinental ballistic missiles.

SUBCHAPTER I—GENERAL

§ 50101. Definitions

In this chapter:

(1) **COMMERCIAL PROVIDER.**—The term “commercial provider” means any person providing space transportation services or other space-related activities, primary control of which is held by persons other than Federal, State, local, and foreign governments.

(2) **PAYLOAD.**—The term “payload” means anything that a person undertakes to transport to, from, or within outer space, or in suborbital trajectory, by means of a space transportation vehicle, but does not include the space transportation vehicle itself except for its components which are specifically designed or adapted for that payload.

(3) **SPACE-RELATED ACTIVITIES.**—The term “space-related activities” includes research and development, manufacturing, processing, service, and other associated and support activities.

(4) **SPACE TRANSPORTATION SERVICES.**—The term “space transportation services” means the preparation of a space transportation vehicle and its payloads for transportation to, from, or within outer space, or in suborbital trajectory, and the conduct of transporting a payload to, from, or within outer space, or in suborbital trajectory.

(5) **SPACE TRANSPORTATION VEHICLE.**—The term “space transportation vehicle” means any vehicle constructed for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle not specifically designed or adapted for a payload.

(6) **STATE.**—The term “State” means each of the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(7) **UNITED STATES COMMERCIAL PROVIDER.**—The term “United States commercial provider” means a commercial provider, organized under the laws of the United States or of a State, that is—

(A) more than 50 percent owned by United States nationals; or

(B) a subsidiary of a foreign company and the Secretary of Transportation finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(II) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company’s subsidiary in the United States, as evidenced by—

(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government-sponsored research and development similar to that authorized under this chapter;

(II) providing no barriers, to companies described in subparagraph (A) with respect to local investment opportunities, that are not provided to foreign companies in the United States; and

(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).

SUBCHAPTER II—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

§ 50111. Commercialization of Space Station

(a) POLICY.—Congress declares that a priority goal of constructing the International Space Station is the economic development of Earth orbital space. Congress further declares that free and competitive markets create the most efficient conditions for promoting economic development, and should therefore govern the economic development of Earth orbital space. Congress further declares that the use of free market principles in operating, servicing, allocating the use of, and adding capabilities to the Space Station, and the resulting fullest possible engagement of commercial providers and participation of commercial users, will reduce Space Station operational costs for all partners and the Federal Government's share of the United States burden to fund operations.

(b) USE OF UNITED STATES COMMERCIALY PROVIDED SERVICES.—

(1) IN GENERAL.—In order to stimulate commercial use of space, help maximize the utility and productivity of the International Space Station, and enable a commercial means of providing crew transfer and crew rescue services for the International Space Station, the Administration shall—

(A) make use of United States commercially provided International Space Station crew transfer and crew rescue services to the maximum extent practicable, if those commercial services have demonstrated the capability to meet Administration-specified ascent, entry, and International Space Station proximity operations safety requirements;

(B) limit, to the maximum extent practicable, the use of the Crew Exploration Vehicle to missions carrying astronauts beyond low Earth orbit once commercial crew transfer and crew rescue services that meet safety requirements become operational;

(C) facilitate, to the maximum extent practicable, the transfer of Administration-developed technologies to potential United States commercial crew transfer and rescue service providers, consistent with United States law; and

(D) issue a notice of intent, not later than 180 days after October 15, 2008, to enter into a funded, competitively awarded Space Act Agreement with 2 or more commercial entities for a Phase 1 Commercial Orbital Transportation Services crewed vehicle demonstration program.

(2) CONGRESSIONAL INTENT.—It is the intent of Congress that funding for the program described in paragraph (1)(D) shall not come at the expense of full funding of the amounts authorized under section 101(3)(A) of the National Aeronautics and Space Administration Authorization Act of 2008 (Public Law 110–422, 122 Stat. 4783), and for future fiscal years, for Orion Crew Exploration Vehicle development, Ares I Crew Launch Vehicle development, or International Space Station cargo delivery.

(3) ADDITIONAL TECHNOLOGIES.—The Administration shall make International Space Station-compatible docking adaptors and other relevant technologies available to the commercial crew providers selected to service the International Space Station.

(4) CREW TRANSFER AND CREW RESCUE SERVICES CONTRACT.—If a commercial provider demonstrates the capability to provide International Space Station crew transfer and crew rescue services and to satisfy Administration ascent, entry, and International Space Station proximity operations safety requirements, the Administration shall enter into an International Space Station crew transfer and crew rescue services contract with that commercial provider for a portion of the Administration’s anticipated International Space Station crew transfer and crew rescue requirements from the time the commercial provider commences operations under contract with the Administration through calendar year 2016, with an option to extend the period of performance through calendar year 2020.

§ 50112. Promotion of United States Global Positioning System standards

In order to support and sustain the Global Positioning System in a manner that will most effectively contribute to the national security, public safety, scientific, and economic interests of the United States, Congress encourages the President to—

(1) ensure the operation of the Global Positioning System on a continuous worldwide basis free of direct user fees;

(2) enter into international agreements that promote cooperation with foreign governments and international organizations to—

(A) establish the Global Positioning System and its augmentations as an acceptable international standard; and

(B) eliminate any foreign barriers to applications of the Global Positioning System worldwide; and

(3) provide clear direction and adequate resources to the Assistant Secretary of Commerce for Communications and Information so that on an international basis the Assistant Secretary can—

(A) achieve and sustain efficient management of the electromagnetic spectrum used by the Global Positioning System; and

(B) protect that spectrum from disruption and interference.

§ 50113. Acquisition of space science data

(a) DEFINITION OF SPACE SCIENCE DATA.—In this section, the term “space science data” includes scientific data concerning—

- (1) the elemental and mineralogical resources of the moon, asteroids, planets and their moons, and comets;
- (2) microgravity acceleration; and
- (3) solar storm monitoring.

(b) **ACQUISITION FROM COMMERCIAL PROVIDERS.**—The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost effective, space science data from a commercial provider.

(c) **TREATMENT OF SPACE SCIENCE DATA AS COMMERCIAL ITEM UNDER ACQUISITION LAWS.**—Acquisitions of space science data by the Administrator shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, space science data shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(d) **SAFETY STANDARDS.**—Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) **LIMITATION.**—This section does not authorize the Administration to provide financial assistance for the development of commercial systems for the collection of space science data.

§ 50114. Administration of commercial space centers

The Administrator shall administer the Commercial Space Center program in a coordinated manner from Administration headquarters in Washington, D.C.

§ 50115. Sources of Earth science data

(a) **ACQUISITION.**—The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost-effective, space-based and airborne Earth remote sensing data, services, distribution, and applications from a commercial provider.

(b) **TREATMENT AS COMMERCIAL ITEM UNDER ACQUISITION LAWS.**—Acquisitions by the Administrator of the data, services, distribution, and applications referred to in subsection (a) shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, such data, services, distribution, and applications shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) **SAFETY STANDARDS.**—Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(d) **ADMINISTRATION AND EXECUTION.**—This section shall be carried out as part of the Commercial Remote Sensing Program at the Stennis Space Center.

§ 50116. Commercial technology transfer program

(a) IN GENERAL.—The Administrator shall execute a commercial technology transfer program with the goal of facilitating the exchange of services, products, and intellectual property between the Administration and the private sector. This program shall place at least as much emphasis on encouraging the transfer of Administration technology to the private sector (“spinning out”) as on encouraging use of private sector technology by the Administration. This program shall be maintained in a manner that provides clear benefits for the Administration, the domestic economy, and the research community.

(b) PROGRAM STRUCTURE.—In carrying out the program described in subsection (a), the Administrator shall provide program participants with at least 45 days notice of any proposed changes to the structure of the Administration’s technology transfer and commercialization organizations that is in effect as of December 30, 2005.

**SUBCHAPTER III—FEDERAL ACQUISITION OF SPACE
TRANSPORTATION SERVICES****§ 50131. Requirement to procure commercial space transportation services**

(a) IN GENERAL.—Except as otherwise provided in this section, the Federal Government shall acquire space transportation services from United States commercial providers whenever such services are required in the course of its activities. To the maximum extent practicable, the Federal Government shall plan missions to accommodate the space transportation services capabilities of United States commercial providers.

(b) EXCEPTIONS.—The Federal Government shall not be required to acquire space transportation services under subsection (a) if, on a case-by-case basis, the Administrator or, in the case of a national security issue, the Secretary of the Air Force, determines that—

(1) a payload requires the unique capabilities of the space shuttle;

(2) cost effective space transportation services that meet specific mission requirements would not be reasonably available from United States commercial providers when required;

(3) the use of space transportation services from United States commercial providers poses an unacceptable risk of loss of a unique scientific opportunity;

(4) the use of space transportation services from United States commercial providers is inconsistent with national security objectives;

(5) the use of space transportation services from United States commercial providers is inconsistent with international agreements for international collaborative efforts relating to science and technology;

(6) it is more cost effective to transport a payload in conjunction with a test or demonstration of a space transportation vehicle owned by the Federal Government; or

(7) a payload can make use of the available cargo space on a space shuttle mission as a secondary payload, and such payload is consistent with the requirements of research,

development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

(c) AGREEMENTS WITH FOREIGN ENTITIES.—Nothing in this section shall prevent the Administrator from planning or negotiating agreements with foreign entities for the launch of Federal Government payloads for international collaborative efforts relating to science and technology.

(d) DELAYED EFFECT.—Subsection (a) shall not apply to space transportation services and space transportation vehicles acquired or owned by the Federal Government before October 28, 1998, or with respect to which a contract for such acquisition or ownership has been entered into before October 28, 1998.

(e) HISTORICAL PURPOSES.—This section shall not be construed to prohibit the Federal Government from acquiring, owning, or maintaining space transportation vehicles solely for historical display purposes.

§ 50132. Acquisition of commercial space transportation services

(a) TREATMENT OF COMMERCIAL SPACE TRANSPORTATION SERVICES AS COMMERCIAL ITEM UNDER ACQUISITION LAWS.—Acquisitions of space transportation services by the Federal Government shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, space transportation services shall be considered to be a commercial item.

(b) SAFETY STANDARDS.—Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

§ 50133. Shuttle privatization

The Administrator shall prepare for an orderly transition from the Federal operation, or Federal management of contracted operation, of space transportation systems to the Federal purchase of commercial space transportation services for all nonemergency space transportation requirements for transportation to and from Earth orbit, including human, cargo, and mixed payloads. In those preparations, the Administrator shall take into account the need for short-term economies, as well as the goal of restoring the Administration's research focus and its mandate to promote the fullest possible commercial use of space. As part of those preparations, the Administrator shall plan for the potential privatization of the space shuttle program. Such plan shall keep safety and cost effectiveness as high priorities. Nothing in this section shall prohibit the Administration from studying, designing, developing, or funding upgrades or modifications essential to the safe and economical operation of the space shuttle fleet.

§ 50134. Use of excess intercontinental ballistic missiles

(a) IN GENERAL.—The Federal Government shall not—

(1) convert any missile described in subsection (c) to a space transportation vehicle configuration; or

(2) transfer ownership of any such missile to another person, except as provided in subsection (b).

(b) AUTHORIZED FEDERAL USES.—

(1) IN GENERAL.—A missile described in subsection (c) may be converted for use as a space transportation vehicle by the

Federal Government if, except as provided in paragraph (2) and at least 30 days before such conversion, the agency seeking to use the missile as a space transportation vehicle transmits to the Committee on Armed Services and the Committee on Science and Technology of the House of Representatives, and to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, a certification that the use of such missile—

(A) would result in cost savings to the Federal Government when compared to the cost of acquiring space transportation services from United States commercial providers;

(B) meets all mission requirements of the agency, including performance, schedule, and risk requirements;

(C) is consistent with international obligations of the United States; and

(D) is approved by the Secretary of Defense or the designee of the Secretary of Defense.

(2) **EXCEPTION TO REQUIREMENT THAT CERTIFICATION BE TRANSMITTED 30 DAYS BEFORE CONVERSION.**—The requirement under paragraph (1) that the certification described in that paragraph must be transmitted at least 30 days before conversion of the missile shall not apply if the Secretary of Defense determines that compliance with that requirement would be inconsistent with meeting immediate national security requirements.

(c) **MISSILES REFERRED TO.**—The missiles referred to in this section are missiles owned by the United States that—

(1) were formerly used by the Department of Defense for national defense purposes as intercontinental ballistic missiles; and

(2) have been declared excess to United States national defense needs and are in compliance with international obligations of the United States.

CHAPTER 503—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION

Sec.

50301. Definitions.

50302. Loan guarantees for production of commercial reusable in-space transportation.

§ 50301. Definitions

In this chapter:

(1) **COMMERCIAL PROVIDER.**—The term “commercial provider” means any person or entity providing commercial reusable in-orbit space transportation services or systems, primary control of which is held by persons other than the Federal Government, a State or local government, or a foreign government.

(2) **IN-SPACE TRANSPORTATION SERVICES.**—The term “in-space transportation services” means operations and activities involved in the direct transportation or attempted transportation of a payload or object from one orbit to another by means of an in-space transportation vehicle.

(3) **IN-SPACE TRANSPORTATION SYSTEM.**—The term “in-space transportation system” means the space and ground elements,

including in-space transportation vehicles and support space systems, and ground administration and control facilities and associated equipment, necessary for the provision of in-space transportation services.

(4) **IN-SPACE TRANSPORTATION VEHICLE.**—The term “in-space transportation vehicle” means a vehicle designed—

(A) to be based and operated in space;

(B) to transport various payloads or objects from one orbit to another orbit; and

(C) to be reusable and refueled in space.

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Defense.

(6) **UNITED STATES COMMERCIAL PROVIDER.**—The term “United States commercial provider” means any commercial provider organized under the laws of the United States that is more than 50 percent owned by United States nationals.

§ 50302. Loan guarantees for production of commercial reusable in-space transportation

(a) **AUTHORITY TO MAKE LOAN GUARANTEES.**—The Secretary may guarantee loans made to eligible United States commercial providers for purposes of producing commercial reusable in-space transportation services or systems.

(b) **ELIGIBLE UNITED STATES COMMERCIAL PROVIDERS.**—The Secretary shall prescribe requirements for the eligibility of United States commercial providers for loan guarantees under this section. Such requirements shall ensure that eligible providers are financially capable of undertaking a loan guaranteed under this section.

(c) **LIMITATION ON LOANS GUARANTEED.**—The Secretary may not guarantee a loan for a United States commercial provider under this section unless the Secretary determines that credit would not otherwise be reasonably available at the time of the guarantee for the commercial reusable in-space transportation service or system to be produced utilizing the proceeds of the loan.

(d) **CREDIT SUBSIDY.**—

(1) **COLLECTION REQUIRED.**—The Secretary shall collect from each United States commercial provider receiving a loan guarantee under this section an amount equal to the amount, as determined by the Secretary, to cover the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)), of the loan guarantee.

(2) **PERIODIC DISBURSEMENTS.**—In the case of a loan guarantee in which proceeds of the loan are disbursed over time, the Secretary shall collect the amount required under this subsection on a pro rata basis, as determined by the Secretary, at the time of each disbursement.

(e) **OTHER TERMS AND CONDITIONS.**—

(1) **PROHIBITION ON SUBORDINATION.**—A loan guaranteed under this section may not be subordinated to another debt contracted by the United States commercial provider concerned, or to any other claims against such provider.

(2) **RESTRICTION ON INCOME.**—A loan guaranteed under this section may not—

(A) provide income which is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.); or

(B) provide significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded.

(3) TREATMENT OF GUARANTEE.—The guarantee of a loan under this section shall be conclusive evidence of the following:

(A) That the guarantee has been properly obtained.

(B) That the loan qualifies for the guarantee.

(C) That, but for fraud or material misrepresentation by the holder of the loan, the guarantee is valid, legal, and enforceable.

(4) OTHER TERMS AND CONDITIONS.—The Secretary may establish any other terms and conditions for a guarantee of a loan under this section as the Secretary considers appropriate to protect the financial interests of the United States.

(f) ENFORCEMENT OF RIGHTS.—

(1) IN GENERAL.—The Attorney General may take any action the Attorney General considers appropriate to enforce any right accruing to the United States under a loan guarantee under this section.

(2) FORBEARANCE.—The Attorney General may, with the approval of the parties concerned, forbear from enforcing any right of the United States under a loan guaranteed under this section for the benefit of a United States commercial provider if such forbearance will not result in any cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)), to the United States.

(3) UTILIZATION OF PROPERTY.—Notwithstanding any other provision of law and subject to the terms of a loan guaranteed under this section, upon the default of a United States commercial provider under the loan, the Secretary may, at the election of the Secretary—

(A) assume control of the physical asset financed by the loan; and

(B) complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell the physical asset.

(g) CREDIT INSTRUMENTS.—

(1) AUTHORITY TO ISSUE INSTRUMENTS.—Notwithstanding any other provision of law, the Secretary may, subject to such terms and conditions as the Secretary considers appropriate, issue credit instruments to United States commercial providers of in-space transportation services or systems, with the aggregate cost (as determined under the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of such instruments not to exceed \$1,500,000,000, but only to the extent that new budget authority to cover such costs is provided in subsequent appropriations Acts or authority is otherwise provided in subsequent appropriations Acts.

(2) CREDIT SUBSIDY.—The Secretary shall provide a credit subsidy for any credit instrument issued under this subsection in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(3) CONSTRUCTION.—The eligibility of a United States commercial provider of in-space transportation services or systems for a credit instrument under this subsection is in addition to any eligibility of such provider for a loan guarantee under other provisions of this section.

CHAPTER 505—COMMERCIAL SPACE COMPETITIVENESS

Sec.	
50501.	Definitions.
50502.	Launch voucher demonstration program.
50503.	Anchor tenancy and termination liability.
50504.	Use of Government facilities.
50505.	Test facilities.
50506.	Commercial Space Achievement Award.

§ 50501. Definitions

In this chapter:

(1) **AGENCY.**—The term “agency” means an executive agency as defined in section 105 of title 5.

(2) **ANCHOR TENANCY.**—The term “anchor tenancy” means an arrangement in which the United States Government agrees to procure sufficient quantities of a commercial space product or service needed to meet Government mission requirements so that a commercial venture is made viable.

(3) **COMMERCIAL.**—The term “commercial” means having—
(A) private capital at risk; and

(B) primary financial and management responsibility for the activity reside with the private sector.

(4) **COST EFFECTIVE.**—The term “cost effective” means costing no more than the available alternatives, determined by a comparison of all related direct and indirect costs including, in the case of Government costs, applicable Government labor and overhead costs as well as contractor charges, and taking into account the ability of each alternative to accommodate mission requirements as well as the related factors of risk, reliability, schedule, and technical performance.

(5) **LAUNCH.**—The term “launch” means to place, or attempt to place, a launch vehicle and its payload, if any, in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space.

(6) **LAUNCH SERVICES.**—The term “launch services” means activities involved in the preparation of a launch vehicle and its payload for launch and the conduct of a launch.

(7) **LAUNCH SUPPORT FACILITIES.**—The term “launch support facilities” means facilities located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, flight safety functions, and payload operations, control, and processing.

(8) **LAUNCH VEHICLE.**—The term “launch vehicle” means any vehicle constructed for the purpose of operating in or placing a payload in outer space or in suborbital trajectories, and includes components of that vehicle.

(9) **PAYLOAD.**—The term “payload” means an object which a person undertakes to launch, and includes subcomponents of the launch vehicle specifically designed or adapted for that object.

(10) **PAYLOAD INTEGRATION SERVICES.**—The term “payload integration services” means activities involved in integrating multiple payloads into a single payload for launch or integrating a payload with a launch vehicle.

(11) **SPACE RECOVERY SUPPORT FACILITIES.**—The term “space recovery support facilities” means facilities required to support activities related to the recovery of payloads returned from

space to a space recovery site, including operations and control, communications, flight safety functions, and payload processing.

(12) SPACE TRANSPORTATION INFRASTRUCTURE.—The term “space transportation infrastructure” means facilities, associated equipment, and real property (including launch sites, launch support facilities, space recovery sites, and space recovery support facilities) required to perform launch or space recovery activities.

(13) STATE.—The term “State” means the several States, the District of Columbia, Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(14) UNITED STATES.—The term “United States” means the States, collectively.

§ 50502. Launch voucher demonstration program

(a) REQUIREMENT TO ESTABLISH PROGRAM.—The Administrator shall establish a demonstration program to award vouchers for the payment of commercial launch services and payload integration services for the purpose of launching payloads funded by the Administration.

(b) AWARD OF VOUCHERS.—The Administrator shall award vouchers under subsection (a) to appropriate individuals as a part of grants administered by the Administration for the launch of—

- (1) payloads to be placed in suborbital trajectories; and
- (2) small payloads to be placed in orbit.

(c) ASSISTANCE.—The Administrator may provide voucher award recipients with such assistance (including contract formulation and technical support during the proposal evaluation) as may be necessary to ensure the purchase of cost effective and reasonably reliable commercial launch services and payload integration services.

§ 50503. Anchor tenancy and termination liability

(a) ANCHOR TENANCY CONTRACTS.—Subject to appropriations, the Administrator or the Administrator of the National Oceanic and Atmospheric Administration may enter into multiyear anchor tenancy contracts for the purchase of a good or service if the appropriate Administrator determines that—

- (1) the good or service meets the mission requirements of the Administration or the National Oceanic and Atmospheric Administration, as appropriate;
- (2) the commercially procured good or service is cost effective;
- (3) the good or service is procured through a competitive process;
- (4) existing or potential customers for the good or service other than the United States Government have been specifically identified;
- (5) the long-term viability of the venture is not dependent upon a continued Government market or other nonreimbursable Government support; and
- (6) private capital is at risk in the venture.

(b) TERMINATION LIABILITY.—

- (1) IN GENERAL.—Contracts entered into under subsection (a) may provide for the payment of termination liability in

the event that the Government terminates such contracts for its convenience.

(2) **FIXED SCHEDULE OF PAYMENTS AND LIMITATION ON LIABILITY.**—Contracts that provide for the payment of termination liability, as described in paragraph (1), shall include a fixed schedule of such termination liability payments. Liability under such contracts shall not exceed the total payments which the Government would have made after the date of termination to purchase the good or service if the contract were not terminated.

(3) **USE OF FUNDS.**—Subject to appropriations, funds available for such termination liability payments may be used for purchase of the good or service upon successful delivery of the good or service pursuant to the contract. In such case, sufficient funds shall remain available to cover any remaining termination liability.

(c) **LIMITATIONS.**—

(1) **DURATION.**—Contracts entered into under this section shall not exceed 10 years in duration.

(2) **FIXED PRICE.**—Such contracts shall provide for delivery of the good or service on a firm, fixed price basis.

(3) **PERFORMANCE SPECIFICATIONS.**—To the extent practicable, reasonable performance specifications shall be used to define technical requirements in such contracts.

(4) **FAILURE TO PERFORM.**—In any such contract, the appropriate Administrator shall reserve the right to completely or partially terminate the contract without payment of such termination liability because of the contractor's actual or anticipated failure to perform its contractual obligations.

§ 50504. Use of Government facilities

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—Federal agencies, including the Administration and the Department of Defense, may allow non-Federal entities to use their space-related facilities on a reimbursable basis if the Administrator, the Secretary of Defense, or the appropriate agency head determines that—

(A) the facilities will be used to support commercial space activities;

(B) such use can be supported by existing or planned Federal resources;

(C) such use is compatible with Federal activities;

(D) equivalent commercial services are not available on reasonable terms; and

(E) such use is consistent with public safety, national security, and international treaty obligations.

(2) **CONSULTATION.**—In carrying out paragraph (1)(E), each agency head shall consult with appropriate Federal officials.

(b) **REIMBURSEMENT PAYMENT.**—

(1) **AMOUNT.**—The reimbursement referred to in subsection (a) may be an amount equal to the direct costs (including salaries of United States civilian and contractor personnel) incurred by the United States as a result of the use of such facilities by the private sector. For the purposes of this paragraph, the term “direct costs” means the actual costs that can be unambiguously associated with such use, and would

not be borne by the United States Government in the absence of such use.

(2) CREDIT TO APPROPRIATION.—The amount of any payment received by the United States for use of facilities under this subsection shall be credited to the appropriation from which the cost of providing such facilities was paid.

§ 50505. Test facilities

(a) CHARGES.—The Administrator shall establish a policy of charging users of the Administration's test facilities for the costs associated with their tests at a level that is competitive with alternative test facilities. The Administrator shall not implement a policy of seeking full cost recovery for a facility until at least 30 days after transmitting a notice to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) FUNDING ACCOUNT.—In planning and budgeting, the Administrator shall establish a funding account that shall be used for all test facilities. The account shall be sufficient to maintain the viability of test facilities during periods of low utilization.

§ 50506. Commercial Space Achievement Award

(a) ESTABLISHMENT.—There is established a Commercial Space Achievement Award. The award shall consist of a medal, which shall be of such design and materials and bear such inscriptions as determined by the Secretary of Commerce. A cash prize may also be awarded if funding for the prize is available under subsection (d).

(b) CRITERIA FOR AWARD.—The Secretary of Commerce shall periodically make awards under this section to individuals, corporations, corporate divisions, or corporate subsidiaries substantially engaged in commercial space activities that in the opinion of the Secretary of Commerce best meet the following criteria:

(1) NON-GOVERNMENTAL REVENUE.—For corporate entities, at least half of the revenues from the space-related activities of the corporation, division, or subsidiary is derived from sources other than the United States Government.

(2) SUBSTANTIAL CONTRIBUTION.—The activities and achievements of the individual, corporation, division, or subsidiary have substantially contributed to the United States gross national product and the stature of United States industry in international markets, with due consideration for both the economic magnitude and the technical quality of the activities and achievements.

(3) SUBSTANTIAL ADVANCEMENT OF TECHNOLOGY.—The individual, corporation, division, or subsidiary has substantially advanced space technology and space applications directly related to commercial space activities.

(c) LIMITATIONS.—No individual or corporate entity may receive an award under this section more than once every 5 years.

(d) FUNDING FOR AWARD.—The Secretary of Commerce may seek and accept gifts of money from public and private sources for the purpose of making cash prize awards under this section. Such money may be used only for that purpose, and only such money may be used for that purpose. The Secretary of Commerce shall make publicly available an itemized list of the sources of such funding.

CHAPTER 507—OFFICE OF SPACE COMMERCIALIZATION

Sec.

50701. Definition of Office.

50702. Establishment.

50703. Annual report.

§ 50701. Definition of Office

In this chapter, the term “Office” means the Office of Space Commercialization established in section 50702 of this title.

§ 50702. Establishment

(a) IN GENERAL.—There is established within the Department of Commerce an Office of Space Commercialization.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be a senior executive and shall be compensated at a level in the Senior Executive Service under section 5382 of title 5 as determined by the Secretary of Commerce.

(c) FUNCTIONS OF OFFICE.—The Office shall be the principal unit for the coordination of space-related issues, programs, and initiatives within the Department of Commerce.

(d) DUTIES OF DIRECTOR.—The primary responsibilities of the Director in carrying out the functions of the Office shall include—

(1) promoting commercial provider investment in space activities by collecting, analyzing, and disseminating information on space markets, and conducting workshops and seminars to increase awareness of commercial space opportunities;

(2) assisting United States commercial providers in the efforts of those providers to conduct business with the United States Government;

(3) acting as an industry advocate within the executive branch of the Federal Government to ensure that the Federal Government meets the space-related requirements of the Federal Government, to the fullest extent feasible, using commercially available space goods and services;

(4) ensuring that the United States Government does not compete with United States commercial providers in the provision of space hardware and services otherwise available from United States commercial providers;

(5) promoting the export of space-related goods and services;

(6) representing the Department of Commerce in the development of United States policies and in negotiations with foreign countries to ensure free and fair trade internationally in the area of space commerce; and

(7) seeking the removal of legal, policy, and institutional impediments to space commerce.

§ 50703. Annual report

The Secretary of Commerce shall submit an annual report on the activities of the Office, including planned programs and expenditures, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives.

Subtitle VI—Earth Observations

CHAPTER 601—LAND REMOTE SENSING POLICY**SUBCHAPTER I—GENERAL**

Sec.

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**SUBCHAPTER VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER
SATELLITES**

- 60161. Prohibition.
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SUBCHAPTER I—GENERAL**§ 60101. Definitions**

In this chapter:

(1) **COST OF FULFILLING USER REQUESTS.**—The term “cost of fulfilling user requests” means the incremental costs associated with providing product generation, reproduction, and distribution of unenhanced data in response to user requests and shall not include any acquisition, amortization, or depreciation of capital assets originally paid for by the United States Government or other costs not specifically attributable to fulfilling user requests.

(2) **DATA CONTINUITY.**—The term “data continuity” means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—

(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and

(B) compatible with such data and with methods used to receive and process such data.

(3) **DATA PREPROCESSING.**—The term “data preprocessing”—
(A) may include—

- (i) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user;
- (ii) registration of such data with respect to features of the Earth; and
- (iii) calibration of spectral response with respect to such data; but

(B) does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

(4) LAND REMOTE SENSING.—The term “land remote sensing” means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.

(5) LANDSAT PROGRAM MANAGEMENT.—The term “Landsat Program Management” means the integrated program management structure—

(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 60111(a) of this title; and

(B) consisting of appropriate officers and employees of the Administration, the Department of Defense, and any other United States Government agencies the President designates as responsible for the Landsat program.

(6) LANDSAT SYSTEM.—The term “Landsat system” means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related ground equipment, systems, and facilities owned by the United States Government.

(7) LANDSAT 6 CONTRACTOR.—The term “Landsat 6 contractor” means the private sector entity which was awarded the contract for spacecraft construction, operations, and data marketing rights for the Landsat 6 spacecraft.

(8) LANDSAT 7.—The term “Landsat 7” means the follow-on satellite to Landsat 6.

(9) NATIONAL SATELLITE LAND REMOTE SENSING DATA ARCHIVE.—The term “National Satellite Land Remote Sensing Data Archive” means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 60142 of this title.

(10) NONCOMMERCIAL PURPOSES.—The term “noncommercial purposes” means activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—

(A) such data shall not be used in connection with any bid for a commercial contract, development of a commercial product, or any other non-United States Government activity that is expected, or has the potential, to be profit-making;

(B) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release, except when such disclosure by the United States Government or its contractors would adversely affect the national security or foreign policy of the United States or violate a provision of law or regulation; and

(C) such data shall not be distributed in competition with unenhanced data provided by the Landsat 6 contractor.

(11) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(12) UNENHANCED DATA.—The term “unenhanced data” means land remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing.

(13) UNITED STATES GOVERNMENT AND ITS AFFILIATED USERS.—The term “United States Government and its affiliated users” means—

(A) United States Government agencies;

(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and

(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for non-commercial purposes.

SUBCHAPTER II—LANDSAT

§ 60111. Landsat Program Management

(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.

(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other United States Government official the President designates as responsible for part of the Landsat program shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat program of the appropriate United States Government agencies. The management plan shall—

(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;

(2) include a baseline funding profile that—

(A) is mutually acceptable to the Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and

(B) provides for total funding responsibility of the Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;

(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency or agencies, in a manner agreed to by the Landsat Program Management, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and

(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.

(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—

(1) Landsat 7 procurement, launch, and operations;

(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;

(3) ensuring that all unenhanced Landsat data remain unclassified and that, except as provided in subsections (a) and (b) of section 60146 of this title, no restrictions are placed on the availability of unenhanced data;

(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.), and to meet the needs of national security users;

(5) Landsat data responsibilities pursuant to this chapter;

(6) oversight of Landsat contracts entered into under sections 102 and 103 of the Land Remote Sensing Policy Act of 1992 (Public Law 102-555, 106 Stat. 4168);

(7) coordination of a technology demonstration program pursuant to section 60133 of this title; and

(8) ensuring that copies of data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.

(d) AUTHORITY TO CONTRACT.—The Landsat Program Management may, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as satellite operations and data preprocessing.

(e) LANDSAT ADVISORY PROCESS.—

(1) ADVICE AND COMMENTS.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—

(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;

(B) the full spectrum of users of Landsat data, including representatives from United States Government agencies, State and local government agencies, academic institutions, nonprofit organizations, value-added companies, the agricultural, mineral extraction, and other user industries, and the public; and

(C) a broad diversity of age groups, sexes, and races.

(2) REPORTS.—The Landsat Program Management shall prepare and submit biennially a report to Congress which—

(A) reports the public comments received pursuant to paragraph (1); and

(B) includes—

- (i) a response to the public comments received pursuant to paragraph (1);
- (ii) information on the volume of use, by category, of data from the Landsat system; and
- (iii) any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.

§ 60112. Transfer of Landsat 6 program responsibilities

The responsibilities of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary and the Landsat Program Management, pursuant to section 60111 of this title.

§ 60113. Data policy for Landsat 7

(a) LANDSAT 7 DATA POLICY.—The Landsat Program Management, in consultation with other appropriate United States Government agencies, shall develop a data policy for Landsat 7 which should—

- (1) ensure that unenhanced data are available to all users at the cost of fulfilling user requests;
- (2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;
- (3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;
- (4) support the development of the commercial market for remote sensing data;
- (5) ensure that the provision of commercial value-added services based on remote sensing data remains exclusively the function of the private sector; and
- (6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data and Information System.

(b) ADDITIONAL DATA POLICY CONSIDERATIONS.—In addition, the data policy for Landsat 7 may provide for—

- (1) United States private sector entities to operate ground receiving stations in the United States for Landsat 7 data;
- (2) other means for direct access by private sector entities to unenhanced data from Landsat 7; and
- (3) the United States Government to charge a per image fee, license fee, or other such fee to entities operating ground receiving stations or distributing Landsat 7 data.

SUBCHAPTER III—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

§ 60121. General licensing authority

(a) LICENSING AUTHORITY OF SECRETARY.—

- (1) IN GENERAL.—In consultation with other appropriate United States Government agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this subchapter.

(2) LIMITATION WITH RESPECT TO SYSTEM USED FOR OTHER PURPOSES.—In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this subchapter shall be limited only to the remote sensing operations of such space system.

(b) COMPLIANCE WITH LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—

(1) IN GENERAL.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this chapter, any regulations issued pursuant to this chapter, and any applicable international obligations and national security concerns of the United States.

(2) LIST OF REQUIREMENTS FOR COMPLETE APPLICATION.—The Secretary shall publish in the Federal Register a complete and specific list of all information required to comprise a complete application for a license under this subchapter. An application shall be considered complete when the applicant has provided all information required by the list most recently published in the Federal Register before the date the application was first submitted. Unless the Secretary has, within 30 days after receipt of an application, notified the applicant of information necessary to complete an application, the Secretary may not deny the application on the basis of the absence of any such information.

(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—

(1) DESIGNATION OF DATA.—The Secretary, in consultation with other appropriate United States Government agencies and pursuant to paragraph (2), shall designate in a license issued pursuant to this subchapter any unenhanced data required to be provided by the licensee under section 60122(b)(3) of this title.

(2) PRELIMINARY DETERMINATION.—The Secretary shall make a designation under paragraph (1) after determining that—

(A) such data are generated by a system for which all or a substantial part of the development, fabrication, launch, or operations costs have been or will be directly funded by the United States Government; or

(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 60122(b)(3) of this title, after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

(3) CONSISTENCY WITH CONTRACT OR OTHER ARRANGEMENT.—A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement

entered into between a United States Government agency and the licensee.

§ 60122. Conditions for operation

(a) LICENSE REQUIRED FOR OPERATION.—No person that is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 60121 of this title.

(b) LICENSING REQUIREMENTS.—Any license issued pursuant to this subchapter shall specify that the licensee shall comply with all of the requirements of this chapter and shall—

(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 60146 of this title;

(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions;

(3) make unenhanced data designated by the Secretary in the license pursuant to section 60121(e) of this title available in accordance with section 60141 of this title;

(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any deviation; and

(6) notify the Secretary of any significant or substantial agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

(c) ADDITIONAL LICENSING REQUIREMENTS FOR LANDSAT 6 CONTRACTOR.—In addition to the requirements of subsection (b), any license issued pursuant to this subchapter to the Landsat 6 contractor shall specify that the Landsat 6 contractor shall—

(1) notify the Secretary of any value added activities (as defined by the Secretary by regulation) that will be conducted by the Landsat 6 contractor or by a subsidiary or affiliate; and

(2) if such activities are to be conducted, provide the Secretary with a plan for compliance with section 60141 of this title.

§ 60123. Administrative authority of Secretary

(a) FUNCTIONS.—In order to carry out the responsibilities specified in this subchapter, the Secretary may—

(1) grant, condition, or transfer licenses under this chapter;

(2) seek an order of injunction or similar judicial determination from a district court of the United States with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this subchapter and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provisions of this chapter, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this subchapter, including civil penalties not to exceed \$10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this chapter or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this chapter.

(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee that makes a timely request for review of an adverse action pursuant to paragraph (1), (3), (5), or (6) of subsection (a) shall be entitled to adjudication by the Secretary on the record after an opportunity for any agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5.

§ 60124. Regulatory authority of Secretary

The Secretary may issue regulations to carry out this subchapter. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5.

§ 60125. Agency activities

(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this subchapter, may license such system if it meets all conditions of this subchapter and—

(1) the system operator agrees to reimburse the Government in a timely manner for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any United States Government agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

(d) **APPLICABILITY.**—This section does not apply to activities carried out under subchapter IV.

(e) **EFFECT ON FCC AUTHORITY.**—Nothing in this subchapter shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SUBCHAPTER IV—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

§ 60131. Continued Federal research and development

(a) **ROLES OF ADMINISTRATION AND DEPARTMENT OF DEFENSE.**—

(1) **IN GENERAL.**—The Administrator and the Secretary of Defense are directed to continue and to enhance programs of remote sensing research and development.

(2) **ADMINISTRATION ACTIVITIES AUTHORIZED AND ENCOURAGED.**—The Administrator is authorized and encouraged to—

(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other United States Government agencies and with public and private research entities (including private industry, universities, non-profit organizations, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(b) **ROLES OF DEPARTMENT OF AGRICULTURE AND DEPARTMENT OF THE INTERIOR.**—

(1) **IN GENERAL.**—In order to enhance the ability of the United States to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) **ACTIVITIES THAT MAY BE INCLUDED.**—Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(c) **ROLE OF OTHER FEDERAL AGENCIES.**—Other United States Government agencies are authorized and encouraged to conduct research and development on the use of remote sensing in the fulfillment of their authorized missions, using funds appropriated for such purposes.

§ 60132. Availability of federally gathered unenhanced data

(a) **IN GENERAL.**—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 60133 of this title, shall be made available to users in a timely fashion.

(b) **PROTECTION FOR COMMERCIAL DATA DISTRIBUTOR.**—The President shall seek to ensure that unenhanced data gathered under

the technology demonstration program carried out pursuant to section 60133 of this title shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.

§ 60133. Technology demonstration program

(a) **ESTABLISHMENT.**—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate United States Government agencies, a technology demonstration program. The goals of the program shall be to—

(1) seek to launch advanced land remote sensing system components within 5 years after October 28, 1992;

(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the anticipated land remote sensing program; and

(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system projected to be in operation through the year 2000, and that therefore holds greater potential for private sector investment and control.

(b) **EXECUTION OF PROGRAM.**—In executing the technology demonstration program, the President shall seek to apply technologies associated with United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.

(c) **BROAD APPLICATION.**—To the greatest extent practicable, the technology demonstration program established under subsection (a) shall be designed to be responsive to the broad civilian, national security, commercial, and foreign policy needs of the United States.

(d) **PRIVATE SECTOR FUNDING.**—The technology demonstration program under this section may be carried out in part with private sector funding.

(e) **LANDSAT PROGRAM MANAGEMENT COORDINATION.**—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.

§ 60134. Preference for private sector land remote sensing system

(a) **IN GENERAL.**—If a successor land remote sensing system to Landsat 7 can be funded and managed by the private sector while still achieving the goals stated in subsection (b) without jeopardizing the domestic, national security, and foreign policy interests of the United States, preference should be given to the development of such a system by the private sector without competition from the United States Government.

(b) **GOALS.**—The goals referred to in subsection (a) are—

(1) to encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;

(2) to encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and

(3) to incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 60133 of this title, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system otherwise projected to be in operation in the future.

SUBCHAPTER V—GENERAL PROVISIONS

§ 60141. Nondiscriminatory data availability

(a) IN GENERAL.—Except as provided in subsection (b), any unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government shall be made available to all users without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 60146 of this title) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another.

(b) EXCEPTIONS.—Unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government may be made available to the United States Government and its affiliated users at reduced prices, in accordance with this chapter, on the condition that such unenhanced data are used solely for noncommercial purposes.

§ 60142. Archiving of data

(a) PUBLIC INTEREST.—It is in the public interest for the United States Government to—

(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) control the content and scope of the archive; and

(3) ensure the quality, integrity, and continuity of the archive.

(b) ARCHIVING PRACTICES.—The Secretary of the Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereafter in this section referred to as the “basic data set”) and shall follow reasonable archival practices to ensure proper storage and preservation of the basic data set and timely access for parties requesting data.

(c) DETERMINATION OF CONTENT OF BASIC DATA SET.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of the Interior shall—

(1) use as a baseline the data archived on October 28, 1992;

(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;

(3) consult with and seek the advice of users and producers of remote sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary of the Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to subchapter II, or by licensees under subchapter III;

(6) include, as the Secretary of the Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 60146 of this title.

(d) PUBLIC DOMAIN.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the National Satellite Land Remote Sensing Data Archive shall be in the public domain and shall be made available to requesting parties by the Secretary of the Interior at the cost of fulfilling user requests.

§ 60143. Nonreproduction

Unenhanced data distributed by any licensee under subchapter III may be sold on the condition that such data will not be reproduced or disseminated by the purchaser for commercial purposes.

§ 60144. Reimbursement for assistance

The Administrator, the Secretary of Defense, and the heads of other United States Government agencies may provide assistance to land remote sensing system operators under the provisions of this chapter. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

§ 60145. Acquisition of equipment

The Landsat Program Management may, by means of a competitive process, allow a licensee under subchapter III or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other United States Government civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.

§ 60146. Radio frequency allocation

(a) APPLICATION TO FEDERAL COMMUNICATIONS COMMISSION.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with commercial remote sensing space systems licensed under subchapter III.

(b) DEADLINE FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this chapter, within 120 days of the receipt of an application for such licensing. If final action has not occurred within 120 days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEMS.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component

thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(d) **CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.**—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

§ 60147. Consultation

(a) **CONSULTATION WITH SECRETARY OF DEFENSE.**—The Secretary and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this chapter affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this chapter, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.

(b) **CONSULTATION WITH SECRETARY OF STATE.**—

(1) **IN GENERAL.**—The Secretary and the Landsat Program Management shall consult with the Secretary of State on all matters under this chapter affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this chapter, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.

(2) **INTERNATIONAL AID.**—Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) **REPORTING DISCRIMINATORY DISTRIBUTION.**—The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.

(c) **STATUS REPORT.**—The Landsat Program Management shall, as often as necessary, provide to Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.

(d) **REIMBURSEMENTS.**—If, as a result of technical modifications imposed on a licensee under subchapter III on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

§ 60148. Enforcement

(a) **IN GENERAL.**—In order to ensure that unenhanced data from the Landsat system received solely for noncommercial purposes are not used for any commercial purpose, the Secretary (in

collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by the Landsat system) shall develop and implement a system for enforcing this prohibition, in the event that unenhanced data from the Landsat system are made available for noncommercial purposes at a different price than such data are made available for other purposes.

(b) **AUTHORITY OF SECRETARY.**—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person that—

(1) receives unenhanced data from the Landsat system under this chapter solely for noncommercial purposes (and at a different price than the price at which such data are made available for other purposes); and

(2) uses such data for other than noncommercial purposes.

(c) **ENFORCEMENT MECHANISMS.**—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than \$10,000 (per day per violation), denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data provided for noncommercial purposes are not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.

(d) **PROCEDURES AND REGULATIONS.**—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data have been, or are being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to Congress on instances of such violations.

SUBCHAPTER VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§ 60161. Prohibition

Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

§ 60162. Future considerations

Regardless of any change in circumstances subsequent to October 28, 1992, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 60161 of this title unless this subchapter has first been repealed.

CHAPTER 603—REMOTE SENSING

Sec.

60301. Definitions.

60302. General responsibilities.

- 60303. Pilot projects to encourage public sector applications.
- 60304. Program evaluation.
- 60305. Data availability.
- 60306. Education.

§ 60301. Definitions

In this chapter:

- (1) **GEOSPATIAL INFORMATION.**—The term “geospatial information” means knowledge of the nature and distribution of physical and cultural features on the landscape based on analysis of data from airborne or spaceborne platforms or other types and sources of data.
- (2) **HIGH RESOLUTION.**—The term “high resolution” means resolution better than five meters.
- (3) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

§ 60302. General responsibilities

The Administrator shall—

- (1) develop a sustained relationship with the United States commercial remote sensing industry and, consistent with applicable policies and law, to the maximum practicable, rely on their services; and
- (2) in conjunction with United States industry and universities, research, develop, and demonstrate prototype Earth science applications to enhance Federal, State, local, and tribal governments’ use of government and commercial remote sensing data, technologies, and other sources of geospatial information for improved decision support to address their needs.

§ 60303. Pilot projects to encourage public sector applications

(a) **IN GENERAL.**—The Administrator shall establish a program of grants for competitively awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs.

(b) **PREFERRED PROJECTS.**—In awarding grants under this section, the Administrator shall give preference to projects that—

- (1) make use of commercial data sets, including high resolution commercial satellite imagery and derived satellite data products, existing public data sets where commercial data sets are not available or applicable, or the fusion of such data sets;
- (2) integrate multiple sources of geospatial information, such as geographic information system data, satellite-provided positioning data, and remotely sensed data, in innovative ways;
- (3) include funds or in-kind contributions from non-Federal sources;
- (4) involve the participation of commercial entities that process raw or lightly processed data, often merging that data with other geospatial information, to create data products that have significant value added to the original data; and
- (5) taken together demonstrate as diverse a set of public sector applications as possible.

(c) OPPORTUNITIES.—In carrying out this section, the Administrator shall seek opportunities to assist—

(1) in the development of commercial applications potentially available from the remote sensing industry; and

(2) State, local, regional, and tribal agencies in applying remote sensing and other geospatial information technologies for growth management.

(d) DURATION.—Assistance for a pilot project under subsection (a) shall be provided for a period not to exceed 3 years.

(e) REPORT.—Each recipient of a grant under subsection (a) shall transmit a report to the Administrator on the results of the pilot project within 180 days of the completion of that project.

(f) WORKSHOP.—Each recipient of a grant under subsection (a) shall, not later than 180 days after the completion of the pilot project, conduct at least one workshop for potential users to disseminate the lessons learned from the pilot project as widely as feasible.

(g) REGULATIONS.—The Administrator shall issue regulations establishing application, selection, and implementation procedures for pilot projects, and guidelines for reports and workshops required by this section.

§ 60304. Program evaluation

(a) ADVISORY COMMITTEE.—The Administrator shall establish an advisory committee, consisting of individuals with appropriate expertise in State, local, regional, and tribal agencies, the university research community, and the remote sensing and other geospatial information industries, to monitor the program established under section 60303 of this title. The advisory committee shall consult with the Federal Geographic Data Committee and other appropriate industry representatives and organizations. Notwithstanding section 14 of the Federal Advisory Committee Act (5 App. U.S.C.), the advisory committee established under this subsection shall remain in effect until the termination of the program under section 60303 of this title.

(b) EFFECTIVENESS EVALUATION.—Not later than December 31, 2009, the Administrator shall transmit to Congress an evaluation of the effectiveness of the program established under section 60303 of this title in exploring and promoting the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs. Such evaluation shall have been conducted by an independent entity.

§ 60305. Data availability

The Administrator shall ensure that the results of each of the pilot projects completed under section 60303 of this title shall be retrievable through an electronic, internet-accessible database.

§ 60306. Education

The Administrator shall establish an educational outreach program to increase awareness at institutions of higher education and State, local, regional, and tribal agencies of the potential applications of remote sensing and other geospatial information and awareness of the need for geospatial workforce development.

CHAPTER 605—EARTH SCIENCE

Sec.

60501. Goal.

60502. Transitioning experimental research into operational services.

60503. Reauthorization of Glory Mission.

60504. Tornadoes and other severe storms.

60505. Coordination with the National Oceanic and Atmospheric Administration.

60506. Sharing of climate related data.

§ 60501. Goal

The goal for the Administration's Earth Science program shall be to pursue a program of Earth observations, research, and applications activities to better understand the Earth, how it supports life, and how human activities affect its ability to do so in the future. In pursuit of this goal, the Administration's Earth Science program shall ensure that securing practical benefits for society will be an important measure of its success in addition to securing new knowledge about the Earth system and climate change. In further pursuit of this goal, the Administration shall, together with the National Oceanic and Atmospheric Administration and other relevant agencies, provide United States leadership in developing and carrying out a cooperative international Earth observations-based research program.

§ 60502. Transitioning experimental research into operational services

(a) INTERAGENCY PROCESS.—The Director of the Office of Science and Technology Policy, in consultation with the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, and other relevant stakeholders, shall develop a process to transition, when appropriate, Administration Earth science and space weather missions or sensors into operational status. The process shall include coordination of annual agency budget requests as required to execute the transitions.

(b) RESPONSIBLE AGENCY OFFICIAL.—The Administrator and the Administrator of the National Oceanic and Atmospheric Administration shall each designate an agency official who shall have the responsibility for and authority to lead the Administration's and the National Oceanic and Atmospheric Administration's transition activities and interagency coordination.

(c) PLAN.—For each mission or sensor that is determined to be appropriate for transition under subsection (a), the Administration and the National Oceanic and Atmospheric Administration shall transmit to Congress a joint plan for conducting the transition. The plan shall include the strategy, milestones, and budget required to execute the transition. The transition plan shall be transmitted to Congress no later than 60 days after the successful completion of the mission or sensor critical design review.

§ 60503. Reauthorization of Glory Mission

Congress reauthorizes the Administration to continue with development of the Glory Mission, which will examine how aerosols and solar energy affect the Earth's climate.

§ 60504. Tornadoes and other severe storms

The Administrator shall ensure that the Administration gives high priority to those parts of its existing cooperative activities with the National Oceanic and Atmospheric Administration that

are related to the study of tornadoes and other severe storms, tornado-force winds, and other factors determined to influence the development of tornadoes and other severe storms, with the goal of improving the Nation's ability to predict tornados and other severe storms. Further, the Administrator shall examine whether there are additional cooperative activities with the National Oceanic and Atmospheric Administration that should be undertaken in the area of tornado and severe storm research.

§ 60505. Coordination with the National Oceanic and Atmospheric Administration

(a) JOINT WORKING GROUP.—The Administrator and the Administrator of the National Oceanic and Atmospheric Administration shall appoint a Joint Working Group, which shall review and monitor missions of the two agencies to ensure maximum coordination in the design, operation, and transition of missions where appropriate. The Joint Working Group shall also prepare the plans required by subsection (c).

(b) COORDINATION REPORT.—Not later than February 15 of each year, the Administrator and the Administrator of the National Oceanic and Atmospheric Administration shall jointly transmit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on how the Earth science programs of the Administration and the National Oceanic and Atmospheric Administration will be coordinated during the fiscal year following the fiscal year in which the report is transmitted.

(c) COORDINATION OF TRANSITION PLANNING AND REPORTING.—The Administrator, in conjunction with the Administrator of the National Oceanic and Atmospheric Administration and in consultation with other relevant agencies, shall evaluate relevant Administration science missions for their potential operational capabilities and shall prepare transition plans for the existing and future Earth observing systems found to have potential operational capabilities.

(d) LIMITATION.—The Administrator shall not transfer any Administration Earth science mission or Earth observing system to the National Oceanic and Atmospheric Administration until the plan required under subsection (c) has been approved by the Administrator and the Administrator of the National Oceanic and Atmospheric Administration and until financial resources have been identified to support the transition or transfer in the President's budget request for the National Oceanic and Atmospheric Administration.

§ 60506. Sharing of climate related data

The Administrator shall work to ensure that the Administration's policies on the sharing of climate related data respond to the recommendations of the Government Accountability Office's report on climate change research and data-sharing policies and to the recommendations on the processing, distribution, and archiving of data by the National Academies Earth Science Decadal Survey, "Earth Science and Applications from Space", and other relevant National Academies reports, to enhance and facilitate their availability and widest possible use to ensure public access to accurate and current data on global warming.

Subtitle VII—Access to Space

CHAPTER 701—USE OF SPACE SHUTTLE OR ALTERNATIVES

Sec.

70101. Recovery of fair value of placing Department of Defense payloads in orbit with space shuttle.

70102. Space shuttle use policy.

70103. Commercial payloads on space shuttle.

§ 70101. Recovery of fair value of placing Department of Defense payloads in orbit with space shuttle

Notwithstanding any other provision of law, or any interagency agreement, the Administrator shall charge such prices as are necessary to recover the fair value of placing Department of Defense payloads into orbit by means of the space shuttle.

§ 70102. Space shuttle use policy

(a) USE POLICY.—

(1) IN GENERAL.—

(A) POLICY.—It shall be the policy of the United States to use the space shuttle—

- (i) for purposes that require a human presence;
- (ii) for purposes that require the unique capabilities of the space shuttle; or
- (iii) when other compelling circumstances exist.

(B) DEFINITION OF COMPELLING CIRCUMSTANCES.—In this paragraph, the term “compelling circumstances” includes, but is not limited to, occasions when the Administrator determines, in consultation with the Secretary of Defense and the Secretary of State, that important national security or foreign policy interests would be served by a shuttle launch.

(2) USING AVAILABLE CARGO SPACE FOR SECONDARY PAYLOADS.—The policy stated in paragraph (1) shall not preclude the use of available cargo space, on a space shuttle mission otherwise consistent with the policy described in paragraph (1), for the purpose of carrying secondary payloads (as defined by the Administrator) that do not require a human presence if such payloads are consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

(b) ANNUAL REPORT.—At least annually, the Administrator shall submit to Congress a report certifying that the payloads scheduled to be launched on the space shuttle for the next 4 years are consistent with the policy set forth in subsection (a)(1). For each payload scheduled to be launched from the space shuttle that does not require a human presence, the Administrator shall, in the certified report to Congress, state the specific circumstances that justified the use of the space shuttle. If, during the period between scheduled reports to Congress, any additions are made to the list of certified payloads intended to be launched from the shuttle, the Administrator shall inform Congress of the additions and the reasons therefor within 45 days of the change.

(c) ADMINISTRATION PAYLOADS.—The report described in subsection (b) shall also include those Administration payloads

designed solely to fly on the space shuttle which have begun the phase C/D of its development cycle.

§ 70103. Commercial payloads on space shuttle

(a) DEFINITIONS.—In this section:

(1) LAUNCH VEHICLE.—The term “launch vehicle” means any vehicle constructed for the purpose of operating in, or placing a payload in, outer space.

(2) PAYLOAD.—The term “payload” means an object which a person undertakes to place in outer space by means of a launch vehicle, and includes subcomponents of the launch vehicle specifically designed or adapted for that object.

(b) IN GENERAL.—Commercial payloads may not be accepted for launch as primary payloads on the space shuttle unless the Administrator determines that—

(1) the payload requires the unique capabilities of the space shuttle; or

(2) launching of the payload on the space shuttle is important for either national security or foreign policy purposes.

**CHAPTER 703—SHUTTLE PRICING POLICY FOR
COMMERCIAL AND FOREIGN USERS**

Sec.

70301. Congressional findings and declarations.

70302. Purpose, policy, and goals.

70303. Definition of additive cost.

70304. Duties of Administrator.

§ 70301. Congressional findings and declarations

Congress finds and declares that—

(1) the Space Transportation System is a vital element of the United States space program, contributing to the United States leadership in space research, technology, and development;

(2) the Space Transportation System is the primary space launch system for both United States national security and civil government missions;

(3) the Space Transportation System contributes to the expansion of United States private sector investment and involvement in space and therefore should serve commercial users;

(4) the availability of the Space Transportation System to foreign users for peaceful purposes is an important means of promoting international cooperative activities in the national interest and in maintaining access to space for activities which enhance the security and welfare of humankind;

(5) the United States is committed to maintaining world leadership in space transportation;

(6) making the Space Transportation System fully operational and cost effective in providing routine access to space will maximize the national economic benefits of the system; and

(7) national goals and the objectives for the Space Transportation System can be furthered by a stable and fair pricing policy for the Space Transportation System.

§ 70302. Purpose, policy, and goals

The purpose of this chapter is to set, for commercial and foreign users, the reimbursement pricing policy for the Space Transportation System that is consistent with the findings included in section 70301 of this title, encourages the full and effective use of space, and is designed to achieve the following goals:

- (1) The preservation of the role of the United States as a leader in space research, technology, and development.
- (2) The efficient and cost effective use of the Space Transportation System.
- (3) The achievement of greatly increased commercial space activity.
- (4) The enhancement of the international competitive position of the United States.

§ 70303. Definition of additive cost

In this chapter, the term “additive cost” means the average direct and indirect costs to the Administration of providing additional flights of the Space Transportation System beyond the costs associated with those flights necessary to meet the space transportation needs of the United States Government.

§ 70304. Duties of Administrator

(a) ESTABLISHMENT AND IMPLEMENTATION OF REIMBURSEMENT RECOVERY SYSTEM.—The Administrator shall establish and implement a pricing system to recover reimbursement in accordance with the pricing policy under section 70302 of this title from each commercial or foreign user of the Space Transportation System, which, except as provided in subsections (c), (d), and (e), shall include a base price of not less than \$74,000,000 for each flight of the Space Transportation System in 1982 dollars.

(b) REPORTS TO CONGRESS.—Each year the Administrator shall submit to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science and Technology of the House of Representatives a report, transmitted contemporaneously with the annual budget request of the President, which shall inform Congress how the policy goals contained in section 70302 of this title are being furthered by the shuttle price for foreign and commercial users.

(c) REDUCTION OF BASE PRICE.—

(1) AUTHORITY TO REDUCE.—If at any time the Administrator finds that the policy goals contained in section 70302 of this title are not being achieved, the Administrator shall have authority to reduce the base price established in subsection (a) after 45 days following receipt by the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science and Technology of the House of Representatives of a notice by the Administrator containing a description of the proposed reduction together with a full and complete statement of the facts and circumstances which necessitate such proposed reduction.

(2) MINIMUM PRICE.—In no case shall the minimum price established under paragraph (1) be less than additive cost.

(d) LOW OR NO-COST FLIGHTS.—The Administrator may set a price lower than the price determined under subsection (a) or (c),

or provide no-cost flights, for any commercial or foreign user of the Space Transportation System that is involved in research, development, or demonstration programs with the Administration.

(e) CUSTOMER INCENTIVES.—Notwithstanding the provisions of subsection (a), the Administrator shall have the authority to offer reasonable customer incentives consistent with the policy goals in section 70302 of this title.

CHAPTER 705—EXPLORATION INITIATIVES

Sec.

- 70501. Space shuttle follow-on.
- 70502. Exploration plan and programs.
- 70503. Ground-based analog capabilities.
- 70504. Stepping stone approach to exploration.
- 70505. Lunar outpost.
- 70506. Exploration technology research.
- 70507. Technology development.
- 70508. Robotic or human servicing of spacecraft.

§ 70501. Space shuttle follow-on

(a) POLICY STATEMENT.—It is the policy of the United States to possess the capability for human access to space on a continuous basis.

(b) ANNUAL REPORT.—The Administrator shall transmit an annual report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the progress being made toward developing the Crew Exploration Vehicle and the Crew Launch Vehicle and the estimated time before they will demonstrate crewed, orbital spaceflight.

§ 70502. Exploration plan and programs

The Administrator shall—

- (1) construct an architecture and implementation plan for the Administration's human exploration program that is not critically dependent on the achievement of milestones by fixed dates;
- (2) implement an exploration technology development program to enable lunar human and robotic operations consistent with section 20302(b) of this title, including surface power to use on the Moon and other locations;
- (3) conduct an in-situ resource utilization technology program to develop the capability to use space resources to increase independence from Earth, and sustain exploration beyond low-Earth orbit; and
- (4) pursue aggressively automated rendezvous and docking capabilities that can support the International Space Station and other mission requirements.

§ 70503. Ground-based analog capabilities

(a) IN GENERAL.—The Administrator may establish a ground-based analog capability in remote United States locations in order to assist in the development of lunar operations, life support, and in-situ resource utilization experience and capabilities.

(b) ENVIRONMENTAL CHARACTERISTICS.—The Administrator shall select locations for the activities described in subsection (a) that—

- (1) are regularly accessible;

(2) have significant temperature extremes and range; and

(3) have access to energy and natural resources (including geothermal, permafrost, volcanic, or other potential resources).

(c) INVOLVEMENT OF LOCAL POPULATIONS AND PRIVATE SECTOR PARTNERS.—In carrying out this section, the Administrator shall involve local populations, academia, and industrial partners as much as possible to ensure that ground-based benefits and applications are encouraged and developed.

§ 70504. Stepping stone approach to exploration

In order to maximize the cost-effectiveness of the long-term exploration and utilization activities of the United States, the Administrator shall take all necessary steps, including engaging international partners, to ensure that activities in its lunar exploration program shall be designed and implemented in a manner that gives strong consideration to how those activities might also help meet the requirements of future exploration and utilization activities beyond the Moon. The timetable of the lunar phase of the long-term international exploration initiative shall be determined by the availability of funding. However, once an exploration-related project enters its development phase, the Administrator shall seek, to the maximum extent practicable, to complete that project without undue delays.

§ 70505. Lunar outpost

(a) ESTABLISHMENT.—As the Administration works toward the establishment of a lunar outpost, the Administration shall make no plans that would require a lunar outpost to be occupied to maintain its viability. Any such outpost shall be operable as a human-tended facility capable of remote or autonomous operation for extended periods.

(b) DESIGNATION.—The United States portion of the first human-tended outpost established on the surface of the Moon shall be designated the “Neil A. Armstrong Lunar Outpost”.

§ 70506. Exploration technology research

The Administrator shall carry out a program of long-term exploration-related technology research and development, including such things as in-space propulsion, power systems, life support, and advanced avionics, that is not tied to specific flight projects. The program shall have the funding goal of ensuring that the technology research and development can be completed in a timely manner in order to support the safe, successful, and sustainable exploration of the solar system. In addition, in order to ensure that the broadest range of innovative concepts and technologies are captured, the long-term technology program shall have the goal of having a significant portion of its funding available for external grants and contracts with universities, research institutions, and industry.

§ 70507. Technology development

The Administrator shall establish an intra-Directorate long-term technology development program for space and Earth science within the Science Mission Directorate for the development of new technology. The program shall be independent of the flight projects under development. The Administration shall have a goal of funding the intra-Directorate technology development program at a level of 5 percent of the total Science Mission Directorate annual budget.

The program shall be structured to include competitively awarded grants and contracts.

§ 70508. Robotic or human servicing of spacecraft

The Administrator shall take all necessary steps to ensure that provision is made in the design and construction of all future observatory-class scientific spacecraft intended to be deployed in Earth orbit or at a Lagrangian point in space for robotic or human servicing and repair to the extent practicable and appropriate.

CHAPTER 707—HUMAN SPACE FLIGHT INDEPENDENT INVESTIGATION COMMISSION

Sec.

- 70701. Definitions.
- 70702. Establishment of Commission.
- 70703. Tasks of Commission.
- 70704. Composition of Commission.
- 70705. Powers of Commission.
- 70706. Public meetings, information, and hearings.
- 70707. Staff of Commission.
- 70708. Compensation and travel expenses.
- 70709. Security clearances for Commission members and staff.
- 70710. Reporting requirements and termination.

§ 70701. Definitions

In this chapter:

- (1) COMMISSION.—The term “Commission” means a Commission established under this chapter.
- (2) INCIDENT.—The term “incident” means either an accident or a deliberate act.

§ 70702. Establishment of Commission

(a) ESTABLISHMENT.—The President shall establish an independent, nonpartisan Commission within the executive branch to investigate any incident that results in the loss of—

- (1) a space shuttle;
 - (2) the International Space Station or its operational viability;
 - (3) any other United States space vehicle carrying humans that is owned by the Federal Government or that is being used pursuant to a contract with the Federal Government;
- or
- (4) a crew member or passenger of any space vehicle described in this subsection.

(b) DEADLINE FOR ESTABLISHMENT.—The President shall establish a Commission within 7 days after an incident specified in subsection (a).

§ 70703. Tasks of Commission

A Commission established pursuant to this chapter shall, to the extent possible, undertake the following tasks:

- (1) INVESTIGATION.—Investigate the incident.
- (2) CAUSE.—Determine the cause of the incident.
- (3) CONTRIBUTING FACTORS.—Identify all contributing factors to the cause of the incident.
- (4) RECOMMENDATIONS.—Make recommendations for corrective actions.
- (5) ADDITIONAL FINDINGS OR RECOMMENDATIONS.—Provide any additional findings or recommendations deemed by the

Commission to be important, whether or not they are related to the specific incident under investigation.

(6) REPORT.—Prepare a report to Congress, the President, and the public.

§ 70704. Composition of Commission

(a) NUMBER OF COMMISSIONERS.—A Commission established pursuant to this chapter shall consist of 15 members.

(b) SELECTION.—The members of a Commission shall be chosen in the following manner:

(1) APPOINTMENT BY PRESIDENT.—The President shall appoint the members, and shall designate the Chairman and Vice Chairman of the Commission from among its members.

(2) LISTS PROVIDED BY LEADERS OF CONGRESS.—The majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall each provide to the President a list of candidates for membership on the Commission. The President may select one of the candidates from each of the 4 lists for membership on the Commission.

(3) PROHIBITION REGARDING FEDERAL OFFICERS AND EMPLOYEES AND MEMBERS OF CONGRESS.—No officer or employee of the Federal Government or Member of Congress shall serve as a member of the Commission.

(4) PROHIBITION REGARDING CONTRACTORS.—No member of the Commission shall have, or have pending, a contractual relationship with the Administration.

(5) PROHIBITION REGARDING CONFLICT OF INTEREST.—The President shall not appoint any individual as a member of a Commission under this section who has a current or former relationship with the Administrator that the President determines would constitute a conflict of interest.

(6) EXPERIENCE.—To the extent practicable, the President shall ensure that the members of the Commission include some individuals with experience relative to human carrying spacecraft, as well as some individuals with investigative experience and some individuals with legal experience.

(7) DIVERSITY.—To the extent practicable, the President shall seek diversity in the membership of the Commission.

(c) DEADLINE FOR APPOINTMENT.—All members of a Commission established under this chapter shall be appointed no later than 30 days after the incident.

(d) INITIAL MEETING.—A Commission shall meet and begin operations as soon as practicable.

(e) SUBSEQUENT MEETINGS.—After its initial meeting, a Commission shall meet upon the call of the Chairman or a majority of its members.

(f) QUORUM.—Eight members of a Commission shall constitute a quorum.

(g) VACANCIES.—Any vacancy in a Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

§ 70705. Powers of Commission

(a) HEARINGS AND EVIDENCE.—A Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this chapter—

(1) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or member may determine advisable.

(b) CONTRACTING.—A Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this chapter.

(c) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—A Commission may secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this chapter. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to a Commission on a reimbursable basis administrative support and other services for the performance of the Commission's tasks.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(3) ADMINISTRATION ENGINEERING AND SAFETY CENTER.—The Administration Engineering and Safety Center shall provide data and technical support as requested by the Commission.

§ 70706. Public meetings, information, and hearings

(a) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—A Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports required under this chapter.

(b) PUBLIC HEARINGS.—Any public hearings of a Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

§ 70707. Staff of Commission

(a) APPOINTMENT AND COMPENSATION.—The Chairman, in consultation with the Vice Chairman, in accordance with rules agreed upon by a Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(b) DETAILEES.—Any Federal Government employee, except for an employee of the Administration, may be detailed to a Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—A Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, but at rates not to exceed the daily equivalent of the annual rate of basic pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5. An expert or consultant whose services are procured under this subsection shall disclose any contract or association the expert or consultant has with the Administration or any Administration contractor.

§ 70708. Compensation and travel expenses

(a) COMPENSATION.—Each member of a Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5 for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of a Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

§ 70709. Security clearances for Commission members and staff

The appropriate Federal agencies or departments shall cooperate with a Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements. No person shall be provided with access to classified information under this chapter without the appropriate security clearances.

§ 70710. Reporting requirements and termination

(a) **INTERIM REPORTS.**—A Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective actions as have been agreed to by a majority of Commission members.

(b) **FINAL REPORT.**—A Commission shall submit to the President and Congress, and make concurrently available to the public, a final report containing such findings, conclusions, and recommendations for corrective actions as have been agreed to by a majority of Commission members. Such report shall include any minority views or opinions not reflected in the majority report.

(c) **TERMINATION.**—

(1) **IN GENERAL.**—A Commission, and all the authorities of this chapter with respect to that Commission, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) **ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.**—A Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

CHAPTER 709—INTERNATIONAL SPACE STATION

Sec.

70901. Peaceful uses of space station.

70902. Allocation of International Space Station research budget.

70903. International Space Station research.

70904. International Space Station completion.

70905. National laboratory designation.

70906. International Space Station National Laboratory Advisory Committee.

70907. Maintaining use through at least 2020.

§ 70901. Peaceful uses of space station

No civil space station authorized under section 103(a)(1) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (Public Law 101-611, 104 Stat. 3190) may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

§ 70902. Allocation of International Space Station research budget

The Administrator shall allocate at least 15 percent of the funds budgeted for International Space Station research to ground-based, free-flyer, and International Space Station life and microgravity science research that is not directly related to supporting the human exploration program, consistent with section 40904 of this title.

§ 70903. International Space Station research

The Administrator shall—

(1) carry out a program of microgravity research consistent with section 40904 of this title; and

(2) consider the need for a life sciences centrifuge and any associated holding facilities.

§ 70904. International Space Station completion

(a) **POLICY.**—It is the policy of the United States to achieve diverse and growing utilization of, and benefits from, the International Space Station.

(b) **ELEMENTS, CAPABILITIES, AND CONFIGURATION CRITERIA.**—The Administrator shall ensure that the International Space Station will—

(1) be assembled and operated in a manner that fulfills international partner agreements, as long as the Administrator determines that the shuttle can safely enable the United States to do so;

(2) be used for a diverse range of microgravity research, including fundamental, applied, and commercial research, consistent with section 40904 of this title;

(3) have an ability to support a crew size of at least 6 persons, unless the Administrator transmits to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 60 days after December 30, 2005, a report explaining why such a requirement should not be met, the impact of not meeting the requirement on the International Space Station research agenda and operations and international partner agreements, and what additional funding or other steps would be required to have an ability to support a crew size of at least 6 persons;

(4) support Crew Exploration Vehicle docking and automated docking of cargo vehicles or modules launched by either heavy-lift or commercially-developed launch vehicles;

(5) support any diagnostic human research, on-orbit characterization of molecular crystal growth, cellular research, and other research that the Administration believes is necessary to conduct, but for which the Administration lacks the capacity to return the materials that need to be analyzed to Earth; and

(6) be operated at an appropriate risk level.

(c) **CONTINGENCIES.**—

(1) **POLICY.**—The Administrator shall ensure that the International Space Station can have available, if needed, sufficient logistics and on-orbit capabilities to support any potential period during which the space shuttle or its follow-on crew and cargo systems are unavailable, and can have available, if needed, sufficient surge delivery capability or prepositioning of spares and other supplies needed to accommodate any such hiatus.

(2) **PLAN.**—Before making any change in the International Space Station assembly sequence in effect on December 30, 2005, the Administrator shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan to carry out the policy described in paragraph (1).

§ 70905. National laboratory designation

(a) **DEFINITION OF UNITED STATES SEGMENT OF THE INTERNATIONAL SPACE STATION.**—In this section the term “United States segment of the International Space Station” means those elements of the International Space Station manufactured—

(1) by the United States; or

(2) for the United States by other nations in exchange for funds or launch services.

(b) DESIGNATION.—To further the policy described in section 70501(a) of this title, the United States segment of the International Space Station is hereby designated a national laboratory.

(c) MANAGEMENT.—

(1) PARTNERSHIPS.—The Administrator shall seek to increase the utilization of the International Space Station by other Federal entities and the private sector through partnerships, cost-sharing agreements, and other arrangements that would supplement Administration funding of the International Space Station.

(2) CONTRACTING.—The Administrator may enter into a contract with a nongovernmental entity to operate the International Space Station national laboratory, subject to all applicable Federal laws and regulations.

§ 70906. International Space Station National Laboratory Advisory Committee

(a) ESTABLISHMENT.—Not later than one year after October 15, 2008, the Administrator shall establish under the Federal Advisory Committee Act a committee to be known as the “International Space Station National Laboratory Advisory Committee” (hereafter in this section referred to as the “Committee”).

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Committee shall be composed of individuals representing organizations that have formal agreements with the Administration to utilize the United States portion of the International Space Station, including allocations within partner elements.

(2) CHAIR.—The Administrator shall appoint a chair from among the members of the Committee, who shall serve for a 2-year term.

(c) DUTIES OF THE COMMITTEE.—

(1) IN GENERAL.—The Committee shall monitor, assess, and make recommendations regarding effective utilization of the International Space Station as a national laboratory and platform for research.

(2) ANNUAL REPORT.—The Committee shall submit to the Administrator, on an annual basis or more frequently as considered necessary by a majority of the members of the Committee, a report containing the assessments and recommendations required by paragraph (1).

(d) DURATION.—The Committee shall exist for the life of the International Space Station.

§ 70907. Maintaining use through at least 2020

The Administrator shall take all necessary steps to ensure that the International Space Station remains a viable and productive facility capable of potential United States utilization through at least 2020 and shall take no steps that would preclude its continued operation and utilization by the United States after 2015.

CHAPTER 711—NEAR-EARTH OBJECTS

Sec.

71101. Reaffirmation of policy.

71102. Requests for information.

71103. Developing policy and recommending responsible Federal agency.

71104. Planetary radar.

§ 71101. Reaffirmation of policy

Congress reaffirms the policy set forth in section 20102(g) of this title (relating to surveying near-Earth asteroids and comets).

§ 71102. Requests for information

The Administrator shall issue requests for information on—

(1) a low-cost space mission with the purpose of rendezvousing with, attaching a tracking device, and characterizing the Apophis asteroid; and

(2) a medium-sized space mission with the purpose of detecting near-Earth objects equal to or greater than 140 meters in diameter.

§ 71103. Developing policy and recommending responsible Federal agency

Within 2 years after October 15, 2008, the Director of the Office of Science and Technology Policy shall—

(1) develop a policy for notifying Federal agencies and relevant emergency response institutions of an impending near-Earth object threat, if near-term public safety is at risk; and

(2) recommend a Federal agency or agencies to be responsible for—

(A) protecting the United States from a near-Earth object that is expected to collide with Earth; and

(B) implementing a deflection campaign, in consultation with international bodies, should one be necessary.

§ 71104. Planetary radar

The Administrator shall maintain a planetary radar that is comparable to the capability provided through the Deep Space Network Goldstone facility of the Administration.

CHAPTER 713—COOPERATION FOR SAFETY AMONG SPACEFARING NATIONS

Sec.

71301. Common docking system standard to enable rescue.

71302. Information sharing to avoid physical or radio-frequency interference.

§ 71301. Common docking system standard to enable rescue

In order to maximize the ability to rescue astronauts whose space vehicles have become disabled, the Administrator shall enter into discussions with the appropriate representatives of spacefaring nations who have or plan to have crew transportation systems capable of orbital flight or flight beyond low Earth orbit for the purpose of agreeing on a common docking system standard.

§ 71302. Information sharing to avoid physical or radio-frequency interference

The Administrator shall, in consultation with other agencies of the Federal Government as the Administrator considers appropriate, initiate discussions with the appropriate representatives of spacefaring nations to determine an appropriate framework under which information intended to promote safe access into outer space, operations in outer space, and return from outer space to Earth free from physical or radio-frequency interference can be shared among the nations.

SEC. 4. CONFORMING AMENDMENTS TO OTHER LAWS.

(a) TITLE 5.—Section 9811(a)(1)(E) of title 5, United States Code, is amended by striking “section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A))” and substituting “section 20113(b)(1) of title 51”.

(b) TITLE 31.—Section 1304(a)(3)(D) of title 31, United States Code, is amended by striking “section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473)” and substituting “section 20113 of title 51”.

(c) TITLE 35.—Section 210(a)(7) of title 35, United States Code, is amended by striking “section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457)” and substituting “section 20135 of title 51”.

(d) TRANSFER OF CHAPTERS 701 AND 703 OF TITLE 49, UNITED STATES CODE.—

(1) TITLE 49, UNITED STATES CODE.—Title 49, United States Code, is amended as follows:

(A) In the analysis for title 49, United States Code, the item related to subtitle IX is amended to read as follows:

“IX. [TRANSFERRED]”.

(B) The heading and analysis for subtitle IX of title 49, United States Code, are amended to read as follows:

“Subtitle IX—[Transferred]”

“Chapter

“701. [Transferred]

“703. [Transferred]”.

Sec.

(2) RENUMBERING AND TRANSFER OF CHAPTERS.—Chapters 701 and 703 of title 49, United States Code, are renumbered as chapters 509 and 511, respectively, of title 51, United States Code, and transferred so as to appear after chapter 507 of title 51, United States Code, as enacted by section 3 of this Act.

(3) RENUMBERING OF SECTIONS IN CHAPTER 509 OF TITLE 51, UNITED STATES CODE.—In chapter 509 of title 51, United States Code, as renumbered by paragraph (2), and in the chapter analysis, the sections are renumbered as follows:

(A) Section 70101 is renumbered 50901.

(B) Section 70102 is renumbered 50902.

(C) Section 70103 is renumbered 50903.

(D) Section 70104 is renumbered 50904.

(E) Section 70105 is renumbered 50905.

(F) Section 70105a is renumbered 50906.

- (G) Section 70106 is renumbered 50907.
- (H) Section 70107 is renumbered 50908.
- (I) Section 70108 is renumbered 50909.
- (J) Section 70109 is renumbered 50910.
- (K) Section 70109a is renumbered 50911.
- (L) Section 70110 is renumbered 50912.
- (M) Section 70111 is renumbered 50913.
- (N) Section 70112 is renumbered 50914.
- (O) Section 70113 is renumbered 50915.
- (P) Section 70114 is renumbered 50916.
- (Q) Section 70115 is renumbered 50917.
- (R) Section 70116 is renumbered 50918.
- (S) Section 70117 is renumbered 50919.
- (T) Section 70118 is renumbered 50920.
- (U) Section 70119 is renumbered 50921.
- (V) Section 70120 is renumbered 50922.
- (W) Section 70121 is renumbered 50923.

(4) RENUMBERING OF SECTIONS IN CHAPTER 511 OF TITLE 51, UNITED STATES CODE.—In chapter 511 of title 51, United States Code, as renumbered by paragraph (2), and in the chapter analysis, the sections are renumbered as follows:

- (A) Section 70301 is renumbered 51101.
- (B) Section 70302 is renumbered 51102.
- (C) Section 70303 is renumbered 51103.
- (D) Section 70304 is renumbered 51104.
- (E) Section 70305 is renumbered 51105.

(5) CROSS REFERENCES IN CHAPTER 509 OF TITLE 51, UNITED STATES CODE.—

(A) Section 50902(11) of title 51, United States Code, as renumbered by paragraph (3), is amended—

- (i) by striking “section 70104(c)” and substituting “section 50904(c)”; and
- (ii) by striking “section 70105a” and substituting “section 50906”.

(B) Section 50902(19) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70120(c)(2)” and substituting “section 50922(c)(2)”.

(C) Section 50904(a)(2) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70102(1)(A) or (B)” and substituting “section 50902(1)(A) or (B)”.

(D) Section 50904(a)(3) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70102(1)(C)” and substituting “section 50902(1)(C)”.

(E) Section 50904(a)(4) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70102(1)(C)” and substituting “section 50902(1)(C)”.

(F) Section 50905(b)(5)(A) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70112(a)(2) and (c)” and substituting “section 50914(a)(2) and (c)”.

(G) Section 50906(c) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70105(b)(2)(C)” and substituting “section 50905(b)(2)(C)”.

(H) Section 50906(i) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “sections 70106, 70107, 70108, 70109, 70110, 70112, 70115, 70116, 70117, and 70121” and substituting “sections 50907, 50908, 50909, 50910, 50912, 50914, 50917, 50918, 50919, and 50923”.

(I) Section 50907(a) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “sections 70104(c), 70105, and 70105a” and substituting “sections 50904(c), 50905, and 50906”.

(J) Section 50908(b)(2) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70105(c)” and substituting “section 50905(c)”.

(K) Section 50908(e) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70110” and substituting “section 50912”.

(L) Section 50909(b) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70110” and substituting “section 50912”.

(M) Section 50912(a)(1) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70105(a) or 70105a” and substituting “section 50905(a) or 50906”.

(N) Section 50912(a)(2) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70104(c)” and substituting “section 50904(c)”.

(O) Section 50912(a)(3)(A) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70107(b) or (c)” and substituting “section 50908(b) or (c)”.

(P) Section 50912(a)(3)(B) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70108(a)” and substituting “section 50909(a)”.

(Q) Section 50915(a)(1)(A) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70112(a)(1)(A)” and substituting “section 50914(a)(1)(A)”.

(R) Section 50915(a)(2) of title 51, United States Code, as renumbered by paragraph (3), is amended—

(i) by striking “section 70112(a)(1)(A)” and substituting “section 50914(a)(1)(A)”; and

(ii) by striking “section 70112(a)(1)” and substituting “section 50914(a)(1)”.

(S) Section 50916 of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70106(b)” and substituting “section 50907(b)”.

(T) Section 50919(b)(2) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 et seq.)” and substituting “chapter 601 of this title”.

(U) Section 50922(c)(2)(B) of title 51, United States Code, as renumbered by paragraph (3), is amended by striking “section 70102” and substituting “section 50902”.

(6) CROSS REFERENCES IN CHAPTER 511 OF TITLE 51, UNITED STATES CODE.—

(A) Section 51101(1) of title 51, United States Code, as renumbered by paragraph (4), is amended by striking

“section 502 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5802)” and substituting “section 50501 of this title”.

(B) Section 51104(d)(1) of title 51, United States Code, as renumbered by paragraph (4), is amended by striking “section 303 of this title” and substituting “section 303 of title 49”.

(7) ANALYSIS FOR TITLE 51, UNITED STATES CODE.—The analysis for title 51, United States Code, as enacted by section 3 of this Act, is amended by adding, after the item for chapter 507, the following items:

“509. Commercial Space Launch Activities50901
 “511. Space Transportation Infrastructure Matching Grants51101”.

(8) DEEMED REFERENCES TO TITLE 49, UNITED STATES CODE.— 49 USC 101 note.

In title 49, United States Code, references to “this title” are deemed to refer also to chapters 509 and 511 of title 51, United States Code.

(e) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT OF 2005.—Section 304 of the National Aeronautics and Space Administration Authorization Act of 2005 (42 U.S.C. 16654) is amended as follows:

(1) Subsection (a)(1) is redesignated as subsection (a) and amended to read as follows:

“(a) ASSESSMENT OF CERTAIN MISSIONS.—Not later than 60 days after the date of enactment of this Act, the Administrator shall carry out an assessment under section 30504 of title 51, United States Code, for at least the following missions: FAST, TIMED, Cluster, Wind, Geotail, Polar, TRACE, Ulysses, and Voyager.”.

(2) Subsection (b) is amended by striking “subsection (a)(1)” and substituting “subsection (a)”.

SEC. 5. TRANSITIONAL AND SAVINGS PROVISIONS.

51 USC note
 prec. 10101.

(a) DEFINITIONS.—In this section:

(1) SOURCE PROVISION.—The term “source provision” means a provision of law that is replaced by a title 51 provision.

(2) TITLE 51 PROVISION.—The term “title 51 provision” means a provision of title 51, United States Code, that is enacted by section 3.

(b) CUTOFF DATE.—The title 51 provisions replace certain provisions of law enacted on or before July 1, 2009. If a law enacted after that date amends or repeals a source provision, that law is deemed to amend or repeal, as the case may be, the corresponding title 51 provision. If a law enacted after that date is otherwise inconsistent with a title 51 provision or a provision of this Act, that law supersedes the title 51 provision or provision of this Act to the extent of the inconsistency.

(c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, a title 51 provision is deemed to have been enacted on the date of enactment of the corresponding source provision.

(d) REFERENCES TO TITLE 51 PROVISIONS.—A reference to a title 51 provision is deemed to refer to the corresponding source provision.

(e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding title 51 provision.

(f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a source provision continues in effect under the corresponding title 51 provision.

(g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a source provision is deemed to have been taken or committed under the corresponding title 51 provision.

51 USC note
prec. 10101.

SEC. 6. REPEALS.

The following provisions of law are repealed, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Act	Section	United States Code
National Aeronautics and Space Act of 1958 (Public Law 85-568)	102	42 U.S.C. 2451.
	103	42 U.S.C. 2452.
	201	42 U.S.C. 2471 (prior).
	202	42 U.S.C. 2472.
	203	42 U.S.C. 2473.
	204	42 U.S.C. 2474.
	205	42 U.S.C. 2475.
	206	42 U.S.C. 2476.
	207	42 U.S.C. 2476a.
	208	42 U.S.C. 2476b.
	302	42 U.S.C. 2453.
	303	42 U.S.C. 2454.
	304(a)	42 U.S.C. 2455(a).
	304(e)	42 U.S.C. 2456.
	304(f)	42 U.S.C. 2456a.
	305	42 U.S.C. 2457.
	306	42 U.S.C. 2458.
	307	42 U.S.C. 2458a.
	308	42 U.S.C. 2458b.
	309	42 U.S.C. 2458c.
	310	42 U.S.C. 2459.
	311	42 U.S.C. 2459b.
	312	42 U.S.C. 2459c.
	313	42 U.S.C. 2459f.
	314	42 U.S.C. 2459f-1.
	315	42 U.S.C. 2459j.
	316	42 U.S.C. 2459k.
	317	42 U.S.C. 2459l.
	401	42 U.S.C. 2481.
	402	42 U.S.C. 2482.
	403	42 U.S.C. 2483.
	404	42 U.S.C. 2484.
Act of June 15, 1959 (Public Law 86-45)	4	42 U.S.C. 2460.
National Aeronautics and Space Administration Authorization Act, 1968 (Public Law 90-67)	6	42 U.S.C. 2477.
Joint Resolution of September 29, 1969 (Public Law 91-76) ..	1, 2	42 U.S.C. 2461.
National Aeronautics and Space Administration Authorization Act, 1978 (Public Law 95-76) ..	6	42 U.S.C. 2463.

Schedule of Laws Repealed—Continued

Act	Section	United States Code
National Aeronautics and Space Administration Authorization Act, 1983 (Public Law 97–324)	106(a)	42 U.S.C. 2464.
National Aeronautics and Space Administration Authorization Act of 1986 (Public Law 99–170)	201	42 U.S.C. 2466.
	202	42 U.S.C. 2466a.
	203	42 U.S.C. 2466b.
	204	42 U.S.C. 2466c.
National Space Grant College and Fellowship Act (Title II of Public Law 100–147)	203	42 U.S.C. 2486a.
	204	42 U.S.C. 2486b.
	205	42 U.S.C. 2486c.
	206	42 U.S.C. 2486d.
	207	42 U.S.C. 2486e.
	208	42 U.S.C. 2486f.
	209	42 U.S.C. 2486g.
	210	42 U.S.C. 2486h.
	211	42 U.S.C. 2486i.
	213	42 U.S.C. 2486k.
	214	42 U.S.C. 2486l.
Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Public Law 100–404)	(par. under heading “Science, Space, and Technology Education Trust Fund”, at 102 Stat. 1028).	42 U.S.C. 2467.
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990 (Public Law 101–144)	(pars. under heading “Small and Disadvantaged Business”, at 103 Stat. 863).	42 U.S.C. 2473b.
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (Public Law 101–611)	112	42 U.S.C. 2465a.
	115(b)	15 U.S.C. 1535.
	123	(not previously classified).
	203	42 U.S.C. 2465c.
	206	42 U.S.C. 2465f.
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139)	(1st par. under heading “Administrative Provisions”, at 105 Stat. 771).	42 U.S.C. 2459d.
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992 (Public Law 102–195)	19	42 U.S.C. 2459e.
	20	42 U.S.C. 2467a.
	21(a)	42 U.S.C. 2473c(a).
	21(c)	42 U.S.C. 2473c(c).
	21(d)	42 U.S.C. 2473c(d).

Schedule of Laws Repealed—Continued

Act	Section	United States Code
	21(e)	42 U.S.C. 2473c(e).
	21(f)	42 U.S.C. 2473c(f).
	21(g)	42 U.S.C. 2473c(g).
	21(h)	42 U.S.C. 2473c(h).
Land Remote Sensing Policy Act of 1992 (Public Law 102–555)	3	15 U.S.C. 5602.
	101	15 U.S.C. 5611.
	102	15 U.S.C. 5612.
	103	15 U.S.C. 5613.
	104	15 U.S.C. 5614.
	105	15 U.S.C. 5615.
	201	15 U.S.C. 5621.
	202	15 U.S.C. 5622.
	203	15 U.S.C. 5623.
	204	15 U.S.C. 5624.
	205	15 U.S.C. 5625.
	301	15 U.S.C. 5631.
	302	15 U.S.C. 5632.
	303	15 U.S.C. 5633.
	401	15 U.S.C. 5641.
	501	15 U.S.C. 5651.
	502	15 U.S.C. 5652.
	503	15 U.S.C. 5653.
	504	15 U.S.C. 5654.
	505	15 U.S.C. 5655.
	506	15 U.S.C. 5656.
	507	15 U.S.C. 5657.
	508	15 U.S.C. 5658.
	601	15 U.S.C. 5671.
	602	15 U.S.C. 5672.
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Public Law 102–588)	304	42 U.S.C. 2467b.
	502	15 U.S.C. 5802.
	504	15 U.S.C. 5803.
	506	15 U.S.C. 5805.
	507	15 U.S.C. 5806.
	508	15 U.S.C. 5807.
	510	15 U.S.C. 5808.
	602	42 U.S.C. 2487a.
	603	42 U.S.C. 2487b.
	604	42 U.S.C. 2487c.
	606	42 U.S.C. 2487e.
	607	42 U.S.C. 2487f.
	608	42 U.S.C. 2487g.
Commercial Space Act of 1998 (Public Law 105–303)	2	42 U.S.C. 14701.
	101	42 U.S.C. 14711.
	104(b)	42 U.S.C. 14712(b).
	105	42 U.S.C. 14713.
	106	42 U.S.C. 14714.
	107	42 U.S.C. 14715, 15 U.S.C. 5621, 5622.
	201	42 U.S.C. 14731.
	202	42 U.S.C. 14732.
	204	42 U.S.C. 14733.
	205	42 U.S.C. 14734.
	206	42 U.S.C. 14735.
Technology Administration Act of 1998 (Public Law 105–309)	8	15 U.S.C. 1511e.
National Aeronautics and Space Administration Authorization Act of 2000 (Public Law 106–391)	126	42 U.S.C. 2475a.
	301	42 U.S.C. 2459g.

Schedule of Laws Repealed—Continued

Act	Section	United States Code
	304	42 U.S.C. 2459h.
	305	42 U.S.C. 2475b.
	325	42 U.S.C. 2473d.
Commercial Reusable In-Space Transportation Act of 2002 (Title IX of Public Law 107– 248)	903	42 U.S.C. 14752.
	904	42 U.S.C. 14753.
Departments of Veterans Affairs and Housing and Urban De- velopment, and Independent Agencies Appropriations Act, 2003 (Division K of Public Law 108–7)	(last par. under heading “Administrative Provisions”, at 117 Stat. 520).	42 U.S.C. 2459i.
National Aeronautics and Space Administration Authorization Act of 2005 (Public Law 109– 155)	101(a)	42 U.S.C. 16611(a).
	101(b)	42 U.S.C. 16611(b).
	101(h)(1)	42 U.S.C. 16611(h)(1).
	101(i)	42 U.S.C. 16611(i).
	103	42 U.S.C. 16613.
	105	42 U.S.C. 16614.
	107	42 U.S.C. 16615.
	110	42 U.S.C. 16618.
	202	42 U.S.C. 16631.
	203	42 U.S.C. 16632.
	204	42 U.S.C. 16633.
	205	42 U.S.C. 16634.
	301	42 U.S.C. 16651.
	304(a) (matter before par. (1))	42 U.S.C. 16654(a) (matter before par. (1)).
	304(a)(2)	42 U.S.C. 16654(a)(2).
	305(2)	42 U.S.C. 16655(2).
	305(3)	42 U.S.C. 16655(3).
	306	42 U.S.C. 16656.
	311	42 U.S.C. 16671.
	312	42 U.S.C. 16672.
	313	42 U.S.C. 16673.
	314	42 U.S.C. 16674.
	315	42 U.S.C. 16675.
	316	42 U.S.C. 16676.
	401	42 U.S.C. 16701.
	411	42 U.S.C. 16711.
	421	42 U.S.C. 16721.
	422	42 U.S.C. 16722.
	423	42 U.S.C. 16723.
	424	42 U.S.C. 16724.
	425	42 U.S.C. 16725.
	426	42 U.S.C. 16726.
	427	42 U.S.C. 16727.
	431	42 U.S.C. 16741.
	441	42 U.S.C. 16751.
	501(a)	42 U.S.C. 16761(a).
	501(b)	42 U.S.C. 16761(b).
	503	42 U.S.C. 16763.
	504	42 U.S.C. 16764.
	505	42 U.S.C. 16765.
	506(1)	42 U.S.C. 16766(1).
	506(2)	42 U.S.C. 16766(2).
	507(a)	42 U.S.C. 16767(a).
	507(b)	42 U.S.C. 16767(b).
	507(d)	42 U.S.C. 16767(d).
	601	42 U.S.C. 16781.
	612	42 U.S.C. 16791.
	613	42 U.S.C. 16792.
	615	42 U.S.C. 16794.
	616	42 U.S.C. 16795.

Schedule of Laws Repealed—Continued

Act	Section	United States Code
	618	42 U.S.C. 16797.
	619(b)	42 U.S.C. 16798(b).
	621	42 U.S.C. 16811.
	707	42 U.S.C. 16821.
	708	42 U.S.C. 16822.
	709	42 U.S.C. 16823.
	821	42 U.S.C. 16841.
	822	42 U.S.C. 16842.
	823	42 U.S.C. 16843.
	824	42 U.S.C. 16844.
	825	42 U.S.C. 16845.
	826	42 U.S.C. 16846.
	827	42 U.S.C. 16847.
	828	42 U.S.C. 16848.
	829	42 U.S.C. 16849.
	830	42 U.S.C. 16850.
America COMPETES Act (Public Law 110–69)	2001(a)	42 U.S.C. 16611a(a).
	2001(b)	42 U.S.C. 16611a(b).
	2001(c)	42 U.S.C. 16611a(c).
	2001(e)	42 U.S.C. 16611a(e).
	2002(b)	42 U.S.C. 16712(b).
	2003	42 U.S.C. 16658.
Science Appropriations Act, 2008 (Public Law 110–161, div. B, title III)	(7th par. under heading “Administrative Provisions”, at 121 Stat. 1919).	42 U.S.C. 16611b.
National Aeronautics and Space Administration Authorization Act of 2008 (Public Law 110–422)	201	42 U.S.C. 17711.
	204(b)	42 U.S.C. 17712(b).
	204(c)	42 U.S.C. 17712(c).
	204(d)	42 U.S.C. 17712(d).
	206(a)	42 U.S.C. 17713(a).
	208	42 U.S.C. 17714.
	302	42 U.S.C. 17721.
	303	42 U.S.C. 17722.
	304(b)	42 U.S.C. 17723(b).
	304(c)	42 U.S.C. 17723(c).
	307	42 U.S.C. 17724.
	403	42 U.S.C. 17731.
	404(a)	42 U.S.C. 17732(a).
	404(b)	42 U.S.C. 17732(b).
	405(b)	42 U.S.C. 17733(b).
	407	42 U.S.C. 17734.
	501	42 U.S.C. 17741.
	502	42 U.S.C. 17742.
	601(a)	42 U.S.C. 17751(a).
	602	42 U.S.C. 17752.
	704(b)	42 U.S.C. 17781(b).
	704(c)	42 U.S.C. 17781(c).
	801(a)	42 U.S.C. 17791(a).
	803	42 U.S.C. 17793.
	804	42 U.S.C. 17794.
	805	42 U.S.C. 17795.
	902	42 U.S.C. 17801.
	1002(a)	42 U.S.C. 17811(a).
	1003(a)	42 U.S.C. 17812(a).
	1102(b)	42 U.S.C. 17821(b).
	1103	42 U.S.C. 17822.
	1104	42 U.S.C. 17823.
	1107	42 U.S.C. 17824.
	1109(c)	42 U.S.C. 17825(c).
	1112	42 U.S.C. 17827.
	1116	42 U.S.C. 17828.
	1117	42 U.S.C. 17829.

Schedule of Laws Repealed—Continued

Act	Section	United States Code
Science Appropriations Act, 2009 (Public Law 111–8, div. B, title III	(3d proviso in par. under heading “Cross Agency Support”, at 123 Stat. 589).	42 U.S.C. 16611b note.

Approved December 18, 2010.

LEGISLATIVE HISTORY—H.R. 3237:

HOUSE REPORTS: No. 111–325 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Jan. 13, considered and passed House.

Dec. 3, considered and passed Senate.



Public Law 111–315
111th Congress

An Act

Dec. 18, 2010
[H.R. 6184]

To amend the Water Resources Development Act of 2000 to extend and modify the program allowing the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FUNDING TO PROCESS PERMITS.

Section 214 of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 117 Stat. 1836; 119 Stat. 2169; 120 Stat. 318; 120 Stat. 3197; 121 Stat. 1067; 123 Stat. 3478) is amended—

Notice.

(1) by striking subsection (a) and inserting the following:
“(a) **IN GENERAL.**—The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.”;

(2) by redesignating subsection (c) as subsection (e);

(3) by striking subsection (b) and inserting the following:

“(b) **EFFECT ON PERMITTING.**—

“(1) **IN GENERAL.**—In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

“(2) **IMPARTIAL DECISIONMAKING.**—In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall—

“(A) be reviewed by—

“(i) the District Commander, or the Commander’s designee, of the Corps District in which the project or activity is located; or

“(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

“(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

“(c) **LIMITATION ON USE OF FUNDS.**—None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

“(d) **PUBLIC AVAILABILITY.**—The Secretary shall ensure that all final permit decisions carried out using funds authorized under

this section are made available to the public, including on the Internet.”; and

(4) in subsection (e) (as redesignated) by striking “2010” and inserting “2016”.

SEC. 2. COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 18, 2010.

LEGISLATIVE HISTORY—H.R. 6184:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 1, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 111–316
111th Congress

An Act

Dec. 18, 2010
[H.R. 6399]

To improve certain administrative operations of the Office of the Architect of the Capitol, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSOLIDATION OF STAFF POSITIONS.

(a) CONSOLIDATION.—Section 108 of the Legislative Branch Appropriations Act, 1991 (2 U.S.C. 1849) is amended to read as follows:

“SEC. 108. The Architect of the Capitol may fix the rate of basic pay for not more than 32 positions at a rate not to exceed the highest total rate of pay for the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code, for the locality involved.”.

(b) CONFORMING AMENDMENT.—Section 1203(e) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1805(e)) is amended by striking paragraph (3).

2 USC 1805 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pay periods beginning on or after the date of the enactment of this Act.

SEC. 2. AVAILABILITY OF APPROPRIATED FUNDS TO ACQUIRE BUILDING.

(a) AVAILABILITY.—The amounts described in subsection (b) shall be available to the Architect of the Capitol for the acquisition (through purchase, lease, transfer from another Federal entity, or otherwise) of real property for the use of the Capitol Police.

(b) AMOUNTS DESCRIBED.—The amounts described in this subsection are amounts appropriated to, and remaining available for obligation by, the Architect of the Capitol under the heading “Architect of the Capitol, Capitol Police Buildings and Grounds” or under the heading “Architect of the Capitol, Capitol Police

Buildings, Grounds and Security” in any Act making appropriations for the legislative branch for fiscal years 2007 through 2010.

Approved December 18, 2010.

LEGISLATIVE HISTORY—H.R. 6399:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 16, considered and passed House.

Dec. 4, considered and passed Senate.



Public Law 111–317
111th Congress

Joint Resolution

Dec. 18, 2010
[H.J. Res. 105]

Making further continuing appropriations for fiscal year 2011, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Continuing Appropriations Act, 2011 (Public Law 111–242) is further amended by striking the date specified in section 106(3) and inserting “December 21, 2010”.

Ante, p. 3063.

Approved December 18, 2010.

LEGISLATIVE HISTORY—H.J. Res. 105:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 17, considered and passed House and Senate.



Public Law 111–318
111th Congress

An Act

To limit access to Social Security account numbers.

Dec. 18, 2010

[S. 3789]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Social Security Number Protection Act of 2010”.

Social Security
Number
Protection Act of
2010.
42 USC 1305
note.

SEC. 2. SOCIAL SECURITY NUMBER PROTECTION.

(a) PROHIBITION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY GOVERNMENTAL AGENCIES.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following:

“(x) No Federal, State, or local agency may display the Social Security account number of any individual, or any derivative of such number, on any check issued for any payment by the Federal, State, or local agency.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to checks issued after the date that is 3 years after the date of enactment of this Act.

42 USC 405 note.

(b) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) (as amended by subsection (a)) is amended by adding at the end the following:

“(xi) No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the Social Security account numbers of other individuals. For purposes of this clause, the term ‘prisoner’ means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual’s conviction of a criminal offense.”.

Definition.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners,

or entry into contract with prisoners, after the date that is
1 year after the date of enactment of this Act.

Approved December 18, 2010.

LEGISLATIVE HISTORY—S. 3789:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed Senate.

Dec. 8, considered and passed House.



Public Law 111–319
111th Congress

An Act

To amend the Fair Credit Reporting Act with respect to the applicability of identity theft guidelines to creditors.

Dec. 18, 2010

[S. 3987]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Red Flag Program Clarification Act of 2010”.

Red Flag
Program
Clarification Act
of 2010.
15 USC 1601
note.

SEC. 2. SCOPE OF CERTAIN CREDITOR REQUIREMENTS.

(a) AMENDMENT TO FCRA.—Section 615(e) of the Fair Credit Reporting Act (15 U.S.C. 1681m(e)) is amended by adding at the end the following:

“(4) DEFINITIONS.—As used in this subsection, the term ‘creditor’—

“(A) means a creditor, as defined in section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a), that regularly and in the ordinary course of business—

“(i) obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction;

“(ii) furnishes information to consumer reporting agencies, as described in section 623, in connection with a credit transaction; or

“(iii) advances funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) does not include a creditor described in subparagraph (A)(iii) that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person; and

“(C) includes any other type of creditor, as defined in that section 702, as the agency described in paragraph (1) having authority over that creditor may determine appropriate by rule promulgated by that agency, based on a determination that such creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.”.

15 USC 1681m
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall become effective on the date of enactment of this Act.

Approved December 18, 2010.

LEGISLATIVE HISTORY—S. 3987:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 30, considered and passed Senate.

Dec. 7, considered and passed House.



Public Law 111–320
111th Congress

An Act

To amend the Child Abuse Prevention and Treatment Act, the Family Violence Prevention and Services Act, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and the Abandoned Infants Assistance Act of 1988 to reauthorize the Acts, and for other purposes.

Dec. 20, 2010
[S. 3817]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “CAPTA Reauthorization Act of 2010”.

CAPTA
Reauthorization
Act of 2010.
42 USC 5101
note.

**TITLE I—CHILD ABUSE PREVENTION
AND TREATMENT ACT**

SEC. 101. FINDINGS.

Section 2 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note) is amended—

(1) by striking paragraph (1) and inserting the following:
“(1) in fiscal year 2008, approximately 772,000 children were found by States to be victims of child abuse and neglect;”;

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting “and close to $\frac{1}{3}$ of all child maltreatment-related fatalities in fiscal year 2008 were attributed to neglect alone” after “maltreatment”; and

(B) in subparagraph (B)—

(i) by striking “60 percent” and inserting “71 percent”;

(ii) by striking “2001” and inserting “fiscal year 2008”;

(iii) by striking “19 percent” and inserting “16 percent”;

(iv) by striking “10 percent” and inserting “9 percent”; and

(v) by striking “and 7 percent suffered emotional maltreatment” and inserting “, 7 percent suffered psychological maltreatment, 2 percent experienced medical neglect, and 9 percent were victims of other forms of maltreatment”;

(3) in paragraph (3)—

(A) in subparagraph (A) by inserting “or neglect” after “abuse”;

(B) in subparagraph (B), by striking “2001, an estimated 1,300” and inserting “fiscal year 2008, an estimated 1,740”; and

(C) in subparagraph (C)—

(i) by inserting “in fiscal year 2008,” after “(C)”;

(ii) by striking “41 percent” and inserting “45 percent”;

(iii) by striking “85 percent” and inserting “72 percent”;

(iv) by striking “6 years” and inserting “4 years”; and

(v) by striking “abuse” each place it appears and inserting “maltreatment”;

(4) in paragraph (4)(B), by striking “slightly” and all that follows and inserting “approximately 37 percent of victims of child abuse did not receive post-investigation services in fiscal year 2008;”;

(5) by redesignating paragraphs (5) through (13) as paragraphs (6) through (11) and (13) through (15), respectively;

(6) by inserting after paragraph (4) of this section the following:

“(5) African-American children, American Indian children, Alaska Native children, and children of multiple races and ethnicities experience the highest rates of child abuse or neglect;”;

(7) in paragraph (6), as redesignated by paragraph (5) of this section—

(A) in subparagraph (A), by inserting “domestic violence services,” after “mental health,”; and

(B) by amending subparagraph (E) to read as follows:

“(E) recognizes the diversity of ethnic, cultural, and religious beliefs and traditions that may impact child rearing patterns, while not allowing the differences in those beliefs and traditions to enable abuse or neglect;”;

(8) by inserting after paragraph (11), as redesignated by paragraph (5) of this section, the following:

“(12) because both child maltreatment and domestic violence occur in up to 60 percent of the families in which either is present, States and communities should adopt assessments and intervention procedures aimed at enhancing the safety both of children and victims of domestic violence;”;

(9) in paragraphs (14) and (15), as redesignated by paragraph (5) of this section, by striking “Federal government” and inserting “Federal Government”; and

(10) in paragraph (14), as redesignated by paragraph (5) of this section, by inserting “and” at the end.

Subtitle A—General Program

SEC. 111. ADVISORY BOARD.

Section 102 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102) is amended—

(1) in subsection (c)—

(A) in paragraph (4), by striking “medicine (including pediatrics)” and inserting “health care providers (including pediatricians)”;

- (B) in paragraph (12), by striking “and”;
- (C) in paragraph (13), by striking the period and inserting “; and”; and
- (D) by adding at the end the following:
“(14) Indian tribes or tribal organizations.”; and
- (2) in subsection (f)—
 - (A) in paragraph (1), by inserting “tribal,” after “State,” each place such term appears; and
 - (B) in paragraph (2)—
 - (i) by striking “abuse or neglect which” and inserting “child abuse or neglect which”; and
 - (ii) by striking “Federal and State” and inserting “Federal, State, and tribal”.

SEC. 112. NATIONAL CLEARINGHOUSE.

Section 103 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5104) is amended—

- (1) in subsection (a), by inserting “and neglect” before the period;
- (2) in subsection (b)—
 - (A) by redesignating paragraphs (2) through (5) as paragraphs (4) through (7), respectively;
 - (B) by striking paragraph (1) and inserting the following:
 - “(1) maintain, coordinate, and disseminate information on effective programs, including private and community-based programs, that have demonstrated success with respect to the prevention, assessment, identification, and treatment of child abuse or neglect and hold the potential for broad-scale implementation and replication;
 - “(2) maintain, coordinate, and disseminate information on the medical diagnosis and treatment of child abuse and neglect;
 - “(3) maintain and disseminate information on best practices relating to differential response;”;
 - (C) in paragraph (4), as redesignated by subparagraph (A) of this paragraph, by inserting “and disseminate” after “maintain”;
 - (D) in paragraph (5), as redesignated by subparagraph (A) of this paragraph—
 - (i) in subparagraph (B), by inserting “(42 U.S.C. 5105 note)” before the semicolon; and
 - (ii) in subparagraph (C), by striking “alcohol or drug” and inserting “substance”;
 - (E) in subparagraph (C) of paragraph (6), as redesignated by subparagraph (A) of this paragraph, by striking “and” at the end;
 - (F) in subparagraph (B) of paragraph (7), as redesignated by subparagraph (A) of this paragraph, by striking “and child welfare personnel.” and inserting “child welfare, substance abuse treatment services, and domestic violence services personnel; and”; and
 - (G) by adding at the end the following:
 - “(8) collect and disseminate information, in conjunction with the National Resource Centers authorized in section 310(b) of the Family Violence Prevention and Services Act, on effective programs and best practices for developing and carrying out

collaboration between entities providing child protective services and entities providing domestic violence services.”; and (3) in subsection (c)(1)—

(A) by striking subparagraph (B) and inserting the following:

“(B) consult with the head of each agency involved with child abuse and neglect on the development of the components for information collection and management of such clearinghouse and on the mechanisms for the sharing of such information with other Federal agencies and clearinghouses;”;

(B) in subparagraph (C)—

(i) in the matter preceding clause (i), by inserting “tribal,” after “State,”;

(ii) in clause (i), by striking “and” at the end; and

(iii) by adding at the end the following:

“(iii) information about the incidence and characteristics of child abuse and neglect in circumstances in which domestic violence is present; and

“(iv) information about the incidence and characteristics of child abuse and neglect in cases related to substance abuse;”;

(C) in subparagraph (F), by striking “abused or neglected children” and inserting “victims of child abuse or neglect”.

SEC. 113. RESEARCH AND ASSISTANCE ACTIVITIES.

(a) RESEARCH.—Section 104(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “from abuse or neglect and to improve the well-being of abused or neglected children” and inserting “from child abuse or neglect and to improve the well-being of victims of child abuse or neglect”;

(B) in subparagraph (B), by striking “abuse and neglect on” and inserting “child abuse and neglect on”;

(C) by redesignating subparagraphs (C), (D), (E), (F), (G), (H), and (I), as subparagraphs (D), (E), (F), (H), (J), (N), and (O), respectively;

(D) by inserting after subparagraph (B) the following: “(C) effective approaches to improving the relationship and attachment of infants and toddlers who experience child abuse or neglect with their parents or primary caregivers in circumstances where reunification is appropriate;”;

(E) in subparagraph (D), as redesignated by subparagraph (C) of this paragraph, by inserting “and neglect” before the semicolon;

(F) in subparagraph (E), as redesignated by subparagraph (C) of this paragraph—

(i) by inserting “, including best practices to meet the needs of special populations,” after “best practices”; and

(ii) by striking “(12)” and inserting “(14)”;

(G) by inserting after subparagraph (F), as redesignated by subparagraph (C) of this paragraph, the following:

“(G) effective practices and programs to improve activities such as identification, screening, medical diagnosis, forensic diagnosis, health evaluations, and services, including activities that promote collaboration between—

“(i) the child protective service system; and

“(ii)(I) the medical community, including providers of mental health and developmental disability services; and

“(II) providers of early childhood intervention services and special education for children who have been victims of child abuse or neglect;”;

(H) by inserting after subparagraph (H), as redesignated by subparagraph (C) of this paragraph, the following:

“(I) effective collaborations, between the child protective system and domestic violence service providers, that provide for the safety of children exposed to domestic violence and their nonabusing parents and that improve the investigations, interventions, delivery of services, and treatments provided for such children and families;”;

(I) in subparagraph (J), as redesignated by subparagraph (C) of this paragraph, by striking “low income” and inserting “low-income”;

(J) by inserting after subparagraph (J), as redesignated by subparagraph (C) of this paragraph, the following:

“(K) the impact of child abuse and neglect on the incidence and progression of disabilities;

“(L) the nature and scope of effective practices relating to differential response, including an analysis of best practices conducted by the States;

“(M) child abuse and neglect issues facing Indians, Alaska Natives, and Native Hawaiians, including providing recommendations for improving the collection of child abuse and neglect data from Indian tribes and Native Hawaiian communities;”;

(K) in subparagraph (N), as redesignated by subparagraph (C) of this paragraph, by striking “clauses (i) through (xi) of subparagraph (H)” and inserting “clauses (i) through (x) of subparagraph (O)”;

(L) in subparagraph (O), as redesignated by subparagraph (C) of this paragraph—

(i) in clauses (i) and (ii), by inserting “and neglect” after “abuse”;

(ii) in clause (v), by striking “child abuse have” and inserting “child abuse and neglect have”;

(iii) by striking “and” at the end of clause (ix);

(iv) by redesignating clause (x) as clause (xi);

(v) by inserting after clause (ix), the following:

“(x) the extent to which reports of suspected or known instances of child abuse or neglect involving a potential combination of jurisdictions, such as intrastate, interstate, Federal-State, and State-Tribal, are being screened out solely on the basis of the cross-jurisdictional complications; and”;

- (vi) in clause (xi), as redesignated by clause (iv), by striking “abuse” and inserting “child abuse and neglect”; and
- (2) in paragraph (2), by striking “subparagraphs” and all that follows and inserting “clauses (i) through (xi) of paragraph (1)(O).”;
- (3) in paragraph (3), by striking “Keeping Children and Families Safe Act of 2003” and inserting “CAPTA Reauthorization Act of 2010”;
- (4) in paragraph (4)—
 - (A) by striking “(A) The” and inserting the following: “(A) IN GENERAL.—The”; and
 - (B) in subparagraph (B)—
 - (i) by striking all that precedes “later” and inserting the following: “(B) PUBLIC COMMENT.—Not”;
 - (ii) by striking “than 2” and inserting “than 1”;
 - and
 - (iii) by striking “Keeping Children and Families Safe Act of 2003” and inserting “CAPTA Reauthorization Act of 2010”; and
- (5) by adding at the end the following:

“(4) STUDY ON SHAKEN BABY SYNDROME.—The Secretary shall conduct a study that—

 - “(A) identifies data collected on shaken baby syndrome;
 - “(B) determines the feasibility of collecting uniform, accurate data from all States regarding—
 - “(i) incidence rates of shaken baby syndrome;
 - “(ii) characteristics of perpetrators of shaken baby syndrome, including age, gender, relation to victim, access to prevention materials and resources, and history of substance abuse, domestic violence, and mental illness; and
 - “(iii) characteristics of victims of shaken baby syndrome, including gender, date of birth, date of injury, date of death (if applicable), and short- and long-term injuries sustained.”.
- (b) TECHNICAL ASSISTANCE.—Section 104(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105(b)) is amended—
 - (1) in paragraph (1), by inserting “and providers of mental health, substance abuse treatment, and domestic violence prevention services” after “disabilities”; and
 - (2) in paragraph (3)(B)—
 - (A) by striking “and child welfare personnel” and inserting “child welfare, substance abuse, and domestic violence services personnel”; and
 - (B) by striking “subjected to abuse.” and inserting “subjected to, or whom the personnel suspect have been subjected to, child abuse or neglect.”.
- (c) PEER REVIEW FOR GRANTS AND CONTRACTS.—Section 104(d) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105(d)) is amended—
 - (1) in paragraph (1)—
 - (A) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—To enhance the quality and usefulness of research in the field of child abuse and neglect,

the Secretary shall, in consultation with experts in the field and other Federal agencies, establish a formal, rigorous, and meritorious peer review process for purposes of evaluating and reviewing applications for assistance through a grant or contract under this section and determining the relative merits of the project for which such assistance is requested.”; and

(B) by striking subparagraph (B) and inserting the following:

“(B) MEMBERS.—In establishing the process required by subparagraph (A), the Secretary shall only appoint to the peer review panels members who—

“(i) are experts in the field of child abuse and neglect or related disciplines, with appropriate expertise related to the applications to be reviewed; and

“(ii) are not individuals who are officers or employees of the Administration for Children and Families.

“(C) MEETINGS.—The peer review panels shall meet as often as is necessary to facilitate the expeditious review of applications for grants and contracts under this section, but shall meet not less often than once a year.

“(D) CRITERIA AND GUIDELINES.—The Secretary shall ensure that the peer review panel utilizes scientifically valid review criteria and scoring guidelines in the review of the applications for grants and contracts.”; and

(2) in paragraph (3)—

(A) by striking “(A) The” and inserting the following:

“(A) MERITORIOUS PROJECTS.—The”; and

(B) in subparagraph (B), by striking all that precedes “the instance” and inserting the following:

“(B) EXPLANATION.—In”.

(d) DEMONSTRATION PROGRAMS AND PROJECTS.—Section 104(e) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105(e)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking “States or” and inserting “entities that are States, Indian tribes or tribal organizations, or”; and

(B) by striking “such agencies or organizations” and inserting “such entities”;

(2) in paragraph (1)(B), by striking “safely facilitate the” and inserting “facilitate the safe”; and

(3) in paragraph (2)—

(A) by inserting “child care and early childhood education and care providers,” after “in cooperation with”; and

(B) by striking “preschool” and inserting “preschools,”.

SEC. 114. GRANTS TO STATES, INDIAN TRIBES OR TRIBAL ORGANIZATIONS, AND PUBLIC OR PRIVATE AGENCIES AND ORGANIZATIONS.

Section 105 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106) is amended—

(1) in the heading, by striking “STATES” and inserting “STATES, INDIAN TRIBES OR TRIBAL ORGANIZATIONS,”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

- (i) by striking “States,” and inserting “entities that are States, Indian tribes or tribal organizations, or”; and
- (ii) by striking “such agencies or organizations” and inserting “such entities”;
- (B) in paragraph (1)—
 - (i) in the matter preceding subparagraph (A), by striking “this section” and inserting “this subsection”;
 - (ii) in subparagraph (A)—
 - (I) by inserting “health care,” before “medicine,”;
 - (II) by inserting “child care,” after “education,”; and
 - (III) by inserting “and neglect” before the semicolon;
 - (iii) in subparagraph (B), by inserting a comma after “youth”;
 - (iv) in subparagraph (D)—
 - (I) by striking “support the enhancement of linkages between” and inserting “enhance linkages among”;
 - (II) by striking “including physical” and all that follows through “partnerships” and inserting “entities providing physical and mental health services, community resources, and developmental disability agencies, to improve screening, forensic diagnosis, and health and developmental evaluations, and for partnerships”; and
 - (III) by striking “offer creative approaches to using” and inserting “support the coordinated use of”;
 - (v) by redesignating subparagraphs (E) through (J) as subparagraphs (F), (G), and (I) through (L), respectively;
 - (vi) by inserting after subparagraph (D) the following:

“(E) for the training of personnel in best practices to meet the unique needs of children with disabilities, including promoting interagency collaboration;”;
 - (vii) by inserting after subparagraph (G), as redesignated by clause (v) of this subparagraph, the following:

“(H) for the training of personnel in childhood development including the unique needs of children under age 3;”;
 - (viii) in subparagraph (J), as redesignated by clause (v) of this subparagraph, by striking “and other public and private welfare agencies” and inserting “other public and private welfare agencies, and agencies that provide early intervention services”;
 - (ix) in subparagraph (K), as redesignated by clause (v) of this subparagraph, by striking “and” at the end;
 - (x) in subparagraph (L), as redesignated by clause (v) of this subparagraph—
 - (I) by striking “disabled infants” each place it appears and inserting “infants or toddlers with disabilities”; and

- (II) by striking the period and inserting “; and”; and
- (xi) by adding at the end the following:
“(M) for the training of personnel in best practices relating to the provision of differential response.”;
- (C) in paragraph (2)(C), by striking “where” and inserting “when”;
- (D) in paragraph (3), by inserting “, leadership,” after “mutual support”;
- (E) in paragraph (4), by striking all that precedes “Secretary” and inserting the following:
“(4) KINSHIP CARE.—The”;
- (F) in paragraph (4), by striking “in not more than 10 States”;
- (G) in paragraph (5)—
 - (i) in the paragraph heading—
 - (I) by striking “BETWEEN” and inserting “AMONG”; and
 - (II) by striking “AND DEVELOPMENTAL DISABILITIES” and inserting “SUBSTANCE ABUSE, DEVELOPMENTAL DISABILITIES, AND DOMESTIC VIOLENCE SERVICE”;
 - (ii) by striking “between” and inserting “among”;
 - (iii) by striking “mental health” and all that follows through “, for” and inserting “mental health, substance abuse, developmental disabilities, and domestic violence service agencies, and entities that carry out community-based programs, for”; and
 - (iv) by striking “help assure” and inserting “ensure”; and
- (H) by inserting after paragraph (5) the following:
“(6) COLLABORATIONS BETWEEN CHILD PROTECTIVE SERVICE ENTITIES AND DOMESTIC VIOLENCE SERVICE ENTITIES.—The Secretary may award grants to public or private agencies and organizations under this section to develop or expand effective collaborations between child protective service entities and domestic violence service entities to improve collaborative investigation and intervention procedures, provision for the safety of the nonabusing parent involved and children, and provision of services to children exposed to domestic violence that also support the caregiving role of the non-abusing parent.”; and
- (3) in subsection (b)(4)—
 - (A) in subparagraph (A)(ii), by striking “neglected or abused” and inserting “victims of child abuse or neglect”;
 - (B) in subparagraphs (B)(ii) and (C)(iii), by striking “abuse or neglect” and inserting “child abuse and neglect”;
 - (C) in subparagraph (C)(iii), by striking “been neglected or abused” and inserting “been a victim of child abuse or neglect”; and
 - (D) in subparagraph (D), by striking “a” after “grantee is” and inserting “an”.

SEC. 115. GRANTS TO STATES FOR CHILD ABUSE OR NEGLECT PREVENTION AND TREATMENT PROGRAMS.

(a) **SECTION HEADING.**—Section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) is amended by striking the section heading and inserting the following:

“SEC. 106. GRANTS TO STATES FOR CHILD ABUSE OR NEGLECT PREVENTION AND TREATMENT PROGRAMS.”.

(b) DEVELOPMENT AND OPERATION GRANTS.—Section 106(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(a)) is amended—

(1) in the matter preceding paragraph (1), by striking “based on” and all that follows through “18 in” and inserting “from allotments made under subsection (f) for”;

(2) in paragraph (1), by striking “abuse and neglect” and inserting “child abuse or neglect”;

(3) in paragraph (2)—

(A) in subparagraph (A), by inserting “, intra-agency, interstate, and intrastate” after “interagency”; and

(B) in subparagraph (B)(i), by striking “abuse and neglect” and inserting “child abuse or neglect”;

(4) in paragraph (4), by inserting “, including the use of differential response” after “protocols”;

(5) in paragraph (6)—

(A) in subparagraph (A) by inserting “, including the use of differential response,” after “strategies”;

(B) in subparagraph (B), by striking “and” at the end;

(C) in subparagraph (C), by striking “workers” and all that follows and inserting “workers; and”; and

(D) by adding at the end the following:

“(D) training in early childhood, child, and adolescent development;”;

(6) by striking paragraphs (8) and (9) and inserting the following:

“(8) developing, facilitating the use of, and implementing research-based strategies and training protocols for individuals mandated to report child abuse and neglect;”;

(7) by redesignating paragraphs (10) through (14) as paragraphs (9) through (13), respectively;

(8) in paragraph (9), as redesignated by paragraph (7) of this subsection—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by adding “and” at the end;

and

(C) by adding at the end the following:

“(D) the use of differential response in preventing child abuse and neglect;”;

(9) in paragraph (10), as redesignated by paragraph (7) of this subsection, by inserting “, including the use of differential response” before the semicolon;

(10) in paragraph (12), as redesignated by paragraph (7) of this subsection, by striking “or” at the end;

(11) in paragraph (13), as redesignated by paragraph (7) of this subsection—

(A) by striking “supporting and enhancing” and all that follows through “community-based programs” and inserting “supporting and enhancing interagency collaboration among public health agencies, agencies in the child protective service system, and agencies carrying out private community-based programs—”;

(B) by striking “to provide” and inserting the following:

“(A) to provide”;

(C) by striking “systems) and” and inserting “systems), and the use of differential response; and”;

(D) by striking “to address” and inserting the following: “(B) to address”;

(E) by striking “abused or neglected” and inserting “victims of child abuse or neglect;” and

(F) by striking the period at the end and inserting “; or”; and

(12) by adding at the end the following:

“(14) developing and implementing procedures for collaboration among child protective services, domestic violence services, and other agencies in—

“(A) investigations, interventions, and the delivery of services and treatment provided to children and families, including the use of differential response, where appropriate; and

“(B) the provision of services that assist children exposed to domestic violence, and that also support the caregiving role of their nonabusing parents.”.

(c) ELIGIBILITY REQUIREMENTS.—Section 106(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) STATE PLAN.—

“(A) IN GENERAL.—To be eligible to receive a grant under this section, a State shall submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) that the State will address with amounts received under the grant.

“(B) DURATION OF PLAN.—Each State plan shall—

“(i) remain in effect for the duration of the State’s participation under this section; and

“(ii) be periodically reviewed and revised as necessary by the State to reflect changes in the State’s strategies and programs under this section.

“(C) ADDITIONAL INFORMATION.—The State shall provide notice to the Secretary—

“(i) of any substantive changes, including any change to State law or regulations, relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section; and

“(ii) of any significant changes in how funds provided under this section are used to support activities described in this section, which may differ from the activities described in the current State application.”;

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A) through (D) as subparagraphs (B) through (E), respectively;

(B) by striking the matter preceding subparagraph (B), as redesignated by subparagraph (A) of this paragraph, and inserting the following:

“(2) CONTENTS.—A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this title, including—

“(A) an assurance that the State plan, to the maximum extent practicable, is coordinated with the State plan under

part B of title IV of the Social Security Act (42 U.S.C. 621 et seq.) relating to child welfare services and family preservation and family support services;”;

(C) in subparagraph (B), as redesignated by subparagraph (A) of this paragraph—

(i) in the matter preceding clause (i)—

(I) by striking “chief executive officer” and inserting “Governor”; and

(II) by striking “Statewide” and inserting “statewide”;

(ii) by amending clause (i) to read as follows:

“(i) provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances;”;

(iii) in clause (ii)—

(I) in the matter preceding subclause (I)—

(aa) by inserting “with” after “born”; and

(bb) by inserting “or a Fetal Alcohol Spectrum Disorder,” after “drug exposure;”;

(II) in subclause (I), by inserting “or neglect”

before the semicolon;

(iv) in clause (iii), by inserting “, or a Fetal Alcohol Spectrum Disorder” before the semicolon;

(v) in clause (v), by inserting “, including the use of differential response,” after “procedures”;

(vi) in clause (vi)—

(I) by striking “the abused or neglected child” and inserting “a victim of child abuse or neglect”; and

(II) by striking “abuse or neglect” and inserting “child abuse or neglect”;

(vii) in clause (ix), by striking “abuse and neglect” and inserting “child abuse and neglect”;

(viii) in clause (xi), by striking “or neglect” and inserting “and neglect”;

(ix) in clause (xiii)—

(I) by striking “an abused or neglected child” and inserting “a victim of child abuse or neglect”; and

(II) by inserting “including training in early childhood, child, and adolescent development,” after “to the role,”;

(x) in clause (xv)(II), by striking “abuse or neglect” and inserting “child abuse or neglect”;

(xi) in clause (xviii), by striking “abuse and” and inserting “abuse or”;

(xii) in clause (xvi)—

(I) in subclause (III), by striking “; or” and inserting “;,”; and

(II) by adding at the end the following:

“(V) to have committed sexual abuse against the surviving child or another child of such parent; or

“(VI) to be required to register with a sex offender registry under section 113(a) of the Adam

Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16913(a));”;

(xiii) in clause (xxi), by striking “Act; and” and inserting “Act (20 U.S.C. 1431 et seq.);”;

(xiv) in clause (xxii)—

(I) by striking “not later” through “2003,”;

(II) by inserting “that meet the requirements of section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20))” after “checks”; and

(III) by adding “and” at the end; and

(xv) by adding at the end the following:

“(xxiii) provisions for systems of technology that support the State child protective service system described in subsection (a) and track reports of child abuse and neglect from intake through final disposition;”;

(D) in subparagraph (C), as redesignated by subparagraph (A) of this paragraph—

(i) by striking “disabled infants with” each place it appears and inserting “infants with disabilities who have”; and

(ii) in clause (iii), by striking “life threatening” and inserting “life-threatening”;

(E) in subparagraph (D), as redesignated by subparagraph (A) of this paragraph—

(i) in clause (ii), by striking “and” at the end;

(ii) in clause (iii), by striking “and” at the end;

(iii) by adding at the end the following:

“(iv) policies and procedures encouraging the appropriate involvement of families in decisionmaking pertaining to children who experienced child abuse or neglect;

“(v) policies and procedures that promote and enhance appropriate collaboration among child protective service agencies, domestic violence service agencies, substance abuse treatment agencies, and other agencies in investigations, interventions, and the delivery of services and treatment provided to children and families affected by child abuse or neglect, including children exposed to domestic violence, where appropriate; and

“(vi) policies and procedures regarding the use of differential response, as applicable;”;

(F) in subparagraph (E), as redesignated by subparagraph (A) of this paragraph—

(i) by inserting “(42 U.S.C. 621 et seq.)” after “Act”; and

(ii) by striking the period at the end and inserting a semicolon;

(G) by inserting after subparagraph (E), as redesignated by subparagraph (A) of this paragraph, the following:

“(F) an assurance or certification that programs and training conducted under this title address the unique needs of unaccompanied homeless youth, including access to enrollment and support services and that such youth are eligible for under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq., 670 et seq.)

and meet the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

“(G) an assurance that the State, in developing the State plan described in paragraph (1), has collaborated with community-based prevention agencies and with families affected by child abuse or neglect.”; and

(H) in the last sentence, by striking “subparagraph (A)” and inserting “subparagraph (B)”;

(3) in paragraph (3), by striking “paragraph (2)(A)” and inserting “paragraph (2)(B)”.

(d) CITIZEN REVIEW PANELS.—Section 106(c) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(c)) is amended—

(1) in paragraph (2), by inserting before the period the following: “, and may include adult former victims of child abuse or neglect”; and

(2) in paragraph (4)(A)(iii)(I), by inserting “(42 U.S.C. 670 et seq.)” before the semicolon.

(e) ANNUAL STATE DATA REPORTS.—Section 106(d) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(d)) is amended—

(1) in paragraph (1), by striking “as abused or neglected” and inserting “as victims of child abuse or neglect”;

(2) in paragraph (4), by inserting “, including use of differential response,” after “services”;

(3) by striking paragraph (7) and inserting the following: “(7)(A) The number of child protective service personnel responsible for the—

“(i) intake of reports filed in the previous year;

“(ii) screening of such reports;

“(iii) assessment of such reports; and

“(iv) investigation of such reports.

“(B) The average caseload for the workers described in subparagraph (A).”;

(4) in paragraph (9), by striking “abuse or neglect” and inserting “child abuse or neglect”;

(5) by striking paragraph (10) and inserting the following:

“(10) For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the State—

“(A) information on the education, qualifications, and training requirements established by the State for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

“(B) data on the education, qualifications, and training of such personnel;

“(C) demographic information of the child protective service personnel; and

“(D) information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.”;

(6) in paragraph (11), by striking “and neglect” and inserting “or neglect”; and

(7) by adding at the end the following:

“(15) The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

“(16) The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.).”.

(f) ANNUAL REPORT.—Section 106(e) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(e)) is amended by inserting “and neglect” before the period.

(g) FORMULA.—Section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) is amended by adding at the end the following:

“(f) ALLOTMENTS.—

“(1) DEFINITIONS.—In this subsection:

“(A) FISCAL YEAR 2009 GRANT FUNDS.—The term ‘fiscal year 2009 grant funds’ means the amount appropriated under section 112 for fiscal year 2009, and not reserved under section 112(a)(2).

“(B) GRANT FUNDS.—The term ‘grant funds’ means the amount appropriated under section 112 for a fiscal year and not reserved under section 112(a)(2).

“(C) STATE.—The term ‘State’ means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(D) TERRITORY.—The term ‘territory’ means Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

“(2) IN GENERAL.—Except as otherwise provided in this section, the Secretary shall make allotments to each State and territory that applies for a grant under this section in an amount equal to the sum of—

“(A) \$50,000; and

“(B) an amount that bears the same relationship to any grant funds remaining after all such States and territories have received \$50,000, as the number of children under the age of 18 in the State or territory bears to the number of such children in all States and territories that apply for such a grant.

“(3) ALLOTMENTS FOR DECREASED APPROPRIATION YEARS.—In the case where the grant funds for a fiscal year are less than the fiscal year 2009 grant funds, the Secretary shall ratably reduce each of the allotments under paragraph (2) for such fiscal year.

“(4) ALLOTMENTS FOR INCREASED APPROPRIATION YEARS.—

“(A) MINIMUM ALLOTMENTS TO STATES FOR INCREASED APPROPRIATIONS YEARS.—In any fiscal year for which the grant funds exceed the fiscal year 2009 grant funds by more than \$1,000,000, the Secretary shall adjust the allotments under paragraph (2), as necessary, such that no State that applies for a grant under this section receives an allotment in an amount that is less than—

“(i) \$100,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by more than \$1,000,000 but less than \$2,000,000;

“(ii) \$125,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by at least \$2,000,000 but less than \$3,000,000; and

“(iii) \$150,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by at least \$3,000,000.

“(B) ALLOTMENT ADJUSTMENT.—In the case of a fiscal year for which subparagraph (A) applies and the grant funds are insufficient to satisfy the requirements of such subparagraph (A), paragraph (2), and paragraph (5), the Secretary shall, subject to paragraph (5), ratably reduce the allotment of each State for which the allotment under paragraph (2) is an amount that exceeds the applicable minimum under subparagraph (A), as necessary to ensure that each State receives the applicable minimum allotment under subparagraph (A).

“(5) HOLD HARMLESS.—Notwithstanding paragraphs (2) and (4), except as provided in paragraph (3), no State or territory shall receive a grant under this section in an amount that is less than the amount such State or territory received under this section for fiscal year 2009.”.

SEC. 116. GRANTS TO STATES FOR PROGRAMS RELATING TO THE INVESTIGATION AND PROSECUTION OF CHILD ABUSE AND NEGLECT CASES.

Section 107 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106c) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) the assessment and investigation of suspected child abuse and neglect cases, including cases of suspected child sexual abuse and exploitation, in a manner that limits additional trauma to the child and the child’s family;

“(2) the assessment and investigation of cases of suspected child abuse-related fatalities and suspected child neglect-related fatalities;”;

(B) in paragraph (3), by striking “particularly” and inserting “including”; and

(C) in paragraph (4)—

(i) by striking “the handling” and inserting “the assessment and investigation”; and

(ii) by striking “victims of abuse” and inserting “suspected victims of child abuse”;

(2) in subsection (b)(1), by striking “section 107(b)” and inserting “section 106(b)”;

(3) in subsection (c)(1)—

(A) in subparagraph (G), by striking “and” at the end;

(B) in subparagraph (H), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(I) adult former victims of child abuse or neglect; and

“(J) individuals experienced in working with homeless children and youths (as defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a)).”;

(4) in subsection (d)(1)—

(A) by striking “particularly” and inserting “including”; and

- (B) by inserting “intrastate,” before “interstate”;
- (5) in subsection (e)(1)—
 - (A) in subparagraph (A)—
 - (i) by striking “particularly” and inserting “including”; and
 - (ii) by inserting “intrastate,” before “interstate”;
 - (B) in subparagraph (B)—
 - (i) by inserting a comma after “model”; and
 - (ii) by striking “improve the rate” and all that follows through “child sexual abuse cases” and inserting the following: “improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children”; and
 - (C) in subparagraph (C)—
 - (i) by inserting a comma after “protocols”;
 - (ii) by inserting “, which may include those children involved in reports of child abuse or neglect with a potential combination of jurisdictions, such as intrastate, interstate, Federal-State, and State-Tribal,” after “protection for children”;
 - (iii) by striking “from abuse” and inserting “from child abuse and neglect”; and
 - (iv) by striking “particularly” and inserting “including”; and
- (6) in subsection (f), by inserting “(42 U.S.C. 10603a)” after “1984”.

SEC. 117. MISCELLANEOUS REQUIREMENTS.

Section 108(d) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106d(d)) is amended to read as follows:

“(d) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should encourage all States and public and private entities that receive assistance under this title to—

“(1) ensure that children and families with limited English proficiency who participate in programs under this title are provided with materials and services through such programs in an appropriate language other than English; and

“(2) ensure that individuals with disabilities who participate in programs under this title are provided with materials and services through such programs that are appropriate to their disabilities.”.

SEC. 118. REPORTS.

(a) IN GENERAL.—Section 110 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106f) is amended by striking subsections (a) and (b) and inserting the following:

“(a) COORDINATION EFFORTS.—Not later than 1 year after the date of enactment of the CAPTA Reauthorization Act of 2010, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on efforts to coordinate the objectives and activities of agencies and organizations that are responsible for programs and activities

related to child abuse and neglect. Not later than 3 years after that date of enactment, the Secretary shall submit to those committees a second report on such efforts during the 3-year period following that date of enactment. Not later than 5 years after that date of enactment, the Secretary shall submit to those committees a third report on such efforts during the 5-year period following that date of enactment.

“(b) EFFECTIVENESS OF STATE PROGRAMS AND TECHNICAL ASSISTANCE.—Not later than 2 years after the date of enactment of the CAPTA Reauthorization Act of 2010 and every 2 years thereafter, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report evaluating the effectiveness of programs receiving assistance under section 106 in achieving the objectives of section 106.”.

(b) STUDY AND REPORT RELATING TO CITIZEN REVIEW PANELS.—Section 110(c) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106f(c)) is amended to read as follows:

“(c) STUDY AND REPORT RELATING TO CITIZEN REVIEW PANELS.—

“(1) IN GENERAL.—The Secretary shall conduct a study to determine the effectiveness of citizen review panels, established under section 106(c), in achieving the stated function of such panels under section 106(c)(4)(A) of—

“(A) examining the policies, procedures, and practices of State and local child protection agencies; and

“(B) evaluating the extent to which such State and local child protection agencies are fulfilling their child protection responsibilities, as described in clauses (i) through (iii) of section 106(c)(4)(A).

“(2) CONTENT OF STUDY.—The study described in paragraph (1) shall be completed in a manner suited to the unique design of citizen review panels, including consideration of the variability among the panels within and between States. The study shall include the following:

“(A) Data describing the membership, organizational structure, operation, and administration of all citizen review panels and the total number of such panels in each State.

“(B) A detailed summary of the extent to which collaboration and information-sharing occurs between citizen review panels and State child protective services agencies or any other entities or State agencies. The summary shall include a description of the outcomes that result from collaboration and information sharing.

“(C) Evidence of the adherence and responsiveness to the reporting requirements under section 106(c)(6) by citizen review panels and States.

“(3) REPORT.—Not later than 2 years after the date of enactment of the CAPTA Reauthorization Act of 2010, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a report that contains the results of the study conducted under paragraph (1).”.

(c) STUDY AND REPORT RELATING TO IMMUNITY FROM PROSECUTION FOR PROFESSIONAL CONSULTATION IN SUSPECTED AND KNOWN

INSTANCES OF CHILD ABUSE AND NEGLECT.—Section 110 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106f) is amended by adding at the end the following:

“(d) STUDY AND REPORT RELATING TO IMMUNITY FROM PROSECUTION FOR PROFESSIONAL CONSULTATION IN SUSPECTED AND KNOWN INSTANCES OF CHILD ABUSE AND NEGLECT.—

“(1) STUDY.—The Secretary shall complete a study, in consultation with experts in the provision of healthcare, law enforcement, education, and local child welfare administration, that examines how provisions for immunity from prosecution under State and local laws and regulations facilitate and inhibit individuals cooperating, consulting, or assisting in making good faith reports, including mandatory reports, of suspected or known instances of child abuse or neglect.

“(2) REPORT.—Not later than 1 year after the date of the enactment of the CAPTA Reauthorization Act of 2010, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a report that contains the results of the study conducted under paragraph (1) and any recommendations for statutory or regulatory changes the Secretary determines appropriate. Such report may be submitted electronically.”.

SEC. 119. DEFINITIONS.

Section 111 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106g) is amended—

(1) in paragraph (5)—

(A) by inserting “except as provided in section 106(f),” after “(5)”;

(B) by inserting “and” after “Samoa,”; and

(C) by striking “and the Trust Territory of the Pacific Islands”;

(2) in paragraph (6)(C), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

“(7) the term ‘Alaska Native’ has the meaning given the term ‘Native’ in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602);

“(8) the term ‘infant or toddler with a disability’ has the meaning given the term in section 632 of the Individuals with Disabilities Education Act (20 U.S.C. 1432);

“(9) the terms ‘Indian’, ‘Indian tribe’, and ‘tribal organization’ have the meanings given the terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

“(10) the term ‘Native Hawaiian’ has the meaning given the term in section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517); and

“(11) the term ‘unaccompanied homeless youth’ means an individual who is described in paragraphs (2) and (6) of section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).”.

SEC. 120. AUTHORIZATION OF APPROPRIATIONS.

Section 112(a)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106h(a)(1)) is amended—

(1) by striking “2004” and inserting “2010”; and

(2) by striking “2005 through 2008” and inserting “2011 through 2015”.

SEC. 121. RULE OF CONSTRUCTION.

Section 113(a)(2) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106i(a)(2)) is amended by striking “abuse or neglect” and inserting “child abuse or neglect”.

Subtitle B—Community-Based Grants for the Prevention of Child Abuse or Neglect

SEC. 131. TITLE HEADING.

The title heading of title II of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116) is amended to read as follows:

“TITLE II—COMMUNITY-BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT”.

SEC. 132. PURPOSE AND AUTHORITY.

Section 201 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116) is amended—

(1) by striking subsection (a)(1) and inserting the following:

“(1) to support community-based efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination of resources and activities, to better strengthen and support families to reduce the likelihood of child abuse and neglect; and”;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “hereafter”;

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A)—

(I) by inserting a comma after “expanding”;

and

(II) by striking “(through networks where appropriate)”;

(ii) in subparagraph (E), by inserting before the semicolon the following: “, including access to such resources and opportunities for unaccompanied homeless youth”; and

(iii) by striking subparagraph (G) and inserting the following:

“(G) demonstrate a commitment to involving parents in the planning and program implementation of the lead agency and entities carrying out local programs funded under this title, including involvement of parents of children with disabilities, parents who are individuals with disabilities, racial and ethnic minorities, and members of other underrepresented or underserved groups; and”;

(C) in paragraph (2), by inserting after “children and families” the following: “, including unaccompanied homeless youth,”;

(D) in paragraph (3)—

(i) by inserting “substance abuse treatment services, domestic violence services,” after “mental health services,”;

(ii) by striking “family resource and support program” and inserting “community-based child abuse and neglect prevention program”; and

(iii) by striking “community-based family resource and support program” and inserting “community-based child abuse and neglect prevention programs”; and

(E) in paragraph (4)—

(i) by inserting “and reporting” after “information management”;

(ii) by striking the comma after “prevention-focused”; and

(iii) by striking “(through networks where appropriate)”.

SEC. 133. ELIGIBILITY.

Section 202 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116a) is amended—

(1) in paragraph (1)—

(A) by striking “chief executive officer” each place it appears and inserting “Governor”; and

(B) by inserting a comma after “enhance”;

(2) in paragraphs (1), (2), and (3), by striking “(through networks where appropriate)” each place it appears;

(3) in paragraphs (2) and (3), in the matter preceding subparagraph (A), by striking “chief executive officer” and inserting “Governor”; and

(4) in paragraph (2)—

(A) in subparagraphs (A) and (B), by inserting “adult former victims of child abuse or neglect,” after “parents,”; and

(B) in subparagraph (C), by inserting a comma after “State”.

SEC. 134. AMOUNT OF GRANT.

Section 203(b)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116b(b)(1))—

(1) in subparagraph (A), by striking all that precedes “70” and inserting the following:

“(A) 70 PERCENT.—”; and

(2) in subparagraph (B), by striking all that precedes “30” and inserting the following:

“(B) 30 PERCENT.—”.

SEC. 135. APPLICATION.

Section 205 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116d) is amended—

(1) in paragraphs (1) and (2), by striking “(through networks where appropriate)”;

(2) in paragraph (2)—

(A) by striking “and how family resource and support” and inserting “, including how community-based child abuse and neglect prevention”; and

(B) by striking “services provided” and inserting “programs provided”;

- (3) in paragraph (4), by inserting a comma after “operation”;
- (4) in paragraph (6)—
 - (A) by striking “an assurance that the State has the” and inserting “a description of the State’s”; and
 - (B) by striking “consumers and” and inserting “consumers, of family advocates, and of adult former victims of child abuse or neglect,”;
- (5) in paragraph (7), by inserting a comma after “expansion”;
- (6) in paragraph (8)—
 - (A) by striking “and activities”; and
 - (B) by inserting after “homelessness,” the following: “unaccompanied homeless youth,”;
- (7) in paragraph (9), by inserting a comma after “training”;
- and
- (8) in paragraph (11), by inserting a comma after “procedures”.

SEC. 136. LOCAL PROGRAM REQUIREMENTS.

(a) IN GENERAL.—Section 206(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116e(a)) is amended—

- (1) in the matter preceding paragraph (1), by inserting a comma after “expand”;
- (2) in paragraph (1)—
 - (A) by striking “parents and” and inserting “parents,”;
 - and
 - (B) by inserting “in meaningful roles” before the semicolon;
- (3) in paragraph (2)—
 - (A) by striking “a strategy to provide, over time,” and inserting “a comprehensive strategy to provide”;
 - (B) by striking “family centered” and inserting “family-centered”; and
 - (C) by striking “and parents with young children,” and inserting “, to parents with young children, and to parents who are adult former victims of domestic violence or child abuse or neglect,”;
- (4) in paragraph (3)—
 - (A) by striking all that precedes subparagraph (C) and inserting the following:

“(3)(A) provide for core child abuse and neglect prevention services, which may be provided directly by the local recipient of the grant funds or through grants or agreements with other local agencies, such as—

 - “(i) parent education, mutual support and self help, and parent leadership services;
 - “(ii) respite care services;
 - “(iii) outreach and followup services, which may include voluntary home visiting services; and
 - “(iv) community and social service referrals; and”;
 - (B) in subparagraph (C)—
 - (i) in the matter preceding clause (i), by striking “(C)” and inserting “(B) provide”;
 - (ii) by striking clause (ii) and inserting the following:

“(ii) child care, early childhood education and care, and intervention services,”;

- (iii) in clause (iii), by inserting “and parents who are individuals with disabilities” before the semicolon;
- (iv) in clause (v), by striking “scholastic tutoring” and inserting “academic tutoring”;
- (v) in clause (vii), by striking “and” after the semicolon;
- (vi) in clause (viii), by adding “and” after the semicolon;
- (vii) by adding at the end the following:
 - “(ix) domestic violence service programs that provide services and treatment to children and their non-abusing caregivers.”; and
 - (viii) in clause (v), by striking “scholastic tutoring” and inserting “academic tutoring”;

(5) in paragraph (5), by striking “family resource and support program” and inserting “child abuse and neglect prevention program”; and

(6) in paragraph (6), by inserting a comma after “operation”.

(b) **TECHNICAL AMENDMENT.**—Section 206(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116e(b)) is amended—

(1) by striking “low income” and inserting “low-income”; and

(2) by striking “family resource and support programs” and inserting “child abuse and neglect prevention programs.”.

SEC. 137. CONFORMING AMENDMENTS.

Section 207 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5119f) is amended—

(1) in paragraph (1), by inserting a comma after “operation”;

(2) in paragraph (2), by inserting “which description shall specify whether those services are supported by research” after “section 202”;

(3) in paragraph (4)—

(A) by striking “section 205(3)” and inserting “section 204(3)”; and

(B) by inserting a comma after “operation”;

(4) in paragraph (6)—

(A) by inserting a comma after “local”; and

(B) by inserting a comma after “expansion”; and

(5) in paragraph (7), by striking “the results” and all that follows and inserting “the results of evaluation, or the outcomes of monitoring, conducted under the State program to demonstrate the effectiveness of activities conducted under this title in meeting the purposes of the program; and”.

SEC. 138. NATIONAL NETWORK FOR COMMUNITY-BASED FAMILY RESOURCE PROGRAMS.

Section 208 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116g) is amended—

(1) in paragraph (1), by inserting a comma after “operate”;

(2) in paragraph (2), by inserting a comma after “operate”;

and

(3) in paragraph (4), by inserting a comma after “operate”.

SEC. 139. DEFINITIONS.

Section 209 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116h) is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2), (3), and (5) as paragraphs (1) through (3), respectively; and

(3) in paragraph (3), as so redesignated—

(A) in the matter preceding subparagraph (A), by inserting “, including the services of crisis nurseries,” after “short term care services”;

(B) in subparagraphs (A) and (B), by striking “abuse or neglect” and inserting “child abuse or neglect”; and

(C) in subparagraph (C), by striking “have” and all that follows and inserting “have disabilities or chronic or terminal illnesses.”.

SEC. 140. AUTHORIZATION OF APPROPRIATIONS.

Section 210 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116i) is amended—

(1) by striking “2004” and inserting “2010”; and

(2) by striking “2005 through 2008” and inserting “2011 through 2015”.

SEC. 141. REDESIGNATION.

Title II of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116 et seq.) is amended by redesignating sections 205 through 210 as sections 204 through 209, respectively.

42 USC
5116d–5116i.

SEC. 142. TRANSFER OF DEFINITIONS.

(a) GENERAL DEFINITIONS.—The Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) is amended by inserting after section 2 the following:

42 USC 5101
note.

“SEC. 3. GENERAL DEFINITIONS.

“In this Act—

“(1) the term ‘child’ means a person who has not attained the lesser of—

“(A) the age of 18; or

“(B) except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides;

“(2) the term ‘child abuse and neglect’ means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm;

“(3) the term ‘child with a disability’ means a child with a disability as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401), or an infant or toddler with a disability as defined in section 632 of such Act (20 U.S.C. 1432);

“(4) the term ‘Governor’ means the chief executive officer of a State;

“(5) the terms ‘Indian’, ‘Indian tribe’, and ‘tribal organization’ have the meanings given the terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

“(6) the term ‘Secretary’ means the Secretary of Health and Human Services;

“(7) except as provided in section 106(f), the term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam,

American Samoa, and the Commonwealth of the Northern Mariana Islands; and

“(8) the term ‘unaccompanied homeless youth’ means an individual who is described in paragraphs (2) and (6) of section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).”.

(b) CONFORMING AMENDMENTS.—Section 111 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106g), as amended by section 119, is further amended—

(1) by striking paragraphs (1), (2), (3), (5), (9), and (11) of section 111;

(2) by redesignating paragraphs (7), (8), and (10) as paragraphs (1), (2), and (3), respectively, and inserting the paragraphs before paragraph (4);

(3) in paragraph (3), as so redesignated, by striking “and” at the end;

(4) in paragraph (4), by adding “and” at the end; and

(5) by redesignating paragraph (6) as paragraph (5).

Subtitle C—Conforming Amendments

SEC. 151. AMENDMENTS TO TABLE OF CONTENTS.

The table of contents in section 1(b) of the Child Abuse Prevention and Treatment Act is amended—

(1) by inserting after the item relating to section 2 the following:

“Sec. 3. General definitions.”;

(2) by amending the item relating to section 105 to read as follows:

“Sec. 105. Grants to States, Indian tribes or tribal organizations, and public or private agencies and organizations.”;

(3) by amending the item relating to section 106 to read as follows:

“Sec. 106. Grants to States for child abuse or neglect prevention and treatment programs.”;

(4) by striking the item relating to the title heading of title II and inserting the following:

“TITLE II—COMMUNITY-BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE OR NEGLECT”;

and

(5) by striking the items relating to sections 204 through 210 and inserting the following:

“Sec. 204. Application.

“Sec. 205. Local program requirements.

“Sec. 206. Performance measures.

“Sec. 207. National network for community-based family resource programs.

“Sec. 208. Definitions.

“Sec. 209. Authorization of appropriations.”.

TITLE II—FAMILY VIOLENCE PREVENTION AND SERVICES ACT

SEC. 201. FAMILY VIOLENCE PREVENTION AND SERVICES.

The Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) is amended to read as follows:

Family Violence
Prevention and
Services Act.

“TITLE III—FAMILY VIOLENCE PREVENTION AND SERVICES

42 USC 10401.

“SEC. 301. SHORT TITLE; PURPOSE.

“(a) SHORT TITLE.—This title may be cited as the ‘Family Violence Prevention and Services Act’.

“(b) PURPOSE.—It is the purpose of this title to—

“(1) assist States and Indian tribes in efforts to increase public awareness about, and primary and secondary prevention of, family violence, domestic violence, and dating violence;

“(2) assist States and Indian tribes in efforts to provide immediate shelter and supportive services for victims of family violence, domestic violence, or dating violence, and their dependents;

“(3) provide for a national domestic violence hotline;

“(4) provide for technical assistance and training relating to family violence, domestic violence, and dating violence programs to States and Indian tribes, local public agencies (including law enforcement agencies, courts, and legal, social service, and health care professionals in public agencies), non-profit private organizations (including faith-based and charitable organizations, community-based organizations, and voluntary associations), tribal organizations, and other persons seeking such assistance and training.

42 USC 10402.

“SEC. 302. DEFINITIONS.

“In this title:

“(1) ALASKA NATIVE.—The term ‘Alaska Native’ has the meaning given the term ‘Native’ in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

“(2) DATING VIOLENCE.—The term ‘dating violence’ has the meaning given such term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

“(3) DOMESTIC VIOLENCE.—The term ‘domestic violence’ has the meaning given such term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

“(4) FAMILY VIOLENCE.—The term ‘family violence’ means any act or threatened act of violence, including any forceful detention of an individual, that—

“(A) results or threatens to result in physical injury; and

“(B) is committed by a person against another individual (including an elderly individual) to or with whom such person—

“(i) is related by blood;

“(ii) is or was related by marriage or is or was otherwise legally related; or

“(iii) is or was lawfully residing.

“(5) INDIAN; INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ‘Indian’, ‘Indian tribe’, and ‘tribal organization’ have the meanings given such terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(6) NATIVE HAWAIIAN.—The term ‘Native Hawaiian’ has the meaning given the term in section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517).

“(7) PERSONALLY IDENTIFYING INFORMATION.—The term ‘personally identifying information’ has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.

“(9) SHELTER.—The term ‘shelter’ means the provision of temporary refuge and supportive services in compliance with applicable State law (including regulation) governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents.

“(10) STATE.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

“(11) STATE DOMESTIC VIOLENCE COALITION.—The term ‘State Domestic Violence Coalition’ means a statewide non-governmental nonprofit private domestic violence organization that—

“(A) has a membership that includes a majority of the primary-purpose domestic violence service providers in the State;

“(B) has board membership that is representative of primary-purpose domestic violence service providers, and which may include representatives of the communities in which the services are being provided in the State;

“(C) has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and

“(D) serves as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State and supports the development of policies, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

“(12) SUPPORTIVE SERVICES.—The term ‘supportive services’ means services for adult and youth victims of family violence, domestic violence, or dating violence, and dependents exposed to family violence, domestic violence, or dating violence, that are designed to—

“(A) meet the needs of such victims of family violence, domestic violence, or dating violence, and their dependents, for short-term, transitional, or long-term safety; and

“(B) provide counseling, advocacy, or assistance for victims of family violence, domestic violence, or dating violence, and their dependents.

“(13) TRIBALLY DESIGNATED OFFICIAL.—The term ‘tribally designated official’ means an individual designated by an Indian tribe, tribal organization, or nonprofit private organization authorized by an Indian tribe, to administer a grant under section 309.

“(14) UNDERSERVED POPULATIONS.—The term ‘underserved populations’ has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). For the purposes of this title, the Secretary has the same authority to determine whether a population is an underserved population as the Attorney General has under that section 40002(a).

42 USC 10403.

“SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

“(a) FORMULA GRANTS TO STATES.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out sections 301 through 312, \$175,000,000 for each of fiscal years 2011 through 2015.

“(2) ALLOCATIONS.—

“(A) FORMULA GRANTS TO STATES.—

“(i) RESERVATION OF FUNDS.—For any fiscal year for which the amounts appropriated under paragraph (1) exceed \$130,000,000, not less than 25 percent of such excess funds shall be made available to carry out section 312.

“(ii) FORMULA GRANTS.—Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under clause (i), not less than 70 percent shall be used for making grants under section 306(a).

“(B) GRANTS TO TRIBES.—Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not less than 10 percent shall be used to carry out section 309.

“(C) TECHNICAL ASSISTANCE AND TRAINING CENTERS.—Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not less than 6 percent shall be used by the Secretary for making grants under section 310.

“(D) GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.—Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not less than 10 percent of such amounts shall be used by the Secretary for making grants under section 311.

“(E) ADMINISTRATION, EVALUATION AND MONITORING.—Of the amount appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not more than 2.5 percent shall be used by the Secretary for evaluation, monitoring, and other administrative costs under this title.

“(b) NATIONAL DOMESTIC VIOLENCE HOTLINE.—There is authorized to be appropriated to carry out section 313 \$3,500,000 for each of fiscal years 2011 through 2015.

“(c) DOMESTIC VIOLENCE PREVENTION ENHANCEMENT AND LEADERSHIP THROUGH ALLIANCES.—There is authorized to be appropriated to carry out section 314 \$6,000,000 for each of fiscal years 2011 through 2015.

“SEC. 304. AUTHORITY OF SECRETARY.

42 USC 10404.

“(a) **AUTHORITIES.**—In order to carry out the provisions of this title, the Secretary is authorized to—

“(1) appoint and fix the compensation of such personnel as are necessary;

“(2) procure, to the extent authorized by section 3109 of title 5, United States Code, such temporary and intermittent services of experts and consultants as are necessary;

“(3) make grants to eligible entities or enter into contracts with for-profit or nonprofit nongovernmental entities and establish reporting requirements for such grantees and contractors;

“(4) prescribe such regulations and guidance as are reasonably necessary in order to carry out the objectives and provisions of this title, including regulations and guidance on implementing new grant conditions established or provisions modified by amendments made to this title by the CAPTA Reauthorization Act of 2010, to ensure accountability and transparency of the actions of grantees and contractors, or as determined by the Secretary to be reasonably necessary to carry out this title; and

“(5) coordinate programs within the Department of Health and Human Services, and seek to coordinate those programs with programs administered by other Federal agencies, that involve or affect efforts to prevent family violence, domestic violence, and dating violence or the provision of assistance for adult and youth victims of family violence, domestic violence, or dating violence.

“(b) **ADMINISTRATION.**—The Secretary shall—

“(1) assign 1 or more employees of the Department of Health and Human Services to carry out the provisions of this title, including carrying out evaluation and monitoring under this title, which employees shall, prior to such appointment, have expertise in the field of family violence and domestic violence prevention and services and, to the extent practicable, have expertise in the field of dating violence;

“(2) provide technical assistance in the conduct of programs for the prevention and treatment of family violence, domestic violence, and dating violence;

“(3) provide for and coordinate research into the most effective approaches to the intervention in and prevention of family violence, domestic violence, and dating violence, by—

“(A) consulting with experts and program providers within the family violence, domestic violence, and dating violence field to identify gaps in research and knowledge, establish research priorities, and disseminate research findings;

“(B) collecting and reporting data on the provision of family violence, domestic violence, and dating violence services, including assistance and programs supported by Federal funds made available under this title and by other governmental or nongovernmental sources of funds; and

“(C) coordinating family violence, domestic violence, and dating violence research efforts within the Department of Health and Human Services with relevant research administered or carried out by other Federal agencies and other researchers, including research on the provision of

assistance for adult and youth victims of family violence, domestic violence, or dating violence; and

“(4) support the development and implementation of effective policies, protocols, and programs within the Department and at other Federal agencies that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence.

“(c) **REPORTS.**—Every 2 years, the Secretary shall review and evaluate the activities conducted by grantees, subgrantees, and contractors under this title and the effectiveness of the programs administered pursuant to this title, and submit a report containing the evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate. Such report shall also include a summary of the documentation provided to the Secretary through performance reports submitted under section 306(d). The Secretary shall make publicly available on the Department of Health and Human Services website the evaluation reports submitted to Congress under this subsection, including the summary of the documentation provided to the Secretary under section 306(d).

42 USC 10405.

“SEC. 305. ALLOTMENT OF FUNDS.

“(a) **IN GENERAL.**—From the sums appropriated under section 303 and available for grants to States under section 306(a) for any fiscal year—

“(1) Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than $\frac{1}{8}$ of 1 percent of the amounts available for grants under section 306(a) for the fiscal year for which the allotment is made; and

“(2) each State shall be allotted for a grant under section 306(a), \$600,000, with the remaining funds to be allotted to each State in an amount that bears the same ratio to such remaining funds as the population of such State bears to the population of all States.

“(b) **POPULATION.**—For the purpose of this section, the population of each State, and the total population of all the States, shall be determined by the Secretary on the basis of the most recent census data available to the Secretary, and the Secretary shall use for such purpose, if available, the annual interim current census data produced by the Secretary of Commerce pursuant to section 181 of title 13, United States Code.

“(c) **RATABLE REDUCTION.**—If the sums appropriated under section 303 for any fiscal year and available for grants to States under section 306(a) are not sufficient to pay in full the total amounts that all States are entitled to receive under subsection (a) for such fiscal year, then the maximum amounts that all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In the event that additional funds become available for making such grants for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

“(d) **REALLOTMENT.**—If, at the end of the sixth month of any fiscal year for which sums are appropriated under section 303, the amount allotted to a State has not been made available to such State in a grant under section 306(a) because of the failure of such State to meet the requirements for such a grant, then

the Secretary shall reallocate such amount to States that meet such requirements.

“(e) CONTINUED AVAILABILITY OF FUNDS.—All funds allotted to a State for a fiscal year under this section, and made available to such State in a grant under section 306(a), shall remain available for obligation by the State until the end of the following fiscal year. All such funds that are not obligated by the State by the end of the following fiscal year shall be made available to the Secretary for discretionary activities under section 314. Such funds shall remain available for obligation, and for expenditure by a recipient of the funds under section 314, for not more than 1 year from the date on which the funds are made available to the Secretary.

“(f) DEFINITION.—In subsection (a)(2), the term ‘State’ does not include any jurisdiction specified in subsection (a)(1).

“SEC. 306. FORMULA GRANTS TO STATES.

42 USC 10406.

“(a) FORMULA GRANTS TO STATES.—The Secretary shall award grants to States in order to assist in supporting the establishment, maintenance, and expansion of programs and projects—

“(1) to prevent incidents of family violence, domestic violence, and dating violence;

“(2) to provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and

“(3) to provide specialized services for children exposed to family violence, domestic violence, or dating violence, underserved populations, and victims who are members of racial and ethnic minority populations.

“(b) ADMINISTRATIVE EXPENSES.—

“(1) ADMINISTRATIVE COSTS.—Each State may use not more than 5 percent of the grant funds for State administrative costs.

“(2) SUBGRANTS TO ELIGIBLE ENTITIES.—The State shall use the remainder of the grant funds to make subgrants to eligible entities for approved purposes as described in section 308.

“(c) GRANT CONDITIONS.—

“(1) APPROVED ACTIVITIES.—In carrying out the activities under this title, grantees and subgrantees may collaborate with and provide information to Federal, State, local, and tribal public officials and agencies, in accordance with limitations on disclosure of confidential or private information as described in paragraph (5), to develop and implement policies to reduce or eliminate family violence, domestic violence, and dating violence.

“(2) DISCRIMINATION PROHIBITED.—

“(A) APPLICATION OF CIVIL RIGHTS PROVISIONS.—For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C.

2000d et seq.), programs and activities funded in whole or in part with funds made available under this title are considered to be programs and activities receiving Federal financial assistance.

“(B) PROHIBITION ON DISCRIMINATION ON BASIS OF SEX, RELIGION.—

“(i) IN GENERAL.—No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this title. Nothing in this title shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual’s sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal or safe operation of that particular program or activity.

Applicability.

“(ii) ENFORCEMENT.—The Secretary shall enforce the provisions of clause (i) in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Section 603 of such Act (42 U.S.C. 2000d–2) shall apply with respect to any action taken by the Secretary to enforce such clause.

“(iii) CONSTRUCTION.—This subparagraph shall not be construed as affecting any legal remedy provided under any other provision of law.

Notification.

“(C) ENFORCEMENT AUTHORITIES OF SECRETARY.—Whenever the Secretary finds that a State, Indian tribe, or other entity that has received financial assistance under this title has failed to comply with a provision of law referred to in subparagraph (A), with subparagraph (B), or with an applicable regulation (including one prescribed to carry out subparagraph (B)), the Secretary shall notify the chief executive officer of the State involved or the tribally designated official of the tribe involved and shall request such officer or official to secure compliance. If, within a reasonable period of time, not to exceed 60 days, the chief executive officer or official fails or refuses to secure compliance, the Secretary may—

Time period.

“(i) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

“(ii) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), sections 504 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794, 794(a)), or title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as may be applicable; or

“(iii) take such other action as may be provided by law.

“(D) ENFORCEMENT AUTHORITY OF ATTORNEY GENERAL.—When a matter is referred to the Attorney General pursuant to subparagraph (C)(i), or whenever the Attorney General has reason to believe that a State, an Indian tribe, or an entity described in subparagraph (C) is engaged

in a pattern or practice in violation of a provision of law referred to in subparagraph (A) or in violation of subparagraph (B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

“(3) INCOME ELIGIBILITY STANDARDS.—No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this title. No fees may be levied for assistance or services provided with funds appropriated to carry out this title.

“(4) MATCH.—No grant shall be made under this section to any entity other than a State or an Indian tribe unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than \$1 for every \$5 of Federal funds provided under the grant. The non-Federal contributions required under this paragraph may be in cash or in kind.

“(5) NONDISCLOSURE OF CONFIDENTIAL OR PRIVATE INFORMATION.—

“(A) IN GENERAL.—In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of such victims and their families.

“(B) NONDISCLOSURE.—Subject to subparagraphs (C), (D), and (E), grantees and subgrantees shall not—

“(i) disclose any personally identifying information collected in connection with services requested (including services utilized or denied), through grantees’ and subgrantees’ programs; or

“(ii) reveal personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal or State grant program, which consent—

“(I) shall be given by—

“(aa) the person, except as provided in item (bb) or (cc);

“(bb) in the case of an unemancipated minor, the minor and the minor’s parent or guardian; or

“(cc) in the case of an individual with a guardian, the individual’s guardian; and

“(II) may not be given by the abuser or suspected abuser of the minor or individual with a guardian, or the abuser or suspected abuser of the other parent of the minor.

“(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

“(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the release of the information; and

“(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

“(D) INFORMATION SHARING.—Grantees and subgrantees may share—

“(i) nonpersonally identifying information, in the aggregate, regarding services to their clients and demographic nonpersonally identifying information in order to comply with Federal, State, or tribal reporting, evaluation, or data collection requirements;

“(ii) court-generated information and law enforcement-generated information contained in secure, governmental registries for protective order enforcement purposes; and

“(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

“(E) OVERSIGHT.—Nothing in this paragraph shall prevent the Secretary from disclosing grant activities authorized in this title to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate and exercising congressional oversight authority. In making all such disclosures, the Secretary shall protect the confidentiality of individuals and omit personally identifying information, including location information about individuals and shelters.

“(F) STATUTORILY PERMITTED REPORTS OF ABUSE OR NEGLECT.—Nothing in this paragraph shall prohibit a grantee or subgrantee from reporting abuse and neglect, as those terms are defined by law, where mandated or expressly permitted by the State or Indian tribe involved.

“(G) PREEMPTION.—Nothing in this paragraph shall be construed to supersede any provision of any Federal, State, tribal, or local law that provides greater protection than this paragraph for victims of family violence, domestic violence, or dating violence.

“(H) CONFIDENTIALITY OF LOCATION.—The address or location of any shelter facility assisted under this title that otherwise maintains a confidential location shall, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public.

“(6) SUPPLEMENT NOT SUPPLANT.—Federal funds made available to a State or Indian tribe under this title shall be used to supplement and not supplant other Federal, State, tribal, and local public funds expended to provide services and activities that promote the objectives of this title.

“(d) REPORTS AND EVALUATION.—Each grantee shall submit an annual performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the grantee and subgrantee activities that have been carried out with grant funds made available under subsection (a) or section 309, contain an evaluation of the effectiveness

Confidentiality.

of such activities, and provide such additional information as the Secretary may reasonably require.

“SEC. 307. STATE APPLICATION.

42 USC 10407.

“(a) APPLICATION.—

“(1) IN GENERAL.—The chief executive officer of a State seeking funds under section 306(a) or a tribally designated official seeking funds under section 309(a) shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

“(2) CONTENTS.—Each such application shall—

“(A) provide a description of the procedures that have been developed to ensure compliance with the provisions of sections 306(c) and 308(d);

“(B) provide, with respect to funds described in paragraph (1), assurances that—

“(i) not more than 5 percent of such funds will be used for administrative costs;

“(ii) the remaining funds will be distributed to eligible entities as described in section 308(a) for approved activities as described in section 308(b); and

“(iii) in the distribution of funds by a State under section 308(a), the State will give special emphasis to the support of community-based projects of demonstrated effectiveness, that are carried out by non-profit private organizations and that—

“(I) have as their primary purpose the operation of shelters for victims of family violence, domestic violence, and dating violence, and their dependents; or

“(II) provide counseling, advocacy, and self-help services to victims of family violence, domestic violence, and dating violence, and their dependents;

“(C) in the case of an application submitted by a State, provide an assurance that there will be an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State;

“(D) in the case of an application submitted by a State, provide an assurance that the State will consult with and provide for the participation of the State Domestic Violence Coalition in the planning and monitoring of the distribution of grants to eligible entities as described in section 308(a) and the administration of the grant programs and projects;

“(E) describe how the State or Indian tribe will involve community-based organizations, whose primary purpose is to provide culturally appropriate services to underserved populations, including how such community-based organizations can assist the State or Indian tribe in addressing the unmet needs of such populations;

“(F) describe how activities and services provided by the State or Indian tribe are designed to reduce family violence, domestic violence, and dating violence, including how funds will be used to provide shelter, supportive services, and prevention services in accordance with section 308(b);

“(G) specify the State agency or tribally designated official to be designated as responsible for the administration of programs and activities relating to family violence, domestic violence, and dating violence, that are carried out by the State or Indian tribe under this title, and for coordination of related programs within the jurisdiction of the State or Indian tribe;

“(H) provide an assurance that the State or Indian tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate; and

“(I) meet such requirements as the Secretary reasonably determines are necessary to carry out the objectives and provisions of this title.

“(b) APPROVAL OF APPLICATION.—

Notification.
Time period.

“(1) IN GENERAL.—The Secretary shall approve any application that meets the requirements of subsection (a) and section 306. The Secretary shall not disapprove any application under this subsection unless the Secretary gives the applicant reasonable notice of the Secretary’s intention to disapprove and a 6-month period providing an opportunity for correction of any deficiencies.

Notification.
Deadline.

“(2) CORRECTION OF DEFICIENCIES.—The Secretary shall give such notice, within 45 days after the date of submission of the application, if any of the provisions of subsection (a) or section 306 have not been satisfied in such application. If the State or Indian tribe does not correct the deficiencies in such application within the 6-month period following the receipt of the Secretary’s notice, the Secretary shall withhold payment of any grant funds under section 306 to such State or under section 309 to such Indian tribe until such date as the State or Indian tribe provides documentation that the deficiencies have been corrected.

“(3) STATE OR TRIBAL DOMESTIC VIOLENCE COALITION PARTICIPATION IN DETERMINATIONS OF COMPLIANCE.—State Domestic Violence Coalitions, or comparable coalitions for Indian tribes, shall be permitted to participate in determining whether grantees for corresponding States or Indian tribes are in compliance with subsection (a) and section 306(c), except that no funds made available under section 311 shall be used to challenge a determination about whether a grantee is in compliance with, or to seek the enforcement of, the requirements of this title.

“(4) FAILURE TO REPORT; NONCONFORMING EXPENDITURES.—The Secretary shall suspend funding for an approved application if the applicant fails to submit an annual performance report under section 306(d), or if funds are expended for purposes other than those set forth in section 306(b), after following the procedures set forth in paragraphs (1), (2), and (3).

42 USC 10408.

“SEC. 308. SUBGRANTS AND USES OF FUNDS.

“(a) SUBGRANTS.—A State that receives a grant under section 306(a) shall use grant funds described in section 306(b)(2) to provide subgrants to eligible entities for programs and projects within such State, that is designed to prevent incidents of family violence, domestic violence, and dating violence by providing immediate

shelter and supportive services for adult and youth victims of family violence, domestic violence, or dating violence (and their dependents), and that may provide prevention services to prevent future incidents of family violence, domestic violence, and dating violence.

“(b) USE OF FUNDS.—

“(1) IN GENERAL.—Funds awarded to eligible entities under subsection (a) shall be used to provide shelter, supportive services, or prevention services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, which may include—

“(A) provision, on a regular basis, of immediate shelter and related supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, including paying for the operating and administrative expenses of the facilities for such shelter;

“(B) assistance in developing safety plans, and supporting efforts of victims of family violence, domestic violence, or dating violence to make decisions related to their ongoing safety and well-being;

“(C) provision of individual and group counseling, peer support groups, and referral to community-based services to assist family violence, domestic violence, and dating violence victims, and their dependents, in recovering from the effects of the violence;

“(D) provision of services, training, technical assistance, and outreach to increase awareness of family violence, domestic violence, and dating violence and increase the accessibility of family violence, domestic violence, and dating violence services;

“(E) provision of culturally and linguistically appropriate services;

“(F) provision of services for children exposed to family violence, domestic violence, or dating violence, including age-appropriate counseling, supportive services, and services for the nonabusing parent that support that parent’s role as a caregiver, which may, as appropriate, include services that work with the nonabusing parent and child together;

“(G) provision of advocacy, case management services, and information and referral services, concerning issues related to family violence, domestic violence, or dating violence intervention and prevention, including—

“(i) assistance in accessing related Federal and State financial assistance programs;

“(ii) legal advocacy to assist victims and their dependents;

“(iii) medical advocacy, including provision of referrals for appropriate health care services (including mental health, alcohol, and drug abuse treatment), but which shall not include reimbursement for any health care services;

“(iv) assistance locating and securing safe and affordable permanent housing and homelessness prevention services;

“(v) provision of transportation, child care, respite care, job training and employment services, financial

literacy services and education, financial planning, and related economic empowerment services; and

“(vi) parenting and other educational services for victims and their dependents; and

“(H) prevention services, including outreach to underserved populations.

“(2) SHELTER AND SUPPORTIVE SERVICES.—Not less than 70 percent of the funds distributed by a State under subsection (a) shall be distributed to entities for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, as described in paragraph (1)(A). Not less than 25 percent of the funds distributed by a State under subsection (a) shall be distributed to entities for the purpose of providing supportive services and prevention services as described in subparagraphs (B) through (H) of paragraph (1).

“(c) ELIGIBLE ENTITIES.—To be eligible to receive a subgrant from a State under this section, an entity shall be—

“(1) a local public agency, or a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, tribal organizations, and voluntary associations), that assists victims of family violence, domestic violence, or dating violence, and their dependents, and has a documented history of effective work concerning family violence, domestic violence, or dating violence; or

“(2) a partnership of 2 or more agencies or organizations that includes—

“(A) an agency or organization described in paragraph (1); and

“(B) an agency or organization that has a demonstrated history of serving populations in their communities, including providing culturally appropriate services.

“(d) CONDITIONS.—

“(1) DIRECT PAYMENTS TO VICTIMS OR DEPENDANTS.—No funds provided under this title may be used as direct payment to any victim of family violence, domestic violence, or dating violence, or to any dependent of such victim.

“(2) VOLUNTARILY ACCEPTED SERVICES.—Receipt of supportive services under this title shall be voluntary. No condition may be applied for the receipt of emergency shelter as described in subsection (b)(1)(A).

42 USC 10409.

“SEC. 309. GRANTS FOR INDIAN TRIBES.

“(a) GRANTS AUTHORIZED.—The Secretary, in consultation with tribal governments pursuant to Executive Order No. 13175 (25 U.S.C. 450 note) and in accordance with section 903 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 14045d), shall continue to award grants for Indian tribes from amounts appropriated under section 303(a)(2)(B) to carry out this section.

“(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall be an Indian tribe, or a tribal organization or nonprofit private organization authorized by an Indian tribe. An Indian tribe shall have the option to authorize a tribal organization or a nonprofit private organization to submit an application and administer the grant funds awarded under this section.

“(c) CONDITIONS.—Each recipient of such a grant shall comply with requirements that are consistent with the requirements applicable to grantees under section 306.

“(d) GRANTEE APPLICATION.—To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary under section 307 at such time, in such manner, and containing such information as the Secretary determines to be essential to carry out the objectives and provisions of this title. The Secretary shall approve any application that meets requirements consistent with the requirements of section 306(c) and section 307(a).

“(e) USE OF FUNDS.—An amount provided under a grant to an eligible entity shall be used for the services described in section 308(b).

“SEC. 310. NATIONAL RESOURCE CENTERS AND TRAINING AND TECHNICAL ASSISTANCE CENTERS. 42 USC 10410.

“(a) PURPOSE AND GRANTS AUTHORIZED.—

“(1) PURPOSE.—The purpose of this section is to provide resource information, training, and technical assistance relating to the objectives of this title to improve the capacity of individuals, organizations, governmental entities, and communities to prevent family violence, domestic violence, and dating violence and to provide effective intervention services.

“(2) GRANTS AUTHORIZED.—From the amounts appropriated under this title and reserved under section 303(a)(2)(C), the Secretary—

“(A) shall award grants to eligible entities for the establishment and maintenance of—

“(i) 2 national resource centers (as provided for in subsection (b)(1)); and

“(ii) at least 7 special issue resource centers addressing key areas of domestic violence, and intervention and prevention (as provided for in subsection (b)(2)); and

“(B) may award grants, to—

“(i) State resource centers to reduce disparities in domestic violence in States with high proportions of Indian (including Alaska Native) or Native Hawaiian populations (as provided for in subsection (b)(3)); and

“(ii) support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating related expertise.

“(b) DOMESTIC VIOLENCE RESOURCE CENTERS.—

“(1) NATIONAL RESOURCE CENTERS.—In accordance with subsection (a)(2), the Secretary shall award grants to eligible entities for— Grants.

“(A) a National Resource Center on Domestic Violence, which shall—

“(i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims

and their children who are exposed to domestic violence; and

“(ii) maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics related to—

“(I) the incidence and prevention of family violence and domestic violence; and

“(II) the provision of shelter, supportive services, and prevention services to adult and youth victims of domestic violence (including services to prevent repeated incidents of violence); and

“(B) a National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women, which shall—

“(i) offer a comprehensive array of technical assistance and training resources to Indian tribes and tribal organizations, specifically designed to enhance the capacity of the tribes and organizations to respond to domestic violence and the findings of section 901 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note);

“(ii) enhance the intervention and prevention efforts of Indian tribes and tribal organizations to respond to domestic violence and increase the safety of Indian women in support of the purposes of section 902 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note); and

“(iii) coordinate activities with other Federal agencies, offices, and grantees that address the needs of Indians (including Alaska Natives), and Native Hawaiians that experience domestic violence, including the Office of Justice Services at the Bureau of Indian Affairs, the Indian Health Service of the Department of Health and Human Services, and the Office on Violence Against Women of the Department of Justice.

“(2) SPECIAL ISSUE RESOURCE CENTERS.—In accordance with subsection (a)(2)(A)(ii), the Secretary shall award grants to eligible entities for special issue resource centers, which shall be national in scope and shall provide information, training, and technical assistance to State and local domestic violence service providers. Each special issue resource center shall focus on enhancing domestic violence intervention and prevention efforts in at least one of the following areas:

“(A) The response of the criminal and civil justice systems to domestic violence victims, which may include the response to the use of the self-defense plea by domestic violence victims and the issuance and use of protective orders.

“(B) The response of child protective service agencies to victims of domestic violence and their dependents and child custody issues in domestic violence cases.

“(C) The response of the interdisciplinary health care system to victims of domestic violence and access to health care resources for victims of domestic violence.

“(D) The response of mental health systems, domestic violence service programs, and other related systems and programs to victims of domestic violence and to their children who are exposed to domestic violence.

“(E) In the case of 3 specific resource centers, enhancing domestic violence intervention and prevention efforts for victims of domestic violence who are members of racial and ethnic minority groups, to enhance the cultural and linguistic relevancy of service delivery, resource utilization, policy, research, technical assistance, community education, and prevention initiatives.

“(3) STATE RESOURCE CENTERS TO REDUCE TRIBAL DISPARITIES.—

“(A) IN GENERAL.—In accordance with subsection (a)(2), the Secretary may award grants to eligible entities for State resource centers, which shall provide statewide information, training, and technical assistance to Indian tribes, tribal organizations, and local domestic violence service organizations serving Indians (including Alaska Natives) or Native Hawaiians, in a culturally sensitive and relevant manner.

“(B) REQUIREMENTS.—An eligible entity shall use a grant provided under this paragraph—

“(i) to offer a comprehensive array of technical assistance and training resources to Indian tribes, tribal organizations, and providers of services to Indians (including Alaska Natives) or Native Hawaiians, specifically designed to enhance the capacity of the tribes, organizations, and providers to respond to domestic violence, including offering the resources in States in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State;

“(ii) to coordinate all projects and activities with the national resource center described in paragraph (1)(B), including projects and activities that involve working with nontribal State and local governments to enhance their capacity to understand the unique needs of Indians (including Alaska Natives) and Native Hawaiians; and

“(iii) to provide comprehensive community education and domestic violence prevention initiatives in a culturally sensitive and relevant manner.

“(c) ELIGIBILITY.—

“(1) IN GENERAL.—To be eligible to receive a grant under subsection (b)(1)(A) or subparagraph (A), (B), (C), or (D) of subsection (b)(2), an entity shall be a nonprofit private organization that focuses primarily on domestic violence and that—

“(A) provides documentation to the Secretary demonstrating experience working directly on issues of domestic violence, and (in the case of an entity seeking a grant under subsection (b)(2)) demonstrating experience working directly in the corresponding specific special issue area described in subsection (b)(2);

“(B) includes on the entity’s advisory board representatives who are from domestic violence service programs and who are geographically and culturally diverse; and

“(C) demonstrates the strong support of domestic violence service programs from across the Nation for the entity’s designation as a national resource center or a special issue resource center, as appropriate.

“(2) NATIONAL INDIAN RESOURCE CENTER.—To be eligible to receive a grant under subsection (b)(1)(B), an entity shall be a tribal organization or a nonprofit private organization that focuses primarily on issues of domestic violence within Indian tribes and that submits documentation to the Secretary demonstrating—

“(A) experience working with Indian tribes and tribal organizations to respond to domestic violence and the findings of section 901 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note);

“(B) experience providing Indian tribes and tribal organizations with assistance in developing tribally-based prevention and intervention services addressing domestic violence and safety for Indian women consistent with the purposes of section 902 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note);

“(C) strong support for the entity’s designation as the National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women from advocates working within Indian tribes to address domestic violence and the safety of Indian women;

“(D) a record of demonstrated effectiveness in assisting Indian tribes and tribal organizations with prevention and intervention services addressing domestic violence; and

“(E) the capacity to serve Indian tribes (including Alaska Native villages and regional and village corporations) across the United States.

“(3) SPECIAL ISSUE RESOURCE CENTERS CONCERNED WITH RACIAL AND ETHNIC MINORITY GROUPS.—To be eligible to receive a grant under subsection (b)(2)(E), an entity shall be an entity that—

“(A) is a nonprofit private organization that focuses primarily on issues of domestic violence in a racial or ethnic community, or is a public or private nonprofit educational institution that has a domestic violence institute, center, or program related to culturally specific issues in domestic violence; and

“(B)(i) has documented experience in the areas of domestic violence prevention and services, and experience relevant to the specific racial or ethnic population to which information, training, technical assistance, and outreach would be provided under the grant;

“(ii) demonstrates the strong support, of advocates from across the Nation who are working to address domestic violence; and

“(iii) has a record of demonstrated effectiveness in enhancing the cultural and linguistic relevancy of service delivery.

“(4) STATE RESOURCE CENTERS TO REDUCE TRIBAL DISPARITIES.—To be eligible to receive a grant under subsection (b)(3), an entity shall—

“(A)(i) be located in a State in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 10 percent of the total population of the State; or

“(ii) be an Indian tribe, tribal organization, or Native Hawaiian organization that focuses primarily on issues of domestic violence among Indians or Native Hawaiians, or an institution of higher education; and

“(B) demonstrate the ability to serve all regions of the State, including underdeveloped areas and areas that are geographically distant from population centers.

“(d) REPORTS AND EVALUATION.—Each entity receiving a grant under this section shall submit a performance report to the Secretary annually and in such manner as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of the activities, and provide such additional information as the Secretary may reasonably require.

“SEC. 311. GRANTS TO STATE DOMESTIC VIOLENCE COALITIONS.

42 USC 10411.

“(a) GRANTS.—The Secretary shall award grants for the funding of State Domestic Violence Coalitions.

“(b) ALLOTMENT OF FUNDS.—

“(1) IN GENERAL.—From the amount appropriated under section 303(a)(2)(D) for each fiscal year, the Secretary shall allot to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the covered territories an amount equal to $\frac{1}{56}$ of the amount so appropriated for such fiscal year.

“(2) DEFINITION.—For purposes of this subsection, the term ‘covered territories’ means Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

“(c) APPLICATION.—Each State Domestic Violence Coalition desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary determines to be essential to carry out the objectives of this section. The application submitted by the coalition for the grant shall provide documentation of the coalition’s work, satisfactory to the Secretary, demonstrating that the coalition—

“(1) meets all of the applicable requirements set forth in this title; and

“(2) demonstrates the ability to conduct appropriately all activities described in this section, as indicated by—

“(A) documented experience in administering Federal grants to conduct the activities described in subsection (d); or

“(B) a documented history of active participation in the activities described in paragraphs (1), (3), (4), and (5) of subsection (d) and a demonstrated capacity to conduct the activities described in subsection (d)(2).

“(d) USE OF FUNDS.—A coalition that receives a grant under this section shall use the grant funds for administration and operations to further the purposes of family violence, domestic violence,

and dating violence intervention and prevention, through activities that shall include—

“(1) working with local family violence, domestic violence, and dating violence service programs and providers of direct services to encourage appropriate and comprehensive responses to family violence, domestic violence, and dating violence against adults or youth within the State involved, including providing training and technical assistance and conducting State needs assessments;

“(2) participating in planning and monitoring the distribution of subgrants and subgrant funds within the State under section 308(a);

“(3) working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their dependents, who are members of racial and ethnic minority populations and underserved populations;

“(4) collaborating with and providing information to entities in such fields as housing, health care, mental health, social welfare, or business to support the development and implementation of effective policies, protocols, and programs that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence;

“(5) encouraging appropriate responses to cases of family violence, domestic violence, or dating violence against adults or youth, including by working with judicial and law enforcement agencies;

“(6) working with family law judges, criminal court judges, child protective service agencies, and children’s advocates to develop appropriate responses to child custody and visitation issues in cases of child exposure to family violence, domestic violence, or dating violence and in cases in which—

“(A) family violence, domestic violence, or dating violence is present; and

“(B) child abuse is present;

“(7) providing information to the public about prevention of family violence, domestic violence, and dating violence, including information targeted to underserved populations; and

“(8) collaborating with Indian tribes and tribal organizations (and corresponding Native Hawaiian groups or communities) to address the needs of Indian (including Alaska Native) and Native Hawaiian victims of family violence, domestic violence, or dating violence, as applicable in the State.

“(e) LIMITATION ON USE OF FUNDS.—A coalition that receives a grant under this section shall not be required to use funds received under this title for the purposes described in paragraph (5) or (6) of subsection (d) if the coalition provides an annual assurance to the Secretary that the coalition is—

“(1) using funds received under section 2001(c)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg(c)(1)) for such purposes; and

“(2) coordinating the activities carried out by the coalition under subsection (d) with the State’s activities under part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) that address those purposes.

“(f) PROHIBITION ON LOBBYING.—No funds made available to entities under this section shall be used, directly or indirectly,

to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any State or local legislative body, or State proposals by initiative petition, except that the representatives of the entity may testify or make other appropriate communication—

“(1) when formally requested to do so by a legislative body, a committee, or a member of the body or committee; or

“(2) in connection with legislation or appropriations directly affecting the activities of the entity.

“(g) **REPORTS AND EVALUATION.**—Each entity receiving a grant under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

“(h) **INDIAN REPRESENTATIVES.**—For purposes of this section, a State Domestic Violence Coalition may include representatives of Indian tribes and tribal organizations.

“SEC. 312. SPECIALIZED SERVICES FOR ABUSED PARENTS AND THEIR CHILDREN. 42 USC 10412.

“(a) **IN GENERAL.**—

“(1) **PROGRAM.**—The Secretary shall establish a grant program to expand the capacity of family violence, domestic violence, and dating violence service programs and community-based programs to prevent future domestic violence by addressing, in an appropriate manner, the needs of children exposed to family violence, domestic violence, or dating violence.

“(2) **GRANTS.**—The Secretary may make grants to eligible entities through the program established under paragraph (1) for periods of not more than 2 years. If the Secretary determines that an entity has received such a grant and been successful in meeting the objectives of the grant application submitted under subsection (c), the Secretary may renew the grant for 1 additional period of not more than 2 years.

“(b) **ELIGIBLE ENTITIES.**—To be eligible to receive a grant under this section, an entity shall be a local agency, a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, and voluntary associations), or a tribal organization, with a demonstrated record of serving victims of family violence, domestic violence, or dating violence and their children.

“(c) **APPLICATION.**—An entity seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including—

“(1) a description of how the entity will prioritize the safety of, and confidentiality of information about—

“(A) victims of family violence, victims of domestic violence, and victims of dating violence; and

“(B) children of victims described in subparagraph (A);

“(2) a description of how the entity will provide developmentally appropriate and age-appropriate services, and culturally and linguistically appropriate services, to the victims and children; and

“(3) a description of how the entity will ensure that professionals working with the children receive the training and technical assistance appropriate and relevant to the unique needs of children exposed to family violence, domestic violence, or dating violence.

“(d) USE OF FUNDS.—An entity that receives a grant under this section for a family violence, domestic violence, and dating violence service or community-based program described in subsection (a)—

“(1) shall use the funds made available through the grant—

“(A) to provide direct counseling, appropriate services consistent with subsection (c)(2), or advocacy on behalf of victims of family violence, domestic violence, or dating violence and their children, including coordinating services with services provided by the child welfare system;

“(B) to provide services for nonabusing parents to support those parents’ roles as caregivers and their roles in responding to the social, emotional, and developmental needs of their children; and

“(C) where appropriate, to provide the services described in this subsection while working with such a nonabusing parent and child together; and

“(2) may use the funds made available through the grant—

“(A) to provide early childhood development and mental health services;

“(B) to coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and

“(C) to provide additional services and referrals to services for children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services.

“(e) REPORTS AND EVALUATION.—Each entity receiving a grant under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

42 USC 10413.

“SEC. 313. NATIONAL DOMESTIC VIOLENCE HOTLINE GRANT.

“(a) IN GENERAL.—The Secretary shall award a grant to 1 or more private entities to provide for the ongoing operation of a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, family and household members of such victims, and persons affected by the victimization. The Secretary shall give priority to applicants with experience in operating a hotline that provides assistance to adult and youth victims of family violence, domestic violence, or dating violence.

“(b) TERM.—The Secretary shall award a grant under this section for a period of not more than 5 years.

“(c) CONDITIONS ON PAYMENT.—The provision of payments under a grant awarded under this section shall be subject to annual approval by the Secretary and subject to the availability of appropriations for each fiscal year to make the payments.

“(d) APPLICATION.—To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary that shall—

“(1) contain such agreements, assurances, and information, be in such form, and be submitted in such manner, as the Secretary shall prescribe;

“(2) include a complete description of the applicant’s plan for the operation of a national domestic violence hotline, including descriptions of—

“(A) the training program for hotline personnel, including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline;

“(B) the hiring criteria and qualifications for hotline personnel;

“(C) the methods for the creation, maintenance, and updating of a resource database;

“(D) a plan for publicizing the availability of the hotline;

“(E) a plan for providing service to non-English speaking callers, including service through hotline personnel who have non-English language capability;

“(F) a plan for facilitating access to the hotline by persons with hearing impairments; and

“(G) a plan for providing assistance and referrals to youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline;

“(3) demonstrate that the applicant has recognized expertise in the area of family violence, domestic violence, or dating violence and a record of high quality service to victims of family violence, domestic violence, or dating violence, including a demonstration of support from advocacy groups and State Domestic Violence Coalitions;

“(4) demonstrate that the applicant has the capacity and the expertise to maintain a domestic violence hotline and a comprehensive database of service providers;

“(5) demonstrate the ability to provide information and referrals for callers, directly connect callers to service providers, and employ crisis interventions meeting the standards of family violence, domestic violence, and dating violence providers;

“(6) demonstrate that the applicant has a commitment to diversity and to the provision of services to underserved populations, including to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities;

“(7) demonstrate that the applicant complies with non-disclosure requirements as described in section 306(c)(5) and follows comprehensive quality assurance practices; and

“(8) contain such other information as the Secretary may require.

“(e) HOTLINE ACTIVITIES.—

“(1) IN GENERAL.—An entity that receives a grant under this section for activities described, in whole or in part, in subsection (a) shall use funds made available through the grant to establish and operate a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, and other individuals described in subsection (a).

“(2) ACTIVITIES.—In establishing and operating the hotline, the entity—

Contracts.

“(A) shall contract with a carrier for the use of a toll-free telephone line;

“(B) shall employ, train (including providing technology training), and supervise personnel to answer incoming calls, provide counseling and referral services for callers on a 24-hour-a-day basis, and directly connect callers to service providers;

“(C) shall assemble and maintain a database of information relating to services for adult and youth victims of family violence, domestic violence, or dating violence to which callers may be referred throughout the United States, including information on the availability of shelters and supportive services for victims of family violence, domestic violence, or dating violence;

“(D) shall widely publicize the hotline throughout the United States, including to potential users;

“(E) shall provide assistance and referrals to meet the needs of underserved populations and individuals with disabilities;

“(F) shall provide assistance and referrals for youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline;

“(G) may provide appropriate assistance and referrals for family and household members of victims of family violence, domestic violence, or dating violence, and persons affected by the victimization described in subsection (a); and

“(H) at the discretion of the hotline operator, may provide assistance, or referrals for counseling or intervention, for identified adult and youth perpetrators, including self-identified perpetrators, of family violence, domestic violence, or dating violence, but shall not be required to provide such assistance or referrals in any circumstance in which the hotline operator fears the safety of a victim may be impacted by an abuser or suspected abuser.

“(f) REPORTS AND EVALUATION.—The entity receiving a grant under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

“SEC. 314. DOMESTIC VIOLENCE PREVENTION ENHANCEMENT AND LEADERSHIP THROUGH ALLIANCES (DELTA).Contracts.
42 USC 10414.

“(a) **IN GENERAL.**—The Secretary shall enter into cooperative agreements with State Domestic Violence Coalitions for the purposes of establishing, operating, and maintaining local community projects to prevent family violence, domestic violence, and dating violence, including violence committed by and against youth, using a coordinated community response model and through prevention and education programs.

“(b) **TERM.**—The Secretary shall enter into a cooperative agreement under this section for a period of not more than 5 fiscal years.

“(c) **CONDITIONS ON PAYMENT.**—The provision of payments under a cooperative agreement under this section shall be subject to—

“(1) annual approval by the Secretary; and

“(2) the availability of appropriations for each fiscal year to make the payments.

“(d) **ELIGIBILITY.**—To be eligible to enter into a cooperative agreement under this section, an organization shall—

“(1) be a State Domestic Violence Coalition; and

“(2) include representatives of pertinent sectors of the local community, which may include—

“(A) health care providers and State or local health departments;

“(B) the education community;

“(C) the faith-based community;

“(D) the criminal justice system;

“(E) family violence, domestic violence, and dating violence service program advocates;

“(F) human service entities such as State child services divisions;

“(G) business and civic leaders; and

“(H) other pertinent sectors.

“(e) **APPLICATIONS.**—An organization that desires to enter into a cooperative agreement under this section shall submit to the Secretary an application, in such form and in such manner as the Secretary shall require, that—

“(1) demonstrates the capacity of the applicant, who may enter into a partnership with a local family violence, domestic violence, or dating violence service provider or community-based organization, to undertake the project involved;

“(2) demonstrates that the project will include a coordinated community response to improve and expand prevention strategies through increased communication and coordination among all affected sectors of the local community;

“(3) includes a complete description of the applicant’s plan for the establishment and implementation of the coordinated community response, including a description of—

“(A) the method to be used for identification and selection of an administrative committee made up of persons knowledgeable about comprehensive family violence, domestic violence, and dating violence prevention planning to oversee the project, hire staff, assure compliance with the project outline, and secure annual evaluation of the project;

“(B) the method to be used for identification and selection of project staff and a project evaluator;

“(C) the method to be used for identification and selection of a project council consisting of representatives of the community sectors listed in subsection (d)(2); and

“(D) the method to be used for identification and selection of a steering committee consisting of representatives of the various community sectors who will chair subcommittees of the project council, each of which will focus on 1 of the sectors;

“(4) demonstrates that the applicant has experience in providing, or the capacity to provide, prevention-focused training and technical assistance;

“(5) demonstrates that the applicant has the capacity to carry out collaborative community initiatives to prevent family violence, domestic violence, and dating violence; and

“(6) contains such other information, agreements, and assurances as the Secretary may require.

“(f) GEOGRAPHICAL DISPERSION.—The Secretary shall enter into cooperative agreements under this section with organizations in States geographically dispersed throughout the Nation.

“(g) USE OF FUNDS.—

“(1) IN GENERAL.—An organization that enters into a cooperative agreement under subsection (a) shall use the funds made available through the agreement to establish, operate, and maintain comprehensive family violence, domestic violence, and dating violence prevention programming.

“(2) TECHNICAL ASSISTANCE, EVALUATION AND MONITORING.—The Secretary may use a portion of the funds provided under this section to—

“(A) provide technical assistance;

“(B) monitor the performance of organizations carrying out activities under the cooperative agreements; and

“(C) conduct an independent evaluation of the program carried out under this section.

“(3) REQUIREMENTS.—In establishing and operating a project under this section, an eligible organization shall—

“(A) establish protocols to improve and expand family violence, domestic violence, and dating violence prevention and intervention strategies within affected community sectors described in subsection (d)(2);

“(B) develop comprehensive prevention plans to coordinate prevention efforts with other community sectors;

“(C) provide for periodic evaluation of the project, and analysis to assist in replication of the prevention strategies used in the project in other communities, and submit a report under subsection (h) that contains the evaluation and analysis;

“(D) develop, replicate, or conduct comprehensive, evidence-informed primary prevention programs that reduce risk factors and promote protective factors that reduce the likelihood of family violence, domestic violence, and dating violence, which may include—

“(i) educational workshops and seminars;

“(ii) training programs for professionals;

“(iii) the preparation of informational material;

“(iv) developmentally appropriate education programs;

“(v) other efforts to increase awareness of the facts about, or to help prevent, family violence, domestic violence, and dating violence; and

“(vi) the dissemination of information about the results of programs conducted under this subparagraph;

“(E) utilize evidence-informed prevention program planning; and

“(F) recognize, in applicable cases, the needs of underserved populations, racial and linguistic populations, and individuals with disabilities.

“(h) **REPORTS AND EVALUATION.**—Each organization entering into a cooperative agreement under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe activities that have been carried out with the funds made available through the agreement, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require. The Secretary shall make the evaluations received under this subsection publicly available on the Department of Health and Human Services website. The reports shall also be submitted to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.”

SEC. 202. AMENDMENTS TO OTHER LAWS.

(a) **TITLE 11, UNITED STATES CODE.**—Section 707(b)(2)(A)(ii)(I) of title 11, United States Code, is amended in the 4th sentence by striking “section 309 of the Family Violence Prevention and Services Act” and inserting “section 302 of the Family Violence Prevention and Services Act”.

(b) **INDIVIDUALS WITH DISABILITIES EDUCATION ACT.**—Section 635(c)(2)(G) of the Individuals with Disabilities Education Act (20 U.S.C. 1435(c)(2)(G)) is amended by striking “section 320 of the Family Violence Prevention and Services Act” and inserting “section 302 of the Family Violence Prevention and Services Act”.

(c) **OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.**—Section 2001(c)(2)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg(c)(2)(A)) is amended by striking “through the Family Violence Prevention and Services Act (42 U.S.C. 10410 et seq.)” and inserting “under section 311 of the Family Violence Prevention and Services Act”.

(d) **VIOLENCE AGAINST WOMEN ACT OF 1994.**—Section 40002(a)(26) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(26)) is amended by striking “under the Family Violence Prevention and Services Act (42 U.S.C. 10410(b))” and inserting “under sections 302 and 311 of the Family Violence Prevention and Services Act”.

(e) **VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.**—The portion of section 310004(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14214(d)) that pertains to the definition of the term “prevention program” is amended—

(1) in paragraph (20), by striking “section 40211” and inserting “section 313 of the Family Violence Prevention and Services Act (relating to a hotline)”;

(2) in paragraph (22), by striking “section 40241” and inserting “sections 301 through 312 of the Family Violence Prevention and Services Act”; and

(3) in paragraph (24), by striking “section 40261” and inserting “section 314 of the Family Violence Prevention and Services Act (relating to community projects to prevent family violence, domestic violence, and dating violence)”.

TITLE III—CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION RE- FORM ACT OF 1978

SEC. 301. CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM.

(a) FINDINGS.—Section 201 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5111) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) FINDINGS.—Congress finds that—

“(1) on the last day of fiscal year 2009, some 424,000 children were living in temporary foster family homes or other foster care settings;

“(2) most children in foster care are victims of child abuse or neglect by their biological parents and their entry into foster care brought them the additional trauma of separation from their homes and often their communities;

“(3) on average, children entering foster care have more physical and mental health needs than do children in the general population, and some require intensive services because the children entering foster care—

“(A) were born to mothers who did not receive prenatal care;

“(B) were born with life-threatening conditions or disabilities;

“(C) were born addicted to alcohol or other drugs; or

“(D) have HIV/AIDS;

“(4) each year, thousands of children in foster care, regardless of their age, the size of the sibling group they are a part of, their racial or ethnic status, their medical condition, or any physical, mental or emotional disability they may have, are in need of placement with permanent, loving, adoptive families;

“(5)(A) States have made important strides in increasing the number of children who are placed in permanent homes with adoptive parents and in reducing the length of time children wait for such a placement; and

“(B) many thousands of children, however, still remain in institutions or foster homes solely because of legal and other barriers to such a placement;

“(6)(A) on the last day of fiscal year 2009, there were 115,000 children waiting for adoption;

“(B) children waiting for adoption have had parental rights of all living parents terminated or the children have a permanency goal of adoption;

“(C)(i) the average age of children adopted with public child welfare agency involvement during fiscal year 2009 was a little more than 6 years; and

“(ii) the average age of children waiting for adoption on the last day of that fiscal year was a little more than 8 years of age and more than 30,000 of those children were 12 years of age or older; and

“(D)(i) 25 percent of the children adopted with public child welfare agency involvement during fiscal year 2009 were African-American; and

“(ii) 30 percent of the children waiting for adoption on the last day of fiscal year 2009 were African-American;

“(7) adoption may be the best alternative for assuring the healthy development of children placed in foster care;

“(8) there are qualified persons seeking to adopt such children who are unable to do so because of barriers to their placement and adoption; and

“(9) in order both to enhance the stability of and love in the home environments of such children and to avoid wasteful expenditures of public funds, such children—

“(A) should not have medically indicated treatment withheld from them; or

“(B) be maintained in foster care or institutions when adoption is appropriate and families can be found for such children.”; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting “older children, minority children, and” after “particularly”; and

(B) by striking paragraph (2) and inserting the following:

“(2) maintain an Internet-based national adoption information exchange system to—

“(A) bring together children who would benefit from adoption and qualified prospective adoptive parents who are seeking such children;

“(B) conduct national recruitment efforts in order to reach prospective parents for children awaiting adoption; and

“(C) connect placement agencies, prospective adoptive parents, and adoptive parents to resources designed to reduce barriers to adoption, support adoptive families, and ensure permanency; and”.

(b) INFORMATION AND SERVICES.—Section 203 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113) is amended—

(1) in subsection (a), by striking all that follows “facilitate the adoption of” and inserting “older children, minority children, and children with special needs, particularly infants and toddlers with disabilities who have life-threatening conditions, and services to families considering adoption of children with special needs.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “and” after “regarding adoption” and inserting a comma; and

- (ii) by inserting “, and post-legal adoption services” after “adoption assistance programs”;
- (B) in paragraph (2), by inserting “, including efforts to promote the adoption of older children, minority children, and children with special needs” after “national level”;
- (C) in paragraph (7)—
 - (i) by striking “study the efficacy of States contracting with” and inserting “increase the effective use of”;
 - (ii) by striking the comma after “organizations)” and inserting “by States,”;
 - (iii) by inserting a comma after “institutions”; and
 - (iv) by inserting “, including assisting in efforts to work with organizations that promote the placement of older children, minority children, and children with special needs” after “children for adoption”;
- (D) in paragraph (9)—
 - (i) in subparagraph (B), by striking “and” at the end;
 - (ii) in subparagraph (C), by adding “and” after the semicolon at the end; and
 - (iii) by adding at the end the following:

“(D) identify best practices to reduce adoption disruption and termination;”;
- (E) in paragraph (10)—
 - (i) in the matter preceding subparagraph (A), by inserting “tribal child welfare agencies,” after “local government entities,”; and
 - (ii) in subparagraph (A)—
 - (I) in clause (ii), by inserting “, including developing and using procedures to notify family and relatives when a child enters the child welfare system” before the semicolon at the end;
 - (II) by redesignating clauses (vii) and (viii) as clauses (viii) and (ix), respectively; and
 - (III) by inserting after clause (vi) the following:

“(vii) education and training of prospective adoptive or adoptive parents;”;
- (3) in subsection (d)—
 - (A) in paragraph (1), by striking the second sentence and all that follows; and
 - (B) in paragraph (2)—
 - (i) in subparagraph (A)—
 - (I) in the second sentence, by inserting “, consistent with the purpose of this title” after “by the Secretary”; and
 - (II) by striking the third sentence and inserting the following: “Each application shall contain information that—
 - “(i) describes how the State plans to improve the placement rate of children in permanent homes;
 - “(ii) describes the methods the State, prior to submitting the application, has used to improve the placement of older children, minority children, and children with special needs, who are legally free for adoption;

“(iii) describes the evaluation the State plans to conduct, to identify the effectiveness of programs and methods of placement under this subsection, and submit to the Secretary; and

“(iv) describes how the State plans to coordinate activities under this subsection with relevant activities under section 473 of the Social Security Act (42 U.S.C. 673).”;

(ii) in subparagraph (B)(i), by inserting “older children, minority children, and” after “successful placement of”; and

(iii) by adding at the end the following:

“(C) EVALUATION.—The Secretary shall compile the results of evaluations submitted by States (described in subparagraph (A)(iii)) and submit a report containing the compiled results to the appropriate committees of Congress.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 205 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5115) is amended—

(1) in subsection (a)—

(A) by striking “2004” and inserting “2010”; and

(B) by striking “2005 through 2008” and inserting “2011 through 2015”;

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following:

“(b) Not less than 30 percent and not more than 50 percent of the funds appropriated under subsection (a) shall be allocated for activities under subsections (b)(10) and (c) of section 203.”.

TITLE IV—ABANDONED INFANTS ASSISTANCE ACT OF 1988

SEC. 401. ABANDONED INFANTS ASSISTANCE.

(a) FINDINGS.—Section 2 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 5117aa) is amended—

(1) in paragraph (4), by striking “including those” and all that follows through “‘AIDS’” and inserting “including those with HIV/AIDS”; and

(2) in paragraph (5), by striking “acquired immune deficiency syndrome” and inserting “HIV/AIDS”.

(b) REPEAL.—Title II of the Abandoned Infants Assistance Act of 1988 (Public Law 100-505; 102 Stat. 2536) is repealed.

42 USC 670 note.

(c) DEFINITIONS.—Section 301 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 5117aa-21) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 302 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 5117aa-22) is amended—

(1) in subsection (a)(1)—

(A) by striking “2004” and inserting “2010”; and

(B) by striking “2005 through 2008” and inserting “2011 through 2015”; and

(2) in subsection (b)(2), by striking “fiscal year 2003” and inserting “fiscal year 2010”.

Approved December 20, 2010.

LEGISLATIVE HISTORY—S. 3817:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 3, considered and passed Senate.

Dec. 8, considered and passed House, amended.

Dec. 10, Senate concurred in House amendment.



Public Law 111–321
111th Congress

An Act

To amend the Small Business Act with respect to the Small Business Innovation Research Program and the Small Business Technology Transfer Program, and for other purposes.

Dec. 22, 2010

[H.R. 2965]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Don’t Ask, Don’t Tell Repeal Act of 2010”.

Don’t Ask, Don’t
Tell Repeal Act of
2010.
10 USC 654 note.

SEC. 2. DEPARTMENT OF DEFENSE POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

(a) COMPREHENSIVE REVIEW ON THE IMPLEMENTATION OF A REPEAL OF 10 U.S.C. 654.—

(1) IN GENERAL.—On March 2, 2010, the Secretary of Defense issued a memorandum directing the Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. 654 (section 654 of title 10, United States Code).

(2) OBJECTIVES AND SCOPE OF REVIEW.—The Terms of Reference accompanying the Secretary’s memorandum established the following objectives and scope of the ordered review:

(A) Determine any impacts to military readiness, military effectiveness and unit cohesion, recruiting/retention, and family readiness that may result from repeal of the law and recommend any actions that should be taken in light of such impacts.

(B) Determine leadership, guidance, and training on standards of conduct and new policies.

(C) Determine appropriate changes to existing policies and regulations, including but not limited to issues regarding personnel management, leadership and training, facilities, investigations, and benefits.

(D) Recommend appropriate changes (if any) to the Uniform Code of Military Justice.

(E) Monitor and evaluate existing legislative proposals to repeal 10 U.S.C. 654 and proposals that may be introduced in the Congress during the period of the review.

(F) Assure appropriate ways to monitor the workforce climate and military effectiveness that support successful follow-through on implementation.

(G) Evaluate the issues raised in ongoing litigation involving 10 U.S.C. 654.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (f) shall take effect 60 days after the date on which the last of the following occurs:

(1) The Secretary of Defense has received the report required by the memorandum of the Secretary referred to in subsection (a).

President.
Certification.

(2) The President transmits to the congressional defense committees a written certification, signed by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, stating each of the following:

(A) That the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have considered the recommendations contained in the report and the report's proposed plan of action.

(B) That the Department of Defense has prepared the necessary policies and regulations to exercise the discretion provided by the amendments made by subsection (f).

(C) That the implementation of necessary policies and regulations pursuant to the discretion provided by the amendments made by subsection (f) is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

(c) **NO IMMEDIATE EFFECT ON CURRENT POLICY.**—Section 654 of title 10, United States Code, shall remain in effect until such time that all of the requirements and certifications required by subsection (b) are met. If these requirements and certifications are not met, section 654 of title 10, United States Code, shall remain in effect.

(d) **BENEFITS.**—Nothing in this section, or the amendments made by this section, shall be construed to require the furnishing of benefits in violation of section 7 of title 1, United States Code (relating to the definitions of “marriage” and “spouse” and referred to as the “Defense of Marriage Act”).

(e) **NO PRIVATE CAUSE OF ACTION.**—Nothing in this section, or the amendments made by this section, shall be construed to create a private cause of action.

(f) **TREATMENT OF 1993 POLICY.**—

(1) **TITLE 10.**—Upon the effective date established by subsection (b), chapter 37 of title 10, United States Code, is amended—

(A) by striking section 654; and

(B) in the table of sections at the beginning of such chapter, by striking the item relating to section 654.

(2) **CONFORMING AMENDMENT.**—Upon the effective date established by subsection (b), section 571 of the National

Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 654 note) is amended by striking subsections (b), (c), and (d).

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 2965 (S. 1233):

HOUSE REPORTS: No. 111–190, Pt. 1 (Comm. on Small Business) and Pt. 2 (Comm. on Science and Technology).

SENATE REPORTS: No. 111–37 (Comm. on Small Business and Entrepreneurship) accompanying S. 1233.

CONGRESSIONAL RECORD:

Vol. 155 (2009): July 8, considered and passed House.
July 13, considered and passed Senate, amended, in lieu of
S. 1233.

Vol. 156 (2010): Dec. 15, House concurred in Senate amendment with an
amendment.
Dec. 16, 18, Senate considered and concurred in House
amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2010):

Dec. 18, Presidential statement.



Public Law 111–322
111th Congress

An Act

Dec. 22, 2010
[H.R. 3082]

Making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Continuing
Appropriations
and Surface
Transportation
Extensions Act,
2011.
Continuing
Appropriations
Amendments,
2011.
Ante, p. 3454.
Definitions.
5 USC 5303 note.

TITLE I—CONTINUING APPROPRIATIONS AMENDMENTS

SECTION 1. (a) The Continuing Appropriations Act, 2011 (Public Law 111–242) is further amended by—

(1) striking the date specified in section 106(3) and inserting “March 4, 2011”; and

(2) adding the following:

“SEC. 147. (a) For the purposes of this section—

“(1) the term ‘employee’—

“(A) means an employee as defined in section 2105 of title 5, United States Code; and

“(B) includes an individual to whom subsection (b), (c), or (f) of such section 2105 pertains (whether or not such individual satisfies subparagraph (A));

“(2) the term ‘senior executive’ means—

“(A) a member of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code;

“(B) a member of the FBI–DEA Senior Executive Service under subchapter III of chapter 31 of title 5, United States Code;

“(C) a member of the Senior Foreign Service under chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following); and

“(D) a member of any similar senior executive service in an Executive agency;

“(3) the term ‘senior-level employee’ means an employee who holds a position in an Executive agency and who is covered by section 5376 of title 5, United States Code, or any similar authority; and

“(4) the term ‘Executive agency’ has the meaning given such term by section 105 of title 5, United States Code.

“(b)(1) Notwithstanding any other provision of law, except as provided in subsection (e), no statutory pay adjustment which (but for this subsection) would otherwise take effect during the period beginning on January 1, 2011, and ending on December 31, 2012, shall be made.

Time period.

“(2) For purposes of this subsection, the term ‘statutory pay adjustment’ means—

“(A) an adjustment required under section 5303, 5304, 5304a, 5318, or 5343(a) of title 5, United States Code; and

“(B) any similar adjustment, required by statute, with respect to employees in an Executive agency.

“(c) Notwithstanding any other provision of law, except as provided in subsection (e), during the period beginning on January 1, 2011, and ending on December 31, 2012, no senior executive or senior-level employee may receive an increase in his or her rate of basic pay absent a change of position that results in a substantial increase in responsibility, or a promotion. Time period.

“(d) The President may issue guidance that Executive agencies shall apply in the implementation of this section. Applicability.

“(e) The Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note) shall be applied using the appropriate locality-based comparability payments established by the President as the applicable comparability payments in section 1914(2) and (3) of such Act. President.
Applicability.

“SEC. 148. Notwithstanding section 101, the level for ‘Department of Commerce, National Telecommunications and Information Administration, Salaries and Expenses’ shall be \$40,649,000.

“SEC. 149. The following authorities shall continue in effect through the earlier of the date specified in section 106(3) of this Act or the date of enactment of the National Defense Authorization Act for Fiscal Year 2011: Extensions.

“(1) Section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 2042), as amended by section 1011 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2441);

“(2) Section 1022 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 371 note), as amended by section 1012 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2441);

“(3) Section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85), as amended by section 1014 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2442);

“(4) Sections 611, 612, 613, 614, 615, 616, 1106, 1222(e), 1224 and 1234 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84);

“(5) Section 631 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181); and

“(6) Section 931 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

“SEC. 150. Subject to the availability of appropriations, the Secretary of the Navy may award a contract or contracts for up to 20 Littoral Combat Ships (LCS).

“SEC. 151. Section 8905a(d)(4)(B) of title 5, United States Code, is amended—

“(1) in clause (i), by striking ‘October 1, 2010’ and inserting ‘December 31, 2011’; and

“(2) in clause (ii)—

“(A) by striking ‘February 1, 2011’ and inserting ‘February 1, 2012’; and

“(B) by striking ‘October 1, 2010’ and inserting ‘December 31, 2011’.

“SEC. 152. Notwithstanding section 101, the level for ‘Special Inspector General for the Troubled Asset Relief Program, Salaries and Expenses’ shall be \$36,300,000.

Ante, p. 2508,
2553.

“SEC. 153. Public Law 111-240 is amended in section 1114 and section 1704 by striking ‘December 31, 2010’ and inserting ‘March 4, 2011’ each time it appears and in section 1704 by adding at the end the following:

“(c) For purposes of the loans made under this section, the maximum guaranteed amount outstanding to the borrower may not exceed \$4,500,000.’

“SEC. 154. The appropriation to the Securities and Exchange Commission pursuant to this Act shall be deemed a regular appropriation for purposes of section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) and sections 13(e), 14(g), and 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e), 78n(g), and 78ee).

118 Stat. 3998.

“SEC. 155. Section 302 of the Universal Service Antideficiency Temporary Suspension Act is amended by striking ‘December 31, 2010’ each place it appears and inserting ‘December 31, 2011’.

Notification.
Deadline.

“SEC. 156. Notwithstanding section 503 of Public Law 111-83, amounts made available in this Act for the Transportation Security Administration shall be available for transfer between and within Transportation Security Administration appropriations to the extent necessary to avoid furloughs or reduction in force, or to provide funding necessary for programs and activities required by law: *Provided*, That such transfers may not result in the termination of programs, projects or activities: *Provided further*, That the House and Senate Appropriations Committees shall be notified within 15 days of such transfers.

“SEC. 157. Up to \$21,880,000 from ‘Coast Guard, Acquisition, Construction, and Improvements’ and ‘Coast Guard, Alteration of Bridges’ may be transferred to ‘Coast Guard, Operating Expenses’: *Provided*, That the Coast Guard may decommission one Medium Endurance Cutter, two High Endurance Cutters, four HU-25 aircraft, the Maritime Intelligence Fusion Center, and one Maritime Safety and Security Team, and make staffing changes at the Coast Guard Investigative Service, as outlined in its budget justification documents for fiscal year 2011 as submitted to the Committees on Appropriations of the Senate and House of Representatives.

“SEC. 158. Notwithstanding section 101, the final proviso under the heading ‘Science and Technology, Research, Development, Acquisition, and Operations’ in Public Law 111-83 (related to the National Bio- and Agro-defense Facility) shall have no effect with respect to all amounts available under this heading.

“SEC. 159. Notwithstanding sections 101 and 128, amounts are provided for ‘Department of the Interior—Minerals Management Service—Royalty and Offshore Minerals Management’ in the manner authorized in Public Law 111-88 for fiscal year 2010, except that for fiscal year 2011 the amounts specified in division A of Public Law 111-88 shall be modified by substituting—

“(1) ‘\$200,110,000’ for ‘\$175,217,000’;

“(2) ‘\$102,231,000’ for ‘\$89,374,000’;

“(3) ‘\$154,890,000’ for ‘\$156,730,000’ each place it appears;

and

“(4) ‘fiscal year 2011’ shall be substituted for ‘fiscal year 2010’ each place it appears.

“SEC. 160. The Secretary of the Interior, in order to implement a reorganization of the Bureau of Ocean Energy Management, Regulation, and Enforcement, may establish accounts, transfer funds among and between the offices and bureaus affected by the reorganization, and take any other administrative actions necessary in conformance with the Appropriations Committee reprogramming procedures described in the joint explanatory statement of the managers accompanying Public Law 111–88 (House of Representatives Report 111–316).

“SEC. 161. Notwithstanding section 101, section 423 of Public Law 111–88 (123 Stat. 2961), concerning the distribution of geothermal energy receipts, shall have no force or effect and the provisions of section 3003(a) of Public Law 111–212 (124 Stat. 2338) shall apply for fiscal year 2011.

“SEC. 162. Notwithstanding section 109, of the funds made available by section 101 for payments under subsections (b) and (d) of section 2602 of the Low Income Home Energy Assistance Act of 1981, the Department of Health and Human Services shall obligate the same amount during the period covered by this continuing resolution as was obligated for such purpose during the comparable period during fiscal year 2010.

“SEC. 163. (a) A ‘highly qualified teacher’ includes a teacher who meets the requirements in 34 CFR 200.56(a)(2)(ii), as published in the Federal Register on December 2, 2002. 20 USC 7801 note.

“(b) This provision is effective on the date of enactment of this provision through the end of the 2012–2013 academic year. Effective date.

“SEC. 164. (a) Notwithstanding section 101, the level for ‘Department of Education, Student Financial Assistance’ to carry out subpart 1 of part A of title IV of the Higher Education Act of 1965 shall be \$23,162,000,000. Grants.

“(b) The maximum Pell Grant for which a student shall be eligible during award year 2011–2012 shall be \$4,860. 20 USC 1070a note.

“SEC. 165. (a) Notwithstanding section 1018(d) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907(d)), the use of any funds appropriated to the United States Capitol Police during fiscal year 2003 for transfer relating to the Truck Interdiction Monitoring Program to the working capital fund established under section 328 of title 49, United States Code, is ratified.

“(b) Nothing in subsection (a) may be construed to waive sections 1341, 1342, 1349, 1350, or 1351 of title 31, United States Code, or subchapter II of chapter 15 of such title (commonly known as the ‘Anti-Deficiency Act’).

“(c) Notwithstanding section 106 of this Act, the use of the funds described under subsection (a) of this section shall apply without fiscal year limitation. Applicability.

“SEC. 166. Notwithstanding section 101, amounts are provided for ‘Department of Veterans Affairs, Departmental Administration, General Operating Expenses’ at a rate for operations of \$2,546,276,000, of which not less than \$2,148,776,000 shall be for the Veterans Benefits Administration.”.

(b) This section may be cited as the “Continuing Appropriations Amendments, 2011”.

Surface
Transportation
Extension Act of
2010, Part II.

TITLE II—EXTENSION OF CURRENT SURFACE TRANSPORTATION PRO- GRAMS

SEC. 2001. SHORT TITLE; RECONCILIATION OF FUNDS.

23 USC 101 note.

(a) This title may be cited as the “Surface Transportation Extension Act of 2010, Part II”.

Time period.

(b) RECONCILIATION OF FUNDS.—The Secretary of Transportation shall reduce the amount apportioned or allocated for a program, project, or activity under this title in fiscal year 2011 by amounts apportioned or allocated pursuant to the Surface Transportation Extension Act of 2010 for the period beginning on October 1, 2010, and ending on December 31, 2010.

Subtitle A—Federal-Aid Highways

SEC. 2101. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAMS.

Time period.

(a) IN GENERAL.—Section 411 of the Surface Transportation Extension Act of 2010 (Public Law 111–147; 124 Stat. 78) is amended—

(1) by striking “the period beginning on October 1, 2010, and ending on December 31, 2010” each place it appears (except in subsection (c)(2)) and inserting “the period beginning on October 1, 2010, and ending on March 4, 2011”;

(2) in subsection (a) by striking “December 31, 2010” and inserting “March 4, 2011”;

(3) in subsection (b)(2) by striking “ $\frac{1}{4}$ ” and inserting “ $\frac{155}{365}$ ”;

(4) in subsection (c)—

(A) in paragraph (2)—

(i) by striking “ $\frac{1}{4}$ ” and inserting “ $\frac{155}{365}$ ”; and

(ii) by striking “the period beginning on October 1, 2010, and ending on December 31, 2010,” and inserting “the period beginning on October 1, 2010, and ending on March 4, 2011”;

(B) in paragraph (4)—

(i) in subparagraph (A)(ii) by striking “ $\frac{1}{4}$ ” and inserting “ $\frac{155}{365}$ ”; and

(ii) in subparagraph (B)(ii)(II) by striking “\$159,750,000” and inserting “\$271,356,164”; and

(C) in paragraph (5) by striking “ $\frac{1}{4}$ ” and inserting “ $\frac{155}{365}$ ”;

(5) in subsection (d)—

(A) by striking “ $\frac{1}{4}$ ” each place it appears and inserting “ $\frac{155}{365}$ ”; and

(B) in paragraph (2)(A)—

(i) in the matter preceding clause (i) by striking “apportioned under sections 104(b) and 144 of title 23, United States Code,” and inserting “specified in section 105(a)(2) of title 23, United States Code (except the high priority projects program),”; and

(ii) in clause (ii) by striking “apportioned under such sections of such Code” and inserting “specified

in such section 105(a)(2) (except the high priority projects program)”; and

(6) in subsection (e)(1)(B) by striking “ $\frac{1}{4}$ ” and inserting “ $\frac{155}{365}$ ”.

(b) ADMINISTRATIVE EXPENSES.—Section 412(a)(2) of the Surface Transportation Extension Act of 2010 (Public Law 111–147; 124 Stat. 83) is amended—

(1) by striking “\$105,606,250” and inserting “\$179,385,959”; and

(2) by striking “the period beginning on October 1, 2010, and ending on December 31, 2010” and inserting “the period beginning on October 1, 2010, and ending on March 4, 2011”.

Time period.

Subtitle B—Extension of National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, and Additional Programs

Time periods.

SEC. 2201. EXTENSION OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION HIGHWAY SAFETY PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2001(a)(1) of SAFETEA–LU (119 Stat. 1519) is amended by striking “and \$58,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$99,795,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2001(a)(2) of SAFETEA–LU (119 Stat. 1519) is amended by striking “and \$27,061,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$45,967,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2001(a)(3) of SAFETEA–LU (119 Stat. 1519) is amended by striking “and \$6,250,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$10,616,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(d) SAFETY BELT PERFORMANCE GRANTS.—Section 2001(a)(4) of SAFETEA–LU (119 Stat. 1519) is amended by striking “and \$31,125,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$52,870,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(e) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—Section 2001(a)(5) of SAFETEA–LU (119 Stat. 1519) is amended by striking “and \$8,625,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$14,651,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(f) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANT PROGRAM.—Section 2001(a)(6) of SAFETEA–LU (119 Stat. 1519) is amended by striking “and \$34,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and

inserting “and \$59,027,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(g) NATIONAL DRIVER REGISTER.—Section 2001(a)(7) of SAFETEA-LU (119 Stat. 1520) is amended by striking “and \$1,029,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$1,748,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(h) HIGH VISIBILITY ENFORCEMENT PROGRAM.—Section 2001(a)(8) of SAFETEA-LU (119 Stat. 1520) is amended by striking “and \$7,250,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$12,315,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(i) MOTORCYCLIST SAFETY.—Section 2001(a)(9) of SAFETEA-LU (119 Stat. 1520) is amended by striking “and \$1,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$2,973,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(j) CHILD SAFETY AND CHILD BOOSTER SEAT SAFETY INCENTIVE GRANTS.—Section 2001(a)(10) of SAFETEA-LU (119 Stat. 1520) is amended by striking “and \$1,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$2,973,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

(k) ADMINISTRATIVE EXPENSES.—Section 2001(a)(11) of SAFETEA-LU (119 Stat. 1520) is amended by striking “and \$6,332,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$10,756,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

SEC. 2202. EXTENSION OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAMS.

(a) MOTOR CARRIER SAFETY GRANTS.—Section 31104(a)(7) of title 49, United States Code, is amended by striking “\$52,679,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “\$88,753,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”.

(b) ADMINISTRATIVE EXPENSES.—Section 31104(i)(1)(G) of title 49, United States Code, is amended by striking “\$61,036,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “\$103,678,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”.

(c) GRANT PROGRAMS.—Section 4101(c) of SAFETEA-LU (119 Stat. 1715) is amended—

(1) in paragraph (1)—

(A) by striking “and” after “2009,”; and

(B) by striking “and \$6,301,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$10,616,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”;

(2) in paragraph (2) by striking “and \$8,066,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$13,589,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”;

(3) in paragraph (3) by striking “and \$1,260,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$2,123,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”;

(4) in paragraph (4) by striking “and \$6,301,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$10,616,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”; and

(5) in paragraph (5) by striking “and \$756,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$1,274,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”.

(d) HIGH-PRIORITY ACTIVITIES.—Section 31104(k)(2) of title 49, United States Code, is amended by striking “2009, \$15,000,000 for fiscal year 2010, and \$3,781,000 for the period beginning on October 1, 2010, and ending on December 31, 2010” and inserting “2010 and \$6,370,000 for the period beginning October 1, 2010, and ending on March 4, 2011”.

(e) NEW ENTRANT AUDITS.—Section 31144(g)(5)(B) of title 49, United States Code, is amended by striking “(and up to \$7,310,000 for the period beginning on October 1, 2010, and ending on December 31, 2010)” and inserting “(and up to \$12,315,000 for the period beginning October 1, 2010, and ending on March 4, 2011)”.

(f) COMMERCIAL DRIVER’S LICENSE INFORMATION SYSTEM MODERNIZATION.—Section 4123(d)(6) of SAFETEA–LU (119 Stat. 1736) is amended by striking “\$2,016,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.” and inserting “and \$3,397,260 for the period beginning October 1, 2010, and ending on March 4, 2011.”.

49 USC 31309
note.

(g) OUTREACH AND EDUCATION.—Section 4127(e) of SAFETEA–LU (119 Stat. 1741) is amended by striking “and 2010” and all that follows before “to carry out” and inserting “2010, and \$425,545 to the Federal Motor Carrier Safety Administration, and \$1,274,000 to the National Highway Traffic Safety Administration, for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

49 USC 31100
note.

(h) GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS.—Section 4134(c) of SAFETEA–LU (119 Stat. 1744) is amended by striking “\$252,000 for the period beginning on October 1, 2010, and ending on December 31, 2010,” and inserting “\$425,545 for the period beginning on October 1, 2010, and ending on March 4, 2011.”.

49 USC 31301
note.

(i) MOTOR CARRIER SAFETY ADVISORY COMMITTEE.—Section 4144(d) of SAFETEA–LU (119 Stat. 1748) is amended by striking “December 31, 2010” and inserting “March 4, 2011”.

49 USC 31100
note.

(j) WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.—Section 4213(d) of SAFETEA–LU (49 U.S.C. 14710 note; 119 Stat. 1759) is amended by striking “December 31, 2010” and inserting “March 4, 2011”.

SEC. 2203. ADDITIONAL PROGRAMS.

(a) HAZARDOUS MATERIALS RESEARCH PROJECTS.—Section 7131(c) of SAFETEA–LU (119 Stat. 1910) is amended by striking “through 2010” and all that follows before “shall be available”

and inserting “through 2010 and \$531,000 for the period beginning on October 1, 2010, and ending on March 4, 2011”.

(b) DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—Section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c) is amended—

(1) in subsection (a) by striking “For each of fiscal years 2006” and all that follows before paragraph (1) and inserting the following: “For each of fiscal years 2006 through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:”; and

(2) in subsection (b)(1)(A) by striking the first sentence and inserting the following: “From the annual appropriation made in accordance with section 3, for each of fiscal years 2006 through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this Act, in accordance with this section and section 9.”.

(c) SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM.—Section 327(i)(1) of title 23, United States Code, is amended by striking “6 years after” and inserting “7 years after”.

(d) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM.—Section 510 of title 23, United States Code, is amended by adding at the end the following:

“(h) IMPLEMENTATION.—Notwithstanding any other provision of this section, the Secretary may use funds made available to carry out this section for implementation of research products related to the future strategic highway research program, including development, demonstration, evaluation, and technology transfer activities.”.

Subtitle C—Public Transportation Programs

SEC. 2301. ALLOCATION OF FUNDS FOR PLANNING PROGRAMS.

Section 5305(g) of title 49, United States Code, is amended by striking “December 31, 2010” and inserting “March 4, 2011”.

SEC. 2302. SPECIAL RULE FOR URBANIZED FORMULA GRANTS.

Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading, by striking “DECEMBER 31, 2010” and inserting “MARCH 4, 2011”;

(2) in subparagraph (A) by striking “December 31, 2010” and inserting “March 4, 2011”; and

(3) in subparagraph (E)—

(A) in the paragraph heading, by striking “DECEMBER 31, 2010” and inserting “MARCH 4, 2011”; and

(B) in the matter preceding clause (i) by striking “December 31, 2010” and inserting “March 4, 2011”.

SEC. 2303. ALLOCATING AMOUNTS FOR CAPITAL INVESTMENT GRANTS.

Section 5309(m) of such title is amended—

(1) In paragraph (2)—

(A) in the paragraph heading by striking “DECEMBER 31, 2010” and inserting “MARCH 4, 2011”;

(B) in the matter preceding paragraph (A) by striking “December 31, 2010” and inserting “March 4, 2011”; and

(C) in subparagraph (A)(i), by striking “\$50,000,000 for the period beginning October 1, 2010, and ending December 31, 2010” and inserting “\$84,931,000 for the period beginning October 1, 2010 and ending March 4, 2011”.

(2) in paragraph (6)—

(A) in subparagraph (B) by striking “\$3,750,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$6,369,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011”;

(B) in subparagraph (C) by striking “\$1,250,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$2,123,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011”.

(3) in paragraph (7)—

(A) in clause (ii) of subparagraph (A)—

(i) in the clause heading, by striking “DECEMBER 31, 2010” and inserting “MARCH 4, 2011”;

(ii) by striking “\$2,500,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$4,246,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011”;

(iii) by striking “25 percent” and inserting “ $155\frac{1}{3}$ percent”.

(4) in subparagraph (B), by amending clause (vi) to read, “\$5,732,000 for the period beginning October 1, 2010 and ending March 4, 2011”.

(5) in subparagraph (C) by striking “December 31, 2010” and inserting “March 4, 2011”.

(6) in subparagraph (D) by striking “\$8,750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010” and inserting “\$14,863,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011”;

(7) in subparagraph (E) by striking “\$750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010” and inserting “\$1,273,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011”.

SEC. 2304. APPORTIONMENT OF FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

Section 5311(c)(1)(F) of title 49, United States Code, is amended to read as follows:

“(F) \$6,369,000 for the period beginning October 1, 2010 and ending March 4, 2011.”.

SEC. 2305. APPORTIONMENT BASED ON FIXED GUIDEWAY FACTORS.

Section 5337(g) of title 49, United States Code, is amended to read as follows:

“(g) SPECIAL RULE FOR OCTOBER 1, 2010, THROUGH MARCH 4, 2011.—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning October 1, 2010, and ending March 4, 2011, in accordance with subsection (a), except that the Secretary shall apportion $\frac{155}{365}$ ths of each dollar amount specified in subsection (a).”.

SEC. 2306. AUTHORIZATIONS FOR PUBLIC TRANSPORTATION.

(a) FORMULA AND BUS GRANTS.—Section 5338(b) of title 49, United States Code, is amended—

(1) by amending paragraph (1)(F) as follows:

“(F) \$3,550,376,000 for the period beginning October 1, 2010, and ending March 4, 2011.”.

(2) in paragraph (2)—

(A) in subparagraph (A) by striking “\$28,375,000 for the period beginning October 1, 2010, and ending December 31, 2010” and by inserting “\$48,198,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(B) in subparagraph (B) by striking “\$1,040,091,250 for the period beginning October 1, 2010, and ending December 31, 2010” and inserting “\$1,766,730,000 for the period beginning October 1, 2010, and ending March 4, 2011”;

(C) in subparagraph (C) by striking “\$12,875,000 for the period beginning October 1, 2010, and ending December 31, 2010” and by inserting “\$21,869,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(D) in subparagraph (D) by striking “\$416,625,000 for the period beginning October 1, 2010 and ending December 31, 2010” and by inserting “\$707,691,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(E) in subparagraph (E) by striking “\$246,000,000 for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$417,863,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(F) in subparagraph (F) by striking “\$33,375,000 for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$56,691,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(G) in subparagraph (G) by striking “\$116,250,000 for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$197,465,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(H) in subparagraph (H) by striking “\$41,125,000 for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$69,856,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(I) in subparagraph (I) by striking “\$23,125,000 for the period beginning October 1, 2010 and ending December 31, 2010” and inserting “\$39,280,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(J) in subparagraph (J) by striking “\$6,725,000 for the period beginning October 1, 2010 and ending December

31, 2010” and by inserting “\$11,423,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(K) in subparagraph (K) by striking “\$875,000 for the period beginning October 1, 2010 and ending December 31, 2010” and by inserting “\$1,486,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(L) in subparagraph (L) by striking “\$6,250,000 for the period beginning October 1, 2010 and ending December 31, 2010” and by inserting “\$10,616,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(M) in subparagraph (M) by striking “\$116,250,000 for the period beginning October 1, 2010 and ending December 31, 2010” and by inserting “\$197,465,000 for the period beginning October 1, 2010 and ending March 4, 2011”; and

(N) in subparagraph (N) by striking “\$2,200,000 for the period beginning October 1, 2010 and ending December 31, 2010” and by inserting “\$3,736,000 for the period beginning October 1, 2010 and ending March 4, 2011”.

(b) CAPITAL INVESTMENT GRANTS.—Section 5338(c)(6) of title 49 United States Code, is amended to read as follows:

“(6) \$849,315,000 for the period of October 1, 2010 through March 4, 2011.”.

(c) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—Section 5338(d) of title 49, United States Code, is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking “\$17,437,500 for the period beginning October 1, 2010, and ending December 31, 2010” and inserting “\$29,619,000 for the period beginning October 1, 2010 and ending March 4, 2011”;

(2) paragraph (3)(A)(ii) is amended to read as follows:

“(ii) OCTOBER 1, 2010 THROUGH MARCH 4, 2011.—Of amounts authorized to be appropriated for the period beginning October 1, 2010, through March 4, 2011, under paragraph (1), the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to $\frac{155}{365}$ ths of the amount allocated for fiscal year 2009 under each such subparagraph.”.

(3) Paragraph (3)(B)(ii) is amended to read as follows:

“(ii) OCTOBER 1, 2010 THROUGH MARCH 4, 2011.—Of the amounts allocated under subparagraph (A)(i) for the university centers program under section 5506 for the period beginning October 1, 2010, and ending March 4, 2011, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to $\frac{155}{365}$ ths of the amount allocated for fiscal year 2009 under each such clause.”.

(4) In clause (3)(B)(iii)—

(A) by striking “2010” and inserting “2011”; and

(B) by striking “2009” and inserting “2010”.

(d) ADMINISTRATION.—Section 5338(e)(6) of title 49, United States Code, is amended to read as follows—

“(6) \$42,003,000 for the period of October 1, 2010 through March 4, 2011.”.

SEC. 2307. AMENDMENTS TO SAFETEA-LU.

(a) **CONTRACTED PARATRANSIT PILOT.**—Section 3009(i)(1) of SAFETEA-LU (Public Law 109–59; 119 Stat. 1572) is amended by striking “December 31, 2010” and inserting “March 4, 2011”.

(b) **PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.**—Section 3011 of SAFETEA-LU (49 U.S.C. 5309 note) is amended—

(1) in subsection (c)(5), by striking “December 31, 2010” and inserting “March 4, 2011”; and

(2) in subsection (d), by striking “December 31, 2010” and inserting “March 4, 2011”.

(c) **ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PILOT PROGRAM.**—Section 3012(b)(8) of SAFETEA-LU (49 U.S.C. 5310 note) is amended by striking “December 31, 2010” and inserting “March 4, 2011”.

(d) **OBLIGATION CEILING.**—Section 3040(7) of SAFETEA-LU (Public Law 109–59; 119 Stat. 1639, is amended to read as follows:

“(7) \$4,462,196,000 for the period beginning October 1, 2010, and ending March 4, 2011, of which not more than \$3,550,376,000 shall be from the Mass Transit Account.”.

(e) **PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.**—Section 3043 of SAFETEA-LU (Public Law 109–59; 119 Stat. 1640) is amended in subsections (b) and (c) by striking “December 31, 2010” and inserting “March 4, 2011”.

(f) **ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.**—Section 3046 of SAFETEA-LU (49 U.S.C. 5338; 119 Stat. 1706) is amended—

(1) in subsection (c)(2), by striking “December 31, 2010” and inserting “March 4, 2011”, and by striking “25 percent” and inserting “¹⁵⁵/₃₆₅ths”.

(2) In subsection (d)—

(A) by striking “2010” and inserting “2011”; and

(B) by striking “2009” and inserting “2010”.

SEC. 2308. LEVEL OF OBLIGATION LIMITATIONS.

(a) **HIGHWAY CATEGORY.**—Section 8003(a) of SAFETEA-LU (2 U.S.C. 901 note; 119 Stat. 1917) is amended—

(1) in paragraph (6) by striking “for the period beginning on October 1, 2009, and ending on September 30, 2010,” and inserting “for fiscal year 2010,”; and

(2) by striking paragraph (7) and inserting the following: “(7) for the period beginning October 1, 2010, and ending on March 4, 2011, \$18,035,192,815.”.

(b) **MASS TRANSIT CATEGORY.**—Section 8003(b) of SAFETEA-LU (2 U.S.C. 901 note; 119 Stat. 1917) is amended—

(1) in paragraph (6) by striking “for the period beginning on October 1, 2009, and ending on December 31, 2010,” and inserting “for fiscal year 2010,”; and

(2) by striking paragraph (7) and inserting the following: “(7) for the period beginning October 1, 2010, and ending on March 4, 2011, \$4,390,137,192.”.

Subtitle D—Extension of Expenditure Authority

SEC. 2401. EXTENSION OF EXPENDITURE AUTHORITY.

(a) HIGHWAY TRUST FUND.—Section 9503 of the Internal Revenue Code of 1986 is amended—

26 USC 9503.

(1) by striking “December 31, 2010 (January 1, 2011, in the case of expenditures for administrative expenses)” in subsections (b)(6)(B) and (c)(1) and inserting “March 5, 2011”;

(2) by striking “the Surface Transportation Extension Act of 2010” in subsections (c)(1) and (e)(3) and inserting “the Surface Transportation Extension Act of 2010, Part II”; and

(3) by striking “January 1, 2011” in subsection (e)(3) and inserting “March 5, 2011”.

(b) SPORT FISH RESTORATION AND BOATING TRUST FUND.—Section 9504 of the Internal Revenue Code of 1986 is amended—

26 USC 9504.

(1) by striking “Surface Transportation Extension Act of 2010” each place it appears in subsection (b)(2) and inserting “Surface Transportation Extension Act of 2010, Part II”; and

(2) by striking “January 1, 2011” in subsection (d)(2) and inserting “March 5, 2011”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 31, 2010.

26 USC 9503 note.

This Act may be cited as the “Continuing Appropriations and Surface Transportation Extensions Act, 2011”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 3082 (S. 1407):

HOUSE REPORTS: No. 111–188 (Comm. on Appropriations).

SENATE REPORTS: No. 111–40 (Comm. on Appropriations) accompanying S. 1407.

CONGRESSIONAL RECORD:

Vol. 155 (2009): July 10, considered and passed House.

Nov. 5, 6, 9, 10, 16, 17, considered and passed Senate, amended.

Vol. 156 (2010): Dec. 8, House concurred in Senate amendment with an amendment.

Dec. 19, Senate considered concurring in House amendment with an amendment.

Dec. 21, Senate concurred in House amendment with an amendment. House concurred in Senate amendment.



Public Law 111–323
111th Congress

An Act

Dec. 22, 2010
[H.R. 1061]

To transfer certain land to the United States to be held in trust for the Hoh Indian Tribe, to place land into trust for the Hoh Indian Tribe, and for other purposes.

Hoh Indian Tribe
Safe Homelands
Act.
16 USC 251 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hoh Indian Tribe Safe Homelands Act”.

16 USC 251 note.

SEC. 2. DEFINITIONS.

In this Act:

(1) **FEDERAL LAND.**—The term “Federal land” means the approximately 37-acre parcel of land—

(A) administered by the National Park Service;

(B) located in sec. 20, T. 26N, R. 13W, W.M., south of the Hoh River; and

(C) depicted on the Map.

(2) **MAP.**—The term “Map” means the map entitled “Hoh Indian Tribe Safe Homelands Act Land Acquisition Map” and dated May 14, 2009.

(3) **NON-FEDERAL LAND.**—The term “non-Federal land” means the approximately 434 acres of land—

(A) owned by the Tribe; and

(B) depicted on the Map.

(4) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(5) **TRIBE.**—The term “Tribe” means the Hoh Indian Tribe.

SEC. 3. LAND TAKEN INTO TRUST FOR BENEFIT OF TRIBE.

(a) **FEDERAL LAND.**—

Effective date.

(1) **IN GENERAL.**—Effective beginning on the date of enactment of this Act—

(A) all right, title, and interest of the United States in and to the Federal land are considered to be held in trust by the United States for the benefit of the Tribe, without any action required to be taken by the Secretary; and

(B) the Federal land shall be excluded from the boundaries of Olympic National Park.

Deadlines.

(2) **SURVEY BY TRIBE.**—

(A) **IN GENERAL.**—The Tribe shall—

(i) conduct a survey of the boundaries of the Federal land; and

(ii) submit the survey to the Director of the National Park Service for review and concurrence.

(B) ACTION BY DIRECTOR.—Not later than 90 days after the date on which the survey is submitted under subparagraph (A)(ii), the Director of the National Park Service shall—

(i) complete the review of the survey; and

(ii) provide to the Tribe a notice of concurrence with the survey. Notification.

(C) AVAILABILITY OF SURVEY.—Not later than 120 days after the date on which the notice of concurrence is provided to the Tribe under subparagraph (B)(ii), the Secretary shall—

(i) submit a copy of the survey to the appropriate committees of Congress; and Records.

(ii) make the survey available for public inspection at the appropriate office of the Secretary. Public information.

(b) NON-FEDERAL LAND.—

(1) IN GENERAL.—On fulfillment of each condition described in paragraph (2), and in accordance with the regulations of the Department of the Interior for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation, the Secretary shall take the non-Federal land into trust for the benefit of the Tribe.

(2) CONDITIONS.—The conditions referred to in paragraph (1) are that the Tribe shall—

(A) convey to the Secretary all right, title, and interest in and to the non-Federal land; and

(B) submit to the Secretary a request to take the non-Federal land into trust for the Tribe.

(c) CONGRESSIONAL INTENT.—It is the intent of Congress that—

(1) the condition of the Federal land as in existence on the date of enactment of this Act should be preserved and protected;

(2) the natural environment existing on the Federal land on the date of enactment of this Act should not be altered, except as otherwise provided by this Act; and

(3) the Tribe and the National Park Service shall work cooperatively regarding issues of mutual concern relating to this Act.

(d) AVAILABILITY OF MAP.—Not later than 120 days after the survey required by subsection (a)(2)(A) has been reviewed and concurred in by the National Park Service, the Secretary shall make the Map available to the appropriate congressional committees. The Map also shall be available for public inspection at the appropriate offices of the Secretary. Deadline. Public information.

SEC. 4. USE OF FEDERAL LAND BY TRIBE; COOPERATIVE EFFORTS.

(a) USE OF FEDERAL LAND BY TRIBE.—

(1) RESTRICTIONS ON USE.—The use of the Federal land by the Tribe shall be subject to the following conditions:

(A) BUILDINGS AND STRUCTURES.—No commercial, residential, industrial, or other building or structure shall be constructed on the Federal land.

(B) NATURAL CONDITION AND ENVIRONMENT.—The Tribe—

(i) shall preserve and protect the condition of the Federal land as in existence on the date of enactment of this Act; and

(ii) shall not carry out any activity that would adversely affect the natural environment of the Federal land, except as otherwise provided by this Act.

(C) LOGGING AND HUNTING.—To maintain use of the Federal land as a natural wildlife corridor and provide for protection of existing resources of the Federal land, no logging or hunting shall be allowed on the Federal land.

(D) ROADS.—

(i) ROUTINE MAINTENANCE.—Routine maintenance may be conducted on the 2-lane county road that crosses the Federal land as in existence on the date of enactment of this Act.

(ii) EXPANSION.—The county road described in clause (i) may not be widened or otherwise expanded.

(iii) RECONSTRUCTION.—If the county road described in clause (i) is compromised due to a flood or other natural or unexpected occurrence, the county road may be reconstructed to ensure access to relevant areas.

(iv) OTHER ACCESS ROUTES.—Except as provided in clause (iii) and subsection (b)(2), no other road or access route shall be permitted on the Federal land.

(2) USES APPROVED BY TREATY.—

(A) IN GENERAL.—The Tribe may authorize any member of the Tribe to use the Federal land for—

(i) ceremonial purposes; or

(ii) any other activity approved by a treaty between the United States and the Tribe.

(B) NO EFFECT ON TREATY RIGHTS OF TRIBE.—Nothing in this Act affects any treaty right of the Tribe in existence on the date of enactment of this Act.

(b) COOPERATIVE EFFORTS.—The Secretary and the Tribe—

(1) shall enter into cooperative agreements—

(A) for joint provision of emergency fire aid, on completion of the proposed emergency fire response building of the Tribe; and

(B) to provide opportunities for the public to learn more regarding the culture and traditions of the Tribe;

(2) may develop and establish on land taken into trust for the benefit of the Tribe pursuant to this Act a multipurpose, nonmotorized trail from Highway 101 to the Pacific Ocean; and

(3) shall work cooperatively on any other issues of mutual concern relating to land taken into trust for the benefit of the Tribe pursuant to this Act.

Contracts.

SEC. 5. GAMING PROHIBITION.

The Tribe may not conduct on any land taken into trust pursuant to this Act any gaming activities—

(1) as a matter of claimed inherent authority; or

(2) under any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) (including any regulations promulgated by the Secretary or the National Indian Gaming Commission pursuant to that Act)).

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 1061 (S. 443):

HOUSE REPORTS: No. 111-306 (Comm. on Natural Resources).

SENATE REPORTS: No. 111-161 (Comm. on Indian Affairs) accompanying S. 443.

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 8, considered and passed House.

Sept. 29, considered and passed Senate, amended.

Dec. 14, House concurred in Senate amendments.



Public Law 111–324
111th Congress

An Act

Dec. 22, 2010
[H.R. 2941]

To reauthorize and enhance Johanna's Law to increase public awareness and knowledge with respect to gynecologic cancers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION AND ENHANCEMENT OF JOHANNA'S LAW.

(a) IN GENERAL.—Section 317P(d) of the Public Health Service Act (42 U.S.C. 247b–17(d)(4)) is amended—

(1) in paragraph (4), by inserting after “2009” the following: “and \$18,000,000 for the period of fiscal years 2012 through 2014”; and

(2) by redesignating paragraph (4) as paragraph (6).

(b) CONSULTATION WITH NONPROFIT GYNECOLOGIC CANCER ORGANIZATIONS.—Section 317P(d) of such Act (42 U.S.C. 247b–17(d)), as amended by subsection (a), is further amended by inserting after paragraph (3) the following:

“(4) CONSULTATION WITH NONPROFIT GYNECOLOGIC CANCER ORGANIZATIONS.—In carrying out the national campaign under this subsection, the Secretary shall consult with nonprofit gynecologic cancer organizations, with a mission both to conquer ovarian or other gynecologic cancer and to provide outreach to State and local governments and communities, for the purpose of determining the best practices for providing gynecologic cancer information and outreach services to varied populations.”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 2941:

HOUSE REPORTS: No. 111–635 (Comm. on Energy and Commerce).
CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, 29, considered and passed House.

Dec. 10, considered and passed Senate, amended.

Dec. 16, House concurred in Senate amendment.



Public Law 111–325
111th Congress

An Act

To amend the Internal Revenue Code of 1986 to modify certain rules applicable to regulated investment companies, and for other purposes.

Dec. 22, 2010
[H.R. 4337]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Regulated Investment Company Modernization Act of 2010”.

(b) **REFERENCE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

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Act of 2010.
26 USC 1 note.

Sec. 1. Short title, etc.

TITLE I—CAPITAL LOSS CARRYOVERS OF REGULATED INVESTMENT COMPANIES

Sec. 101. Capital loss carryovers of regulated investment companies.

TITLE II—MODIFICATION OF GROSS INCOME AND ASSET TESTS OF REGULATED INVESTMENT COMPANIES

Sec. 201. Savings provisions for failures of regulated investment companies to satisfy gross income and asset tests.

TITLE III—MODIFICATION OF RULES RELATED TO DIVIDENDS AND OTHER DISTRIBUTIONS

Sec. 301. Modification of dividend designation requirements and allocation rules for regulated investment companies.

Sec. 302. Earnings and profits of regulated investment companies.

Sec. 303. Pass-thru of exempt-interest dividends and foreign tax credits in fund of funds structure.

Sec. 304. Modification of rules for spillover dividends of regulated investment companies.

Sec. 305. Return of capital distributions of regulated investment companies.

Sec. 306. Distributions in redemption of stock of a regulated investment company.

Sec. 307. Repeal of preferential dividend rule for publicly offered regulated investment companies.

Sec. 308. Elective deferral of certain late-year losses of regulated investment companies.

Sec. 309. Exception to holding period requirement for certain regularly declared exempt-interest dividends.

TITLE IV—MODIFICATIONS RELATED TO EXCISE TAX APPLICABLE TO REGULATED INVESTMENT COMPANIES

Sec. 401. Excise tax exemption for certain regulated investment companies owned by tax exempt entities.

Sec. 402. Deferral of certain gains and losses of regulated investment companies for excise tax purposes.

Sec. 403. Distributed amount for excise tax purposes determined on basis of taxes paid by regulated investment company.

Sec. 404. Increase in required distribution of capital gain net income.

TITLE V—OTHER PROVISIONS

Sec. 501. Repeal of assessable penalty with respect to liability for tax of regulated investment companies.

Sec. 502. Modification of sales load basis deferral rule for regulated investment companies.

TITLE I—CAPITAL LOSS CARRYOVERS OF REGULATED INVESTMENT COMPANIES

SEC. 101. CAPITAL LOSS CARRYOVERS OF REGULATED INVESTMENT COMPANIES.

26 USC 1212.

(a) IN GENERAL.—Subsection (a) of section 1212 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) REGULATED INVESTMENT COMPANIES.—

“(A) IN GENERAL.—If a regulated investment company has a net capital loss for any taxable year—

“(i) paragraph (1) shall not apply to such loss,

“(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

“(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

Applicability.

“(B) COORDINATION WITH GENERAL RULE.—If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company—

“(i) LOSSES TO WHICH THIS PARAGRAPH APPLIES.—Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1).

“(ii) LOSSES TO WHICH GENERAL RULE APPLIES.—Paragraph (1) shall be applied by substituting ‘net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph (3)(A) applies)’ for ‘net capital loss for the loss year or any taxable year thereafter’.”.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 1212(a)(1) is amended to read as follows:

“(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss.”.

(2) Paragraph (10) of section 1222 is amended by striking “section 1212” and inserting “section 1212(a)(1)”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to net capital

26 USC 1212
note.

losses for taxable years beginning after the date of the enactment of this Act.

(2) COORDINATION RULES.—Subparagraph (B) of section 1212(a)(3) of the Internal Revenue Code of 1986, as added by this section, shall apply to taxable years beginning after the date of the enactment of this Act. Applicability.

TITLE II—MODIFICATION OF GROSS INCOME AND ASSET TESTS OF REGULATED INVESTMENT COMPANIES

SEC. 201. SAVINGS PROVISIONS FOR FAILURES OF REGULATED INVESTMENT COMPANIES TO SATISFY GROSS INCOME AND ASSET TESTS.

(a) ASSET TEST.—Subsection (d) of section 851 is amended— 26 USC 851.

(1) by striking “A corporation which meets” and inserting the following:

“(1) IN GENERAL.—A corporation which meets”, and

(2) by adding at the end the following new paragraph:

“(2) SPECIAL RULES REGARDING FAILURE TO SATISFY REQUIREMENTS.—If paragraph (1) does not preserve a corporation’s status as a regulated investment company for any particular quarter—

“(A) IN GENERAL.—A corporation that fails to meet the requirements of subsection (b)(3) (other than a failure described in subparagraph (B)(i)) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

“(i) following the corporation’s identification of the failure to satisfy the requirements of such subsection for such quarter, a description of each asset that causes the corporation to fail to satisfy the requirements of such subsection at the close of such quarter is set forth in a schedule for such quarter filed in the manner provided by the Secretary,

“(ii) the failure to meet the requirements of such subsection for such quarter is due to reasonable cause and not due to willful neglect, and

“(iii)(I) the corporation disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation’s identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or Deadline.

“(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

“(B) RULE FOR CERTAIN DE MINIMIS FAILURES.—A corporation that fails to meet the requirements of subsection (b)(3) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

“(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

“(I) 1 percent of the total value of the corporation’s assets at the end of the quarter for which such measurement is done, or

“(II) \$10,000,000, and

Deadline.

“(ii)(I) the corporation, following the identification of such failure, disposes of assets in order to meet the requirements of such subsection within 6 months after the last day of the quarter in which the corporation’s identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

“(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

“(C) TAX.—

“(i) TAX IMPOSED.—If subparagraph (A) applies to a corporation for any quarter, there is hereby imposed on such corporation a tax in an amount equal to the greater of—

“(I) \$50,000, or

“(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

“(ii) PERIOD.—For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of subsection (b)(3) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the corporation disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such subsection.

“(iii) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, a tax imposed by this subparagraph shall be treated as an excise tax with respect to which the deficiency procedures of such subtitle apply.”.

26 USC 851.

(b) GROSS INCOME TEST.—Section 851 is amended by adding at the end the following new subsection:

“(i) FAILURE TO SATISFY GROSS INCOME TEST.—

“(1) DISCLOSURE REQUIREMENT.—A corporation that fails to meet the requirement of paragraph (2) of subsection (b) for any taxable year shall nevertheless be considered to have satisfied the requirement of such paragraph for such taxable year if—

“(A) following the corporation’s identification of the failure to meet such requirement for such taxable year, a description of each item of its gross income described in such paragraph is set forth in a schedule for such taxable year filed in the manner provided by the Secretary, and

“(B) the failure to meet such requirement is due to reasonable cause and not due to willful neglect.

“(2) IMPOSITION OF TAX ON FAILURES.—If paragraph (1) applies to a regulated investment company for any taxable year, there is hereby imposed on such company a tax in an amount equal to the excess of—

“(A) the gross income of such company which is not derived from sources referred to in subsection (b)(2), over

“(B) $\frac{1}{9}$ of the gross income of such company which is derived from such sources.”.

(c) DEDUCTION OF TAXES PAID FROM INVESTMENT COMPANY TAXABLE INCOME.—Paragraph (2) of section 852(b) is amended by adding at the end the following new subparagraph: 26 USC 852.

“(G) There shall be deducted an amount equal to the tax imposed by subsections (d)(2) and (i) of section 851 for the taxable year.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after the date of the enactment of this Act. 26 USC 851 note.

TITLE III—MODIFICATION OF RULES RELATED TO DIVIDENDS AND OTHER DISTRIBUTIONS

SEC. 301. MODIFICATION OF DIVIDEND DESIGNATION REQUIREMENTS AND ALLOCATION RULES FOR REGULATED INVESTMENT COMPANIES.

(a) CAPITAL GAIN DIVIDENDS.—

(1) IN GENERAL.—Subparagraph (C) of section 852(b)(3) is amended to read as follows:

“(C) DEFINITION OF CAPITAL GAIN DIVIDEND.—For purposes of this part—

“(i) IN GENERAL.—Except as provided in clause (ii), a capital gain dividend is any dividend, or part thereof, which is reported by the company as a capital gain dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the net capital gain of the company for such taxable year, a capital gain dividend is the excess of—

“(I) the reported capital gain dividend amount, over

“(II) the excess reported amount which is allocable to such reported capital gain dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess

Applicability.

reported amount as the reported capital gain dividend amount bears to the aggregate reported amount.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED CAPITAL GAIN DIVIDEND AMOUNT.—The term ‘reported capital gain dividend amount’ means the amount reported to its shareholders under clause (i) as a capital gain dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the net capital gain of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as capital gain dividends for the taxable year (including capital gain dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(v) ADJUSTMENT FOR DETERMINATIONS.—If there is an increase in the excess described in subparagraph (A) for the taxable year which results from a determination (as defined in section 860(e)), the company may, subject to the limitations of this subparagraph, increase the amount of capital gain dividends reported under clause (i).

“(vi) SPECIAL RULE FOR LOSSES LATE IN THE CALENDAR YEAR.—For special rule for certain losses after October 31, see paragraph (8).”.

26 USC 860.

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 860(f)(2) is amended by inserting “or reported (as the case may be)” after “designated”.

(b) EXEMPT-INTEREST DIVIDENDS.—Subparagraph (A) of section 852(b)(5) is amended to read as follows:

“(A) DEFINITION OF EXEMPT-INTEREST DIVIDEND.—

“(i) IN GENERAL.—Except as provided in clause (ii), an exempt-interest dividend is any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and reported by the company as an exempt-interest dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the exempt interest of the company for such taxable year, an exempt-interest dividend is the excess of—

“(I) the reported exempt-interest dividend amount, over

“(II) the excess reported amount which is allocable to such reported exempt-interest dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported exempt-interest dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported exempt-interest dividend amount bears to the aggregate reported amount.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

Applicability.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED EXEMPT-INTEREST DIVIDEND AMOUNT.—The term ‘reported exempt-interest dividend amount’ means the amount reported to its shareholders under clause (i) as an exempt-interest dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the exempt interest of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as exempt-interest dividends for the taxable year (including exempt-interest dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(V) EXEMPT INTEREST.—The term ‘exempt interest’ means, with respect to any regulated investment company, the excess of the amount of interest excludable from gross income under

section 103(a) over the amounts disallowed as deductions under sections 265 and 171(a)(2).”.

(c) FOREIGN TAX CREDITS.—

26 USC 853.

(1) IN GENERAL.—Subsection (c) of section 853 is amended—

(A) by striking “so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of the taxable year” and inserting “so reported by the company in a written statement furnished to such shareholder”, and

(B) by striking “NOTICE” in the heading and inserting “STATEMENTS”.

(2) CONFORMING AMENDMENTS.—Subsection (d) of section 853 is amended—

(A) by striking “and the notice to shareholders required by subsection (c)” in the text thereof, and

(B) by striking “AND NOTIFYING SHAREHOLDERS” in the heading thereof.

(d) CREDITS FOR TAX CREDIT BONDS.—

(1) IN GENERAL.—Subsection (c) of section 853A is amended—

(A) by striking “so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year” and inserting “so reported by the regulated investment company in a written statement furnished to such shareholder”, and

(B) by striking “NOTICE” in the heading and inserting “STATEMENTS”.

(2) CONFORMING AMENDMENTS.—Subsection (d) of section 853A is amended—

(A) by striking “and the notice to shareholders required by subsection (c)” in the text thereof, and

(B) by striking “AND NOTIFYING SHAREHOLDERS” in the heading thereof.

(e) DIVIDEND RECEIVED DEDUCTION, ETC.—

(1) IN GENERAL.—Paragraph (1) of section 854(b) is amended—

(A) by striking “designated under this subparagraph by the regulated investment company” in subparagraph (A) and inserting “reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders”,

(B) by striking “designated by the regulated investment company” in subparagraph (B)(i) and inserting “reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders”,

(C) by striking “designated” in subparagraph (C)(i) and inserting “reported”, and

(D) by striking “designated” in subparagraph (C)(ii) and inserting “reported”.

(2) CONFORMING AMENDMENTS.—Subsection (b) of section 854 is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5), as paragraphs (2), (3), and (4), respectively.

(f) DIVIDENDS PAID TO CERTAIN FOREIGN PERSONS.—

(1) INTEREST-RELATED DIVIDENDS.—Subparagraph (C) of section 871(k)(1) is amended by striking all that precedes “any taxable year of the company beginning” and inserting the following: 26 USC 871.

“(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), an interest related dividend is any dividend, or part thereof, which is reported by the company as an interest related dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified net interest income of the company for such taxable year, an interest related dividend is the excess of—

“(I) the reported interest related dividend amount, over

“(II) the excess reported amount which is allocable to such reported interest related dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported interest related dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported interest related dividend amount bears to the aggregate reported amount.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

Applicability.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED INTEREST RELATED DIVIDEND AMOUNT.—The term ‘reported interest related dividend amount’ means the amount reported to its shareholders under clause (i) as an interest related dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the qualified net interest income of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as interest related dividends for

the taxable year (including interest related dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—

The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(v) TERMINATION.—The term ‘interest related dividend’ shall not include any dividend with respect to”.

26 USC 871.

(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—Subparagraph (C) of section 871(k)(2) is amended by striking all that precedes “any taxable year of the company beginning” and inserting the following:

Definitions.

“(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘short-term capital gain dividend’ means any dividend, or part thereof, which is reported by the company as a short-term capital gain dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified short-term gain of the company for such taxable year, the term ‘short-term capital gain dividend’ means the excess of—

“(I) the reported short-term capital gain dividend amount, over

“(II) the excess reported amount which is allocable to such reported short-term capital gain dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported short-term capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported short-term capital gain dividend amount bears to the aggregate reported amount.

Applicability.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED SHORT-TERM CAPITAL GAIN DIVIDEND AMOUNT.—The term ‘reported short-term capital gain dividend amount’ means the amount reported to its shareholders under clause (i) as a short-term capital gain dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the qualified short-term gain of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as short-term capital gain dividends for the taxable year (including short-term capital gain dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(v) TERMINATION.—The term ‘short-term capital gain dividend’ shall not include any dividend with respect to”.

(g) CONFORMING AMENDMENTS.—Section 855 is amended— 26 USC 855.

(1) by striking subsection (c) and redesignating subsection (d) as subsection (c), and

(2) by striking “, (c) and (d)” in subsection (a) and inserting “and (c)”.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 852 note.

(i) APPLICATION OF JGTRRA SUNSET.—Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 shall apply to the amendments made by subparagraphs (B) and (D) of subsection (e)(1) to the same extent and in the same manner as section 303 of such Act applies to the amendments made by section 302 of such Act. 26 USC 854 note.

SEC. 302. EARNINGS AND PROFITS OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (1) of section 852(c) is amended to read as follows:

“(1) TREATMENT OF NONDEDUCTIBLE ITEMS.—

“(A) NET CAPITAL LOSS.—If a regulated investment company has a net capital loss for any taxable year—

“(i) such net capital loss shall not be taken into account for purposes of determining the company’s earnings and profits, and

“(ii) any capital loss arising on the first day of the next taxable year by reason of clause (ii) or (iii) of section 1212(a)(3)(A) shall be treated as so arising for purposes of determining earnings and profits.

“(B) OTHER NONDEDUCTIBLE ITEMS.—

“(i) IN GENERAL.—The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction (other than by reason of section 265 or 171(a)(2)) in computing its taxable income for such taxable year.

“(ii) COORDINATION WITH TREATMENT OF NET CAPITAL LOSSES.—Clause (i) shall not apply to a net capital loss to which subparagraph (A) applies.”.

(b) CONFORMING AMENDMENTS.—

26 USC 852.

(1) Subsection (c) of section 852 is amended by adding at the end the following new paragraph:

“(4) REGULATED INVESTMENT COMPANY.—For purposes of this subsection, the term ‘regulated investment company’ includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).”.

(2) Paragraphs (1)(A) and (2)(A) of section 871(k) are each amended by inserting “which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid” before the period at the end.

26 USC 852 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 303. PASS-THRU OF EXEMPT-INTEREST DIVIDENDS AND FOREIGN TAX CREDITS IN FUND OF FUNDS STRUCTURE.

(a) IN GENERAL.—Section 852 is amended by adding at the end the following new subsection:

“(g) SPECIAL RULES FOR FUND OF FUNDS.—

“(1) IN GENERAL.—In the case of a qualified fund of funds—

“(A) such fund shall be qualified to pay exempt-interest dividends to its shareholders without regard to whether such fund satisfies the requirements of the first sentence of subsection (b)(5), and

“(B) such fund may elect the application of section 853 (relating to foreign tax credit allowed to shareholders) without regard to the requirement of subsection (a)(1) thereof.

“(2) QUALIFIED FUND OF FUNDS.—For purposes of this subsection, the term ‘qualified fund of funds’ means a regulated investment company if (at the close of each quarter of the taxable year) at least 50 percent of the value of its total assets is represented by interests in other regulated investment companies.”.

26 USC 852 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 304. MODIFICATION OF RULES FOR SPILLOVER DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) DEADLINE FOR DECLARATION OF DIVIDEND.—Paragraph (1) of section 855(a) is amended to read as follows:

“(1) declares a dividend before the later of—

“(A) the 15th day of the 9th month following the close of the taxable year, or

“(B) in the case of an extension of time for filing the company’s return for the taxable year, the due date for filing such return taking into account such extension, and”.

(b) DEADLINE FOR DISTRIBUTION OF DIVIDEND.—Paragraph (2) of section 855(a) is amended by striking “the first regular dividend payment” and inserting “the first dividend payment of the same type of dividend”.

(c) **SHORT-TERM CAPITAL GAIN.**—Subsection (a) of section 855 is amended by adding at the end the following: “For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.”. 26 USC 855.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act. 26 USC 855 note.

SEC. 305. RETURN OF CAPITAL DISTRIBUTIONS OF REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Subsection (b) of section 316 is amended by adding at the end the following new paragraph:

“(4) **CERTAIN DISTRIBUTIONS BY REGULATED INVESTMENT COMPANIES IN EXCESS OF EARNINGS AND PROFITS.**—In the case of a regulated investment company that has a taxable year other than a calendar year, if the distributions by the company with respect to any class of stock of such company for the taxable year exceed the company’s current and accumulated earnings and profits which may be used for the payment of dividends on such class of stock, the company’s current earnings and profits shall, for purposes of subsection (a), be allocated first to distributions with respect to such class of stock made during the portion of the taxable year which precedes January 1.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions made in taxable years beginning after the date of the enactment of this Act. 26 USC 316 note.

SEC. 306. DISTRIBUTIONS IN REDEMPTION OF STOCK OF A REGULATED INVESTMENT COMPANY.

(a) **REDEMPTIONS TREATED AS EXCHANGES.**—

(1) **IN GENERAL.**—Subsection (b) of section 302 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

“(5) **REDEMPTIONS BY CERTAIN REGULATED INVESTMENT COMPANIES.**—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall apply to any distribution in redemption of stock of a publicly offered regulated investment company (within the meaning of section 67(c)(2)(B)) if—

“(A) such redemption is upon the demand of the stockholder, and

“(B) such company issues only stock which is redeemable upon the demand of the stockholder.”.

(2) **CONFORMING AMENDMENT.**—Subsection (a) of section 302 is amended by striking “or (4)” and inserting “(4), or (5)”.

(b) **LOSSES ON REDEMPTIONS NOT DISALLOWED FOR FUND-OF-FUNDS REGULATED INVESTMENT COMPANIES.**—Paragraph (3) of section 267(f) is amended by adding at the end the following new subparagraph: 26 USC 267 note.

“(D) **REDEMPTIONS BY FUND-OF-FUNDS REGULATED INVESTMENT COMPANIES.**—Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to any distribution in redemption of stock of a regulated investment company if—

“(i) such company issues only stock which is redeemable upon the demand of the stockholder, and

“(ii) such redemption is upon the demand of another regulated investment company.”.

26 USC 267 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 307. REPEAL OF PREFERENTIAL DIVIDEND RULE FOR PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Subsection (c) of section 562 is amended by striking “The amount” and inserting “Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount”.

(b) **CONFORMING AMENDMENT.**—Section 562(c) is amended by inserting “(other than a publicly offered regulated investment company (as so defined))” after “regulated investment company” in the second sentence thereof.

26 USC 562 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 308. ELECTIVE DEFERRAL OF CERTAIN LATE-YEAR LOSSES OF REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Paragraph (8) of section 852(b) is amended to read as follows:

“(8) **ELECTIVE DEFERRAL OF CERTAIN LATE-YEAR LOSSES.**—

“(A) **IN GENERAL.**—Except as otherwise provided by the Secretary, a regulated investment company may elect for any taxable year to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year for purposes of this title.

“(B) **QUALIFIED LATE-YEAR LOSS.**—For purposes of this paragraph, the term ‘qualified late-year loss’ means—

“(i) any post-October capital loss, and

“(ii) any late-year ordinary loss.

“(C) **POST-OCTOBER CAPITAL LOSS.**—For purposes of this paragraph, the term ‘post-October capital loss’ means the greatest of—

“(i) the net capital loss attributable to the portion of the taxable year after October 31,

“(ii) the net long-term capital loss attributable to such portion of the taxable year, or

“(iii) the net short-term capital loss attributable to such portion of the taxable year.

“(D) **LATE-YEAR ORDINARY LOSS.**—For purposes of this paragraph, the term ‘late-year ordinary loss’ means the excess (if any) of—

“(i) the sum of—

“(I) the specified losses (as defined in section 4982(e)(5)(B)(ii)) attributable to the portion of the taxable year after October 31, plus

“(II) the ordinary losses not described in subclause (I) attributable to the portion of the taxable year after December 31, over

“(ii) the sum of—

“(I) the specified gains (as defined in section 4982(e)(5)(B)(i)) attributable to the portion of the taxable year after October 31, plus

“(II) the ordinary income not described in subclause (I) attributable to the portion of the taxable year after December 31.

“(E) SPECIAL RULE FOR COMPANIES DETERMINING REQUIRED CAPITAL GAIN DISTRIBUTIONS ON TAXABLE YEAR BASIS.—In the case of a company to which an election under section 4982(e)(4) applies—

“(i) if such company’s taxable year ends with the month of November, the amount of qualified late-year losses (if any) shall be computed without regard to any income, gain, or loss described in subparagraphs (C), (D)(i)(I), and (D)(ii)(I), and

“(ii) if such company’s taxable year ends with the month of December, subparagraph (A) shall not apply.”.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 852 is amended by striking paragraph (10). 26 USC 852.

(2) Paragraph (2) of section 852(c) is amended by striking the first sentence and inserting the following: “For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)).”

(3) Subparagraph (D) of section 871(k)(2) is amended by striking the last two sentences and inserting the following: “For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 852 note.

SEC. 309. EXCEPTION TO HOLDING PERIOD REQUIREMENT FOR CERTAIN REGULARLY DECLARED EXEMPT-INTEREST DIVIDENDS.

(a) IN GENERAL.—Subparagraph (E) of section 852(b)(4) is amended by striking all that precedes “In the case of a regulated investment company” and inserting the following:

“(E) EXCEPTION TO HOLDING PERIOD REQUIREMENT FOR CERTAIN REGULARLY DECLARED EXEMPT-INTEREST DIVIDENDS.—

“(i) DAILY DIVIDEND COMPANIES.—Except as otherwise provided by regulations, subparagraph (B) shall not apply with respect to a regular dividend paid by a regulated investment company which declares exempt-interest dividends on a daily basis in an amount equal to at least 90 percent of its net tax-exempt interest and distributes such dividends on a monthly or more frequent basis.

“(ii) AUTHORITY TO SHORTEN REQUIRED HOLDING PERIOD WITH RESPECT TO OTHER COMPANIES.—”.

26 USC 852. (b) CONFORMING AMENDMENT.—Clause (ii) of section 852(b)(4)(E), as amended by subsection (a), is amended by inserting “(other than a company described in clause (i))” after “regulated investment company”.

26 USC 852 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses incurred on shares of stock for which the taxpayer’s holding period begins after the date of the enactment of this Act.

TITLE IV—MODIFICATIONS RELATED TO EXCISE TAX APPLICABLE TO REG- ULATED INVESTMENT COMPANIES

SEC. 401. EXCISE TAX EXEMPTION FOR CERTAIN REGULATED INVESTMENT COMPANIES OWNED BY TAX EXEMPT ENTITIES.

(a) IN GENERAL.—Subsection (f) of section 4982 is amended—
(1) by striking “either” in the matter preceding paragraph (1),

(2) by striking “or” at the end of paragraph (1),
(3) by striking the period at the end of paragraph (2),
and

(4) by inserting after paragraph (2) the following new paragraphs:

“(3) any other tax-exempt entity whose ownership of beneficial interests in the company would not preclude the application of section 817(h)(4), or

“(4) another regulated investment company described in this subsection.”.

26 USC 4982
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years beginning after the date of the enactment of this Act.

SEC. 402. DEFERRAL OF CERTAIN GAINS AND LOSSES OF REGULATED INVESTMENT COMPANIES FOR EXCISE TAX PURPOSES.

(a) IN GENERAL.—Subsection (e) of section 4982 is amended by striking paragraphs (5) and (6) and inserting the following new paragraphs:

“(5) TREATMENT OF SPECIFIED GAINS AND LOSSES AFTER OCTOBER 31 OF CALENDAR YEAR.—

“(A) IN GENERAL.—Any specified gain or specified loss which (but for this paragraph) would be properly taken into account for the portion of the calendar year after October 31 shall be treated as arising on January 1 of the following calendar year.

“(B) SPECIFIED GAINS AND LOSSES.—For purposes of this paragraph—

“(i) SPECIFIED GAIN.—The term ‘specified gain’ means ordinary gain from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency gain attributable to a section 988 transaction (within the meaning of

section 988) and any amount includible in gross income under section 1296(a)(1).

“(ii) SPECIFIED LOSS.—The term ‘specified loss’ means ordinary loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency loss attributable to a section 988 transaction (within the meaning of section 988) and any amount allowable as a deduction under section 1296(a)(2).

“(C) SPECIAL RULE FOR COMPANIES ELECTING TO USE THE TAXABLE YEAR.—In the case of any company making an election under paragraph (4), subparagraph (A) shall be applied by substituting the last day of the company’s taxable year for October 31.

“(6) TREATMENT OF MARK TO MARKET GAIN.—

“(A) IN GENERAL.—For purposes of determining a regulated investment company’s ordinary income, notwithstanding paragraph (1)(C), each specified mark to market provision shall be applied as if such company’s taxable year ended on October 31. In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company’s taxable year for October 31.

“(B) SPECIFIED MARK TO MARKET PROVISION.—For purposes of this paragraph, the term ‘specified mark to market provision’ means sections 1256 and 1296 and any other provision of this title (or regulations thereunder) which treats property as disposed of on the last day of the taxable year.

“(7) ELECTIVE DEFERRAL OF CERTAIN ORDINARY LOSSES.—Except as provided in regulations prescribed by the Secretary, in the case of a regulated investment company which has a taxable year other than the calendar year—

“(A) such company may elect to determine its ordinary income for the calendar year without regard to any net ordinary loss (determined without regard to specified gains and losses taken into account under paragraph (5)) which is attributable to the portion of such calendar year which is after the beginning of the taxable year which begins in such calendar year, and

“(B) any amount of net ordinary loss not taken into account for a calendar year by reason of subparagraph (A) shall be treated as arising on the 1st day of the following calendar year.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after the date of the enactment of this Act. 26 USC 4982 note.

SEC. 403. DISTRIBUTED AMOUNT FOR EXCISE TAX PURPOSES DETERMINED ON BASIS OF TAXES PAID BY REGULATED INVESTMENT COMPANY.

(a) IN GENERAL.—Subsection (c) of section 4982 is amended by adding at the end the following new paragraph: 26 USC 4982.

“(4) SPECIAL RULE FOR ESTIMATED TAX PAYMENTS.—

“(A) IN GENERAL.—In the case of a regulated investment company which elects the application of this paragraph for any calendar year—

“(i) the distributed amount with respect to such company for such calendar year shall be increased by the amount on which qualified estimated tax payments are made by such company during such calendar year, and

“(ii) the distributed amount with respect to such company for the following calendar year shall be reduced by the amount of such increase.

“(B) QUALIFIED ESTIMATED TAX PAYMENTS.—For purposes of this paragraph, the term ‘qualified estimated tax payments’ means, with respect to any calendar year, payments of estimated tax of a tax described in paragraph (1)(B) for any taxable year which begins (but does not end) in such calendar year.”.

26 USC 4982
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years beginning after the date of the enactment of this Act.

SEC. 404. INCREASE IN REQUIRED DISTRIBUTION OF CAPITAL GAIN NET INCOME.

26 USC 4982.

(a) IN GENERAL.—Subparagraph (B) of section 4982(b)(1) is amended by striking “98 percent” and inserting “98.2 percent”.

26 USC 4982
note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after the date of the enactment of this Act.

TITLE V—OTHER PROVISIONS

SEC. 501. REPEAL OF ASSESSABLE PENALTY WITH RESPECT TO LIABILITY FOR TAX OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 is amended by striking section 6697 (and by striking the item relating to such section in the table of sections of such part).

(b) CONFORMING AMENDMENT.—Section 860 is amended by striking subsection (j).

26 USC 860 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 502. MODIFICATION OF SALES LOAD BASIS DEFERRAL RULE FOR REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Subparagraph (C) of section 852(f)(1) is amended by striking “subsequently acquires” and inserting “acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to charges incurred in taxable years beginning after the date of the enactment of this Act. 26 USC 852 note.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 4337:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed House.

Dec. 8, considered and passed Senate, amended.

Dec. 15, House concurred in Senate amendment.



Public Law 111–326
111th Congress

An Act

Dec. 22, 2010
[H.R. 5591]

To designate the airport traffic control tower located at Spokane International Airport in Spokane, Washington, as the “Ray Daves Airport Traffic Control Tower”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The airport traffic control tower located at Spokane International Airport in Spokane, Washington, and any successor airport traffic control tower at that location, shall be known and designated as the “Ray Daves Airport Traffic Control Tower”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the airport traffic control tower referred to in section 1 shall be deemed to be a reference to the “Ray Daves Airport Traffic Control Tower”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 5591:

HOUSE REPORTS: No. 111–611 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed House.

Dec. 9, considered and passed Senate.



Public Law 111–327
111th Congress

An Act

To amend title 11 of the United States Code to make technical corrections; and for related purposes.

Dec. 22, 2010
[H.R. 6198]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bankruptcy Technical Corrections Act of 2010”.

Bankruptcy
Technical
Corrections Act
of 2010.
11 USC 101 note.

SEC. 2. TECHNICAL CORRECTIONS RELATING TO AMENDMENTS MADE BY PUBLIC LAW 109–8.

(a) TITLE 11 OF THE UNITED STATES CODE.—Title 11 of the United States Code is amended—

(1) in section 101—

(A) in paragraph (13A)—

(i) in subparagraph (A) by inserting “if used as the principal residence by the debtor” after “structure” the 1st place it appears, and

(ii) in subparagraph (B) by inserting “if used as the principal residence by the debtor” before the period at the end,

(B) in paragraph (35) by striking “(23) and (35)” and inserting “(21B) and (33)(A)”,

(C) in paragraph (40B) by striking “written document relating to a patient or a” and inserting “record relating to a patient, including a written document or a”,

(D) in paragraph (42) by striking “303, and 304” and inserting “303 and 1504”,

(E) in paragraph (51B) by inserting “thereto” before the period at the end, and

(F) in paragraph (51D) by inserting “of the filing” after “date” the 1st place it appears,

(2) in section 103(a) by striking “362(n)” and inserting “362(o)”,

(3) in section 105(d)(2) by inserting “may” after “Procedure,”,

(4) in section 106(a)(1) by striking “728,”,

(5) in section 107(a) by striking “subsection (b) of this section” and inserting “subsections (b) and (c)”,

(6) in section 109—

(A) in subsection (b)(3)(B) by striking “1978” and inserting “1978”, and

(B) in subsection (h)(1)—

- (i) by inserting “other than paragraph (4) of this subsection” after “this section”, and
 - (ii) by striking “preceding” and inserting “ending on”,
- (7) in section 110—
 - (A) in subsection (b)(2)(A) by inserting “or on behalf of” after “from”, and
 - (B) in subsection (h)—
 - (i) in the last sentence of paragraph (1)—
 - (I) by striking “a” and inserting “the”, and
 - (II) by inserting “or on behalf of” after “from”,
 - (ii) in paragraph (3)(A)—
 - (I) by striking “found to be in excess of the value of any services”, and
 - (II) in clause (i) by inserting “found to be in excess of the value of any services” after “(i)”, and
 - (iii) in paragraph (4) by striking “paragraph (2)” and inserting “paragraph (3)”,
- (8) in section 111(d)(1)(E)—
 - (A) by striking the period at the end and insert “; and”, and
 - (B) by indenting the left margin of such subparagraph 2 additional ems to the right,
- (9) in section 303 by redesignating subsection (l) as subsection (k),
- (10) in section 308(b)—
 - (A) by striking “small business debtor” and inserting “debtor in a small business case”, and
 - (B) in paragraph (4)—
 - (i) in subparagraph (A)—
 - (I) by striking “(A)”, and
 - (II) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively,
 - (ii) in subparagraph (B)—
 - (I) by striking “(B)” and inserting “(5)”,
 - (II) by striking “subparagraph (A)(i)” and inserting “paragraph (4)(A)”, and
 - (III) by striking “subparagraph (A)(ii)” and inserting “paragraph (4)(B)”,
 - (iii) by redesignating subparagraph (C) as paragraph (6), and
- (11) in section 348—
 - (A) in subsection (b)—
 - (i) by striking “728(a), 728(b),”, and
 - (ii) by striking “1146(a), 1146(b),”, and
 - (B) in subsection (f)(1)(C)(i) by inserting “of the filing” after “date”,
- (12) in section 362—
 - (A) in subsection (a)(8)—
 - (i) by striking “corporate debtor’s”, and
 - (ii) by inserting “of a debtor that is a corporation” after “liability” the 1st place it appears,
 - (B) in subsection (c)—
 - (i) in paragraph (3), in the matter preceding subparagraph (A), by inserting “a” after “against”, and

- (ii) in paragraph (4)(A)(i) by inserting “under a chapter other than chapter 7 after dismissal” after “refiled”,
- (C) in subsection (d)(4) by striking “hinder, and” and inserting “hinder, or”, and
- (D) in subsection (l)(2) by striking “nonbankruptcy” and inserting “nonbankruptcy”,
- (13) in section 363(d)—
 - (A) in the matter preceding paragraph (1) by striking “only”,
 - (B) by amending paragraph (1) to read as follows:

“(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and”, and
 - (C) in paragraph (2) by inserting “only” after “(2)”,
- (14) in section 505(a)(2)(C) by striking “any law (other than a bankruptcy law)” and inserting “applicable nonbankruptcy law”,
- (15) in section 507(a)(8)(A)(ii) by striking the period at the end and inserting “; or”,
- (16) in section 521(a)—
 - (A) in paragraph (2)—
 - (i) in subparagraph (A)—
 - (I) by striking “the debtor shall”, and
 - (II) by adding “and” at the end,
 - (ii) in subparagraph (B)—
 - (I) by striking “the debtor shall”, and
 - (II) by striking “and” at the end, and
 - (iii) in subparagraph (C) by striking “(C)” and inserting the following:

“except that”, and
 - (B) in paragraphs (3) and (4) by inserting “is” after “auditor”,
- (17) in section 522—
 - (A) in subsection (b)(3)(A)—
 - (i) by striking “at” the 1st place it appears and inserting “to”, and
 - (ii) by striking “at” the 2d place it appears and inserting “in”, and
 - (B) in subsection (c)(1) by striking “section 523(a)(5)” and inserting “such paragraph”,
- (18) in section 523(a)—
 - (A) in paragraph (2)(C)(ii)(II) by striking the period at the end and inserting a semicolon, and
 - (B) in paragraph (3) by striking “521(1)” and inserting “521(a)(1)”,
- (19) in section 524(k)—
 - (A) in the last undesignated paragraph of the quoted matter in paragraph (3)(J)(i)—
 - (i) by striking “security property” the 1st place it appears and inserting “property securing the lien”,
 - (ii) by striking “current value of the security property” and inserting “amount of the allowed secured claim”, and

- (iii) in the last sentence by inserting “must” after “you”, and
- (B) in paragraph (5)(B) by striking “that” and inserting “that,”,
- (20) in section 526(a)—
 - (A) in paragraph (2) by striking “untrue and” and inserting “untrue or”, and
 - (B) in paragraph (4) by inserting “a” after “preparer”,
- (21) in the 3d sentence of the 4th undesignated paragraph of the quoted matter in section 527(b), by striking “Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention” and inserting “Schedules, and Statement of Financial Affairs, and in some cases a Statement of Intention,”,
- (22) in section 541(b)(6)(B) by striking “section 529(b)(7)” and inserting “section 529(b)(6)”,
- (23) in section 554(c) by striking “521(1)” and inserting “521(a)(1)”,
- (24) in section 704(a)(3) by striking “521(2)(B)” and inserting “521(a)(2)(B)”,
- (25) in section 707—
 - (A) in subsection (a)(3) by striking “521” and inserting “521(a)”, and
 - (B) in subsection (b)—
 - (i) in paragraph (2)(A)(iii)(I) by inserting “of the filing” after “date”, and
 - (ii) in paragraph (3) by striking “subparagraph (A)(i) of such paragraph” and inserting “paragraph (2)(A)(i)”,
- (26) in section 723(c) by striking “Notwithstanding section 728(c) of this title, the” and inserting “The”,
- (27) in section 724(b)(2)—
 - (A) by striking “507(a)(1)” and inserting “507(a)(1)(C) or 507(a)(2)”,
 - (B) by inserting “under each such section” after “expenses” the 1st place it appears,
 - (C) by striking “chapter 7 of this title” and inserting “this chapter”, and
 - (D) by striking “507(a)(2),” and inserting “507(a)(1)(A), 507(a)(1)(B),”,
- (28) in section 726(b) by striking “or (8)” and inserting “(8), (9), or (10)”,
- (29) in section 901(a)—
 - (A) by inserting “333,” after “301,” and
 - (B) by inserting “351,” after “350(b)”,
- (30) in section 1104—
 - (A) in subsection (a)
 - (i) in paragraph (1) by inserting “or” at the end,
 - (ii) in paragraph (2) by striking “; or” and inserting a period, and
 - (iii) by striking paragraph (3), and
 - (B) in subsection (b)(2)(B)(ii) by striking “subsection (d)” and inserting “subsection (a)”,
- (31) in section 1106(a)—
 - (A) in paragraph (1) by striking “704” and inserting “704(a)”, and

- (B) in paragraph (2) by striking “521(1)” and inserting “521(a)(1)”,
- (32) in section 1111(a) by striking “521(1)” and inserting “521(a)(1)”,
- (33) amending section 1112—
 - (A) in subsection (b)—

- (i) by amending paragraph (1) to read as follows:

“(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.”, and

- (ii) in paragraph (2)—

- (I) by striking the matter preceding subparagraph (A) and inserting the following:

“(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—”, and

- (II) in subparagraph (B) by striking “granting such relief” and inserting “converting or dismissing the case”, and

- (B) in subsection (e) by striking “521” and inserting “521(a)”,

- (34) in section 1127(f)(1) by striking “subsection (a)” and inserting “subsection (e)”,

- (35) in section 1129(a)(16) by striking “of the plan” and inserting “under the plan”,

- (36) in section 1141(d)(5)—

- (A) in subparagraph (B)—

- (i) in clause (i) by striking “and” at the end; and

- (ii) by adding at the end the following:

- “(iii) subparagraph (C) permits the court to grant a discharge; and”, and

- (B) in subparagraph (C) —

- (i) by striking “unless” and inserting “the court may grant a discharge if,”,

- (ii) in clause (ii) by striking the period at the end and inserting a semicolon, and

- (iii) by adding at the end the following:

“and if the requirements of subparagraph (A) or (B) are met.”,

- (37) in section 1145(b) by striking “2(11)” each place it appears and inserting “2(a)(11)”,

- (38) in section 1202(b)—

- (A) in paragraph (1) by striking “704(2), 704(3), 704(5), 704(6), 704(7), and 704(9)” and inserting “704(a)(2), 704(a)(3), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9)”, and

- (B) in paragraph (5) by striking “704(8)” and inserting “704(a)(8)”,

- (39) in section 1302(b)(1) by striking “704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9)” and inserting “704(a)(2),

704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9),

(40) in section 1304(c) by striking “704(8)” and inserting “704(a)(8),”

(41) in section 1307—

(A) in subsection (c)—

(i) by striking “subsection (e)” and inserting “subsection (f),”

(ii) in paragraph (9) by striking “521” and inserting “521(a),” and

(iii) in paragraph (10) by striking “521” and inserting “521(a),” and

(B) in subsection (d) by striking “subsection (e)” and inserting “subsection (f),”

(42) in section 1308(b)(2)—

(A) in subparagraph (A) by striking “paragraph (1)” and inserting “paragraph (1)(A),”

(B) in subparagraph (B) by striking “paragraph (2)” and inserting “paragraph (1)(B),” and

(C) by striking “this subsection” each place it appears and inserting “paragraph (1),”

(43) in section 1322(a)—

(A) by striking “shall” the 1st place it appears,

(B) in paragraph (1) by inserting “shall” after “(1),”

(C) in paragraph (2) by inserting “shall” after “(2),”

(D) in paragraph (3) by inserting “shall” after “claims,”

and

(E) in paragraph (4) by striking “a plan,”

(44) in section 1325—

(A) in the last sentence of subsection (a) by inserting “period” after “910-day,” and

(B) in subsection (b)(2)(A)(ii) by striking “548(d)(3)” and inserting “548(d)(3)),”

(45) in the heading of section 1511 by inserting “, 302,” after “301,”

(46) in section 1519(f) by striking “362(n)” and inserting “362(o),”

(47) in section 1521(f) by striking “362(n)” and inserting “362(o),”

(48) in section 1529(1) by inserting “is” after “States,”

(49) in the table of sections of chapter 3, by striking the item relating to section 333 and inserting the following:

“333. Appointment of patient care ombudsman.”, and

(50) in the table of sections of chapter 5, by striking the item relating to section 562 and inserting the following:

“562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements.”.

(b) TITLE 18 OF THE UNITED STATES CODE.—Section 157 of title 18, United States Code is amended—

(1) in paragraph (1) by striking “bankruptcy,” and

(2) in paragraphs (2) and (3) by striking “, including a fraudulent involuntary bankruptcy petition under section 303 of such title”.

(c) TITLE 28 OF THE UNITED STATES CODE.—

(1) AMENDMENT RELATING TO APPEALS.—Section 158(d)(2)(D) of title 28 of the United States Code is amended by striking “appeal in” and inserting “appeal is”.

(2) AMENDMENT RELATING TO BANKRUPTCY STATISTICS.—Section 159(c)(3)(H) of title 28 of the United States Code is amended by inserting “the” after “against”.

(3) TECHNICAL AMENDMENTS.—Section 586(a) of title 28 of the United States Code is amended—

(A) in paragraph (3)(A)(ii) is amended by striking the period at the end and inserting a semicolon,

(B) in paragraph (7)(C) by striking “identify” and inserting “determine”, and

(C) in paragraph (8) by striking “the United States trustee shall”.

SEC. 3. TECHNICAL CORRECTION TO PUBLIC LAW 109–8.

Section 1406(b)(1) of Public Law 109–8 is amended by striking “cept” and inserting “Except”. 11 USC 507 note.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 6198:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed House.

Nov. 19, considered and passed Senate, amended.

Dec. 16, House concurred in Senate amendment.



Public Law 111–328
111th Congress

An Act

Dec. 22, 2010
[H.R. 6278]

Kingman and
Heritage Islands
Act of 2010.

To amend the National Children’s Island Act of 1995 to expand allowable uses for Kingman and Heritage Islands by the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Kingman and Heritage Islands Act of 2010”.

SEC. 2. AMENDMENTS TO NATIONAL CHILDREN’S ISLAND ACT OF 1995.

(a) **EXPANSION OF ALLOWABLE USES FOR KINGMAN AND HERITAGE ISLAND.**—The National Children’s Island Act of 1995 (sec. 10–1401 et seq., D.C. Official Code) is amended by adding at the end the following:

“SEC. 7. COMPREHENSIVE AND ANACOSTIA WATERFRONT FRAMEWORK PLANS.

“(a) **COMPLIANCE WITH PLANS.**—Notwithstanding any other provision of this Act, it is not a violation of the terms and conditions of this Act for the District of Columbia to use the lands conveyed and the easements granted under this Act for recreational, environmental, or educational purposes in accordance with the Anacostia Waterfront Framework Plan and the Comprehensive Plan.

“(b) **DEFINITIONS.**—For purposes of this section, the following definitions apply:

“(1) **ANACOSTIA WATERFRONT FRAMEWORK PLAN.**—The term ‘Anacostia Waterfront Framework Plan’ means the November 2003 Anacostia Waterfront Framework Plan to redevelop and revitalize the Anacostia waterfront in the District of Columbia, as may be amended from time to time, developed pursuant to a memorandum of understanding dated March 22, 2000, between the General Services Administration, Government of the District of Columbia, Office of Management and Budget, Naval District Washington, Military District Washington, Marine Barracks Washington, Department of Labor, Department of Transportation, National Park Service, Army Corps of Engineers, Environmental Protection Agency, Washington Metropolitan Area Transit Authority, National Capital Planning Commission, National Arboretum, and Small Business Administration.

“(2) **COMPREHENSIVE PLAN.**—The term ‘Comprehensive Plan’ means the Comprehensive Plan of the District of Columbia approved by the Council of the District of Columbia

on December 28, 2006, as such plan may be amended or superseded from time to time.”.

(b) MODIFICATION OF REVERSIONARY INTEREST.—Paragraph (1) of section 3(d) of the National Children’s Island Act of 1995 (sec. 10–1402(d)(1), D.C. Official Code) is amended by striking “The transfer under subsection (a)” and all that follows and inserting the following: “Title in the property transferred under subsection (a) and the easements granted under subsection (b) shall revert to the United States upon the expiration of the 60-day period which begins on the date on which the Secretary provides written notice to the District that the Secretary has determined that the District is using any portion of the property for a use other than recreational, environmental, or educational purposes in accordance with National Children’s Island, the Anacostia Waterfront Framework Plan, or the Comprehensive Plan. Such notice shall be made in accordance with chapter 5 of title 5, United States Code (relating to administrative procedures).”.

Notification.
Time period.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 6278:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 16, considered and passed House.

Dec. 13, considered and passed Senate.



Public Law 111–329
111th Congress

An Act

Dec. 22, 2010
[H.R. 6473]

To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

Airport and
Airway
Extension Act
of 2010, Part IV.
26 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Airport and Airway Extension Act of 2010, Part IV”.

SEC. 2. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

26 USC 4081.

(a) **FUEL TAXES.**—Subparagraph (B) of section 4081(d)(2) of the Internal Revenue Code of 1986 is amended by striking “December 31, 2010” and inserting “March 31, 2011”.

(b) **TICKET TAXES.**—

(1) **PERSONS.**—Clause (ii) of section 4261(j)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “December 31, 2010” and inserting “March 31, 2011”.

(2) **PROPERTY.**—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking “December 31, 2010” and inserting “March 31, 2011”.

26 USC 4081
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2011.

SEC. 3. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 is amended—

(1) by striking “January 1, 2011” and inserting “April 1, 2011”; and

(2) by inserting “or the Airport and Airway Extension Act of 2010, Part IV” before the semicolon at the end of subparagraph (A).

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 9502(e) of such Code is amended by striking “January 1, 2011” and inserting “April 1, 2011”.

26 USC 9502
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2011.

SEC. 4. EXTENSION OF AIRPORT IMPROVEMENT PROGRAM.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Section 48103 of title 49, United States Code, is amended—

(A) by striking “and” at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting “; and”; and

(C) by inserting after paragraph (7) the following:

“(8) \$1,850,000,000 for the 6-month period beginning on October 1, 2010.”.

(2) OBLIGATION OF AMOUNTS.—Subject to limitations specified in advance in appropriation Acts, sums made available pursuant to the amendment made by paragraph (1) may be obligated at any time through September 30, 2011, and shall remain available until expended.

(3) PROGRAM IMPLEMENTATION.—For purposes of calculating funding apportionments and meeting other requirements under sections 47114, 47115, 47116, and 47117 of title 49, United States Code, for the 6-month period beginning on October 1, 2010, the Administrator of the Federal Aviation Administration shall—

Time period.

(A) first calculate funding apportionments on an annualized basis as if the total amount available under section 48103 of such title for fiscal year 2011 were \$3,700,000,000; and

(B) then reduce by 50 percent—

(i) all funding apportionments calculated under subparagraph (A); and

(ii) amounts available pursuant to sections 47117(b) and 47117(f)(2) of such title.

(b) PROJECT GRANT AUTHORITY.—Section 47104(c) of such title is amended by striking “December 31, 2010,” and inserting “March 31, 2011,”.

SEC. 5. EXTENSION OF EXPIRING AUTHORITIES.

(a) Section 40117(l)(7) of title 49, United States Code, is amended by striking “January 1, 2011.” and inserting “April 1, 2011.”.

(b) Section 44302(f)(1) of such title is amended—

(1) by striking “December 31, 2010,” and inserting “March 31, 2011,”; and

(2) by striking “March 31, 2011,” and inserting “June 30, 2011,”.

(c) Section 44303(b) of such title is amended by striking “March 31, 2011,” and inserting “June 30, 2011,”.

(d) Section 47107(s)(3) of such title is amended by striking “January 1, 2011.” and inserting “April 1, 2011.”.

(e) Section 47115(j) of such title is amended by striking “January 1, 2011,” inserting “April 1, 2011,”.

(f) Section 47141(f) of such title is amended by striking “December 31, 2010.” and inserting “March 31, 2011.”.

(g) Section 49108 of such title is amended by striking “December 31, 2010,” and inserting “March 31, 2011,”.

(h) Section 161 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 47109 note) is amended by striking “January 1, 2011,” and inserting “April 1, 2011,”.

(i) Section 186(d) of such Act (117 Stat. 2518) is amended by striking “January 1, 2011,” inserting “April 1, 2011,”.

124 STAT. 3568

PUBLIC LAW 111-329—DEC. 22, 2010

Effective date.
49 USC 40117
note.

(j) The amendments made by this section shall take effect on January 1, 2011.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 6473:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 2, considered and passed House.

Dec. 18, considered and passed Senate.



Public Law 111–330
111th Congress

An Act

To make technical corrections to provisions of law enacted by the Coast Guard Authorization Act of 2010.

Dec. 22, 2010
[H.R. 6516]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL CORRECTIONS.

Effective with the enactment of the Coast Guard Authorization Act of 2010 (Public Law 111–281), such Act is amended as follows:

(1) Section 208(c) is amended by striking “such chapter” and inserting “chapter 5 of title 14, United States Code,”. *Ante*, p. 2912.

(2) Section 221(a)(6)(B) is amended by inserting open quotation marks before “(1) In such amounts”. *Ante*, p. 2920.

(3) Section 401(d)(1) is amended by striking “part” and inserting “section”. *Ante*, p. 2930.

(4) Section 402(a) is amended by striking “Coast Guard Authorization Act for Fiscal Years 2010 and 2011” each place it appears and inserting “Coast Guard Authorization Act of 2010”. *Ante*, p. 2931.

(5) Section 511(a) is amended— *Ante*, p. 2951.

(A) in the matter preceding the quoted material, by striking “of such title” and inserting “of title 14, United States Code,”; and

(B) in the quoted material, in section 50(a)(3)(B), by striking “stewrdship” and inserting “stewardship”.

(6) Section 524(a) is amended—

(A) in subsection (a), in the quoted matter, by redesignating section 102 as section 101; and

(B) in subsection (b), by striking the matter that is inside the quotation marks and inserting the following:

“101. Appeals and waivers.”.

(7) Section 525 is amended—

(A) in subsection (a)—

(i) in the matter preceding the quoted material, by striking “further”; and

(ii) in the quoted material, by redesignating section 200 as section 199; and

(B) in subsection (b), by striking the matter that is inside the quotation marks and inserting the following:

“199. Marine Safety curriculum.”.

(8) Section 617(f)(3)(C) is amended by striking “402(c)” and inserting “11.402(c)”. *Ante*, p. 2975.

- Ante*, p. 2975. (9) Section 618 is amended by striking “Great Lake” and inserting “Great Lakes”.
- Ante*, p. 2980. (10) Section 702(a) is amended by inserting “of the department in which the Coast Guard is operating” after “Secretary”.
- Ante*, p. 2981. (11) Section 703(a) is amended by inserting “of the department in which the Coast Guard is operating” after “Secretary”.
- Ante*, p. 2993. (12) Section 806(c)(2)(A)(i) is amended—
 (A) by striking “**OR FACILITIES**” and inserting “**or facilities**”; and
 (B) by striking “**PORTS**” and inserting “**ports**”.
- Ante*, p. 3001. (13) Section 819 is amended in the quoted matter by striking “(6)” and inserting “(3)”.
- Ante*, p. 3001. (14) Section 821(a) is amended in the quoted matter in section 70125(d) by striking “[46 U.S.C. 70101 note]” and inserting “(46 U.S.C. 70101 note)”.
- (15) Section 821(b) is amended by striking “is repealed” and inserting “, and the item relating to such section in the table of contents in section 1(b) of such Act, are repealed”.
- Ante*, p. 3005. (16) Section 828(a) is amended—
 (A) by striking “Section 701” and inserting “Chapter 701”; and
 (B) by striking “is amended” and inserting “is further amended”.
- Ante*, p. 3006. (17) Section 828(c) is amended—
 (A) in paragraph (1) by striking “is amended” and inserting “is further amended”;
 (B) in paragraph (2) by striking “is amended” and inserting “is further amended”;
 (C) by redesignating paragraphs (3) and (4) as subparagraphs (A) and (B) of paragraph (2), and moving such subparagraphs 2 ems to the right; and
 (D) in subparagraph (A) of paragraph (2), as so redesignated, by striking the matter that is inside the quotation marks and inserting the following:
 “Subchapter I—General”.
- Ante*, p. 3007. (18) Section 901(a) is amended by inserting “and 12132” after “12112”.
- Ante*, p. 3023. (19) Section 1011(9)(B) is amended by striking “3(b)(2)” and inserting “1012(b)(2)”.

(20) Section 1043 is amended by striking “section 18,” *Ante*, p. 3031.
and inserting “title 18,”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 6516:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 14, considered and passed House.

Dec. 15, considered and passed Senate.



Public Law 111–331
111th Congress

An Act

Dec. 22, 2010
[S. 30]

To amend the Communications Act of 1934 to prohibit manipulation of caller identification information.

Truth in Caller
ID Act of 2009.
47 USC 609 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Truth in Caller ID Act of 2009”.

SEC. 2. PROHIBITION REGARDING MANIPULATION OF CALLER IDENTIFICATION INFORMATION.

Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following new subsection:

“(e) PROHIBITION ON PROVISION OF INACCURATE CALLER IDENTIFICATION INFORMATION.—

“(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

“(2) PROTECTION FOR BLOCKING CALLER IDENTIFICATION INFORMATION.—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

“(3) REGULATIONS.—

“(A) IN GENERAL.—Not later than 6 months after the date of enactment of the Truth in Caller ID Act of 2009, the Commission shall prescribe regulations to implement this subsection.

“(B) CONTENT OF REGULATIONS.—

“(i) IN GENERAL.—The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines is appropriate.

“(ii) SPECIFIC EXEMPTION FOR LAW ENFORCEMENT AGENCIES OR COURT ORDERS.—The regulations required

Deadline.

under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with—

“(I) any authorized activity of a law enforcement agency; or

“(II) a court order that specifically authorizes the use of caller identification manipulation.

“(4) REPORT.—Not later than 6 months after the enactment of the Truth in Caller ID Act of 2009, the Commission shall report to Congress whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications service or IP-enabled voice service.

“(5) PENALTIES.—

“(A) CIVIL FORFEITURE.—

“(i) IN GENERAL.—Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b), to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this Act. The amount of the forfeiture penalty determined under this paragraph shall not exceed \$10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.

“(ii) RECOVERY.—Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a).

“(iii) PROCEDURE.—No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) or section 503(b)(4).

“(iv) 2-YEAR STATUTE OF LIMITATIONS.—No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred more than 2 years prior to the date of issuance of the required notice or notice of apparent liability.

“(B) CRIMINAL FINE.—Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than \$10,000 for each violation, or 3 times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 for such a violation. This subparagraph does not supersede the provisions of section 501 relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

“(6) ENFORCEMENT BY STATES.—

“(A) IN GENERAL.—The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as *parens patriae*, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the

chief legal officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

“(B) NOTICE.—The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

“(C) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subparagraph (B), the Commission shall have the right—

“(i) to intervene in the action;

“(ii) upon so intervening, to be heard on all matters arising therein; and

“(iii) to file petitions for appeal.

“(D) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(E) VENUE; SERVICE OR PROCESS.—

“(i) VENUE.—An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

“(ii) SERVICE OF PROCESS.—In an action brought under subparagraph (A)—

“(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

“(II) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

“(7) EFFECT ON OTHER LAWS.—This subsection does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

“(8) DEFINITIONS.—For purposes of this subsection:

“(A) CALLER IDENTIFICATION INFORMATION.—The term ‘caller identification information’ means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service.

“(B) CALLER IDENTIFICATION SERVICE.—The term ‘caller identification service’ means any service or device designed

to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service. Such term includes automatic number identification services.

“(C) IP-ENABLED VOICE SERVICE.—The term ‘IP-enabled voice service’ has the meaning given that term by section 9.3 of the Commission’s regulations (47 C.F.R. 9.3), as those regulations may be amended by the Commission from time to time.

“(9) LIMITATION.—Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 30 (H.R. 1258):

HOUSE REPORTS: No. 111–461 (Comm. on Energy and Commerce) accompanying H.R. 1258.

SENATE REPORTS: No. 111–96 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Feb. 23, considered and passed Senate.

Dec. 15, considered and passed House.



Public Law 111–332
111th Congress

An Act

Dec. 22, 2010
[S. 1275]

National
Foundation on
Fitness, Sports,
and Nutrition
Establishment
Act.
36 USC note
prec. 20101.

To establish a National Foundation on Physical Fitness and Sports to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Foundation on Fitness, Sports, and Nutrition Establishment Act”.

SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.

(a) **ESTABLISHMENT.**—There is established the National Foundation on Fitness, Sports, and Nutrition (hereinafter in this Act referred to as the “Foundation”). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) **PURPOSES.**—The purposes of the Foundation are—

(1) in conjunction with the Office of the President's Council on Fitness, Sports and Nutrition, to develop a list and description of programs, events and other activities which would further the purposes and functions outlined in Executive Order 13265, as amended, and with respect to which combined private and governmental efforts would be beneficial;

(2) to encourage and promote the participation by private organizations in the activities referred to in subsection (b)(1) and to encourage and promote private gifts of money and other property to support those activities; and

(3) in consultation with such Office, to undertake and support activities to further the purposes and functions of such Executive Order.

(c) **PROHIBITION ON FEDERAL FUNDING.**—The Foundation may not accept any Federal funds.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) **ESTABLISHMENT AND MEMBERSHIP.**—The Foundation shall have a governing Board of Directors (hereinafter referred to in this Act as the “Board”), which shall consist of 9 members each of whom shall be a United States citizen and—

(1) 3 of whom should be knowledgeable or experienced in one or more fields directly connected with physical fitness, sports, nutrition, or the relationship between health status and physical exercise; and

(2) 6 of whom should be leaders in the private sector with a strong interest in physical fitness, sports, nutrition, or the relationship between health status and physical exercise. The membership of the Board, to the extent practicable, should represent diverse professional specialties relating to the achievement of physical fitness through regular participation in programs of exercise, sports, and similar activities, or to nutrition. The Assistant Secretary for Health, the Executive Director of the President's Council on Fitness, Sports and Nutrition, the Director for the National Center for Chronic Disease Prevention and Health Promotion, the Director of the National Heart, Lung, and Blood Institute, and the Director for the Centers for Disease Control and Prevention shall be ex officio, nonvoting members of the Board. Appointment to the Board or its staff shall not constitute employment by, or the holding of an office of, the United States for the purposes of laws relating to Federal employment.

(b) APPOINTMENTS.—Within 90 days from the date of enactment of this Act, the members of the Board shall be appointed by the Secretary in accordance with this subsection. In selecting individuals for appointments to the Board, the Secretary should consult with—

Deadline.

(1) the Speaker of the House of Representatives concerning the appointment of one member;

(2) the Majority Leader of the House of Representatives concerning the appointment of one member;

(3) the Majority Leader of the Senate concerning the appointment of one member;

(4) the President Pro Tempore concerning the appointment of one member;

(5) the Minority Leader of the House of Representatives concerning the appointment of one member; and

(6) the Minority Leader of the Senate concerning the appointment of one member.

(c) TERMS.—The members of the Board shall serve for a term of 6 years, except that the original members of the Board shall be appointed for staggered terms as determined appropriate by the Secretary. A vacancy on the Board shall be filled within 60 days of the vacancy in the same manner in which the original appointment was made and shall be for the balance of the term of the individual who was replaced. No individual may serve more than 2 consecutive terms as a member.

Deadline.

(d) CHAIRMAN.—The Chairman shall be elected by the Board from its members for a 2-year term and shall not be limited in terms or service, other than as provided in subsection (c).

(e) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a member misses 3 consecutive regularly scheduled meetings, that member may be removed from the Board and the vacancy filled in accordance with subsection (c).

(g) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation, subject to the same limitations on reimbursement that are imposed upon employees of Federal agencies.

(h) **LIMITATIONS.**—The following limitations apply with respect to the appointment of employees of the Foundation:

(1) Employees may not be appointed until the Foundation has sufficient funds to pay them for their service. No individual so appointed may receive a salary in excess of the annual rate of basic pay in effect for Executive Level V in the Federal service. A member of the Board may not receive compensation for serving as an employee of the Foundation.

(2) The first employee appointed by the Board shall be the Secretary of the Board who shall serve, at the direction of the Board, as its chief operating officer and shall be knowledgeable and experienced in matters relating to physical fitness, sports, and nutrition.

(3) No Public Health Service employee nor the spouse or dependent relative of such an employee may serve as a member of the Board of Directors or as an employee of the Foundation.

(4) Any individual who is an employee or member of the Board of the Foundation may not (in accordance with the policies developed under subsection (i)) personally or substantially participate in the consideration or determination by the Foundation of any matter that would directly or predictably affect any financial interest of—

(A) the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act, 1978) of the individual; or

(B) any business organization, or other entity, of which the individual is an officer or employee, is negotiating for employment, or in which the individual has any other financial interest.

(i) **GENERAL POWERS.**—The Board may complete the organization of the Foundation by—

(1) appointing employees;

(2) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provision of this Act; and

(3) undertaking such other acts as may be necessary to carry out the provisions of this Act.

In establishing bylaws under this subsection, the Board shall provide for policies with regard to financial conflicts of interest and ethical standards for the acceptance, solicitation and disposition of donations and grants to the Foundation.

SEC. 4. POWERS AND DUTIES OF THE FOUNDATION.

(a) **IN GENERAL.**—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in or near the District of Columbia; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(b) **SEAL.**—The Foundation shall have an official seal selected by the Board which may be used as provided for in section 5.

(c) INCORPORATION; NONPROFIT STATUS.—To carry out the purposes of the Foundation under section 2, the Board shall—

(1) incorporate the Foundation in the District of Columbia; and

District of
Columbia.

(2) establish such policies and bylaws as may be necessary to ensure that the Foundation maintains status as an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986.

(d) POWERS.—Subject to the specific provisions of section 2, the Foundation, in consultation with the Office of the President's Council on Fitness, Sports, and Nutrition, shall have the power, directly or by the awarding of contracts or grants, to carry out or support activities for the purposes described in such section.

(e) TREATMENT OF PROPERTY.—For purposes of this Act, an interest in real property shall be treated as including easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational inspirational or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

SEC. 5. PROTECTION AND USES OF TRADEMARKS AND TRADE NAMES.

(a) TRADEMARKS OF THE FOUNDATION.—Authorization for a contributor, or a supplier of goods or services, to use, in advertising regarding the contribution, goods, or services, the trade name of the Foundation, or any trademark, seal, symbol, insignia, or emblem of the Foundation may be provided only by the Foundation with the concurrence of the Secretary or the Secretary's designee.

(b) TRADEMARKS OF THE COUNCIL.—Authorization for a contributor or supplier described in subsection (a) to use, in such advertising, the trade name of the President's Council on Fitness, Sports, and Nutrition, or any trademark, seal, symbol, insignia, or emblem of such Council, may be provided—

(1) by the Secretary or the Secretary's designee; or

(2) by the Foundation with the concurrence of the Secretary or the Secretary's designee.

SEC. 6. AUDIT, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled “An Act for audit of accounts of private corporations established under Federal law”, approved August 30, 1964 (Public Law 88-504, 36 U.S.C. 1101-1103), the Foundation shall be treated as a private corporation under Federal law. The Inspector General of the Department of Health and Human Services and the Comptroller General of the United States shall have access to the financial and other records of the Foundation, upon reasonable notice.

(b) REPORT.—The Foundation shall, not later than 60 days after the end of each fiscal year, transmit to the Secretary and to Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF WITH RESPECT TO CERTAIN FOUNDATION ACTS OR FAILURE TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice or policy that is inconsistent with its purposes set forth in section 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threaten to do so;
the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 1275:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 9, considered and passed Senate.

Dec. 14, considered and passed House.



Public Law 111–333
111th Congress

An Act

To redesignate the Longfellow National Historic Site, Massachusetts, as the “Longfellow House-Washington’s Headquarters National Historic Site”.

Dec. 22, 2010
[S. 1405]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Longfellow House-Washington’s Headquarters National Historic Site Designation Act”.

SEC. 2. REDESIGNATION OF LONGFELLOW NATIONAL HISTORIC SITE, MASSACHUSETTS.

(a) **IN GENERAL.**—The Longfellow National Historic Site in Cambridge, Massachusetts, shall be known and designated as “Longfellow House-Washington’s Headquarters National Historic Site”.

(b) **REFERENCES.**—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Longfellow National Historic Site shall be considered to be a reference to the “Longfellow House-Washington’s Headquarters National Historic Site”.

Longfellow
House-
Washington’s
Headquarters
National
Historic Site
Designation Act.
16 USC 461 note.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 1405:

SENATE REPORTS: No. 111–141 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 7, considered and passed Senate.

Dec. 14, considered and passed House.



Public Law 111–334
111th Congress

An Act

Dec. 22, 2010
[S. 1448]

To amend the Act of August 9, 1955, to authorize the Coquille Indian Tribe, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, the Klamath Tribes, and the Burns Paiute Tribe to obtain 99-year lease authority for trust land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASES OF RESTRICTED LAND.

Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)), is amended in the second sentence by inserting “land held in trust for the Coquille Indian Tribe, land held in trust for the Confederated Tribes of Siletz Indians, land held in trust for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, land held in trust for the Klamath Tribes, and land held in trust for the Burns Paiute Tribe,” after “lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon,”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 1448:

SENATE REPORTS: No. 111–245 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 22, considered and passed Senate.

Dec. 14, considered and passed House.



Public Law 111–335
111th Congress

An Act

To authorize a single fisheries cooperative for the Bering Sea Aleutian Islands
longline catcher processor subsector, and for other purposes.

Dec. 22, 2010
[S. 1609]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Longline Catcher Processor
Subsector Single Fishery Cooperative Act”.

**SEC. 2. AUTHORITY TO APPROVE AND IMPLEMENT A SINGLE FISHERY
COOPERATIVE FOR THE LONGLINE CATCHER PROC-
ESSOR SUBSECTOR IN THE BSAI.**

Longline Catcher
Processor
Subsector
Single Fishery
Cooperative Act.
16 USC 1851
note.
Deadlines.

(a) **IN GENERAL.**—Upon the request of eligible members of
the longline catcher processor subsector holding at least 80 percent
of the licenses issued for that subsector, the Secretary is authorized
to approve a single fishery cooperative for the longline catcher
processor subsector in the BSAI.

(b) **LIMITATION.**—A single fishery cooperative approved under
this section shall include a limitation prohibiting any eligible
member from harvesting a total of more than 20 percent of the
Pacific cod available to be harvested in the longline catcher proc-
essor subsector, the violation of which is subject to the penalties,
sanctions, and forfeitures under section 308 of the Magnuson-Stev-
ens Act (16 U.S.C. 1858), except that such limitation shall not
apply to harvest amounts from quota assigned explicitly to a CDQ
group as part of a CDQ allocation to an entity established by
section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(c) **CONTRACT SUBMISSION AND REVIEW.**—The longline catcher
processor subsector shall submit to the Secretary—

(1) not later than November 1 of each year, a contract
to implement a single fishery cooperative approved under this
section for the following calendar year; and

(2) not later than 60 days prior to the commencement
of fishing under the single fishery cooperative, any interim
modifications to the contract submitted under paragraph (1).

(d) **DEPARTMENT OF JUSTICE REVIEW.**—Not later than November
1 before the first year of fishing under a single fishery cooperative
approved under this section, the longline catcher processor sector
shall submit to the Secretary a copy of a letter from a party
to the contract under subsection (c)(1) requesting a business review
letter from the Attorney General and any response to such request.

(e) **IMPLEMENTATION.**—The Secretary shall implement a single
fishery cooperative approved under this section not later than 2
years after receiving a request under subsection (a).

Records.

(f) **STATUS QUO FISHERY.**—If the longline catcher processor subsector does not submit a contract to the Secretary under subsection (c) then the longline catcher processor subsector in the BSAI shall operate as a limited access fishery for the following year subject to the license limitation program in effect for the longline catcher processor subsector on the date of enactment of this Act or any subsequent modifications to the license limitation program recommended by the Council and approved by the Secretary.

SEC. 3. HARVEST AND PROHIBITED SPECIES ALLOCATIONS TO A SINGLE FISHERY COOPERATIVE FOR THE LONGLINE CATCHER PROCESSOR SUBSECTOR IN THE BSAI.

A single fishery cooperative approved under section 2 may, on an annual basis, collectively—

(1) harvest the total amount of BSAI Pacific cod total allowable catch, less any amount allocated to the longline catcher processor subsector non-cooperative limited access fishery;

(2) utilize the total amount of BSAI Pacific cod prohibited species catch allocation, less any amount allocated to a longline catcher processor subsector non-cooperative limited access fishery; and

(3) harvest any reallocation of Pacific cod to the longline catcher processor subsector during a fishing year by the Secretary.

SEC. 4. LONGLINE CATCHER PROCESSOR SUBSECTOR NON-COOPERATIVE LIMITED ACCESS FISHERY.

(a) **IN GENERAL.**—An eligible member that elects not to participate in a single fishery cooperative approved under section 2 shall operate in a non-cooperative limited access fishery subject to the license limitation program in effect for the longline catcher processor subsector on the date of enactment of this Act or any subsequent modifications to the license limitation program recommended by the Council and approved by the Secretary.

(b) **HARVEST AND PROHIBITED SPECIES ALLOCATIONS.**—Eligible members operating in a non-cooperative limited access fishery under this section may collectively—

(1) harvest the percentage of BSAI Pacific cod total allowable catch equal to the combined average percentage of the BSAI Pacific cod harvest allocated to the longline catcher processor sector and retained by the vessel or vessels designated on the eligible members license limitation program license or licenses for 2006, 2007, and 2008, according to the catch accounting system data used to establish total catch; and

(2) utilize the percentage of BSAI Pacific cod prohibited species catch allocation equal to the percentage calculated under paragraph (1).

SEC. 5. AUTHORITY OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.

(a) **IN GENERAL.**—Nothing in this Act shall supersede the authority of the Council to recommend for approval by the Secretary such conservation and management measures, in accordance with the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) as it considers necessary to ensure that this Act does not diminish the effectiveness

of fishery management in the BSAI or the Gulf of Alaska Pacific cod fishery.

(b) LIMITATIONS.—

(1) Notwithstanding the authority provided to the Council under this section, the Council is prohibited from altering or otherwise modifying—

(A) the methodology established under section 3 for allocating the BSAI Pacific cod total allowable catch and BSAI Pacific cod prohibited species catch allocation to a single fishery cooperative approved under this Act; or

(B) the methodology established under section 4 of this Act for allocating the BSAI Pacific cod total allowable catch and BSAI Pacific cod prohibited species catch allocation to the non-cooperative limited access fishery.

(2) No sooner than 7 years after approval of a single fisheries cooperative under section 2 of this Act, the Council may modify the harvest limitation established under section 2(b) if such modification does not negatively impact any eligible member of the longline catcher processor subsector.

(c) PROTECTIONS FOR THE GULF OF ALASKA PACIFIC COD FISHERY.—The Council may recommend for approval by the Secretary such harvest limitations of Pacific cod by the longline catcher processor subsector in the Western Gulf of Alaska and the Central Gulf of Alaska as may be necessary to protect coastal communities and other Gulf of Alaska participants from potential competitive advantages provided to the longline catcher processor subsector by this Act.

SEC. 6. RELATIONSHIP TO THE MAGNUSON-STEVENSON ACT.

(a) IN GENERAL.—Consistent with section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)), a single fishery cooperative approved under section 2 of this Act is intended to enhance conservation and sustainable fishery management, reduce and minimize bycatch, promote social and economic benefits, and improve the vessel safety of the longline catcher processor subsector in the BSAI.

(b) TRANSITION RULE.—A single fishery cooperative approved under section 2 of this Act is deemed to meet the requirements of section 303A(i) of the Magnuson-Stevens Act (16 U.S.C. 1853a(i)) as if it had been approved by the Secretary within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, unless the Secretary makes a determination, within 30 days after the date of enactment of this Act, that application of section 303A(i) of the Magnuson-Stevens Act to the cooperative approved under section 2 of this Act would be inconsistent with the purposes for which section 303A was added to the Magnuson-Stevens Act.

Deadlines.

(c) COST RECOVERY.—Consistent with section 304(d)(2) of the Magnuson-Stevens Act (16 U.S.C. 1854(d)(2)), the Secretary is authorized to recover reasonable costs to administer a single fishery cooperative approved under section 2 of this Act.

SEC. 7. COMMUNITY DEVELOPMENT QUOTA PROGRAM.

Nothing in this Act shall affect the western Alaska community development program established by section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)), including the allocation of fishery resources in the directed Pacific cod fishery.

SEC. 8. DEFINITIONS.

In this Act:

(1) **BSAI.**—The term “BSAI” has the meaning given that term in section 219(a)(2) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2886).

(2) **BSAI PACIFIC COD TOTAL ALLOWABLE CATCH.**—The term “BSAI Pacific cod total allowable catch” means the Pacific cod total allowable catch for the directed longline catcher processor subsector in the BSAI as established on an annual basis by the Council and approved by the Secretary.

(3) **BSAI PACIFIC COD PROHIBITED SPECIES CATCH ALLOCATION.**—The term “BSAI Pacific cod prohibited species catch allocation” means the prohibited species catch allocation for the directed longline catcher processor subsector in the BSAI as established on an annual basis by the Council and approved by the Secretary.

(4) **COUNCIL.**—The term “Council” means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G)).

(5) **ELIGIBLE MEMBER.**—The term “eligible member” means a holder of a license limitation program license, or licenses, eligible to participate in the longline catcher processor subsector.

(6) **GULF OF ALASKA.**—The term “Gulf of Alaska” means that portion of the Exclusive Economic Zone contained in Statistical Areas 610, 620, and 630.

(7) **LOGLINE CATCHER PROCESSOR SUBSECTOR.**—The term “longline catcher processor subsector” has the meaning given that term in section 219(a)(6) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2886).

(8) **MAGNUSON-STEVENS ACT.**—The term “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(9) **SECRETARY.**—The term “Secretary” means the Secretary of Commerce.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 1609:

SENATE REPORTS: No. 111–250 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 18, considered and passed Senate.

Dec. 14, considered and passed House.



Public Law 111–336
111th Congress

An Act

To amend the Act of August 9, 1955, to modify a provision relating to leases involving certain Indian tribes.

Dec. 22, 2010
[S. 2906]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASES INVOLVING CERTAIN INDIAN TRIBES.

The first section of the Act of August 9, 1955 (25 U.S.C. 415), is amended—

(1) in subsection (a), in the second sentence, by inserting “and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians,” after “the Kalispel Indian Reservation”; and

(2) in subsection (b), by inserting “, the Puyallup Tribe of Indians, the Swinomish Indian Tribal Community, or the Kalispel Tribe of Indians” after “Tulalip Tribes”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 2906:

SENATE REPORTS: No. 111–246 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 22, considered and passed Senate.

Dec. 14, considered and passed House.



Public Law 111–337
111th Congress

An Act

Dec. 22, 2010
[S. 3199]

To amend the Public Health Service Act regarding early detection, diagnosis, and treatment of hearing loss.

Early Hearing
Detection and
Intervention Act
of 2010.
42 USC 201 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Early Hearing Detection and Intervention Act of 2010”.

SEC. 2. EARLY DETECTION, DIAGNOSIS, AND TREATMENT OF HEARING LOSS.

Section 399M of the Public Health Service Act (42 U.S.C. 280g–1) is amended—

(1) in the section heading, by striking “**INFANTS**” and inserting “**NEWBORNS AND INFANTS**”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “screening, evaluation and intervention programs and systems” and inserting “screening, evaluation, diagnosis, and intervention programs and systems, and to assist in the recruitment, retention, education, and training of qualified personnel and health care providers,”;

(B) by amending paragraph (1) to read as follows:
“(1) To develop and monitor the efficacy of statewide programs and systems for hearing screening of newborns and infants; prompt evaluation and diagnosis of children referred from screening programs; and appropriate educational, audiological, and medical interventions for children identified with hearing loss. Early intervention includes referral to and delivery of information and services by schools and agencies, including community, consumer, and parent-based agencies and organizations and other programs mandated by part C of the Individuals with Disabilities Education Act, which offer programs specifically designed to meet the unique language and communication needs of deaf and hard of hearing newborns, infants, toddlers, and children. Programs and systems under this paragraph shall establish and foster family-to-family support mechanisms that are critical in the first months after a child is identified with hearing loss.”; and

(C) by adding at the end the following:

“(3) Other activities may include developing efficient models to ensure that newborns and infants who are identified with a hearing loss through screening receive follow-up by a qualified health care provider, and State agencies shall be encouraged

to adopt models that effectively increase the rate of occurrence of such follow-up.”;

(3) in subsection (b)(1)(A), by striking “hearing loss screening, evaluation, and intervention programs” and inserting “hearing loss screening, evaluation, diagnosis, and intervention programs”;

(4) in paragraphs (2) and (3) of subsection (c), by striking the term “hearing screening, evaluation and intervention programs” each place such term appears and inserting “hearing screening, evaluation, diagnosis, and intervention programs”;

(5) in subsection (e)—

(A) in paragraph (3), by striking “ensuring that families of the child” and all that follows and inserting “ensuring that families of the child are provided comprehensive, consumer-oriented information about the full range of family support, training, information services, and language and communication options and are given the opportunity to consider and obtain the full range of such appropriate services, educational and program placements, and other options for their child from highly qualified providers.”; and

(B) in paragraph (6), by striking “, after rescreening,”; and

(6) in subsection (f)—

(A) in paragraph (1), by striking “fiscal year 2002” and inserting “fiscal years 2011 through 2015”;

(B) in paragraph (2), by striking “fiscal year 2002” and inserting “fiscal years 2011 through 2015”; and

(C) in paragraph (3), by striking “fiscal year 2002” and inserting “fiscal years 2011 through 2015”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 3199 (H.R. 1246):

HOUSE REPORTS: No. 111–44 (Comm. on Energy and Commerce) accompanying H.R. 1246.

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 7, considered and passed Senate.

Dec. 15, considered and passed House.



Public Law 111–338
111th Congress

An Act

Dec. 22, 2010
[S. 3794]

To amend chapter 5 of title 40, United States Code, to include organizations whose membership comprises substantially veterans as recipient organizations for the donation of Federal surplus personal property through State agencies.

Formerly Owned
Resources for
Veterans to
Express Thanks
for Service
Act of 2010.
40 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Formerly Owned Resources for Veterans to Express Thanks for Service Act of 2010” or “FOR VETS Act of 2010”.

SEC. 2. RECIPIENTS OF CERTAIN FEDERAL SURPLUS PERSONAL PROPERTY.

Section 549(c)(3)(B) of title 40, United States Code, is amended—

- (1) in clause (viii), by striking “or” after the semicolon;
- (2) in clause (ix), by striking the period and inserting “; or”; and
- (3) by adding at the end the following:
 - “(x) an organization whose—
 - “(I) membership comprises substantially veterans (as defined under section 101 of title 38); and
 - “(II) representatives are recognized by the Secretary of Veterans Affairs under section 5902 of title 38.”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 3794:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Sept. 29, considered and passed Senate.
Dec. 14, considered and passed House.



Public Law 111–339
111th Congress

An Act

To require reports on the management of Arlington National Cemetery.

Dec. 22, 2010

[S. 3860]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPORTS ON MANAGEMENT OF ARLINGTON NATIONAL CEMETERY.

(a) **REPORT ON GRAVESITE DISCREPANCIES.**—Not later than one year after the date of the enactment of this Act, the Secretary of the Army shall submit to the committees of Congress specified in subsection (c) a report setting forth an accounting of the gravesites at Arlington National Cemetery, Virginia. The accounting shall—

(1) specify whether gravesite locations at Arlington National Cemetery are correctly identified, labeled, and occupied; and

(2) set forth a plan of action, including the resources required and a proposed schedule, to implement remedial actions to address deficiencies identified pursuant to the accounting.

(b) **GAO REVIEW OF MANAGEMENT AND OVERSIGHT OF CONTRACTS.**—

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in subsection (c) a report on the management and oversight of contracts at Arlington National Cemetery.

(2) **ELEMENTS.**—The report required by paragraph (1) shall include the following:

(A) The number, dollar amount, and duration of current contracts at Arlington National Cemetery over the simplified acquisition threshold.

(B) The number, dollar amount, and duration of current contracts for automation of burial operations at Arlington National Cemetery, including contracts relating to the Total Cemetery Management System (TCMS), the Geographic Information System (GIS), the Interment Scheduling System (ISS), the Interment Management System (IMS), and new or modified versions of the Burial Operations Support System (BOSS) of the Department of Veterans Affairs.

(C) An assessment of the management and oversight by the Executive Director of the Army National Cemeteries Program of the contracts covered by subparagraphs (A) and (B), including the use of and actions taken for that

purpose by the Corps of Engineers and the National Capital Region Contracting Center of the Army Contracting Command.

(D) An assessment of the actions taken by the Executive Director of the Army National Cemeteries Program in response to the findings and recommendations of the Inspector General of the Army in the report entitled “Report of Investigation and Special Inspection of Arlington National Cemetery Final Report (Case 10-04)”, dated June 9, 2010.

(E) An assessment of the implementation of the following:

(i) Army Directive 2010-04 on Enhancing the Operations and Oversight of the Army National Cemeteries Program, dated June 10, 2010, including, without limitation, an evaluation of the sufficiency of all contract management and oversight procedures, current and planned information and technology systems, applications, and contracts, current organizational structure and manpower, and compliance with and execution of all plans, reviews, studies, evaluations, and requirements specified in the Army Directive.

(ii) The recommendations and actions proposed by the Army National Cemeteries Advisory Commission with respect to Arlington National Cemetery.

(F) An assessment of the adequacy of current practices at Arlington National Cemetery to provide information, outreach, and support to families of individuals buried at Arlington National Cemetery regarding procedures to detect and correct current errors in burials at Arlington National Cemetery.

(G) An assessment of the feasibility and advisability of transferring jurisdiction of Arlington National Cemetery and the United States Soldiers’ and Airmen’s Home National Cemetery to the Department of Veterans Affairs, and an assessment of the feasibility and advisability of the sharing of jurisdiction of such facilities between the Department of Defense and the Department of Veterans Affairs.

(3) SIMPLIFIED ACQUISITION THRESHOLD DEFINED.—In this subsection, the term “simplified acquisition threshold” has the meaning provided that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(c) SPECIFIED COMMITTEES OF CONGRESS.—The committees of Congress specified in this subsection are—

(1) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Veterans’ Affairs of the Senate; and

(2) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Veterans’ Affairs of the House of Representatives.

(d) REPORTS ON IMPLEMENTATION OF ARMY DIRECTIVE ON ARMY NATIONAL CEMETERIES PROGRAM.—

(1) IN GENERAL.—The Secretary of the Army shall submit to the appropriate committees of Congress reports on execution of and compliance with Army Directive 2010-04 on Enhancing the Operations and Oversight of the Army National Cemeteries

Program, dated June 10, 2010. Each such report shall include, for the preceding 270 days or year (as applicable), a description and assessment of the following:

(A) Execution of and compliance with every section of the Army Directive for Arlington National Cemetery, including, without limitation, an evaluation of the sufficiency of all contract management and oversight procedures, current and planned information and technology systems, applications, and contracts, current organizational structure and manpower, and compliance with and execution of all plans, reviews, studies, evaluations, and requirements specified in the Army Directive.

(B) The adequacy of current practices at Arlington National Cemetery to provide information, outreach, and support to families of those individuals buried at Arlington National Cemetery regarding procedures to detect and correct current errors in burials at Arlington National Cemetery.

(2) PERIOD AND FREQUENCY OF SUBMITTAL.—A report required by paragraph (1) shall be submitted not later than 270 days after the date of the enactment of this Act, and every year thereafter for the next 2 years.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 3860:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 4, considered and passed Senate.

Dec. 15, 16, considered and passed House.



Public Law 111–340
111th Congress

An Act

Dec. 22, 2010
[S. 3984]

Museum and
Library Services
Act of 2010.

20 USC 9101
note.

To amend and extend the Museum and Library Services Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Museum and Library Services Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References.

TITLE I—GENERAL PROVISIONS

Sec. 101. General definitions.
Sec. 102. Responsibilities of Director.
Sec. 103. Personnel.
Sec. 104. Board.
Sec. 105. Awards and medals.
Sec. 106. Research and analysis.
Sec. 107. Hearings.
Sec. 108. Administrative funds.

TITLE II—LIBRARY SERVICES AND TECHNOLOGY

Sec. 201. Purposes.
Sec. 202. Authorization of appropriations.
Sec. 203. Reservations and allotments.
Sec. 204. State plans.
Sec. 205. Grants.
Sec. 206. Grants, contracts, or cooperative agreements.
Sec. 207. Laura Bush 21st Century Librarian Program.
Sec. 208. Conforming amendments.

TITLE III—MUSEUM SERVICES

Sec. 301. Purpose.
Sec. 302. Definitions.
Sec. 303. Museum services activities.
Sec. 304. Authorization of appropriations.

**TITLE IV—REPEAL OF THE NATIONAL COMMISSION ON LIBRARIES AND
INFORMATION SCIENCE ACT**

Sec. 401. Repeal.

SEC. 2. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Museum and Library Services Act (20 U.S.C. 9101 et seq.).

TITLE I—GENERAL PROVISIONS

SEC. 101. GENERAL DEFINITIONS.

Section 202 (20 U.S.C. 9101) is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(2) by inserting after paragraph (1) the following:

“(2) DIGITAL LITERACY SKILLS.—The term ‘digital literacy skills’ means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.”.

SEC. 102. RESPONSIBILITIES OF DIRECTOR.

Section 204 (20 U.S.C. 9103) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) DUTIES AND POWERS.—

“(1) PRIMARY RESPONSIBILITY.—The Director shall have primary responsibility for the development and implementation of policy to ensure the availability of museum, library, and information services adequate to meet the essential information, education, research, economic, cultural, and civic needs of the people of the United States.

“(2) DUTIES.—In carrying out the responsibility described in paragraph (1), the Director shall—

“(A) advise the President, Congress, and other Federal agencies and offices on museum, library, and information services in order to ensure the creation, preservation, organization, and dissemination of knowledge;

“(B) engage Federal, State, and local governmental agencies and private entities in assessing the museum, library, and information services needs of the people of the United States, and coordinate the development of plans, policies, and activities to meet such needs effectively;

“(C) carry out programs of research and development, data collection, and financial assistance to extend and improve the museum, library, and information services of the people of the United States; and

“(D) ensure that museum, library, and information services are fully integrated into the information and education infrastructures of the United States.”;

(2) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively; and

(3) by striking subsection (e) and inserting the following:

“(e) INTERAGENCY AGREEMENTS.—The Director may—

“(1) enter into interagency agreements to promote or assist with the museum, library, and information services-related activities of other Federal agencies, on either a reimbursable or non-reimbursable basis; and

“(2) use funds appropriated under this Act for the costs of such activities.

“(f) COORDINATION.—The Director shall ensure coordination of the policies and activities of the Institute with the policies and activities of other agencies and offices of the Federal Government having interest in and responsibilities for the improvement of

museums and libraries and information services. Where appropriate, the Director shall ensure that such policies and activities are coordinated with—

“(1) activities under section 1251 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6383);

“(2) programs and activities under the Head Start Act (42 U.S.C. 9831 et seq.) (including programs and activities under subparagraphs (H)(vii) and (J)(iii) of section 641(d)(2) of such Act) (42 U.S.C. 9836(d)(2));

“(3) activities under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) (including activities under section 134(c) of such Act) (29 U.S.C. 2864(c)); and

“(4) Federal programs and activities that increase the capacity of libraries and museums to act as partners in economic and community development, education and research, improving digital literacy skills, and disseminating health information.

“(g) INTERAGENCY COLLABORATION.—The Director shall work jointly with the individuals heading relevant Federal departments and agencies, including the Secretary of Labor, the Secretary of Education, the Administrator of the Small Business Administration, the Chairman of the Federal Communications Commission, the Director of the National Science Foundation, the Secretary of Health and Human Services, the Secretary of State, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment of the Humanities, and the Director of the Office of Management and Budget, or the designees of such individuals, on—

“(1) initiatives, materials, or technology to support workforce development activities undertaken by libraries;

“(2) resource and policy approaches to eliminate barriers to fully leveraging the role of libraries and museums in supporting the early learning, literacy, lifelong learning, digital literacy, workforce development, and education needs of the people of the United States; and

“(3) initiatives, materials, or technology to support educational, cultural, historical, scientific, environmental, and other activities undertaken by museums.”.

SEC. 103. PERSONNEL.

Section 206 (20 U.S.C. 9105) is amended—

(1) by striking paragraph (2) of subsection (b) and inserting the following:

“(2) NUMBER AND COMPENSATION.—

“(A) IN GENERAL.—The number of employees appointed and compensated under paragraph (1) shall not exceed $\frac{1}{5}$ of the number of full-time regular or professional employees of the Institute.

“(B) RATE OF COMPENSATION.—

“(i) IN GENERAL.—Except as provided in clause (ii), the rate of basic compensation for the employees appointed and compensated under paragraph (1) may not exceed the rate prescribed for level GS-15 of the General Schedule under section 5332 of title 5, United States Code.

“(ii) EXCEPTION.—The Director may appoint not more than 3 employees under paragraph (1) at a rate of basic compensation that exceeds the rate described in clause (i) but does not exceed the rate of basic pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.”; and

(2) by adding at the end the following:

“(d) EXPERTS AND CONSULTANTS.—The Director may use experts and consultants, including panels of experts, who may be employed as authorized under section 3109 of title 5, United States Code.”.

SEC. 104. BOARD.

Section 207 (20 U.S.C. 9105a) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking subparagraph (D); and

(ii) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;

(B) in paragraph (2)—

(i) in the matter preceding clause (i) of subparagraph (A), by striking “(1)(E)” and inserting “(1)(D)”; and

(ii) in the matter preceding clause (i) of subparagraph (B), by striking “(1)(F)” and inserting “(1)(E)”; and

(C) in paragraph (4)—

(i) by inserting “and” after “Library Services,”; and

(ii) by striking “, and the Chairman of the National Commission on Library and Information Science”;

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking “Except as otherwise provided in this subsection, each” and inserting “Each”; and

(ii) by striking “(E) or (F)” and inserting “(D) or (E)”; and

(B) in paragraph (2), by striking “INITIAL BOARD APPOINTMENTS.—” and all that follows through “The terms of the first members” and inserting the following: “AUTHORITY TO ADJUST TERMS.—The terms of the members”;

(3) in subsection (d)—

(A) in paragraph (1), by striking “relating to museum and library services, including financial assistance awarded under this title” and inserting “relating to museum, library, and information services”; and

(B) by striking paragraph (2) and inserting the following:

“(2) NATIONAL AWARDS AND MEDALS.—The Museum and Library Services Board shall advise the Director in awarding national awards and medals under section 209.”; and

(4) in subsection (i), by striking “take steps to ensure that the policies and activities of the Institute are coordinated with other activities of the Federal Government” and inserting “coordinate the development and implementation of policies and activities as described in subsections (f) and (g) of section 204”.

SEC. 105. AWARDS AND MEDALS.

Section 209 (20 U.S.C. 9107) is amended to read as follows:

“SEC. 209. AWARDS AND MEDALS.

“The Director, with the advice of the Museum and Library Services Board, may annually award national awards and medals for library and museum services to outstanding libraries and museums that have made significant contributions in service to their communities.”.

SEC. 106. RESEARCH AND ANALYSIS.

Section 210 (20 U.S.C. 9108) is amended to read as follows:

“SEC. 210. POLICY RESEARCH, ANALYSIS, DATA COLLECTION, AND DISSEMINATION.

Deadline.

“(a) **IN GENERAL.**—The Director shall annually conduct policy research, analysis, and data collection to extend and improve the Nation’s museum, library, and information services.

“(b) **REQUIREMENTS.**—The policy research, analysis, and data collection shall be conducted in ongoing collaboration (as determined appropriate by the Director), and in consultation, with—

“(1) State library administrative agencies;

“(2) national, State, and regional library and museum organizations; and

“(3) other relevant agencies and organizations.

“(c) **OBJECTIVES.**—The policy research, analysis, and data collection shall be used to—

“(1) identify national needs for and trends in museum, library, and information services;

“(2) measure and report on the impact and effectiveness of museum, library, and information services throughout the United States, including the impact of Federal programs authorized under this Act;

“(3) identify best practices; and

“(4) develop plans to improve museum, library, and information services of the United States and to strengthen national, State, local, regional, and international communications and cooperative networks.

“(d) **DISSEMINATION.**—Each year, the Director shall widely disseminate, as appropriate to accomplish the objectives under subsection (c), the results of the policy research, analysis, and data collection carried out under this section.

“(e) **AUTHORITY TO CONTRACT.**—The Director is authorized—

“(1) to enter into contracts, grants, cooperative agreements, and other arrangements with Federal agencies and other public and private organizations to carry out the objectives under subsection (c); and

“(2) to publish and disseminate, in a form determined appropriate by the Director, the reports, findings, studies, and other materials prepared under paragraph (1).

“(f) **AUTHORIZATION OF APPROPRIATIONS.**—

“(1) **IN GENERAL.**—There are authorized to be appropriated to carry out this section \$3,500,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.

“(2) **AVAILABILITY OF FUNDS.**—Sums appropriated under paragraph (1) for any fiscal year shall remain available for obligation until expended.”.

SEC. 107. HEARINGS.

Subtitle A (20 U.S.C. 9101 et seq.) is amended by adding at the end the following:

“SEC. 210B. HEARINGS.

20 USC 9110.

“The Director is authorized to conduct hearings at such times and places as the Director determines appropriate for carrying out the purposes of this subtitle.”.

SEC. 108. ADMINISTRATIVE FUNDS.

Subtitle A (20 U.S.C. 9101 et seq.), as amended by section 107, is further amended by adding at the end the following:

“SEC. 210C. ADMINISTRATIVE FUNDS.

20 USC 9111.

“Notwithstanding any other provision of this Act, the Director shall establish one account to be used to pay the Federal administrative costs of carrying out this Act, and not more than a total of 7 percent of the funds appropriated under sections 210(f), 214, and 275 shall be placed in such account.”.

TITLE II—LIBRARY SERVICES AND TECHNOLOGY

SEC. 201. PURPOSES.

Section 212 (20 U.S.C. 9121) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) to enhance coordination among Federal programs that relate to library and information services;”;

(2) in paragraph (2), by inserting “continuous” after “promote”;

(3) in paragraph (3), by striking “and” after the semicolon;

(4) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

“(5) to promote literacy, education, and lifelong learning and to enhance and expand the services and resources provided by libraries, including those services and resources relating to workforce development, 21st century skills, and digital literacy skills;

“(6) to enhance the skills of the current library workforce and to recruit future professionals to the field of library and information services;

“(7) to ensure the preservation of knowledge and library collections in all formats and to enable libraries to serve their communities during disasters;

“(8) to enhance the role of libraries within the information infrastructure of the United States in order to support research, education, and innovation; and

“(9) to promote library services that provide users with access to information through national, State, local, regional, and international collaborations and networks.”.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

Section 214 (20 U.S.C. 9123) is amended—

(a) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—There are authorized to be appropriated—

“(1) to carry out chapters 1, 2, and 3, \$232,000,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016; and

“(2) to carry out chapter 4, \$24,500,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.”; and
(b) by striking subsection (c).

SEC. 203. RESERVATIONS AND ALLOTMENTS.

Section 221(b)(3) (20 U.S.C. 9131(b)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking “\$340,000” and inserting “\$680,000”;
and

(B) by striking “\$40,000” and inserting “\$60,000”;

(2) by striking subparagraph (C); and

(3) by redesignating subparagraph (D) as subparagraph (C).

SEC. 204. STATE PLANS.

Section 224 (20 U.S.C. 9134) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(B) after paragraph (5), by inserting the following:
“(6) describe how the State library administrative agency will work with other State agencies and offices where appropriate to coordinate resources, programs, and activities and leverage, but not replace, the Federal and State investment in—

“(A) elementary and secondary education, including coordination with the activities within the State that are supported by a grant under section 1251 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6383);

“(B) early childhood education, including coordination with—

“(i) the State’s activities carried out under subsections (b)(4) and (e)(1) of section 642 of the Head Start Act (42 U.S.C. 9837); and

“(ii) the activities described in the State’s strategic plan in accordance with section 642B(a)(4)(B)(i) of such Act (42 U.S.C. 9837b(a)(4)(B)(i));

“(C) workforce development, including coordination with—

“(i) the activities carried out by the State workforce investment board under section 111(d) of the Workforce Investment Act of 1998 (29 U.S.C. 2821(d)); and

“(ii) the State’s one-stop delivery system established under section 134(c) of such Act (29 U.S.C. 2864(c)); and

“(D) other Federal programs and activities that relate to library services, including economic and community development and health information;”;

(2) in subsection (e)(2), by inserting “, including through electronic means” before the period at the end.

SEC. 205. GRANTS.

Section 231 (20 U.S.C. 9141) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting before the semicolon the following: “in order to support such individuals’ needs for education, lifelong learning, workforce development, and digital literacy skills”;

(B) in paragraph (2), by striking “electronic networks;” and inserting “collaborations and networks; and”;

(C) by redesignating paragraph (2) (as amended by subparagraph (B)) as paragraph (7), and by moving such paragraph so as to appear after paragraph (6);

(D) by striking paragraph (3);

(E) by inserting after paragraph (1) the following:

“(2) establishing or enhancing electronic and other linkages and improved coordination among and between libraries and entities, as described in section 224(b)(6), for the purpose of improving the quality of and access to library and information services;

“(3)(A) providing training and professional development, including continuing education, to enhance the skills of the current library workforce and leadership, and advance the delivery of library and information services; and

“(B) enhancing efforts to recruit future professionals to the field of library and information services;”;

(F) in paragraph (5), by striking “and” after the semicolon;

(G) in paragraph (6), by striking the period and inserting a semicolon; and

(H) by adding at the end the following:

“(8) carrying out other activities consistent with the purposes set forth in section 212, as described in the State library administrative agency’s plan.”; and

(2) by striking subsection (b) and inserting the following:

“(b) SPECIAL RULE.—Each State library administrative agency receiving funds under this chapter may apportion the funds available for the priorities described in subsection (a) as appropriate to meet the needs of the individual State.”.

SEC. 206. GRANTS, CONTRACTS, OR COOPERATIVE AGREEMENTS.

Section 262(a) (20 U.S.C. 9162(a)) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

“(1) building workforce and institutional capacity for managing the national information infrastructure and serving the information and education needs of the public;

“(2)(A) research and demonstration projects related to the improvement of libraries or the enhancement of library and information services through effective and efficient use of new technologies, including projects that enable library users to acquire digital literacy skills and that make information resources more accessible and available; and

“(B) dissemination of information derived from such projects;”;

(2) in paragraph (3)—

(A) by striking “digitization” and inserting “digitizing”; and

(B) by inserting “, including the development of national, regional, statewide, or local emergency plans that

would ensure the preservation of knowledge and library collections in the event of a disaster” before “; and”.

SEC. 207. LAURA BUSH 21ST CENTURY LIBRARIAN PROGRAM.

Subtitle B (20 U.S.C. 9121 et seq.) is amended by adding at the end the following:

“CHAPTER 4—LAURA BUSH 21ST CENTURY LIBRARIANS

20 USC 9165.

“SEC. 264. LAURA BUSH 21ST CENTURY LIBRARIAN PROGRAM.

“(a) PURPOSE.—It is the purpose of this chapter to develop a diverse workforce of librarians by—

“(1) recruiting and educating the next generation of librarians, including by encouraging middle or high school students and postsecondary students to pursue careers in library and information science;

“(2) developing faculty and library leaders, including by increasing the institutional capacity of graduate schools of library and information science; and

“(3) enhancing the training and professional development of librarians and the library workforce to meet the needs of their communities, including those needs relating to literacy and education, workforce development, lifelong learning, and digital literacy.

“(b) ACTIVITIES.—From the amounts provided under section 214(a)(2), the Director may enter into arrangements, including grants, contracts, cooperative agreements, and other forms of assistance, with libraries, library consortia and associations, institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), and other entities that the Director determines appropriate, for projects that further the purpose of this chapter, such as projects that—

“(1) increase the number of students enrolled in nationally accredited graduate library and information science programs and preparing for careers of service in libraries;

“(2) recruit future professionals, including efforts to attract promising middle school, high school, or postsecondary students to consider careers in library and information science;

“(3) develop or enhance professional development programs for librarians and the library workforce;

“(4) enhance curricula within nationally accredited graduate library and information science programs;

“(5) enhance doctoral education in order to develop faculty to educate the future generation of library professionals and develop the future generation of library leaders; and

“(6) conduct research, including research to support the successful recruitment and education of the next generation of librarians.

“(c) EVALUATION.—The Director shall establish procedures for reviewing and evaluating projects supported under this chapter.”.

SEC. 208. CONFORMING AMENDMENTS.

The National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 951 et seq.) is amended—

(1) in section 4(a) (20 U.S.C. 953(a)), by striking “Institute of Museum Services” and inserting “Institute of Museum and Library Services”; and

(2) in section 9 (20 U.S.C. 958), by striking “Institute of Museum Services” each place the term appears and inserting “Institute of Museum and Library Services”.

TITLE III—MUSEUM SERVICES

SEC. 301. PURPOSE.

Section 272 (20 U.S.C. 9171) is amended—

(1) in paragraph (3), by inserting “through international, national, regional, State, and local networks and partnerships” after “services”;

(2) in paragraph (5), by striking “and” after the semicolon;

(3) in paragraph (6), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

“(7) to encourage and support museums as a part of economic development and revitalization in communities;

“(8) to ensure museums of various types and sizes in diverse geographic regions of the United States are afforded attention and support; and

“(9) to support efforts at the State level to leverage museum resources and maximize museum services.”.

SEC. 302. DEFINITIONS.

Section 273(1) (20 U.S.C. 9172(1)) is amended by inserting “includes museums that have tangible and digital collections and” after “Such term”.

SEC. 303. MUSEUM SERVICES ACTIVITIES.

Section 274 (20 U.S.C. 9173) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “, States, local governments,” after “with museums”;

(B) by redesignating paragraphs (5) through (10) as paragraphs (6) through (11), respectively;

(C) by striking paragraphs (3) and (4) and inserting the following:

“(3) supporting the conservation and preservation of museum collections, including efforts to—

“(A) provide optimal conditions for storage, exhibition, and use;

“(B) prepare for and respond to disasters and emergency situations;

“(C) establish endowments for conservation; and

“(D) train museum staff in collections care;

“(4) supporting efforts at the State level to leverage museum resources, including statewide assessments of museum services and needs and development of State plans to improve and maximize museum services through the State;

“(5) stimulating greater collaboration, in order to share resources and strengthen communities, among museums and—

“(A) libraries;

“(B) schools;

“(C) international, Federal, State, regional, and local agencies or organizations;

“(D) nongovernmental organizations; and

“(E) other community organizations;”;

(D) in paragraph (6) (as redesignated by subparagraph (B)), by striking “broadcast media” and inserting “media, including new ways to disseminate information,”; and

(E) in paragraph (9) (as redesignated by subparagraph (B)), by striking “at all levels,” and inserting “, and the skills of museum staff, at all levels, and to support the development of the next generation of museum leaders and professionals,”; and

(2) in subsection (c)—

(A) by redesignating paragraph (2) as paragraph (3);

(B) by inserting after paragraph (1) the following:

“(2) GRANT DISTRIBUTION.—In awarding grants, the Director shall take into consideration the equitable distribution of grants to museums of various types and sizes and to different geographic areas of the United States”; and

(C) in paragraph (2)—

(i) in subparagraph (A), by striking “awards”; and

(ii) in subparagraph (B), by striking “, but subsequent” and inserting “. Subsequent”.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

Section 275 (20 U.S.C. 9176) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) GRANTS.—For the purpose of carrying out this subtitle, there are authorized to be appropriated to the Director \$38,600,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.”;

(2) by striking subsection (b);

(3) by redesignating subsection (c) as subsection (b); and

(4) by adding at the end the following:

“(c) FUNDING RULES.—Notwithstanding any other provision of this subtitle, if the amount appropriated under subsection (a) for a fiscal year is greater than the amount appropriated under such subsection for fiscal year 2011 by more than \$10,000,000, then an amount of not less than 30 percent but not more than 50 percent of the increase in appropriated funds shall be available, from the funds appropriated under such subsection for the fiscal year, to enter into arrangements under section 274 to carry out the State assessments described in section 274(a)(4) and to assist States in the implementation of such plans.”.

TITLE IV—REPEAL OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE ACT

SEC. 401. REPEAL.

(a) IN GENERAL.—The National Commission on Libraries and Information Science Act (20 U.S.C. 1501 et seq.) is repealed.

(b) TRANSFER OF FUNCTIONS.—The functions that the National Commission on Libraries and Information Science exercised before the date of enactment of this Act shall be transferred to the Institute of Museum and Library Services established under section 203 of the Museum and Library Services Act (20 U.S.C. 9102).

(c) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel and the assets, contracts, property, records,

20 USC 1501 and
note, 1502–1506.

20 USC 9102
note.

and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available for the functions and activities vested by law in the National Commission on Libraries and Information Science shall be transferred to the Institute of Museum and Library Services upon the date of enactment of this Act.

(d) REFERENCES.—Any reference to the National Commission on Libraries and Information Science in any Federal law, Executive Order, rule, delegation of authority, or document shall be construed to refer to the Institute of Museum and Library Services when the reference regards functions transferred under subsection (b).

20 USC 9102
note.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 3984:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 7, considered and passed Senate.

Dec. 14, considered and passed House.



Public Law 111–341
111th Congress

An Act

Dec. 22, 2010

[S. 3998]

To extend the Child Safety Pilot Program.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

Criminal History
Background
Checks Pilot
Extension Act
of 2010.
42 USC 5101
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Criminal History Background
Checks Pilot Extension Act of 2010”.

SEC. 2. EXTENSION.

Section 108(a)(3)(A) of the PROTECT Act (42 U.S.C. 5119a
note) is amended by striking “92-month” and inserting “104-month”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 3998:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 1, considered and passed Senate.

Dec. 7, 8, considered and passed House.



Public Law 111–342
111th Congress

An Act

To amend title 28, United States Code, to prevent the proceeds or instrumentalities of foreign crime located in the United States from being shielded from foreign forfeiture proceedings.

Dec. 22, 2010
[S. 4005]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preserving Foreign Criminal Assets for Forfeiture Act of 2010”.

Preserving
Foreign
Criminal Assets
for Forfeiture
Act of 2010.
28 USC 1 note.

SEC. 2. PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE UNDER FOREIGN LAW.

Section 2467(d)(3)(A) of title 28, United States Code, is amended to read as follows:

“(A) RESTRAINING ORDERS.—

“(i) IN GENERAL.—To preserve the availability of property subject to civil or criminal forfeiture under foreign law, the Government may apply for, and the court may issue, a restraining order at any time before or after the initiation of forfeiture proceedings by a foreign nation.

“(ii) PROCEDURES.—

“(I) IN GENERAL.—A restraining order under this subparagraph shall be issued in a manner consistent with subparagraphs (A), (C), and (E) of paragraph (1) and the procedural due process protections for a restraining order under section 983(j) of title 18.

“(II) APPLICATION.—For purposes of applying such section 983(j)—

“(aa) references in such section 983(j) to civil forfeiture or the filing of a complaint shall be deemed to refer to the applicable foreign criminal or forfeiture proceedings; and

“(bb) the reference in paragraph (1)(B)(i) of such section 983(j) to the United States shall be deemed to refer to the foreign nation.”.

Approved December 22, 2010.

LEGISLATIVE HISTORY—S. 4005:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 14, considered and passed Senate.

Dec. 16, considered and passed House.



Public Law 111–343
111th Congress

An Act

To require the Federal Deposit Insurance Corporation to fully insure Interest on Lawyers Trust Accounts.

Dec. 29, 2010

[H.R. 6398]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INTEREST ON LAWYERS TRUST ACCOUNTS.

(a) IN GENERAL.—Section 11(a)(1)(B)(iii) of the Federal Deposit Insurance Act, as added by section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203), is amended—

12 USC 1821.

(1) by redesignating subclauses (I), (II), and (III) as items (aa), (bb), and (cc), respectively, and adjusting the margins accordingly;

(2) by striking “means a deposit” and inserting the following:

“means—

“(I) a deposit”;

(3) in item (cc), as so redesignated, by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following:

“(II) a trust account established by an attorney or law firm on behalf of a client, commonly known as an ‘Interest on Lawyers Trust Account’, or a functionally equivalent account, as determined by the Corporation.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on December 31, 2010.

12 USC 1821
note.

SEC. 2. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 29, 2010.

LEGISLATIVE HISTORY—H.R. 6398:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 30, considered and passed House.

Dec. 22, considered and passed Senate.



Public Law 111–344
111th Congress

An Act

To extend trade adjustment assistance and certain trade preference programs, to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, and for other purposes.

Dec. 29, 2010
[H.R. 6517]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Omnibus Trade
Act of 2010.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Omnibus Trade Act of 2010”.

19 USC 2101
note.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EXTENSION OF TRADE ADJUSTMENT ASSISTANCE AND HEALTH COVERAGE IMPROVEMENT

Subtitle A—Extension of Trade Adjustment Assistance

Sec. 101. Extension of trade adjustment assistance.

Sec. 102. Merit staffing for State administration of trade adjustment assistance.

Subtitle B—Health Coverage Improvement

Sec. 111. Improvement of the affordability of the credit.

Sec. 112. Payment for the monthly premiums paid prior to commencement of the advance payments of credit.

Sec. 113. TAA recipients not enrolled in training programs eligible for credit.

Sec. 114. TAA pre-certification period rule for purposes of determining whether there is a 63-day lapse in creditable coverage.

Sec. 115. Continued qualification of family members after certain events.

Sec. 116. Extension of COBRA benefits for certain TAA-eligible individuals and PBGC recipients.

Sec. 117. Addition of coverage through voluntary employees’ beneficiary associations.

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TITLE II—ANDEAN TRADE PREFERENCES ACT

Sec. 201. Extension of Andean Trade Preference Act.

TITLE III—OFFSETS

Sec. 301. Customs user fees.

Sec. 302. Time for payment of corporate estimated taxes.

TITLE IV—BUDGETARY EFFECTS

Sec. 401. Compliance with PAYGO.

TITLE I—EXTENSION OF TRADE ADJUSTMENT ASSISTANCE AND HEALTH COVERAGE IMPROVEMENT

Subtitle A—Extension of Trade Adjustment Assistance

SEC. 101. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE.

19 USC 2271
note prec.

(a) IN GENERAL.—Section 1893(a) of the Trade and Globalization Adjustment Assistance Act of 2009 (Public Law 111–5; 123 Stat. 422) is amended by striking “January 1, 2011” each place it appears and inserting “February 13, 2011”.

(b) APPLICATION OF PRIOR LAW.—Section 1893(b) of the Trade and Globalization Adjustment Assistance Act of 2009 (Public Law 111–5; 123 Stat. 422 (19 U.S.C. 2271 note prec.)) is amended to read as follows:

Effective date.

“(b) APPLICATION OF PRIOR LAW.—Chapters 2, 3, 4, 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) shall be applied and administered beginning February 13, 2011, as if the amendments made by this subtitle (other than part VI) had never been enacted, except that in applying and administering such chapters—

“(1) section 245 of that Act shall be applied and administered by substituting ‘February 12, 2012’ for ‘December 31, 2007’;

“(2) section 246(b)(1) of that Act shall be applied and administered by substituting ‘February 12, 2012’ for ‘the date that is 5 years’ and all that follows through ‘State’;

“(3) section 256(b) of that Act shall be applied and administered by substituting ‘the 1-year period beginning February 13, 2011, and ending February 12, 2012,’ for ‘each of fiscal years 2003 through 2007, and \$4,000,000 for the 3-month period beginning on October 1, 2007,’;

“(4) section 298(a) of that Act shall be applied and administered by substituting ‘the 1-year period beginning February 13, 2011, and ending February 12, 2012,’ for ‘each of the fiscal years’ and all that follows through ‘October 1, 2007’; and

“(5) subject to subsection (a)(2), section 285 of that Act shall be applied and administered—

“(A) in subsection (a), by substituting ‘February 12, 2011’ for ‘December 31, 2007’ each place it appears; and

“(B) by applying and administering subsection (b) as if it read as follows:

“(b) OTHER ASSISTANCE.—

“(1) ASSISTANCE FOR FIRMS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 3 after February 12, 2012.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 3 on or before February 12, 2012, may be provided—

“(i) to the extent funds are available pursuant to such chapter for such purpose; and

“(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.

“(2) FARMERS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 6 after February 12, 2012.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 6 on or before February 12, 2012, may be provided—

“(i) to the extent funds are available pursuant to such chapter for such purpose; and

“(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.’”.

(c) CONFORMING AMENDMENTS.—

(1) Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended to read as follows:

“(2)(A) The total amount of payments that may be made under paragraph (1) shall not exceed—

“(i) \$575,000,000 for fiscal year 2010; and

“(ii) \$66,500,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.”.

(2) Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(3) Section 246(b)(1) of the Trade Act of 1974 (19 U.S.C. 2318(b)(1)) is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(4) Section 255(a) of the Trade Act of 1974 (19 U.S.C. 2345(a)) is amended—

(A) in the first sentence to read as follows: “There are authorized to be appropriated to the Secretary to carry out the provisions of this chapter \$50,000,000 for fiscal year 2010 and \$5,800,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.”; and

(B) in paragraph (1), by striking “December 31, 2010” and inserting “February 12, 2011”.

(5) Section 275(f) of the Trade Act of 1974 (19 U.S.C. 2371d(f)) is amended by striking “2011” and inserting “and annually thereafter”.

(6) Section 276(c)(2) of the Trade Act of 1974 (19 U.S.C. 2371e(c)(2)) is amended to read as follows:

“(2) FUNDS TO BE USED.—Of the funds appropriated pursuant to section 277(c), the Secretary may make available, to provide grants to eligible communities under paragraph (1), not more than—

“(A) \$25,000,000 for fiscal year 2010; and

“(B) \$2,900,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.”.

(7) Section 277(c) of the Trade Act of 1974 (19 U.S.C. 2371f(c)) is amended—

(A) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out this subchapter—

“(A) \$150,000,000 for fiscal year 2010; and

“(B) \$17,3000 for the 6-week period beginning January 1, 2011 and ending February 12, 2011.”; and

(B) in paragraph (2)(A), by striking “December 31, 2010” and inserting “February 12, 2011”.

(8) Section 278(e) of the Trade Act of 1974 (19 U.S.C. 2372(e)) is amended by striking “2011” and inserting “and annually thereafter”.

(9) Section 279A(h)(2) of the Trade Act of 1974 (19 U.S.C. 2373(h)(2)) is amended by striking “2011” and inserting “and annually thereafter”.

(10) Section 279B(a) of the Trade Act of 1974 (19 U.S.C. 2373a(a)) is amended to read as follows:

“(a) IN GENERAL.—

“(1) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Labor to carry out the Sector Partnership Grant program under section 279A—

“(A) \$40,000,000 for fiscal year 2010; and

“(B) \$4,600,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.

“(2) AVAILABILITY OF APPROPRIATIONS.—Funds appropriated pursuant to this section shall remain available until expended.”.

(11) Section 285 of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended—

(A) by striking “December 31, 2010” each place it appears and inserting “February 12, 2011”; and

(B) in subsection (a)(2)(A), by inserting “pursuant to petitions filed under section 221 before February 12, 2011” after “title”.

(12) Section 298(a) of the Trade Act of 1974 (19 U.S.C. 2401g(a)) is amended by striking “\$90,000,000 for each of the fiscal years 2009 and 2010, and \$22,500,000 for the period beginning October 1, 2010, and ending December 31, 2010” and inserting “\$10,400,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011”.

(13) The table of contents for the Trade Act of 1974 is amended by striking the item relating to section 235 and inserting the following:

“Sec. 235. Employment and case management services.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2011.

SEC. 102. MERIT STAFFING FOR STATE ADMINISTRATION OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Notwithstanding section 618.890(b) of title 20, Code of Federal Regulations, or any other provision of law, the single transition deadline for implementing the merit-based State personnel staffing requirements contained in section 618.890(a) of title 20, Code of Federal Regulations, shall not be earlier than February 12, 2011.

(b) EFFECTIVE DATE.—This section shall take effect on December 14, 2010.

Subtitle B—Health Coverage Improvement

SEC. 111. IMPROVEMENT OF THE AFFORDABILITY OF THE CREDIT.

(a) IN GENERAL.—Section 35(a) of the Internal Revenue Code of 1986 is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

19 USC 2271
note prec.

19 USC 2271
note prec.

Deadline.

26 USC 35.

(b) CONFORMING AMENDMENT.—Section 7527(b) of such Code is amended by striking “January 1, 2011” and inserting “February 13, 2011”. 26 USC 7527.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage months beginning after December 31, 2010. 26 USC 35 note.

SEC. 112. PAYMENT FOR THE MONTHLY PREMIUMS PAID PRIOR TO COMMENCEMENT OF THE ADVANCE PAYMENTS OF CREDIT.

(a) IN GENERAL.—Section 7527(e) of the Internal Revenue Code of 1986 is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to coverage months beginning after December 31, 2010. 26 USC 7527 note.

SEC. 113. TAA RECIPIENTS NOT ENROLLED IN TRAINING PROGRAMS ELIGIBLE FOR CREDIT.

(a) IN GENERAL.—Section 35(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to coverage months beginning after December 31, 2010. 26 USC 35 note.

SEC. 114. TAA PRE-CERTIFICATION PERIOD RULE FOR PURPOSES OF DETERMINING WHETHER THERE IS A 63-DAY LAPSE IN CREDITABLE COVERAGE.

(a) IRC AMENDMENT.—Section 9801(c)(2)(D) of the Internal Revenue Code of 1986 is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

(b) ERISA AMENDMENT.—Section 701(c)(2)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(c)(2)(C)) is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

(c) PHSA AMENDMENT.—Section 2701(c)(2)(C) of the Public Health Service Act (as in effect for plan years beginning before January 1, 2014) is amended by striking “January 1, 2011” and inserting “February 13, 2011”. 42 USC 300gg.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2010. 26 USC 9801 note.

SEC. 115. CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.

(a) IN GENERAL.—Section 35(g)(9) of the Internal Revenue Code of 1986, as added by section 1899E(a) of the American Recovery and Reinvestment Tax Act of 2009 (relating to continued qualification of family members after certain events), is amended by striking “January 1, 2011” and inserting “February 13, 2011”. 26 USC 35.

(b) CONFORMING AMENDMENT.—Section 173(f)(8) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(8)) is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2010. 26 USC 35 note.

SEC. 116. EXTENSION OF COBRA BENEFITS FOR CERTAIN TAA-ELIGIBLE INDIVIDUALS AND PBGC RECIPIENTS.

(a) ERISA AMENDMENTS.—

(1) PBGC RECIPIENTS.—Section 602(2)(A)(v) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.

1162(2)(A)(v)) is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(2) TAA-ELIGIBLE INDIVIDUALS.—Section 602(2)(A)(vi) of such Act (29 U.S.C. 1162(2)(A)(vi)) is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(b) IRC AMENDMENTS.—

(1) PBGC RECIPIENTS.—Section 4980B(f)(2)(B)(i)(V) of the Internal Revenue Code of 1986 is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(2) TAA-ELIGIBLE INDIVIDUALS.—Section 4980B(f)(2)(B)(i)(VI) of such Code is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(c) PHSA AMENDMENTS.—Section 2202(2)(A)(iv) of the Public Health Service Act (42 U.S.C. 300bb–2(2)(A)(iv)) is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

26 USC 4980B
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after December 31, 2010.

SEC. 117. ADDITION OF COVERAGE THROUGH VOLUNTARY EMPLOYEES’ BENEFICIARY ASSOCIATIONS.

(a) IN GENERAL.—Section 35(e)(1)(K) of the Internal Revenue Code of 1986 is amended by striking “January 1, 2011” and inserting “February 13, 2012”.

26 USC 35 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to coverage months beginning after December 31, 2010.

SEC. 118. NOTICE REQUIREMENTS.

(a) IN GENERAL.—Section 7527(d)(2) of the Internal Revenue Code of 1986 is amended by striking “January 1, 2011” and inserting “February 13, 2011”.

26 USC 7527
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to certificates issued after December 31, 2010.

TITLE II—ANDEAN TRADE PREFERENCES ACT

SEC. 201. EXTENSION OF ANDEAN TRADE PREFERENCE ACT.

(a) EXTENSION.—Section 208(a)(1) of the Andean Trade Preference Act (19 U.S.C. 3206(a)(1)) is amended to read as follows:

“(1) remain in effect—

“(A) with respect to Colombia after February 12, 2011; and

“(B) with respect to Peru after December 31, 2010;”.

(b) ECUADOR.—Section 208(a)(2) of the Andean Trade Preference Act (19 U.S.C. 3206(a)(2)) is amended by striking “December 31, 2010” and inserting “February 12, 2011”.

(c) TREATMENT OF CERTAIN APPAREL ARTICLES.—Section 204(b)(3)(E)(ii)(II) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)) is amended (ii)(II), by striking “December 31, 2010” and inserting “February 12, 2011”.

(d) ANNUAL REPORT.—Section 203(f)(1) of the Andean Trade Preference Act (19 U.S.C. 3202(f)(1)) is amended by striking “every 2 years” and inserting “annually”.

TITLE III—OFFSETS

SEC. 301. CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—

(1) in subparagraph (A), by striking “September 30, 2019” and inserting “January 7, 2020”; and

(2) in subparagraph (B)(i), by striking “September 30, 2019” and inserting “January 14, 2020”.

SEC. 302. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

26 USC 6655
note.

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 4.5 percentage points.

TITLE IV—BUDGETARY EFFECTS

SEC. 401. COMPLIANCE WITH PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 29, 2010.

LEGISLATIVE HISTORY—H.R. 6517:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 15, considered and passed House.

Dec. 22, considered and passed Senate, amended. House concurred in Senate amendment.



Public Law 111–345
111th Congress

An Act

Dec. 29, 2010

[S. 3386]

Restore Online
Shoppers’
Confidence Act.
15 USC 8401
note.

15 USC 8401.

To protect consumers from certain aggressive sales tactics on the Internet.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Restore Online Shoppers’ Confidence Act”.

SEC. 2. FINDINGS; DECLARATION OF POLICY.

The Congress finds the following:

(1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.

(2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers’ business.

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for “bounties” and other payments, hundreds of reputable online retailers and websites shared their customers’ billing information, including credit card and debit card numbers, with third party sellers through a process known as “data pass”. These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.

(5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party “post-transaction” offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.

(6) Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers’ billing information, including their credit or debit card information, directly from the consumers. Because third party sellers

acquired consumers' billing information from the initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.

(7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.

(8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

SEC. 3. PROHIBITIONS AGAINST CERTAIN UNFAIR AND DECEPTIVE INTERNET SALES PRACTICES. 15 USC 8402.

(a) **REQUIREMENTS FOR CERTAIN INTERNET-BASED SALES.**—It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

(A) a description of the goods or services being offered;

(B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and

(C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

(A) obtaining from the consumer—

(i) the full account number of the account to be charged; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

(b) **PROHIBITION ON DATA-PASS USED TO FACILITATE CERTAIN DECEPTIVE INTERNET SALES TRANSACTIONS.**—It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

(c) APPLICATION WITH OTHER LAW.—Nothing in this Act shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

(d) DEFINITIONS.—In this section:

(1) INITIAL MERCHANT.—The term “initial merchant” means a person that has obtained a consumer’s billing information directly from the consumer through an Internet transaction initiated by the consumer.

(2) POST-TRANSACTION THIRD PARTY SELLER.—The term “post-transaction third party seller” means a person that—

(A) sells, or offers for sale, any good or service on the Internet;

(B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and

(C) is not—

(i) the initial merchant;

(ii) a subsidiary or corporate affiliate of the initial merchant; or

(iii) a successor of an entity described in clause

(i) or (ii).

15 USC 8403.

SEC. 4. NEGATIVE OPTION MARKETING ON THE INTERNET.

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission’s Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

(1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information;

(2) obtains a consumer’s express informed consent before charging the consumer’s credit card, debit card, bank account, or other financial account for products or services through such transaction; and

(3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer’s credit card, debit card, bank account, or other financial account.

15 USC 8404.

SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) IN GENERAL.—Violation of this Act or any regulation prescribed under this Act shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(b) PENALTIES.—Any person who violates this Act or any regulation prescribed under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this Act.

(c) **AUTHORITY PRESERVED.**—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

SEC. 6. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

15 USC 8405.

(a) **RIGHT OF ACTION.**—Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this Act or any regulation issued under this Act that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code, to obtain appropriate injunctive relief.

(b) **NOTICE TO COMMISSION REQUIRED.**—A State shall provide prior written notice to the Federal Trade Commission of any civil action under subsection (a) together with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such action.

(c) **INTERVENTION BY THE COMMISSION.**—The Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed—

(1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or

(2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(e) **LIMITATION.**—No separate suit shall be brought under this section if, at the time the suit is brought, the same alleged violation is the subject of a pending action by the Federal Trade Commission or the United States under this Act.

Approved December 29, 2010.

LEGISLATIVE HISTORY—S. 3386:

SENATE REPORTS: No. 111–240 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 30, considered and passed Senate.

Dec. 15, considered and passed House.



Public Law 111–346
111th Congress

An Act

Dec. 29, 2010
[S. 4058]

To extend certain expiring provisions providing enhanced protections for servicemembers relating to mortgages and mortgage foreclosure.

Helping Heroes
Keep Their
Homes Act of
2010.
50 USC app. 501
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Helping Heroes Keep Their Homes Act of 2010”.

SEC. 2. EXTENSION OF ENHANCED PROTECTIONS FOR SERVICEMEMBERS RELATING TO MORTGAGES AND MORTGAGE FORECLOSURE UNDER SERVICEMEMBERS CIVIL RELIEF ACT.

50 USC app. 533. Paragraph (2) of section 2203(c) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is amended—

(1) by striking “December 31, 2010” and inserting “December 31, 2012”; and

(2) by striking “January 1, 2011” and inserting “January 1, 2013”.

Approved December 29, 2010.

LEGISLATIVE HISTORY—S. 4058:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 22, considered and passed Senate and House.



Public Law 111–347
111th Congress

An Act

To amend the Public Health Service Act to extend and improve protections and services to individuals directly impacted by the terrorist attack in New York City on September 11, 2001, and for other purposes.

Jan. 2, 2011
[H.R. 847]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “James Zadroga 9/11 Health and Compensation Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

James Zadroga
9/11 Health and
Compensation
Act of 2010.
42 USC 201 note.

Sec. 1. Short title; table of contents.

TITLE I—WORLD TRADE CENTER HEALTH PROGRAM

Sec. 101. World Trade Center Health Program.

“TITLE XXXIII—WORLD TRADE CENTER HEALTH PROGRAM

“Subtitle A—Establishment of Program; Advisory Committee

“Sec. 3301. Establishment of World Trade Center Health Program.

“Sec. 3302. WTC Health Program Scientific/Technical Advisory Committee; WTC Health Program Steering Committees.

“Sec. 3303. Education and outreach.

“Sec. 3304. Uniform data collection and analysis.

“Sec. 3305. Clinical Centers of Excellence and Data Centers.

“Sec. 3306. Definitions.

“Subtitle B—Program of Monitoring, Initial Health Evaluations, and Treatment

“PART 1—WTC RESPONDERS

“Sec. 3311. Identification of WTC responders and provision of WTC-related monitoring services.

“Sec. 3312. Treatment of enrolled WTC responders for WTC-related health conditions.

“Sec. 3313. National arrangement for benefits for eligible individuals outside New York.

“PART 2—WTC SURVIVORS

“Sec. 3321. Identification and initial health evaluation of screening-eligible and certified-eligible WTC survivors.

“Sec. 3322. Followup monitoring and treatment of certified-eligible WTC survivors for WTC-related health conditions.

“Sec. 3323. Followup monitoring and treatment of other individuals with WTC-related health conditions.

“PART 3—PAYOR PROVISIONS

“Sec. 3331. Payment of claims.

“Sec. 3332. Administrative arrangement authority.

“Subtitle C—Research Into Conditions

“Sec. 3341. Research regarding certain health conditions related to September 11 terrorist attacks.

“Sec. 3342. World Trade Center Health Registry.

“Subtitle D—Funding

“Sec. 3351. World Trade Center Health Program Fund.

TITLE II—SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001

Sec. 201. Definitions.

Sec. 202. Extended and expanded eligibility for compensation.

Sec. 203. Requirement to update regulations.

Sec. 204. Limited liability for certain claims.

Sec. 205. Funding; attorney fees.

TITLE III—REVENUE RELATED PROVISIONS

Sec. 301. Excise tax on foreign procurement.

Sec. 302. Renewal of fees for visa-dependent employers.

TITLE IV—BUDGETARY EFFECTS

Sec. 401. Compliance with Statutory Pay-As-You-Go Act of 2010.

TITLE I—WORLD TRADE CENTER HEALTH PROGRAM

SEC. 101. WORLD TRADE CENTER HEALTH PROGRAM.

The Public Health Service Act is amended by adding at the end the following new title:

“TITLE XXXIII—WORLD TRADE CENTER HEALTH PROGRAM

“Subtitle A—Establishment of Program; Advisory Committee

42 USC 300mm.

“SEC. 3301. ESTABLISHMENT OF WORLD TRADE CENTER HEALTH PROGRAM.

“(a) **IN GENERAL.**—There is hereby established within the Department of Health and Human Services a program to be known as the World Trade Center Health Program, which shall be administered by the WTC Program Administrator, to provide beginning on July 1, 2011—

“(1) medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks; and

“(2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City who were directly impacted and adversely affected by such attacks.

“(b) **COMPONENTS OF PROGRAM.**—The WTC Program includes the following components:

“(1) **MEDICAL MONITORING FOR RESPONDERS.**—Medical monitoring under section 3311, including clinical examinations and long-term health monitoring and analysis for enrolled WTC responders who were likely to have been exposed to airborne toxins that were released, or to other hazards, as a result of the September 11, 2001, terrorist attacks.

“(2) INITIAL HEALTH EVALUATION FOR SURVIVORS.—An initial health evaluation under section 3321, including an evaluation to determine eligibility for followup monitoring and treatment.

“(3) FOLLOWUP MONITORING AND TREATMENT FOR WTC-RELATED HEALTH CONDITIONS FOR RESPONDERS AND SURVIVORS.—Provision under sections 3312, 3322, and 3323 of followup monitoring and treatment and payment, subject to the provisions of subsection (d), for all medically necessary health and mental health care expenses of an individual with respect to a WTC-related health condition (including necessary prescription drugs).

“(4) OUTREACH.—Establishment under section 3303 of an education and outreach program to potentially eligible individuals concerning the benefits under this title.

“(5) CLINICAL DATA COLLECTION AND ANALYSIS.—Collection and analysis under section 3304 of health and mental health data relating to individuals receiving monitoring or treatment benefits in a uniform manner in collaboration with the collection of epidemiological data under section 3342.

“(6) RESEARCH ON HEALTH CONDITIONS.—Establishment under subtitle C of a research program on health conditions resulting from the September 11, 2001, terrorist attacks.

“(c) NO COST SHARING.—Monitoring and treatment benefits and initial health evaluation benefits are provided under subtitle B without any deductibles, copayments, or other cost sharing to an enrolled WTC responder or certified-eligible WTC survivor. Initial health evaluation benefits are provided under subtitle B without any deductibles, copayments, or other cost sharing to a screening-eligible WTC survivor.

“(d) PREVENTING FRAUD AND UNREASONABLE ADMINISTRATIVE COSTS.—

“(1) FRAUD.—The Inspector General of the Department of Health and Human Services shall develop and implement a program to review the WTC Program’s health care expenditures to detect fraudulent or duplicate billing and payment for inappropriate services. This title is a Federal health care program (as defined in section 1128B(f) of the Social Security Act) and is a health plan (as defined in section 1128C(c) of such Act) for purposes of applying sections 1128 through 1128E of such Act.

“(2) UNREASONABLE ADMINISTRATIVE COSTS.—The Inspector General of the Department of Health and Human Services shall develop and implement a program to review the WTC Program for unreasonable administrative costs, including with respect to infrastructure, administration, and claims processing.

“(e) QUALITY ASSURANCE.—The WTC Program Administrator working with the Clinical Centers of Excellence shall develop and implement a quality assurance program for the monitoring and treatment delivered by such Centers of Excellence and any other participating health care providers. Such program shall include—

- “(1) adherence to monitoring and treatment protocols;
 - “(2) appropriate diagnostic and treatment referrals for participants;
 - “(3) prompt communication of test results to participants;
- and

“(4) such other elements as the Administrator specifies in consultation with the Clinical Centers of Excellence.

“(f) ANNUAL PROGRAM REPORT.—

“(1) IN GENERAL.—Not later than 6 months after the end of each fiscal year in which the WTC Program is in operation, the WTC Program Administrator shall submit an annual report to the Congress on the operations of this title for such fiscal year and for the entire period of operation of the program.

“(2) CONTENTS INCLUDED IN REPORT.—Each annual report under paragraph (1) shall include at least the following:

“(A) ELIGIBLE INDIVIDUALS.—Information for each clinical program described in paragraph (3)—

“(i) on the number of individuals who applied for certification under subtitle B and the number of such individuals who were so certified;

“(ii) of the individuals who were certified, on the number who received monitoring under the program and the number of such individuals who received medical treatment under the program;

“(iii) with respect to individuals so certified who received such treatment, on the WTC-related health conditions for which they were treated; and

“(iv) on the projected number of individuals who will be certified under subtitle B in the succeeding fiscal year and the succeeding 10-year period.

“(B) MONITORING, INITIAL HEALTH EVALUATION, AND TREATMENT COSTS.—For each clinical program so described—

“(i) information on the costs of monitoring and initial health evaluation and the costs of treatment and on the estimated costs of such monitoring, evaluation, and treatment in the succeeding fiscal year; and

“(ii) an estimate of the cost of medical treatment for WTC-related health conditions that have been paid for or reimbursed by workers’ compensation, by public or private health plans, or by New York City under section 3331.

“(C) ADMINISTRATIVE COSTS.—Information on the cost of administering the program, including costs of program support, data collection and analysis, and research conducted under the program.

“(D) ADMINISTRATIVE EXPERIENCE.—Information on the administrative performance of the program, including—

“(i) the performance of the program in providing timely evaluation of and treatment to eligible individuals; and

“(ii) a list of the Clinical Centers of Excellence and other providers that are participating in the program.

“(E) SCIENTIFIC REPORTS.—A summary of the findings of any new scientific reports or studies on the health effects associated with exposure described in section 3306(1), including the findings of research conducted under section 3341(a).

“(F) ADVISORY COMMITTEE RECOMMENDATIONS.—A list of recommendations by the WTC Scientific/Technical Advisory Committee on additional WTC Program eligibility

criteria and on additional WTC-related health conditions and the action of the WTC Program Administrator concerning each such recommendation.

“(3) SEPARATE CLINICAL PROGRAMS DESCRIBED.—In paragraph (2), each of the following shall be treated as a separate clinical program of the WTC Program:

“(A) FIREFIGHTERS AND RELATED PERSONNEL.—The benefits provided for enrolled WTC responders described in section 3311(a)(2)(A).

“(B) OTHER WTC RESPONDERS.—The benefits provided for enrolled WTC responders not described in subparagraph (A).

“(C) WTC SURVIVORS.—The benefits provided for screening-eligible WTC survivors and certified-eligible WTC survivors in section 3321(a).

“(g) NOTIFICATION TO CONGRESS UPON REACHING 80 PERCENT OF ELIGIBILITY NUMERICAL LIMITS.—The Secretary shall promptly notify the Congress of each of the following:

“(1) When the number of enrollments of WTC responders subject to the limit established under section 3311(a)(4) has reached 80 percent of such limit.

“(2) When the number of certifications for certified-eligible WTC survivors subject to the limit established under section 3321(a)(3) has reached 80 percent of such limit.

“(h) CONSULTATION.—The WTC Program Administrator shall engage in ongoing outreach and consultation with relevant stakeholders, including the WTC Health Program Steering Committees and the Advisory Committee under section 3302, regarding the implementation and improvement of programs under this title.

“SEC. 3302. WTC HEALTH PROGRAM SCIENTIFIC/TECHNICAL ADVISORY COMMITTEE; WTC HEALTH PROGRAM STEERING COMMITTEES.

42 USC
300mm-1.

“(a) ADVISORY COMMITTEE.—

“(1) ESTABLISHMENT.—The WTC Program Administrator shall establish an advisory committee to be known as the WTC Health Program Scientific/Technical Advisory Committee (in this subsection referred to as the ‘Advisory Committee’) to review scientific and medical evidence and to make recommendations to the Administrator on additional WTC Program eligibility criteria and on additional WTC-related health conditions.

“(2) COMPOSITION.—The WTC Program Administrator shall appoint the members of the Advisory Committee and shall include at least—

“(A) 4 occupational physicians, at least 2 of whom have experience treating WTC rescue and recovery workers;

“(B) 1 physician with expertise in pulmonary medicine;

“(C) 2 environmental medicine or environmental health specialists;

“(D) 2 representatives of WTC responders;

“(E) 2 representatives of certified-eligible WTC survivors;

“(F) an industrial hygienist;

“(G) a toxicologist;

“(H) an epidemiologist; and

“(I) a mental health professional.

Public
information.
Web posting.

“(3) MEETINGS.—The Advisory Committee shall meet at such frequency as may be required to carry out its duties.

“(4) REPORTS.—The WTC Program Administrator shall provide for publication of recommendations of the Advisory Committee on the public Web site established for the WTC Program.

“(5) DURATION.—Notwithstanding any other provision of law, the Advisory Committee shall continue in operation during the period in which the WTC Program is in operation.

“(6) APPLICATION OF FACAA.—Except as otherwise specifically provided, the Advisory Committee shall be subject to the Federal Advisory Committee Act.

“(b) WTC HEALTH PROGRAM STEERING COMMITTEES.—

“(1) CONSULTATION.—The WTC Program Administrator shall consult with 2 steering committees (each in this section referred to as a ‘Steering Committee’) that are established as follows:

“(A) WTC RESPONDERS STEERING COMMITTEE.—One Steering Committee, to be known as the WTC Responders Steering Committee, for the purpose of receiving input from affected stakeholders and facilitating the coordination of monitoring and treatment programs for the enrolled WTC responders under part 1 of subtitle B.

“(B) WTC SURVIVORS STEERING COMMITTEE.—One Steering Committee, to be known as the WTC Survivors Steering Committee, for the purpose of receiving input from affected stakeholders and facilitating the coordination of initial health evaluations, monitoring, and treatment programs for screening-eligible and certified-eligible WTC survivors under part 2 of subtitle B.

“(2) MEMBERSHIP.—

“(A) WTC RESPONDERS STEERING COMMITTEE.—

“(i) REPRESENTATION.—The WTC Responders Steering Committee shall include—

“(I) representatives of the Centers of Excellence providing services to WTC responders;

“(II) representatives of labor organizations representing firefighters, police, other New York City employees, and recovery and cleanup workers who responded to the September 11, 2001, terrorist attacks; and

“(III) 3 representatives of New York City, 1 of whom will be selected by the police commissioner of New York City, 1 by the health commissioner of New York City, and 1 by the mayor of New York City.

“(ii) INITIAL MEMBERSHIP.—The WTC Responders Steering Committee shall initially be composed of members of the WTC Monitoring and Treatment Program Steering Committee (as in existence on the day before the date of the enactment of this title).

“(B) WTC SURVIVORS STEERING COMMITTEE.—

“(i) REPRESENTATION.—The WTC Survivors Steering Committee shall include representatives of—

“(I) the Centers of Excellence providing services to screening-eligible and certified-eligible WTC survivors;

“(II) the population of residents, students, and area and other workers affected by the September 11, 2001, terrorist attacks;

“(III) screening-eligible and certified-eligible survivors receiving initial health evaluations, monitoring, or treatment under part 2 of subtitle B and organizations advocating on their behalf; and

“(IV) New York City.

“(ii) INITIAL MEMBERSHIP.—The WTC Survivors Steering Committee shall initially be composed of members of the WTC Environmental Health Center Survivor Advisory Committee (as in existence on the day before the date of the enactment of this title).

“(C) ADDITIONAL APPOINTMENTS.—Each Steering Committee may recommend, if approved by a majority of voting members of the Committee, additional members to the Committee.

“(D) VACANCIES.—A vacancy in a Steering Committee shall be filled by an individual recommended by the Steering Committee.

“SEC. 3303. EDUCATION AND OUTREACH.

42 USC
300mm–2.

“The WTC Program Administrator shall institute a program that provides education and outreach on the existence and availability of services under the WTC Program. The outreach and education program—

“(1) shall include—

“(A) the establishment of a public Web site with information about the WTC Program;

Web site.

“(B) meetings with potentially eligible populations;

“(C) development and dissemination of outreach materials informing people about the program; and

“(D) the establishment of phone information services; and

“(2) shall be conducted in a manner intended—

“(A) to reach all affected populations; and

“(B) to include materials for culturally and linguistically diverse populations.

“SEC. 3304. UNIFORM DATA COLLECTION AND ANALYSIS.

Reports.
42 USC
300mm–3.

“(a) IN GENERAL.—The WTC Program Administrator shall provide for the uniform collection of data, including claims data (and analysis of data and regular reports to the Administrator) on the prevalence of WTC-related health conditions and the identification of new WTC-related health conditions. Such data shall be collected for all individuals provided monitoring or treatment benefits under subtitle B and regardless of their place of residence or Clinical Center of Excellence through which the benefits are provided. The WTC Program Administrator shall provide, through the Data Centers or otherwise, for the integration of such data into the monitoring and treatment program activities under this title.

“(b) COORDINATING THROUGH CENTERS OF EXCELLENCE.—Each Clinical Center of Excellence shall collect data described in subsection (a) and report such data to the corresponding Data Center for analysis by such Data Center.

“(c) COLLABORATION WITH WTC HEALTH REGISTRY.—The WTC Program Administrator shall provide for collaboration between the

Data Centers and the World Trade Center Health Registry described in section 3342.

“(d) **PRIVACY.**—The data collection and analysis under this section shall be conducted and maintained in a manner that protects the confidentiality of individually identifiable health information consistent with applicable statutes and regulations, including, as applicable, HIPAA privacy and security law (as defined in section 3009(a)(2)) and section 552a of title 5, United States Code.

42 USC
300mm-4.

“SEC. 3305. CLINICAL CENTERS OF EXCELLENCE AND DATA CENTERS.

“(a) **IN GENERAL.**—

“(1) **CONTRACTS WITH CLINICAL CENTERS OF EXCELLENCE.**—The WTC Program Administrator shall, subject to subsection (b)(1)(B), enter into contracts with Clinical Centers of Excellence (as defined in subsection (b)(1)(A))—

“(A) for the provision of monitoring and treatment benefits and initial health evaluation benefits under subtitle B;

“(B) for the provision of outreach activities to individuals eligible for such monitoring and treatment benefits, for initial health evaluation benefits, and for followup to individuals who are enrolled in the monitoring program;

“(C) for the provision of counseling for benefits under subtitle B, with respect to WTC-related health conditions, for individuals eligible for such benefits;

“(D) for the provision of counseling for benefits for WTC-related health conditions that may be available under workers’ compensation or other benefit programs for work-related injuries or illnesses, health insurance, disability insurance, or other insurance plans or through public or private social service agencies and assisting eligible individuals in applying for such benefits;

“(E) for the provision of translational and interpretive services for program participants who are not English language proficient; and

“(F) for the collection and reporting of data, including claims data, in accordance with section 3304.

“(2) **CONTRACTS WITH DATA CENTERS.**—

“(A) **IN GENERAL.**—The WTC Program Administrator shall enter into contracts with one or more Data Centers (as defined in subsection (b)(2))—

“(i) for receiving, analyzing, and reporting to the WTC Program Administrator on data, in accordance with section 3304, that have been collected and reported to such Data Centers by the corresponding Clinical Centers of Excellence under subsection (b)(1)(B)(iii);

“(ii) for the development of monitoring, initial health evaluation, and treatment protocols, with respect to WTC-related health conditions;

“(iii) for coordinating the outreach activities conducted under paragraph (1)(B) by each corresponding Clinical Center of Excellence;

“(iv) for establishing criteria for the credentialing of medical providers participating in the nationwide network under section 3313;

“(v) for coordinating and administering the activities of the WTC Health Program Steering Committees established under section 3002(b); and

“(vi) for meeting periodically with the corresponding Clinical Centers of Excellence to obtain input on the analysis and reporting of data collected under clause (i) and on the development of monitoring, initial health evaluation, and treatment protocols under clause (ii).

“(B) MEDICAL PROVIDER SELECTION.—The medical providers under subparagraph (A)(iv) shall be selected by the WTC Program Administrator on the basis of their experience treating or diagnosing the health conditions included in the list of WTC-related health conditions.

“(C) CLINICAL DISCUSSIONS.—In carrying out subparagraph (A)(ii), a Data Center shall engage in clinical discussions across the WTC Program to guide treatment approaches for individuals with a WTC-related health condition.

“(D) TRANSPARENCY OF DATA.—A contract entered into under this subsection with a Data Center shall require the Data Center to make any data collected and reported to such Center under subsection (b)(1)(B)(iii) available to health researchers and others as provided in the CDC/ATSDR Policy on Releasing and Sharing Data.

“(3) AUTHORITY FOR CONTRACTS TO BE CLASS SPECIFIC.—A contract entered into under this subsection with a Clinical Center of Excellence or a Data Center may be with respect to one or more class of enrolled WTC responders, screening-eligible WTC survivors, or certified-eligible WTC survivors.

“(4) USE OF COOPERATIVE AGREEMENTS.—Any contract under this title between the WTC Program Administrator and a Data Center or a Clinical Center of Excellence may be in the form of a cooperative agreement.

“(5) REVIEW ON FEASIBILITY OF CONSOLIDATING DATA CENTERS.—Not later than July 1, 2011, the Comptroller General of the United States shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the feasibility of consolidating Data Centers into a single Data Center.

Deadline.
Reports.

“(b) CENTERS OF EXCELLENCE.—

“(1) CLINICAL CENTERS OF EXCELLENCE.—

“(A) DEFINITION.—For purposes of this title, the term ‘Clinical Center of Excellence’ means a Center that demonstrates to the satisfaction of the Administrator that the Center—

“(i) uses an integrated, centralized health care provider approach to create a comprehensive suite of health services under this title that are accessible to enrolled WTC responders, screening-eligible WTC survivors, or certified-eligible WTC survivors;

“(ii) has experience in caring for WTC responders and screening-eligible WTC survivors or includes health care providers who have been trained pursuant to section 3313(c);

“(iii) employs health care provider staff with expertise that includes, at a minimum, occupational medicine, environmental medicine, trauma-related psychiatry and psychology, and social services counseling; and

“(iv) meets such other requirements as specified by the Administrator.

“(B) CONTRACT REQUIREMENTS.—The WTC Program Administrator shall not enter into a contract with a Clinical Center of Excellence under subsection (a)(1) unless the Center agrees to do each of the following:

“(i) Establish a formal mechanism for consulting with and receiving input from representatives of eligible populations receiving monitoring and treatment benefits under subtitle B from such Center.

“(ii) Coordinate monitoring and treatment benefits under subtitle B with routine medical care provided for the treatment of conditions other than WTC-related health conditions.

“(iii) Collect and report to the corresponding Data Center data, including claims data, in accordance with section 3304(b).

“(iv) Have in place safeguards against fraud that are satisfactory to the Administrator, in consultation with the Inspector General of the Department of Health and Human Services.

“(v) Treat or refer for treatment all individuals who are enrolled WTC responders or certified-eligible WTC survivors with respect to such Center who present themselves for treatment of a WTC-related health condition.

“(vi) Have in place safeguards, consistent with section 3304(c), to ensure the confidentiality of an individual’s individually identifiable health information, including requiring that such information not be disclosed to the individual’s employer without the authorization of the individual.

“(vii) Use amounts paid under subsection (c)(1) only for costs incurred in carrying out the activities described in subsection (a), other than those described in subsection (a)(1)(A).

“(viii) Utilize health care providers with occupational and environmental medicine expertise to conduct physical and mental health assessments, in accordance with protocols developed under subsection (a)(2)(A)(ii).

“(ix) Communicate with WTC responders and screening-eligible and certified-eligible WTC survivors in appropriate languages and conduct outreach activities with relevant stakeholder worker or community associations.

“(x) Meet all the other applicable requirements of this title, including regulations implementing such requirements.

“(C) TRANSITION RULE TO ENSURE CONTINUITY OF CARE.—The WTC Program Administrator shall to the maximum extent feasible ensure continuity of care in any period of transition from monitoring and treatment of an enrolled

WTC responder or certified-eligible WTC survivor by a provider to a Clinical Center of Excellence or a health care provider participating in the nationwide network under section 3313.

“(2) DATA CENTERS.—For purposes of this title, the term ‘Data Center’ means a Center that the WTC Program Administrator determines has the capacity to carry out the responsibilities for a Data Center under subsection (a)(2).” Definition.

“(3) CORRESPONDING CENTERS.—For purposes of this title, a Clinical Center of Excellence and a Data Center shall be treated as ‘corresponding’ to the extent that such Clinical Center and Data Center serve the same population group.

“(c) PAYMENT FOR INFRASTRUCTURE COSTS.—

“(1) IN GENERAL.—The WTC Program Administrator shall reimburse a Clinical Center of Excellence for the fixed infrastructure costs of such Center in carrying out the activities described in subtitle B at a rate negotiated by the Administrator and such Centers. Such negotiated rate shall be fair and appropriate and take into account the number of enrolled WTC responders receiving services from such Center under this title.

“(2) FIXED INFRASTRUCTURE COSTS.—For purposes of paragraph (1), the term ‘fixed infrastructure costs’ means, with respect to a Clinical Center of Excellence, the costs incurred by such Center that are not otherwise reimbursable by the WTC Program Administrator under section 3312(c) for patient evaluation, monitoring, or treatment but which are needed to operate the WTC program such as the costs involved in outreach to participants or recruiting participants, data collection and analysis, social services for counseling patients on other available assistance outside the WTC program, and the development of treatment protocols. Such term does not include costs for new construction or other capital costs.” Definition.

“(d) GAO ANALYSIS.—Not later than July 1, 2011, the Comptroller General shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate an analysis on whether Clinical Centers of Excellence with which the WTC Program Administrator enters into a contract under this section have financial systems that will allow for the timely submission of claims data for purposes of section 3304 and subsections (a)(1)(F) and (b)(1)(B)(iii).” Deadline.

“SEC. 3306. DEFINITIONS.

42 USC
300mm–5.

“In this title:

“(1) The term ‘aggravating’ means, with respect to a health condition, a health condition that existed on September 11, 2001, and that, as a result of exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, requires medical treatment that is (or will be) in addition to, more frequent than, or of longer duration than the medical treatment that would have been required for such condition in the absence of such exposure.

“(2) The term ‘certified-eligible WTC survivor’ has the meaning given such term in section 3321(a)(2).

“(3) The terms ‘Clinical Center of Excellence’ and ‘Data Center’ have the meanings given such terms in section 3305.

“(4) The term ‘enrolled WTC responder’ means a WTC responder enrolled under section 3311(a)(3).

“(5) The term ‘initial health evaluation’ includes, with respect to an individual, a medical and exposure history, a physical examination, and additional medical testing as needed to evaluate whether the individual has a WTC-related health condition and is eligible for treatment under the WTC Program.

“(6) The term ‘list of WTC-related health conditions’ means—

“(A) for WTC responders, the health conditions listed in section 3312(a)(3); and

“(B) for screening-eligible and certified-eligible WTC survivors, the health conditions listed in section 3322(b).

“(7) The term ‘New York City disaster area’ means the area within New York City that is—

“(A) the area of Manhattan that is south of Houston Street; and

“(B) any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former World Trade Center site.

“(8) The term ‘New York metropolitan area’ means an area, specified by the WTC Program Administrator, within which WTC responders and eligible WTC screening-eligible survivors who reside in such area are reasonably able to access monitoring and treatment benefits and initial health evaluation benefits under this title through a Clinical Center of Excellence described in subparagraphs (A), (B), or (C) of section 3305(b)(1).

“(9) The term ‘screening-eligible WTC survivor’ has the meaning given such term in section 3321(a)(1).

“(10) Any reference to ‘September 11, 2001’ shall be deemed a reference to the period on such date subsequent to the terrorist attacks at the World Trade Center, Shanksville, Pennsylvania, or the Pentagon, as applicable, on such date.

“(11) The term ‘September 11, 2001, terrorist attacks’ means the terrorist attacks that occurred on September 11, 2001, in New York City, in Shanksville, Pennsylvania, and at the Pentagon, and includes the aftermath of such attacks.

“(12) The term ‘WTC Health Program Steering Committee’ means such a Steering Committee established under section 3302(b).

“(13) The term ‘WTC Program’ means the World Trade Center Health Program established under section 3301(a).

“(14)(A) The term ‘WTC Program Administrator’ means—

“(i) subject to subparagraph (B), with respect to paragraphs (3) and (4) of section 3311(a) (relating to enrollment of WTC responders), section 3312(c) and the corresponding provisions of section 3322 (relating to payment for initial health evaluation, monitoring, and treatment, paragraphs (1)(C), (2)(B), and (3) of section 3321(a) (relating to determination or certification of screening-eligible or certified-eligible WTC responders), and part 3 of subtitle B (relating to payor provisions), an official in the Department of Health and Human Services, to be designated by the Secretary; and

“(ii) with respect to any other provision of this title, the Director of the National Institute for Occupational Safety and Health, or a designee of such Director.

“(B) In no case may the Secretary designate under subparagraph (A)(i) the Director of the National Institute for Occupational Safety and Health or a designee of such Director with respect to section 3322 (relating to payment for initial health evaluation, monitoring, and treatment).

“(15) The term ‘WTC-related health condition’ is defined in section 3312(a).

“(16) The term ‘WTC responder’ is defined in section 3311(a).

“(17) The term ‘WTC Scientific/Technical Advisory Committee’ means such Committee established under section 3302(a).

“Subtitle B—Program of Monitoring, Initial Health Evaluations, and Treatment

“PART 1—WTC RESPONDERS

“SEC. 3311. IDENTIFICATION OF WTC RESPONDERS AND PROVISION OF WTC-RELATED MONITORING SERVICES.

42 USC
300mm-21.

“(a) WTC RESPONDER DEFINED.—

“(1) IN GENERAL.—For purposes of this title, the term ‘WTC responder’ means any of the following individuals, subject to paragraph (4):

“(A) CURRENTLY IDENTIFIED RESPONDER.—An individual who has been identified as eligible for monitoring under the arrangements as in effect on the date of the enactment of this title between the National Institute for Occupational Safety and Health and—

“(i) the consortium coordinated by Mt. Sinai Hospital in New York City that coordinates the monitoring and treatment for enrolled WTC responders other than with respect to those covered under the arrangement with the Fire Department of New York City; or

“(ii) the Fire Department of New York City.

“(B) RESPONDER WHO MEETS CURRENT ELIGIBILITY CRITERIA.—An individual who meets the current eligibility criteria described in paragraph (2).

“(C) RESPONDER WHO MEETS MODIFIED ELIGIBILITY CRITERIA.—An individual who—

“(i) performed rescue, recovery, demolition, debris cleanup, or other related services in the New York City disaster area in response to the September 11, 2001, terrorist attacks, regardless of whether such services were performed by a State or Federal employee or member of the National Guard or otherwise; and

“(ii) meets such eligibility criteria relating to exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks as the WTC Program Administrator, after consultation with the WTC Scientific/Technical Advisory Committee, determines appropriate.

The WTC Program Administrator shall not modify such eligibility criteria on or after the date that the number of enrollments of WTC responders has reached 80 percent of the limit described in paragraph (4) or on or after the

Time periods.

date that the number of certifications for certified-eligible WTC survivors under section 3321(a)(2)(B) has reached 80 percent of the limit described in section 3321(a)(3).

“(2) CURRENT ELIGIBILITY CRITERIA.—The eligibility criteria described in this paragraph for an individual is that the individual is described in any of the following categories:

“(A) FIREFIGHTERS AND RELATED PERSONNEL.—The individual—

“(i) was a member of the Fire Department of New York City (whether fire or emergency personnel, active or retired) who participated at least one day in the rescue and recovery effort at any of the former World Trade Center sites (including Ground Zero, Staten Island Landfill, and the New York City Chief Medical Examiner’s Office) for any time during the period beginning on September 11, 2001, and ending on July 31, 2002; or

“(ii)(I) is a surviving immediate family member of an individual who was a member of the Fire Department of New York City (whether fire or emergency personnel, active or retired) and was killed at the World Trade site on September 11, 2001; and

“(II) received any treatment for a WTC-related health condition described in section 3312(a)(1)(A)(ii) (relating to mental health conditions) on or before September 1, 2008.

“(B) LAW ENFORCEMENT OFFICERS AND WTC RESCUE, RECOVERY, AND CLEANUP WORKERS.—The individual—

“(i) worked or volunteered onsite in rescue, recovery, debris cleanup, or related support services in lower Manhattan (south of Canal St.), the Staten Island Landfill, or the barge loading piers, for at least 4 hours during the period beginning on September 11, 2001, and ending on September 14, 2001, for at least 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001, or for at least 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(ii)(I) was a member of the Police Department of New York City (whether active or retired) or a member of the Port Authority Police of the Port Authority of New York and New Jersey (whether active or retired) who participated onsite in rescue, recovery, debris cleanup, or related services in lower Manhattan (south of Canal St.), including Ground Zero, the Staten Island Landfill, or the barge loading piers, for at least 4 hours during the period beginning September 11, 2001, and ending on September 14, 2001;

“(II) participated onsite in rescue, recovery, debris cleanup, or related services at Ground Zero, the Staten Island Landfill, or the barge loading piers, for at least one day during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(III) participated onsite in rescue, recovery, debris cleanup, or related services in lower Manhattan (south of Canal St.) for at least 24 hours during the period

beginning on September 11, 2001, and ending on September 30, 2001; or

“(IV) participated onsite in rescue, recovery, debris cleanup, or related services in lower Manhattan (south of Canal St.) for at least 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(iii) was an employee of the Office of the Chief Medical Examiner of New York City involved in the examination and handling of human remains from the World Trade Center attacks, or other morgue worker who performed similar post-September 11 functions for such Office staff, during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(iv) was a worker in the Port Authority Trans-Hudson Corporation Tunnel for at least 24 hours during the period beginning on February 1, 2002, and ending on July 1, 2002; or

“(v) was a vehicle-maintenance worker who was exposed to debris from the former World Trade Center while retrieving, driving, cleaning, repairing, and maintaining vehicles contaminated by airborne toxins from the September 11, 2001, terrorist attacks during a duration and period described in subparagraph (A).

“(C) RESPONDERS TO THE SEPTEMBER 11 ATTACKS AT THE PENTAGON AND SHANKSVILLE, PENNSYLVANIA.—The individual—

“(i)(I) was a member of a fire or police department (whether fire or emergency personnel, active or retired), worked for a recovery or cleanup contractor, or was a volunteer; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on the date on which the cleanup of the site was concluded, as determined by the WTC Program Administrator; or

“(II) was a member of a fire or police department (whether fire or emergency personnel, active or retired), worked for a recovery or cleanup contractor, or was a volunteer; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania, site of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on the date on which the cleanup of the site was concluded, as determined by the WTC Program Administrator; and

“(ii) is determined by the WTC Program Administrator to be at an increased risk of developing a WTC-related health condition as a result of exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks, and meets such eligibility criteria related to such exposures, as the WTC Program Administrator determines are appropriate, after consultation with the WTC Scientific/Technical Advisory Committee.

“(3) ENROLLMENT PROCESS.—

“(A) IN GENERAL.—The WTC Program Administrator shall establish a process for enrolling WTC responders in the WTC Program. Under such process—

“(i) WTC responders described in paragraph (1)(A) shall be deemed to be enrolled in such Program;

“(ii) subject to clause (iii), the Administrator shall enroll in such program individuals who are determined to be WTC responders;

“(iii) the Administrator shall deny such enrollment to an individual if the Administrator determines that the numerical limitation in paragraph (4) on enrollment of WTC responders has been met;

“(iv) there shall be no fee charged to the applicant for making an application for such enrollment;

Determination.
Deadline.

“(v) the Administrator shall make a determination on such an application not later than 60 days after the date of filing the application; and

“(vi) an individual who is denied enrollment in such Program shall have an opportunity to appeal such determination in a manner established under such process.

“(B) TIMING.—

Deadline.

“(i) CURRENTLY IDENTIFIED RESPONDERS.—In accordance with subparagraph (A)(i), the WTC Program Administrator shall enroll an individual described in paragraph (1)(A) in the WTC Program not later than July 1, 2011.

“(ii) OTHER RESPONDERS.—In accordance with subparagraph (A)(ii) and consistent with paragraph (4), the WTC Program Administrator shall enroll any other individual who is determined to be a WTC responder in the WTC Program at the time of such determination.

“(4) NUMERICAL LIMITATION ON ELIGIBLE WTC RESPONDERS.—

“(A) IN GENERAL.—The total number of individuals not described in paragraph (1)(A) or (2)(A)(ii) who may be enrolled under paragraph (3)(A)(ii) shall not exceed 25,000 at any time, of which no more than 2,500 may be individuals enrolled based on modified eligibility criteria established under paragraph (1)(C).

“(B) PROCESS.—In implementing subparagraph (A), the WTC Program Administrator shall—

“(i) limit the number of enrollments made under paragraph (3)—

“(I) in accordance with such subparagraph; and

“(II) to such number, as determined by the Administrator based on the best available information and subject to amounts available under section 3351, that will ensure sufficient funds will be available to provide treatment and monitoring benefits under this title, with respect to all individuals who are enrolled through the end of fiscal year 2020; and

“(ii) provide priority (subject to paragraph (3)(A)(i)) in such enrollments in the order in which individuals apply for enrollment under paragraph (3).

“(5) DISQUALIFICATION OF INDIVIDUALS ON TERRORIST WATCH LIST.—No individual who is on the terrorist watch list maintained by the Department of Homeland Security shall qualify as an eligible WTC responder. Before enrolling any individual as a WTC responder in the WTC Program under paragraph (3), the Administrator, in consultation with the Secretary of Homeland Security, shall determine whether the individual is on such list.

Determination.

“(b) MONITORING BENEFITS.—

“(1) IN GENERAL.—In the case of an enrolled WTC responder (other than one described in subsection (a)(2)(A)(ii)), the WTC Program shall provide for monitoring benefits that include monitoring consistent with protocols approved by the WTC Program Administrator and including clinical examinations and long-term health monitoring and analysis. In the case of an enrolled WTC responder who is an active member of the Fire Department of New York City, the responder shall receive such benefits as part of the individual’s periodic company medical exams.

“(2) PROVISION OF MONITORING BENEFITS.—The monitoring benefits under paragraph (1) shall be provided through the Clinical Center of Excellence for the type of individual involved or, in the case of an individual residing outside the New York metropolitan area, under an arrangement under section 3313.

“SEC. 3312. TREATMENT OF ENROLLED WTC RESPONDERS FOR WTC-RELATED HEALTH CONDITIONS.

42 USC
300mm–22.

“(a) WTC-RELATED HEALTH CONDITION DEFINED.—

“(1) IN GENERAL.—For purposes of this title, the term ‘WTC-related health condition’ means a condition that—

“(A)(i) is an illness or health condition for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, based on an examination by a medical professional with experience in treating or diagnosing the health conditions included in the applicable list of WTC-related health conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition, as determined under paragraph (2); or

“(ii) is a mental health condition for which such attacks, based on an examination by a medical professional with experience in treating or diagnosing the health conditions included in the applicable list of WTC-related health conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition, as determined under paragraph (2); and

“(B) is included in the applicable list of WTC-related health conditions or—

“(i) with respect to a WTC responder, is provided certification of coverage under subsection (b)(2)(B)(iii); or

“(ii) with respect to a screening-eligible WTC survivor or certified-eligible WTC survivor, is provided

certification of coverage under subsection (b)(2)(B)(iii), as applied under section 3322(a).

In the case of a WTC responder described in section 3311(a)(2)(A)(ii) (relating to a surviving immediate family member of a firefighter), such term does not include an illness or health condition described in subparagraph (A)(i).

“(2) DETERMINATION.—The determination under paragraph (1) or subsection (b) of whether the September 11, 2001, terrorist attacks were substantially likely to be a significant factor in aggravating, contributing to, or causing an individual’s illness or health condition shall be made based on an assessment of the following:

“(A) The individual’s exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the terrorist attacks. Such exposure shall be—

“(i) evaluated and characterized through the use of a standardized, population-appropriate questionnaire approved by the Director of the National Institute for Occupational Safety and Health; and

“(ii) assessed and documented by a medical professional with experience in treating or diagnosing health conditions included on the list of WTC-related health conditions.

“(B) The type of symptoms and temporal sequence of symptoms. Such symptoms shall be—

“(i) assessed through the use of a standardized, population-appropriate medical questionnaire approved by the Director of the National Institute for Occupational Safety and Health and a medical examination; and

“(ii) diagnosed and documented by a medical professional described in subparagraph (A)(ii).

“(3) LIST OF HEALTH CONDITIONS FOR WTC RESPONDERS.—The list of health conditions for WTC responders consists of the following:

“(A) AERODIGESTIVE DISORDERS.—

“(i) Interstitial lung diseases.

“(ii) Chronic respiratory disorder—fumes/vapors.

“(iii) Asthma.

“(iv) Reactive airways dysfunction syndrome (RADS).

“(v) WTC-exacerbated chronic obstructive pulmonary disease (COPD).

“(vi) Chronic cough syndrome.

“(vii) Upper airway hyperreactivity.

“(viii) Chronic rhinosinusitis.

“(ix) Chronic nasopharyngitis.

“(x) Chronic laryngitis.

“(xi) Gastroesophageal reflux disorder (GERD).

“(xii) Sleep apnea exacerbated by or related to a condition described in a previous clause.

“(B) MENTAL HEALTH CONDITIONS.—

“(i) Posttraumatic stress disorder (PTSD).

“(ii) Major depressive disorder.

“(iii) Panic disorder.

“(iv) Generalized anxiety disorder.

“(v) Anxiety disorder (not otherwise specified).

“(vi) Depression (not otherwise specified).

“(vii) Acute stress disorder.

“(viii) Dysthymic disorder.

“(ix) Adjustment disorder.

“(x) Substance abuse.

“(C) MUSCULOSKELETAL DISORDERS FOR CERTAIN WTC RESPONDERS.—In the case of a WTC responder described in paragraph (4), a condition described in such paragraph.

“(D) ADDITIONAL CONDITIONS.—Any cancer (or type of cancer) or other condition added, pursuant to paragraph (5) or (6), to the list under this paragraph.

“(4) MUSCULOSKELETAL DISORDERS.—

“(A) IN GENERAL.—For purposes of this title, in the case of a WTC responder who received any treatment for a WTC-related musculoskeletal disorder on or before September 11, 2003, the list of health conditions in paragraph (3) shall include:

“(i) Low back pain.

“(ii) Carpal tunnel syndrome (CTS).

“(iii) Other musculoskeletal disorders.

“(B) DEFINITION.—The term ‘WTC-related musculoskeletal disorder’ means a chronic or recurrent disorder of the musculoskeletal system caused by heavy lifting or repetitive strain on the joints or musculoskeletal system occurring during rescue or recovery efforts in the New York City disaster area in the aftermath of the September 11, 2001, terrorist attacks.

“(5) CANCER.—

“(A) IN GENERAL.—The WTC Program Administrator shall periodically conduct a review of all available scientific and medical evidence, including findings and recommendations of Clinical Centers of Excellence, published in peer-reviewed journals to determine if, based on such evidence, cancer or a certain type of cancer should be added to the applicable list of WTC-related health conditions. The WTC Program Administrator shall conduct the first review under this subparagraph not later than 180 days after the date of the enactment of this title.

Deadlines.
Review.

“(B) PROPOSED REGULATIONS AND RULEMAKING.—Based on the periodic reviews under subparagraph (A), if the WTC Program Administrator determines that cancer or a certain type of cancer should be added to such list of WTC-related health conditions, the WTC Program Administrator shall propose regulations, through rulemaking, to add cancer or the certain type of cancer to such list.

“(C) FINAL REGULATIONS.—Based on all the available evidence in the rulemaking record, the WTC Program Administrator shall make a final determination of whether cancer or a certain type of cancer should be added to such list of WTC-related health conditions. If such a determination is made to make such an addition, the WTC Program Administrator shall by regulation add cancer or the certain type of cancer to such list.

Determination.

“(D) DETERMINATIONS NOT TO ADD CANCER OR CERTAIN TYPES OF CANCER.—In the case that the WTC Program Administrator determines under subparagraph (B) or (C) that cancer or a certain type of cancer should not be added

Federal Register,
publication.

to such list of WTC-related health conditions, the WTC Program Administrator shall publish an explanation for such determination in the Federal Register. Any such determination to not make such an addition shall not preclude the addition of cancer or the certain type of cancer to such list at a later date.

“(6) ADDITION OF HEALTH CONDITIONS TO LIST FOR WTC RESPONDERS.—

“(A) IN GENERAL.—Whenever the WTC Program Administrator determines that a proposed rule should be promulgated to add a health condition to the list of health conditions in paragraph (3), the Administrator may request a recommendation of the Advisory Committee or may publish such a proposed rule in the Federal Register in accordance with subparagraph (D).

“(B) ADMINISTRATOR’S OPTIONS AFTER RECEIPT OF PETITION.—In the case that the WTC Program Administrator receives a written petition by an interested party to add a health condition to the list of health conditions in paragraph (3), not later than 60 days after the date of receipt of such petition the Administrator shall—

“(i) request a recommendation of the Advisory Committee;

“(ii) publish a proposed rule in the Federal Register to add such health condition, in accordance with subparagraph (D);

“(iii) publish in the Federal Register the Administrator’s determination not to publish such a proposed rule and the basis for such determination; or

“(iv) publish in the Federal Register a determination that insufficient evidence exists to take action under clauses (i) through (iii).

“(C) ACTION BY ADVISORY COMMITTEE.—In the case that the Administrator requests a recommendation of the Advisory Committee under this paragraph, with respect to adding a health condition to the list in paragraph (3), the Advisory Committee shall submit to the Administrator such recommendation not later than 60 days after the date of such request or by such date (not to exceed 180 days after such date of request) as specified by the Administrator. Not later than 60 days after the date of receipt of such recommendation, the Administrator shall, in accordance with subparagraph (D), publish in the Federal Register a proposed rule with respect to such recommendation or a determination not to propose such a proposed rule and the basis for such determination.

“(D) PUBLICATION.—The WTC Program Administrator shall, with respect to any proposed rule under this paragraph—

“(i) publish such proposed rule in accordance with section 553 of title 5, United States Code; and

“(ii) provide interested parties a period of 30 days after such publication to submit written comments on the proposed rule.

The WTC Program Administrator may extend the period described in clause (ii) upon a finding of good cause. In

Deadline.
Recommendation.
Federal Register,
publication.

Recommendation.
Deadlines.

Federal Register,
publication.

Comment period.

Federal Register,
publication.

the case of such an extension, the Administrator shall publish such extension in the Federal Register.

“(E) INTERESTED PARTY DEFINED.—For purposes of this paragraph, the term ‘interested party’ includes a representative of any organization representing WTC responders, a nationally recognized medical association, a Clinical or Data Center, a State or political subdivision, or any other interested person. Definition.

“(b) COVERAGE OF TREATMENT FOR WTC-RELATED HEALTH CONDITIONS.—

“(1) DETERMINATION FOR ENROLLED WTC RESPONDERS BASED ON A WTC-RELATED HEALTH CONDITION.—

“(A) IN GENERAL.—If a physician at a Clinical Center of Excellence that is providing monitoring benefits under section 3311 for an enrolled WTC responder makes a determination that the responder has a WTC-related health condition that is in the list in subsection (a)(3) and that exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 1, 2001, terrorist attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition—

“(i) the physician shall promptly transmit such determination to the WTC Program Administrator and provide the Administrator with the medical facts supporting such determination; and

“(ii) on and after the date of such transmittal and subject to subparagraph (B), the WTC Program shall provide for payment under subsection (c) for medically necessary treatment for such condition.

“(B) REVIEW; CERTIFICATION; APPEALS.—

“(i) REVIEW.—A Federal employee designated by the WTC Program Administrator shall review determinations made under subparagraph (A).

“(ii) CERTIFICATION.—The Administrator shall provide a certification of such condition based upon reviews conducted under clause (i). Such a certification shall be provided unless the Administrator determines that the responder’s condition is not a WTC-related health condition in the list in subsection (a)(3) or that exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 1, 2001, terrorist attacks is not substantially likely to be a significant factor in aggravating, contributing to, or causing the condition.

“(iii) APPEAL PROCESS.—The Administrator shall establish, by rule, a process for the appeal of determinations under clause (ii). Regulations.

“(2) DETERMINATION BASED ON MEDICALLY ASSOCIATED WTC-RELATED HEALTH CONDITIONS.—

“(A) IN GENERAL.—If a physician at a Clinical Center of Excellence determines pursuant to subsection (a) that the enrolled WTC responder has a health condition described in subsection (a)(1)(A) that is not in the list in subsection (a)(3) but which is medically associated with a WTC-related health condition—

“(i) the physician shall promptly transmit such determination to the WTC Program Administrator and

provide the Administrator with the facts supporting such determination; and

“(ii) the Administrator shall make a determination under subparagraph (B) with respect to such physician’s determination.

Regulations.

“(B) PROCEDURES FOR REVIEW, CERTIFICATION, AND APPEAL.—The WTC Program Administrator shall, by rule, establish procedures for the review and certification of physician determinations under subparagraph (A). Such rule shall provide for—

“(i) the timely review of such a determination by a physician panel with appropriate expertise for the condition and recommendations to the WTC Program Administrator;

Deadline.

“(ii) not later than 60 days after the date of the transmittal under subparagraph (A)(i), a determination by the WTC Program Administrator on whether or not the condition involved is described in subsection (a)(1)(A) and is medically associated with a WTC-related health condition;

“(iii) certification in accordance with paragraph (1)(B)(ii) of coverage of such condition if determined to be described in subsection (a)(1)(A) and medically associated with a WTC-related health condition; and

“(iv) a process for appeals of determinations relating to such conditions.

“(C) INCLUSION IN LIST OF HEALTH CONDITIONS.—If the WTC Program Administrator provides certification under subparagraph (B)(iii) for coverage of a condition, the Administrator may, pursuant to subsection (a)(6), add the condition to the list in subsection (a)(3).

“(D) CONDITIONS ALREADY DECLINED FOR INCLUSION IN LIST.—If the WTC Program Administrator publishes a determination under subsection (a)(6)(B) not to include a condition in the list in subsection (a)(3), the WTC Program Administrator shall not provide certification under subparagraph (B)(iii) for coverage of the condition. In the case of an individual who is certified under subparagraph (B)(iii) with respect to such condition before the date of the publication of such determination the previous sentence shall not apply.

“(3) REQUIREMENT OF MEDICAL NECESSITY.—

“(A) IN GENERAL.—In providing treatment for a WTC-related health condition, a physician or other provider shall provide treatment that is medically necessary and in accordance with medical treatment protocols established under subsection (d).

“(B) REGULATIONS RELATING TO MEDICAL NECESSITY.—For the purpose of this title, the WTC Program Administrator shall issue regulations specifying a standard for determining medical necessity with respect to health care services and prescription pharmaceuticals, a process for determining whether treatment furnished and pharmaceuticals prescribed under this title meet such standard (including any prior authorization requirement), and a process for appeal of a determination under subsection (c)(3).

“(4) SCOPE OF TREATMENT COVERED.—

“(A) IN GENERAL.—The scope of treatment covered under this subsection includes services of physicians and other health care providers, diagnostic and laboratory tests, prescription drugs, inpatient and outpatient hospital services, and other medically necessary treatment.

“(B) PHARMACEUTICAL COVERAGE.—With respect to ensuring coverage of medically necessary outpatient prescription drugs, such drugs shall be provided, under arrangements made by the WTC Program Administrator, directly through participating Clinical Centers of Excellence or through one or more outside vendors.

“(C) TRANSPORTATION EXPENSES FOR NATIONWIDE NETWORK.—The WTC Program Administrator may provide for necessary and reasonable transportation and expenses incident to the securing of medically necessary treatment through the nationwide network under section 3313 involving travel of more than 250 miles and for which payment is made under this section in the same manner in which individuals may be furnished necessary and reasonable transportation and expenses incident to services involving travel of more than 250 miles under regulations implementing section 3629(c) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of Public Law 106-398; 42 U.S.C. 7384t(c)).

“(5) PROVISION OF TREATMENT PENDING CERTIFICATION.—

With respect to an enrolled WTC responder for whom a determination is made by an examining physician under paragraph (1) or (2), but for whom the WTC Program Administrator has not yet determined whether to certify the determination, the WTC Program Administrator may establish by rule a process through which the Administrator may approve the provision of medical treatment under this subsection (and payment under subsection (c)) with respect to such responder and such responder’s WTC-related health condition (under such terms and conditions as the Administrator may provide) until the Administrator makes a decision on whether to certify the determination.

“(C) PAYMENT FOR INITIAL HEALTH EVALUATION, MONITORING, AND TREATMENT OF WTC-RELATED HEALTH CONDITIONS.—

“(1) MEDICAL TREATMENT.—

“(A) USE OF FECA PAYMENT RATES.—

“(i) IN GENERAL.—Subject to clause (ii):

“(I) Subject to subparagraphs (B) and (C), the WTC Program Administrator shall reimburse costs for medically necessary treatment under this title for WTC-related health conditions according to the payment rates that would apply to the provision of such treatment and services by the facility under the Federal Employees Compensation Act.

“(II) For treatment not covered under subclause (i) or subparagraph (B), the WTC Program Administrator shall establish by regulation a reimbursement rate for such treatment.

Regulations.

“(ii) EXCEPTION.—In no case shall payments for products or services under clause (i) be made at a rate higher than the Office of Worker’s Compensation

Programs in the Department Labor would pay for such products or services rendered at the time such products or services were provided.

“(B) PHARMACEUTICALS.—

“(i) IN GENERAL.—The WTC Program Administrator shall establish a program for paying for the medically necessary outpatient prescription pharmaceuticals prescribed under this title for WTC-related health conditions through one or more contracts with outside vendors.

“(ii) COMPETITIVE BIDDING.—Under such program the Administrator shall—

“(I) select one or more appropriate vendors through a Federal competitive bid process; and

“(II) select the lowest bidder (or bidders) meeting the requirements for providing pharmaceutical benefits for participants in the WTC Program.

“(iii) TREATMENT OF FDNY PARTICIPANTS.—Under such program the Administrator may enter into an agreement with a separate vendor to provide pharmaceutical benefits to enrolled WTC responders for whom the Clinical Center of Excellence is described in section 3305 if such an arrangement is deemed necessary and beneficial to the program by the WTC Program Administrator.

“(iv) PHARMACEUTICALS.—Not later than July 1, 2011, the Comptroller General of the United States shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on whether existing Federal pharmaceutical purchasing programs can provide pharmaceutical benefits more efficiently and effectively than through the WTC program.

“(C) IMPROVING QUALITY AND EFFICIENCY THROUGH MODIFICATION OF PAYMENT AMOUNTS AND METHODOLOGIES.—The WTC Program Administrator may modify the amounts and methodologies for making payments for initial health evaluations, monitoring, or treatment, if, taking into account utilization and quality data furnished by the Clinical Centers of Excellence under section 3305(b)(1)(B)(iii), the Administrator determines that a bundling, capitation, pay for performance, or other payment methodology would better ensure high quality and efficient delivery of initial health evaluations, monitoring, or treatment to an enrolled WTC responder, screening-eligible WTC survivor, or certified-eligible WTC survivor.

“(2) MONITORING AND INITIAL HEALTH EVALUATION.—The WTC Program Administrator shall reimburse the costs of monitoring and the costs of an initial health evaluation provided under this title at a rate set by the Administrator by regulation.

“(3) DETERMINATION OF MEDICAL NECESSITY.—

“(A) REVIEW OF MEDICAL NECESSITY AND PROTOCOLS.—As part of the process for reimbursement or payment under this subsection, the WTC Program Administrator shall provide for the review of claims for reimbursement or payment

Deadline.
Reports.

for the provision of medical treatment to determine if such treatment is medically necessary and in accordance with medical treatment protocols established under subsection (d).

“(B) WITHHOLDING OF PAYMENT FOR MEDICALLY UNNECESSARY TREATMENT.—The Administrator shall withhold such reimbursement or payment for treatment that the Administrator determines is not medically necessary or is not in accordance with such medical treatment protocols.

“(d) MEDICAL TREATMENT PROTOCOLS.—

“(1) DEVELOPMENT.—The Data Centers shall develop medical treatment protocols for the treatment of enrolled WTC responders and certified-eligible WTC survivors for health conditions included in the applicable list of WTC-related health conditions.

“(2) APPROVAL.—The medical treatment protocols developed under paragraph (1) shall be subject to approval by the WTC Program Administrator.

“SEC. 3313. NATIONAL ARRANGEMENT FOR BENEFITS FOR ELIGIBLE INDIVIDUALS OUTSIDE NEW YORK.

42 USC
300mm-23.

“(a) IN GENERAL.—In order to ensure reasonable access to benefits under this subtitle for individuals who are enrolled WTC responders, screening-eligible WTC survivors, or certified-eligible WTC survivors and who reside in any State, as defined in section 2(f), outside the New York metropolitan area, the WTC Program Administrator shall establish a nationwide network of health care providers to provide monitoring and treatment benefits and initial health evaluations near such individuals’ areas of residence in such States. Nothing in this subsection shall be construed as preventing such individuals from being provided such monitoring and treatment benefits or initial health evaluation through any Clinical Center of Excellence.

“(b) NETWORK REQUIREMENTS.—Any health care provider participating in the network under subsection (a) shall—

“(1) meet criteria for credentialing established by the Data Centers;

“(2) follow the monitoring, initial health evaluation, and treatment protocols developed under section 3305(a)(2)(A)(ii);

“(3) collect and report data in accordance with section 3304; and

“(4) meet such fraud, quality assurance, and other requirements as the WTC Program Administrator establishes, including sections 1128 through 1128E of the Social Security Act, as applied by section 3301(d).

“(c) TRAINING AND TECHNICAL ASSISTANCE.—The WTC Program Administrator may provide, including through contract, for the provision of training and technical assistance to health care providers participating in the network under subsection (a).

“(d) PROVISION OF SERVICES THROUGH THE VA.—

“(1) IN GENERAL.—The WTC Program Administrator may enter into an agreement with the Secretary of Veterans Affairs for the Secretary to provide services under this section through facilities of the Department of Veterans Affairs.

“(2) NATIONAL PROGRAM.—Not later than July 1, 2011, the Comptroller General of the United States shall submit

Deadline.
Reports.

to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on whether the Department of Veterans Affairs can provide monitoring and treatment services to individuals under this section more efficiently and effectively than through the nationwide network to be established under subsection (a).

“PART 2—WTC SURVIVORS

42 USC
300mm-31.

“SEC. 3321. IDENTIFICATION AND INITIAL HEALTH EVALUATION OF SCREENING-ELIGIBLE AND CERTIFIED-ELIGIBLE WTC SURVIVORS.

“(a) IDENTIFICATION OF SCREENING-ELIGIBLE WTC SURVIVORS AND CERTIFIED-ELIGIBLE WTC SURVIVORS.—

“(1) SCREENING-ELIGIBLE WTC SURVIVORS.—

“(A) DEFINITION.—In this title, the term ‘screening-eligible WTC survivor’ means, subject to subparagraph (C) and paragraph (3), an individual who is described in any of the following clauses:

“(i) CURRENTLY IDENTIFIED SURVIVOR.—An individual, including a WTC responder, who has been identified as eligible for medical treatment and monitoring by the WTC Environmental Health Center as of the date of enactment of this title.

“(ii) SURVIVOR WHO MEETS CURRENT ELIGIBILITY CRITERIA.—An individual who is not a WTC responder, for purposes of the initial health evaluation under subsection (b), claims symptoms of a WTC-related health condition and meets any of the current eligibility criteria described in subparagraph (B).

“(iii) SURVIVOR WHO MEETS MODIFIED ELIGIBILITY CRITERIA.—An individual who is not a WTC responder, for purposes of the initial health evaluation under subsection (b), claims symptoms of a WTC-related health condition and meets such eligibility criteria relating to exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks as the WTC Administrator determines, after consultation with the Data Centers described in section 3305 and the WTC Scientific/Technical Advisory Committee and WTC Health Program Steering Committees under section 3302.

The Administrator shall not modify such criteria under clause (iii) on or after the date that the number of certifications for certified-eligible WTC survivors under paragraph (2)(B) has reached 80 percent of the limit described in paragraph (3) or on or after the date that the number of enrollments of WTC responders has reached 80 percent of the limit described in section 3311(a)(4).

“(B) CURRENT ELIGIBILITY CRITERIA.—The eligibility criteria described in this subparagraph for an individual are that the individual is described in any of the following clauses:

“(i) A person who was present in the New York City disaster area in the dust or dust cloud on September 11, 2001.

Time periods.

“(ii) A person who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area for—

“(I) at least 4 days during the 4-month period beginning on September 11, 2001, and ending on January 10, 2002; or

“(II) at least 30 days during the period beginning on September 11, 2001, and ending on July 31, 2002.

“(iii) Any person who worked as a cleanup worker or performed maintenance work in the New York City disaster area during the 4-month period described in subparagraph (B)(i) and had extensive exposure to WTC dust as a result of such work.

“(iv) A person who was deemed eligible to receive a grant from the Lower Manhattan Development Corporation Residential Grant Program, who possessed a lease for a residence or purchased a residence in the New York City disaster area, and who resided in such residence during the period beginning on September 11, 2001, and ending on May 31, 2003.

“(v) A person whose place of employment—

“(I) at any time during the period beginning on September 11, 2001, and ending on May 31, 2003, was in the New York City disaster area; and

“(II) was deemed eligible to receive a grant from the Lower Manhattan Development Corporation WTC Small Firms Attraction and Retention Act program or other government incentive program designed to revitalize the lower Manhattan economy after the September 11, 2001, terrorist attacks.

“(C) APPLICATION AND DETERMINATION PROCESS FOR SCREENING ELIGIBILITY.—

“(i) IN GENERAL.—The WTC Program Administrator in consultation with the Data Centers shall establish a process for individuals, other than individuals described in subparagraph (A)(i), to be determined to be screening-eligible WTC survivors. Under such process—

“(I) there shall be no fee charged to the applicant for making an application for such determination;

“(II) the Administrator shall make a determination on such an application not later than 60 days after the date of filing the application;

“(III) the Administrator shall make such a determination relating to an applicant's compliance with this title and shall not determine that an individual is not so eligible or deny written documentation under clause (ii) to such individual unless the Administrator determines that—

“(aa) based on the application submitted, the individual does not meet the eligibility criteria; or

Deadline.

“(bb) the numerical limitation on certifications of certified-eligible WTC survivors set forth in paragraph (3) has been met; and

“(IV) an individual who is determined not to be a screening-eligible WTC survivor shall have an opportunity to appeal such determination in a manner established under such process.

“(ii) WRITTEN DOCUMENTATION OF SCREENING-ELIGIBILITY.—

“(I) IN GENERAL.—In the case of an individual who is described in subparagraph (A)(i) or who is determined under clause (i) (consistent with paragraph (3)) to be a screening-eligible WTC survivor, the WTC Program Administrator shall provide an appropriate written documentation of such fact.

“(II) TIMING.—

“(aa) CURRENTLY IDENTIFIED SURVIVORS.—In the case of an individual who is described in subparagraph (A)(i), the WTC Program Administrator shall provide the written documentation under subclause (I) not later than July 1, 2011.

“(bb) OTHER MEMBERS.—In the case of another individual who is determined under clause (i) and consistent with paragraph (3) to be a screening-eligible WTC survivor, the WTC Program Administrator shall provide the written documentation under subclause (I) at the time of such determination.

“(2) CERTIFIED-ELIGIBLE WTC SURVIVORS.—

“(A) DEFINITION.—The term ‘certified-eligible WTC survivor’ means, subject to paragraph (3), a screening-eligible WTC survivor who the WTC Program Administrator certifies under subparagraph (B) to be eligible for followup monitoring and treatment under this part.

“(B) CERTIFICATION OF ELIGIBILITY FOR MONITORING AND TREATMENT.—

“(i) IN GENERAL.—The WTC Program Administrator shall establish a certification process under which the Administrator shall provide appropriate certification to screening-eligible WTC survivors who, pursuant to the initial health evaluation under subsection (b), are determined to be eligible for followup monitoring and treatment under this part.

“(ii) TIMING.—

“(I) CURRENTLY IDENTIFIED SURVIVORS.—In the case of an individual who is described in paragraph (1)(A)(i), the WTC Program Administrator shall provide the certification under clause (i) not later than July 1, 2011.

“(II) OTHER MEMBERS.—In the case of another individual who is determined under clause (i) to be eligible for followup monitoring and treatment, the WTC Program Administrator shall provide the certification under such clause at the time of such determination.

“(3) NUMERICAL LIMITATION ON CERTIFIED-ELIGIBLE WTC SURVIVORS.—

“(A) IN GENERAL.—The total number of individuals not described in paragraph (1)(A)(i) who may be certified as certified-eligible WTC survivors under paragraph (2)(B) shall not exceed 25,000 at any time.

“(B) PROCESS.—In implementing subparagraph (A), the WTC Program Administrator shall—

“(i) limit the number of certifications provided under paragraph (2)(B)—

“(I) in accordance with such subparagraph; and

“(II) to such number, as determined by the Administrator based on the best available information and subject to amounts made available under section 3351, that will ensure sufficient funds will be available to provide treatment and monitoring benefits under this title, with respect to all individuals receiving such certifications through the end of fiscal year 2020; and

“(ii) provide priority in such certifications in the order in which individuals apply for a determination under paragraph (2)(B).

“(4) DISQUALIFICATION OF INDIVIDUALS ON TERRORIST WATCH LIST.—No individual who is on the terrorist watch list maintained by the Department of Homeland Security shall qualify as a screening-eligible WTC survivor or a certified-eligible WTC survivor. Before determining any individual to be a screening-eligible WTC survivor under paragraph (1) or certifying any individual as a certified eligible WTC survivor under paragraph (2), the Administrator, in consultation with the Secretary of Homeland Security, shall determine whether the individual is on such list.

Determination.

“(b) INITIAL HEALTH EVALUATION TO DETERMINE ELIGIBILITY FOR FOLLOWUP MONITORING OR TREATMENT.—

“(1) IN GENERAL.—In the case of a screening-eligible WTC survivor, the WTC Program shall provide for an initial health evaluation to determine if the survivor has a WTC-related health condition and is eligible for followup monitoring and treatment benefits under the WTC Program. Initial health evaluation protocols under section 3305(a)(2)(A)(ii) shall be subject to approval by the WTC Program Administrator.

“(2) INITIAL HEALTH EVALUATION PROVIDERS.—The initial health evaluation described in paragraph (1) shall be provided through a Clinical Center of Excellence with respect to the individual involved.

“(3) LIMITATION ON INITIAL HEALTH EVALUATION BENEFITS.—Benefits for an initial health evaluation under this part for a screening-eligible WTC survivor shall consist only of a single medical initial health evaluation consistent with initial health evaluation protocols described in paragraph (1). Nothing in this paragraph shall be construed as preventing such an individual from seeking additional medical initial health evaluations at the expense of the individual.

42 USC
300mm–32.

“SEC. 3322. FOLLOWUP MONITORING AND TREATMENT OF CERTIFIED-ELIGIBLE WTC SURVIVORS FOR WTC-RELATED HEALTH CONDITIONS.

Applicability.

“(a) IN GENERAL.—Subject to subsection (b), the provisions of sections 3311 and 3312 shall apply to followup monitoring and treatment of WTC-related health conditions for certified-eligible WTC survivors in the same manner as such provisions apply to the monitoring and treatment of WTC-related health conditions for enrolled WTC responders.

“(b) LIST OF WTC-RELATED HEALTH CONDITIONS FOR SURVIVORS.—The list of health conditions for screening-eligible WTC survivors and certified-eligible WTC survivors consists of the following:

“(1) AERODIGESTIVE DISORDERS.—

“(A) Interstitial lung diseases.

“(B) Chronic respiratory disorder—fumes/vapors.

“(C) Asthma.

“(D) Reactive airways dysfunction syndrome (RADS).

“(E) WTC-exacerbated chronic obstructive pulmonary disease (COPD).

“(F) Chronic cough syndrome.

“(G) Upper airway hyperreactivity.

“(H) Chronic rhinosinusitis.

“(I) Chronic nasopharyngitis.

“(J) Chronic laryngitis.

“(K) Gastroesophageal reflux disorder (GERD).

“(L) Sleep apnea exacerbated by or related to a condition described in a previous clause.

“(2) MENTAL HEALTH CONDITIONS.—

“(A) Posttraumatic stress disorder (PTSD).

“(B) Major depressive disorder.

“(C) Panic disorder.

“(D) Generalized anxiety disorder.

“(E) Anxiety disorder (not otherwise specified).

“(F) Depression (not otherwise specified).

“(G) Acute stress disorder.

“(H) Dysthymic disorder.

“(I) Adjustment disorder.

“(J) Substance abuse.

“(3) ADDITIONAL CONDITIONS.—Any cancer (or type of cancer) or other condition added to the list in section 3312(a)(3) pursuant to paragraph (5) or (6) of section 3312(a), as such provisions are applied under subsection (a) with respect to certified-eligible WTC survivors.

42 USC
300mm–33.

“SEC. 3323. FOLLOWUP MONITORING AND TREATMENT OF OTHER INDIVIDUALS WITH WTC-RELATED HEALTH CONDITIONS.

Applicability.

“(a) IN GENERAL.—Subject to subsection (c), the provisions of section 3322 shall apply to the followup monitoring and treatment of WTC-related health conditions in the case of individuals described in subsection (b) in the same manner as such provisions apply to the followup monitoring and treatment of WTC-related health conditions for certified-eligible WTC survivors.

“(b) INDIVIDUALS DESCRIBED.—An individual described in this subsection is an individual who, regardless of location of residence—

“(1) is not an enrolled WTC responder or a certified-eligible WTC survivor; and

“(2) is diagnosed at a Clinical Center of Excellence with a WTC-related health condition for certified-eligible WTC survivors.

“(c) LIMITATION.—

“(1) IN GENERAL.—The WTC Program Administrator shall limit benefits for any fiscal year under subsection (a) in a manner so that payments under this section for such fiscal year do not exceed the amount specified in paragraph (2) for such fiscal year.

“(2) LIMITATION.—The amount specified in this paragraph for—

“(A) the last calendar quarter of fiscal year 2011 is \$5,000,000;

“(B) fiscal year 2012 is \$20,000,000; or

“(C) a succeeding fiscal year is the amount specified in this paragraph for the previous fiscal year increased by the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

“PART 3—PAYOR PROVISIONS

“SEC. 3331. PAYMENT OF CLAIMS.

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), the cost of monitoring and treatment benefits and initial health evaluation benefits provided under parts 1 and 2 of this subtitle shall be paid for by the WTC Program from the World Trade Center Health Program Fund.

“(b) WORKERS’ COMPENSATION PAYMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), payment for treatment under parts 1 and 2 of this subtitle of a WTC-related health condition of an individual that is work-related shall be reduced or recouped to the extent that the WTC Program Administrator determines that payment has been made, or can reasonably be expected to be made, under a workers’ compensation law or plan of the United States, a State, or a locality, or other work-related injury or illness benefit plan of the employer of such individual, for such treatment. The provisions of clauses (iii), (iv), (v), and (vi) of paragraph (2)(B) of section 1862(b) of the Social Security Act and paragraphs (3) and (4) of such section shall apply to the recoupment under this subsection of a payment to the WTC Program (with respect to a workers’ compensation law or plan, or other work-related injury or illness plan of the employer involved, and such individual) in the same manner as such provisions apply to the reimbursement of a payment under section 1862(b)(2) of such Act to the Secretary (with respect to such a law or plan and an individual entitled to benefits under title XVIII of such Act) except that any reference in such paragraph (4) to payment rates under title XVIII of the Social Security Act shall be deemed a reference to payment rates under this title.

“(2) EXCEPTION.—Paragraph (1) shall not apply for any quarter, with respect to any workers’ compensation law or plan, including line of duty compensation, to which New York City is obligated to make payments, if, in accordance with terms specified under the contract under subsection (d)(1)(A),

42 USC
300mm–41.

Applicability.

New York City has made the full payment required under such contract for such quarter.

“(3) RULES OF CONSTRUCTION.—Nothing in this title shall be construed to affect, modify, or relieve any obligations under a worker’s compensation law or plan, other work-related injury or illness benefit plan of an employer, or any health insurance plan.

“(c) HEALTH INSURANCE COVERAGE.—

Applicability.

“(1) IN GENERAL.—In the case of an individual who has a WTC-related health condition that is not work-related and has health coverage for such condition through any public or private health plan (including health benefits under title XVIII, XIX, or XXI of the Social Security Act) the provisions of section 1862(b) of the Social Security Act shall apply to such a health plan and such individual in the same manner as they apply to group health plan and an individual entitled to benefits under title XVIII of such Act pursuant to section 226(a) of such Act. Any costs for items and services covered under such plan that are not reimbursed by such health plan, due to the application of deductibles, copayments, coinsurance, other cost sharing, or otherwise, are reimbursable under this title to the extent that they are covered under the WTC Program. The program under this title shall not be treated as a legally liable party for purposes of applying section 1902(a)(25) of the Social Security Act.

“(2) RECOVERY BY INDIVIDUAL PROVIDERS.—Nothing in paragraph (1) shall be construed as requiring an entity providing monitoring and treatment under this title to seek reimbursement under a health plan with which the entity has no contract for reimbursement.

“(3) MAINTENANCE OF REQUIRED MINIMUM ESSENTIAL COVERAGE.—No payment may be made for monitoring and treatment under this title for an individual for a month (beginning with July 2014) if with respect to such month the individual—

“(A) is an applicable individual (as defined in subsection (d) of section 5000A of Internal Revenue Code of 1986) for whom the exemption under subsection (e) of such section does not apply; and

“(B) is not covered under minimum essential coverage, as required under subsection (a) of such section.

“(d) REQUIRED CONTRIBUTION BY NEW YORK CITY IN PROGRAM COSTS.—

“(1) CONTRACT REQUIREMENT.—

“(A) IN GENERAL.—No funds may be disbursed from the World Trade Center Health Program Fund under section 3351 unless New York City has entered into a contract with the WTC Program Administrator under which New York City agrees, in a form and manner specified by the Administrator, to pay the full contribution described in subparagraph (B) in accordance with this subsection on a timely basis, plus any interest owed pursuant to subparagraph (E)(i). Such contract shall specify the terms under which New York City shall be considered to have made the full payment required for a quarter for purposes of subsection (b)(2).

“(B) FULL CONTRIBUTION AMOUNT.—Under such contract, with respect to the last calendar quarter of fiscal

year 2011 and each calendar quarter in fiscal years 2012 through 2015 the full contribution amount under this subparagraph shall be equal to 10 percent of the expenditures in carrying out this title for the respective quarter and with respect to calendar quarters in fiscal year 2016, such full contribution amount shall be equal to $\frac{1}{9}$ of the Federal expenditures in carrying out this title for the respective quarter.

“(C) SATISFACTION OF PAYMENT OBLIGATION.—The payment obligation under such contract may not be satisfied through any of the following:

“(i) An amount derived from Federal sources.

“(ii) An amount paid before the date of the enactment of this title.

“(iii) An amount paid to satisfy a judgment or as part of a settlement related to injuries or illnesses arising out of the September 11, 2001, terrorist attacks.

“(D) TIMING OF CONTRIBUTION.—The payment obligation under such contract for a calendar quarter in a fiscal year shall be paid not later than the last day of the second succeeding calendar quarter.

“(E) COMPLIANCE.—

“(i) INTEREST FOR LATE PAYMENT.—If New York City fails to pay to the WTC Program Administrator pursuant to such contract the amount required for any calendar quarter by the day specified in subparagraph (D), interest shall accrue on the amount not so paid at the rate (determined by the Administrator) based on the average yield to maturity, plus 1 percentage point, on outstanding municipal bonds issued by New York City with a remaining maturity of at least 1 year.

“(ii) RECOVERY OF AMOUNTS OWED.—The amounts owed to the WTC Program Administrator under such contract shall be recoverable by the United States in an action in the same manner as payments made under title XVIII of the Social Security Act may be recoverable in an action brought under section 1862(b)(2)(B)(iii) of such Act.

“(F) DEPOSIT IN FUND.—The WTC Program Administrator shall deposit amounts paid under such contract into the World Trade Center Health Program Fund under section 3351.

“(2) PAYMENT OF NEW YORK CITY SHARE OF MONITORING AND TREATMENT COSTS.—With respect to each calendar quarter for which a contribution is required by New York City under the contract under paragraph (1), the WTC Program Administrator shall—

“(A) provide New York City with an estimate of such amount of the required contribution at the beginning of such quarter and with an updated estimate of such amount at the beginning of each of the subsequent 2 quarters;

“(B) bill such amount directly to New York City; and

“(C) certify periodically, for purposes of this subsection, whether or not New York City has paid the amount so billed.

Certification.
Deadline.

Such amount shall initially be estimated by the WTC Program Administrator and shall be subject to adjustment and reconciliation based upon actual expenditures in carrying out this title.

“(3) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed as authorizing the WTC Administrator, with respect to a fiscal year, to reduce the numerical limitation under section 3311(a)(4) or 3321(a)(3) for such fiscal year if New York City fails to comply with paragraph (1) for a calendar quarter in such fiscal year.

“(e) **WORK-RELATED DESCRIBED.**—For the purposes of this section, a WTC-related health condition shall be treated as a condition that is work-related if—

“(1) the condition is diagnosed in an enrolled WTC responder, or in an individual who qualifies as a certified-eligible WTC survivor on the basis of being a rescue, recovery, or cleanup worker; or

“(2) with respect to the condition the individual has filed and had established a claim under a workers’ compensation law or plan of the United States or a State, or other work-related injury or illness benefit plan of the employer of such individual.

42 USC
300mm–42.

“SEC. 3332. ADMINISTRATIVE ARRANGEMENT AUTHORITY.

“The WTC Program Administrator may enter into arrangements with other government agencies, insurance companies, or other third-party administrators to provide for timely and accurate processing of claims under sections 3312, 3313, 3322, and 3323.

“Subtitle C—Research Into Conditions

42 USC
300mm–51.

“SEC. 3341. RESEARCH REGARDING CERTAIN HEALTH CONDITIONS RELATED TO SEPTEMBER 11 TERRORIST ATTACKS.

“(a) **IN GENERAL.**—With respect to individuals, including enrolled WTC responders and certified-eligible WTC survivors, receiving monitoring or treatment under subtitle B, the WTC Program Administrator shall conduct or support—

“(1) research on physical and mental health conditions that may be related to the September 11, 2001, terrorist attacks;

“(2) research on diagnosing WTC-related health conditions of such individuals, in the case of conditions for which there has been diagnostic uncertainty; and

“(3) research on treating WTC-related health conditions of such individuals, in the case of conditions for which there has been treatment uncertainty.

The Administrator may provide such support through continuation and expansion of research that was initiated before the date of the enactment of this title and through the World Trade Center Health Registry (referred to in section 3342), through a Clinical Center of Excellence, or through a Data Center.

“(b) **TYPES OF RESEARCH.**—The research under subsection (a)(1) shall include epidemiologic and other research studies on WTC-related health conditions or emerging conditions—

“(1) among enrolled WTC responders and certified-eligible WTC survivors under treatment; and

“(2) in sampled populations outside the New York City disaster area in Manhattan as far north as 14th Street and in Brooklyn, along with control populations, to identify potential for long-term adverse health effects in less exposed populations.

“(c) CONSULTATION.—The WTC Program Administrator shall carry out this section in consultation with the WTC Scientific/Technical Advisory Committee.

“(d) APPLICATION OF PRIVACY AND HUMAN SUBJECT PROTECTIONS.—The privacy and human subject protections applicable to research conducted under this section shall not be less than such protections applicable to research conducted or funded by the Department of Health and Human Services.

“SEC. 3342. WORLD TRADE CENTER HEALTH REGISTRY.

42 USC
300mm–52.

“For the purpose of ensuring ongoing data collection relating to victims of the September 11, 2001, terrorist attacks, the WTC Program Administrator shall ensure that a registry of such victims is maintained that is at least as comprehensive as the World Trade Center Health Registry maintained under the arrangements in effect as of April 20, 2009, with the New York City Department of Health and Mental Hygiene.

“Subtitle D—Funding

“SEC. 3351. WORLD TRADE CENTER HEALTH PROGRAM FUND.

42 USC
300mm–61.

“(a) ESTABLISHMENT OF FUND.—

“(1) IN GENERAL.—There is established a fund to be known as the World Trade Center Health Program Fund (referred to in this section as the ‘Fund’).

“(2) FUNDING.—Out of any money in the Treasury not otherwise appropriated, there shall be deposited into the Fund for each of fiscal years 2012 through 2016 (and the last calendar quarter of fiscal year 2011)—

“(A) the Federal share, consisting of an amount equal to the lesser of—

“(i) 90 percent of the expenditures in carrying out this title for the respective fiscal year (initially based on estimates, subject to subsequent reconciliation based on actual expenditures); or

“(ii)(I) \$71,000,000 for the last calendar quarter of fiscal year 2011, \$318,000,000 for fiscal year 2012, \$354,000,000 for fiscal year 2013, \$382,000,000 for fiscal year 2014, and \$431,000,000 for fiscal year 2015; and

“(II) subject to paragraph (4), an additional amount for fiscal year 2016 from unexpended amounts for previous fiscal years; plus

“(B) the New York City share, consisting of the amount contributed under the contract under section 3331(d).

“(3) CONTRACT REQUIREMENT.—

“(A) IN GENERAL.—No funds may be disbursed from the Fund unless New York City has entered into a contract with the WTC Program Administrator under section 3331(d)(1).

“(B) BREACH OF CONTRACT.—In the case of a failure to pay the amount so required under the contract—

“(i) the amount is recoverable under subparagraph (E)(ii) of such section;

“(ii) such failure shall not affect the disbursement of amounts from the Fund; and

“(iii) the Federal share described in paragraph (2)(A) shall not be increased by the amount so unpaid.

“(4) AGGREGATE LIMITATION ON FUNDING BEGINNING WITH FISCAL YEAR 2016.—Beginning with fiscal year 2016, in no case shall the share of Federal funds deposited into the Fund under paragraph (2) for such fiscal year and previous fiscal years and quarters exceed the sum of the amounts specified in paragraph (2)(A)(ii)(I).

“(b) MANDATORY FUNDS FOR MONITORING, INITIAL HEALTH EVALUATIONS, TREATMENT, AND CLAIMS PROCESSING.—

“(1) IN GENERAL.—The amounts deposited into the Fund under subsection (a)(2) shall be available, without further appropriation, consistent with paragraph (2) and subsection (c), to carry out subtitle B and sections 3302(a), 3303, 3304, 3305(a)(2), 3305(c), 3341, and 3342.

“(2) LIMITATION ON MANDATORY FUNDING.—This title does not establish any Federal obligation for payment of amounts in excess of the amounts available from the Fund for such purpose.

“(3) LIMITATION ON AUTHORIZATION FOR FURTHER APPROPRIATIONS.—This title does not establish any authorization for appropriation of amounts in excess of the amounts available from the Fund under paragraph (1).

“(c) LIMITS ON SPENDING FOR CERTAIN PURPOSES.—Of the amounts made available under subsection (b)(1), not more than each of the following amounts may be available for each of the following purposes:

“(1) SURVIVING IMMEDIATE FAMILY MEMBERS OF FIRE-FIGHTERS.—For the purposes of carrying out subtitle B with respect to WTC responders described in section 3311(a)(2)(A)(ii)—

“(A) for the last calendar quarter of fiscal year 2011, \$100,000;

“(B) for fiscal year 2012, \$400,000; and

“(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

“(2) WTC HEALTH PROGRAM SCIENTIFIC/TECHNICAL ADVISORY COMMITTEE.—For the purpose of carrying out section 3302(a)—

“(A) for the last calendar quarter of fiscal year 2011, \$25,000;

“(B) for fiscal year 2012, \$100,000; and

“(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

“(3) EDUCATION AND OUTREACH.—For the purpose of carrying out section 3303—

“(A) for the last calendar quarter of fiscal year 2011, \$500,000;

“(B) for fiscal year 2012, \$2,000,000; and

“(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

“(4) UNIFORM DATA COLLECTION.—For the purpose of carrying out section 3304 and for reimbursing Data Centers (as defined in section 3305(b)(2)) for the costs incurred by such Centers in carrying out activities under contracts entered into under section 3305(a)(2)—

“(A) for the last calendar quarter of fiscal year 2011, \$2,500,000;

“(B) for fiscal year 2012, \$10,000,000; and

“(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

“(5) RESEARCH REGARDING CERTAIN HEALTH CONDITIONS.—For the purpose of carrying out section 3341—

“(A) for the last calendar quarter of fiscal year 2011, \$3,750,000;

“(B) for fiscal year 2012, \$15,000,000; and

“(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

“(6) WORLD TRADE CENTER HEALTH REGISTRY.—For the purpose of carrying out section 3342—

“(A) for the last calendar quarter of fiscal year 2011, \$1,750,000;

“(B) for fiscal year 2012, \$7,000,000; and

“(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.”.

TITLE II—SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001

SEC. 201. DEFINITIONS.

Section 402 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in paragraph (6) by inserting “, or debris removal, including under the World Trade Center Health Program established under section 3001 of the Public Health Service Act,

and payments made pursuant to the settlement of a civil action described in section 405(c)(3)(C)(iii)” after “September 11, 2001”;

(2) by inserting after paragraph (6) the following new paragraphs and redesignating subsequent paragraphs accordingly:

“(7) CONTRACTOR AND SUBCONTRACTOR.—The term ‘contractor and subcontractor’ means any contractor or subcontractor (at any tier of a subcontracting relationship), including any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated or allied company, affiliated company, corporation, firm, organization, or joint venture thereof that participated in debris removal at any 9/11 crash site. Such term shall not include any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect.

“(8) DEBRIS REMOVAL.—The term ‘debris removal’ means rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of September 11, 2001, with respect to a 9/11 crash site.”;

(3) by inserting after paragraph (10), as so redesignated, the following new paragraph and redesignating the subsequent paragraphs accordingly:

“(11) IMMEDIATE AFTERMATH.—The term ‘immediate aftermath’ means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002.”; and

(4) by adding at the end the following new paragraph:

“(14) 9/11 CRASH SITE.—The term ‘9/11 crash site’ means—

“(A) the World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site;

“(B) the buildings or portions of buildings that were destroyed as a result of the terrorist-related aircraft crashes of September 11, 2001;

“(C) any area contiguous to a site of such crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); and

“(D) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.”.

SEC. 202. EXTENDED AND EXPANDED ELIGIBILITY FOR COMPENSATION.

(a) INFORMATION ON LOSSES RESULTING FROM DEBRIS REMOVAL INCLUDED IN CONTENTS OF CLAIM FORM.—Section 405(a)(2)(B) of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in clause (i), by inserting “, or debris removal during the immediate aftermath” after “September 11, 2001”;

(2) in clause (ii), by inserting “or debris removal during the immediate aftermath” after “crashes”; and

(3) in clause (iii), by inserting “or debris removal during the immediate aftermath” after “crashes”.

(b) EXTENSION OF DEADLINE FOR CLAIMS UNDER SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001.—Section 405(a)(3) of such Act is amended to read as follows:

49 USC 40101
note.

“(3) LIMITATION.—

“(A) IN GENERAL.—Except as provided by subparagraph (B), no claim may be filed under paragraph (1) after the date that is 2 years after the date on which regulations are promulgated under section 407(a).

“(B) EXCEPTION.—A claim may be filed under paragraph (1), in accordance with subsection (c)(3)(A)(i), by an individual (or by a personal representative on behalf of a deceased individual) during the period beginning on the date on which the regulations are updated under section 407(b) and ending on the date that is 5 years after the date on which such regulations are updated.”.

Time period.

(c) REQUIREMENTS FOR FILING CLAIMS DURING EXTENDED FILING PERIOD.—Section 405(c)(3) of such Act is amended—

49 USC
40101 note.

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(2) by inserting before subparagraph (B), as so redesignated, the following new subparagraph:

“(A) REQUIREMENTS FOR FILING CLAIMS DURING EXTENDED FILING PERIOD.—

“(i) TIMING REQUIREMENTS FOR FILING CLAIMS.—An individual (or a personal representative on behalf of a deceased individual) may file a claim during the period described in subsection (a)(3)(B) as follows:

“(I) In the case that the Special Master determines the individual knew (or reasonably should have known) before the date specified in clause (iii) that the individual suffered a physical harm at a 9/11 crash site as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal, and that the individual knew (or should have known) before such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the date that is 2 years after such specified date.

“(II) In the case that the Special Master determines the individual first knew (or reasonably should have known) on or after the date specified in clause (iii) that the individual suffered such a physical harm or that the individual first knew (or should have known) on or after such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the last day of the 2-year period beginning on the date the Special Master determines the individual first knew (or should have known) that the individual both suffered from such harm and was eligible to file a claim under this title.

“(ii) OTHER ELIGIBILITY REQUIREMENTS FOR FILING CLAIMS.—An individual may file a claim during the period described in subsection (a)(3)(B) only if—

“(I) the individual was treated by a medical professional for suffering from a physical harm described in clause (i)(I) within a reasonable time from the date of discovering such harm; and

“(II) the individual’s physical harm is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care.

“(iii) DATE SPECIFIED.—The date specified in this clause is the date on which the regulations are updated under section 407(a).”.

49 USC
40101 note.

(d) CLARIFYING APPLICABILITY TO ALL 9/11 CRASH SITES.—Section 405(c)(2)(A)(i) of such Act is amended by striking “or the site of the aircraft crash at Shanksville, Pennsylvania” and inserting “the site of the aircraft crash at Shanksville, Pennsylvania, or any other 9/11 crash site”.

49 USC
40101 note.

(e) INCLUSION OF PHYSICAL HARM RESULTING FROM DEBRIS REMOVAL.—Section 405(c) of such Act is amended in paragraph (2)(A)(ii), by inserting “or debris removal” after “air crash”.

(f) LIMITATIONS ON CIVIL ACTIONS.—

49 USC
40101 note.

(1) APPLICATION TO DAMAGES RELATED TO DEBRIS REMOVAL.—Clause (i) of section 405(c)(3)(C) of such Act, as redesignated by subsection (c), is amended by inserting “, or for damages arising from or related to debris removal” after “September 11, 2001”.

(2) PENDING ACTIONS.—Clause (ii) of such section, as so redesignated, is amended to read as follows:

“(ii) PENDING ACTIONS.—In the case of an individual who is a party to a civil action described in clause (i), such individual may not submit a claim under this title—

“(I) during the period described in subsection (a)(3)(A) unless such individual withdraws from such action by the date that is 90 days after the date on which regulations are promulgated under section 407(a); and

“(II) during the period described in subsection (a)(3)(B) unless such individual withdraws from such action by the date that is 90 days after the date on which the regulations are updated under section 407(b).”.

(3) SETTLED ACTIONS.—Such section, as so redesignated, is further amended by adding at the end the following new clause:

“(iii) SETTLED ACTIONS.—In the case of an individual who settled a civil action described in clause (i), such individual may not submit a claim under this title unless such action was commenced after December 22, 2003, and a release of all claims in such action was tendered prior to the date on which the James Zadroga 9/11 Health and Compensation Act of 2010 was enacted.”.

SEC. 203. REQUIREMENT TO UPDATE REGULATIONS.

Section 407 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) by striking “Not later than” and inserting “(a) IN GENERAL.—Not later than”; and

(2) by adding at the end the following new subsection:

“(b) UPDATED REGULATIONS.—Not later than 180 days after the date of the enactment of the James Zadroga 9/11 Health and Compensation Act of 2010, the Special Master shall update the regulations promulgated under subsection (a) to the extent necessary to comply with the provisions of title II of such Act.”.

Deadline.

SEC. 204. LIMITED LIABILITY FOR CERTAIN CLAIMS.

Section 408(a) of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended by adding at the end the following new paragraphs:

“(4) LIABILITY FOR CERTAIN CLAIMS.—Notwithstanding any other provision of law, liability for all claims and actions (including claims or actions that have been previously resolved, that are currently pending, and that may be filed) for compensatory damages, contribution or indemnity, or any other form or type of relief, arising from or related to debris removal, against the City of New York, any entity (including the Port Authority of New York and New Jersey) with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect) and any contractors and subcontractors, shall not be in an amount that exceeds the sum of the following, as may be applicable:

“(A) The amount of funds of the WTC Captive Insurance Company, including the cumulative interest.

“(B) The amount of all available insurance identified in schedule 2 of the WTC Captive Insurance Company insurance policy.

“(C) As it relates to the limitation of liability of the City of New York, the amount that is the greater of the City of New York’s insurance coverage or \$350,000,000. In determining the amount of the City’s insurance coverage for purposes of the previous sentence, any amount described in subparagraphs (A) and (B) shall not be included.

“(D) As it relates to the limitation of liability of any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect), the amount of all available liability insurance coverage maintained by any such entity.

“(E) As it relates to the limitation of liability of any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such contractor or subcontractor on September 11, 2001.

“(5) PRIORITY OF CLAIMS PAYMENTS.—Payments to plaintiffs who obtain a settlement or judgment with respect to a claim or action to which paragraph (4) applies, shall be paid solely from the following funds in the following order, as may be applicable:

Applicability.

“(A) The funds described in subparagraph (A) or (B) of paragraph (4).

“(B) If there are no funds available as described in subparagraph (A) or (B) of paragraph (4), the funds described in subparagraph (C) of such paragraph.

“(C) If there are no funds available as described in subparagraph (A), (B), or (C) of paragraph (4), the funds described in subparagraph (D) of such paragraph.

“(D) If there are no funds available as described in subparagraph (A), (B), (C), or (D) of paragraph (4), the funds described in subparagraph (E) of such paragraph.

“(6) DECLARATORY JUDGMENT ACTIONS AND DIRECT ACTION.—Any claimant to a claim or action to which paragraph (4) applies may, with respect to such claim or action, either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved, except that no such action for declaratory judgment or direct action may be commenced until after the funds available in subparagraph (A), (B), (C), and (D) of paragraph (5) have been exhausted consistent with the order described in such paragraph for payment.”.

SEC. 205. FUNDING; ATTORNEY FEES.

Section 406 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in subsection (a), by striking “Not later than” and inserting “Subject to the limitations under subsection (d), not later than”;

(2) in subsection (b)—

(A) by inserting “in the amounts provided under subsection (d)(1)” after “appropriations Acts”; and

(B) by inserting “subject to the limitations under subsection (d)” before the period; and

(3) by adding at the end the following new subsections:

“(d) LIMITATION.—

“(1) IN GENERAL.—The total amount of Federal funds paid for compensation under this title, with respect to claims filed on or after the date on which the regulations are updated under section 407(b), shall not exceed \$2,775,000,000. Of such amounts, not to exceed \$875,000,000 shall be available to pay such claims during the 5-year period beginning on such date.

“(2) PRO-RATION AND PAYMENT OF REMAINING CLAIMS.—

“(A) IN GENERAL.—The Special Master shall ratably reduce the amount of compensation due claimants under this title in a manner to ensure, to the extent possible, that—

“(i) all claimants who, before application of the limitation under the second sentence of paragraph (1), would have been determined to be entitled to a payment under this title during such 5-year period, receive a payment during such period; and

“(ii) the total amount of all such payments made during such 5-year period do not exceed the amount available under the second sentence of paragraph (1) to pay claims during such period.

“(B) PAYMENT OF REMAINDER OF CLAIM AMOUNTS.—In any case in which the amount of a claim is ratably reduced pursuant to subparagraph (A), on or after the first day after the 5-year period described in paragraph

Time period.

Time period.

Deadline.

(1), but in no event later than 1 year after such 5-year period, the Special Master shall pay to the claimant the amount that is equal to the difference between—

“(i) the amount that the claimant would have been paid under this title during such period without regard to the limitation under the second sentence of paragraph (1) applicable to such period; and

“(ii) the amount the claimant was paid under this title during such period.

“(C) TERMINATION.—Upon completion of all payments pursuant to this subsection, the Victim’s Compensation Fund shall be permanently closed.

“(e) ATTORNEY FEES.—

“(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not charge, for services rendered in connection with the claim of an individual under this title, more than 10 percent of an award made under this title on such claim.

“(2) LIMITATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of an individual who was charged a legal fee in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii), the representative of the individual may not charge any amount for compensation for services rendered in connection with a claim filed under this title.

“(B) EXCEPTION.—If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of an individual is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement, the representative of such individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than—

“(i) 10 percent of such aggregate amount through the settlement, minus

“(ii) the total amount of all legal fees charged for services rendered in connection with such settlement.

“(3) DISCRETION TO LOWER FEE.—In the event that the special master finds that the fee limit set by paragraph (1) or (2) provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted for in paragraph (1).”.

TITLE III—REVENUE RELATED PROVISIONS

SEC. 301. EXCISE TAX ON CERTAIN FOREIGN PROCUREMENT.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

“CHAPTER 50—FOREIGN PROCUREMENT

“Sec. 5000C. Imposition of tax on certain foreign procurement.

26 USC 5000C. **“SEC. 5000C. IMPOSITION OF TAX ON CERTAIN FOREIGN PROCUREMENT.**

Definition.

“(a) IMPOSITION OF TAX.—There is hereby imposed on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment.

“(b) SPECIFIED FEDERAL PROCUREMENT PAYMENT.—For purposes of this section, the term ‘specified Federal procurement payment’ means any payment made pursuant to a contract with the Government of the United States for—

“(1) the provision of goods, if such goods are manufactured or produced in any country which is not a party to an international procurement agreement with the United States, or

“(2) the provision of services, if such services are provided in any country which is not a party to an international procurement agreement with the United States.

“(c) FOREIGN PERSON.—For purposes of this section, the term ‘foreign person’ means any person other than a United States person.

“(d) ADMINISTRATIVE PROVISIONS.—

“(1) WITHHOLDING.—The amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed by this section on such payment.

“(2) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.”.

(2) CLERICAL AMENDMENT.—The table of chapters for subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“CHAPTER 50—FOREIGN PROCUREMENT”.

Applicability.
26 USC 5000C
note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments received pursuant to contracts entered into on and after the date of the enactment of this Act.

26 USC 5000C
note.

(b) PROHIBITION ON REIMBURSEMENT OF FEES.—

(1) IN GENERAL.—The head of each executive agency shall take any and all measures necessary to ensure that no funds are disbursed to any foreign contractor in order to reimburse the tax imposed under section 5000C of the Internal Revenue Code of 1986.

(2) ANNUAL REVIEW.—The Administrator for Federal Procurement Policy shall annually review the contracting activities of each executive agency to monitor compliance with the requirements of paragraph (1).

Definition.

(3) EXECUTIVE AGENCY.—For purposes of this subsection, the term “executive agency” has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

26 USC 5000C
note.

(c) APPLICATION.—This section and the amendments made by this section shall be applied in a manner consistent with United States obligations under international agreements.

SEC. 302. RENEWAL OF FEES FOR VISA-DEPENDENT EMPLOYERS.

Subsections (a), (b), and (c) of section 402 of Public Law 111–230 are amended by striking “2014” each place that such appears and inserting “2015”. *Ante*, p. 2487.

TITLE IV—BUDGETARY EFFECTS**SEC. 401. COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved January 2, 2011.

LEGISLATIVE HISTORY—H.R. 847:

HOUSE REPORTS: No. 111–560, Pt. 1 (Comm. on Energy and Commerce) and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 29, considered and failed House.

Sept. 29, considered and passed House.

Dec. 22, considered and passed Senate, amended. House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2011):

Jan. 2, Presidential statement.



Public Law 111–348
111th Congress

An Act

Jan. 4, 2011
[H.R. 81]

To amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—SHARK CONSERVATION ACT OF 2010

Sec. 101. Short title.

Sec. 102. Amendment of the High Seas Driftnet Fishing Moratorium Protection Act.

Sec. 103. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

Sec. 104. Offset of implementation cost.

TITLE II—INTERNATIONAL FISHERIES AGREEMENT

Sec. 201. Short title.

Sec. 202. International Fishery Agreement.

Sec. 203. Application with other laws.

Sec. 204. Effective date.

TITLE III—MISCELLANEOUS

Sec. 301. Technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.

Sec. 302. Pacific Whiting Act of 2006.

Sec. 303. Replacement vessel.

**TITLE I—SHARK CONSERVATION ACT
OF 2010**

Shark
Conservation Act
of 2010.

16 USC 1801
note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Shark Conservation Act of 2010”.

SEC. 102. AMENDMENT OF HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.

(a) **ACTIONS TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.**—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking “and” at the end;

(B) in subparagraph (E), by inserting “and” after the semicolon; and

(C) by adding at the end the following:

“(F) to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea;”;

(2) in paragraph (2), by striking “and” at the end;

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following:

“(3) seeking to enter into international agreements that require measures for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that are comparable to those of the United States, taking into account different conditions; and”.

(b) ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—Subparagraph (A) of section 609(e)(3) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(e)(3)) is amended—

(1) by striking the “and” before “bycatch reduction requirements”; and

(2) by striking the semicolon at the end and inserting “, and shark conservation measures;”.

(c) EQUIVALENT CONSERVATION MEASURES.—

(1) IDENTIFICATION.—Subsection (a) of section 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k) is amended—

(A) in the matter preceding paragraph (1), by striking “607, a nation if—” and inserting “607—”;

(B) in paragraph (1)—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(ii) by moving clauses (i) and (ii) (as so redesignated) 2 ems to the right;

(C) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(D) by moving subparagraphs (A) through (C) (as so redesignated) 2 ems to the right;

(E) by inserting before subparagraph (A) (as so redesignated) the following:

“(1) a nation if—”;

(F) in subparagraph (C) (as so redesignated) by striking the period at the end and inserting “; and”; and

(G) by adding at the end the following:

“(2) a nation if—

“(A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

“(B) the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.”.

(2) INITIAL IDENTIFICATIONS.—The Secretary of Commerce shall begin making identifications under paragraph (2) of section 610(a) of the High Seas Driftnet Fishing Moratorium

Deadline.
16 USC 1826k
note.

Protection Act (16 U.S.C. 1826k(a)), as added by paragraph (1)(G), not later than 1 year after the date of the enactment of this Act.

SEC. 103. AMENDMENT OF MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT.

(a) **IN GENERAL.**—Paragraph (1) of section 307 of Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) by amending subparagraph (P) to read as follows:

“(P)(i) to remove any of the fins of a shark (including the tail) at sea;

“(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

“(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

“(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;”;

(2) by striking the matter following subparagraph (R) and inserting the following:

“For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term ‘naturally attached’, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.”

Definition.

16 USC 1857
note.

(b) **SAVINGS CLAUSE.**—

“(1) **IN GENERAL.**—The amendments made by subsection (a) do not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.

(2) **DEFINITIONS.**—In this subsection:

(A) **COMMERCIAL FISHING.**—The term “commercial fishing” has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(B) **STATE.**—The term “State” has the meaning given that term in section 803 of Public Law 103-206 (16 U.S.C. 5102).

SEC. 104. OFFSET OF IMPLEMENTATION COST.

Section 308(a) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(a)) is amended by striking “2012.” and inserting “2010, and \$2,500,000 for each of fiscal years 2011 and 2012.”.

TITLE II—INTERNATIONAL FISHERIES AGREEMENT

International
Fisheries
Agreement
Clarification Act.

SEC. 201. SHORT TITLE.

This title may be cited as the “International Fisheries Agreement Clarification Act”.

16 USC 1854
note.

SEC. 202. INTERNATIONAL FISHERY AGREEMENT.

Consistent with the intent of provisions of the Magnuson-Stevens Fishery and Conservation and Management Act relating to international agreements, the Secretary of Commerce and the New England Fishery Management Council may, for the purpose of rebuilding those portions of fish stocks covered by the United States-Canada Transboundary Resource Sharing Understanding on the date of enactment of this Act—

16 USC 1854
note.

(1) take into account the Understanding and decisions made under that Understanding in the application of section 304(e)(4)(A)(i) of the Act (16 U.S.C. 1854(e)(4)(A)(i));

(2) consider decisions made under that Understanding as “management measures under an international agreement” that “dictate otherwise” for purposes of section 304(e)(4)(A)(ii) of the Act (16 U.S.C. 1854(e)(4)(A)(ii)); and

(3) establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act that exceed the catch levels otherwise required under the Northeast Multi-species Fishery Management Plan if—

(A) overfishing is ended immediately;

(B) the fishing mortality level ensures rebuilding within a time period for rebuilding specified taking into account the Understanding pursuant to paragraphs (1) and (2) of this subsection; and

(C) such catch levels are consistent with that Understanding.

SEC. 203. APPLICATION WITH OTHER LAWS.

Nothing in this title shall be construed to amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) or to limit or otherwise alter the authority of the Secretary of Commerce under that Act concerning other species.

16 USC 1854
note.

SEC. 204. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), section 202 shall apply with respect to fishing years beginning after April 30, 2010.

16 USC 1854
note.

(b) SPECIAL RULE.—Section 202(3)(B) shall only apply with respect to fishing years beginning after April 30, 2012.

Applicability.

TITLE III—MISCELLANEOUS

SEC. 301. TECHNICAL CORRECTIONS TO THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT.

Section 503 of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6902) is amended—

(1) by striking “Management Council and” in subsection (a) and inserting “Management Council, and one of whom shall be the chairman or a member of”;

(2) by striking subsection (c)(1) and inserting the following:

“(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”; and

(3) by striking subsection (d)(2)(B)(ii) and inserting the following:

“(ii) shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”.

SEC. 302. PACIFIC WHITING ACT OF 2006.

(a) SCIENTIFIC EXPERTS.—Section 605(a)(1) of the Pacific Whiting Act of 2006 (16 U.S.C. 7004(a)(1)) is amended by striking “at least 6 but not more than 12” inserting “no more than 2”.

(b) EMPLOYMENT STATUS.—Section 609(a) of the Pacific Whiting Act of 2006 (16 U.S.C. 7008(a)) is amended to read as follows:

“(a) EMPLOYMENT STATUS.—Individuals appointed under section 603, 604, 605, or 606 of this title, other than officers or employees of the United States Government, shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”.

SEC. 303. REPLACEMENT VESSEL.

Notwithstanding any other provision of law, the Secretary of Commerce may promulgate regulations that allow for the replacement or rebuilding of a vessel qualified under subsections (a)(7) and (g)(1)(A) of section 219 of the Department of Commerce and

Related Agencies Appropriations Act, 2005 (Public Law 108–447;
188 Stat. 886–891).

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 81 (S. 850):

SENATE REPORTS: No. 111–124 (Commerce, Science and Transportation) accompanying S. 850.

CONGRESSIONAL RECORD:

Vol. 155 (2009): Mar. 2, considered and passed House.

Vol. 156 (2010): Dec. 20, considered and passed Senate, amended.

Dec. 21, House concurred in Senate amendment.



Public Law 111–349
111th Congress

An Act

Jan. 4, 2011
[H.R. 628]

To establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

28 USC 137 note.

SECTION 1. PILOT PROGRAM IN CERTAIN DISTRICT COURTS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a program, in each of the United States district courts designated under subsection (b), under which—

(A) those district judges of that district court who request to hear cases under which 1 or more issues arising under any Act of Congress relating to patents or plant variety protection are required to be decided, are designated by the chief judge of the court to hear those cases;

(B) cases described in subparagraph (A) are randomly assigned to the judges of the district court, regardless of whether the judges are designated under subparagraph (A);

(C) a judge not designated under subparagraph (A) to whom a case is assigned under subparagraph (B) may decline to accept the case; and

(D) a case declined under subparagraph (C) is randomly reassigned to 1 of those judges of the court designated under subparagraph (A).

(2) SENIOR JUDGES.—Senior judges of a district court may be designated under paragraph (1)(A) if at least 1 judge of the court in regular active service is also so designated.

(3) RIGHT TO TRANSFER CASES PRESERVED.—This section shall not be construed to limit the ability of a judge to request the reassignment of or otherwise transfer a case to which the judge is assigned under this section, in accordance with otherwise applicable rules of the court.

(b) DESIGNATION.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall designate not less than 6 United States district courts, in at least 3 different judicial circuits, in which the program established under subsection (a) will be carried out.

(2) CRITERIA FOR DESIGNATIONS.—

(A) IN GENERAL.—The Director shall make designations under paragraph (1) from—

Deadline.

(i) the 15 district courts in which the largest number of patent and plant variety protection cases were filed in the most recent calendar year that has ended; or

(ii) the district courts that have adopted, or certified to the Director the intention to adopt, local rules for patent and plant variety protection cases.

(B) SELECTION OF COURTS.—From amongst the district courts that satisfy the criteria for designation under this subsection, the Director shall select—

(i) 3 district courts that each have at least 10 district judges authorized to be appointed by the President, whether under section 133(a) of title 28, United States Code, or on a temporary basis under any other provision of law, and at least 3 judges of the court have made the request under subsection (a)(1)(A); and

(ii) 3 district courts that each have fewer than 10 district judges authorized to be appointed by the President, whether under section 133(a) of title 28, United States Code, or on a temporary basis under any other provision of law, and at least 2 judges of the court have made the request under subsection (a)(1)(A).

(c) DURATION.—The program established under subsection (a) shall terminate 10 years after the end of the 6-month period described in subsection (b).

(d) APPLICABILITY.—The program established under subsection (a) shall apply in a district court designated under subsection (b) only to cases commenced on or after the date of such designation.

(e) REPORTS TO CONGRESS.—

(1) IN GENERAL.—At the times specified in paragraph (2), the Director of the Administrative Office of the United States Courts, in consultation with the chief judge of each of the district courts designated under subsection (b) and the Director of the Federal Judicial Center, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the pilot program established under subsection (a). The report shall include—

(A) an analysis of the extent to which the program has succeeded in developing expertise in patent and plant variety protection cases among the district judges of the district courts so designated;

(B) an analysis of the extent to which the program has improved the efficiency of the courts involved by reason of such expertise;

(C) with respect to patent cases handled by the judges designated pursuant to subsection (a)(1)(A) and judges not so designated, a comparison between the 2 groups of judges with respect to—

(i) the rate of reversal by the Court of Appeals for the Federal Circuit, of such cases on the issues of claim construction and substantive patent law; and

(ii) the period of time elapsed from the date on which a case is filed to the date on which trial begins or summary judgment is entered;

(D) a discussion of any evidence indicating that litigants select certain of the judicial districts designated under subsection (b) in an attempt to ensure a given outcome; and

(E) an analysis of whether the pilot program should be extended to other district courts, or should be made permanent and apply to all district courts.

(2) TIMETABLE FOR REPORTS.—The times referred to in paragraph (1) are—

(A) not later than the date that is 5 years and 3 months after the end of the 6-month period described in subsection (b); and

(B) not later than 5 years after the date described in subparagraph (A).

(3) PERIODIC REPORTS.—The Director of the Administrative Office of the United States Courts, in consultation with the chief judge of each of the district courts designated under subsection (b) and the Director of the Federal Judicial Center, shall keep the committees referred to in paragraph (1) informed, on a periodic basis while the pilot program is in effect, with respect to the matters referred to in subparagraphs (A) through (E) of paragraph (1).

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 628:

CONGRESSIONAL RECORD:

Vol. 155 (2009): Mar. 17, considered and passed House.

Vol. 156 (2010): Dec. 13, considered and passed Senate, amended.

Dec. 16, 17, House considered and concurred in Senate amendment.



Public Law 111–350
111th Congress

An Act

To enact certain laws relating to public contracts as title 41, United States Code,
“Public Contracts”.

Jan. 4, 2011

[H.R. 1107]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; conformity with original intent.
- Sec. 3. Enactment of Title 41, United States Code.
- Sec. 4. Conforming amendment.
- Sec. 5. Conforming cross-references.
- Sec. 6. Transitional and savings provisions.
- Sec. 7. Repeals.

SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.

41 USC note
prec. 101.

(a) **PURPOSE.**—The purpose of this Act is to enact certain laws relating to public contracts as title 41, United States Code, “Public Contracts”.

(b) **CONFORMITY WITH ORIGINAL INTENT.**—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).

SEC. 3. ENACTMENT OF TITLE 41, UNITED STATES CODE.

41 USC note
prec. 101.

Certain general and permanent laws of the United States, related to public contracts, are revised, codified, and enacted as title 41, United States Code, “Public Contracts”, as follows:

TITLE 41—PUBLIC CONTRACTS

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I. FEDERAL PROCUREMENT POLICY	101
II. OTHER ADVERTISING AND CONTRACT PROVISIONS	6101
III. CONTRACT DISPUTES	7101
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DIVISION A—GENERAL

CHAPTER 1—DEFINITIONS

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SUBCHAPTER I—SUBTITLE DEFINITIONS

§ 101. Administrator

In this subtitle, the term “Administrator” means the Administrator for Federal Procurement Policy appointed under section 1102 of this title.

§ 102. Commercial component

In this subtitle, the term “commercial component” means a component that is a commercial item.

§ 103. Commercial item

In this subtitle, the term “commercial item” means—

- (1) an item, other than real property, that—
 - (A) is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes; and
 - (B) has been sold, leased, or licensed, or offered for sale, lease, or license, to the general public;
- (2) an item that—
 - (A) evolved from an item described in paragraph (1) through advances in technology or performance; and
 - (B) is not yet available in the commercial marketplace but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Federal Government solicitation;
- (3) an item that would satisfy the criteria in paragraph (1) or (2) were it not for—
 - (A) modifications of a type customarily available in the commercial marketplace; or
 - (B) minor modifications made to meet Federal Government requirements;
- (4) any combination of items meeting the requirements of paragraph (1), (2), (3), or (5) that are of a type customarily combined and sold in combination to the general public;
- (5) installation services, maintenance services, repair services, training services, and other services if—
 - (A) those services are procured for support of an item referred to in paragraph (1), (2), (3), or (4), regardless of whether the services are provided by the same source or at the same time as the item; and
 - (B) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions;
- (7) any item, combination of items, or service referred to in paragraphs (1) to (6) even though the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
- (8) a nondevelopmental item if the procuring agency determines, in accordance with conditions in the Federal Acquisition Regulation, that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple State and local governments.

§ 104. Commercially available off-the-shelf item

In this subtitle, the term “commercially available off-the-shelf item”—

- (1) means an item that—
 - (A) is a commercial item (as described in section 103(1) of this title);
 - (B) is sold in substantial quantities in the commercial marketplace; and

(C) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace; but

(2) does not include bulk cargo, as defined in section 40102(4) of title 46, such as agricultural products and petroleum products.

§ 105. Component

In this subtitle, the term “component” means an item supplied to the Federal Government as part of an end item or of another component.

§ 106. Federal Acquisition Regulation

In this subtitle, the term “Federal Acquisition Regulation” means the regulation issued under section 1303(a)(1) of this title.

§ 107. Full and open competition

In this subtitle, the term “full and open competition”, when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement.

§ 108. Item and item of supply

In this subtitle, the terms “item” and “item of supply”—

(1) mean an individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, including spare parts and replenishment spare parts; but

(2) do not include packaging or labeling associated with shipment or identification of an item.

§ 109. Major system

(a) IN GENERAL.—In this subtitle, the term “major system” means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. These elements may include hardware, equipment, software, or a combination of hardware, equipment, and software, but do not include construction or other improvements to real property.

(b) SYSTEM DEEMED TO BE MAJOR SYSTEM.—A system is deemed to be a major system if—

(1) the Department of Defense is responsible for the system and the total expenditures for research, development, testing, and evaluation for the system are estimated to exceed \$75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds \$300,000,000 (based on fiscal year 1980 constant dollars);

(2) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed the greater of \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a major system established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled “Major Systems Acquisitions”; or

(3) the head of the agency responsible for the system designates the system a major system.

§ 110. Nondevelopmental item

In this subtitle, the term “nondevelopmental item” means—

- (1) a commercial item;
- (2) a previously developed item of supply that is in use by a department or agency of the Federal Government, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
- (3) an item of supply described in paragraph (1) or (2) that requires only minor modification or modification of the type customarily available in the commercial marketplace to meet the requirements of the procuring department or agency; or
- (4) an item of supply currently being produced that does not meet the requirements of paragraph (1), (2), or (3) solely because the item is not yet in use.

§ 111. Procurement

In this subtitle, the term “procurement” includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

§ 112. Procurement system

In this subtitle, the term “procurement system” means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function.

§ 113. Responsible source

In this subtitle, the term “responsible source” means a prospective contractor that—

- (1) has adequate financial resources to perform the contract or the ability to obtain those resources;
- (2) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;
- (3) has a satisfactory performance record;
- (4) has a satisfactory record of integrity and business ethics;
- (5) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain the organization, experience, controls, and skills;
- (6) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain the equipment and facilities; and
- (7) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

§ 114. Standards

In this subtitle, the term “standards” means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of the system.

§ 115. Supplies

In this subtitle, the term “supplies” has the same meaning as the terms “item” and “item of supply”.

§ 116. Technical data

In this subtitle, the term “technical data”—

- (1) means recorded information (regardless of the form or method of the recording) of a scientific or technical nature

(including computer software documentation) relating to supplies procured by an agency; but

(2) does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

SUBCHAPTER II—DIVISION B DEFINITIONS

§ 131. Acquisition

In division B, the term “acquisition”—

(1) means the process of acquiring, with appropriated amounts, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

(2) includes—

(A) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;

(B) the description of requirements to satisfy agency needs;

(C) solicitation and selection of sources;

(D) award of contracts;

(E) contract performance;

(F) contract financing;

(G) management and measurement of contract performance through final delivery and payment; and

(H) technical and management functions directly related to the process of fulfilling agency requirements by contract.

§ 132. Competitive procedures

In division B, the term “competitive procedures” means procedures under which an agency enters into a contract pursuant to full and open competition.

§ 133. Executive agency

In division B, the term “executive agency” means—

(1) an executive department specified in section 101 of title 5;

(2) a military department specified in section 102 of title 5;

(3) an independent establishment as defined in section 104(1) of title 5; and

(4) a wholly owned Government corporation fully subject to chapter 91 of title 31.

§ 134. Simplified acquisition threshold

In division B, the term “simplified acquisition threshold” means \$100,000.

SUBCHAPTER III—DIVISION C DEFINITIONS

§ 151. Agency head

In division C, the term “agency head” means the head or any assistant head of an executive agency, and may at the option of the Administrator of General Services include the chief official

of any principal organizational unit of the General Services Administration.

§ 152. Competitive procedures

In division C, the term “competitive procedures” means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes—

- (1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;
- (2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of those proposals;
- (3) the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration if—
 - (A) participation in the program has been open to all responsible sources; and
 - (B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government;
- (4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for those procurements are permitted to compete; and
- (5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of that Act (15 U.S.C. 638).

§ 153. Simplified acquisition threshold for contract in support of humanitarian or peacekeeping operation

(1) IN GENERAL.—In division C, the term “simplified acquisition threshold” has the meaning provided that term in section 134 of this title, except that, in the case of a contract to be awarded and performed, or purchase to be made, outside the United States in support of a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in section 134 of this title.

(2) DEFINITION.—In paragraph (1), the term “humanitarian or peacekeeping operation” means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

**CHAPTER 11—ESTABLISHMENT OF OFFICE AND
AUTHORITY AND FUNCTIONS OF ADMINISTRATOR**

SUBCHAPTER I—GENERAL

- Sec.
1101. Office of Federal Procurement Policy.
1102. Administrator.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

1121. General authority.
1122. Functions.
1123. Small business concerns.

- 1124. Tests of innovative procurement methods and procedures.
- 1125. Recipients of Federal grants or assistance.
- 1126. Policy regarding consideration of contractor past performance.
- 1127. Determining benchmark compensation amount.
- 1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services.
- 1129. Center of excellence in contracting for services.
- 1130. Effect of division on other law.
- 1131. Annual report.

SUBCHAPTER I—GENERAL

§ 1101. Office of Federal Procurement Policy

(a) ORGANIZATION.—There is an Office of Federal Procurement Policy in the Office of Management and Budget.

(b) PURPOSES.—The purposes of the Office of Federal Procurement Policy are to—

(1) provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies; and

(2) promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(c) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be appropriated each fiscal year for the Office of Federal Procurement Policy to carry out the responsibilities of the Office for that fiscal year.

§ 1102. Administrator

(a) HEAD OF OFFICE.—The head of the Office of Federal Procurement Policy is the Administrator for Federal Procurement Policy.

(b) APPOINTMENT.—The Administrator is appointed by the President, by and with the advice and consent of the Senate.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

§ 1121. General authority

(a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

(b) FEDERAL ACQUISITION REGULATION.—To the extent that the Administrator considers appropriate in carrying out the policies and functions set forth in this division, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. The policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation.

(c) POLICIES TO BE FOLLOWED BY EXECUTIVE AGENCIES.—

(1) AREAS OF PROCUREMENT FOR WHICH POLICIES ARE TO BE FOLLOWED.—The policies implemented in the Federal Acquisition Regulation shall be followed by executive agencies in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property.

(2) PROCEDURES TO ENSURE COMPLIANCE.—The Administrator shall establish procedures to ensure compliance with the Federal Acquisition Regulation by all executive agencies.

(3) APPLICATION OF OTHER LAWS.—The authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in this section and sections 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title.

(d) WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO ACT.—In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures, and forms in a timely manner, including regulations, procedures, and forms necessary to implement prescribed policy the Administrator initiates under subsection (b), the Administrator, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this division, shall prescribe Government-wide regulations, procedures, and forms which executive agencies shall follow in procuring items listed in subsection (c)(1).

(e) OVERSIGHT OF PROCUREMENT REGULATIONS OF OTHER AGENCIES.—The Administrator, with the concurrence of the Director of the Office of Management and Budget, and with consultation with the head of the agency concerned, may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that the rule or regulation is inconsistent with any policies, regulations, or procedures issued pursuant to subsection (b).

(f) LIMITATION ON AUTHORITY.—The authority of the Administrator under this division shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications for the property, services, or construction; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

§ 1122. Functions

(a) IN GENERAL.—The functions of the Administrator include—

(1) providing leadership and ensuring action by the executive agencies in establishing, developing, and maintaining the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in developing simplified Government-wide procurement regulations, procedures, and forms;

(2) coordinating the development of Government-wide procurement system standards that executive agencies shall implement in their procurement systems;

(3) providing leadership and coordination in formulating the executive branch position on legislation relating to procurement;

(4)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for those activities), which shall be located in

the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and

(B) ensuring executive agency compliance with the record requirements of section 1712 of this title;

(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for those activities), which shall be located in the General Services Administration, in order to—

(A) foster and promote the development of a professional acquisition workforce Government-wide;

(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

(C) collect data and analyze acquisition workforce data from the Office of Personnel Management, from the heads of executive agencies, and, through periodic surveys, from individual employees;

(D) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

(E) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

(F) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

(G) evaluate the effectiveness of training and career development programs for acquisition personnel;

(H) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

(I) facilitate, to the extent requested by agencies, inter-agency intern and training programs; and

(J) perform other career management or research functions as directed by the Administrator;

(6) administering section 1703(a) to (i) of this title;

(7) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(8) developing standard contract forms and contract language in order to reduce the Federal Government's cost of procuring property and services and the private sector's cost of doing business with the Federal Government;

(9) providing for a Government-wide award to recognize and promote vendor excellence;

(10) providing for a Government-wide award to recognize and promote excellence in officers and employees of the Federal Government serving in procurement-related positions;

(11) developing policies, in consultation with the Administrator of the Small Business Administration, that ensure that small businesses, qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women are provided with the maximum practicable opportunities to participate in procurements

that are conducted for amounts below the simplified acquisition threshold;

(12) developing policies that will promote achievement of goals for participation by small businesses, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women; and

(13) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(b) CONSULTATION AND ASSISTANCE.—In carrying out the functions in subsection (a), the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) with the concurrence of the heads of affected executive agencies, may designate one or more executive agencies to assist in performing those functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in performing any other function the Administrator considers appropriate.

(c) ASSIGNMENT, DELEGATION, OR TRANSFER.—

(1) TO ADMINISTRATOR.—Except as otherwise provided by law, only duties, functions, or responsibilities expressly assigned by this division shall be assigned, delegated, or transferred to the Administrator.

(2) BY ADMINISTRATOR.—

(A) WITHIN OFFICE.—The Administrator may make and authorize delegations within the Office of Federal Procurement Policy that the Administrator determines to be necessary to carry out this division.

(B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator may delegate, and authorize successive redelegations of, an authority, function, or power of the Administrator under this division (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out the policy) to another executive agency with the consent of the head of the executive agency or at the direction of the President.

§ 1123. Small business concerns

In formulating the Federal Acquisition Regulation and procedures to ensure compliance with the Regulation, the Administrator, in consultation with the Small Business Administration, shall—

(1) conduct analyses of the impact on small business concerns resulting from revised procurement regulations; and

(2) incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

§ 1124. Tests of innovative procurement methods and procedures

(a) IN GENERAL.—The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. In developing a program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

- (1) ascertain the need for and specify the objectives of the program;
- (2) develop the guidelines and procedures for carrying out the program and the criteria to be used in measuring the success of the program;
- (3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under the program;
- (4) select the appropriate executive agencies or components of executive agencies to carry out the program;
- (5) specify the categories and types of products or services to be procured under the program; and
- (6) develop the methods to be used to analyze the results of the program.

(b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out the program.

(c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines that it is necessary to waive the application of a provision of law to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and request that the Committees take the necessary action to provide that the provision of law does not apply with respect to the proposed program. The notification to Congress shall include—

- (1) a description of the proposed program (including the scope and purpose of the proposed program);
- (2) the procedures to be followed in carrying out the proposed program;
- (3) the provisions of law affected and the application of any provision of law that must be waived in order to carry out the proposed program; and
- (4) the executive agencies involved in carrying out the proposed program.

§ 1125. Recipients of Federal grants or assistance

(a) AUTHORITY.—With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms that the Administrator considers appropriate and that executive agencies shall follow in providing for the procurement, to the extent required under those programs, of property or services referred to in section 1121(c)(1) of this title by recipients of Federal grants or assistance under the programs.

(b) LIMITATION.—Subsection (a) does not—

(1) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to a recipient of a Federal grant or assistance; or

(2) authorize action by a recipient contrary to State and local law in the case of a program to provide a Federal grant or assistance to a State or political subdivision.

§ 1126. Policy regarding consideration of contractor past performance

(a) GUIDANCE.—The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include—

(1) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

(2) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary;

(3) policies for ensuring that—

(A) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, other departments and agencies of the Federal Government, agencies of State and local governments, and commercial customers; and

(B) the information submitted by offerors is considered; and

(4) the period for which information on past performance of offerors may be maintained and considered.

(b) INFORMATION NOT AVAILABLE.—If there is no information on past contract performance of an offeror or the information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.

§ 1127. Determining benchmark compensation amount

(a) DEFINITIONS.—In this section:

(1) BENCHMARK COMPENSATION AMOUNT.—The term “benchmark compensation amount”, for a fiscal year, is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (b) is made.

(2) BENCHMARK CORPORATION.—The term “benchmark corporation”, with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of \$50,000,000 for the fiscal year.

(3) COMPENSATION.—The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer’s cost accounting records for the fiscal year.

(4) FISCAL YEAR.—The term “fiscal year” means a fiscal year a contractor establishes for accounting purposes.

(5) PUBLICLY-OWNED UNITED STATES CORPORATION.—The term “publicly-owned United States corporation” means a corporation—

(A) organized under the laws of a State of the United States, the District of Columbia, Puerto Rico, or a possession of the United States; and

(B) whose voting stock is publicly traded.

(6) SENIOR EXECUTIVES.—The term “senior executives”, with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

(b) DETERMINING BENCHMARK COMPENSATION AMOUNT.—For purposes of section 4304(a)(16) of this title and section 2324(e)(1)(P) of title 10, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection, the Administrator shall consult with the Director of the Defense Contract Audit Agency and other officials of executive agencies as the Administrator considers appropriate.

§ 1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services

The Administrator, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Personnel Management, shall develop and implement a plan to ensure that the Federal Government maintains the necessary capability with respect to the acquisition of architectural and engineering services to—

(1) ensure that Federal Government employees have the expertise to determine agency requirements for those services;

(2) establish priorities and programs, including acquisition plans;

(3) establish professional standards;

(4) develop scopes of work; and

(5) award and administer contracts for those services.

§ 1129. Center of excellence in contracting for services

The Administrator shall maintain a center of excellence in contracting for services. The center shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

§ 1130. Effect of division on other law

This division does not impair or affect the authorities or responsibilities relating to the procurement of real property conferred by division C of this subtitle and chapters 1 to 11 of title 40.

§ 1131. Annual report

The Administrator annually shall submit to Congress an assessment of the progress made in executive agencies in implementing the policy regarding major acquisitions that is stated in section 3103(a) of this title. The Administrator shall use data from existing management systems in making the assessment.

CHAPTER 13—ACQUISITION COUNCILS**SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL**

- Sec.
1301. Definition.
1302. Establishment and membership.
1303. Functions and authority.
1304. Contract clauses and certifications.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

1311. Establishment and membership.
1312. Functions.

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL**§ 1301. Definition**

In this subchapter, the term “Council” means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

§ 1302. Establishment and membership

(a) **ESTABLISHMENT.**—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

(b) **MEMBERSHIP.**—

(1) **MAKEUP OF COUNCIL.**—The Council consists of—

(A) the Administrator;

(B) the Secretary of Defense;

(C) the Administrator of National Aeronautics and Space;

and

(D) the Administrator of General Services.

(2) **DESIGNATION OF OTHER OFFICIALS.**—

(A) **OFFICIALS WHO MAY BE DESIGNATED.**—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(c) of this title.

(B) **LIMITATION ON DESIGNATION.**—No other official or employee may be designated to serve on the Council.

§ 1303. Functions and authority

(a) **FUNCTIONS.**—

(1) **ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.**—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of

National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and maintain in accordance with subsection (d) a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation.

(2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to procurement issued by an executive agency shall be limited to—

(A) regulations essential to implement Government-wide policies and procedures within the agency; and

(B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with the Council, shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies prescribed pursuant to section 1121(b) of this title.

(4) REQUEST TO REVIEW REGULATION.—

(A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a person may request the Administrator to review a regulation relating to procurement on the basis that the regulation is inconsistent with the Federal Acquisition Regulation.

(B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its face, state a valid basis for the review, the Administrator shall complete the review not later than 60 days after receiving the request. The time for completion of the review may be extended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation otherwise should be revised to remove an inconsistency with the policies prescribed under section 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take other action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary to remove the inconsistency. If the Administrator determines that the regulation, although not inconsistent with the Federal Acquisition Regulation or those policies, should be revised to improve compliance with the Regulation or policies, the Administrator shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 as may be necessary and appropriate.

(6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the Administrator shall be in writing and made publicly available.

(b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

(1) IN GENERAL.—Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to section 1302(b) of this title shall—

(A) approve or disapprove all regulations relating to procurement that are proposed for public comment, prescribed in final form, or otherwise made effective by that agency before the regulation may be prescribed in final form, or otherwise made effective, except that the official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(B) carry out the responsibilities of that agency set forth in chapter 35 of title 44 for each information collection request that relates to procurement rules or regulations; and

(C) eliminate or reduce—

(i) any redundant or unnecessary levels of review and approval in the procurement system of that agency; and

(ii) redundant or unnecessary procurement regulations which are unique to that agency.

(2) LIMITATION ON DELEGATION.—The authority to review and approve or disapprove regulations under paragraph (1)(A) may not be delegated to an individual outside the office of the official who represents the agency on the Council pursuant to section 1302(b) of this title.

(c) GOVERNING POLICIES.—All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies prescribed under section 1121(b) of this title.

(d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION REGULATION.—Subject to section 1121(d) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation.

§ 1304. Contract clauses and certifications

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

(A) the certification requirement is specifically imposed by statute; or

(B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term “head of the executive agency” with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) the certification requirement is specifically imposed by statute; or

(ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

§ 1311. Establishment and membership

(a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisition Officers Council.

(b) MEMBERSHIP.—The members of the Council are—

(1) the Deputy Director for Management of the Office of Management and Budget;

(2) the Administrator;

(3) the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(4) the chief acquisition officer of each executive agency that is required to have a chief acquisition officer under section 1702 of this title and the senior procurement executive of each military department; and

(5) any other senior agency officer of each executive agency, appointed by the head of the agency in consultation with the Chairman of the Council, who can effectively assist the Council in performing the functions set forth in section 1312(b) of this title and supporting the associated range of acquisition activities.

(c) LEADERSHIP AND SUPPORT.—

(1) CHAIRMAN.—The Deputy Director for Management of the Office of Management and Budget is the Chairman of the Council.

(2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be selected by the Council from among its members. The Vice Chairman serves for one year and may serve multiple terms.

(3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the Council on behalf of the Deputy Director for Management.

(4) SUPPORT.—The Administrator of General Services shall provide administrative and other support for the Council.

§ 1312. Functions

(a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the principal interagency forum for monitoring and improving the Federal acquisition system.

(b) FUNCTIONS.—The Council shall perform functions that include the following:

(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.

(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.

(5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.

(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.

(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.

CHAPTER 15—COST ACCOUNTING STANDARDS

Sec.	
1501.	Cost Accounting Standards Board.
1502.	Cost accounting standards.
1503.	Contract price adjustment.
1504.	Effect on other standards and regulations.
1505.	Examinations.
1506.	Authorization of appropriations.

§ 1501. Cost Accounting Standards Board

(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(b) MEMBERSHIP.—

(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

(A) 2 representatives of the Federal Government—

(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and

(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.

(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—

(i) one of whom is a representative of industry; and

(ii) one of whom is particularly knowledgeable about cost accounting problems and systems.

(2) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING AGENCY.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(c) SENIOR STAFF.—The Administrator, after consultation with the Board, may—

(1) appoint an executive secretary and 2 additional staff members without regard to the provisions of title 5 governing appointments in the competitive service; and

(2) pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.

(d) OTHER STAFF.—The Administrator may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(e) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the Administrator, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(f) COMPENSATION.—

(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (e)(1), shall not receive additional compensation for services but shall continue to be compensated by the employing department or agency of the officer or employee.

(2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board.

(3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual hired under subsection (e)(2) may receive compensation at a rate fixed by the Administrator, but not to exceed the daily equivalent of the rate for level V of the Executive Schedule for each day (including travel time) in which the individual is properly engaged in the actual performance of duties under this chapter.

(4) TRAVEL EXPENSES.—While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis under this chapter shall be allowed travel expenses in accordance with section 5703 of title 5.

§ 1502. Cost accounting standards

(a) AUTHORITY.—

(1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and

interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter. The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONTRACT.—

(A) DEFINITION.—In this paragraph, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is adjusted in accordance with applicable requirements of law.

(C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial item;

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;

(iii) a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or

(iv) a contract or subcontract with a value of less than \$7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than \$7,500,000 that is covered by the standards.

(2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than \$15,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.—The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3)(A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than

the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—

(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

§ 1503. Contract price adjustment

(a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under chapter 71 of this title.

(b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under section 1502(f)(2) of this title shall be made, where applicable, on relevant contracts between the Federal Government and the contractor that are subject to the cost accounting standards so as to protect the Federal Government from payment, in the aggregate, of increased costs, as defined by the Cost Accounting Standards Board. The Federal Government may not recover costs greater than the aggregate increased cost to the Federal Government, as defined by the Board, on the relevant contracts subject to the price adjustment unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Federal Government.

(c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased costs were made to the contractor or subcontractor to the time the Federal Government receives full compensation for the price adjustment.

§ 1504. Effect on other standards and regulations

(a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations prescribed by the Cost Accounting Standards Board

under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)—

(1) remain in effect until amended, superseded, or rescinded by the Board under this chapter; and

(2) are subject to the provisions of this division in the same manner as if prescribed by the Board under this division.

(b) **INCONSISTENT AGENCY REGULATIONS.**—To ensure that a regulation or proposed regulation of an executive agency is not inconsistent with a cost accounting standard prescribed or amended under this chapter, the Administrator, under the authority in sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, shall rescind or deny the promulgation of the inconsistent regulation or proposed regulation and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305.

(c) **COSTS NOT SUBJECT TO DIFFERENT STANDARDS.**—Costs that are the subject of cost accounting standards prescribed under this chapter are not subject to regulations established by another executive agency that differ from those standards with respect to the measurement, assignment, and allocation of those costs.

§ 1505. Examinations

To determine whether a contractor or subcontractor has complied with cost accounting standards prescribed under this chapter and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, an authorized representative of the head of the agency concerned, of the offices of inspector general established under the Inspector General Act of 1978 (5 U.S.C. App.), or of the Comptroller General shall have the right to examine and copy documents, papers, or records of the contractor or subcontractor relating to compliance with the standards.

§ 1506. Authorization of appropriations

Necessary amounts may be appropriated to carry out this chapter.

CHAPTER 17—AGENCY RESPONSIBILITIES AND PROCEDURES

Sec.

- 1701. Cooperation with the Administrator.
- 1702. Chief Acquisition Officers and senior procurement executives.
- 1703. Acquisition workforce.
- 1704. Planning and policy-making for acquisition workforce.
- 1705. Advocates for competition.
- 1706. Personnel evaluation.
- 1707. Publication of proposed regulations.
- 1708. Procurement notice.
- 1709. Contracting functions performed by Federal personnel.
- 1710. Public-private competition required before conversion to contractor performance.
- 1711. Value engineering.
- 1712. Record requirements.
- 1713. Procurement data.

§ 1701. Cooperation with the Administrator

On the request of the Administrator, each executive agency shall—

(1) make its services, personnel, and facilities available to the Office of Federal Procurement Policy to the greatest practicable extent for the performance of functions under this division; and

(2) except when prohibited by law, furnish to the Administrator, and give the Administrator access to, all information and records in its possession that the Administrator may determine to be necessary for the performance of the functions of the Office.

§ 1702. Chief Acquisition Officers and senior procurement executives

(a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or designated under section 901(a) of title 31 shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency.

(b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

(1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Officer is acquisition management.

(2) ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(3) OTHER FUNCTIONS.—The functions of each Chief Acquisition Officer include—

(A) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(B) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

(C) increasing appropriate use of performance-based contracting and performance specifications;

(D) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making within the executive agency;

(E) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;

(F) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

(G) as part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections 1105(a)(28), 1115, 1116, and 9703 (added by section 5(a) of Public Law 103-62 (107 Stat. 289)) of title 31—

(i) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management;

(ii) developing strategies and specific plans for hiring, training, and professional development to rectify a deficiency in meeting those requirements; and

(iii) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

(c) SENIOR PROCUREMENT EXECUTIVE.—

(1) DESIGNATION.—The head of each executive agency shall designate a senior procurement executive.

(2) RESPONSIBILITY.—The senior procurement executive is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

(3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DESIGNATED.—For an executive agency for which a Chief Acquisition Officer has been appointed or designated under subsection (a), the head of the executive agency shall—

(A) designate the Chief Acquisition Officer as the senior procurement executive for the executive agency; or

(B) ensure that the senior procurement executive designated under paragraph (1) reports directly to the Chief Acquisition Officer without intervening authority.

§ 1703. Acquisition workforce

(a) DESCRIPTION.—For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A).

(b) APPLICABILITY.—

(1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—Except as provided in subsection (i), this section does not apply to an executive agency that is subject to chapter 87 of title 10.

(2) APPLICABILITY OF PROGRAMS.—The programs established by this section apply to the acquisition workforce of each executive agency.

(c) MANAGEMENT POLICIES.—

(1) DUTIES OF HEAD OF EXECUTIVE AGENCY.—

(A) ESTABLISH POLICIES AND PROCEDURES.—After consultation with the Administrator, the head of each executive agency shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5.

(B) ENSURE UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

(2) DUTIES OF ADMINISTRATOR.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that the policies are consistent with the policies and procedures established, and enhanced system of incentives provided, pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 108 Stat. 3351). The Administrator shall evaluate the implementation of this section by executive agencies.

(d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXECUTIVE.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementing this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

(e) COLLECTING AND MAINTAINING INFORMATION.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementing this section. To the maximum extent practicable, information requirements shall conform to standards the Director of the Office of Personnel Management establishes for the Central Personnel Data File.

(f) CAREER DEVELOPMENT.—

(1) CAREER PATHS.—

(A) IDENTIFICATION.—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make available information on those career paths.

(B) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

(C) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency also shall encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

(2) PERFORMANCE INCENTIVES.—The head of each executive agency shall provide for an enhanced system of incentives to encourage excellence in the acquisition workforce that rewards

performance of employees who contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

(A) relate pay to performance (including the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 3103(b) of this title); and

(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals.

(g) QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall—

(A) establish qualification requirements, including education requirements, for—

(i) entry-level positions in the General Schedule Contracting series (GS-1102);

(ii) senior positions in the General Schedule Contracting series (GS-1102);

(iii) all positions in the General Schedule Purchasing series (GS-1105); and

(iv) positions in other General Schedule series in which significant acquisition-related functions are performed; and

(B) prescribe the manner and extent to which the qualification requirements shall apply to an individual serving in a position described in subparagraph (A) at the time the requirements are established.

(2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE ACQUISITION WORKFORCE.—The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10 with appropriate modifications.

(3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. The Director is deemed to have approved the requirement or prescription if the Director does not disapprove the requirement or prescription within 30 days after receiving it.

(h) EDUCATION AND TRAINING.—

(1) FUNDING LEVELS.—The head of an executive agency shall set forth separately the funding levels requested for educating and training the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(2) TUITION ASSISTANCE.—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5 for personnel serving in acquisition positions in the agency.

(3) RESTRICTED OBLIGATION.—Amounts appropriated for education and training under this section may not be obligated for another purpose.

(i) TRAINING FUND.—

(1) PURPOSES.—The purposes of this subsection are to ensure that the Federal acquisition workforce—

(A) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

(B) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.

(2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an acquisition workforce training fund. The Administrator of General Services shall manage the fund through the Federal Acquisition Institute to support the training of the acquisition workforce of the executive agencies, except as provided in paragraph (5). The Administrator of General Services shall consult with the Administrator in managing the fund.

(3) CREDITS TO FUND.—Five percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts shall be credited to the fund:

(A) Government-wide task and delivery-order contracts entered into under sections 4103 and 4105 of this title.

(B) Government-wide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multiagency acquisition contracts for that technology authorized by section 11314 of title 40.

(C) multiple-award schedule contracts entered into by the Administrator of General Services.

(4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency that administers a contract described in paragraph (3) shall remit to the General Services Administration the amount required to be credited to the fund with respect to the contract at the end of each quarter of the fiscal year.

(5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT OF DEFENSE.—The Administrator of General Services shall transfer to the Secretary of Defense fees collected from the Department of Defense pursuant to paragraph (3). The Defense Acquisition University shall use the fees for acquisition workforce training.

(6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Administrator of General Services, through the Office of Federal Procurement Policy, shall ensure that amounts collected for training under this subsection are not used for a purpose other than the purpose specified in paragraph (2).

(7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDUCATION AND TRAINING.—Amounts credited to the fund are in addition to amounts requested and appropriated for education and training referred to in subsection (h)(1).

(8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund remain available to be expended only in the fiscal year for which they are credited and the 2 succeeding fiscal years.

(j) RECRUITMENT PROGRAM.—

(1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and 5753 of title 5, the head of a department or agency of the Federal Government (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in subsection (g)(1)(A)) are

shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified individuals directly to those positions in the department or agency.

(2) **TERMINATION OF AUTHORITY.**—The head of a department or agency may not appoint an individual to a position of employment under this subsection after September 30, 2012.

(k) **REEMPLOYMENT WITHOUT LOSS OF ANNUITY.**—

(1) **ESTABLISHMENT OF POLICIES AND PROCEDURES.**—The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement and Disability Fund, on the basis of the individual's service, without discontinuing the annuity. The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

(2) **CRITERIA FOR CONTINUATION OF ANNUITY.**—Policies and procedures established under paragraph (1) shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if any of the following makes the reemployment of an individual essential:

(A) The unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of the individual's service.

(B) The exceptional difficulty in recruiting or retaining a qualified employee.

(C) A temporary emergency hiring need.

(3) **SERVICE NOT SUBJECT TO CSRS OR FERS.**—An individual reemployed under this subsection shall not be deemed an employee for purposes of chapter 83 or 84 of title 5.

(4) **REPORTING REQUIREMENT.**—The Administrator shall submit annually to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.

(5) **SUNSET PROVISION.**—The authority under this subsection expires on December 31, 2011.

§ 1704. Planning and policy-making for acquisition workforce

(a) **DEFINITIONS.**—In this section:

(1) **ASSOCIATE ADMINISTRATOR.**—The term “Associate Administrator” means the Associate Administrator for Acquisition Workforce Programs as designated by the Administrator pursuant to subsection (b).

(2) **CHIEF ACQUISITION OFFICER.**—The term “Chief Acquisition Officer” means a Chief Acquisition Officer for an executive agency appointed pursuant to section 1702 of this title.

(b) **ASSOCIATE ADMINISTRATOR FOR ACQUISITION WORKFORCE PROGRAMS.**—The Administrator shall designate a member of the Senior Executive Service as the Associate Administrator for Acquisition Workforce Programs. The Associate Administrator shall be located in the Federal Acquisition Institute (or its successor). The Associate Administrator shall be responsible for—

(1) supervising the acquisition workforce training fund established under section 1703(i) of this title;

(2) developing, in coordination with Chief Acquisition Officers and Chief Human Capital Officers, a strategic human capital plan for the acquisition workforce of the Federal Government;

(3) reviewing and providing input to individual agency acquisition workforce succession plans;

(4) recommending to the Administrator and other senior government officials appropriate programs, policies, and practices to increase the quantity and quality of the Federal acquisition workforce; and

(5) carrying out other functions that the Administrator may assign.

(c) ACQUISITION AND CONTRACTING TRAINING PROGRAMS WITHIN EXECUTIVE AGENCIES.—

(1) CHIEF ACQUISITION OFFICER AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the Chief Acquisition Officer for that agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this subsection. The Chief Acquisition Officer shall ensure that the policies established by the head of the agency in accordance with this subsection are implemented throughout the agency.

(2) REQUIREMENT.—The head of each executive agency, after consultation with the Associate Administrator, shall establish and operate acquisition and contracting training programs. The programs shall—

(A) have curricula covering a broad range of acquisition and contracting disciplines corresponding to the specific acquisition and contracting needs of the agency involved;

(B) be developed and applied according to rigorous standards; and

(C) be designed to maximize efficiency, through the use of self-paced courses, online courses, on-the-job training, and the use of remote instructors, wherever those features can be applied without reducing the effectiveness of the training or negatively affecting academic standards.

(d) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote the development of performance standards for training and uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall evaluate the implementation of the provisions of subsection (c) by executive agencies.

(e) INFORMATION ON ACQUISITION AND CONTRACTING TRAINING.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition and contracting workforce related to the implementation of subsection (c).

(f) ACQUISITION WORKFORCE HUMAN CAPITAL SUCCESSION PLAN.—

(1) IN GENERAL.—Each Chief Acquisition Officer for an executive agency shall develop, in consultation with the Chief Human Capital Officer for the agency and the Associate Administrator, a succession plan consistent with the agency's strategic human capital plan for the recruitment, development, and retention of the agency's acquisition workforce, with a particular focus

on warranted contracting officers and program managers of the agency.

(2) CONTENT OF PLAN.—The acquisition workforce succession plan shall address—

(A) recruitment goals for personnel from procurement intern programs;

(B) the agency's acquisition workforce training needs;

(C) actions to retain high performing acquisition professionals who possess critical relevant skills;

(D) recruitment goals for personnel from the Federal Career Intern Program; and

(E) recruitment goals for personnel from the Presidential Management Fellows Program.

(g) ACQUISITION WORKFORCE DEVELOPMENT STRATEGIC PLAN.—

(1) PURPOSE.—The purpose of this subsection is to authorize the preparation and completion of the Acquisition Workforce Development Strategic Plan, which is a plan for Federal agencies other than the Department of Defense to—

(A) develop a specific and actionable 5-year plan to increase the size of the acquisition workforce; and

(B) operate a government-wide acquisition intern program for the Federal agencies.

(2) ESTABLISHMENT OF PLAN.—The Associate Administrator shall be responsible for the management, oversight, and administration of the Acquisition Workforce Development Strategic Plan in cooperation and consultation with the Office of Federal Procurement Policy and with the assistance of the Federal Acquisition Institute.

(3) CRITERIA.—The Acquisition Workforce Development Strategic Plan shall include an examination of the following matters:

(A) The variety and complexity of acquisitions conducted by each Federal agency covered by the plan, and the workforce needed to effectively carry out the acquisitions.

(B) The development of a sustainable funding model to support efforts to hire, retain, and train an acquisition workforce of appropriate size and skill to effectively carry out the acquisition programs of the Federal agencies covered by the plan, including an examination of interagency funding methods and a discussion of how the model of the Defense Acquisition Workforce Development Fund could be applied to civilian agencies.

(C) Any strategic human capital planning necessary to hire, retain, and train an acquisition workforce of appropriate size and skill at each Federal agency covered by the plan.

(D) Methodologies that Federal agencies covered by the plan can use to project future acquisition workforce personnel hiring requirements, including an appropriate distribution of such personnel across each category of positions designated as acquisition workforce personnel under section 1703(g) of this title.

(E) Government-wide training standards and certification requirements necessary to enhance the mobility and career opportunities of the Federal acquisition workforce within the Federal agencies covered by the plan.

(F) If the Associate Administrator recommends as part of the plan a growth in the acquisition workforce of the

Federal agencies covered by the plan below 25 percent over the next 5 years, an examination of each of the matters specified in subparagraphs (A) to (E) in the context of a 5-year plan that increases the size of such acquisition workforce by not less than 25 percent, or an explanation why such a level of growth would not be in the best interest of the Federal Government.

(4) **DEADLINE FOR COMPLETION.**—The Acquisition Workforce Development Strategic Plan shall be completed not later than one year after October 14, 2008, and in a fashion that allows for immediate implementation of its recommendations and guidelines.

(5) **FUNDS.**—The acquisition workforce development strategic plan shall be funded from the acquisition workforce training fund under section 1703(i) of this title.

(h) **TRAINING IN THE ACQUISITION OF ARCHITECT AND ENGINEERING SERVICES.**—The Administrator shall ensure that a sufficient number of Federal employees are trained in the acquisition of architect and engineering services.

(i) **UTILIZATION OF RECRUITMENT AND RETENTION AUTHORITIES.**—The Administrator, in coordination with the Director of the Office of Personnel Management, shall encourage executive agencies to use existing authorities, including direct hire authority and tuition assistance programs, to recruit and retain acquisition personnel and consider recruiting acquisition personnel who may be retiring from the private sector, consistent with existing laws and regulations.

§ 1705. Advocates for competition

(a) **ESTABLISHMENT AND DESIGNATION.**—

(1) **ESTABLISHMENT.**—Each executive agency has an advocate for competition.

(2) **DESIGNATION.**—The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for the executive agency on July 18, 1984 (other than the senior procurement executive designated pursuant to section 1702(c) of this title) to serve as the advocate for competition;

(B) not assign those officers or employees duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide those officers or employees with the staff or assistance necessary to carry out the duties and responsibilities of the advocate for competition, such as individuals who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) **DUTIES AND FUNCTIONS.**—The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to, and promoting full and open competition in, the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency—

- (A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and
- (B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency;
- (4) prepare and transmit to the senior procurement executive an annual report describing—
 - (A) the advocate's activities under this section;
 - (B) new initiatives required to increase competition; and
 - (C) remaining barriers to full and open competition;
- (5) recommend to the senior procurement executive—
 - (A) goals and the plans for increasing competition on a fiscal year basis; and
 - (B) a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and
- (6) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) **RESPONSIBILITIES.**—The advocate for competition for each procuring activity is responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to acquisition, including unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

§ 1706. Personnel evaluation

The head of each executive agency subject to division C shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98-577, 98 Stat. 3066), that the performance appraisal system applicable to those employees affords appropriate recognition to, among other factors, efforts to—

- (1) increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;
- (2) further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98-577, 98 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public Law 98-525, title XII, 98 Stat. 2588); and
- (3) further other objectives and purposes of the Federal acquisition system authorized by law.

§ 1707. Publication of proposed regulations

(a) **COVERED POLICIES, REGULATIONS, PROCEDURES, AND FORMS.**—

(1) **REQUIRED COMMENT PERIOD.**—Except as provided in subsection (d), a procurement policy, regulation, procedure, or form (including an amendment or modification thereto) may not take effect until 60 days after it is published for public comment in the Federal Register pursuant to subsection (b) if it—

- (A) relates to the expenditure of appropriated funds; and

(B)(i) has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form; or

(ii) has a significant cost or administrative impact on contractors or offerors.

(2) EXCEPTION.—A policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but the effective date may not be less than 30 days after the publication date.

(b) PUBLICATION IN FEDERAL REGISTER AND COMMENT PERIOD.—Subject to subsection (c), the head of the agency shall have published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on the proposal. The length of the comment period may not be less than 30 days.

(c) CONTENTS OF NOTICE.—Notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and the name and address of the officer or employee of the Federal Government designated to receive the comments.

(d) WAIVER.—The requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable.

(e) EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.—

(1) TEMPORARY BASIS.—A procurement policy, regulation, procedure, or form for which the requirements of subsections (a) and (b) are waived under subsection (d) is effective on a temporary basis if—

(A) a notice of the policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

(2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under subsection (d) may issue the final procurement policy, regulation, procedure, or form.

§ 1708. Procurement notice

(a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—

(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for not less than 10 days, in a public place at the contracting

office issuing the solicitation a notice of solicitation described in subsection (c);

(2) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(B) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement; and

(3) an executive agency awarding a contract for property or services for a price exceeding \$25,000, or placing an order exceeding \$25,000 under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) EXEMPTIONS.—

(1) IN GENERAL.—A notice is not required under subsection (a) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency's needs and disclosure would compromise national security;

(C) the proposed procurement would result from acceptance of—

(i) an unsolicited proposal that demonstrates a unique and innovative research concept and publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act (15 U.S.C. 638);

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) CERTAIN PROCUREMENTS.—The requirements of subsection (a)(2) do not apply to a procurement—

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10; or

(B) for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.—Paragraph (1)(A) shall be implemented in a manner consistent with applicable international agreements.

(c) CONTENTS OF NOTICE.—Each notice of solicitation required by paragraph (1) or (2) of subsection (a) shall include—

(1) an accurate description of the property or services to be contracted for, which description—

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A)(i) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and

(ii) identify the source in the Federal Government, if any, from which the technical data may be obtained; and

(B)(i) state whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and

(ii) if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of those procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial items using special simplified procedures—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.—A notice of solicitation, award, or order required to be published under subsection (a) shall be published by electronic means. The notice must be electronically accessible in a form that allows convenient and universal user access through the single

Government-wide point of entry designated in the Federal Acquisition Regulation.

(e) TIME LIMITATIONS.—

(1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency required by subsection (a)(2) to publish a notice of solicitation may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)(2) that—

(i) in the case of a solicitation for research and development, is earlier than 45 days after the date the notice required for a bid or proposal for a contract described in subsection (a)(2)(A) is published;

(ii) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than 30 days after the date the notice required for an order described in subsection (a)(2)(B) is published; or

(iii) in any other case, is earlier than 30 days after the date the solicitation is issued.

(2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.—An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation for which a deadline is not provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (1) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial items.

(f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under subsection (a)(1) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.—An executive agency shall make available to a business concern, or the authorized representative of a concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of the package.

§ 1709. Contracting functions performed by Federal personnel

(a) COVERED PERSONNEL.—Personnel referred to in subsection

(b) are—

(1) an employee, as defined in section 2105 of title 5;

(2) a member of the armed forces; and

(3) an individual assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

(b) **LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.**—No individual who is not an individual described in subsection (a) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (a) with adequate training and capabilities to perform the evaluations and analyses are not readily available in the agency or another Federal agency. When administering this subsection, the head of each executive agency shall determine in accordance with standards and procedures prescribed in the Federal Acquisition Regulation whether—

- (1) a sufficient number of personnel described in subsection (a) in the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and
- (2) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

(c) **CERTAIN RELATIONSHIP NOT AFFECTED.**—This section does not affect the relationship between the Federal Government and a Federally funded research and development center.

§ 1710. Public-private competition required before conversion to contractor performance

(a) **PUBLIC-PRIVATE COMPETITION.**—

(1) **WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS ALLOWED.**—A function of an executive agency performed by 10 or more agency civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by agency civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the executive agency with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by agency civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Federal Government over the life of the contract, including—

(i) the estimated cost to the Federal Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Federal Government for performance of the function by agency civilian employees; and

(iii) an estimate of all other costs and expenditures that the Federal Government would incur because of the award of the contract;

(F) requires continued performance of the function by agency civilian employees unless the difference in the cost

of performance of the function by a contractor compared to the cost of performance of the function by agency civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) \$10,000,000; and

(G) examines the effect of performance of the function by a contractor on the agency mission associated with the performance of the function.

(2) NOT A NEW REQUIREMENT.—A function that is performed by the executive agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) PROHIBITIONS.—In no case may a function being performed by executive agency personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(b) CONSULTING WITH AFFECTED EMPLOYEES OR THEIR REPRESENTATIVES.—

(1) CONSULTING WITH AFFECTED EMPLOYEES.—Each civilian employee of an executive agency responsible for determining under Office of Management and Budget Circular A76 whether to convert to contractor performance any function of the executive agency—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of the employees on the development and preparation of that statement and that study; and

(B) may consult with the employees on other matters relating to that determination.

(2) CONSULTING WITH REPRESENTATIVES.—

(A) EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) EMPLOYEES NOT REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) REGULATIONS.—The head of each executive agency shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—

(1) **REPORT.**—Before commencing a public-private competition under subsection (a), the head of an executive agency shall submit to Congress a report containing the following:

(A) The function for which the public-private competition is to be conducted.

(B) The location at which the function is performed by agency civilian employees.

(C) The number of agency civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of an executive agency to impose predetermined constraints or limitations on agency civilian employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) **EXAMINATION OF POTENTIAL ECONOMIC EFFECT.**—The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) agency civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Federal Government, if more than 50 agency civilian employees perform the function.

(3) **OBJECTIONS TO PUBLIC-PRIVATE COMPETITION.**—

(A) **GROUND.**—A representative individual or entity at a facility where a public-private competition is conducted may submit to the head of the executive agency an objection to the public-private competition on the grounds that—

(i) the report required by paragraph (1) has not been submitted; or

(ii) the certification required by paragraph (1)(E) was not included in the report required by paragraph (1).

(B) **DEADLINES.**—The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(C) **REPORT AND CERTIFICATION REQUIRED BEFORE SOLICITATION OR AWARD OF CONTRACT.**—If the head of the executive agency determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract

until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) **EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY DISABLED PEOPLE.**—This section shall not apply to a commercial or industrial type function of an executive agency that is—

(1) included on the procurement list established pursuant to section 8503 of this title; or

(2) planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled people in accordance with chapter 85 of this title.

(e) **INAPPLICABILITY DURING WAR OR EMERGENCY.**—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

§ 1711. Value engineering

Each executive agency shall establish and maintain cost-effective procedures and processes for analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of the agency. The analysis shall be—

(1) performed by qualified agency or contractor personnel;

and

(2) directed at improving performance, reliability, quality, safety, and life cycle costs.

§ 1712. Record requirements

(a) **MAINTAINING RECORDS ON COMPUTER.**—Each executive agency shall establish and maintain for 5 years a computer file, by fiscal year, containing unclassified records of all procurements greater than the simplified acquisition threshold in that fiscal year.

(b) **CONTENTS.**—The record established under subsection (a) shall include, with respect to each procurement carried out using—

(1) competitive procedures—

(A) the date of contract award;

(B) information identifying the source to whom the contract was awarded;

(C) the property or services the Federal Government obtains under the procurement; and

(D) the total cost of the procurement; or

(2) procedures other than competitive procedures—

(A) the information described in paragraph (1);

(B) the reason under section 3304(a) of this title or section 2304(c) of title 10 for using the procedures; and

(C) the identity of the organization or activity that conducted the procurement.

(c) **SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN ONE BID OR PROPOSAL.**—Information included in a record pursuant to subsection (b)(1) that relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in the record. The record of that information shall be designated “noncompetitive procurements using competitive procedures”.

(d) **TRANSMISSION AND DATA ENTRY OF INFORMATION.**—The head of each executive agency shall—

(1) ensure the accuracy of the information included in the record established and maintained by the agency under subsection (a); and

(2) transmit in a timely manner such information to the General Services Administration for entry into the Federal Procurement Data System referred to in section 1122(a)(4) of this title, or any successor system.

§ 1713. Procurement data

(a) DEFINITIONS.—In this section:

(1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term “qualified HUBZone small business concern” has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(p)).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term “small business concern owned and controlled by women” has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of the Women’s Business Ownership Act of 1988 (Public Law 100–533, 102 Stat. 2692).

(b) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of qualified HUBZone small business concerns, the number of small businesses owned and controlled by women, and the number of small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, that are first time recipients of contracts from the agency. The Office shall take appropriate action to ascertain, for each fiscal year, the number of those small businesses that have newly entered the Federal market.

CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

1901. Simplified acquisition procedures.

1902. Procedures applicable to purchases below micro-purchase threshold.

1903. Special emergency procurement authority.

1904. Certain transactions for defense against attack.

1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold.

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1907. List of laws inapplicable to procurements of commercially available off-the-shelf items.

1908. Inflation adjustment of acquisition-related dollar thresholds.

§ 1901. Simplified acquisition procedures

(a) WHEN PROCEDURES ARE TO BE USED.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services

sought and on market research, that offers will include only commercial items.

(b) **PROHIBITION ON DIVIDING PURCHASES.**—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified acquisition procedures required by subsection (a).

(c) **PROMOTION OF COMPETITION REQUIRED.**—When using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) **CONSIDERATION OF OFFERS TIMELY RECEIVED.**—The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) **SPECIAL RULES FOR COMMERCIAL ITEMS.**—The Federal Acquisition Regulation shall provide that an executive agency using special simplified procedures to purchase commercial items—

(1) shall publish a notice in accordance with section 1708 of this title and, as provided in section 1708(c)(4) of this title, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 2304(f) of title 10 or section 3304(e) of this title, as applicable; and

(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.

§ 1902. Procedures applicable to purchases below micro-purchase threshold

(a) **DEFINITION.**—For purposes of this section, the micro-purchase threshold is \$3,000.

(b) **COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICABILITY OF CERTAIN AUTHORITY.**—

(1) **COMPLIANCE WITH CERTAIN REQUIREMENTS.**—The head of each executive agency shall ensure that procuring activities of that agency, when awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 15 U.S.C. 644 note).

(2) **NONAPPLICABILITY OF CERTAIN AUTHORITY.**—The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to a purchase with a price exceeding the micro-purchase threshold.

(c) **NONAPPLICABILITY OF CERTAIN PROVISIONS.**—An executive agency purchase with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and chapter 83 of this title.

(d) **PURCHASES WITHOUT COMPETITIVE QUOTATIONS.**—A purchase not greater than \$3,000 may be made without obtaining competitive quotations if an employee of an executive agency or a member of the armed forces, authorized to do so, determines that the price for the purchase is reasonable.

(e) **EQUITABLE DISTRIBUTION.**—Purchases not greater than \$3,000 shall be distributed equitably among qualified suppliers.

(f) **IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.**—This section shall be implemented through the Federal Acquisition Regulation.

§ 1903. Special emergency procurement authority

(a) **APPLICABILITY.**—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101(a) of title 10); or

(2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

(b) **INCREASED THRESHOLDS AND LIMITATION.**—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) \$15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term “simplified acquisition threshold” means—

(A) \$250,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$1,000,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the \$5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 2304(g)(1)(B) of title 10 is deemed to be \$10,000,000.

(c) **AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL ITEM.**—

(1) **IN GENERAL.**—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial item for the purpose of carrying out the procurement.

(2) **CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.**—A contract in an amount of more than \$15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and section 2306a of title 10.

§ 1904. Certain transactions for defense against attack

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—The head of an executive agency that engages in basic research, applied research, advanced research,

and development projects that are necessary to the responsibilities of the executive agency in the field of research and development and have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack may exercise the same authority (subject to the same restrictions and conditions) with respect to the research and projects as the Secretary of Defense may exercise under section 2371 of title 10, except for subsections (b) and (f) of section 2371.

(2) **PROTOTYPE PROJECTS.**—The head of an executive agency, under the authority of paragraph (1), may carry out prototype projects that meet the requirements of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under section 845(a) of that Act and that the period of authority to carry out projects under section 845(a) of that Act terminates as provided in section 845(i) of that Act.

(3) **APPLICATION OF REQUIREMENTS AND CONDITIONS.**—In applying the requirements and conditions of section 845 of that Act under this subsection—

(A) section 845(c) of that Act shall apply with respect to prototype projects carried out under paragraph (2); and

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under section 845(d) of that Act.

(4) **APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.**—

(A) **OFFICE OF MANAGEMENT AND BUDGET.**—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) **DEPARTMENT OF HOMELAND SECURITY.**—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) **REGULATIONS.**—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) **ANNUAL REPORT.**—The annual report of the head of an executive agency that is required under section 2371(h) of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) **TERMINATION OF AUTHORITY.**—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

§ 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) **DEFINITION.**—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) **INCLUSION IN FEDERAL ACQUISITION REGULATION.**—

(1) **IN GENERAL.**—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to

contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

§ 1906. List of laws inapplicable to procurements of commercial items

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial items by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial items.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the applicability of the provision.

(c) SUBCONTRACTS.—

(1) DEFINITION.—In this subsection, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under a contract or subcontract for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (3) does not apply to those subcontracts. This section does not render a provision of law not included on the list inapplicable to subcontracts under a contract for the procurement of commercial items.

(3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law described in subsection (d) shall be included on the list of inapplicable provisions of law required by paragraph (2) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt subcontracts under a contract for the procurement of commercial items from the applicability of the provision.

(4) WAIVER NOT AUTHORIZED.—This subsection does not authorize the waiver of the applicability of any provision of law with respect to any subcontract under a contract with a prime contractor reselling or distributing commercial items of another contractor without adding value.

(d) COVERED LAW.—A provision of law referred to in subsections (b)(2) and (c) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial items.

(e) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (d) is not included on the list of inapplicable provisions of law as required by subsection (b) or (c) and the Council has not made a written determination pursuant to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

§ 1907. List of laws inapplicable to procurements of commercially available off-the-shelf items

(a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) LAWS TO BE INCLUDED.—A provision of law described in subsection (b) shall be included on the list of inapplicable

provisions of law required by paragraph (1) unless the Administrator makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision.

(3) OTHER AUTHORITIES OR RESPONSIBILITIES NOT AFFECTED.—This section does not modify, supersede, impair, or restrict authorities or responsibilities under—

(A) section 15 of the Small Business Act (15 U.S.C. 644); or

(B) bid protest procedures developed under the authority of—

(i) subchapter V of chapter 35 of title 31;

(ii) section 2305(e) and (f) of title 10; or

(iii) sections 3706 and 3707 of this title.

(b) COVERED LAW.—Except as provided in subsection (a)(3), a provision of law referred to in subsection (a)(1) is a provision of law that the Administrator determines imposes Federal Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services on persons whom the Federal Government has awarded contracts for the procurement of commercially available off-the-shelf items, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercially available off-the-shelf items.

§ 1908. Inflation adjustment of acquisition-related dollar thresholds

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the requirement for adjustment under subsection (c) applies to a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the Council determines.

(2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresholds—

(A) in chapter 67 of this title;

(B) in sections 3141 to 3144, 3146, and 3147 of title 40; or

(C) the United States Trade Representative establishes pursuant to title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.).

(3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—This section supersedes the applicability of other provisions of law that provide for the adjustment of a dollar threshold that is adjustable under this section.

(c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

(1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of paragraph (2), the baseline constant dollar value for a dollar threshold—

(A) in effect on October 1, 2000, that was first specified in a law that took effect on or before October 1, 2000, is the October 1, 2000, constant dollar value of that dollar threshold; and

(B) specified in a law that takes effect after October 1, 2000, is the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to that law.

(2) ADJUSTMENT.—On October 1 of each year evenly divisible by 5, the Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (b)(1), to the baseline constant dollar value of that threshold.

(3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjustable under this section shall be adjusted only as provided in this section.

(d) PUBLICATION.—The Council shall publish a notice of the adjusted dollar thresholds under this section in the Federal Register. The thresholds take effect on the date of publication.

(e) CALCULATION.—An adjustment under this section shall be—

(1) calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Secretary of Labor; and

(2) rounded, in the case of a dollar threshold that on the day before the adjustment is—

(A) less than \$10,000, to the nearest \$500;

(B) not less than \$10,000, but less than \$100,000, to the nearest \$5,000;

(C) not less than \$100,000, but less than \$1,000,000, to the nearest \$50,000; and

(D) \$1,000,000 or more, to the nearest \$500,000.

(f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—

(1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may request adjustment of a dollar threshold adjustable under this section that is not included in a notice of adjustment published under subsection (d) by submitting a petition for adjustment to the Administrator.

(2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for adjustment of a dollar threshold under paragraph (1), the Administrator—

(A) shall determine, in writing, whether the dollar threshold is required to be adjusted under this section; and

(B) on determining that it should be adjusted, shall publish in the Federal Register a revised notice of the adjustment dollar thresholds under this section that includes the adjustment of the dollar threshold covered by the petition.

(3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjustment of a dollar threshold pursuant to a petition under this subsection takes effect on the date the revised notice adding the adjustment under paragraph (2)(B) is published.

CHAPTER 21—RESTRICTIONS ON OBTAINING AND DISCLOSING CERTAIN INFORMATION

Sec.

2101. Definitions.

2102. Prohibitions on disclosing and obtaining procurement information.

- 2103. Actions required of procurement officers when contacted regarding non-Federal employment.
- 2104. Prohibition on former official's acceptance of compensation from contractor.
- 2105. Penalties and administrative actions.
- 2106. Reporting information believed to constitute evidence of offense.
- 2107. Savings provisions.

§ 2101. Definitions

In this chapter:

(1) **CONTRACTING OFFICER.**—The term “contracting officer” means an individual who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to the contract.

(2) **CONTRACTOR BID OR PROPOSAL INFORMATION.**—The term “contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of, or in connection with, a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in section 2306a(h) of title 10 with respect to procurements subject to that section and section 3501(a) of this title with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor as “contractor bid or proposal information”, in accordance with applicable law or regulation.

(3) **FEDERAL AGENCY.**—The term “Federal agency” has the meaning given that term in section 102 of title 40.

(4) **FEDERAL AGENCY PROCUREMENT.**—The term “Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

(5) **OFFICIAL.**—The term “official” means—

(A) an officer, as defined in section 2104 of title 5;

(B) an employee, as defined in section 2105 of title 5; and

(C) a member of the uniformed services, as defined in section 2101(3) of title 5.

(6) **PROTEST.**—The term “protest” means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31.

(7) **SOURCE SELECTION INFORMATION.**—The term “source selection information” means any of the following information prepared for use by a Federal agency to evaluate a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

(I) Reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as “source selection information” based on a case-by-case determination by the head of the agency, the head’s designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

§ 2102. Prohibitions on disclosing and obtaining procurement information

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) IN GENERAL.—Except as provided by law, a person described in paragraph (3) shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction in paragraph (1), an employee of a private sector organization assigned to an agency under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal information or source selection information during the 3-year period after the employee’s assignment ends, except as provided by law.

(3) APPLICATION.—Paragraph (1) applies to a person that—

(A)(i) is a present or former official of the Federal Government; or

(ii) is acting or has acted for or on behalf of, or who is advising or has advised the Federal Government with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—

Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

§ 2103. Actions required of procurement officers when contacted regarding non-Federal employment

(a) ACTIONS REQUIRED.—An agency official participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold who contacts or is contacted by a person that is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official shall—

(1) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(A) reject the possibility of non-Federal employment; or

(B) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until the agency authorizes the official to resume participation in the procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(i) the person is no longer a bidder or offeror in that Federal agency procurement; or

(ii) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(b) RETENTION OF REPORTS.—The agency shall retain each report required by this section for not less than 2 years following the submission of the report. The reports shall be made available to the public on request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of that section may be withheld from disclosure to the public.

(c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) An official who knowingly fails to comply with the requirements of this section.

(2) A bidder or offeror that engages in employment discussions with an official who is subject to the restrictions of this section, knowing that the official has not complied with paragraph (1) or (2) of subsection (a).

§ 2104. Prohibition on former official's acceptance of compensation from contractor

(a) PROHIBITION.—A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after the official—

(1) served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(3) personally made for the Federal agency a decision to—

(A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of \$10,000,000;

(C) approve issuance of one or more contract payments in excess of \$10,000,000 to that contractor; or

(D) pay or settle a claim in excess of \$10,000,000 with that contractor.

(b) **WHEN COMPENSATION MAY BE ACCEPTED.**—Subsection (a) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (1), (2), or (3) of subsection (a).

(c) **IMPLEMENTING REGULATIONS.**—Regulations implementing this section shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this section from accepting compensation from a particular contractor.

(d) **PERSONS SUBJECT TO PENALTIES.**—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) A former official who knowingly accepts compensation in violation of this section.

(2) A contractor that provides compensation to a former official knowing that the official accepts the compensation in violation of this section.

§ 2105. Penalties and administrative actions

(a) **CRIMINAL PENALTIES.**—A person that violates section 2102 of this title to exchange information covered by section 2102 of this title for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement contract shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) **CIVIL PENALTIES.**—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—

(1) an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and

(2) an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.

(c) **ADMINISTRATIVE ACTIONS.**—

(1) **TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.**—A Federal agency that receives information that a contractor or a person has violated section 2102, 2103, or 2104 of this title shall consider taking one or more of the following actions, as appropriate:

(A) Canceling the Federal agency procurement, if a contract has not yet been awarded.

(B) Rescinding a contract with respect to which—

(i) the contractor or someone acting for the contractor has been convicted for an offense punishable under subsection (a); or

(ii) the head of the agency that awarded the contract has determined, based on a preponderance of the evidence, that the contractor or a person acting for the contractor has engaged in conduct constituting the offense.

(C) Initiating a suspension or debarment proceeding for the protection of the Federal Government in accordance with procedures in the Federal Acquisition Regulation.

(D) Initiating an adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Federal agency rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For purposes of a suspension or debarment proceeding initiated pursuant to paragraph (1)(C), engaging in conduct constituting an offense under section 2102, 2103, or 2104 of this title affects the present responsibility of a Federal Government contractor or subcontractor.

§ 2106. Reporting information believed to constitute evidence of offense

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

§ 2107. Savings provisions

This chapter does not—

(1) restrict the disclosure of information to, or its receipt by, a person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation.

CHAPTER 23—MISCELLANEOUS

- Sec.
 2301. Use of electronic commerce in Federal procurement.
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§ 2301. Use of electronic commerce in Federal procurement

(a) **DEFINITION.**—For the purposes of this section, the term “electronic commerce” means electronic techniques for accomplishing business transactions, including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfers, and electronic data interchange.

(b) **ESTABLISHMENT, MAINTENANCE, AND USE OF ELECTRONIC COMMERCE PROCEDURES AND PROCESSES.**—The head of each executive agency, after consulting with the Administrator, shall establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of the procurement system of the agency.

(c) **APPLICABLE STANDARDS.**—In conducting electronic commerce, the head of an executive agency shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

(d) **REQUIREMENTS OF SYSTEMS, TECHNOLOGIES, PROCEDURES, AND PROCESSES.**—The head of each executive agency shall ensure that systems, technologies, procedures, and processes established pursuant to this section—

(1) are implemented with uniformity throughout the agency, to the extent practicable;

(2) are implemented only after granting due consideration to the use or partial use, as appropriate, of existing electronic commerce and electronic data interchange systems and infrastructures such as the Federal acquisition computer network architecture known as FACNET;

(3) facilitate access to Federal Government procurement opportunities, including opportunities for small business concerns, socially and economically disadvantaged small business concerns, and business concerns owned predominantly by women; and

(4) ensure that any notice of agency requirements or agency solicitation for contract opportunities is provided in a form that allows convenient and universal user access through a single, Government-wide point of entry.

(e) **IMPLEMENTATION.**—In carrying out the requirements of this section, the Administrator shall—

(1) issue policies to promote, to the maximum extent practicable, uniform implementation of this section by executive

agencies, with due regard for differences in program requirements among agencies that may require departures from uniform procedures and processes in appropriate cases, when warranted because of the agency mission;

(2) ensure that the head of each executive agency complies with the requirements of subsection (d); and

(3) consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

§ 2302. Rights in technical data

(a) **WHERE DEFINED.**—The legitimate proprietary interest of the Federal Government and of a contractor in technical or other data shall be defined in regulations prescribed as part of the Federal Acquisition Regulation.

(b) **GENERAL EXTENT OF REGULATIONS.**—

(1) **OTHER RIGHTS NOT IMPAIRED.**—Regulations prescribed under subsection (a) may not impair a right of the Federal Government or of a contractor with respect to a patent or copyright or another right in technical data otherwise established by law.

(2) **LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOVERNMENT.**—With respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that the Federal Government may not require a person that has developed a product (or process offered or to be offered for sale to the public) to provide to the Federal Government technical data relating to the design (or development or manufacture of the product or process) as a condition of procurement by the Federal Government of the product or process. This paragraph does not apply to data that may be necessary for the Federal Government to operate and maintain the product or use the process if the Federal Government obtains it as an element of performance under the contract.

(c) **TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.**—

(1) **USE BY GOVERNMENT AND AGENCIES.**—Except as otherwise expressly provided by Federal statute, with respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that—

(A) the Federal Government has unlimited rights in technical data developed exclusively with Federal funds if delivery of the data—

(i) was required as an element of performance under a contract; and

(ii) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future; and

(B) the Federal Government and each agency of the Federal Government has an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Federal Government) technical data developed exclusively with Federal funds.

(2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOVERNMENT.—The requirements of paragraph (1) are in addition to and not in lieu of any other rights the Federal Government may have pursuant to law.

(d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The following factors shall be considered in prescribing regulations under subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219, 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the Federal Government in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(e) PROVISIONS REQUIRED IN CONTRACTS.—Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the Federal Government and the contractor or subcontractor (at any tier) regarding technical data to be delivered under the contract;

(2) specifying technical data to be delivered under the contract and schedules for delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for technical data to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the Federal Government to use the data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver the revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise another remedy the head of the agency considers appropriate) during any period if the

contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

§ 2303. Ethics safeguards related to contractor conflicts of interest

(a) **DEFINITION.**—In this section, the term “relevant acquisition function” means an acquisition function closely associated with inherently governmental functions.

(b) **POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.**—

(1) **DEVELOPMENT AND ISSUANCE OF POLICY.**—The Administrator shall develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) **ELEMENTS OF POLICY.**—The policy shall—

(A) define “personal conflict of interest” as it relates to contractor employees performing relevant acquisition functions; and

(B) require each contractor whose employees perform relevant acquisition functions to—

(i) identify and prevent personal conflicts of interest for the employees;

(ii) prohibit contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain;

(iii) report any personal conflict-of-interest violation by an employee to the applicable contracting officer or contracting officer’s representative as soon as it is identified;

(iv) maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(v) have procedures in place to screen for potential conflicts of interest for all employees performing relevant acquisition functions; and

(vi) take appropriate disciplinary action in the case of employees who fail to comply with policies established pursuant to this section.

(3) **CONTRACT CLAUSE.**—

(A) **CONTENTS.**—The Administrator shall develop a personal conflicts-of-interest clause or a set of clauses for inclusion in solicitations and contracts (and task or delivery orders) for the performance of relevant acquisition functions that sets forth—

(i) the personal conflicts-of-interest policy developed under this subsection; and

(ii) the contractor’s responsibilities under the policy.

(B) **EFFECTIVE DATE.**—Subparagraph (A) shall take effect 300 days after October 14, 2008, and shall apply to—

(i) contracts entered into on or after that effective date; and

(ii) task or delivery orders awarded on or after that effective date, regardless of whether the contracts pursuant to which the task or delivery orders are awarded are entered before, on, or after October 14, 2008.

(4) APPLICABILITY.—

(A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—This subsection shall apply to any contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of this title) if the contract is for the performance of relevant acquisition functions.

(B) PARTIAL APPLICABILITY.—If only a portion of a contract described in subparagraph (A) is for the performance of relevant acquisition functions, then this subsection applies only to that portion of the contract.

(c) BEST PRACTICES.—The Administrator shall, in consultation with the Director of the Office of Government Ethics, develop and maintain a repository of best practices relating to the prevention and mitigation of organizational and personal conflicts of interest in Federal contracting.

§ 2304. Conflict of interest standards for consultants

(a) CONTENT OF REGULATIONS.—The Administrator shall prescribe under this division Government-wide regulations that set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) procedures, including registration, certification, and enforcement requirements as may be appropriate, to promote compliance with the standards.

(b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by subsection (a) apply to—

(1) advisory and assistance services provided to the Federal Government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of the services in the regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) other services related to Federal contracts as specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

(c) INTELLIGENCE ACTIVITIES EXEMPTION.—

(1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as defined in section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a).

(2) REPORT.—The Director of National Intelligence shall report to the Intelligence and Appropriations Committees of Congress each January 1, delineating the activities and organizations that have been exempted under paragraph (1).

(d) PRESIDENTIAL DETERMINATION.—Before the regulations required by subsection (a) are prescribed, the President shall determine if prescribing the regulations will have a significantly adverse effect on the accomplishment of the mission of the Defense Department or another Federal agency. If the President determines that the regulations will have such an adverse effect, the President

shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for the determination. If such a report is submitted, the requirement for the regulations shall be null and void.

§ 2305. Authority of Director of Office of Management and Budget not affected

This division does not limit the authorities and responsibilities of the Director of the Office of Management and Budget in effect on December 1, 1983.

§ 2306. Openness of meetings

The Administrator by regulation shall require that—

- (1) formal meetings of the Office of Federal Procurement Policy, as designated by the Administrator, for developing procurement policies and regulations be open to the public; and
- (2) public notice of each meeting be given not less than 10 days prior to the meeting.

§ 2307. Comptroller General's access to information

The Administrator and personnel in the Office of Federal Procurement Policy shall furnish information the Comptroller General may require to discharge the responsibilities of the Comptroller General. For this purpose, the Comptroller General or representatives of the Comptroller General shall have access to all books, documents, papers, and records of the Office of Federal Procurement Policy.

§ 2308. Modular contracting for information technology

(a) USE.—To the maximum extent practicable, the head of an executive agency should use modular contracting for an acquisition of a major system of information technology.

(b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) PROVISIONS IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall provide that—

- (1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—
 - (A) are easier to manage individually than would be one comprehensive acquisition;
 - (B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attaining those objectives;
 - (C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions; and
 - (D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(2) to the maximum extent practicable, a contract for an increment of an information technology acquisition should be awarded within 180 days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the solicitation resulting in award of the contract was issued.

§ 2309. Protection of constitutional rights of contractors

(a) PROHIBITION ON REQUIRING WAIVER OF RIGHTS.—A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive a right under the Constitution for a purpose relating to the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in section 3 of that Act (22 U.S.C. 6701)).

(b) PERMISSIBLE CONTRACT CLAUSES.—Subsection (a) does not prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections to ensure that the contractor is performing the contract in accordance with the provisions of the contract.

§ 2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items

(a) CRITERIA.—A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

(1) the value of the contract or task order is estimated not to exceed \$25,000,000;

(2) the contract or task order sets forth specifically each task to be performed and, for each task—

(A) defines the task in measurable, mission-related terms;

(B) identifies the specific end products or output to be achieved; and

(C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) REGULATIONS.—Regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) REPORT.—Not later than 2 years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Homeland Security and Governmental Affairs and on Armed Services of the Senate and the Committees on Oversight and Government Reform and on Armed Services of the House of Representatives a report on the contracts

or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of the authority, both government-wide and for each department and agency.

(d) EXPIRATION.—The authority under this section expires 10 years after November 24, 2003.

§ 2311. Enhanced transparency on interagency contracting and other transactions

The Director of the Office of Management and Budget shall direct appropriate revisions to the Federal Procurement Data System or any successor system to facilitate the collection of complete, timely, and reliable data on interagency contracting actions and on transactions other than contracts, grants, and cooperative agreements issued pursuant to section 2371 of title 10 or similar authorities. The Director of the Office of Management and Budget shall ensure that data, consistent with what is collected for contract actions, is obtained on—

- (1) interagency contracting actions, including data at the task or delivery-order level; and
- (2) other transactions, including the initial award and any subsequent modifications awarded or orders issued (other than transactions that are reported through the Federal Assistance Awards Data System).

§ 2312. Contingency Contracting Corps

(a) DEFINITION.—In this section, the term “Corps” means the Contingency Contracting Corps established in subsection (b).

(b) ESTABLISHMENT.—The Administrator of General Services, pursuant to policies established by the Office of Management and Budget, and in consultation with the Secretary of Defense and the Secretary of Homeland Security, shall establish a Government-wide Contingency Contracting Corps.

(c) FUNCTION.—The members of the Corps shall be available for deployment in responding to an emergency or major disaster, or a contingency operation, both within or outside the continental United States.

(d) APPLICABILITY.—The authorities provided in this section apply with respect to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used—

- (1) in support of a contingency operation as defined in section 101(a)(13) of title 10; or
- (2) to respond to an emergency or major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(e) MEMBERSHIP.—Membership in the Corps shall be voluntary and open to all Federal employees and members of the Armed Forces who are members of the Federal acquisition workforce.

(f) EDUCATION AND TRAINING.—The Administrator of General Services may, in consultation with the Director of the Federal Acquisition Institute and the Chief Acquisition Officers Council, establish educational and training requirements for members of the Corps. Education and training carried out pursuant to the requirements shall be paid for from funds available in the acquisition workforce training fund established pursuant to section 1703(i) of this title.

(g) SALARY.—The salary for a member of the Corps shall be paid—

(1) in the case of a member of the Armed Forces, out of funds available to the Armed Force concerned; and

(2) in the case of a Federal employee, out of funds available to the employing agency.

(h) AUTHORITY TO DEPLOY THE CORPS.—

(1) DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall have the authority, upon request by an executive agency, to determine when members of the Corps shall be deployed, with the concurrence of the head of the agency or agencies employing the members to be deployed.

(2) SECRETARY OF DEFENSE.—Nothing in this section shall preclude the Secretary of Defense or the Secretary's designee from deploying members of the Armed Forces or civilian personnel of the Department of Defense in support of a contingency operation as defined in section 101(a)(13) of title 10.

(i) ANNUAL REPORT.—

(1) IN GENERAL.—The Administrator of General Services shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate and the Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives an annual report on the status of the Corps as of September 30 of each fiscal year.

(2) CONTENT.—Each report under paragraph (1) shall include the number of members of the Corps, the total cost of operating the program, the number of deployments of members of the program, and the performance of members of the program in deployment.

§ 2313. Database for Federal agency contract and grant officers and suspension and debarment officials

(a) IN GENERAL.—Subject to the authority, direction, and control of the Director of the Office of Management and Budget, the Administrator of General Services shall establish and maintain a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants.

(b) PERSONS COVERED.—The database shall cover the following:

(1) Any person awarded a Federal agency contract or grant in excess of \$500,000, if any information described in subsection (c) exists with respect to the person.

(2) Any person awarded such other category or categories of Federal agency contract as the Federal Acquisition Regulation may provide, if any information described in subsection (c) exists with respect to the person.

(c) INFORMATION INCLUDED.—With respect to a covered person, the database shall include information (in the form of a brief description) for the most recent 5-year period regarding the following:

(1) Each civil or criminal proceeding, or any administrative proceeding, in connection with the award or performance of a contract or grant with the Federal Government with respect to the person during the period to the extent that the proceeding results in the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(i) the payment of a monetary fine or penalty of \$5,000 or more; or

(ii) the payment of a reimbursement, restitution, or damages in excess of \$100,000.

(D) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in subparagraph (A), (B), or (C).

(2) Each Federal contract and grant awarded to the person that was terminated in the period due to default.

(3) Each Federal suspension and debarment of the person.

(4) Each Federal administrative agreement entered into by the person and the Federal Government in the period to resolve a suspension or debarment proceeding.

(5) Each final finding by a Federal official in the period that the person has been determined not to be a responsible source under paragraph (3) or (4) of section 113 of this title.

(6) Other information that shall be provided for purposes of this section in the Federal Acquisition Regulation.

(7) To the maximum extent practicable, information similar to the information covered by paragraphs (1) to (4) in connection with the award or performance of a contract or grant with a State government.

(d) REQUIREMENTS RELATING TO DATABASE INFORMATION.—

(1) DIRECT INPUT AND UPDATE.—The Administrator of General Services shall design and maintain the database in a manner that allows the appropriate Federal agency officials to directly input and update information in the database relating to actions that the officials have taken with regard to contractors or grant recipients.

(2) TIMELINESS AND ACCURACY.—The Administrator of General Services shall develop policies to require—

(A) the timely and accurate input of information into the database;

(B) the timely notification of any covered person when information relevant to the person is entered into the database; and

(C) opportunities for any covered person to submit comments pertaining to information about the person for inclusion in the database.

(e) USE OF DATABASE.—

(1) AVAILABILITY TO GOVERNMENT OFFICIALS.—The Administrator of General Services shall ensure that the information in the database is available to appropriate acquisition officials of Federal agencies, other government officials as the Administrator of General Services determines appropriate, and, on request, the Chairman and Ranking Member of the committees of Congress having jurisdiction.

(2) REVIEW AND ASSESSMENT OF DATA.—

(A) IN GENERAL.—Before awarding a contract or grant in excess of the simplified acquisition threshold under section 134 of this title, the Federal agency official responsible for awarding the contract or grant shall review the database and consider all information in the database with regard to any offer or proposal, and in the case of a contract, shall consider other past performance information available with respect to the offeror in making any responsibility determination or past performance evaluation for the offeror.

(B) DOCUMENTATION IN CONTRACT FILE.—The contract file for each contract of a Federal agency in excess of the simplified acquisition threshold shall document the manner in which the material in the database was considered in any responsibility determination or past performance evaluation.

(f) DISCLOSURE IN APPLICATIONS.—The Federal Acquisition Regulation shall require that persons with Federal agency contracts and grants valued in total greater than \$10,000,000 shall—

(1) submit to the Administrator of General Services, in a manner determined appropriate by the Administrator of General Services, the information subject to inclusion in the database as listed in subsection (c) current as of the date of submittal of the information under this subsection; and

(2) update the information submitted under paragraph (1) on a semiannual basis.

(g) RULEMAKING.—The Administrator of General Services shall prescribe regulations that may be necessary to carry out this section.

DIVISION C—PROCUREMENT

CHAPTER 31—GENERAL

Sec.	
3101.	Applicability.
3102.	Delegation and assignment of powers, functions, and responsibilities.
3103.	Acquisition programs.
3104.	Small business concerns.
3105.	New contracts and grants and merit-based selection procedures.
3106.	Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division.

§ 3101. Applicability

(a) IN GENERAL.—An executive agency shall make purchases and contracts for property and services in accordance with this division and implementing regulations of the Administrator of General Services.

(b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

(1) SIMPLIFIED ACQUISITION THRESHOLD.—

(A) DEFINITION.—For purposes of an acquisition by an executive agency, the simplified acquisition threshold is as specified in section 134 of this title.

(B) INAPPLICABLE LAWS.—A law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of this title does not apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition procedures contained in the Federal Acquisition Regulation

pursuant to section 1901 of this title apply in executive agencies as provided in section 1901.

(c) EXCEPTIONS.—

(1) IN GENERAL.—This division does not apply—

(A) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(B) except as provided in paragraph (2), when this division is made inapplicable pursuant to law.

(2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING, OPENING OF BIDS, AND LENGTH OF CONTRACT.—Sections 6101, 6103, and 6304 of this title do not apply to the procurement of property or services made by an executive agency pursuant to this division. However, when this division is made inapplicable by any law, sections 6101 and 6103 of this title apply in the absence of authority conferred by statute to procure without advertising or without regard to section 6101 of this title. A law that authorizes an executive agency (other than an executive agency exempted from this division by this subsection) to procure property or services without advertising or without regard to section 6101 of this title is deemed to authorize the procurement pursuant to the provisions of this division relating to procedures other than sealed-bid procedures.

§ 3102. Delegation and assignment of powers, functions, and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another law, the head of an executive agency may delegate to another officer or official of that agency any power under this division.

(b) PROCUREMENTS FOR OR WITH ANOTHER AGENCY.—Subject to subsection (a), to facilitate the procurement of property and services covered by this division by an executive agency for another executive agency, and to facilitate joint procurement by executive agencies—

(1) the head of an executive agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within the agency;

(2) the heads of 2 or more executive agencies, consistent with section 1535 of title 31 and regulations prescribed under section 1074 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 31 U.S.C. 1535 note), may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

(3) the heads of 2 or more executive agencies may establish joint or combined offices to exercise procurement functions and responsibilities.

§ 3103. Acquisition programs

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost, performance, and schedule goals established for major acquisition programs of the agency.

(b) ESTABLISHMENT OF GOALS.—

(1) BY HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

(2) BY CHIEF FINANCIAL OFFICER.—The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major acquisition program of the agency.

(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—When it is necessary to implement the policy set out in subsection (a), the head of an executive agency shall—

(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

(2) identify suitable actions to be taken, including termination, with respect to those programs.

§ 3104. Small business concerns

It is the policy of Congress that a fair proportion of the total purchases and contracts for property and services for the Federal Government shall be placed with small business concerns.

§ 3105. New contracts and grants and merit-based selection procedures

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

(1) an executive agency should not be required by legislation to award—

(A) a new contract to a specific non-Federal Government entity; or

(B) a new grant for research, development, test, or evaluation to a non-Federal Government entity; and

(2) a program, project, or technology identified in legislation be procured or awarded through merit-based selection procedures.

(b) NEW CONTRACT AND NEW GRANT DESCRIBED.—For purposes of this section—

(1) a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a prior contract; and

(2) a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a prior grant.

(c) REQUIREMENTS FOR AWARDED NEW CONTRACT OR NEW GRANT.—A provision of law may not be construed as requiring a new contract or a new grant to be awarded to a specified non-Federal Government entity unless the provision of law specifically—

(1) refers to this section;

(2) identifies the particular non-Federal Government entity involved; and

(3) states that the award to that entity is required by the provision of law in contravention of the policy set forth in subsection (a).

(d) EXCEPTION.—This section does not apply to a contract or grant that calls on the National Academy of Sciences to investigate, examine, or experiment on a subject of science or art of significance to an executive agency and to report on those matters to Congress or an agency of the Federal Government.

§ 3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division

This division does not—

- (1) authorize the erection, repair, or furnishing of a public building or public improvement; or
- (2) permit a contract for the construction or repair of a building, road, sidewalk, sewer, main, or similar item using procedures other than sealed-bid procedures under section 3301(b)(1)(A) of this title if the conditions set forth in section 3301(b)(1)(A) of this title apply or the contract is to be performed outside the United States.

CHAPTER 33—PLANNING AND SOLICITATION

Sec.

3301. Full and open competition.
3302. Requirements for purchase of property and services pursuant to multiple award contracts.
3303. Exclusion of particular source or restriction of solicitation to small business concerns.
3304. Use of noncompetitive procedures.
3305. Simplified procedures for small purchases.
3306. Planning and solicitation requirements.
3307. Preference for commercial items.
3308. Planning for future competition in contracts for major systems.
3309. Design-build selection procedures.
3310. Quantities to order.
3311. Qualification requirement.

§ 3301. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and 3305 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services shall—

- (1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and
- (2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) APPROPRIATE COMPETITIVE PROCEDURES.—

(1) USE OF SEALED BIDS.—In determining the competitive procedures appropriate under the circumstance, an executive agency shall—

(A) solicit sealed bids if—

- (i) time permits the solicitation, submission, and evaluation of sealed bids;
- (ii) the award will be made on the basis of price and other price-related factors;
- (iii) it is not necessary to conduct discussions with the responding sources about their bids; and
- (iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A).

(2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not require the use of sealed-bid procedures in cases in which section 204(e) of title 23 applies.

(c) **EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.**—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government’s requirements.

§ 3302. Requirements for purchase of property and services pursuant to multiple award contracts

(a) **DEFINITIONS.**—In this section:

(1) **EXECUTIVE AGENCY.**—The term “executive agency” has the same meaning given in section 133 of this title.

(2) **INDIVIDUAL PURCHASE.**—The term “individual purchase” means a task order, delivery order, or other purchase.

(3) **MULTIPLE AWARD CONTRACT.**—The term “multiple award contract” means—

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10;

(B) a multiple award task order contract that is entered into under the authority of sections 2304a to 2304d of title 10, or chapter 41 of this title; and

(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of an executive agency with 2 or more sources pursuant to the same solicitation.

(4) **SOLE SOURCE TASK OR DELIVERY ORDER.**—The term “sole source task or delivery order” means any order that does not follow the competitive procedures in paragraph (2) or (3) of subsection (c).

(b) **REGULATIONS REQUIRED.**—The Federal Acquisition Regulation shall require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple award contracts.

(c) **CONTENT OF REGULATIONS.**—

(1) **IN GENERAL.**—The regulations required by subsection (b) shall provide that each individual purchase of property or services in excess of the simplified acquisition threshold that is made under a multiple award contract shall be made on a competitive basis unless a contracting officer—

(A) waives the requirement on the basis of a determination that—

(i) one of the circumstances described in paragraphs (1) to (4) of section 4106(c) of this title or section 2304c(b) of title 10 applies to the individual purchase; or

(ii) a law expressly authorizes or requires that the purchase be made from a specified source; and

(B) justifies the determination in writing.

(2) **COMPETITIVE BASIS PROCEDURES.**—For purposes of this subsection, an individual purchase of property or services is made on a competitive basis only if it is made pursuant to procedures that—

(A) require fair notice of the intent to make that purchase (including a description of the work to be performed and the basis on which the selection will be made) to be provided to all contractors offering the property or services under the multiple award contract; and

(B) afford all contractors responding to the notice a fair opportunity to make an offer and have that offer fairly considered by the official making the purchase.

(3) EXCEPTION TO NOTICE REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), and subject to subparagraph (B), notice may be provided to fewer than all contractors offering the property or services under a multiple award contract as described in subsection (a)(3)(A) if notice is provided to as many contractors as practicable.

(B) LIMITATION ON EXCEPTION.—A purchase may not be made pursuant to a notice that is provided to fewer than all contractors under subparagraph (A) unless—

(i) offers were received from at least 3 qualified contractors; or

(ii) a contracting officer of the executive agency determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

(d) PUBLIC NOTICE REQUIREMENTS RELATED TO SOLE SOURCE TASK OR DELIVERY ORDERS.—

(1) PUBLIC NOTICE REQUIRED.—The Federal Acquisition Regulation shall require the head of each executive agency to—

(A) publish on FedBizOpps notice of all sole source task or delivery orders in excess of the simplified acquisition threshold that are placed against multiple award contracts not later than 14 days after the orders are placed, except in the event of extraordinary circumstances or classified orders; and

(B) disclose the determination required by subsection (c)(1) related to sole source task or delivery orders in excess of the simplified acquisition threshold placed against multiple award contracts through the same mechanism and to the same extent as the disclosure of documents containing a justification and approval required by section 2304(f)(1) of title 10 and section 3304(e)(1) of this title, except in the event of extraordinary circumstances or classified orders.

(2) EXEMPTION.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(e) APPLICABILITY.—The regulations required by subsection (b) shall apply to all individual purchases of property or services that are made under multiple award contracts on or after the effective date of the regulations, without regard to whether the multiple award contracts were entered into before, on, or after the effective date.

§ 3303. Exclusion of particular source or restriction of solicitation to small business concerns

(a) EXCLUSION OF PARTICULAR SOURCE.—

(1) CRITERIA FOR EXCLUSION.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures but excluding a particular source to establish or maintain an alternative source of supply for that property or service if the agency head determines that to do so would—

(A) increase or maintain competition and likely result in reduced overall cost for the procurement, or for an anticipated procurement, of the property or services;

(B) be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(D) ensure the continuous availability of a reliable source of supply of the property or service;

(E) satisfy projected needs for the property or service determined on the basis of a history of high demand for the property or service; or

(F) satisfy a critical need for medical, safety, or emergency supplies.

(2) DETERMINATION FOR CLASS DISALLOWED.—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIREMENTS.—A contract awarded pursuant to the competitive procedures referred to in subsections (a) and (b) is not subject to the justification and approval required by section 3304(e)(1) of this title.

§ 3304. Use of noncompetitive procedures

(a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An executive agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

(2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Federal Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source—

(A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization;

(B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable

litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before a court, administrative tribunal, or agency, whether or not the expert is expected to testify; or

(D) to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or treaty between the Federal Government and a foreign government or an international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for that government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to section 3105 of this title, a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the executive agency (who may not delegate the authority under this paragraph)—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned; and

(B) notifies Congress in writing of that determination not less than 30 days before the award of the contract.

(b) **PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE SOURCE.**—For the purposes of subsection (a)(1), in the case of—

(1) a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services are deemed to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which is not otherwise available to the Federal Government and does not resemble the substance of a pending competitive procurement; or

(2) a follow-on contract for the continued development or production of a major system or highly specialized equipment, the property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(A) substantial duplication of cost to the Federal Government that is not expected to be recovered through competition; or

(B) unacceptable delay in fulfilling the executive agency's needs.

(c) **PROPERTY OR SERVICES NEEDED WITH UNUSUAL AND COMPELLING URGENCY.**—

(1) **ALLOWABLE CONTRACT PERIOD.**—The contract period of a contract described in paragraph (2) that is entered into by an executive agency pursuant to the authority provided under subsection (a)(2)—

(A) may not exceed the time necessary—

- (i) to meet the unusual and compelling requirements of the work to be performed under the contract; and
- (ii) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(B) may not exceed one year unless the head of the executive agency entering into the contract determines that exceptional circumstances apply.

(2) APPLICABILITY OF ALLOWABLE CONTRACT PERIOD.—This subsection applies to any contract in an amount greater than the simplified acquisition threshold.

(d) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of paragraph (2) or (6) of subsection (a) shall request offers from as many potential sources as is practicable under the circumstances.

(e) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

(1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided in paragraphs (3) and (4), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of those procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved, in the case of a contract for an amount—

(i) exceeding \$500,000 but equal to or less than \$10,000,000, by the advocate for competition for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) exceeding \$10,000,000 but equal to or less than \$50,000,000, by the head of the procuring activity or by a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in which the individual is entitled to receive the daily equivalent of the maximum annual rate of basic pay payable for level IV of the Executive Schedule (or in a comparable or higher position under another schedule); or

(iii) exceeding \$50,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of this title (without further delegation); and

(C) any required notice has been published with respect to the contract pursuant to section 1708 of this title and the executive agency has considered all bids or proposals received in response to that notice.

(2) ELEMENTS OF JUSTIFICATION.—The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of any sources that expressed in writing an interest in the procurement; and

(F) a statement of any actions the agency may take to remove or overcome a barrier to competition before a subsequent procurement for those needs.

(3) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the case of a procurement permitted by subsection (a)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded.

(4) JUSTIFICATION NOT REQUIRED.—The justification and approval required by paragraph (1) are not required if—

(A) a statute expressly requires that the procurement be made from a specified source;

(B) the agency's need is for a brand-name commercial item for authorized resale;

(C) the procurement is permitted by subsection (a)(7);

or

(D) the procurement is conducted under chapter 85 of this title or section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(5) RESTRICTIONS ON EXECUTIVE AGENCIES.—

(A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERVICES.—In no case may an executive agency—

(i) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount available to the agency for procurement functions; or

(ii) procure property or services from another executive agency unless the other executive agency complies fully with the requirements of this division in its procurement of the property or services.

(B) ADDITIONAL RESTRICTION.—The restriction set out in subparagraph (A)(ii) is in addition to any other restriction provided by law.

(f) PUBLIC AVAILABILITY OF JUSTIFICATION AND APPROVAL REQUIRED FOR USING NONCOMPETITIVE PROCEDURES.—

(1) TIME REQUIREMENT.—

(A) WITHIN 14 DAYS AFTER CONTRACT AWARD.—Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (a), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (e)(1) with respect to the procurement.

(B) WITHIN 30 DAYS AFTER CONTRACT AWARD.—In the case of a procurement permitted by subsection (a)(2), subparagraph (A) shall be applied by substituting “30 days” for “14 days”.

(2) AVAILABILITY ON WEBSITES.—The documents referred to in subparagraph (A) of paragraph (1) shall be made available on the website of the agency and through a Government-wide website selected by the Administrator.

(3) EXCEPTION TO AVAILABILITY AND APPROVAL REQUIREMENT.—This subsection does not require the public availability

of information that is exempt from public disclosure under section 552(b) of title 5.

§ 3305. Simplified procedures for small purchases

(a) AUTHORIZATION.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

- (1) not greater than the simplified acquisition threshold; and
- (2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold. The rental rate under a multiyear lease does not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

(c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified procedures required by subsection (a).

(d) PROMOTION OF COMPETITION.—In using the simplified procedures, an executive agency shall promote competition to the maximum extent practicable.

(e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.—An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of this title.

§ 3306. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.—

(1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under this division shall include specifications that—

(A) consistent with this division, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive

agency and the market available to satisfy those needs. Subject to those needs, specifications may be stated in terms of—

- (A) function, so that a variety of products or services may qualify;
- (B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or
- (C) design requirements.

(b) CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors that the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and the award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and the award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall—

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

- (i) significantly more important than cost or price;
- (ii) approximately equal in importance to cost or price; or
- (iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations implementing paragraph (1)(C) may not define the terms

“significantly more important” and “significantly less important” as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(d) **ADDITIONAL INFORMATION IN SOLICITATION.**—This section does not prohibit an executive agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation’s mandatory requirements at the lowest cost or price.

(e) **LIMITATION ON EVALUATION OF PURCHASE OPTIONS.**—An executive agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in the solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.

(f) **AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRACTORS.**—

(1) **DEFINITION.**—In this subsection, the term “executive agency” has the meaning given that term in section 133 of this title.

(2) **FEDERAL ACQUISITION REGULATION TO ALLOW TELECOMMUTING.**—The Federal Acquisition Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies.

(3) **SCOPE OF ALLOWANCE.**—The Federal Acquisition Regulation at a minimum shall provide that a solicitation for the acquisition of property or services may not set forth any requirement or evaluation criteria that would—

(A) render an offeror ineligible to enter into a contract on the basis of the inclusion of a plan of the offeror to allow the offeror’s employees to telecommute, unless the contracting officer concerned first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is allowed and documents in writing the basis for the determination; or

(B) reduce the scoring of an offer on the basis of the inclusion in the offer of a plan of the offeror to allow the offeror’s employees to telecommute, unless the contracting officer concerned first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed and documents in writing the basis for the determination.

§ 3307. Preference for commercial items

(a) **RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COMMERCIAL ITEMS.**—

(1) **THIS DIVISION.**—Unless otherwise specifically provided, all other provisions in this division also apply to the procurement of commercial items.

(2) **LAWS LISTED IN FEDERAL ACQUISITION REGULATION.**—A contract for the procurement of a commercial item entered into by the head of an executive agency is not subject to

a law properly listed in the Federal Acquisition Regulation pursuant to section 1906 of this title.

(b) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—

(1) requirements of the executive agency with respect to a procurement of supplies or services are stated in terms of—

- (A) functions to be performed;
- (B) performance required; or
- (C) essential physical characteristics;

(2) those requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items may be procured to fulfill those requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill those requirements.

(c) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the executive agency;

(2) require that prime contractors and subcontractors at all levels under contracts of the executive agency incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the executive agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items in response to the executive agency solicitations;

(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(d) MARKET RESEARCH.—

(1) WHEN TO BE USED.—The head of an executive agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that executive agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) USE OF RESULTS.—The head of an executive agency shall use the results of market research to determine whether commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available,

nondevelopmental items other than commercial items are available that—

(A) meet the executive agency's requirements;

(B) could be modified to meet the executive agency's requirements; or

(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.

(3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(e) REGULATIONS.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall provide regulations to implement this section, sections 102, 103, 105, and 110 of this title, and chapter 140 of title 10.

(2) CONTRACT CLAUSES.—

(A) DEFINITION.—In this paragraph, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) LIST OF CLAUSES TO BE INCLUDED.—The regulations prescribed under paragraph (1) shall contain a list of contract clauses to be included in contracts for the acquisition of commercial end items. To the maximum extent practicable, the list shall include only those contract clauses that are—

(i) required to implement provisions of law or executive orders applicable to acquisitions of commercial items or commercial components; or

(ii) determined to be consistent with standard commercial practice.

(C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations shall provide that the Federal Government shall not require a prime contractor to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial items any contract clause except those that are—

(i) required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) determined to be consistent with standard commercial practice.

(D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the maximum extent practicable, only the contract clauses listed pursuant to subparagraph (B) may be used in a contract, and only the contract clauses referred to in subparagraph (C) may be required to be used in a subcontract, for the acquisition of commercial items or commercial components by or for an executive agency.

(E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to subparagraph (B), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

(3) MARKET ACCEPTANCE.—

(A) REQUIREMENT OF OFFERORS.—The Federal Acquisition Regulation shall provide that under appropriate conditions the head of an executive agency may require offerors to demonstrate that the items offered—

(i) have achieved commercial market acceptance or been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

(ii) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

(B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The Federal Acquisition Regulation shall provide guidance to ensure that the criteria for determining commercial market acceptance include the consideration of—

(i) the minimum needs of the executive agency concerned; and

(ii) the entire relevant commercial market, including small businesses.

(4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

(A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal Acquisition Regulation shall include, for acquisitions of commercial items—

(i) a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts be used to the maximum extent practicable;

(ii) a prohibition on use of cost type contracts; and

(iii) subject to subparagraph (B), authority for use of a time-and-materials or labor-hour contract for the procurement of commercial services that are commonly sold to the general public through those contracts and are purchased by the procuring agency on a competitive basis.

(B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT MAY BE USED.—A time-and-materials or labor-hour contract may be used pursuant to the authority referred to in subparagraph (A)(iii)—

(i) only for a procurement of commercial services in a category of commercial services described in subparagraph (C); and

(ii) only if the contracting officer for the procurement—

(I) executes a determination and findings that no other contract type is suitable;

(II) includes in the contract a ceiling price that the contractor exceeds at its own risk; and

(III) authorizes a subsequent change in the ceiling price only on a determination, documented in the contract file, that it is in the best interest of the procuring agency to change the ceiling price.

(C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of commercial services referred to in subparagraph (B) are as follows:

(i) Commercial services procured for support of a commercial item, as described in section 103(5) of this title.

(ii) Any other category of commercial services that the Administrator for Federal Procurement Policy designates in the Federal Acquisition Regulation for the purposes of this subparagraph on the basis that—

(I) the commercial services in the category are of a type of commercial services that are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(II) it would be in the best interests of the Federal Government to authorize use of time-and-materials or labor-hour contracts for purchases of the commercial services in the category.

(5) **CONTRACT QUALITY REQUIREMENTS.**—Regulations prescribed under paragraph (1) shall include provisions that—

(A) allow, to the maximum extent practicable, a contractor under a commercial items acquisition to use the existing quality assurance system of the contractor as a substitute for compliance with an otherwise applicable requirement for the Federal Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Federal Government;

(B) require that, to the maximum extent practicable, the executive agency take advantage of warranties (including extended warranties) offered by offerors of commercial items and use those warranties for the repair and replacement of commercial items; and

(C) set forth guidance regarding the use of past performance of commercial items and sources as a factor in contract award decisions.

§ 3308. Planning for future competition in contracts for major systems

(a) **DEVELOPMENT CONTRACT.**—

(1) **DETERMINING WHETHER PROPOSALS ARE NECESSARY.**—In preparing a solicitation for the award of a development contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require the proposals, the head of the agency shall consider the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If the proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) **CONTENTS OF PROPOSALS.**—The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

(A) Proposals to incorporate in the design of the major system items that are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(B) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items that the Federal Government will be able to acquire competitively in the future.

(b) **PRODUCTION CONTRACT.**—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a solicitation for the award of a production contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require the proposals, the head of the agency shall consider the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If the proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENT OF PROPOSALS.—The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the Federal Government will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to this requirement may include the following:

(A) Proposals to provide to the Federal Government the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the Federal Government of acquiring the data and the right to use the data.

(B) Proposals for the qualification or development of multiple sources of supply for the item.

(c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in subsections (a) and (b) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.

§ 3309. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under sections 1101 to 1104 of title 40 or another acquisition procedure authorized by law is used, the head of an executive agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

(1) the contracting officer anticipates that 3 or more offers will be received for the contract;

(2) design work must be performed before an offeror can develop a price or cost proposal for the contract;

(3) the offeror will incur a substantial amount of expense in preparing the offer; and

(4) the contracting officer has considered information such as the following:

(A) The extent to which the project requirements have been adequately defined.

(B) The time constraints for delivery of the project.

(C) The capability and experience of potential contractors.

(D) The suitability of the project for use of the two-phase selection procedures.

(E) The capability of the agency to manage the two-phase selection process.

(F) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Federal Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals that meet the Federal Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with sections 1101 to 1104 of title 40.

(2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) EVALUATION FACTORS.—The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team), and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) SELECTION BY CONTRACTING OFFICER.—

(A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(i) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work, or both; and

(ii) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b) to (d) of section 3306 of this title.

(B) SEPARATE EVALUATIONS.—The contracting officer separately evaluates the submissions described in clauses (i) and (ii) of subparagraph (A).

(5) AWARDING OF CONTRACT.—The agency awards the contract in accordance with chapter 37 of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE-TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Federal Government's interest and is consistent with the purposes and objectives of the two-phase selection process.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

§ 3310. Quantities to order

(a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency shall procure supplies in a quantity that—

(1) will result in the total cost and unit cost most advantageous to the Federal Government, where practicable; and

(2) does not exceed the quantity reasonably expected to be required by the agency.

(b) OFFEROR'S OPINION OF QUANTITY.—Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of supplies proposed to be procured is economically advantageous to the Federal Government and, if applicable, to recommend a quantity that would be more economically advantageous to the Federal Government. Each recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

§ 3311. Qualification requirement

(a) DEFINITION.—In this section, the term “qualification requirement” means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Except as provided in subsection (c), the head of an agency, before enforcing any qualification requirement, shall—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror on request all requirements that a prospective offeror, or its

product, must satisfy to become qualified, with those requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the cost of testing and evaluation likely to be incurred by a potential offeror to become qualified;

(4) ensure that a potential offeror is provided, on request, a prompt opportunity to demonstrate at its own expense (except as provided in subsection (d)) its ability to meet the standards specified for qualification using—

(A) qualified personnel and facilities—

(i) of the agency concerned;

(ii) of another agency obtained through interagency agreement; or

(iii) under contract; or

(B) other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of paragraph (4), provide to the extent possible that those services be provided by a contractor that—

(A) is not expected to benefit from an absence of additional qualified sources; and

(B) is required in the contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed whether qualification is attained and, if not attained, is promptly furnished specific information about why qualification was not attained.

(c) **APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.**—

(1) **APPLICABILITY.**—Subsection (b) does not apply to a qualification requirement established by statute prior to October 30, 1984.

(2) **WAIVER AUTHORITY.**—

(A) **SUBMISSION OF DETERMINATION OF UNREASONABLENESS.**—Except as provided in subparagraph (C), if it is unreasonable to specify the standards for qualification that a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement.

(B) **AUTHORITY TO GRANT WAIVER.**—After considering any comments of the advocate for competition reviewing the determination, the head of the procuring activity may waive the requirements of paragraphs (2) to (5) of subsection (b) for up to 2 years with respect to the item subject to the qualification requirement.

(C) **NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.**—Waiver authority under this paragraph does not apply with respect to a qualified products list.

(3) **SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED.**—A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror has not been identified as meeting

a qualification requirement if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet those standards before the date specified for award of the contract.

(4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT REQUIRED.—This subsection does not require the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with that requirement.

(5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an agency need not delay a proposed procurement to comply with subsection (b) or to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

(1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PRODUCTS.—If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than 2 actual manufacturers or the products of 2 actual manufacturers, respectively, the head of the agency concerned shall—

(A) publish notice periodically soliciting additional sources or products to seek qualification, unless the contracting officer determines that doing so would compromise national security; and

(B) subject to paragraph (2), bear the cost of conducting the specified testing and evaluation (excluding the cost associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern that has met the standards specified for qualification and that could reasonably be expected to compete for a contract for that requirement.

(2) WHEN AGENCY MAY BEAR COST.—The head of the agency concerned may bear the cost under paragraph (1)(B) only if the head of the agency determines that the additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to offset (within a reasonable period of time considering the duration and dollar value of anticipated future requirements) the cost incurred by the agency.

(3) CERTIFICATION REQUIRED.—The head of the agency shall require a prospective contractor requesting the Federal Government to bear testing and evaluation costs under paragraph (1)(B) to certify its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within 7 years after the establishment of a qualification requirement, the need for the requirement shall be examined and the standards of the requirement revalidated in accordance with the requirements of subsection (b). This subsection does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) **WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT ALLOWED.**—Except in an emergency as determined by the head of the agency, after the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not enforce the requirement unless the agency complies with the requirements of subsection (b).

CHAPTER 35—TRUTHFUL COST OR PRICING DATA

Sec.

- 3501. General.
- 3502. Required cost or pricing data and certification.
- 3503. Exceptions.
- 3504. Cost or pricing data on below-threshold contracts.
- 3505. Submission of other information.
- 3506. Price reductions for defective cost or pricing data.
- 3507. Interest and penalties for certain overpayments.
- 3508. Right to examine contractor records.
- 3509. Notification of violations of Federal criminal law or overpayments.

§ 3501. General

(a) **DEFINITIONS.**—In this chapter:

(1) **COMMERCIAL ITEM.**—The term “commercial item” has the meaning provided the term by section 103 of this title.

(2) **COST OR PRICING DATA.**—The term “cost or pricing data” means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with section 3506(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include factual information from which a judgment was derived.

(3) **SUBCONTRACT.**—The term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(b) **REGULATIONS.**—

(1) **MINIMIZING ABUSE OF COMMERCIAL SERVICES ITEM AUTHORITY.**—The Federal Acquisition Regulation shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial items for purposes of this chapter only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the services.

(2) **INFORMATION TO SUBMIT.**—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

(A) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

§ 3502. Required cost or pricing data and certification

(a) **WHEN REQUIRED.**—The head of an executive agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) **OFFEROR FOR PRIME CONTRACT.**—An offeror for a prime contract under this division to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(A) in the case of a prime contract entered into after October 13, 1994, the price of the contract to the Federal Government is expected to exceed \$500,000; and

(B) in the case of a prime contract entered into on or before October 13, 1994, the price of the contract to the Federal Government is expected to exceed \$100,000.

(2) **CONTRACTOR.**—The contractor for a prime contract under this division shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(A) in the case of a change or modification made to a prime contract referred to in paragraph (1)(A), the price adjustment is expected to exceed \$500,000;

(B) in the case of a change or modification made to a prime contract that was entered into on or before October 13, 1994, and that has been modified pursuant to subsection (f), the price adjustment is expected to exceed \$500,000; and

(C) in the case of a change or modification not covered by subparagraph (A) or (B), the price adjustment is expected to exceed \$100,000.

(3) **OFFEROR FOR SUBCONTRACT.**—An offeror for a subcontract (at any tier) of a contract under this division shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this chapter and—

(A) in the case of a subcontract under a prime contract referred to in paragraph (1)(A), the price of the subcontract is expected to exceed \$500,000;

(B) in the case of a subcontract entered into under a prime contract that was entered into on or before October 13, 1994, and that has been modified pursuant to subsection (f), the price of the subcontract is expected to exceed \$500,000; and

(C) in the case of a subcontract not covered by subparagraph (A) or (B), the price of the subcontract is expected to exceed \$100,000.

(4) **SUBCONTRACTOR.**—The subcontractor for a subcontract covered by paragraph (3) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(A) in the case of a change or modification to a subcontract referred to in paragraph (3)(A) or (B), the price adjustment is expected to exceed \$500,000; and

(B) in the case of a change or modification to a subcontract referred to in paragraph (3)(C), the price adjustment is expected to exceed \$100,000.

(b) CERTIFICATION.—A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under subsection (a) (or required by the head of the procuring activity concerned to submit the data under section 3504 of this title) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(c) TO WHOM SUBMITTED.—Cost or pricing data required to be submitted under subsection (a) (or under section 3504 of this title), and a certification required to be submitted under subsection (b), shall be submitted—

(1) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or a designated representative of the contracting officer); or

(2) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(d) APPLICATION OF CHAPTER.—Except as provided under section 3503 of this title, this chapter applies to contracts entered into by the head of an executive agency on behalf of a foreign government.

(e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of requirements for submission of certified cost or pricing data that is granted under section 3503(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) of this section for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under subsection (a)(3) of this section should be waived in the case of those subcontracts and justifies in writing the reason for the determination.

(f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before October 13, 1994, the head of the executive agency that entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All those modifications shall be made without requiring consideration.

(g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year that is divisible by 5, each amount set forth in subsection (a) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000. In the case of an amount that is evenly divisible by \$25,000 but not evenly divisible by \$50,000, the amount shall be rounded to the next higher multiple of \$50,000.

§ 3503. Exceptions

(a) IN GENERAL.—Submission of certified cost or pricing data shall not be required under section 3502 of this title in the case of a contract, a subcontract, or a modification of a contract or subcontract—

(1) for which the price agreed on is based on—

(A) adequate price competition; or

(B) prices set by law or regulation;

(2) for the acquisition of a commercial item; or

(3) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this chapter may be waived and justifies in writing the reasons for the determination.

(b) **MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.**—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be required under section 3502 of this title if—

(1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1) or (2) of subsection (a); and

(2) the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

§ 3504. Cost or pricing data on below-threshold contracts

(a) **AUTHORITY TO REQUIRE SUBMISSION.**—Subject to subsection (b), when certified cost or pricing data are not required to be submitted by section 3502 of this title for a contract, subcontract, or modification of a contract or subcontract, the data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that the data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires the data to be submitted under this section, the head of the procuring activity shall justify in writing the reason for the requirement.

(b) **EXCEPTION.**—The head of the procuring activity may not require certified cost or pricing data to be submitted under this section for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in section 3503(a)(1) or (2) of this title.

(c) **DELEGATION OF AUTHORITY PROHIBITED.**—The head of a procuring activity may not delegate the functions under this section.

§ 3505. Submission of other information

(a) **AUTHORITY TO REQUIRE SUBMISSION.**—When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3503(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

(b) **LIMITATIONS ON AUTHORITY.**—The Federal Acquisition Regulation shall include the following provisions regarding the types of

information that contracting officers may require under subsection (a):

(1) REASONABLE LIMITATIONS.—Reasonable limitations on requests for sales data relating to commercial items.

(2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) INFORMATION NOT TO BE DISCLOSED.—A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

§ 3506. Price reductions for defective cost or pricing data

(a) PROVISION REQUIRING ADJUSTMENT.—

(1) IN GENERAL.—A prime contract (or change or modification to a prime contract) under which a certificate under section 3502(b) of this title is required shall contain a provision that the price of the contract to the Federal Government, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the executive agency that the price was increased because the contractor (or any subcontractor required to make the certificate available) submitted defective cost or pricing data.

(2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of this chapter, defective cost or pricing data are cost or pricing data that, as of the date of agreement on the price of the contract (or another date agreed on between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree on a date other than the date of agreement on the price of the contract, the date agreed on by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under a contract provision required by subsection (a) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it is a defense that the Federal Government did not rely on the defective data submitted by the contractor or subcontractor.

(c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract under a contract provision required by subsection (a) that—

(1) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(A) was the sole source of the property or services procured; or

(B) otherwise was in a superior bargaining position with respect to the property or services procured;

(2) the contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring

the character of the data to the attention of the contracting officer;

(3) the contract was based on an agreement between the contractor and the Federal Government about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(4) the prime contractor or subcontractor did not submit a certification of cost or pricing data relating to the contract as required by section 3502(b) of this title.

(d) OFFSETS.—

(1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by subsection (a) if—

(A) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(B) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable, consistent with subsection (a)(2), another date agreed on by the parties, and that the data were not submitted as specified in section 3502(c) of this title before that date.

(2) WHEN NOT ALLOWED.—A contractor shall not be allowed to offset an amount otherwise authorized to be offset under paragraph (1) if—

(A) the certification under section 3502(b) of this title with respect to the cost or pricing data involved was known to be false when signed; or

(B) the Federal Government proves that, had the cost or pricing data referred to in paragraph (1)(B) been submitted to the Federal Government before date of agreement on the price of the contract (or price of the modification), or, if applicable, under subsection (a)(2), another date agreed on by the parties, the submission of the cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

§ 3507. Interest and penalties for certain overpayments

(a) IN GENERAL.—If the Federal Government makes an overpayment to a contractor under a contract with an executive agency subject to this chapter and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the Federal Government—

(1) for interest on the amount of the overpayment, to be computed—

(A) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of the overpayment to the Federal Government; and

(B) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621); and

(2) if the submission of the defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(b) **LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.**—Any liability under this section of a contractor that submits cost or pricing data but refuses to submit the certification required by section 3502(b) of this title with respect to the cost or pricing data is not affected by the refusal to submit the certification.

§ 3508. Right to examine contractor records

For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this chapter, an executive agency shall have the authority provided by section 4706(b)(2) of this title.

§ 3509. Notification of violations of Federal criminal law or overpayments

(a) **DEFINITION.**—In this section, the term “covered contract” means any contract in an amount greater than \$5,000,000 and more than 120 days in duration.

(b) **FEDERAL ACQUISITION REGULATION.**—The Federal Acquisition Regulation shall include, pursuant to FAR Case 2007-006 (as published at 72 Fed. Reg. 64019, November 14, 2007) or any follow-on FAR case, provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items.

CHAPTER 37—AWARDING OF CONTRACTS

Sec.	
3701.	Basis of award and rejection.
3702.	Sealed bids.
3703.	Competitive proposals.
3704.	Post-award debriefings.
3705.	Pre-award debriefings.
3706.	Encouragement of alternative dispute resolution.
3707.	Antitrust violations.
3708.	Protests.

§ 3701. Basis of award and rejection

(a) **AWARD.**—An executive agency shall evaluate sealed bids and competitive proposals, and award a contract, based solely on the factors specified in the solicitation.

(b) **REJECTION.**—All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that rejection is in the public interest.

§ 3702. Sealed bids

(a) **OPENING OF BIDS.**—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) **CRITERIA FOR AWARDING CONTRACT.**—The executive agency shall evaluate the bids in accordance with section 3701(a) of this title without discussions with the bidders and, except as provided in section 3701(b) of this title, shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the Federal Government, considering only price and the other price-related factors included in the solicitation.

(c) **NOTICE OF AWARD.**—The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the

award to the successful bidder. Within 3 days after the date of contract award, the executive agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

§ 3703. Competitive proposals

(a) EVALUATION AND AWARD.—An executive agency shall evaluate competitive proposals in accordance with section 3701(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), if, as required by section 3306(b)(2)(B)(i) of this title, the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with those criteria.

(c) CRITERIA FOR AWARDED CONTRACT.—Except as otherwise provided in section 3701(b) of this title, the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the Federal Government, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The executive agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to that source and, within 3 days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals.

§ 3704. Post-award debriefings

(a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, on written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall debrief the offeror within, to the maximum extent practicable, 5 days after receipt of the request by the executive agency.

(c) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a minimum—

(1) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(2) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall

evaluated cost and technical rating of the offer of the debriefed offeror;

(3) the overall ranking of all offers;

(4) a summary of the rationale for the award;

(5) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(6) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for competitive proposals shall include a statement that information described in subsection (c) may be disclosed in post-award debriefings.

(f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of the contract award and as a result of a successful procurement protest, the executive agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the head of the executive agency shall make available to all offerors—

(1) the information provided in debriefings under this section regarding the offer of the contractor awarded the contract; and

(2) the same information that would have been provided to the original offerors.

(g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

§ 3705. Pre-award debriefings

(a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes that offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Federal Government to conduct a debriefing at that time.

(c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required to debrief an excluded offeror in accordance with section 3704 of this title only if that offeror requested and was refused a pre-award debriefing under subsections (a) and (b).

(d) INFORMATION TO BE PROVIDED.—The debriefing conducted under this section shall include—

(1) the executive agency's evaluation of the significant elements in the offeror's offer;

(2) a summary of the rationale for the offeror's exclusion; and

(3) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted pursuant to this section may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

§ 3706. Encouragement of alternative dispute resolution

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

§ 3707. Antitrust violations

If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, the agency head shall refer the bid or proposal to the Attorney General for appropriate action.

§ 3708. Protests

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, and an actual or prospective offeror requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the executive agency may—

(1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of section 3554 of title 31; and

(2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of section 3554(c).

CHAPTER 39—SPECIFIC TYPES OF CONTRACTS

Sec.

3901. Contracts awarded using procedures other than sealed-bid procedures.

3902. Severable services contracts for periods crossing fiscal years.

3903. Multiyear contracts.

3904. Contract authority for severable services contracts and multiyear contracts.

3905. Cost contracts.

3906. Cost-reimbursement contracts.

§ 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) **AUTHORIZED TYPES.**—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) **REQUIRED WARRANTY.**—

(1) **CONTENT.**—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) **REMEDY FOR BREACH OR VIOLATION.**—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) **NONAPPLICATION.**—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

§ 3902. Severable services contracts for periods crossing fiscal years

(a) **AUTHORITY TO ENTER INTO CONTRACT.**—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) **OBLIGATION OF FUNDS.**—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.

§ 3903. Multiyear contracts

(a) **DEFINITION.**—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) **AUTHORITY TO ENTER INTO CONTRACT.**—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(c) **TERMINATION CLAUSE.**—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of the contract in a fiscal year covered by the contract. Funds available for paying termination costs shall remain available for that purpose until the costs associated with termination of the contract are paid.

(d) **CANCELLATION CEILING NOTICE.**—Before a contract described in subsection (b) that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to Congress. The contract may not be awarded until the end of the 30-day period beginning on the date of the notification.

(e) **CONTINGENCY CLAUSE FOR APPROPRIATION OF FUNDS.**—A multiyear contract may provide that performance under the contract after the first year of the contract is contingent on the appropriation of funds and (if the contract does so provide) that a cancellation payment shall be made to the contractor if the funds are not appropriated.

(f) **OTHER LAW NOT AFFECTED.**—This section does not modify or affect any other provision of law that authorizes multiyear contracts.

§ 3904. Contract authority for severable services contracts and multiyear contracts

(a) **COMPTROLLER GENERAL.**—The Comptroller General may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and nonaudit-related services to the same extent as executive agencies under sections 3902 and 3903 of this title.

(b) **LIBRARY OF CONGRESS.**—The Library of Congress may use available funds to enter into contracts for the lease or procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and services pursuant to sections 3902 and 3903 of this title.

(c) **CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.**—The Chief Administrative Officer of the House of Representatives may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(d) **CONGRESSIONAL BUDGET OFFICE.**—The Congressional Budget Office may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and may enter into multiyear contracts for the acquisition of property and services to the same extent as executive agencies under the authority of sections 3902 and 3903 of this title.

(e) **SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE.**—Subject to regulations prescribed by the Committee

on Rules and Administration of the Senate, the Secretary and the Sergeant at Arms and Doorkeeper of the Senate may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent and under the same conditions as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services to the same extent and under the same conditions as executive agencies under the authority of section 3903 of this title.

(f) CAPITOL POLICE.—The United States Capitol Police may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of the Smithsonian Institution may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services under the authority of section 3903 of this title.

§ 3905. Cost contracts

(a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the estimated cost of the contract, not including the fee, as determined by the agency head at the time of entering into the contract.

(2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The fee in a cost-plus-a-fixed-fee contract for experimental, developmental, or research work shall not exceed 15 percent of the estimated cost of the contract, not including the fee.

(3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a cost-plus-a-fixed-fee contract for architectural or engineering services relating to any public works or utility project may include the contractor's costs and shall not exceed 6 percent of the estimated cost, not including the fee, as determined

by the agency head at the time of entering into the contract, of the project to which the fee applies.

(c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either the simplified acquisition threshold or 5 percent of the total estimated cost of the prime contract.

(d) RIGHT TO AUDIT.—A procuring agency, through any authorized representative thereof, has the right to inspect the plans and to audit the books and records of a prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

§ 3906. Cost-reimbursement contracts

(a) DEFINITION.—In this section, the term “executive agency” has the same meaning given in section 133 of this title.

(b) REGULATIONS ON THE USE OF COST-REIMBURSEMENT CONTRACTS.—The Federal Acquisition Regulation shall address the use of cost-reimbursement contracts.

(c) CONTENT.—The regulations promulgated under subsection (b) shall include guidance regarding—

(1) when and under what circumstances cost-reimbursement contracts are appropriate;

(2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts; and

(3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—The Director of the Office of Management and Budget shall submit an annual report to Congressional committees identified in subsection (e) on the use of cost-reimbursement contracts and task or delivery orders by all executive agencies.

(2) CONTENTS.—The report shall include—

(A) the total number and value of contracts awarded and orders issued during the covered fiscal year;

(B) the total number and value of cost-reimbursement contracts awarded and orders issued during the covered fiscal year; and

(C) an assessment of the effectiveness of the regulations promulgated pursuant to subsection (b) in ensuring the appropriate use of cost-reimbursement contracts.

(3) TIME REQUIREMENTS.—

(A) DEADLINE.—The report shall be submitted no later than March 1 and shall cover the fiscal year ending September 30 of the prior year.

(B) LIMITATION.—The report shall be submitted from March 1, 2009, until March 1, 2014.

(e) CONGRESSIONAL COMMITTEES.—The report required by subsection (d) shall be submitted to—

(1) the Committee on Oversight and Government Reform of the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committees on Appropriations of the House of Representatives and the Senate; and

(4) in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives.

CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS

Sec.	
4101.	Definitions.
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4103.	General authority.
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4105.	Advisory and assistance services.
4106.	Orders.

§ 4101. Definitions

In this chapter:

(1) **DELIVERY ORDER CONTRACT.**—The term “delivery order contract” means a contract for property that—

(A) does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the delivery of property during the period of the contract.

(2) **TASK ORDER CONTRACT.**—The term “task order contract” means a contract for services that—

(A) does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the performance of tasks during the period of the contract.

§ 4102. Authorities or responsibilities not affected

This chapter does not modify or supersede, and is not intended to impair or restrict, authorities or responsibilities under sections 1101 to 1104 of title 40.

§ 4103. General authority

(a) **AUTHORITY TO AWARD.**—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task or delivery order contract for procurement of services or property.

(b) **SOLICITATION.**—The solicitation for a task or delivery order contract shall include—

(1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option;

(2) the maximum quantity or dollar value of the services or property to be procured under the contract; and

(3) a statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) **APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.**—The head of an executive agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in section 3304(a) of this title applies to the contract and the use of those procedures is approved in accordance with section 3304(e) of this title.

(d) **SINGLE AND MULTIPLE CONTRACT AWARDS.**—

(1) **EXERCISE OF AUTHORITY.**—The head of an executive agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract;
or

(B) if the solicitation states that the head of the executive agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to 2 or more sources.

(2) DETERMINATION NOT REQUIRED.—No determination under section 3303 of this title is required for an award of multiple task or delivery order contracts under paragraph (1)(B).

(3) SINGLE SOURCE AWARD FOR TASK OR DELIVERY ORDER CONTRACTS EXCEEDING \$100,000,000.—

(A) WHEN SINGLE AWARDS ARE ALLOWED.—No task or delivery order contract in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single source unless the head of the executive agency determines in writing that—

(i) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) the contract provides only for firm, fixed price task orders or delivery orders for—

(I) products for which unit prices are established in the contract; or

(II) services for which prices are established in the contract for the specific tasks to be performed;

(iii) only one source is qualified and capable of performing the work at a reasonable price to the Federal Government; or

(iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(B) NOTIFICATION OF CONGRESS.—The head of the executive agency shall notify Congress within 30 days after any determination under subparagraph (A)(iv).

(4) REGULATIONS.—Regulations implementing this subsection shall establish—

(A) a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under paragraph (1)(B); and

(B) criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 4105 of this title, this section does not apply to a task or delivery order contract for the acquisition of advisory and assistance services (as defined in section 1105(g) of title 31).

(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an executive agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

§ 4104. Guidance on use of task and delivery order contracts

(a) **GUIDANCE IN FEDERAL ACQUISITION REGULATION.**—The Federal Acquisition Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall provide guidance to agencies on the appropriate use of task and delivery order contracts in accordance with this chapter and sections 2304a to 2304d of title 10.

(b) **CONTENT OF REGULATIONS.**—The regulations issued pursuant to subsection (a) at a minimum shall provide specific guidance on—

(1) the appropriate use of Government-wide and other multi-agency contracts entered into in accordance with this chapter and sections 2304a to 2304d of title 10; and

(2) steps that agencies should take in entering into and administering multiple award task and delivery order contracts to ensure compliance with the requirement in—

(A) section 11312 of title 40 for capital planning and investment control in purchases of information technology products and services;

(B) section 4106(c) of this title and section 2304c(b) of title 10 to ensure that all contractors are afforded a fair opportunity to be considered for the award of task and delivery orders; and

(C) section 4106(e) of this title and section 2304c(c) of title 10 for a statement of work in each task or delivery order issued that clearly specifies all tasks to be performed or property to be delivered under the order.

(c) **FEDERAL SUPPLY SCHEDULES PROGRAM.**—The Administrator for Federal Procurement Policy shall consult with the Administrator of General Services to assess the effectiveness of the multiple awards schedule program of the General Services Administration referred to in section 152(3) of this title that is administered as the Federal Supply Schedules program. The assessment shall include examination of—

(1) the administration of the program by the Administrator of General Services; and

(2) the ordering and program practices followed by Federal customer agencies in using schedules established under the program.

§ 4105. Advisory and assistance services

(a) **DEFINITION.**—In this section, the term “advisory and assistance services” has the same meaning given that term in section 1105(g) of title 31.

(b) **AUTHORITY TO AWARD.**—

(1) **IN GENERAL.**—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task order contract for procurement of advisory and assistance services.

(2) **ONLY UNDER THIS SECTION.**—The head of an executive agency may enter into a task order contract for advisory and assistance services only under this section.

(c) **CONTRACT PERIOD.**—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to the contract.

(d) **CONTENT OF NOTICE.**—The notice required by section 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(e) **REQUIRED CONTENT OF SOLICITATION AND CONTRACT.**—

(1) **SOLICITATION.**—The solicitation shall include the information (regarding services) described in section 4103(b) of this title.

(2) **CONTRACT.**—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) **MULTIPLE AWARDS.**—

(1) **AUTHORITY TO MAKE MULTIPLE AWARDS.**—On the basis of one solicitation, the head of an executive agency may award separate task order contracts under this section for the same or similar services to 2 or more sources if the solicitation states that the head of the executive agency has the option to do so.

(2) **CONTENT OF SOLICITATION.**—In the case of a task order contract for advisory and assistance services to be entered into under this section, if the contract period is to exceed 3 years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the executive agency may also elect to award only one task order contract if the head of the executive agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) **NONAPPLICATION.**—Paragraph (2) does not apply in the case of a solicitation for which the head of the executive agency concerned determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

(g) **CONTRACT MODIFICATIONS.**—

(1) **INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.**—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) **USE OF COMPETITIVE PROCEDURES.**—Unless use of procedures other than competitive procedures is authorized by an exception in section 3304(a) of this title and approved in accordance with section 3304(e) of this title, competitive procedures shall be used for making such a modification.

(3) **NOTICE.**—Notice regarding the modification shall be provided in accordance with section 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) **CONTRACT EXTENSIONS.**—

(1) **WHEN CONTRACT MAY BE EXTENDED.**—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f),

a contract entered into by the head of an executive agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the head of the executive agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into the contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

§ 4106. Orders

(a) APPLICATION.—This section applies to task and delivery order contracts entered into under sections 4103 and 4105 of this title.

(b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for the order under section 1708 of this title or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3304(e) of this title) that is separate from that used for entering into the contract.

(c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are awarded under section 4103(d)(1)(B) or 4105(f) of this title, all contractors awarded the contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of \$2,500 that is to be issued under any of the contracts, unless—

(1) the executive agency's need for the services or property ordered is of such unusual urgency that providing the opportunity to all of those contractors would result in unacceptable delays in fulfilling that need;

(2) only one of those contractors is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor to satisfy a minimum guarantee.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000.—In the case of a task or delivery order in excess of \$5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

- (1) a notice of the task or delivery order that includes a clear statement of the executive agency's requirements;
 - (2) a reasonable period of time to provide a proposal in response to the notice;
 - (3) disclosure of the significant factors and subfactors, including cost or price, that the executive agency expects to consider in evaluating such proposals, and their relative importance;
 - (4) in the case of an award that is to be made on a best value basis, a written statement documenting—
 - (A) the basis for the award; and
 - (B) the relative importance of quality and price or cost factors; and
 - (5) an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title.
- (e) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.
- (f) PROTESTS.—
- (1) PROTEST NOT AUTHORIZED.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—
 - (A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or
 - (B) a protest of an order valued in excess of \$10,000,000.
 - (2) JURISDICTION OVER PROTESTS.—Notwithstanding section 3556 of title 31, the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).
 - (3) EFFECTIVE PERIOD.—This subsection shall be in effect for three years, beginning on the date that is 120 days after January 28, 2008.
- (g) TASK AND DELIVERY ORDER OMBUDSMAN.—
- (1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The head of each executive agency who awards multiple task or delivery order contracts under section 4103(d)(1)(B) or 4105(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on those contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).
 - (2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency's advocate for competition.

CHAPTER 43—ALLOWABLE COSTS

- Sec.
- 4301. Definitions.
 - 4302. Adjustment of threshold amount of covered contract.
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§ 4301. Definitions

In this chapter:

(1) **COMPENSATION.**—The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer’s cost accounting records for the fiscal year.

(2) **COVERED CONTRACT.**—The term “covered contract” means a contract for an amount in excess of \$500,000 that is entered into by an executive agency, except that the term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

(3) **FISCAL YEAR.**—The term “fiscal year” means a fiscal year established by a contractor for accounting purposes.

(4) **SENIOR EXECUTIVE.**—The term “senior executive”, with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

§ 4302. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by 5, the amount set forth in section 4301(2) of this title shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An adjusted amount that is not evenly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000. If an amount is evenly divisible by \$25,000 but is not evenly divisible by \$50,000, the amount shall be rounded to the next higher multiple of \$50,000.

§ 4303. Effect of submission of unallowable costs

(a) **INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULATION COST PRINCIPLE.**—An executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued and if that proposal includes the submission of a cost that is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) **PENALTY FOR VIOLATION OF COST PRINCIPLE.**—

(1) **UNALLOWABLE COST IN PROPOSAL.**—If the executive agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the executive agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the Federal Government for the use of the amount which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) **COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.**—If the executive agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of

that contractor before the submission of that proposal, the executive agency shall assess a penalty against the contractor in an amount equal to 2 times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) **WAIVER OF PENALTY.**—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) **APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.**—An action of an executive agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of this title; and

(2) is appealable in the manner provided in section 7104(a) of this title.

§ 4304. Specific costs not allowable

(a) **SPECIFIC COSTS.**—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with those costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Federal Government where the contractor is found liable or had pleaded *nolo contendere* to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance those payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft that exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a “golden parachute payment”) that is—

(A) in an amount in excess of the normal severance pay paid by the contractor to an employee on termination of employment; and

(B) paid to the employee contingent on, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor’s assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor’s own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a Federal Government facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the Federal Government or a State, to the extent provided in section 4310 of this title.

(16) Costs of compensation of senior executives of contractors for a fiscal year, regardless of the contract funding source, to the extent that the compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator under section 1127 of this title.

(b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATIONALS.—

(1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, an executive agency, in awarding a covered contract, may waive the application of paragraphs (13) and (14) of subsection (a) to that contract if the executive agency determines that—

(A) the application of those provisions to that contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;

(B) the contractor has taken (or has established plans to take) appropriate actions within the contractor’s control to minimize the amount and number of incidents of the

payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(C) the payment of severance pay is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An executive agency shall include in the solicitation for a covered contract a statement indicating—

(A) that a waiver has been granted under paragraph (1) for the contract; or

(B) whether the executive agency will consider granting a waiver and, if the executive agency will consider granting a waiver, the criteria to be used in granting the waiver.

(3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—An executive agency shall make the final determination whether to grant a waiver under paragraph (1) with respect to a covered contract before award of the contract.

(c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation implementing this chapter may establish appropriate definitions, exclusions, limitations, and qualifications. A submission by a contractor of costs that are incurred by the contractor and that are claimed to be allowable under Department of Energy management and operating contracts shall be considered a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued.

§ 4305. Required regulations

(a) IN GENERAL.—The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Those provisions shall define in detail and in specific terms the costs that are unallowable, in whole or in part, under covered contracts.

(b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(1) Air shows.

(2) Membership in civic, community, and professional organizations.

(3) Recruitment.

(4) Employee morale and welfare.

(5) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(6) Community relations.

(7) Dining facilities.

(8) Professional and consulting services, including legal services.

(9) Compensation.

(10) Selling and marketing.

(11) Travel.

(12) Public relations.

(13) Hotel and meal expenses.

(14) Expense of corporate aircraft.

(15) Company-furnished automobiles.

(16) Advertising.

(17) Conventions.

(c) ADDITIONAL REQUIREMENTS.—

(1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until the contracting officer has obtained—

(A) adequate documentation of those costs; and

(B) the opinion of the contract auditor on the allowability of those costs.

(2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, a contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.—The Federal Acquisition Regulation shall require that all categories of costs designated in the report of a contract auditor as questioned with respect to a proposal for settlement be resolved in a manner so that the amount of the individual questioned costs that are paid will be reflected in the settlement.

§ 4306. Applicability of regulations to subcontractors

The regulations referred to in sections 4304 and 4305(a) and (b) of this title shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of those regulations to all subcontractors of the covered contract.

§ 4307. Contractor certification

(a) CONTENT AND FORM.—A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. The certification shall be in a form prescribed in the Federal Acquisition Regulation.

(b) WAIVER.—An executive agency may, in an exceptional case, waive the requirement for certification under subsection (a) in the case of a contract if the agency—

(1) determines that it would be in the interest of the Federal Government to waive the certification; and

(2) states in writing the reasons for the determination and makes the determination available to the public.

§ 4308. Penalties for submission of cost known to be unallowable

The submission to an executive agency of a proposal for settlement of costs for any period after those costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that the cost is unallowable, is subject to section 287 of title 18 and section 3729 of title 31.

§ 4309. Burden of proof on contractor

In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Federal Government is in issue,

the burden of proof is on the contractor to establish that those costs are reasonable.

§ 4310. Proceeding costs not allowable

(a) DEFINITIONS.—In this section:

(1) COSTS.—The term “costs”, with respect to a proceeding, means all costs incurred by a contractor, whether before or after the commencement of the proceeding, including—

(A) administrative and clerical expenses;

(B) the cost of legal services, including legal services performed by an employee of the contractor;

(C) the cost of the services of accountants and consultants retained by the contractor; and

(D) the pay of directors, officers, and employees of the contractor for time devoted by those directors, officers, and employees to the proceeding.

(2) PENALTY.—The term “penalty” does not include restitution, reimbursement, or compensatory damages.

(3) PROCEEDING.—The term “proceeding” includes an investigation.

(b) IN GENERAL.—Except as otherwise provided in this section, costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State are not allowable as reimbursable costs under a covered contract if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation; and

(2) results in a disposition described in subsection (c).

(c) COVERED DISPOSITIONS.—A disposition referred to in subsection (b)(2) is any of the following:

(1) In a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in subsection (b).

(4) A final decision to do any of the following, by reason of the violation or failure referred to in subsection (b):

(A) Debar or suspend the contractor.

(B) Rescind or void the contract.

(C) Terminate the contract for default.

(5) A disposition of the proceeding by consent or compromise if the disposition could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

(d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY FEDERAL GOVERNMENT.—In the case of a proceeding referred to in subsection (b) that is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the Federal Government, the costs incurred by the contractor in connection with the proceeding that are otherwise not allowable as reimbursable costs under subsection (b) may be allowed to the extent specifically provided in that agreement.

(e) **COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PROCEEDING COMMENCED BY STATE.**—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the executive agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with the proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of—

- (1) a specific term or condition of the contract; or
- (2) specific written instructions of the executive agency.

(f) **OTHER ALLOWABLE COSTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (3), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if the costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) **AMOUNT OF ALLOWABLE COSTS.**—

(A) **MAXIMUM AMOUNT ALLOWED.**—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that the costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) **CONTENT OF REGULATIONS.**—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the Federal Government as a party, and other factors as may be appropriate.

(3) **WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.**—In the case of a proceeding referred to in paragraph (1), contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

(A) the proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and

(B) the costs of the other proceeding are not allowable under subsection (b).

CHAPTER 45—CONTRACT FINANCING

Sec.	
4501.	Authority of executive agency.
4502.	Payment.
4503.	Security for advance payments.
4504.	Conditions for progress payments.
4505.	Payments for commercial items.
4506.	Action in case of fraud.

§ 4501. Authority of executive agency

An executive agency may—

- (1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and
- (2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

§ 4502. Payment

(a) **BASIS FOR PAYMENT.**—When practicable, payments under section 4501 of this title shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) **PAYMENT AMOUNT.**—Payments made under section 4501 of this title may not exceed the unpaid contract price.

§ 4503. Security for advance payments

Advance payments under section 4501 of this title may be made only on adequate security and a determination by the agency head that to do so would be in the public interest. The security may be in the form of a lien in favor of the Federal Government on the property contracted for, on the balance in an account in which the payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the Federal Government.

§ 4504. Conditions for progress payments

(a) **PAYMENT COMMENSURATE WITH WORK.**—The executive agency shall ensure that a payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for those payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide information and evidence the executive agency determines is necessary to permit the executive agency to carry out this subsection.

(b) **LIMITATION.**—The executive agency shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under the contract as long as the executive agency has not made the contractual terms, specifications, and price definite.

(c) **APPLICATION.**—This section applies to a contract in an amount greater than \$25,000.

§ 4505. Payments for commercial items

(a) **TERMS AND CONDITIONS FOR PAYMENTS.**—Payments under section 4501 of this title for commercial items may be made under terms and conditions that the head of the executive agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the Federal Government.

(b) **SECURITY FOR PAYMENTS.**—The head of the executive agency shall obtain adequate security for the payments. If the security is in the form of a lien in favor of the Federal Government, the lien is paramount to all other liens and is effective immediately on the first payment, without filing, notice, or other action by the Federal Government.

(c) **LIMITATION ON ADVANCE PAYMENTS.**—Advance payments made under section 4501 of this title for commercial items may include payments, in a total amount not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) **NONAPPLICATION OF CERTAIN CONDITIONS.**—The conditions of sections 4503 and 4504 of this title need not be applied if they would be inconsistent, as determined by the head of the executive agency, with commercial terms and conditions pursuant to this section.

§ 4506. Action in case of fraud

(a) **DEFINITION.**—In this section, the term “remedy coordination official”, with respect to an executive agency, means the individual or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) **RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.**—In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the executive agency reduce or suspend further payments to that contractor.

(c) **REDUCTION OR SUSPENSION OF PAYMENTS.**—The head of an executive agency receiving a recommendation under subsection (b) in the case of a contractor’s request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. On making an affirmative determination, the head of the executive agency may reduce or suspend further payments to the contractor under the contract.

(d) **EXTENT OF REDUCTION OR SUSPENSION.**—The extent of any reduction or suspension of payments by an executive agency under subsection (c) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the Federal Government resulting from the fraud.

(e) **WRITTEN JUSTIFICATION.**—A written justification for each decision of the head of an executive agency whether to reduce or suspend payments under subsection (c), and for each recommendation received by the executive agency in connection with the decision, shall be prepared and be retained in the files of the executive agency.

(f) **NOTICE.**—The head of each executive agency shall prescribe procedures to ensure that, before the head of the executive agency decides to reduce or suspend payments in the case of a contractor under subsection (c), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the executive agency in response to the proposed reduction or suspension.

(g) **REVIEW.**—Not later than 180 days after the date on which the head of an executive agency reduces or suspends payments to a contractor under subsection (c), the remedy coordination official of the executive agency shall—

(1) review the determination of fraud on which the reduction or suspension is based; and

(2) transmit a recommendation to the head of the executive agency whether the suspension or reduction should continue.

(h) **REPORT.**—The head of each executive agency who receives recommendations made by the remedy coordination official of the executive agency to reduce or suspend payments under subsection (c) during a fiscal year shall prepare for that year a report that

contains the recommendations, the actions taken on the recommendations and the reasons for those actions, and an assessment of the effects of those actions on the Federal Government. The report shall be available to any Member of Congress on request.

(i) **RESTRICTION ON DELEGATION.**—The head of an executive agency may not delegate responsibilities under this section to an individual in a position below level IV of the Executive Schedule.

CHAPTER 47—MISCELLANEOUS

Sec.

- 4701. Determinations and decisions.
- 4702. Prohibition on release of contractor proposals.
- 4703. Validation of proprietary data restrictions.
- 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government.
- 4705. Protection of contractor employees from reprisal for disclosure of certain information.
- 4706. Examination of facilities and records of contractor.
- 4707. Remission of liquidated damages.
- 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions.
- 4709. Implementation of electronic commerce capability.
- 4710. Limitations on tiering of subcontractors.
- 4711. Linking of award and incentive fees to acquisition outcomes.

§ 4701. Determinations and decisions

(a) **INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.**—

(1) **IN GENERAL.**—Determinations and decisions required to be made under this division by the head of an executive agency or provided in this division or chapters 1 to 11 of title 40 to be made by the Administrator of General Services or other agency head may be made for an individual purchase or contract or, except for determinations or decisions made under sections 3105, 3301, 3303 to 3305, 3306(a)–(e), and 3308, chapter 37, and section 4702 of this title or to the extent expressly prohibited by another law, for a class of purchases or contracts.

(2) **DELEGATION.**—Except as provided in section 3304(a)(7) of this title, and except as provided in section 121(d)(1) and (2) of title 40 with respect to the Administrator of General Services, the agency head, in the discretion and subject to the direction of the agency head, may delegate powers provided by this division or chapters 1 to 11 of title 40, including the making of determinations and decisions described in paragraph (1), to other officers or officials of the agency.

(3) **FINALITY.**—The determinations and decisions are final.

(b) **WRITTEN FINDINGS.**—

(1) **BASIS FOR CERTAIN DETERMINATIONS.**—Each determination or decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title shall be based on a written finding by the individual making the determination or decision. A finding under section 4503 or 4706(d)(2)(B) shall set out facts and circumstances that support the determination or decision.

(2) **FINALITY.**—Each finding referred to in paragraph (1) is final.

(3) **MAINTAINING COPIES OF FINDINGS.**—The head of an executive agency shall maintain for a period of not less than 6 years a copy of each finding referred to in paragraph (1) that is made by an individual in that executive agency. The period

begins on the date of the determination or decision to which the finding relates.

§ 4702. Prohibition on release of contractor proposals

(a) DEFINITION.—In this section, the term “proposal” means a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) PROHIBITION.—A proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5.

(c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

§ 4703. Validation of proprietary data restrictions

(a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—A contract for property or services entered into by an executive agency that provides for the delivery of technical data shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction the contractor or subcontractor asserts on the right of the Federal Government to use the data; and

(2) the contracting officer may review the validity of a restriction the contractor or subcontractor asserts under the contract on the right of the Federal Government to use technical data furnished to the Federal Government under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the Federal Government would make it impracticable to procure the item competitively at a later time.

(b) CHALLENGE OF RESTRICTION.—If after a review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. The notice shall state—

(1) the grounds for challenging the asserted restriction; and

(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

(c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, the contracting officer shall provide appropriate additional time to adequately permit the justification to be submitted.

(d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the earliest challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each challenge.

(e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

(1) NO RESPONSE SUBMITTED.—The contracting officer shall issue a decision pertaining to the validity of the asserted restriction if the contractor or subcontractor does not submit a response under subsection (b).

(2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justification submitted in response to the notice provided pursuant to subsection (b), a contracting officer shall issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) CLAIM DEEMED CLAIM WITHIN CHAPTER 71.—A claim pertaining to the validity of the asserted restriction that is submitted in writing to a contracting officer by a contractor or subcontractor at any tier is deemed to be a claim within the meaning of chapter 71 of this title.

(g) FINAL DISPOSITION OF CHALLENGE.—

(1) CHALLENGE IS SUSTAINED.—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is sustained on final disposition—

(A) the restriction is cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, is liable to the Federal Government for payment of the cost to the Federal Government of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the Federal Government in challenging the asserted restriction, unless special circumstances would make the payment unjust.

(2) CHALLENGE NOT SUSTAINED.—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is not sustained on final disposition, the Federal Government—

(A) continues to be bound by the restriction; and

(B) is liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Federal Government is found not to be made in good faith.

§ 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government

(a) CONTRACT RESTRICTIONS.—Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not—

(1) enter into an agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the Federal Government of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales described in paragraph (1) to the Federal Government.

(b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This section does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.

(d) **INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO OTHER PURCHASERS.**—An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under the contract that restricts sales by the subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the Federal Government in violation of the provision included in the contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of the commercial items from that subcontractor.

§ 4705. Protection of contractor employees from reprisal for disclosure of certain information

(a) **DEFINITIONS.**—In this section:

(1) **CONTRACT.**—The term “contract” means a contract awarded by the head of an executive agency.

(2) **CONTRACTOR.**—The term “contractor” means a person awarded a contract with an executive agency.

(3) **INSPECTOR GENERAL.**—The term “Inspector General” means an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C. App.).

(b) **PROHIBITION OF REPRISALS.**—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for, or negotiation of, a contract).

(c) **INVESTIGATION OF COMPLAINTS.**—An individual who believes that the individual has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, on completion of the investigation, submit a report of the findings of the investigation to the individual, the contractor concerned, and the head of the agency. If the executive agency does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

(d) **REMEDY AND ENFORCEMENT AUTHORITY.**—

(1) **ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.**—If the head of an executive agency determines that a contractor has subjected an individual to a reprisal prohibited by subsection (b), the head of the executive agency may take one or more of the following actions:

(A) **ABATEMENT.**—Order the contractor to take affirmative action to abate the reprisal.

(B) **REINSTATEMENT.**—Order the contractor to reinstate the individual to the position that the individual held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the individual in that position if the reprisal had not been taken.

(C) **PAYMENT.**—Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs

and expenses (including attorneys' fees and expert witnesses' fees) that the complainant reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) **ENFORCEMENT ORDER.**—When a contractor fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of the order in the United States district court for a district in which the reprisal was found to have occurred. In an action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) **REVIEW OF ENFORCEMENT ORDER.**—A person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. A petition seeking review must be filed no more than 60 days after the head of the agency issues the order. Review shall conform to chapter 7 of title 5.

(e) **SCOPE OF SECTION.**—This section does not—

(1) authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

§ 4706. Examination of facilities and records of contractor

(a) **DEFINITION.**—In this section, the term “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) **AGENCY AUTHORITY.**—

(1) **INSPECTION OF PLANT AND AUDIT OF RECORDS.**—The head of an executive agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of those subcontracts, under a contract referred to in subparagraph (A).

(2) **EXAMINATION OF RECORDS.**—The head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 35 of this title with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(c) SUBPOENA POWER.—

(1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Inspector General of an executive agency appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, on request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (b).

(2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of contumacy or refusal to obey, is enforceable by order of an appropriate United States district court.

(3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may not be delegated.

(4) REPORT.—In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the exercise of the authority during the preceding year and the reasons why the authority was exercised in any instance.

(d) AUTHORITY OF COMPTROLLER GENERAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and representatives of the Comptroller General may examine records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding the transactions.

(2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the executive agency concerned determines, with the concurrence of the Comptroller General or the designee of the Comptroller General, that applying paragraph (1) to the contract or subcontract would not be in the public interest. The concurrence of the Comptroller General or the designee is not required when—

(A) the contractor or subcontractor is—

(i) the government of a foreign country or an agency of that government; or

(ii) precluded by the laws of the country involved from making its records available for examination; and

(B) the executive agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not require a contractor or subcontractor to create or maintain a record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another law.

(e) **LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.**—An executive agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by another department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(f) **EXPIRATION OF AUTHORITY.**—The authority of an executive agency under subsection (b) and the authority of the Comptroller General under subsection (d) shall expire 3 years after final payment under the contract or subcontract.

(g) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is not greater than the simplified acquisition threshold.

(h) **ELECTRONIC FORM ALLOWED.**—This section does not preclude a contractor from duplicating or storing original records in electronic form.

(i) **ORIGINAL RECORDS NOT REQUIRED.**—An executive agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) **PRESERVATION PROCEDURES ESTABLISHED.**—The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) **INDEXING SYSTEM MAINTAINED.**—The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) **ORIGINAL RECORDS RETAINED.**—The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

§ 4707. Remission of liquidated damages

When a contract made on behalf of the Federal Government by the head of a Federal agency, or by an authorized officer of the agency, includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation of the head of the agency may remit any part of the damages as the Secretary of the Treasury believes is just and equitable.

§ 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions

A cost-type research and development contract (including a grant) with a university, college, or other educational institution may provide for payment of reimbursable indirect costs on the basis of predetermined fixed-percentage rates applied to the total of the reimbursable direct costs incurred or to an element of the total of the reimbursable direct costs incurred.

§ 4709. Implementation of electronic commerce capability

(a) **ROLE OF HEAD OF EXECUTIVE AGENCY.**—The head of each executive agency shall implement the electronic commerce capability required by section 2301 of this title. In implementing the capability, the head of an executive agency shall consult with the Administrator.

(b) **PROGRAM MANAGER.**—The head of each executive agency shall designate a program manager to implement the electronic commerce capability for the agency. The program manager reports directly to an official at a level not lower than the senior procurement executive designated for the agency under section 1702(c) of this title.

§ 4710. Limitations on tiering of subcontractors

(a) **DEFINITION.**—In this section, the term “executive agency” has the same meaning given in section 133 of this title.

(b) **REGULATIONS.**—For executive agencies other than the Department of Defense, the Federal Acquisition Regulation shall—

(1) require contractors to minimize the excessive use of subcontractors, or of tiers of subcontractors, that add no or negligible value; and

(2) ensure that neither a contractor nor a subcontractor receives indirect costs or profit on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value (but not to limit charges for indirect costs and profit based on the direct costs of managing lower-tier subcontracts).

(c) **COVERED CONTRACTS.**—This section applies to any cost-reimbursement type contract or task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 134 of this title).

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as limiting the ability of the Department of Defense to implement more restrictive limitations on the tiering of subcontractors.

(e) **APPLICABILITY.**—The Department of Defense shall continue to be subject to guidance on limitations on tiering of subcontractors issued by the Department of Defense pursuant to section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2324 note).

§ 4711. Linking of award and incentive fees to acquisition outcomes

(a) **DEFINITION.**—In this section, the term “executive agency” has the same meaning given in section 133 of this title.

(b) **GUIDANCE FOR EXECUTIVE AGENCIES ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.**—The Federal Acquisition Regulation shall provide executive agencies other than the Department of Defense with instructions, including definitions, on the appropriate use of award and incentive fees in Federal acquisition programs.

(c) **ELEMENTS.**—The regulations under subsection (b) shall—

(1) ensure that all new contracts using award fees link the fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be “excellent” or “superior” and the percentage of the available award fee which contractors should be paid for the performance;

(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be “acceptable”, “average”, “expected”, “good”, or “satisfactory”;

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the Federal Government;

(8) ensure that each executive agency—

(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate the data on a regular basis;

(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

(d) **GUIDANCE FOR DEPARTMENT OF DEFENSE.**—The Department of Defense shall continue to be subject to guidance on award and incentive fees issued by the Secretary of Defense pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2302 note).

Subtitle II—Other Advertising and Contract Provisions

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CHAPTER 61—ADVERTISING

Sec.	
6101.	Advertising requirement for Federal Government purchases and sales.
6102.	Exceptions from advertising requirement.
6103.	Opening of bids.

§ 6101. Advertising requirement for Federal Government purchases and sales

(a) **DEFINITIONS.**—In this section—

(1) APPROPRIATION.—The term “appropriation” includes amounts made available by legislation under section 9104 of title 31.

(2) FEDERAL GOVERNMENT.—The term “Federal Government” includes the government of the District of Columbia.

(b) PURCHASES.—

(1) IN GENERAL.—Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Federal Government may be made or entered into only after advertising for proposals for a sufficient time.

(2) LIMITATIONS ON APPLICABILITY.—Paragraph (1) does not apply when—

(A) the amount involved in any one case does not exceed \$25,000;

(B) public exigencies require the immediate delivery of articles or performance of services;

(C) only one source of supply is available and the Federal Government purchasing or contracting officer so certifies; or

(D) services are required to be performed by a contractor in person and are—

(i) of a technical and professional nature; or

(ii) under Federal Government supervision and paid for on a time basis.

(c) SALES.—Except when otherwise authorized by law or when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Federal Government are governed by the requirements of this section for advertising.

(d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—For wholly owned Government corporations, this section applies only to administrative transactions.

§ 6102. Exceptions from advertising requirement

(a) AMERICAN BATTLE MONUMENTS COMMISSION.—Section 6101 of this title does not apply to the American Battle Monuments Commission with respect to leases in foreign countries for office or garage space.

(b) BUREAU OF INTERPARLIAMENTARY UNION FOR PROMOTION OF INTERNATIONAL ARBITRATION.—Section 6101 of this title does not apply to the Bureau of Interparliamentary Union for Promotion of International Arbitration with respect to necessary stenographic reporting services by contract.

(c) DEPARTMENT OF STATE.—Section 6101 of this title does not apply to the Department of State when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section 6101 of this title does not apply to the International Committee of Aerial Legal Experts with respect to necessary stenographic and other services by contract.

(e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market according to common business practice, without compliance with section 6101 of this title, when the aggregate amount of the purchase or the service does not exceed \$25,000 in any instance.

(f) **FOREST PRODUCTS FROM INDIAN RESERVATIONS.**—Lumber and other forest products produced by Indian enterprises from forests on Indian reservations may be sold under regulations the Secretary of the Interior prescribes, without compliance with section 6101 of this title.

(g) **HOUSE OF REPRESENTATIVES.**—Section 6101 of this title does not apply to purchases and contracts for supplies or services for any office of the House of Representatives.

(h) **CONGRESSIONAL BUDGET OFFICE.**—The Director of the Congressional Budget Office may enter into agreements or contracts without regard to section 6101 of this title.

§ 6103. Opening of bids

Whenever proposals for supplies have been solicited, the parties responding to the solicitation shall be notified of the time and place of the opening of the bids, and be permitted to be present either in person or by attorney. A record of each bid shall be made at the time and place of the opening of the bids.

CHAPTER 63—GENERAL CONTRACT PROVISIONS

- Sec.
6301. Authorization requirement.
6302. Contracts for fuel made by Secretary of the Army.
6303. Certain contracts limited to appropriated amounts.
6304. Certain contracts limited to one-year term.
6305. Prohibition on transfer of contract and certain allowable assignments.
6306. Prohibition on Members of Congress making contracts with Federal Government.
6307. Contracts with Federal Government-owned establishments and availability of appropriations.
6308. Contracts for transportation of Federal Government securities.
6309. Honorable discharge certificate in lieu of birth certificate.

§ 6301. Authorization requirement

(a) **IN GENERAL.**—A contract or purchase on behalf of the Federal Government shall not be made unless the contract or purchase is authorized by law or is under an appropriation adequate to its fulfillment.

(b) **EXCEPTION.**—

(1) **DEFINITION.**—In this subsection, the term “defined Secretary” means—

(A) the Secretary of Defense; or

(B) the Secretary of Homeland Security with respect to the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(2) **IN GENERAL.**—Subsection (a) does not apply to a contract or purchase made by a defined Secretary for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.

(3) **CURRENT YEAR LIMITATION.**—A contract or purchase made by a defined Secretary under this subsection may not exceed the necessities of the current year.

(4) **REPORTS.**—The defined Secretary shall immediately advise Congress when authority is exercised under this subsection. The defined Secretary shall report quarterly on the estimated obligations incurred pursuant to the authority granted in this subsection.

(c) **SPECIAL RULE FOR PURCHASE OF LAND.**—Land may not be purchased by the Federal Government unless the purchase is authorized by law.

§ 6302. Contracts for fuel made by Secretary of the Army

The Secretary of the Army, when the Secretary believes it is in the interest of the United States, may enter into contracts and incur obligations for fuel in sufficient quantities to meet the requirements for one year without regard to the current fiscal year. Amounts appropriated for the fiscal year in which the contract is made or amounts appropriated or which may be appropriated for the following fiscal year may be used to pay for supplies delivered under a contract made pursuant to this section.

§ 6303. Certain contracts limited to appropriated amounts

A contract to erect, repair, or furnish a public building, or to make any public improvement, shall not be made on terms requiring the Federal Government to pay more than the amount specifically appropriated for the activity covered by the contract.

§ 6304. Certain contracts limited to one-year term

Except as otherwise provided, an executive department shall not make a contract for stationery or other supplies for a term longer than one year from the time the contract is made.

§ 6305. Prohibition on transfer of contract and certain allowable assignments

(a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party to whom the Federal Government gives a contract or order may not transfer the contract or order, or any interest in the contract or order, to another party. A purported transfer in violation of this subsection annuls the contract or order so far as the Federal Government is concerned, except that all rights of action for breach of contract are reserved to the Federal Government.

(b) ASSIGNMENT.—

(1) IN GENERAL.—Notwithstanding subsection (a) and in accordance with the requirements of this subsection, amounts due from the Federal Government under a contract may be assigned to a bank, trust company, Federal lending agency, or other financing institution.

(2) MINIMUM AMOUNT.—This subsection applies only to a contract under which the aggregate amounts due from the Federal Government total at least \$1,000.

(3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made under this subsection if the contract forbids the assignment.

(4) FULL BALANCE DUE.—Unless otherwise expressly permitted by the contract, an assignment under this subsection must cover the balance of all amounts due from the Federal Government under the contract.

(5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by the contract, an assignment under this subsection may not be made to more than one party or be subject to further assignment, except that assignment may be made to one party as agent or trustee for 2 or more parties participating in the financing.

(6) WRITTEN NOTICE.—The assignee of an assignment under this subsection shall file written notice of the assignment and a true copy of the instrument of assignment with—

(A) the contracting officer or head of the officer's department or agency;

(B) the surety on any bond connected with the contract;
and

(C) the disbursing officer, if any, designated in the contract to make payment.

(7) **VALIDITY.**—Notwithstanding any law to the contrary governing the validity of assignments, an assignment under this subsection is a valid assignment for all purposes.

(8) **NO REFUND TO COVER ASSIGNOR'S LIABILITY.**—The assignee of an assignment under this subsection is not liable to make any refund to the Federal Government because of an assignor's liability to the Federal Government, whether that liability arises from the contract or independently.

(9) **AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.**—

(A) **CONTRACT PROVISION.**—A contract of the Department of Defense, the General Services Administration, the Department of Energy, or another department or agency of the Federal Government designated by the President may, on a determination of need by the President, provide or be amended without consideration to provide that payments made to an assignee under the contract are not subject to reduction or setoff. Each determination of need by the President under this subparagraph shall be published in the Federal Register.

(B) **CARRYING OUT CONTRACT PROVISION.**—When a “no reduction or setoff” provision as described in subparagraph (A) is included in a contract, payments to the assignee are not subject to reduction or setoff for an assignor's liability arising—

(i) independently of the contract;

(ii) on account of renegotiation under a renegotiation statute or under a statutory renegotiation article in the contract;

(iii) on account of fines;

(iv) on account of penalties; or

(v) on account of taxes, social security contributions, or the withholding or non-withholding of taxes or social security contributions, whether arising from or independently of the contract.

(C) **LIMITATION.**—Subparagraph (B)(iv) does not apply to amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract.

§ 6306. Prohibition on Members of Congress making contracts with Federal Government

(a) **IN GENERAL.**—A Member of Congress may not enter into or benefit from a contract or agreement or any part of a contract or agreement with the Federal Government.

(b) **EXEMPTIONS.**—

(1) **IN GENERAL.**—Subsection (a) does not apply to contracts that the Secretary of Agriculture may enter into with farmers.

(2) **CERTAIN ACTS.**—Subsection (a) does not apply to a contract entered into under—

(A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

(B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(C) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.).

(3) PUBLIC RECORD.—An exemption under this subsection shall be made a matter of public record.

§ 6307. Contracts with Federal Government-owned establishments and availability of appropriations

An order or contract placed with a Federal Government-owned establishment for work, material, or the manufacture of material pertaining to an approved project is deemed to be an obligation in the same manner that a similar order or contract placed with a commercial manufacturer or private contractor is an obligation. Appropriations remain available to pay an obligation to a Federal Government-owned establishment just as appropriations remain available to pay an obligation to a commercial manufacturer or private contractor.

§ 6308. Contracts for transportation of Federal Government securities

When practicable, a contract for transporting bullion, cash, or securities of the Federal Government shall be awarded to the lowest responsible bidder after notice to all parties with means of transportation.

§ 6309. Honorable discharge certificate in lieu of birth certificate

(a) IN GENERAL.—An employer described in subsection (b) may not deny employment, on account of failure to produce a birth certificate, to an individual who submits, in lieu of the birth certificate, an honorable discharge certificate (or certificate issued in lieu of an honorable discharge certificate) from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the United States, unless the honorable discharge certificate shows on its face that the individual may have been an alien at the time of its issuance.

(b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to in subsection (a) is an employer—

(1) engaged in—

(A) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or

(B) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility; and

(2) engaged in the activity described in paragraph (1) under—

(A) a contract with the Federal Government; or

(B) any contract that the President, the Secretary of the Army, the Secretary of the Air Force, the Secretary of the Navy, or the Secretary of the Department in which the Coast Guard is operating certifies to the employer to be necessary to the national defense.

CHAPTER 65—CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$10,000

Sec.

6501. Definitions.

6502. Required contract terms.

6503. Breach or violation of required contract terms.

6504. Three-year prohibition on new contracts in case of breach or violation.

- 6505. Exclusions.
- 6506. Administrative provisions.
- 6507. Hearing authority and procedures.
- 6508. Authority to make exceptions.
- 6509. Other procedures.
- 6510. Manufacturers and regular dealers.
- 6511. Effect on other law.

§ 6501. Definitions

In this chapter—

(1) **AGENCY OF THE UNITED STATES.**—The term “agency of the United States” means an executive department, independent establishment, or other agency or instrumentality of the United States, the District of Columbia, or a corporation in which all stock is beneficially owned by the Federal Government.

(2) **PERSON.**—The term “person” includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Labor.

§ 6502. Required contract terms

A contract made by an agency of the United States for the manufacture or furnishing of materials, supplies, articles, or equipment, in an amount exceeding \$10,000, shall include the following representations and stipulations:

(1) **MINIMUM WAGES TO BE PAID.**—All individuals employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum wages, as determined by the Secretary, for individuals employed in similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract, except that this paragraph applies only to purchases or contracts relating to industries that have been the subject matter of a determination by the Secretary.

(2) **MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.**—No individual employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract shall be permitted to work in excess of 40 hours in any one week, except that this paragraph does not apply to an employer who has entered into an agreement with employees pursuant to paragraph (1) or (2) of section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(b)(1) or (2)).

(3) **INELIGIBLE EMPLOYEES.**—No individual under 16 years of age and no incarcerated individual will be employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract, except that this section, or other law or executive order containing similar prohibitions against the purchase of goods by the Federal Government, does not apply to convict labor that satisfies the conditions of section 1761(c) of title 18.

(4) **STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CONTRACT PERFORMED.**—No part of the contract will be performed, and no materials, supplies, articles, or equipment will be manufactured or fabricated under the contract, in plants,

factories, buildings, or surroundings, or under working conditions, that are unsanitary, hazardous, or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part of the work is to be performed is prima facie evidence of compliance with this paragraph.

§ 6503. Breach or violation of required contract terms

(a) **APPLICABLE BREACH OR VIOLATION.**—This section applies in case of breach or violation of a representation or stipulation included in a contract under section 6502 of this title.

(b) **LIQUIDATED DAMAGES.**—In addition to damages for any other breach of the contract, the party responsible for a breach or violation described in subsection (a) is liable to the Federal Government for the following liquidated damages:

(1) An amount equal to the sum of \$10 per day for each individual under 16 years of age and each incarcerated individual knowingly employed in the performance of the contract.

(2) An amount equal to the sum of each underpayment of wages due an employee engaged in the performance of the contract, including any underpayments arising from deductions, rebates, or refunds.

(c) **CANCELLATION AND ALTERNATIVE COMPLETION.**—In addition to the Federal Government being entitled to damages described in subsection (b), the agency of the United States that made the contract may cancel the contract and make open-market purchases or make other contracts for the completion of the original contract, charging any additional cost to the original contractor.

(d) **RECOVERY OF AMOUNTS DUE.**—An amount due the Federal Government because of a breach or violation described in subsection (a) may be withheld from any amounts owed the contractor under any contract under section 6502 of this title or may be recovered in a suit brought by the Attorney General.

(e) **EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.**—An amount withheld or recovered under subsection (d) that is based on an underpayment of wages as described in subsection (b)(2) shall be held in a special deposit account. On order of the Secretary, the amount shall be paid directly to the underpaid employee on whose account the amount was withheld or recovered. However, an employee's claim for payment under this subsection may be entertained only if made within one year from the date of actual notice to the contractor of the withholding or recovery.

§ 6504. Three-year prohibition on new contracts in case of breach or violation

(a) **DISTRIBUTION OF LIST.**—The Comptroller General shall distribute to each agency of the United States a list containing the names of persons found by the Secretary to have breached or violated a representation or stipulation included in a contract under section 6502 of this title.

(b) **THREE-YEAR PROHIBITION.**—Unless the Secretary recommends otherwise, a contract described in section 6502 of this title may not be awarded to a person named on the list under subsection (a), or to a firm, corporation, partnership, or association in which the person has a controlling interest, until 3 years have elapsed from the date of the determination by the Secretary that a breach or violation occurred.

§ 6505. Exclusions

(a) **ITEMS AVAILABLE IN THE OPEN MARKET.**—This chapter does not apply to the purchase of materials, supplies, articles, or equipment that may usually be bought in the open market.

(b) **PERISHABLES AND AGRICULTURAL PRODUCTS.**—This chapter does not apply to any of the following:

(1) Perishables, including dairy, livestock and nursery products.

(2) Agricultural or farm products processed for first sale by the original producers.

(3) Contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or products of agricultural commodities.

(c) **CARRIAGE OF FREIGHT OR PERSONNEL.**—This chapter may not be construed to apply to—

(1) the carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect; or

(2) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

§ 6506. Administrative provisions

(a) **IN GENERAL.**—The Secretary shall administer this chapter.

(b) **REGULATIONS.**—The Secretary may make, amend, and rescind regulations as necessary to carry out this chapter.

(c) **USE OF GOVERNMENT OFFICERS AND EMPLOYEES.**—The Secretary shall use Federal officers and employees and, with a State's consent, State and local officers and employees as the Secretary finds necessary to assist in the administration of this chapter.

(d) **APPOINTMENTS.**—The Secretary shall appoint an administrative officer and attorneys, experts, and other employees from time to time as the Secretary finds necessary for the administration of this chapter. The appointments are subject to chapter 51 and subchapter III of chapter 53 of title 5 and other law applicable to the employment and compensation of officers and employees of the Federal Government.

(e) **INVESTIGATIONS.**—The Secretary, or an authorized representative of the Secretary, may make investigations and findings as provided in this chapter and may, in any part of the United States, prosecute an inquiry necessary to carry out this chapter.

§ 6507. Hearing authority and procedures

(a) **RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINATIONS.**—A wage determination under section 6502(1) of this title shall be made on the record after opportunity for a hearing.

(b) **AUTHORITY TO HOLD HEARINGS.**—The Secretary or an impartial representative designated by the Secretary may hold hearings when there is a complaint of breach or violation of a representation or stipulation included in a contract under section 6502 of this title. The Secretary may initiate hearings on the Secretary's own motion or on the application of a person affected by the ruling of an agency of the United States relating to a proposal or contract under this chapter.

(c) **ORDERS TO COMPEL TESTIMONY.**—The Secretary or an impartial representative designated by the Secretary may issue orders requiring witnesses to attend hearings held under this section and to produce evidence and testimony under oath. Witnesses shall be

paid fees and mileage at the same rates as witnesses in courts of the United States.

(d) **ENFORCEMENT OF ORDERS.**—If a person refuses or fails to obey an order issued under subsection (c), the Secretary or an impartial representative designated by the Secretary may bring an action to enforce the order in a district court of the United States or in the district court of a territory or possession of the United States. A court has jurisdiction to enforce the order if the inquiry is being carried out within the court's judicial district or if the person is found or resides or transacts business within the court's judicial district. The court may issue an order requiring the person to obey the order issued under subsection (c), and the court may punish any further refusal or failure as contempt of court.

(e) **FINDINGS OF FACT.**—After notice and a hearing, the Secretary or an impartial representative designated by the Secretary shall make findings of fact. The findings are conclusive for agencies of the United States. If supported by a preponderance of the evidence, the findings are conclusive in any court of the United States.

(f) **DECISIONS.**—The Secretary or an impartial representative designated by the Secretary may make decisions, based on findings of fact, that are considered necessary to enforce this chapter.

§ 6508. Authority to make exceptions

(a) **DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.**—When the head of an agency of the United States makes a written finding that the inclusion of representations or stipulations under section 6502 of this title in a proposal or contract will seriously impair the conduct of Federal Government business, the Secretary shall make exceptions, in specific cases or otherwise, when justice or the public interest will be served.

(b) **AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CONTRACTS.**—When an agency of the United States and a contractor jointly recommend, the Secretary may modify the terms of an existing contract with respect to minimum wages and maximum hours of labor as the Secretary finds necessary and proper in the public interest or to prevent injustice and undue hardship.

(c) **AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS.**—The Secretary may provide reasonable limitations and may prescribe regulations to allow reasonable variations, tolerances, and exemptions in the application of this chapter to contractors, including with respect to minimum wages and maximum hours of labor.

(d) **RATE OF PAY FOR OVERTIME.**—When the Secretary permits an increase in the maximum hours of labor stipulated in a contract, the Secretary shall set a rate of pay for overtime. The overtime rate must be at least one and one-half times the basic hourly rate.

(e) **AUTHORITY OF THE PRESIDENT TO SUSPEND.**—The President may suspend any of the representations and stipulations contained in section 6502 of this title whenever, in the President's judgment, suspension is in the public interest.

§ 6509. Other procedures

(a) **APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**—Notwithstanding section 553 of title 5, subchapter II of chapter 5 and chapter 7 of title 5 are applicable in the administration of sections 6501 to 6507 and 6511 of this title.

(b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of representations and stipulations in a contract under section 6502 of this title, an interested person has the right of judicial review of any legal question which might otherwise be raised, including wage determinations and the interpretation of the terms “locality” and “open market”.

(c) JUDICIAL REVIEW OF WAGE DETERMINATIONS.—A person adversely affected or aggrieved by a wage determination under section 6502(1) of this title has the right of judicial review of the determination, or of the applicability of the determination, within 90 days after the determination is made, in the manner provided by chapter 7 of title 5. A person adversely affected or aggrieved by a wage determination is deemed to include a person in an industry to which the determination applies that is a supplier of materials, supplies, articles, or equipment that are purchased or intended to be purchased by the Federal Government from any source.

§ 6510. Manufacturers and regular dealers

(a) PRESCRIBING STANDARDS.—The Secretary may prescribe, in regulations, standards for determining whether a contractor is a manufacturer or regular dealer with respect to materials, supplies, articles, or equipment to be manufactured or furnished under, or used in the performance of, a contract entered into by an agency of the United States.

(b) JUDICIAL REVIEW.—An interested person has the right of judicial review of any legal question relating to interpretation of the terms “regular dealer” and “manufacturer” as defined pursuant to subsection (a).

§ 6511. Effect on other law

This chapter may not be construed to modify or amend the following provisions:

- (1) Chapter 83 of this title.
- (2) Sections 3141 to 3144, 3146, and 3147 of title 40.
- (3) Chapter 307 of title 18.

CHAPTER 67—SERVICE CONTRACT LABOR STANDARDS

Sec.

6701. Definitions.
6702. Contracts to which this chapter applies.
6703. Required contract terms.
6704. Limitation on minimum wage.
6705. Violations.
6706. Three-year prohibition on new contracts in case of violation.
6707. Enforcement and administration of chapter.

§ 6701. Definitions

In this chapter:

- (1) COMPENSATION.—The term “compensation” means any of the payments or fringe benefits described in section 6703 of this title.
- (2) SECRETARY.—The term “Secretary” means the Secretary of Labor.
- (3) SERVICE EMPLOYEE.—The term “service employee”—
 - (A) means an individual engaged in the performance of a contract made by the Federal Government and not

exempted under section 6702(b) of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States;

(B) includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor; but

(C) does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations.

(4) UNITED STATES.—The term “United States”—

(A) includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 et seq.), American Samoa, Guam, Wake Island, and Johnston Island; but

(B) does not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

§ 6702. Contracts to which this chapter applies

(a) IN GENERAL.—Except as provided in subsection (b), this chapter applies to any contract or bid specification for a contract, whether negotiated or advertised, that—

(1) is made by the Federal Government or the District of Columbia;

(2) involves an amount exceeding \$2,500; and

(3) has as its principal purpose the furnishing of services in the United States through the use of service employees.

(b) EXEMPTIONS.—This chapter does not apply to—

(1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works;

(2) any work required to be done in accordance with chapter 65 of this title;

(3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

(5) a contract for public utility services, including electric light and power, water, steam, and gas;

(6) an employment contract providing for direct services to a Federal agency by an individual; and

(7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

§ 6703. Required contract terms

A contract, and bid specification for a contract, to which this chapter applies under section 6702 of this title shall contain the following terms:

(1) MINIMUM WAGE.—The contract and bid specification shall contain a provision specifying the minimum wage to be paid to each class of service employee engaged in the performance

of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative, in accordance with prevailing rates in the locality, or, where a collective-bargaining agreement covers the service employees, in accordance with the rates provided for in the agreement, including prospective wage increases provided for in the agreement as a result of arm's length negotiations. In any case the minimum wage may not be less than the minimum wage specified in section 6704 of this title.

(2) **FRINGE BENEFITS.**—The contract and bid specification shall contain a provision specifying the fringe benefits to be provided to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative to be prevailing in the locality, or, where a collective-bargaining agreement covers the service employees, to be provided for under the agreement, including prospective fringe benefit increases provided for in the agreement as a result of arm's-length negotiations. The fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this paragraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under regulations established by the Secretary.

(3) **WORKING CONDITIONS.**—The contract and bid specification shall contain a provision specifying that no part of the services covered by this chapter may be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to provide the services.

(4) **NOTICE.**—The contract and bid specification shall contain a provision specifying that on the date a service employee begins work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2), on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) **GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYSTEMS.**—The contract and bid specification shall contain a statement of the rates that would be paid by the Federal agency to each class of service employee if section 5332 or 5341 of title 5 were applicable to them. The Secretary shall give due consideration to these rates in making the wage and fringe benefit determinations specified in this section.

§ 6704. Limitation on minimum wage

(a) **IN GENERAL.**—A contractor that makes a contract with the Federal Government, the principal purpose of which is to furnish

services through the use of service employees, and any subcontractor, may not pay less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in performing work on the contract.

(b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to a violation of this section.

§ 6705. Violations

(a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a violation of a contract provision required under section 6703(1) or (2) of this title or a violation of section 6704 of this title is liable for an amount equal to the sum of any deduction, rebate, refund, or underpayment of compensation due any employee engaged in the performance of the contract.

(b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

(1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—

The total amount determined under subsection (a) to be due any employee engaged in the performance of a contract may be withheld from accrued payments due on the contract or on any other contract between the same contractor and the Federal Government. The amount withheld shall be held in a deposit fund. On order of the Secretary, the compensation found by the Secretary or the head of a Federal agency to be due an underpaid employee pursuant to this chapter shall be paid from the deposit fund directly to the underpaid employee.

(2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued payments withheld under the terms of the contract are insufficient to reimburse a service employee with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the Federal Government may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayment. Any amount recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee. Any amount not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury as miscellaneous receipts.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to other actions in accordance with this section, when a violation of any contract stipulation is found, the Federal agency that made the contract may cancel the contract on written notice to the original contractor. The Federal Government may then make other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(d) ENFORCEMENT OF SECTION.—In accordance with regulations prescribed pursuant to section 6707(a)–(d) of this title, the Secretary or the head of a Federal agency may carry out this section.

§ 6706. Three-year prohibition on new contracts in case of violation

(a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to each agency of the Federal Government a list containing the names of persons or firms that a Federal agency or the Secretary has found to have violated this chapter.

(b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends otherwise because of unusual circumstances, a Federal Government

contract may not be awarded to a person or firm named on the list under subsection (a), or to an entity in which the person or firm has a substantial interest, until 3 years have elapsed from the date of publication of the list. If the Secretary does not recommend otherwise because of unusual circumstances, the Secretary shall, not later than 90 days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the person or firm found to have violated this chapter.

§ 6707. Enforcement and administration of chapter

(a) **ENFORCEMENT OF CHAPTER.**—Sections 6506 and 6507 of this title govern the Secretary's authority to enforce this chapter, including the Secretary's authority to prescribe regulations, issue orders, hold hearings, make decisions based on findings of fact, and take other appropriate action under this chapter.

(b) **LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES, AND EXEMPTIONS.**—The Secretary may provide reasonable limitations and may prescribe regulations allowing reasonable variation, tolerances, and exemptions with respect to this chapter (other than subsection (f)), but only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Federal Government business, and is in accord with the remedial purpose of this chapter to protect prevailing labor standards.

(c) **PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDECESSOR CONTRACTS.**—

(1) **IN GENERAL.**—Under a contract which succeeds a contract subject to this chapter, and under which substantially the same services are furnished, a contractor or subcontractor may not pay a service employee less than the wages and fringe benefits the service employee would have received under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations.

(2) **EXCEPTION.**—This subsection does not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that wages and fringe benefits under the predecessor contract are substantially at variance with wages and fringe benefits prevailing in the same locality for services of a similar character.

(d) **DURATION OF CONTRACTS.**—Subject to limitations in annual appropriation acts but notwithstanding any other law, a contract to which this chapter applies may, if authorized by the Secretary, be for any term of years not exceeding 5, if the contract provides for periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 6703 of this title at least once every 2 years during the term of the contract, covering each class of service employee.

(e) **EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVERTIME PAY.**—In determining any overtime pay to which a service employee is entitled under Federal law, the regular or basic hourly rate of pay of the service employee does not include any fringe benefit payments computed under this chapter which are excluded from the definition of "regular rate" under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(f) **TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.**—It is the intent of Congress that determinations of minimum wages and fringe benefits under section 6703(1) and (2) of this title should be made as soon as administratively feasible for all contracts subject to this chapter. In any event, the Secretary shall at least make the determinations for contracts under which more than 5 service employees are to be employed.

Subtitle III—Contract Disputes

Chapter	Sec.
71. Contract Disputes	7101

CHAPTER 71—CONTRACT DISPUTES

Sec.	
7101.	Definitions.
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§ 7101. Definitions

In this chapter:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

(2) **AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.**—The term “agency board” or “agency board of contract appeals” means—

- (A) the Armed Services Board;
- (B) the Civilian Board;
- (C) the board of contract appeals of the Tennessee Valley Authority; or
- (D) the Postal Service Board established under section 7105(d)(1) of this title.

(3) **AGENCY HEAD.**—The term “agency head” means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

(4) **ARMED SERVICES BOARD.**—The term “Armed Services Board” means the Armed Services Board of Contract Appeals established under section 7105(a)(1) of this title.

(5) **CIVILIAN BOARD.**—The term “Civilian Board” means the Civilian Board of Contract Appeals established under section 7105(b)(1) of this title.

(6) **CONTRACTING OFFICER.**—The term “contracting officer”—

(A) means an individual who, by appointment in accordance with applicable regulations, has the authority to make and administer contracts and to make determinations and findings with respect to contracts; and

(B) includes an authorized representative of the contracting officer, acting within the limits of the representative's authority.

(7) **CONTRACTOR.**—The term “contractor” means a party to a Federal Government contract other than the Federal Government.

(8) **EXECUTIVE AGENCY.**—The term “executive agency” means—

(A) an executive department as defined in section 101 of title 5;

(B) a military department as defined in section 102 of title 5;

(C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; and

(D) a wholly owned Government corporation as defined in section 9101(3) of title 31.

(9) **MISREPRESENTATION OF FACT.**—The term “misrepresentation of fact” means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

§ 7102. Applicability of chapter

(a) **EXECUTIVE AGENCY CONTRACTS.**—Unless otherwise specifically provided in this chapter, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair, or maintenance of real property; or

(4) the disposal of personal property.

(b) **TENNESSEE VALLEY AUTHORITY CONTRACTS.**—

(1) **IN GENERAL.**—With respect to contracts of the Tennessee Valley Authority, this chapter applies only to contracts containing a clause that requires contract disputes to be resolved through an agency administrative process.

(2) **EXCLUSION.**—Notwithstanding any other provision of this chapter, this chapter does not apply to a contract of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system.

(c) **FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CONTRACTS.**—If an agency head determines that applying this chapter would not be in the public interest, this chapter does not apply to a contract with a foreign government, an agency of a foreign government, an international organization, or a subsidiary body of an international organization.

(d) **MARITIME CONTRACTS.**—Appeals under section 7107(a) of this title and actions brought under sections 7104(b) and 7107(b) to (f) of this title, arising out of maritime contracts, are governed by chapter 309 or 311 of title 46, as applicable, to the extent that those chapters are not inconsistent with this chapter.

§ 7103. Decision by contracting officer

(a) **CLAIMS GENERALLY.**—

(1) **SUBMISSION OF CONTRACTOR’S CLAIMS TO CONTRACTING OFFICER.**—Each claim by a contractor against the Federal

Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) **CONTRACTOR'S CLAIMS IN WRITING.**—Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

(3) **CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT'S CLAIMS.**—Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.

(4) **TIME FOR SUBMITTING CLAIMS.**—

(A) **IN GENERAL.**—Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

(B) **EXCEPTION.**—Subparagraph (A) of this paragraph does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(5) **APPLICABILITY.**—The authority of this subsection and subsections (c)(1), (d), and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

(b) **CERTIFICATION OF CLAIMS.**—

(1) **REQUIREMENT GENERALLY.**—For claims of more than \$100,000 made by a contractor, the contractor shall certify that—

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

(2) **WHO MAY EXECUTE CERTIFICATION.**—The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

(3) **FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.**—A contracting officer is not obligated to render a final decision on a claim of more than \$100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

(c) **FRAUDULENT CLAIMS.**—

(1) **NO AUTHORITY TO SETTLE.**—This section does not authorize an agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(2) **LIABILITY OF CONTRACTOR.**—If a contractor is unable to support any part of the contractor's claim and it is determined that the inability is attributable to a misrepresentation of fact or fraud by the contractor, then the contractor is liable to

the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government's costs attributable to reviewing the unsupported part of the claim. Liability under this paragraph shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(d) **ISSUANCE OF DECISION.**—The contracting officer shall issue a decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor.

(e) **CONTENTS OF DECISION.**—The contracting officer's decision shall state the reasons for the decision reached and shall inform the contractor of the contractor's rights as provided in this chapter. Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.

(f) **TIME FOR ISSUANCE OF DECISION.**—

(1) **CLAIM OF \$100,000 OR LESS.**—A contracting officer shall issue a decision on any submitted claim of \$100,000 or less within 60 days from the contracting officer's receipt of a written request from the contractor that a decision be rendered within that period.

(2) **CLAIM OF MORE THAN \$100,000.**—A contracting officer shall, within 60 days of receipt of a submitted certified claim over \$100,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) **GENERAL REQUIREMENT OF REASONABLENESS.**—The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations prescribed by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor.

(4) **REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED TIME PERIOD.**—A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) **FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.**—Failure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim as otherwise provided in this chapter. However, the tribunal concerned may, at its option, stay the proceedings of the appeal or action to obtain a decision by the contracting officer.

(g) **FINALITY OF DECISION UNLESS APPEALED.**—The contracting officer's decision on a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by this chapter. This chapter does not prohibit an executive agency from including a clause in a Federal Government contract requiring that, pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(h) **ALTERNATIVE MEANS OF DISPUTE RESOLUTION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any

alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. All provisions of subchapter IV of chapter 5 of title 5 apply to alternative means of dispute resolution under this subsection.

(2) **CERTIFICATION OF CLAIM.**—The contractor shall certify the claim when required to do so under subsection (b)(1) or other law.

(3) **REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION.**—

(A) **CONTRACTING OFFICER.**—A contracting officer who rejects a contractor's request for alternative dispute resolution proceedings shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or other specific reasons that alternative dispute resolution procedures are inappropriate.

(B) **CONTRACTOR.**—A contractor that rejects an agency's request for alternative dispute resolution proceedings shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

§ 7104. Contractor's right of appeal from decision by contracting officer

(a) **APPEAL TO AGENCY BOARD.**—A contractor, within 90 days from the date of receipt of a contracting officer's decision under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.

(b) **BRINGING AN ACTION DE NOVO IN FEDERAL COURT.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), and in lieu of appealing the decision of a contracting officer under section 7103 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) **TENNESSEE VALLEY AUTHORITY.**—In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a district court of the United States pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) **TIME FOR FILING.**—A contractor shall file any action under paragraph (1) or (2) within 12 months from the date of receipt of a contracting officer's decision under section 7103 of this title.

(4) **DE NOVO.**—An action under paragraph (1) or (2) shall proceed de novo in accordance with the rules of the appropriate court.

§ 7105. Agency boards

(a) **ARMED SERVICES BOARD.**—

(1) **ESTABLISHMENT.**—An Armed Services Board of Contract Appeals may be established within the Department of Defense when the Secretary of Defense, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least 3 members who shall have no other inconsistent duties. Workload studies will be updated at least once every 3 years and submitted to the Administrator.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Armed Services Board shall be selected and appointed in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years of experience in public contract law. The Secretary of Defense shall designate the chairman and vice chairman of the Armed Services Board from among the appointed members. Compensation for the chairman, vice chairman, and other members shall be determined under section 5372a of title 5.

(b) CIVILIAN BOARD.—

(1) ESTABLISHMENT.—There is established in the General Services Administration the Civilian Board of Contract Appeals.

(2) MEMBERSHIP.—

(A) ELIGIBILITY.—The Civilian Board consists of members appointed by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) from a register of applicants maintained by the Administrator of General Services, in accordance with rules issued by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) for establishing and maintaining a register of eligible applicants and selecting Civilian Board members. The Administrator of General Services shall appoint a member without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Civilian Board member.

(B) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Civilian Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years experience in public contract law. Compensation for the members shall be determined under section 5372a of title 5.

(3) REMOVAL.—Members of the Civilian Board are subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5.

(4) FUNCTIONS.—

(A) IN GENERAL.—The Civilian Board has jurisdiction as provided by subsection (e)(1)(B).

(B) ADDITIONAL JURISDICTION.—With the concurrence of the Federal agencies affected, the Civilian Board may assume—

(i) jurisdiction over any additional category of laws or disputes over which an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act exercised jurisdiction before January 6, 2007; and

(ii) any other function the agency board performed before January 6, 2007, on behalf of those agencies.

(c) TENNESSEE VALLEY AUTHORITY BOARD.—

(1) ESTABLISHMENT.—The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals of the Tennessee Valley Authority of an indeterminate number of members.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to the agency board established under paragraph (1), and shall designate a chairman of the agency board. The chairman and other members of the agency board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the agency board.

(d) POSTAL SERVICE BOARD.—

(1) ESTABLISHMENT.—There is established an agency board of contract appeals known as the Postal Service Board of Contract Appeals.

(2) APPOINTMENT AND SERVICE OF MEMBERS.—The Postal Service Board of Contract Appeals consists of judges appointed by the Postmaster General. The judges shall meet the qualifications of and serve in the same manner as members of the Civilian Board.

(3) APPLICATION.—This chapter applies to contract disputes before the Postal Service Board of Contract Appeals in the same manner as it applies to contract disputes before the Civilian Board.

(e) JURISDICTION.—

(1) IN GENERAL.—

(A) ARMED SERVICES BOARD.—The Armed Services Board has jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency.

(B) CIVILIAN BOARD.—The Civilian Board has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency.

(C) POSTAL SERVICE BOARD.—The Postal Service Board of Contract Appeals has jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency.

(D) OTHER AGENCY BOARDS.—Each other agency board has jurisdiction to decide any appeal from a decision of a contracting officer relative to a contract made by its agency.

(2) RELIEF.—In exercising this jurisdiction, an agency board may grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims.

(f) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition

or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General, or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring the person to appear before the agency board or a member of the agency board, to produce evidence or to give testimony, or both. Any failure of the person to obey the order of the court may be punished by the court as contempt of court.

(g) DECISIONS.—An agency board shall—

(1) to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes;

(2) issue a decision in writing or take other appropriate action on each appeal submitted; and

(3) mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

§ 7106. Agency board procedures for accelerated and small claims

(a) ACCELERATED PROCEDURE WHERE \$100,000 OR LESS IN DISPUTE.—The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is \$100,000 or less. The accelerated procedure is applicable at the sole election of the contractor. An appeal under the accelerated procedure shall be resolved, whenever possible, within 180 days from the date the contractor elects to use the procedure.

(b) SMALL CLAIMS PROCEDURE.—

(1) IN GENERAL.—The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is \$50,000 or less, or in the case of a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and regulations under that Act), \$150,000 or less. The small claims procedure is applicable at the sole election of the contractor.

(2) SIMPLIFIED RULES OF PROCEDURE.—The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. An appeal under the small claims procedure may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(3) TIME OF DECISION.—An appeal under the small claims procedure shall be resolved, whenever possible, within 120 days from the date the contractor elects to use the procedure.

(4) FINALITY OF DECISION.—A decision against the Federal Government or against the contractor reached under the small claims procedure is final and conclusive and may not be set aside except in cases of fraud.

(5) NO PRECEDENT.—Administrative determinations and final decisions under this subsection have no value as precedent for future cases under this chapter.

(6) REVIEW OF REQUISITE AMOUNTS IN CONTROVERSY.—The Administrator, from time to time, may review the dollar amounts specified in paragraph (1) and adjust the amounts

in accordance with economic indexes selected by the Administrator.

§ 7107. Judicial review of agency board decisions

(a) REVIEW.—

(1) IN GENERAL.—The decision of an agency board is final, except that—

(A) a contractor may appeal the decision to the United States Court of Appeals for the Federal Circuit within 120 days from the date the contractor receives a copy of the decision; or

(B) if an agency head determines that an appeal should be taken, the agency head, with the prior approval of the Attorney General, may transmit the decision to the United States Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within 120 days from the date the agency receives a copy of the decision.

(2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph (1), a decision of the board of contract appeals of the Tennessee Valley Authority is final, except that—

(A) a contractor may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date the contractor receives a copy of the decision; or

(B) the Tennessee Valley Authority may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date of the decision.

(3) REVIEW OF ARBITRATION.—An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 to 13 of title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

(b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW AND FACT.—Notwithstanding any contract provision, regulation, or rule of law to the contrary, in an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a)—

(1) the decision of the agency board on a question of law is not final or conclusive; but

(2) the decision of the agency board on a question of fact is final and conclusive and may not be set aside unless the decision is—

(A) fraudulent, arbitrary, or capricious;

(B) so grossly erroneous as to necessarily imply bad faith; or

(C) not supported by substantial evidence.

(c) REMAND.—In an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a), the court may render an opinion and judgment and remand the case for further action by the agency board or by the executive agency as appropriate, with direction the court considers just and proper.

(d) CONSOLIDATION.—If 2 or more actions arising from one contract are filed in the United States Court of Federal Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the United States Court of

Federal Claims may order the consolidation of the actions in that court or transfer any actions to or among the agency boards involved.

(e) **JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.**—In an action filed pursuant to this chapter involving 2 or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one of the claims can be divided for purposes of decision or judgment, and in any action where multiple parties are involved, the court, whenever appropriate, may enter a judgment as to one or more but fewer than all of the claims or portions of claims or parties.

(f) **ADVISORY OPINIONS.**—

(1) **IN GENERAL.**—Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request an agency board to provide the court with an advisory opinion on the matters of contract interpretation under consideration.

(2) **APPLICABLE ISSUE.**—An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this chapter.

(3) **REFERRAL TO AGENCY BOARD WITH JURISDICTION.**—A district court shall direct a request under paragraph (1) to the agency board having jurisdiction under this chapter to adjudicate appeals of contract claims under the contract being interpreted by the court.

(4) **TIMELY RESPONSE.**—After receiving a request for an advisory opinion under paragraph (1), an agency board shall provide the advisory opinion in a timely manner to the district court making the request.

§ 7108. Payment of claims

(a) **JUDGMENTS.**—Any judgment against the Federal Government on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) **MONETARY AWARDS.**—Any monetary award to a contractor by an agency board shall be paid promptly in accordance with the procedures contained in subsection (a).

(c) **REIMBURSEMENT.**—Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available amounts or by obtaining additional appropriations for purposes of reimbursement.

(d) **TENNESSEE VALLEY AUTHORITY.**—

(1) **JUDGMENTS.**—Notwithstanding subsections (a) to (c), any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(2) **MONETARY AWARDS.**—Notwithstanding subsections (a) to (c), any monetary award to a contractor by the board of contract appeals of the Tennessee Valley Authority shall be paid in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

§ 7109. Interest

(a) **PERIOD.**—

(1) **IN GENERAL.**—Interest on an amount found due a contractor on a claim shall be paid to the contractor for the

period beginning with the date the contracting officer receives the contractor's claim, pursuant to section 7103(a) of this title, until the date of payment of the claim.

(2) **DEFECTIVE CERTIFICATION.**—On a claim for which the certification under section 7103(b)(1) of this title is found to be defective, any interest due under this section shall be paid for the period beginning with the date the contracting officer initially receives the contractor's claim until the date of payment of the claim.

(b) **RATE.**—Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable for each successive 6-month period. The rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately 5 years.

Subtitle IV—Miscellaneous

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CHAPTER 81—DRUG-FREE WORKPLACE

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8101.	Definitions and construction.
8102.	Drug-free workplace requirements for Federal contractors.
8103.	Drug-free workplace requirements for Federal grant recipients.
8104.	Employee sanctions and remedies.
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§ 8101. Definitions and construction

(a) **DEFINITIONS.**—In this chapter:

(1) **CONTRACTOR.**—The term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract.

(2) **CONTROLLED SUBSTANCE.**—The term “controlled substance” means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

(3) **CONVICTION.**—The term “conviction” means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

(4) **CRIMINAL DRUG STATUTE.**—The term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

(5) **DRUG-FREE WORKPLACE.**—The term “drug-free workplace” means a site of an entity—

(A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and

(B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in

accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100-690, 102 Stat. 4181).

(6) EMPLOYEE.—The term “employee” means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section 8102 or 8103 of this title.

(7) FEDERAL AGENCY.—The term “Federal agency” means an agency as defined in section 552(f) of title 5.

(8) GRANTEE.—The term “grantee” means the department, division, or other unit of a person responsible for the performance under the grant.

(b) CONSTRUCTION.—This chapter does not require law enforcement agencies to comply with this chapter if the head of the agency determines it would be inappropriate in connection with the agency’s undercover operations.

§ 8102. Drug-free workplace requirements for Federal contractors

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal agency, other than a contract for the procurement of commercial items (as defined in section 103 of this title), unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

- (i) the dangers of drug abuse in the workplace;
- (ii) the person’s policy of maintaining a drug-free workplace;
- (iii) available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will—

- (i) abide by the terms of the statement; and
- (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation

program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—

(A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) EFFECT OF DEBARMENT.—A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

§ 8103. Drug-free workplace requirements for Federal grant recipients

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity with the grant.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that—

(A) the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(B) the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.

(3) EFFECT OF DEBARMENT.—A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant

by a Federal agency, for a period specified in the decision, not to exceed 5 years.

§ 8104. Employee sanctions and remedies

Within 30 days after receiving notice from an employee of a conviction pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a contractor or grantee shall—

- (1) take appropriate personnel action against the employee, up to and including termination; or
- (2) require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

§ 8105. Waiver

(a) IN GENERAL.—The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if—

- (1) in the case of a contract, the head of the agency determines under section 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or
- (2) in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

§ 8106. Regulations

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

CHAPTER 83—BUY AMERICAN

Sec.

8301. Definitions.
8302. American materials required for public use.
8303. Contracts for public works.
8304. Waiver rescission.
8305. Annual report.

§ 8301. Definitions

In this chapter:

(1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms “public building”, “public use”, and “public work” mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) UNITED STATES.—The term “United States” includes any place subject to the jurisdiction of the United States.

§ 8302. American materials required for public use**(a) IN GENERAL.—**

(1) **ALLOWABLE MATERIALS.**—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

(2) **EXCEPTIONS.**—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) REPORTS.—

(1) **IN GENERAL.**—Not later than 180 days after the end of each of fiscal years 2009 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

(2) **CONTENTS OF REPORT.**—The report required by paragraph (1) shall separately include, for the fiscal year covered by the report—

(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

(B) an itemized list of all waivers granted with respect to the articles, materials, or supplies under this chapter, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase the articles, materials, or supplies; and

(D) a summary of—

(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) **PUBLIC AVAILABILITY.**—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) **EXCEPTION FOR INTELLIGENCE COMMUNITY.**—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

§ 8303. Contracts for public works

(a) **IN GENERAL.**—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—

(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and

(2) manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

(b) **EXCEPTIONS.**—

(1) **IN GENERAL.**—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(2) **PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.**—If the head of the department or independent establishment making the contract finds that it is impracticable to comply with subsection (a) for a particular article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.

(3) **INCONSISTENT WITH PUBLIC INTEREST.**—Subsection (a) shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned determines their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(c) **RESULTS OF FAILURE TO COMPLY.**—If the head of a department, bureau, agency, or independent establishment that has made a contract containing the provision required by subsection (a) finds that there has been a failure to comply with the provision in the performance of the contract, the head of the department, bureau, agency, or independent establishment shall make the findings

public. The findings shall include the name of the contractor obligated under the contract. The contractor, and any subcontractor, material man, or supplier associated or affiliated with the contractor, shall not be awarded another contract for the construction, alteration, or repair of any public building or public work for 3 years after the findings are made public.

§ 8304. Waiver rescission

(a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b) is a reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived this chapter for certain products in that country.

(b) DETERMINATION BY SECRETARY OF DEFENSE.—If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country that is party to an agreement described in subsection (a) has violated the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of this chapter with respect to those types of products produced in that country.

§ 8305. Annual report

Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the amount of purchases by the Department of Defense from foreign entities in that fiscal year. The report shall separately indicate the dollar value of items for which this chapter was waived pursuant to—

- (1) a reciprocal defense procurement memorandum of understanding described in section 8304(a) of this title;
- (2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or
- (3) an international agreement to which the United States is a party.

CHAPTER 85—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Sec.	Definitions.
8501.	Committee for Purchase From People Who Are Blind or Severely Disabled.
8502.	Duties and powers of the Committee.
8503.	Procurement requirements for the Federal Government.
8504.	Audit.
8505.	Authorization of appropriations.
8506.	

§ 8501. Definitions

In this chapter:

- (1) BLIND.—The term “blind” refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.
- (2) COMMITTEE.—The term “Committee” means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of this title.

(3) DIRECT LABOR.—The term “direct labor”—

(A) includes all work required for preparation, processing, and packing of a product, or work directly relating to the performance of a service; but

(B) does not include supervision, administration, inspection, or shipping.

(4) ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERNMENT.—The terms “entity of the Federal Government” and “Federal Government” include an entity of the legislative or judicial branch, a military department or executive agency (as defined in sections 102 and 105 of title 5, respectively), the United States Postal Service, and a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(5) OTHER SEVERELY DISABLED.—The term “other severely disabled” means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DISABLED.—The term “qualified nonprofit agency for other severely disabled” means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of severely disabled individuals who are not blind; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(7) QUALIFIED NONPROFIT AGENCY FOR THE BLIND.—The term “qualified nonprofit agency for the blind” means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of blind individuals; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(8) SEVERELY DISABLED INDIVIDUAL.—The term “severely disabled individual” means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(9) STATE.—The term “State” includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

§ 8502. Committee for Purchase From People Who Are Blind or Severely Disabled

(a) ESTABLISHMENT.—There is a Committee for Purchase From People Who Are Blind or Severely Disabled.

(b) COMPOSITION.—The Committee consists of 15 members appointed by the President as follows:

(1) One officer or employee from each of the following, nominated by the head of the department or agency:

- (A) The Department of Agriculture.
- (B) The Department of Defense.
- (C) The Department of the Army.
- (D) The Department of the Navy.
- (E) The Department of the Air Force.
- (F) The Department of Education.
- (G) The Department of Commerce.
- (H) The Department of Veterans Affairs.
- (I) The Department of Justice.
- (J) The Department of Labor.
- (K) The General Services Administration.

(2) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of the blind.

(3) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of other severely disabled individuals.

(4) One member from individuals who are not officers or employees of the Federal Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(5) One member from individuals who are not officers or employees of the Federal Government and who represent severely disabled individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely disabled individuals.

(c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3), (4), or (5) of subsection (b) shall be appointed for terms of 5 years and may be reappointed if the member meets the qualifications prescribed by those paragraphs.

(d) CHAIRMAN.—The members of the Committee shall elect one of the members to be Chairman.

(e) VACANCY.—

(1) MANNER IN WHICH FILLED.—A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(2) UNFULFILLED TERM.—A member appointed under paragraph (2), (3), (4), or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term. The member may serve after the expiration of a term until a successor takes office.

(f) PAY AND TRAVEL EXPENSES.—

(1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as provided in paragraph (2), members of the Committee are entitled to receive the daily equivalent of the maximum annual rate of basic pay payable for level IV of the Executive Schedule for each day (including travel-time) during which they perform services for the Committee. A member is entitled to travel expenses, including a per diem allowance instead of subsistence, as provided under section 5703 of title 5.

(2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members who are officers or employees of the Federal Government may not receive additional pay because of their service on the Committee.

(g) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—Subject to rules the Committee may adopt and to chapters 33 and 51 and subchapter III of chapter 53 of title 5, the Chairman may appoint and fix the pay of personnel the Committee determines are necessary to assist it in carrying out this chapter.

(2) PERSONNEL FROM OTHER ENTITIES.—On request of the Committee, the head of an entity of the Federal Government may detail, on a reimbursable basis, any personnel of the entity to the Committee to assist it in carrying out this chapter.

(h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure directly from an entity of the Federal Government information necessary to enable it to carry out this chapter. On request of the Chairman, the head of the entity shall furnish the information to the Committee.

(i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Committee, on a reimbursable basis, administrative support services the Committee requests.

(j) ANNUAL REPORT.—Not later than December 31 of each year, the Committee shall transmit to the President a report that includes the names of the Committee members serving in the prior fiscal year, the dates of Committee meetings in that year, a description of the activities of the Committee under this chapter in that year, and any recommendations for changes in this chapter which the Committee determines are necessary.

§ 8503. Duties and powers of the Committee

(a) PROCUREMENT LIST.—

(1) MAINTENANCE OF LIST.—The Committee shall maintain and publish in the Federal Register a procurement list. The list shall include the following products and services determined by the Committee to be suitable for the Federal Government to procure pursuant to this chapter:

(A) Products produced by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled.

(B) The services those agencies provide.

(2) CHANGES TO LIST.—The Committee may, by rule made in accordance with the requirements of section 553(b) to (e) of title 5, add to and remove from the procurement list products so produced and services so provided.

(b) FAIR MARKET PRICE.—The Committee shall determine the fair market price of products and services contained on the procurement list that are offered for sale to the Federal Government by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled. The Committee from time to time shall revise its price determinations with respect to those products and services in accordance with changing market conditions.

(c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for products and services on the procurement list among qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled.

(d) REGULATIONS.—The Committee—

(1) may prescribe regulations regarding specifications for products and services on the procurement list, the time of their delivery, and other matters as necessary to carry out this chapter; and

(2) shall prescribe regulations providing that when the Federal Government purchases products produced and offered for sale by qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled, priority shall be given to products produced and offered for sale by qualified nonprofit agencies for the blind.

(e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall make a continuing study and evaluation of its activities under this chapter to ensure effective and efficient administration of this chapter. The Committee on its own or in cooperation with other public or nonprofit private agencies may study—

(1) problems related to the employment of the blind and other severely disabled individuals; and

(2) the development and adaptation of production methods that would enable a greater utilization of the blind and other severely disabled individuals.

§ 8504. Procurement requirements for the Federal Government

(a) IN GENERAL.—An entity of the Federal Government intending to procure a product or service on the procurement list referred to in section 8503 of this title shall procure the product or service from a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled in accordance with regulations of the Committee and at the price the Committee establishes if the product or service is available within the period required by the entity.

(b) EXCEPTION.—This section does not apply to the procurement of a product that is available from an industry established under chapter 307 of title 18 and that is required under section 4124 of title 18 to be procured from that industry.

§ 8505. Audit

For the purpose of audit and examination, the Comptroller General shall have access to the books, documents, papers, and other records of—

- (1) the Committee and of each central nonprofit agency the Committee designates under section 8503(c) of this title; and
- (2) qualified nonprofit agencies for the blind and qualified nonprofit agencies for other severely disabled that have sold products or services under this chapter to the extent those books, documents, papers, and other records relate to the activities of the agency in a fiscal year in which a sale was made under this chapter.

§ 8506. Authorization of appropriations

Necessary amounts may be appropriated to the Committee to carry out this chapter.

CHAPTER 87—KICKBACKS

- Sec.
8701. Definitions.
8702. Prohibited conduct.
8703. Contractor responsibilities.
8704. Inspection authority.
8705. Administrative offsets.
8706. Civil actions.
8707. Criminal penalties.

§ 8701. Definitions

In this chapter:

(1) **CONTRACTING AGENCY.**—The term “contracting agency”, when used with respect to a prime contractor, means a department, agency, or establishment of the Federal Government that enters into a prime contract with a prime contractor.

(2) **KICKBACK.**—The term “kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.

(3) **PERSON.**—The term “person” means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(4) **PRIME CONTRACT.**—The term “prime contract” means a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.

(5) **PRIME CONTRACTOR.**—The term “prime contractor” means a person that has entered into a prime contract with the Federal Government.

(6) **PRIME CONTRACTOR EMPLOYEE.**—The term “prime contractor employee” means an officer, partner, employee, or agent of a prime contractor.

(7) **SUBCONTRACT.**—The term “subcontract” means a contract or contractual action entered into by a prime contractor or subcontractor to obtain supplies, materials, equipment, or services of any kind under a prime contract.

(8) **SUBCONTRACTOR.**—The term “subcontractor”—

(A) means a person, other than the prime contractor, that offers to furnish or furnishes supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with the prime contract; and

(B) includes a person that offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(9) SUBCONTRACTOR EMPLOYEE.—The term “subcontractor employee” means an officer, partner, employee, or agent of a subcontractor.

§ 8702. Prohibited conduct

A person may not—

- (1) provide, attempt to provide, or offer to provide a kickback;
- (2) solicit, accept, or attempt to accept a kickback; or
- (3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price—
 - (A) a subcontractor charges a prime contractor or a higher tier subcontractor; or
 - (B) a prime contractor charges the Federal Government.

§ 8703. Contractor responsibilities

(a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include in each prime contract awarded by the agency a requirement that the prime contractor shall—

- (1) have in place and follow reasonable procedures designed to prevent and detect violations of section 8702 of this title in its own operations and direct business relationships; and
- (2) cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime contractor shall cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—A prime contractor or subcontractor that has reasonable grounds to believe that a violation of section 8702 of this title may have occurred shall promptly report the possible violation in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or contractual action to suspend or debar a person who is eligible to enter into contracts with the Federal Government, evidence that the person has supplied information to the Federal Government pursuant to paragraph (1) is favorable evidence of the person’s responsibility for the purposes of Federal procurement laws and regulations.

(d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply to a prime contract—

- (1) that is not greater than \$100,000; or
- (2) for the acquisition of commercial items (as defined in section 103 of this title).

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the

Comptroller General and the inspector general of the contracting agency, or a representative of the contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

(b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of commercial items (as defined in section 103 of this title).

§ 8705. Administrative offsets

(a) DEFINITION.—In this section, the term “contracting officer” has the meaning given that term in chapter 71 of this title.

(b) OFFSET AUTHORITY.—A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 8702 of this title against amounts the Federal Government owes the prime contractor under the prime contract to which the kickback relates.

(c) DUTIES OF PRIME CONTRACTOR.—

(1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—

On direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from amounts owed to a subcontractor under a subcontract of the prime contract the amount of a kickback which was or may be offset against the prime contractor under subsection (b). The contracting officer may order that amounts withheld—

(A) be paid over to the contracting agency; or

(B) be retained by the prime contractor if the Federal Government has already offset the amount against the prime contractor.

(2) NOTICE.—The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (1)(B).

(d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.—An offset under subsection (b) or a direction or order of a contracting officer under subsection (c) is a claim by the Federal Government for the purposes of chapter 71 of this title.

§ 8706. Civil actions

(a) AMOUNT.—The Federal Government in a civil action may recover from a person—

(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—

(A) twice the amount of each kickback involved in the violation; and

(B) not more than \$10,000 for each occurrence of prohibited conduct; and

(2) whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

(b) STATUTE OF LIMITATIONS.—A civil action under this section must be brought within 6 years after the later of the date on which—

(1) the prohibited conduct establishing the cause of action occurred; or

(2) the Federal Government first knew or should reasonably have known that the prohibited conduct had occurred.

§ 8707. Criminal penalties

A person that knowingly and willfully engages in conduct prohibited by section 8702 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

SEC. 4. CONFORMING AMENDMENT.

Section 2410i(b)(1) of title 10, United States Code, is amended by striking “small purchase threshold” and substituting “simplified acquisition threshold”.

SEC. 5. CONFORMING CROSS-REFERENCES.

(a) TITLE 5.—Title 5, United States Code, is amended as follows:

(1) In section 504(b)(1)(C)(ii)—

(A) strike “section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)” and substitute “section 7103 of title 41”; and

(B) strike “section 8 of that Act (41 U.S.C. 607)” and substitute “section 7105 of title 41”.

(2) In section 551(1)(H), strike “chapter 2 of title 41;”.

(3) In section 701(b)(1)(H), strike “chapter 2 of title 41;”.

(4) In section 3109(b)(3), strike “section 5” and substitute “section 6101(b) to (d)”.

(5) In section 3374(c)(2), strike “section 27 of the Office of Federal Procurement Policy Act” and substitute “chapter 21 of title 41”.

(6) In section 3704(b)(2)(G), strike “section 27 of the Office of Federal Procurement Policy Act” and substitute “chapter 21 of title 41”.

(7) In section 4105, strike “section 5” and substitute “section 6101(b) to (d)”.

(8) In section 5102(c)(30), strike “section 8 of the Contract Disputes Act of 1978” and substitute “section 7105(a)(2), (c)(2), or (d)(2) of title 41”.

(9) In section 5372a—

(A) in subsection (a)(1)—

(i) strike “section 8 of the Contract Disputes Act of 1978” and substitute “section 7105(a)(2), (c)(2), or (d)(2) of title 41”; and

(ii) strike “section 42 of the Office of Federal Procurement Policy Act” and substitute “section 7105(b)(2) of title 41”; and

(B) in subsection (a)(2), strike “section 8 of the Contract Disputes Act of 1978” and substitute “section 7105(a)(1), (c)(1), or (d)(1) of title 41”.

(10) In section 7342(e)(1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(11) In section 8709(a), strike “section 5” and substitute “section 6101(b) to (d)”.

(12) In section 8714a(a), strike “section 5” and substitute “section 6101(b) to (d)”.

(13) In section 8714b(a), strike “section 5” and substitute “section 6101(b) to (d)”.

(14) In section 8714c(a), strike “section 5” and substitute “section 6101(b) to (d)”.

(15) In section 8902(a), strike “section 5” and substitute “section 6101(b) to (d)”.

(16) In section 8953(a)(1), strike “section 5” and substitute “section 6101(b) to (d)”.

(17) In section 8983(a)(1), strike “section 5” and substitute “section 6101(b) to (d)”.

(18) In section 9003—

(A) in subsection (a), strike “section 5” and substitute “section 6101(b) to (d)”;

(B) in subsection (c)(3), before subparagraph (A), strike “the Contract Disputes Act of 1978” and substitute “chapter 71 of title 41”;

(C) in subsection (c)(3)(A), strike “(after appropriate arrangements, as described in section 8(c) of such Act)”;

and

(D) in subsection (c)(3)(B), strike “section 10(a)(1) of such Act” and substitute “section 7104(b)(1) of title 41”.

(19) In section 9009, strike “section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f))” and substitute “section 1502(a) and (b) of title 41”.

(b) TITLE 10.—Title 10, United States Code, is amended as follows:

(1) In section 133(c)(1), strike “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))” and substitute “section 1702(c) of title 41”.

(2) In section 2013(a), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

(3) In section 2194(b)(2), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(4) In section 2201—

(A) in subsection (b), strike “section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and (b)(1)–(3) of title 41”; and

(B) in subsection (c), strike “section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and (b)(1)–(3) of title 41”.

(5) In section 2207(b), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title 41”.

(6) In section 2225(f)—

(A) in paragraph (1), strike “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))” and substitute “section 1702(c) of title 41”; and

(B) in paragraph (2), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title 41”.

(7) In section 2226(b), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(8) In section 2302—

(A) in paragraph (3), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter 1 of title 41”;

(B) in paragraph (6), strike “section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))” and substitute “section 1303(a)(1) of title 41”; and

(C) in paragraph (7), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “section 134 of title 41”.

(9) In section 2302a—

(A) in subsection (a), strike “section 4(11) of the Office of Federal Procurement Policy Act” and substitute “section 134 of title 41”; and

(B) in subsection (b), strike “section 33 of the Office of Federal Procurement Policy Act” and substitute “section 1905 of title 41”.

(10) In section 2302b, strike “section 31 of the Office of Federal Procurement Policy Act” and substitute “section 1901 of title 41”.

(11) In section 2302c—

(A) in subsection (a)(1), strike “section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426)” and substitute “section 2301 of title 41”; and

(B) in subsection (b), strike “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))” and substitute “section 1702(c) of title 41”.

(12) In section 2304—

(A) in subsection (f)(1)(B)(iii), strike “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))” and substitute “section 1702(c) of title 41”; and

(B) in subsection (f)(1)(C), strike “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1708 of title 41”; and

(C) in subsection (f)(2)(D), strike “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title 41”; and

(D) in subsection (g)(4), strike “section 31(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 427)” and substitute “section 1901(e) of title 41”; and

(E) in subsection (h)(1), strike “The Walsh-Healey Act (41 U.S.C. 35 et seq.)” and substitute “Chapter 65 of title 41”.

(13) In section 2304b—

(A) in subsection (c), strike “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1708 of title 41”; and

(B) in subsection (f)(3), strike “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1708 of title 41”.

(14) In section 2304c(a)(1), strike “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1708 of title 41”.

(15) In section 2306a(h)(3), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(16) In section 2314, strike “Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)” and substitute “Sections 6101(b)–(d) and 6304 of title 41”.

(17) In section 2318—

- (A) in subsection (a)(1), strike “section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a))” and substitute “section 1705(a) of title 41”; and
- (B) in subsection (a)(2), strike “sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))” and substitute “section 1705(b) and (c) of title 41”.
- (18) In section 2321(h), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”.
- (19) In section 2324—
- (A) in subsection (d)(1), strike “section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)” and substitute “section 7103 of title 41”; and
- (B) in subsection (d)(2), strike “section 7 of such Act (41 U.S.C. 606)” and substitute “section 7104(a) of title 41”; and
- (C) in subsection (e)(1)(P), strike “section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435)” and substitute “section 1127 of title 41”; and
- (D) in subsection (e)(2)(C), strike “(41 U.S.C. 10b–1)” and substitute “(as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988)”.
- (20) In section 2343, strike “section 3741 of the Revised Statutes (41 U.S.C. 22)” and substitute “section 6306 of title 41”.
- (21) In section 2375(b), strike “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906 of title 41”.
- (22) In section 2376(1), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter 1 of title 41”.
- (23) In section 2384—
- (A) in subsection (b)(2), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))” and substitute “section 103 of title 41”; and
- (B) in subsection (b)(3), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))” and substitute “section 134 of title 41”.
- (24) In section 2393(d)—
- (A) strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))” and substitute “section 134 of title 41”; and
- (B) strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))” and substitute “section 103 of title 41”.
- (25) In section 2402—
- (A) in subsection (c), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))” and substitute “section 134 of title 41”; and
- (B) in subsection (d)(2), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))” and substitute “section 103 of title 41”.
- (26) In section 2408—
- (A) in subsection (a)(4)(A), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))” and substitute “section 134 of title 41”; and

(B) in subsection (a)(4)(B), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(27) In section 2410(c), strike “section 4(11) of the Office of Federal Procurement Policy Act” and substitute “section 134 of title 41”.

(28) In section 2410b(c), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(29) In section 2410d—

(A) in subsection (b)(2)(A), strike “section 5(3) of the Javits-Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section 8501(7) of title 41”;

(B) in subsection (b)(2)(B), strike “handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4))” and substitute “disabled, as defined in section 8501(6) of title 41”; and

(C) in subsection (b)(2)(C), strike “section 2(c) of such Act (41 U.S.C. 47(c))” and substitute “section 8503(c) of title 41”.

(30) In section 2410g(d)(1), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(31) In section 2410i(b)(1), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title 41”.

(32) In section 2410m—

(A) in subsection (a), before paragraph (1), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”;

(B) in subsection (a)(2), strike “section 7 of such Act (41 U.S.C. 606)” and substitute “section 7104(a) of title 41”; and

(C) in subsection (b)(1)(A), strike “section 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a))” and substitute “section 7104(b) of title 41”.

(33) In section 2457(e), strike “section 2 of the Buy American Act (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

(34) In section 2461(c)(1), strike “section 2 of the Javits-Wagner-O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title 41”.

(35) In section 2485(b)(1), strike “section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))” and substitute “section 107 of title 41”.

(36) In the chapter analysis for subchapter V of chapter 148, in the item for section 2533, strike “the Buy American Act” and substitute “chapter 83 of title 41”.

(37) In section 2533—

(A) in the section catchline, strike “**the Buy American Act**” and substitute “**chapter 83 of title 41**”; and

(B) in subsection (a), strike “section 2 of the Buy American Act (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

(38) In section 2533a(i), strike “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906 of title 41”.

(39) In section 2533b—

(A) in subsection (h), strike “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906 of title 41”; and

(B) in subsection (j), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “section 105 of title 41”.

(40) In section 2534(g)(2), strike “section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429)” and substitute “section 1905 of title 41”.

(41) In section 2562(a)(1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(42) In section 2576(a), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(43) In section 2636(b)(3), strike “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title 41”.

(44) In section 2667(f)(1), strike “Notwithstanding subsection (a)(3) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)” and substitute “Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section”.

(45) In section 2664(a), strike “title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(46) In section 2691(b), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(47) In section 2696(a), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(48) In section 2836(g), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”.

(49) In section 2854a(d)(1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(50) In section 2878(d)(2), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(51) In the chapter analysis for chapter 633, in the item for section 7299, strike “Walsh-Healey Act” and substitute “chapter 65 of title 41”.

(52) In section 7299—

(A) in the heading, strike “Walsh-Healey Act” and substitute “chapter 65 of title 41”; and

(B) strike “the Walsh-Healey Act (41 U.S.C. 35 et seq.)” and substitute “chapter 65 of title 41”.

(53) In section 7305(d)—

(A) strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”; and

(B) strike “under subtitle I of title 40 and such title III” and substitute “under those provisions”.

(54) In section 9444(b)(1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(55) In section 9781(g), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(c) TITLE 14.—Title 14, United States Code, is amended as follows:

(1) In section 92(d), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(2) In section 93(h), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(3) In section 641(a), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(4) In section 685(c)(1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(d) TITLE 18.—Title 18, United States Code, is amended as follows:

(1) In section 3672, strike “section 3709 of the Revised Statutes of the United States” and substitute “section 6101(b) to (d) of title 41”.

(2) In section 4124(c), strike “section 6(d)(4) of the Office of Federal Procurement Policy Act” and substitute “section 1122(a)(4) of title 41”.

(e) TITLE 23.—Title 23, United States Code, is amended as follows:

(1) In section 140—

(A) in subsection (b), strike “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),” and substitute “section 6101(b) to (d) of title 41”; and

(B) in subsection (c)—

(i) strike “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),” and substitute “section 6101(b) to (d) of title 41”; and

(ii) strike “section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e))” and substitute “section 3106 of title 41”.

(2) In section 502(c)(5), strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

(f) THE INTERNAL REVENUE CODE OF 1986.—Section 7608(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 7608(c)(1)) is amended—

(1) in subparagraph (A)(i)(II), by striking “sections 11(a) and 22” and substituting “sections 6301(a) and (b)(1)–(3) and 6306”;

(2) in subparagraph (A)(i)(III), by striking “section 255” and substituting “chapter 45”; and

(3) in subparagraph (A)(i)(V), by striking “section 254(a) and (c)” and substituting “section 3901”.

(g) TITLE 28.—Title 28, United States Code, is amended as follows:

(1) In the last sentence of section 524(c)(1), strike “section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41”.

(2) In section 604(a)(10)(C), strike “section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(3) In section 624(3), strike “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(4) In section 753(g), strike “section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(5) In section 1295—

(A) in subsection (a)(10), strike “section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1))” and substitute “section 7107(a)(1) of title 41”;

(B) in subsection (b), strike “section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b))” and substitute “section 7107(b) of title 41”; and

(C) in subsection (c), strike “section 10(b) of the Contract Disputes Act of 1978” and substitute “section 7107(b) of title 41”.

(6) In section 1346(a)(2), strike “sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978” and substitute “sections 7104(b)(1) and 7107(a)(1) of title 41”.

(7) In section 1491(a)(2), strike “section 10(a)(1) of the Contract Disputes Act of 1978” and substitute “section 7104(b)(1) of title 41”.

(8) In section 2401(a), strike “the Contract Disputes Act of 1978” and substitute “chapter 71 of title 41”.

(9) In section 2412—

(A) in subsection (d)(2)(E), strike “the Contract Disputes Act of 1978” and substitute “chapter 71 of title 41”; and

(B) in subsection (d)(3), strike “the Contract Disputes Act of 1978” and substitute “chapter 71 of title 41”.

(10) In section 2414, strike “the Contract Disputes Act of 1978” and substitute “chapter 71 of title 41”.

(11) In section 2517(a), strike “the Contract Disputes Act of 1978” and substitute “chapter 71 of title 41”.

(h) TITLE 31.—Title 31, United States Code, is amended as follows:

(1) In section 506, strike “section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404(a))” and substitute “section 1101(a) of title 41”.

- (2) In section 731(i)(7), strike “section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423)” and substitute “chapter 21 of title 41”.
- (3) In section 781(c)(1), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- (4) Section 1344(h)(2)(A) is amended to read as follows:
“(A) a department—
 “(i) including independent establishments, other agencies, and wholly owned Government corporations; but
 “(ii) not including the Senate, House of Representatives, or Architect of the Capitol, or the officers or employees thereof;”
- (5) In section 3567, strike “section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))” and substitute “section 133 of title 41”.
- (6) In section 3718(b)(1)(A), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.
- (7) In section 3902(a), strike “section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611)” and substitute “section 7109(a)(1) and (b) of title 41”.
- (8) In section 3907—
 (A) in subsection (a), strike “section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)” and substitute “section 7103 of title 41”;
 (B) in subsection (b)(1)(A), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”;
 (C) in subsection (b)(2)—
 (i) strike “section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611)” and substitute “section 7109(a)(1) and (b) of title 41”; and
 (ii) in the second sentence, strike “section 12” and substitute “section 7109(a)(1) and (b)”; and
 (D) in subsection (c), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”.
- (9) In section 6202(c)(2), strike “section 6(d)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(5))” and substitute “section 1122(a)(4) of title 41”.
- (10) In section 9703(b)(3), as added by section 638(b)(1) of the Act of October 6, 1992 (Public Law 102–393, 106 Stat. 1779), strike “section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41”.
- (i) TITLE 35.—Title 35, United States Code, is amended as follows:
 (1) In section 2(b)(4)(A), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

- (2) In section 203(b), strike “the Contract Disputes Act (41 U.S.C. § 601 et seq.)” and substitute “chapter 71 of title 41”.
- (j) TITLE 38.—Title 38, United States Code, is amended as follows:
- (1) In section 1720(c)(2), strike “section 2(b)(1) of the Service Contract Act of 1965 (41 U.S.C. 351(b)(1))” and substitute “section 6704(a) of title 41”.
- (2) In section 1966(a), strike “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- (3) In section 3720(b), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.
- (4) In section 7317(f), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- (5) In section 7802(f), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- (6) In section 8122—
- (A) in subsection (a)(1), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”; and
- (B) in subsection (c)—
- (i) strike “(41 U.S.C. 252(c))”; and
- (ii) strike “section 304 of that Act (41 U.S.C. 254)” and substitute “sections 3901 and 3905 of title 41”.
- (7) In section 8127—
- (A) in subsection (b), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “section 134 of title 41”; and
- (B) in subsection (c)(2), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “section 134 of title 41”.
- (8) In section 8153(a)—
- (A) in paragraph (3)(B)(ii), strike “section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b)” and substitute “section 1707 of title 41”; and
- (B) in paragraph (3)(D), strike “section 303(f) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f))” and substitute “section 3304(e) of title 41”.
- (9) In section 8201(e), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- (k) TITLE 39.—Section 410(b) of title 39, United States Code, is amended by striking paragraph (5) and substituting—
- “(5) chapters 65 and 67 of title 41;”.
- (l) TITLE 40.—Title 40, United States Code, is amended as follows:
- (1) In the chapter analysis for chapter 1, in item 111, strike “Federal Property and Administrative Services Act of 1949” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.
- (2) In section 102, before paragraph (1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.
- (3) In section 111—

(A) in the section catchline, strike “**Federal Property and Administrative Services Act of 1949**” and substitute “**division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41**”; and

(B) before paragraph (1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(4) In section 113(b)—

(A) in the heading, strike “THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT” and substitute “DIVISION B (EXCEPT SECTIONS 1704 AND 2303) OF SUBTITLE I OF TITLE 41”; and

(B) strike “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B (Except Sections 1704 and 2303) of subtitle I of title 41”.

(5) In section 311—

(A) in subsection (a), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”; and

(B) in subsection (b), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(6) In section 501(b)(2)(B), strike “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B (except sections 1704 and 2303) of subtitle I of title 41”.

(7) In section 502—

(A) in subsection (b)(1)(A)(i), strike “section 5(3) of the Javits-Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section 8501(7) of title 41”; and

(B) in subsection (b)(1)(A)(ii), strike “handicapped (as defined in section 5(4) of the Javits-Wagner-O’Day Act (41 U.S.C. 48b(4)))” and substitute “disabled (as defined in section 8501(6) of title 41)”;

(C) in subsection (b)(1)(B), strike “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title 41”; and

(D) in subsection (b)(2), strike “section 2 of the Javits-Wagner-O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title 41”.

(8) In section 503(b)—

(A) in paragraph (1), strike “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B (except sections 1704 and 2303) of subtitle I of title 41”; and

(B) in paragraph (3)—

(i) in the heading, strike “SECTION 3709 OF REVISED STATUTES” and substitute “SECTION 6101(b) TO (d) OF TITLE 41”; and

(ii) strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

(9) In section 506(a)(1)(D), strike “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B (except sections 1704 and 2303) of subtitle I of title 41”.

(10) In section 545(f), strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

(11) In section 593(a)(2), strike “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title 41”.

(12) In section 1305, strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(13) In section 1308, strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(14) In section 3148, strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(15) In section 3304(d)(2), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(16) In section 3305(a)—

(A) in paragraph (1), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”; and

(B) in paragraph (2), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(17) In section 3308(a), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(18) In section 3310(2), strike “section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253)” and substitute “sections 3105, 3301, and 3303 to 3305 of title 41”.

(19) In section 3701(b)(3)(A)(ii), strike “the Walsh-Healey Act (41 U.S.C. 35 et seq.)” and substitute “chapter 65 of title 41”.

(20) In section 3704(b)(1), strike “sections 4 and 5 of the Walsh-Healey Act (41 U.S.C. 38, 39)” and substitute “sections 6506 and 6507 of title 41”.

(21) In section 3707, strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “section 103 of title 41”.

(22) In section 6111(b)(2)(D), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(23) In section 8711(d), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(24) In section 11101—

(A) in paragraph (1), strike “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and substitute “section 103 of title 41”; and

(B) in paragraph (2), strike “section 4 of the Act (41 U.S.C. 403)” and substitute “section 133 of title 41”.

(m) TITLE 44.—Title 44, United States Code, is amended as follows:

(1) In the chapter analysis for chapter 3, in the item for section 311, strike “the Federal Property and Administrative Services Act” and substitute “subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(2) In section 311—

(A) in the section catchline, strike “**the Federal Property and Administrative Services Act**” and substitute “**subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41**”;

(B) in subsection (a), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”; and

(C) in subsection (c), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(n) TITLE 46.—Section 51703(b)(2) of title 46, United States Code, is amended by striking “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substituting “section 6101(b) to (d) of title 41”.

(o) TITLE 49.—Title 49, United States Code, is amended as follows:

(1) In section 103(e), strike “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

(2) In section 1113(b)(1)(B) strike “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

(3) In section 5334(j)(2), strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

(4) In section 10721, strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

(5) In section 13712, strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

(6) In section 15504, strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

(7) In section 40110—

(A) in subsection (d)(2)(A), strike “Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252–266)” and substitute “Division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”;

(B) in subsection (d)(2)(B), strike “The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and substitute “Division B (except sections 1704 and 2303) of subtitle I of title 41”;

(C) in subsection (d)(2)(C), strike “, except for section 315 (41 U.S.C. 265). For the purpose of applying section 315 of that Act to the system,” and substitute “. However, section 4705 of title 41 shall apply to the new acquisition management system developed and implemented pursuant to paragraph (1). For the purpose of applying section 4705 of title 41 to the system,”; and

(D) in subsection (d)(3)—

(i) in the heading, strike “THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT” and substitute “DIVISION B (EXCEPT SECTIONS 1704 AND 2303) OF SUBTITLE I OF TITLE 41”;

(ii) before subparagraph (A), strike “section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423)” and substitute “chapter 21 of title 41”; and

(iii) in subparagraph (A), strike “Subsections (f) and (g)” and substitute “Sections 2101 and 2106 of title 41”.

(8) In section 40118(f)(2), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(9) In section 47305(d), strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

SEC. 6. TRANSITIONAL AND SAVINGS PROVISIONS.

41 USC note
prec. 101.

(a) CUTOFF DATE.—This Act replaces certain provisions of law enacted on or before December 31, 2008. If a law enacted after that date amends or repeals a provision replaced by this Act, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this Act. If a law enacted after that date is otherwise inconsistent with this Act, it supersedes this Act to the extent of the inconsistency.

41 USC note
prec. 101.

(b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, the date of enactment of a provision enacted by this Act is deemed to be the date of enactment of the provision it replaced.

41 USC note
prec. 101.

(c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision of law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

41 USC note
prec. 101.

(d) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision of law replaced by this Act continues in effect under the corresponding provision enacted by this Act.

41 USC note
prec. 101.

(e) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision of law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(f) EFFECTIVE DATES FOR CERTAIN ACTIONS.—

41 USC 2303
note.

(1) ISSUE POLICY.—The requirement in section 2303(b)(1) of title 41, United States Code, to issue a policy shall be done not later than 270 days after October 14, 2008.

(2) REVISIONS IN FEDERAL PROCUREMENT DATA SYSTEM OR SUCCESSOR SYSTEM.—The requirement in section 2311 of title 41, United States Code, to direct appropriate revisions in the Federal Procurement Data System or any successor system shall be done not later than one year after October 14, 2008. 41 USC 2311 note.

(3) ESTABLISH DATABASE.—The requirement in section 2313(a) of title 41, United States Code, to establish a database shall be done not later than one year after October 14, 2008. 41 USC 2313 note.

(4) AMEND FEDERAL ACQUISITION REGULATION WITHIN ONE YEAR AFTER OCTOBER 14, 2008.—The Federal Acquisition Regulation shall be amended to meet the requirements of sections 2313(f), 3302(b) and (d), 4710(b), and 4711(b) of title 41, United States Code, not later than one year after October 14, 2008. 41 USC 2313 note.

(5) AMEND FEDERAL ACQUISITION REGULATION WITHIN 270 DAYS AFTER OCTOBER 14, 2008.—The Federal Acquisition Regulation shall be amended to meet the requirements of section 3906(b) of title 41, United States Code, not later than 270 days after October 14, 2008. 41 USC 3906 note.

SEC. 7. REPEALS.

(a) INFERENCE OF REPEAL.—The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal. 41 USC note prec. 101.

(b) REPEALER SCHEDULE.—The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act. 41 USC note prec. 101.

Schedule of Laws Repealed Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Vol- ume	Page	Existing	Proposed
1875 Mar. 3 ...	133	2	18	455	10	.....
1884 July 7	332	(words after “fifty five thousand dollars” in 3d par. under heading “Miscellaneous Objects Under the Treasury Department”).	23	204	24	6308
1920 June 5 ...	240	(last par. under heading “Purchase of Articles Manufactured at Government Arsenals”).	41	975	23	6307
1921 June 30	33	1 (last proviso on p. 78)	42	78	11a	6302
1922 July 1	259	(1st proviso on p. 812) ...	42	812	23	6307
1926 May 13 ..	294	(4th complete par. (related to R.S. § 3741) on p. 547).	44	547	16c	.....

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
1927 Jan. 12 ..	27	(2d complete par. (related to R.S. § 3741) on p. 936).	44	936	16a	
1933 Mar. 3 ...	212	title III, § 1	47	1520	10c	8301
		title III, § 2	47	1520	10a	8302
		title III, § 3	47	1520	10b	8303
		title III, § 4			10b-1	
June 16	101	5	48	305	24a	
1934 Jan. 25 ..	5	(related to R.S. § 3741) ..	48	337	22	6306
June 16	553	1-6	48	974	28-33	
1935 Aug. 29	815 .....	.....	49	990	34	
1936 June 30	881	1 (matter before subsec. (a) less words related to definition of “agency of the United States”).	49	2036	35	6502
		1 (matter before subsec. (a) related to definition of “agency of the United States”).	49	2036	35	6501
		1(a)-(d)	49	2036	35	6502
		2	49	2037	36	6503
		3	49	2037	37	6504
		4	49	2038	38	6506
		5	49	2038	39	6507
		6	49	2038	40	6508
		7	49	2039	41	6501
		8	49	2039	42	6511
		9	49	2039	43	6505
		10(a)			43a	6509
		10(b) (1st sentence)			43a	6507
		10(b) (last sentence), (c)			43a	6509
		11			43b	6510
		12	49	2039	44	
		13	49	2039	45	6502
1938 June 25	697	1	52	1196	46	8502
		2	52	1196	47	8503
		3	52	1196	48	8504
		4	52	1196	48a	8505
		5	52	1196	48b	8501
		6	52	1196	48c	8506
		7			46 note	
1939 Aug. 4 ...	418	13 (related to R.S. § 3744).	53	1197	16d	
1940 June 18	396	(last par. (related to R.S. § 3709) under heading “Botanic Garden”).	54	474	6kk	
		(last par. (related to R.S. § 3744) under heading “Botanic Garden”).	54	474	16b	
June 24	412 .....	.....	54	504	6b	6102
Oct. 10 ..	851	2(a)	54	1110	6a	6102
		2(f)	54	1110	6a	6102
		2(h)	54	1110	6a	6102
		2(j)	54	1110	6a	6102

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
		3(a)	54	1111	6b	
		3(b)	54	1111	6b	
1942						
June 22	432	1	56	375	49	6309
		2	56	376	50	6309
July 2 ...	472	(1st complete par. on p. 493).	56	493	6	
1944						
July 1 ...	358	1, 2(a)	58	649	101, 102	
		3	58	650	103	
		4(b)–13(c)	58	651	104–113	
		13(d)	58	662	113	
		13(e)–15	58	662	113–115	
		17, 18(a)	58	665	117, 118	
		18(c)–(e)	58	666	118	
		19(c)	58	667	119	
		20–25	58	668	120–125	
		26	58	671	101 note	
		27	58	671	101 note	
1946						
Mar. 8 ...	80	1	60	37	51	
		2	60	37	52	8701
		3	60	37	53	8702
		4	60	37	54	8707
		5	60	37	55	8706
		6	60	37	56	8705
		7	60	37	57	8703
		8	60	37	58	8704
Aug. 2 ...	744	9(c)	60	809	5	6101
		18	60	811	5a	6101
1949						
June 30	288	301	63	393	251	
		302(a)	63	393	252	3101
		302(b)	63	393	252	3104
		302(c)(1)	63	393	252	3106
		302(c)(2)			252	3301
		302A, 302B			252a, 252b	3101
		302C			252c	4709
		303(a)	63	395	253	3301
		303(b)	63	395	253	3303
		303(c)–(f)	63	395	253	3304
		303(g)	63	395	253	3305
		303(h)			253	3301
		303(i)			253	3105
		303(j)			253	3304
		303A			253a	3306
		303B(a), (b)			253b	3701
		303B(c)			253b	3702
		303B(d)			253b	3703
		303B(e)			253b	3704
		303B(f)			253b	3705
		303B(g)			253b	3704, 3705
		303B(h)			253b	3706
		303B(i)			253b	3707
		303B(j)			253b	3308
		303B(k), (l)			253b	3708
		303B(m)			253b	4702
		303C			253c	3311
		303D			253d	4703
		303F			253f	3310
		303G			253g	4704
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Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 1107:

HOUSE REPORTS: No. 111–42 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 155 (2009): May 6, considered and passed House.

Vol. 156 (2010): Dec. 2, considered and passed Senate, amended.

Dec. 16, 17, House considered and concurred in Senate amendments.



Public Law 111–351
111th Congress

An Act

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

Jan. 4, 2011
[H.R. 1746]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Predisaster Hazard Mitigation Act of 2010”.

Predisaster
Hazard
Mitigation Act of
2010.
42 USC 5121
note.

SEC. 2. FINDINGS.

Congress finds the following:

42 USC 5133
note.

(1) The predisaster hazard mitigation program has been successful and cost-effective. Funding from the predisaster hazard mitigation program has successfully reduced loss of life, personal injuries, damage to and destruction of property, and disruption of communities from disasters.

(2) The predisaster hazard mitigation program has saved Federal taxpayers from spending significant sums on disaster recovery and relief that would have been otherwise incurred had communities not successfully applied mitigation techniques.

(3) A 2007 Congressional Budget Office report found that the predisaster hazard mitigation program reduced losses by roughly \$3 (measured in 2007 dollars) for each dollar invested in mitigation efforts funded under the predisaster hazard mitigation program. Moreover, the Congressional Budget Office found that projects funded under the predisaster hazard mitigation program could lower the need for post-disaster assistance from the Federal Government so that the predisaster hazard mitigation investment by the Federal Government would actually save taxpayer funds.

(4) A 2005 report by the Multihazard Mitigation Council showed substantial benefits and cost savings from the hazard mitigation programs of the Federal Emergency Management Agency generally. Looking at a range of hazard mitigation programs of the Federal Emergency Management Agency, the study found that, on average, \$1 invested by the Federal Emergency Management Agency in hazard mitigation provided the Nation with roughly \$4 in benefits. Moreover, the report projected that the mitigation grants awarded between 1993 and 2003 would save more than 220 lives and prevent nearly 4,700 injuries over approximately 50 years.

(5) Given the substantial savings generated from the predisaster hazard mitigation program in the years following the provision of assistance under the program, increasing funds appropriated for the program would be a wise investment.

SEC. 3. PREDISASTER HAZARD MITIGATION.

(a) ALLOCATION OF FUNDS.—Section 203(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(f)) is amended to read as follows:

“(f) ALLOCATION OF FUNDS.—

President.
Grants.

“(1) IN GENERAL.—The President shall award financial assistance under this section on a competitive basis and in accordance with the criteria in subsection (g).

“(2) MINIMUM AND MAXIMUM AMOUNTS.—In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year—

“(A) is not less than the lesser of—

“(i) \$575,000; or

“(ii) the amount that is equal to 1 percent of the total funds appropriated to carry out this section for the fiscal year; and

“(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended to read as follows:

“(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) \$180,000,000 for fiscal year 2011;

“(2) \$200,000,000 for fiscal year 2012; and

“(3) \$200,000,000 for fiscal year 2013.”.

(c) TECHNICAL CORRECTIONS TO REFERENCES.—The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended—

(1) in section 602(a) (42 U.S.C. 5195a(a)), by striking paragraph (7) and inserting the following:

Definition.

“(7) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Emergency Management Agency.”; and

(2) by striking “Director” each place it appears and inserting “Administrator”, except—

(A) in section 622 (42 U.S.C. 5197a)—

(i) in the second and fourth places it appears in subsection (c); and

(ii) in subsection (d); and

(B) in section 626(b) (42 U.S.C. 5197e(b)).

42 USC 5134,
5144, 5165d,
5170c, 5172,
5195a, 5195b,
5196–5196b,
5196f,
5197–5197c,
5197h.

SEC. 4. PROHIBITION ON EARMARKS.

Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133) is amended by adding at the end the following:

“(n) PROHIBITION ON EARMARKS.—

“(1) DEFINITION.—In this subsection, the term ‘congressionally directed spending’ means a statutory provision or report language included primarily at the request of a Senator or

a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

“(2) PROHIBITION.—None of the funds appropriated or otherwise made available to carry out this section may be used for congressionally directed spending.

“(3) CERTIFICATION TO CONGRESS.—The Administrator of the Federal Emergency Management Agency shall submit to Congress a certification regarding whether all financial assistance under this section was awarded in accordance with this section.”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 1746:

HOUSE REPORTS: No. 111–83 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD:

Vol. 155 (2009): Apr. 27, considered and passed House.

Vol. 156 (2010): Dec. 20, considered and passed Senate, amended.

Dec. 21, House concurred in Senate amendment.



Public Law 111–352
111th Congress

An Act

Jan. 4, 2011
[H.R. 2142]

To require quarterly performance assessments of Government programs for purposes of assessing agency performance and improvement, and to establish agency performance improvement officers and the Performance Improvement Council.

GPRA
Modernization
Act of 2010.
31 USC 1101
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “GPRA Modernization Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Strategic planning amendments.
- Sec. 3. Performance planning amendments.
- Sec. 4. Performance reporting amendments.
- Sec. 5. Federal Government and agency priority goals.
- Sec. 6. Quarterly priority progress reviews and use of performance information.
- Sec. 7. Transparency of Federal Government programs, priority goals, and results.
- Sec. 8. Agency Chief Operating Officers.
- Sec. 9. Agency Performance Improvement Officers and the Performance Improvement Council.
- Sec. 10. Format of performance plans and reports.
- Sec. 11. Reducing duplicative and outdated agency reporting.
- Sec. 12. Performance management skills and competencies.
- Sec. 13. Technical and conforming amendments.
- Sec. 14. Implementation of this Act.
- Sec. 15. Congressional oversight and legislation.

SEC. 2. STRATEGIC PLANNING AMENDMENTS.

Chapter 3 of title 5, United States Code, is amended by striking section 306 and inserting the following:

“§ 306. Agency strategic plans

“(a) Not later than the first Monday in February of any year following the year in which the term of the President commences under section 101 of title 3, the head of each agency shall make available on the public website of the agency a strategic plan and notify the President and Congress of its availability. Such plan shall contain—

“(1) a comprehensive mission statement covering the major functions and operations of the agency;

“(2) general goals and objectives, including outcome-oriented goals, for the major functions and operations of the agency;

“(3) a description of how any goals and objectives contribute to the Federal Government priority goals required by section 1120(a) of title 31;

Deadline.
Public
information.
Web posting.
Notification.

“(4) a description of how the goals and objectives are to be achieved, including—

“(A) a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives; and

“(B) a description of how the agency is working with other agencies to achieve its goals and objectives as well as relevant Federal Government priority goals;

“(5) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations required under subsection (d);

“(6) a description of how the performance goals provided in the plan required by section 1115(a) of title 31, including the agency priority goals required by section 1120(b) of title 31, if applicable, contribute to the general goals and objectives in the strategic plan;

“(7) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

“(8) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations to be conducted.

“(b) The strategic plan shall cover a period of not less than 4 years following the fiscal year in which the plan is submitted. As needed, the head of the agency may make adjustments to the strategic plan to reflect significant changes in the environment in which the agency is operating, with appropriate notification of Congress.

“(c) The performance plan required by section 1115(b) of title 31 shall be consistent with the agency’s strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

“(d) When developing or making adjustments to a strategic plan, the agency shall consult periodically with the Congress, including majority and minority views from the appropriate authorizing, appropriations, and oversight committees, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan. The agency shall consult with the appropriate committees of Congress at least once every 2 years.

Consultation.

“(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

“(f) For purposes of this section the term ‘agency’ means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the Government Accountability Office, the United States Postal Service, and the Postal Regulatory Commission.”.

Definition.

SEC. 3. PERFORMANCE PLANNING AMENDMENTS.

Chapter 11 of title 31, United States Code, is amended by striking section 1115 and inserting the following:

“§ 1115. Federal Government and agency performance plans

Coordination.

Web posting.

“(a) **FEDERAL GOVERNMENT PERFORMANCE PLANS.**—In carrying out the provisions of section 1105(a)(28), the Director of the Office of Management and Budget shall coordinate with agencies to develop the Federal Government performance plan. In addition to the submission of such plan with each budget of the United States Government, the Director of the Office of Management and Budget shall ensure that all information required by this subsection is concurrently made available on the website provided under section 1122 and updated periodically, but no less than annually. The Federal Government performance plan shall—

“(1) establish Federal Government performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year for each of the Federal Government priority goals required under section 1120(a) of this title;

“(2) identify the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities contributing to each Federal Government performance goal during the current fiscal year;

“(3) for each Federal Government performance goal, identify a lead Government official who shall be responsible for coordinating the efforts to achieve the goal;

“(4) establish common Federal Government performance indicators with quarterly targets to be used in measuring or assessing—

“(A) overall progress toward each Federal Government performance goal; and

“(B) the individual contribution of each agency, organization, program activity, regulation, tax expenditure, policy, and other activity identified under paragraph (2);

“(5) establish clearly defined quarterly milestones; and

“(6) identify major management challenges that are Governmentwide or crosscutting in nature and describe plans to address such challenges, including relevant performance goals, performance indicators, and milestones.

Deadline.
Public
information.
Web posting.
Notification.

“(b) **AGENCY PERFORMANCE PLANS.**—Not later than the first Monday in February of each year, the head of each agency shall make available on a public website of the agency, and notify the President and the Congress of its availability, a performance plan covering each program activity set forth in the budget of such agency. Such plan shall—

“(1) establish performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year;

“(2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (c);

“(3) describe how the performance goals contribute to—

“(A) the general goals and objectives established in the agency’s strategic plan required by section 306(a)(2) of title 5; and

“(B) any of the Federal Government performance goals established in the Federal Government performance plan required by subsection (a)(1);

“(4) identify among the performance goals those which are designated as agency priority goals as required by section 1120(b) of this title, if applicable;

“(5) provide a description of how the performance goals are to be achieved, including—

“(A) the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals;

“(B) clearly defined milestones;

“(C) an identification of the organizations, program activities, regulations, policies, and other activities that contribute to each performance goal, both within and external to the agency;

“(D) a description of how the agency is working with other agencies to achieve its performance goals as well as relevant Federal Government performance goals; and

“(E) an identification of the agency officials responsible for the achievement of each performance goal, who shall be known as goal leaders;

“(6) establish a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, customer service, efficiency, output, and outcome indicators;

“(7) provide a basis for comparing actual program results with the established performance goals;

“(8) a description of how the agency will ensure the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

“(A) the means to be used to verify and validate measured values;

“(B) the sources for the data;

“(C) the level of accuracy required for the intended use of the data;

“(D) any limitations to the data at the required level of accuracy; and

“(E) how the agency will compensate for such limitations if needed to reach the required level of accuracy;

“(9) describe major management challenges the agency faces and identify—

“(A) planned actions to address such challenges;

“(B) performance goals, performance indicators, and milestones to measure progress toward resolving such challenges; and

“(C) the agency official responsible for resolving such challenges; and

“(10) identify low-priority program activities based on an analysis of their contribution to the mission and goals of the agency and include an evidence-based justification for designating a program activity as low priority.

“(c) ALTERNATIVE FORM.—If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of the Office of Management and Budget may authorize an alternative form. Such alternative form shall—

“(1) include separate descriptive statements of—

“(A)(i) a minimally effective program; and

“(ii) a successful program; or

“(B) such alternative as authorized by the Director of the Office of Management and Budget, with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity’s performance meets the criteria of the description; or

“(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

“(d) TREATMENT OF PROGRAM ACTIVITIES.—For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.

“(e) APPENDIX.—An agency may submit with an annual performance plan an appendix covering any portion of the plan that—

“(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

“(2) is properly classified pursuant to such Executive order.

“(f) INHERENTLY GOVERNMENTAL FUNCTIONS.—The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

“(g) CHIEF HUMAN CAPITAL OFFICERS.—With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (b)(5)(A).

“(h) DEFINITIONS.—For purposes of this section and sections 1116 through 1125, and sections 9703 and 9704, the term—

“(1) ‘agency’ has the same meaning as such term is defined under section 306(f) of title 5;

“(2) ‘crosscutting’ means across organizational (such as agency) boundaries;

“(3) ‘customer service measure’ means an assessment of service delivery to a customer, client, citizen, or other recipient, which can include an assessment of quality, timeliness, and satisfaction among other factors;

“(4) ‘efficiency measure’ means a ratio of a program activity’s inputs (such as costs or hours worked by employees) to its outputs (amount of products or services delivered) or outcomes (the desired results of a program);

“(5) ‘major management challenge’ means programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse, and mismanagement (such as issues identified by the Government Accountability Office as high risk or issues identified by an Inspector General) where a failure to perform well could seriously affect the ability of an agency or the Government to achieve its mission or goals;

“(6) ‘milestone’ means a scheduled event signifying the completion of a major deliverable or a set of related deliverables or a phase of work;

“(7) ‘outcome measure’ means an assessment of the results of a program activity compared to its intended purpose;

“(8) ‘output measure’ means the tabulation, calculation, or recording of activity or effort that can be expressed in a quantitative or qualitative manner;

“(9) ‘performance goal’ means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;

“(10) ‘performance indicator’ means a particular value or characteristic used to measure output or outcome;

“(11) ‘program activity’ means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and

“(12) ‘program evaluation’ means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended objectives.”.

SEC. 4. PERFORMANCE REPORTING AMENDMENTS.

Chapter 11 of title 31, United States Code, is amended by striking section 1116 and inserting the following:

“§ 1116. Agency performance reporting

“(a) The head of each agency shall make available on a public website of the agency and to the Office of Management and Budget an update on agency performance.

Public
information.
Web posting.

Deadline.

“(b)(1) Each update shall compare actual performance achieved with the performance goals established in the agency performance plan under section 1115(b) and shall occur no less than 150 days after the end of each fiscal year, with more frequent updates of actual performance on indicators that provide data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden.

“(2) If performance goals are specified in an alternative form under section 1115(c), the results shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

“(c) Each update shall—

“(1) review the success of achieving the performance goals and include actual results for the 5 preceding fiscal years;

“(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals during the period covered by the update;

“(3) explain and describe where a performance goal has not been met (including when a program activity’s performance is determined not to have met the criteria of a successful program activity under section 1115(c)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)—

“(A) why the goal was not met;

“(B) those plans and schedules for achieving the established performance goal; and

“(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

“(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title;

“(5) include a review of the performance goals and evaluation of the performance plan relative to the agency’s strategic human capital management;

“(6) describe how the agency ensures the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

“(A) the means used to verify and validate measured values;

“(B) the sources for the data;

“(C) the level of accuracy required for the intended use of the data;

“(D) any limitations to the data at the required level of accuracy; and

“(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy; and

“(7) include the summary findings of those program evaluations completed during the period covered by the update.

Classified
information.

“(d) If an agency performance update includes any program activity or information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is properly classified pursuant to such Executive Order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).

“(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of agency performance updates under this section shall be performed only by Federal employees.

Deadline.
Determination.

“(f) Each fiscal year, the Office of Management and Budget shall determine whether the agency programs or activities meet performance goals and objectives outlined in the agency performance plans and submit a report on unmet goals to—

“(1) the head of the agency;

“(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and

“(4) the Government Accountability Office.

Designation.

“(g) If an agency’s programs or activities have not met performance goals as determined by the Office of Management and Budget for 1 fiscal year, the head of the agency shall submit a performance improvement plan to the Office of Management and Budget to increase program effectiveness for each unmet goal with measurable milestones. The agency shall designate a senior official who shall oversee the performance improvement strategies for each unmet goal.

Submission.

“(h)(1) If the Office of Management and Budget determines that agency programs or activities have unmet performance goals for 2 consecutive fiscal years, the head of the agency shall—

“(A) submit to Congress a description of the actions the Administration will take to improve performance, including proposed statutory changes or planned executive actions; and

“(B) describe any additional funding the agency will obligate to achieve the goal, if such an action is determined appropriate in consultation with the Director of the Office of Management and Budget, for an amount determined appropriate by the Director.

“(2) In providing additional funding described under paragraph (1)(B), the head of the agency shall use any reprogramming or transfer authority available to the agency. If after exercising such authority additional funding is necessary to achieve the level determined appropriate by the Director of the Office of Management and Budget, the head of the agency shall submit a request to Congress for additional reprogramming or transfer authority.

Request.

“(i) If an agency’s programs or activities have not met performance goals as determined by the Office of Management and Budget for 3 consecutive fiscal years, the Director of the Office of Management and Budget shall submit recommendations to Congress on actions to improve performance not later than 60 days after that determination, including—

Recommendations.
Deadline.

“(1) reauthorization proposals for each program or activity that has not met performance goals;

“(2) proposed statutory changes necessary for the program activities to achieve the proposed level of performance on each performance goal; and

“(3) planned executive actions or identification of the program for termination or reduction in the President’s budget.”.

SEC. 5. FEDERAL GOVERNMENT AND AGENCY PRIORITY GOALS.

Chapter 11 of title 31, United States Code, is amended by adding after section 1119 the following:

“§ 1120. Federal Government and agency priority goals

“(a) FEDERAL GOVERNMENT PRIORITY GOALS.—

“(1) The Director of the Office of Management and Budget shall coordinate with agencies to develop priority goals to improve the performance and management of the Federal Government. Such Federal Government priority goals shall include—

“(A) outcome-oriented goals covering a limited number of crosscutting policy areas; and

“(B) goals for management improvements needed across the Federal Government, including—

“(i) financial management;

“(ii) human capital management;

“(iii) information technology management;

“(iv) procurement and acquisition management;

and

“(v) real property management;

“(2) The Federal Government priority goals shall be long-term in nature. At a minimum, the Federal Government priority goals shall be updated or revised every 4 years and made publicly available concurrently with the submission of the budget of the United States Government made in the first full fiscal year following any year in which the term of the President commences under section 101 of title 3. As needed, the Director of the Office of Management and Budget may make adjustments to the Federal Government priority goals to reflect significant changes in the environment in which the

Deadline.
Public
information.

	Federal Government is operating, with appropriate notification of Congress.
Consultation.	<p>“(3) When developing or making adjustments to Federal Government priority goals, the Director of the Office of Management and Budget shall consult periodically with the Congress, including obtaining majority and minority views from—</p> <p>“(A) the Committees on Appropriations of the Senate and the House of Representatives;</p> <p>“(B) the Committees on the Budget of the Senate and the House of Representatives;</p> <p>“(C) the Committee on Homeland Security and Governmental Affairs of the Senate;</p> <p>“(D) the Committee on Oversight and Government Reform of the House of Representatives;</p> <p>“(E) the Committee on Finance of the Senate;</p> <p>“(F) the Committee on Ways and Means of the House of Representatives; and</p> <p>“(G) any other committees as determined appropriate;</p>
Consultation. Deadline.	<p>“(4) The Director of the Office of Management and Budget shall consult with the appropriate committees of Congress at least once every 2 years.</p>
Web posting.	<p>“(5) The Director of the Office of Management and Budget shall make information about the Federal Government priority goals available on the website described under section 1122 of this title.</p> <p>“(6) The Federal Government performance plan required under section 1115(a) of this title shall be consistent with the Federal Government priority goals.</p> <p>“(b) AGENCY PRIORITY GOALS.—</p>
Deadline.	<p>“(1) Every 2 years, the head of each agency listed in section 901(b) of this title, or as otherwise determined by the Director of the Office of Management and Budget, shall identify agency priority goals from among the performance goals of the agency.</p>
Determination.	<p>The Director of the Office of Management and Budget shall determine the total number of agency priority goals across the Government, and the number to be developed by each agency. The agency priority goals shall—</p> <p>“(A) reflect the highest priorities of the agency, as determined by the head of the agency and informed by the Federal Government priority goals provided under subsection (a) and the consultations with Congress and other interested parties required by section 306(d) of title 5;</p>
Time period.	<p>“(B) have ambitious targets that can be achieved within a 2-year period;</p> <p>“(C) have a clearly identified agency official, known as a goal leader, who is responsible for the achievement of each agency priority goal;</p> <p>“(D) have interim quarterly targets for performance indicators if more frequent updates of actual performance provides data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden; and</p> <p>“(E) have clearly defined quarterly milestones.</p>
Classified information.	<p>“(2) If an agency priority goal includes any program activity or information that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is properly</p>

classified pursuant to such Executive order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).

“(c) The functions and activities of this section shall be considered to be inherently governmental functions. The development of Federal Government and agency priority goals shall be performed only by Federal employees.”.

SEC. 6. QUARTERLY PRIORITY PROGRESS REVIEWS AND USE OF PERFORMANCE INFORMATION.

Chapter 11 of title 31, United States Code, is amended by adding after section 1120 (as added by section 5 of this Act) the following:

“§ 1121. Quarterly priority progress reviews and use of performance information

“(a) USE OF PERFORMANCE INFORMATION TO ACHIEVE FEDERAL GOVERNMENT PRIORITY GOALS.—Not less than quarterly, the Director of the Office of Management and Budget, with the support of the Performance Improvement Council, shall—

“(1) for each Federal Government priority goal required by section 1120(a) of this title, review with the appropriate lead Government official the progress achieved during the most recent quarter, overall trend data, and the likelihood of meeting the planned level of performance;

“(2) include in such reviews officials from the agencies, organizations, and program activities that contribute to the accomplishment of each Federal Government priority goal;

“(3) assess whether agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities are contributing as planned to each Federal Government priority goal;

Assessment.

“(4) categorize the Federal Government priority goals by risk of not achieving the planned level of performance; and

“(5) for the Federal Government priority goals at greatest risk of not meeting the planned level of performance, identify prospects and strategies for performance improvement, including any needed changes to agencies, organizations, program activities, regulations, tax expenditures, policies or other activities.

“(b) AGENCY USE OF PERFORMANCE INFORMATION TO ACHIEVE AGENCY PRIORITY GOALS.—Not less than quarterly, at each agency required to develop agency priority goals required by section 1120(b) of this title, the head of the agency and Chief Operating Officer, with the support of the agency Performance Improvement Officer, shall—

“(1) for each agency priority goal, review with the appropriate goal leader the progress achieved during the most recent quarter, overall trend data, and the likelihood of meeting the planned level of performance;

“(2) coordinate with relevant personnel within and outside the agency who contribute to the accomplishment of each agency priority goal;

“(3) assess whether relevant organizations, program activities, regulations, policies, and other activities are contributing as planned to the agency priority goals;

Assessment.

“(4) categorize agency priority goals by risk of not achieving the planned level of performance; and

“(5) for agency priority goals at greatest risk of not meeting the planned level of performance, identify prospects and strategies for performance improvement, including any needed changes to agency program activities, regulations, policies, or other activities.”.

SEC. 7. TRANSPARENCY OF FEDERAL GOVERNMENT PROGRAMS, PRIORITY GOALS, AND RESULTS.

Chapter 11 of title 31, United States Code, is amended by adding after section 1121 (as added by section 6 of this Act) the following:

“§ 1122. Transparency of programs, priority goals, and results

“(a) TRANSPARENCY OF AGENCY PROGRAMS.—

Deadline.

“(1) IN GENERAL.—Not later than October 1, 2012, the Office of Management and Budget shall—

“(A) ensure the effective operation of a single website;

“(B) at a minimum, update the website on a quarterly basis; and

“(C) include on the website information about each program identified by the agencies.

“(2) INFORMATION.—Information for each program described under paragraph (1) shall include—

“(A) an identification of how the agency defines the term ‘program’, consistent with guidance provided by the Director of the Office of Management and Budget, including the program activities that are aggregated, disaggregated, or consolidated to be considered a program by the agency;

“(B) a description of the purposes of the program and the contribution of the program to the mission and goals of the agency; and

“(C) an identification of funding for the current fiscal year and previous 2 fiscal years.

“(b) TRANSPARENCY OF AGENCY PRIORITY GOALS AND RESULTS.—The head of each agency required to develop agency priority goals shall make information about each agency priority goal available to the Office of Management and Budget for publication on the website, with the exception of any information covered by section 1120(b)(2) of this title. In addition to an identification of each agency priority goal, the website shall also consolidate information about each agency priority goal, including—

“(1) a description of how the agency incorporated any views and suggestions obtained through congressional consultations about the agency priority goal;

“(2) an identification of key factors external to the agency and beyond its control that could significantly affect the achievement of the agency priority goal;

“(3) a description of how each agency priority goal will be achieved, including—

“(A) the strategies and resources required to meet the priority goal;

“(B) clearly defined milestones;

“(C) the organizations, program activities, regulations, policies, and other activities that contribute to each goal, both within and external to the agency;

“(D) how the agency is working with other agencies to achieve the goal; and

“(E) an identification of the agency official responsible for achieving the priority goal;

“(4) the performance indicators to be used in measuring or assessing progress;

“(5) a description of how the agency ensures the accuracy and reliability of the data used to measure progress towards the priority goal, including an identification of—

“(A) the means used to verify and validate measured values;

“(B) the sources for the data;

“(C) the level of accuracy required for the intended use of the data;

“(D) any limitations to the data at the required level of accuracy; and

“(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy;

“(6) the results achieved during the most recent quarter and overall trend data compared to the planned level of performance;

“(7) an assessment of whether relevant organizations, program activities, regulations, policies, and other activities are contributing as planned;

“(8) an identification of the agency priority goals at risk of not achieving the planned level of performance; and

“(9) any prospects or strategies for performance improvement.

“(c) TRANSPARENCY OF FEDERAL GOVERNMENT PRIORITY GOALS AND RESULTS.—The Director of the Office of Management and Budget shall also make available on the website—

Web posting.

“(1) a brief description of each of the Federal Government priority goals required by section 1120(a) of this title;

“(2) a description of how the Federal Government priority goals incorporate views and suggestions obtained through congressional consultations;

“(3) the Federal Government performance goals and performance indicators associated with each Federal Government priority goal as required by section 1115(a) of this title;

“(4) an identification of the lead Government official for each Federal Government performance goal;

“(5) the results achieved during the most recent quarter and overall trend data compared to the planned level of performance;

“(6) an identification of the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities that contribute to each Federal Government priority goal;

“(7) an assessment of whether relevant agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities are contributing as planned;

Assessment.

“(8) an identification of the Federal Government priority goals at risk of not achieving the planned level of performance; and

“(9) any prospects or strategies for performance improvement.

Public
information.

Guidance.

“(d) **INFORMATION ON WEBSITE.**—The information made available on the website under this section shall be readily accessible and easily found on the Internet by the public and members and committees of Congress. Such information shall also be presented in a searchable, machine-readable format. The Director of the Office of Management and Budget shall issue guidance to ensure that such information is provided in a way that presents a coherent picture of all Federal programs, and the performance of the Federal Government as well as individual agencies.”.

SEC. 8. AGENCY CHIEF OPERATING OFFICERS.

Chapter 11 of title 31, United States Code, is amended by adding after section 1122 (as added by section 7 of this Act) the following:

“§ 1123. Chief Operating Officers

“(a) **ESTABLISHMENT.**—At each agency, the deputy head of agency, or equivalent, shall be the Chief Operating Officer of the agency.

“(b) **FUNCTION.**—Each Chief Operating Officer shall be responsible for improving the management and performance of the agency, and shall—

“(1) provide overall organization management to improve agency performance and achieve the mission and goals of the agency through the use of strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved;

“(2) advise and assist the head of agency in carrying out the requirements of sections 1115 through 1122 of this title and section 306 of title 5;

“(3) oversee agency-specific efforts to improve management functions within the agency and across Government; and

“(4) coordinate and collaborate with relevant personnel within and external to the agency who have a significant role in contributing to and achieving the mission and goals of the agency, such as the Chief Financial Officer, Chief Human Capital Officer, Chief Acquisition Officer/Senior Procurement Executive, Chief Information Officer, and other line of business chiefs at the agency.”.

SEC. 9. AGENCY PERFORMANCE IMPROVEMENT OFFICERS AND THE PERFORMANCE IMPROVEMENT COUNCIL.

Chapter 11 of title 31, United States Code, is amended by adding after section 1123 (as added by section 8 of this Act) the following:

“§ 1124. Performance Improvement Officers and the Performance Improvement Council

“(a) **PERFORMANCE IMPROVEMENT OFFICERS.**—

“(1) **ESTABLISHMENT.**—At each agency, the head of the agency, in consultation with the agency Chief Operating Officer, shall designate a senior executive of the agency as the agency Performance Improvement Officer.

“(2) **FUNCTION.**—Each Performance Improvement Officer shall report directly to the Chief Operating Officer. Subject to the direction of the Chief Operating Officer, each Performance Improvement Officer shall—

“(A) advise and assist the head of the agency and the Chief Operating Officer to ensure that the mission and goals of the agency are achieved through strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved;

“(B) advise the head of the agency and the Chief Operating Officer on the selection of agency goals, including opportunities to collaborate with other agencies on common goals;

“(C) assist the head of the agency and the Chief Operating Officer in overseeing the implementation of the agency strategic planning, performance planning, and reporting requirements provided under sections 1115 through 1122 of this title and sections 306 of title 5, including the contributions of the agency to the Federal Government priority goals;

“(D) support the head of agency and the Chief Operating Officer in the conduct of regular reviews of agency performance, including at least quarterly reviews of progress achieved toward agency priority goals, if applicable;

“(E) assist the head of the agency and the Chief Operating Officer in the development and use within the agency of performance measures in personnel performance appraisals, and, as appropriate, other agency personnel and planning processes and assessments; and

“(F) ensure that agency progress toward the achievement of all goals is communicated to leaders, managers, and employees in the agency and Congress, and made available on a public website of the agency.

Public
information.
Web posting.

“(b) PERFORMANCE IMPROVEMENT COUNCIL.—

“(1) ESTABLISHMENT.—There is established a Performance Improvement Council, consisting of—

“(A) the Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council;

“(B) the Performance Improvement Officer from each agency defined in section 901(b) of this title;

“(C) other Performance Improvement Officers as determined appropriate by the chairperson; and

“(D) other individuals as determined appropriate by the chairperson.

“(2) FUNCTION.—The Performance Improvement Council shall—

“(A) be convened by the chairperson or the designee of the chairperson, who shall preside at the meetings of the Performance Improvement Council, determine its agenda, direct its work, and establish and direct subgroups of the Performance Improvement Council, as appropriate, to deal with particular subject matters;

“(B) assist the Director of the Office of Management and Budget to improve the performance of the Federal Government and achieve the Federal Government priority goals;

“(C) assist the Director of the Office of Management and Budget in implementing the planning, reporting, and

use of performance information requirements related to the Federal Government priority goals provided under sections 1115, 1120, 1121, and 1122 of this title;

“(D) work to resolve specific Governmentwide or cross-cutting performance issues, as necessary;

“(E) facilitate the exchange among agencies of practices that have led to performance improvements within specific programs, agencies, or across agencies;

“(F) coordinate with other interagency management councils;

“(G) seek advice and information as appropriate from nonmember agencies, particularly smaller agencies;

“(H) consider the performance improvement experiences of corporations, nonprofit organizations, foreign, State, and local governments, Government employees, public sector unions, and customers of Government services;

“(I) receive such assistance, information and advice from agencies as the Council may request, which agencies shall provide to the extent permitted by law; and

“(J) develop and submit to the Director of the Office of Management and Budget, or when appropriate to the President through the Director of the Office of Management and Budget, at times and in such formats as the chairperson may specify, recommendations to streamline and improve performance management policies and requirements.

“(3) SUPPORT.—

“(A) IN GENERAL.—The Administrator of General Services shall provide administrative and other support for the Council to implement this section.

“(B) PERSONNEL.—The heads of agencies with Performance Improvement Officers serving on the Council shall, as appropriate and to the extent permitted by law, provide at the request of the chairperson of the Performance Improvement Council up to 2 personnel authorizations to serve at the direction of the chairperson.”.

31 USC 1115
note.

SEC. 10. FORMAT OF PERFORMANCE PLANS AND REPORTS.

(a) **SEARCHABLE, MACHINE-READABLE PLANS AND REPORTS.**—For fiscal year 2012 and each fiscal year thereafter, each agency required to produce strategic plans, performance plans, and performance updates in accordance with the amendments made by this Act shall—

(1) not incur expenses for the printing of strategic plans, performance plans, and performance reports for release external to the agency, except when providing such documents to the Congress;

(2) produce such plans and reports in searchable, machine-readable formats; and

(3) make such plans and reports available on the website described under section 1122 of title 31, United States Code.

(b) **WEB-BASED PERFORMANCE PLANNING AND REPORTING.**—

(1) **IN GENERAL.**—Not later than June 1, 2012, the Director of the Office of Management and Budget shall issue guidance to agencies to provide concise and timely performance information for publication on the website described under section

Web posting.

Guidance.

1122 of title 31, United States Code, including, at a minimum, all requirements of sections 1115 and 1116 of title 31, United States Code, except for section 1115(e).

(2) HIGH-PRIORITY GOALS.—For agencies required to develop agency priority goals under section 1120(b) of title 31, United States Code, the performance information required under this section shall be merged with the existing information required under section 1122 of title 31, United States Code.

(3) CONSIDERATIONS.—In developing guidance under this subsection, the Director of the Office of Management and Budget shall take into consideration the experiences of agencies in making consolidated performance planning and reporting information available on the website as required under section 1122 of title 31, United States Code.

SEC. 11. REDUCING DUPLICATIVE AND OUTDATED AGENCY REPORTING.

(a) BUDGET CONTENTS.—Section 1105(a) of title 31, United States Code, is amended—

(1) by redesignating second paragraph (33) as paragraph (35); and

(2) by adding at the end the following:

“(37) the list of plans and reports, as provided for under section 1125, that agencies identified for elimination or consolidation because the plans and reports are determined outdated or duplicative of other required plans and reports.”.

(b) ELIMINATION OF UNNECESSARY AGENCY REPORTING.—Chapter 11 of title 31, United States Code, is further amended by adding after section 1124 (as added by section 9 of this Act) the following:

“§ 1125. Elimination of unnecessary agency reporting

“(a) AGENCY IDENTIFICATION OF UNNECESSARY REPORTS.—Annually, based on guidance provided by the Director of the Office of Management and Budget, the Chief Operating Officer at each agency shall—

“(1) compile a list that identifies all plans and reports the agency produces for Congress, in accordance with statutory requirements or as directed in congressional reports;

“(2) analyze the list compiled under paragraph (1), identify which plans and reports are outdated or duplicative of other required plans and reports, and refine the list to include only the plans and reports identified to be outdated or duplicative;

“(3) consult with the congressional committees that receive the plans and reports identified under paragraph (2) to determine whether those plans and reports are no longer useful to the committees and could be eliminated or consolidated with other plans and reports; and

“(4) provide a total count of plans and reports compiled under paragraph (1) and the list of outdated and duplicative reports identified under paragraph (2) to the Director of the Office of Management and Budget.

“(b) PLANS AND REPORTS.—

“(1) FIRST YEAR.—During the first year of implementation of this section, the list of plans and reports identified by each agency as outdated or duplicative shall be not less than 10

Determination. percent of all plans and reports identified under subsection (a)(1).

“(2) SUBSEQUENT YEARS.—In each year following the first year described under paragraph (1), the Director of the Office of Management and Budget shall determine the minimum percent of plans and reports to be identified as outdated or duplicative on each list of plans and reports.

“(c) REQUEST FOR ELIMINATION OF UNNECESSARY REPORTS.—In addition to including the list of plans and reports determined to be outdated or duplicative by each agency in the budget of the United States Government, as provided by section 1105(a)(37), the Director of the Office of Management and Budget may concurrently submit to Congress legislation to eliminate or consolidate such plans and reports.”.

Deadlines.
5 USC 5105 note.

SEC. 12. PERFORMANCE MANAGEMENT SKILLS AND COMPETENCIES.

(a) PERFORMANCE MANAGEMENT SKILLS AND COMPETENCIES.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Personnel Management, in consultation with the Performance Improvement Council, shall identify the key skills and competencies needed by Federal Government personnel for developing goals, evaluating programs, and analyzing and using performance information for the purpose of improving Government efficiency and effectiveness.

(b) POSITION CLASSIFICATIONS.—Not later than 2 years after the date of enactment of this Act, based on the identifications under subsection (a), the Director of the Office of Personnel Management shall incorporate, as appropriate, such key skills and competencies into relevant position classifications.

(c) INCORPORATION INTO EXISTING AGENCY TRAINING.—Not later than 2 years after the enactment of this Act, the Director of the Office of Personnel Management shall work with each agency, as defined under section 306(f) of title 5, United States Code, to incorporate the key skills identified under subsection (a) into training for relevant employees at each agency.

SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The table of contents for chapter 3 of title 5, United States Code, is amended by striking the item relating to section 306 and inserting the following:

“306. Agency strategic plans.”.

(b) The table of contents for chapter 11 of title 31, United States Code, is amended by striking the items relating to section 1115 and 1116 and inserting the following:

“1115. Federal Government and agency performance plans.

“1116. Agency performance reporting.”.

(c) The table of contents for chapter 11 of title 31, United States Code, is amended by adding at the end the following:

“1120. Federal Government and agency priority goals.

“1121. Quarterly priority progress reviews and use of performance information.

“1122. Transparency of programs, priority goals, and results.

“1123. Chief Operating Officers.

“1124. Performance Improvement Officers and the Performance Improvement Council.

“1125. Elimination of unnecessary agency reporting.”.

SEC. 14. IMPLEMENTATION OF THIS ACT.**(a) INTERIM PLANNING AND REPORTING.—**31 USC 1115
note.

(1) **IN GENERAL.**—The Director of the Office of Management and Budget shall coordinate with agencies to develop interim Federal Government priority goals and submit interim Federal Government performance plans consistent with the requirements of this Act beginning with the submission of the fiscal year 2013 Budget of the United States Government.

Coordination.

(2) REQUIREMENTS.—Each agency shall—

Deadline.

(A) not later than February 6, 2012, make adjustments to its strategic plan to make the plan consistent with the requirements of this Act;

(B) prepare and submit performance plans consistent with the requirements of this Act, including the identification of agency priority goals, beginning with the performance plan for fiscal year 2013; and

Plan.

(C) make performance reporting updates consistent with the requirements of this Act beginning in fiscal year 2012.

(3) QUARTERLY REVIEWS.—The quarterly priority progress reviews required under this Act shall begin—

(A) with the first full quarter beginning on or after the date of enactment of this Act for agencies based on the agency priority goals contained in the Analytical Perspectives volume of the Fiscal Year 2011 Budget of the United States Government; and

(B) with the quarter ending June 30, 2012 for the interim Federal Government priority goals.

(b) GUIDANCE.—The Director of the Office of Management and Budget shall prepare guidance for agencies in carrying out the interim planning and reporting activities required under subsection (a), in addition to other guidance as required for implementation of this Act.

SEC. 15. CONGRESSIONAL OVERSIGHT AND LEGISLATION.31 USC 1115
note.

(a) IN GENERAL.—Nothing in this Act shall be construed as limiting the ability of Congress to establish, amend, suspend, or annul a goal of the Federal Government or an agency.

(b) GAO REVIEWS.—

(1) INTERIM PLANNING AND REPORTING EVALUATION.—Not later than June 30, 2013, the Comptroller General shall submit a report to Congress that includes—

(A) an evaluation of the implementation of the interim planning and reporting activities conducted under section 14 of this Act; and

(B) any recommendations for improving implementation of this Act as determined appropriate.

(2) IMPLEMENTATION EVALUATIONS.—

(A) IN GENERAL.—The Comptroller General shall evaluate the implementation of this Act subsequent to the interim planning and reporting activities evaluated in the report submitted to Congress under paragraph (1).

(B) AGENCY IMPLEMENTATION.—

(i) EVALUATIONS.—The Comptroller General shall evaluate how implementation of this Act is affecting performance management at the agencies described in section 901(b) of title 31, United States Code,

including whether performance management is being used by those agencies to improve the efficiency and effectiveness of agency programs.

(ii) **REPORTS.**—The Comptroller General shall submit to Congress—

(I) an initial report on the evaluation under clause (i), not later than September 30, 2015; and

(II) a subsequent report on the evaluation under clause (i), not later than September 30, 2017.

(C) **FEDERAL GOVERNMENT PLANNING AND REPORTING IMPLEMENTATION.**—

(i) **EVALUATIONS.**—The Comptroller General shall evaluate the implementation of the Federal Government priority goals, Federal Government performance plans and related reporting required by this Act.

(ii) **REPORTS.**—The Comptroller General shall submit to Congress—

(I) an initial report on the evaluation under clause (i), not later than September 30, 2015; and

(II) subsequent reports on the evaluation under clause (i), not later than September 30, 2017 and every 4 years thereafter.

(D) **RECOMMENDATIONS.**—The Comptroller General shall include in the reports required by subparagraphs (B) and (C) any recommendations for improving implementation of this Act and for streamlining the planning and reporting requirements of the Government Performance and Results Act of 1993.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 2142:

HOUSE REPORTS: No. 111–504 (Comm. on Oversight and Government Reform).

SENATE REPORTS: No. 111–372 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 16, considered and passed House.

Dec. 16, considered and passed Senate, amended.

Dec. 17, House failed to concur in Senate amendment.

Dec. 21, House concurred in Senate amendment.



Public Law 111–353
111th Congress

An Act

To amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

Jan. 4, 2011

[H.R. 2751]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “FDA Food Safety Modernization Act”.

(b) **REFERENCES.**—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

FDA Food Safety
Modernization
Act.

21 USC 2201
note.

Sec. 1. Short title; references; table of contents.

TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

- Sec. 101. Inspections of records.
- Sec. 102. Registration of food facilities.
- Sec. 103. Hazard analysis and risk-based preventive controls.
- Sec. 104. Performance standards.
- Sec. 105. Standards for produce safety.
- Sec. 106. Protection against intentional adulteration.
- Sec. 107. Authority to collect fees.
- Sec. 108. National agriculture and food defense strategy.
- Sec. 109. Food and Agriculture Coordinating Councils.
- Sec. 110. Building domestic capacity.
- Sec. 111. Sanitary transportation of food.
- Sec. 112. Food allergy and anaphylaxis management.
- Sec. 113. New dietary ingredients.
- Sec. 114. Requirement for guidance relating to post harvest processing of raw oysters.
- Sec. 115. Port shopping.
- Sec. 116. Alcohol-related facilities.

TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

- Sec. 201. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.
- Sec. 202. Laboratory accreditation for analyses of foods.
- Sec. 203. Integrated consortium of laboratory networks.
- Sec. 204. Enhancing tracking and tracing of food and recordkeeping.
- Sec. 205. Surveillance.
- Sec. 206. Mandatory recall authority.
- Sec. 207. Administrative detention of food.
- Sec. 208. Decontamination and disposal standards and plans.
- Sec. 209. Improving the training of State, local, territorial, and tribal food safety officials.
- Sec. 210. Enhancing food safety.

Sec. 211. Improving the reportable food registry.

TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

- Sec. 301. Foreign supplier verification program.
- Sec. 302. Voluntary qualified importer program.
- Sec. 303. Authority to require import certifications for food.
- Sec. 304. Prior notice of imported food shipments.
- Sec. 305. Building capacity of foreign governments with respect to food safety.
- Sec. 306. Inspection of foreign food facilities.
- Sec. 307. Accreditation of third-party auditors.
- Sec. 308. Foreign offices of the Food and Drug Administration.
- Sec. 309. Smuggled food.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Funding for food safety.
- Sec. 402. Employee protections.
- Sec. 403. Jurisdiction; authorities.
- Sec. 404. Compliance with international agreements.
- Sec. 405. Determination of budgetary effects.

TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

SEC. 101. INSPECTIONS OF RECORDS.

(a) IN GENERAL.—Section 414(a) (21 U.S.C. 350c(a)) is amended—

(1) by striking the heading and all that follows through “of food is” and inserting the following: “RECORDS INSPECTION.—

“(1) ADULTERATED FOOD.—If the Secretary has a reasonable belief that an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, is”;

(2) by inserting “, and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner,” after “relating to such article”;

(3) by striking the last sentence; and

(4) by inserting at the end the following:

“(2) USE OF OR EXPOSURE TO FOOD OF CONCERN.—If the Secretary believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals, each person (excluding farms and restaurants) who manufactures, processes, packs, distributes, receives, holds, or imports such article shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, that are needed to assist the Secretary in determining whether there is a reasonable probability that the use of or exposure to the food will cause serious adverse health consequences or death to humans or animals.

“(3) APPLICATION.—The requirement under paragraphs (1) and (2) applies to all records relating to the manufacture, processing, packing, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person

Notice.

in any format (including paper and electronic formats) and at any location.”.

(b) CONFORMING AMENDMENT.—Section 704(a)(1)(B) (21 U.S.C. 374(a)(1)(B)) is amended by striking “section 414 when” and all that follows through “subject to” and inserting “section 414, when the standard for records inspection under paragraph (1) or (2) of section 414(a) applies, subject to”.

SEC. 102. REGISTRATION OF FOOD FACILITIES.

(a) UPDATING OF FOOD CATEGORY REGULATIONS; BIENNIAL REGISTRATION RENEWAL.—Section 415(a) (21 U.S.C. 350d(a)) is amended—

(1) in paragraph (2), by—

(A) striking “conducts business and” and inserting “conducts business, the e-mail address for the contact person of the facility or, in the case of a foreign facility, the United States agent for the facility, and”; and

(B) inserting “, or any other food categories as determined appropriate by the Secretary, including by guidance” after “Code of Federal Regulations”;

(2) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(3) by inserting after paragraph (2) the following:

“(3) BIENNIAL REGISTRATION RENEWAL.—During the period beginning on October 1 and ending on December 31 of each even-numbered year, a registrant that has submitted a registration under paragraph (1) shall submit to the Secretary a renewal registration containing the information described in paragraph (2). The Secretary shall provide for an abbreviated registration renewal process for any registrant that has not had any changes to such information since the registrant submitted the preceding registration or registration renewal for the facility involved.”.

Time period.

(b) SUSPENSION OF REGISTRATION.—

(1) IN GENERAL.—Section 415 (21 U.S.C. 350d) is amended—

(A) in subsection (a)(2), by inserting after the first sentence the following: “The registration shall contain an assurance that the Secretary will be permitted to inspect such facility at the times and in the manner permitted by this Act.”;

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(C) by inserting after subsection (a) the following:

“(b) SUSPENSION OF REGISTRATION.—

“(1) IN GENERAL.—If the Secretary determines that food manufactured, processed, packed, received, or held by a facility registered under this section has a reasonable probability of causing serious adverse health consequences or death to humans or animals, the Secretary may by order suspend the registration of a facility—

“(A) that created, caused, or was otherwise responsible for such reasonable probability; or

“(B)(i) that knew of, or had reason to know of, such reasonable probability; and

“(ii) packed, received, or held such food.

Deadline.

“(2) HEARING ON SUSPENSION.—The Secretary shall provide the registrant subject to an order under paragraph (1) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 business days after the issuance of the order or such other time period, as agreed upon by the Secretary and the registrant, on the actions required for reinstatement of registration and why the registration that is subject to suspension should be reinstated. The Secretary shall reinstate a registration if the Secretary determines, based on evidence presented, that adequate grounds do not exist to continue the suspension of the registration.

“(3) POST-HEARING CORRECTIVE ACTION PLAN; VACATING OF ORDER.—

Deadline.

“(A) CORRECTIVE ACTION PLAN.—If, after providing opportunity for an informal hearing under paragraph (2), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan not later than 14 days after the submission of the corrective action plan or such other time period as determined by the Secretary.

“(B) VACATING OF ORDER.—Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions required by the order, or that such actions should be modified, the Secretary shall promptly vacate the order and reinstate the registration of the facility subject to the order or modify the order, as appropriate.

“(4) EFFECT OF SUSPENSION.—If the registration of a facility is suspended under this subsection, no person shall import or export food into the United States from such facility, offer to import or export food into the United States from such facility, or otherwise introduce food from such facility into interstate or intrastate commerce in the United States.

“(5) REGULATIONS.—

“(A) IN GENERAL.—The Secretary shall promulgate regulations to implement this subsection. The Secretary may promulgate such regulations on an interim final basis.

“(B) REGISTRATION REQUIREMENT.—The Secretary may require that registration under this section be submitted in an electronic format. Such requirement may not take effect before the date that is 5 years after the date of enactment of the FDA Food Safety Modernization Act.

Effective dates.

“(6) APPLICATION DATE.—Facilities shall be subject to the requirements of this subsection beginning on the earlier of—

“(A) the date on which the Secretary issues regulations under paragraph (5); or

“(B) 180 days after the date of enactment of the FDA Food Safety Modernization Act.

“(7) NO DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or vacate an order of suspension shall not be delegated to any officer or employee other than the Commissioner.”.

Deadline.
21 USC 350d
note.

(2) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of the regulations promulgated

under section 415(b)(5) of the Federal Food, Drug, and Cosmetic Act (as added by this section), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such regulations to assist small entities in complying with registration requirements and other activities required under such section.

(3) IMPORTED FOOD.—Section 801(l) (21 U.S.C. 381(l)) is amended by inserting “(or for which a registration has been suspended under such section)” after “section 415”.

(c) CLARIFICATION OF INTENT.—

21 USC 350d
note.

(1) RETAIL FOOD ESTABLISHMENT.—The Secretary shall amend the definition of the term “retail food establishment” in section 1.227(b)(11) of title 21, Code of Federal Regulations to clarify that, in determining the primary function of an establishment or a retail food establishment under such section, the sale of food products directly to consumers by such establishment and the sale of food directly to consumers by such retail food establishment include—

(A) the sale of such food products or food directly to consumers by such establishment at a roadside stand or farmers’ market where such stand or market is located other than where the food was manufactured or processed;

(B) the sale and distribution of such food through a community supported agriculture program; and

(C) the sale and distribution of such food at any other such direct sales platform as determined by the Secretary.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) the term “community supported agriculture program” has the same meaning given the term “community supported agriculture (CSA) program” in section 249.2 of title 7, Code of Federal Regulations (or any successor regulation); and

(B) the term “consumer” does not include a business.

(d) CONFORMING AMENDMENTS.—

(1) Section 301(d) (21 U.S.C. 331(d)) is amended by inserting “415,” after “404,”.

(2) Section 415(d), as redesignated by subsection (b), is amended by adding at the end before the period “for a facility to be registered, except with respect to the reinstatement of a registration that is suspended under subsection (b)”.

21 USC 350d.

SEC. 103. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

“SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

21 USC 350g.

“(a) IN GENERAL.—The owner, operator, or agent in charge of a facility shall, in accordance with this section, evaluate the hazards that could affect food manufactured, processed, packed, or held by such facility, identify and implement preventive controls to significantly minimize or prevent the occurrence of such hazards and provide assurances that such food is not adulterated under section 402 or misbranded under section 403(w), monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

“(b) HAZARD ANALYSIS.—The owner, operator, or agent in charge of a facility shall—

“(1) identify and evaluate known or reasonably foreseeable hazards that may be associated with the facility, including—

“(A) biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, decomposition, parasites, allergens, and unapproved food and color additives; and

“(B) hazards that occur naturally, or may be unintentionally introduced; and

“(2) identify and evaluate hazards that may be intentionally introduced, including by acts of terrorism; and

“(3) develop a written analysis of the hazards.

“(c) PREVENTIVE CONTROLS.—The owner, operator, or agent in charge of a facility shall identify and implement preventive controls, including at critical control points, if any, to provide assurances that—

“(1) hazards identified in the hazard analysis conducted under subsection (b)(1) will be significantly minimized or prevented;

“(2) any hazards identified in the hazard analysis conducted under subsection (b)(2) will be significantly minimized or prevented and addressed, consistent with section 420, as applicable; and

“(3) the food manufactured, processed, packed, or held by such facility will not be adulterated under section 402 or misbranded under section 403(w).

“(d) MONITORING OF EFFECTIVENESS.—The owner, operator, or agent in charge of a facility shall monitor the effectiveness of the preventive controls implemented under subsection (c) to provide assurances that the outcomes described in subsection (c) shall be achieved.

Procedures.

“(e) CORRECTIVE ACTIONS.—The owner, operator, or agent in charge of a facility shall establish procedures to ensure that, if the preventive controls implemented under subsection (c) are not properly implemented or are found to be ineffective—

“(1) appropriate action is taken to reduce the likelihood of recurrence of the implementation failure;

“(2) all affected food is evaluated for safety; and

“(3) all affected food is prevented from entering into commerce if the owner, operator or agent in charge of such facility cannot ensure that the affected food is not adulterated under section 402 or misbranded under section 403(w).

“(f) VERIFICATION.—The owner, operator, or agent in charge of a facility shall verify that—

“(1) the preventive controls implemented under subsection (c) are adequate to control the hazards identified under subsection (b);

“(2) the owner, operator, or agent is conducting monitoring in accordance with subsection (d);

“(3) the owner, operator, or agent is making appropriate decisions about corrective actions taken under subsection (e);

“(4) the preventive controls implemented under subsection (c) are effectively and significantly minimizing or preventing the occurrence of identified hazards, including through the use of environmental and product testing programs and other appropriate means; and

“(5) there is documented, periodic reanalysis of the plan under subsection (i) to ensure that the plan is still relevant to the raw materials, conditions and processes in the facility, and new and emerging threats.

“(g) RECORDKEEPING.—The owner, operator, or agent in charge of a facility shall maintain, for not less than 2 years, records documenting the monitoring of the preventive controls implemented under subsection (c), instances of nonconformance material to food safety, the results of testing and other appropriate means of verification under subsection (f)(4), instances when corrective actions were implemented, and the efficacy of preventive controls and corrective actions. Time period.

“(h) WRITTEN PLAN AND DOCUMENTATION.—The owner, operator, or agent in charge of a facility shall prepare a written plan that documents and describes the procedures used by the facility to comply with the requirements of this section, including analyzing the hazards under subsection (b) and identifying the preventive controls adopted under subsection (c) to address those hazards. Such written plan, together with the documentation described in subsection (g), shall be made promptly available to a duly authorized representative of the Secretary upon oral or written request.

“(i) REQUIREMENT TO REANALYZE.—The owner, operator, or agent in charge of a facility shall conduct a reanalysis under subsection (b) whenever a significant change is made in the activities conducted at a facility operated by such owner, operator, or agent if the change creates a reasonable potential for a new hazard or a significant increase in a previously identified hazard or not less frequently than once every 3 years, whichever is earlier. Such reanalysis shall be completed and additional preventive controls needed to address the hazard identified, if any, shall be implemented before the change in activities at the facility is operative. Such owner, operator, or agent shall revise the written plan required under subsection (h) if such a significant change is made or document the basis for the conclusion that no additional or revised preventive controls are needed. The Secretary may require a reanalysis under this section to respond to new hazards and developments in scientific understanding, including, as appropriate, results from the Department of Homeland Security biological, chemical, radiological, or other terrorism risk assessment. Deadline.

“(j) EXEMPTION FOR SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES SUBJECT TO HACCP.—

“(1) IN GENERAL.—This section shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with, 1 of the following standards and regulations with respect to such facility:

“(A) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(B) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(C) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

“(2) APPLICABILITY.—The exemption under paragraph (1)(C) shall apply only with respect to microbiological hazards that are regulated under the standards for Thermally Processed

Low-Acid Foods Packaged in Hermetically Sealed Containers under part 113 of chapter 21, Code of Federal Regulations (or any successor regulations).

“(k) EXCEPTION FOR ACTIVITIES OF FACILITIES SUBJECT TO SECTION 419.—This section shall not apply to activities of a facility that are subject to section 419.

“(l) MODIFIED REQUIREMENTS FOR QUALIFIED FACILITIES.—

“(1) QUALIFIED FACILITIES.—

“(A) IN GENERAL.—A facility is a qualified facility for purposes of this subsection if the facility meets the conditions under subparagraph (B) or (C).

“(B) VERY SMALL BUSINESS.—A facility is a qualified facility under this subparagraph—

“(i) if the facility, including any subsidiary or affiliate of the facility, is, collectively, a very small business (as defined in the regulations promulgated under subsection (n)); and

“(ii) in the case where the facility is a subsidiary or affiliate of an entity, if such subsidiaries or affiliates, are, collectively, a very small business (as so defined).

“(C) LIMITED ANNUAL MONETARY VALUE OF SALES.—

“(i) IN GENERAL.—A facility is a qualified facility under this subparagraph if clause (ii) applies—

“(I) to the facility, including any subsidiary or affiliate of the facility, collectively; and

“(II) to the subsidiaries or affiliates, collectively, of any entity of which the facility is a subsidiary or affiliate.

“(ii) AVERAGE ANNUAL MONETARY VALUE.—This clause applies if—

“(I) during the 3-year period preceding the applicable calendar year, the average annual monetary value of the food manufactured, processed, packed, or held at such facility (or the collective average annual monetary value of such food at any subsidiary or affiliate, as described in clause (i)) that is sold directly to qualified end-users during such period exceeded the average annual monetary value of the food manufactured, processed, packed, or held at such facility (or the collective average annual monetary value of such food at any subsidiary or affiliate, as so described) sold by such facility (or collectively by any such subsidiary or affiliate) to all other purchasers during such period; and

“(II) the average annual monetary value of all food sold by such facility (or the collective average annual monetary value of such food sold by any subsidiary or affiliate, as described in clause (i)) during such period was less than \$500,000, adjusted for inflation.

“(2) EXEMPTION.—A qualified facility—

“(A) shall not be subject to the requirements under subsections (a) through (i) and subsection (n) in an applicable calendar year; and

“(B) shall submit to the Secretary—

Applicability.

“(i)(I) documentation that demonstrates that the owner, operator, or agent in charge of the facility has identified potential hazards associated with the food being produced, is implementing preventive controls to address the hazards, and is monitoring the preventive controls to ensure that such controls are effective; or

“(II) documentation (which may include licenses, inspection reports, certificates, permits, credentials, certification by an appropriate agency (such as a State department of agriculture), or other evidence of oversight), as specified by the Secretary, that the facility is in compliance with State, local, county, or other applicable non-Federal food safety law; and

“(ii) documentation, as specified by the Secretary in a guidance document issued not later than 1 year after the date of enactment of this section, that the facility is a qualified facility under paragraph (1)(B) or (1)(C).

Deadline.

“(3) WITHDRAWAL; RULE OF CONSTRUCTION.—

“(A) IN GENERAL.—In the event of an active investigation of a foodborne illness outbreak that is directly linked to a qualified facility subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a qualified facility that are material to the safety of the food manufactured, processed, packed, or held at such facility, the Secretary may withdraw the exemption provided to such facility under this subsection.

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

“(4) DEFINITIONS.—In this subsection:

“(A) AFFILIATE.—The term ‘affiliate’ means any facility that controls, is controlled by, or is under common control with another facility.

“(B) QUALIFIED END-USER.—The term ‘qualified end-user’, with respect to a food, means—

“(i) the consumer of the food; or

“(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 415) that—

“(I) is located—

“(aa) in the same State as the qualified facility that sold the food to such restaurant or establishment; or

“(bb) not more than 275 miles from such facility; and

“(II) is purchasing the food for sale directly to consumers at such restaurant or retail food establishment.

“(C) CONSUMER.—For purposes of subparagraph (B), the term ‘consumer’ does not include a business.

“(D) SUBSIDIARY.—The term ‘subsidiary’ means any company which is owned or controlled directly or indirectly by another company.

“(5) STUDY.—

“(A) IN GENERAL.—The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study of the food processing sector regulated by the Secretary to determine—

“(i) the distribution of food production by type and size of operation, including monetary value of food sold;

“(ii) the proportion of food produced by each type and size of operation;

“(iii) the number and types of food facilities collocated on farms, including the number and proportion by commodity and by manufacturing or processing activity;

“(iv) the incidence of foodborne illness originating from each size and type of operation and the type of food facilities for which no reported or known hazard exists; and

“(v) the effect on foodborne illness risk associated with commingling, processing, transporting, and storing food and raw agricultural commodities, including differences in risk based on the scale and duration of such activities.

“(B) SIZE.—The results of the study conducted under subparagraph (A) shall include the information necessary to enable the Secretary to define the terms ‘small business’ and ‘very small business’, for purposes of promulgating the regulation under subsection (n). In defining such terms, the Secretary shall include consideration of harvestable acres, income, the number of employees, and the volume of food harvested.

“(C) SUBMISSION OF REPORT.—Not later than 18 months after the date of enactment the FDA Food Safety Modernization Act, the Secretary shall submit to Congress a report that describes the results of the study conducted under subparagraph (A).

“(6) NO PREEMPTION.—Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production of food. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

“(7) NOTIFICATION TO CONSUMERS.—

“(A) IN GENERAL.—A qualified facility that is exempt from the requirements under subsections (a) through (i) and subsection (n) and does not prepare documentation under paragraph (2)(B)(i)(I) shall—

“(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this Act, include prominently and conspicuously on such label the name and business address of the facility where the food was manufactured or processed; or

“(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provisions of this Act, prominently and conspicuously display, at the point of purchase, the name and business address of the facility where the

food was manufactured or processed, on a label, poster, sign, placard, or documents delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

“(B) NO ADDITIONAL LABEL.—Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition to any label required under any other provision of this Act.

“(m) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section with respect to facilities that are solely engaged in the production of food for animals other than man, the storage of raw agricultural commodities (other than fruits and vegetables) intended for further distribution or processing, or the storage of packaged foods that are not exposed to the environment.

“(n) REGULATIONS.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations—

Deadline.

“(A) to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls under this section; and

“(B) to define, for purposes of this section, the terms ‘small business’ and ‘very small business’, taking into consideration the study described in subsection (1)(5).

“(2) COORDINATION.—In promulgating the regulations under paragraph (1)(A), with regard to hazards that may be intentionally introduced, including by acts of terrorism, the Secretary shall coordinate with the Secretary of Homeland Security, as appropriate.

“(3) CONTENT.—The regulations promulgated under paragraph (1)(A) shall—

“(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm;

“(B) comply with chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’), with special attention to minimizing the burden (as defined in section 3502(2) of such Act) on the facility, and collection of information (as defined in section 3502(3) of such Act), associated with such regulations;

“(C) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

“(D) not require a facility to hire a consultant or other third party to identify, implement, certify, or audit preventative controls, except in the case of negotiated enforcement resolutions that may require such a consultant or third party.

“(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to provide the Secretary with the authority to prescribe specific technologies, practices, or critical controls for an individual facility.

“(5) REVIEW.—In promulgating the regulations under paragraph (1)(A), the Secretary shall review regulatory hazard analysis and preventive control programs in existence on the date of enactment of the FDA Food Safety Modernization Act, including the Grade ‘A’ Pasteurized Milk Ordinance to ensure that such regulations are consistent, to the extent practicable, with applicable domestic and internationally-recognized standards in existence on such date.

“(o) DEFINITIONS.—For purposes of this section:

“(1) CRITICAL CONTROL POINT.—The term ‘critical control point’ means a point, step, or procedure in a food process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce such hazard to an acceptable level.

“(2) FACILITY.—The term ‘facility’ means a domestic facility or a foreign facility that is required to register under section 415.

“(3) PREVENTIVE CONTROLS.—The term ‘preventive controls’ means those risk-based, reasonably appropriate procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, or holding of food would employ to significantly minimize or prevent the hazards identified under the hazard analysis conducted under subsection (b) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, or holding at the time of the analysis. Those procedures, practices, and processes may include the following:

“(A) Sanitation procedures for food contact surfaces and utensils and food-contact surfaces of equipment.

“(B) Supervisor, manager, and employee hygiene training.

“(C) An environmental monitoring program to verify the effectiveness of pathogen controls in processes where a food is exposed to a potential contaminant in the environment.

“(D) A food allergen control program.

“(E) A recall plan.

“(F) Current Good Manufacturing Practices (cGMPs) under part 110 of title 21, Code of Federal Regulations (or any successor regulations).

“(G) Supplier verification activities that relate to the safety of food.”

21 USC 350g
note.

(b) GUIDANCE DOCUMENT.—The Secretary shall issue a guidance document related to the regulations promulgated under subsection (b)(1) with respect to the hazard analysis and preventive controls under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

21 USC 350d
note.

(c) RULEMAKING.—

(1) PROPOSED RULEMAKING.—

Deadline.
Federal Register,
publication.
Notice.

(A) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall publish a notice of proposed rulemaking in the Federal Register to promulgate regulations with respect to—

(i) activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed

on such farm or another farm under the same ownership for purposes of section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act; and

(ii) activities that constitute on-farm manufacturing or processing of food that is not consumed on that farm or on another farm under common ownership for purposes of such section 415.

(B) CLARIFICATION.—The rulemaking described under subparagraph (A) shall enhance the implementation of such section 415 and clarify the activities that are included as part of the definition of the term “facility” under such section 415. Nothing in this Act authorizes the Secretary to modify the definition of the term “facility” under such section.

(C) SCIENCE-BASED RISK ANALYSIS.—In promulgating regulations under subparagraph (A), the Secretary shall conduct a science-based risk analysis of—

(i) specific types of on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership, as such packing and holding relates to specific foods; and

(ii) specific on-farm manufacturing and processing activities as such activities relate to specific foods that are not consumed on that farm or on another farm under common ownership.

(D) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—

(i) IN GENERAL.—In promulgating the regulations under subparagraph (A), the Secretary shall consider the results of the science-based risk analysis conducted under subparagraph (C), and shall exempt certain facilities from the requirements in section 418 of the Federal Food, Drug, and Cosmetic Act (as added by this section), including hazard analysis and preventive controls, and the mandatory inspection frequency in section 421 of such Act (as added by section 201), or modify the requirements in such sections 418 or 421, as the Secretary determines appropriate, if such facilities are engaged only in specific types of on-farm manufacturing, processing, packing, or holding activities that the Secretary determines to be low risk involving specific foods the Secretary determines to be low risk.

(ii) LIMITATION.—The exemptions or modifications under clause (i) shall not include an exemption from the requirement to register under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act, if applicable, and shall apply only to small businesses and very small businesses, as defined in the regulation promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act (as added under subsection (a)).

Applicability.

(2) FINAL REGULATIONS.—Not later than 9 months after the close of the comment period for the proposed rulemaking under paragraph (1), the Secretary shall adopt final rules with respect to—

(A) activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership for purposes of section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act;

(B) activities that constitute on-farm manufacturing or processing of food that is not consumed on that farm or on another farm under common ownership for purposes of such section 415; and

(C) the requirements under sections 418 and 421 of the Federal Food, Drug, and Cosmetic Act, as added by this Act, from which the Secretary may issue exemptions or modifications of the requirements for certain types of facilities.

Deadline.
21 USC 350g
note.

(d) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of the regulations promulgated under subsection (n) of section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 418 and this section to assist small entities in complying with the hazard analysis and other activities required under such section 418 and this section.

(e) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

“(uu) The operation of a facility that manufactures, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 418.”.

21 USC 350g
note.

(f) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce Hazard Analysis Critical Control programs and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

Applicability.
21 USC 350g
note.

(g) DIETARY SUPPLEMENTS.—Nothing in the amendments made by this section shall apply to any facility with regard to the manufacturing, processing, packing, or holding of a dietary supplement that is in compliance with the requirements of sections 402(g)(2) and 761 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(g)(2), 379aa–1).

21 USC 342 note.
Deadline.

(h) UPDATING GUIDANCE RELATING TO FISH AND FISHERIES PRODUCTS HAZARDS AND CONTROLS.—The Secretary shall, not later than 180 days after the date of enactment of this Act, update the Fish and Fisheries Products Hazards and Control Guidance to take into account advances in technology that have occurred since the previous publication of such Guidance by the Secretary.

21 USC 350g.

(i) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

Applicability.
Effective dates.

(2) FLEXIBILITY FOR SMALL BUSINESSES.—Notwithstanding paragraph (1)—

(A) the amendments made by this section shall apply to a small business (as defined in the regulations promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act (as added by this section)) beginning on the

date that is 6 months after the effective date of such regulations; and

(B) the amendments made by this section shall apply to a very small business (as defined in such regulations) beginning on the date that is 18 months after the effective date of such regulations.

SEC. 104. PERFORMANCE STANDARDS.

21 USC 2201.

(a) **IN GENERAL.**—The Secretary shall, in coordination with the Secretary of Agriculture, not less frequently than every 2 years, review and evaluate relevant health data and other relevant information, including from toxicological and epidemiological studies and analyses, current Good Manufacturing Practices issued by the Secretary relating to food, and relevant recommendations of relevant advisory committees, including the Food Advisory Committee, to determine the most significant foodborne contaminants.

Deadline.

(b) **GUIDANCE DOCUMENTS AND REGULATIONS.**—Based on the review and evaluation conducted under subsection (a), and when appropriate to reduce the risk of serious illness or death to humans or animals or to prevent adulteration of the food under section 402 of the Federal Food, Drug, or Cosmetic Act (21 U.S.C. 342) or to prevent the spread by food of communicable disease under section 361 of the Public Health Service Act (42 U.S.C. 264), the Secretary shall issue contaminant-specific and science-based guidance documents, including guidance documents regarding action levels, or regulations. Such guidance, including guidance regarding action levels, or regulations—

(1) shall apply to products or product classes;

(2) shall, where appropriate, differentiate between food for human consumption and food intended for consumption by animals other than humans; and

(3) shall not be written to be facility-specific.

Applicability.

(c) **NO DUPLICATION OF EFFORTS.**—The Secretary shall coordinate with the Secretary of Agriculture to avoid issuing duplicative guidance on the same contaminants.

(d) **REVIEW.**—The Secretary shall periodically review and revise, as appropriate, the guidance documents, including guidance documents regarding action levels, or regulations promulgated under this section.

SEC. 105. STANDARDS FOR PRODUCE SAFETY.

(a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 103, is amended by adding at the end the following:

“SEC. 419. STANDARDS FOR PRODUCE SAFETY.

21 USC 350h.

“(a) **PROPOSED RULEMAKING.**—

“(1) **IN GENERAL.**—

“(A) **RULEMAKING.**—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Agriculture and representatives of State departments of agriculture (including with regard to the national organic program established under the Organic Foods Production Act of 1990), and in consultation with the Secretary of Homeland Security, shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits

Deadline.
Publication.
Notice.

and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

“(B) DETERMINATION BY SECRETARY.—With respect to small businesses and very small businesses (as such terms are defined in the regulation promulgated under subparagraph (A)) that produce and harvest those types of fruits and vegetables that are raw agricultural commodities that the Secretary has determined are low risk and do not present a risk of serious adverse health consequences or death, the Secretary may determine not to include production and harvesting of such fruits and vegetables in such rulemaking, or may modify the applicable requirements of regulations promulgated pursuant to this section.

“(2) PUBLIC INPUT.—During the comment period on the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

“(3) CONTENT.—The proposed rulemaking under paragraph (1) shall—

“(A) provide sufficient flexibility to be applicable to various types of entities engaged in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including small businesses and entities that sell directly to consumers, and be appropriate to the scale and diversity of the production and harvesting of such commodities;

“(B) include, with respect to growing, harvesting, sorting, packing, and storage operations, science-based minimum standards related to soil amendments, hygiene, packaging, temperature controls, animals in the growing area, and water;

“(C) consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism;

“(D) take into consideration, consistent with ensuring enforceable public health protection, conservation and environmental practice standards and policies established by Federal natural resource conservation, wildlife conservation, and environmental agencies;

“(E) in the case of production that is certified organic, not include any requirements that conflict with or duplicate the requirements of the national organic program established under the Organic Foods Production Act of 1990, while providing the same level of public health protection as the requirements under guidance documents, including guidance documents regarding action levels, and regulations under the FDA Food Safety Modernization Act; and

“(F) define, for purposes of this section, the terms ‘small business’ and ‘very small business’.

“(4) PRIORITIZATION.—The Secretary shall prioritize the implementation of the regulations under this section for specific fruits and vegetables that are raw agricultural commodities

based on known risks which may include a history and severity of foodborne illness outbreaks.

“(b) FINAL REGULATION.—

“(1) IN GENERAL.—Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum science-based standards for those types of fruits and vegetables, including specific mixes or categories of fruits or vegetables, that are raw agricultural commodities, based on known safety risks, which may include a history of foodborne illness outbreaks.

Deadline.

“(2) FINAL REGULATION.—The final regulation shall—

“(A) provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States or the appropriate elected State official as recognized by State statute; and

“(B) include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

“(3) FLEXIBILITY FOR SMALL BUSINESSES.—Notwithstanding paragraph (1)—

Applicability.
Effective dates.

“(A) the regulations promulgated under this section shall apply to a small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 1 year after the effective date of the final regulation under paragraph (1); and

“(B) the regulations promulgated under this section shall apply to a very small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 2 years after the effective date of the final regulation under paragraph (1).

“(c) CRITERIA.—

“(1) IN GENERAL.—The regulations adopted under subsection (b) shall—

“(A) set forth those procedures, processes, and practices that the Secretary determines to minimize the risk of serious adverse health consequences or death, including procedures, processes, and practices that the Secretary determines to be reasonably necessary to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 402;

“(B) provide sufficient flexibility to be practicable for all sizes and types of businesses, including small businesses such as a small food processing facility co-located on a farm;

“(C) comply with chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’), with special attention to minimizing the burden (as defined in section 3502(2) of such Act) on the business, and collection of information (as defined in section 3502(3) of such Act), associated with such regulations;

“(D) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

“(E) not require a business to hire a consultant or other third party to identify, implement, certify, compliance with these procedures, processes, and practices, except in the case of negotiated enforcement resolutions that may require such a consultant or third party; and

“(F) permit States and foreign countries from which food is imported into the United States to request from the Secretary variances from the requirements of the regulations, subject to paragraph (2), where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 and to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

“(2) VARIANCES.—

“(A) REQUESTS FOR VARIANCES.—A State or foreign country from which food is imported into the United States may in writing request a variance from the Secretary. Such request shall describe the variance requested and present information demonstrating that the variance does not increase the likelihood that the food for which the variance is requested will be adulterated under section 402, and that the variance provides the same level of public health protection as the requirements of the regulations adopted under subsection (b). The Secretary shall review such requests in a reasonable timeframe.

“(B) APPROVAL OF VARIANCES.—The Secretary may approve a variance in whole or in part, as appropriate, and may specify the scope of applicability of a variance to other similarly situated persons.

“(C) DENIAL OF VARIANCES.—The Secretary may deny a variance request if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 402 and is not reasonably likely to provide the same level of public health protection as the requirements of the regulation adopted under subsection (b). The Secretary shall notify the person requesting such variance of the reasons for the denial.

Notification.

“(D) MODIFICATION OR REVOCATION OF A VARIANCE.—The Secretary, after notice and an opportunity for a hearing, may modify or revoke a variance if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 402 and is not reasonably likely to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

Contracts.

“(d) ENFORCEMENT.—The Secretary may coordinate with the Secretary of Agriculture and, as appropriate, shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

“(e) GUIDANCE.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish, after consultation with the Secretary of Agriculture, representatives of State departments of agriculture, farmer representatives, and various types of entities engaged in the production and harvesting or importing of fruits and vegetables that are raw agricultural commodities, including small businesses, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce under this section.

Deadline.
Publication.
Consultation.

“(2) PUBLIC MEETINGS.—The Secretary shall conduct not fewer than 3 public meetings in diverse geographical areas of the United States as part of an effort to conduct education and outreach regarding the guidance described in paragraph (1) for persons in different regions who are involved in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including persons that sell directly to consumers and farmer representatives, and for importers of fruits and vegetables that are raw agricultural commodities.

“(3) PAPERWORK REDUCTION.—The Secretary shall ensure that any updated guidance under this section will—

“(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm; and

“(B) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods.

“(f) EXEMPTION FOR DIRECT FARM MARKETING.—

“(1) IN GENERAL.—A farm shall be exempt from the requirements under this section in a calendar year if—

“(A) during the previous 3-year period, the average annual monetary value of the food sold by such farm directly to qualified end-users during such period exceeded the average annual monetary value of the food sold by such farm to all other buyers during such period; and

“(B) the average annual monetary value of all food sold during such period was less than \$500,000, adjusted for inflation.

“(2) NOTIFICATION TO CONSUMERS.—

“(A) IN GENERAL.—A farm that is exempt from the requirements under this section shall—

“(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this Act, include prominently and conspicuously on such label the name and business address of the farm where the produce was grown; or

“(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provision of this Act, prominently and conspicuously display, at the point of purchase, the name and business address of the farm where the produce was grown, on a label, poster, sign, placard, or documents delivered contemporaneously with the

food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

“(B) NO ADDITIONAL LABEL.—Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition to any label required under any other provision of this Act.

“(3) WITHDRAWAL; RULE OF CONSTRUCTION.—

“(A) IN GENERAL.—In the event of an active investigation of a foodborne illness outbreak that is directly linked to a farm subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a farm that are material to the safety of the food produced or harvested at such farm, the Secretary may withdraw the exemption provided to such farm under this subsection.

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

“(4) DEFINITIONS.—

“(A) QUALIFIED END-USER.—In this subsection, the term ‘qualified end-user’, with respect to a food means—

“(i) the consumer of the food; or

“(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 415) that is located—

“(I) in the same State as the farm that produced the food; or

“(II) not more than 275 miles from such farm.

“(B) CONSUMER.—For purposes of subparagraph (A), the term ‘consumer’ does not include a business.

“(5) NO PREEMPTION.—Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production, harvesting, holding, transportation, and sale of fresh fruits and vegetables. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

“(6) LIMITATION OF EFFECT.—Nothing in this subsection shall prevent the Secretary from exercising any authority granted in the other sections of this Act.

“(g) CLARIFICATION.—This section shall not apply to produce that is produced by an individual for personal consumption.

“(h) EXCEPTION FOR ACTIVITIES OF FACILITIES SUBJECT TO SECTION 418.—This section shall not apply to activities of a facility that are subject to section 418.”.

(b) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of regulations under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary of Health and Human Services shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 419 and to assist small entities in complying with standards for safe production and harvesting and other activities required under such section.

(c) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 103, is amended by adding at the end the following:

Deadline.
21 USC 350h
note.

“(vv) The failure to comply with the requirements under section 419.”

(d) **NO EFFECT ON HACCP AUTHORITIES.**—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

21 USC 350h
note.

SEC. 106. PROTECTION AGAINST INTENTIONAL ADULTERATION.

(a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 105, is amended by adding at the end the following:

“SEC. 420. PROTECTION AGAINST INTENTIONAL ADULTERATION.

21 USC 350i.

“(a) **DETERMINATIONS.**—

“(1) **IN GENERAL.**—The Secretary shall—

“(A) conduct a vulnerability assessment of the food system, including by consideration of the Department of Homeland Security biological, chemical, radiological, or other terrorism risk assessments;

“(B) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration of food at vulnerable points; and

“(C) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

Determination.

“(2) **LIMITED DISTRIBUTION.**—In the interest of national security, the Secretary, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which determinations made under paragraph (1) are made publicly available.

“(b) **REGULATIONS.**—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Homeland Security and in consultation with the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this Act. Such regulations shall—

Deadline.

“(1) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food; and

“(2) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate.

“(c) **APPLICABILITY.**—Regulations promulgated under subsection (b) shall apply only to food for which there is a high risk of intentional contamination, as determined by the Secretary, in consultation with the Secretary of Homeland Security, under subsection (a), that could cause serious adverse health consequences or death to humans or animals and shall include those foods—

“(1) for which the Secretary has identified clear vulnerabilities (including short shelf-life or susceptibility to intentional contamination at critical control points); and

“(2) in bulk or batch form, prior to being packaged for the final consumer.

“(d) EXCEPTION.—This section shall not apply to farms, except for those that produce milk.

“(e) DEFINITION.—For purposes of this section, the term ‘farm’ has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).”.

(b) GUIDANCE DOCUMENTS.—

Deadline.

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) CONTENT.—The guidance documents issued under paragraph (1) shall—

(A) include a model assessment for a person to use under subsection (b)(1) of section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a);

(B) include examples of mitigation strategies or measures described in subsection (b)(2) of such section; and

(C) specify situations in which the examples of mitigation strategies or measures described in subsection (b)(2) of such section are appropriate.

(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.

21 USC 350i
note.

(c) PERIODIC REVIEW.—The Secretary of Health and Human Services shall periodically review and, as appropriate, update the regulations under section 420(b) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), and the guidance documents under subsection (b).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 105, is amended by adding at the end the following:

“(ww) The failure to comply with section 420.”.

SEC. 107. AUTHORITY TO COLLECT FEES.

(a) FEES FOR REINSPECTION, RECALL, AND IMPORTATION ACTIVITIES.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) is amended by adding at the end the following:

“PART 6—FEES RELATED TO FOOD

21 USC 379j–31.

“SEC. 743. AUTHORITY TO COLLECT AND USE FEES.

“(a) IN GENERAL.—

“(1) PURPOSE AND AUTHORITY.—For fiscal year 2010 and each subsequent fiscal year, the Secretary shall, in accordance with this section, assess and collect fees from—

“(A) the responsible party for each domestic facility (as defined in section 415(b)) and the United States agent

for each foreign facility subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year;

“(B) the responsible party for a domestic facility (as defined in section 415(b)) and an importer who does not comply with a recall order under section 423 or under section 412(f) in such fiscal year, to cover food recall activities associated with such order performed by the Secretary, including technical assistance, follow-up effectiveness checks, and public notifications, for such year;

“(C) each importer participating in the voluntary qualified importer program under section 806 in such year, to cover the administrative costs of such program for such year; and

“(D) each importer subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year.

“(2) DEFINITIONS.—For purposes of this section—

“(A) the term ‘reinspection’ means—

“(i) with respect to domestic facilities (as defined in section 415(b)), 1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction; and

“(ii) with respect to importers, 1 or more examinations conducted under section 801 subsequent to an examination conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction;

“(B) the term ‘reinspection-related costs’ means all expenses, including administrative expenses, incurred in connection with—

“(i) arranging, conducting, and evaluating the results of reinspections; and

“(ii) assessing and collecting reinspection fees under this section; and

“(C) the term ‘responsible party’ has the meaning given such term in section 417(a)(1).

“(b) ESTABLISHMENT OF FEES.—

“(1) IN GENERAL.—Subject to subsections (c) and (d), the Secretary shall establish the fees to be collected under this section for each fiscal year specified in subsection (a)(1), based on the methodology described under paragraph (2), and shall publish such fees in a Federal Register notice not later than 60 days before the start of each such year.

“(2) FEE METHODOLOGY.—

“(A) FEES.—Fees amounts established for collection—

“(i) under subparagraph (A) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the reinspection-related activities (including by type or level of reinspection activity, as the Secretary determines applicable) described in such subparagraph (A) for such year;

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publication.
Notice.
Deadline.

“(ii) under subparagraph (B) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (B) for such year;

“(iii) under subparagraph (C) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (C) for such year; and

“(iv) under subparagraph (D) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (D) for such year.

“(B) OTHER CONSIDERATIONS.—

“(i) VOLUNTARY QUALIFIED IMPORTER PROGRAM.—In establishing the fee amounts under subparagraph (A)(iii) for a fiscal year, the Secretary shall provide for the number of importers who have submitted to the Secretary a notice under section 806(c) informing the Secretary of the intent of such importer to participate in the program under section 806 in such fiscal year.

“(II) RECOUPMENT.—In establishing the fee amounts under subparagraph (A)(iii) for the first 5 fiscal years after the date of enactment of this section, the Secretary shall include in such fee a reasonable surcharge that provides a recoupment of the costs expended by the Secretary to establish and implement the first year of the program under section 806.

“(ii) CREDITING OF FEES.—In establishing the fee amounts under subparagraph (A) for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of fees needed to carry out such activities, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

“(iii) PUBLISHED GUIDELINES.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish in the Federal Register a proposed set of guidelines in consideration of the burden of fee amounts on small business. Such consideration may include reduced fee amounts for small businesses. The Secretary shall provide for a period of public comment on such guidelines. The Secretary shall adjust the fee schedule for small businesses subject to such fees only through notice and comment rulemaking.

“(3) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to clause (i), (ii), (iii), and (iv) of paragraph (2)(A) available solely to pay for the costs referred to in such clause (i), (ii), (iii), and (iv) of paragraph (2)(A), respectively.

“(c) LIMITATIONS.—

“(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2010 unless the amount of the total appropriations for food safety

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publication.
Comment period.

activities at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) is equal to or greater than the amount of appropriations for food safety activities at the Food and Drug Administration for fiscal year 2009 (excluding the amount of fees appropriated for such fiscal year), multiplied by the adjustment factor under paragraph (3).

“(2) AUTHORITY.—If—

“(A) the Secretary does not assess fees under subsection

(a) for a portion of a fiscal year because paragraph (1) applies; and

“(B) at a later date in such fiscal year, such paragraph (1) ceases to apply,

the Secretary may assess and collect such fees under subsection (a), without any modification to the rate of such fees, notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

“(3) ADJUSTMENT FACTOR.—

“(A) IN GENERAL.—The adjustment factor described in paragraph (1) shall be the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year, but in no case shall such adjustment factor be negative.

“(B) COMPOUNDED BASIS.—The adjustment under subparagraph (A) made each fiscal year shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2009.

“(4) LIMITATION ON AMOUNT OF CERTAIN FEES.—

“(A) IN GENERAL.—Notwithstanding any other provision of this section and subject to subparagraph (B), the Secretary may not collect fees in a fiscal year such that the amount collected—

“(i) under subparagraph (B) of subsection (a)(1) exceeds \$20,000,000; and

“(ii) under subparagraphs (A) and (D) of subsection (a)(1) exceeds \$25,000,000 combined.

“(B) EXCEPTION.—If a domestic facility (as defined in section 415(b)) or an importer becomes subject to a fee described in subparagraph (A), (B), or (D) of subsection (a)(1) after the maximum amount of fees has been collected by the Secretary under subparagraph (A), the Secretary may collect a fee from such facility or importer.

“(d) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the operating expenses of the Food and Drug Administration employees and contractors performing activities associated with these food safety fees.

“(e) COLLECTION OF FEES.—

“(1) IN GENERAL.—The Secretary shall specify in the Federal Register notice described in subsection (b)(1) the time

and manner in which fees assessed under this section shall be collected.

Deadline.

“(2) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

“(f) ANNUAL REPORT TO CONGRESS.—Not later than 120 days after each fiscal year for which fees are assessed under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, to include a description of fees assessed and collected for each such year and a summary description of the entities paying such fees and the types of business in which such entities engage.

“(g) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2010 and each fiscal year thereafter, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted or otherwise affected under the other provisions of this section.”.

(b) EXPORT CERTIFICATION FEES FOR FOODS AND ANIMAL FEED.—

(1) AUTHORITY FOR EXPORT CERTIFICATIONS FOR FOOD, INCLUDING ANIMAL FEED.—Section 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amended—

(A) in the matter preceding clause (i), by striking “a drug” and inserting “a food, drug”;

(B) in clause (i) by striking “exported drug” and inserting “exported food, drug”; and

(C) in clause (ii) by striking “the drug” each place it appears and inserting “the food, drug”.

(2) CLARIFICATION OF CERTIFICATION.—Section 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

“(C) For purposes of this paragraph, a certification by the Secretary shall be made on such basis, and in such form (including a publicly available listing) as the Secretary determines appropriate.”.

(3) LIMITATIONS ON THE USE AND AMOUNT OF FEES.—Paragraph (4) of section 801(e) (21 U.S.C. 381(e)) is amended by adding at the end the following:

“(D) With regard to fees pursuant to subparagraph (B) in connection with written export certifications for food:

“(i) Such fees shall be collected and available solely for the costs of the Food and Drug Administration associated with issuing such certifications.

“(ii) Such fees may not be retained in an amount that exceeds such costs for the respective fiscal year.”

21 USC 2202.

SEC. 108. NATIONAL AGRICULTURE AND FOOD DEFENSE STRATEGY.

(a) DEVELOPMENT AND SUBMISSION OF STRATEGY.—

Deadline.
Web posting.

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and transmit

to the relevant committees of Congress, and make publicly available on the Internet Web sites of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) IMPLEMENTATION PLAN.—The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) RESEARCH.—The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) REVISIONS.—Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

Deadlines.

(5) CONSISTENCY WITH EXISTING PLANS.—The strategy described in paragraph (1) shall be consistent with—

- (A) the National Incident Management System;
- (B) the National Response Framework;
- (C) the National Infrastructure Protection Plan;
- (D) the National Preparedness Goals; and
- (E) other relevant national strategies.

(b) COMPONENTS.—

(1) IN GENERAL.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

(A) to achieve each goal described in paragraph (2); and

(B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) GOALS.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) PREPAREDNESS GOAL.—Enhance the preparedness of the agriculture and food system by—

- (i) conducting vulnerability assessments of the agriculture and food system;
- (ii) mitigating vulnerabilities of the system;
- (iii) improving communication and training relating to the system;
- (iv) developing and conducting exercises to test decontamination and disposal plans;
- (v) developing modeling tools to improve event consequence assessment and decision support; and
- (vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) DETECTION GOAL.—Improve agriculture and food system detection capabilities by—

- (i) identifying contamination in food products at the earliest possible time; and

(ii) conducting surveillance to prevent the spread of diseases.

(C) EMERGENCY RESPONSE GOAL.—Ensure an efficient response to agriculture and food emergencies by—

(i) immediately investigating animal disease outbreaks and suspected food contamination;

(ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) RECOVERY GOAL.—Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture, food production, and international trade;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

(3) EVALUATION.—The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall—

(A) develop metrics to measure progress for the evaluation process described in paragraph (1)(B); and

(B) report on the progress measured in subparagraph (A) as part of the National Agriculture and Food Defense strategy described in subsection (a)(1).

(c) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, may determine the manner and format in which the National Agriculture and Food Defense strategy established under this section is made publicly available on the Internet Web sites of the Department of Health and Human Services, the Department of Homeland Security, and the Department of Agriculture, as described in subsection (a)(1).

SEC. 109. FOOD AND AGRICULTURE COORDINATING COUNCILS.

The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services and the Secretary of Agriculture, shall within 180 days of enactment of this Act, and annually thereafter, submit to the relevant committees of Congress,

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Deadlines.
Web posting.
Reports.
21 USC 2203.

and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help coordinate and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

SEC. 110. BUILDING DOMESTIC CAPACITY.

21 USC 2204.

(a) IN GENERAL.—

(1) INITIAL REPORT.—The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall, not later than 2 years after the date of enactment of this Act, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and supply chain security of food and to prevent outbreaks of foodborne illness and other food-related hazards that can be addressed through preventive activities. Such report shall include a description of the following:

(A) Analysis of the need for further regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture Coordinating Councils referred to in section 109, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to foodborne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States and local governments to build State and local food safety and food defense capabilities, including progress implementing strategies developed under sections 108 and 205.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(H) The impact of requirements under this Act (including amendments made by this Act) on certified organic farms and facilities (as defined in section 415 (21 U.S.C. 350d).

(I) Specific efforts taken pursuant to the agreements authorized under section 421(c) of the Federal Food, Drug, and Cosmetic Act (as added by section 201), together with, as necessary, a description of any additional authorities necessary to improve seafood safety.

(2) BIENNIAL REPORTS.—On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (H) of paragraph (1), as necessary.

(b) RISK-BASED ACTIVITIES.—The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) CAPABILITY FOR LABORATORY ANALYSES; RESEARCH.—The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to identify new and rapid analytical techniques, including commercially-available techniques that can be employed at ports of entry and by Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities and progress toward laboratory accreditation under section 422 of the Federal Food, Drug, and Cosmetic Act (as added by section 202).

(d) INFORMATION TECHNOLOGY.—The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State, local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior notice system under section 801(m) of such Act (21 U.S.C. 381(m)) with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) AUTOMATED RISK ASSESSMENT.—The report developed under subsection (a)(1) shall include a description of progress toward

developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) TRACEBACK AND SURVEILLANCE REPORT.—The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration’s performance in foodborne illness outbreaks during the 5-year period preceding the date of enactment of this Act involving fruits and vegetables that are raw agricultural commodities (as defined in section 201(r) (21 U.S.C. 321(r)) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public, industry, and State and local governments, as such communication and coordination relates to outbreak identification and traceback.

(g) BIENNIAL FOOD SAFETY AND FOOD DEFENSE RESEARCH PLAN.—The Secretary, the Secretary of Agriculture, and the Secretary of Homeland Security shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of foodborne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the subsequent 2-year period.

(h) EFFECTIVENESS OF PROGRAMS ADMINISTERED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

(1) IN GENERAL.—To determine whether existing Federal programs administered by the Department of Health and Human Services are effective in achieving the stated goals of such programs, the Secretary shall, beginning not later than 1 year after the date of enactment of this Act—

(A) conduct an annual evaluation of each program of such Department to determine the effectiveness of each such program in achieving legislated intent, purposes, and objectives; and

(B) submit to Congress a report concerning such evaluation.

(2) CONTENT.—The report described under paragraph (1)(B) shall—

(A) include conclusions concerning the reasons that such existing programs have proven successful or not successful and what factors contributed to such conclusions;

(B) include recommendations for consolidation and elimination to reduce duplication and inefficiencies in such programs at such Department as identified during the evaluation conduct under this subsection; and

(C) be made publicly available in a publication entitled “Guide to the U.S. Department of Health and Human Services Programs”.

(i) UNIQUE IDENTIFICATION NUMBERS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study regarding the need for, and challenges associated with, development and implementation of a program that requires a unique identification number for each food facility registered with the Secretary and, as appropriate, each broker that imports food into the United States. Such study shall include an evaluation of the costs associated with development and implementation

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Publication.

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Study.

of such a system, and make recommendations about what new authorities, if any, would be necessary to develop and implement such a system.

(2) REPORT.—Not later than 15 months after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the findings of the study conducted under paragraph (1) and that includes any recommendations determined appropriate by the Secretary.

SEC. 111. SANITARY TRANSPORTATION OF FOOD.

Deadline.
Regulations.
21 USC 350e
note.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate regulations described in section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)).

(b) FOOD TRANSPORTATION STUDY.—The Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study of the transportation of food for consumption in the United States, including transportation by air, that includes an examination of the unique needs of rural and frontier areas with regard to the delivery of safe food.

21 USC 2205.

SEC. 112. FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT.

(a) DEFINITIONS.—In this section:

(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term “early childhood education program” means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) ESEA DEFINITIONS.—The terms “local educational agency”, “secondary school”, “elementary school”, and “parent” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) SCHOOL.—The term “school” includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(4) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(b) ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.—

(1) ESTABLISHMENT.—

Deadline.

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) **APPLICABILITY OF FERPA.**—Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of section 444 of the General Education Provisions Act (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g).

(2) **CONTENTS.**—The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following and may be updated as the Secretary determines necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child’s physician or nurse—

(I) supporting a diagnosis of food allergy, and any risk of anaphylaxis, if applicable;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

(IV) listing any medication prescribed for the child for the treatment of anaphylaxis;

(V) detailing emergency treatment procedures in the event of a reaction;

(VI) listing the signs and symptoms of a reaction; and

(VII) assessing the child’s readiness for self-administration of prescription medication; and

(ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.

(B) The creation and maintenance of an individual plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—

(i) the children are capable of self-administering medication; and

(ii) such administration is not prohibited by State law.

(C) Communication strategies between individual schools or early childhood education programs and providers of emergency medical services, including appropriate instructions for emergency medical response.

(D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.

(E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.

(F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.

(G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.

(H) The timely accessibility of epinephrine by school or early childhood education program personnel when the nurse is not immediately available.

(I) The creation of a plan contained in each individual plan for food allergy management that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as non-academic outings and field trips, before- and after-school programs or before- and after-early child education program programs, and school-sponsored or early childhood education program-sponsored programs held on weekends.

(J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(K) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) RELATION TO STATE LAW.—Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) SCHOOL-BASED FOOD ALLERGY MANAGEMENT GRANTS.—

(1) IN GENERAL.—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) APPLICATION.—

(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a local educational agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) CONTENTS.—Each application submitted under subparagraph (A) shall include—

(i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);

(ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

(I) how the guidelines will be carried out at individual schools served by the local educational agency;

(II) how the local educational agency will inform parents and students of the guidelines in place;

(III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

- (IV) any other activities that the Secretary determines appropriate;
- (iii) an itemization of how grant funds received under this subsection will be expended;
- (iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and
- (v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) **USE OF FUNDS.**—Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

(A) Purchase of materials and supplies, including limited medical supplies such as epinephrine and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) **DURATION OF AWARDS.**—The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) **LIMITATION ON GRANT FUNDING.**—The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) **MAXIMUM AMOUNT OF ANNUAL AWARDS.**—A grant awarded under this subsection may not be made in an amount that is more than \$50,000 annually.

(7) **PRIORITY.**—In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(8) **MATCHING FUNDS.**—

(A) **IN GENERAL.**—The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) ADMINISTRATIVE FUNDS.—A local educational agency that receives a grant under this subsection may use not more than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) PROGRESS AND EVALUATIONS.—At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(11) SUPPLEMENT, NOT SUPPLANT.—Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$30,000,000 for fiscal year 2011 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) VOLUNTARY NATURE OF GUIDELINES.—

(1) IN GENERAL.—The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

SEC. 113. NEW DIETARY INGREDIENTS.

(a) IN GENERAL.—Section 413 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350b) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) NOTIFICATION.—

“(1) IN GENERAL.—If the Secretary determines that the information in a new dietary ingredient notification submitted under this section for an article purported to be a new dietary ingredient is inadequate to establish that a dietary supplement containing such article will reasonably be expected to be safe because the article may be, or may contain, an anabolic steroid or an analogue of an anabolic steroid, the Secretary shall notify the Drug Enforcement Administration of such determination. Such notification by the Secretary shall include, at a minimum, the name of the dietary supplement or article, the name of the person or persons who marketed the product or made

the submission of information regarding the article to the Secretary under this section, and any contact information for such person or persons that the Secretary has.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘anabolic steroid’ has the meaning given such term in section 102(41) of the Controlled Substances Act; and

“(B) the term ‘analogue of an anabolic steroid’ means a substance whose chemical structure is substantially similar to the chemical structure of an anabolic steroid.”.

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish guidance that clarifies when a dietary supplement ingredient is a new dietary ingredient, when the manufacturer or distributor of a dietary ingredient or dietary supplement should provide the Secretary with information as described in section 413(a)(2) of the Federal Food, Drug, and Cosmetic Act, the evidence needed to document the safety of new dietary ingredients, and appropriate methods for establishing the identity of a new dietary ingredient.

Deadline.
Publication.
21 USC 350b
note.

SEC. 114. REQUIREMENT FOR GUIDANCE RELATING TO POST HARVEST PROCESSING OF RAW OYSTERS.

21 USC 342 note.

(a) IN GENERAL.—Not later than 90 days prior to the issuance of any guidance, regulation, or suggested amendment by the Food and Drug Administration to the National Shellfish Sanitation Program’s Model Ordinance, or the issuance of any guidance or regulation by the Food and Drug Administration relating to the Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration (parts 123 and 1240 of title 21, Code of Federal Regulations (or any successor regulations), where such guidance, regulation or suggested amendment relates to post harvest processing for raw oysters, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report which shall include—

Deadline.
Reports.

(1) an assessment of how post harvest processing or other equivalent controls feasibly may be implemented in the fastest, safest, and most economical manner;

(2) the projected public health benefits of any proposed post harvest processing;

(3) the projected costs of compliance with such post harvest processing measures;

(4) the impact post harvest processing is expected to have on the sales, cost, and availability of raw oysters;

(5) criteria for ensuring post harvest processing standards will be applied equally to shellfish imported from all nations of origin;

(6) an evaluation of alternative measures to prevent, eliminate, or reduce to an acceptable level the occurrence of foodborne illness; and

(7) the extent to which the Food and Drug Administration has consulted with the States and other regulatory agencies, as appropriate, with regard to post harvest processing measures.

(b) LIMITATION.—Subsection (a) shall not apply to the guidance described in section 103(h).

(c) **REVIEW AND EVALUATION.**—Not later than 30 days after the Secretary issues a proposed regulation or guidance described in subsection (a), the Comptroller General of the United States shall—

(1) review and evaluate the report described in (a) and report to Congress on the findings of the estimates and analysis in the report;

(2) compare such proposed regulation or guidance to similar regulations or guidance with respect to other regulated foods, including a comparison of risks the Secretary may find associated with seafood and the instances of those risks in such other regulated foods; and

(3) evaluate the impact of post harvest processing on the competitiveness of the domestic oyster industry in the United States and in international markets.

(d) **WAIVER.**—The requirement of preparing a report under subsection (a) shall be waived if the Secretary issues a guidance that is adopted as a consensus agreement between Federal and State regulators and the oyster industry, acting through the Interstate Shellfish Sanitation Conference.

(e) **PUBLIC ACCESS.**—Any report prepared under this section shall be made available to the public.

21 USC 381 note.

SEC. 115. PORT SHOPPING.

Notification.

Until the date on which the Secretary promulgates a final rule that implements the amendments made by section 308 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (Public Law 107-188), the Secretary shall notify the Secretary of Homeland Security of all instances in which the Secretary refuses to admit a food into the United States under section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) so that the Secretary of Homeland Security, acting through the Commissioner of Customs and Border Protection, may prevent food refused admittance into the United States by a United States port of entry from being admitted by another United States port of entry, through the notification of other such United States ports of entry.

21 USC 2206.

SEC. 116. ALCOHOL-RELATED FACILITIES.

(a) **IN GENERAL.**—Except as provided by sections 102, 206, 207, 302, 304, 402, 403, and 404 of this Act, and the amendments made by such sections, nothing in this Act, or the amendments made by this Act, shall be construed to apply to a facility that—

(1) under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and

(2) under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) is required to register as a facility because such facility is engaged in manufacturing, processing, packing, or holding 1 or more alcoholic beverages, with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages.

Applicability.

(b) **LIMITED RECEIPT AND DISTRIBUTION OF NON-ALCOHOL FOOD.**—Subsection (a) shall not apply to a facility engaged in the receipt and distribution of any non-alcohol food, except that such paragraph shall apply to a facility described in such paragraph

that receives and distributes non-alcohol food, provided such food is received and distributed—

(1) in a prepackaged form that prevents any direct human contact with such food; and

(2) in amounts that constitute not more than 5 percent of the overall sales of such facility, as determined by the Secretary of the Treasury.

(c) **RULE OF CONSTRUCTION.**—Except as provided in subsections (a) and (b), this section shall not be construed to exempt any food, other than alcoholic beverages, as defined in section 214 of the Federal Alcohol Administration Act (27 U.S.C. 214), from the requirements of this Act (including the amendments made by this Act).

TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

SEC. 201. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

(a) **TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 106, is amended by adding at the end the following:

“SEC. 421. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

21 USC 350j.

“(a) **IDENTIFICATION AND INSPECTION OF FACILITIES.**—

“(1) **IDENTIFICATION.**—The Secretary shall identify high-risk facilities and shall allocate resources to inspect facilities according to the known safety risks of the facilities, which shall be based on the following factors:

“(A) The known safety risks of the food manufactured, processed, packed, or held at the facility.

“(B) The compliance history of a facility, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

“(C) The rigor and effectiveness of the facility’s hazard analysis and risk-based preventive controls.

“(D) Whether the food manufactured, processed, packed, or held at the facility meets the criteria for priority under section 801(h)(1).

“(E) Whether the food or the facility that manufactured, processed, packed, or held such food has received a certification as described in section 801(q) or 806, as appropriate.

“(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

“(2) **INSPECTIONS.**—

“(A) **IN GENERAL.**—Beginning on the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall increase the frequency of inspection of all facilities.

Effective date.

Deadlines.

“(B) DOMESTIC HIGH-RISK FACILITIES.—The Secretary shall increase the frequency of inspection of domestic facilities identified under paragraph (1) as high-risk facilities such that each such facility is inspected—

“(i) not less often than once in the 5-year period following the date of enactment of the FDA Food Safety Modernization Act; and

“(ii) not less often than once every 3 years thereafter.

Deadlines.

“(C) DOMESTIC NON-HIGH-RISK FACILITIES.—The Secretary shall ensure that each domestic facility that is not identified under paragraph (1) as a high-risk facility is inspected—

“(i) not less often than once in the 7-year period following the date of enactment of the FDA Food Safety Modernization Act; and

“(ii) not less often than once every 5 years thereafter.

Time period.

“(D) FOREIGN FACILITIES.—

“(i) YEAR 1.—In the 1-year period following the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall inspect not fewer than 600 foreign facilities.

“(ii) SUBSEQUENT YEARS.—In each of the 5 years following the 1-year period described in clause (i), the Secretary shall inspect not fewer than twice the number of foreign facilities inspected by the Secretary during the previous year.

“(E) RELIANCE ON FEDERAL, STATE, OR LOCAL INSPECTIONS.—In meeting the inspection requirements under this subsection for domestic facilities, the Secretary may rely on inspections conducted by other Federal, State, or local agencies under interagency agreement, contract, memorandum of understanding, or other obligation.

“(b) IDENTIFICATION AND INSPECTION AT PORTS OF ENTRY.—The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect any article of food imported into the United States according to the known safety risks of the article of food, which shall be based on the following factors:

“(1) The known safety risks of the food imported.

“(2) The known safety risks of the countries or regions of origin and countries through which such article of food is transported.

“(3) The compliance history of the importer, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

“(4) The rigor and effectiveness of the activities conducted by the importer of such article of food to satisfy the requirements of the foreign supplier verification program under section 805.

“(5) Whether the food importer participates in the voluntary qualified importer program under section 806.

“(6) Whether the food meets the criteria for priority under section 801(h)(1).

“(7) Whether the food or the facility that manufactured, processed, packed, or held such food received a certification as described in section 801(q) or 806.

“(8) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

“(c) INTERAGENCY AGREEMENTS WITH RESPECT TO SEAFOOD.—

“(1) IN GENERAL.—The Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of Homeland Security, the Chairman of the Federal Trade Commission, and the heads of other appropriate agencies may enter into such agreements as may be necessary or appropriate to improve seafood safety.

“(2) SCOPE OF AGREEMENTS.—The agreements under paragraph (1) may include—

“(A) cooperative arrangements for examining and testing seafood imports that leverage the resources, capabilities, and authorities of each party to the agreement;

“(B) coordination of inspections of foreign facilities to increase the percentage of imported seafood and seafood facilities inspected;

“(C) standardization of data on seafood names, inspection records, and laboratory testing to improve interagency coordination;

“(D) coordination to detect and investigate violations under applicable Federal law;

“(E) a process, including the use or modification of existing processes, by which officers and employees of the National Oceanic and Atmospheric Administration may be duly designated by the Secretary to carry out seafood examinations and investigations under section 801 of this Act or section 203 of the Food Allergen Labeling and Consumer Protection Act of 2004;

“(F) the sharing of information concerning observed non-compliance with United States food requirements domestically and in foreign nations and new regulatory decisions and policies that may affect the safety of food imported into the United States;

“(G) conducting joint training on subjects that affect and strengthen seafood inspection effectiveness by Federal authorities; and

“(H) outreach on Federal efforts to enhance seafood safety and compliance with Federal food safety requirements.

“(d) COORDINATION.—The Secretary shall improve coordination and cooperation with the Secretary of Agriculture and the Secretary of Homeland Security to target food inspection resources.

“(e) FACILITY.—For purposes of this section, the term ‘facility’ means a domestic facility or a foreign facility that is required to register under section 415.”.

Definition.

(b) ANNUAL REPORT.—Section 1003 (21 U.S.C. 393) is amended by adding at the end the following:

“(h) ANNUAL REPORT REGARDING FOOD.—Not later than February 1 of each year, the Secretary shall submit to Congress a report, including efforts to coordinate and cooperate with other Federal agencies with responsibilities for food inspections, regarding—

“(1) information about food facilities including—

“(A) the appropriations used to inspect facilities registered pursuant to section 415 in the previous fiscal year;

“(B) the average cost of both a non-high-risk food facility inspection and a high-risk food facility inspection, if such a difference exists, in the previous fiscal year;

“(C) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary inspected in the previous fiscal year;

“(D) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year;

“(E) the number of high-risk facilities identified pursuant to section 421 that the Secretary inspected in the previous fiscal year; and

“(F) the number of high-risk facilities identified pursuant to section 421 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year.

“(2) information about food imports including—

“(A) the number of lines of food imported into the United States that the Secretary physically inspected or sampled in the previous fiscal year;

“(B) the number of lines of food imported into the United States that the Secretary did not physically inspect or sample in the previous fiscal year; and

“(C) the average cost of physically inspecting or sampling a line of food subject to this Act that is imported or offered for import into the United States; and

“(3) information on the foreign offices of the Food and Drug Administration including—

“(A) the number of foreign offices established; and

“(B) the number of personnel permanently stationed in each foreign office.

Web posting.

“(i) PUBLIC AVAILABILITY OF ANNUAL FOOD REPORTS.—The Secretary shall make the reports required under subsection (h) available to the public on the Internet Web site of the Food and Drug Administration.”.

21 USC 350j
note.

(c) ADVISORY COMMITTEE CONSULTATION.—In allocating inspection resources as described in section 421 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary may, as appropriate, consult with any relevant advisory committee within the Department of Health and Human Services.

SEC. 202. LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 201, is amended by adding at the end the following:

21 USC 350k.

“SEC. 422. LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

“(a) RECOGNITION OF LABORATORY ACCREDITATION.—

Deadline.

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

“(A) establish a program for the testing of food by accredited laboratories;

Establishment.

“(B) establish a publicly available registry of accreditation bodies recognized by the Secretary and laboratories

accredited by a recognized accreditation body, including the name of, contact information for, and other information deemed appropriate by the Secretary about such bodies and laboratories; and

“(C) require, as a condition of recognition or accreditation, as appropriate, that recognized accreditation bodies and accredited laboratories report to the Secretary any changes that would affect the recognition of such accreditation body or the accreditation of such laboratory.

“(2) PROGRAM REQUIREMENTS.—The program established under paragraph (1)(A) shall provide for the recognition of laboratory accreditation bodies that meet criteria established by the Secretary for accreditation of laboratories, including independent private laboratories and laboratories run and operated by a Federal agency (including the Department of Commerce), State, or locality with a demonstrated capability to conduct 1 or more sampling and analytical testing methodologies for food.

“(3) INCREASING THE NUMBER OF QUALIFIED LABORATORIES.—The Secretary shall work with the laboratory accreditation bodies recognized under paragraph (1), as appropriate, to increase the number of qualified laboratories that are eligible to perform testing under subparagraph (b) beyond the number so qualified on the date of enactment of the FDA Food Safety Modernization Act.

“(4) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in coordination with the Secretary of Homeland Security, may determine the time, manner, and form in which the registry established under paragraph (1)(B) is made publicly available.

“(5) FOREIGN LABORATORIES.—Accreditation bodies recognized by the Secretary under paragraph (1) may accredit laboratories that operate outside the United States, so long as such laboratories meet the accreditation standards applicable to domestic laboratories accredited under this section.

“(6) MODEL LABORATORY STANDARDS.—The Secretary shall develop model standards that a laboratory shall meet to be accredited by a recognized accreditation body for a specified sampling or analytical testing methodology and included in the registry provided for under paragraph (1). In developing the model standards, the Secretary shall consult existing standards for guidance. The model standards shall include—

“(A) methods to ensure that—

“(i) appropriate sampling, analytical procedures (including rapid analytical procedures), and commercially available techniques are followed and reports of analyses are certified as true and accurate;

“(ii) internal quality systems are established and maintained;

“(iii) procedures exist to evaluate and respond promptly to complaints regarding analyses and other activities for which the laboratory is accredited; and

“(iv) individuals who conduct the sampling and analyses are qualified by training and experience to do so; and

“(B) any other criteria determined appropriate by the Secretary.

“(7) REVIEW OF RECOGNITION.—To ensure compliance with the requirements of this section, the Secretary—

“(A) shall periodically, and in no case less than once every 5 years, reevaluate accreditation bodies recognized under paragraph (1) and may accompany auditors from an accreditation body to assess whether the accreditation body meets the criteria for recognition; and

“(B) shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section, specifying, as appropriate, any terms and conditions necessary for laboratories accredited by such body to continue to perform testing as described in this section.

“(b) TESTING PROCEDURES.—

“(1) IN GENERAL.—Not later than 30 months after the date of enactment of the FDA Food Safety Modernization Act, food testing shall be conducted by Federal laboratories or non-Federal laboratories that have been accredited for the appropriate sampling or analytical testing methodology or methodologies by a recognized accreditation body on the registry established by the Secretary under subsection (a)(1)(B) whenever such testing is conducted—

“(A) by or on behalf of an owner or consignee—

“(i) in response to a specific testing requirement under this Act or implementing regulations, when applied to address an identified or suspected food safety problem; and

“(ii) as required by the Secretary, as the Secretary deems appropriate, to address an identified or suspected food safety problem; or

“(B) on behalf of an owner or consignee—

“(i) in support of admission of an article of food under section 801(a); and

“(ii) under an Import Alert that requires successful consecutive tests.

“(2) RESULTS OF TESTING.—The results of any such testing shall be sent directly to the Food and Drug Administration, except the Secretary may by regulation exempt test results from such submission requirement if the Secretary determines that such results do not contribute to the protection of public health. Test results required to be submitted may be submitted to the Food and Drug Administration through electronic means.

“(3) EXCEPTION.—The Secretary may waive requirements under this subsection if—

“(A) a new methodology or methodologies have been developed and validated but a laboratory has not yet been accredited to perform such methodology or methodologies; and

“(B) the use of such methodology or methodologies are necessary to prevent, control, or mitigate a food emergency or foodborne illness outbreak.

“(c) REVIEW BY SECRETARY.—If food sampling and testing performed by a laboratory run and operated by a State or locality that is accredited by a recognized accreditation body on the registry established by the Secretary under subsection (a) result in a State recalling a food, the Secretary shall review the sampling and testing

Waiver authority.

results for the purpose of determining the need for a national recall or other compliance and enforcement activities.

“(d) NO LIMIT ON SECRETARIAL AUTHORITY.—Nothing in this section shall be construed to limit the ability of the Secretary to review and act upon information from food testing, including determining the sufficiency of such information and testing.”.

(b) FOOD EMERGENCY RESPONSE NETWORK.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal governments shall, not later than 180 days after the date of enactment of this Act, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

Deadlines.
Web posting.
Reports.
21 USC 2221.

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State, local, and tribal food laboratories, including the adoption of novel surveillance and identification technologies and the sharing of data between Federal agencies and State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

SEC. 203. INTEGRATED CONSORTIUM OF LABORATORY NETWORKS.

21 USC 2222.

(a) IN GENERAL.—The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services, the Secretary of Agriculture, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

Contracts.

(1) agree on common laboratory methods in order to reduce the time required to detect and respond to foodborne illness outbreaks and facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify means by which laboratory network members could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) REPORTING REQUIREMENT.—The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of the integrated consortium of laboratory networks, as established under subsection (a), in carrying out this section.

Web posting.

21 USC 2223.

SEC. 204. ENHANCING TRACKING AND TRACING OF FOOD AND RECORDKEEPING.**(a) PILOT PROJECTS.—**

(1) **IN GENERAL.**—Not later than 270 days after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”), taking into account recommendations from the Secretary of Agriculture and representatives of State departments of health and agriculture, shall establish pilot projects in coordination with the food industry to explore and evaluate methods to rapidly and effectively identify recipients of food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) or misbranded under section 403(w) of such Act (21 U.S.C. 343(w)).

(2) **CONTENT.**—The Secretary shall conduct 1 or more pilot projects under paragraph (1) in coordination with the processed food sector and 1 or more such pilot projects in coordination with processors or distributors of fruits and vegetables that are raw agricultural commodities. The Secretary shall ensure that the pilot projects under paragraph (1) reflect the diversity of the food supply and include at least 3 different types of foods that have been the subject of significant outbreaks during the 5-year period preceding the date of enactment of this Act, and are selected in order to—

(A) develop and demonstrate methods for rapid and effective tracking and tracing of foods in a manner that is practicable for facilities of varying sizes, including small businesses;

(B) develop and demonstrate appropriate technologies, including technologies existing on the date of enactment of this Act, that enhance the tracking and tracing of food; and

(C) inform the promulgation of regulations under subsection (d).

(3) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the pilot projects under this subsection together with recommendations for improving the tracking and tracing of food.

(b) ADDITIONAL DATA GATHERING.—

(1) **IN GENERAL.**—The Secretary, in coordination with the Secretary of Agriculture and multiple representatives of State departments of health and agriculture, shall assess—

(A) the costs and benefits associated with the adoption and use of several product tracing technologies, including technologies used in the pilot projects under subsection (a);

(B) the feasibility of such technologies for different sectors of the food industry, including small businesses; and

(C) whether such technologies are compatible with the requirements of this subsection.

(2) **REQUIREMENTS.**—To the extent practicable, in carrying out paragraph (1), the Secretary shall—

Recommendations.

(A) evaluate domestic and international product tracing practices in commercial use;

(B) consider international efforts, including an assessment of whether product tracing requirements developed under this section are compatible with global tracing systems, as appropriate; and

(C) consult with a diverse and broad range of experts and stakeholders, including representatives of the food industry, agricultural producers, and nongovernmental organizations that represent the interests of consumers.

Consultation.

(c) **PRODUCT TRACING SYSTEM.**—The Secretary, in consultation with the Secretary of Agriculture, shall, as appropriate, establish within the Food and Drug Administration a product tracing system to receive information that improves the capacity of the Secretary to effectively and rapidly track and trace food that is in the United States or offered for import into the United States. Prior to the establishment of such product tracing system, the Secretary shall examine the results of applicable pilot projects and shall ensure that the activities of such system are adequately supported by the results of such pilot projects.

(d) **ADDITIONAL RECORDKEEPING REQUIREMENTS FOR HIGH RISK FOODS.**—

(1) **IN GENERAL.**—In order to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of such Act, not later than 2 years after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to establish recordkeeping requirements, in addition to the requirements under section 414 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c) and subpart J of part 1 of title 21, Code of Federal Regulations (or any successor regulations), for facilities that manufacture, process, pack, or hold foods that the Secretary designates under paragraph (2) as high-risk foods. The Secretary shall set an appropriate effective date of such additional requirements for foods designated as high risk that takes into account the length of time necessary to comply with such requirements. Such requirements shall—

Deadline.
Publication.
Notice.

(A) relate only to information that is reasonably available and appropriate;

(B) be science-based;

(C) not prescribe specific technologies for the maintenance of records;

(D) ensure that the public health benefits of imposing additional recordkeeping requirements outweigh the cost of compliance with such requirements;

(E) be scale-appropriate and practicable for facilities of varying sizes and capabilities with respect to costs and recordkeeping burdens, and not require the creation and maintenance of duplicate records where the information is contained in other company records kept in the normal course of business;

(F) minimize the number of different recordkeeping requirements for facilities that handle more than 1 type of food;

(G) to the extent practicable, not require a facility to change business systems to comply with such requirements;

(H) allow any person subject to this subsection to maintain records required under this subsection at a central or reasonably accessible location provided that such records can be made available to the Secretary not later than 24 hours after the Secretary requests such records; and

(I) include a process by which the Secretary may issue a waiver of the requirements under this subsection if the Secretary determines that such requirements would result in an economic hardship for an individual facility or a type of facility;

(J) be commensurate with the known safety risks of the designated food;

(K) take into account international trade obligations;

(L) not require—

(i) a full pedigree, or a record of the complete previous distribution history of the food from the point of origin of such food;

(ii) records of recipients of a food beyond the immediate subsequent recipient of such food; or

(iii) product tracking to the case level by persons subject to such requirements; and

(M) include a process by which the Secretary may remove a high-risk food designation developed under paragraph (2) for a food or type of food.

(2) DESIGNATION OF HIGH-RISK FOODS.—

Deadline.

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and thereafter as the Secretary determines necessary, the Secretary shall designate high-risk foods for which the additional recordkeeping requirements described in paragraph (1) are appropriate and necessary to protect the public health. Each such designation shall be based on—

(i) the known safety risks of a particular food, including the history and severity of foodborne illness outbreaks attributed to such food, taking into consideration foodborne illness data collected by the Centers for Disease Control and Prevention;

(ii) the likelihood that a particular food has a high potential risk for microbiological or chemical contamination or would support the growth of pathogenic microorganisms due to the nature of the food or the processes used to produce such food;

(iii) the point in the manufacturing process of the food where contamination is most likely to occur;

(iv) the likelihood of contamination and steps taken during the manufacturing process to reduce the possibility of contamination;

(v) the likelihood that consuming a particular food will result in a foodborne illness due to contamination of the food; and

(vi) the likely or known severity, including health and economic impacts, of a foodborne illness attributed to a particular food.

(B) LIST OF HIGH-RISK FOODS.—At the time the Secretary promulgates the final rules under paragraph (1), the Secretary shall publish the list of the foods designated under subparagraph (A) as high-risk foods on the Internet website of the Food and Drug Administration. The Secretary may update the list to designate new high-risk foods and to remove foods that are no longer deemed to be high-risk foods, provided that each such update to the list is consistent with the requirements of this subsection and notice of such update is published in the Federal Register.

List.
Web posting.

Federal Register,
publication.
Notice.

(3) PROTECTION OF SENSITIVE INFORMATION.—In promulgating regulations under this subsection, the Secretary shall take appropriate measures to ensure that there are effective procedures to prevent the unauthorized disclosure of any trade secret or confidential information that is obtained by the Secretary pursuant to this section, including periodic risk assessment and planning to prevent unauthorized release and controls to—

(A) prevent unauthorized reproduction of trade secret or confidential information;

(B) prevent unauthorized access to trade secret or confidential information; and

(C) maintain records with respect to access by any person to trade secret or confidential information maintained by the agency.

(4) PUBLIC INPUT.—During the comment period in the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(5) RETENTION OF RECORDS.—Except as otherwise provided in this subsection, the Secretary may require that a facility retain records under this subsection for not more than 2 years, taking into consideration the risk of spoilage, loss of value, or loss of palatability of the applicable food when determining the appropriate timeframes.

(6) LIMITATIONS.—

(A) FARM TO SCHOOL PROGRAMS.—In establishing requirements under this subsection, the Secretary shall, in consultation with the Secretary of Agriculture, consider the impact of requirements on farm to school or farm to institution programs of the Department of Agriculture and other farm to school and farm to institution programs outside such agency, and shall modify the requirements under this subsection, as appropriate, with respect to such programs so that the requirements do not place undue burdens on farm to school or farm to institution programs.

(B) IDENTITY-PRESERVED LABELS WITH RESPECT TO FARM SALES OF FOOD THAT IS PRODUCED AND PACKAGED ON A FARM.—The requirements under this subsection shall not apply to a food that is produced and packaged on a farm if—

(i) the packaging of the food maintains the integrity of the product and prevents subsequent contamination or alteration of the product; and

(ii) the labeling of the food includes the name, complete address (street address, town, State, country, and zip or other postal code), and business phone number of the farm, unless the Secretary waives the requirement to include a business phone number of the farm, as appropriate, in order to accommodate a religious belief of the individual in charge of such farm.

(C) FISHING VESSELS.—The requirements under this subsection with respect to a food that is produced through the use of a fishing vessel (as defined in section 3(18) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(18))) shall be limited to the requirements under subparagraph (F) until such time as the food is sold by the owner, operator, or agent in charge of such fishing vessel.

(D) COMMINGLED RAW AGRICULTURAL COMMODITIES.—

(i) LIMITATION ON EXTENT OF TRACING.—Record-keeping requirements under this subsection with regard to any commingled raw agricultural commodity shall be limited to the requirements under subparagraph (F).

(ii) DEFINITIONS.—For the purposes of this subparagraph—

(I) the term “commingled raw agricultural commodity” means any commodity that is combined or mixed after harvesting, but before processing;

(II) the term “commingled raw agricultural commodity” shall not include types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that standards promulgated under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by section 105) would minimize the risk of serious adverse health consequences or death; and

(III) the term “processing” means operations that alter the general state of the commodity, such as canning, cooking, freezing, dehydration, milling, grinding, pasteurization, or homogenization.

(E) EXEMPTION OF OTHER FOODS.—The Secretary may, by notice in the Federal Register, modify the requirements under this subsection with respect to, or exempt a food or a type of facility from, the requirements of this subsection (other than the requirements under subparagraph (F), if applicable) if the Secretary determines that product tracing requirements for such food (such as bulk or commingled ingredients that are intended to be processed to destroy pathogens) or type of facility is not necessary to protect the public health.

(F) RECORDKEEPING REGARDING PREVIOUS SOURCES AND SUBSEQUENT RECIPIENTS.—In the case of a person or food to which a limitation or exemption under subparagraph (C), (D), or (E) applies, if such person, or a person who

manufactures, processes, packs, or holds such food, is required to register with the Secretary under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) with respect to the manufacturing, processing, packing, or holding of the applicable food, the Secretary shall require such person to maintain records that identify the immediate previous source of such food and the immediate subsequent recipient of such food.

(G) GROCERY STORES.—With respect to a sale of a food described in subparagraph (H) to a grocery store, the Secretary shall not require such grocery store to maintain records under this subsection other than records documenting the farm that was the source of such food. The Secretary shall not require that such records be kept for more than 180 days. Time period.

(H) FARM SALES TO CONSUMERS.—The Secretary shall not require a farm to maintain any distribution records under this subsection with respect to a sale of a food described in subparagraph (I) (including a sale of a food that is produced and packaged on such farm), if such sale is made by the farm directly to a consumer.

(I) SALE OF A FOOD.—A sale of a food described in this subparagraph is a sale of a food in which—

- (i) the food is produced on a farm; and
- (ii) the sale is made by the owner, operator, or agent in charge of such farm directly to a consumer or grocery store.

(7) NO IMPACT ON NON-HIGH-RISK FOODS.—The record-keeping requirements established under paragraph (1) shall have no effect on foods that are not designated by the Secretary under paragraph (2) as high-risk foods. Foods described in the preceding sentence shall be subject solely to the record-keeping requirements under section 414 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c) and subpart J of part 1 of title 21, Code of Federal Regulations (or any successor regulations).

(e) EVALUATION AND RECOMMENDATIONS.—

(1) REPORT.—Not later than 1 year after the effective date of the final rule promulgated under subsection (d)(1), the Comptroller General of the United States shall submit to Congress a report, taking into consideration the costs of compliance and other regulatory burdens on small businesses and Federal, State, and local food safety practices and requirements, that evaluates the public health benefits and risks, if any, of limiting—

(A) the product tracing requirements under subsection (d) to foods identified under paragraph (2) of such subsection, including whether such requirements provide adequate assurance of traceability in the event of intentional adulteration, including by acts of terrorism; and

(B) the participation of restaurants in the record-keeping requirements.

(2) DETERMINATION AND RECOMMENDATIONS.—In conducting the evaluation and report under paragraph (1), if the Comptroller General of the United States determines that the limitations described in such paragraph do not adequately protect the public health, the Comptroller General shall submit

to Congress recommendations, if appropriate, regarding record-keeping requirements for restaurants and additional foods, in order to protect the public health.

(f) FARMS.—

(1) REQUEST FOR INFORMATION.—Notwithstanding subsection (d), during an active investigation of a foodborne illness outbreak, or if the Secretary determines it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak, the Secretary, in consultation and coordination with State and local agencies responsible for food safety, as appropriate, may request that the owner, operator, or agent of a farm identify potential immediate recipients, other than consumers, of an article of the food that is the subject of such investigation if the Secretary reasonably believes such article of food—

(A) is adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act;

(B) presents a threat of serious adverse health consequences or death to humans or animals; and

(C) was adulterated as described in subparagraph (A) on a particular farm (as defined in section 1.227 of chapter 21, Code of Federal Regulations (or any successor regulation)).

Notice.

(2) MANNER OF REQUEST.—In making a request under paragraph (1), the Secretary, in consultation and coordination with State and local agencies responsible for food safety, as appropriate, shall issue a written notice to the owner, operator, or agent of the farm to which the article of food has been traced. The individual providing such notice shall present to such owner, operator, or agent appropriate credentials and shall deliver such notice at reasonable times and within reasonable limits and in a reasonable manner.

(3) DELIVERY OF INFORMATION REQUESTED.—The owner, operator, or agent of a farm shall deliver the information requested under paragraph (1) in a prompt and reasonable manner. Such information may consist of records kept in the normal course of business, and may be in electronic or non-electronic format.

(4) LIMITATION.—A request made under paragraph (1) shall not include a request for information relating to the finances, pricing of commodities produced, personnel, research, sales (other than information relating to shipping), or other disclosures that may reveal trade secrets or confidential information from the farm to which the article of food has been traced, other than information necessary to identify potential immediate recipients of such food. Section 301(j) of the Federal Food, Drug, and Cosmetic Act and the Freedom of Information Act shall apply with respect to any confidential commercial information that is disclosed to the Food and Drug Administration in the course of responding to a request under paragraph (1).

Applicability.

(5) RECORDS.—Except with respect to identifying potential immediate recipients in response to a request under this subsection, nothing in this subsection shall require the establishment or maintenance by farms of new records.

(g) **NO LIMITATION ON COMMINGLING OF FOOD.**—Nothing in this section shall be construed to authorize the Secretary to impose any limitation on the commingling of food.

(h) **SMALL ENTITY COMPLIANCE GUIDE.**—Not later than 180 days after promulgation of a final rule under subsection (d), the Secretary shall issue a small entity compliance guide setting forth in plain language the requirements of the regulations under such subsection in order to assist small entities, including farms and small businesses, in complying with the recordkeeping requirements under such subsection.

Deadline.

(i) **FLEXIBILITY FOR SMALL BUSINESSES.**—Notwithstanding any other provision of law, the regulations promulgated under subsection (d) shall apply—

Applicability.
Deadlines.
Effective dates.

(1) to small businesses (as defined by the Secretary in section 103, not later than 90 days after the date of enactment of this Act) beginning on the date that is 1 year after the effective date of the final regulations promulgated under subsection (d); and

(2) to very small businesses (as defined by the Secretary in section 103, not later than 90 days after the date of enactment of this Act) beginning on the date that is 2 years after the effective date of the final regulations promulgated under subsection (d).

(j) **ENFORCEMENT.**—

(1) **PROHIBITED ACTS.**—Section 301(e) (21 U.S.C. 331(e)) is amended by inserting “; or the violation of any recordkeeping requirement under section 204 of the FDA Food Safety Modernization Act (except when such violation is committed by a farm)” before the period at the end.

(2) **IMPORTS.**—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting “or (4) the recordkeeping requirements under section 204 of the FDA Food Safety Modernization Act (other than the requirements under subsection (f) of such section) have not been complied with regarding such article,” in the third sentence before “then such article shall be refused admission”.

SEC. 205. SURVEILLANCE.

21 USC 2224.

(a) **DEFINITION OF FOODBORNE ILLNESS OUTBREAK.**—In this Act, the term “foodborne illness outbreak” means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a certain food.

(b) **FOODBORNE ILLNESS SURVEILLANCE SYSTEMS.**—

(1) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enhance foodborne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses by—

(A) coordinating Federal, State and local foodborne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(B) facilitating sharing of surveillance information on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, the Department of Homeland Security, and State and local agencies, and with the public;

(C) developing improved epidemiological tools for obtaining quality exposure data and microbiological methods for classifying cases;

(D) augmenting such systems to improve attribution of a foodborne illness outbreak to a specific food;

(E) expanding capacity of such systems, including working toward automatic electronic searches, for implementation of identification practices, including fingerprinting strategies, for foodborne infectious agents, in order to identify new or rarely documented causes of foodborne illness and submit standardized information to a centralized database;

(F) allowing timely public access to aggregated, de-identified surveillance data;

(G) at least annually, publishing current reports on findings from such systems;

(H) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(I) integrating foodborne illness surveillance systems and data with other biosurveillance and public health situational awareness capabilities at the Federal, State, and local levels, including by sharing foodborne illness surveillance data with the National Biosurveillance Integration Center; and

(J) other activities as determined appropriate by the Secretary.

(2) **WORKING GROUP.**—The Secretary shall support and maintain a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food and food testing industries, consumer organizations, and academia. Such working group shall provide the Secretary, through at least annual meetings of the working group and an annual public report, advice and recommendations on an ongoing and regular basis regarding the improvement of foodborne illness surveillance and implementation of this section, including advice and recommendations on—

(A) the priority needs of regulatory agencies, the food industry, and consumers for information and analysis on foodborne illness and its causes;

(B) opportunities to improve the effectiveness of initiatives at the Federal, State, and local levels, including coordination and integration of activities among Federal agencies, and between the Federal, State, and local levels of government;

(C) improvement in the timeliness and depth of access by regulatory and health agencies, the food industry, academic researchers, and consumers to foodborne illness aggregated, de-identified surveillance data collected by government agencies at all levels, including data compiled by the Centers for Disease Control and Prevention;

(D) key barriers at Federal, State, and local levels to improving foodborne illness surveillance and the utility of such surveillance for preventing foodborne illness;

(E) the capabilities needed for establishing automatic electronic searches of surveillance data; and

(F) specific actions to reduce barriers to improvement, implement the working group's recommendations, and

Deadline.
Reports.
Recommendations.

achieve the purposes of this section, with measurable objectives and timelines, and identification of resource and staffing needs.

(3) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out the activities described in paragraph (1), there is authorized to be appropriated \$24,000,000 for each fiscal years 2011 through 2015.

(c) **IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.**—

(1) **IN GENERAL.**—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

Strategies.

(A) Improve foodborne illness outbreak response and containment.

(B) Accelerate foodborne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal, State, and local partnerships to coordinate food safety and defense resources and reduce the incidence of foodborne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(F) Strengthen the capacity of State and local agencies to achieve the goals described in section 108.

(2) **REVIEW.**—In developing of the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

Deadline.

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

(d) **FOOD SAFETY CAPACITY BUILDING GRANTS.**—Section 317R(b) of the Public Health Service Act (42 U.S.C. 247b–20(b)) is amended—

(1) by striking “2002” and inserting “2010”; and

(2) by striking “2003 through 2006” and inserting “2011 through 2015”.

SEC. 206. MANDATORY RECALL AUTHORITY.

(a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 202, is amended by adding at the end the following:

21 USC 350l.

“SEC. 423. MANDATORY RECALL AUTHORITY.

Determination.

“(a) **VOLUNTARY PROCEDURES.**—If the Secretary determines, based on information gathered through the reportable food registry under section 417 or through any other means, that there is a reasonable probability that an article of food (other than infant formula) is adulterated under section 402 or misbranded under section 403(w) and the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals, the Secretary shall provide the responsible party (as defined in section 417) with an opportunity to cease distribution and recall such article.

“(b) PREHEARING ORDER TO CEASE DISTRIBUTION AND GIVE NOTICE.—

“(1) **IN GENERAL.**—If the responsible party refuses to or does not voluntarily cease distribution or recall such article within the time and in the manner prescribed by the Secretary (if so prescribed), the Secretary may, by order require, as the Secretary deems necessary, such person to—

“(A) immediately cease distribution of such article; and

“(B) as applicable, immediately notify all persons—

“(i) manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing and selling such article; and

“(ii) to which such article has been distributed, transported, or sold, to immediately cease distribution of such article.

“(2) REQUIRED ADDITIONAL INFORMATION.—

“(A) **IN GENERAL.**—If an article of food covered by a recall order issued under paragraph (1)(B) has been distributed to a warehouse-based third party logistics provider without providing such provider sufficient information to know or reasonably determine the precise identity of the article of food covered by a recall order that is in its possession, the notice provided by the responsible party subject to the order issued under paragraph (1)(B) shall include such information as is necessary for the warehouse-based third party logistics provider to identify the food.

“(B) **RULES OF CONSTRUCTION.**—Nothing in this paragraph shall be construed—

“(i) to exempt a warehouse-based third party logistics provider from the requirements of this Act, including the requirements in this section and section 414; or

“(ii) to exempt a warehouse-based third party logistics provider from being the subject of a mandatory recall order.

“(3) **DETERMINATION TO LIMIT AREAS AFFECTED.**—If the Secretary requires a responsible party to cease distribution under paragraph (1)(A) of an article of food identified in subsection (a), the Secretary may limit the size of the geographic area and the markets affected by such cessation if such limitation would not compromise the public health.

Deadline.

“(c) **HEARING ON ORDER.**—The Secretary shall provide the responsible party subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as possible, but not later than 2 days after the issuance of the order,

on the actions required by the order and on why the article that is the subject of the order should not be recalled.

“(d) POST-HEARING RECALL ORDER AND MODIFICATION OF ORDER.—

“(1) AMENDMENT OF ORDER.—If, after providing opportunity for an informal hearing under subsection (c), the Secretary determines that removal of the article from commerce is necessary, the Secretary shall, as appropriate—

“(A) amend the order to require recall of such article or other appropriate action;

“(B) specify a timetable in which the recall shall occur;

“(C) require periodic reports to the Secretary describing the progress of the recall; and

“(D) provide notice to consumers to whom such article was, or may have been, distributed.

“(2) VACATING OF ORDER.—If, after such hearing, the Secretary determines that adequate grounds do not exist to continue the actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

“(e) RULE REGARDING ALCOHOLIC BEVERAGES.—The Secretary shall not initiate a mandatory recall or take any other action under this section with respect to any alcohol beverage until the Secretary has provided the Alcohol and Tobacco Tax and Trade Bureau with a reasonable opportunity to cease distribution and recall such article under the Alcohol and Tobacco Tax and Trade Bureau authority.

“(f) COOPERATION AND CONSULTATION.—The Secretary shall work with State and local public health officials in carrying out this section, as appropriate.

“(g) PUBLIC NOTIFICATION.—In conducting a recall under this section, the Secretary shall—

“(1) ensure that a press release is published regarding the recall, as well as alerts and public notices, as appropriate, in order to provide notification—

Publication.
Notices.

“(A) of the recall to consumers and retailers to whom such article was, or may have been, distributed; and

“(B) that includes, at a minimum—

“(i) the name of the article of food subject to the recall;

“(ii) a description of the risk associated with such article; and

“(iii) to the extent practicable, information for consumers about similar articles of food that are not affected by the recall;

“(2) consult the policies of the Department of Agriculture regarding providing to the public a list of retail consignees receiving products involved in a Class I recall and shall consider providing such a list to the public, as determined appropriate by the Secretary; and

“(3) if available, publish on the Internet Web site of the Food and Drug Administration an image of the article that is the subject of the press release described in (1).

Web posting.

“(h) NO DELEGATION.—The authority conferred by this section to order a recall or vacate a recall order shall not be delegated to any officer or employee other than the Commissioner.

“(i) EFFECT.—Nothing in this section shall affect the authority of the Secretary to request or participate in a voluntary recall, or to issue an order to cease distribution or to recall under any other provision of this Act or under the Public Health Service Act.

“(j) COORDINATED COMMUNICATION.—

“(1) IN GENERAL.—To assist in carrying out the requirements of this subsection, the Secretary shall establish an incident command operation or a similar operation within the Department of Health and Human Services that will operate not later than 24 hours after the initiation of a mandatory recall or the recall of an article of food for which the use of, or exposure to, such article will cause serious adverse health consequences or death to humans or animals.

“(2) REQUIREMENTS.—To reduce the potential for miscommunication during recalls or regarding investigations of a food borne illness outbreak associated with a food that is subject to a recall, each incident command operation or similar operation under paragraph (1) shall use regular staff and resources of the Department of Health and Human Services to—

“(A) ensure timely and coordinated communication within the Department, including enhanced communication and coordination between different agencies and organizations within the Department;

“(B) ensure timely and coordinated communication from the Department, including public statements, throughout the duration of the investigation and related foodborne illness outbreak;

“(C) identify a single point of contact within the Department for public inquiries regarding any actions by the Secretary related to a recall;

“(D) coordinate with Federal, State, local, and tribal authorities, as appropriate, that have responsibilities related to the recall of a food or a foodborne illness outbreak associated with a food that is subject to the recall, including notification of the Secretary of Agriculture and the Secretary of Education in the event such recalled food is a commodity intended for use in a child nutrition program (as identified in section 25(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769f(b))); and

“(E) conclude operations at such time as the Secretary determines appropriate.

“(3) MULTIPLE RECALLS.—The Secretary may establish multiple or concurrent incident command operations or similar operations in the event of multiple recalls or foodborne illness outbreaks necessitating such action by the Department of Health and Human Services.”

(b) SEARCH ENGINE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall modify the Internet Web site of the Food and Drug Administration to include a search engine that—

(1) is consumer-friendly, as determined by the Secretary; and

(2) provides a means by which an individual may locate relevant information regarding each article of food subject to a recall under section 423 of the Federal Food, Drug, and

Deadline.
Web posting.
21 USC 350l
note.

Cosmetic Act and the status of such recall (such as whether a recall is ongoing or has been completed).

(c) CIVIL PENALTY.—Section 303(f)(2)(A) (21 U.S.C. 333(f)(2)(A)) is amended by inserting “or any person who does not comply with a recall order under section 423” after “section 402(a)(2)(B)”.

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 106, is amended by adding at the end the following:

“(xx) The refusal or failure to follow an order under section 423.”.

(e) GAO REVIEW.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

Deadline.
Reports.

(A) identifies State and local agencies with the authority to require the mandatory recall of food, and evaluates use of such authority with regard to frequency, effectiveness, and appropriateness, including consideration of any new or existing mechanisms available to compensate persons for general and specific recall-related costs when a recall is subsequently determined by the relevant authority to have been an error;

(B) identifies Federal agencies, other than the Department of Health and Human Services, with mandatory recall authority and examines use of that authority with regard to frequency, effectiveness, and appropriateness, including any new or existing mechanisms available to compensate persons for general and specific recall-related costs when a recall is subsequently determined by the relevant agency to have been an error;

(C) considers models for farmer restitution implemented in other nations in cases of erroneous recalls; and

(D) makes recommendations to the Secretary regarding use of the authority under section 423 of the Federal Food, Drug, and Cosmetic Act (as added by this section) to protect the public health while seeking to minimize unnecessary economic costs.

(2) EFFECT OF REVIEW.—If the Comptroller General of the United States finds, after the review conducted under paragraph (1), that the mechanisms described in such paragraph do not exist or are inadequate, then, not later than 90 days after the conclusion of such review, the Secretary of Agriculture shall conduct a study of the feasibility of implementing a farmer indemnification program to provide restitution to agricultural producers for losses sustained as a result of a mandatory recall of an agricultural commodity by a Federal or State regulatory agency that is subsequently determined to be in error. The Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study, including any recommendations.

Deadline.
Study.

Reports.

(f) ANNUAL REPORT TO CONGRESS.—

21 USC 3501–1.

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall submit a report to the Committee

on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the use of recall authority under section 423 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)) and any public health advisories issued by the Secretary that advise against the consumption of an article of food on the ground that the article of food is adulterated and poses an imminent danger to health.

(2) **CONTENT.**—The report under paragraph (1) shall include, with respect to the report year—

(A) the identity of each article of food that was the subject of a public health advisory described in paragraph (1), an opportunity to cease distribution and recall under subsection (a) of section 423 of the Federal Food, Drug, and Cosmetic Act, or a mandatory recall order under subsection (b) of such section;

(B) the number of responsible parties, as defined in section 417 of the Federal Food, Drug, and Cosmetic Act, formally given the opportunity to cease distribution of an article of food and recall such article, as described in section 423(a) of such Act;

(C) the number of responsible parties described in subparagraph (B) who did not cease distribution of or recall an article of food after given the opportunity to cease distribution or recall under section 423(a) of the Federal Food, Drug, and Cosmetic Act;

(D) the number of recall orders issued under section 423(b) of the Federal Food, Drug, and Cosmetic Act; and

(E) a description of any instances in which there was no testing that confirmed adulteration of an article of food that was the subject of a recall under section 423(b) of the Federal Food, Drug, and Cosmetic Act or a public health advisory described in paragraph (1).

SEC. 207. ADMINISTRATIVE DETENTION OF FOOD.

(a) **IN GENERAL.**—Section 304(h)(1)(A) (21 U.S.C. 334(h)(1)(A)) is amended by—

(1) striking “credible evidence or information indicating” and inserting “reason to believe”; and

(2) striking “presents a threat of serious adverse health consequences or death to humans or animals” and inserting “is adulterated or misbranded”.

Deadline.
21 USC 334 note. (b) **REGULATIONS.**—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

21 USC 334 note. (c) **EFFECTIVE DATE.**—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 208. DECONTAMINATION AND DISPOSAL STANDARDS AND PLANS.

(a) **IN GENERAL.**—The Administrator of the Environmental Protection Agency (referred to in this section as the “Administrator”), in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, and Secretary of Agriculture, shall provide support for, and technical assistance to, State, local, and tribal governments in preparing for, assessing, decontaminating, and recovering from an agriculture or food emergency.

21 USC 2225.

(b) **DEVELOPMENT OF STANDARDS.**—In carrying out subsection (a), the Administrator, in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, Secretary of Agriculture, and State, local, and tribal governments, shall develop and disseminate specific standards and protocols to undertake clean-up, clearance, and recovery activities following the decontamination and disposal of specific threat agents and foreign animal diseases.

(c) **DEVELOPMENT OF MODEL PLANS.**—In carrying out subsection (a), the Administrator, the Secretary of Health and Human Services, and the Secretary of Agriculture shall jointly develop and disseminate model plans for—

(1) the decontamination of individuals, equipment, and facilities following an intentional contamination of agriculture or food; and

(2) the disposal of large quantities of animals, plants, or food products that have been infected or contaminated by specific threat agents and foreign animal diseases.

(d) **EXERCISES.**—In carrying out subsection (a), the Administrator, in coordination with the entities described under subsection (b), shall conduct exercises at least annually to evaluate and identify weaknesses in the decontamination and disposal model plans described in subsection (c). Such exercises shall be carried out, to the maximum extent practicable, as part of the national exercise program under section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)).

Deadline.

(e) **MODIFICATIONS.**—Based on the exercises described in subsection (d), the Administrator, in coordination with the entities described in subsection (b), shall review and modify as necessary the plans described in subsection (c) not less frequently than biennially.

(f) **PRIORITIZATION.**—The Administrator, in coordination with the entities described in subsection (b), shall develop standards and plans under subsections (b) and (c) in an identified order of priority that takes into account—

(1) highest-risk biological, chemical, and radiological threat agents;

(2) agents that could cause the greatest economic devastation to the agriculture and food system; and

(3) agents that are most difficult to clean or remediate.

SEC. 209. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.

(a) **IMPROVING TRAINING.**—Chapter X (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

“SEC. 1011. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.

21 USC 399c.

“(a) **TRAINING.**—The Secretary shall set standards and administer training and education programs for the employees of State, local, territorial, and tribal food safety officials relating to the regulatory responsibilities and policies established by this Act, including programs for—

“(1) scientific training;

“(2) training to improve the skill of officers and employees authorized to conduct inspections under sections 702 and 704;

“(3) training to achieve advanced product or process specialization in such inspections;

“(4) training that addresses best practices;

“(5) training in administrative process and procedure and integrity issues;

“(6) training in appropriate sampling and laboratory analysis methodology; and

“(7) training in building enforcement actions following inspections, examinations, testing, and investigations.

“(b) PARTNERSHIPS WITH STATE AND LOCAL OFFICIALS.—

“(1) IN GENERAL.—The Secretary, pursuant to a contract or memorandum of understanding between the Secretary and the head of a State, local, territorial, or tribal department or agency, is authorized and encouraged to conduct examinations, testing, and investigations for the purposes of determining compliance with the food safety provisions of this Act through the officers and employees of such State, local, territorial, or tribal department or agency.

“(2) CONTENT.—A contract or memorandum described under paragraph (1) shall include provisions to ensure adequate training of such officers and employees to conduct such examinations, testing, and investigations. The contract or memorandum shall contain provisions regarding reimbursement. Such provisions may, at the sole discretion of the head of the other department or agency, require reimbursement, in whole or in part, from the Secretary for the examinations, testing, or investigations performed pursuant to this section by the officers or employees of the State, territorial, or tribal department or agency.

“(3) EFFECT.—Nothing in this subsection shall be construed to limit the authority of the Secretary under section 702.

“(c) EXTENSION SERVICE.—The Secretary shall ensure coordination with the extension activities of the National Institute of Food and Agriculture of the Department of Agriculture in advising producers and small processors transitioning into new practices required as a result of the enactment of the FDA Food Safety Modernization Act and assisting regulated industry with compliance with such Act.

“(d) NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

“(1) IN GENERAL.—In order to improve food safety and reduce the incidence of foodborne illness, the Secretary shall, not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, enter into one or more memoranda of understanding, or enter into other cooperative agreements, with the Secretary of Agriculture to establish a competitive grant program within the National Institute for Food and Agriculture to provide food safety training, education, extension, outreach, and technical assistance to—

“(A) owners and operators of farms;

“(B) small food processors; and

“(C) small fruit and vegetable merchant wholesalers.

“(2) IMPLEMENTATION.—The competitive grant program established under paragraph (1) shall be carried out in accordance with section 405 of the Agricultural Research, Extension, and Education Reform Act of 1998.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2011 through 2015.”.

Deadline.
Contracts.
Grants.

(b) NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH, AND TECHNICAL ASSISTANCE PROGRAM.—Title IV of the Agricultural Research, Extension, and Education Reform Act of 1998 is amended by inserting after section 404 (7 U.S.C. 7624) the following:

“SEC. 405. NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH, AND TECHNICAL ASSISTANCE PROGRAM.

7 USC 7625.

“(a) IN GENERAL.—The Secretary shall award grants under this section to carry out the competitive grant program established under section 1011(d) of the Federal Food, Drug, and Cosmetic Act, pursuant to any memoranda of understanding entered into under such section.

Grants.

“(b) INTEGRATED APPROACH.—The grant program described under subsection (a) shall be carried out under this section in a manner that facilitates the integration of food safety standards and guidance with the variety of agricultural production systems, encompassing conventional, sustainable, organic, and conservation and environmental practices.

“(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to projects that target small and medium-sized farms, beginning farmers, socially disadvantaged farmers, small processors, or small fresh fruit and vegetable merchant wholesalers.

“(d) PROGRAM COORDINATION.—

“(1) IN GENERAL.—The Secretary shall coordinate implementation of the grant program under this section with the National Integrated Food Safety Initiative.

“(2) INTERACTION.—The Secretary shall—

“(A) in carrying out the grant program under this section, take into consideration applied research, education, and extension results obtained from the National Integrated Food Safety Initiative; and

“(B) in determining the applied research agenda for the National Integrated Food Safety Initiative, take into consideration the needs articulated by participants in projects funded by the program under this section.

“(e) GRANTS.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall make competitive grants to support training, education, extension, outreach, and technical assistance projects that will help improve public health by increasing the understanding and adoption of established food safety standards, guidance, and protocols.

“(2) ENCOURAGED FEATURES.—The Secretary shall encourage projects carried out using grant funds under this section to include co-management of food safety, conservation systems, and ecological health.

“(3) MAXIMUM TERM AND SIZE OF GRANT.—

“(A) IN GENERAL.—A grant under this section shall have a term that is not more than 3 years.

“(B) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to an entity under this section after such entity has received 3 years of grant funding under this section.

“(f) GRANT ELIGIBILITY.—

“(1) IN GENERAL.—To be eligible for a grant under this section, an entity shall be—

“(A) a State cooperative extension service;

“(B) a Federal, State, local, or tribal agency, a nonprofit community-based or non-governmental organization, or an organization representing owners and operators of farms, small food processors, or small fruit and vegetable merchant wholesalers that has a commitment to public health and expertise in administering programs that contribute to food safety;

“(C) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a foundation maintained by an institution of higher education;

“(D) a collaboration of 2 or more eligible entities described in this subsection; or

“(E) such other appropriate entity, as determined by the Secretary.

“(2) MULTISTATE PARTNERSHIPS.—Grants under this section may be made for projects involving more than 1 State.

“(g) REGIONAL BALANCE.—In making grants under this section, the Secretary shall, to the maximum extent practicable, ensure—

“(1) geographic diversity; and

“(2) diversity of types of agricultural production.

“(h) TECHNICAL ASSISTANCE.—The Secretary may use funds made available under this section to provide technical assistance to grant recipients to further the purposes of this section.

“(i) BEST PRACTICES AND MODEL PROGRAMS.—Based on evaluations of, and responses arising from, projects funded under this section, the Secretary may issue a set of recommended best practices and models for food safety training programs for agricultural producers, small food processors, and small fresh fruit and vegetable merchant wholesalers.

“(j) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.”.

SEC. 210. ENHANCING FOOD SAFETY.

(a) GRANTS TO ENHANCE FOOD SAFETY.—Section 1009 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399) is amended to read as follows:

“SEC. 1009. GRANTS TO ENHANCE FOOD SAFETY.

“(a) IN GENERAL.—The Secretary is authorized to make grants to eligible entities to—

“(1) undertake examinations, inspections, and investigations, and related food safety activities under section 702;

“(2) train to the standards of the Secretary for the examination, inspection, and investigation of food manufacturing, processing, packing, holding, distribution, and importation, including as such examination, inspection, and investigation relate to retail food establishments;

“(3) build the food safety capacity of the laboratories of such eligible entity, including the detection of zoonotic diseases;

“(4) build the infrastructure and capacity of the food safety programs of such eligible entity to meet the standards as outlined in the grant application; and

“(5) take appropriate action to protect the public health in response to—

“(A) a notification under section 1008, including planning and otherwise preparing to take such action; or

“(B) a recall of food under this Act.

“(b) ELIGIBLE ENTITIES; APPLICATION.—

“(1) IN GENERAL.—In this section, the term ‘eligible entity’ means an entity—

“(A) that is—

“(i) a State;

“(ii) a locality;

“(iii) a territory;

“(iv) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act); or

“(v) a nonprofit food safety training entity that collaborates with 1 or more institutions of higher education; and

“(B) that submits an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

“(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

“(A) an assurance that the eligible entity has developed plans to engage in the types of activities described in subsection (a);

“(B) a description of the types of activities to be funded by the grant;

“(C) an itemization of how grant funds received under this section will be expended;

“(D) a description of how grant activities will be monitored; and

“(E) an agreement by the eligible entity to report information required by the Secretary to conduct evaluations under this section.

“(c) LIMITATIONS.—The funds provided under subsection (a) shall be available to an eligible entity that receives a grant under this section only to the extent such entity funds the food safety programs of such entity independently of any grant under this section in each year of the grant at a level equal to the level of such funding in the previous year, increased by the Consumer Price Index. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

“(d) ADDITIONAL AUTHORITY.—The Secretary may—

“(1) award a grant under this section in each subsequent fiscal year without reapplication for a period of not more than 3 years, provided the requirements of subsection (c) are met for the previous fiscal year; and

“(2) award a grant under this section in a fiscal year for which the requirement of subsection (c) has not been met only if such requirement was not met because such funding was diverted for response to 1 or more natural disasters or in other extenuating circumstances that the Secretary may determine appropriate.

“(e) DURATION OF AWARDS.—The Secretary may award grants to an individual grant recipient under this section for periods of not more than 3 years. In the event the Secretary conducts a program evaluation, funding in the second year or third year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

“(f) PROGRESS AND EVALUATION.—

“(1) IN GENERAL.—The Secretary shall measure the status and success of each grant program authorized under the FDA Food Safety Modernization Act (and any amendment made by such Act), including the grant program under this section. A recipient of a grant described in the preceding sentence shall, at the end of each grant year, provide the Secretary with information on how grant funds were spent and the status of the efforts by such recipient to enhance food safety. To the extent practicable, the Secretary shall take the performance of such a grant recipient into account when determining whether to continue funding for such recipient.

“(2) NO DUPLICATION.—In carrying out paragraph (1), the Secretary shall not duplicate the efforts of the Secretary under other provisions of this Act or the FDA Food Safety Modernization Act that require measurement and review of the activities of grant recipients under either such Act.

“(g) SUPPLEMENT NOT SUPPLANT.—Grant funds received under this section shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.”.

(b) CENTERS OF EXCELLENCE.—Part P of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

42 USC 280g-16.

“SEC. 399V-5. FOOD SAFETY INTEGRATED CENTERS OF EXCELLENCE.

Deadline.
Designation.

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the working group described in subsection (b)(2), shall designate 5 Integrated Food Safety Centers of Excellence (referred to in this section as the ‘Centers of Excellence’) to serve as resources for Federal, State, and local public health professionals to respond to foodborne illness outbreaks. The Centers of Excellence shall be headquartered at selected State health departments.

“(b) SELECTION OF CENTERS OF EXCELLENCE.—

“(1) ELIGIBLE ENTITIES.—To be eligible to be designated as a Center of Excellence under subsection (a), an entity shall—

“(A) be a State health department;

“(B) partner with 1 or more institutions of higher education that have demonstrated knowledge, expertise, and meaningful experience with regional or national food production, processing, and distribution, as well as leadership in the laboratory, epidemiological, and environmental detection and investigation of foodborne illness; and

“(C) provide to the Secretary such information, at such time, and in such manner, as the Secretary may require.

“(2) WORKING GROUP.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food industry, including food retailers and food manufacturers, consumer organizations, and academia to make recommendations to the Secretary regarding designations of the Centers of Excellence. Deadline.

“(3) ADDITIONAL CENTERS OF EXCELLENCE.—The Secretary may designate eligible entities to be regional Food Safety Centers of Excellence, in addition to the 5 Centers designated under subsection (a).

“(c) ACTIVITIES.—Under the leadership of the Director of the Centers for Disease Control and Prevention, each Center of Excellence shall be based out of a selected State health department, which shall provide assistance to other regional, State, and local departments of health through activities that include—

“(1) providing resources, including timely information concerning symptoms and tests, for frontline health professionals interviewing individuals as part of routine surveillance and outbreak investigations;

“(2) providing analysis of the timeliness and effectiveness of foodborne disease surveillance and outbreak response activities;

“(3) providing training for epidemiological and environmental investigation of foodborne illness, including suggestions for streamlining and standardizing the investigation process;

“(4) establishing fellowships, stipends, and scholarships to train future epidemiological and food-safety leaders and to address critical workforce shortages;

“(5) training and coordinating State and local personnel;

“(6) strengthening capacity to participate in existing or new foodborne illness surveillance and environmental assessment information systems; and

“(7) conducting research and outreach activities focused on increasing prevention, communication, and education regarding food safety.

“(d) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall submit to Congress a report that—

“(1) describes the effectiveness of the Centers of Excellence; and

“(2) provides legislative recommendations or describes additional resources required by the Centers of Excellence.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

“(f) NO DUPLICATION OF EFFORT.—In carrying out activities of the Centers of Excellence or other programs under this section, the Secretary shall not duplicate other Federal foodborne illness response efforts.”

SEC. 211. IMPROVING THE REPORTABLE FOOD REGISTRY.

(a) IN GENERAL.—Section 417 (21 U.S.C. 350f) is amended—

Deadline.	<p>(1) by redesignating subsections (f) through (k) as subsections (i) through (n), respectively; and</p> <p>(2) by inserting after subsection (e) the following:</p> <p>“(f) CRITICAL INFORMATION.—Except with respect to fruits and vegetables that are raw agricultural commodities, not more than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary may require a responsible party to submit to the Secretary consumer-oriented information regarding a reportable food, which shall include—</p> <p>“(1) a description of the article of food as provided in subsection (e)(3);</p> <p>“(2) as provided in subsection (e)(7), affected product identification codes, such as UPC, SKU, or lot or batch numbers sufficient for the consumer to identify the article of food;</p> <p>“(3) contact information for the responsible party as provided in subsection (e)(8); and</p> <p>“(4) any other information the Secretary determines is necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food.</p> <p>“(g) GROCERY STORE NOTIFICATION.—</p> <p>“(1) ACTION BY SECRETARY.—The Secretary shall—</p> <p>“(A) prepare the critical information described under subsection (f) for a reportable food as a standardized one-page summary;</p> <p>“(B) publish such one-page summary on the Internet website of the Food and Drug Administration in a format that can be easily printed by a grocery store for purposes of consumer notification.</p> <p>“(2) ACTION BY GROCERY STORE.—A notification described under paragraph (1)(B) shall include the date and time such summary was posted on the Internet website of the Food and Drug Administration.</p> <p>“(h) CONSUMER NOTIFICATION.—</p> <p>“(1) IN GENERAL.—If a grocery store sold a reportable food that is the subject of the posting and such establishment is part of chain of establishments with 15 or more physical locations, then such establishment shall, not later than 24 hours after a one page summary described in subsection (g) is published, prominently display such summary or the information from such summary via at least one of the methods identified under paragraph (2) and maintain the display for 14 days.</p> <p>“(2) LIST OF CONSPICUOUS LOCATIONS.—Not more than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall develop and publish a list of acceptable conspicuous locations and manners, from which grocery stores shall select at least one, for providing the notification required in paragraph (1). Such list shall include—</p> <p>“(A) posting the notification at or near the register;</p> <p>“(B) providing the location of the reportable food;</p> <p>“(C) providing targeted recall information given to customers upon purchase of a food; and</p> <p>“(D) other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of the enactment of the FDA Food Safety Modernization Act to provide notice of such recalls to consumers as considered appropriate by the Secretary.”.</p>
Publication. Web posting. Notification.	
Deadlines. Time period.	
Publication.	

(b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 206, is amended by adding at the end the following:

“(yy) The knowing and willful failure to comply with the notification requirement under section 417(h).”.

(c) CONFORMING AMENDMENT.—Section 301(e) (21 U.S.C. 331(e)) is amended by striking “417(g)” and inserting “417(j)”.

TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

SEC. 301. FOREIGN SUPPLIER VERIFICATION PROGRAM.

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

“SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.

21 USC 384a.

“(a) IN GENERAL.—

“(1) VERIFICATION REQUIREMENT.—Except as provided under subsections (e) and (f), each importer shall perform risk-based foreign supplier verification activities for the purpose of verifying that the food imported by the importer or agent of an importer is—

“(A) produced in compliance with the requirements of section 418 or section 419, as appropriate; and

“(B) is not adulterated under section 402 or misbranded under section 403(w).

“(2) IMPORTER DEFINED.—For purposes of this section, the term ‘importer’ means, with respect to an article of food—

“(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or

“(B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.

“(b) GUIDANCE.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall issue guidance to assist importers in developing foreign supplier verification programs.

“(c) REGULATIONS.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations to provide for the content of the foreign supplier verification program established under subsection (a).

“(2) REQUIREMENTS.—The regulations promulgated under paragraph (1)—

“(A) shall require that the foreign supplier verification program of each importer be adequate to provide assurances that each foreign supplier to the importer produces the imported food in compliance with—

“(i) processes and procedures, including reasonably appropriate risk-based preventive controls, that provide the same level of public health protection as those required under section 418 or section 419 (taking into

consideration variances granted under section 419), as appropriate; and

“(ii) section 402 and section 403(w).

“(B) shall include such other requirements as the Secretary deems necessary and appropriate to verify that food imported into the United States is as safe as food produced and sold within the United States.

“(3) CONSIDERATIONS.—In promulgating regulations under this subsection, the Secretary shall, as appropriate, take into account differences among importers and types of imported foods, including based on the level of risk posed by the imported food.

“(4) ACTIVITIES.—Verification activities under a foreign supplier verification program under this section may include monitoring records for shipments, lot-by-lot certification of compliance, annual on-site inspections, checking the hazard analysis and risk-based preventive control plan of the foreign supplier, and periodically testing and sampling shipments.

Time period.

“(d) RECORD MAINTENANCE AND ACCESS.—Records of an importer related to a foreign supplier verification program shall be maintained for a period of not less than 2 years and shall be made available promptly to a duly authorized representative of the Secretary upon request.

“(e) EXEMPTION OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.—This section shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with, 1 of the following standards and regulations with respect to such facility:

“(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

Applicability.

The exemption under paragraph (3) shall apply only with respect to microbiological hazards that are regulated under the standards for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers under part 113 of chapter 21, Code of Federal Regulations (or any successor regulations).

Notice.
Federal Register,
publication.

“(f) ADDITIONAL EXEMPTIONS.—The Secretary, by notice published in the Federal Register, shall establish an exemption from the requirements of this section for articles of food imported in small quantities for research and evaluation purposes or for personal consumption, provided that such foods are not intended for retail sale and are not sold or distributed to the public.

Web posting.

“(g) PUBLICATION OF LIST OF PARTICIPANTS.—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list that includes the name of, location of, and other information deemed necessary by the Secretary about, importers participating under this section.”.

(b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 211, is amended by adding at the end the following:

“(zz) The importation or offering for importation of a food if the importer (as defined in section 805) does not have in place

a foreign supplier verification program in compliance with such section 805.”.

(c) **IMPORTS.**—Section 801(a) (21 U.S.C. 381(a)) is amended by adding “or the importer (as defined in section 805) is in violation of such section 805” after “or in violation of section 505”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 2 years after the date of enactment of this Act. 21 USC 331 note.

SEC. 302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 301, is amended by adding at the end the following:

“SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

21 USC 384b.

“(a) **IN GENERAL.**—Beginning not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

Deadline.

“(1) establish a program, in consultation with the Secretary of Homeland Security—

“(A) to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program; and

“(B) consistent with section 808, establish a process for the issuance of a facility certification to accompany food offered for importation by importers who have voluntarily agreed to participate in such program; and

“(2) issue a guidance document related to participation in, revocation of such participation in, reinstatement in, and compliance with, such program.

Guidelines.

“(b) **VOLUNTARY PARTICIPATION.**—An importer may request the Secretary to provide for the expedited review and importation of designated foods in accordance with the program established by the Secretary under subsection (a).

“(c) **NOTICE OF INTENT TO PARTICIPATE.**—An importer that intends to participate in the program under this section in a fiscal year shall submit a notice and application to the Secretary of such intent at the time and in a manner established by the Secretary.

“(d) **ELIGIBILITY.**—Eligibility shall be limited to an importer offering food for importation from a facility that has a certification described in subsection (a). In reviewing the applications and making determinations on such applications, the Secretary shall consider the risk of the food to be imported based on factors, such as the following:

“(1) The known safety risks of the food to be imported.

“(2) The compliance history of foreign suppliers used by the importer, as appropriate.

“(3) The capability of the regulatory system of the country of export to ensure compliance with United States food safety standards for a designated food.

“(4) The compliance of the importer with the requirements of section 805.

“(5) The recordkeeping, testing, inspections and audits of facilities, traceability of articles of food, temperature controls, and sourcing practices of the importer.

“(6) The potential risk for intentional adulteration of the food.

“(7) Any other factor that the Secretary determines appropriate.

Deadline.

“(e) **REVIEW AND REVOCATION.**—Any importer qualified by the Secretary in accordance with the eligibility criteria set forth in this section shall be reevaluated not less often than once every 3 years and the Secretary shall promptly revoke the qualified importer status of any importer found not to be in compliance with such criteria.

“(f) **FALSE STATEMENTS.**—Any statement or representation made by an importer to the Secretary shall be subject to section 1001 of title 18, United States Code.

“(g) **DEFINITION.**—For purposes of this section, the term ‘importer’ means the person that brings food, or causes food to be brought, from a foreign country into the customs territory of the United States.”.

SEC. 303. AUTHORITY TO REQUIRE IMPORT CERTIFICATIONS FOR FOOD.

(a) **IN GENERAL.**—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting after the third sentence the following: “With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (q) that such food be accompanied by a certification or other assurance that the food meets applicable requirements of this Act, then such article shall be refused admission.”.

(b) **ADDITION OF CERTIFICATION REQUIREMENT.**—Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

“(q) **CERTIFICATIONS CONCERNING IMPORTED FOODS.**—

“(1) **IN GENERAL.**—The Secretary may require, as a condition of granting admission to an article of food imported or offered for import into the United States, that an entity described in paragraph (3) provide a certification, or such other assurances as the Secretary determines appropriate, that the article of food complies with applicable requirements of this Act. Such certification or assurances may be provided in the form of shipment-specific certificates, a listing of certified facilities that manufacture, process, pack, or hold such food, or in such other form as the Secretary may specify.

“(2) **FACTORS TO BE CONSIDERED IN REQUIRING CERTIFICATION.**—The Secretary shall base the determination that an article of food is required to have a certification described in paragraph (1) on the risk of the food, including—

“(A) known safety risks associated with the food;

“(B) known food safety risks associated with the country, territory, or region of origin of the food;

“(C) a finding by the Secretary, supported by scientific, risk-based evidence, that—

“(i) the food safety programs, systems, and standards in the country, territory, or region of origin of the food are inadequate to ensure that the article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act; and

“(ii) the certification would assist the Secretary in determining whether to refuse or admit the article of food under subsection (a); and

“(D) information submitted to the Secretary in accordance with the process established in paragraph (7).

“(3) CERTIFYING ENTITIES.—For purposes of paragraph (1), entities that shall provide the certification or assurances described in such paragraph are—

“(A) an agency or a representative of the government of the country from which the article of food at issue originated, as designated by the Secretary; or

“(B) such other persons or entities accredited pursuant to section 808 to provide such certification or assurance.

“(4) RENEWAL AND REFUSAL OF CERTIFICATIONS.—The Secretary may—

“(A) require that any certification or other assurance provided by an entity specified in paragraph (2) be renewed by such entity at such times as the Secretary determines appropriate; and

“(B) refuse to accept any certification or assurance if the Secretary determines that such certification or assurance is not valid or reliable.

“(5) ELECTRONIC SUBMISSION.—The Secretary shall provide for the electronic submission of certifications under this subsection.

“(6) FALSE STATEMENTS.—Any statement or representation made by an entity described in paragraph (2) to the Secretary shall be subject to section 1001 of title 18, United States Code.

“(7) ASSESSMENT OF FOOD SAFETY PROGRAMS, SYSTEMS, AND STANDARDS.—If the Secretary determines that the food safety programs, systems, and standards in a foreign region, country, or territory are inadequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act, the Secretary shall, to the extent practicable, identify such inadequacies and establish a process by which the foreign region, country, or territory may inform the Secretary of improvements made to such food safety program, system, or standard and demonstrate that those controls are adequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act.”.

(c) CONFORMING TECHNICAL AMENDMENT.—Section 801(b) (21 U.S.C. 381(b)) is amended in the second sentence by striking “with respect to an article included within the provision of the fourth sentence of subsection (a)” and inserting “with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761,”.

(d) NO LIMIT ON AUTHORITY.—Nothing in the amendments made by this section shall limit the authority of the Secretary to conduct inspections of imported food or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported food.

21 USC 381 note.

SEC. 304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.

(a) IN GENERAL.—Section 801(m)(1) (21 U.S.C. 381(m)(1)) is amended by inserting “any country to which the article has been refused entry,” after “the country from which the article is shipped;”.

Deadline.

21 USC 381 note.

(b) **REGULATIONS.**—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart I of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

21 USC 381 note.

(c) **EFFECTIVE DATE.**—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 305. BUILDING CAPACITY OF FOREIGN GOVERNMENTS WITH RESPECT TO FOOD SAFETY.

Plans.

(a) **IN GENERAL.**—The Secretary shall, not later than 2 years of the date of enactment of this Act, develop a comprehensive plan to expand the technical, scientific, and regulatory food safety capacity of foreign governments, and their respective food industries, from which foods are exported to the United States.

(b) **CONSULTATION.**—In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Agriculture, Secretary of State, Secretary of the Treasury, the Secretary of Homeland Security, the United States Trade Representative, and the Secretary of Commerce, representatives of the food industry, appropriate foreign government officials, nongovernmental organizations that represent the interests of consumers, and other stakeholders.

(c) **PLAN.**—The plan developed under subsection (a) shall include, as appropriate, the following:

(1) Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.

(2) Provisions for secure electronic data sharing.

(3) Provisions for mutual recognition of inspection reports.

(4) Training of foreign governments and food producers on United States requirements for safe food.

(5) Recommendations on whether and how to harmonize requirements under the Codex Alimentarius.

(6) Provisions for the multilateral acceptance of laboratory methods and testing and detection techniques.

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to affect the regulation of dietary supplements under the Dietary Supplement Health and Education Act of 1994 (Public Law 103–417).

SEC. 306. INSPECTION OF FOREIGN FOOD FACILITIES.

(a) **IN GENERAL.**—Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 302, is amended by inserting at the end the following:

21 USC 384c.

“SEC. 807. INSPECTION OF FOREIGN FOOD FACILITIES.

“(a) **INSPECTION.**—The Secretary—

“(1) may enter into arrangements and agreements with foreign governments to facilitate the inspection of foreign facilities registered under section 415; and

“(2) shall direct resources to inspections of foreign facilities, suppliers, and food types, especially such facilities, suppliers, and food types that present a high risk (as identified by the Secretary), to help ensure the safety and security of the food supply of the United States.

“(b) EFFECT OF INABILITY TO INSPECT.—Notwithstanding any other provision of law, food shall be refused admission into the United States if it is from a foreign factory, warehouse, or other establishment of which the owner, operator, or agent in charge, or the government of the foreign country, refuses to permit entry of United States inspectors or other individuals duly designated by the Secretary, upon request, to inspect such factory, warehouse, or other establishment. For purposes of this subsection, such an owner, operator, or agent in charge shall be considered to have refused an inspection if such owner, operator, or agent in charge does not permit an inspection of a factory, warehouse, or other establishment during the 24-hour period after such request is submitted, or after such other time period, as agreed upon by the Secretary and the foreign factory, warehouse, or other establishment.”.

(b) INSPECTION BY THE SECRETARY OF COMMERCE.—

21 USC 2241.

(1) IN GENERAL.—The Secretary of Commerce, in coordination with the Secretary of Health and Human Services, may send 1 or more inspectors to a country or facility of an exporter from which seafood imported into the United States originates. The inspectors shall assess practices and processes used in connection with the farming, cultivation, harvesting, preparation for market, or transportation of such seafood and may provide technical assistance related to such activities.

(2) INSPECTION REPORT.—

(A) IN GENERAL.—The Secretary of Health and Human Services, in coordination with the Secretary of Commerce, shall—

(i) prepare an inspection report for each inspection conducted under paragraph (1);

(ii) provide the report to the country or exporter that is the subject of the report; and

(iii) provide a 30-day period during which the country or exporter may provide a rebuttal or other comments on the findings of the report to the Secretary of Health and Human Services.

Time period.

(B) DISTRIBUTION AND USE OF REPORT.—The Secretary of Health and Human Services shall consider the inspection reports described in subparagraph (A) in distributing inspection resources under section 421 of the Federal Food, Drug, and Cosmetic Act, as added by section 201.

SEC. 307. ACCREDITATION OF THIRD-PARTY AUDITORS.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 306, is amended by adding at the end the following:

“SEC. 808. ACCREDITATION OF THIRD-PARTY AUDITORS.

21 USC 384d.

“(a) DEFINITIONS.—In this section:

“(1) AUDIT AGENT.—The term ‘audit agent’ means an individual who is an employee or agent of an accredited third-party auditor and, although not individually accredited, is qualified to conduct food safety audits on behalf of an accredited third-party auditor.

“(2) ACCREDITATION BODY.—The term ‘accreditation body’ means an authority that performs accreditation of third-party auditors.

“(3) THIRD-PARTY AUDITOR.—The term ‘third-party auditor’ means a foreign government, agency of a foreign government,

foreign cooperative, or any other third party, as the Secretary determines appropriate in accordance with the model standards described in subsection (b)(2), that is eligible to be considered for accreditation to conduct food safety audits to certify that eligible entities meet the applicable requirements of this section. A third-party auditor may be a single individual. A third-party auditor may employ or use audit agents to help conduct consultative and regulatory audits.

“(4) ACCREDITED THIRD-PARTY AUDITOR.—The term ‘accredited third-party auditor’ means a third-party auditor accredited by an accreditation body to conduct audits of eligible entities to certify that such eligible entities meet the applicable requirements of this section. An accredited third-party auditor may be an individual who conducts food safety audits to certify that eligible entities meet the applicable requirements of this section.

“(5) CONSULTATIVE AUDIT.—The term ‘consultative audit’ means an audit of an eligible entity—

“(A) to determine whether such entity is in compliance with the provisions of this Act and with applicable industry standards and practices; and

“(B) the results of which are for internal purposes only.

“(6) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a foreign entity, including a foreign facility registered under section 415, in the food import supply chain that chooses to be audited by an accredited third-party auditor or the audit agent of such accredited third-party auditor.

“(7) REGULATORY AUDIT.—The term ‘regulatory audit’ means an audit of an eligible entity—

“(A) to determine whether such entity is in compliance with the provisions of this Act; and

“(B) the results of which determine—

“(i) whether an article of food manufactured, processed, packed, or held by such entity is eligible to receive a food certification under section 801(q); or

“(ii) whether a facility is eligible to receive a facility certification under section 806(a) for purposes of participating in the program under section 806.

“(b) ACCREDITATION SYSTEM.—

“(1) ACCREDITATION BODIES.—

“(A) RECOGNITION OF ACCREDITATION BODIES.—

“(i) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a system for the recognition of accreditation bodies that accredit third-party auditors to certify that eligible entities meet the applicable requirements of this section.

“(ii) DIRECT ACCREDITATION.—If, by the date that is 2 years after the date of establishment of the system described in clause (i), the Secretary has not identified and recognized an accreditation body to meet the requirements of this section, the Secretary may directly accredit third-party auditors.

“(B) NOTIFICATION.—Each accreditation body recognized by the Secretary shall submit to the Secretary a

Deadline.

list of all accredited third-party auditors accredited by such body and the audit agents of such auditors.

“(C) REVOCATION OF RECOGNITION AS AN ACCREDITATION BODY.—The Secretary shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

“(D) REINSTATEMENT.—The Secretary shall establish procedures to reinstate recognition of an accreditation body if the Secretary determines, based on evidence presented by such accreditation body, that revocation was inappropriate or that the body meets the requirements for recognition under this section.

Procedures.

“(2) MODEL ACCREDITATION STANDARDS.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall develop model standards, including requirements for regulatory audit reports, and each recognized accreditation body shall ensure that third-party auditors and audit agents of such auditors meet such standards in order to qualify such third-party auditors as accredited third-party auditors under this section. In developing the model standards, the Secretary shall look to standards in place on the date of the enactment of this section for guidance, to avoid unnecessary duplication of efforts and costs.

Deadline.

“(c) THIRD-PARTY AUDITORS.—

“(1) REQUIREMENTS FOR ACCREDITATION AS A THIRD-PARTY AUDITOR.—

“(A) FOREIGN GOVERNMENTS.—Prior to accrediting a foreign government or an agency of a foreign government as an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of food safety programs, systems, and standards of the government or agency of the government as the Secretary deems necessary, including requirements under the model standards developed under subsection (b)(2), to determine that the foreign government or agency of the foreign government is capable of adequately ensuring that eligible entities or foods certified by such government or agency meet the requirements of this Act with respect to food manufactured, processed, packed, or held for import into the United States.

“(B) FOREIGN COOPERATIVES AND OTHER THIRD PARTIES.—Prior to accrediting a foreign cooperative that aggregates the products of growers or processors, or any other third party to be an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of the training and qualifications of audit agents used by that cooperative or party and conduct such reviews of internal systems and such other investigation of the cooperative or party as the Secretary deems necessary, including requirements under the model standards developed under subsection (b)(2), to determine that each eligible entity certified by the cooperative or party has systems and standards in use to ensure that such entity or food meets the requirements of this Act.

“(2) REQUIREMENT TO ISSUE CERTIFICATION OF ELIGIBLE ENTITIES OR FOODS.—

“(A) IN GENERAL.—An accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) may not accredit a third-party auditor unless such third-party auditor agrees to issue a written and, as appropriate, electronic food certification, described in section 801(q), or facility certification under section 806(a), as appropriate, to accompany each food shipment for import into the United States from an eligible entity, subject to requirements set forth by the Secretary. Such written or electronic certification may be included with other documentation regarding such food shipment. The Secretary shall consider certifications under section 801(q) and participation in the voluntary qualified importer program described in section 806 when targeting inspection resources under section 421.

“(B) PURPOSE OF CERTIFICATION.—The Secretary shall use certification provided by accredited third-party auditors to—

“(i) determine, in conjunction with any other assurances the Secretary may require under section 801(q), whether a food satisfies the requirements of such section; and

“(ii) determine whether a facility is eligible to be a facility from which food may be offered for import under the voluntary qualified importer program under section 806.

“(C) REQUIREMENTS FOR ISSUING CERTIFICATION.—

“(i) IN GENERAL.—An accredited third-party auditor shall issue a food certification under section 801(q) or a facility certification described under subparagraph (B) only after conducting a regulatory audit and such other activities that may be necessary to establish compliance with the requirements of such sections.

“(ii) PROVISION OF CERTIFICATION.—Only an accredited third-party auditor or the Secretary may provide a facility certification under section 806(a). Only those parties described in 801(q)(3) or the Secretary may provide a food certification under 301(g).

“(3) AUDIT REPORT SUBMISSION REQUIREMENTS.—

“(A) REQUIREMENTS IN GENERAL.—As a condition of accreditation, not later than 45 days after conducting an audit, an accredited third-party auditor or audit agent of such auditor shall prepare, and, in the case of a regulatory audit, submit, the audit report for each audit conducted, in a form and manner designated by the Secretary, which shall include—

“(i) the identity of the persons at the audited eligible entity responsible for compliance with food safety requirements;

“(ii) the dates of the audit;

“(iii) the scope of the audit; and

“(iv) any other information required by the Secretary that relates to or may influence an assessment of compliance with this Act.

Audit.

“(B) RECORDS.—Following any accreditation of a third-party auditor, the Secretary may, at any time, require the accredited third-party auditor to submit to the Secretary an onsite audit report and such other reports or documents required as part of the audit process, for any eligible entity certified by the third-party auditor or audit agent of such auditor. Such report may include documentation that the eligible entity is in compliance with any applicable registration requirements.

“(C) LIMITATION.—The requirement under subparagraph (B) shall not include any report or other documents resulting from a consultative audit by the accredited third-party auditor, except that the Secretary may access the results of a consultative audit in accordance with section 414.

“(4) REQUIREMENTS OF ACCREDITED THIRD-PARTY AUDITORS AND AUDIT AGENTS OF SUCH AUDITORS.—

“(A) RISKS TO PUBLIC HEALTH.—If, at any time during an audit, an accredited third-party auditor or audit agent of such auditor discovers a condition that could cause or contribute to a serious risk to the public health, such auditor shall immediately notify the Secretary of—

Notification.

“(i) the identification of the eligible entity subject to the audit; and

“(ii) such condition.

“(B) TYPES OF AUDITS.—An accredited third-party auditor or audit agent of such auditor may perform consultative and regulatory audits of eligible entities.

“(C) LIMITATIONS.—

“(i) IN GENERAL.—An accredited third party auditor may not perform a regulatory audit of an eligible entity if such agent has performed a consultative audit or a regulatory audit of such eligible entity during the previous 13-month period.

“(ii) WAIVER.—The Secretary may waive the application of clause (i) if the Secretary determines that there is insufficient access to accredited third-party auditors in a country or region.

“(5) CONFLICTS OF INTEREST.—

“(A) THIRD-PARTY AUDITORS.—An accredited third-party auditor shall—

“(i) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor;

“(ii) in carrying out audits of eligible entities under this section, have procedures to ensure against the use of any officer or employee of such auditor that has a financial conflict of interest regarding an eligible entity to be certified by such auditor; and

“(iii) annually make available to the Secretary disclosures of the extent to which such auditor and the officers and employees of such auditor have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

Deadline.

“(B) AUDIT AGENTS.—An audit agent shall—

“(i) not own or operate an eligible entity to be audited by such agent;

- Deadline. “(ii) in carrying out audits of eligible entities under this section, have procedures to ensure that such agent does not have a financial conflict of interest regarding an eligible entity to be audited by such agent; and
- “(iii) annually make available to the Secretary disclosures of the extent to which such agent has maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.
- Deadline. “(C) REGULATIONS.—The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act to implement this section and to ensure that there are protections against conflicts of interest between an accredited third-party auditor and the eligible entity to be certified by such auditor or audited by such audit agent. Such regulations shall include—
- “(i) requiring that audits performed under this section be unannounced;
- “(ii) a structure to decrease the potential for conflicts of interest, including timing and public disclosure, for fees paid by eligible entities to accredited third-party auditors; and
- “(iii) appropriate limits on financial affiliations between an accredited third-party auditor or audit agents of such auditor and any person that owns or operates an eligible entity to be certified by such auditor, as described in subparagraphs (A) and (B).
- “(6) WITHDRAWAL OF ACCREDITATION.—
- “(A) IN GENERAL.—The Secretary shall withdraw accreditation from an accredited third-party auditor—
- “(i) if food certified under section 801(q) or from a facility certified under paragraph (2)(B) by such third-party auditor is linked to an outbreak of foodborne illness that has a reasonable probability of causing serious adverse health consequences or death in humans or animals;
- “(ii) following an evaluation and finding by the Secretary that the third-party auditor no longer meets the requirements for accreditation; or
- “(iii) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to ensure continued compliance with the requirements set forth in this section.
- “(B) ADDITIONAL BASIS FOR WITHDRAWAL OF ACCREDITATION.—The Secretary may withdraw accreditation from an accredited third-party auditor in the case that such third-party auditor is accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(1)(C) is revoked, if the Secretary determines that there is good cause for the withdrawal.
- Waiver authority. “(C) EXCEPTION.—The Secretary may waive the application of subparagraph (A)(i) if the Secretary—
- “(i) conducts an investigation of the material facts related to the outbreak of human or animal illness; and

“(ii) reviews the steps or actions taken by the third party auditor to justify the certification and determines that the accredited third-party auditor satisfied the requirements under section 801(q) of certifying the food, or the requirements under paragraph (2)(B) of certifying the entity.

“(7) REACCREDITATION.—The Secretary shall establish procedures to reinstate the accreditation of a third-party auditor for which accreditation has been withdrawn under paragraph (6)—

Procedures.

“(A) if the Secretary determines, based on evidence presented, that the third-party auditor satisfies the requirements of this section and adequate grounds for revocation no longer exist; and

“(B) in the case of a third-party auditor accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(1)(C) is revoked—

“(i) if the third-party auditor becomes accredited not later than 1 year after revocation of accreditation under paragraph (6)(A), through direct accreditation under subsection (b)(1)(A)(ii) or by an accreditation body in good standing; or

Deadline.

“(ii) under such conditions as the Secretary may require for a third-party auditor under paragraph (6)(B).

“(8) NEUTRALIZING COSTS.—The Secretary shall establish by regulation a reimbursement (user fee) program, similar to the method described in section 203(h) of the Agriculture Marketing Act of 1946, by which the Secretary assesses fees and requires accredited third-party auditors and audit agents to reimburse the Food and Drug Administration for the work performed to establish and administer the accreditation system under this section. The Secretary shall make operating this program revenue-neutral and shall not generate surplus revenue from such a reimbursement mechanism. Fees authorized under this paragraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriation Acts. Such fees are authorized to remain available until expended.

Regulations.

“(d) RECERTIFICATION OF ELIGIBLE ENTITIES.—An eligible entity shall apply for annual recertification by an accredited third-party auditor if such entity—

Applicability.

“(1) intends to participate in voluntary qualified importer program under section 806; or

“(2) is required to provide to the Secretary a certification under section 801(q) for any food from such entity.

“(e) FALSE STATEMENTS.—Any statement or representation made—

“(1) by an employee or agent of an eligible entity to an accredited third-party auditor or audit agent; or

“(2) by an accredited third-party auditor to the Secretary, shall be subject to section 1001 of title 18, United States Code.

“(f) MONITORING.—To ensure compliance with the requirements of this section, the Secretary shall—

“(1) periodically, or at least once every 4 years, reevaluate the accreditation bodies described in subsection (b)(1);

Deadlines.

Deadlines.

“(2) periodically, or at least once every 4 years, evaluate the performance of each accredited third-party auditor, through the review of regulatory audit reports by such auditors, the compliance history as available of eligible entities certified by such auditors, and any other measures deemed necessary by the Secretary;

“(3) at any time, conduct an onsite audit of any eligible entity certified by an accredited third-party auditor, with or without the auditor present; and

“(4) take any other measures deemed necessary by the Secretary.

“(g) PUBLICLY AVAILABLE REGISTRY.—The Secretary shall establish a publicly available registry of accreditation bodies and of accredited third-party auditors, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies and auditors.

“(h) LIMITATIONS.—

“(1) NO EFFECT ON SECTION 704 INSPECTIONS.—The audits performed under this section shall not be considered inspections under section 704.

“(2) NO EFFECT ON INSPECTION AUTHORITY.—Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.”.

21 USC 2242.

SEC. 308. FOREIGN OFFICES OF THE FOOD AND DRUG ADMINISTRATION.

Establishment.

(a) IN GENERAL.—The Secretary shall establish offices of the Food and Drug Administration in foreign countries selected by the Secretary, to provide assistance to the appropriate governmental entities of such countries with respect to measures to provide for the safety of articles of food and other products regulated by the Food and Drug Administration exported by such country to the United States, including by directly conducting risk-based inspections of such articles and supporting such inspections by such governmental entity.

(b) CONSULTATION.—In establishing the foreign offices described in subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Homeland Security, and the United States Trade Representative.

(c) REPORT.—Not later than October 1, 2011, the Secretary shall submit to Congress a report on the basis for the selection by the Secretary of the foreign countries in which the Secretary established offices, the progress which such offices have made with respect to assisting the governments of such countries in providing for the safety of articles of food and other products regulated by the Food and Drug Administration exported to the United States, and the plans of the Secretary for establishing additional foreign offices of the Food and Drug Administration, as appropriate.

21 USC 2243.

SEC. 309. SMUGGLED FOOD.

Deadline.
Strategy.

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Secretary shall, in coordination with the Secretary of Homeland Security, develop and implement a strategy to better identify smuggled food and prevent entry of such food into the United States.

Deadline.

(b) NOTIFICATION TO HOMELAND SECURITY.—Not later than 10 days after the Secretary identifies a smuggled food that the Secretary believes would cause serious adverse health consequences

or death to humans or animals, the Secretary shall provide to the Secretary of Homeland Security a notification under section 417(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350f(k)) describing the smuggled food and, if available, the names of the individuals or entities that attempted to import such food into the United States.

(c) PUBLIC NOTIFICATION.—If the Secretary—

(1) identifies a smuggled food;

(2) reasonably believes exposure to the food would cause serious adverse health consequences or death to humans or animals; and

(3) reasonably believes that the food has entered domestic commerce and is likely to be consumed,

the Secretary shall promptly issue a press release describing that food and shall use other emergency communication or recall networks, as appropriate, to warn consumers and vendors about the potential threat.

(d) EFFECT OF SECTION.—Nothing in this section shall affect the authority of the Secretary to issue public notifications under other circumstances.

(e) DEFINITION.—In this subsection, the term “smuggled food” means any food that a person introduces into the United States through fraudulent means or with the intent to defraud or mislead.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FUNDING FOR FOOD SAFETY.

(a) IN GENERAL.—There are authorized to be appropriated to carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities in the Office of Regulatory Affairs of the Food and Drug Administration such sums as may be necessary for fiscal years 2011 through 2015.

(b) INCREASED NUMBER OF FIELD STAFF.—

(1) IN GENERAL.—To carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities of the Office of Regulatory Affairs of the Food and Drug Administration, the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than—

(A) 4,000 staff members in fiscal year 2011;

(B) 4,200 staff members in fiscal year 2012;

(C) 4,600 staff members in fiscal year 2013; and

(D) 5,000 staff members in fiscal year 2014.

(2) FIELD STAFF FOR FOOD DEFENSE.—The goal under paragraph (1) shall include an increase of 150 employees by fiscal year 2011 to—

(A) provide additional detection of and response to food defense threats; and

(B) detect, track, and remove smuggled food (as defined in section 309) from commerce.

SEC. 402. EMPLOYEE PROTECTIONS.

Chapter X of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.), as amended by section 209, is further amended by adding at the end the following:

21 USC 399d.

“SEC. 1012. EMPLOYEE PROTECTIONS.

“(a) IN GENERAL.—No entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee’s initiative or in the ordinary course of the employee’s duties (or any person acting pursuant to a request of the employee)—

“(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any order, rule, regulation, standard, or ban under this Act, or any order, rule, regulation, standard, or ban under this Act;

“(2) testified or is about to testify in a proceeding concerning such violation;

“(3) assisted or participated or is about to assist or participate in such a proceeding; or

“(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act, or any order, rule, regulation, standard, or ban under this Act.

“(b) PROCESS.—

Deadline.

“(1) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the ‘Secretary’) alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of the evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

Notification.

“(2) INVESTIGATION.—

Deadline.

Notification.

“(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have

committed a violation of subsection (a) of the Secretary's findings.

“(B) REASONABLE CAUSE FOUND; PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

Deadline.

“(C) DISMISSAL OF COMPLAINT.—

“(i) STANDARD FOR COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(iii) VIOLATION STANDARD.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(iv) RELIEF STANDARD.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(3) FINAL ORDER.—

“(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

Deadline.

“(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

“(i) to take affirmative action to abate the violation;

“(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

“(iii) to provide compensatory damages to the complainant.

“(C) PENALTY.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

“(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys’ fee, not exceeding \$1,000, to be paid by the complainant.

“(4) ACTION IN COURT.—

Deadlines.

“(A) IN GENERAL.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

“(B) RELIEF.—The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

“(i) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

“(ii) the amount of back pay, with interest; and

“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(5) REVIEW.—

“(A) IN GENERAL.—Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the

date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. Deadline.

“(B) NO JUDICIAL REVIEW.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

“(6) FAILURE TO COMPLY WITH ORDER.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

“(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

“(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

“(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.

“(c) EFFECT OF SECTION.—

“(1) OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“(d) ENFORCEMENT.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(e) LIMITATION.—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity’s agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.”.

21 USC 2251.

SEC. 403. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding voluntary inspection of non-amenable species under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act;

(4) alter or limit the authority of the Secretary of Agriculture under the laws administered by such Secretary, including—

(A) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(B) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

(C) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(D) the United States Grain Standards Act (7 U.S.C. 71 et seq.);

(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(F) the United States Warehouse Act (7 U.S.C. 241 et seq.);

(G) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.); and

(H) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with the amendments made by the Agricultural Marketing Agreement Act of 1937; or

(5) alter, impede, or affect the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or any other statute, including any authority related to securing the borders of the United States, managing ports of entry, or agricultural import and entry inspection activities.

21 USC 2252.

SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

SEC. 405. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 2751:

CONGRESSIONAL RECORD:

Vol. 155 (2009): June 9, considered and passed House.

Vol. 156 (2010): Dec. 19, considered and passed Senate, amended.

Dec. 21, House concurred in Senate amendments.



Public Law 111–354
111th Congress

An Act

Jan. 4, 2011
[H.R. 4445]

To amend Public Law 95–232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico.

Indian Pueblo
Cultural Center
Clarification Act.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Pueblo Cultural Center Clarification Act”.

**SEC. 2. REPEAL OF RESTRICTION ON TREATING AS INDIAN COUNTRY
CERTAIN LANDS HELD IN TRUST FOR INDIAN PUEBLOS IN
NEW MEXICO.**

Public Law 95–232 is amended in the first section in subsection (b) by striking “However, such property shall not be ‘Indian country’ as defined in section 1151 of title 18, United States Code.”.

SEC. 3. PROHIBITION ON GAMING.

92 Stat. 30.

Public Law 95–232 is amended in the first section by adding at the end the following:

“(e) PROHIBITION ON GAMING.—Gaming, as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), shall be prohibited on land held in trust pursuant to subsection (b).”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 4445:

HOUSE REPORTS: No. 111–515 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–379 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 29, 30, considered and passed House.

Dec. 21, considered and passed Senate.



Public Law 111–355
111th Congress

An Act

To designate the facility of the United States Postal Service located at 1332 Sharon Copley Road in Sharon Center, Ohio, as the “Emil Bolas Post Office”.

Jan. 4, 2011
[H.R. 4602]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EMIL BOLAS POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1332 Sharon Copley Road in Sharon Center, Ohio, shall be known and designated as the “Emil Bolas Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Emil Bolas Post Office”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 4602:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, 29, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–356
111th Congress

An Act

Jan. 4, 2011
[H.R. 4748]

To amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes.

Northern Border
Counternarcotics
Strategy Act of
2010.
Canada.
21 USC 1701
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Northern Border Counternarcotics Strategy Act of 2010”.

SEC. 2. NORTHERN BORDER COUNTERNARCOTICS STRATEGY.

The Office of National Drug Control Policy Reauthorization Act of 2006 (Public Law 109–469; 120 Stat. 3502) is amended by inserting after section 1110 the following:

21 USC 1705
note.

“SEC. 1110A. REQUIREMENT FOR NORTHERN BORDER COUNTERNARCOTICS STRATEGY.

“(a) **DEFINITIONS.**—In this section, the terms ‘appropriate congressional committees’, ‘Director’, and ‘National Drug Control Program agency’ have the meanings given those terms in section 702 of the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701).

Deadlines.

“(b) **STRATEGY.**—Not later than 180 days after the date of enactment of this section, and every 2 years thereafter, the Director, in consultation with the head of each relevant National Drug Control Program agency and relevant officials of States, local governments, tribal governments, and the governments of other countries, shall develop a Northern Border Counternarcotics Strategy and submit the strategy to—

“(1) the appropriate congressional committees (including the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives);

“(2) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Indian Affairs of the Senate; and

“(3) the Committee on Armed Services, the Committee on Homeland Security, and the Committee on Natural Resources of the House of Representatives.

“(c) **PURPOSES.**—The Northern Border Counternarcotics Strategy shall—

“(1) set forth the strategy of the Federal Government for preventing the illegal trafficking of drugs across the international border between the United States and Canada, including through ports of entry and between ports of entry on the border;

“(2) state the specific roles and responsibilities of each relevant National Drug Control Program agency for implementing the strategy;

“(3) identify the specific resources required to enable the relevant National Drug Control Program agencies to implement the strategy; and

“(4) reflect the unique nature of small communities along the international border between the United States and Canada, ongoing cooperation and coordination with Canadian law enforcement authorities, and variations in the volumes of vehicles and pedestrians crossing through ports of entry along the international border between the United States and Canada.

“(d) SPECIFIC CONTENT RELATED TO CROSS-BORDER INDIAN RESERVATIONS.—The Northern Border Counternarcotics Strategy shall include—

“(1) a strategy to end the illegal trafficking of drugs to or through Indian reservations on or near the international border between the United States and Canada; and

“(2) recommendations for additional assistance, if any, needed by tribal law enforcement agencies relating to the strategy, including an evaluation of Federal technical and financial assistance, infrastructure capacity building, and interoperability deficiencies.

“(e) LIMITATION.—

“(1) IN GENERAL.—The Northern Border Counternarcotics Strategy shall not change the existing agency authorities and this section shall not be construed to amend or modify any law governing interagency relationships.

“(2) LEGITIMATE TRADE AND TRAVEL.—The Northern Border Counternarcotics Strategy shall be designed to promote, and not hinder, legitimate trade and travel.

“(f) TREATMENT OF CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—

“(1) IN GENERAL.—The Northern Border Counternarcotics Strategy shall be submitted in unclassified form and shall be available to the public.

Public
information.

“(2) ANNEX.—The Northern Border Counternarcotics Strategy may include an annex containing any classified information or information the public disclosure of which, as determined by the Director or the head of any relevant National Drug Control Program agency, would be detrimental to the

law enforcement or national security activities of any Federal, State, local, or tribal agency.”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 4748:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 27, considered and passed House.

Dec. 20, considered and passed Senate, amended.

Dec. 21, House concurred in Senate amendment.



Public Law 111–357
111th Congress

An Act

To amend the Fish and Wildlife Act of 1956 to reauthorize volunteer programs and community partnerships for national wildlife refuges, and for other purposes.

Jan. 4, 2011

[H.R. 4973]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Wildlife Refuge Volunteer Improvement Act of 2010”.

National Wildlife
Refuge Volunteer
Improvement Act
of 2010.
16 USC 742a
note.

SEC. 2. REAUTHORIZATION OF APPROPRIATIONS TO IMPLEMENT VOLUNTEER, COMMUNITY PARTNERSHIP AND EDUCATION PROGRAMS UNDER FISH AND WILDLIFE ACT OF 1956.

(a) REAUTHORIZATION.—Section 7(f) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(f)) is amended to read as follows:

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior to carry out subsections (b), (c), (d), (e), and (f), \$2,000,000 for each of fiscal years 2011 through 2014.”.

(b) TECHNICAL CORRECTIONS.—Section 7 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f) is amended in subsections (b)(2)(B)(ii) and (d)(2)(C)(i) by striking “National Wildlife Refuge Administration Act of 1966” each place it appears and inserting “National Wildlife Refuge System Administration Act of 1966”.

SEC. 3. AMENDMENTS TO NATIONAL WILDLIFE REFUGE SYSTEM VOLUNTEER AND COMMUNITY PARTNERSHIP ENHANCEMENT ACT OF 1998.

Section 4(a) of the National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f–1) is amended—

(1) in the subsection heading by striking “PROJECTS” and inserting “NATIONAL VOLUNTEER COORDINATION PROGRAM”;

(2) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—Subject to the availability of appropriations, and in conformance with the strategy developed under paragraph (2) and consistent with the authorities regarding gifts, volunteer services, community partnerships, and refuge education enhancement under section 7 of the Fish and Wildlife Act of 1956 (16 U.S.C. 741f), the Secretary of the Interior, through the Director of the United States Fish and Wildlife Service, shall carry out a National Volunteer Coordination Program within the National Wildlife Refuge System to—

“(A) augment and support the capabilities and efforts of Federal employees to implement resource management,

conservation, and public education programs and activities across the National Wildlife Refuge System;

“(B) provide meaningful opportunities for volunteers to support the resource management, conservation, and public education programs and activities of national wildlife refuges or complexes of geographically related national wildlife refuges in each United States Fish and Wildlife Service region; and

“(C) fulfill the purpose and mission of the National Wildlife Refuge System under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).”;

(3) by amending paragraph (2) to read as follows:

“(2) VOLUNTEER COORDINATION STRATEGY.—

“(A) IN GENERAL.—No later than one year after date of enactment of this paragraph, the Director shall publish in the Federal Register a national strategy for the coordination and utilization of volunteers within the National Wildlife Refuge System.

“(B) CONSULTATION REQUIRED.—The strategy shall be developed in consultation with State fish and wildlife agencies, Indian tribes, refuge friends groups or similar volunteer organizations, and other relevant stakeholders.

“(C) VOLUNTEER COORDINATORS.—The Director shall provide, subject to the availability of appropriations, no less than one regional volunteer coordinator for each United States Fish and Wildlife Service region to implement the strategy published under this paragraph. Such coordinators may be responsible for assisting partner organizations in developing and implementing volunteer projects and activities under cooperative agreements under section 7(d) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(d)).”; and

(4) in paragraph (4), by striking “for for each fiscal year through fiscal year 2009” and inserting “for each fiscal year through fiscal year 2014”.

SEC. 4. VOLUNTEER, COMMUNITY PARTNERSHIPS, AND EDUCATION PROGRAMS REPORT.

(a) IN GENERAL.—Section 7 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(e)) is amended—

(1) by redesignating subsection (f) (as amended by this Act) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

“(f) REPORT.—Not later than 1 year after the date of enactment of this subsection and every 5 years thereafter, the Secretary of the Interior shall submit a report to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

“(1) evaluating the accomplishments of the volunteer program, the community partnerships program, and the refuge education programs authorized under this section, and of the National Volunteer Coordination Program and volunteer coordination strategy under section 4(a) of the National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f–1); and

Deadline.
Federal Register,
publication.

“(2) making recommendations to improve the effectiveness of such programs, including regarding implementing subparagraphs (A), (B), and (C) of paragraph (1) of subsection (e).”.

(b) CONFORMING AMENDMENT.—Section 4(a) of the National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f–1) is further amended by striking paragraph (3), and by redesignating paragraph (4) (as amended by this Act) as paragraph (3).

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 4973:

HOUSE REPORTS: No. 111–531 (Comm. on Natural Resources).

SENATE REPORTS: No. 111–366 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 13, considered and passed House.

Dec. 17, considered and passed Senate.



Public Law 111–358
111th Congress

An Act

Jan. 4, 2011
[H.R. 5116]

To invest in innovation through research and development, to improve the competitiveness of the United States, and for other purposes.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

America
COMPETES
Reauthorization
Act of 2010.
42 USC 1861
note.

(a) **SHORT TITLE.**—this Act may be cited as the “America COMPETES Reauthorization Act of 2010” or the “America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Budgetary impact statement.

TITLE I—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

- Sec. 101. Coordination of Federal STEM education.
- Sec. 102. Coordination of advanced manufacturing research and development.
- Sec. 103. Interagency public access committee.
- Sec. 104. Federal scientific collections.
- Sec. 105. Prize competitions.

TITLE II—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

- Sec. 201. NASA’s contribution to innovation and competitiveness.
- Sec. 202. NASA’s contribution to education.
- Sec. 203. Assessment of impediments to space science and engineering workforce development for minority and under-represented groups at NASA.
- Sec. 204. International Space Station’s contribution to national competitiveness enhancement.
- Sec. 205. Study of potential commercial orbital platform program impact on Science, Technology, Engineering, and Mathematics.
- Sec. 206. Definitions.

TITLE III—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

- Sec. 301. Oceanic and atmospheric research and development program.
- Sec. 302. Oceanic and atmospheric science education programs.
- Sec. 303. Workforce study.

TITLE IV—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

- Sec. 401. Short title.
- Sec. 402. Authorization of appropriations.
- Sec. 403. Under Secretary of Commerce for Standards and Technology.
- Sec. 404. Manufacturing Extension Partnership.
- Sec. 405. Emergency communication and tracking technologies research initiative.
- Sec. 406. Broadening participation.
- Sec. 407. NIST Fellowships.
- Sec. 408. Green manufacturing and construction.
- Sec. 409. Definitions.

TITLE V—SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS
SUPPORT PROGRAMS

SUBTITLE A—NATIONAL SCIENCE FOUNDATION

- Sec. 501. Short title.
- Sec. 502. Definitions.
- Sec. 503. Authorization of appropriations.
- Sec. 504. National Science Board administrative amendments.
- Sec. 505. National Center for Science and Engineering statistics.
- Sec. 506. National Science Foundation manufacturing research and education.
- Sec. 507. National Science Board report on mid-scale instrumentation.
- Sec. 508. Partnerships for innovation.
- Sec. 509. Sustainable chemistry basic research.
- Sec. 510. Graduate student support.
- Sec. 511. Robert Noyce teacher scholarship program.
- Sec. 512. Undergraduate broadening participation program.
- Sec. 513. Research experiences for high school students.
- Sec. 514. Research experiences for undergraduates.
- Sec. 515. STEM industry internship programs.
- Sec. 516. Cyber-enabled learning for national challenges.
- Sec. 517. Experimental Program to Stimulate Competitive Research.
- Sec. 518. Sense of the Congress regarding the science, technology, engineering, and mathematics talent expansion program.
- Sec. 519. Sense of the Congress regarding the National Science Foundation's contributions to basic research and education.
- Sec. 520. Academic technology transfer and commercialization of university research.
- Sec. 521. Study to develop improved impact-on-society metrics.
- Sec. 522. NSF grants in support of sponsored post-doctoral fellowship programs.
- Sec. 523. Collaboration in planning for stewardship of large-scale facilities.
- Sec. 524. Cloud computing research enhancement.
- Sec. 525. Tribal colleges and universities program.
- Sec. 526. Broader impacts review criterion.
- Sec. 527. Twenty-first century graduate education.

SUBTITLE B—STEM-TRAINING GRANT PROGRAM

- Sec. 551. Purpose.
- Sec. 552. Program requirements.
- Sec. 553. Grant program.
- Sec. 554. Grant oversight and administration.
- Sec. 555. Definitions.
- Sec. 556. Authorization of appropriations.

TITLE VI—INNOVATION

- Sec. 601. Office of innovation and entrepreneurship.
- Sec. 602. Federal loan guarantees for innovative technologies in manufacturing.
- Sec. 603. Regional innovation program.
- Sec. 604. Study on economic competitiveness and innovative capacity of United States and development of national economic competitiveness strategy.
- Sec. 605. Promoting use of high-end computing simulation and modeling by small- and medium-sized manufacturers.

TITLE VII—NIST GREEN JOBS

- Sec. 701. Short title.
- Sec. 702. Findings.
- Sec. 703. National Institute of Standards and Technology competitive grant program.

TITLE VIII—GENERAL PROVISIONS

- Sec. 801. Government Accountability Office review.
- Sec. 802. Salary restrictions.
- Sec. 803. Additional research authorities of the FCC.

TITLE IX—DEPARTMENT OF ENERGY

- Sec. 901. Science, engineering, and mathematics education programs.
- Sec. 902. Energy research programs.
- Sec. 903. Basic research.
- Sec. 904. Advanced Research Project Agency-Energy.

TITLE X—EDUCATION

- Sec. 1001. References

Sec. 1002. Repeals and conforming amendments.
 Sec. 1003. Authorizations of appropriations and matching requirement.

42 USC 6621
 note.

SEC. 2. DEFINITIONS.

In this Act:

(1) **DIRECTOR.**—In title I, the term “Director” means the Director of the Office of Science and Technology Policy.

(2) **STEM.**—The term “STEM” means the academic and professional disciplines of science, technology, engineering, and mathematics.

SEC. 3. BUDGETARY IMPACT STATEMENT.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

TITLE I—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

42 USC 6621.

SEC. 101. COORDINATION OF FEDERAL STEM EDUCATION.

(a) **ESTABLISHMENT.**—The Director shall establish a committee under the National Science and Technology Council, including the Office of Management and Budget, with the responsibility to coordinate Federal programs and activities in support of STEM education, including at the National Science Foundation, the Department of Energy, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Department of Education, and all other Federal agencies that have programs and activities in support of STEM education.

(b) **RESPONSIBILITIES.**—The committee established under subsection (a) shall—

(1) coordinate the STEM education activities and programs of the Federal agencies;

(2) coordinate STEM education activities and programs with the Office of Management and Budget;

(3) encourage the teaching of innovation and entrepreneurship as part of STEM education activities;

(4) review STEM education activities and programs to ensure they are not duplicative of similar efforts within the Federal government;

(5) develop, implement through the participating agencies, and update once every 5 years a 5-year STEM education strategic plan, which shall—

(A) specify and prioritize annual and long-term objectives;

(B) specify the common metrics that will be used to assess progress toward achieving the objectives;

(C) describe the approaches that will be taken by each participating agency to assess the effectiveness of its STEM education programs and activities; and

(D) with respect to subparagraph (A), describe the role of each agency in supporting programs and activities designed to achieve the objectives; and

Strategic plan.
 Deadline.

(6) establish, periodically update, and maintain an inventory of federally sponsored STEM education programs and activities, including documentation of assessments of the effectiveness of such programs and activities and rates of participation by women, underrepresented minorities, and persons in rural areas in such programs and activities.

(b) RESPONSIBILITIES OF OSTP.—The Director shall encourage and monitor the efforts of the participating agencies to ensure that the strategic plan under subsection (b)(5) is developed and executed effectively and that the objectives of the strategic plan are met.

(c) REPORT.—The Director shall transmit a report annually to Congress at the time of the President's budget request describing the plan required under subsection (b)(5). The annual report shall include—

(1) a description of the STEM education programs and activities for the previous and current fiscal years, and the proposed programs and activities under the President's budget request, of each participating Federal agency;

(2) the levels of funding for each participating Federal agency for the programs and activities described under paragraph (1) for the previous fiscal year and under the President's budget request;

(3) an evaluation of the levels of duplication and fragmentation of the programs and activities described under paragraph (1);

(4) except for the initial annual report, a description of the progress made in carrying out the implementation plan, including a description of the outcome of any program assessments completed in the previous year, and any changes made to that plan since the previous annual report; and

(5) a description of how the participating Federal agencies will disseminate information about federally supported resources for STEM education practitioners, including teacher professional development programs, to States and to STEM education practitioners, including to teachers and administrators in schools that meet the criteria described in subsection (c)(1)(A) and (B) of section 3175 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381j(c)(1)(A) and (B)).

SEC. 102. COORDINATION OF ADVANCED MANUFACTURING RESEARCH AND DEVELOPMENT. 42 USC 6622.

(a) INTERAGENCY COMMITTEE.—The Director shall establish or designate a Committee on Technology under the National Science and Technology Council. The Committee shall be responsible for planning and coordinating Federal programs and activities in advanced manufacturing research and development.

Establishment.

(b) RESPONSIBILITIES OF COMMITTEE.—The Committee shall—

(1) coordinate the advanced manufacturing research and development programs and activities of the Federal agencies;

(2) establish goals and priorities for advanced manufacturing research and development that will strengthen United States manufacturing;

(3) work with industry organizations, Federal agencies, and Federally Funded Research and Development Centers not

represented on the Committee, to identify and reduce regulatory, logistical, and fiscal barriers within the Federal government and State governments that inhibit United States manufacturing;

(4) facilitate the transfer of intellectual property and technology based on federally supported university research into commercialization and manufacturing;

(5) identify technological, market, or business challenges that may best be addressed by public-private partnerships, and are likely to attract both participation and primary funding from industry;

(6) encourage the formation of public-private partnerships to respond to those challenges for transition to United States manufacturing; and

(7) develop, and update every 5 years, a strategic plan to guide Federal programs and activities in support of advanced manufacturing research and development, which shall—

(A) specify and prioritize near-term and long-term research and development objectives, the anticipated time frame for achieving the objectives, and the metrics for use in assessing progress toward the objectives;

(B) specify the role of each Federal agency in carrying out or sponsoring research and development to meet the objectives of the strategic plan;

(C) describe how the Federal agencies and Federally Funded Research and Development Centers supporting advanced manufacturing research and development will foster the transfer of research and development results into new manufacturing technologies and United States based manufacturing of new products and processes for the benefit of society to ensure national, energy, and economic security;

(D) describe how Federal agencies and Federally Funded Research and Development Centers supporting advanced manufacturing research and development will strengthen all levels of manufacturing education and training programs to ensure an adequate, well-trained workforce;

(E) describe how the Federal agencies and Federally Funded Research and Development Centers supporting advanced manufacturing research and development will assist small- and medium-sized manufacturers in developing and implementing new products and processes; and

(F) take into consideration the recommendations of a wide range of stakeholders, including representatives from diverse manufacturing companies, academia, and other relevant organizations and institutions.

(c) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Director shall transmit the strategic plan developed under subsection (b)(7) to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science and Technology, and shall transmit subsequent updates to those committees as appropriate.

42 USC 6623.

SEC. 103. INTERAGENCY PUBLIC ACCESS COMMITTEE.

(a) **ESTABLISHMENT.**—The Director shall establish a working group under the National Science and Technology Council with

Strategic plan.
Deadline.

the responsibility to coordinate Federal science agency research and policies related to the dissemination and long-term stewardship of the results of unclassified research, including digital data and peer-reviewed scholarly publications, supported wholly, or in part, by funding from the Federal science agencies.

(b) RESPONSIBILITIES.—The working group shall—

(1) identify the specific objectives and public interests that need to be addressed by any policies coordinated under (a);

(2) take into account inherent variability among Federal science agencies and scientific disciplines in the nature of research, types of data, and dissemination models;

(3) coordinate the development or designation of standards for research data, the structure of full text and metadata, navigation tools, and other applications to maximize interoperability across Federal science agencies, across science and engineering disciplines, and between research data and scholarly publications, taking into account existing consensus standards, including international standards;

(4) coordinate Federal science agency programs and activities that support research and education on tools and systems required to ensure preservation and stewardship of all forms of digital research data, including scholarly publications;

(5) work with international science and technology counterparts to maximize interoperability between United States based unclassified research databases and international databases and repositories;

(6) solicit input and recommendations from, and collaborate with, non-Federal stakeholders, including the public, universities, nonprofit and for-profit publishers, libraries, federally funded and non federally funded research scientists, and other organizations and institutions with a stake in long term preservation and access to the results of federally funded research;

(7) establish priorities for coordinating the development of any Federal science agency policies related to public access to the results of federally funded research to maximize the benefits of such policies with respect to their potential economic or other impact on the science and engineering enterprise and the stakeholders thereof;

(8) take into consideration the distinction between scholarly publications and digital data;

(9) take into consideration the role that scientific publishers play in the peer review process in ensuring the integrity of the record of scientific research, including the investments and added value that they make; and

(10) examine Federal agency practices and procedures for providing research reports to the agencies charged with locating and preserving unclassified research.

(c) PATENT OR COPYRIGHT LAW.—Nothing in this section shall be construed to undermine any right under the provisions of title 17 or 35, United States Code.

(d) APPLICATION WITH EXISTING LAW.—Nothing defined in section (b) shall be construed to affect existing law with respect to Federal science agencies' policies related to public access.

(e) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Director shall transmit a report to Congress describing—

(1) the specific objectives and public interest identified under (b)(1);

(2) any priorities established under subsection (b)(7);

(3) the impact the policies described under (a) have had on the science and engineering enterprise and the stakeholders, including the financial impact on research budgets;

(4) the status of any Federal science agency policies related to public access to the results of federally funded research; and

(5) how any policies developed or being developed by Federal science agencies, as described in subsection (a), incorporate input from the non-Federal stakeholders described in subsection (b)(6).

(f) **FEDERAL SCIENCE AGENCY DEFINED.**—For the purposes of this section, the term “Federal science agency” means any Federal agency with an annual extramural research expenditure of over \$100,000,000.

42 USC 6624.

SEC. 104. FEDERAL SCIENTIFIC COLLECTIONS.

(a) **MANAGEMENT OF SCIENTIFIC COLLECTIONS.**—The Office of Science and Technology Policy shall develop policies for the management and use of Federal scientific collections to improve the quality, organization, access, including online access, and long-term preservation of such collections for the benefit of the scientific enterprise. In developing those policies the Office of Science and Technology Policy shall consult, as appropriate, with—

Consultation.

(1) Federal agencies with such collections; and

(2) representatives of other organizations, institutions, and other entities not a part of the Federal Government that have a stake in the preservation, maintenance, and accessibility of such collections, including State and local government agencies, institutions of higher education, museums, and other entities engaged in the acquisition, holding, management, or use of scientific collections.

Web site.

(b) **CLEARINGHOUSE.**—The Office of Science and Technology Policy, in consultation with relevant Federal agencies, shall ensure the development of an online clearinghouse for information on the contents of and access to Federal scientific collections.

(c) **DISPOSAL OF COLLECTIONS.**—The policies developed under subsection (a) shall—

(1) require that, before disposing of a scientific collection, a Federal agency shall—

Consultation.

(A) conduct a review of the research value of the collection; and

(B) consult with researchers who have used the collection, and other potentially interested parties, concerning—

(i) the collection’s value for research purposes; and

(ii) possible additional educational uses for the collection; and

(2) include procedures for Federal agencies to transfer scientific collections they no longer need to researchers at institutions or other entities qualified to manage the collections.

(d) **COST PROJECTIONS.**—The Office of Science and Technology Policy, in consultation with relevant Federal agencies, shall develop a common set of methodologies to be used by Federal agencies for the assessment and projection of costs associated with the management and preservation of their scientific collections.

(e) **SCIENTIFIC COLLECTION DEFINED.**—In this section, the term “scientific collection” means a set of physical specimens, living or inanimate, created for the purpose of supporting science and serving as a long-term research asset, rather than for their market value as collectibles or their historical, artistic, or cultural significance, and, as appropriate and feasible, the associated specimen data and materials.

SEC. 105. PRIZE COMPETITIONS.

(a) **IN GENERAL.**—The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended by adding at the end the following:

“SEC. 24. PRIZE COMPETITIONS.

15 USC 3719.

“(a) **DEFINITIONS.**—In this section:

“(1) **AGENCY.**—The term ‘agency’ means a Federal agency.

“(2) **DIRECTOR.**—The term ‘Director’ means the Director of the Office of Science and Technology Policy.

“(3) **FEDERAL AGENCY.**—The term ‘Federal agency’ has the meaning given under section 4, except that term shall not include any agency of the legislative branch of the Federal Government.

“(4) **HEAD OF AN AGENCY.**—The term ‘head of an agency’ means the head of a Federal agency.

“(b) **IN GENERAL.**—Each head of an agency, or the heads of multiple agencies in cooperation, may carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective agency.

“(c) **PRIZES.**—For purposes of this section, a prize may be one or more of the following:

“(1) A point solution prize that rewards and spurs the development of solutions for a particular, well-defined problem.

“(2) An exposition prize that helps identify and promote a broad range of ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties.

“(3) Participation prizes that create value during and after the competition by encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and after the competition.

“(4) Such other types of prizes as each head of an agency considers appropriate to stimulate innovation that has the potential to advance the mission of the respective agency.

“(d) **TOPICS.**—In selecting topics for prize competitions, the head of an agency shall consult widely both within and outside the Federal Government, and may empanel advisory committees.

Consultation.

“(e) **ADVERTISING.**—The head of an agency shall widely advertise each prize competition to encourage broad participation.

“(f) **REQUIREMENTS AND REGISTRATION.**—For each prize competition, the head of an agency shall publish a notice in the Federal Register announcing—

Federal Register,
publication.
Notice.

“(1) the subject of the competition;

“(2) the rules for being eligible to participate in the competition;

“(3) the process for participants to register for the competition;

“(4) the amount of the prize; and

“(5) the basis on which a winner will be selected.

“(g) ELIGIBILITY.—To be eligible to win a prize under this section, an individual or entity—

“(1) shall have registered to participate in the competition under any rules promulgated by the head of an agency under subsection (f);

“(2) shall have complied with all the requirements under this section;

“(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

“(4) may not be a Federal entity or Federal employee acting within the scope of their employment.

“(h) CONSULTATION WITH FEDERAL EMPLOYEES.—An individual or entity shall not be deemed ineligible under subsection (g) because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

“(i) LIABILITY.—

“(1) IN GENERAL.—

“(A) DEFINITION.—In this paragraph, the term ‘related entity’ means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

“(B) LIABILITY.—Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

“(2) INSURANCE.—Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of an agency, for claims by—

“(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant’s insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

“(B) the Federal Government for damage or loss to Government property resulting from such an activity.

“(3) EXCEPTION.—The head of an agency may not require a participant to waive claims against the administering entity arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential business information of the participant.

“(j) INTELLECTUAL PROPERTY.—

“(1) PROHIBITION ON THE GOVERNMENT ACQUIRING INTELLECTUAL PROPERTY RIGHTS.—The Federal Government

may not gain an interest in intellectual property developed by a participant in a competition without the written consent of the participant.

“(2) LICENSES.—The Federal Government may negotiate a license for the use of intellectual property developed by a participant for a competition.

“(k) JUDGES.—

“(1) IN GENERAL.—For each competition, the head of an agency, either directly or through an agreement under subsection (l), shall appoint one or more qualified judges to select the winner or winners of the prize competition on the basis described under subsection (f). Judges for each competition may include individuals from outside the agency, including from the private sector.

Appointment.

“(2) RESTRICTIONS.—A judge may not—

“(A) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or

“(B) have a familial or financial relationship with an individual who is a registered participant.

“(3) GUIDELINES.—The heads of agencies who carry out competitions under this section shall develop guidelines to ensure that the judges appointed for such competitions are fairly balanced and operate in a transparent manner.

“(4) EXEMPTION FROM FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any committee, board, commission, panel, task force, or similar entity, created solely for the purpose of judging prize competitions under this section.

“(l) ADMINISTERING THE COMPETITION.—The head of an agency may enter into an agreement with a private, nonprofit entity to administer a prize competition, subject to the provisions of this section.

“(m) FUNDING.—

“(1) IN GENERAL.—Support for a prize competition under this section, including financial support for the design and administration of a prize or funds for a monetary prize purse, may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The head of an agency may accept funds from other Federal agencies to support such competitions. The head of an agency may not give any special consideration to any private sector entity in return for a donation.

“(2) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended. No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31, United States Code.

“(3) AMOUNT OF PRIZE.—

“(A) ANNOUNCEMENT.—No prize may be announced under subsection (f) until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source.

“(B) INCREASE IN AMOUNT.—The head of an agency may increase the amount of a prize after an initial announcement is made under subsection (f) only if—

Notice.

“(i) notice of the increase is provided in the same manner as the initial notice of the prize; and

“(ii) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.

Time period.

“(4) LIMITATION ON AMOUNT.—

“(A) NOTICE TO CONGRESS.—No prize competition under this section may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives.

“(B) APPROVAL OF HEAD OF AGENCY.—No prize competition under this section may result in the award of more than \$1,000,000 in cash prizes without the approval of the head of an agency.

Deadline.
Guidelines.

“(n) GENERAL SERVICE ADMINISTRATION ASSISTANCE.—Not later than 180 days after the date of the enactment of the America COMPETES Reauthorization Act of 2010, the General Services Administration shall provide government wide services to share best practices and assist agencies in developing guidelines for issuing prize competitions. The General Services Administration shall develop a contract vehicle to provide agencies access to relevant products and services, including technical assistance in structuring and conducting prize competitions to take maximum benefit of the marketplace as they identify and pursue prize competitions to further the policy objectives of the Federal Government.

Contracts.

“(o) COMPLIANCE WITH EXISTING LAW.—

“(1) IN GENERAL.—The Federal Government shall not, by virtue of offering or providing a prize under this section, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and nonproliferation laws, and related regulations.

“(2) OTHER PRIZE AUTHORITY.—Nothing in this section affects the prize authority authorized by any other provision of law.

“(p) ANNUAL REPORT.—

“(1) IN GENERAL.—Not later than March 1 of each year, the Director shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report on the activities carried out during the preceding fiscal year under the authority in subsection (b).

“(2) INFORMATION INCLUDED.—The report for a fiscal year under this subsection shall include, for each prize competition under subsection (b), the following:

“(A) PROPOSED GOALS.—A description of the proposed goals of each prize competition.

“(B) PREFERABLE METHOD.—An analysis of why the utilization of the authority in subsection (b) was the preferable method of achieving the goals described in subparagraph (A) as opposed to other authorities available to the agency, such as contracts, grants, and cooperative agreements.

“(C) AMOUNT OF CASH PRIZES.—The total amount of cash prizes awarded for each prize competition, including

a description of amount of private funds contributed to the program, the sources of such funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the agency for recording as obligations and expenditures.

“(D) SOLICITATIONS AND EVALUATION OF SUBMISSIONS.—The methods used for the solicitation and evaluation of submissions under each prize competition, together with an assessment of the effectiveness of such methods and lessons learned for future prize competitions.

“(E) RESOURCES.—A description of the resources, including personnel and funding, used in the execution of each prize competition together with a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures.

“(F) RESULTS.—A description of how each prize competition advanced the mission of the agency concerned.”.

(b) REPEAL OF SPACE ACT LIMITATION.—Section 314(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2459f–1 is amended by striking “The Administration may carry out a program to award prizes only in conformity with this section.”.

51 USC 20144.

TITLE II—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 201. NASA’S CONTRIBUTION TO INNOVATION AND COMPETITIVENESS.

It is the sense of Congress that a renewed emphasis on technology development would enhance current mission capabilities and enable future missions, while encouraging NASA, private industry, and academia to spur innovation. NASA’s Innovative Partnership Program is a valuable mechanism to accelerate technology maturation and encourage the transfer of technology into the private sector.

SEC. 202. NASA’S CONTRIBUTION TO EDUCATION.

51 USC 40901
note prec.

(a) SENSE OF CONGRESS.—It is the sense of Congress that NASA is uniquely positioned to interest students in science, technology, engineering, and mathematics, not only by the example it sets, but through its education programs.

(b) EDUCATIONAL PROGRAM GOALS.—NASA shall develop and maintain educational programs—

(1) to carry out and support research based programs and activities designed to increase student interest and participation in STEM, including students from minority and underrepresented groups;

(2) to improve public literacy in STEM;

(3) that employ proven strategies and methods for improving student learning and teaching in STEM;

(4) to provide curriculum support materials and other resources that—

(A) are designed to be integrated with comprehensive STEM education;

(B) are aligned with national science education standards;

(C) promote the adoption and implementation of high-quality education practices that build toward college and career-readiness; and

(5) to create and support opportunities for enhanced and ongoing professional development for teachers using best practices that improve the STEM content and knowledge of the teachers, including through programs linking STEM teachers with STEM educators at the higher education level.

51 USC 30501
note prec.

SEC. 203. ASSESSMENT OF IMPEDIMENTS TO SPACE SCIENCE AND ENGINEERING WORKFORCE DEVELOPMENT FOR MINORITY AND UNDERREPRESENTED GROUPS AT NASA.

Contracts.

(a) **ASSESSMENT.**—The Administrator shall enter into an arrangement for an independent assessment of any impediments to space science and engineering workforce development for minority and underrepresented groups at NASA, including recommendations on—

(1) measures to address such impediments;

(2) opportunities for augmenting the impact of space science and engineering workforce development activities and for expanding proven, effective programs; and

(3) best practices and lessons learned, as identified through the assessment, to help maximize the effectiveness of existing and future programs to increase the participation of minority and underrepresented groups in the space science and engineering workforce at NASA.

(b) **REPORT.**—A report on the assessment carried out under subsection (a) shall be transmitted to the House of Representatives Committee on Science and Technology and the Senate Committee on Commerce, Science, and Transportation not later than 15 months after the date of enactment of this Act.

(c) **IMPLEMENTATION.**—To the extent practicable, the Administrator shall take all necessary steps to address any impediments identified in the assessment.

51 USC 20303
note.

SEC. 204. INTERNATIONAL SPACE STATION'S CONTRIBUTION TO NATIONAL COMPETITIVENESS ENHANCEMENT.

(a) **SENSE OF CONGRESS.**—It is the sense of the Congress that the International Space Station represents a valuable and unique national asset which can be utilized to increase educational opportunities and scientific and technological innovation which will enhance the Nation's economic security and competitiveness in the global technology fields of endeavor. If the period for active utilization of the International Space Station is extended to at least the year 2020, the potential for such opportunities and innovation would be increased. Efforts should be made to fully realize that potential.

(b) **EVALUATION AND ASSESSMENT OF NASA'S INTERAGENCY CONTRIBUTION.**—Pursuant to the authority provided in title II of the America COMPETES Act (Public Law 110–69), the Administrator shall evaluate and, where possible, expand efforts to maximize NASA's contribution to interagency efforts to enhance science, technology, engineering, and mathematics education capabilities, and to enhance the Nation's technological excellence and global

competitiveness. The Administrator shall identify these enhancements in the annual reports required by section 2001(e) of that Act (42 U.S.C. 16611a(e)).

(c) **REPORT TO THE CONGRESS.**—Within 120 days after the date of enactment of this Act, the Administrator shall provide to the House of Representatives Committee on Science and Technology and the Senate Committee on Commerce, Science, and Transportation a report on the assessment made pursuant to subsection (a). The report shall include—

(1) a description of current and potential activities associated with utilization of the International Space Station which are supportive of the goals of educational excellence and innovation and competitive enhancement established or reaffirmed by this Act, including a summary of the goals supported, the number of individuals or organizations participating in or benefiting from such activities, and a summary of how such activities might be expanded or improved upon;

(2) a description of government and private partnerships which are, or may be, established to effectively utilize the capabilities represented by the International Space Station to enhance United States competitiveness, innovation and science, technology, engineering, and mathematics education; and

(3) a summary of proposed actions or activities to be undertaken to ensure the maximum utilization of the International Space Station to contribute to fulfillment of the goals and objectives of this Act, and the identification of any additional authority, assets, or funding that would be required to support such activities.

SEC. 205. STUDY OF POTENTIAL COMMERCIAL ORBITAL PLATFORM PROGRAM IMPACT ON SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS.

(a) **IN GENERAL.**—Section 1003 of the National Aeronautics and Space Administration Authorization Act of 2010 (42 U.S.C. 18421) is amended to read as follows:

“SEC. 1003. STUDY OF POTENTIAL COMMERCIAL ORBITAL PLATFORM PROGRAM IMPACT ON SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS. 42 USC 18421.

“A fundamental and unique capability of NASA is in stimulating science, technology, engineering, and mathematics education in the United States. In ensuring maximum use of that capability, the Administrator shall carry out a study to—

“(1) identify the benefits of and lessons learned from ongoing and previous NASA orbital student programs including, at a minimum, the Get Away Special (GAS) and Earth Knowledge Acquired by Middle School Students (EarthKAM) programs, on science, technology, engineering, and mathematics education;

“(2) assess the potential impacts on science, technology, engineering, and mathematics education of a program that would facilitate the development of scientific and educational payloads involving United States students and educators and the flights of those payloads on commercially available orbital platforms, when available and operational, with the goal of providing frequent and regular payload launches;

“(3) identify NASA expertise, such as NASA science, engineering, payload development, and payload operations, that

could be made available to facilitate a science, technology, engineering, and mathematics program using commercial orbital platforms; and

“(4) identify the issues that would need to be addressed before NASA could properly assess the merits and feasibility of the program described in paragraph (2).”.

42 USC 18421
note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 12, 2010.

51 USC 10101
note.

SEC. 206. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of NASA.

(2) NASA.—The term “NASA” means the National Aeronautics and Space Administration.

TITLE III—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SEC. 301. OCEANIC AND ATMOSPHERIC RESEARCH AND DEVELOPMENT PROGRAM.

Section 4001 of the America COMPETES Act (33 U.S.C. 893) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The Administrator”; and

(2) by adding at the end the following:

“(b) OCEANIC AND ATMOSPHERIC RESEARCH AND DEVELOPMENT PROGRAM.—The Administrator shall implement programs and activities—

“(1) to identify emerging and innovative research and development priorities to enhance United States competitiveness, support development of new economic opportunities based on NOAA research, observations, monitoring modeling, and predictions that sustain ecosystem services;

“(2) to promote United States leadership in oceanic and atmospheric science and competitiveness in the applied uses of such knowledge, including for the development and expansion of economic opportunities; and

“(3) to advance ocean, coastal, Great Lakes, and atmospheric research and development, including potentially transformational research, in collaboration with other relevant Federal agencies, academic institutions, the private sector, and nongovernmental programs, consistent with NOAA’s mission to understand, observe, and model the Earth’s atmosphere and biosphere, including the oceans, in an integrated manner.

“(c) REPORT.—No later than 12 months after the date of enactment of the America COMPETES Reauthorization Act of 2010, the Administrator, in consultation with the National Science Foundation or other such agencies with mature transformational research portfolios, shall develop and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science and Technology that describes NOAA’s strategy for enhancing transformational research in its research and development portfolio to increase United States competitiveness in oceanic and atmospheric science and technology. The report shall—

- “(1) define ‘transformational research’;
- “(2) identify emerging and innovative areas of research and development where transformational research has the potential to make significant and revolutionary –advancements in both understanding and U.S. science leadership;
- “(3) describe how transformational research priorities are identified and appropriately –balanced in the context of NOAA’s broader research portfolio;
- “(4) describe NOAA’s plan for developing a competitive peer review and priority-setting –process, funding mechanisms, performance and evaluation measures, and transition-to-operation guidelines for transformational research; and
- “(5) describe partnerships with other agencies involved in transformational research.”.

SEC. 302. OCEANIC AND ATMOSPHERIC SCIENCE EDUCATION PROGRAMS.

Section 4002 of the America COMPETES Act (33 U.S.C. 893a) is amended—

- (1) by striking “the agency.” in subsection (a) and inserting “agency, with consideration given to the goal of promoting the participation of individuals from underrepresented groups in STEM fields and in promoting the acquisition and retention of highly qualified and motivated young scientists to complement and supplement workforce needs.”;
- (2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;
- (3) by inserting after subsection (a) the following:

“(b) EDUCATIONAL PROGRAM GOALS.—The education programs developed by NOAA shall, to the extent applicable—

 - “(1) carry out and support research based programs and activities designed to increase student interest and participation in STEM;
 - “(2) improve public literacy in STEM;
 - “(3) employ proven strategies and methods for improving student learning and teaching in STEM;
 - “(4) provide curriculum support materials and other resources that—
 - “(A) are designed to be integrated with comprehensive STEM education;
 - “(B) are aligned with national science education standards; and
 - “(C) promote the adoption and implementation of high-quality education practices that build toward college and career-readiness; and
 - “(5) create and support opportunities for enhanced and ongoing professional development for teachers using best practices that improves the STEM content and knowledge of the teachers, including through programs linking STEM teachers with STEM educators at the higher education level.”;
- (4) by striking “develop” in subsection (c), as redesignated, and inserting “maintain”; and
- (5) by adding at the end thereof the following:

“(e) STEM DEFINED.—In this section, the term ‘STEM’ means the academic and professional disciplines of science, technology, engineering, and mathematics.”.

33 USC 893c.

SEC. 303. WORKFORCE STUDY.

(a) **IN GENERAL.**—The Secretary of Commerce, in cooperation with the Secretary of Education, shall request the National Academy of Sciences to conduct a study on the scientific workforce in the areas of oceanic and atmospheric research and development. The study shall investigate—

(1) whether there is a shortage in the number of individuals with advanced degrees in oceanic and atmospheric sciences who have the ability to conduct high quality scientific research in physical and chemical oceanography, meteorology, and atmospheric modeling, and related fields, for government, non-profit, and private sector entities;

(2) what Federal programs are available to help facilitate the education of students hoping to pursue these degrees;

(3) barriers to transitioning highly qualified oceanic and atmospheric scientists into Federal civil service scientist career tracks;

(4) what institutions of higher education, the private sector, and the Congress could do to increase the number of individuals with such post baccalaureate degrees;

(5) the impact of an aging Federal scientist workforce on the ability of Federal agencies to conduct high quality scientific research; and

(6) what actions the Federal government can take to assist the transition of highly qualified scientists into Federal career scientist positions and ensure that the experiences of retiring Federal scientists are adequately documented and transferred prior to retirement from Federal service.

Consultation.

(b) **COORDINATION.**—The Secretary of Commerce and the Secretary of Education shall consult with the heads of other Federal agencies and departments with oceanic and atmospheric expertise or authority in preparing the specifications for the study.

(c) **REPORT.**—No later than 18 months after the date of enactment of this Act, the Secretary of Commerce and the Secretary of Education shall transmit a joint report to each committee of Congress with jurisdiction over the programs described in 4002(b) of the America COMPETES Act (33 U.S.C. 893a(b)), as amended by section 302 of this Act, detailing the findings and recommendations of the study and setting forth a prioritized plan to implement the recommendations.

Evaluation.

(d) **PROGRAM AND PLAN.**—The Administrator of the National Oceanic and Atmospheric Administration shall evaluate the National Academy of Sciences study and develop a workforce program and plan to institutionalize the Administration's Federal science career pathways and address aging workforce issues. The program and plan shall be developed in consultation with the Administration's cooperative institutes and other academic partners to identify and implement programs and mechanisms to ensure that—

(1) sufficient highly qualified scientists are able to transition into Federal career scientist positions in the Administration's laboratories and programs; and

(2) the technical and management experiences of senior employees are documented and transferred before leaving Federal service.

TITLE IV—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

National
Institute of
Standards and
Technology
Authorization
Act of 2010.

SEC. 401. SHORT TITLE.

This title may be cited as the “National Institute of Standards and Technology Authorization Act of 2010”.

SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEAR 2011.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce \$918,900,000 for the National Institute of Standards and Technology for fiscal year 2011.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized by paragraph (1)—

(A) \$584,500,000 shall be authorized for scientific and technical research and services laboratory activities;

(B) \$124,800,000 shall be authorized for the construction and maintenance of facilities; and

(C) \$209,600,000 shall be authorized for industrial technology services activities, of which—

(i) \$141,100,000 shall be authorized for the Manufacturing Extension Partnership program under sections 25 and 26 of such Act (15 U.S.C. 278k and 278l), of which not more than \$5,000,000 shall be for the competitive grant program under section 25(f) of such Act; and

(ii) \$10,000,000 shall be authorized for the Malcolm Baldrige National Quality Award program under section 17 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a).

(b) FISCAL YEAR 2012.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce \$970,800,000 for the National Institute of Standards and Technology for fiscal year 2012.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized by paragraph (1)—

(A) \$661,100,000 shall be authorized for scientific and technical research and services laboratory activities;

(B) \$84,900,000 shall be authorized for the construction and maintenance of facilities; and

(C) \$224,800,000 shall be authorized for industrial technology services activities, of which—

(i) \$155,100,000 shall be authorized for the Manufacturing Extension Partnership program under sections 25 and 26 of such Act (15 U.S.C. 278k and 278l), of which not more than \$5,000,000 shall be for the competitive grant program under section 25(f) of such Act; and

(ii) \$10,300,000 shall be authorized for the Malcolm Baldrige National Quality Award program under section 17 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a).

(c) FISCAL YEAR 2013.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce \$1,039,709,000 for the National Institute of Standards and Technology for fiscal year 2013.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized by paragraph (1)—

(A) \$676,700,000 shall be authorized for scientific and technical research and services laboratory activities;

(B) \$121,300,000 shall be authorized for the construction and maintenance of facilities; and

(C) \$241,709,000 shall be authorized for industrial technology services activities, of which—

(i) \$165,100,000 shall be authorized for the Manufacturing Extension Partnership program under sections 25 and 26 of such Act (15 U.S.C. 278k and 278l), of which not more than \$5,000,000 shall be for the competitive grant program under section 25(f) of such Act; and

(ii) \$10,609,000 shall be authorized for the Malcolm Baldrige National Quality Award program under section 17 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a).

SEC. 403. UNDER SECRETARY OF COMMERCE FOR STANDARDS AND TECHNOLOGY.

(a) ESTABLISHMENT.—The National Institute of Standards and Technology Act is amended by inserting after section 3 the following:

15 USC 273a.

“SEC. 4. UNDER SECRETARY OF COMMERCE FOR STANDARDS AND TECHNOLOGY.

“(a) ESTABLISHMENT.—There shall be in the Department of Commerce an Under Secretary of Commerce for Standards and Technology (in this section referred to as the ‘Under Secretary’).

President.

“(b) APPOINTMENT.—The Under Secretary shall be appointed by the President by and with the advice and consent of the Senate.

“(c) COMPENSATION.—The Under Secretary shall be compensated at the rate in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code.

“(d) DUTIES.—The Under Secretary shall serve as the Director of the Institute and shall perform such duties as required of the Director by the Secretary under this Act or by law.

“(e) APPLICABILITY.—The individual serving as the Director of the Institute on the date of enactment of the National Institute of Standards and Technology Authorization Act of 2010 shall also serve as the Under Secretary until such time as a successor is appointed under subsection (b).”.

(b) CONFORMING AMENDMENTS.—

(1) TITLE 5, UNITED STATES CODE.—

(A) LEVEL III.—Section 5314 of title 5, United States Code, is amended by inserting before the item “Associate Attorney General” the following:

“Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.”.

(B) LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking “Director, National Institute of Standards and Technology, Department of Commerce.”.

(2) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACT.—Section 5 of the National Institute of Standards and Technology Act (15 U.S.C. 274) is amended by striking the first, fifth, and sixth sentences.

SEC. 404. MANUFACTURING EXTENSION PARTNERSHIP.

(a) **COMMUNITY COLLEGE SUPPORT.**—Section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (4);

(2) by striking “Institute.” in paragraph (5) and inserting “Institute; and”; and

(3) by adding at the end the following:

“(6) providing to community colleges information about the job skills needed in small- and medium-sized manufacturing businesses in the regions they serve.”.

(b) **INNOVATIVE SERVICES INITIATIVE.**—Section 25 of such Act (15 U.S.C. 278k) is amended by adding at the end the following:

“(g) **INNOVATIVE SERVICES INITIATIVE.**—

“(1) **ESTABLISHMENT.**—The Director shall establish, within the Centers program under this section, an innovative services initiative to assist small- and medium-sized manufacturers in—

“(A) reducing their energy usage, greenhouse gas emissions, and environmental waste to improve profitability;

“(B) accelerating the domestic commercialization of new product technologies, including components for renewable energy and energy efficiency systems; and

“(C) identification of and diversification to new markets, including support for transitioning to the production of components for renewable energy and energy efficiency systems.

“(2) **MARKET DEMAND.**—The Director may not undertake any activity to accelerate the domestic commercialization of a new product technology under this subsection unless an analysis of market demand for the new product technology has been conducted.”.

(c) **REPORTS.**—Section 25 of such Act (15 U.S.C. 278k), as amended by subsection (b), is further amended by adding at the end the following:

“(h) **REPORTS.**—

“(1) **IN GENERAL.**—In submitting the 3-year programmatic planning document and annual updates under section 23, the Director shall include an assessment of the Director’s governance of the program established under this section.

“(2) **CRITERIA.**—In conducting the assessment, the Director shall use the criteria established pursuant to the Malcolm Baldrige National Quality Award under section 17(d)(1)(C) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a(d)(1)(C)).”.

(d) **HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP PROGRAM COST-SHARING.**—Section 25(c) of such Act (15 U.S.C. 278k(c)) is amended by adding at the end the following:

“(7) Not later than 90 days after the date of enactment of the National Institute of Standards and Technology Authorization Act of 2010, the Comptroller General shall submit to Congress a report on the cost share requirements under the program. The report shall—

“(A) discuss various cost share structures, including the cost share structure in place prior to such date of enactment, and the effect of such cost share structures on individual Centers and the overall program; and

Deadline.
Reports.

“(B) include recommendations for how best to structure the cost share requirement to provide for the long-term sustainability of the program.”.

“(8) If consistent with the recommendations in the report transmitted to Congress under paragraph (7), the Secretary shall alter the cost structure requirements specified under paragraph (3)(B) and (5) provided that the modification does not increase the cost share structure in place before the date of enactment of the America COMPETES Reauthorization Act of 2010, or allow the Secretary to provide a Center more than 50 percent of the costs incurred by that Center.”.

(e) ADVISORY BOARD.—Section 25(e)(4) of such Act (15 U.S.C. 278k(e)(4)) is amended to read as follows:

“(4) FEDERAL ADVISORY COMMITTEE ACT APPLICABILITY.—

“(A) IN GENERAL.—In discharging its duties under this subsection, the MEP Advisory Board shall function solely in an advisory capacity, in accordance with the Federal Advisory Committee Act.

“(B) EXCEPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the MEP Advisory Board.”.

(f) DESIGNATION OF PROGRAM.—

(1) IN GENERAL.—Section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k), as amended by subsection (c), is further amended by adding at the end the following:

“(i) DESIGNATION.—

“(1) HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP.—The program under this section shall be known as the ‘Hollings Manufacturing Extension Partnership’.

“(2) HOLLINGS MANUFACTURING EXTENSION CENTERS.—The Regional Centers for the Transfer of Manufacturing Technology created and supported under subsection (a) shall be known as the ‘Hollings Manufacturing Extension Centers’ (in this Act referred to as the ‘Centers’).”.

(2) CONFORMING AMENDMENT TO CONSOLIDATED APPROPRIATIONS ACT, 2005.—Division B of title II of the Consolidated Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2879; 15 U.S.C. 278k note) is amended under the heading “INDUSTRIAL TECHNOLOGY SERVICES” by striking “2007: *Provided further, That*” and all that follows through “Extension Centers.” and inserting “2007.”.

(3) TECHNICAL AMENDMENTS.—

(A) Section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(a)) is amended in the matter preceding paragraph (1) by striking “Regional Centers for the Transfer of Manufacturing Technology” and inserting “regional centers for the transfer of manufacturing technology”.

(B) Section 25 of such Act (15 U.S.C. 278k), as amended by subsection (f), is further amended by adding at the end the following:

“(j) COMMUNITY COLLEGE DEFINED.—In this section, the term ‘community college’ means an institution of higher education (as defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) at which the highest degree that is predominantly awarded to students is an associate’s degree.”.

(h) EVALUATION OF OBSTACLES UNIQUE TO SMALL MANUFACTURERS.—Section 25 of such Act (15 U.S.C. 278k), as amended by subsection (g), is further amended by adding at the end the following:

“(k) EVALUATION OF OBSTACLES UNIQUE TO SMALL MANUFACTURERS.—The Director shall—

“(1) evaluate obstacles that are unique to small manufacturers that prevent such manufacturers from effectively competing in the global market;

“(2) implement a comprehensive plan to train the Centers to address such obstacles; and Plans.

“(3) facilitate improved communication between the Centers to assist such manufacturers in implementing appropriate, targeted solutions to such obstacles.”.

(i) NIST ACT AMENDMENT.—Section 25(f)(3) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)(3)) is amended by striking “Director of the Centers program,” and inserting “Director of the Hollings MEP program,”.

SEC. 405. EMERGENCY COMMUNICATION AND TRACKING TECHNOLOGIES RESEARCH INITIATIVE. 15 USC 278n–1.

(a) ESTABLISHMENT.—The Director shall establish a research initiative to support the development of emergency communication and tracking technologies for use in locating trapped individuals in confined spaces, such as underground mines, and other shielded environments, such as high-rise buildings or collapsed structures, where conventional radio communication is limited.

(b) ACTIVITIES.—In order to carry out this section, the Director shall work with the private sector and appropriate Federal agencies to—

(1) perform a needs assessment to identify and evaluate the measurement, technical standards, and conformity assessment needs required to improve the operation and reliability of such emergency communication and tracking technologies;

(2) support the development of technical standards and conformance architecture to improve the operation and reliability of such emergency communication and tracking technologies; and

(3) incorporate and build upon existing reports and studies on improving emergency communications.

(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Director shall submit to Congress and make publicly available a report describing the assessment performed under subsection (b)(1) and making recommendations about research priorities to address gaps in the measurement, technical standards, and conformity assessment needs identified by the assessment.

SEC. 406. BROADENING PARTICIPATION.

(a) RESEARCH FELLOWSHIPS.—Section 18 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–1) is amended by adding at the end the following:

“(c) UNDERREPRESENTED MINORITIES.—In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute.”.

(b) POSTDOCTORAL FELLOWSHIP PROGRAM.—Section 19 of such Act (15 U.S.C. 278g-2) is amended by adding at the end the following: “In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute.”.

(c) TEACHER DEVELOPMENT.—Section 19A(c) of such Act (15 U.S.C. 278g-2a(c)) is amended by adding at the end the following: “The Director shall give special consideration to an application from a teacher from a high-need school, as defined in section 200 of the Higher Education Act of 1965 (20 U.S.C. 1021).”.

SEC. 407. NIST FELLOWSHIPS.

(a) POST-DOCTORAL FELLOWSHIP PROGRAM.—Section 19 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-2) is amended by striking “, in conjunction with the National Academy of Sciences,”.

(b) RESEARCH FELLOWSHIPS.—Section 18(a) of that Act (15 USC 278g-1(a)) is amended by striking “up to 1.5 percent of the”.

(c) COMMERCE, SCIENCE, AND TECHNOLOGY FELLOWSHIP PROGRAM.—Section 5163(d) of the Omnibus Trade and Competition Act of 1988 (15 U.S.C. 1533) is repealed.

15 USC 278n-2.

SEC. 408. GREEN MANUFACTURING AND CONSTRUCTION.

The Director shall carry out a green manufacturing and construction initiative—

(1) to develop accurate sustainability metrics and practices for use in manufacturing;

(2) to advance the development of standards, including high performance green building standards, and the creation of an information infrastructure to communicate sustainability information about suppliers; and

(3) to move buildings toward becoming high performance green buildings, including improving energy performance, service life, and indoor air quality of new and retrofitted buildings through validated measurement data.

15 USC 278n-1
note.

SEC. 409. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the National Institute of Standards and Technology.

(2) FEDERAL AGENCY.—The term “Federal agency” has the meaning given such term in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703).

(3) HIGH PERFORMANCE GREEN BUILDING.—The term “high performance green building” has the meaning given that term by section 401(13) of the Energy Independence and Security Act of 2009 (42 U.S.C. 17061(13)).

TITLE V—SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS SUPPORT PROGRAMS

SUBTITLE A—NATIONAL SCIENCE FOUNDATION

National Science
Foundation
Authorization
Act of 2010.

SEC. 501. SHORT TITLE.

This subtitle may be cited as the “National Science Foundation Authorization Act of 2010”.

42 USC 1861
note.

SEC. 502. DEFINITIONS.

In this subtitle:

42 USC 1862p
note.

(1) **DIRECTOR.**—The term “Director” means the Director of the National Science Foundation.

(2) **EPSCoR.**—The term “EPSCoR” means the Experimental Program to Stimulate Competitive Research.

(3) **FOUNDATION.**—The term “Foundation” means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(4) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(5) **STATE.**—The term “State” means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(6) **UNITED STATES.**—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

SEC. 503. AUTHORIZATION OF APPROPRIATIONS.

(a) **FISCAL YEAR 2011.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to the Foundation \$7,424,400,000 for fiscal year 2011.

(2) **SPECIFIC ALLOCATIONS.**—Of the amount authorized by paragraph (1)—

(A) \$5,974,782,000 shall be made available to carry research and related activities;

(B) \$937,850,000 shall be made available for education and human resources;

(C) \$164,744,000 shall be made available for major research equipment and facilities construction;

(D) \$327,503,000 shall be made available for agency operations and award management;

(E) \$4,803,000 shall be made available for the Office of the National Science Board; and

(F) \$14,718,000 shall be made available for the Office of Inspector General.

(b) **FISCAL YEAR 2012.**—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation \$7,800,000,000 for fiscal year 2012.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized by paragraph (1)—

(A) \$6,234,281,000 shall be made available to carry research and related activities;

(B) \$978,959,000 shall be made available for education and human resources;

(C) \$225,544,000 shall be made available for major research equipment and facilities construction;

(D) \$341,676,000 shall be made available for agency operations and award management;

(E) \$4,808,000 shall be made available for the Office of the National Science Board; and

(F) \$14,732,000 shall be made available for the Office of Inspector General.

(c) FISCAL YEAR 2013.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation \$8,300,000,000 for fiscal year 2013.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized by paragraph (1)—

(A) \$6,637,849,000 shall be made available to carry research and related activities;

(B) \$1,041,762,000 shall be made available for education and human resources;

(C) \$236,764,000 shall be made available for major research equipment and facilities construction;

(D) \$363,670,000 shall be made available for agency operations and award management;

(E) \$4,906,000 shall be made available for the Office of the National Science Board; and

(F) \$15,049,000 shall be made available for the Office of Inspector General.

SEC. 504. NATIONAL SCIENCE BOARD ADMINISTRATIVE AMENDMENTS.

(a) STAFFING AT THE NATIONAL SCIENCE BOARD.—Section 4(g) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(g)) is amended by striking “not more than 5”.

(b) NATIONAL SCIENCE BOARD REPORTS.—Section 4(j)(2) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(j)(2)) is amended by inserting “within the authority of the Foundation (or otherwise as requested by the Congress or the President)” after “individual policy matters”.

(c) BOARD ADHERENCE TO SUNSHINE ACT.—Section 15(a)(2) of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–5(a)(2)) is amended—

(1) by striking “The Board” and inserting “To ensure transparency of the Board’s entire decision-making process, including deliberations on Board business occurring within its various subdivisions, the Board”; and

(2) by adding at the end the following: “The preceding requirement will apply to meetings of the full Board, whenever a quorum is present; and to meetings of its subdivisions, whenever a quorum of the subdivision is present.”.

SEC. 505. NATIONAL CENTER FOR SCIENCE AND ENGINEERING STATISTICS. 42 USC 1862p.

(a) **ESTABLISHMENT.**—There is established within the Foundation a National Center for Science and Engineering Statistics that shall serve as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development.

(b) **DUTIES.**—In carrying out subsection (a) of this section, the Director, acting through the Center shall—

(1) collect, acquire, analyze, report, and disseminate statistical data related to the science and engineering enterprise in the United States and other nations that is relevant and useful to practitioners, researchers, policymakers, and the public, including statistical data on—

(A) research and development trends;

(B) the science and engineering workforce;

(C) United States competitiveness in science, engineering, technology, and research and development; and

(D) the condition and progress of United States STEM education;

(2) support research using the data it collects, and on methodologies in areas related to the work of the Center; and

(3) support the education and training of researchers in the use of large-scale, nationally representative data sets.

(c) **STATISTICAL REPORTS.**—The Director or the National Science Board, acting through the Center, shall issue regular, and as necessary, special statistical reports on topics related to the national and international science and engineering enterprise such as the biennial report required by section 4(j)(1) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(j)(1)) on indicators of the state of science and engineering in the United States.

Reports.
Public
information.

SEC. 506. NATIONAL SCIENCE FOUNDATION MANUFACTURING RESEARCH AND EDUCATION.

Grants.
42 USC 1862p–1.

(a) **MANUFACTURING RESEARCH.**—The Director shall carry out a program to award merit-reviewed, competitive grants to institutions of higher education to support fundamental research leading to transformative advances in manufacturing technologies, processes, and enterprises that will support United States manufacturing through improved performance, productivity, sustainability, and competitiveness. Research areas may include—

(1) nanomanufacturing;

(2) manufacturing and construction machines and equipment, including robotics, automation, and other intelligent systems;

(3) manufacturing enterprise systems;

(4) advanced sensing and control techniques;

(5) materials processing; and

(6) information technologies for manufacturing, including predictive and real-time models and simulations, and virtual manufacturing.

(b) **MANUFACTURING EDUCATION.**—In order to help ensure a well-trained manufacturing workforce, the Director shall award grants to strengthen and expand scientific and technical education and training in advanced manufacturing, including through the Foundation's Advanced Technological Education program.

SEC. 507. NATIONAL SCIENCE BOARD REPORT ON MID-SCALE INSTRUMENTATION.

(a) **MID-SCALE RESEARCH INSTRUMENTATION NEEDS.**—The National Science Board shall evaluate the needs, across all disciplines supported by the Foundation, for mid-scale research instrumentation that falls between the instruments funded by the Major Research Instrumentation program and the very large projects funded by the Major Research Equipment and Facilities Construction program.

(b) **REPORT ON MID-SCALE RESEARCH INSTRUMENTATION PROGRAM.**—Not later than 1 year after the date of enactment of this Act, the National Science Board shall submit to Congress a report on mid-scale research instrumentation at the Foundation. At a minimum, this report shall include—

(1) the findings from the Board's evaluation of instrumentation needs required under subsection (a), including a description of differences across disciplines and Foundation research directorates;

(2) a recommendation or recommendations regarding how the Foundation should set priorities for mid-scale instrumentation across disciplines and Foundation research directorates;

(3) a recommendation or recommendations regarding the appropriateness of expanding existing programs, including the Major Research Instrumentation program or the Major Research Equipment and Facilities Construction program, to support more instrumentation at the mid-scale;

(4) a recommendation or recommendations regarding the need for and appropriateness of a new, Foundation-wide program or initiative in support of mid-scale instrumentation, including any recommendations regarding the administration of and budget for such a program or initiative and the appropriate scope of instruments to be funded under such a program or initiative; and

(5) any recommendation or recommendations regarding other options for supporting mid-scale research instrumentation at the Foundation.

42 USC 1862p-2.

SEC. 508. PARTNERSHIPS FOR INNOVATION.

Grants.

(a) **IN GENERAL.**—The Director shall carry out a program to award merit-reviewed, competitive grants to institutions of higher education to establish and to expand partnerships that promote innovation and increase the impact of research by developing tools and resources to connect new scientific discoveries to practical uses.

(b) **PARTNERSHIPS.**—

(1) **IN GENERAL.**—To be eligible for funding under this section, an institution of higher education must propose establishment of a partnership that—

(A) includes at least one private sector entity; and

(B) may include other institutions of higher education, public sector institutions, private sector entities, and non-profit organizations.

(2) **PRIORITY.**—In selecting grant recipients under this section, the Director shall give priority to partnerships that include one or more institutions of higher education and at least one of the following:

(A) A minority serving institution.

(B) A primarily undergraduate institution.

(C) A 2-year institution of higher education.

(c) PROGRAM.—Proposals funded under this section shall seek—

(1) to increase the impact of the most promising research at the institution or institutions of higher education that are members of the partnership through knowledge transfer or commercialization;

(2) to increase the engagement of faculty and students across multiple disciplines and departments, including faculty and students in schools of business and other appropriate non-STEM fields and disciplines in knowledge transfer activities;

(3) to enhance education and mentoring of students and faculty in innovation and entrepreneurship through networks, courses, and development of best practices and curricula;

(4) to strengthen the culture of the institution or institutions of higher education to undertake and participate in activities related to innovation and leading to economic or social impact;

(5) to broaden the participation of all types of institutions of higher education in activities to meet STEM workforce needs and promote innovation and knowledge transfer; and

(6) to build lasting partnerships with local and regional businesses, local and State governments, and other relevant entities.

(d) ADDITIONAL CRITERIA.—In selecting grant recipients under this section, the Director shall also consider the extent to which the applicants are able to demonstrate evidence of institutional support for, and commitment to—

(1) achieving the goals of the program as described in subsection (c);

(2) expansion to an institution-wide program if the initial proposal is not for an institution-wide program; and

(3) sustaining any new innovation tools and resources generated from funding under this program.

(e) LIMITATION.—No funds provided under this section may be used to construct or renovate a building or structure.

SEC. 509. SUSTAINABLE CHEMISTRY BASIC RESEARCH.

Grants.
42 USC 1862p-3.

The Director shall establish a Green Chemistry Basic Research program to award competitive, merit-based grants to support research into green and sustainable chemistry which will lead to clean, safe, and economical alternatives to traditional chemical products and practices. The research program shall provide sustained support for green chemistry research, education, and technology transfer through—

(1) merit-reviewed competitive grants to individual investigators and teams of investigators, including, to the extent practicable, young investigators, for research;

(2) grants to fund collaborative research partnerships among universities, industry, and nonprofit organizations;

(3) symposia, forums, and conferences to increase outreach, collaboration, and dissemination of green chemistry advances and practices; and

(4) education, training, and retraining of undergraduate and graduate students and professional chemists and chemical engineers, including through partnerships with industry, in green chemistry science and engineering.

SEC. 510. GRADUATE STUDENT SUPPORT.

42 USC 1869
note.

(a) FINDING.—The Congress finds that—

(1) the Integrative Graduate Education and Research Traineeship program is an important program for training the next generation of scientists and engineers in team-based interdisciplinary research and problem solving, and for providing them with the many additional skills, such as communication skills, needed to thrive in diverse STEM careers; and

(2) the Integrative Graduate Education and Research Traineeship program is no less valuable to the preparation and support of graduate students than the Foundation's Graduate Research Fellowship program.

Effective date.
42 USC 1869
note.

(b) EQUAL TREATMENT OF IGERT AND GRF.—Beginning in fiscal year 2011, the Director shall increase or, if necessary, decrease funding for the Foundation's Integrative Graduate Education and Research Traineeship program (or any program by which it is replaced) at least at the same rate as it increases or decreases funding for the Graduate Research Fellowship program.

(c) SUPPORT FOR GRADUATE STUDENT RESEARCH FROM THE RESEARCH ACCOUNT.—For each of the fiscal years 2011 through 2013, at least 50 percent of the total Foundation funds allocated to the Integrative Graduate Education and Research Traineeship program and the Graduate Research Fellowship program shall come from funds appropriated for Research and Related Activities.

(d) COST OF EDUCATION ALLOWANCE FOR GRF PROGRAM.—Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1869) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The Foundation is authorized”; and

(2) by adding at the end the following:

“(b) AMOUNT.—The Director shall establish for each year the amount to be awarded for scholarships and fellowships under this section for that year. Each such scholarship and fellowship shall include a cost of education allowance of \$12,000, subject to any restrictions on the use of cost of education allowance as determined by the Director.”.

SEC. 511. ROBERT NOYCE TEACHER SCHOLARSHIP PROGRAM.

(a) MATCHING REQUIREMENT.—Section 10A(h)(1) of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–1a(h)(1)) is amended to read as follows:

“(1) IN GENERAL.—An eligible entity receiving a grant under this section shall provide, from non-Federal sources, to carry out the activities supported by the grant—

“(A) in the case of grants in an amount of less than \$1,500,000, an amount equal to at least 30 percent of the amount of the grant, at least one half of which shall be in cash; and

“(B) in the case of grants in an amount of \$1,500,000 or more, an amount equal to at least 50 percent of the amount of the grant, at least one half of which shall be in cash.”.

(b) RETIRING STEM PROFESSIONALS.—Section 10A(a)(2)(A) of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–1a(a)(2)(A)) is amended by inserting “including retiring professionals in those fields,” after “mathematics professionals,”.

SEC. 512 UNDERGRADUATE BROADENING PARTICIPATION PROGRAM. 42 USC 1862p–4.

The Foundation shall continue to support the Historically Black Colleges and Universities Undergraduate Program, the Louis Stokes Alliances for Minority Participation program, the Tribal Colleges and Universities Program, and Hispanic-serving institutions as separate programs.

SEC. 513. RESEARCH EXPERIENCES FOR HIGH SCHOOL STUDENTS. 42 USC 1862p–5.

The Director shall permit specialized STEM high schools conducting research to participate in major data collection initiatives from universities, corporations, or government labs under a research grant from the Foundation, as part of the research proposal.

SEC. 514. RESEARCH EXPERIENCES FOR UNDERGRADUATES. 42 USC 1862p–6.

(a) **RESEARCH SITES.**—The Director shall award grants, on a merit-reviewed, competitive basis, to institutions of higher education, nonprofit organizations, or consortia of such institutions and organizations, for sites designated by the Director to provide research experiences for 6 or more undergraduate STEM students for sites designated at primarily undergraduate institutions of higher education and 10 or more undergraduate STEM students for all other sites, with consideration given to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b). The Director shall ensure that—

(1) at least half of the students participating in a program funded by a grant under this subsection at each site shall be recruited from institutions of higher education where research opportunities in STEM are limited, including 2-year institutions;

(2) the awards provide undergraduate research experiences in a wide range of STEM disciplines;

(3) the awards support a variety of projects, including independent investigator-led projects, interdisciplinary projects, and multi-institutional projects (including virtual projects);

(4) students participating in each program funded have mentors, including during the academic year to the extent practicable, to help connect the students' research experiences to the overall academic course of study and to help students achieve success in courses of study leading to a baccalaureate degree in a STEM field;

(5) mentors and students are supported with appropriate salary or stipends; and

(6) student participants are tracked, for employment and continued matriculation in STEM fields, through receipt of the undergraduate degree and for at least 3 years thereafter.

(b) **INCLUSION OF UNDERGRADUATES IN STANDARD RESEARCH GRANTS.**—The Director shall require that every recipient of a research grant from the Foundation proposing to include 1 or more students enrolled in certificate, associate, or baccalaureate degree programs in carrying out the research under the grant shall request support, including stipend support, for such undergraduate students as part of the research proposal itself rather than as a supplement to the research proposal, unless such undergraduate participation was not foreseeable at the time of the original proposal.

42 USC 1862p-7. **SEC. 515. STEM INDUSTRY INTERNSHIP PROGRAMS.**

(a) **IN GENERAL.**—The Director may award grants, on a competitive, merit-reviewed basis, to institutions of higher education, or consortia thereof, to establish or expand partnerships with local or regional private sector entities, for the purpose of providing undergraduate students with integrated internship experiences that connect private sector internship experiences with the students' STEM coursework. The partnerships may also include industry or professional associations.

(b) **INTERNSHIP PROGRAM.**—The grants awarded under subsection (a) may include internship programs in the manufacturing sector.

(c) **USE OF GRANT FUNDS.**—Grants under this section may be used—

(1) to develop and implement hands-on learning opportunities;

(2) to develop curricula and instructional materials related to industry, including the manufacturing sector;

(3) to perform outreach to secondary schools;

(4) to develop mentorship programs for students with partner organizations; and

(5) to conduct activities to support awareness of career opportunities and skill requirements.

(d) **PRIORITY.**—In awarding grants under this section, the Director shall give priority to institutions of higher education or consortia thereof that demonstrate significant outreach to and coordination with local or regional private sector entities and Regional Centers for the Transfer of Manufacturing Technology established by section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(a)) in developing academic courses designed to provide students with the skills or certifications necessary for employment in local or regional companies.

(e) **OUTREACH TO RURAL COMMUNITIES.**—The Foundation shall conduct outreach to institutions of higher education and private sector entities in rural areas to encourage those entities to participate in partnerships under this section.

(d) **COST-SHARE.**—The Director shall require a 50 percent non-Federal cost-share from partnerships established or expanded under this section.

(e) **RESTRICTION.**—No Federal funds provided under this section may be used—

(1) for the purpose of providing stipends or compensation to students for private sector internships unless private sector entities match 75 percent of such funding; or

(2) as payment or reimbursement to private sector entities, except for institutions of higher education.

(f) **REPORT.**—Not less than 3 years after the date of enactment of this Act, the Director shall submit a report to Congress on the number and total value of awards made under this section, the number of students affected by those awards, any evidence of the effect of those awards on workforce preparation and jobs placement for participating students, and an economic and ethnic breakdown of the participating students.

Payments.

42 USC 1862p-8. **SEC. 516. CYBER-ENABLED LEARNING FOR NATIONAL CHALLENGES.**

The Director shall, in consultation with appropriate Federal agencies, identify ways to use cyber-enabled learning to create

an innovative STEM workforce and to help retrain and retain our existing STEM workforce to address national challenges, including national security and competitiveness, and use technology to enhance or supplement laboratory based learning.

SEC. 517. EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH. 42 USC 1862p–9.

(a) FINDINGS.—The Congress finds that—

(1) The National Science Foundation Act of 1950 stated, “it shall be an objective of the Foundation to strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States, and to avoid undue concentration of such research and education,”;

(2) National Science Foundation funding remains highly concentrated, with 27 States and 2 jurisdictions, taken together, receiving only about 10 percent of all NSF research funding; each of these States received only a fraction of one percent of Foundation’s research dollars each year;

(3) the Nation requires the talent, expertise, and research capabilities of all States in order to prepare sufficient numbers of scientists and engineers, remain globally competitive and support economic development.

(b) CONTINUATION OF PROGRAM.—The Director shall continue to carry out EPSCoR, with the objective of helping the eligible States to develop the research infrastructure that will make them more competitive for Foundation and other Federal research funding. The program shall continue to increase as the National Science Foundation funding increases.

(c) CONGRESSIONAL REPORTS.—The Director shall report to the appropriate committees of Congress on an annual basis, using the most recent available data—

(1) the total amount made available, by State, under EPSCoR;

(2) the amount of co-funding made available to EPSCoR States;

(3) the total amount of National Science Foundation funding made available to all institutions and entities within EPSCoR States; and

(4) efforts and accomplishments to more fully integrate the 29 EPSCoR jurisdictions in major activities and initiatives of the Foundation.

(d) COORDINATION OF EPSCoR AND SIMILAR FEDERAL PROGRAMS.—

(1) ANOTHER FINDING.—The Congress finds that a number of Federal agencies have programs, such as Experimental Programs to Stimulate Competitive Research and the National Institutes of Health Institutional Development Award program, designed to increase the capacity for and quality of science and technology research and training at academic institutions in States that historically have received relatively little Federal research and development funding.

(2) COORDINATION REQUIRED.—The EPSCoR Interagency Coordinating Committee, chaired by the National Science Foundation, shall—

(A) coordinate EPSCoR and Federal EPSCoR-like programs to maximize the impact of Federal support for

building competitive research infrastructure, and in order to achieve an integrated Federal effort;

(B) coordinate agency objectives with State and institutional goals, to obtain continued non-Federal support of science and technology research and training;

(C) develop metrics to assess gains in academic research quality and competitiveness, and in science and technology human resource development;

(D) conduct a cross-agency evaluation of EPSCoR and other Federal EPSCoR-like programs and accomplishments, including management, investment, and metric-measuring strategies implemented by the different agencies aimed to increase the number of new investigators receiving peer-reviewed funding, broaden participation, and empower knowledge generation, dissemination, application, and national research and development competitiveness;

(E) coordinate the development and implementation of new, novel workshops, outreach activities, and follow-up mentoring activities among EPSCoR or EPSCoR-like programs for colleges and universities in EPSCoR States and territories in order to increase the number of proposals submitted and successfully funded and to enhance state-wide coordination of EPSCoR and Federal EPSCoR-like programs;

(F) coordinate the development of new, innovative solicitations and programs to facilitate collaborations, partnerships, and mentoring activities among faculty at all levels in non-EPSCoR and EPSCoR States and jurisdictions;

(G) conduct an evaluation of the roles, responsibilities and degree of autonomy that program officers or managers (or the equivalent position) have in executing EPSCoR programs at the different Federal agencies and the impacts these differences have on the number of EPSCoR State and jurisdiction faculty participating in the peer review process and the percentage of successful awards by individual EPSCoR State jurisdiction and individual researcher; and

Survey.

(H) conduct a survey of colleges and university faculty at all levels regarding their knowledge and understanding of EPSCoR, and their level of interaction with and knowledge about their respective State or Jurisdictional EPSCoR Committee.

(3) MEETINGS AND REPORTS.—The Committee shall meet at least twice each fiscal year and shall submit an annual report to the appropriate committees of Congress describing progress made in carrying out paragraph (2).

(e) FEDERAL AGENCY REPORTS.—Each Federal agency that administers an EPSCoR or Federal EPSCoR-like program shall submit to the OSTP as part of its Federal budget submission—

(1) a description of the program strategy and objectives;

(2) a description of the awards made in the previous year, including—

(A) the percentage of reviewers and number of new reviewers from EPSCoR States;

(B) the percentage of new investigators from EPSCoR States;

(C) the number of programs or large collaborator awards involving a partnership of organizations and institutions from EPSCoR and non-EPSCoR States; and
(3) an analysis of the gains in academic research quality and competitiveness, and in science and technology human resource development, achieved by the program in the last year.

(f) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) IN GENERAL.—The Director shall contract with the National Academy of Sciences to conduct a study on all Federal agencies that administer an Experimental Program to Stimulate Competitive Research or a program similar to the Experimental Program to Stimulate Competitive Research.

Contracts.

(2) MATTERS TO BE ADDRESSED.—The study conducted under paragraph (1) shall include the following:

(A) A delineation of the policies of each Federal agency with respect to the awarding of grants to EPSCoR States.

(B) The effectiveness of each program.

(C) Recommendations for improvements for each agency to achieve EPSCoR goals.

(D) An assessment of the effectiveness of EPSCoR States in using awards to develop science and engineering research and education, and science and engineering infrastructure within their States.

(E) Such other issues that address the effectiveness of EPSCoR as the National Academy of Sciences considers appropriate.

SEC. 518. SENSE OF THE CONGRESS REGARDING THE SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS TALENT EXPANSION PROGRAM.

It is the sense of the Congress that—

(1) the Science, Technology, Engineering, and Mathematics Talent Expansion Program established by the National Science Foundation Authorization Act of 2002 continues to be an effective program to increase the number of students, who are citizens or permanent residents of the United States, receiving associate or baccalaureate degrees in established or emerging fields within science, technology, engineering, and mathematics, and its authorization continues;

(2) the strategies employed continue to strengthen mentoring and tutoring between faculty and students and provide students with information and exposure to potential career pathways in science, technology, engineering, and mathematics areas;

(3) this highly competitive program awarded 145 Program implementation awards and 12 research projects in the first 6 years of operations; and

(4) the Science, Technology, Engineering, and Mathematics Talent Expansion Program should continue to be supported by the National Science Foundation.

SEC. 519. SENSE OF THE CONGRESS REGARDING THE NATIONAL SCIENCE FOUNDATION'S CONTRIBUTIONS TO BASIC RESEARCH AND EDUCATION.

(a) FINDINGS.—The Congress finds that—

(1) the National Science Foundation is an independent Federal agency created by Congress in 1950 to, among other

things, promote the progress of science, to advance the national health, prosperity, and welfare, and to secure the national defense;

(2) the Foundation is the funding source for approximately 20 percent of all federally supported basic research conducted by America's colleges and universities, and is the major source of Federal backing for mathematics, computer science and other sciences;

(3) the America COMPETES Act of 2007 helped rejuvenate our focus on increasing basic research investment in the physical sciences, strengthening educational opportunities in the science, technology, engineering, and mathematics fields and developing a robust innovation infrastructure; and

(4) reauthorization of the America COMPETES Act should continue a robust investment in basic research and education and preserve the essence of the original Act by increasing the investment focus on science, technology, engineering, and mathematics basic research and education as a national priority.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) the National Science Foundation is the finest scientific foundation in the world, and is a vital agency that must support basic research needed to advance the United States into the 21st century;

(2) the National Science Foundation should focus Federal research and development resources primarily in the areas of science, technology, engineering, and mathematics basic research and education; and

(3) the National Science Foundation should strive to ensure that federally-supported research is of the finest quality, is ground breaking, and answers questions or solves problems that are of utmost importance to society at large.

42 USC
1862p–10.

Reports.
Deadline.
Web site.

SEC. 520. ACADEMIC TECHNOLOGY TRANSFER AND COMMERCIALIZATION OF UNIVERSITY RESEARCH.

(a) IN GENERAL.—Any institution of higher education (as such term is defined in section 101(A) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) that receives National Science Foundation research support and has received at least \$25,000,000 in total Federal research grants in the most recent fiscal year shall keep, maintain, and report annually to the National Science Foundation the universal record locator for a public website that contains information concerning its general approach to and mechanisms for transfer of technology and the commercialization of research results, including—

(1) contact information for individuals and university offices responsible for technology transfer and commercialization;

(2) information for both university researchers and industry on the institution's technology licensing and commercialization strategies;

(3) success stories, statistics, and examples of how the university supports commercialization of research results;

(4) technologies available for licensing by the university where appropriate; and

(5) any other information deemed by the institution to be helpful to companies with the potential to commercialize university inventions.

(b) NSF WEBSITE.—The National Science Foundation shall create and maintain a website accessible to the public that links to each website mentioned under (a).

(c) TRADE SECRET INFORMATION.—Notwithstanding subsection (a), an institution shall not be required to reveal confidential, trade secret, or proprietary information on its website.

SEC. 521. STUDY TO DEVELOP IMPROVED IMPACT-ON-SOCIETY METRICS.

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Director of the National Science Foundation shall contract with the National Academy of Sciences to initiate a study to evaluate, develop, or improve metrics for measuring the potential impact-on-society, including—

Deadline.
Contracts.

(1) the potential for commercial applications of research studies funded in whole or in part by grants of financial assistance from the Foundation or other Federal agencies;

(2) the manner in which research conducted at, and individuals graduating from, an institution of higher education contribute to the development of new intellectual property and the success of commercial activities;

(3) the quality of relevant scientific and international publications; and

(4) the ability of such institutions to attract external research funding.

(b) REPORT.—Within 1 year after initiating the study required by subsection (a), the Director shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science and Technology setting forth the Director's findings, conclusions, and recommendations.

SEC. 522. NSF GRANTS IN SUPPORT OF SPONSORED POST-DOCTORAL FELLOWSHIP PROGRAMS.

42 USC
1862p–11.

The Director of the National Science Foundation may utilize funds appropriated to carry out grants to institutions of higher education (as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) to provide financial support for post-graduate research in fields with potential commercial applications to match, in whole or in part, any private sector grant of financial assistance to any post-doctoral program in such a field of study.

SEC. 523. COLLABORATION IN PLANNING FOR STEWARDSHIP OF LARGE-SCALE FACILITIES.

It is the sense of Congress that—

(1) the Foundation should, in its planning for construction and stewardship of large facilities, coordinate and collaborate with other Federal agencies, including the Department of Energy's Office of Science, to ensure that joint investments may be made when practicable;

(2) in particular, the Foundation should ensure that it responds to recommendations by the National Academy of Sciences and working groups convened by the National Science

and Technology Council regarding such facilities and opportunities for partnership with other agencies in the design and construction of such facilities; and

(3) for facilities in which research in multiple disciplines will be possible, the Director should include multiple units within the Foundation during the planning process.

42 USC
1862p–12.

SEC. 524. CLOUD COMPUTING RESEARCH ENHANCEMENT.

(a) **RESEARCH FOCUS AREA.**—The Director may support a national research agenda in key areas affected by the increased use of public and private cloud computing, including—

(1) new approaches, techniques, technologies, and tools for—

(A) optimizing the effectiveness and efficiency of cloud computing environments; and

(B) mitigating security, identity, privacy, reliability, and manageability risks in cloud-based environments, including as they differ from traditional data centers;

(2) new algorithms and technologies to define, assess, and establish large-scale, trustworthy, cloud-based infrastructures;

(3) models and advanced technologies to measure, assess, report, and understand the performance, reliability, energy consumption, and other characteristics of complex cloud environments; and

(4) advanced security technologies to protect sensitive or proprietary information in global-scale cloud environments.

(b) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the Director shall initiate a review and assessment of cloud computing research opportunities and challenges, including research areas listed in subsection (a), as well as related issues such as—

(A) the management and assurance of data that are the subject of Federal laws and regulations in cloud computing environments, which laws and regulations exist on the date of enactment of this Act;

(B) misappropriation of cloud services, piracy through cloud technologies, and other threats to the integrity of cloud services;

(C) areas of advanced technology needed to enable trusted communications, processing, and storage; and

(D) other areas of focus determined appropriate by the Director.

(2) **UNSOLICITED PROPOSALS.**—The Director may accept unsolicited proposals that review and assess the issues described in paragraph (1). The proposals may be judged according to existing criteria of the National Science Foundation.

(c) **REPORT.**—The Director shall provide an annual report for not less than 5 consecutive years to Congress on the outcomes of National Science Foundation investments in cloud computing research, recommendations for research focus and program improvements, or other related recommendations. The reports, including any interim findings or recommendations, shall be made publicly available on the website of the National Science Foundation.

(d) **NIST SUPPORT.**—The Director of the National Institute of Standards and Technology shall—

Web posting.

(1) collaborate with industry in the development of standards supporting trusted cloud computing infrastructures, metrics, interoperability, and assurance; and

(2) support standards development with the intent of supporting common goals.

SEC. 525. TRIBAL COLLEGES AND UNIVERSITIES PROGRAM.

42 USC
1862p–13.
Grants.

(a) **IN GENERAL.**—The Director shall continue to support a program to award grants on a competitive, merit-reviewed basis to tribal colleges and universities (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c), including institutions described in section 317 of such Act (20 U.S.C. 1059d), to enhance the quality of undergraduate STEM education at such institutions and to increase the retention and graduation rates of Native American students pursuing associate's or baccalaureate degrees in STEM.

(b) **PROGRAM COMPONENTS.**—Grants awarded under this section shall support—

(1) activities to improve courses and curriculum in STEM;

(2) faculty development;

(3) stipends for undergraduate students participating in research; and

(4) other activities consistent with subsection (a), as determined by the Director.

(c) **INSTRUMENTATION.**—Funding provided under this section may be used for laboratory equipment and materials.

SEC. 526. BROADER IMPACTS REVIEW CRITERION.

42 USC
1862p–14.

(a) **GOALS.**—The Foundation shall apply a Broader Impacts Review Criterion to achieve the following goals:

(1) Increased economic competitiveness of the United States.

(2) Development of a globally competitive STEM workforce.

(3) Increased participation of women and underrepresented minorities in STEM.

(4) Increased partnerships between academia and industry.

(5) Improved pre-K–12 STEM education and teacher development.

(6) Improved undergraduate STEM education.

(7) Increased public scientific literacy.

(8) Increased national security.

(b) **POLICY.**—Not later than 6 months after the date of enactment of this Act, the Director shall develop and implement a policy for the Broader Impacts Review Criterion that—

(1) provides for educating professional staff at the Foundation, merit review panels, and applicants for Foundation research grants on the policy developed under this subsection;

(2) clarifies that the activities of grant recipients undertaken to satisfy the Broader Impacts Review Criterion shall—

(A) to the extent practicable employ proven strategies and models and draw on existing programs and activities; and

(B) when novel approaches are justified, build on the most current research results;

(3) allows for some portion of funds allocated to broader impacts under a research grant to be used for assessment and evaluation of the broader impacts activity;

(4) encourages institutions of higher education and other nonprofit education or research organizations to develop and provide, either as individual institutions or in partnerships thereof, appropriate training and programs to assist Foundation-funded principal investigators at their institutions in achieving the goals of the Broader Impacts Review Criterion as described in subsection (a); and

(5) requires principal investigators applying for Foundation research grants to provide evidence of institutional support for the portion of the investigator's proposal designed to satisfy the Broader Impacts Review Criterion, including evidence of relevant training, programs, and other institutional resources available to the investigator from either their home institution or organization or another institution or organization with relevant expertise.

42 USC
1862p-15.
Grants.

SEC. 527. TWENTY-FIRST CENTURY GRADUATE EDUCATION.

(a) **IN GENERAL.**—The Director shall award grants, on a competitive, merit-reviewed basis, to institutions of higher education to implement or expand research-based reforms in master's and doctoral level STEM education that emphasize preparation for diverse careers utilizing STEM degrees, including at diverse types of institutions of higher education, in industry, and at government agencies and research laboratories.

(b) **USES OF FUNDS.**—Activities supported by grants under this section may include—

(1) creation of multidisciplinary or interdisciplinary courses or programs for the purpose of improved student instruction and research in STEM;

(2) expansion of graduate STEM research opportunities to include interdisciplinary research opportunities and research opportunities in industry, at Federal laboratories, and at international research institutions or research sites;

(3) development and implementation of future faculty training programs focused on improved instruction, mentoring, assessment of student learning, and support of undergraduate STEM students;

(4) support and training for graduate students to participate in instructional activities beyond the traditional teaching assistantship, and especially as part of ongoing educational reform efforts, including at pre-K-12 schools, and primarily undergraduate institutions;

(5) creation, improvement, or expansion of innovative graduate programs such as science master's degree programs;

(6) development and implementation of seminars, workshops, and other professional development activities that increase the ability of graduate students to engage in innovation, technology transfer, and entrepreneurship;

(7) development and implementation of seminars, workshops, and other professional development activities that increase the ability of graduate students to effectively communicate their research findings to technical audiences outside of their own discipline and to nontechnical audiences;

(8) expansion of successful STEM reform efforts beyond a single academic unit to other STEM academic units within an institution or to comparable academic units at other institutions; and

(9) research on teaching and learning of STEM at the graduate level related to the proposed reform effort, including assessment and evaluation of the proposed reform activities and research on scalability and sustainability of approaches to reform.

(c) PARTNERSHIP.—An institution of higher education may partner with one or more other nonprofit education or research organizations, including scientific and engineering societies, for the purposes of carrying out the activities authorized under this section.

(d) SELECTION PROCESS.—

(1) APPLICATIONS.—An institution of higher education seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the proposed reform effort;

(B) in the case of applications that propose an expansion of a previously implemented reform effort at the applicant's institution or at other institutions, a description of the previously implemented reform effort;

(C) evidence of institutional support for, and commitment to, the proposed reform effort, including long-term commitment to implement successful strategies from the current reform effort beyond the academic unit or units included in the grant proposal or to disseminate successful strategies to other institutions; and

(D) a description of the plans for assessment and evaluation of the grant proposed reform activities.

(2) REVIEW OF APPLICATIONS.—In selecting grant recipients under this section, the Director shall consider at a minimum—

(A) the likelihood of success in undertaking the proposed effort at the institution submitting the application, including the extent to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit or units;

(B) the degree to which the proposed reform will contribute to change in institutional culture and policy such that a greater value is placed on preparing graduate students for diverse careers utilizing STEM degrees;

(C) the likelihood that the institution will sustain or expand the reform beyond the period of the grant; and

(D) the degree to which scholarly assessment and evaluation plans are included in the design of the reform effort.

SUBTITLE B—STEM-TRAINING GRANT PROGRAM

SEC. 551. PURPOSE.

20 USC 9901.

The purpose of this subtitle is to replicate and implement programs at institutions of higher education that provide integrated courses of study in science, technology, engineering, or mathematics, and teacher education, that lead to a baccalaureate degree in science, technology, engineering, or mathematics with concurrent teacher certification.

20 USC 9902.

SEC. 552. PROGRAM REQUIREMENTS.

The Director shall replicate and implement undergraduate degree programs under this subtitle that—

(1) are designed to recruit and prepare students who pursue a baccalaureate degree in science, technology, engineering, or mathematics to become certified as elementary and secondary teachers;

(2) require the education department (or its equivalent) and the departments or division responsible for preparation of science, technology, engineering, and mathematics majors at an institution of higher education to collaborate in establishing and implementing the program at that institution;

(3) require students participating in the program to enter the program through a field-based course and to continue to complete field-based courses supervised by master teachers throughout the program;

(4) hire sufficient teachers so that the ratio of students to master teachers in the program does not exceed 100 to 1;

(5) include instruction in the use of scientifically-based instructional materials and methods, assessments, pedagogical content knowledge (including the interaction between mathematics and science), the use of instructional technology, and how to incorporate State and local standards into the classroom curriculum;

(6) restrict to students participating in the program those courses that are specifically designed for the needs of teachers of science, technology, engineering, and mathematics; and

(7) require students participating in the program to successfully complete a final evaluation of their teaching proficiency, based on their classroom teaching performance, conducted by multiple trained observers, and a portfolio of their accomplishments.

20 USC 9903.

SEC. 553. GRANT PROGRAM.

(a) **IN GENERAL.**—The Director shall establish a grant program to support programs at institutions of higher education to carry out the purpose of this subtitle.

(b) **GEOGRAPHICAL CONSIDERATIONS.**—In the administration of this subtitle, the Director shall take such steps as may be necessary to ensure that grants are equitably distributed across all regions of the United States, taking into account population density and other geographic and demographic considerations.

(c) **AMOUNT OF GRANT.**—Subject to the requirements of subsection (d), the Director may award grants annually on a competitive basis to institutions of higher education in the amount of \$2,000,000, per institution of which—

(1) \$1,500,000 shall be used—

(A) to design, implement, and evaluate a program that meets the requirements of section 552;

(B) to employ master teachers at the institution to oversee field experiences;

(C) to provide a stipend to mentor teachers participating in the program; and

(D) to support curriculum development and implementation strategies for science, technology,

engineering, and mathematics content courses taught through the program; and

(2) up to \$500,000 shall be set aside by the grantee for technical support and evaluation services from the institution whose programs will be replicated.

(d) ELIGIBILITY.—To be eligible to apply for a grant under this section, an institution of higher education shall—

(1) include former secondary school science, technology, engineering, or mathematics master teachers as faculty in its science department for this program;

(2) grant terminal degrees in science, technology, engineering, and mathematics; and

(3) have a process to be used in establishing partnerships with local educational agencies for placement of participating students in their field experiences, including a process for identifying mentor teachers working in local schools to supervise classroom field experiences in cooperation with university-based master teachers;

(4) maintain policies allowing flexible entry to the program throughout the undergraduate coursework;

(5) require that master teachers employed by the institution will supervise field experiences of students in the program;

(6) require that the program complies with State certification or licensing requirements and the requirements under section 9101(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(23)) for highly qualified teachers;

(7) develop during the course of the grant a plan for long-term support and assessment of its graduates, which shall include—

(A) induction support for graduates in their first one to two years of teaching;

(B) systems to determine the teaching status of graduates and thereby determine retention rates; and

(C) methods to analyze the achievement of students taught by graduates, and methods to analyze classroom practices of graduates; and

(8) be able upon completion of the grant at the end of 5 years to fund essential program costs, including salaries of master teachers and other necessary personnel, from recurring university budgets.

(e) APPLICATION REQUIREMENTS.—An institution of higher education seeking a grant under the program shall submit an application to the Director in such form, at such time, and containing such information and assurances as the Director may require, including—

(1) a description of the current rate at which individuals majoring in science, technology, engineering, and mathematics become certified as elementary and secondary teachers;

(2) a description for the institution's plan for increasing the numbers of students enrolled in and graduating from the program supported under this subtitle;

(3) a description of the institution's capacity to develop a program in which individuals majoring in science, technology, engineering, and mathematics can become certified as elementary and secondary teachers;

(4) identification of the organizational unit within the department or division of arts and sciences or the science

department at the institution that will adopt teacher certification for elementary and secondary teachers as its primary mission;

(5) identification of core faculty within the department or division of arts and sciences or the science department at the institution to champion teacher preparation in their departments by teaching courses dedicated to preparing future elementary and secondary school teachers, helping create new degree plans, advising prospective students within their major, and assisting as needed with program administration;

(6) identification of core faculty in the education department or its equivalent at the institution to champion teacher preparation by creating and teaching courses specific to the preparation of science, technology, engineering, and mathematics and working closely with colleagues in the department or division of arts and sciences or the science department; and

(7) a description of involving practical, field-based experience in teaching and degree plans enabling students to graduate in 4 years with a major in science, technology, engineering, or mathematics and elementary or secondary school teacher certification.

(f) **MATCHING REQUIREMENT.**—An institution of higher education may not receive a grant under this section unless it provides, from non-federal sources, to carry out the activities supported by the grant, an amount that is not less than—

(1) 35 percent of the amount of the grant for the first fiscal year of the grant;

(2) 55 percent of the amount of the grant for the second and third fiscal years of the grant; and

(3) 75 percent of the amount of the grant for the fourth and fifth fiscal years of the grant.

Deadline.

(g) **GUIDANCE.**—Within 90 days after the date of enactment of this Act, the Director shall initiate a proceeding to promulgate guidance for the administration of the grant program established under subsection (a).

20 USC 9904.

SEC. 554. GRANT OVERSIGHT AND ADMINISTRATION.

(a) **IN GENERAL.**—The Director may execute a contract for program oversight and fiscal management with an organization at an institution of higher education, a non-profit organization, or other entity that demonstrates capacity for and experience in—

(1) replicating 1 or more similar programs at regional or national levels;

(2) providing programmatic and technical implementation assistance for the program;

(3) performing data collection and analysis to ensure proper implementation and continuous program improvement; and

(4) providing accountability for results by measuring and monitoring achievement of programmatic milestones.

(b) **OVERSIGHT RESPONSIBILITIES.**—

(1) **MANDATORY DUTIES.**—If the Director executes a contract under subsection (a) with an organization for program oversight and fiscal management, the organization shall—

(A) ensure that a grant recipient faithfully replicates and implements the program or programs for which the grant is awarded;

(B) ensure that grant funds are used for the purposes authorized and that a grant recipient has a system in place to track and account for all Federal grant funds provided;

(C) provide technical assistance to grant recipients;

(D) collect and analyze data and report to the Director annually on the effects of the program on—

Reports.
Deadline.

(i) the progress of participating students in achieving teaching competence and teaching certification;

(ii) the participation of students in the program by major, compared with local and State needs on secondary teachers by discipline; and

(iii) the participation of students in the program by demographic subgroup;

(E) collect and analyze data and report to the Director annually on the effects of the program on the academic achievement of elementary and secondary school students taught by graduates of programs funded by grants under this subtitle; and

Reports.
Deadline.

(F) submit an annual report to the Director demonstrating compliance with the requirements of subparagraphs (A) through (E).

Reports.
Deadline.

(2) DISCRETIONARY DUTIES.—At the request of the Director, the organization under contract under subsection (a) may assist the Director in evaluating grant applications.

(c) REPORTS TO CONGRESS.—The Director shall submit a copy of the annual report required by subsection (b)(1)(F) to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Science and Technology, and the House of Representatives Committee on Education and Labor.

SEC. 555. DEFINITIONS.

20 USC 9905.

In this subtitle:

(1) FIELD-BASED COURSE.—The term “field-based course” means a course of instruction offered by an institution of higher education that includes a requirement that students teach a minimum of 3 lessons or sequences of lessons to elementary or secondary students.

(2) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given that term by section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) MASTER TEACHER.—The term “master teacher” means an individual—

(A) who has been awarded a master’s or doctoral degree by an institution of higher education;

(B) whose graduate coursework included courses in mathematics, science, computer science, or engineering;

(C) who has at least 3 years teaching experience in K–12 settings; and

(D) whose teaching has been recognized for exceptional accomplishments in educating students, or is demonstrated to have resulted in improved student achievement.

(4) MENTOR TEACHER.—The term “mentor teacher” means an elementary or secondary school classroom teacher who

assists with the training of students participating in a field-based course.

(5) **DIRECTOR.**—The term “Director” means the Director of the National Science Foundation.

20 USC 9906.

SEC. 556. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director to carry out this subtitle \$10,000,000 for each of fiscal years 2011 through 2013.

TITLE VI—INNOVATION

SEC. 601. OFFICE OF INNOVATION AND ENTREPRENEURSHIP.

The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), as amended by section 106 of this Act, is amended by adding at the end the following:

Establishment.
15 USC 3720.

“SEC. 25. OFFICE OF INNOVATION AND ENTREPRENEURSHIP.

“(a) **IN GENERAL.**—The Secretary shall establish an Office of Innovation and Entrepreneurship to foster innovation and the commercialization of new technologies, products, processes, and services with the goal of promoting productivity and economic growth in the United States.

“(b) **DUTIES.**—The Office of Innovation and Entrepreneurship shall be responsible for—

“(1) developing policies to accelerate innovation and advance the commercialization of research and development, including federally funded research and development;

“(2) identifying existing barriers to innovation and commercialization, including access to capital and other resources, and ways to overcome those barriers, particularly in States participating in the Experimental Program to Stimulate Competitive Research;

“(3) providing access to relevant data, research, and technical assistance on innovation and commercialization;

“(4) strengthening collaboration on and coordination of policies relating to innovation and commercialization, including those focused on the needs of small businesses and rural communities, within the Department of Commerce, between the Department of Commerce and other Federal agencies, and between the Department of Commerce and appropriate State government agencies and institutions, as appropriate; and

“(5) any other duties as determined by the Secretary.

“(c) **ADVISORY COMMITTEE.**—The Secretary shall establish an Advisory Council on Innovation and Entrepreneurship to provide advice to the Secretary on carrying out subsection (b).”.

SEC. 602. FEDERAL LOAN GUARANTEES FOR INNOVATIVE TECHNOLOGIES IN MANUFACTURING.

The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), as amended by section 601, is further amended by adding at the end the following:

15 USC 3721.

“SEC. 26. FEDERAL LOAN GUARANTEES FOR INNOVATIVE TECHNOLOGIES IN MANUFACTURING.

“(a) **ESTABLISHMENT.**—The Secretary shall establish a program to provide loan guarantees for obligations to small- or medium-

sized manufacturers for the use or production of innovative technologies.

“(b) ELIGIBLE PROJECTS.—A loan guarantee may be made under the program only for a project that re-equips, expands, or establishes a manufacturing facility in the United States—

“(1) to use an innovative technology or an innovative process in manufacturing;

“(2) to manufacture an innovative technology product or an integral component of such a product; or

“(3) to commercialize an innovative product, process, or idea that was developed by research funded in whole or in part by a grant from the Federal government.

“(c) ELIGIBLE BORROWER.—A loan guarantee may be made under the program only for a borrower who is a small- or medium-sized manufacturer, as determined by the Secretary under the criteria established pursuant to subsection (l).

“(d) LIMITATION ON AMOUNT.—A loan guarantee shall not exceed an amount equal to 80 percent of the obligation, as estimated at the time at which the loan guarantee is issued.

“(e) LIMITATIONS ON LOAN GUARANTEE.—No loan guarantee shall be made unless the Secretary determines that—

Determination.

“(1) there is a reasonable prospect of repayment of the principal and interest on the obligation by the borrower;

“(2) the amount of the obligation (when combined with amounts available to the borrower from other sources) is sufficient to carry out the project;

“(3) the obligation is not subordinate to other financing;

“(4) the obligation bears interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks; and

“(5) the term of an obligation requires full repayment over a period not to exceed the lesser of—

“(A) 30 years; or

“(B) 90 percent of the projected useful life, as determined by the Secretary, of the physical asset to be financed by the obligation.

“(f) DEFAULTS.—

“(1) PAYMENT BY SECRETARY.—

“(A) IN GENERAL.—If a borrower defaults (as defined in regulations promulgated by the Secretary and specified in the loan guarantee) on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

“(B) PAYMENT REQUIRED.—Within such period as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that the default has been remedied.

“(C) FORBEARANCE.—Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and approved by the Secretary.

“(2) SUBROGATION.—

“(A) IN GENERAL.—If the Secretary makes a payment under paragraph (1), the Secretary shall be subrogated to the rights, as specified in the loan guarantee, of the recipient of the payment or related agreements including, if appropriate, the authority (notwithstanding any other provision of law)—

“(i) to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such loan guarantee or related agreement; or

“(ii) to permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines that such an agreement is in the public interest.

“(B) SUPERIORITY OF RIGHTS.—The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.

“(3) NOTIFICATION.—If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

“(g) TERMS AND CONDITIONS.—A loan guarantee under this section shall include such detailed terms and conditions as the Secretary determines appropriate—

“(1) to protect the interests of the United States in the case of default; and

“(2) to have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.

“(h) CONSULTATION.—In establishing the terms and conditions of a loan guarantee under this section, the Secretary shall consult with the Secretary of the Treasury.

“(i) FEES.—

“(1) IN GENERAL.—The Secretary shall charge and collect fees for loan guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.

“(2) AVAILABILITY.—Fees collected under this subsection shall—

“(A) be deposited by the Secretary into the Treasury of the United States; and

“(B) remain available until expended, subject to such other conditions as are contained in annual appropriations Acts.

“(3) LIMITATION.—In charging and collecting fees under paragraph (1), the Secretary shall take into consideration the amount of the obligation.

“(j) RECORDS.—

“(1) IN GENERAL.—With respect to a loan guarantee under this section, the borrower, the lender, and any other appropriate party shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

“(2) ACCESS.—The Secretary and the Comptroller General of the United States, or their duly authorized representatives,

Regulations.

shall have access to records and other pertinent documents for the purpose of conducting an audit.

“(k) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all loan guarantees issued under this section with respect to principal and interest.

“(l) REGULATIONS.—The Secretary shall issue final regulations before making any loan guarantees under the program. The regulations shall include—

“(1) criteria that the Secretary shall use to determine eligibility for loan guarantees under this section, including—

“(A) whether a borrower is a small- or medium-sized manufacturer; and

“(B) whether a borrower demonstrates that a market exists for the innovative technology product, or the integral component of such a product, to be manufactured, as evidenced by written statements of interest from potential purchasers;

“(2) criteria that the Secretary shall use to determine the amount of any fees charged under subsection (i), including criteria related to the amount of the obligation;

“(3) policies and procedures for selecting and monitoring lenders and loan performance; and

“(4) any other policies, procedures, or information necessary to implement this section.

“(m) AUDIT.—

“(1) ANNUAL INDEPENDENT AUDITS.—The Secretary shall enter into an arrangement with an independent auditor for annual evaluations of the program under this section.

Contracts.

“(2) COMPTROLLER GENERAL REVIEW.—The Comptroller General of the United States shall conduct a biennial review of the Secretary’s execution of the program under this section.

“(3) REPORT.—The results of the independent audit under paragraph (1) and the Comptroller General’s review under paragraph (2) shall be provided directly to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

“(n) REPORT TO CONGRESS.—Concurrent with the submission to Congress of the President’s annual budget request in each year after the date of enactment of the America COMPETES Reauthorization Act of 2010, the Secretary shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing a summary of all activities carried out under this section.

“(o) COORDINATION AND NONDUPLICATION.—To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other loan guarantee programs within the Federal Government.

“(p) MEP CENTERS.—The Secretary may use centers established under section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k) to provide information about the program established under this section and to conduct outreach to potential borrowers, as appropriate.

“(q) MINIMIZING RISK.—The Secretary shall promulgate regulations and policies to carry out this section in accordance with Office of Management and Budget Circular No. A-129, entitled

Regulations.

‘Policies for Federal Credit Programs and Non-Tax Receivables’, as in effect on the date of enactment of the America COMPETES Reauthorization Act of 2010.

“(r) SENSE OF CONGRESS.—It is the sense of Congress that no loan guarantee shall be made under this section unless the borrower agrees to use a federally-approved electronic employment eligibility verification system to verify the employment eligibility of—

“(1) all persons hired during the contract term by the borrower to perform employment duties within the United States; and

“(2) all persons assigned by the borrower to perform work within the United States on the project.

“(s) DEFINITIONS.—In this section:

“(1) COST.—The term ‘cost’ has the meaning given such term under section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

“(2) INNOVATIVE PROCESS.—The term ‘innovative process’ means a process that is significantly improved as compared to the process in general use in the commercial marketplace in the United States at the time the loan guarantee is issued.

“(3) INNOVATIVE TECHNOLOGY.—The term ‘innovative technology’ means a technology that is significantly improved as compared to the technology in general use in the commercial marketplace in the United States at the time the loan guarantee is issued.

“(4) LOAN GUARANTEE.—The term ‘loan guarantee’ has the meaning given such term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a). The term includes a loan guarantee commitment (as defined in section 502 of such Act (2 U.S.C. 661a)).

“(5) OBLIGATION.—The term ‘obligation’ means the loan or other debt obligation that is guaranteed under this section.

“(6) PROGRAM.—The term ‘program’ means the loan guarantee program established in subsection (a).

“(t) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$20,000,000 for each of fiscal years 2011 through 2013 to provide the cost of loan guarantees under this section.”.

SEC. 603. REGIONAL INNOVATION PROGRAM.

The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), as amended by section 602, is further amended by adding at the end thereof the following:

15 USC 3722.

“SEC. 27. REGIONAL INNOVATION PROGRAM.

“(a) ESTABLISHMENT.—The Secretary shall establish a regional innovation program to encourage and support the development of regional innovation strategies, including regional innovation clusters and science and research parks.

“(b) CLUSTER GRANTS.—

“(1) IN GENERAL.—As part of the program established under subsection (a), the Secretary may award grants on a competitive basis to eligible recipients for activities relating to the formation and development of regional innovation clusters.

“(2) PERMISSIBLE ACTIVITIES.—Grants awarded under this subsection may be used for activities determined appropriate by the Secretary, including the following:

“(A) Feasibility studies.

“(B) Planning activities.

“(C) Technical assistance.

“(D) Developing or strengthening communication and collaboration between and among participants of a regional innovation cluster.

“(E) Attracting additional participants to a regional innovation cluster.

“(F) Facilitating market development of products and services developed by a regional innovation cluster, including through demonstration, deployment, technology transfer, and commercialization activities.

“(G) Developing relationships between a regional innovation cluster and entities or clusters in other regions.

“(H) Interacting with the public and State and local governments to meet the goals of the cluster.

“(3) ELIGIBLE RECIPIENT DEFINED.—In this subsection, the term ‘eligible recipient’ means—

“(A) a State;

“(B) an Indian tribe;

“(C) a city or other political subdivision of a State;

“(D) an entity that—

“(i) is a nonprofit organization, an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, or an economic development organization or similar entity; and

“(ii) has an application that is supported by a State or a political subdivision of a State; or

“(E) a consortium of any of the entities described in subparagraphs (A) through (D).

“(4) APPLICATION.—

“(A) IN GENERAL.—An eligible recipient shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

“(B) COMPONENTS.—The application shall include, at a minimum, a description of the regional innovation cluster supported by the proposed activity, including a description of—

“(i) whether the regional innovation cluster is supported by the private sector, State and local governments, and other relevant stakeholders;

“(ii) how the existing participants in the regional innovation cluster will encourage and solicit participation by all types of entities that might benefit from participation, including newly formed entities and those rival existing participants;

“(iii) the extent to which the regional innovation cluster is likely to stimulate innovation and have a positive impact on regional economic growth and development;

“(iv) whether the participants in the regional innovation cluster have access to, or contribute to, a well-trained workforce;

“(v) whether the participants in the regional innovation cluster are capable of attracting additional funds from non-Federal sources; and

“(vi) the likelihood that the participants in the regional innovation cluster will be able to sustain activities once grant funds under this subsection have been expended.

“(C) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications from regions that contain communities negatively impacted by trade.

“(5) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to an eligible recipient who agrees to collaborate with local workforce investment area boards.

“(6) COST SHARE.—The Secretary may not provide more than 50 percent of the total cost of any activity funded under this subsection.

“(7) USE AND APPLICATION OF RESEARCH AND INFORMATION PROGRAM.—To the maximum extent practicable, the Secretary shall ensure that activities funded under this subsection use and apply any relevant research, best practices, and metrics developed under the program established in subsection (c).

“(c) SCIENCE AND RESEARCH PARK DEVELOPMENT GRANTS.—

“(1) IN GENERAL.—As part of the program established under subsection (a), the Secretary may award grants for the development of feasibility studies and plans for the construction of new science parks or the renovation or expansion of existing science parks.

“(2) LIMITATION ON AMOUNT OF GRANTS.—The amount of a grant awarded under this subsection may not exceed \$750,000.

“(3) AWARD.—

“(A) COMPETITION REQUIRED.—The Secretary shall award grants under this subsection pursuant to a full and open competition.

“(B) GEOGRAPHIC DISPERSION.—In conducting a competitive process, the Secretary shall consider the need to avoid undue geographic concentration among any one category of States based on their predominant rural or urban character as indicated by population density.

“(C) SELECTION CRITERIA.—The Secretary shall publish the criteria to be utilized in any competition for the selection of recipients of grants under this subsection, which shall include requirements relating to the—

“(i) effect the science park will have on regional economic growth and development;

“(ii) number of jobs to be created at the science park and the surrounding regional community each year during its first 3 years;

“(iii) funding to be required to construct, renovate or expand the science park during its first 3 years;

“(iv) amount and type of financing and access to capital available to the applicant;

“(v) types of businesses and research entities expected in the science park and surrounding regional community;

“(vi) letters of intent by businesses and research entities to locate in the science park;

“(vii) capability to attract a well trained workforce to the science park;

Publication.

“(viii) the management of the science park during its first 5 years;

“(ix) expected financial risks in the construction and operation of the science park and the risk mitigation strategy;

“(x) physical infrastructure available to the science park, including roads, utilities, and telecommunications;

“(xi) utilization of energy-efficient building technology including nationally recognized green building design practices, renewable energy, cogeneration, and other methods that increase energy efficiency and conservation;

“(xii) consideration to the transformation of military bases affected by the base realignment and closure process or the redevelopment of existing buildings, structures, or brownfield sites that are abandoned, idled, or underused into single or multiple building facilities for science and technology companies and institutions;

“(xiii) ability to collaborate with other science parks throughout the world;

“(xiv) consideration of sustainable development practices and the quality of life at the science park; and

“(xv) other such criteria as the Secretary shall prescribe.

“(4) ALLOCATION CONSTRAINTS.—The Secretary may not allocate less than one-third of the total grant funding allocated under this section for any fiscal year to grants under subsection (b) or this subsection without written notification to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committees on Science and Technology and on Energy and Commerce.

Notification.

“(d) LOAN GUARANTEES FOR SCIENCE PARK INFRASTRUCTURE.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary may guarantee up to 80 percent of the loan amount for projects for the construction or expansion, including renovation and modernization, of science park infrastructure.

“(2) LIMITATIONS ON GUARANTEE AMOUNTS.—The maximum amount of loan principal guaranteed under this subsection may not exceed—

“(A) \$50,000,000 with respect to any single project; and

“(B) \$300,000,000 with respect to all projects.

“(3) SELECTION OF GUARANTEE RECIPIENTS.—The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, property, and such other things of value as the Secretary shall deem necessary. Recipients of grants under subsection (c) are not eligible for a loan guarantee during the period of the grant. To the extent that the Secretary determines it to be feasible, the Secretary may select recipients of guarantee assistance in accord with a competitive process that takes into account the factors set out in subsection (c)(3)(C) of this section.

“(4) TERMS AND CONDITIONS FOR LOAN GUARANTEES.—The loans guaranteed under this subsection shall be subject to such terms and conditions as the Secretary may prescribe, except that—

“(A) the final maturity of such loans made or guaranteed may not exceed the lesser of—

“(i) 30 years; or

“(ii) 90 percent of the useful life of any physical asset to be financed by the loan;

“(B) a loan guaranteed under this subsection may not be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default;

“(C) a loan may not be guaranteed under this subsection unless the Secretary determines that the lender is responsible and that provision is made for servicing the loan on reasonable terms and in a manner that adequately protects the financial interest of the United States;

“(D) a loan may not be guaranteed under this subsection if—

“(i) the income from the loan is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986; or

“(ii) the guarantee provides significant collateral or security, as determined by the Secretary in coordination with the Secretary of the Treasury, for other obligations the income from which is so excluded;

“(E) any guarantee provided under this subsection shall be conclusive evidence that—

“(i) the guarantee has been properly obtained;

“(ii) the underlying loan qualified for the guarantee; and

“(iii) absent fraud or material misrepresentation by the holder, the guarantee is presumed to be valid, legal, and enforceable;

“(F) the Secretary may not extend credit assistance unless the Secretary has determined that there is a reasonable assurance of repayment; and

“(G) new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required under section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

“(5) PAYMENT OF LOSSES.—

“(A) IN GENERAL.—If, as a result of a default by a borrower under a loan guaranteed under this subsection, after the holder has made such further collection efforts and instituted such enforcement proceedings as the Secretary may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay to the holder the percentage of the loss specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this section.

“(B) ENFORCEMENT OF RIGHTS.—The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

“(C) FORBEARANCE.—Nothing in this section may be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990) is available.

“(6) EVALUATION OF CREDIT RISK.—

“(A) The Secretary shall periodically assess the credit risk of new and existing direct loans or guaranteed loans.

“(B) Not later than 2 years after the date of the enactment of the America COMPETES Reauthorization Act of 2010, the Comptroller General of the United States shall—

Deadline.

“(i) conduct a review of the subsidy estimates for the loan guarantees under this section; and

“(ii) submit to Congress a report on the review conducted under this paragraph.

Reports.

“(7) TERMINATION.—A loan may not be guaranteed under this section after September 30, 2013.

“(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$7,000,000 for each of fiscal years 2011 through 2013 for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990) of guaranteeing \$300,000,000 in loans under this section, such sums to remain available until expended.

“(e) REGIONAL INNOVATION RESEARCH AND INFORMATION PROGRAM.—

“(1) IN GENERAL.—As part of the program established under subsection (a), the Secretary shall establish a regional innovation research and information program—

“(A) to gather, analyze, and disseminate information on best practices for regional innovation strategies (including regional innovation clusters), including information relating to how innovation, productivity, and economic development can be maximized through such strategies;

“(B) to provide technical assistance, including through the development of technical assistance guides, for the development and implementation of regional innovation strategies (including regional innovation clusters);

“(C) to support the development of relevant metrics and measurement standards to evaluate regional innovation strategies (including regional innovation clusters), including the extent to which such strategies stimulate innovation, productivity, and economic development; and

“(D) to collect and make available data on regional innovation cluster activity in the United States, including data on—

“(i) the size, specialization, and competitiveness of regional innovation clusters;

“(ii) the regional domestic product contribution, total jobs and earnings by key occupations, establishment size, nature of specialization, patents, Federal

research and development spending, and other relevant information for regional innovation clusters; and

“(iii) supply chain product and service flows within and between regional innovation clusters.

“(2) RESEARCH GRANTS.—The Secretary may award research grants on a competitive basis to support and further the goals of the program established under this subsection.

“(3) DISSEMINATION OF INFORMATION.—Data and analysis compiled by the Secretary under the program established in this subsection shall be made available to other Federal agencies, State and local governments, and nonprofit and for-profit entities.

“(4) REGIONAL INNOVATION GRANT PROGRAM.—The Secretary shall incorporate data and analysis relating to any grant under subsection (b) or (c) and any loan guarantee under subsection (d) into the program established under this subsection.

“(f) INTERAGENCY COORDINATION.—

“(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other programs at the Department of Commerce or other Federal agencies.

“(2) COLLABORATION.—

“(A) IN GENERAL.—The Secretary shall explore and pursue collaboration with other Federal agencies, including through multiagency funding opportunities, on regional innovation strategies.

“(B) SMALL BUSINESSES.—The Secretary shall ensure that such collaboration with Federal agencies prioritizes the needs and challenges of small businesses.

“(g) EVALUATION.—

“(1) IN GENERAL.—Not later than 3 years after the date of enactment of the America COMPETES Reauthorization Act of 2010, the Secretary shall enter into a contract with an independent entity, such as the National Academy of Sciences, to conduct an evaluation of the program established under subsection (a).

“(2) REQUIREMENTS.—The evaluation shall include—

“(A) whether the program is achieving its goals;

“(B) any recommendations for how the program may be improved; and

“(C) a recommendation as to whether the program should be continued or terminated.

“(h) DEFINITIONS.—In this section:

“(1) REGIONAL INNOVATION CLUSTER.—The term ‘regional innovation cluster’ means a geographically bounded network of similar, synergistic, or complementary entities that—

“(A) are engaged in or with a particular industry sector;

“(B) have active channels for business transactions and communication;

“(C) share specialized infrastructure, labor markets, and services; and

“(D) leverage the region’s unique competitive strengths to stimulate innovation and create jobs.

“(2) SCIENCE PARK.—The term ‘Science park’ means a property-based venture, which has—

Deadline.
Contracts.

“(A) master-planned property and buildings designed primarily for private-public research and development activities, high technology and science-based companies, and research and development support services;

“(B) a contractual or operational relationship with one or more science- or research-related institution of higher education or governmental or non-profit research laboratories;

“(C) a primary mission to promote research and development through industry partnerships, assisting in the growth of new ventures and promoting innovation-driven economic development;

“(D) a role in facilitating the transfer of technology and business skills between researchers and industry teams; and

“(E) a role in promoting technology-led economic development for the community or region in which the science park is located. A science park may be owned by a governmental or not-for-profit entity, but it may enter into partnerships or joint ventures with for-profit entities for development or management of specific components of the park.

“(3) STATE.—The term ‘State’ means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

“(i) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in subsection (d)(8), there are authorized to be appropriated \$100,000,000 for each of fiscal years 2011 through 2013 to carry out this section (other than for loan guarantees under subsection (d)).”.

SEC. 604. STUDY ON ECONOMIC COMPETITIVENESS AND INNOVATIVE CAPACITY OF UNITED STATES AND DEVELOPMENT OF NATIONAL ECONOMIC COMPETITIVENESS STRATEGY.

15 USC 3701
note.

(a) STUDY.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall complete a comprehensive study of the economic competitiveness and innovative capacity of the United States.

Deadline.

(2) MATTERS COVERED.—The study required by paragraph (1) shall include the following:

(A) An analysis of the United States economy and innovation infrastructure.

(B) An assessment of the following:

(i) The current competitive and innovation performance of the United States economy relative to other countries that compete economically with the United States.

(ii) Economic competitiveness and domestic innovation in the current business climate, including tax and Federal regulatory policy.

(iii) The business climate of the United States and those of other countries that compete economically with the United States.

(iv) Regional issues that influence the economic competitiveness and innovation capacity of the United States, including—

(I) the roles of State and local governments and institutions of higher education; and

(II) regional factors that contribute positively to innovation.

(v) The effectiveness of the Federal Government in supporting and promoting economic competitiveness and innovation, including any duplicative efforts of, or gaps in coverage between, Federal agencies and departments.

(vi) Barriers to competitiveness in newly emerging business or technology sectors, factors influencing underperforming economic sectors, unique issues facing small and medium enterprises, and barriers to the development and evolution of start-ups, firms, and industries.

(vii) The effects of domestic and international trade policy on the competitiveness of the United States and the United States economy.

(viii) United States export promotion and export finance programs relative to export promotion and export finance programs of other countries that compete economically with the United States, including Canada, France, Germany, Italy, Japan, Korea, and the United Kingdom, with noting of export promotion and export finance programs carried out by such countries that are not analogous to any programs carried out by the United States.

(ix) The effectiveness of current policies and programs affecting exports, including an assessment of Federal trade restrictions and State and Federal export promotion activities.

(x) The effectiveness of the Federal Government and Federally funded research and development centers in supporting and promoting technology commercialization and technology transfer.

(xi) Domestic and international intellectual property policies and practices.

(xii) Manufacturing capacity, logistics, and supply chain dynamics of major export sectors, including access to a skilled workforce, physical infrastructure, and broadband network infrastructure.

(xiii) Federal and State policies relating to science, technology, and education and other relevant Federal and State policies designed to promote commercial innovation, including immigration policies.

(C) Development of recommendations on the following:

(i) How the United States should invest in human capital.

(ii) How the United States should facilitate entrepreneurship and innovation.

(iii) How best to develop opportunities for locally and regionally driven innovation by providing Federal support.

(iv) How best to strengthen the economic infrastructure and industrial base of the United States.

(v) How to improve the international competitiveness of the United States.

(3) CONSULTATION.—

(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in consultation with the National Economic Council of the Office of Policy Development, such Federal agencies as the Secretary considers appropriate, and the Innovation Advisory Board established under subparagraph (B). The Secretary shall also establish a process for obtaining comments from the public.

Comment period.

(B) INNOVATION ADVISORY BOARD.—

(i) IN GENERAL.—The Secretary shall establish an Innovation Advisory Board for purposes of obtaining advice with respect to the conduct of the study required by paragraph (1).

Establishment.

(ii) COMPOSITION.—The Advisory Board established under clause (i) shall be comprised of 15 members, appointed by the Secretary—

(I) who shall represent all major industry sectors;

(II) a majority of whom should be from private industry, including large and small firms, representing advanced technology sectors and more traditional sectors that use technology; and

(III) who may include economic or innovation policy experts, State and local government officials active in technology-based economic development, and representatives from higher education.

(iii) EXEMPTION FROM FACa.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board established under clause (i).

(b) STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the completion of the study required by subsection (a), the Secretary shall develop, based on the study required by subsection (a)(1), a national 10-year strategy to strengthen the innovative and competitive capacity of the Federal Government, State and local governments, United States institutions of higher education, and the private sector of the United States.

Deadline.

(2) ELEMENTS.—The strategy required by paragraph (1) shall include the following:

(A) Actions to be taken by individual Federal agencies and departments to improve competitiveness.

(B) Proposed legislative actions for consideration by Congress.

(C) Annual goals and milestones for the 10-year period of the strategy.

(D) A plan for monitoring the progress of the Federal Government with respect to improving conditions for innovation and the competitiveness of the United States.

(c) REPORT.—

(1) IN GENERAL.—Upon the completion of the strategy required by subsection (b), the Secretary of Commerce shall submit to Congress and the President a report on the study

conducted under subsection (a) and the strategy developed under subsection (b).

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) The findings of the Secretary with respect to the study conducted under subsection (a).

(B) The strategy required by subsection (b).

15 USC 3701
note.

SEC. 605. PROMOTING USE OF HIGH-END COMPUTING SIMULATION AND MODELING BY SMALL- AND MEDIUM-SIZED MANUFACTURERS.

(a) FINDINGS.—Congress finds that—

(1) the utilization of high-end computing simulation and modeling by large-scale government contractors and Federal research entities has resulted in substantial improvements in the development of advanced manufacturing technologies; and

(2) such simulation and modeling would also benefit small- and medium-sized manufacturers in the United States if such manufacturers were to deploy such simulation and modeling throughout their manufacturing chains.

(b) POLICY.—It is the policy of the United States to take all effective measures practicable to ensure that Federal programs and policies encourage and contribute to the use of high-end computing simulation and modeling in the United States manufacturing sector.

(c) STUDY.—

Deadline.

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, shall carry out, through an interagency consulting process, a study of the barriers to the use of high-end computing simulation and modeling by small- and medium-sized manufacturers in the United States.

(2) FACTORS.—In carrying out the study required by paragraph (1), the Secretary of Commerce, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, shall consider the following:

(A) The access of small- and medium-sized manufacturers in the United States to high-performance computing facilities and resources.

(B) The availability of software and other applications tailored to meet the needs of such manufacturers.

(C) Whether such manufacturers employ or have access to individuals with appropriate expertise for the use of such facilities and resources.

(D) Whether such manufacturers have access to training to develop such expertise.

(E) The availability of tools and other methods to such manufacturers to understand and manage the costs and risks associated with transitioning to the use of such facilities and resources.

(3) REPORT.—Not later than 270 days after the commencement of the study required by paragraph (1), the Secretary of Commerce shall, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, submit to Congress a report on such study. Such report shall

include such recommendations for such legislative or administrative action as the Secretary of Commerce considers appropriate in light of the study to increase the utilization of high-end computing simulation and modeling by small- and medium-sized manufacturers in the United States.

(d) **AUTHORIZATION OF DEMONSTRATION AND PILOT PROGRAMS.**—As part of the study required by subsection (c)(1), the Secretary of Commerce, the Secretary of Energy, and the Director of the Office of Science and Technology Policy may carry out such demonstration or pilot programs as either Secretary or the Director considers appropriate to gather experiential data to evaluate the feasibility and advisability of a specific program or policy initiative to reduce barriers to the utilization of high-end computer modeling and simulation by small- and medium-sized manufacturers in the United States.

TITLE VII—NIST GREEN JOBS

SEC. 701. SHORT TITLE.

This title may be cited as the “NIST Grants for Energy Efficiency, New Job Opportunities, and Business Solutions Act of 2010” or the “NIST GREEN JOBS Act of 2010”.

SEC. 702. FINDINGS.

Congress finds the following:

(1) Over its 20-year existence, the Hollings Manufacturing Extension Partnership has proven its value to manufacturers as demonstrated by the resulting impact on jobs and the economies of all 50 States and the Nation as a whole.

(2) The Hollings Manufacturing Extension Partnership has helped thousands of companies reinvest in themselves through process improvement and business growth initiatives leading to more sales, new markets, and the adoption of technology to deliver new products and services.

(3) Manufacturing is an increasingly important part of the construction sector as the industry moves to the use of more components and factory built sub-assemblies.

(4) Construction practices must become more efficient and precise if the United States is to construct and renovate its building stock to reduce related carbon emissions to levels that are consistent with combating global warming.

(5) Many companies involved in construction are small, without access to innovative manufacturing techniques, and could benefit from the type of training and business analysis activities that the Hollings Manufacturing Extension Partnership routinely provides to the Nation’s manufacturers and their supply chains.

(6) Broadening the competitiveness grant program under section 25(f) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)) could help develop and diffuse knowledge necessary to capture a large portion of the estimated \$100 billion or more in energy savings if buildings in the United States met the level and quality of energy efficiency now found in buildings in certain other countries.

NIST Grants
for Energy
Efficiency,
New Job
Opportunities,
and Business
Solutions Act
of 2010.
15 USC 271 note.
15 USC 278k
note.

(7) It is therefore in the national interest to expand the capabilities of the Hollings Manufacturing Extension Partnership to be supportive of the construction and green energy industries.

SEC. 703. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY COMPETITIVE GRANT PROGRAM.

(a) IN GENERAL.—Section 25(f)(3) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)(3)) is amended—

(1) by striking “to develop” in the first sentence and inserting “to add capabilities to the MEP program, including the development of”; and

(2) by striking the last sentence and inserting “Centers may be reimbursed for costs incurred under the program. These themes—

“(A) shall be related to projects designed to increase the viability both of traditional manufacturing sectors and other sectors, such as construction, that increasingly rely on manufacturing through the use of manufactured components and manufacturing techniques, including supply chain integration and quality management;

“(B) shall be related to projects related to the transfer of technology based on the technological needs of manufacturers and available technologies from institutions of higher education, laboratories, and other technology producing entities; and

“(C) may extend beyond these traditional areas to include projects related to construction industry modernization.”.

(b) SELECTION.—Section 25(f)(5) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)(5)) is amended to read as follows:

“(5) SELECTION.—

“(A) IN GENERAL.—Awards under this section shall be peer reviewed and competitively awarded. The Director shall endeavor to select at least one proposal in each of the 9 statistical divisions of the United States (as designated by the Bureau of the Census). The Director shall select proposals to receive awards that will—

“(i) create jobs or train newly hired employees;

“(ii) promote technology transfer and commercialization of environmentally focused materials, products, and processes;

“(iii) increase energy efficiency; and

“(iv) improve the competitiveness of industries in the region in which the Center or Centers are located.

“(B) ADDITIONAL SELECTION CRITERIA.—The Director may select proposals to receive awards that will—

“(i) encourage greater cooperation and foster partnerships in the region with similar Federal, State, and locally funded programs to encourage energy efficiency and building technology; and

“(ii) collect data and analyze the increasing connection between manufactured products and manufacturing techniques, the future of construction practices, and the emerging application of products from the green energy industries.”.

(c) **OTHER MODIFICATIONS.**—Section 25(f) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)) is amended—

(1) by adding at the end the following:

“(7) **DURATION.**—Awards under this section shall last no longer than 3 years.

“(8) **ELIGIBLE PARTICIPANTS.**—In addition to manufacturing firms eligible to participate in the Centers program, awards under this subsection may be used by the Centers to assist small- or medium-sized construction firms. Centers may be reimbursed under the program for working with such eligible participants.

“(9) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to any amounts otherwise authorized or appropriated to carry out this section, there are authorized to be appropriated to the Secretary of Commerce \$7,000,000 for each of the fiscal years 2011 through 2013 to carry out this subsection.”.

TITLE VIII—GENERAL PROVISIONS

SEC. 801. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.

Not later than May 31, 2013, the Comptroller General of the United States shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science and Technology that evaluates the status of the programs authorized in this Act, including the extent to which such programs have been funded, implemented, and are contributing to achieving the goals of the Act.

Deadline.
Reports.

SEC. 802. SALARY RESTRICTIONS.

(a) **OBSCENE MATTER ON FEDERAL PROPERTY.**—None of the funds authorized under this Act may be used to pay the salary of any individual who is convicted of violating section 1460 of title 18, United States Code.

(b) **USE OF FEDERAL COMPUTERS FOR CHILD PORNOGRAPHY OR EXPLOITATION OF MINORS.**—None of the funds authorized under this Act may be used to pay the salary of any individual who is convicted of a violation of section 2252 of title 18, United States Code.

SEC. 803. ADDITIONAL RESEARCH AUTHORITIES OF THE FCC.

Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding at the end the following:

“SEC. 12. ADDITIONAL RESEARCH AUTHORITIES OF THE FCC.

47 USC 162.

“In order to carry out the purposes of this Act, the Commission may—

“(1) undertake research and development work in connection with any matter in relation to which the Commission has jurisdiction; and

“(2) promote the carrying out of such research and development by others, or otherwise to arrange for such research and development to be carried out by others.”.

TITLE IX—DEPARTMENT OF ENERGY

SEC. 901. SCIENCE, ENGINEERING, AND MATHEMATICS EDUCATION PROGRAMS.

(a) IN GENERAL.—Sections 3171, 3175, and 3191 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381h, 7381j, 7381p) are repealed.

(b) AUTHORIZATION OF APPROPRIATIONS FOR SUMMER INSTITUTES.—Section 3185(f) of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381n(f)) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(4) \$25,000,000 for each of fiscal years 2011 through 2013.”.

(c) CONFORMING AMENDMENTS.—

(1) Subpart B of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381g et seq.) is amended by striking chapters 1, 2, and 5 (42 U.S.C. 7381h, 7381j, 7381p).

(2) Section 3195 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381r) is amended by striking “chapters 1, 3, and 4” each place it appears and inserting “chapters 3 and 4”.

SEC. 902. ENERGY RESEARCH PROGRAMS.

(a) NUCLEAR SCIENCE TALENT PROGRAM.—Section 5004(f) of the America COMPETES Act (42 U.S.C. 16532(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(D) \$9,800,000 for fiscal year 2011;

“(E) \$10,100,000 for fiscal year 2012; and

“(F) \$10,400,000 for fiscal year 2013.”; and

(2) in paragraph (2)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(D) \$8,240,000 for fiscal year 2011;

“(E) \$8,500,000 for fiscal year 2012; and

“(F) \$8,750,000 for fiscal year 2013.”.

(b) HYDROCARBON SYSTEMS SCIENCE TALENT PROGRAM.—Section 5005 of the America COMPETES Act (42 U.S.C. 16533) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (H), by striking “and” at the end;

(B) in subparagraph (I), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(J) hydrocarbon spill response and remediation.”; and

(2) in subsection (f)(1)—

(A) in subparagraph (B), by striking “and”;

(B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(D) \$9,800,000 for fiscal year 2011;

“(E) \$10,000,000 for fiscal year 2012; and

“(F) \$10,400,000 for fiscal year 2013.”.

(c) **EARLY CAREER AWARDS.**—Section 5006(h) of the America COMPETES Act (42 U.S.C. 16534(h)) is amended by striking “2010” and inserting “2013”.

(d) **PROTECTING AMERICA’S COMPETITIVE EDGE (PACE) GRADUATE FELLOWSHIP PROGRAM.**—Section 5009(f) of the America COMPETES Act (42 U.S.C. 16536(f)) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(4) \$20,600,000 for fiscal year 2011;

“(5) \$21,200,000 for fiscal year 2012; and

“(6) \$21,900,000 for fiscal year 2013.”.

(e) **DISTINGUISHED SCIENTIST PROGRAM.**—Section 5011(j) of the America COMPETES Act (42 U.S.C. 16537(j)) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(4) \$31,000,000 for fiscal year 2011;

“(5) \$32,000,000 for fiscal year 2012; and

“(6) \$33,000,000 for fiscal year 2013.”.

SEC. 903. BASIC RESEARCH.

Section 971(b) of the Energy Policy Act of 2005 (42 U.S.C. 16311(b)) is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(5) \$5,247,000,000 for fiscal year 2011;

“(6) \$5,614,000,000 for fiscal year 2012; and

“(7) \$6,007,000,000 for fiscal year 2013.”.

SEC. 904. ADVANCED RESEARCH PROJECTS AGENCY-ENERGY.

Section 5012 of the America COMPETES Act (42 U.S.C. 16538) is amended—

(1) in subsection (a)(3), by striking “subsection (m)(1)” and inserting “subsection (n)(1)”;.

(2) in subsection (c)(2)(A), by inserting “and applied” after “advances in fundamental”;

(3) in subsection (e)—

(A) in paragraph (3)—

(i) by striking subparagraph (C) and inserting the following:

“(C) research and development of advanced manufacturing process and technologies for the domestic manufacturing of novel energy technologies; and”; and

(ii) in subparagraph (D), by striking “and” after the semicolon at the end;

(B) in paragraph (4), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(5) pursuant to subsection (c)(2)(C)—

“(A) ensuring that applications for funding disclose the extent of current and prior efforts, including monetary investments as appropriate, in pursuit of the technology area for which funding is being requested;

“(B) adopting measures to ensure that, in making awards, program managers adhere to the purposes of subsection (c)(2)(C); and

“(C) providing as part of the annual report required by subsection (h)(1) a summary of the instances of and reasons for ARPA–E funding projects in technology areas already being undertaken by industry.”;

(4) by redesignating subsections (f) through (m) as subsections (g) through (n), respectively;

(5) by inserting after subsection (e) the following:

“(f) AWARDS.—In carrying out this section, the Director may provide awards in the form of grants, contracts, cooperative agreements, cash prizes, and other transactions.”;

(6) in subsection (g) (as redesignated by paragraph (4))—

(A) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(B) by inserting before paragraph (2) (as redesignated by subparagraph (A)) the following:

“(1) IN GENERAL.—The Director shall establish and maintain within ARPA–E a staff with sufficient qualifications and expertise to enable ARPA–E to carry out the responsibilities of ARPA–E under this section in conjunction with other operations of the Department.”;

(C) in paragraph (2) (as redesignated by subparagraph (A))—

(i) in the paragraph heading, by striking “PROGRAM MANAGERS” and inserting “PROGRAM DIRECTORS”;

(ii) in subparagraph (A), by striking “program managers for each of” and inserting “program directors for”;

(iii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking “program manager” and inserting “program director”;

(II) in clause (iv), by striking “, with advice under subsection (j) as appropriate,”;

(III) by redesignating clauses (v) and (vi) as clauses (vi) and (viii), respectively;

(IV) by inserting after clause (iv) the following:

“(v) identifying innovative cost-sharing arrangements for ARPA–E projects, including through use of the authority provided under section 988(b)(3) of the Energy Policy Act of 2005 (42 U.S.C. 16352(b)(3));”;

(V) in clause (vi) (as redesignated by subclause (III)), by striking “; and” and inserting a semicolon; and

(VI) by inserting after clause (vi) (as redesignated by subclause (III)) the following:

“(vii) identifying mechanisms for commercial application of successful energy technology development projects, including through establishment of partnerships between awardees and commercial entities; and”;

(iv) in subparagraph (C), by inserting “not more than” after “shall be”; and

(D) in paragraph (3) (as redesignated by subparagraph (A))—

(i) in subparagraph (A)—

(I) in clause (i), by striking “and” after the semicolon at the end; and

(II) by striking clause (ii) and inserting the following:

“(ii) fix the basic pay of such personnel at a rate to be determined by the Director at rates not in excess of Level II of the Executive Schedule (EX–II) without regard to the civil service laws; and

“(iii) pay any employee appointed under this subpart payments in addition to basic pay, except that the total amount of additional payments paid to an employee under this subpart for any 12-month period shall not exceed the least of the following amounts:

“(I) \$25,000.

“(II) The amount equal to 25 percent of the annual rate of basic pay of the employee.

“(III) The amount of the limitation that is applicable for a calendar year under section 5307(a)(1) of title 5, United States Code.”;

(ii) in subparagraph (B), by striking “not less than 70, and not more than 120,” and inserting “not more than 120”;

(7) in subsection (h)(2) (as redesignated by paragraph (4))—

(A) by striking “2008” and inserting “2010”; and

(B) by striking “2011” and inserting “2013”;

(8) by striking subsection (j) (as redesignated by paragraph (4)) and inserting the following:

“(j) FEDERAL DEMONSTRATION OF TECHNOLOGIES.—The Director shall seek opportunities to partner with purchasing and procurement programs of Federal agencies to demonstrate energy technologies resulting from activities funded through ARPA-E.”;

(9) in subsection (l) (as redesignated by paragraph (4))—

(A) in paragraph (1), by striking “4 years” and inserting “6 years”; and

(B) in paragraph (2)(B), by inserting “, and the manner in which those lessons may apply to the operation of other programs of the Department” after “ARPA-E”; and

(10) in subsection (n) (as redesignated by paragraph (4))—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking “and” after the semicolon at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

“(C) \$300,000,000 for fiscal year 2011;

“(D) \$306,000,000 for fiscal year 2012; and

“(E) \$312,000,000 for fiscal year 2013.”;

- (B) by striking paragraph (4);
- (C) by redesignating paragraph (5) as paragraph (4);
- and
- (D) in paragraph (4)(B) (as redesignated by subparagraph (C))—
 - (i) by striking “2.5 percent” and inserting “5 percent”; and
 - (ii) by inserting “, consistent with the goal described in subsection (c)(2)(D) and within the responsibilities of program directors described in subsection (g)(2)(B)(vii)” after “outreach activities”.

TITLE X—EDUCATION

SEC. 1001. REFERENCES.

Except as otherwise expressly provided, wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the America COMPETES Act (Public Law 110–69).

SEC. 1002. REPEALS AND CONFORMING AMENDMENTS.

- (a) REPEALS.—The following provisions of the Act are repealed:
 - (1) Section 6001 (20 U.S.C. 9801).
 - (2) Part III of subtitle A of title VI (20 U.S.C. 9841).
 - (3) Subtitle B of title VI (20 U.S.C. 9851 et seq.)
 - (4) Subtitle C of title VI (20 U.S.C. 9861 et seq.).
 - (5) Subtitle E of title VI (20 U.S.C. 9881 et seq.).
- (b) CONFORMING AMENDMENTS.—The Act is amended—
 - (1) by redesignating section 6002 (20 U.S.C. 9802) as section 6001;
 - (2) by redesignating subtitle D of title VI (20 U.S.C. 9871) as subtitle B of title VI; and
 - (3) by redesignating section 6401 (20 U.S.C. 9871) as section 6201.

20 USC
9851–9854.
20 USC
9861–9864.
20 USC
9881–9882.

SEC. 1003. AUTHORIZATIONS OF APPROPRIATIONS AND MATCHING REQUIREMENT.

- (a) TEACHERS FOR A COMPETITIVE TOMORROW.—Section 6116 (20 U.S.C. 9816) is amended to read as follows:

“SEC. 6116. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this part \$4,000,000 for each of fiscal years 2011 through 2013, of which—

- “(1) \$2,000,000 shall be available to carry out section 6113 for each of fiscal years 2011 through 2013; and
- “(2) \$2,000,000 shall be available to carry out section 6114 for each of fiscal years 2011 through 2013.”.

(b) ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS AND MATCHING REQUIREMENT.—Section 6123 (20 U.S.C. 9833) is amended—

- (1) in subsection (h)(1)—
 - (A) by striking “100” and inserting “50”; and
 - (B) by striking “200” and inserting “100”; and
- (2) by striking subsection (l) and inserting the following:

“(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$75,000,000 for each of fiscal years 2011 through 2013.”.

(c) ALIGNMENT OF EDUCATION PROGRAMS.—Section 6201(j), as redesignated by section 1002(b)(3), is amended to read as follows: 20 USC 9871.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$120,000,000 for each of fiscal years 2011 and 2012.”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5116:

HOUSE REPORTS: No. 111–478, Pt. 1 (Comm. on Science and Technology).
CONGRESSIONAL RECORD, Vol. 156 (2010):

May 12, 13, 28, considered and passed House.
Dec. 17, considered and passed Senate, amended.
Dec. 21, House concurred in Senate amendment.



Public Law 111–359
111th Congress

An Act

Jan. 4, 2011
[H.R. 5133]

To designate the facility of the United States Postal Service located at 331 1st Street in Carlstadt, New Jersey, as the “Staff Sergeant Frank T. Carvill and Lance Corporal Michael A. Schwarz Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STAFF SERGEANT FRANK T. CARVILL AND LANCE CORPORAL MICHAEL A. SCHWARZ POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 331 1st Street in Carlstadt, New Jersey, shall be known and designated as the “Staff Sergeant Frank T. Carvill and Lance Corporal Michael A. Schwarz Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Staff Sergeant Frank T. Carvill and Lance Corporal Michael A. Schwarz Post Office Building”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5133:

CONGRESSIONAL RECORD, Vol. 156 (2010):

June 9, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–360
111th Congress

An Act

To exclude an external power supply for certain security or life safety alarms and surveillance system components from the application of certain energy efficiency standards under the Energy Policy and Conservation Act.

Jan. 4, 2011

[H.R. 5470]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EFFICIENCY STANDARDS FOR CLASS A EXTERNAL POWER SUPPLIES.

Section 325(u)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6295(u)(3)) is amended—

(1) in subparagraph (A), by striking “(D)” and inserting “(E)”; and

(2) by adding at the end the following:

“(E) NONAPPLICATION OF NO-LOAD MODE ENERGY EFFICIENCY STANDARDS TO EXTERNAL POWER SUPPLIES FOR CERTAIN SECURITY OR LIFE SAFETY ALARMS OR SURVEILLANCE SYSTEMS.—

“(i) DEFINITION OF SECURITY OR LIFE SAFETY ALARM OR SURVEILLANCE SYSTEM.—In this subparagraph:

“(I) IN GENERAL.—The term ‘security or life safety alarm or surveillance system’ means equipment designed and marketed to perform any of the following functions (on a continuous basis):

“(aa) Monitor, detect, record, or provide notification of intrusion or access to real property or physical assets or notification of threats to life safety.

“(bb) Deter or control access to real property or physical assets, or prevent the unauthorized removal of physical assets.

“(cc) Monitor, detect, record, or provide notification of fire, gas, smoke, flooding, or other physical threats to real property, physical assets, or life safety.

“(II) EXCLUSION.—The term ‘security or life safety alarm or surveillance system’ does not include any product with a principal function other than life safety, security, or surveillance that—

“(aa) is designed and marketed with a built-in alarm or theft-deterrent feature; or

“(bb) does not operate necessarily and continuously in active mode.

“(ii) NONAPPLICATION OF NO-LOAD MODE REQUIREMENTS.—The No-Load Mode energy efficiency standards established by this paragraph shall not apply to an external power supply manufactured before July 1, 2017, that—

“(I) is an AC-to-AC external power supply;

“(II) has a nameplate output of 20 watts or more;

“(III) is certified to the Secretary as being designed to be connected to a security or life safety alarm or surveillance system component; and

“(IV) on establishment within the External Power Supply International Efficiency Marking Protocol, as referenced in the ‘Energy Star Program Requirements for Single Voltage External Ac–Dc and Ac–Ac Power Supplies’, published by the Environmental Protection Agency, of a distinguishing mark for products described in this clause, is permanently marked with the distinguishing mark.

“(iii) ADMINISTRATION.—In carrying out this subparagraph, the Secretary shall—

“(I) require, with appropriate safeguard for the protection of confidential business information, the submission of unit shipment data on an annual basis; and

“(II) restrict the eligibility of external power supplies for the exemption provided under this subparagraph on a finding that a substantial number of the external power supplies are being marketed to or installed in applications other than security or life safety alarm or surveillance systems.”.

Submission.
Deadline.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5470:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 8, considered and passed House.

Dec. 21, considered and passed Senate.



Public Law 111–361
111th Congress

An Act

To designate the facility of the United States Postal Service located at 47 East Fayette Street in Uniontown, Pennsylvania, as the “George C. Marshall Post Office”.

Jan. 4, 2011

[H.R. 5605]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GEORGE C. MARSHALL POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 47 East Fayette Street in Uniontown, Pennsylvania, shall be known and designated as the “George C. Marshall Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “George C. Marshall Post Office”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5605:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, 29, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–362
111th Congress

An Act

Jan. 4, 2011
[H.R. 5606]

To designate the facility of the United States Postal Service located at 47 South 7th Street in Indiana, Pennsylvania, as the “James M. ‘Jimmy’ Stewart Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JAMES M. “JIMMY” STEWART POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 47 South 7th Street in Indiana, Pennsylvania, shall be known and designated as the “James M. ‘Jimmy’ Stewart Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “James M. ‘Jimmy’ Stewart Post Office Building”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5606:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, 29, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–363
111th Congress

An Act

To designate the Little River Branch facility of the United States Postal Service located at 140 NE 84th Street in Miami, Florida, as the “Jesse J. McCrary, Jr. Post Office”.

Jan. 4, 2011

[H.R. 5655]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JESSE J. MCCRARY, JR. POST OFFICE.

(a) DESIGNATION.—The Little River Branch facility of the United States Postal Service located at 140 NE 84th Street in Miami, Florida, shall be known and designated as the “Jesse J. McCrary, Jr. Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Jesse J. McCrary, Jr. Post Office”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5655:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 16, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–364
111th Congress

An Act

Jan. 4, 2011
[H.R. 5809]

To amend the Energy Policy Act of 2005 to reauthorize and modify provisions relating to the diesel emissions reduction program.

Diesel Emissions
Reduction Act
of 2010.
42 USC 15801
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Diesel Emissions Reduction Act of 2010”.

SEC. 2. DIESEL EMISSIONS REDUCTION PROGRAM.

(a) **DEFINITIONS.**—Section 791 of the Energy Policy Act of 2005 (42 U.S.C. 16131) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(C) any private individual or entity that—

“(i) is the owner of record of a diesel vehicle or fleet operated pursuant to a contract, license, or lease with a Federal department or agency or an entity described in subparagraph (A); and

“(ii) meets such timely and appropriate requirements as the Administrator may establish for vehicle use and for notice to and approval by the Federal department or agency or entity described in subparagraph (A) with respect to which the owner has entered into a contract, license, or lease as described in clause (i).”;

(2) in paragraph (4), by inserting “currently, or has not been previously,” after “that is not”;

(3) by striking paragraph (9);

(4) by redesignating paragraph (8) as paragraph (9);

(5) in paragraph (9) (as so redesignated), in the matter preceding subparagraph (A), by striking “, advanced truckstop electrification system,”; and

(6) by inserting after paragraph (7) the following:

“(8) **STATE.**—The term ‘State’ means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.”.

(b) **NATIONAL GRANT, REBATE, AND LOAN PROGRAMS.**—Section 792 of the Energy Policy Act of 2005 (42 U.S.C. 16132) is amended—

- (1) in the section heading, by inserting “, **REBATE**,” after “**GRANT**”;
- (2) in subsection (a)—
 - (A) in the matter preceding paragraph (1), by striking “to provide grants and low-cost revolving loans, as determined by the Administrator, on a competitive basis, to eligible entities” and inserting “to provide grants, rebates, or low-cost revolving loans, as determined by the Administrator, on a competitive basis, to eligible entities, including through contracts entered into under subsection (e) of this section,”; and
 - (B) in paragraph (1), by striking “tons of”;
- (3) in subsection (b)—
 - (A) by striking paragraph (2);
 - (B) by redesignating paragraph (3) as paragraph (2);and
 - (C) in paragraph (2) (as so redesignated)—
 - (i) in subparagraph (A), in the matter preceding clause (i), by striking “90” and inserting “95”;
 - (ii) in subparagraph (B)(i), by striking “10 percent” and inserting “5 percent”; and
 - (iii) in subparagraph (B)(ii), by striking “the application under subsection (c)” and inserting “a verification application”;
- (4) in subsection (c)—
 - (A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;
 - (B) by striking paragraph (1) and inserting the following:
 - “(1) **EXPEDITED PROCESS**.—
 - “(A) **IN GENERAL**.—The Administrator shall develop a simplified application process for all applicants under this section to expedite the provision of funds.
 - “(B) **REQUIREMENTS**.—In developing the expedited process under subparagraph (A), the Administrator—
 - “(i) shall take into consideration the special circumstances affecting small fleet owners; and
 - “(ii) to avoid duplicative procedures, may require applicants to include in an application under this section the results of a competitive bidding process for equipment and installation.
 - “(2) **ELIGIBILITY**.—
 - “(A) **GRANTS**.—To be eligible to receive a grant under this section, an eligible entity shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.
 - “(B) **REBATES AND LOW-COST LOANS**.—To be eligible to receive a rebate or a low-cost loan under this section, an eligible entity shall submit an application in accordance with such guidance as the Administrator may establish—
 - “(i) to the Administrator; or
 - “(ii) to an entity that has entered into a contract under subsection (e).”;
 - (C) in paragraph (3)(G) (as redesignated by subparagraph (A)), by inserting “in the case of an application

relating to nonroad engines or vehicles,” before “a description of the diesel”; and

(D) in paragraph (4) (as redesignated by subparagraph (A))—

(i) in the matter preceding subparagraph (A)—

(I) by inserting “, rebate,” after “grant”; and

(II) by inserting “highest” after “shall give”;

(ii) in subparagraph (C)(iii)—

(I) by striking “a diesel fleets” and inserting “diesel fleets”; and

(II) by inserting “construction sites, schools,” after “terminals,”;

(iii) in subparagraph (E), by adding “and” at the end;

(iv) in subparagraph (F), by striking “; and” and inserting a period; and

(v) by striking subparagraph (G);

(5) in subsection (d)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting “, rebate,” after “grant”; and

(B) in paragraph (2)(A)—

(i) by striking “grant or loan provided” and inserting “grant, rebate, or loan provided, or contract entered into,”; and

(ii) by striking “Federal, State or local law” and inserting “any Federal law, except that this subparagraph shall not apply to a mandate in a State implementation plan approved by the Administrator under the Clean Air Act”; and

(6) by adding at the end the following:

“(e) CONTRACT PROGRAMS.—

“(1) AUTHORITY.—In addition to the use of contracting authority otherwise available to the Administrator, the Administrator may enter into contracts with eligible contractors described in paragraph (2) for the administration of programs for providing rebates or loans, subject to the requirements of this subtitle.

“(2) ELIGIBLE CONTRACTORS.—The Administrator may enter into a contract under this subsection with a for-profit or non-profit entity that has the capacity—

“(A) to sell diesel vehicles or equipment to, or to arrange financing for, individuals or entities that own a diesel vehicle or fleet; or

“(B) to upgrade diesel vehicles or equipment with verified or Environmental Protection Agency-certified engines or technologies, or to arrange financing for such upgrades.

“(f) PUBLIC NOTIFICATION.—Not later than 60 days after the date of the award of a grant, rebate, or loan, the Administrator shall publish on the website of the Environmental Protection Agency—

“(1) for rebates and loans provided to the owner of a diesel vehicle or fleet, the total number and dollar amount of rebates or loans provided, as well as a breakdown of the technologies funded through the rebates or loans; and

Deadline.
Web posting.

“(2) for other rebates and loans, and for grants, a description of each application for which the grant, rebate, or loan is provided.”

(c) STATE GRANT, REBATE, AND LOAN PROGRAMS.—Section 793 of the Energy Policy Act of 2005 (42 U.S.C. 16133) is amended—

(1) in the section heading, by inserting “, **REBATE**,” after “**GRANT**”;

(2) in subsection (a), by inserting “, rebate,” after “grant”;

(3) in subsection (b)(1), by inserting “, rebate,” after “grant”;

(4) by amending subsection (c)(2) to read as follows:

“(2) **ALLOCATION**.—

“(A) **IN GENERAL**.—Except as provided in subparagraphs (B) and (C), using not more than 20 percent of the funds made available to carry out this subtitle for a fiscal year, the Administrator shall provide to each State qualified for an allocation for the fiscal year an allocation equal to $\frac{1}{53}$ of the funds made available for that fiscal year for distribution to States under this paragraph.

“(B) **CERTAIN TERRITORIES**.—

“(i) **IN GENERAL**.—Except as provided in clause (ii), Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall collectively receive an allocation equal to $\frac{1}{53}$ of the funds made available for that fiscal year for distribution to States under this subsection, divided equally among those 4 States.

“(ii) **EXCEPTION**.—If any State described in clause (i) does not qualify for an allocation under this paragraph, the share of funds otherwise allocated for that State under clause (i) shall be reallocated pursuant to subparagraph (C).

“(C) **REALLOCATION**.—If any State does not qualify for an allocation under this paragraph, the share of funds otherwise allocated for that State under this paragraph shall be reallocated to each remaining qualified State in an amount equal to the product obtained by multiplying—

“(i) the proportion that the population of the State bears to the population of all States described in paragraph (1); by

“(ii) the amount otherwise allocatable to the non-qualifying State under this paragraph.”;

(5) in subsection (d)—

(A) in paragraph (1), by inserting “, rebate,” after “grant”;

(B) in paragraph (2), by inserting “, rebates,” after “grants”;

(C) in paragraph (3), in the matter preceding subparagraph (A), by striking “grant or loan provided under this section may be used” and inserting “grant, rebate, or loan provided under this section shall be used”; and

(D) by adding at the end the following:

“(4) **PRIORITY**.—In providing grants, rebates, and loans under this section, a State shall use the priorities in section 792(c)(4).

“(5) **PUBLIC NOTIFICATION**.—Not later than 60 days after the date of the award of a grant, rebate, or loan by a State, the State shall publish on the Web site of the State—

Deadline.
Web posting.

“(A) for rebates, grants, and loans provided to the owner of a diesel vehicle or fleet, the total number and dollar amount of rebates, grants, or loans provided, as well as a breakdown of the technologies funded through the rebates, grants, or loans; and

“(B) for other rebates, grants, and loans, a description of each application for which the grant, rebate, or loan is provided.”.

(d) **EVALUATION AND REPORT.**—Section 794(b) of the Energy Policy Act of 2005 (42 U.S.C. 16134(b)) is amended—

(1) in each of paragraphs (2) through (5) by inserting “, rebate,” after “grant” each place it appears;

(2) in paragraph (5), by striking “and” at the end;

(3) in paragraph (6), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following new paragraph:

“(7) in the last report sent to Congress before January 1, 2016, an analysis of the need to continue the program, including an assessment of the size of the vehicle and engine fleet that could provide benefits from being retrofit under this program and a description of the number and types of applications that were not granted in the preceding year.”.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—Section 797 of the Energy Policy Act of 2005 (42 U.S.C. 16137) is amended to read as follows:

“SEC. 797. AUTHORIZATION OF APPROPRIATIONS.

“(a) **IN GENERAL.**—There is authorized to be appropriated to carry out this subtitle \$100,000,000 for each of fiscal years 2012 through 2016, to remain available until expended.

“(b) **MANAGEMENT AND OVERSIGHT.**—The Administrator may use not more than 1 percent of the amounts made available under subsection (a) for each fiscal year for management and oversight purposes.”.

SEC. 3. AUDIT.

(a) **IN GENERAL.**—Not later than 360 days after the date of enactment of this Act, the Comptroller General of the United States shall carry out an audit to identify—

(1) all Federal mobile source clean air grant, rebate, or low cost revolving loan programs under the authority of the Administrator of the Environmental Protection Agency, the Secretary of Transportation, or other relevant Federal agency heads that are designed to address diesel emissions from, or reduce diesel fuel usage by, diesel engines and vehicles; and

(2) whether, and to what extent, duplication or overlap among, or gaps between, these Federal mobile source clean air programs exists.

(b) **REPORT.**—The Comptroller General of the United States shall—

(1) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a copy of the audit under subsection (a); and

(2) make a copy of the audit under subsection (a) available on a publicly accessible Internet site.

(c) OFFSET.—All unobligated amounts provided to carry out the pilot program under title I of division G of the Omnibus Appropriations Act, 2009 (Public Law 111–8; 123 Stat. 814) under the heading “MISCELLANEOUS ITEMS” are rescinded.

SEC. 4. EFFECTIVE DATE.

42 USC 16131
note.

(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by section 2 shall take effect on October 1, 2011.

(b) EXCEPTION.—The amendments made by subsections (a)(4) and (6) and (c)(4) of section 2 shall take effect on the date of enactment of this Act.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5809:

HOUSE REPORTS: No. 111–618, Pt. 1 (Comm. on Energy and Commerce).
CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 22, considered and passed House.

Dec. 16, considered and passed Senate, amended.

Dec. 21, House concurred in Senate amendments.



Public Law 111–365
111th Congress

An Act

Jan. 4, 2011
[H.R. 5877]

To designate the facility of the United States Postal Service located at 655 Centre Street in Jamaica Plain, Massachusetts, as the “Lance Corporal Alexander Scott Arredondo, United States Marine Corps Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. LANCE CORPORAL ALEXANDER SCOTT ARREDONDO,
UNITED STATES MARINE CORPS POST OFFICE
BUILDING.**

(a) DESIGNATION.—The facility of the United States Postal Service located at 655 Centre Street in Jamaica Plain, Massachusetts, shall be known and designated as the “Lance Corporal Alexander Scott Arredondo, United States Marine Corps Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Lance Corporal Alexander Scott Arredondo, United States Marine Corps Post Office Building”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5877:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Nov. 29, considered and passed House.
Dec. 16, considered and passed Senate.



Public Law 111–366
111th Congress

An Act

To amend the Internal Revenue Code of 1986 to authorize the tax court to appoint employees.

Jan. 4, 2011
[H.R. 5901]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY OF TAX COURT TO APPOINT EMPLOYEES.

(a) **IN GENERAL.**—Subsection (a) of section 7471 of the Internal Revenue Code of 1986 (relating to employees) is amended to read as follows:

26 USC 7471.

“(a) **APPOINTMENT AND COMPENSATION.**—

“(1) **CLERK.**—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

“(2) **JUDGE-APPOINTED EMPLOYEES.**—

“(A) **IN GENERAL.**—The judges and special trial judges of the Tax Court may appoint employees, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such employee shall serve at the pleasure of the appointing judge.

“(B) **EXEMPTION FROM FEDERAL LEAVE PROVISIONS.**—

A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the law clerk’s credit as of the effective date of this subsection shall remain credited to the law clerk and shall be available to the law clerk upon separation from the Federal Government.

“(3) **OTHER EMPLOYEES.**—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

“(4) **PAY.**—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in courts established under Article III of the Constitution of the United States.

“(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

“(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

“(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

“(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

“(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

“(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

“(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

“(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

“(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

“(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

“(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall continue to be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

Time period.

“(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

“(10) MERIT SYSTEM PRINCIPLES, PROHIBITED PERSONNEL PRACTICES, AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

“(A) include the principles set forth in section 2301(b) of title 5, United States Code;

“(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

“(C) in the case of any individual who would be a preference eligible in the executive branch, provide preference for that individual in a manner and to an extent

consistent with preference accorded to preference eligibles in the executive branch.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act. 26 USC 7471 note.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 5901:

CONGRESSIONAL RECORD, Vol. 156 (2010):

July 29, 30, considered and passed House.

Dec. 17, considered and passed Senate, amended.

Dec. 22, House concurred in Senate amendments.



Public Law 111–367
111th Congress

An Act

Jan. 4, 2011
[H.R. 6392]

To designate the facility of the United States Postal Service located at 5003 Westfields Boulevard in Centreville, Virginia, as the “Colonel George Juskalian Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COLONEL GEORGE JUSKALIAN POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 5003 Westfields Boulevard in Centreville, Virginia, shall be known and designated as the “Colonel George Juskalian Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Colonel George Juskalian Post Office Building”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 6392:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Nov. 29, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–368
111th Congress

An Act

To designate the facility of the United States Postal Service located at 111 North 6th Street in St. Louis, Missouri, as the “Earl Wilson, Jr. Post Office”.

Jan. 4, 2011
[H.R. 6400]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EARL WILSON, JR. POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 111 North 6th Street in St. Louis, Missouri, shall be known and designated as the “Earl Wilson, Jr. Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Earl Wilson, Jr. Post Office”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 6400:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 7, considered and passed House.

Dec. 16, considered and passed Senate.



Public Law 111–369
111th Congress

An Act

Jan. 4, 2011
[H.R. 6412]

To amend title 28, United States Code, to require the Attorney General to share criminal records with State sentencing commissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Access to
Criminal History
Records for State
Sentencing
Commissions Act
of 2010.
28 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Access to Criminal History Records for State Sentencing Commissions Act of 2010”.

SEC. 2. ATTORNEY GENERAL TO SHARE CRIMINAL RECORDS WITH STATE SENTENCING COMMISSIONS.

Section 534(a) of title 28, United States Code, is amended by inserting after “, the States” the following: “, including State sentencing commissions”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 6412:

CONGRESSIONAL RECORD, Vol. 156 (2010):
Dec. 7, 9, considered and passed House.
Dec. 20, considered and passed Senate.



Public Law 111-370
111th Congress

An Act

To direct the Administrator of General Services to convey a parcel of real property in Houston, Texas, to the Military Museum of Texas, and for other purposes.

Jan. 4, 2011
[H.R. 6510]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF REAL PROPERTY IN HOUSTON, TEXAS.

(a) **AUTHORITY TO CONVEY.**—The Administrator of General Services shall convey, at the market value determined under subsection (b), to the Military Museum of Texas all right, title, and interest of the United States in and to the parcel of real property located at 8611 Wallisville Road in Houston, Texas, as described in subsection (c).

(b) **DETERMINATION OF MARKET VALUE.**—For purposes of subsection (a), the market value of the real property shall be determined by an independent appraisal based on the current use of the property. The appraisal shall be commissioned by the Administrator and paid for by the Military Museum of Texas.

(c) **PROPERTY DESCRIPTION.**—The real property to be conveyed is the 3.673 acres of land in Lot 3 of Moers Subdivision in the W.M. Black Survey, Abstract 114, Harris County, Texas, more particularly described as follows:

(1) Beginning at an iron rod located at the intersection of the north line of Wallisville Road presently being 100' wide with the southeast line of U.S. Highway 90 presently being 150' in width.

(2) Thence north 38°13' east 1068.61' along the southeast line of U.S. Highway 90 to an iron rod for the point of beginning.

(3) Thence south 01°15'43" east 713.5' along a fence to a galvanized iron fence corner in the north line of Wallisville Road.

(4) Thence south 79°26' west, 408' more or less parallel to the east boundary line to a point in the southeast line of U.S. Highway 90.

(5) Thence north 38°13' east 460' more or less along the southeast line of U.S. Highway 90 to the point of beginning.

(d) **STRUCTURES AND IMPROVEMENTS.**—The conveyance shall include the improvements, structures, and fixtures located on the real property conveyed and related personal property.

(e) **USE RESTRICTION.**—

(1) **IN GENERAL.**—As a condition of the conveyance, the Military Museum of Texas shall use and maintain the real property conveyed, for a minimum period of 30 years, in a manner consistent with the use of the property at the time of the conveyance.

Time period.

(2) USE RESTRICTION.—Except as provided by paragraph (3), if the real property conveyed ceases to be used or maintained as required by paragraph (1), all or any portion of the property shall, in its then existing condition and at the option of the Administrator, revert to the United States.

(3) ABROGATION OF USE RESTRICTION.—

(A) IN GENERAL.—The Military Museum of Texas may seek abrogation of the use restriction set forth in paragraph (2) by obtaining the advance written consent of the Administrator, and by payment to the United States of the fair market value of the real property to be released from the restriction.

(B) DETERMINATION OF FAIR MARKET VALUE.—For purposes of subparagraph (A), the fair market value of the real property shall be determined by an independent appraisal based on the highest and best use of the property as of the effective date of the abrogation. The appraisal shall be commissioned by the Administrator and paid for by the Military Museum of Texas.

(f) COMPLIANCE.—

(1) REPORTS.—As a condition of the conveyance, the Military Museum of Texas shall submit to the Administrator, not later than one year after the date of the conveyance and annually thereafter for a period of 30 years, a report on the Military Museum's use and maintenance of the real property conveyed, and any other reports required by the Administrator to evidence the Military Museum's continuous use of the property in accordance with subsection (d).

(2) INSPECTIONS.—Not later than one year after the date of conveyance and every 5 years thereafter for a period of 30 years, the Administrator shall conduct inspections of the real property conveyed to confirm information provided in the reports submitted under paragraph (1).

(g) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may require the conveyance to be subject to such additional terms and conditions as the Administrator considers appropriate and necessary to protect the interests of the United States.

(h) COSTS OF CONVEYANCE.—The Military Museum of Texas shall be responsible for all reasonable and necessary costs associated with the conveyance, including real estate transaction and environmental documentation costs.

(i) RELATIONSHIP TO ENVIRONMENTAL LAW.—Nothing in this section may be construed to affect or limit the application of or obligation to comply with any environmental law, including section

Deadlines.
Time period.

120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 6510:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 14, considered and passed House.

Dec. 18, considered and passed Senate.



Public Law 111–371
111th Congress

An Act

Jan. 4, 2011
[H.R. 6533]

Local Community
Radio Act
of 2010.
47 USC 303 note.

To implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Local Community Radio Act of 2010”.

SEC. 2. AMENDMENT.

Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106–553; 114 Stat. 2762A–111), is amended to read as follows:

“SEC. 632. (a) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99–25, to—

“(1) prescribe protection for co-channels and first- and second-adjacent channels; and

“(2) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

“(b) Any license that was issued by the Federal Communications Commission to a low-power FM station prior to April 2, 2001, and that does not comply with the modifications adopted by the Commission in MM Docket No. 99–25 on April 2, 2001, shall remain invalid.”.

SEC. 3. MINIMUM DISTANCE SEPARATION REQUIREMENTS.

(a) **IN GENERAL.**—The Federal Communications Commission shall modify its rules to eliminate third-adjacent minimum distance separation requirements between—

(1) low-power FM stations; and

(2) full-service FM stations, FM translator stations, and FM booster stations.

(b) **RESTRICTION.**—

(1) **IN GENERAL.**—The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enactment of this Act between—

(A) low-power FM stations; and

(B) full-service FM stations.

(2) WAIVER.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the Federal Communications Commission may grant a waiver of the second-adjacent channel distance separation requirement to low-power FM stations that establish, using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service.

(B) REQUIREMENTS.—

(i) SUSPENSION.—Any low-power FM station that receives a waiver under subparagraph (A) shall be required to suspend operation immediately upon notification by the Federal Communications Commission that it is causing interference to the reception of an existing or modified full-service FM station without regard to the location of the station receiving interference.

(ii) ELIMINATION OF INTERFERENCE.—A low-power FM station described in clause (i) shall not resume operation until such interference has been eliminated or it can demonstrate to the Federal Communications Commission that the interference was not due to emissions from the low-power FM station, except that such station may make short test transmissions during the period of suspended operation to check the efficacy of remedial measures.

(iii) NOTIFICATION.—Upon receipt of a complaint of interference from a low-power FM station operating pursuant to a waiver authorized under subparagraph (A), the Federal Communications Commission shall notify the identified low-power FM station by telephone or other electronic communication within 1 business day.

Deadline.

SEC. 4. PROTECTION OF RADIO READING SERVICES.

The Federal Communications Commission shall comply with its existing minimum distance separation requirements for full-service FM stations, FM translator stations, and FM booster stations that broadcast radio reading services via an analog subcarrier frequency to avoid potential interference by low-power FM stations.

SEC. 5. ENSURING AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS.

The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that—

(1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations;

(2) such decisions are made based on the needs of the local community; and

(3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

SEC. 6. PROTECTION OF TRANSLATOR INPUT SIGNALS.

The Federal Communications Commission shall modify its rules to address the potential for predicted interference to FM translator

input signals on third-adjacent channels set forth in section 2.7 of the technical report entitled “Experimental Measurements of the Third-Adjacent Channel Impacts of Low-Power FM Stations, Volume One—Final Report (May 2003)”.

SEC. 7. ENSURING EFFECTIVE REMEDIATION OF INTERFERENCE.

The Federal Communications Commission shall modify the interference complaint process described in section 73.810 of its rules (47 CFR 73.810) as follows:

(1) With respect to those low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements under section 73.807 of the Commission’s rules (47 CFR 73.807), the Federal Communications Commission shall provide the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in section 74.1203 of its rules (47 CFR 74.1203) as in effect on the date of enactment of this Act.

(2) For a period of 1 year after a new low-power FM station is constructed on a third-adjacent channel, such low-power FM station shall be required to broadcast periodic announcements that alert listeners that interference that they may be experiencing could be the result of the operation of such low-power FM station on a third-adjacent channel and shall instruct affected listeners to contact such low-power FM station to report any interference. The Federal Communications Commission shall require all newly constructed low-power FM stations on third-adjacent channels to—

(A) notify the Federal Communications Commission and all affected stations on third-adjacent channels of an interference complaint by electronic communication within 48 hours after the receipt of such complaint; and

(B) cooperate in addressing any such interference.

(3) Low-power FM stations on third-adjacent channels shall be required to address complaints of interference within the protected contour of an affected station and shall be encouraged to address all other interference complaints, including complaints to the Federal Communications Commission based on interference to a full-service FM station, an FM translator station, or an FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station. The Federal Communications Commission shall provide notice to the licensee of a low-power FM station of the existence of such interference within 7 calendar days of the receipt of a complaint from a listener or another station.

(4) To the extent possible, the Federal Communications Commission shall grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.

(5) The Federal Communications Commission shall—

(A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission;

(B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster

Time period.
Public
information.

Notification.
Deadline.

Notice.
Deadline.

station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and

(C) accept complaints of interference to mobile reception.

(6) The Federal Communications Commission shall for full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per one square mile land area, require all low-power FM stations licensed after the date of enactment of this Act and located on third-adjacent, second-adjacent, first-adjacent, or co-channels to such full-service FM stations, to provide the same interference remediation requirements to complaints of interference, without regard to whether such complaints of interference occur within or outside of the protected contour of such stations, under the same interference complaint and remediation procedures that FM translator stations and FM booster stations are required to provide to full-service stations as set forth in section 74.1203 of its rules (47 CFR 74.1203) as in effect on the date of enactment of this Act. Notwithstanding the provisions of section 74.1203, no interference that arises outside the relevant distance for the full-service station class specified in the first column titled “required” for “Co-channel minimum separation (km)” in the table listed in section 73.807(a)(1) of the Commission’s rules (47 CFR 73.807(a)(1)) shall require remediation.

SEC. 8. FCC STUDY ON IMPACT OF LOW-POWER FM STATIONS ON FULL-SERVICE COMMERCIAL FM STATIONS.

(a) **IN GENERAL.**—The Federal Communications Commission shall conduct an economic study on the impact that low-power FM stations will have on full-service commercial FM stations.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Federal Communications Commission shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives on the study conducted under subsection (a).

(c) **LICENSING NOT AFFECTED BY STUDY.**—Nothing in this section shall affect the licensing of new low-power FM stations as otherwise permitted under this Act.

Approved January 4, 2011.

LEGISLATIVE HISTORY—H.R. 6533:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 17, considered and passed House.

Dec. 18, considered and passed Senate.



Public Law 111–372
111th Congress

An Act

To amend section 202 of the Housing Act of 1959, to improve the program under such section for supportive housing for the elderly, and for other purposes.

Jan. 4, 2011

[S. 118]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Section 202 Supportive Housing for the Elderly Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Section 202
Supportive
Housing for the
Elderly Act of
2010.
12 USC 1701
note.

Sec. 1. Short title and table of contents.

TITLE I—NEW CONSTRUCTION REFORMS

- Sec. 101. Selection criteria.
- Sec. 102. Development cost limitations.
- Sec. 103. Owner deposits.
- Sec. 104. Definition of private nonprofit organization.
- Sec. 105. Nonmetropolitan allocation.

TITLE II—REFINANCING

- Sec. 201. Approval of prepayment of debt.
- Sec. 202. Use of unexpended amounts.
- Sec. 203. Use of project residual receipts.
- Sec. 204. Additional provisions.

TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-ENRICHED HOUSING

- Sec. 301. Amendments to the grants for conversion of elderly housing to assisted living facilities.
- Sec. 302. Monthly assistance payment under rental assistance.

TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

- Sec. 401. Budgetary effects.

TITLE I—NEW CONSTRUCTION REFORMS

SEC. 101. SELECTION CRITERIA.

Section 202(f)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(f)(1)) is amended—

(1) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(2) by inserting after subparagraph (E) the following new subparagraph:

“(F) the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained

for the housing, who has the managerial capacity and responsibility for carrying out the actions described in subparagraphs (A) and (B) of subsection (g)(2);”.

SEC. 102. DEVELOPMENT COST LIMITATIONS.

Section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)) is amended, in the matter preceding subparagraph (A), by inserting “reasonable” before “development cost limitations”.

SEC. 103. OWNER DEPOSITS.

Section 202(j)(3)(A) of the Housing Act of 1959 (12 U.S.C. 1701q(j)(3)(A)) is amended by inserting after the period at the end the following: “Such amount shall be used only to cover operating deficits during the first 3 years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.”.

SEC. 104. DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.

Section 202(k)(4) of the Housing Act of 1959 (12 U.S.C. 1701q(k)(4)) is amended to read as follows:

“(4) The term ‘private nonprofit organization’ means—

“(A) any incorporated private institution or foundation—

“(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

“(ii) which has a governing board—

“(I) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

“(II) which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, the Secretary may determine the criteria or conditions under which financial, compliance and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation responsible for the operation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

“(iii) which is approved by the Secretary as to financial responsibility; and

“(B) a for-profit limited partnership the sole general partner of which is—

“(i) an organization meeting the requirements under subparagraph (A);

“(ii) a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A); or

“(iii) a limited liability company wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A).”.

SEC. 105. NONMETROPOLITAN ALLOCATION.

Paragraph (3) of section 202(l) of the Housing Act of 1959 (12 U.S.C. 1701q(l)(3)) is amended by inserting after the period at the end the following: “In complying with this paragraph, the Secretary shall either operate a national competition for the non-metropolitan funds or make allocations to regional offices of the Department of Housing and Urban Development.”.

TITLE II—REFINANCING**SEC. 201. APPROVAL OF PREPAYMENT OF DEBT.**

Subsection (a) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) in the matter preceding paragraph (1), by inserting “, for which the Secretary’s consent to prepayment is required,” after “Affordable Housing Act”;

(2) in paragraph (1)—

(A) by inserting “at least 20 years following” before “the maturity date”;

(B) by inserting “project-based” before “rental assistance payments contract”;

(C) by inserting “project-based” before “rental housing assistance programs”; and

(D) by inserting “, or any successor project-based rental assistance program,” after “1701s)”;

(3) by amending paragraph (2) to read as follows:

“(2) the prepayment may involve refinancing of the loan if such refinancing results in—

“(A) a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan; or

“(B) a transaction in which the project owner will address the physical needs of the project, but only if, as a result of the refinancing—

“(i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e); and

“(ii) the overall cost for providing rental assistance under section 8 for the project (if any) is not increased, except, upon approval by the Secretary to—

“(I) mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by nonprofit organizations; or

“(II) mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by eligible owners (as such term is defined in section 202(k) of the

Housing Act of 1959 (12 U.S.C. 1701q(k)); and”;
and

(4) by adding at the end the following:

“(3) notwithstanding paragraph (2)(A), the prepayment and refinancing authorized pursuant to paragraph (2)(B) involves an increase in debt service only in the case of a refinancing of a project assisted with a loan under such section 202 carrying an interest rate of 6 percent or lower.”.

SEC. 202. USE OF UNEXPENDED AMOUNTS.

Subsection (c) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “USE OF UNEXPENDED AMOUNTS.—” and inserting “USE OF PROCEEDS.—”;

(2) by amending the matter preceding paragraph (1) to read as follows: “Upon execution of the refinancing for a project pursuant to this section, the Secretary shall ensure that proceeds are used in a manner advantageous to tenants of the project, or are used in the provision of affordable rental housing and related social services for elderly persons that are tenants of the project or are tenants of other HUD-assisted senior housing by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer, including—”;

(3) by amending paragraph (1) to read as follows:

“(1) not more than 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services, except that upon the request of the non-profit owner, sponsor, or organization and determination of the Secretary, such 15 percent limitation may be waived to ensure that the use of unexpended amounts better enables seniors to age in place;”;

(4) in paragraph (2), by inserting before the semicolon the following; “, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable”;

(5) in paragraph (3), by striking “or” at the end;

(6) in paragraph (4), by striking “according to a pro rata allocation of shared savings resulting from the refinancing.” and inserting a semicolon; and

(7) by adding at the end the following new paragraphs:

“(5) rehabilitation of the project to ensure long-term viability; and

“(6) the payment to the project owner, sponsor, or third party developer of a developer’s fee in an amount not to exceed or duplicate—

“(A) in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as calculated by the State program as a percentage of acceptable development cost as defined by that State program; or

“(B) in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost.

For purposes of paragraph (6)(B), the term ‘acceptable development cost’ shall include, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.”.

SEC. 203. USE OF PROJECT RESIDUAL RECEIPTS.

Paragraph (1) of section 811(d) of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “not more than 15 percent of”; and

(2) by inserting before the period at the end the following: “or other purposes approved by the Secretary”.

SEC. 204. ADDITIONAL PROVISIONS.

Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended by adding at the end the following new subsections:

“(e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—Notwithstanding any other provision of law, in connection with a prepayment plan for a project approved under subsection (a) by the Secretary or as otherwise approved by the Secretary to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization and to further preservation and affordability of such project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:

“(1) Assistance under the contract shall be made available to the private nonprofit organization owner—

“(A) for a term of at least 20 years, subject to annual appropriations; and

“(B) under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937 or under the rules of such assistance as may be made available for the project.

“(2) Any projects for which a senior preservation rental assistance contract is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.

“(f) SUBORDINATION OR ASSUMPTION OF EXISTING DEBT.—In lieu of prepayment under this section of the indebtedness with respect to a project, the Secretary may approve—

“(1) in connection with new financing for the project, the subordination of the loan for the project under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) and the continued subordination of any other existing subordinate debt previously approved by the Secretary to facilitate preservation of the project as affordable housing; or

“(2) the assumption (which may include the subordination described in paragraph (1)) of the loan for the project under such section 202 in connection with the transfer of the project with such a loan to a private nonprofit organization.

“(g) FLEXIBLE SUBSIDY DEBT.—The Secretary shall waive the requirement that debt for a project pursuant to the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a) be prepaid in

Waiver authority.

connection with a prepayment, refinancing, or transfer under this section of a project if the financial transaction or refinancing cannot be completed without the waiver.

“(h) **TENANT INVOLVEMENT IN PREPAYMENT AND REFINANCING.**—The Secretary shall not accept an offer to prepay the loan for any project under section 202 of the Housing Act of 1959 unless the Secretary—

“(1) has determined that the owner of the project has notified the tenants of the owner’s request for approval of a prepayment; and

“(2) has determined that the owner of the project has provided the tenants with an opportunity to comment on the owner’s request for approval of a prepayment, including on the description of any anticipated rehabilitation or other use of the proceeds from the transaction, and its impacts on project rents, tenant contributions, or the affordability restrictions for the project, and that the owner has responded to such comments in writing.

“(i) **DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.**—For purposes of this section, the term ‘private nonprofit organization’ has the meaning given such term in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).”.

TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-ENRICHED HOUSING

SEC. 301. AMENDMENTS TO THE GRANTS FOR CONVERSION OF ELDERLY HOUSING TO ASSISTED LIVING FACILITIES.

(a) **TECHNICAL AMENDMENT.**—The section heading for section 202b of the Housing Act of 1959 (12 U.S.C. 1701q-2) is amended by inserting “**AND OTHER PURPOSES**” after “**ASSISTED LIVING FACILITIES**”.

(b) **EXTENSION OF GRANT AUTHORITY.**—Section 202b(a)(2) of the Housing Act of 1959 (12 U.S.C. 1701q-2(a)(2)) is amended—

(1) by striking “(2) **CONVERSION.—Activities**” and inserting the following:

“(2) **CONVERSION.**—

“(A) **ASSISTED LIVING FACILITIES.—Activities**”; and

(2) by adding at the end the following:

“(B) **SERVICE-ENRICHED HOUSING.—Activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons.**”.

(c) **AMENDMENT TO APPLICATION PROCESS.**—Section 202b(c)(1) of the Housing Act of 1959 (12 U.S.C. 1701q-2(c)(1)) is amended by inserting “for either an assisted living facility or service-enriched housing” after “activities”.

(d) **REQUIREMENTS FOR SERVICES.**—Section 202b(d) of the Housing Act of 1959 (12 U.S.C. 1701q-2(d)) is amended to read as follows:

“(d) **REQUIREMENTS FOR SERVICES.**—

“(1) **SUFFICIENT EVIDENCE OF FIRM FUNDING COMMITMENTS.**—The Secretary may not make a grant under this section for conversion activities unless an application for a grant submitted pursuant to subsection (c) contains sufficient evidence, in the determination of the Secretary, of firm commitments for the funding of services to be provided in the assisted

living facility or service-enriched housing, which may be provided by third parties.

“(2) REQUIRED EVIDENCE.—The Secretary shall require evidence that each recipient of a grant for service-enriched housing under this section provides relevant and timely disclosure of information to residents or potential residents of such housing relating to—

“(A) the services that will be available at the property to each resident, including—

“(i) the right to accept, decline, or choose such services and to have the choice of provider;

“(ii) the services made available by or contracted through the grantee;

“(iii) the identity of, and relevant information for, all agencies or organizations providing any services to residents, which agencies or organizations shall provide information regarding all procedures and requirements to obtain services, any charges or rates for the services, and the rights and responsibilities of the residents related to those services;

“(B) the availability, identity, contact information, and role of the service coordinator; and

“(C) such other information as the Secretary determines to be appropriate to ensure that residents are adequately informed of the services options available to promote resident independence and quality of life.”

(e) AMENDMENTS TO SELECTION CRITERIA.—Section 202b(e) of the Housing Act of 1959 (12 U.S.C. 1701q-2(e)) is amended—

(1) in paragraph (2)—

(A) by inserting “or service-enriched housing” after “facilities”; and

(B) by inserting “service-enriched housing” after “facility”;

(2) in paragraph (5), by inserting “or service-enriched housing” after “facility”; and

(3) in paragraph (6), by inserting “or service-enriched housing” after “facility”.

(f) AMENDMENTS TO SECTION 8 PROJECT-BASED ASSISTANCE.—Section 202b(f) of the Housing Act of 1959 (12 U.S.C. 1701q-2(f)) is amended—

(1) in paragraph (1), by inserting “or service-enriched housing” after “facilities” each time that term appears; and

(2) in paragraph (2), by inserting “or service-enriched housing” after “facility”.

(g) AMENDMENTS TO DEFINITIONS.—Section 202b(g) of the Housing Act of 1959 (12 U.S.C. 1701q-2(g)) is amended to read as follows:

“(g) DEFINITIONS.—For purposes of this section—

“(1) the term ‘assisted living facility’ has the meaning given such term in section 232(b) of the National Housing Act (1715w(b));

“(2) the term ‘service-enriched housing’ means housing that—

“(A) makes available through licensed or certified third party service providers supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed

or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy;

“(B) includes the position of service coordinator, which may be funded as an operating expense of the property;

“(C) provides separate dwelling units for residents, each of which contains a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

“(D) provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of provider; and

Applicability.

“(3) the definitions in section 1701(q)(k) of this title shall apply.”.

SEC. 302. MONTHLY ASSISTANCE PAYMENT UNDER RENTAL ASSISTANCE.

Clause (iii) of section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii)) is amended by inserting before the period at the end the following: “, except that a family may be required at the time the family initially receives such assistance to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount or percentage that is reasonable given the services and amenities provided and as the Secretary deems appropriate.”.

TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

SEC. 401. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 118:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 18, considered and passed Senate.

Dec. 21, considered and passed House.



Public Law 111–373
111th Congress

An Act

Jan. 4, 2011
[S. 841]

Pedestrian Safety
Enhancement
Act of 2010.
49 USC 30111
note.

To direct the Secretary of Transportation to study and establish a motor vehicle safety standard that provides for a means of alerting blind and other pedestrians of motor vehicle operation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pedestrian Safety Enhancement Act of 2010”.

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term “Secretary” means the Secretary of Transportation;

(2) the term “alert sound” (herein referred to as the “sound”) means a vehicle-emitted sound to enable pedestrians to discern vehicle presence, direction, location, and operation;

(3) the term “cross-over speed” means the speed at which tire noise, wind resistance, or other factors eliminate the need for a separate alert sound as determined by the Secretary;

(4) the term “motor vehicle” has the meaning given such term in section 30102(a)(6) of title 49, United States Code, except that such term shall not include a trailer (as such term is defined in section 571.3 of title 49, Code of Federal Regulations);

(5) the term “conventional motor vehicle” means a motor vehicle powered by a gasoline, diesel, or alternative fueled internal combustion engine as its sole means of propulsion;

(6) the term “manufacturer” has the meaning given such term in section 30102(a)(5) of title 49, United States Code;

(7) the term “dealer” has the meaning given such term in section 30102(a)(1) of title 49, United States Code;

(8) the term “defect” has the meaning given such term in section 30102(a)(2) of title 49, United States Code;

(9) the term “hybrid vehicle” means a motor vehicle which has more than one means of propulsion; and

(10) the term “electric vehicle” means a motor vehicle with an electric motor as its sole means of propulsion.

SEC. 3. MINIMUM SOUND REQUIREMENT FOR MOTOR VEHICLES.

Deadlines.

(a) **RULEMAKING REQUIRED.**—Not later than 18 months after the date of enactment of this Act the Secretary shall initiate rulemaking, under section 30111 of title 49, United States Code, to promulgate a motor vehicle safety standard—

(1) establishing performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby electric or hybrid vehicle operating below the cross-over speed, if any; and

(2) requiring new electric or hybrid vehicles to provide an alert sound conforming to the requirements of the motor vehicle safety standard established under this subsection.

The motor vehicle safety standard established under this subsection shall not require either driver or pedestrian activation of the alert sound and shall allow the pedestrian to reasonably detect a nearby electric or hybrid vehicle in critical operating scenarios including, but not limited to, constant speed, accelerating, or decelerating. The Secretary shall allow manufacturers to provide each vehicle with one or more sounds that comply with the motor vehicle safety standard at the time of manufacture. Further, the Secretary shall require manufacturers to provide, within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model and shall prohibit manufacturers from providing any mechanism for anyone other than the manufacturer or the dealer to disable, alter, replace, or modify the sound or set of sounds, except that the manufacturer or dealer may alter, replace, or modify the sound or set of sounds in order to remedy a defect or non-compliance with the motor vehicle safety standard. The Secretary shall promulgate the required motor vehicle safety standard pursuant to this subsection not later than 36 months after the date of enactment of this Act.

(b) CONSIDERATION.—When conducting the required rule-making, the Secretary shall—

Determinations.

(1) determine the minimum level of sound emitted from a motor vehicle that is necessary to provide blind and other pedestrians with the information needed to reasonably detect a nearby electric or hybrid vehicle operating at or below the cross-over speed, if any;

(2) determine the performance requirements for an alert sound that is recognizable to a pedestrian as a motor vehicle in operation; and

(3) consider the overall community noise impact.

(c) PHASE-IN REQUIRED.—The motor vehicle safety standard prescribed pursuant to subsection (a) of this section shall establish a phase-in period for compliance, as determined by the Secretary, and shall require full compliance with the required motor vehicle safety standard for motor vehicles manufactured on or after September 1st of the calendar year that begins 3 years after the date on which the final rule is issued.

(d) REQUIRED CONSULTATION.—When conducting the required study and rulemaking, the Secretary shall—

(1) consult with the Environmental Protection Agency to assure that the motor vehicle safety standard is consistent with existing noise requirements overseen by the Agency;

(2) consult consumer groups representing individuals who are blind;

(3) consult with automobile manufacturers and professional organizations representing them;

(4) consult technical standardization organizations responsible for measurement methods such as the Society of Automotive Engineers, the International Organization for Standardization, and the United Nations Economic Commission for Europe, World Forum for Harmonization of Vehicle Regulations.

(e) **REQUIRED STUDY AND REPORT TO CONGRESS.**—Not later than 48 months after the date of enactment of this Act, the Secretary shall complete a study and report to Congress as to whether there exists a safety need to apply the motor vehicle safety standard required by subsection (a) to conventional motor vehicles. In the event that the Secretary determines there exists a safety need, the Secretary shall initiate rulemaking under section 30111 of title 49, United States Code, to extend the standard to conventional motor vehicles.

SEC. 4. FUNDING.

Notwithstanding any other provision of law, \$2,000,000 of any amounts made available to the Secretary of Transportation under section 406 of title 23, United States Code, shall be made available to the Administrator of the National Highway Transportation Safety Administration for carrying out section 3 of this Act.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 841:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 9, considered and passed Senate.

Dec. 15, 16, considered and passed House.



Public Law 111–374
111th Congress

An Act

To amend section 811 of the Cranston-Gonzalez National Affordable Housing Act to improve the program under such section for supportive housing for persons with disabilities.

Jan. 4, 2011
[S. 1481]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—This Act may be cited as the “Frank Melville Supportive Housing Investment Act of 2010”.

(b) **REFERENCES.**—Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, section 811 or any other provision of section 811, the reference shall be considered to be made to section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

Frank Melville
Supportive
Housing
Investment Act
of 2010.
42 USC 8001
note.

SEC. 2. TENANT-BASED RENTAL ASSISTANCE.

42 USC 8013.

(a) **RENEWAL THROUGH SECTION 8.**—Section 811(d)(4) is amended to read as follows:

“(4) **TENANT-BASED RENTAL ASSISTANCE.**—

“(A) **IN GENERAL.**—Tenant-based rental assistance provided under subsection (b)(1) shall be provided under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)).

“(B) **CONVERSION OF EXISTING ASSISTANCE.**—There is authorized to be appropriated for tenant-based rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) for persons with disabilities an amount not less than the amount necessary to convert the number of authorized vouchers and funding under an annual contributions contract in effect on the date of enactment of the Frank Melville Supportive Housing Investment Act of 2010. Such converted vouchers may be administered by the entity administering the vouchers prior to conversion. For purposes of administering such converted vouchers, such entities shall be considered a ‘public housing agency’ authorized to engage in the operation of tenant-based assistance under section 8 of the United States Housing Act of 1937.

“(C) **REQUIREMENTS UPON TURNOVER.**—The Secretary shall develop and issue, to public housing agencies that receive voucher assistance made available under this subsection and to public housing agencies that received voucher assistance under section 8(o) of the United States

Housing Act of 1937 (42 U.S.C. 1437f(o)) for non-elderly disabled families pursuant to appropriation Acts for fiscal years 1997 through 2002 or any other subsequent appropriations for incremental vouchers for non-elderly disabled families, guidance to ensure that, to the maximum extent possible, such vouchers continue to be provided upon turnover to qualified persons with disabilities or to qualified non-elderly disabled families, respectively.”.

42 USC 8013
note.

(b) **PROVISION OF TECHNICAL ASSISTANCE.**—The Secretary is authorized to the extent amounts are made available in future appropriations Acts, to provide technical assistance to public housing agencies and other administering entities to facilitate using vouchers to provide permanent supportive housing for persons with disabilities, help States reduce reliance on segregated restrictive settings for people with disabilities to meet community care requirements, end chronic homelessness, as “chronically homeless” is defined in section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361), and for other related purposes.

42 USC 8013.

SEC. 3. MODERNIZED CAPITAL ADVANCE PROGRAM.

(a) **PROJECT RENTAL ASSISTANCE CONTRACTS.**—Section 811 is amended—

(1) in subsection (d)(2)—

(A) by inserting “(A) INITIAL PROJECT RENTAL ASSISTANCE CONTRACT.—” after “PROJECT RENTAL ASSISTANCE.—”;

(B) in the first sentence, by inserting after “shall” the following: “comply with subsection (e)(2) and shall”;

(C) by striking “annual contract amount” each place such term appears and inserting “amount provided under the contract for each year covered by the contract”; and

(D) by adding at the end the following new subparagraph:

“(B) **RENEWAL OF AND INCREASES IN CONTRACT AMOUNTS.**—

“(i) **EXPIRATION OF CONTRACT TERM.**—Upon the expiration of each contract term, subject to the availability of amounts made available in appropriation Acts, the Secretary shall adjust the annual contract amount to provide for reasonable project costs, including adequate reserves and service coordinators as appropriate, except that any contract amounts not used by a project during a contract term shall not be available for such adjustments upon renewal.

“(ii) **EMERGENCY SITUATIONS.**—In the event of emergency situations that are outside the control of the owner, the Secretary shall increase the annual contract amount, subject to reasonable review and limitations as the Secretary shall provide.”.

(2) in subsection (e)(2)—

(A) in the first sentence, by inserting before the period at the end the following: “, except that, in the case of the sponsor of a project assisted with any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 or with any tax-exempt housing bonds, the contract shall have an initial term of not less than 360 months and shall provide funding for a term of 60 months”; and

(B) by striking “extend any expiring contract” and insert “upon expiration of a contract (or any renewed contract), renew such contract”.

(b) PROGRAM REQUIREMENTS.—Section 811 is amended—

(1) in subsection (e)—

(A) by striking the subsection heading and inserting the following: “PROGRAM REQUIREMENTS”;

(B) by striking paragraph (1) and inserting the following new paragraph:

“(1) USE RESTRICTIONS.—

“(A) TERM.—Any project for which a capital advance is provided under subsection (d)(1) shall be operated for not less than 40 years as supportive housing for persons with disabilities, in accordance with the application for the project approved by the Secretary and shall, during such period, be made available for occupancy only by very low-income persons with disabilities.

“(B) CONVERSION.—If the owner of a project requests the use of the project for the direct benefit of very low-income persons with disabilities and, pursuant to such request the Secretary determines that a project is no longer needed for use as supportive housing for persons with disabilities, the Secretary may approve the request and authorize the owner to convert the project to such use.”; and

(C) by adding at the end the following new paragraphs:

“(3) LIMITATION ON USE OF FUNDS.—No assistance received under this section (or any State or local government funds used to supplement such assistance) may be used to replace other State or local funds previously used, or designated for use, to assist persons with disabilities.

“(4) MULTIFAMILY PROJECTS.—

“(A) LIMITATION.—Except as provided in subparagraph (B), of the total number of dwelling units in any multifamily housing project (including any condominium or cooperative housing project) containing any unit for which assistance is provided from a capital grant under subsection (d)(1) made after the date of the enactment of the Frank Melville Supportive Housing Investment Act of 2010, the aggregate number that are used for persons with disabilities, including supportive housing for persons with disabilities, or to which any occupancy preference for persons with disabilities applies, may not exceed 25 percent of such total.

“(B) EXCEPTION.—Subparagraph (A) shall not apply in the case of any project that is a group home or independent living facility.”; and

(2) in subsection (l), by striking paragraph (4).

(c) DELEGATED PROCESSING.—Subsection (g) of section 811 (42 U.S.C. 8013(g)) is amended—

(1) by striking “SELECTION CRITERIA.—” and inserting “SELECTION CRITERIA AND PROCESSING.—(1) SELECTION CRITERIA.—”;

(2) by redesignating paragraphs (1), (2), (3), (4), (5), (6), and (7) as subparagraphs (A), (B), (C), (D), (E), (G), and (H), respectively; and

(3) by adding at the end the following new paragraph:

	“(2) DELEGATED PROCESSING.—
Deadline.	<p>“(A) In issuing a capital advance under subsection (d)(1) for any multifamily project (but not including any project that is a group home or independent living facility) for which financing for the purposes described in the last sentence of subsection (b) is provided by a combination of the capital advance and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that—</p> <p>“(i) is in geographic proximity to the property;</p> <p>“(ii) has demonstrated experience in and capacity for underwriting multifamily housing loans that provide housing and supportive services;</p> <p>“(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section; and</p> <p>“(iv) agrees to issue a firm commitment within 12 months of delegation.</p> <p>“(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency is sufficiently qualified to provide delegated processing pursuant to this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.</p> <p>“(C) The Secretary shall—</p> <p>“(i) develop criteria and a timeline to periodically assess the performance of State and local housing agencies in carrying out the duties delegated to such agencies pursuant to subparagraph (A); and</p> <p>“(ii) retain the authority to review and process projects financed by a capital advance in the event that, after a review and assessment, a State or local housing agency is determined to have failed to satisfy the criteria established pursuant to clause (i).</p> <p>“(D) An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.</p>
Criteria. Timeline.	
Fee schedule.	
Deadline.	“(E) Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital advance amounts or project rental assistance and such reductions shall be subject to appeal.”.
Notification.	
	(d) LEVERAGING OTHER RESOURCES.—Paragraph (1) of section 811(g) (as so designated by subsection (c)(1) of this section) is amended by inserting after subparagraph (E) (as so redesignated by subsection (c)(2) of this section) the following new subparagraph:

“(F) the extent to which the per-unit cost of units to be assisted under this section will be supplemented with resources from other public and private sources;”.

(e) TENANT PROTECTIONS AND ELIGIBILITY FOR OCCUPANCY.—Section 811 is amended by striking subsection (i) and inserting the following new subsection:

“(i) ADMISSION AND OCCUPANCY.—

“(1) TENANT SELECTION.—

“(A) PROCEDURES.—An owner shall adopt written tenant selection procedures that are satisfactory to the Secretary as (i) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (ii) reasonably related to program eligibility and an applicant’s ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection.

Notification.

“(B) REQUIREMENT FOR OCCUPANCY.—Occupancy in dwelling units provided assistance under this section shall be available only to persons with disabilities and households that include at least one person with a disability.

“(C) AVAILABILITY.—Except only as provided in subparagraph (D), occupancy in dwelling units in housing provided with assistance under this section shall be available to all persons with disabilities eligible for such occupancy without regard to the particular disability involved.

“(D) LIMITATION ON OCCUPANCY.—Notwithstanding any other provision of law, the owner of housing developed under this section may, with the approval of the Secretary, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services offered in connection with the housing.

“(2) TENANT PROTECTIONS.—

“(A) LEASE.—The lease between a tenant and an owner of housing assisted under this section shall be for not less than one year, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

“(B) TERMINATION OF TENANCY.—An owner may not terminate the tenancy or refuse to renew the lease of a tenant of a rental dwelling unit assisted under this section except—

“(i) for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause; and

“(ii) by providing the tenant, not less than 30 days before such termination or refusal to renew, with written notice specifying the grounds for such action.

“(C) VOLUNTARY PARTICIPATION IN SERVICES.—A supportive service plan for housing assisted under this section shall permit each resident to take responsibility for choosing and acquiring their own services, to receive any supportive services made available directly or indirectly by the owner of such housing, or to not receive any supportive services.”.

(f) DEVELOPMENT COST LIMITATIONS.—Subsection (h) of section 811 is amended—

(1) in paragraph (1)—

(A) by striking the paragraph heading and inserting “GROUP HOMES”;

(B) in the first sentence, by striking “various types and sizes” and inserting “group homes”;

(C) by striking subparagraph (E); and

(D) by redesignating subparagraphs (F) and (G) as subparagraphs (E) and (F), respectively;

(2) in paragraph (3), by inserting “established pursuant to paragraph (1)” after “cost limitation”; and

(3) by adding at the end the following new paragraph:

“(6) APPLICABILITY OF HOME PROGRAM COST LIMITATIONS.—

“(A) IN GENERAL.—The provisions of section 212(e) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742(e)) and the cost limits established by the Secretary pursuant to such section with respect to the amount of funds under subtitle A of title II of such Act that may be invested on a per unit basis, shall apply to supportive housing assisted with a capital advance under subsection (d)(1) and the amount of funds under such subsection that may be invested on a per unit basis.

“(B) WAIVERS.—The Secretary may provide for waiver of the cost limits applicable pursuant to subparagraph (A)—

“(i) in the cases in which the cost limits established pursuant to section 212(e) of the Cranston-Gonzalez National Affordable Housing Act may be waived; and

“(ii) to provide for—

“(I) the cost of special design features to make the housing accessible to persons with disabilities;

“(II) the cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities; and

“(III) the cost of providing the housing in a location that is accessible to public transportation and community organizations that provide supportive services to persons with disabilities.”.

(g) CONGRESSIONAL NOTIFICATION OF WAIVER.—Section 811(k) is amended—

Deadline.

(1) in paragraph (1), by adding the following after the second sentence: “Not later than the date of the exercise of any waiver permitted under the previous sentence, the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the waiver or the intention to exercise the waiver, together with a detailed explanation of the reason for the waiver.”; and

(2) in paragraph (4)—

(A) by striking “prescribe, subject to the limitation under subsection (h)(6) of this section” and inserting “prescribe”; and

Deadline.

(B) by adding the following after the first sentence: “Not later than the date that the Secretary prescribes a limit exceeding the 24 person limit in the previous sentence, the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the limit or the intention to prescribe a limit

in excess of 24 persons, together with a detailed explanation of the reason for the new limit.”.

(h) MINIMUM ALLOCATION FOR MULTIFAMILY PROJECTS.—Paragraph (1) of section 811(l) is amended to read as follows:

“(1) MINIMUM ALLOCATION FOR MULTIFAMILY PROJECTS.—

The Secretary shall establish a minimum percentage of the amount made available for each fiscal year for capital advances under subsection (d)(1) that shall be used for multifamily projects subject to subsection (e)(4).”.

SEC. 4. PROJECT RENTAL ASSISTANCE.

42 USC 8013.

Section 811(b) is amended—

(1) in the matter preceding paragraph (1), by striking “is authorized—” and inserting “is authorized to take the following actions:”;

(2) in paragraph (1)—

(A) by striking “(1) to provide tenant-based” and inserting “(1) TENANT-BASED ASSISTANCE.—To provide tenant-based”; and

(B) by striking “; and” and inserting a period;

(3) in paragraph (2), by striking “(2) to provide assistance” and inserting “(2) CAPITAL ADVANCES.—To provide assistance”; and

(4) by adding at the end the following:

“(3) PROJECT RENTAL ASSISTANCE.—

“(A) IN GENERAL.—To offer additional methods of financing supportive housing for non-elderly adults with disabilities, the Secretary shall make funds available for project rental assistance pursuant to subparagraph (B) for eligible projects under subparagraph (C). The Secretary shall provide for State housing finance agencies and other appropriate entities to apply to the Secretary for such project rental assistance funds, which shall be made available by such agencies and entities for dwelling units in eligible projects based upon criteria established by the Secretary. The Secretary may not require any State housing finance agency or other entity applying for such project rental assistance funds to identify in such application the eligible projects for which such funds will be used, and shall allow such agencies and applicants to subsequently identify such eligible projects pursuant to the making of commitments described in subparagraph (C)(ii).

“(B) CONTRACT TERMS.—

“(i) CONTRACT TERMS.—Project rental assistance under this paragraph shall be provided—

“(I) in accordance with subsection (d)(2); and

“(II) under a contract having an initial term of not less than 180 months that provides funding for a term 60 months, which funding shall be renewed upon expiration, subject to the availability of sufficient amounts in appropriation Acts.

“(ii) LIMITATION ON UNITS ASSISTED.—Of the total number of dwelling units in any multifamily housing project containing any unit for which project rental assistance under this paragraph is provided, the aggregate number that are provided such project rental assistance, that are used for supportive housing for

persons with disabilities, or to which any occupancy preference for persons with disabilities applies, may not exceed 25 percent of such total.

“(iii) PROHIBITION OF CAPITAL ADVANCES.—The Secretary may not provide a capital advance under subsection (d)(1) for any project for which assistance is provided under this paragraph.

“(iv) ELIGIBLE POPULATION.—Project rental assistance under this paragraph may be provided only for dwelling units for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability.

“(C) ELIGIBLE PROJECTS.—An eligible project under this subparagraph is a new or existing multifamily housing project for which—

“(i) the development costs are paid with resources from other public or private sources; and

“(ii) a commitment has been made—

“(I) by the applicable State agency responsible for allocation of low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, for an allocation of such credits;

“(II) by the applicable participating jurisdiction that receives assistance under the HOME Investment Partnership Act, for assistance from such jurisdiction; or

“(III) by any Federal agency or any State or local government, for funding for the project from funds from any other sources.

“(D) STATE AGENCY INVOLVEMENT.—Assistance under this paragraph may be provided only for projects for which the applicable State agency responsible for health and human services programs, and the applicable State agency designated to administer or supervise the administration of the State plan for medical assistance under title XIX of the Social Security Act, have entered into such agreements as the Secretary considers appropriate—

“(i) to identify the target populations to be served by the project;

“(ii) to set forth methods for outreach and referral; and

“(iii) to make available appropriate services for tenants of the project.

“(E) USE REQUIREMENTS.—In the case of any project for which project rental assistance is provided under this paragraph, the dwelling units assisted pursuant to subparagraph (B) shall be operated for not less than 30 years as supportive housing for persons with disabilities, in accordance with the application for the project approved by the Secretary, and such dwelling units shall, during such period, be made available for occupancy only by persons and households described in subparagraph (B)(iv).

“(F) REPORT.—Not later than 3 years after the date of the enactment of this paragraph, and again 2 years thereafter, the Secretary shall submit to Congress a report—

“(i) describing the assistance provided under this paragraph;

“(ii) analyzing the effectiveness of such assistance, including the effectiveness of such assistance compared to the assistance program for capital advances set forth under subsection (d)(1) (as in effect pursuant to the amendments made by such Act); and

“(iii) making recommendations regarding future models for assistance under this section.”.

SEC. 5. TECHNICAL CORRECTIONS.

42 USC 8013.

Section 811 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2)—

(i) by striking “provides” and inserting “makes available”; and

(ii) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(3) promotes and facilitates community integration for people with significant and long-term disabilities.”;

(2) in subsection (c)—

(A) in paragraph (1), by striking “special” and inserting “housing and community-based services”; and

(B) in paragraph (2)—

(i) by striking subparagraph (A) and inserting the following:

“(A) make available voluntary supportive services that address the individual needs of persons with disabilities occupying such housing;”; and

(ii) in subparagraph (B), by striking the comma and inserting a semicolon;

(3) in subsection (d)(1), by striking “provided under” and all that follows through “shall bear” and inserting “provided pursuant to subsection (b)(1) shall bear”;

(4) in subsection (f)—

(A) in paragraph (3)—

(i) in subparagraph (B), by striking “receive” and inserting “be offered”; and

(ii) by striking subparagraph (C) and inserting the following:

“(C) evidence of the applicant’s experience in—

“(i) providing such supportive services; or

“(ii) creating and managing structured partnerships with service providers for the delivery of appropriate community-based services;”; and

(iii) in subparagraph (D), by striking “such persons” and all that follows through “provision of such services” and inserting “tenants”; and

(iv) in subparagraph (E), by inserting “other Federal, and” before “State”; and

(B) in paragraph (4), by striking “special” and inserting “housing and community-based services”;

(5) in subsection (g), in paragraph (1) (as so redesignated by section 3(c)(1) of this Act)—

(A) in subparagraph (D) (as so redesignated by section 3(c)(2) of this Act), by striking “the necessary supportive services will be provided” and inserting “appropriate supportive services will be made available”; and

(B) by striking subparagraph (E) (as so redesignated by section 3(c)(2) of this Act) and inserting the following:

“(E) the extent to which the location and design of the proposed project will facilitate the provision of community-based supportive services and address other basic needs of persons with disabilities, including access to appropriate and accessible transportation, access to community services agencies, public facilities, and shopping;”;

(6) in subsection (j)—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively;

(7) in subsection (k)—

(A) in paragraph (1), by inserting before the period at the end of the first sentence the following: “, which provides a separate bedroom for each tenant of the residence”;

Definition.

(B) in paragraph (2), by striking the first sentence, and inserting the following: “The term ‘person with disabilities’ means a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability.”;

Definition.

(C) by striking paragraph (3) and inserting the following new paragraph:

“(3) The term ‘supportive housing for persons with disabilities’ means dwelling units that—

“(A) are designed to meet the permanent housing needs of very low-income persons with disabilities; and

“(B) are located in housing that make available supportive services that address the individual health, mental health, or other needs of such persons.”;

(D) in paragraph (5), by striking “a project for”; and

(E) in paragraph (6)—

(i) by inserting after and below subparagraph (D) the matter to be inserted by the amendment made by section 841 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569; 114 Stat. 3022); and

(ii) in the matter inserted by the amendment made by subparagraph (A) of this paragraph, by striking “wholly owned and”; and

(8) in subsection (l)—

(A) in paragraph (2), by striking “subsection (c)(1)” and inserting “subsection (d)(1)”; and

(B) in paragraph (3), by striking “subsection (c)(2)” and inserting “subsection (d)(2)”.

42 USC 8013.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

Subsection (m) of section 811 is amended to read as follows:

“(m) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for providing assistance pursuant to this section \$300,000,000 for each of fiscal years 2011 through 2015.”.

SEC. 7. GAO STUDY.

The Comptroller General of the United States shall conduct a study of the supportive housing for persons with disabilities program under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013) to determine the adequacy and effectiveness of such program in assisting households of persons with disabilities. Such study shall determine—

(1) the total number of households assisted under such program;

(2) the extent to which households assisted under other programs of the Department of Housing and Urban Development that provide rental assistance or rental housing would be eligible to receive assistance under such section 811 program; and

(3) the extent to which households described in paragraph (2) who are eligible for, but not receiving, assistance under such section 811 program are receiving supportive services from, or assisted by, the Department of Housing and Urban Development other than through the section 811 program (including under the Resident Opportunity and Self-Sufficiency program) or from other sources.

Upon the completion of the study required under this section, the Comptroller General shall submit a report to the Congress setting forth the findings and conclusions of the study. Reports.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 1481 (H.R. 1675):

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 17, considered and passed Senate.

Dec. 21, considered and passed House.



Public Law 111–375
111th Congress

An Act

Jan. 4, 2011

[S. 3036]

National
Alzheimer’s
Project Act.
42 USC 11201
note.

42 USC 11225.

To establish the National Alzheimer’s Project.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Alzheimer’s Project Act”.

SEC. 2. THE NATIONAL ALZHEIMER’S PROJECT.

(a) **DEFINITION OF ALZHEIMER’S.**—In this Act, the term “Alzheimer’s” means Alzheimer’s disease and related dementias.

(b) **ESTABLISHMENT.**—There is established in the Office of the Secretary of Health and Human Services the National Alzheimer’s Project (referred to in this Act as the “Project”).

(c) **PURPOSE OF THE PROJECT.**—The Secretary of Health and Human Services, or the Secretary’s designee, shall—

(1) be responsible for the creation and maintenance of an integrated national plan to overcome Alzheimer’s;

(2) provide information and coordination of Alzheimer’s research and services across all Federal agencies;

(3) accelerate the development of treatments that would prevent, halt, or reverse the course of Alzheimer’s;

(4) improve the—

(A) early diagnosis of Alzheimer’s disease; and

(B) coordination of the care and treatment of citizens with Alzheimer’s;

(5) ensure the inclusion of ethnic and racial populations at higher risk for Alzheimer’s or least likely to receive care, in clinical, research, and service efforts with the purpose of decreasing health disparities in Alzheimer’s; and

(6) coordinate with international bodies to integrate and inform the fight against Alzheimer’s globally.

(d) **DUTIES OF THE SECRETARY.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services, or the Secretary’s designee, shall—

(A) oversee the creation and updating of the national plan described in paragraph (2); and

(B) use discretionary authority to evaluate all Federal programs around Alzheimer’s, including budget requests and approvals.

Deadline.

(2) **NATIONAL PLAN.**—The Secretary of Health and Human Services, or the Secretary’s designee, shall carry out an annual assessment of the Nation’s progress in preparing for the escalating burden of Alzheimer’s, including both implementation

steps and recommendations for priority actions based on the assessment.

(e) ADVISORY COUNCIL.—

Establishment.

(1) IN GENERAL.—There is established an Advisory Council on Alzheimer's Research, Care, and Services (referred to in this Act as the "Advisory Council").

(2) MEMBERSHIP.—

(A) FEDERAL MEMBERS.—The Advisory Council shall be comprised of the following experts:

(i) A designee of the Centers for Disease Control and Prevention.

(ii) A designee of the Administration on Aging.

(iii) A designee of the Centers for Medicare & Medicaid Services.

(iv) A designee of the Indian Health Service.

(v) A designee of the Office of the Director of the National Institutes of Health.

(vi) The Surgeon General.

(vii) A designee of the National Science Foundation.

(viii) A designee of the Department of Veterans Affairs.

(ix) A designee of the Food and Drug Administration.

(x) A designee of the Agency for Healthcare Research and Quality.

(B) NON-FEDERAL MEMBERS.—In addition to the members outlined in subparagraph (A), the Advisory Council shall include 12 expert members from outside the Federal Government, which shall include—

(i) 2 Alzheimer's patient advocates;

(ii) 2 Alzheimer's caregivers;

(iii) 2 health care providers;

(iv) 2 representatives of State health departments;

(v) 2 researchers with Alzheimer's-related expertise in basic, translational, clinical, or drug development science; and

(vi) 2 voluntary health association representatives, including a national Alzheimer's disease organization that has demonstrated experience in research, care, and patient services, and a State-based advocacy organization that provides services to families and professionals, including information and referral, support groups, care consultation, education, and safety services.

(3) MEETINGS.—The Advisory Council shall meet quarterly and such meetings shall be open to the public. Deadline.

(4) ADVICE.—The Advisory Council shall advise the Secretary of Health and Human Services, or the Secretary's designee.

(5) ANNUAL REPORT.—The Advisory Council shall provide to the Secretary of Health and Human Services, or the Secretary's designee and Congress—

(A) an initial evaluation of all federally funded efforts in Alzheimer's research, clinical care, and institutional-, home-, and community-based programs and their outcomes;

(B) initial recommendations for priority actions to expand, eliminate, coordinate, or condense programs based on the program's performance, mission, and purpose;

(C) initial recommendations to—

(i) reduce the financial impact of Alzheimer's on—

(I) Medicare and other federally funded programs; and

(II) families living with Alzheimer's disease; and

(ii) improve health outcomes; and

(D) annually thereafter, an evaluation of the implementation, including outcomes, of the recommendations, including priorities if necessary, through an updated national plan under subsection (d)(2).

(6) TERMINATION.—The Advisory Council shall terminate on December 31, 2025.

(f) DATA SHARING.—Agencies both within the Department of Health and Human Services and outside of the Department that have data relating to Alzheimer's shall share such data with the Secretary of Health and Human Services, or the Secretary's designee, to enable the Secretary, or the Secretary's designee, to complete the report described in subsection (g).

(g) ANNUAL REPORT.—The Secretary of Health and Human Services, or the Secretary's designee, shall submit to Congress—

(1) an annual report that includes an evaluation of all federally funded efforts in Alzheimer's research, clinical care, and institutional-, home-, and community-based programs and their outcomes;

(2) an evaluation of all federally funded programs based on program performance, mission, and purpose related to Alzheimer's disease;

(3) recommendations for—

(A) priority actions based on the evaluation conducted by the Secretary and the Advisory Council to—

(i) reduce the financial impact of Alzheimer's on—

(I) Medicare and other federally funded programs; and

(II) families living with Alzheimer's disease; and

(ii) improve health outcomes;

(B) implementation steps; and

(C) priority actions to improve the prevention, diagnosis, treatment, care, institutional-, home-, and community-based programs of Alzheimer's disease for individuals with Alzheimer's disease and their caregivers; and

(4) an annually updated national plan.

(h) SUNSET.—The Project shall expire on December 31, 2025.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3036:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 8, considered and passed Senate.

Dec. 15, considered and passed House.



Public Law 111–376
111th Congress

An Act

Jan. 4, 2011

[S. 3243]

Anti-Border
Corruption Act
of 2010.
6 USC 101 note.

6 USC 221 note.

To require U.S. Customs and Border Protection to administer polygraph examinations to all applicants for law enforcement positions with U.S. Customs and Border Protection, to require U.S. Customs and Border Protection to initiate all periodic background reinvestigations of certain law enforcement personnel, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Anti-Border Corruption Act of 2010”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) According to the Office of the Inspector General of the Department of Homeland Security, since 2003, 129 U.S. Customs and Border Protection officials have been arrested on corruption charges and, during 2009, 576 investigations were opened on allegations of improper conduct by U.S. Customs and Border Protection officials.

(2) To foster integrity in the workplace, established policy of U.S. Customs and Border Protection calls for—

(A) all job applicants for law enforcement positions at U.S. Customs and Border Protection to receive a polygraph examination and a background investigation before being offered employment; and

(B) relevant employees to receive a periodic background reinvestigation every 5 years.

(3) According to the Office of Internal Affairs of U.S. Customs and Border Protection—

(A) in 2009, less than 15 percent of applicants for jobs with U.S. Customs and Border Protection received polygraph examinations;

(B) as of March 2010, U.S. Customs and Border Protection had a backlog of approximately 10,000 periodic background reinvestigations of existing employees; and

(C) without additional resources, by the end of fiscal year 2010, the backlog of periodic background reinvestigations will increase to approximately 19,000.

SEC. 3. REQUIREMENTS WITH RESPECT TO ADMINISTERING POLYGRAPH EXAMINATIONS TO LAW ENFORCEMENT PERSONNEL OF U.S. CUSTOMS AND BORDER PROTECTION.

Deadlines.

The Secretary of Homeland Security shall ensure that—

(1) by not later than 2 years after the date of the enactment of this Act, all applicants for law enforcement positions with U.S. Customs and Border Protection receive polygraph examinations before being hired for such a position; and

(2) by not later than 180 days after the date of the enactment of this Act, U.S. Customs and Border Protection initiates all periodic background reinvestigations for all law enforcement personnel of U.S. Customs and Border Protection that should receive periodic background reinvestigations pursuant to relevant policies of U.S. Customs and Border Protection in effect on the day before the date of the enactment of this Act.

SEC. 4. PROGRESS REPORT.

Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter through the date that is 2 years after such date of enactment, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on the progress made by U.S. Customs and Border Protection toward complying with section 3.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3243:

SENATE REPORTS: No. 111–338 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed Senate.

Dec. 21, considered and passed House.



Public Law 111–377
111th Congress

An Act

Jan. 4, 2011
[S. 3447]

To amend title 38, United States Code, to improve educational assistance for veterans who served in the Armed Forces after September 11, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Post-9/11
Veterans
Educational
Assistance
Improvements
Act of 2010.
38 USC 101 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Post-9/11 Veterans Educational Assistance Improvements Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference to title 38, United States Code.
- Sec. 3. Statutory Pay-As-You-Go Act compliance.

TITLE I—POST-9/11 VETERANS EDUCATIONAL ASSISTANCE

- Sec. 101. Modification of entitlement to educational assistance.
- Sec. 102. Amounts of assistance for programs of education leading to a degree pursued at public, non-public, and foreign institutions of higher learning.
- Sec. 103. Amounts of assistance for programs of education leading to a degree pursued on active duty.
- Sec. 104. Educational assistance for programs of education pursued on half-time basis or less.
- Sec. 105. Educational assistance for programs of education other than programs of education leading to a degree.
- Sec. 106. Determination of monthly housing stipend payments for academic years.
- Sec. 107. Availability of assistance for licensure and certification tests.
- Sec. 108. National tests.
- Sec. 109. Continuation of entitlement to additional educational assistance for critical skills or specialty.
- Sec. 110. Transfer of unused education benefits.
- Sec. 111. Bar to duplication of certain educational assistance benefits.
- Sec. 112. Technical amendments.

TITLE II—OTHER EDUCATIONAL ASSISTANCE MATTERS

- Sec. 201. Extension of delimiting dates for use of educational assistance by primary caregivers of seriously injured veterans and members of the Armed Forces.
- Sec. 202. Limitations on receipt of educational assistance under National Call to Service and other programs of educational assistance.
- Sec. 203. Approval of courses.
- Sec. 204. Reporting fees.
- Sec. 205. Election for receipt of alternate subsistence allowance for certain veterans with service-connected disabilities undergoing training and rehabilitation.
- Sec. 206. Modification of authority to make certain interval payments.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall

be considered to be made to a section or other provision of title 38, United States Code.

SEC. 3. STATUTORY PAY-AS-YOU-GO ACT COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

TITLE I—POST-9/11 VETERANS EDUCATIONAL ASSISTANCE

SEC. 101. MODIFICATION OF ENTITLEMENT TO EDUCATIONAL ASSISTANCE.

(a) MODIFICATION OF DEFINITIONS ON ELIGIBILITY FOR EDUCATIONAL ASSISTANCE.—

(1) EXPANSION OF DEFINITION OF ACTIVE DUTY TO INCLUDE SERVICE IN NATIONAL GUARD FOR CERTAIN PURPOSES.—Paragraph (1) of section 3301 is amended by adding at the end the following new subparagraph:

“(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, in addition to service described in subparagraph (B), full-time service—

“(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

“(ii) in the National Guard under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.”.

(2) EXPANSION OF DEFINITION OF ARMY ENTRY LEVEL AND SKILL TRAINING TO INCLUDE ONE STATION UNIT TRAINING.—Paragraph (2)(A) of such section is amended by inserting “or One Station Unit Training” before the period at the end.

(3) CLARIFICATION OF DEFINITION OF ENTRY LEVEL AND SKILL TRAINING FOR THE COAST GUARD.—Paragraph (2)(E) of such section is amended by inserting “and Skill Training (or so-called ‘A’ School)” before the period at the end.

(b) CLARIFICATION OF APPLICABILITY OF HONORABLE SERVICE REQUIREMENT FOR CERTAIN DISCHARGES AND RELEASES FROM THE ARMED FORCES AS BASIS FOR ENTITLEMENT TO EDUCATIONAL ASSISTANCE.—Section 3311(c)(4) is amended in the matter preceding subparagraph (A) by striking “A discharge or release from active duty in the Armed Forces” and inserting “A discharge or release from active duty in the Armed Forces after service on active duty in the Armed Forces characterized by the Secretary concerned as honorable service”.

(c) EXCLUSION FROM PERIOD OF SERVICE ON ACTIVE DUTY OF PERIODS OF SERVICE IN CONNECTION WITH ATTENDANCE AT COAST GUARD ACADEMY.—Section 3311(d)(2) is amended by inserting “or section 182 of title 14” before the period at the end.

(d) EFFECTIVE DATES.—

38 USC 3301
note.

Time period.

(1) SERVICE IN NATIONAL GUARD AS ACTIVE DUTY.—The amendment made by subsection (a)(1) shall take effect on August 1, 2009, as if included in the enactment of chapter 33 of title 38, United States Code, pursuant to the Post-9/11 Veterans Educational Assistance Act of 2008 (title V of Public Law 110-252). However, no benefits otherwise payable by reason of such amendment for the period beginning on August 1, 2009, and ending on September 30, 2011, may be paid before October 1, 2011.

38 USC 3301
note.

(2) ONE STATION UNIT TRAINING.—The amendment made by subsection (a)(2) shall take effect on the date of the enactment of this Act.

38 USC 3301
note.

(3) ENTRY LEVEL AND SKILL TRAINING FOR THE COAST GUARD.—The amendment made by subsection (a)(3) shall take effect on the date of the enactment of this Act, and shall apply with respect to individuals entering service on or after that date.

38 USC 3311
note.

(4) HONORABLE SERVICE REQUIREMENT.—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act, and shall apply with respect to discharges and releases from the Armed Forces that occur on or after that date.

38 USC 3311
note.

(5) SERVICE IN CONNECTION WITH ATTENDANCE AT COAST GUARD ACADEMY.—The amendment made by subsection (c) shall take effect on the date of the enactment of this Act, and shall apply with respect to individuals entering into agreements on service in the Coast Guard on or after that date.

SEC. 102. AMOUNTS OF ASSISTANCE FOR PROGRAMS OF EDUCATION LEADING TO A DEGREE PURSUED AT PUBLIC, NON-PUBLIC, AND FOREIGN INSTITUTIONS OF HIGHER LEARNING.

(a) AMOUNTS OF EDUCATIONAL ASSISTANCE.—

(1) IN GENERAL.—Section 3313(c) is amended—

(A) in the matter preceding paragraph (1), by inserting “leading to a degree at an institution of higher learning (as that term is defined in section 3452(f))” after “program of education”; and

(B) in paragraph (1), by striking subparagraph (A) and inserting the following new subparagraph (A):

“(A) An amount equal to the following:

“(i) In the case of a program of education pursued at a public institution of higher learning, the actual net cost for in-State tuition and fees assessed by the institution for the program of education after the application of—

“(I) any waiver of, or reduction in, tuition and fees; and

“(II) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965 (20 U.S.C. 1070a)) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees.

“(ii) In the case of a program of education pursued at a non-public or foreign institution of higher learning, the lesser of—

“(I) the actual net cost for tuition and fees assessed by the institution for the program of education after the application of—

“(aa) any waiver of, or reduction in, tuition and fees; and

“(bb) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or

“(II) the amount equal to—

“(aa) for the academic year beginning on August 1, 2011, \$17,500; or

“(bb) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August 1 under this subclause, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h).”.

(2) CONFORMING AMENDMENT.—The heading of such section is amended to read as follows: “PROGRAMS OF EDUCATION LEADING TO A DEGREE PURSUED AT INSTITUTIONS OF HIGHER LEARNING ON MORE THAN HALF-TIME BASIS.—”.

(b) AMOUNTS OF MONTHLY STIPENDS.—Section 3313(c)(1)(B) is amended—

(1) by redesignating clause (ii) as clause (iv); and

(2) by striking clause (i) and inserting the following new clauses:

“(i) Except as provided in clauses (ii) and (iii), for each month an individual pursues a program of education on more than a half-time basis, a monthly housing stipend equal to the product of—

“(I) the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution of higher learning at which the individual is enrolled, multiplied by

“(II) the lesser of—

“(aa) 1.0; or

“(bb) the number of course hours borne by the individual in pursuit of the program of education, divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest multiple of 10.

“(ii) In the case of an individual pursuing a program of education at a foreign institution of higher

learning on more than a half-time basis, for each month the individual pursues the program of education, a monthly housing stipend equal to the product of—

“(I) the national average of the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5, multiplied by

“(II) the lesser of—

“(aa) 1.0; or

“(bb) the number of course hours borne by the individual in pursuit of the program of education, divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest multiple of 10.

“(iii) In the case of an individual pursuing a program of education solely through distance learning on more than a half-time basis, a monthly housing stipend equal to 50 percent of the amount payable under clause (ii) if the individual were otherwise entitled to a monthly housing stipend under that clause for pursuit of the program of education.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on August 1, 2011, and shall apply with respect to amounts payable for educational assistance for pursuit of programs of education on or after that date.

(2) STIPEND FOR DISTANCE LEARNING ON MORE THAN HALF-TIME BASIS.—Clause (iii) of section 3313(c)(1)(B) of title 38, United States Code (as added by subsection (b)(2) of this section), shall take effect on October 1, 2011, and shall apply with respect to amounts payable for educational assistance for pursuit of programs of education as covered by such clause on or after that date.

SEC. 103. AMOUNTS OF ASSISTANCE FOR PROGRAMS OF EDUCATION LEADING TO A DEGREE PURSUED ON ACTIVE DUTY.

(a) IN GENERAL.—Section 3313(e) is amended—

(1) in paragraphs (1), by inserting “leading to a degree” after “approved program of education”;

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by inserting “leading to a degree” after “program of education”;

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (iii), respectively;

(C) in the matter preceding clause (i), as redesignated by subparagraph (B) of this paragraph—

(i) by striking “The amount” and inserting “The amounts”; and

(ii) by striking “is the lesser of—” and inserting “are as follows:

“(A) Subject to subparagraph (C), an amount equal to the lesser of—”;

(D) by striking clause (i), as so redesignated, and inserting the following new clauses:

Applicability.
38 USC 3313
note.

“(i) in the case of a program of education pursued at a public institution of higher learning, the actual net cost for in-State tuition and fees assessed by the institution for the program of education after the application of—

“(I) any waiver of, or reduction in, tuition and fees; and

“(II) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965 (20 U.S.C. 1070a)) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees;

“(ii) in the case of a program of education pursued at a non-public or foreign institution of higher learning, the lesser of—

“(I) the actual net cost for tuition and fees assessed by the institution for the program of education after the application of—

“(aa) any waiver of, or reduction in, tuition and fees; and

“(bb) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or

“(II) the amount equal to—

“(aa) for the academic year beginning on August 1, 2011, \$17,500; or

“(bb) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August 1 under this subclause, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h); or”.

(E) by adding at the end the following new subparagraphs (B) and (C):

“(B) Subject to subparagraph (C), for the first month of each quarter, semester, or term, as applicable, of the program of education pursued by the individual, a lump sum amount for books, supplies, equipment, and other educational costs with respect to such quarter, semester, or term in the amount equal to—

“(i) \$1,000, multiplied by

“(ii) the fraction of a complete academic year under the program of education that such quarter, semester, or term constitutes.

“(C) In the case of an individual entitled to educational assistance by reason of paragraphs (3) through (8) of section 3311(b), the amounts payable to the individual pursuant to subparagraphs (A)(i), (A)(ii), and (B) shall be the

amounts otherwise determined pursuant to such subparagraphs multiplied by the same percentage applicable to the monthly amounts payable to the individual under paragraphs (2) through (7) of subsection (c).”.

(b) **CONFORMING AMENDMENT.**—The heading of such section is amended to read as follows: “PROGRAMS OF EDUCATION LEADING TO A DEGREE PURSUED ON ACTIVE DUTY ON MORE THAN HALF-TIME BASIS.—”.

Applicability.
38 USC 3313
note.

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act, and shall apply with respect to amounts payable for educational assistance for pursuit of programs of education on or after such effective date.

(2) **LUMP SUM FOR BOOKS AND OTHER EDUCATIONAL COSTS.**—Subparagraph (B) of section 3313(e)(2) of title 38, United States Code (as added by subsection (a)(2)(E) of this section), shall take effect on October 1, 2011, and shall apply with respect to amounts payable for educational assistance for pursuit of programs of education on or after that date.

SEC. 104. EDUCATIONAL ASSISTANCE FOR PROGRAMS OF EDUCATION PURSUED ON HALF-TIME BASIS OR LESS.

(a) **CLARIFICATION OF AVAILABILITY OF ASSISTANCE.**—Section 3313(f) is amended—

(1) in paragraph (1), by inserting before the period at the end the following: “whether a program of education pursued on active duty, a program of education leading to a degree, or a program of education other than a program of education leading to a degree”; and

(2) in paragraph (2), by inserting “covered by this subsection” after “program of education” in the matter preceding subparagraph (A).

(b) **AMOUNT OF ASSISTANCE.**—Clause (i) of paragraph (2)(A) of such section is amended to read as follows:

“(i) the actual net cost for in-State tuition and fees assessed by the institution of higher learning for the program of education after the application of—

“(I) any waiver of, or reduction in, tuition and fees; and

“(II) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965 (20 U.S.C. 1070a)) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or”.

Applicability.
38 USC 3313
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on August 1, 2011, and shall apply with respect to amounts payable for educational assistance for pursuit of programs of education on or after that date.

SEC. 105. EDUCATIONAL ASSISTANCE FOR PROGRAMS OF EDUCATION OTHER THAN PROGRAMS OF EDUCATION LEADING TO A DEGREE.

(a) **APPROVED PROGRAMS OF EDUCATION AT INSTITUTIONS OTHER THAN INSTITUTIONS OF HIGHER LEARNING.**—Subsection (b) of section

3313 is amended by striking “is offered by an institution of higher learning (as that term is defined in section 3452(f)) and”.

(b) ASSISTANCE FOR PURSUIT OF PROGRAMS OF EDUCATION OTHER THAN PROGRAMS OF EDUCATION LEADING TO A DEGREE.—Such section is further amended—

(1) by striking subsection (h);

(2) by redesignating subsection (g) as subsection (h); and

(3) by inserting after subsection (f) the following new subsection (g):

“(g) PROGRAMS OF EDUCATION OTHER THAN PROGRAMS OF EDUCATION LEADING TO A DEGREE.—

“(1) IN GENERAL.—Educational assistance is payable under this chapter for pursuit of an approved program of education other than a program of education leading to a degree at an institution other than an institution of higher learning (as that term is defined in section 3452(f)).

“(2) PURSUIT ON HALF-TIME BASIS OR LESS.—The payment of educational assistance under this chapter for pursuit of a program of education otherwise described in paragraph (1) on a half-time basis or less is governed by subsection (f).

“(3) AMOUNT OF ASSISTANCE.—The amounts of educational assistance payable under this chapter to an individual entitled to educational assistance under this chapter who is pursuing an approved program of education covered by this subsection are as follows:

“(A) In the case of an individual enrolled in a program of education (other than a program described in subparagraphs (B) through (D)) in pursuit of a certificate or other non-college degree, the following:

“(i) Subject to clause (iv), an amount equal to the lesser of—

“(I) the actual net cost for in-State tuition and fees assessed by the institution concerned for the program of education after the application of—

“(aa) any waiver of, or reduction in, tuition and fees; and

“(bb) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965 (20 U.S.C. 1070a)) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or

“(II) the amount equal to—

“(aa) for the academic year beginning on August 1, 2011, \$17,500; or

“(bb) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August 1 under this subclause, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h).

“(ii) Except in the case of an individual pursuing a program of education on a half-time or less basis

and subject to clause (iv), a monthly housing stipend equal to the product—

“(I) of—

“(aa) in the case of an individual pursuing resident training, the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution at which the individual is enrolled; or

“(bb) in the case of an individual pursuing a program of education through distance learning, a monthly amount equal to 50 percent of the amount payable under item (aa), multiplied by

“(II) the lesser of—

“(aa) 1.0; or

“(bb) the number of course hours borne by the individual in pursuit of the program of education involved, divided by the minimum number of course hours required for full-time pursuit of such program of education, rounded to the nearest multiple of 10.

“(iii) Subject to clause (iv), a monthly stipend in an amount equal to \$83 for each month (or pro rata amount for a partial month) of training pursued for books supplies, equipment, and other educational costs.

“(iv) In the case of an individual entitled to educational assistance by reason of paragraphs (3) through (8) of section 3311(b), the amounts payable pursuant to clauses (i), (ii), and (iii) shall be the amounts otherwise determined pursuant to such clauses multiplied by the same percentage applicable to the monthly amounts payable to the individual under paragraphs (2) through (7) of subsection (c).

“(B) In the case of an individual pursuing a full-time program of apprenticeship or other on-job training, amounts as follows:

“(i) Subject to clauses (iii) and (iv), for each month the individual pursues the program of education, a monthly housing stipend equal to—

“(I) during the first six-month period of the program, the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the employer at which the individual pursues such program;

“(II) during the second six-month period of the program, 80 percent of the monthly amount of the basic allowance for housing payable as described in subclause (I);

“(III) during the third six-month period of the program, 60 percent of the monthly amount of

the basic allowance for housing payable as described in subclause (I);

“(IV) during the fourth six-month period of such program, 40 percent of the monthly amount of the basic allowance for housing payable as described in subclause (I); and

“(V) during any month after the first 24 months of such program, 20 percent of the monthly amount of the basic allowance for housing payable as described in subclause (I).

“(ii) Subject to clauses (iii) and (iv), a monthly stipend in an amount equal to \$83 for each month (or pro rata amount for each partial month) of training pursued for books supplies, equipment, and other educational costs.

“(iii) In the case of an individual entitled to educational assistance by reason of paragraphs (3) through (8) of sections 3311(b), the amounts payable pursuant to clauses (i) and (ii) shall be the amounts otherwise determined pursuant to such clauses multiplied by the same percentage applicable to the monthly amounts payable to the individual under paragraphs (2) through (7) of subsection (c).

“(iv) In any month in which an individual pursuing a program of education consisting of a program of apprenticeship or other on-job training fails to complete 120 hours of training, the amount of monthly educational assistance allowance payable under clauses (i) and (iii) to the individual shall be limited to the same proportion of the applicable rate determined under this subparagraph as the number of hours worked during such month, rounded to the nearest eight hours, bears to 120 hours.

“(C) In the case of an individual enrolled in a program of education consisting of flight training (regardless of the institution providing such program of education), an amount equal to—

“(i) the lesser of—

“(I) the actual net cost for in-State tuition and fees assessed by the institution concerned for the program of education after the application of—

“(aa) any waiver of, or reduction in, tuition and fees; and

“(bb) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or

“(II) the amount equal to—

“(aa) for the academic year beginning on August 1, 2011, \$10,000; or

“(bb) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August

1 under this subclause, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h), multiplied by—

“(ii) either—

“(I) in the case of an individual entitled to educational assistance by reason of paragraphs (1), (2), or (9) of section 3311(b), 100 percent; or

“(II) in the case of an individual entitled to educational assistance by reason of paragraphs (3) through (8) of section 3311(b), the same percentage as would otherwise apply to the monthly amounts payable to the individual under paragraphs (2) through (7) of subsection (c).

“(D) In the case of an individual enrolled in a program of education that is pursued exclusively by correspondence (regardless of the institution providing such program of education), an amount equal to—

“(i) the lesser of—

“(I) the actual net cost for tuition and fees assessed by the institution concerned for the program of education after the application of—

“(aa) any waiver of, or reduction in, tuition and fees; and

“(bb) any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees.

“(II) the amount equal to—

“(aa) for the academic year beginning on August 1, 2011, \$8,500; or

“(bb) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August 1 under this subclause, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h), multiplied by—

“(ii) either—

“(I) in the case of an individual entitled to educational assistance by reason of paragraphs (1), (2), or (9) of section 3311(b), 100 percent; or

“(II) in the case of an individual entitled to educational assistance by reason of paragraphs (3) through (8) of section 3311(b), the same percentage as would otherwise apply to the monthly amounts payable to the individual under paragraphs (2) through (7) of subsection (c).

“(4) FREQUENCY OF PAYMENT.—

“(A) QUARTER, SEMESTER, OR TERM PAYMENTS.—Payment of the amounts payable under paragraph (3)(A)(i) for pursuit of a program of education shall be made for

the entire quarter, semester, or term, as applicable, of the program of education.

“(B) MONTHLY PAYMENTS.—Payment of the amounts payable under paragraphs (3)(A)(ii) and (3)(B)(i) for pursuit of a program of education shall be made on a monthly basis.

“(C) LUMP SUM PAYMENTS.—

“(i) Payment for the amount payable under paragraphs (3)(A)(iii) and (3)(B)(ii) shall be paid to the individual for the first month of each quarter, semester, or term, as applicable, of the program education pursued by the individual.

“(ii) Payment of the amount payable under paragraph (3)(C) for pursuit of a program of education shall be made upon receipt of certification for training completed by the individual and serviced by the training facility.

“(D) QUARTERLY PAYMENTS.—Payment of the amounts payable under paragraph (3)(D) for pursuit of a program of education shall be made quarterly on a pro rata basis for the lessons completed by the individual and serviced by the institution.

“(5) CHARGE AGAINST ENTITLEMENT FOR CERTIFICATE AND OTHER NON-COLLEGE DEGREE PROGRAMS.—

“(A) IN GENERAL.—In the case of amounts paid under paragraph (3)(A)(i) for pursuit of a program of education, the charge against entitlement to educational assistance under this chapter of the individual for whom such payment is made shall be one month for each of—

“(i) the amount so paid, divided by

“(ii) subject to subparagraph (B), the amount equal to one-twelfth of the amount applicable in the academic year in which the payment is made under paragraph (3)(A)(i)(II).

“(B) PRO RATA ADJUSTMENT BASED ON CERTAIN ELIGIBILITY.—If the amount otherwise payable with respect to an individual under paragraph (3)(A)(i) is subject to a percentage adjustment under paragraph (3)(A)(iv), the amount applicable with respect to the individual under subparagraph (A)(ii) shall be the amount otherwise determined pursuant to such subparagraph subject to a percentage adjustment equal to the percentage adjustment applicable with respect to the individual under paragraph (3)(A)(iv).”.

(c) PAYMENT OF AMOUNTS TO EDUCATIONAL INSTITUTIONS.—Subsection (h) of section 3313, as redesignated by subsection (b)(2) of this section, is amended by inserting “, and under subparagraphs (A)(i), (C), and (D) of subsection (g)(3),” after “(f)(2)(A)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2011, and shall apply with respect to amounts payable for educational assistance for pursuit of programs of education on or after that date.

Applicability.
38 USC 3313
note.

SEC. 106. DETERMINATION OF MONTHLY HOUSING STIPEND PAYMENTS FOR ACADEMIC YEARS.

(a) IN GENERAL.—Section 3313, as amended by this Act, is further amended by adding at the end the following new subsection:

“(i) DETERMINATION OF HOUSING STIPEND PAYMENTS FOR ACADEMIC YEARS.—Any monthly housing stipend payable under this section during the academic year beginning on August 1 of a calendar year shall be determined utilizing rates for basic allowances for housing payable under section 403 of title 37 in effect as of January 1 of such calendar year.”.

38 USC 3313
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on August 1, 2011.

SEC. 107. AVAILABILITY OF ASSISTANCE FOR LICENSURE AND CERTIFICATION TESTS.

(a) AVAILABILITY OF ASSISTANCE FOR ADDITIONAL TESTS.—Subsection (a) of section 3315 is amended by striking “one licensing or certification test” and inserting “licensing or certification tests”.

(b) CHARGE AGAINST ENTITLEMENT FOR RECEIPT OF ASSISTANCE.—

(1) IN GENERAL.—Subsection (c) of such section is amended to read as follows:

“(c) CHARGE AGAINST ENTITLEMENT.—The charge against an individual’s entitlement under this chapter for payment for a licensing or certification test shall be determined at the rate of one month (rounded to the nearest whole month) for each amount paid that equals—

“(1) for the academic year beginning on August 1, 2011, \$1,460; or

“(2) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August 1 under this subsection, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h).”.

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section is amended—

(A) in paragraph (1), by striking “or” at the end;

(B) in paragraph (2), by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(3) the amount of entitlement available to the individual under this chapter at the time of payment for the test under this section.”.

Applicability.
38 USC 3313
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 2011, and shall apply with respect to licensure and certification tests taken on or after that date.

SEC. 108. NATIONAL TESTS.

(a) NATIONAL TESTS.—

(1) IN GENERAL.—Chapter 33 is amended by inserting after section 3315 the following new section:

38 USC 3315A.

“§ 3315A. National tests

“(a) IN GENERAL.—An individual entitled to educational assistance under this chapter shall also be entitled to educational assistance for the following:

“(1) A national test for admission to an institution of higher learning as described in the last sentence of section 3452(b).

“(2) A national test providing an opportunity for course credit at an institution of higher learning as so described.

“(b) AMOUNT.—The amount of educational assistance payable under this chapter for a test described in subsection (a) is the lesser of—

“(1) the fee charged for the test; or

“(2) the amount of entitlement available to the individual under this chapter at the time of payment for the test under this section.

“(c) CHARGE AGAINST ENTITLEMENT.—The number of months of entitlement charged an individual under this chapter for a test described in subsection (a) shall be determined at the rate of one month (rounded to the nearest whole month) for each amount paid that equals—

“(1) for the academic year beginning on August 1, 2011, \$1,460; or

“(2) for an academic year beginning on any subsequent August 1, the amount for the previous academic year beginning on August 1 under this subsection, as increased by the percentage increase equal to the most recent percentage increase determined under section 3015(h).”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 is amended by inserting after the item relating to section 3315 the following new item:

“3315A. National tests.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 2011, and shall apply with respect to national tests taken on or after that date.

Applicability.
38 USC 3315A
note.

SEC. 109. CONTINUATION OF ENTITLEMENT TO ADDITIONAL EDUCATIONAL ASSISTANCE FOR CRITICAL SKILLS OR SPECIALTY.

(a) IN GENERAL.—Section 3316 is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) CONTINUATION OF INCREASED EDUCATIONAL ASSISTANCE.—

“(1) IN GENERAL.—An individual who made an election to receive educational assistance under this chapter pursuant to section 5003(c)(1)(A) of the Post-9/11 Veterans Educational Assistance Act of 2008 (38 U.S.C. 3301 note) and who, at the time of the election, was entitled to increased educational assistance under section 3015(d) or section 16131(i) of title 10 shall remain entitled to increased educational assistance in the utilization of the individual’s entitlement to educational assistance under this chapter.

“(2) RATE.—The monthly rate of increased educational assistance payable to an individual under paragraph (1) shall be—

“(A) the rate of educational assistance otherwise payable to the individual under section 3015(d) or section 16131(i) of title 10, as the case may be, had the individual not made the election described in paragraph (1), multiplied by

“(B) the lesser of—

“(i) 1.0; or

“(ii) the number of course hours borne by the individual in pursuit of the program of education involved

divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest multiple of 10.

“(3) FREQUENCY OF PAYMENT.—Payment of the amounts payable under paragraph (1) during pursuit of a program of education shall be made on a monthly basis.”.

(b) CLARIFICATION ON FUNDING OF INCREASED ASSISTANCE.—

(1) IN GENERAL.—Such section is further amended by inserting after subsection (c), as added by subsection (a)(2) of this section, the following new subsection:

“(d) FUNDING.—Payments for increased educational assistance under this section shall be made from the Department of Defense Education Benefits Fund under section 2006 of title 10 or from appropriations available to the Department of Homeland Security for that purpose, as applicable.”.

(2) CONFORMING AMENDMENTS.—Section 2006(b) of title 10, United States Code, is amended—

(A) in paragraph (1), by inserting “or 33” after “chapter 30”; and

(B) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The present value of any future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized by section 3316 of title 38.”.

10 USC 2006
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 2011.

SEC. 110. TRANSFER OF UNUSED EDUCATION BENEFITS.

(a) AVAILABILITY OF TRANSFER AUTHORITY FOR MEMBERS OF PHS AND NOAA.—Section 3319 is amended—

(1) by striking “Armed Forces” each place it appears (other than in subsection (a)) and inserting “uniformed services”; and

(2) by striking subsection (k).

(b) SCOPE AND EXERCISE OF AUTHORITY.—Subsection (a) of such section is amended—

(1) by striking “Subject to the provisions of this section,” and all that follows through “to permit” and inserting “(1) Subject to the provisions of this section, the Secretary concerned may permit”; and

(2) by adding at the end the following new paragraph:

“(2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The Secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the national security interests of the United States.”.

38 USC 3319
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 2011.

SEC. 111. BAR TO DUPLICATION OF CERTAIN EDUCATIONAL ASSISTANCE BENEFITS.

(a) BAR TO CONCURRENT RECEIPT OF TRANSFERRED EDUCATION BENEFITS AND MARINE GUNNERY SERGEANT JOHN DAVID FRY SCHOLARSHIP ASSISTANCE.—Section 3322 is amended by adding at the end the following new subsection:

“(e) BAR TO CONCURRENT RECEIPT OF TRANSFERRED EDUCATION BENEFITS AND MARINE GUNNERY SERGEANT JOHN DAVID FRY SCHOLARSHIP ASSISTANCE.—An individual entitled to educational

assistance under both sections 3311(b)(9) and 3319 may not receive assistance under both provisions concurrently, but shall elect (in such form and manner as the Secretary may prescribe) under which provision to receive educational assistance.”.

(b) **BAR TO RECEIPT OF COMPENSATION AND PENSION AND MARINE GUNNERY SERGEANT JOHN DAVID FRY SCHOLARSHIP ASSISTANCE.**—Such section is further amended by adding at the end the following new subsection:

“(f) **BAR TO RECEIPT OF COMPENSATION AND PENSION AND MARINE GUNNERY SERGEANT JOHN DAVID FRY SCHOLARSHIP ASSISTANCE.**—The commencement of a program of education under section 3311(b)(9) shall be a bar to the following:

“(1) Subsequent payments of dependency and indemnity compensation or pension based on the death of a parent to an eligible person over the age of 18 years by reason of pursuing a course in an educational institution.

“(2) Increased rates, or additional amounts, of compensation, dependency and indemnity compensation, or pension because of such a person, whether eligibility is based upon the death of the parent.”.

(c) **BAR TO CONCURRENT RECEIPT OF TRANSFERRED EDUCATION BENEFITS.**—Such section is further amended by adding at the end the following new subsection:

“(g) **BAR TO CONCURRENT RECEIPT OF TRANSFERRED EDUCATION BENEFITS.**—A spouse or child who is entitled to educational assistance under this chapter based on a transfer of entitlement from more than one individual under section 3319 may not receive assistance based on transfers from more than one such individual concurrently, but shall elect (in such form and manner as the Secretary may prescribe) under which source to utilize such assistance at any one time.”.

(d) **BAR TO DUPLICATION OF ELIGIBILITY BASED ON A SINGLE EVENT.**—Such section is further amended by adding at the end the following new subsection:

“(h) **BAR TO DUPLICATION OF ELIGIBILITY BASED ON A SINGLE EVENT OR PERIOD OF SERVICE.**—

“(1) **ACTIVE-DUTY SERVICE.**—An individual with qualifying service in the Armed Forces that establishes eligibility on the part of such individual for educational assistance under this chapter, chapter 30 or 32 of this title, and chapter 1606 or 1607 of title 10, shall elect (in such form and manner as the Secretary may prescribe) under which authority such service is to be credited.

“(2) **ELIGIBILITY FOR EDUCATIONAL ASSISTANCE BASED ON PARENT’S SERVICE.**—A child of a member of the Armed Forces who, on or after September 11, 2001, dies in the line of duty while serving on active duty, who is eligible for educational assistance under either section 3311(b)(9) or chapter 35 of this title based on the parent’s death may not receive such assistance under both this chapter and chapter 35 of this title, but shall elect (in such form and manner as the Secretary may prescribe) under which chapter to receive such assistance.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on August 1, 2011.

38 USC 3322
note.

SEC. 112. TECHNICAL AMENDMENTS.

(a) **SECTION 3313.**—Section 3313 is amended—

(1) by striking “higher education” each place it appears and inserting “higher learning”; and

(2) in clause (iii) of subparagraph (A) of subsection (e)(2), as redesignated by section 103(a)(2) of this Act, by adding a period at the end.

(b) SECTION 3319.—Section 3319(b)(2) is amended by striking “to section (k)” and inserting “to subsection (j)”.

(c) SECTION 3323.—Section 3323(a) is amended by striking “section 3034(a)(1)” and inserting “sections 3034(a)(1) and 3680(c)”.

TITLE II—OTHER EDUCATIONAL ASSISTANCE MATTERS

SEC. 201. EXTENSION OF DELIMITING DATES FOR USE OF EDUCATIONAL ASSISTANCE BY PRIMARY CAREGIVERS OF SERIOUSLY INJURED VETERANS AND MEMBERS OF THE ARMED FORCES.

Time period.

(a) ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE.—Subsection (d) of section 3031 is amended to read as follows:

“(d)(1) In the case of an individual eligible for educational assistance under this chapter who is prevented from pursuing the individual’s chosen program of education before the expiration of the 10-year period for the use of entitlement under this chapter otherwise applicable under this section because of a physical or mental disability which is not the result of the individual’s own willful misconduct, such 10-year period—

“(A) shall not run during the period the individual is so prevented from pursuing such program; and

Determination.
Regulations.

“(B) shall again begin running on the first day after the individual’s recovery from such disability on which it is reasonably feasible, as determined under regulations prescribed by the Secretary, for the individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

“(2)(A) Subject to subparagraph (B), in the case of an individual eligible for educational assistance under this chapter who is prevented from pursuing the individual’s chosen program of education before the expiration of the 10-year period for the use of entitlement under this chapter otherwise applicable under this section by reason of acting as the primary provider of personal care services for a veteran or member of the Armed Forces under section 1720G(a) of this title, such 10-year period—

“(i) shall not run during the period the individual is so prevented from pursuing such program; and

“(ii) shall again begin running on the first day after the date of the recovery of the veteran or member from the injury, or the date on which the individual ceases to be the primary provider of personal care services for the veteran or member, whichever is earlier, on which it is reasonably feasible, as so determined, for the individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

“(B) Subparagraph (A) shall not apply with respect to the period of an individual as a primary provider of personal care

services if the period concludes with the revocation of the individual's designation as such a primary provider under section 1720G(a)(7)(D) of this title.”.

(b) CERTAIN TRANSFEREES OF POST-9/11 EDUCATIONAL ASSISTANCE.—Paragraph (5) of section 3319(h) is amended to read as follows:

“(5) LIMITATION ON AGE OF USE BY CHILD TRANSFEREES.—

“(A) IN GENERAL.—A child to whom entitlement is transferred under this section may use the benefits transferred without regard to the 15-year delimiting date specified in section 3321, but may not, except as provided in subparagraph (B), use any benefits so transferred after attaining the age of 26 years.

“(B) PRIMARY CAREGIVERS OF SERIOUSLY INJURED MEMBERS OF THE ARMED FORCES AND VETERANS.—

“(i) IN GENERAL.—Subject to clause (ii), in the case of a child who, before attaining the age of 26 years, is prevented from pursuing a chosen program of education by reason of acting as the primary provider of personal care services for a veteran or member of the Armed Forces under section 1720G(a), the child may use the benefits beginning on the date specified in clause (iii) for a period whose length is specified in clause (iv).

“(ii) INAPPLICABILITY FOR REVOCATION.—Clause (i) shall not apply with respect to the period of an individual as a primary provider of personal care services if the period concludes with the revocation of the individual's designation as such a primary provider under section 1720G(a)(7)(D).

“(iii) DATE FOR COMMENCEMENT OF USE.—The date specified in this clause for the beginning of the use of benefits by a child under clause (i) is the later of—

“(I) the date on which the child ceases acting as the primary provider of personal care services for the veteran or member concerned as described in clause (i);

“(II) the date on which it is reasonably feasible, as determined under regulations prescribed by the Secretary, for the child to initiate or resume the use of benefits; or

“(III) the date on which the child attains the age of 26 years.

“(iv) LENGTH OF USE.—The length of the period specified in this clause for the use of benefits by a child under clause (i) is the length equal to the length of the period that—

“(I) begins on the date on which the child begins acting as the primary provider of personal care services for the veteran or member concerned as described in clause (i); and

“(II) ends on the later of—

“(aa) the date on which the child ceases acting as the primary provider of personal care services for the veteran or member as described in clause (i); or

“(bb) the date on which it is reasonably feasible, as so determined, for the child to initiate or resume the use of benefits.”

(c) SURVIVORS’ AND DEPENDENTS’ EDUCATIONAL ASSISTANCE.—

Subsection (c) of section 3512 is amended to read as follows:

“(c)(1) Notwithstanding subsection (a) and subject to paragraph (2), an eligible person may be afforded educational assistance beyond the age limitation applicable to the person under such subsection if—

“(A) the person suspends pursuit of such person’s program of education after having enrolled in such program within the time period applicable to such person under such subsection;

“(B) the person is unable to complete such program after the period of suspension and before attaining the age limitation applicable to the person under such subsection; and

“(C) the Secretary finds that the suspension was due to either of the following:

“(i) The actions of the person as the primary provider of personal care services for a veteran or member of the Armed Forces under section 1720G(a) of this title.

“(ii) Conditions otherwise beyond the control of the person.

“(2) Paragraph (1) shall not apply with respect to the period of an individual as a primary provider of personal care services if the period concludes with the revocation of the individual’s designation as such a primary provider under section 1720G(a)(7)(D) of this title.

“(3) Educational assistance may not be afforded a person under paragraph (1) after the earlier of—

“(A) the age limitation applicable to the person under subsection (a), plus a period of time equal to the period the person was required to suspend pursuit of the person’s program of education as described in paragraph (1); or

“(B) the date of the person’s thirty-first birthday.”

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 2011, and shall apply with respect to preventions and suspension of pursuit of programs of education that commence on or after that date.

Applicability.
38 USC 3031
note.

SEC. 202. LIMITATIONS ON RECEIPT OF EDUCATIONAL ASSISTANCE UNDER NATIONAL CALL TO SERVICE AND OTHER PROGRAMS OF EDUCATIONAL ASSISTANCE.

(a) BAR TO DUPLICATION OF EDUCATIONAL ASSISTANCE BENEFITS.—Section 3322(a) is amended by inserting “or section 510” after “or 1607”.

(b) LIMITATION ON CONCURRENT RECEIPT OF EDUCATIONAL ASSISTANCE.—Section 3681(b)(2) is amended by inserting “and section 510” after “and 107”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 2011.

38 USC 3322
note.

SEC. 203. APPROVAL OF COURSES.

(a) CONSTRUCTIVE APPROVAL OF CERTAIN COURSES.—

(1) IN GENERAL.—Section 3672(b) is amended—

(A) by inserting “(1)” after “(b)”; and

(B) by adding at the end the following new paragraph:

“(2)(A) Subject to sections 3675(b)(1) and (b)(2), 3680A, 3684, and 3696 of this title, the following programs are deemed to be approved for purposes of this chapter:

“(i) An accredited standard college degree program offered at a public or not-for-profit proprietary educational institution that is accredited by an agency or association recognized for that purpose by the Secretary of Education.

“(ii) A flight training course approved by the Federal Aviation Administration that is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate.

“(iii) An apprenticeship program registered with the Office of Apprenticeship (OA) of the Employment Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (popularly known as the ‘National Apprenticeship Act’; 29 U.S.C. 50 et seq.).

“(iv) A program leading to a secondary school diploma offered by a secondary school approved in the State in which it is operating.

“(B) A licensure test offered by a Federal, State, or local government is deemed to be approved for purposes of this chapter.”.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (3) of section 3034(d) is amended to read as follows:

“(3) the flight school courses are approved by the Federal Aviation Administration and are offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate.”.

(B) Section 3671(b)(2) is amended by striking “In the case” and inserting “Except as otherwise provided in this chapter, in the case”.

(C) Section 3689(a)(1) is amended by inserting after “unless” the following: “the test is deemed approved by section 3672(b)(2)(B) of this title or”.

(b) USE OF STATE APPROVING AGENCIES FOR COMPLIANCE AND OVERSIGHT ACTIVITIES.—Section 3673 is amended by adding at the end the following new subsection:

“(d) USE OF STATE APPROVING AGENCIES FOR COMPLIANCE AND OVERSIGHT ACTIVITIES.—The Secretary may utilize the services of a State approving agency for such compliance and oversight purposes as the Secretary considers appropriate without regard to whether the Secretary or the agency approved the courses offered in the State concerned.”.

(c) APPROVAL OF ACCREDITED COURSES.—

(1) IN GENERAL.—Subsection (a)(1) of section 3675 is amended by striking “A State approving agency may approve the courses offered by an educational institution” and inserting “The Secretary or a State approving agency may approve accredited programs (including non-degree accredited programs) offered by proprietary for-profit educational institutions”.

(2) CONDITION OF APPROVAL.—Subsection (b) of such section is amended—

(A) in the matter preceding paragraph (1), by inserting “the Secretary or” after “this section,”; and

(B) is amended by inserting “the Secretary or” after “as prescribed by”.

(d) **DISAPPROVAL OF COURSES.**—Section 3679(a) is amended by inserting “the Secretary or” after “disapproved by” both places it appears.

38 USC 3034
note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on August 1, 2011.

SEC. 204. REPORTING FEES.

(a) **INCREASE IN AMOUNT OF FEES.**—Section 3684(c) is amended—

(1) by striking “multiplying \$7” and inserting “multiplying \$12”; and

(2) by striking “or \$11” and inserting “or \$15”.

(b) **USE OF FEES PAID.**—Such section is further amended by inserting after the fourth sentence the following new sentence: “Any reporting fee paid an educational institution or joint apprenticeship training committee after the date of the enactment of the Post-9/11 Veterans Educational Assistance Improvements Act of 2011 shall be utilized by such institution or committee solely for the making of certifications required under this chapter or chapter 31, 34, or 35 of this title or for otherwise supporting programs for veterans.”.

38 USC 3684
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2011.

SEC. 205. ELECTION FOR RECEIPT OF ALTERNATE SUBSISTENCE ALLOWANCE FOR CERTAIN VETERANS WITH SERVICE-CONNECTED DISABILITIES UNDERGOING TRAINING AND REHABILITATION.

(a) **ELECTION AUTHORIZED.**—Section 3108(b) is amended by adding at the end the following new paragraph:

“(4) A veteran entitled to a subsistence allowance under this chapter and educational assistance under chapter 33 of this title may elect to receive payment from the Secretary in lieu of an amount otherwise determined by the Secretary under this subsection in an amount equal to the applicable monthly amount of basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution providing rehabilitation program concerned.”.

38 USC 3684
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on August 1, 2011.

SEC. 206. MODIFICATION OF AUTHORITY TO MAKE CERTAIN INTERVAL PAYMENTS.

(a) **IN GENERAL.**—The flush matter following clause (3)(B) of section 3680(a) is amended by striking “of this subsection—” and all that follows and inserting “of this subsection during periods when schools are temporarily closed under an established policy based on an Executive order of the President or due to an emergency situation. However, the total number of weeks for which allowances may continue to be so payable in any 12-month period may not exceed 4 weeks.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on August 1, 2011. 38 USC 3680 note.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3447:

SENATE REPORTS: No. 111–346 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 13, considered and passed Senate.

Dec. 15, 16, considered and passed House.



Public Law 111–378
111th Congress

An Act

Jan. 4, 2011
[S. 3481]

To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FEDERAL RESPONSIBILITY TO PAY FOR STORMWATER PROGRAMS.

Section 313 of the Federal Water Pollution Control Act (33 U.S.C. 1323) is amended by adding at the end the following:

“(c) REASONABLE SERVICE CHARGES.—

“(1) IN GENERAL.—For the purposes of this Act, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is—

“(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and

“(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

“(2) LIMITATION ON ACCOUNTS.—

“(A) LIMITATION.—The payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.

“(B) REIMBURSEMENT OR PAYMENT OBLIGATION OF FEDERAL GOVERNMENT.—Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, as described in subsection (a), shall not be obligated to pay or reimburse any fee, charge, or assessment described in paragraph (1), except to the extent and in an amount provided in advance

by any appropriations Act to pay or reimburse the fee,
charge, or assessment.”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3481:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 21, considered and passed Senate.

Dec. 22, considered and passed House.



Public Law 111–379
111th Congress

An Act

Jan. 4, 2011
[S. 3592]

To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the “First Lieutenant Robert Wilson Collins Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FIRST LIEUTENANT ROBERT WILSON COLLINS POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, shall be known and designated as the “First Lieutenant Robert Wilson Collins Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “First Lieutenant Robert Wilson Collins Post Office Building”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3592:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 16, considered and passed Senate.

Dec. 17, 21, considered and passed House.



Public Law 111–380
111th Congress

An Act

To amend the Safe Drinking Water Act to reduce lead in drinking water.

Jan. 4, 2011

[S. 3874]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reduction of Lead in Drinking Water Act”.

Reduction of
Lead in Drinking
Water Act.
42 USC 1201
note.

SEC. 2. REDUCING LEAD IN DRINKING WATER.

(a) IN GENERAL.—Section 1417 of the Safe Drinking Water Act (42 U.S.C. 300g–6) is amended—

(1) by adding at the end of subsection (a) the following:

“(4) EXEMPTIONS.—The prohibitions in paragraphs (1) and

(3) shall not apply to—

“(A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

“(B) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.”; and

(2) by amending subsection (d) to read as follows:

“(d) DEFINITION OF LEAD FREE.—

“(1) IN GENERAL.—For the purposes of this section, the term ‘lead free’ means—

“(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and

“(B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

“(2) CALCULATION.—The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce

wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.”.

42 USC 300g–6
note.

(b) EFFECTIVE DATE.—The provisions of subsections (a)(4) and (d) of section 1417 of the Safe Drinking Water Act, as added by this section, apply beginning on the day that is 36 months after the date of the enactment of this Act.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3874:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 16, considered and passed Senate.

Dec. 17, considered and passed House.



Public Law 111–381
111th Congress

An Act

To authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo.

Jan. 4, 2011
[S. 3903]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OHKAY OWINGEH PUEBLO LEASING AUTHORITY.

Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)), is amended in the second sentence by inserting “and lands held in trust for Ohkay Owingeh Pueblo” after “of land on the Devils Lake Sioux Reservation,”.

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 3903:

SENATE REPORTS: No. 111–371 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 21, considered and passed Senate.

Dec. 22, considered and passed House.



Public Law 111–382
111th Congress

An Act

Jan. 4, 2011
[S. 4036]

To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STABILIZATION FUND.

(a) **ADDITIONAL ADVANCES.**—Section 217(c)(3) of the Federal Credit Union Act (12 U.S.C. 1790e(c)(3)) is amended by inserting before the period at the end the following: “and any additional advances”.

(b) **ASSESSMENTS.**—Section 217 of the Federal Credit Union Act (12 U.S.C. 1790e) is amended by striking subsection (d) and inserting the following:

Deadlines.

“(d) **ASSESSMENT AUTHORITY.**—

“(1) **ASSESSMENTS RELATING TO EXPENDITURES UNDER SUBSECTION (B).**—In order to make expenditures, as described in subsection (b), the Board may assess a special premium with respect to each insured credit union in an aggregate amount that is reasonably calculated to make any pending or future expenditure described in subsection (b), which premium shall be due and payable not later than 60 days after the date of the assessment. In setting the amount of any assessment under this subsection, the Board shall take into consideration any potential impact on credit union earnings that such an assessment may have.

“(2) **SPECIAL PREMIUMS RELATING TO REPAYMENTS UNDER SUBSECTION (C)(3).**—Not later than 90 days before the scheduled date of each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and shall determine whether the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund is not likely to have sufficient funds to make the repayment, the Board shall assess with respect to each insured credit union a special premium, which shall be due and payable not later than 60 days after the date of the assessment, in an aggregate amount calculated to ensure that the Stabilization Fund is able to make the required repayment.

“(3) **COMPUTATION.**—Any assessment or premium charge for an insured credit union under this subsection shall be stated as a percentage of its insured shares, as represented on the previous call report of that insured credit union. The percentage shall be identical for each insured credit union. Any insured credit union that fails to make timely payment

of the assessment or special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 202.”.

SEC. 2. EQUITY RATIO.

Section 202(h)(2) of the Federal Credit Union Act (12 U.S.C. 1782(h)(2)) is amended by striking “when applied to the Fund,” and inserting “which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity,”.

SEC. 3. NET WORTH DEFINITION.

Section 216(o)(2) of the Federal Credit Union Act (12 U.S.C. 1790d(o)(2)) is amended to read as follows:

“(2) NET WORTH.—The term ‘net worth’—

“(A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined;

“(B) with respect to any insured credit union, includes, at the Board’s discretion and subject to rules and regulations established by the Board, assistance provided under section 208 to facilitate a least-cost resolution consistent with the best interests of the credit union system; and

“(C) with respect to a low-income credit union, includes secondary capital accounts that are—

“(i) uninsured; and

“(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund.”.

SEC. 4. STUDY OF NATIONAL CREDIT UNION ADMINISTRATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the National Credit Union Administration’s supervision of corporate credit unions and implementation of prompt corrective action.

(b) ISSUES TO BE STUDIED.—In conducting the study required under subsection (a), the Comptroller General shall—

(1) determine the reasons for the failure of any corporate credit union since 2008; Determination.

(2) evaluate the adequacy of the National Credit Union Administration’s response to the failures of corporate credit unions, including with respect to protecting taxpayers, avoiding moral hazard, minimizing the costs of resolving such corporate credit unions, and the ability of insured credit unions to bear any assessments levied to cover such costs; Evaluation.

(3) evaluate the effectiveness of implementation of prompt corrective action by the National Credit Union Administration for both insured credit unions and corporate credit unions; and Evaluation.

(4) examine whether the National Credit Union Administration has effectively implemented each of the recommendations by the Inspector General of the National Credit Union Administration in its Material Loss Review Reports, and, if not, the adequacy of the National Credit Union Administration’s reasons for not implementing such recommendation.

(c) REPORT TO COUNCIL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required under this section to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) the Committee on Financial Services of the House of Representatives; and

(3) the Financial Stability Oversight Council.

(d) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under subsection (c), the Financial Stability Oversight Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations issued to the National Credit Union Administration under section 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5330).

Approved January 4, 2011.

LEGISLATIVE HISTORY—S. 4036:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 16, considered and passed Senate.

Dec. 22, considered and passed House.



Public Law 111–383
111th Congress

An Act

To authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Jan. 7, 2011
[H.R. 6523]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) **SHORT TITLE.**—This Act may be cited as the “Ike Skelton National Defense Authorization Act for Fiscal Year 2011”.

(b) **REFERENCES.**—Any reference in this or any other Act to the “National Defense Authorization Act for Fiscal Year 2011” shall be deemed to refer to the “Ike Skelton National Defense Authorization Act for Fiscal Year 2011”.

Ike Skelton
National Defense
Authorization
Act for Fiscal
Year 2011.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

5 USC 9902 note.

(a) **DIVISIONS.**—This Act is organized into three divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Organization of Act into divisions; table of contents.

Sec. 3. Congressional defense committees.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sec. 101. Army.

Sec. 102. Navy and Marine Corps.

Sec. 103. Air Force.

Sec. 104. Defense-wide activities.

Subtitle B—Navy Programs

Sec. 111. Multiyear funding for detail design and construction of LHA Replacement ship designated LHA–7.

Sec. 112. Requirement to maintain Navy airborne signals intelligence, surveillance, and reconnaissance capabilities.

Sec. 113. Report on naval force structure and missile defense.

Sec. 114. Reports on service-life extension of F/A–18 aircraft by the Department of the Navy.

Subtitle C—Joint and Multiservice Matters

Sec. 121. Limitations on biometric systems funds.

- Sec. 122. System management plan and matrix for the F–35 Joint Strike Fighter aircraft program.
- Sec. 123. Quarterly reports on use of Combat Mission Requirements funds.
- Sec. 124. Counter-improvised explosive device initiatives database.
- Sec. 125. Study on lightweight body armor solutions.
- Sec. 126. Integration of solid state laser systems into certain aircraft.
- Sec. 127. Contracts for commercial imaging satellite capacities.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

- Sec. 201. Authorization of appropriations.

Subtitle B—Program Requirements, Restrictions, and Limitations

- Sec. 211. Enhancement of Department of Defense support of science, mathematics, and engineering education.
- Sec. 212. Limitation on use of funds by Defense Advanced Research Projects Agency for operation of National Cyber Range.
- Sec. 213. Separate program elements required for research and development of Joint Light Tactical Vehicle.
- Sec. 214. Program for research, development, and deployment of advanced ground vehicles, ground vehicle systems, and components.
- Sec. 215. Demonstration and pilot projects on cybersecurity.

Subtitle C—Missile Defense Programs

- Sec. 221. Sense of Congress on ballistic missile defense.
- Sec. 222. Repeal of prohibition of certain contracts by Missile Defense Agency with foreign entities.
- Sec. 223. Limitation on availability of funds for missile defense interceptors in Europe.
- Sec. 224. Medium Extended Air Defense System.
- Sec. 225. Acquisition accountability reports on the ballistic missile defense system.
- Sec. 226. Authority to support ballistic missile shared early warning with the Czech Republic.
- Sec. 227. Report on phased, adaptive approach to missile defense in Europe.
- Sec. 228. Independent review and assessment of the Ground-Based Midcourse Defense system.
- Sec. 229. Iron Dome short-range rocket defense program.

Subtitle D—Reports

- Sec. 231. Report on analysis of alternatives and program requirements for the Ground Combat Vehicle program.
- Sec. 232. Cost benefit analysis of future tank-fired munitions.
- Sec. 233. Annual Comptroller General report on the VH–(XX) presidential helicopter acquisition program.

Subtitle E—Other Matters

- Sec. 241. Sense of Congress affirming the importance of Department of Defense participation in development of next generation semiconductor technologies.
- Sec. 242. Pilot program on collaborative energy security.
- Sec. 243. Pilot program to include technology protection features during research and development of defense systems.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

- Sec. 301. Operation and maintenance funding.

Subtitle B—Energy and Environmental Provisions

- Sec. 311. Reimbursement of Environmental Protection Agency for certain costs in connection with the Twin Cities Army Ammunition Plant, Minnesota.
- Sec. 312. Payment to Environmental Protection Agency of stipulated penalties in connection with Naval Air Station, Brunswick, Maine.
- Sec. 313. Requirements related to the investigation of exposure to drinking water at Camp Lejeune, North Carolina.
- Sec. 314. Comptroller General assessment on military environmental exposures.

Subtitle C—Workplace and Depot Issues

- Sec. 321. Technical amendments to requirement for service contract inventory.

- Sec. 322. Repeal of conditions on expansion of functions performed under prime vendor contracts for depot-level maintenance and repair.
- Sec. 323. Prohibition on establishing goals or quotas for conversion of functions to performance by Department of Defense civilian employees.

Subtitle D—Reports

- Sec. 331. Additional reporting requirements relating to corrosion prevention projects and activities.
- Sec. 332. Modification and repeal of certain reporting requirements.
- Sec. 333. Report on Air Sovereignty Alert mission.
- Sec. 334. Report on the SEAD/DEAD mission requirement for the Air Force.
- Sec. 335. Requirement to update study on strategic seaports.

Subtitle E—Limitations and Extensions of Authority

- Sec. 341. Permanent authority to accept and use landing fees charged for use of domestic military airfields by civil aircraft.
- Sec. 342. Extension of Arsenal Support Program Initiative.
- Sec. 343. Limitation on obligation of funds for the Army Human Terrain System.
- Sec. 344. Limitation on obligation of funds pending submission of classified justification material.
- Sec. 345. Requirements for transferring aircraft within the Air Force inventory.
- Sec. 346. Commercial sale of small arms ammunition in excess of military requirements.

Subtitle F—Other Matters

- Sec. 351. Expedited processing of background investigations for certain individuals.
- Sec. 352. Revision to authorities relating to transportation of civilian passengers and commercial cargoes by Department of Defense when space unavailable on commercial lines.
- Sec. 353. Technical correction to obsolete reference relating to use of flexible hiring authority to facilitate performance of certain Department of Defense functions by civilian employees.
- Sec. 354. Authority for payment of full replacement value for loss or damage to household goods in limited cases not covered by carrier liability.
- Sec. 355. Recovery of improperly disposed of Department of Defense property.
- Sec. 356. Operational readiness models.
- Sec. 357. Sense of Congress regarding continued importance of High-Altitude Aviation Training Site, Colorado.
- Sec. 358. Study of effects of new construction of obstructions on military installations and operations.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

- Sec. 401. End strengths for active forces.
- Sec. 402. Revision in permanent active duty end strength minimum levels.

Subtitle B—Reserve Forces

- Sec. 411. End strengths for Selected Reserve.
- Sec. 412. End strengths for Reserves on active duty in support of the Reserves.
- Sec. 413. End strengths for military technicians (dual status).
- Sec. 414. Fiscal year 2011 limitation on number of non-dual status technicians.
- Sec. 415. Maximum number of reserve personnel authorized to be on active duty for operational support.

Subtitle C—Authorization of Appropriations

- Sec. 421. Military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy Generally

- Sec. 501. Ages for appointment and mandatory retirement for health professions officers.
- Sec. 502. Authority for appointment of warrant officers in the grade of W–1 by commission and standardization of warrant officer appointing authority.
- Sec. 503. Nondisclosure of information from discussions, deliberations, notes, and records of special selection boards.
- Sec. 504. Administrative removal of officers from promotion list.
- Sec. 505. Modification of authority for officers selected for appointment to general and flag officer grades to wear insignia of higher grade before appointment.

- Sec. 506. Temporary authority to reduce minimum length of active service as a commissioned officer required for voluntary retirement as an officer.

Subtitle B—Reserve Component Management

- Sec. 511. Removal of statutory distribution limits on Navy reserve flag officer allocation.
- Sec. 512. Assignment of Air Force Reserve military technicians (dual status) to positions outside Air Force Reserve unit program.
- Sec. 513. Temporary authority for temporary employment of non-dual status military technicians.
- Sec. 514. Revision of structure and functions of the Reserve Forces Policy Board.
- Sec. 515. Repeal of requirement for new oath when officer transfers from active-duty list to reserve active-status list.
- Sec. 516. Leave of members of the reserve components of the Armed Forces.
- Sec. 517. Direct appointment of graduates of the United States Merchant Marine Academy into the National Guard.

Subtitle C—Joint Qualified Officers and Requirements

- Sec. 521. Technical revisions to definition of joint matters for purposes of joint officer management.
- Sec. 522. Modification of promotion board procedures for joint qualified officers and officers with Joint Staff experience.

Subtitle D—General Service Authorities

- Sec. 531. Extension of temporary authority to order retired members of the Armed Forces to active duty in high-demand, low-density assignments.
- Sec. 532. Non-chargeable rest and recuperation absence for certain members undergoing extended deployment to a combat zone.
- Sec. 533. Correction of military records.
- Sec. 534. Disposition of members found to be fit for duty who are not suitable for deployment or worldwide assignment for medical reasons.
- Sec. 535. Review of laws, policies, and regulations restricting service of female members of the Armed Forces.

Subtitle E—Military Justice and Legal Matters

- Sec. 541. Continuation of warrant officers on active duty to complete disciplinary action.
- Sec. 542. Enhanced authority to punish contempt in military justice proceedings.
- Sec. 543. Improvements to Department of Defense domestic violence programs.

Subtitle F—Member Education and Training Opportunities and Administration

- Sec. 551. Enhancements of Department of Defense undergraduate nurse training program.
- Sec. 552. Repayment of education loan repayment benefits.
- Sec. 553. Participation of Armed Forces Health Professions Scholarship and Financial Assistance Program recipients in active duty health profession loan repayment program.
- Sec. 554. Active duty obligation for military academy graduates who participate in the Armed Forces Health Professions Scholarship and Financial Assistance program.

Subtitle G—Defense Dependents' Education

- Sec. 561. Enrollment of dependents of members of the Armed Forces who reside in temporary housing in Department of Defense domestic dependent elementary and secondary schools.
- Sec. 562. Continuation of authority to assist local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
- Sec. 563. Impact aid for children with severe disabilities.

Subtitle H—Decorations and Awards

- Sec. 571. Clarification of persons eligible for award of bronze star medal.
- Sec. 572. Authorization and request for award of Distinguished-Service Cross to Shinyei Matayoshi for acts of valor during World War II.
- Sec. 573. Authorization and request for award of Distinguished-Service Cross to Jay C. Copley for acts of valor during the Vietnam War.
- Sec. 574. Program to commemorate 60th anniversary of the Korean War.

Subtitle I—Military Family Readiness Matters

- Sec. 581. Appointment of additional members of Department of Defense Military Family Readiness Council.

- Sec. 582. Enhancement of community support for military families with special needs.
- Sec. 583. Modification of Yellow Ribbon Reintegration Program.
- Sec. 584. Expansion and continuation of Joint Family Support Assistance Program.
- Sec. 585. Report on military spouse education programs.
- Sec. 586. Report on enhancing benefits available for military dependent children with special education needs.
- Sec. 587. Reports on child development centers and financial assistance for child care for members of the Armed Forces.

Subtitle J—Other Matters

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- Sec. 3401. Authorization of appropriations.

TITLE XXXV—MARITIME ADMINISTRATION

- Sec. 3501. Authorization of appropriations for national security aspects of the merchant marine for fiscal year 2011.

- Sec. 3502. Extension of Maritime Security Fleet program.
Sec. 3503. United States Merchant Marine Academy nominations of residents of the Northern Mariana Islands.
Sec. 3504. Research authority.

SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES.

10 USC 101 note.

For purposes of this Act, the term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10, United States Code.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

- Sec. 101. Army.
Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.

Subtitle B—Navy Programs

- Sec. 111. Multiyear funding for detail design and construction of LHA Replacement ship designated LHA–7.
Sec. 112. Requirement to maintain Navy airborne signals intelligence, surveillance, and reconnaissance capabilities.
Sec. 113. Report on naval force structure and missile defense.
Sec. 114. Reports on service-life extension of F/A–18 aircraft by the Department of the Navy.

Subtitle C—Joint and Multiservice Matters

- Sec. 121. Limitations on biometric systems funds.
Sec. 122. System management plan and matrix for the F–35 Joint Strike Fighter aircraft program.
Sec. 123. Quarterly reports on use of Combat Mission Requirements funds.
Sec. 124. Counter-improvised explosive device initiatives database.
Sec. 125. Study on lightweight body armor solutions.
Sec. 126. Integration of solid state laser systems into certain aircraft.
Sec. 127. Contracts for commercial imaging satellite capacities.

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement for the Army as follows:

- (1) For aircraft, \$5,908,384,000.
- (2) For missiles, \$1,670,463,000.
- (3) For weapons and tracked combat vehicles, \$1,656,263,000.
- (4) For ammunition, \$1,953,194,000.
- (5) For other procurement, \$9,758,965,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement for the Navy as follows:

- (1) For aircraft, \$18,877,139,000.
- (2) For weapons, including missiles and torpedoes, \$3,358,264,000.

(3) For shipbuilding and conversion, \$15,724,520,000.

(4) For other procurement, \$6,381,815,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement for the Marine Corps in the amount of \$1,296,838,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement of ammunition for the Navy and the Marine Corps in the amount of \$817,991,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement for the Air Force as follows:

(1) For aircraft, \$14,668,408,000.

(2) For ammunition, \$672,420,000.

(3) For missiles, \$5,444,464,000.

(4) For other procurement, \$17,845,342,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2011 for Defense-wide procurement in the amount of \$4,398,168,000.

Subtitle B—Navy Programs

SEC. 111. MULTIYEAR FUNDING FOR DETAIL DESIGN AND CONSTRUCTION OF LHA REPLACEMENT SHIP DESIGNATED LHA-7.

(a) AUTHORITY TO USE MULTIPLE YEARS OF FUNDING.—The Secretary of the Navy may enter into a contract for detail design and construction of the LHA Replacement ship designated LHA-7 that provides that, subject to subsection (b), funds for payments under the contract may be provided from amounts authorized to be appropriated for the Department of Defense for Shipbuilding and Conversion, Navy, for fiscal years 2011 and 2012.

(b) CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2011 is subject to the availability of appropriations for that purpose for such later fiscal year.

SEC. 112. REQUIREMENT TO MAINTAIN NAVY AIRBORNE SIGNALS INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE CAPABILITIES.

(a) FINDINGS.—Congress finds the following:

(1) The Navy terminated the EP-X program to acquire a new land-based airborne signals intelligence capability because of escalating costs and funds budgeted for the program were re-allocated to other priorities.

(2) The Navy took this action without planning and budgeting for alternative means to meet operational requirements for tactical-level and theater-level signals intelligence capabilities to support the combatant commands and national intelligence consumers.

(3) The principal Navy airborne signals intelligence capability today is the EP-3E Airborne Reconnaissance Integrated Electronic System II (ARIES II)—the aircraft and associated electronic equipment of this system are aging and will require

replacement or substantial ongoing upgrades to continue to meet requirements.

(4) The Special Projects Aircraft (SPA) platform of the Navy is the second critical element in the airborne signals intelligence capability of the Navy and provides the Navy its most advanced, comprehensive multi-intelligence and quick-reaction capability available.

(b) REQUIREMENT TO MAINTAIN CAPABILITIES.—

(1) PROHIBITION ON RETIREMENT OF PLATFORMS.—The Secretary of the Navy may not retire (or to prepare to retire) the EP-3E Airborne Reconnaissance Integrated Electronic System II or Special Projects Aircraft platform.

(2) MAINTENANCE OF PLATFORMS.—The Secretary of the Navy shall continue to maintain, sustain, and upgrade the EP-3E Airborne Reconnaissance Integrated Electronic System II and Special Projects Aircraft platforms in order to provide capabilities necessary to operate effectively against rapidly evolving threats and to meet combatant commander operational intelligence, surveillance, and reconnaissance requirements.

(3) CERTIFICATION.—Not later than February 1, 2011, and annually thereafter, the Under Secretary of Defense for Intelligence and the Vice Chairman of the Joint Chiefs of Staff shall jointly certify to Congress the following:

Deadline.

(A) The Secretary of the Navy is maintaining and sustaining the EP-3E Airborne Reconnaissance Integrated Electronic System II and Special Projects Aircraft platform in a manner that meets the intelligence, surveillance, and reconnaissance requirements of the commanders of the combatant commands.

(B) Any plan for the retirement or replacement of the EP-3E Airborne Reconnaissance Integrated Electronic System II or Special Projects Aircraft platform will provide, in the aggregate, an equivalent or superior capability and capacity to the platform concerned.

(4) TERMINATION.—The requirements of this subsection with respect to the EP-3E Airborne Reconnaissance Integrated Electronic System II or the Special Projects Aircraft platform shall expire on the commencement of the fielding by the Navy of a platform or mix of platforms and sensors that are, in the aggregate, equivalent or superior to the EP-3E Airborne Reconnaissance Integrated Electronic System II (spiral 3) or the Special Projects Aircraft (P909) platform.

(c) RESTRICTION ON TRANSFER OF SABER FOCUS PROGRAM ISR CAPABILITIES.—

(1) RESTRICTION.—The Secretary of the Navy may not transfer the Saber Focus unmanned aerial system, associated equipment, or processing, exploitation, and dissemination capabilities of the Saber Focus program to the Secretary of the Air Force until 30 days after the Secretary of the Air Force certifies to the congressional defense committees that after such a transfer, the Secretary of the Air Force will provide intelligence, surveillance, and reconnaissance (hereinafter in this section referred to as “ISR”) capabilities at the same or greater capability and capacity level as the capability or capacity level at which the Saber Focus program provides such capabilities to the area of operations concerned as of the date of the enactment of this Act.

Time period.
Certification.

(2) CONTINUED NAVY PROVISION OF CAPABILITIES.—The Secretary of the Navy shall continue to provide Saber Focus ISR program capabilities at the same or greater capability and capacity level as the capability or capacity level at which the Saber Focus program provides such capabilities as of the date of the enactment of this Act to the area of operations concerned until—

Certification.

(A) the certification referred to in paragraph (1) is provided to the congressional defense committees; or

Time period.

Certification.

(B) 30 days after the Secretary of Defense certifies to the congressional defense committees that the ISR capabilities of the Saber Focus program are no longer required to mitigate the ISR requirements of the combatant commander in the area of operations concerned.

SEC. 113. REPORT ON NAVAL FORCE STRUCTURE AND MISSILE DEFENSE.

(a) REPORT.—Not later than March 31, 2011, the Secretary of Defense, in coordination with the Secretary of the Navy and the Chief of Naval Operations, shall submit to the congressional defense committees a report on the force structure requirements of the major combatant surface vessels with respect to ballistic missile defense.

(b) MATTERS INCLUDED.—The report shall include the following:

(1) An analysis of whether the requirement for sea-based missile defense can be accommodated by upgrading Aegis ships that exist as of the date of the report or by procuring additional combatant surface vessels.

(2) A discussion of whether such sea-based missile defense will require increasing the overall number of combatant surface vessels beyond the requirement of 88 cruisers and destroyers in the 313-ship fleet plan of the Navy.

(3) A discussion of the process for determining the number of Aegis ships needed by each commander of the combatant commands to fulfill ballistic missile defense requirements, including (in consultation with the Chairman of the Joints Chiefs of Staff) the number of such ships needed to support the phased, adaptive approach to ballistic missile defense in Europe.

(4) A discussion of the impact of Aegis Ashore missile defense deployments, as well as deployment of other elements of the ballistic missile defense system, on Aegis ballistic missile defense ship force structure requirements.

(5) A discussion of the potential effect of ballistic missile defense operations on the ability of the Navy to meet surface fleet demands in each geographic area and for each mission set.

(6) An evaluation of how the Aegis ballistic missile defense program can succeed as part of a balanced fleet of adequate size and strength to meet the security needs of the United States.

(7) A description of both the shortfalls and the benefits of expected technological advancements in the sea-based missile defense program.

(8) A description of the anticipated plan for deployment of Aegis ballistic missile defense ships within the context of the fleet response plan.

SEC. 114. REPORTS ON SERVICE-LIFE EXTENSION OF F/A-18 AIRCRAFT BY THE DEPARTMENT OF THE NAVY.

(a) **COST-BENEFIT ANALYSIS OF SERVICE LIFE EXTENSION OF F/A-18 AIRCRAFT.**—Before the Secretary of the Navy may enter into a program to extend the service life of F/A-18 aircraft beyond 8,600 hours, the Secretary shall—

(1) conduct a cost-benefit analysis, in accordance with Office of Management and Budget Circular A-94, comparing extending the service life of existing F/A-18 aircraft with procuring additional F/A-18E or F/A-18F aircraft as a means of managing the shortfall of the Department of the Navy in strike fighter aircraft; and

(2) submit to the congressional defense committees a report on such cost-benefit analysis.

(b) **ELEMENTS OF COST-BENEFIT ANALYSIS.**—The cost-benefit analysis required by subsection (a)(1) shall include the following:

(1) An estimate of the full costs, over the period covered by the future-years defense program submitted to Congress under section 221 of title 10, United States Code, with the budget of the President, of extending legacy F/A-18 aircraft beyond 8,600 hours, including—

(A) any increases in operation and maintenance costs associated with operating such aircraft beyond a service life of 8,600 hours; and

(B) the costs with respect to the airframe, avionics, software, and aircraft subsystems and components required to remain relevant in countering future threats and meeting the warfighting requirements of the commanders of the combatant commands.

(2) An estimate of the full costs, over the period covered by such future-years defense program, of procuring such additional F/A-18E or F/A-18F aircraft as would be required to meet the strike fighter requirements of the Department of the Navy in the event the service life of legacy F/A-18 aircraft is not extended beyond 8,600 hours.

(3) An assessment of risks associated with extending the service life of legacy F/A-18 aircraft beyond 8,600 hours, including the level of certainty that the Secretary will be able to achieve such an extension.

(4) An estimate of the cost-per-flight hour incurred in operating legacy F/A-18 aircraft with a service life extended beyond 8,600 hours.

(5) An estimate of the cost-per-flight hour incurred for operating new F/A-18E or F/A-18F aircraft.

(6) An assessment of any alternatives to extending the service life of legacy F/A-18 aircraft beyond 8,600 hours or buying additional F/A-18E or F/A-18F aircraft that may be available to the Secretary to manage the shortfall of the Department of the Navy in strike fighter aircraft.

(c) **ADDITIONAL ELEMENTS OF REPORT.**—In addition to the information required in the cost-benefit analysis under subsection (b), the report under subsection (a)(2) shall include an assessment of the following:

(1) Differences in capabilities of—

(A) legacy F/A-18 aircraft that have undergone service-life extension;

(B) F/A-18E or F/A-18F aircraft; and

(C) F-35C aircraft.

(2) Differences in capabilities that would result under the legacy F/A-18 aircraft service-life extension program if such program would—

(A) provide only airframe-life extensions to the legacy F/A-18 aircraft fleet; and

(B) provide for airframe-life extensions and capability upgrades to the legacy F/A-18 aircraft fleet.

(3) Any disruption that procuring additional F/A-18E or F/A-18F aircraft, rather than extending the service life of legacy F/A-18 aircraft beyond 8,600 hours, would have on the plan of the Navy to procure operational carrier-variant Joint Strike Fighter aircraft.

(4) Any changes that procuring additional F/A-18E or F/A-18F aircraft, rather than extending the service life of legacy F/A-18 aircraft beyond 8600 hours, would have on the force structure or force mix intended by the Navy for its carrier air wings.

(5) Any other operational implication of extending (or not extending) the service life of legacy F/A-18 aircraft that the Secretary considers appropriate.

(d) REPORT ON OPERATIONAL F/A-18 AIRCRAFT SQUADRONS.—Before reducing the number of F/A-18 aircraft in an operational squadron of the Navy or Marine Corps, the Secretary shall submit to the congressional defense committees a report that discusses the operational risks and impacts of reducing the squadron size. The report shall include an assessment of the following:

(1) The effect of the reduction on the operational capability and readiness of the Navy and the Marine Corps to conduct overseas contingency operations.

(2) The effect of the reduction on the capability of the Navy and the Marine Corps to meet ongoing operational demands.

(3) Any mechanisms the Secretary intends to use to mitigate any risks associated with the squadron size reduction.

(4) The effect of the reduction on pilots and ground support crews of F/A-18 aircraft, in terms of training, readiness, and war fighting capabilities.

(e) REPORT ON F/A-18 AIRCRAFT TRAINING SQUADRONS.—Before reducing the size of an F/A-18 aircraft training squadron, or transferring an F/A-18 training aircraft for operational needs, the Secretary shall submit to the congressional defense committees a report that describes—

(1) any risks to sustaining required training of F/A-18 aircraft pilots with a reduced training aircraft base; and

(2) any actions the Navy is taking to mitigate the risks described under paragraph (1).

Subtitle C—Joint and Multiservice Matters

SEC. 121. LIMITATIONS ON BIOMETRIC SYSTEMS FUNDS.

Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2011 for biometrics programs and operations, not more than 85 percent may be obligated or expended until—

(1) the Secretary of Defense submits to the congressional defense committees a report on the actions taken and planned to be taken—

Reports.

(A) to implement subparagraphs (A) through (F) of paragraph (16) of the National Security Presidential Directive dated June 5, 2008 (NSPD–59);

(B) to implement the recommendations of the Comptroller General of the United States included in the report of the Comptroller General numbered GAO–08–1065 dated September 2008;

(C) to implement the recommendations of the Comptroller General included in the report of the Comptroller General numbered GAO–09–49 dated October 2008;

(D) to fully and completely characterize the current biometrics architecture and establish the objective architecture for the Department of Defense;

(E) to ensure that an official of the Office of the Secretary of Defense has the authority necessary to be responsible for ensuring that all funding for biometrics programs and operations is programmed, budgeted, and executed; and

(F) to ensure that an officer within the Office of the Joint Chiefs of Staff has the authority necessary to be responsible for ensuring the development and implementation of common and interoperable standards for the collection, storage, and use of biometrics data by all commanders of the combatant commands and their commands; and

(2) a period of 30 days has elapsed after the date on which the report is submitted under paragraph (1).

SEC. 122. SYSTEM MANAGEMENT PLAN AND MATRIX FOR THE F–35 JOINT STRIKE FIGHTER AIRCRAFT PROGRAM.

(a) SYSTEM MANAGEMENT PLAN.—

(1) PLAN REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish a management plan for the F–35 Joint Strike Fighter aircraft program under which decisions to commit to specified levels of production are linked to progress in meeting specified program milestones, including design, manufacturing, testing, and fielding milestones for critical system maturity elements.

(2) NATURE OF PLAN.—The plan under paragraph (1) shall align technical progress milestones with acquisition milestones in a system maturity matrix. The matrix shall provide criteria and conditions for comparing expected levels of demonstrated system maturity with annual production commitments, starting with the fiscal year 2012 production program, and continuing over the remaining life of the system development and demonstration program. The matrix and criteria shall include elements such as the following:

(A) Manufacturing maturity, including on-time deliveries, manufacturing process control, quality rates, and labor efficiency rates.

(B) Engineering maturity, including metrics for the number of new design actions and number of design changes in a given period.

(C) Performance and testing progress, including test points, hours and flights accomplished, capabilities demonstrated, key performance parameters, and attributes demonstrated.

(D) Mission effectiveness and system reliability, including operational effectiveness and reliability growth.

(E) Training, fielding, and deployment status.

(b) REPORTS TO CONGRESS.—

(1) INITIAL REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report setting forth the plan required by subsection (a). The report shall include—

(A) the proposed system maturity matrix described in subsection (a)(2), including a description, for each element specified in the matrix under subsection (a)(2), of the criteria and milestones to be used in evaluating actual program performance against planned performance for each annual production commitment; and

(B) a description of the actions to be taken to implement the plan.

(2) UPDATES.—The Secretary shall submit to Congress, at or about the same time as the submittal to Congress of the budget of the President for any fiscal year after fiscal year 2012 (as submitted pursuant to section 1105(a) of title 31, United States Code), any modification to the plan required by subsection (a) that was made during the preceding calendar year, including a rationale for each such modification.

(c) REPORT ON CAPABILITIES OF MARINE CORPS VARIANT OF F-35 FIGHTER AIRCRAFT AT INITIAL OPERATING CAPABILITY.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report on the expected capabilities of the F-35B Joint Strike Fighter aircraft at the time when the Marine Corps plans to declare Initial Operating Capability for the F-35B Joint Strike Fighter aircraft. The report shall be prepared in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) ELEMENTS.—The report under paragraph (1) shall include a description of the following with respect to the F-35B Joint Strike Fighter aircraft:

(A) Performance of the aircraft and its subsystems, compared to key performance parameters.

(B) Expected capability to perform Marine Corps missions.

(C) Required maintenance and logistics standards, including mission capability rates.

(D) Expected levels of crew training and performance.

(E) Product improvements that are planned before the Initial Operating Capability of the aircraft to be made after the Initial Operating Capability of the aircraft, as planned in March 2010.

10 USC 167 note. **SEC. 123. QUARTERLY REPORTS ON USE OF COMBAT MISSION REQUIREMENTS FUNDS.**

(a) QUARTERLY REPORTS REQUIRED.—

(1) IN GENERAL.—Not later than 30 days after the end of each fiscal quarter, the commander of the United States

Special Operations Command shall submit to the congressional defense committees a report on the use of Combat Mission Requirements funds during the preceding fiscal quarter.

(2) **COMBAT MISSION REQUIREMENTS FUNDS.**—For purposes of this section, Combat Mission Requirements funds are amounts available to the Department of Defense for Defense-wide procurement in the Combat Mission Requirements subaccount of the Defense-wide Procurement account.

(b) **ELEMENTS.**—Each report under subsection (a) shall include, for the fiscal quarter covered by such report, the following:

(1) The balance of the Combat Mission Requirements subaccount at the beginning of such quarter.

(2) The balance of the Combat Mission Requirements subaccount at the end of such quarter.

(3) Any transfer of funds into or out of the Combat Mission Requirements subaccount during such quarter, including the source of any funds transferred into the subaccount, and the objective of any transfer of funds out of the subaccount.

(4) A description of any requirement—

(A) approved for procurement using Combat Mission Requirements funds during such quarter; or

(B) procured using such funds during such quarter.

(5) With respect to each description of a requirement under paragraph (4), the amount of Combat Mission Requirements funds committed to the procurement or approved procurement of such requirement.

(c) **FORM.**—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 124. COUNTER-IMPROVISED EXPLOSIVE DEVICE INITIATIVES DATABASE. 10 USC 113 note.

(a) **COMPREHENSIVE DATABASE.**—

(1) **IN GENERAL.**—The Secretary of Defense, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall develop and maintain a comprehensive database containing appropriate information for coordinating, tracking, and archiving each counter-improvised explosive device initiative within the Department of Defense. The database shall, at a minimum, ensure the visibility of each counter-improvised explosive device initiative.

(2) **USE OF INFORMATION.**—Using information contained in the database developed under paragraph (1), the Secretary, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall—

(A) identify and eliminate redundant counter-improvised explosive device initiatives;

(B) facilitate the transition of counter-improvised explosive device initiatives from funding under the Joint Improvised Explosive Device Defeat Fund to funding provided by the military departments; and

(C) notify the appropriate personnel and organizations prior to a counter-improvised explosive device initiative being funded through the Joint Improvised Explosive Device Defeat Fund.

(3) **COORDINATION.**—In carrying out paragraph (1), the Secretary shall ensure that the Secretary of each military department coordinates and collaborates on development of the database to ensure its interoperability, completeness, consistency, and effectiveness.

(b) **METRICS.**—The Secretary of Defense, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall—

(1) develop appropriate means to measure the effectiveness of counter-improvised explosive device initiatives; and

(2) prioritize the funding of such initiatives according to such means.

(c) **COUNTER-IMPROVISED EXPLOSIVE DEVICE INITIATIVE DEFINED.**—In this section, the term “counter-improvised explosive device initiative” means any project, program, or research activity funded by any component of the Department of Defense that is intended to assist or support efforts to counter, combat, or defeat the use of improvised explosive devices.

SEC. 125. STUDY ON LIGHTWEIGHT BODY ARMOR SOLUTIONS.

(a) **STUDY REQUIRED.**—The Secretary of Defense shall enter into a contract with a federally funded research and development center to conduct a study to—

(1) assess the effectiveness of the processes used by the Secretary to identify and examine the requirements for lighter weight body armor systems; and

(2) determine ways in which the Secretary may more effectively address the research, development, and procurement requirements regarding reducing the weight of body armor.

(b) **MATTERS COVERED.**—The study conducted under subsection (a) shall include findings and recommendations regarding the following:

(1) The requirement for lighter weight body armor and personal protective equipment and the ability of the Secretary to meet such requirement.

(2) Innovative design ideas for more modular body armor that allow for scalable protection levels for various missions and threats.

(3) The need for research, development, and acquisition funding dedicated specifically for reducing the weight of body armor.

(4) The efficiency and effectiveness of current body armor funding procedures and processes.

(5) Industry concerns, capabilities, and willingness to invest in the development and production of lightweight body armor initiatives.

(6) Barriers preventing the development of lighter weight body armor (including such barriers with respect to technical, institutional, or financial problems).

(7) Changes to procedures or policy with respect to lightweight body armor.

(8) Other areas of concern not previously addressed by equipping boards, body armor producers, or program managers.

(c) **SUBMISSION TO CONGRESS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report on the study conducted under subsection (a).

Deadline.

SEC. 126. INTEGRATION OF SOLID STATE LASER SYSTEMS INTO CERTAIN AIRCRAFT.

(a) **ANALYSIS OF FEASIBILITY REQUIRED.**—The Secretary of Defense shall conduct an analysis of the feasibility of integrating solid state laser systems into the aircraft platforms specified in subsection (b) for purposes of permitting such aircraft to accomplish their missions, including to provide close air support.

(b) **AIRCRAFT.**—The aircraft platforms specified in this subsection shall include, at a minimum, the following:

- (1) The C–130 aircraft.
- (2) The B–1 bomber aircraft.
- (3) The F–35 fighter aircraft.

(c) **SCOPE OF ANALYSIS.**—The analysis required by subsection (a) shall include a determination of the following:

- (1) The estimated cost per unit of each laser system analyzed.
- (2) The estimated cost of operation and maintenance of each aircraft platform specified in subsection (b) in connection with each laser system analyzed, noting that the fidelity of such analysis may not be uniform for all aircraft platforms.

SEC. 127. CONTRACTS FOR COMMERCIAL IMAGING SATELLITE CAPACITIES.

10 USC 2302
note.

(a) **TELESCOPE REQUIREMENTS UNDER CONTRACTS AFTER 2010.**—Except as provided in subsection (b), any contract for additional commercial imaging satellite capability or capacity entered into by the Department of Defense after December 31, 2010, shall require that the imaging telescope providing such capability or capacity under such contract has an aperture of not less than 1.5 meters.

(b) **WAIVER.**—The Secretary of Defense may waive the limitation in subsection (a) if—

- (1) the Secretary submits to the congressional defense committees written certification that the waiver is in the national security interests of the United States; and
- (2) a period of 30 days has elapsed following the date on which the certification under paragraph (1) is submitted.

Certification.

Time period.

(c) **CONTINUATION OF CURRENT CONTRACTS.**—The limitation in subsection (a) may not be construed to prohibit or prevent the Secretary of Defense from continuing or maintaining current commercial imaging satellite capability or capacity in orbit or under contract by December 31, 2010.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.

Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. Enhancement of Department of Defense support of science, mathematics, and engineering education.

Sec. 212. Limitation on use of funds by Defense Advanced Research Projects Agency for operation of National Cyber Range.

Sec. 213. Separate program elements required for research and development of Joint Light Tactical Vehicle.

Sec. 214. Program for research, development, and deployment of advanced ground vehicles, ground vehicle systems, and components.

Sec. 215. Demonstration and pilot projects on cybersecurity.

Subtitle C—Missile Defense Programs

Sec. 221. Sense of Congress on ballistic missile defense.

Sec. 222. Repeal of prohibition of certain contracts by Missile Defense Agency with foreign entities.

Sec. 223. Limitation on availability of funds for missile defense interceptors in Europe.

Sec. 224. Medium Extended Air Defense System.

Sec. 225. Acquisition accountability reports on the ballistic missile defense system.

Sec. 226. Authority to support ballistic missile shared early warning with the Czech Republic.

Sec. 227. Report on phased, adaptive approach to missile defense in Europe.

Sec. 228. Independent review and assessment of the Ground-Based Midcourse Defense system.

Sec. 229. Iron Dome short-range rocket defense program.

Subtitle D—Reports

Sec. 231. Report on analysis of alternatives and program requirements for the Ground Combat Vehicle program.

Sec. 232. Cost benefit analysis of future tank-fired munitions.

Sec. 233. Annual Comptroller General report on the VH–(XX) presidential helicopter acquisition program.

Subtitle E—Other Matters

Sec. 241. Sense of Congress affirming the importance of Department of Defense participation in development of next generation semiconductor technologies.

Sec. 242. Pilot program on collaborative energy security.

Sec. 243. Pilot program to include technology protection features during research and development of defense systems.

Subtitle A—Authorization of Appropriations

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the use of the Department of Defense for research, development, test, and evaluation as follows:

(1) For the Army, \$10,093,704,000.

(2) For the Navy, \$17,881,008,000.

(3) For the Air Force, \$27,319,627,000.

(4) For Defense-wide activities, \$21,292,576,000, of which \$194,910,000 is authorized for the Director of Operational Test and Evaluation.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 211. ENHANCEMENT OF DEPARTMENT OF DEFENSE SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION.

(a) DISCHARGE OF SUPPORT THROUGH MILITARY DEPARTMENTS.—Section 2192(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) The Secretary of Defense may carry out the authority in paragraph (1) through the Secretaries of the military departments.”.

(b) PARTNERSHIP INTERMEDIARIES FOR PURPOSES OF EDUCATION PARTNERSHIPS.—Section 2194 of such title is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

“(e) The Secretary of Defense may permit the director of a defense laboratory to enter into a cooperative agreement with an appropriate entity to act as an intermediary and assist the director in carrying out activities under this section.”.

SEC. 212. LIMITATION ON USE OF FUNDS BY DEFENSE ADVANCED RESEARCH PROJECTS AGENCY FOR OPERATION OF NATIONAL CYBER RANGE.

(a) PROHIBITION ON USE OF FUNDS PENDING REPORT.—Amounts authorized to be appropriated by this Act and available to the Defense Advanced Research Projects Agency may not be obligated or expended for the National Cyber Range established in support of the Comprehensive National Cybersecurity Initiative until the date that is 90 days after the date on which the Under Secretary of Defense for Acquisition, Technology, and Logistics submits to the Committees on Armed Services of the Senate and the House of Representatives a report described in subsection (c). Time period.

(b) LIMITATION ON USE OF FUNDS AFTER REPORT.—Commencing on the date that is 90 days after the date on which the Under Secretary submits a report described in subsection (c), amounts described in subsection (a) shall be available for obligation or expenditure only for the purposes of research and development activities that the Under Secretary considers appropriate for ensuring and assessing the functionality of the National Cyber Range. Time period.

(c) REPORT.—

(1) IN GENERAL.—The report described in this subsection is a report setting forth a plan for the transition of the National Cyber Range to operation and sustainment.

(2) ELEMENTS.—The report shall include, at a minimum, the following:

(A) An analysis of various potential recipients under the transition of the National Cyber Range.

(B) For each recipient analyzed under subparagraph (A), a description of the proposed transition of the National Cyber Range to such recipient, including the proposed schedule and funding for such transition.

(3) POTENTIAL RECIPIENTS.—The recipients analyzed in the report under paragraph (2)(A) shall include, at a minimum, the following:

(A) A consortium for the operation and sustainment of the National Cyber Range as a government-owned, government-operated facility.

(B) A consortium for the operation and sustainment of the National Cyber Range as a government-owned, contractor-operated facility.

SEC. 213. SEPARATE PROGRAM ELEMENTS REQUIRED FOR RESEARCH AND DEVELOPMENT OF JOINT LIGHT TACTICAL VEHICLE.

10 USC 221 note.

In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2012, and each subsequent fiscal year, the

Secretary shall ensure that within each research, development, test, and evaluation account of the Army and the Navy a separate, dedicated program element is assigned to the Joint Light Tactical Vehicle.

10 USC 2358
note.

SEC. 214. PROGRAM FOR RESEARCH, DEVELOPMENT, AND DEPLOYMENT OF ADVANCED GROUND VEHICLES, GROUND VEHICLE SYSTEMS, AND COMPONENTS.

(a) **PROGRAM AUTHORIZED.**—The Secretary of Defense may carry out a program for research and development on, and deployment of, advanced technology ground vehicles, ground vehicle systems, and components within the Department of Defense.

(b) **GOALS AND OBJECTIVES.**—The goals and objectives of the program authorized by subsection (a) are as follows:

(1) To identify and support technological advances that are necessary for the development of advanced technologies for use in ground vehicles of types to be used by the Department of Defense.

(2) To procure and deploy significant quantities of advanced technology ground vehicles for use by the Department.

(3) To maximize the leverage of Federal and nongovernment funds used for the development and deployment of advanced technology ground vehicles, ground vehicle systems, and components.

(c) **ELEMENTS OF PROGRAM.**—The program authorized by subsection (a) may include—

(1) enhanced research and development activities for advanced technology ground vehicles, ground vehicle systems, and components, including—

(A) increased investments in research and development of batteries, advanced materials, power electronics, fuel cells and fuel cell systems, hybrid systems, and advanced engines;

(B) pilot projects for the demonstration of advanced technologies in ground vehicles for use by the Department of Defense; and

(C) the establishment of public-private partnerships, including research centers, manufacturing and prototyping facilities, and test beds, to speed the development, deployment, and transition to use of advanced technology ground vehicles, ground vehicle systems, and components; and

(2) enhanced activities to procure and deploy advanced technology ground vehicles in the Department, including—

(A) preferences for the purchase of advanced technology ground vehicles;

(B) the use of authorities available to the Secretary of Defense to stimulate the development and production of advanced technology systems and ground vehicles through purchases, loan guarantees, and other mechanisms;

(C) pilot programs to demonstrate advanced technology ground vehicles and associated infrastructure at select defense installations;

(D) metrics to evaluate environmental and other benefits, life cycle costs, and greenhouse gas emissions associated with the deployment of advanced technology ground vehicles; and

(E) schedules and objectives for the conversion of the ground vehicle fleet of the Department to advanced technology ground vehicles.

(d) COOPERATION WITH INDUSTRY AND ACADEMIA.—

(1) IN GENERAL.—The Secretary may carry out the program authorized by subsection (a) through partnerships and other cooperative agreements with private sector entities, including—

(A) universities and other academic institutions;

(B) companies in the automobile and truck manufacturing industry;

(C) companies that supply systems and components to the automobile and truck manufacturing industry; and

(D) any other companies or private sector entities that the Secretary considers appropriate.

(2) NATURE OF COOPERATION.—The Secretary shall ensure that any partnership or cooperative agreement under paragraph (1) provides for private sector participants to collectively contribute, in cash or in kind, not less than one-half of the total cost of the activities carried out under such partnership or cooperative agreement.

(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—The program authorized by subsection (a) shall be carried out, to the maximum extent practicable, in coordination with the Department of Energy and other appropriate departments and agencies of the Federal Government.

SEC. 215. DEMONSTRATION AND PILOT PROJECTS ON CYBERSECURITY.

10 USC 2225
note.

(a) DEMONSTRATION PROJECTS ON PROCESSES FOR APPLICATION OF COMMERCIAL TECHNOLOGIES TO CYBERSECURITY REQUIREMENTS.—

(1) PROJECTS REQUIRED.—The Secretary of Defense and the Secretaries of the military departments shall jointly carry out demonstration projects to assess the feasibility and advisability of using various business models and processes to rapidly and effectively identify innovative commercial technologies and apply such technologies to Department of Defense and other cybersecurity requirements.

(2) SCOPE OF PROJECTS.—Any demonstration project under paragraph (1) shall be carried out in such a manner as to contribute to the cyber policy review of the President and the Comprehensive National Cybersecurity Initiative.

(b) PILOT PROGRAMS ON CYBERSECURITY REQUIRED.—The Secretary of Defense shall support or conduct pilot programs on cybersecurity with respect to the following areas:

(1) Threat sensing and warning for information networks worldwide.

(2) Managed security services for cybersecurity within the defense industrial base, military departments, and combatant commands.

(3) Use of private processes and infrastructure to address threats, problems, vulnerabilities, or opportunities in cybersecurity.

(4) Processes for securing the global supply chain.

(5) Processes for threat sensing and security of cloud computing infrastructure.

(c) REPORTS.—

(1) **REPORTS REQUIRED.**—Not later than 240 days after the date of the enactment of this Act, and annually thereafter at or about the time of the submittal to Congress of the budget of the President for a fiscal year (as submitted pursuant to section 1105(a) of title 31, United States Code), the Secretary of Defense shall, in coordination with the Secretary of Homeland Security, submit to Congress a report on any demonstration projects carried out under subsection (a), and on the pilot projects carried out under subsection (b), during the preceding year.

(2) **ELEMENTS.**—Each report under this subsection shall include the following:

(A) A description and assessment of any activities under the demonstration projects and pilot projects referred to in paragraph (1) during the preceding year.

(B) For the pilot projects supported or conducted under subsection (b)(2)—

(i) a quantitative and qualitative assessment of the extent to which managed security services covered by the pilot project could provide effective and affordable cybersecurity capabilities for components of the Department of Defense and for entities in the defense industrial base, and an assessment whether such services could be expanded rapidly to a large scale without exceeding the ability of the Federal Government to manage such expansion; and

(ii) an assessment of whether managed security services are compatible with the cybersecurity strategy of the Department of Defense with respect to conducting an active, in-depth defense under the direction of United States Cyber Command.

(C) For the pilot projects supported or conducted under subsection (b)(3)—

(i) a description of any performance metrics established for purposes of the pilot project, and a description of any processes developed for purposes of accountability and governance under any partnership under the pilot project; and

(ii) an assessment of the role a partnership such as a partnership under the pilot project would play in the acquisition of cyberspace capabilities by the Department of Defense, including a role with respect to the development and approval of requirements, approval and oversight of acquiring capabilities, test and evaluation of new capabilities, and budgeting for new capabilities.

(D) For the pilot projects supported or conducted under subsection (b)(4)—

(i) a framework and taxonomy for evaluating practices that secure the global supply chain, as well as practices for securely operating in an uncertain or compromised supply chain;

(ii) an assessment of the viability of applying commercial practices for securing the global supply chain; and

(iii) an assessment of the viability of applying commercial practices for securely operating in an uncertain or compromised supply chain.

(E) For the pilot projects supported or conducted under subsection (b)(5)—

(i) an assessment of the capabilities of Federal Government providers to offer secure cloud computing environments; and

(ii) an assessment of the capabilities of commercial providers to offer secure cloud computing environments to the Federal Government.

(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

Subtitle C—Missile Defense Programs

SEC. 221. SENSE OF CONGRESS ON BALLISTIC MISSILE DEFENSE.

(a) SENSE OF CONGRESS.—It is the sense of Congress—

(1) that the phased, adaptive approach to missile defense in Europe is an appropriate response to the existing ballistic missile threat from Iran to the European territory of North Atlantic Treaty Organization countries, and to potential future ballistic missile capabilities of Iran;

(2) that the phased, adaptive approach to missile defense in Europe is not intended to, and will not, provide a missile defense capability relative to the ballistic missile deterrent forces of the Russian Federation, or diminish strategic stability with the Russian Federation;

(3) to support the efforts of the United States Government and the North Atlantic Treaty Organization to pursue cooperation with the Russian Federation on ballistic missile defense relative to Iranian missile threats;

(4) that the ground-based midcourse defense system deployed in Alaska and California currently provides adequate defensive capability for the United States against currently anticipated future long-range ballistic missile threats from Iran, and this capability will be enhanced as the system is improved, including by the planned deployment of an AN/TPY–2 radar in southern Europe in 2011;

(5) that the ground-based midcourse defense system should be maintained, enhanced, and adequately tested to ensure its operational capability through its service life;

(6) that the United States should, as stated in its unilateral statement accompanying the New START Treaty, “continue improving and deploying its missile defense systems in order to defend itself against limited attack and as part of our collaborative approach to strengthening stability in key regions”;

(7) that, as part of this effort, the Department of Defense should pursue the development, testing, and deployment of operationally effective versions of all variants of the standard missile–3 for all four phases of the phased, adaptive approach to missile defense in Europe;

(8) that the standard missile–3 block IIB interceptor missile planned for deployment in phase 4 of the phased, adaptive approach should be capable of addressing the potential future threat of intermediate-range and long-range ballistic missiles

from Iran, including intercontinental ballistic missiles that could be capable of reaching the United States;

(9) that there are no constraints contained in the New START Treaty on the development or deployment by the United States of effective missile defenses, including all phases of the phased, adaptive approach to missile defense in Europe and further enhancements to the ground-based midcourse defense system, as well as future missile defenses; and

(10) that the Department of Defense should continue the development, testing, and assessment of the two-stage ground-based interceptor in such a manner as to provide a hedge against potential technical challenges with the development of the standard missile–3 block IIB interceptor missile as a means of augmenting the defense of Europe and of the homeland against a limited ballistic missile attack from nations such as North Korea or Iran.

(b) **NEW START TREATY DEFINED.**—In this section, the term “New START Treaty” means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010.

SEC. 222. REPEAL OF PROHIBITION OF CERTAIN CONTRACTS BY MISSILE DEFENSE AGENCY WITH FOREIGN ENTITIES.

Section 222 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1055; 10 U.S.C. 2431 note) is repealed.

SEC. 223. LIMITATION ON AVAILABILITY OF FUNDS FOR MISSILE DEFENSE INTERCEPTORS IN EUROPE.

10 USC 2431
note.

(a) **LIMITATION ON CONSTRUCTION AND DEPLOYMENT OF INTERCEPTORS.**—No funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2011 or any fiscal year thereafter may be obligated or expended for site activation, construction, or deployment of missile defense interceptors on European land as part of the phased, adaptive approach to missile defense in Europe until—

International
agreements.

(1) any nation agreeing to host such system has signed and ratified a missile defense basing agreement and a status of forces agreement authorizing the deployment of such interceptors; and

Time period.

(2) a period of 45 days has elapsed following the date on which the Secretary of Defense submits to the congressional defense committees the report on the independent assessment of alternative missile defense systems in Europe required by section 235(c)(2) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2235).

10 USC 2431
note.

(b) **LIMITATION ON PROCUREMENT OR DEPLOYMENT OF INTERCEPTORS.**—No funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2011 or any fiscal year thereafter may be obligated or expended for the procurement (other than initial long-lead procurement) or deployment of operational missiles on European land as part of the phased, adaptive approach to missile defense in Europe until the Secretary of Defense, after receiving the views of the Director of Operational Test and Evaluation, submits to the congressional defense committees a report certifying that the proposed interceptor

to be deployed as part of such missile defense system has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner and that such missile defense system has the ability to accomplish the mission.

(c) **WAIVER.**—The Secretary of Defense may waive the limitations in subsections (a) and (b) if—

10 USC 2431
note.

(1) the Secretary submits to the congressional defense committees written certification that the waiver is in the urgent national security interests of the United States; and

Certification.

(2) a period of seven days has elapsed following the date on which the certification under paragraph (1) is submitted.

Time period.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed so as to limit the obligation and expenditure of funds for any missile defense activities not otherwise limited by subsection (a) or (b), including, with respect to the planned deployments of missile defense interceptors on European land as part of the phased, adaptive approach to missile defense in Europe—

10 USC 2431
note.

(1) research, development, test and evaluation;

(2) site surveys;

(3) studies and analyses; and

(4) site planning and design and construction design.

(e) **CONFORMING REPEAL.**—Section 234 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–81; 123 Stat. 2234) is repealed.

10 USC 2431
note.

SEC. 224. MEDIUM EXTENDED AIR DEFENSE SYSTEM.

(a) **LIMITATION ON AVAILABILITY OF FUNDS.**—Of the amounts authorized to be appropriated in this title for fiscal year 2011 for research, development, test, and evaluation, Army, of the amount that corresponds with budget activity five, line 117, in the budget transmitted to Congress by the President for fiscal year 2011, not more than 25 percent may be obligated or expended until the date on which—

(1) the Secretary of Defense completes the critical design review and the system program review for the medium extended air defense system program and decides to proceed with the program; and

(2) the Secretary submits in writing to the congressional defense committees a report containing the decision referred to in paragraph (1) to proceed with the medium extended air defense system.

Reports.

(b) **FURTHER LIMITATIONS.**—

(1) **IN GENERAL.**—Of the amounts authorized to be appropriated in this title for fiscal year 2011 for research, development, test, and evaluation, Army, of the amount that corresponds with budget activity five, line 117, in the budget transmitted to Congress by the President for fiscal year 2011, not more than 50 percent may be obligated or expended until a period of 30 days have elapsed following the date on which the Secretary submits to the congressional defense committees a report containing the elements specified in paragraph (2).

Time period.
Reports.

(2) **ELEMENTS OF REPORT.**—The elements specified in this paragraph for the report described in paragraph (1) are the following:

(A) A detailed description of the decision described in subsection (a)(1) and the explanation for that decision.

(B) A cost estimate performed by the Director of Cost Assessment and Program Evaluation of the medium extended air defense system program, including an analysis of the cost growth in the program and an explanation of what effect such cost growth would have if the program were subject to the provisions of section 2433 of title 10, United States Code (commonly referred to as the “Nunn-McCurdy Act”).

(C) An analysis of alternatives to the medium extended air defense system program and its component elements.

(D) A description of the planned schedule and cost for the development, production, and deployment of the medium extended air defense system, including the cost and schedule for any variations to the baseline program to be fielded by the Armed Forces.

(E) A description of the role of Germany and Italy in the medium extended air defense system program, including the role of such countries in procurement or production of elements of such program.

(F) Any other matters that the Secretary of Defense considers appropriate.

(c) **FORM OF REPORTS.**—The reports submitted under this section shall be submitted in unclassified form, but may include a classified annex.

10 USC 223 note.

SEC. 225. ACQUISITION ACCOUNTABILITY REPORTS ON THE BALLISTIC MISSILE DEFENSE SYSTEM.

(a) **BASELINES REQUIRED.**—The Secretary of Defense shall ensure that the Missile Defense Agency establishes and maintains an acquisition baseline for each program element of the ballistic missile defense system, as specified in section 223 of title 10, United States Code.

(b) **ELEMENTS OF BASELINES.**—Each acquisition baseline required by subsection (a) for a program element shall include the following:

(1) A comprehensive schedule for the program element, including—

(A) research and development milestones;

(B) acquisition milestones, including design reviews and key decision points;

(C) key test events, including ground and flight tests and ballistic missile defense system tests; and

(D) delivery and fielding schedules.

(2) A detailed technical description of—

(A) the capability to be developed, including hardware and software;

(B) system requirements;

(C) how the proposed capability satisfies a capability identified by the commanders of the combatant commands on a prioritized capabilities list;

(D) key knowledge points that must be achieved to permit continuation of the program and to inform production and deployment decisions; and

(E) how the Missile Defense Agency plans to improve the capability over time.

(3) A cost estimate for the program element, including—

(A) a life cycle cost estimate;

(B) program acquisition unit costs for the program element;

(C) average procurement unit costs and program acquisition costs for the program element; and

(D) an identification when the program joint cost analysis requirements description document is scheduled to be approved.

(4) A test baseline summarizing the comprehensive test program for the program element outlined in the integrated master test plan.

(c) ANNUAL REPORTS ON ACQUISITION BASELINES.—

(1) ANNUAL REPORTS REQUIRED.—Not later than February 15, 2011, and annually thereafter, the Director of the Missile Defense Agency shall submit to the congressional defense committees a report on the acquisition baselines required by subsection (a). The first such report shall set forth the acquisition baselines, and each later report shall identify the significant changes or variances, if any, in any such baseline from any earlier report under this subsection.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) ANNUAL REPORTS ON MISSILE DEFENSE EXECUTIVE BOARD ACTIVITIES.—The Director shall include in each report under subsection (c) a description of the activities of the Missile Defense Executive Board during the preceding fiscal year, including the following:

(1) A list of each meeting of the Board during the preceding fiscal year.

(2) The agenda and issues considered at each such meeting.

(3) A description of any decisions or recommendations made by the Board at each such meeting.

SEC. 226. AUTHORITY TO SUPPORT BALLISTIC MISSILE SHARED EARLY WARNING WITH THE CZECH REPUBLIC.

(a) AUTHORITY TO SUPPORT SHARED EARLY WARNING.—During fiscal years 2011 and 2012, the Secretary of Defense may carry out a program to provide a ballistic missile shared early warning capability for the United States and the Czech Republic.

(b) FISCAL YEAR 2011 FUNDING AUTHORIZATION.—

(1) Of the funds authorized to be appropriated by this Act or any other Act for fiscal year 2011 for Operation and Maintenance, Air Force, \$1,700,000 may be available for the purposes described in subsection (a).

(2) Of the funds authorized to be appropriated by this Act or any other Act for fiscal year 2011 for Other Procurement, Air Force, \$500,000 may be available for the purposes described in subsection (a).

SEC. 227. REPORT ON PHASED, ADAPTIVE APPROACH TO MISSILE DEFENSE IN EUROPE.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the phased, adaptive approach to missile defense in Europe.

(b) MATTERS INCLUDED.—The report under subsection (a) shall include the following:

(1) A detailed explanation of—

(A) the analytic basis (including the analytic process and methodology) that led to the recommendation of the Secretary of Defense and the Joint Chiefs of Staff to pursue the phased, adaptive approach to missile defense in Europe, including the ability to defend deployed forces of the United States, allies, and partners in Europe, and the United States homeland, against the existing, emerging, and future threat from Iranian ballistic missiles in a timely and flexible manner; and

(B) the planned defensive coverage of Europe provided by such missile defense.

(2) A detailed explanation of the specific elements planned for each of the four phases of the phased, adaptive approach to missile defense in Europe, including schedules and parameters of planned deployments of missile defense systems at sea and on land, and the knowledge points or milestones that will be required prior to operational deployment of those elements.

(3) A description of the factors and processes that will be used to determine the eventual numbers and locations of interceptors that will be deployed at sea and on land, and the concept of operations that will enable the phased, adaptive approach to missile defense in Europe to be operated in a flexible, adaptable, and survivable manner.

(4) A description of the status of the development or production of the various elements of the phased, adaptive approach to missile defense in Europe, particularly the development of the standard missile-3, block IIA and block IIB interceptors, including the technical readiness levels of those systems under development and the plans for retiring the technical risks of such systems.

(5) A description of the advances in technology that are expected to permit enhanced defensive capability of the phased, adaptive approach to missile defense in Europe, including airborne infrared sensor technology, space sensor technology, and enhanced battle management, command, control, and communications.

(6) A discussion of how the phased, adaptive approach to missile defense in Europe will meet the operational needs of the commander of the United States European Command, and how it relates to plans to use a phased, adaptive approach to missile defense in other geographic regions.

(7) An explanation of—

(A) the views of the North Atlantic Treaty Organization on the phased, adaptive approach to missile defense in Europe; and

(B) how such missile defense fits into the current missile defense strategy of NATO.

(c) FORM.—The report shall be in unclassified form, but may include a classified annex.

SEC. 228. INDEPENDENT REVIEW AND ASSESSMENT OF THE GROUND-BASED MIDCOURSE DEFENSE SYSTEM.

(a) INDEPENDENT REVIEW AND ASSESSMENT REQUIRED.—The Secretary of Defense shall select an appropriate entity outside the Department of Defense to conduct an independent review and assessment of the ground-based midcourse defense system.

(b) **ELEMENTS.**—The review and assessment required by this section shall address the current plans of the Department of Defense with respect to the following:

(1) The force structure and inventory levels necessary for the ground-based midcourse defense system to achieve the planned capabilities of that system, including an analysis of costs and potential advantages of deploying additional operational ground-based interceptor missiles.

(2) The number of ground-based interceptor missiles necessary for operational assets, test assets (including developmental and operational test assets and aging and surveillance test assets), and spare missiles for the ground-based midcourse defense system.

(3) The plan to maintain the operational effectiveness of the ground-based midcourse defense system over the course of its service life, including any modernization or capability enhancement efforts, and any sustainment efforts.

(4) The plan for funding the development, production, deployment, testing, improvement, and sustainment of the ground-based midcourse defense system.

(5) The plan for flight testing the ground-based midcourse defense system, including aging and surveillance tests to demonstrate the continuing effectiveness of the system over the course of its service life.

(6) The plan for production of ground-based interceptor missiles necessary for operational test assets, aging and surveillance test assets, and spare missiles for the ground-based midcourse defense system.

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the entity conducting the review and assessment under this section shall submit to the Secretary and the congressional defense committees a report containing—

(1) the results of the review and assessment; and

(2) any recommendations on how the Department of Defense may improve upon its plans to ensure the availability, reliability, maintainability, supportability, and improvement of the ground-based midcourse defense system.

SEC. 229. IRON DOME SHORT-RANGE ROCKET DEFENSE PROGRAM. Israel.

Of the funds authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide, the Secretary of Defense may provide up to \$205,000,000 to the government of Israel for the Iron Dome short-range rocket defense system.

Subtitle D—Reports

SEC. 231. REPORT ON ANALYSIS OF ALTERNATIVES AND PROGRAM REQUIREMENTS FOR THE GROUND COMBAT VEHICLE PROGRAM.

(a) **REPORT REQUIRED.**—Not later than January 15, 2011, the Secretary of the Army shall submit to the congressional defense committees a report on the Ground Combat Vehicle program of the Army. Such report shall include—

(1) the results of the analysis of alternatives conducted prior to milestone A, including any technical data; and

(2) an explanation of any plans to adjust the requirements of the Ground Combat Vehicle program during the technology development phase of such program.

(b) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(c) LIMITATION ON OBLIGATION OF FUNDS.—Of the funds authorized to be appropriated by this or any other Act for fiscal year 2011 for research, development, test, and evaluation, Army, for development of the Ground Combat Vehicle, not more than 50 percent may be obligated or expended until the date that is 30 days after the date on which the report is submitted under subsection (a).

SEC. 232. COST BENEFIT ANALYSIS OF FUTURE TANK-FIRED MUNITIONS.

(a) COST BENEFIT ANALYSIS REQUIRED.—

(1) IN GENERAL.—The Secretary of the Army shall conduct a cost benefit analysis of future munitions to be fired from the M1 Abrams series main battle tank to determine the proper investment to be made in tank munitions, including beyond line of sight technology.

(2) ELEMENTS.—The cost benefit analysis under paragraph (1) shall include—

(A) the predicted operational performance of future tank-fired munitions, including those incorporating beyond line of sight technology, based on the relevant modeling and simulation of future combat scenarios of the Army, including a detailed analysis on the suitability of each munition to address the full spectrum of targets across the entire range of the tank (including close range, mid-range, long-range, and beyond line of sight);

(B) a detailed assessment of the projected costs to develop and field each tank-fired munition included in the analysis, including those incorporating beyond line of sight technology; and

(C) a comparative analysis of each tank-fired munition included in the analysis, including suitability to address known capability gaps and overmatch against known and projected threats.

(3) MUNITIONS INCLUDED.—In conducting the cost benefit analysis under paragraph (1), the Secretary shall include, at a minimum, the Mid-Range Munition, the Advanced Kinetic Energy round, and the Advanced Multipurpose Program.

(b) BRIEFING.—Not later than April 15, 2011, the Secretary shall provide a detailed briefing to the congressional defense committees on the cost benefit analysis conducted under subsection (a).

SEC. 233. ANNUAL COMPTROLLER GENERAL REPORT ON THE VH-(XX) PRESIDENTIAL HELICOPTER ACQUISITION PROGRAM.

(a) ANNUAL GAO REVIEW.—During the period beginning on the date of the enactment of this Act and ending on March 1, 2013, the Comptroller General of the United States shall conduct an annual review of the VH-(XX) aircraft acquisition program.

(b) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than March 1 of each year beginning in 2011 and ending in 2013, the Comptroller General shall submit to the congressional defense committees a report

on the review of the VH-(XX) aircraft acquisition program conducted under subsection (a).

(2) MATTERS TO BE INCLUDED.—Each report on the review of the VH-(XX) aircraft acquisition program shall include the following:

(A) The extent to which the program is meeting development and procurement cost, schedule, performance, and risk mitigation goals.

(B) With respect to meeting the desired initial operational capability and full operational capability dates for the VH-(XX) aircraft, the progress and results of—

(i) developmental and operational testing of the aircraft; and

(ii) plans for correcting deficiencies in aircraft performance, operational effectiveness, reliability, suitability, and safety.

(C) An assessment of VH-(XX) aircraft procurement plans, production results, and efforts to improve manufacturing efficiency and supplier performance.

(D) An assessment of the acquisition strategy of the VH-(XX) aircraft, including whether such strategy is in compliance with acquisition management best-practices and the acquisition policy and regulations of the Department of Defense.

(E) A risk assessment of the integrated master schedule and the test and evaluation master plan of the VH-(XX) aircraft as it relates to—

(i) the probability of success;

(ii) the funding required for such aircraft compared with the funding programmed; and

(iii) development and production concurrency.

(3) ADDITIONAL INFORMATION.—In submitting to the congressional defense committees the first report under paragraph (1) and a report following any changes made by the Secretary of the Navy to the baseline documentation of the VH-(XX) aircraft acquisition program, the Comptroller General shall include, with respect to such program, an assessment of the sufficiency and objectivity of—

(A) the analysis of alternatives;

(B) the initial capabilities document;

(C) the capabilities development document; and

(D) the systems requirement document.

Subtitle E—Other Matters

SEC. 241. SENSE OF CONGRESS AFFIRMING THE IMPORTANCE OF DEPARTMENT OF DEFENSE PARTICIPATION IN DEVELOPMENT OF NEXT GENERATION SEMICONDUCTOR TECHNOLOGIES.

(a) FINDINGS.—Congress finds the following:

(1) The next generation of weapons systems, battlefield sensors, and intelligence platforms will need to be lighter, more agile, consume less power, and have greater computational power, which can be achieved by decreasing the feature size of integrated circuits to the nanometer scale.

(2) There is a growing concern in the Department of Defense and the United States intelligence community over the offshore shift in development and production of high capacity semiconductors. Greater reliance on providers of semiconductors in the United States high technology industry would help mitigate the security risks of such an offshore shift.

(3) The development of new manufacturing technologies is recognized in the semiconductor industry as critical to the development of the next generation of integrated circuits.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should pursue research and development capabilities to take the lead in developing and producing the next generation of integrated circuits; and

(2) the Department of Defense should continue to work with industry and academia in pursuing the research and development of advanced manufacturing techniques in support of the development of the next generation of integrated circuits needed for the requirements and specialized applications of the Department of Defense.

10 USC 2911
note.

SEC. 242. PILOT PROGRAM ON COLLABORATIVE ENERGY SECURITY.

(a) PILOT PROGRAM.—The Secretary of Defense, in coordination with the Secretary of Energy, may carry out a collaborative energy security pilot program involving one or more partnerships between one military installation and one national laboratory, for the purpose of evaluating and validating secure, salable microgrid components and systems for deployment.

(b) SELECTION OF MILITARY INSTALLATION AND NATIONAL LABORATORY.—If the Secretary of Defense carries out a pilot program under this section, the Secretary of Defense and the Secretary of Energy shall jointly select a military installation and a national laboratory for the purpose of carrying out the pilot program. In making such selections, the Secretaries shall consider each of the following:

(1) A commitment to participate made by a military installation being considered for selection.

(2) The findings and recommendations of relevant energy security assessments of military installations being considered for selection.

(3) The availability of renewable energy sources at a military installation being considered for selection.

(4) Potential synergies between the expertise and capabilities of a national laboratory being considered for selection and the infrastructure, interests, or other energy security needs of a military installation being considered for selection.

(5) The effects of any utility tariffs, surcharges, or other considerations on the feasibility of enabling any excess electricity generated on a military installation being considered for selection to be sold or otherwise made available to the local community near the installation.

(c) PROGRAM ELEMENTS.—A pilot program under this section shall be carried out as follows:

(1) Under the pilot program, the Secretaries shall evaluate and validate the performance of new energy technologies that may be incorporated into operating environments.

(2) The pilot program shall involve collaboration with the Office of Electricity Delivery and Energy Reliability of the

Department of Energy and other offices and agencies within the Department of Energy, as appropriate, and the Environmental Security Technical Certification Program of the Department of Defense.

(3) Under the pilot program, the Secretary of Defense shall investigate opportunities for any excess electricity created for the military installation to be sold or otherwise made available to the local community near the installation.

(4) The Secretary of Defense shall use the results of the pilot program as the basis for informing key performance parameters and validating energy components and designs that could be implemented in various military installations across the country and at forward operating bases.

(5) The pilot program shall support the effort of the Secretary of Defense to use the military as a test bed to demonstrate innovative energy technologies.

(d) IMPLEMENTATION AND DURATION.—If the Secretary of Defense carries out a pilot program under this section, such pilot program shall begin by not later than July 1, 2011, and shall be not less than three years in duration. Deadline.

(e) REPORTS.—

(1) INITIAL REPORT.—If the Secretary of Defense carries out a pilot program under this section, the Secretary shall submit to the appropriate congressional committees by not later than October 1, 2011, an initial report that provides an update on the implementation of the pilot program, including an identification of the selected military installation and national laboratory partner and a description of technologies under evaluation.

(2) FINAL REPORT.—Not later than 90 days after completion of a pilot program under this section, the Secretary shall submit to the appropriate congressional committees a report on the pilot program, including any findings and recommendations of the Secretary.

(f) DEFINITIONS.—For purposes of this section:

(1) The term “appropriate congressional committees” means—

(A) the Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Science and Technology of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Energy and Natural Resources, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) The term “microgrid” means an integrated energy system consisting of interconnected loads and distributed energy resources (including generators, energy storage devices, and smart controls) that can operate with the utility grid or in an intentional islanding mode.

(3) The term “national laboratory” means—

(A) a national laboratory (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)); or

(B) a national security laboratory (as defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)).

10 USC 2358
note.

SEC. 243. PILOT PROGRAM TO INCLUDE TECHNOLOGY PROTECTION FEATURES DURING RESEARCH AND DEVELOPMENT OF DEFENSE SYSTEMS.

(a) **PILOT PROGRAM.**—The Secretary of Defense shall carry out a pilot program to develop and incorporate technology protection features in a designated system during the research and development phase of such system.

(b) **ANNUAL REPORTS.**—Not later than December 31 of each year in which the Secretary carries out the pilot program established under this section, the Secretary shall submit to the congressional defense committees a report on the pilot program, including a list of each designated system included in the program.

(c) **TERMINATION.**—The pilot program established under this section shall terminate on October 1, 2015.

(d) **DEFINITIONS.**—In this section:

(1) The term “designated system” means any system (including a major system, as defined in section 2302(5) of title 10, United States Code) that the Under Secretary of Defense for Acquisition, Technology, and Logistics designates as being included in the pilot program established under this section.

(2) The term “technology protection features” means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

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Sec. 321. Technical amendments to requirement for service contract inventory.

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Subtitle D—Reports

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Subtitle E—Limitations and Extensions of Authority

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Subtitle F—Other Matters

- Sec. 351. Expedited processing of background investigations for certain individuals.
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- Sec. 355. Recovery of improperly disposed of Department of Defense property.
- Sec. 356. Operational readiness models.
- Sec. 357. Sense of Congress regarding continued importance of High-Altitude Aviation Training Site, Colorado.
- Sec. 358. Study of effects of new construction of obstructions on military installations and operations.

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

- (1) For the Army, \$33,921,165,000.
- (2) For the Navy, \$38,232,943,000.
- (3) For the Marine Corps, \$5,590,340,000.
- (4) For the Air Force, \$36,822,516,000.
- (5) For Defense-wide activities, \$30,562,619,000.
- (6) For the Army Reserve, \$2,879,077,000.
- (7) For the Naval Reserve, \$1,367,764,000.
- (8) For the Marine Corps Reserve, \$285,234,000.
- (9) For the Air Force Reserve, \$3,403,827,000.
- (10) For the Army National Guard, \$6,621,704,000.
- (11) For the Air National Guard, \$6,042,239,000.
- (12) For the United States Court of Appeals for the Armed Forces, \$14,068,000.
- (13) For the Acquisition Development Workforce Fund, \$217,561,000.
- (14) For Environmental Restoration, Army, \$444,581,000.
- (15) For Environmental Restoration, Navy, \$304,867,000.
- (16) For Environmental Restoration, Air Force, \$502,653,000.
- (17) For Environmental Restoration, Defense-wide, \$10,744,000.
- (18) For Environmental Restoration, Formerly Used Defense Sites, \$296,546,000.
- (19) For Overseas Humanitarian, Disaster, and Civic Aid programs, \$108,032,000.
- (20) For Cooperative Threat Reduction programs, \$522,512,000.

Subtitle B—Energy and Environmental Provisions

SEC. 311. REIMBURSEMENT OF ENVIRONMENTAL PROTECTION AGENCY FOR CERTAIN COSTS IN CONNECTION WITH THE TWIN CITIES ARMY AMMUNITION PLANT, MINNESOTA.

(a) AUTHORITY TO REIMBURSE.—

(1) **TRANSFER AMOUNT.**—Using funds described in subsection (b) and notwithstanding section 2215 of title 10, United States Code, the Secretary of Defense may transfer not more than \$5,611,670.67 in fiscal year 2011 to the Hazardous Substance Superfund.

(2) **PURPOSE OF REIMBURSEMENT.**—The amount authorized to be transferred under paragraph (1) is to reimburse the Environmental Protection Agency for costs the Agency incurred relating to the response actions performed at the Twin Cities Army Ammunition Plant, Minnesota.

(3) **INTERAGENCY AGREEMENT.**—The reimbursement described in paragraph (2) is intended to satisfy certain terms of the interagency agreement entered into by the Department of the Army and the Environmental Protection Agency for the Twin Cities Army Ammunition Plant that took effect in December 1987 and that provided for the recovery of expenses by the Agency from the Department of the Army.

(b) **SOURCE OF FUNDS.**—The transfer of funds authorized in subsection (a) shall be made using funds authorized to be appropriated for fiscal year 2011 for operation and maintenance for Environmental Restoration, Army.

SEC. 312. PAYMENT TO ENVIRONMENTAL PROTECTION AGENCY OF STIPULATED PENALTIES IN CONNECTION WITH NAVAL AIR STATION, BRUNSWICK, MAINE.

(a) **AUTHORITY TO TRANSFER FUNDS.**—From amounts authorized to be appropriated for fiscal year 2011 for the Department of Defense Base Closure Account 2005, and notwithstanding section 2215 of title 10, United States Code, the Secretary of Defense may transfer an amount of not more than \$153,000 to the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

(b) **PURPOSE OF TRANSFER.**—The purpose of a transfer made under subsection (a) is to satisfy a stipulated penalty assessed by the Environmental Protection Agency on June 12, 2008, against Naval Air Station, Brunswick, Maine, for the failure of the Navy to sample certain monitoring wells in a timely manner pursuant to a schedule included in the Federal facility agreement for Naval Air Station, Brunswick, which was entered into by the Secretary of the Navy and the Administrator of the Environmental Protection Agency on October 19, 1990.

(c) **ACCEPTANCE OF PAYMENT.**—If the Secretary of Defense makes a transfer authorized under subsection (a), the Administrator of the Environmental Protection Agency shall accept the amount transferred as payment in full of the penalty referred to in subsection (b).

SEC. 313. REQUIREMENTS RELATED TO THE INVESTIGATION OF EXPOSURE TO DRINKING WATER AT CAMP LEJEUNE, NORTH CAROLINA.

(a) **FINDINGS.**—Congress makes the following findings:

(1) The Department of the Navy and the Agency for Toxic Substances and Disease Registry (hereinafter in this section referred to as “ATSDR”) have been working together for almost two decades to identify the possible effects of exposure to contaminated drinking water at Camp Lejeune, North Carolina.

(2) Multiple studies have been conducted, and are being conducted, which require significant amounts of data and historical documentation, requiring the Department of the Navy and ATSDR to have close collaboration and open access to information.

(3) In June 2010, the Department of the Navy and ATSDR established the Camp Lejeune Data Mining Technical Workgroup to identify and inventory information and data relevant to the ongoing scientific research.

(b) **REQUIREMENTS.**—

(1) **ATSDR ACCESS TO DATA.**—By not later than 90 days after the date of the enactment of this Act, the Secretary of the Navy shall ensure that the inventory created by the Camp Lejeune Data Mining Technical Workgroup is accurate and complete and that ATSDR has full access to all of the documents and data listed therein as needed.

Deadline.

(2) **AVAILABILITY OF NEW AND NEWLY DISCOVERED DOCUMENTS.**—If after the date of enactment of this Act the Secretary of the Navy generates any new document, record, or electronic data, or comes into possession of any existing document, record, or electronic data not previously provided in the Camp Lejeune Data Mining Technical Workgroup, the Secretary of the Navy shall make such information immediately available to ATSDR with an electronic inventory incorporating the newly located or generated document, record, or electronic data.

(3) **LIMITATION ON ADJUDICATION OF CLAIMS.**—None of the funds authorized to be appropriated by this Act for fiscal year 2011 may be used to adjudicate any administrative claim filed with the Department of the Navy regarding water contamination at Camp Lejeune, North Carolina, until at least 45 days after the date on which the Secretary of the Navy notifies the Committees on Armed Services of the Senate and House of Representatives of the intention of the Secretary to adjudicate the claim.

Deadline.

Notification.

SEC. 314. COMPTROLLER GENERAL ASSESSMENT ON MILITARY ENVIRONMENTAL EXPOSURES.

(a) **FINDINGS.**—Congress makes the following findings:

(1) There have been various reports of the exposure of current and former members of the Armed Forces, their dependents, and civilian employees to environmental hazards while living and working on military installations.

(2) There is the need to better understand existing Department of Defense policies and procedures for addressing possible environmental exposures at military installations, determining any correlation between such an exposure and a subsequent health condition, and handling claims and potential compensation.

(3) While many of these possible exposures have been studied and evaluated, the extent to which those exposures caused or contributed to the short- and long-term health conditions of current and former members of the Armed Forces, their dependents, and civilian employees remains largely unknown.

(4) As for these possible exposures and the link between the exposure and subsequent health conditions, there may be better ways for the Federal Government to evaluate, address and, as warranted, provide health benefits or possible compensation as a remedy to these potential exposures.

(b) **COMPTROLLER GENERAL ASSESSMENT REQUIRED.**—The Comptroller General of the United States shall carry out an assessment of possible exposures to environmental hazards on military installations that includes the following:

(1) An identification of the policies and processes by which the Department of Defense and the military departments respond to environmental hazards on military installations and possible exposures and determine if there is a standard framework.

(2) An identification of the existing processes available to current and former members of the Armed Forces, their dependents, and civilian employees to seek compensation and health benefits for exposures to environmental hazards on military installations.

(3) A comparison of the processes identified under paragraph (2) with other potential options or methods for providing health benefits or compensation to individuals for injuries that may have resulted from environmental hazards on military installations.

(4) An examination of what is known about the advantages and disadvantages of other potential options or methods as well as any shortfalls in the current processes.

(5) Recommendations for any administrative or legislative action that the Comptroller General deems appropriate in the context of the assessment.

(c) **REPORT.**—Not later than January 1, 2012, the Comptroller General shall submit to the Chairmen and Ranking Members of the Committees on Armed Services of the Senate and the House of Representatives a report on the findings and recommendations, as appropriate, of the Comptroller General with respect to the assessment conducted under subsection (b).

(d) **COORDINATION.**—In carrying out subsection (b), the Comptroller General shall receive comments from the Secretary of Defense and others, as appropriate.

(e) **CONSTRUCTION.**—Nothing in this section shall be interpreted to impede, encroach, or delay—

(1) any studies, reviews, or assessments of any actual or potential environmental exposures at any military installation, including the studies included in the Agency for Toxic Substances and Disease Registry's Annual Plan of Work regarding the water contamination at Camp Lejeune, North Carolina;

(2) the Agency for Toxic Substances and Disease Registry's statutory obligations, including its obligations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) regarding Superfund sites; or

Comments.

(3) the remediation of any environmental contamination or hazard at any military installation.

(f) **MILITARY INSTALLATION DEFINED.**—In this section, the term “military installation” has the meaning given that term in section 2801(c)(4) of title 10, United States Code.

Subtitle C—Workplace and Depot Issues

SEC. 321. TECHNICAL AMENDMENTS TO REQUIREMENT FOR SERVICE CONTRACT INVENTORY.

Section 2330a(c) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) in paragraph (1), in the matter preceding subparagraph

(A)—

(A) by striking the second sentence;

(B) by inserting after the first sentence the following new sentence: “The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:”; and

Guidance.

(C) by inserting after the sentence added by subparagraph (B) the following:

“(A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—

Guidance.

“(i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees; and

“(ii) the calculation of contractor manpower equivalents in a manner that is comparable to the calculation of full-time equivalents for use in inventories of functions performed by Department of Defense employees.

“(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures.”;

Guidance.

(3) by inserting after subparagraph (B) of paragraph (1), as added by paragraph (2), the following:

“(2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:”; and

(4) in paragraph (2), as redesignated by paragraph (3), by striking subparagraph (E) and inserting the following new subparagraph (E):

“(E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).”.

SEC. 322. REPEAL OF CONDITIONS ON EXPANSION OF FUNCTIONS PERFORMED UNDER PRIME VENDOR CONTRACTS FOR DEPOT-LEVEL MAINTENANCE AND REPAIR.

Section 346 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1979; 10 U.S.C. 2464 note) is repealed.

10 USC 2463
note.

SEC. 323. PROHIBITION ON ESTABLISHING GOALS OR QUOTAS FOR CONVERSION OF FUNCTIONS TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) PROHIBITION.—The Secretary of Defense may not establish, apply, or enforce any numerical goal, target, or quota for the conversion of Department of Defense functions to performance by Department of Defense civilian employees, unless such goal, target, or quota is based on considered research and analysis, as required by section 235, 2330a, or 2463 of title 10, United States Code.

(b) DECISIONS TO INSOURCE.—In deciding which functions should be converted to performance by Department of Defense civilian employees pursuant to section 2463 of title 10, United States Code, the Secretary of Defense shall use the costing methodology outlined in the Directive-Type Memorandum 09–007 (Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support) or any successor guidance for the determination of costs when costs are the sole basis for the decision. The Secretary of a military department may issue supplemental guidance to assist in such decisions affecting functions of that military department.

(c) REPORTS.—

(1) REPORT TO CONGRESS.—Not later than March 31, 2011, the Secretary of Defense shall submit to the congressional defense committees a report on the decisions with respect to the conversion of functions to performance by Department of Defense civilian employees made during fiscal year 2010. Such report shall identify, for each such decision—

(A) the agency or service of the Department involved in the decision;

(B) the basis and rationale for the decision; and

(C) the number of contractor employees whose functions were converted to performance by Department of Defense civilian employees.

(2) COMPTROLLER GENERAL REVIEW.—Not later than 120 days after the submittal of the report under paragraph (1), the Comptroller General of the United States shall submit to the congressional defense committees an assessment of the report.

(d) CONSTRUCTION.—Nothing in this section shall be construed—

(1) to preclude the Secretary of Defense from establishing, applying, and enforcing goals for the conversion of acquisition functions and other critical functions to performance by Department of Defense civilian employees, where such goals are based on considered research and analysis; or

(2) to require the Secretary of Defense to conduct a cost comparison before making a decision to convert any acquisition function or other critical function to performance by Department of Defense civilian employees, where factors other than cost serve as a basis for the Secretary's decision.

Subtitle D—Reports

SEC. 331. ADDITIONAL REPORTING REQUIREMENTS RELATING TO CORROSION PREVENTION PROJECTS AND ACTIVITIES.

Section 2228(e) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (C), by striking “The” and inserting “For the fiscal year covered by the report and the preceding fiscal year, the”; and

(B) by adding at the end the following new subparagraph:

“(E) For the fiscal year covered by the report and the preceding fiscal year, the amount of funds requested in the budget for each project or activity described in subsection (d) compared to the funding requirements for the project or activity.”;

(2) in paragraph (2)(B), by inserting before the period at the end the following: “, including the annex to the report described in paragraph (3)”; and

(3) by adding at the end the following new paragraph:

“(3) Each report under this section shall include, in an annex to the report, a copy of the annual corrosion report most recently submitted by the corrosion control and prevention executive of each military department under section 903(b)(5) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4567; 10 U.S.C. 2228 note).”.

SEC. 332. MODIFICATION AND REPEAL OF CERTAIN REPORTING REQUIREMENTS.

(a) **PRIORITIZATION OF FUNDS.**—Subsection (a) of section 323 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 229 note) is amended—

(1) in paragraph (1), by striking “the global war on terrorism” and inserting “overseas contingency operations”; and

(2) in paragraph (2)—

(A) in subparagraph (A), by striking “units transforming to modularity” and inserting “modular units”; and

(B) in subparagraph (B), by striking “2012” and inserting “2015”.

(b) **BUDGET INFORMATION.**—Subsection (b) of such section is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking “the global war on terrorism” and inserting “overseas contingency operations”; and

(ii) by inserting “and” at the end;

(B) in subparagraph (B)—

(i) in clause (i), by striking “units transforming to modularity” and inserting “modular units”; and

(ii) by striking “; and” at the end and inserting a period; and

(C) by striking subparagraph (C); and

(2) by striking paragraph (3).

(c) **ANNUAL REPORT ON ARMY PROGRESS.**—Subsection (c) of such section is amended—

(1) by striking paragraphs (1), (2), (3), (4), (5), (6), and (7);

(2) by redesignating paragraphs (8) and (9) as subparagraphs (D) and (F), respectively;

(3) by submitting “(1)” before “On the date”;

(4) in paragraph (1), as designated by paragraph (3) of this subsection, by striking “in meeting” and all that follows through “shall be itemized” and inserting “in fulfilling the key enabler equipment requirements of modular units and in repairing, recapitalizing, and replacing equipment and materiel used in support of overseas contingency operations underway as of the date of such report, and associated sustainment. Any information included in the report shall be itemized”;

(5) by striking “Each such report” and all that follows through the colon and inserting the following:

“(2) Each such report shall include the following:

“(A) An assessment of the key enabler equipment and personnel of the Army, including—

“(i) a comparison of—

“(I) the authorized level of key enabler equipment;

“(II) the level of key enabler equipment on hand;

and

“(III) the planned purchases of key enabler equipment as set forth in the future-years defense program submitted with the budget for such fiscal year;

“(ii) a comparison of the authorized and actual personnel levels for personnel with key enabler personnel specialties with the requirements for key enabler personnel specialties;

“(iii) an identification of any shortfalls indicated by the comparisons in clauses (i) and (ii); and

“(iv) an assessment of the number and type of key enabler equipment that the Army projects it will have on hand by the end of such future-years defense program that will require repair, recapitalization, or replacement at or before the end of the time period covered by such future-years defense program (which assessment shall account for additional repair, recapitalization, or replacement resulting from use of key enabler equipment in overseas contingency operations).

“(B) If an assessment under subparagraph (A) identifies shortfalls that will exist within the period covered by the future-years defense program submitted in such fiscal year, an identification of the risks associated with such shortfalls and mitigation strategies to address such risks.

“(C) A schedule for the accomplishment of the purposes set forth in paragraph (1).”;

(6) in paragraph (2), as amended by paragraphs (2) and (5) of this subsection, by inserting after subparagraph (D) the following new subparagraph:

“(E) A description of the status of the development of doctrine on how modular combat, functional, and support forces will train, be sustained, and fight.”; and

(7) in subparagraph (F) of paragraph (2) as redesignated by paragraphs (2) and (5) of this subsection, by striking “paragraphs (1) through (8)” and inserting “subparagraphs (A) through (E)”.

(d) ANNUAL COMPTROLLER GENERAL ON ARMY PROGRESS.—Subsection (d) of such section is amended to read as follows:

10 USC 229 note.

“(d) ANNUAL COMPTROLLER GENERAL REPORT ON ARMY PROGRESS.—Not later than 180 days after the date on which the Secretary of the Army submits a report under subsection (c), the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the Comptroller General’s review of such report. Each report under this subsection shall include such information and recommendations as the Comptroller General considers appropriate in light of such review.”.

(e) DEFINITIONS.—Such section is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), as amended by subsection (d) of this section, the following new subsection (e):
“(e) DEFINITIONS.—In this section:

“(1) The term ‘contingency operation’ has the meaning given that term in section 101(a)(13) of title 10, United States Code.

“(2) The term ‘key enabler’, in the case of equipment or personnel, means equipment or personnel, as the case may be, that make a modular force or unit as capable or more capable than the non-modular force or unit it replaced, including the following:

“(A) Equipment such as tactical and high frequency radio, tactical wheeled vehicles, battle command systems, unmanned aerial vehicles, all-source analysis systems, analysis and control elements, fire support sensor systems, firefinder radar, joint network nodes, long-range advanced scout surveillance systems, Trojan Spirit systems (or any successor system), and any other equipment items identified by the Army as making a modular force or unit as capable or more capable than the non-modular force or unit it replaced.

“(B) Personnel in specialties needed to operate or support the equipment specified in subparagraph (A) and personnel in specialties relating to civil affairs, communication and information systems operation, explosive ordinance disposal, military intelligence, psychological operations, and any other personnel specialties identified by the Army as making a modular force or unit as capable or more capable than the non-modular force or unit it replaced.”.

(f) TERMINATION OF REPORT REQUIREMENT.—Subsection (f) of such section, as redesignated by subsection (e)(1) of this section, is further amended by striking “fiscal year 2012” and inserting “fiscal year 2015”.

(g) REPEAL OF REPORT ON DISPOSITION OF RESERVE EQUIPMENT.—Title III of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) is amended by striking section 349.

120 Stat. 2159.

(h) REPEAL OF REPORT ON READINESS OF GROUND FORCES.—Title III of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181) is amended by striking section 355.

122 Stat. 73.

SEC. 333. REPORT ON AIR SOVEREIGNTY ALERT MISSION.

(a) REPORT REQUIRED.—Not later than March 1, 2011, the Commander of the United States Northern Command and the North

American Aerospace Defense Command shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the Air Sovereignty Alert (hereinafter in this section referred to as “ASA”) mission and Operation Noble Eagle.

(b) CONSULTATION.—The Commander shall consult with the Director of the National Guard Bureau who shall review and provide independent analysis and comments on the report required under subsection (a).

(c) CONTENTS OF REPORT.—The report required under subsection (a) shall include each of the following:

(1) An evaluation of the ASA mission and of Operation Noble Eagle.

(2) An evaluation of each of the following:

(A) The current ability to perform the ASA mission with respect to training, equipment, and basing.

(B) Any current deficiencies in the ASA mission.

(C) Any changes in threats that would require any change in training, equipment, and basing to effectively support the ASA mission.

(D) An evaluation of whether the ASA mission is fully resourced with respect to funding, personnel, and aircraft.

(E) A description of the coverage of ASA and Operation Noble Eagle units with respect to—

(i) population centers covered; and

(ii) targets of value covered, including symbolic (including national monuments, sports venues, and centers of commerce), critical infrastructure (including power plants, ports, dams, bridges, and telecommunication nodes), and national security (including military bases and organs of government) targets.

(F) An unclassified, notional area of responsibility conforming to the unclassified response time of the unit represented graphically on a map and detailing the total population and number of targets of value covered, as described in subparagraph (E).

(3) The status of the implementation of the recommendations made in the Government Accountability Office report entitled “Actions Needed to Improve Management of Air Sovereignty Alert Operations to Protect U.S. Airspace” (GAO–09–184).

(d) FORM OF REPORT.—The report required by subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

SEC. 334. REPORT ON THE SEAD/DEAD MISSION REQUIREMENT FOR THE AIR FORCE.

(a) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Service of the House of Representatives a report describing the feasibility and desirability of designating the Suppression of Enemy Air Defenses/Destruction of Enemy Air Defenses (hereinafter in this section referred to as “SEAD/DEAD”) mission as a responsibility of the Air National Guard.

(b) CONTENTS OF REPORT.—The report required under subsection (a) shall include each of the following:

(1) An evaluation of the SEAD/DEAD mission, as in effect on the date of the enactment of this Act.

(2) An evaluation of the following with respect to the SEAD/DEAD mission:

(A) The current ability of the Air National Guard to perform the mission with regards to training, equipment, funding, and basing.

(B) Any current deficiencies of the Air National Guard to perform the mission, including range infrastructure or other improvements needed to support peacetime training and readiness.

(C) The corrective actions and costs required to address any deficiencies described in subparagraph (B).

(c) CONSULTATION.—The Secretary of the Air Force shall consult with the Director of the National Guard Bureau who shall review and provide independent analysis and comments on the report required under subsection (a).

SEC. 335. REQUIREMENT TO UPDATE STUDY ON STRATEGIC SEAPORTS.

The Commander of the United States Transportation Command shall update the study entitled “PORT LOOK 2008 Strategic Seaports Study”. In updating the study under this section, the Commander shall consider the infrastructure in the vicinity of a strategic port, including bridges, roads, and rail, and any issues relating to the capacity and condition of such infrastructure.

Subtitle E—Limitations and Extensions of Authority

SEC. 341. PERMANENT AUTHORITY TO ACCEPT AND USE LANDING FEES CHARGED FOR USE OF DOMESTIC MILITARY AIRFIELDS BY CIVIL AIRCRAFT.

(a) IN GENERAL.—Chapter 159 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2697. Acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft

“(a) AUTHORITY.—The Secretary of a military department may impose landing fees for the use by civil aircraft of domestic military airfields under the jurisdiction of that Secretary and may use any fees received under this section as a source of funding for the operation and maintenance of airfields of that department.

“(b) UNIFORM LANDING FEES.—The Secretary of Defense shall prescribe the amount of the landing fees that may be imposed under this section. Such fees shall be uniform among the military departments.

“(c) USE OF PROCEEDS.—Amounts received for a fiscal year in payment of landing fees imposed under this section for the use of a military airfield shall be credited to the appropriation that is available for that fiscal year for the operation and maintenance of that military airfield, shall be merged with amounts in the appropriation to which credited, and shall be available for that military airfield for the same period and purposes as the appropriation is available.

“(d) LIMITATION.—The Secretary of a military department shall determine whether consideration for a landing fee has been received

Determination.

in a lease, license, or other real estate agreement for an airfield and shall use such a determination to offset appropriate amounts imposed under subsection (a) for that airfield.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2697. Acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft.”.

SEC. 342. EXTENSION OF ARSENAL SUPPORT PROGRAM INITIATIVE.

Section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398; 10 U.S.C. 4551 note), as amended by section 341 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 69) and section 354 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2264), is further amended—

10 USC 4551
note.

(1) in subsection (a), by striking “2011” and inserting “2012”; and

(2) in subsection (g)(1), by striking “2011” and inserting “2012”.

SEC. 343. LIMITATION ON OBLIGATION OF FUNDS FOR THE ARMY HUMAN TERRAIN SYSTEM.

(a) LIMITATION.—Of the amounts authorized to be appropriated for the Human Terrain System (hereinafter in this section referred to as the “HTS”) that are described in subsection (b), not more than 85 percent of the amounts remaining unobligated as of the date of enactment of this Act may be obligated until the Secretary of the Army submits to the congressional defense committees each of the following:

(1) A validation of all HTS requirements, including any prior joint urgent operational needs statements.

Certification.

(2) A certification that policies, procedures, and guidance are in place to protect the integrity of social science researchers participating in HTS, including ethical guidelines and human studies research procedures.

(b) COVERED AUTHORIZATIONS OR APPROPRIATIONS.—The amounts authorized to be appropriated described in this subsection are amounts authorized to be appropriated for fiscal year 2011, including such amounts authorized to be appropriated for overseas contingency operations, for—

(1) operation and maintenance for HTS;

(2) procurement for Mapping the Human Terrain hardware and software; and

(3) research, development, test, and evaluation for Mapping the Human Terrain hardware and software.

Time period.

SEC. 344. LIMITATION ON OBLIGATION OF FUNDS PENDING SUBMISSION OF CLASSIFIED JUSTIFICATION MATERIAL.

Of the amounts authorized to be appropriated in this title for fiscal year 2011 for the Office of the Secretary of Defense, of the amount that corresponds with budget activity four, line 270, in the budget transmitted to Congress by the President for fiscal year 2011, not more than 90 percent may be obligated until 15 days after the information cited in the classified annex accompanying this Act relating to the provision of classified justification

material to Congress is provided to the congressional defense committees.

SEC. 345. REQUIREMENTS FOR TRANSFERRING AIRCRAFT WITHIN THE AIR FORCE INVENTORY.

10 USC 8062
note.

(a) **REQUIREMENTS.**—In proposing the transfer of ownership of any aircraft from ownership by a reserve component of the Air Force to ownership by a regular component of the Air Force, including such a transfer to be made on a temporary basis, the Secretary of the Air Force shall ensure that a written agreement regarding such transfer of ownership has been entered into between the Director of the Air National Guard, the Commander of the Air Force Reserve Command, and the Chief of Staff of the Air Force. Any such agreement shall specify each of the following:

Contracts.

- (1) The number of and type of aircraft to be transferred.
- (2) In the case of any aircraft transferred on a temporary basis—

- (A) the schedule under which the aircraft will be returned to the ownership of the reserve component;

- (B) a description of the condition, including the estimated remaining service life, in which any such aircraft will be returned to the reserve component; and

- (C) a description of the allocation of resources, including the designation of responsibility for funding aircraft operation and maintenance and a detailed description of budgetary responsibilities, for the period for which the ownership of the aircraft is transferred to the regular component.

- (3) The designation of responsibility for funding depot maintenance requirements or modifications to the aircraft generated as a result of the transfer, including any such requirements and modifications required during the period for which the ownership of the aircraft is transferred to the regular component.

- (4) Any location from which the aircraft will be transferred.

- (5) The effects on manpower that such a transfer may have at any facility identified under paragraph (4).

- (6) The effects on the skills and proficiencies of the reserve component personnel affected by the transfer.

- (7) Any other items the Director of the Air National Guard or the Commander of the Air Force Reserve Command determines are necessary in order to execute such a transfer.

(b) **SUBMITTAL OF AGREEMENTS TO CONGRESS.**—The Secretary of the Air Force may not take any action to transfer the ownership of an aircraft as described in subsection (a) until the Secretary submits to the congressional defense committees an agreement entered into pursuant to such subsection regarding the transfer of ownership of the aircraft.

SEC. 346. COMMERCIAL SALE OF SMALL ARMS AMMUNITION IN EXCESS OF MILITARY REQUIREMENTS.

10 USC 2576
note.

(a) **COMMERCIAL SALE OF SMALL ARMS AMMUNITION.**—Small arms ammunition and ammunition components in excess of military requirements, including fired cartridge cases, which are not otherwise prohibited from commercial sale or certified by the Secretary of Defense as unserviceable or unsafe, may not be demilitarized or destroyed and shall be made available for commercial sale.

Notice.

(b) **DEADLINE FOR GUIDANCE.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance to ensure compliance with subsection (a). Not later than 15 days after issuing such guidance, the Secretary shall submit to the congressional defense committees a letter of compliance providing notice of such guidance.

(c) **PREFERENCE.**—No small arms ammunition and ammunition components in excess of military requirements may be made available for commercial sale under this section before such ammunition and ammunition components are offered for transfer or purchase, as authorized by law, to another Federal department or agency or for sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies pursuant to section 2576 of title 10, United States Code, as amended by this Act.

Subtitle F—Other Matters

SEC. 351. EXPEDITED PROCESSING OF BACKGROUND INVESTIGATIONS FOR CERTAIN INDIVIDUALS.

(a) **EXPEDITED PROCESSING OF SECURITY CLEARANCES.**—Section 1564 of title 10, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection (a):

“(a) **EXPEDITED PROCESS.**—The Secretary of Defense may prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for—

“(1) Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security; and

“(2) any individual who—

“(A) submits an application for a position as an employee of the Department of Defense for which—

“(i) the individual is qualified; and

“(ii) a security clearance is required; and

“(B) is—

“(i) a member of the armed forces who was retired or separated, or is expected to be retired or separated, for physical disability pursuant to chapter 61 of this title;

“(ii) the spouse of a member of the armed forces who retires or is separated, after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, for a physical disability as a result of a wound, injuries or illness incurred or aggravated in the line of duty (as determined by the Secretary concerned); or

“(iii) the spouse of a member of the armed forces who dies, after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as a result of a wound, injury, or illness incurred or aggravated in the line of duty (as determined by the Secretary concerned).”; and

(2) by adding at the end the following new subsection:

“(f) **USE OF APPROPRIATED FUNDS.**—The Secretary of Defense may use funds authorized to be appropriated to the Department of Defense for operation and maintenance to conduct background

investigations under this section for individuals described in subsection (a)(2).”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply with respect to a background investigation conducted after the date of the enactment of this Act. 10 USC 1564 note.

SEC. 352. REVISION TO AUTHORITIES RELATING TO TRANSPORTATION OF CIVILIAN PASSENGERS AND COMMERCIAL CARGOES BY DEPARTMENT OF DEFENSE WHEN SPACE UNAVAILABLE ON COMMERCIAL LINES.

(a) **TRANSPORTATION ON DOD VEHICLES AND AIRCRAFT.**—Subsection (a) of section 2649 of title 10, United States Code, is amended—

(1) by inserting “AUTHORITY.—” before “Whenever”; and

(2) by inserting “, vehicles, or aircraft” in the first sentence after “vessels” both places it appears.

(b) **AMOUNTS CHARGED FOR TRANSPORTATION IN EMERGENCY, DISASTER, OR HUMANITARIAN RESPONSE CASES.**—

(1) **LIMITATION ON AMOUNTS CHARGED.**—The second sentence of subsection (a) of such section is amended by inserting before the period the following: “, except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation”.

(2) **CREDITING OF RECEIPTS.**—Subsection (b) of such section is amended by striking “Amounts” and inserting “CREDITING OF RECEIPTS.—Any amount received under this section with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts”.

(c) **TRANSPORTATION DURING CONTINGENCIES OR DISASTER RESPONSES.**—Such section is further amended by adding at the end the following new subsection:

“(c) **TRANSPORTATION OF ALLIED PERSONNEL DURING CONTINGENCIES OR DISASTER RESPONSES.**—During the 5-year period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, when space is available on vessels, vehicles, or aircraft operated by the Department of Defense and the Secretary of Defense determines that operations in the area of a contingency operation or disaster response would be facilitated if allied forces or civilians were to be transported using such vessels, vehicles, or aircraft, the Secretary may provide such transportation on a noninterference basis, without charge.”.

(d) **CONFORMING AMENDMENT.**—Section 2648 of such title is amended by inserting “, vehicles, or aircraft” after “vessels” in the matter preceding paragraph (1).

(e) **TECHNICAL AMENDMENTS.**—

(1) The heading of section 2648 of such title is amended to read as follows:

“§ 2648. Persons and supplies: sea, land, and air transportation”.

(2) The heading of section 2649 of such title is amended to read as follows:

“§ 2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft”.

(f) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 157 of such title is amended by striking the items relating to sections 2648 and 2649 and inserting the following new items:

“2648. Persons and supplies: sea, land, and air transportation.

“2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft.”.

SEC. 353. TECHNICAL CORRECTION TO OBSOLETE REFERENCE RELATING TO USE OF FLEXIBLE HIRING AUTHORITY TO FACILITATE PERFORMANCE OF CERTAIN DEPARTMENT OF DEFENSE FUNCTIONS BY CIVILIAN EMPLOYEES.

Section 2463(d)(1) of title 10, United States Code, is amended by striking “under the National Security Personnel System, as established”.

SEC. 354. AUTHORITY FOR PAYMENT OF FULL REPLACEMENT VALUE FOR LOSS OR DAMAGE TO HOUSEHOLD GOODS IN LIMITED CASES NOT COVERED BY CARRIER LIABILITY.

(a) CLAIMS AUTHORITY.—

(1) IN GENERAL.—Chapter 163 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2740. Property loss: reimbursement of members and civilian employees for full replacement value of household effects when contractor reimbursement not available

“The Secretary of Defense and the Secretaries of the military departments, in paying a claim under section 3721 of title 31 arising from loss or damage to household goods stored or transported at the expense of the Department of Defense, may pay the claim on the basis of full replacement value in any of the following cases in which reimbursement for the full replacement value for the loss or damage is not available directly from a carrier under section 2636a of this title:

“(1) A case in which—

“(A) the lost or damaged goods were stored or transported under a contract, tender, or solicitation in accordance with section 2636a of this title that requires the transportation service provider to settle claims on the basis of full replacement value; and

“(B) the loss or damage occurred under circumstances that exclude the transportation service provider from liability.

“(2) A case in which—

“(A) the loss or damage occurred while the lost or damaged goods were in the possession of an ocean carrier that was transporting, loading, or unloading the goods

under a Department of Defense contract for ocean carriage; and

“(B) the land-based portions of the transportation were under contracts, in accordance with section 2636a of this title, that require the land carriers to settle claims on the basis of full replacement value.

“(3) A case in which—

“(A) the lost or damaged goods were transported or stored under a contract or solicitation that requires at least one of the transportation service providers or carriers that handled the shipment to settle claims on the basis of full replacement value pursuant to section 2636a of this title;

“(B) the lost or damaged goods have been in the custody of more than one independent contractor or transportation service provider; and

“(C) a claim submitted to the delivering transportation service provider or carrier is denied in whole or in part because the loss or damage occurred while the lost or damaged goods were in the custody of a prior transportation service provider or carrier or government entity.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2740. Property loss: reimbursement of members and civilian employees for full replacement value of household effects when contractor reimbursement not available.”.

(b) EFFECTIVE DATE.—Section 2740 of title 10, United States Code, as added by subsection (a), shall apply with respect to losses incurred after the date of the enactment of this Act. 10 USC 2740 note.

SEC. 355. RECOVERY OF IMPROPERLY DISPOSED OF DEPARTMENT OF DEFENSE PROPERTY.

(a) IN GENERAL.—Chapter 165 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2790. Recovery of improperly disposed of Department of Defense property

“(a) PROHIBITION.—No member of the armed forces, civilian employee of the United States Government, contractor personnel, or other person may sell, lend, pledge, barter, or give any clothing, arms, articles, equipment, or other military or Department of Defense property except in accordance with the statutes and regulations governing Government property.

“(b) TRANSFER OF TITLE OR INTEREST INEFFECTIVE.—If property has been disposed of in violation of subsection (a), the person holding the property has no right or title to, or interest in, the property.

“(c) AUTHORITY FOR SEIZURE OF IMPROPERLY DISPOSED OF PROPERTY.—If any person is in the possession of military or Department of Defense property without right or title to, or interest in, the property because it has been disposed of in material violation of subsection (a), any Federal, State, or local law enforcement official may seize the property wherever found. Unless an exception to the warrant requirement under the fourth amendment to the Constitution applies, seizure may be made only—

“(1) pursuant to—

“(A) a warrant issued by the district court of the United States for the district in which the property is located, or for the district in which the person in possession of the property resides or is subject to service; or

“(B) pursuant to an order by such court, issued after a determination of improper transfer under subsection (e); and

“(2) after such a court has issued such a warrant or order.

“(d) INAPPLICABILITY TO CERTAIN PROPERTY.—Subsections (b) and (c) shall not apply to—

“(1) property on public display by public or private collectors or museums in secured exhibits; or

“(2) property in the collection of any museum or veterans organization or held in a private collection for the purpose of public display, provided that any such property, the possession of which could undermine national security or create a hazard to public health or safety, has been fully demilitarized.

“(e) DETERMINATIONS OF VIOLATIONS.—(1) The district court of the United States for the district in which the property is located, or the district in which the person in possession of the property resides or is subject to service, shall have jurisdiction, regardless of the current approximated or estimated value of the property, to determine whether property was disposed of in violation of subsection (a). Any such determination shall be by a preponderance of the evidence.

Deadline.

“(2) Except as provided in paragraph (3), in the case of property, the possession of which could undermine national security or create a hazard to public health or safety, the determination under paragraph (1) may be made after the seizure of the property, as long as the United States files an action seeking such determination within 90 days after seizure of the property. If the person from whom the property is seized is found to have been lawfully in possession of the property and the return of the property could undermine national security or create a hazard to public health or safety, the Secretary of Defense shall reimburse the person for the market value for the property.

“(3) Paragraph (2) shall not apply to any firearm, ammunition, or ammunition component, or firearm part or accessory that is not prohibited for commercial sale.

“(f) DELIVERY OF SEIZED PROPERTY.—Any law enforcement official who seizes property under subsection (c) and is not authorized to retain it for the United States shall deliver the property to an authorized member of the armed forces or other authorized official of the Department of Defense or the Department of Justice.

“(g) SCOPE OF ENFORCEMENT.—This section shall apply to the following:

“(1) Any military or Department of Defense property disposed of on or after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 in a manner that is not in accordance with statutes and regulations governing Government property in effect at the time of the disposal of such property.

“(2) Any significant military equipment disposed of on or after January 1, 2002, in a manner that is not in accordance with statutes and regulations governing Government property in effect at the time of the disposal of such significant military equipment.

“(h) **RULE OF CONSTRUCTION.**—The authority of this section is in addition to any other authority of the United States with respect to property to which the United States may have right or title.

“(i) **DEFINITIONS.**—In this section:

“(1) The term ‘significant military equipment’ means defense articles on the United States Munitions List for which special export controls are warranted because of their capacity for substantial military utility or capability.

“(2) The term ‘museum’ has the meaning given that term in section 273(1) of the Museum Services Act (20 U.S.C. 9172(1)).

“(3) The term ‘fully demilitarized’ means, with respect to equipment or material, the destruction of the military offensive or defensive advantages inherent in the equipment or material, including, at a minimum, the destruction or disabling of key points of such equipment or material, such as the fuselage, tail assembly, wing spar, armor, radar and radomes, armament and armament provisions, operating systems and software, and classified items.

“(4) The term ‘veterans organization’ means any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 165 of such title is amended by inserting after the item relating to section 2789 the following new item:

“2790. Recovery of improperly disposed of Department of Defense property.”.

SEC. 356. OPERATIONAL READINESS MODELS.

Deadline.

(a) **REVIEW OF MODELS.**—Not later than September 30, 2011, the Director of the Congressional Budget Office shall conduct a study to identify, compare, and contrast the budget preparation tools and models used by each of the military departments to determine funding levels for operational readiness requirements during the programming, planning, budgeting, and execution process and report the findings to the congressional defense committees. In carrying out such study, the Director shall—

Study.

(1) assess whether any additional or alternative verified and validated operational readiness model used by any military department for budgeting for flying or ground equipment hours, steaming days, equipment operations, equipment maintenance, and depot maintenance should be incorporated into the budget process of that military department; and

(2) identify any shortcomings or deficiencies in the approach of each military department in building the operational readiness budget for that department.

(b) **CONGRESSIONAL BRIEFING.**—Not later than April 1, 2012, in conjunction with the submission by the Secretary of Defense of the budget justification documents for fiscal year 2013, the Secretaries of each of the military departments, or designated representatives thereof, shall brief the congressional defense committees on their respective responses to the study conducted by the Director of the Congressional Budget Office. Each such briefing shall include—

(1) a description of how the military department concerned plans to address any deficiencies in the development of the

operational readiness budget of such department identified in the study; and

(2) a description of how the modeling tools identified in the study could be used by the military department to improve the development of the operational readiness budget for the department.

SEC. 357. SENSE OF CONGRESS REGARDING CONTINUED IMPORTANCE OF HIGH-ALTITUDE AVIATION TRAINING SITE, COLORADO.

(a) FINDINGS.—Congress makes the following findings:

(1) The High-Altitude Aviation Training Site in Gypsum, Colorado, is the only Department of Defense aviation school that provides an opportunity for rotor-wing military pilots to train in high-altitude, mountainous terrain, under full gross weight and power management operations.

(2) The High-Altitude Aviation Training Site is operated by the Colorado Army National Guard and is available to pilots of all branches of the Armed Forces and to pilots of allied countries.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the High-Altitude Army Aviation Training Site continues to be critically important to ensuring the readiness and capabilities of rotor-wing military pilots; and

(2) the Department of Defense should take all appropriate actions to prevent encroachment on the High-Altitude Army Aviation Training Site.

49 USC 44718
note.

SEC. 358. STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS.

(a) OBJECTIVE.—It shall be an objective of the Department of Defense to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness.

(b) DESIGNATION OF SENIOR OFFICIAL AND LEAD ORGANIZATION.—

Deadline.

(1) DESIGNATION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall designate a senior official of the Department of Defense, and a lead organization of the Department of Defense, to—

(A) serve as the executive agent to carry out the review required by subsection (d);

(B) serve as a clearinghouse to coordinate Department of Defense review of applications for projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, and received by the Department of Defense from the Secretary of Transportation; and

(C) accelerate the development of planning tools necessary to determine the acceptability to the Department of Defense of proposals included in an application for a project submitted pursuant to such section.

(2) RESOURCES.—The Secretary shall ensure that the senior official and lead organization designated under paragraph (1) are assigned such personnel and resources as the Secretary considers appropriate to carry out this section.

Deadline.

(c) INITIAL ACTIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, acting

through the senior official and lead organization designated pursuant to subsection (b), shall—

(1) conduct a preliminary review of each application for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, that may have an adverse impact on military operations and readiness, unless such project has been granted a determination of no hazard. Such review shall, at a minimum, for each such project—

(A) assess the likely scope and duration of any adverse impact of such project on military operations and readiness; and

(B) identify any feasible and affordable actions that could be taken in the immediate future by the Department, the developer of such project, or others to mitigate such adverse impact and to minimize risks to national security while allowing such project to proceed with development;

(2) develop, in coordination with other departments and agencies of the Federal Government, an integrated review process to ensure timely notification and consideration of projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, that may have an adverse impact on military operations and readiness;

(3) establish procedures for the Department of Defense for the coordinated consideration of and response to a request for a review received from State and local officials or the developer of a renewable energy development or other energy project, including guidance to personnel at each military installation in the United States on how to initiate such procedures and ensure a coordinated Department response while seeking to fulfil the objective under subsection (a); and

Procedures.

(4) develop procedures for conducting early outreach to parties carrying out projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, that could have an adverse impact on military operations and readiness, and to the general public, to clearly communicate notice on actions being taken by the Department of Defense under this section and to receive comments from such parties and the general public on such actions.

Procedures.

(d) COMPREHENSIVE REVIEW.—

(1) STRATEGY REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense, acting through the senior official and lead organization designated pursuant to subsection (b), shall develop a comprehensive strategy for addressing the military impacts of projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code.

Deadline.

(2) ELEMENTS.—In developing the strategy required by paragraph (1), the Secretary of Defense shall—

(A) assess of the magnitude of interference posed by projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code;

(B) identify geographic areas selected as proposed locations for projects filed, or which may be filed in the future, with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, where such projects could have an adverse impact on military operations and

readiness and categorize the risk of adverse impact in such areas as high, medium, or low for the purpose of informing early outreach efforts under subsection (c)(4) and preliminary assessments under subsection (e); and

(C) specifically identify feasible and affordable long-term actions that may be taken to mitigate adverse impacts of projects filed, or which may be filed in the future, with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, on military operations and readiness, including—

(i) investment priorities of the Department of Defense with respect to research and development;

(ii) modifications to military operations to accommodate applications for such projects;

(iii) recommended upgrades or modifications to existing systems or procedures by the Department of Defense;

(iv) acquisition of new systems by the Department and other departments and agencies of the Federal Government and timelines for fielding such new systems; and

(v) modifications to the projects for which such applications are filed, including changes in size, location, or technology.

(e) DEPARTMENT OF DEFENSE HAZARD ASSESSMENT.—

Deadline.

(1) PRELIMINARY ASSESSMENT.—The procedures established pursuant to subsection (c) shall ensure that not later than 30 days after receiving a proper application for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, the Secretary of Defense shall review the project and provide a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk.

(2) DETERMINATION OF UNACCEPTABLE RISK.—The procedures established pursuant to subsection (c) shall ensure that the Secretary of Defense does not object to a project filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, except in a case in which the Secretary of Defense determines, after giving full consideration to mitigation actions identified pursuant to this section, that such project would result in an unacceptable risk to the national security of the United States.

Deadline.
Reports.

(3) CONGRESSIONAL NOTICE REQUIREMENT.—Not later than 30 days after making a determination of unacceptable risk under paragraph (2), the Secretary of Defense shall submit to the congressional defense committees a report on such determination and the basis for such determination. Such a report shall include an explanation of the operational impact that led to the determination, a discussion of the mitigation options considered, and an explanation of why the mitigation options were not feasible or did not resolve the conflict.

(4) NON-DELEGATION OF DETERMINATIONS.—The responsibility for making a determination of unacceptable risk under paragraph (2) may only be delegated to an appropriate senior officer of the Department of Defense, on the recommendation of the senior official designated pursuant to subsection (b).

The following individuals are appropriate senior officers of the Department of Defense for the purposes of this paragraph:

(A) The Deputy Secretary of Defense.

(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(C) The Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.

(f) REPORTS.—

(1) REPORT TO CONGRESS.—Not later than March 15 each year from 2011 through 2015, the Secretary of Defense shall submit to the congressional defense committees a report on the actions taken by the Department of Defense during the preceding year to implement this section and the comprehensive strategy developed pursuant to this section.

(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall include—

(A) the results of a review carried out by the Secretary of Defense of any projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code—

(i) that the Secretary of Defense has determined would result in an unacceptable risk to the national security; and

(ii) for which the Secretary of Defense has recommended to the Secretary of Transportation that a hazard determination be issued;

(B) an assessment of the risk associated with the loss or modifications of military training routes and a quantification of such risk;

(C) an assessment of the risk associated with solar power and similar systems as to the effects of glint on military readiness;

(D) an assessment of the risk associated with electromagnetic interference on military readiness, including the effects of testing and evaluation ranges;

(E) an assessment of any risks posed by the development of projects filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, to the prevention of threats and aggression directed toward the United States and its territories; and

(F) a description of the distance from a military installation that the Department of Defense will use to prescreen applicants under section 44718 of title 49, United States Code.

(g) AUTHORITY TO ACCEPT CONTRIBUTIONS OF FUNDS.—The Secretary of Defense is authorized to accept a voluntary contribution of funds from an applicant for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code. Amounts so accepted shall be available for the purpose of offsetting the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of such project on military operations and readiness.

(h) EFFECT OF DEPARTMENT OF DEFENSE HAZARD ASSESSMENT.—An action taken pursuant to this section shall not be considered to be a substitute for any assessment or determination required of the Secretary of Transportation under section 44718 of title 49, United States Code.

(i) SAVINGS PROVISION.—Nothing in this section shall be construed to affect or limit the application of, or any obligation to comply with, any environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(j) DEFINITIONS.—In this section:

(1) The term “military training route” means a training route developed as part of the Military Training Route Program, carried out jointly by the Federal Aviation Administration and the Secretary of Defense, for use by the Armed Forces for the purpose of conducting low-altitude, high-speed military training.

(2) The term “military installation” has the meaning given that term in section 2801(c)(4) of title 10, United States Code.

(3) The term “military readiness” includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End strengths for active forces.

Sec. 402. Revision in permanent active duty end strength minimum levels.

Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.

Sec. 412. End strengths for Reserves on active duty in support of the Reserves.

Sec. 413. End strengths for military technicians (dual status).

Sec. 414. Fiscal year 2011 limitation on number of non-dual status technicians.

Sec. 415. Maximum number of reserve personnel authorized to be on active duty for operational support.

Subtitle C—Authorization of Appropriations

Sec. 421. Military personnel.

Subtitle A—Active Forces

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2011, as follows:

(1) The Army, 569,400.

(2) The Navy, 328,700.

(3) The Marine Corps, 202,100.

(4) The Air Force, 332,200.

SEC. 402. REVISION IN PERMANENT ACTIVE DUTY END STRENGTH MINIMUM LEVELS.

Section 691(b) of title 10, United States Code, is amended by striking paragraphs (1) through (4) and inserting the following new paragraphs:

“(1) For the Army, 547,400.

“(2) For the Navy, 324,300.

“(3) For the Marine Corps, 202,100.

“(4) For the Air Force, 332,200.”.

Subtitle B—Reserve Forces

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2011, as follows:

- (1) The Army National Guard of the United States, 358,200.
- (2) The Army Reserve, 205,000.
- (3) The Navy Reserve, 65,500.
- (4) The Marine Corps Reserve, 39,600.
- (5) The Air National Guard of the United States, 106,700.
- (6) The Air Force Reserve, 71,200.
- (7) The Coast Guard Reserve, 10,000.

(b) END STRENGTH REDUCTIONS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

- (1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and
- (2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

(c) END STRENGTH INCREASES.—Whenever units or individual members of the Selected Reserve of any reserve component are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2011, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

- (1) The Army National Guard of the United States, 32,060.
- (2) The Army Reserve, 16,261.
- (3) The Navy Reserve, 10,688.
- (4) The Marine Corps Reserve, 2,261.
- (5) The Air National Guard of the United States, 14,584.
- (6) The Air Force Reserve, 2,992.

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The minimum number of military technicians (dual status) as of the last day of fiscal year 2011 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

- (1) For the Army Reserve, 8,395.
- (2) For the Army National Guard of the United States, 27,210.

(3) For the Air Force Reserve, 10,720.

(4) For the Air National Guard of the United States, 22,394.

SEC. 414. FISCAL YEAR 2011 LIMITATION ON NUMBER OF NON-DUAL STATUS TECHNICIANS.

(a) LIMITATIONS.—

(1) NATIONAL GUARD.—Within the limitation provided in section 10217(c)(2) of title 10, United States Code, the number of non-dual status technicians employed by the National Guard as of September 30, 2011, may not exceed the following:

(A) For the Army National Guard of the United States, 1,600.

(B) For the Air National Guard of the United States, 350.

(2) ARMY RESERVE.—The number of non-dual status technicians employed by the Army Reserve as of September 30, 2011, may not exceed 595.

(3) AIR FORCE RESERVE.—The number of non-dual status technicians employed by the Air Force Reserve as of September 30, 2011, may not exceed 90.

(b) NON-DUAL STATUS TECHNICIANS DEFINED.—In this section, the term “non-dual status technician” has the meaning given that term in section 10217(a) of title 10, United States Code.

SEC. 415. MAXIMUM NUMBER OF RESERVE PERSONNEL AUTHORIZED TO BE ON ACTIVE DUTY FOR OPERATIONAL SUPPORT.

During fiscal year 2011, the maximum number of members of the reserve components of the Armed Forces who may be serving at any time on full-time operational support duty under section 115(b) of title 10, United States Code, is the following:

(1) The Army National Guard of the United States, 17,000.

(2) The Army Reserve, 13,000.

(3) The Navy Reserve, 6,200.

(4) The Marine Corps Reserve, 3,000.

(5) The Air National Guard of the United States, 16,000.

(6) The Air Force Reserve, 14,000.

Subtitle C—Authorization of Appropriations

SEC. 421. MILITARY PERSONNEL.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense for military personnel for fiscal year 2011 a total of \$138,540,700,000.

(b) CONSTRUCTION OF AUTHORIZATION.—The authorization of appropriations in subsection (a) supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2011.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy Generally

Sec. 501. Ages for appointment and mandatory retirement for health professions officers.

- Sec. 502. Authority for appointment of warrant officers in the grade of W–1 by commission and standardization of warrant officer appointing authority.
- Sec. 503. Nondisclosure of information from discussions, deliberations, notes, and records of special selection boards.
- Sec. 504. Administrative removal of officers from promotion list.
- Sec. 505. Modification of authority for officers selected for appointment to general and flag officer grades to wear insignia of higher grade before appointment.
- Sec. 506. Temporary authority to reduce minimum length of active service as a commissioned officer required for voluntary retirement as an officer.

Subtitle B—Reserve Component Management

- Sec. 511. Removal of statutory distribution limits on Navy reserve flag officer allocation.
- Sec. 512. Assignment of Air Force Reserve military technicians (dual status) to positions outside Air Force Reserve unit program.
- Sec. 513. Temporary authority for temporary employment of non-dual status military technicians.
- Sec. 514. Revision of structure and functions of the Reserve Forces Policy Board.
- Sec. 515. Repeal of requirement for new oath when officer transfers from active-duty list to reserve active-status list.
- Sec. 516. Leave of members of the reserve components of the Armed Forces.
- Sec. 517. Direct appointment of graduates of the United States Merchant Marine Academy into the National Guard.

Subtitle C—Joint Qualified Officers and Requirements

- Sec. 521. Technical revisions to definition of joint matters for purposes of joint officer management.
- Sec. 522. Modification of promotion board procedures for joint qualified officers and officers with Joint Staff experience.

Subtitle D—General Service Authorities

- Sec. 531. Extension of temporary authority to order retired members of the Armed Forces to active duty in high-demand, low-density assignments.
- Sec. 532. Non-chargeable rest and recuperation absence for certain members undergoing extended deployment to a combat zone.
- Sec. 533. Correction of military records.
- Sec. 534. Disposition of members found to be fit for duty who are not suitable for deployment or worldwide assignment for medical reasons.
- Sec. 535. Review of laws, policies, and regulations restricting service of female members of the Armed Forces.

Subtitle E—Military Justice and Legal Matters

- Sec. 541. Continuation of warrant officers on active duty to complete disciplinary action.
- Sec. 542. Enhanced authority to punish contempt in military justice proceedings.
- Sec. 543. Improvements to Department of Defense domestic violence programs.

Subtitle F—Member Education and Training Opportunities and Administration

- Sec. 551. Enhancements of Department of Defense undergraduate nurse training program.
- Sec. 552. Repayment of education loan repayment benefits.
- Sec. 553. Participation of Armed Forces Health Professions Scholarship and Financial Assistance Program recipients in active duty health profession loan repayment program.
- Sec. 554. Active duty obligation for military academy graduates who participate in the Armed Forces Health Professions Scholarship and Financial Assistance program.

Subtitle G—Defense Dependents' Education

- Sec. 561. Enrollment of dependents of members of the Armed Forces who reside in temporary housing in Department of Defense domestic dependent elementary and secondary schools.
- Sec. 562. Continuation of authority to assist local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
- Sec. 563. Impact aid for children with severe disabilities.

Subtitle H—Decorations and Awards

- Sec. 571. Clarification of persons eligible for award of bronze star medal.

- Sec. 572. Authorization and request for award of Distinguished-Service Cross to Shinyei Matayoshi for acts of valor during World War II.
- Sec. 573. Authorization and request for award of Distinguished-Service Cross to Jay C. Copley for acts of valor during the Vietnam War.
- Sec. 574. Program to commemorate 60th anniversary of the Korean War.

Subtitle I—Military Family Readiness Matters

- Sec. 581. Appointment of additional members of Department of Defense Military Family Readiness Council.
- Sec. 582. Enhancement of community support for military families with special needs.
- Sec. 583. Modification of Yellow Ribbon Reintegration Program.
- Sec. 584. Expansion and continuation of Joint Family Support Assistance Program.
- Sec. 585. Report on military spouse education programs.
- Sec. 586. Report on enhancing benefits available for military dependent children with special education needs.
- Sec. 587. Reports on child development centers and financial assistance for child care for members of the Armed Forces.

Subtitle J—Other Matters

- Sec. 591. Authority for members of the Armed Forces and Department of Defense and Coast Guard civilian employees and their families to accept gifts from non-Federal entities.
- Sec. 592. Increase in number of private sector civilians authorized for admission to National Defense University.
- Sec. 593. Admission of defense industry civilians to attend United States Air Force Institute of Technology.
- Sec. 594. Updated terminology for Army Medical Service Corps.
- Sec. 595. Date for submission of annual report on Department of Defense STARBASE Program.
- Sec. 596. Extension of deadline for submission of final report of Military Leadership Diversity Commission.

Subtitle A—Officer Personnel Policy Generally

SEC. 501. AGES FOR APPOINTMENT AND MANDATORY RETIREMENT FOR HEALTH PROFESSIONS OFFICERS.

(a) AGE FOR ORIGINAL APPOINTMENT AS HEALTH PROFESSIONS OFFICER.—Section 532(d)(2) of title 10, United States Code, is amended by striking “reserve”.

(b) MANDATORY RETIREMENT AGE FOR HEALTH PROFESSIONS OFFICERS.—

(1) ADDITIONAL CATEGORIES OF OFFICERS ELIGIBLE FOR DEFERRAL OF MANDATORY RETIREMENT FOR AGE.—Paragraph (2) of section 1251(b) of such title is amended—

(A) in subparagraph (B), by striking “or” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(D) an officer in a category of officers designated by the Secretary of the military department concerned for the purposes of this paragraph as consisting of officers whose duties consist primarily of—

“(i) providing health care;

“(ii) performing other clinical care; or

“(iii) performing health care-related administrative duties.”.

(2) CONFORMING AMENDMENT.—Paragraph (1) of such section is amended by striking “the officer will be performing duties consisting primarily of providing patient care or performing other clinical duties.” and inserting “the officer—

“(A) will be performing duties consisting primarily of providing patient care or performing other clinical duties; or

“(B) is in a category of officers designated under subparagraph (D) of paragraph (2) whose duties will consist primarily of the duties described in clause (i), (ii), or (iii) of such subparagraph.”.

SEC. 502. AUTHORITY FOR APPOINTMENT OF WARRANT OFFICERS IN THE GRADE OF W-1 BY COMMISSION AND STANDARDIZATION OF WARRANT OFFICER APPOINTING AUTHORITY.

(a) REGULAR OFFICERS.—

(1) **AUTHORITY FOR APPOINTMENTS BY COMMISSION IN WARRANT OFFICER W-1 GRADE.**—The first sentence of section 571(b) of title 10, United States Code, is amended by striking “by the Secretary concerned” and inserting “, except that with respect to an armed force under the jurisdiction of the Secretary of a military department, the Secretary concerned may provide by regulation that appointments in that grade in that armed force shall be made by commission”.

(2) **APPOINTING AUTHORITY.**—The second sentence of such section is amended by inserting before the period at the end the following: “, and appointments (whether by warrant or commission) in the grade of regular warrant officer, W-1, shall be made by the President, except that appointments in that grade in the Coast Guard shall be made by the Secretary concerned”.

President.

(b) **RESERVE OFFICERS.**—Subsection (b) of section 12241 of such title is amended to read as follows:

“(b) Appointments in permanent reserve warrant officer grades shall be made in the same manner as is prescribed for regular warrant officer grades by section 571(b) of this title.”.

(c) **PRESIDENTIAL FUNCTIONS.**—Except as otherwise provided by the President by Executive order, the provisions of Executive Order 13384 (10 U.S.C. 531 note) relating to the functions of the President under the second sentence of section 571(b) of title 10, United States Code, shall apply in the same manner to the functions of the President under section 12241(b) of title 10, United States Code.

Applicability.
10 USC 12241
note.

SEC. 503. NONDISCLOSURE OF INFORMATION FROM DISCUSSIONS, DELIBERATIONS, NOTES, AND RECORDS OF SPECIAL SELECTION BOARDS.

(a) **NONDISCLOSURE OF BOARD PROCEEDINGS.**—Section 613a of title 10, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

“(a) **PROHIBITION ON DISCLOSURE.**—The proceedings of a selection board convened under section 573, 611, or 628 of this title may not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.”;

(2) in subsection (b), by striking “AND RECORDS” and inserting “NOTES, AND RECORDS”; and

(3) by adding at the end the following new subsection:

“(c) **APPLICABILITY.**—This section applies to all selection boards convened under section 573, 611, or 628 of this title, regardless of the date on which the board was convened.”.

10 USC 628.

(b) **REPORTS OF BOARDS.**—Section 628(c)(2) of such title is amended by striking “sections 576(d) and 576(f)” and inserting “sections 576(d), 576(f), and 613a”.

(c) **RESERVE BOARDS.**—Section 14104 of such title is amended—

(1) by striking subsection (a) and inserting the following new subsection:

“(a) **PROHIBITION ON DISCLOSURE.**—The proceedings of a selection board convened under section 14101 or 14502 of this title may not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.”;

(2) in subsection (b), by striking “AND RECORDS” and inserting “NOTES, AND RECORDS”; and

(3) by adding at the end the following new subsection:

“(c) **APPLICABILITY.**—This section applies to all selection boards convened under section 14101 or 14502 of this title, regardless of the date on which the board was convened.”.

SEC. 504. ADMINISTRATIVE REMOVAL OF OFFICERS FROM PROMOTION LIST.

(a) **ACTIVE-DUTY LIST.**—Section 629 of title 10, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

Regulations.

“(d) **ADMINISTRATIVE REMOVAL.**—Under regulations prescribed by the Secretary concerned, if an officer on the active-duty list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter, but before being promoted, the officer’s name shall be administratively removed from the list of officers recommended for promotion by a selection board.”.

(b) **RESERVE ACTIVE-STATUS LIST.**—Section 14310 of such title is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

Regulations.

“(d) **ADMINISTRATIVE REMOVAL.**—Under regulations prescribed by the Secretary concerned, if an officer on the reserve active-status list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter or having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer’s name shall be administratively removed from the list of officers recommended for promotion by a selection board.”.

SEC. 505. MODIFICATION OF AUTHORITY FOR OFFICERS SELECTED FOR APPOINTMENT TO GENERAL AND FLAG OFFICER GRADES TO WEAR INSIGNIA OF HIGHER GRADE BEFORE APPOINTMENT.

(a) **LIMITED AUTHORITY FOR OFFICERS SELECTED FOR APPOINTMENT TO GRADES ABOVE MAJOR GENERAL AND REAR ADMIRAL.**—

(1) **IN GENERAL.**—Chapter 45 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions

“(a) **AUTHORITY.**—An officer serving in a grade below the grade of lieutenant general or, in the case of the Navy, vice admiral, who has been selected for appointment to the grade of lieutenant general or general, or, in the case of the Navy, vice admiral or admiral, and an officer serving in the grade of lieutenant general or vice admiral who has been selected for appointment to the grade of general or admiral, may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that higher grade for a period of up to 14 days before assuming the duties of a position for which the higher grade is authorized. An officer who is so authorized to wear the insignia of a higher grade is said to be ‘frocked’ to that grade.

“(b) **RESTRICTIONS.**—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

“(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

“(2) the officer has received orders to serve in a position outside the military department of that officer for which that grade is authorized;

“(3) the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority) has given approval for the officer to wear the insignia for that grade before assuming the duties of a position for which that grade is authorized; and

“(4) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

Notification.

“(c) **BENEFITS NOT TO BE CONSTRUED AS ACCRUING.**—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of a higher grade may not be construed as conferring authority for that officer to—

“(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

“(B) assume any legal authority associated with that grade.

“(2) The period for which an officer wears the insignia of a higher grade under such authority may not be taken into account for any of the following purposes:

“(A) Seniority in that grade.

“(B) Time of service in that grade.

“(d) **LIMITATION ON NUMBER OF OFFICERS FROCKED.**—The total number of officers who are authorized to wear the insignia for a higher grade under this section shall count against the limitation in section 777(d) of this title on the total number of officers authorized to wear the insignia of a higher grade.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions.”.

(b) REPEAL OF WAITING PERIOD FOLLOWING CONGRESSIONAL NOTIFICATION FOR OFFICERS SELECTED FOR APPOINTMENT TO GENERAL AND FLAG OFFICER GRADES BELOW LIEUTENANT GENERAL AND VICE ADMIRAL.—Section 777(b)(3)(B) of such title is amended by striking “and a period of 30 days has elapsed after the date of the notification”.

10 USC 777.

SEC. 506. TEMPORARY AUTHORITY TO REDUCE MINIMUM LENGTH OF ACTIVE SERVICE AS A COMMISSIONED OFFICER REQUIRED FOR VOLUNTARY RETIREMENT AS AN OFFICER.

(a) ARMY.—Section 3911(b)(2) of title 10, United States Code, is amended by striking “January 6, 2006, and ending on December 31, 2008” and inserting “the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013”.

(b) NAVY AND MARINE CORPS.—Section 6323(a)(2)(B) of such title is amended by striking “January 6, 2006, and ending on December 31, 2008” and inserting “the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013”.

(c) AIR FORCE.—Section 8911(b)(2) of such title is amended by striking “January 6, 2006, and ending on December 31, 2008” and inserting “the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013”.

Subtitle B—Reserve Component Management

SEC. 511. REMOVAL OF STATUTORY DISTRIBUTION LIMITS ON NAVY RESERVE FLAG OFFICER ALLOCATION.

Section 12004(c) of title 10, United States Code, is amended—

- (1) by striking paragraphs (2), (3), and (5); and
- (2) by redesignating paragraph (4) as paragraph (2).

SEC. 512. ASSIGNMENT OF AIR FORCE RESERVE MILITARY TECHNICIANS (DUAL STATUS) TO POSITIONS OUTSIDE AIR FORCE RESERVE UNIT PROGRAM.

Section 10216(d) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Air Force Reserve in an area other than the Air Force Reserve unit program, except that not more than 50 of such technicians may be assigned outside of the unit program at the same time.”.

SEC. 513. TEMPORARY AUTHORITY FOR TEMPORARY EMPLOYMENT OF NON-DUAL STATUS MILITARY TECHNICIANS.

(a) EXCEPTION FOR TEMPORARY EMPLOYMENT.—Section 10217 of title 10, United States Code, is amended—

- (1) in subsection (a)—

(A) by striking “or” at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting “; or”; and

(C) by adding at the end the following new paragraph:

“(3) is hired as a temporary employee pursuant to the exception for temporary employment provided by subsection (d) and subject to the terms and conditions of such subsection.”; and

(2) by adding at the end the following new subsection:

“(d) EXCEPTION FOR TEMPORARY EMPLOYMENT.—(1) Notwithstanding section 10218 of this title, the Secretary of the Army or the Secretary of the Air Force may employ, for a period not to exceed two years, a person to fill a vacancy created by the mobilization of a military technician (dual status) occupying a position under section 10216 of this title.

Time period.

“(2) The duration of the temporary employment of a person in a military technician position under this subsection may not exceed the shorter of the following:

“(A) The period of mobilization of the military technician (dual status) whose vacancy is being filled by the temporary employee.

“(B) Two years.

“(3) No person may be hired under the authority of this subsection after the end of the 2-year period beginning on the date of the enactment of this subsection.”.

Time period.

(b) EXCEPTION FROM PERMANENT LIMITATION ON NUMBER OF NON-DUAL STATUS TECHNICIANS.—Subsection (c) of such section is amended by adding at the end the following new paragraph:

10 USC 10217.

“(3) An individual employed as a non-dual status technician as described in subsection (a)(3) shall not be considered a non-dual status technician for purposes of paragraphs (1) and (2).”.

SEC. 514. REVISION OF STRUCTURE AND FUNCTIONS OF THE RESERVE FORCES POLICY BOARD.

(a) REVISION OF STRUCTURE.—

(1) IN GENERAL.—Section 10301 of title 10, United States Code, is amended to read as follows:

“§ 10301. Reserve Forces Policy Board

“(a) IN GENERAL.—As provided in section 175 of this title, there is in the Office of the Secretary of Defense a board known as the ‘Reserve Forces Policy Board’ (in this section referred to as the ‘Board’).

“(b) FUNCTIONS.—The Board shall serve as an independent adviser to the Secretary of Defense to provide advice and recommendations to the Secretary on strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components.

Recommendations.

“(c) MEMBERSHIP.—The Board consists of 20 members, appointed or designated as follows:

“(1) A civilian appointed by the Secretary of Defense from among persons determined by the Secretary to have the knowledge of, and experience in, policy matters relevant to national security and reserve component matters necessary to carry out the duties of chair of the Board, who shall serve as chair of the Board.

“(2) Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Army—

“(A) one of whom shall be a member of the Army National Guard of the United States or a former member of the Army National Guard of the United States in the Retired Reserve; and

“(B) one of whom shall be a member or retired member of the Army Reserve.

“(3) Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy—

“(A) one of whom shall be an active or retired officer of the Navy Reserve; and

“(B) one of whom shall be an active or retired officer of the Marine Corps Reserve.

“(4) Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force—

“(A) one of whom shall be a member of the Air National Guard of the United States or a former member of the Air National Guard of the United States in the Retired Reserve; and

“(B) one of whom shall be a member or retired member of the Air Force Reserve.

“(5) One active or retired reserve officer or enlisted member of the Coast Guard designated by the Secretary of Homeland Security.

“(6) Ten persons appointed or designated by the Secretary of Defense, each of whom shall be a United States citizen having significant knowledge of and experience in policy matters relevant to national security and reserve component matters and shall be one of the following:

“(A) An individual not employed in any Federal or State department or agency.

“(B) An individual employed by a Federal or State department or agency.

“(C) An officer of a regular component of the armed forces on active duty, or an officer of a reserve component of the armed forces in an active status, who—

“(i) is serving or has served in a senior position on the Joint Staff, the headquarters staff of a combatant command, or the headquarters staff of an armed force; and

“(ii) has experience in joint professional military education, joint qualification, and joint operations matters.

“(7) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general or flag officer recommended by the chair and designated by the Secretary of Defense, who shall serve without vote—

“(A) as military adviser to the chair;

“(B) as military executive officer of the Board; and

“(C) as supervisor of the operations and staff of the Board.

“(8) A senior enlisted member of a reserve component recommended by the chair and designated by the Secretary of

Defense, who shall serve without vote as enlisted military adviser to the chair.

“(d) MATTERS TO BE ACTED ON.—The Board may act on those matters referred to it by the chair and on any matter raised by a member of the Board or the Secretary of Defense.

“(e) STAFF.—The Board shall be supported by a staff consisting of one full-time officer from each of the reserve components listed in paragraphs (1) through (6) of section 10101 of this title who holds the grade of colonel (or in the case of the Navy, the grade of captain) or who has been selected for promotion to that grade. These officers shall also serve as liaisons between their respective components and the Board. They shall perform their staff and liaison duties under the supervision of the military executive officer of the Board in an independent manner reflecting the independent nature of the Board.

“(f) RELATIONSHIP TO SERVICE RESERVE POLICY COMMITTEES AND BOARDS.—This section does not affect the committees and boards prescribed within the military departments by sections 10302 through 10305 of this title, and a member of such a committee or board may, if otherwise eligible, be a member of the Board.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph

(1) shall take effect on July 1, 2011.

(b) REVISION TO ANNUAL REPORT REQUIREMENT.—Section 113(c)(2) of title 10, United States Code, is amended by striking “the reserve programs of the Department of Defense and on any other matters” and inserting “on any reserve component matter”.

10 USC 10301
note.

SEC. 515. REPEAL OF REQUIREMENT FOR NEW OATH WHEN OFFICER TRANSFERS FROM ACTIVE-DUTY LIST TO RESERVE ACTIVE-STATUS LIST.

Section 12201(a)(2) of title 10, United States Code, is amended by striking “An officer transferred from the active-duty list of an armed force to a reserve active-status list of an armed force under section 647 of this title” and inserting “If an officer is transferred from the active-duty list of an armed force to a reserve active-status list of an armed force in accordance with regulations prescribed by the Secretary of Defense, the officer”.

SEC. 516. LEAVE OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES.

(a) CARRYOVER OF ACCUMULATED LEAVE TO SUCCEEDING PERIOD OF ACTIVE SERVICE.—Section 701 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(k) A member of a reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member’s next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.”.

(b) PAYMENT FOR UNUSED ACCRUED LEAVE.—Section 501(a) of title 37, United States Code, is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(4) in the case of an officer or an enlisted member of a reserve component who is not serving on active duty, separation or release from the reserve component under honorable conditions, or death; and

“(5) in the case of an enlisted member of a reserve a component who is not serving on active duty, termination of enlistment in conjunction with the commencement of a successive enlistment, or appointment as an officer.”.

SEC. 517. DIRECT APPOINTMENT OF GRADUATES OF THE UNITED STATES MERCHANT MARINE ACADEMY INTO THE NATIONAL GUARD.

Section 305(a)(5) of title 32, United States Code, is amended by striking “or the United States Coast Guard Academy” and inserting “the United States Coast Guard Academy, or the United States Merchant Marine Academy”.

Subtitle C—Joint Qualified Officers and Requirements

SEC. 521. TECHNICAL REVISIONS TO DEFINITION OF JOINT MATTERS FOR PURPOSES OF JOINT OFFICER MANAGEMENT.

Section 668(a) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “multiple” in the matter preceding subparagraph (A) and inserting “integrated”; and

(B) by striking “and” at the end of the subparagraph (D) and inserting “or”; and

(2) by striking paragraph (2) and inserting the following new paragraph:

“(2) In the context of joint matters, the term ‘integrated military forces’ refers to military forces that are involved in the planning or execution (or both) of operations involving participants from—

“(A) more than one military department; or

“(B) a military department and one or more of the following:

“(i) Other departments and agencies of the United States.

“(ii) The military forces or agencies of other countries.

“(iii) Non-governmental persons or entities.”.

SEC. 522. MODIFICATION OF PROMOTION BOARD PROCEDURES FOR JOINT QUALIFIED OFFICERS AND OFFICERS WITH JOINT STAFF EXPERIENCE.

(a) BOARD COMPOSITION.—Subsection (c) of section 612 of title 10, United States Code, is amended to read as follows:

“(c)(1) Each selection board convened under section 611(a) of this title that will consider an officer described in paragraph (2) shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is a joint qualified officer.

“(2) Paragraph (1) applies with respect to an officer who—

“(A) is serving on, or has served on, the Joint Staff; or

“(B) is a joint qualified officer.

“(3) The Secretary of Defense may waive the requirement in paragraph (1) in the case of—

“(A) any selection board of the Marine Corps; or

Applicability.

Waiver authority.

“(B) any selection board that is considering officers in specialties identified in paragraph (2) or (3) of section 619a(b) of this title.”.

(b) INFORMATION FURNISHED TO SELECTION BOARDS.—Section 615 of such title is amended in subsections (b)(5) and (c) by striking “in joint duty assignments of officers who are serving, or have served, in such assignments” and inserting “of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers”. 10 USC 615.

(c) ACTION ON REPORT OF SELECTION BOARDS.—Section 618(b) of such title is amended—

(1) in paragraph (1), by striking “are serving, or have served, in joint duty assignments” and inserting “are serving on, or have served on, the Joint Staff or are joint qualified officers”;

(2) in subparagraphs (A) and (B) of paragraph (2), by striking “in joint duty assignments of officers who are serving, or have served, in such assignments” and inserting “of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers”; and

(3) in paragraph (4), by striking “in joint duty assignments” and inserting “who are serving on, or have served on, the Joint Staff or are joint qualified officers”.

Subtitle D—General Service Authorities

SEC. 531. EXTENSION OF TEMPORARY AUTHORITY TO ORDER RETIRED MEMBERS OF THE ARMED FORCES TO ACTIVE DUTY IN HIGH-DEMAND, LOW-DENSITY ASSIGNMENTS.

(a) EXTENSION OF AUTHORITY.—Section 688a(f) of title 10, United States Code, is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

(b) REPORT REQUIRED.—Not later than April 1, 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing an assessment by the Secretary of the need to extend the authority provided by section 688a of title 10, United States Code, beyond December 31, 2011. The report shall include, at a minimum, the following:

(1) A list of the current types of high-demand, low-density capabilities (as defined in such section) for which the authority is being used to address operational requirements.

(2) For each high-demand, low-density capability included in the list under paragraph (1), the number of retired members of the Armed Forces who have served on active duty at any time during each of fiscal years 2007 through 2010 under the authority.

(3) A plan to increase the required active duty strength for the high-demand, low-density capabilities included in the list under paragraph (1) to eliminate the need to use the authority.

SEC. 532. NON-CHARGEABLE REST AND RECUPERATION ABSENCE FOR CERTAIN MEMBERS UNDERGOING EXTENDED DEPLOYMENT TO A COMBAT ZONE.

(a) IN GENERAL.—Chapter 40 of title 10, United States Code, is amended by inserting after section 705 the following new section:

“§ 705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone

Regulations.

“(a) REST AND RECUPERATION AUTHORIZED.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may provide a member of the armed forces described in subsection (b) the benefits described in subsection (c).

“(b) COVERED MEMBERS.—A member of the armed forces described in this subsection is any member who—

“(1) is assigned or deployed for at least 270 days in an area or location—

“(A) that is designated by the President as a combat zone; and

“(B) in which hardship duty pay is authorized to be paid under section 305 of title 37; and

“(2) meets such other criteria as the Secretary of Defense may prescribe in the regulations required by subsection (a).

“(c) BENEFITS.—The benefits described in this subsection are the following:

“(1) A period of rest and recuperation absence for not more than 15 days.

“(2) Round-trip transportation at Government expense from the area or location in which the member is serving in connection with the exercise of the period of rest and recuperation.

“(d) CONSTRUCTION WITH OTHER LEAVE.—Any benefits provided a member under this section are in addition to any other leave or absence to which the member may be entitled.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 705 the following new item:

“705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone.”.

SEC. 533. CORRECTION OF MILITARY RECORDS.

(a) MEMBERS ELIGIBLE TO REQUEST REVIEW OF RETIREMENT OR SEPARATION WITHOUT PAY FOR PHYSICAL DISABILITY.—Section 1554(a) of title 10, United States Code, is amended—

(1) by striking “an officer” and inserting “a member or former member of the uniformed services”; and

(2) by striking “his case” and inserting “the member’s case”.

(b) LIMITATION ON REDUCTION IN PERSONNEL ASSIGNED TO DUTY WITH SERVICE REVIEW AGENCY.—1559(a) of such title is amended by striking “December 31, 2010” and inserting “December 31, 2013”.

SEC. 534. DISPOSITION OF MEMBERS FOUND TO BE FIT FOR DUTY WHO ARE NOT SUITABLE FOR DEPLOYMENT OR WORLD-WIDE ASSIGNMENT FOR MEDICAL REASONS.

(a) DISPOSITION.—

(1) IN GENERAL.—Chapter 61 of title 10, United States Code, is amended by inserting after section 1214 the following new section:

“§ 1214a. Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation

“(a) DISPOSITION.—Except as provided in subsection (c), the Secretary of the military department concerned may not authorize the involuntary administrative separation of a member described in subsection (b) based on a determination that the member is unsuitable for deployment or worldwide assignment based on the same medical condition of the member considered by a Physical Evaluation Board during the evaluation of the member.

“(b) COVERED MEMBERS.—A member covered by subsection (a) is any member of the armed forces who has been determined by a Physical Evaluation Board pursuant to a physical evaluation by the board to be fit for duty.

“(c) REEVALUATION.—(1) The Secretary of the military department concerned may direct the Physical Evaluation Board to reevaluate any member described in subsection (b) if the Secretary has reason to believe that a medical condition of the member considered by the Physical Evaluation Board during the evaluation of the member described in that subsection renders the member unsuitable for continued military service based on the medical condition.

“(2) A member determined pursuant to reevaluation under paragraph (1) to be unfit to perform the duties of the member’s office, grade, rank, or rating may be retired or separated for physical disability under this chapter.

“(3) The Secretary of Defense shall be the final approval authority for any case determined by the Secretary of a military department to warrant administrative separation based on a determination that the member is unsuitable for continued service due to the same medical condition of the member considered by a Physical Evaluation Board that found the member fit for duty.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 61 of such title is amended by inserting after the item relating to section 1214 the following new item:

“1214a. Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to members evaluated for fitness for duty by Physical Evaluation Boards on or after that date.

10 USC 1214a
note.

SEC. 535. REVIEW OF LAWS, POLICIES, AND REGULATIONS RESTRICTING SERVICE OF FEMALE MEMBERS OF THE ARMED FORCES.

(a) REVIEW REQUIRED.—The Secretary of Defense, in coordination with the Secretaries of the military departments, shall conduct a review of laws, policies, and regulations, including the collocation policy, that may restrict the service of female members of the Armed Forces to determine whether changes in such laws, policies, and regulations are needed to ensure that female members have an equitable opportunity to compete and excel in the Armed Forces.

Deadline.
Reports.

(b) **SUBMISSION OF RESULTS.**—Not later than April 15, 2011, the Secretary of Defense shall submit to the congressional defense committees a report containing the results of the review.

Subtitle E—Military Justice and Legal Matters

SEC. 541. CONTINUATION OF WARRANT OFFICERS ON ACTIVE DUTY TO COMPLETE DISCIPLINARY ACTION.

Section 580 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f) A warrant officer subject to discharge or retirement under this section, but against whom any action has been commenced with a view to trying the officer by court-martial, may be continued on active duty, without prejudice to such action, until the completion of such action.”.

SEC. 542. ENHANCED AUTHORITY TO PUNISH CONTEMPT IN MILITARY JUSTICE PROCEEDINGS.

(a) **IN GENERAL.**—Section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 848. Art. 48. Contempts

“(a) **AUTHORITY TO PUNISH CONTEMPT.**—A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

“(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

“(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

“(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.

“(b) **PUNISHMENT.**—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of \$1,000, or both.

“(c) **INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.**—This section does not apply to a military commission established under chapter 47A of this title.”.

10 USC 848 note.

(b) **EFFECTIVE DATE.**—Section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to acts of contempt committed after the date of the enactment of this Act.

10 USC 1562
note.

SEC. 543. IMPROVEMENTS TO DEPARTMENT OF DEFENSE DOMESTIC VIOLENCE PROGRAMS.

Plans.
Deadline.

(a) **IMPLEMENTATION OF OUTSTANDING COMPTROLLER GENERAL RECOMMENDATIONS.**—Consistent with the recommendations contained in the report of the Comptroller General of the United States titled “Status of Implementation of GAO’s 2006 Recommendations on the Department of Defense’s Domestic Violence Program” (GAO–10–577R), the Secretary of Defense shall complete,

not later than one year after the date of enactment of this Act, implementation of actions to address the following recommendations:

(1) **DEFENSE INCIDENT-BASED REPORTING SYSTEM.**—The Secretary of Defense shall develop a comprehensive management plan to address deficiencies in the data captured in the Defense Incident-Based Reporting System to ensure the system can provide an accurate count of domestic violence incidents, and any consequent disciplinary action, that are reported throughout the Department of Defense.

(2) **ADEQUATE PERSONNEL.**—The Secretary of Defense shall develop a plan to ensure that adequate personnel are available to implement recommendations made by the Defense Task Force on Domestic Violence.

(3) **DOMESTIC VIOLENCE TRAINING DATA FOR CHAPLAINS.**—The Secretary of Defense shall develop a plan to collect domestic violence training data for chaplains.

(4) **OVERSIGHT FRAMEWORK.**—The Secretary of Defense shall develop an oversight framework for Department of Defense domestic violence programs, to include oversight of implementation of recommendations made by the Defense Task Force on Domestic Violence, including budgeting, communication initiatives, and policy compliance.

(b) **IMPLEMENTATION REPORT.**—The Secretary of Defense shall submit to the congressional defense committees an implementation report within 90 days of the completion of actions outlined in subsection (a).

Subtitle F—Member Education and Training Opportunities and Administration

SEC. 551. ENHANCEMENTS OF DEPARTMENT OF DEFENSE UNDERGRADUATE NURSE TRAINING PROGRAM.

(a) **CLARIFICATION OF DEGREE COVERED BY PROGRAM.**—Subsection (a) of section 2016 of title 10, United States Code, is amended by striking “a nursing degree” and inserting “a bachelor of science degree in nursing”.

(b) **GRADUATION RATES OF TRAINING PROGRAMS.**—Subsection (b) of such section is amended by inserting “in nursing” after “bachelor of science degree”.

(c) **LOCATION OF PROGRAMS.**—Subsection (d) of such section is amended to read as follows:

“(d) **LOCATION OF PROGRAMS.**—(1) An academic institution selected to operate an undergraduate nurse training program shall establish the program at or near a military installation that has a military treatment facility designated as a medical center with inpatient capability and multiple graduate medical education programs located on the installation or within reasonable proximity to the installation.

“(2) Before approving a location as the site of an undergraduate nurse training program, the Secretary of Defense shall conduct an assessment to ensure that the establishment of the program at that location will not adversely impact or displace existing nurse training programs, either conducted by the Department of Defense or by a civilian entity, at the location.”.

Assessment.

(d) **PILOT PROGRAM.**—

(1) IMPLEMENTATION.—Paragraph (2) of section 525(d) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2287; 10 U.S.C. 2016 note) is amended by striking “July 1, 2011” and inserting “December 31, 2011”.

(2) GRADUATION RATES.—Paragraph (3) of such section is amended—

(A) by striking the “The pilot program shall achieve” and inserting “The goal of the pilot program is to achieve”; and

(B) by striking “nurse training program” and inserting “nurse training programs”.

SEC. 552. REPAYMENT OF EDUCATION LOAN REPAYMENT BENEFITS.

(a) ENLISTED MEMBERS ON ACTIVE DUTY IN SPECIFIED MILITARY SPECIALTIES.—Section 2171 of title 10, United States Code, is amended by adding at the end the following new subsections:

“(g) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 16301 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) of title 37.

“(h) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member’s death or disability.”

(b) MEMBERS OF SELECTED RESERVE.—Section 16301 of such title is amended by adding at the end the following new subsections:

“(h) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 2171 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) of title 37.

“(i) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member’s death or disability.”

SEC. 553. PARTICIPATION OF ARMED FORCES HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM RECIPIENTS IN ACTIVE DUTY HEALTH PROFESSION LOAN REPAYMENT PROGRAM.

Section 2173(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) The person is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance Program under subchapter I of chapter 105 of this title for a number of years less than is required to complete the normal length of the course of study required for the health profession concerned.”

Regulations.
Procedures.
Standards.

SEC. 554. ACTIVE DUTY OBLIGATION FOR MILITARY ACADEMY GRADUATES WHO PARTICIPATE IN THE ARMED FORCES HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM.

(a) **MILITARY ACADEMY GRADUATES.**—Section 4348(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) That if an appointment described in paragraph (2) or (3) is tendered and the cadet participates in a program under section 2121 of this title, the cadet will fulfill any unserved obligation incurred under this section on active duty, regardless of the type of appointment held, upon completion of, and in addition to, any service obligation incurred under section 2123 of this title for participation in such program.”.

(b) **NAVAL ACADEMY GRADUATES.**—Section 6959(a) of such title is amended by adding at the end the following new paragraph:

“(4) That if an appointment described in paragraph (2) or (3) is tendered and the midshipman participates in a program under section 2121 of this title, the midshipman will fulfill any unserved obligation incurred under this section on active duty, regardless of the type of appointment held, upon completion of, and in addition to, any service obligation incurred under section 2123 of this title for participation in such program.”.

(c) **AIR FORCE ACADEMY GRADUATES.**—Section 9348(a) of such title is amended by adding at the end the following new paragraph:

“(4) That if an appointment described in paragraph (2) or (3) is tendered and the cadet participates in a program under section 2121 of this title, the cadet will fulfill any unserved obligation incurred under this section on active duty, regardless of the type of appointment held, upon completion of, and in addition to, any service obligation incurred under section 2123 of this title for participation in such program.”.

Subtitle G—Defense Dependents’ Education

SEC. 561. ENROLLMENT OF DEPENDENTS OF MEMBERS OF THE ARMED FORCES WHO RESIDE IN TEMPORARY HOUSING IN DEPARTMENT OF DEFENSE DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS.

Section 2164(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3)(A) Under the circumstances described in subparagraph (B), the Secretary may, at the discretion of the Secretary, permit a dependent of a member of the armed forces to enroll in an educational program provided by the Secretary pursuant to this subsection without regard to the requirement in paragraph (1) with respect to residence on a military installation.

“(B) Subparagraph (A) applies only if—

“(i) the dependents reside in temporary housing (regardless of whether the temporary housing is on Federal property)—

“(I) because of the unavailability of adequate permanent living quarters on the military installation to which the member is assigned; or

Applicability.

“(II) while the member is wounded, ill, or injured;
and
“(ii) the Secretary determines that the circumstances of such living arrangements justify extending the enrollment authority to include the dependents.”.

SEC. 562. CONTINUATION OF AUTHORITY TO ASSIST LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) **ASSISTANCE TO SCHOOLS WITH SIGNIFICANT NUMBERS OF MILITARY DEPENDENT STUDENTS.**—Of the amount authorized to be appropriated for fiscal year 2011 pursuant to section 301(5) for operation and maintenance for Defense-wide activities, \$30,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (a) of section 572 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 20 U.S.C. 7703b).

(b) **ASSISTANCE TO SCHOOLS WITH ENROLLMENT CHANGES DUE TO BASE CLOSURES, FORCE STRUCTURE CHANGES, OR FORCE RELOCATIONS.**—Of the amount authorized to be appropriated for fiscal year 2011 pursuant to section 301(5) for operation and maintenance for Defense-wide activities, \$10,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (b) of section 572 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 20 U.S.C. 7703b).

(c) **LOCAL EDUCATIONAL AGENCY DEFINED.**—In this section, the term “local educational agency” has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

SEC. 563. IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.

Of the amount authorized to be appropriated for fiscal year 2011 pursuant to section 301(5) for operation and maintenance for Defense-wide activities, \$10,000,000 shall be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77; 20 U.S.C. 7703a).

Subtitle H—Decorations and Awards

SEC. 571. CLARIFICATION OF PERSONS ELIGIBLE FOR AWARD OF BRONZE STAR MEDAL.

(a) **LIMITATION ON ELIGIBLE PERSONS.**—Section 1133 of title 10, United States Code, is amended to read as follows:

“§ 1133. Bronze Star: limitation on persons eligible to receive

“The decoration known as the ‘Bronze Star’ may only be awarded to a member of a military force who—

“(1) at the time of the events for which the decoration is to be awarded, was serving in a geographic area in which special pay is authorized under section 310 or paragraph (1) or (3) of section 351(a) of title 37; or

“(2) receives special pay under section 310 or paragraph (1) or (3) of section 351(a) of title 37 as a result of those events.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 57 of such title is amended by striking the item relating to section 1133 and inserting the following new item:

“1133. Bronze Star: limitation on persons eligible to receive.”.

(c) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) applies to the award of the Bronze Star after October 30, 2000. 10 USC 1133 note.

SEC. 572. AUTHORIZATION AND REQUEST FOR AWARD OF DISTINGUISHED-SERVICE CROSS TO SHINYEI MATAYOSHI FOR ACTS OF VALOR DURING WORLD WAR II.

(a) AUTHORIZATION.—Notwithstanding the time limitations specified in section 3744 of title 10, United States Code, or any other time limitation with respect to the awarding of certain medals to persons who served in the Armed Forces, the Secretary of the Army is authorized and requested to award the Distinguished-Service Cross under section 3742 of that title to Shinyei Matayoshi for the acts of valor referred to in subsection (b).

(b) ACTS OF VALOR DESCRIBED.—The acts of valor referred to in subsection (a) are the actions of Tech Sergeant Shinyei Matayoshi on April 7, 1945, as a member of Company G, 2d Battalion, 442d Regimental Combat Team during World War II.

SEC. 573. AUTHORIZATION AND REQUEST FOR AWARD OF DISTINGUISHED-SERVICE CROSS TO JAY C. COPLEY FOR ACTS OF VALOR DURING THE VIETNAM WAR.

(a) AUTHORIZATION.—Notwithstanding the time limitations specified in section 3744 of title 10, United States Code, or any other time limitation with respect to the awarding of certain medals to persons who served in the Armed Forces, the Secretary of the Army is authorized and requested to award the Distinguished-Service Cross under section 3742 of such title to former Captain Jay C. Copley of the United States Army for the acts of valor during the Vietnam War described in subsection (b).

(b) ACTS OF VALOR DESCRIBED.—The acts of valor referred to in subsection (a) are the actions of then Captain Jay C. Copley on May 5, 1968, as commander of Company C of the 1st Battalion, 50th Infantry, attached to the 173d Airborne Brigade during an engagement with a regimental-size enemy force in Bin Dinh Province, South Vietnam.

SEC. 574. PROGRAM TO COMMEMORATE 60TH ANNIVERSARY OF THE KOREAN WAR. 10 USC 113 note.

(a) COMMEMORATIVE PROGRAM AUTHORIZED.—The Secretary of Defense may establish and conduct a program to commemorate the 60th anniversary of the Korean War (in this section referred to as the “commemorative program”). In conducting the commemorative program, the Secretary of Defense shall coordinate and support other programs and activities of the Federal Government, State and local governments, and other persons and organizations in commemoration of the Korean War.

(b) SCHEDULE.—If the Secretary of Defense establishes the commemorative program, the Secretary shall determine the schedule of major events and priority of efforts for the commemorative program to achieve the commemorative objectives specified Determination.

in subsection (c). The Secretary of Defense may establish a committee to assist the Secretary in determining the schedule and conducting the commemorative program.

(c) **COMMEMORATIVE ACTIVITIES AND OBJECTIVES.**—The commemorative program may include activities and ceremonies to achieve the following objectives:

(1) To thank and honor veterans of the Korean War, including members of the Armed Forces who were held as prisoners of war or listed as missing in action, for their service and sacrifice on behalf of the United States.

(2) To thank and honor the families of veterans of the Korean War for their sacrifices and contributions, especially families who lost a loved one in the Korean War.

(3) To highlight the service of the Armed Forces during the Korean War and the contributions of Federal agencies and governmental and non-governmental organizations that served with, or in support of, the Armed Forces.

(4) To pay tribute to the sacrifices and contributions made on the home front by the people of the United States during the Korean War.

(5) To provide the people of the United States with a clear understanding and appreciation of the lessons and history of the Korean War.

(6) To highlight the advances in technology, science, and medicine related to military research conducted during the Korean War.

(7) To recognize the contributions and sacrifices made by the allies of the United States during the Korean War.

Applicability. (d) **USE OF THE UNITED STATES OF AMERICA KOREAN WAR COMMEMORATION AND SYMBOLS.**—Subsection (c) of section 1083 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1918), as amended by section 1067 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2134) and section 1052 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 764), shall apply to the commemorative program.

(e) **COMMEMORATIVE FUND.**—

(1) **ESTABLISHMENT OF NEW ACCOUNT.**—If the Secretary of Defense establishes the commemorative program, the Secretary the Treasury shall establish in the Treasury of the United States an account to be known as the “Department of Defense Korean War Commemoration Fund” (in this section referred to as the “Fund”).

Regulations. (2) **ADMINISTRATION AND USE OF FUND.**—The Fund shall be available to, and administered by, the Secretary of Defense. The Secretary of Defense shall use the assets of the Fund only for the purpose of conducting the commemorative program and shall prescribe such regulations regarding the use of the Fund as the Secretary of Defense considers to be necessary.

(3) **DEPOSITS.**—There shall be deposited into the Fund the following:

(A) Amounts appropriated to the Fund.

(B) Proceeds derived from the use by the Secretary of Defense of the exclusive rights described in subsection (c) of section 1083 of the National Defense Authorization

Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1918).

(C) Donations made in support of the commemorative program by private and corporate donors.

(4) AVAILABILITY.—Subject to paragraph (5), amounts in the Fund shall remain available until expended.

(5) TREATMENT OF UNOBLIGATED FUNDS; TRANSFER.—If unobligated amounts remain in the Fund as of September 30, 2013, the Secretary of the Treasury shall transfer the remaining amounts to the Department of Defense Vietnam War Commemorative Fund established pursuant to section 598(e) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 113 note). The transferred amounts shall be merged with, and available for the same purposes as, other amounts in the Department of Defense Vietnam War Commemorative Fund.

(f) ACCEPTANCE OF VOLUNTARY SERVICES.—

(1) AUTHORITY TO ACCEPT SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the commemorative program. The Secretary of Defense shall prohibit the solicitation of any voluntary services if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in the program.

(2) COMPENSATION FOR WORK-RELATED INJURY.—A person providing voluntary services under this subsection shall be considered to be a Federal employee for purposes of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries. The person shall also be considered a special governmental employee for purposes of standards of conduct and sections 202, 203, 205, 207, 208, and 209 of title 18, United States Code. A person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of voluntary services under this subsection.

(3) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary of Defense may provide for reimbursement of incidental expenses incurred by a person providing voluntary services under this subsection. The Secretary of Defense shall determine which expenses are eligible for reimbursement under this paragraph.

Determination.

(g) REPORT REQUIRED.—If the Secretary of Defense conducts the commemorative program, the Inspector General of the Department of Defense shall submit to Congress, not later than 60 days after the end of the commemorative program, a report containing an accounting of—

(1) all of the funds deposited into and expended from the Fund;

(2) any other funds expended under this section; and

(3) any unobligated funds remaining in the Fund as of September 30, 2013, that are transferred to the Department of Defense Vietnam War Commemorative Fund pursuant to subsection (e)(5).

(h) LIMITATION ON EXPENDITURES.—Using amounts appropriated to the Department of Defense, the Secretary of Defense

may not expend more than \$5,000,000 to carry out the commemorative program.

Subtitle I—Military Family Readiness Matters

SEC. 581. APPOINTMENT OF ADDITIONAL MEMBERS OF DEPARTMENT OF DEFENSE MILITARY FAMILY READINESS COUNCIL.

(a) INCLUSION OF SPOUSE OF GENERAL OR FLAG OFFICER.—Subsection (b) of section 1781a of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraph (E) as subparagraph (F); and

(B) by inserting after subparagraph (D) the following new subparagraph:

“(E) The spouse of a general or flag officer.”; and

(2) in paragraph (2), by striking “subparagraphs (C) and (D)” and inserting “subparagraphs (C), (D), and (E)”.

(b) INCLUSION OF DIRECTOR OF OFFICE OF COMMUNITY SUPPORT FOR MILITARY FAMILIES WITH SPECIAL NEEDS.—Subsection (b)(1) of such section is further amended by adding at the end the following new subparagraph:

“(G) The Director of the Office of Community Support for Military Families With Special Needs.”.

(c) CLARIFICATION OF APPOINTMENT OPTIONS FOR EXISTING MEMBER.—Subparagraph (F) of subsection (b)(1) of such section, as redesignated by subsection (a)(1)(A), is amended to read as follows:

“(F) In addition to the representatives appointed under subparagraphs (B) and (C), the senior enlisted advisor, or the spouse of a senior enlisted member, from each of the Army, Navy, Marine Corps, and Air Force.”.

(d) APPOINTMENT BY SECRETARY OF DEFENSE.—Subsection (b) of such section is further amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking “, who shall be appointed by the Secretary of Defense”;

(B) in subparagraph (C), by striking “, who shall be appointed by the Secretary of Defense” both places it appears; and

(C) in subparagraph (D), by striking “by the Secretary of Defense”; and

(2) by adding at the end the following new paragraph:

“(3) The Secretary of Defense shall appoint the members of the Council required by subparagraphs (B) through (F) of paragraph (1).”.

SEC. 582. ENHANCEMENT OF COMMUNITY SUPPORT FOR MILITARY FAMILIES WITH SPECIAL NEEDS.

(a) DIRECTOR OF THE OFFICE OF COMMUNITY SUPPORT FOR MILITARY FAMILIES WITH SPECIAL NEEDS.—Subsection (c) of section 1781c of title 10, United States Code, is amended to read as follows:

“(c) DIRECTOR.—(1) The head of the Office shall be the Director of the Office of Community Support for Military Families With

Special Needs, who shall be a member of the Senior Executive Service or a general officer or flag officer.

“(2) In the discharge of the responsibilities of the Office, the Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness.”.

(b) ADDITIONAL RESPONSIBILITY FOR OFFICE.—Subsection (d) of such section is amended—

10 USC 1781c.

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph (7):

“(7) To conduct periodic reviews of best practices in the United States in the provision of medical and educational services for children with special needs.”.

(c) ENHANCEMENT OF SUPPORT.—Section 563 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2304) is amended—

10 USC 1781c.

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following new subsections:

10 USC 1781c
note.

“(c) MILITARY DEPARTMENT SUPPORT FOR LOCAL CENTERS TO ASSIST MILITARY CHILDREN WITH SPECIAL NEEDS.—The Secretary of a military department may establish or support centers on or in the vicinity of military installations under the jurisdiction of such Secretary to coordinate and provide medical and educational services for children with special needs of members of the Armed Forces who are assigned to such installations.

“(d) ADVISORY PANEL ON COMMUNITY SUPPORT FOR MILITARY FAMILIES WITH SPECIAL NEEDS.—

“(1) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subsection, the Secretary of Defense shall establish an advisory panel on community support for military families with special needs.

Deadline.

“(2) MEMBERS.—The advisory panel shall consist of seven individuals who are a member of a military family with special needs. The Secretary of Defense shall appoint the members of the advisory panel.

Appointment.

“(3) DUTIES.—The advisory panel shall—

“(A) provide informed advice to the Director of the Office of Community Support for Military Families With Special Needs on the implementation of the policy required by subsection (e) of section 1781c of title 10, United States Code, and on the discharge of the programs required by subsection (f) of such section;

“(B) assess and provide information to the Director on services and support for children with special needs that is available from other departments and agencies of the Federal Government and from State and local governments; and

“(C) otherwise advise and assist the Director in the discharge of the duties of the Office of Community Support for Military Families With Special Needs in such manner as the Secretary of Defense and the Director jointly determine appropriate.

“(4) MEETINGS.—The Director shall meet with the advisory panel at such times, and with such frequency, as the Director considers appropriate. The Director shall meet with the panel

Deadline.

at least once each year. The Director may meet with the panel through teleconferencing or by other electronic means.”.

SEC. 583. MODIFICATION OF YELLOW RIBBON REINTEGRATION PROGRAM.

(a) OFFICE FOR REINTEGRATION PROGRAMS.—Subsection (d)(1) of section 582 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 10101 note) is amended—

(1) by striking “The Under” and inserting the following:

“(A) IN GENERAL.—The Under”; and

(2) in the last sentence—

(A) by striking “The office may also” and inserting the following:

“(B) PARTNERSHIPS AND ACCESS.—The office may”;

(B) by inserting “and the Department of Veterans Affairs” after “Administration”; and

(C) by adding at the end the following new sentence: “Service and State-based programs may provide access to curriculum, training, and support for services to members and families from all components.”.

(b) CENTER FOR EXCELLENCE IN REINTEGRATION.—Subsection (d)(2) of such section is amended by adding at the end the following new sentence: “The Center shall develop and implement a process for evaluating the effectiveness of the Yellow Ribbon Reintegration Program in supporting the health and well-being of members of the Armed Forces and their families throughout the deployment cycle described in subsection (g).”.

(c) STATE DEPLOYMENT CYCLE SUPPORT TEAMS.—Subsection (f)(3) of such section is amended by inserting “and community-based organizations” after “service providers”.

(d) OPERATION OF PROGRAM DURING DEPLOYMENT AND POST-DEPLOYMENT-RECONSTITUTION PHASES.—Subsection (g) of such section is amended—

(1) in paragraph (3), by inserting “and to decrease the isolation of families during deployment” after “combat zone”; and

(2) in paragraph (5)(A), by inserting “, providing information on employment opportunities,” after “communities”.

(e) ADDITIONAL OUTREACH SERVICE.—Subsection (h) of such section, as amended by section 595(1) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2338), is amended by adding at the end the following new paragraph:

“(15) Resiliency training to promote comprehensive programs for members of the Armed Forces to build mental and emotional resiliency for successfully meeting the demands of the deployment cycle.”.

SEC. 584. EXPANSION AND CONTINUATION OF JOINT FAMILY SUPPORT ASSISTANCE PROGRAM.

Section 675 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 119 Stat. 2273; 10 U.S.C. 1781 note) is amended—

(1) in subsection (b)—

(A) by striking “not more than” and inserting “not less than”; and

(B) by striking “Up to” and inserting “At least”; and

(2) in subsection (h), by striking “at the end of the three-year period beginning on the date on which funds are first obligated for the program” and inserting “on December 31, 2012”.

SEC. 585. REPORT ON MILITARY SPOUSE EDUCATION PROGRAMS.

(a) **REVIEW REQUIRED.**—The Secretary of Defense shall carry out a review of all education programs of the Department of Defense and Department of Veterans Affairs designed to support spouses of members of the Armed Forces.

(b) **ELEMENTS OF REVIEW.**—At a minimum, the review shall evaluate the following:

(1) All education programs of the Department of Defense and Department of Veterans Affairs that are in place to advance educational opportunities for military spouses.

(2) The efficacy and effectiveness of such education programs.

(3) The extent to which the availability of educational opportunities for military spouses influences the decisions of members to remain in the Armed Forces.

(4) A comparison of the costs associated with providing military spouse education opportunities as an incentive to retain members rather than recruiting or training new members.

(c) **SUBMISSION OF RESULTS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing—

(1) the results of the review; and

(2) such recommendations as the Secretary considers necessary for improving military spouse education programs.

(d) **CONSULTATION.**—In conducting the review and preparing the report, the Secretary of Defense shall consult with the Secretary of Veterans Affairs regarding education programs of Department of Veterans Affairs assisting spouses of members of the Armed Forces.

SEC. 586. REPORT ON ENHANCING BENEFITS AVAILABLE FOR MILITARY DEPENDENT CHILDREN WITH SPECIAL EDUCATION NEEDS.

(a) **REPORT REQUIRED.**—Not later than September 30, 2011, the Secretary of the Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the needs of military families with children with special education needs and evaluating options to enhance the benefits available to such families and children under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) in meeting such needs.

(b) **CONSULTATION.**—The Secretary of Defense shall prepare the report in consultation with the Secretary of Education.

(c) **ELEMENTS.**—In preparing the report, the Secretary of Defense shall—

(1) identify and assess obstacles faced by military families with children with special education needs in obtaining a free appropriate public education to address such needs;

(2) identify and assess evidence-based research and best practices for providing special education and related services (as those terms are defined in section 602 of the Individuals

with Disabilities Education Act (20 U.S.C. 1401)) for military children with special education needs;

(3) assess timeliness in obtaining special education and related services described in paragraph (2);

(4) determine and document the cost associated with obtaining special education and related services described in paragraph (2);

(5) assess the feasibility of establishing an individualized education program for military children with special education needs that is applicable across jurisdictions of local educational agencies in order to achieve reciprocity among States in acknowledging such programs;

(6) identify means of improving oversight and compliance with the requirements of section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414) relating to a local educational agency supporting an existing individualized education program for a child with special education needs who is relocating to another State pursuant to the permanent change of station of a military parent until an individualized education program is developed and approved for such child in the State to which the child relocates;

(7) assess the feasibility of establishing an expedited process for resolution of complaints by military parents with a child with special education needs about lack of access to education and related services otherwise specified in the individualized education program of the child;

(8) assess the feasibility of permitting the Department of Defense to contact the State to which a military family with a child with special education needs will relocate pursuant to a permanent change of station when the orders for such change of station are issued, but before the family takes residence in such State, for the purpose of commencing preparation for education and related services specified in the individualized education program of the child;

(9) assess the feasibility of establishing a system within the Department of Defense to document complaints by military parents regarding access to free and appropriate public education for their children with special education needs;

(10) identify means to strengthen the monitoring and oversight of special education and related services for military children with special education needs under the Interstate Compact on Educational Opportunities for Military Children; and

(11) consider such other matters as the Secretary of Defense and the Secretary of Education jointly consider appropriate.

10 USC 1791
note.

SEC. 587. REPORTS ON CHILD DEVELOPMENT CENTERS AND FINANCIAL ASSISTANCE FOR CHILD CARE FOR MEMBERS OF THE ARMED FORCES.

(a) **REPORTS REQUIRED.**—Not later than six months after the date of the enactment of this Act, and every two years thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on Department of Defense child development centers and financial assistance for child care provided by the Department of Defense off-installation to members of the Armed Forces.

(b) **ELEMENTS.**—Each report required by subsection (a) shall include the following, current as of the date of such report:

(1) The number of child development centers currently located on military installations.

(2) The number of dependents of members of the Armed Forces utilizing such child development centers.

(3) The number of dependents of members of the Armed Forces that are unable to utilize such child development centers due to capacity limitations.

(4) The types of financial assistance available for child care provided by the Department of Defense off-installation to members of the Armed Forces (including eligible members of the reserve components).

(5) The extent to which members of the Armed Forces are utilizing such financial assistance for child care off-installation.

(6) The methods by which the Department of Defense reaches out to eligible military families to increase awareness of the availability of such financial assistance.

(7) The formulas used to calculate the amount of such financial assistance provided to members of the Armed Forces.

(8) The funding available for such financial assistance in the Department of Defense and in the military departments.

(9) The barriers to access, if any, to such financial assistance faced by members of the Armed Forces, including whether standards and criteria of the Department of Defense for child care off-installation may affect access to child care.

(10) Any other matters the Secretary considers appropriate in connection with such report, including with respect to the enhancement of access to Department of Defense child care development centers and financial assistance for child care off-installation for members of the Armed Forces.

Subtitle J—Other Matters

SEC. 591. AUTHORITY FOR MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE AND COAST GUARD CIVILIAN EMPLOYEES AND THEIR FAMILIES TO ACCEPT GIFTS FROM NON-FEDERAL ENTITIES.

(a) CODIFICATION AND EXPANSION OF EXISTING AUTHORITY TO COVER ADDITIONAL MEMBERS AND EMPLOYEES.—Chapter 155 of title 10, United States Code, is amended by inserting after section 2601 the following new section:

“§ 2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families

“(a) REGULATIONS GOVERNING ACCEPTANCE OF GIFTS.—(1) The Secretary of Defense (and the Secretary of Homeland Security in the case of the Coast Guard) shall issue regulations to provide that, subject to such limitations as may be specified in such regulations, the following individuals may accept gifts from nonprofit organizations, private parties, and other sources outside the Department of Defense or the Department of Homeland Security:

“(A) A member of the armed forces described in subsection

(b).

“(B) A civilian employee of the Department of Defense or Coast Guard described in subsection (c).

- “(C) The family members of such a member or employee.
 “(D) Survivors of such a member or employee who is killed.
 “(2) The regulations required by this subsection shall—
 “(A) apply uniformly to all elements of the Department of Defense and, to the maximum extent feasible, to the Coast Guard; and
 “(B) require review and approval by a designated agency ethics official before acceptance of a gift to ensure that acceptance of the gift complies with the Joint Ethics Regulation.
 “(b) COVERED MEMBERS.—This section applies to a member of the armed forces who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness—
 “(1) as described in section 1413a(e)(2) of this title; or
 “(2) under other circumstances determined by the Secretary concerned to warrant treatment analogous to members covered by paragraph (1).
 “(c) COVERED EMPLOYEES.—This section applies to a civilian employee of the Department of Defense or Coast Guard who, while an employee on or after September 11, 2001, incurred an injury or illness under a circumstance described in paragraph (1) or (2) of subsection (c).
 “(d) GIFTS FROM CERTAIN SOURCES PROHIBITED.—The regulations issued under subsection (a) may not authorize the acceptance of a gift from a foreign government or international organization or their agents.”.
- (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2601 the following new item:
- “2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families.”.
- SEC. 592. INCREASE IN NUMBER OF PRIVATE SECTOR CIVILIANS AUTHORIZED FOR ADMISSION TO NATIONAL DEFENSE UNIVERSITY.**
- Section 2167(a) of title 10, United States Code, is amended by striking “20 full-time student positions” and inserting “35 full-time student positions”.
- SEC. 593. ADMISSION OF DEFENSE INDUSTRY CIVILIANS TO ATTEND UNITED STATES AIR FORCE INSTITUTE OF TECHNOLOGY.**
- (a) ADMISSION AUTHORITY.—Chapter 901 of title 10, United States Code, is amended by inserting after section 9314 the following new section:
- “§ 9314a. United States Air Force Institute of Technology: admission of defense industry civilians**
- “(a) ADMISSION AUTHORIZED.—(1) The Secretary of the Air Force may permit defense industry employees described in subsection (b) to receive instruction at the United States Air Force Institute of Technology in accordance with this section. Any such defense industry employee may be enrolled in, and may be provided instruction in, a program leading to a graduate degree in a defense focused curriculum related to aeronautics and astronautics, electrical and computer engineering, engineering physics, mathematics and statistics, operational sciences, or systems and engineering management.

“(2) No more than 125 defense industry employees may be enrolled at the United States Air Force Institute of Technology at any one time under the authority of paragraph (1).

“(3) Upon successful completion of the course of instruction at the United States Air Force Institute of Technology in which a defense industry employee is enrolled, the defense industry employee may be awarded an appropriate degree under section 9314 of this title.

“(b) ELIGIBLE DEFENSE INDUSTRY EMPLOYEES.—For purposes of this section, an eligible defense industry employee is an individual employed by a private firm that is engaged in providing to the Department of Defense significant and substantial defense-related systems, products, or services. A defense industry employee admitted for instruction at the United States Air Force Institute of Technology remains eligible for such instruction only so long as that person remains employed by the same firm.

“(c) ANNUAL DETERMINATION BY THE SECRETARY OF THE AIR FORCE.—Defense industry employees may receive instruction at the United States Air Force Institute of Technology during any academic year only if, before the start of that academic year, the Secretary of the Air Force, or the designee of the Secretary, determines that providing instruction to defense industry employees under this section during that year—

“(1) will further the military mission of the United States Air Force Institute of Technology; and

“(2) will be done on a space-available basis and not require an increase in the size of the faculty of the school, an increase in the course offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school.

“(d) PROGRAM REQUIREMENTS.—The Secretary of the Air Force shall ensure that—

“(1) the curriculum in which defense industry employees may be enrolled under this section is not readily available through other schools and concentrates on the areas of focus specified in subsection (a)(1) that are conducted by military organizations and defense contractors working in close cooperation; and

“(2) the course offerings at the United States Air Force Institute of Technology continue to be determined solely by the needs of the Department of Defense.

“(e) TUITION.—(1) The United States Air Force Institute of Technology shall charge tuition for students enrolled under this section at a rate not less than the rate charged for employees of the United States outside the Department of the Air Force.

“(2) Amounts received by the United States Air Force Institute of Technology for instruction of students enrolled under this section shall be retained by the school to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the school.

“(f) STANDARDS OF CONDUCT.—While receiving instruction at the United States Air Force Institute of Technology, defense industry employees enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the school.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 9314 the following new item:

“9314a. United States Air Force Institute of Technology: admission of defense industry civilians.”.

SEC. 594. UPDATED TERMINOLOGY FOR ARMY MEDICAL SERVICE CORPS.

Paragraph (5) of section 3068 of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking “Pharmacy, Supply, and Administration” and inserting “Administrative Health Services”;

(2) in subparagraph (C), by striking “Sanitary Engineering” and inserting “Preventive Medicine Sciences”; and

(3) in subparagraph (D), by striking “Optometry” and inserting “Clinical Health Sciences”.

SEC. 595. DATE FOR SUBMISSION OF ANNUAL REPORT ON DEPARTMENT OF DEFENSE STARBASE PROGRAM.

Section 2193b(g) of title 10, United States Code, is amended by striking “90 days after the end of each fiscal year” and inserting “March 31 of each year”.

SEC. 596. EXTENSION OF DEADLINE FOR SUBMISSION OF FINAL REPORT OF MILITARY LEADERSHIP DIVERSITY COMMISSION.

Section 596(e)(1) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4478) is amended by striking “12 months” and inserting “18 months”.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Ineligibility of certain Federal civilian employees for Reservist income replacement payments on account of availability of comparable benefits under another program.

Subtitle B—Bonuses and Special and Incentive Pays

Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.

Sec. 612. One-year extension of certain bonus and special pay authorities for health care professionals.

Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.

Sec. 614. One-year extension of authorities relating to title 37 consolidated special pay, incentive pay, and bonus authorities.

Sec. 615. One-year extension of authorities relating to payment of other title 37 bonuses and special pays.

Sec. 616. One-year extension of authorities relating to payment of referral bonuses.

Subtitle C—Travel and Transportation Allowances

Sec. 621. Extension of authority to provide travel and transportation allowances for inactive duty training outside of normal commuting distances.

Sec. 622. Travel and transportation allowances for attendance at Yellow Ribbon Reintegration events.

Subtitle D—Disability, Retired Pay and Survivor Benefits

- Sec. 631. Elimination of cap on retired pay multiplier for members with greater than 30 years of service who retire for disability.
- Sec. 632. Payment date for retired and retainer pay.
- Sec. 633. Clarification of effect of ordering reserve component member to active duty to receive authorized medical care on reducing eligibility age for receipt of non-regular service retired pay.
- Sec. 634. Conformity of special compensation for members with injuries or illnesses requiring assistance in everyday living with monthly personal caregiver stipend under Department of Veterans Affairs program of comprehensive assistance for family caregivers.
- Sec. 635. Sense of Congress concerning age and service requirements for retired pay for non-regular service.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits and Operations

- Sec. 641. Addition of definition of morale, welfare, and recreation telephone services for use in contracts to provide such services for military personnel serving in combat zones.
- Sec. 642. Feasibility study on establishment of full exchange store in the Northern Mariana Islands.
- Sec. 643. Continuation of commissary and exchange operations at Brunswick Naval Air Station, Maine.

Subtitle F—Other Matters

- Sec. 651. Report on basic allowance for housing for personnel assigned to sea duty.
- Sec. 652. Report on savings from enhanced management of special pay for aviation career officers extending period of active duty.

Subtitle A—Pay and Allowances

SEC. 601. INELIGIBILITY OF CERTAIN FEDERAL CIVILIAN EMPLOYEES FOR RESERVIST INCOME REPLACEMENT PAYMENTS ON ACCOUNT OF AVAILABILITY OF COMPARABLE BENEFITS UNDER ANOTHER PROGRAM.

(a) INELIGIBILITY FOR PAYMENTS.—Section 910(b) of title 37, United States Code, is amended by adding at the end the following new paragraph:

“(3) A civilian employee of the Federal Government who is also a member of a reserve component is not entitled to a payment under this section for any period for which the employee is entitled to—

“(A) a differential payment under section 5538 of title 5;

or

“(B) a comparable benefit under an administratively established program for civilian employees absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services.”.

(b) EFFECTIVE DATE.—Subsection (b)(3) of section 910 of title 37, United States Code, as added by subsection (a), shall apply with respect to payments under such section for months beginning on or after the date of the enactment of this Act. 37 USC 910 note.

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES.

The following sections of title 37, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 308b(g), relating to Selected Reserve reenlistment bonus.
- (2) Section 308c(i), relating to Selected Reserve affiliation or enlistment bonus.
- (3) Section 308d(c), relating to special pay for enlisted members assigned to certain high-priority units.
- (4) Section 308g(f)(2), relating to Ready Reserve enlistment bonus for persons without prior service.
- (5) Section 308h(e), relating to Ready Reserve enlistment and reenlistment bonus for persons with prior service.
- (6) Section 308i(f), relating to Selected Reserve enlistment and reenlistment bonus for persons with prior service.
- (7) Section 910(g), relating to income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service.

SEC. 612. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR HEALTH CARE PROFESSIONALS.

(a) TITLE 10 AUTHORITIES.—The following sections of title 10, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 2130a(a)(1), relating to nurse officer candidate accession program.
- (2) Section 16302(d), relating to repayment of education loans for certain health professionals who serve in the Selected Reserve.

(b) TITLE 37 AUTHORITIES.—The following sections of title 37, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 302c–1(f), relating to accession and retention bonuses for psychologists.
- (2) Section 302d(a)(1), relating to accession bonus for registered nurses.
- (3) Section 302e(a)(1), relating to incentive special pay for nurse anesthetists.
- (4) Section 302g(e), relating to special pay for Selected Reserve health professionals in critically short wartime specialties.
- (5) Section 302h(a)(1), relating to accession bonus for dental officers.
- (6) Section 302j(a), relating to accession bonus for pharmacy officers.
- (7) Section 302k(f), relating to accession bonus for medical officers in critically short wartime specialties.
- (8) Section 302l(g), relating to accession bonus for dental specialist officers in critically short wartime specialties.

SEC. 613. ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS.

The following sections of title 37, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 312(f), relating to special pay for nuclear-qualified officers extending period of active service.
- (2) Section 312b(c), relating to nuclear career accession bonus.
- (3) Section 312c(d), relating to nuclear career annual incentive bonus.

SEC. 614. ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

The following sections of title 37, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 331(h), relating to general bonus authority for enlisted members.
- (2) Section 332(g), relating to general bonus authority for officers.
- (3) Section 333(i), relating to special bonus and incentive pay authorities for nuclear officers.
- (4) Section 334(i), relating to special aviation incentive pay and bonus authorities for officers.
- (5) Section 335(k), relating to special bonus and incentive pay authorities for officers in health professions.
- (6) Section 351(h), relating to hazardous duty pay.
- (7) Section 352(g), relating to assignment pay or special duty pay.
- (8) Section 353(i), relating to skill incentive pay or proficiency bonus.
- (9) Section 355(h), relating to retention incentives for members qualified in critical military skills or assigned to high priority units.

SEC. 615. ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER TITLE 37 BONUSES AND SPECIAL PAYS.

The following sections of title 37, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 301b(a), relating to aviation officer retention bonus.
- (2) Section 307a(g), relating to assignment incentive pay.
- (3) Section 308(g), relating to reenlistment bonus for active members.
- (4) Section 309(e), relating to enlistment bonus.
- (5) Section 324(g), relating to accession bonus for new officers in critical skills.
- (6) Section 326(g), relating to incentive bonus for conversion to military occupational specialty to ease personnel shortage.
- (7) Section 327(h), relating to incentive bonus for transfer between armed forces.
- (8) Section 330(f), relating to accession bonus for officer candidates.

SEC. 616. ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF REFERRAL BONUSES.

The following sections of title 10, United States Code, are amended by striking “December 31, 2010” and inserting “December 31, 2011”:

- (1) Section 1030(i), relating to health professions referral bonus.
- (2) Section 3252(h), relating to Army referral bonus.

Subtitle C—Travel and Transportation Allowances

SEC. 621. EXTENSION OF AUTHORITY TO PROVIDE TRAVEL AND TRANSPORTATION ALLOWANCES FOR INACTIVE DUTY TRAINING OUTSIDE OF NORMAL COMMUTING DISTANCES.

Section 408a(e) of title 37, United States Code, is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

SEC. 622. TRAVEL AND TRANSPORTATION ALLOWANCES FOR ATTENDANCE AT YELLOW RIBBON REINTEGRATION EVENTS.

(a) PAYMENT OF TRAVEL COSTS AUTHORIZED.—

(1) IN GENERAL.—Chapter 7 of title 37, United States Code, is amended by inserting after section 411k the following new section:

“§ 411l. Travel and transportation allowances: attendance of members and other persons at Yellow Ribbon Reintegration Program events

Regulations.

“(a) ALLOWANCES AUTHORIZED.—(1) Under uniform regulations prescribed by the Secretaries concerned, a member of the uniformed services authorized to attend a Yellow Ribbon Reintegration Program event may be provided travel and transportation allowances in order that the member may attend a Yellow Ribbon Reintegration Program event.

“(2) Under uniform regulations prescribed by the Secretaries concerned, travel and transportation allowances may be provided for a person designated pursuant to subsection (b) in order for the person to accompany a member in attending a Yellow Ribbon Reintegration Program event if the Secretary concerned determines that the presence of the person at the event may contribute to the purposes of the event for the member.

“(b) DESIGNATION OF PERSONS ELIGIBLE FOR ALLOWANCE.—A member of the uniformed services who is eligible to attend a Yellow Ribbon Reintegration Program event may designate one or more persons, including another member of the uniformed services, for purposes of receiving travel and transportation allowances described in subsection (c) to attend a Yellow Ribbon Reintegration Program event. The designation of a person for purposes of this section shall be made in writing and may be changed at any time.

“(c) AUTHORIZED TRAVEL AND TRANSPORTATION.—(1) The transportation authorized by subsection (a) is round-trip transportation between the home or place of business of the authorized person and the location of the Yellow Ribbon Reintegration Program event.

“(2) In addition to transportation under paragraph (1), the Secretary concerned may provide a per diem allowance or reimbursement for the actual and necessary expenses of the travel, or a combination thereof, but not to exceed the rates established under section 404(d) of this title.

“(3) The transportation authorized by paragraph (1) may be provided by any of the following means:

“(A) Transportation in-kind.

“(B) A monetary allowance in place of transportation in-kind at a rate to be prescribed by the Secretaries concerned.

“(C) Reimbursement for the commercial cost of transportation.

“(4) An allowance payable under this subsection may be paid in advance.

“(5) Reimbursement payable under this subsection may not exceed the cost of Government-procured commercial round-trip air travel.

“(d) **YELLOW RIBBON REINTEGRATION PROGRAM EVENT DEFINED.**—In this section, the term ‘Yellow Ribbon Reintegration Program event’ means an event authorized under section 582 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 10101 note).”.

(2) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by inserting after the item related to section 411k the following new item:

“411l. Travel and transportation allowances; attendance of members and other persons at Yellow Ribbon Reintegration Program events.”.

(b) **APPLICABILITY.**—No reimbursement may be provided under section 411l of title 37, United States Code, as added by subsection (a), for travel and transportation costs incurred before September 30, 2010.

37 USC 411l
note.

Subtitle D—Disability, Retired Pay and Survivor Benefits

SEC. 631. ELIMINATION OF CAP ON RETIRED PAY MULTIPLIER FOR MEMBERS WITH GREATER THAN 30 YEARS OF SERVICE WHO RETIRE FOR DISABILITY.

(a) **COMPUTATION OF RETIRED PAY.**—The table in section 1401(a) of title 10, United States Code, is amended—

(1) in the column designated “Column 2”, by inserting “, not to exceed 75%,” after “percentage of disability” both places it appears; and

(2) by striking column 4.

(b) **RECOMPUTATION OF RETIRED OR RETAINER PAY TO REFLECT LATER ACTIVE DUTY OF MEMBERS WHO FIRST BECAME MEMBERS BEFORE SEPTEMBER 8, 1980.**—The table in section 1402(d) of such title is amended—

(1) in the column designated “Column 2”, by inserting “, not to exceed 75%,” after “percentage of disability”; and

(2) by striking column 4.

(c) **RECOMPUTATION OF RETIRED OR RETAINER PAY TO REFLECT LATER ACTIVE DUTY OF MEMBERS WHO FIRST BECAME MEMBERS AFTER SEPTEMBER 7, 1980.**—The table in section 1402a(d) of such title is amended—

(1) in the column designated “Column 2”, by inserting “, not to exceed 75 percent,” after “percentage of disability”; and

(2) by striking column 4.

10 USC 1401
note.

(d) APPLICATION OF AMENDMENTS.—The tables in sections 1401(a), 1402(d), and 1402a(d) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act, shall continue to apply to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A of such title on or before the date of the enactment of this Act. The amendments made by this section shall apply only with respect to persons who first become entitled to retired or retainer pay under such subtitle after that date.

SEC. 632. PAYMENT DATE FOR RETIRED AND RETAINER PAY.

(a) SETTING PAYMENT DATE.—Section 1412 of title 10, United States Code, is amended—

(1) by striking “Amounts” and inserting “(a) ROUNDING.—Amounts”; and

(2) by adding at the end the following new subsection:

“(b) PAYMENT DATE.—Amounts of retired pay and retainer pay due a retired member of the uniformed services shall be paid on the first day of each month beginning after the month in which the right to such pay accrues.”.

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

“§ 1412. Administrative provisions”.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 71 of such title is amended by striking the item relating to section 1412 and inserting the following new item:

“1412. Administrative provisions.”.

10 USC 1412
note.

(c) EFFECTIVE DATE.—Subsection (b) of section 1412 of title 10, United States Code, as added by subsection (a), shall apply beginning with the first month that begins more than 30 days after the date of the enactment of this Act.

SEC. 633. CLARIFICATION OF EFFECT OF ORDERING RESERVE COMPONENT MEMBER TO ACTIVE DUTY TO RECEIVE AUTHORIZED MEDICAL CARE ON REDUCING ELIGIBILITY AGE FOR RECEIPT OF NON-REGULAR SERVICE RETIRED PAY.

Section 12731(f)(2)(B) of title 10, United States Code, is amended by adding at the end the following new clause:

“(iii) If a member described in subparagraph (A) is wounded or otherwise injured or becomes ill while serving on active duty pursuant to a call or order to active duty under a provision of law referred to in the first sentence of clause (i) or in clause (ii), and the member is then ordered to active duty under section 12301(h)(1) of this title to receive medical care for the wound, injury, or illness, each day of active duty under that order for medical care shall be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this paragraph.”.

SEC. 634. CONFORMITY OF SPECIAL COMPENSATION FOR MEMBERS WITH INJURIES OR ILLNESSES REQUIRING ASSISTANCE IN EVERYDAY LIVING WITH MONTHLY PERSONAL CAREGIVER STIPEND UNDER DEPARTMENT OF VETERANS AFFAIRS PROGRAM OF COMPREHENSIVE ASSISTANCE FOR FAMILY CAREGIVERS.

Subsection (c) of section 439 of title 37, United States Code, is amended to read as follows:

“(c) AMOUNT.—The amount of monthly special compensation payable to a member under subsection (a) shall be the amount as follows:

“(1) The monthly amount of aid and attendance payable under section 1114(r)(2) of title 38.

“(2) Upon the establishment by the Secretary of Veterans Affairs pursuant to subparagraph (C) of section 1720G(a)(3) of title 38 of the schedule of monthly personal caregiver stipends under the Department of Veterans Affairs program of comprehensive assistance for family caregivers under subparagraph (A)(ii)(V) of such section, the monthly personal caregiver stipend payable with respect to similarly circumstanced veterans under such schedule, rather than the amount specified in paragraph (1).”.

SEC. 635. SENSE OF CONGRESS CONCERNING AGE AND SERVICE REQUIREMENTS FOR RETIRED PAY FOR NON-REGULAR SERVICE.

It is the sense of Congress that—

(1) the amendments made to section 12731 of title 10, United States Code, by section 647 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 160) were intended to reduce the minimum age at which members of a reserve component of the Armed Forces would begin receiving retired pay according to time spent deployed, by three months for every 90-day period spent on active duty over the course of a career, rather than limiting qualifying time to such periods wholly served within the same fiscal year, as interpreted by the Department of Defense; and

(2) steps should be taken by the Department of Defense to implement the congressional intent outlined in paragraph (1).

Subtitle E—Commissary and Non-appropriated Fund Instrumentality Benefits and Operations

SEC. 641. ADDITION OF DEFINITION OF MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES FOR USE IN CONTRACTS TO PROVIDE SUCH SERVICES FOR MILITARY PERSONNEL SERVING IN COMBAT ZONES.

Section 885 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 265; 10 U.S.C. 2304 note) is amended by adding at the end the following new subsection:

“(c) MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES DEFINED.—In this section, the term ‘morale, welfare, and recreation telephone services’ means unofficial telephone calling center services

supporting calling centers provided by the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other nonappropriated fund instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.”.

SEC. 642. FEASIBILITY STUDY ON ESTABLISHMENT OF FULL EXCHANGE STORE IN THE NORTHERN MARIANA ISLANDS.

Deadline.
Reports.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report containing the results of a study to determine the feasibility of replacing the “Shoppette” of the Army and Air Force Exchange Service in the Northern Mariana Islands with a full-service exchange store.

SEC. 643. CONTINUATION OF COMMISSARY AND EXCHANGE OPERATIONS AT BRUNSWICK NAVAL AIR STATION, MAINE.

(a) CONTINUATION OF OPERATIONS.—The Secretary of Defense shall provide for the continuation of commissary and exchange operations at Brunswick Naval Air Station, Maine, until the later of the following:

Time period.

(1) The closure of Brunswick Naval Air Station.

(2) The end of the 60-day period beginning on the date on which the Secretary of Defense makes the determination under subsection (b).

Deadline.

(b) REVIEW AND DETERMINATION.—Not earlier than 120 days after the date of the enactment of this Act, the Secretary of Defense shall—

(1) review any report prepared by the Comptroller General of the United States relating to commissary and exchange operations at Brunswick Naval Air Station, Maine; and

(2) based on such review, make a determination regarding whether such operations should be continued.

Subtitle F—Other Matters

SEC. 651. REPORT ON BASIC ALLOWANCE FOR HOUSING FOR PERSONNEL ASSIGNED TO SEA DUTY.

(a) REPORT REQUIRED.—Not later than July 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report containing the following:

(1) A review of the standards used to determine the monthly rates of basic allowance for housing for personnel assigned to sea duty (under section 403 of title 37, United States Code).

(2) A review of the legislative framework and policies applicable to eligibility and levels of compensation for single and married personnel, with and without dependents, who are assigned to sea duty.

(3) Any recommendation for modifications of title 37, United States Code, relating to basic allowance for housing for personnel who are assigned to sea duty that the Secretary considers appropriate, including an estimate of the cost of each modification.

(b) ELEMENTS OF REVIEWS.—In conducting the reviews for purposes of subsection (a), the Secretary shall consider whether existing

law, policies, and housing standards are suitable in terms of the following:

- (1) The cost and availability of housing ashore for personnel assigned to sea duty.
- (2) The pay and allowances (other than basic allowance for housing) payable to personnel who are assigned to sea duty, including basic pay, career sea pay, and the family separation allowance.
- (3) The comparability in levels of compensation for single and married personnel, with and without dependents, who are assigned to sea duty.
- (4) The provision of appropriate quality of life and retention incentives for members in all grades who are assigned to sea duty.
- (5) The provision of appropriate recognition and motivation for promotion to higher military grades of personnel who are assigned to sea duty.
- (6) Budgetary constraints and rising personnel costs.

SEC. 652. REPORT ON SAVINGS FROM ENHANCED MANAGEMENT OF SPECIAL PAY FOR AVIATION CAREER OFFICERS EXTENDING PERIOD OF ACTIVE DUTY.

(a) **REPORT REQUIRED.**—Not later than August 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report regarding the use and management of the special pay programs authorized in section 301b of title 37, United States Code, for aviation career officers extending a period of active duty.

(b) **ELEMENTS OF REPORT.**—The report required by subsection (a) shall include the following:

(1) A review of the programs operated by the Secretaries of the military departments, including—

(A) directives and guidelines issued by the Secretary of Defense;

(B) the number of aviation officers receiving the special pay, listed by weapon system;

(C) the weapon systems for which special pay is not authorized and the number of aviation officers affected by such exclusion;

(D) the policy and structure of the programs and the retention philosophy supporting the policy and structure of the programs;

(E) the amounts paid to individual aviation officers, annually and over the course of a career; and

(F) the amounts budgeted annually for such programs.

(2) An accounting of aviation officers receiving the special pay who have an active duty service commitment and the totals of aviation officers and allocated funding by types of active duty service commitment.

(3) A review of retention trends for aviation officers, generally and by weapon system, within the military departments and an assessment of the factors that influence retention trends, and the reliability and durability of those trends if such factors are altered.

(4) An assessment of the funds that can be saved by restructuring or eliminating such programs to reduce payments to aviation officers associated with those weapon systems with

strong retention trends and aviation officers with active duty service commitments.

(5) A review of the demand for former military aviation officers to fulfill commercial airline hiring requirements, recent data regarding airline hiring of former military aviation officers, and an assessment of the methods used by airlines to qualify pilot candidates for employment as commercial pilots.

(6) Any recommendations for modifications of title 37, United States Code, relating to special pay for aviation career officers extending a period of active duty.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Improvements to Health Benefits

- Sec. 701. Extension of prohibition on increases in certain health care costs.
- Sec. 702. Extension of dependent coverage under the TRICARE program.
- Sec. 703. Survivor dental benefits.
- Sec. 704. Aural screenings for members of the Armed Forces.
- Sec. 705. Temporary prohibition on increase in copayments under retail pharmacy system of pharmacy benefits program.

Subtitle B—Health Care Administration

- Sec. 711. Administration of TRICARE.
- Sec. 712. Postdeployment health reassessments for purposes of the medical tracking system for members of the Armed Forces deployed overseas.
- Sec. 713. Clarification of licensure requirements applicable to military health-care professionals who are members of the National Guard performing certain duty while in State status.
- Sec. 714. Improvements to oversight of medical training for Medical Corps officers.
- Sec. 715. Health information technology.
- Sec. 716. Education and training on use of pharmaceuticals in rehabilitation programs for wounded warriors.

Subtitle C—Other Matters

- Sec. 721. Repeal of report requirement on separations resulting from refusal to participate in anthrax vaccine immunization program.
- Sec. 722. Comprehensive policy on consistent neurological cognitive assessments of members of the Armed Forces before and after deployment.
- Sec. 723. Assessment of post-traumatic stress disorder by military occupation.
- Sec. 724. Licensed mental health counselors and the TRICARE program.

Subtitle A—Improvements to Health Benefits

SEC. 701. EXTENSION OF PROHIBITION ON INCREASES IN CERTAIN HEALTH CARE COSTS.

(a) **CHARGES UNDER CONTRACTS FOR MEDICAL CARE.**—Section 1097(e) of title 10, United States Code, is amended by striking “September 30, 2009” and inserting “September 30, 2011”.

(b) **CHARGES FOR INPATIENT CARE.**—Section 1086(b)(3) of such title is amended by striking “September 30, 2010” and inserting “September 30, 2011”.

SEC. 702. EXTENSION OF DEPENDENT COVERAGE UNDER THE TRICARE PROGRAM.

(a) **DEPENDENT COVERAGE.**—

(1) **IN GENERAL.**—Chapter 55 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1110b. TRICARE program: extension of dependent coverage

“(a) IN GENERAL.—In accordance with subsection (c), an individual described in subsection (b) shall be deemed to be a dependent (as described in section 1072(2)(D) of this title) for purposes of coverage under the TRICARE program.

“(b) INDIVIDUAL DESCRIBED.—An individual described in this subsection is an individual who—

“(1) would be a dependent under section 1072(2) of this title but for exceeding an age limit under such section;

“(2) has not attained the age of 26;

“(3) is not eligible to enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986);

“(4) is not otherwise a dependent of a member or a former member under any subparagraph of section 1072(2) of this title; and

“(5) meets other criteria specified in regulations prescribed by the Secretary, similar to regulations prescribed by the Secretary of Health and Human Services under section 2714(b) of the Public Health Service Act.

“(c) PREMIUM.—(1) The Secretary shall prescribe by regulation a premium (or premiums) for coverage under the TRICARE program provided pursuant to this section to an individual described in subsection (b).

Regulations.

“(2) The monthly amount of the premium in effect for a month for coverage under the TRICARE program pursuant to this section shall be the amount equal to the cost of such coverage that the Secretary determines on an appropriate actuarial basis.

Determination.

“(3) The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums under this subsection.

Requirements.
Procedures.

“(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1110a the following new item:

“1110b. TRICARE program: extension of dependent coverage.”.

(b) EFFECTIVE DATE AND REGULATIONS.—The amendments made by this section shall take effect on January 1, 2011. The Secretary of Defense shall prescribe an interim final rule with respect to such amendments, effective not later than January 1, 2011.

10 USC 1110b
note.
Deadline.**SEC. 703. SURVIVOR DENTAL BENEFITS.**

Paragraph (2) of section 1076a(k) of title 10, United States Code, is amended to read as follows:

“(2) Such term includes any such dependent of a member who dies—

“(A) while on active duty for a period of more than 30 days; or

“(B) while such member is a member of the Ready Reserve.”.

SEC. 704. AURAL SCREENINGS FOR MEMBERS OF THE ARMED FORCES.

Deadlines.

(a) TINNITUS SCREENING.—

(1) STUDY REQUIRED.—Not later than September 30, 2011, the Secretary of Defense shall conduct a study to identify the best tests currently available to screen members of the Armed Forces for tinnitus.

(2) PLAN.—Not later than December 31, 2011, the Secretary shall develop a plan to ensure that all members of the Armed Forces are screened for tinnitus prior to and after a deployment to a combat zone.

(3) REPORT.—Not later than December 31, 2011, the Secretary shall submit to the congressional defense committees a report containing the results of the study under paragraph (1) and the plan under paragraph (2).

(b) IMPROVING AURAL PROTECTION FOR MEMBERS OF THE ARMED FORCES.—

(1) IN GENERAL.—In accordance with section 721 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4506), the Secretary of Defense shall examine methods to improve the aural protection for members of the Armed Forces in combat.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report on the methods to improve aural protection examined under subsection (a).

(c) CENTER OF EXCELLENCE.—The Secretary shall ensure that all studies, findings, plans, and reports conducted or submitted under this section are transmitted to the center of excellence established by section 721 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4506).

SEC. 705. TEMPORARY PROHIBITION ON INCREASE IN COPAYMENTS UNDER RETAIL PHARMACY SYSTEM OF PHARMACY BENEFITS PROGRAM.

Time period.

During the period beginning on October 1, 2010, and ending on September 30, 2011, the cost sharing requirements established under paragraph (6) of section 1074g(a) of title 10, United States Code, for pharmaceutical agents available through retail pharmacies covered by paragraph (2)(E)(ii) of such section may not exceed amounts as follows:

(1) In the case of generic agents, \$3.

(2) In the case of formulary agents, \$9.

(3) In the case of nonformulary agents, \$22.

Subtitle B—Health Care Administration**SEC. 711. ADMINISTRATION OF TRICARE.**

Subsection (a) of section 1073 of title 10, United States Code, is amended—

(1) by striking “Except” and inserting “(1) Except”; and

(2) by adding at the end the following new paragraph:

“(2) Except as otherwise provided in this chapter, the Secretary of Defense shall have responsibility for administering the TRICARE program and making any decision affecting such program.”.

SEC. 712. POSTDEPLOYMENT HEALTH REASSESSMENTS FOR PURPOSES OF THE MEDICAL TRACKING SYSTEM FOR MEMBERS OF THE ARMED FORCES DEPLOYED OVERSEAS.

(a) **REQUIREMENT FOR POSTDEPLOYMENT HEALTH REASSESSMENTS.**—Paragraph (1) of subsection (b) of section 1074f of title 10, United States Code, is amended to read as follows:

“(1)(A) The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including the assessment of mental health and the drawing of blood samples) and postdeployment health reassessments to—

“(i) accurately record the health status of members before their deployment;

“(ii) accurately record any changes in their health status during the course of their deployment; and

“(iii) identify health concerns, including mental health concerns, that may become manifest several months following their deployment.

“(B) The postdeployment medical examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).

“(C) The postdeployment health reassessment shall be conducted at an appropriate time during the period beginning 90 days after the member is redeployed and ending 180 days after the member is redeployed.”.

Time period.

(b) **INCORPORATION IN REASSESSMENTS OF ELEMENTS OF PREDEPLOYMENT AND POSTDEPLOYMENT MEDICAL EXAMINATIONS.**—Paragraph (2) of such subsection is amended by striking “and postdeployment medical examination” and inserting “medical examination, postdeployment medical examination, and postdeployment health reassessment”.

(c) **RECORDKEEPING.**—Subsection (c) of such section is amended—

(1) by inserting “and reassessments” after “medical examinations”; and

(2) by inserting “and the prescription and administration of psychotropic medications” after “including immunizations”.

(d) **QUALITY ASSURANCE.**—Subsection (d) of such section is amended—

(1) in paragraph (1), by striking “and postdeployment medical examinations” and inserting “, postdeployment medical examinations, and postdeployment health reassessments”; and

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting “and reassessments” after “postdeployment health assessments”; and

(B) in subparagraph (B), by inserting “and reassessments” after “such assessments”.

SEC. 713. CLARIFICATION OF LICENSURE REQUIREMENTS APPLICABLE TO MILITARY HEALTH-CARE PROFESSIONALS WHO ARE MEMBERS OF THE NATIONAL GUARD PERFORMING CERTAIN DUTY WHILE IN STATE STATUS.

Section 1094(d) of title 10, United States Code, is amended—

(1) in paragraph (1), by inserting “or (3)” after “paragraph (2)”; and

(2) in paragraph (2), by inserting “as being described in this paragraph” after “paragraph (1)”; and

(3) by adding at the end the following new paragraph:
“(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

“(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

“(B) is performing training or duty under section 502(f) of title 32 in response to an actual or potential disaster.”.

SEC. 714. IMPROVEMENTS TO OVERSIGHT OF MEDICAL TRAINING FOR MEDICAL CORPS OFFICERS.

(a) REVIEW OF TRAINING PROGRAMS FOR MEDICAL OFFICERS.—

(1) REVIEW.—The Secretary of Defense shall conduct a review of training programs for medical officers (as defined in section 101(b)(14) of title 10, United States Code) to ensure that the academic and military performance of such officers has been completely documented in military personnel records. The programs reviewed shall include, at a minimum, the following:

(A) Programs at the Uniformed Services University of the Health Sciences that award a medical doctor degree.

(B) Selected residency programs at military medical treatment facilities, as determined by the Secretary, to include at least one program in each of the specialties of—

- (i) anesthesiology;
- (ii) emergency medicine;
- (iii) family medicine;
- (iv) general surgery;
- (v) neurology;
- (vi) obstetrics/gynecology;
- (vii) pathology;
- (viii) pediatrics; and
- (ix) psychiatry.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the findings of the review under paragraph (1).

(b) ANNUAL REPORT ON GRADUATE MEDICAL EDUCATION PROGRAMS.—

(1) ANNUAL REPORT.—Not later than April 1, 2011, and annually thereafter through 2015, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the graduate medical education programs of the Department of Defense.

(2) ELEMENTS.—Each report under paragraph (1) shall include the following:

(A) An identification of each graduate medical education program of the Department of Defense in effect during the previous fiscal year, including for each such program, the military department responsible, the location, the medical specialty, the period of training required, and the number of students by year.

(B) The status of each program referred to in subparagraph (A), including, for each such program, an identification of the fiscal year in which the last action was taken with respect to each of the following:

- (i) Initial accreditation.
- (ii) Continued accreditation.
- (iii) If applicable, probation, and the reasons for probationary status.
- (iv) If applicable, withheld or withdrawn accreditation, and the reasons for such action.

(C) A discussion of trends in the graduate medical education programs of the Department.

(D) A discussion of challenges faced by such programs, and a description and assessment of strategies and plans to address such challenges.

(E) Such other matters as the Secretary considers appropriate.

SEC. 715. HEALTH INFORMATION TECHNOLOGY.

(a) ENTERPRISE RISK ASSESSMENT METHODOLOGY STUDY.—

(1) STUDY REQUIRED.—The Secretary of Defense shall conduct an enterprise risk assessment methodology study of all health information technology programs of the Department of Defense.

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report containing the results of the study required under paragraph (1).

(b) REPORT ON HEALTH INFORMATION TECHNOLOGY ORGANIZATIONAL STRUCTURE AND FUTURE PLANS.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the organizational structure for health information technology within the Department of Defense.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

(A) Organizational charts for all organizations involved with health information technology showing, at a minimum, the senior positions in each office and each activity.

(B) A description of the functions and responsibilities, to include policy formulation, policy and program execution, and program oversight, of each senior position for health information technology.

(C) An assessment of how well the health information systems of the Department of Defense interact with the health information systems of—

- (i) the Department of Veterans Affairs; and
- (ii) entities other than the Federal Government.

(D) A description of the role played by the Interagency Program Office established by section 1635 of the Wounded Warrior Act (title XVI of Public Law 110-181; 10 U.S.C. 1071 note) and whether the office is satisfactorily performing the functions required by such section, as well as recommendations for administrative or legislative action as the Secretary considers appropriate.

(E) A complete description of all future plans for legacy systems and new electronic health record initiatives, including the joint virtual lifetime electronic record.

(F) The results of the survey described in paragraph (3).

(3) SURVEY.—The Secretary shall conduct a survey of users of the health information technology systems of the Department of Defense to assess the benefits and failings of such systems.

(4) DEFINITIONS.—In this subsection:

(A) The term “senior position” means a position filled by a member of the senior executive service, a position on the Executive Schedule established pursuant to title 5, United States Code, or a position filled by a general or flag officer.

(B) The term “senior personnel” means personnel who are members of the senior executive service, who fill a position listed on the Executive Schedule established pursuant to title 5, United States Code, or who are general or flag officers.

(c) REPORT ON GAO REPORT REQUIRED.—Not later than March 31, 2011, the Secretary of Defense shall submit to the congressional defense committees a report on the report by the Comptroller General of the United States titled “Information Technology: Opportunities Exist to Improve Management of DOD’s Electronic Health Record Initiative” (GAO-11-50), including—

(1) the status of implementing the recommendations made in such report; and

(2) for each such recommendation that has not been implemented, the reason why the recommendation has not been implemented.

10 USC 1074g
note.

SEC. 716. EDUCATION AND TRAINING ON USE OF PHARMACEUTICALS IN REHABILITATION PROGRAMS FOR WOUNDED WARRIORS.

(a) EDUCATION AND TRAINING REQUIRED.—The Secretary of Defense shall develop and implement training, available through the Internet or other means, on the use of pharmaceuticals in rehabilitation programs for seriously ill or injured members of the Armed Forces.

(b) RECIPIENTS OF TRAINING.—The training developed and implemented under subsection (a) shall be training for each category of individuals as follows:

(1) Patients in or transitioning to a wounded warrior unit, with special accommodation in such training for such patients with cognitive disabilities.

(2) Nonmedical case managers.

(3) Military leaders.

(4) Family members.

(c) ELEMENTS OF TRAINING.—The training developed and implemented under subsection (a) shall include the following:

(1) An overview of the fundamentals of safe prescription drug use.

(2) Familiarization with the benefits and risks of using pharmaceuticals in rehabilitation therapies.

(3) Examples of the use of pharmaceuticals for individuals with multiple, complex injuries, including traumatic brain injury and post-traumatic stress disorder.

(4) Familiarization with means of finding additional resources for information on pharmaceuticals.

(5) Familiarization with basic elements of pain and pharmaceutical management.

(6) Familiarization with complementary and alternative therapies.

(d) TAILORING OF TRAINING.—The training developed and implemented under subsection (a) shall appropriately tailor the elements specified in subsection (c) for and among each category of individuals set forth in subsection (b).

(e) REVIEW OF PHARMACY.—

(1) REVIEW.—The Secretary shall review all policies and procedures of the Department of Defense regarding the use of pharmaceuticals in rehabilitation programs for seriously ill or injured members of the Armed Forces.

(2) RECOMMENDATIONS.—Not later than September 20, 2011, the Secretary shall submit to the congressional defense committees any recommendations for administrative or legislative action with respect to the review under paragraph (1) as the Secretary considers appropriate.

Deadline.

Subtitle C—Other Matters

SEC. 721. REPEAL OF REPORT REQUIREMENT ON SEPARATIONS RESULTING FROM REFUSAL TO PARTICIPATE IN ANTHRAX VACCINE IMMUNIZATION PROGRAM.

Section 1178 of title 10, United States Code, is amended—

(1) by striking “(a) REQUIREMENT TO ESTABLISH SYSTEM.—”; and

(2) by striking subsection (b).

SEC. 722. COMPREHENSIVE POLICY ON CONSISTENT NEUROLOGICAL COGNITIVE ASSESSMENTS OF MEMBERS OF THE ARMED FORCES BEFORE AND AFTER DEPLOYMENT.

10 USC 1074f note.

(a) COMPREHENSIVE POLICY REQUIRED.—Not later than January 31, 2011, the Secretary of Defense shall develop and implement a comprehensive policy on consistent neurological cognitive assessments of members of the Armed Forces before and after deployment.

Deadline.

(b) UPDATES.—The Secretary shall revise the policy required by subsection (a) on a periodic basis in accordance with experience and evolving best practice guidelines.

SEC. 723. ASSESSMENT OF POST-TRAUMATIC STRESS DISORDER BY MILITARY OCCUPATION.

(a) ASSESSMENT.—The Secretaries of the military departments shall each conduct an assessment of post-traumatic stress disorder incidence by military occupation, including identification of military occupations with a high incidence of such disorder.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretaries shall each submit to the congressional defense committees a report on the assessment under subsection (a).

(c) CENTERS OF EXCELLENCE.—The Secretary of Defense shall ensure that all studies, findings, plans, and reports conducted or submitted under this section are transmitted to the centers of excellence established by sections 1621 and 1622 of the Wounded Warrior Act (title XVI of Public Law 110–181).

SEC. 724. LICENSED MENTAL HEALTH COUNSELORS AND THE TRICARE PROGRAM.

Deadline.
Regulations.

Not later than June 20, 2011, the Secretary of Defense shall prescribe the regulations required by section 717 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 1073 note).

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

- Sec. 801. Disclosure to litigation support contractors.
- Sec. 802. Designation of engine development and procurement program as major subprogram.
- Sec. 803. Enhancement of Department of Defense authority to respond to combat and safety emergencies through rapid acquisition and deployment of urgently needed supplies.
- Sec. 804. Review of acquisition process for rapid fielding of capabilities in response to urgent operational needs.
- Sec. 805. Acquisition of major automated information system programs.
- Sec. 806. Requirements for information relating to supply chain risk.

Subtitle B—Provisions Relating to Major Defense Acquisition Programs

- Sec. 811. Cost estimates for program baselines and contract negotiations for major defense acquisition and major automated information system programs.
- Sec. 812. Management of manufacturing risk in major defense acquisition programs.
- Sec. 813. Modification and extension of requirements of the Weapon System Acquisition Reform Act of 2009.
- Sec. 814. Inclusion of major subprograms to major defense acquisition programs under various acquisition-related requirements.

Subtitle C—Amendments to General Contracting Authorities, Procedures, and Limitations

- Sec. 821. Provisions relating to fire resistant fiber for production of military uniforms.
- Sec. 822. Repeal of requirement for certain procurements from firms in the small arms production industrial base.
- Sec. 823. Review of regulatory definition relating to production of specialty metals.
- Sec. 824. Guidance relating to rights in technical data.
- Sec. 825. Extension of sunset date for certain protests of task and delivery order contracts.
- Sec. 826. Inclusion of option amounts in limitations on authority of the Department of Defense to carry out certain prototype projects.
- Sec. 827. Permanent authority for Defense Acquisition Challenge Program; pilot expansion of Program.
- Sec. 828. Energy savings performance contracts.
- Sec. 829. Definition of materials critical to national security.

Subtitle D—Contractor Matters

- Sec. 831. Oversight and accountability of contractors performing private security functions in areas of combat operations.
- Sec. 832. Extension of regulations on contractors performing private security functions to areas of other significant military operations.
- Sec. 833. Standards and certification for private security contractors.
- Sec. 834. Enhancements of authority of Secretary of Defense to reduce or deny award fees to companies found to jeopardize the health or safety of Government personnel.
- Sec. 835. Annual joint report and Comptroller General review on contracting in Iraq and Afghanistan.

Subtitle E—Other Matters

- Sec. 841. Improvements to structure and functioning of Joint Requirements Oversight Council.

- Sec. 842. Department of Defense policy on acquisition and performance of sustainable products and services.
- Sec. 843. Assessment and plan for critical rare earth materials in defense applications.
- Sec. 844. Review of national security exception to competition.
- Sec. 845. Requirement for entities with facility clearances that are not under foreign ownership control or influence mitigation.
- Sec. 846. Procurement of photovoltaic devices.
- Sec. 847. Non-availability exception from Buy American requirements for procurement of hand or measuring tools.
- Sec. 848. Contractor logistics support of contingency operations.

Subtitle F—Improve Acquisition Act

- Sec. 860. Short title.

PART I—DEFENSE ACQUISITION SYSTEM

- Sec. 861. Improvements to the management of the defense acquisition system.
- Sec. 862. Comptroller General report on Joint Capabilities Integration and Development System.
- Sec. 863. Requirements for the acquisition of services.
- Sec. 864. Review of defense acquisition guidance.
- Sec. 865. Requirement to review references to services acquisition throughout the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- Sec. 866. Pilot program on acquisition of military purpose nondevelopmental items.

PART II—DEFENSE ACQUISITION WORKFORCE

- Sec. 871. Acquisition workforce excellence.
- Sec. 872. Amendments to the acquisition workforce demonstration project.
- Sec. 873. Career development for civilian and military personnel in the acquisition workforce.
- Sec. 874. Recertification and training requirements.
- Sec. 875. Information technology acquisition workforce.
- Sec. 876. Definition of acquisition workforce.
- Sec. 877. Defense Acquisition University curriculum review.

PART III—FINANCIAL MANAGEMENT

- Sec. 881. Audit readiness of financial statements of the Department of Defense.
- Sec. 882. Review of obligation and expenditure thresholds.
- Sec. 883. Disclosure and traceability of the cost of Department of Defense health care contracts.

PART IV—INDUSTRIAL BASE

- Sec. 891. Expansion of the industrial base.
- Sec. 892. Price trend analysis for supplies and equipment purchased by the Department of Defense.
- Sec. 893. Contractor business systems.
- Sec. 894. Review and recommendations on eliminating barriers to contracting with the Department of Defense.
- Sec. 895. Inclusion of the providers of services and information technology in the national technology and industrial base.
- Sec. 896. Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy; Industrial Base Fund.

Subtitle A—Acquisition Policy and Management

SEC. 801. DISCLOSURE TO LITIGATION SUPPORT CONTRACTORS.

(a) IN GENERAL.—Section 2320 of title 10, United States Code, is amended—

(1) in subsection (c)(2)—

(A) by striking “subsection (a), allowing” and inserting “subsection (a)—

“(A) allowing”; and

(B) by adding at the end the following new subparagraph:

“(B) allowing a covered litigation support contractor access to and use of any technical, proprietary, or confidential data delivered under a contract for the sole purpose of providing litigation support to the Government in the form of administrative, technical, or professional services during or in anticipation of litigation; or”; and
 (2) by inserting after subsection (f) the following:

Definition.

“(g) In this section, the term ‘covered litigation support contractor’ means a contractor (including an expert or technical consultant) under contract with the Department of Defense to provide litigation support, which contractor executes a contract with the Government agreeing to and acknowledging—

“(1) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

“(2) that the covered litigation support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered litigation support contractor; and

“(3) that such technical data provided to the covered litigation support contractor under the authority of this section shall not be used by the covered litigation support contractor to compete against the third party for Government or non-Government contracts.”

10 USC 2320
note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date that is 120 days after the date of the enactment of this Act.

SEC. 802. DESIGNATION OF ENGINE DEVELOPMENT AND PROCUREMENT PROGRAM AS MAJOR SUBPROGRAM.

Deadline.

(a) **DESIGNATION AS MAJOR SUBPROGRAM.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall designate an engine development and procurement program as a major subprogram of the F-35 Lightning II aircraft major defense acquisition program, in accordance with section 2430a of title 10, United States Code.

(b) **ORIGINAL BASELINE.**—For purposes of reporting requirements referred to in section 2430a(b) of title 10, United States Code, for the major subprogram designated under subsection (a), the Secretary shall use the Milestone B decision as the original baseline for the subprogram.

(c) **ACTIONS FOLLOWING CRITICAL COST GROWTH.**—

(1) **IN GENERAL.**—Subject to paragraph (2), to the extent that the Secretary elects to restructure the Lightning II aircraft major defense acquisition program subsequent to a reassessment and actions required by subsections (a) and (c) of section 2433a of title 10, United States Code, during fiscal year 2010, and also conducts such reassessment and actions with respect to an F-35 engine development and procurement program (including related reporting based on the original baseline as defined in subsection (c)), the requirements of section 2433a of such title with respect to a major subprogram designated under subsection (a) shall be considered to be met with respect to the major subprogram.

(2) **LIMITATION.**—Actions taken in accordance with paragraph (1) shall be considered to meet the requirements of section 2433a of title 10, United States Code, with respect

to a major subprogram designated under subsection (a) only to the extent that designation as a major subprogram would require the Secretary of Defense to conduct a reassessment and take actions pursuant to such section 2433a for such a subprogram upon enactment of this Act. The requirements of such section 2433a shall not be considered to be met with respect to such a subprogram in the event that additional programmatic changes, following the date of the enactment of this Act, cause the program acquisition unit cost or procurement unit cost of such a subprogram to increase by a percentage equal to or greater than the critical cost growth threshold (as defined in section 2433(a)(5) of such title) for the subprogram.

SEC. 803. ENHANCEMENT OF DEPARTMENT OF DEFENSE AUTHORITY TO RESPOND TO COMBAT AND SAFETY EMERGENCIES THROUGH RAPID ACQUISITION AND DEPLOYMENT OF URGENTLY NEEDED SUPPLIES.

(a) **REQUIREMENT TO ESTABLISH PROCEDURES.**—Subsection (a) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (10 U.S.C. 2302 note) is amended—

(1) in the matter preceding paragraph (1), by striking “items” and inserting “supplies”; and

(2) by striking paragraph (1) and inserting the following new paragraph (1):

“(1)(A) currently under development by the Department of Defense or available from the commercial sector; or

“(B) require only minor modifications to supplies described in subparagraph (A); and”.

(b) **ISSUES TO BE ADDRESSED.**—Subsection (b) of such section is amended—

(1) in paragraph (1)(B), by striking “items” and inserting “supplies”; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking “items” and inserting “supplies”; and

(B) in subparagraphs (A) and (B), by striking “an item” and inserting “the supplies”; and

(C) in subparagraph (C), by inserting “and utilization” after “deployment”.

(c) **RESPONSE TO COMBAT EMERGENCIES.**—Subsection (c) of such section is amended—

(1) by striking “equipment” each place it appears other than paragraph (5) and inserting “supplies”; and

(2) by striking “combat capability” each place it appears;

(3) by striking “that has resulted in combat fatalities” each place it appears and inserting “that has resulted in combat casualties, or is likely to result in combat casualties”; and

(4) in paragraph (1), by striking “is” and inserting “are”; and

(5) in paragraph (2)—

(A) in subparagraph (A), by striking “is” each place it appears and inserting “are”; and

(B) in subparagraph (B), by striking “fatalities” at the end and inserting “casualties”; and

(6) by amending paragraph (3) to read as follows:

“(3) In any fiscal year in which the Secretary makes a determination described in paragraph (1), the Secretary may use any

funds available to the Department of Defense for that fiscal year for acquisitions of supplies under this section if the determination includes a written finding that the use of such funds is necessary to address the combat capability deficiency in a timely manner. The authority of this section may not be used to acquire supplies in an amount aggregating more than \$200,000,000 during any such fiscal year.”;

(7) in paragraph (4)—

(A) by inserting “, in consultation with the Director of the Office of Management and Budget,” after “shall”; and

(B) by striking “Each such notice” and inserting “For each such determination, the notice under the preceding sentence”; and

(8) in paragraph (5), by striking “that equipment” and inserting “the supplies concerned”.

10 USC 806.

(d) **WAIVER OF CERTAIN STATUTES AND REGULATIONS.**—Subsection (d)(1) of such section is amended by striking “equipment” in subparagraphs (A), (B), and (C) and inserting “supplies”.

(e) **TESTING REQUIREMENT.**—Subsection (e) of such section is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “an item” and inserting “the supplies”; and

(B) in subparagraph (B), by striking “of the item” and all that follows through “requirements document” and inserting “of the supplies in meeting the original requirements for the supplies (as stated in a statement of the urgent operational need”;

(2) in paragraph (2)—

(A) by striking “an item” and inserting “supplies”; and

(B) by striking “the item” and inserting “the supplies”; and

(3) in paragraph (3), by striking “items” each place it appears and inserting “supplies”.

(f) **LIMITATION.**—Subsection (f) of such section is amended to read as follows:

“(f) **LIMITATION.**—In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.”.

10 USC 2302
note.

SEC. 804. REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS.

(a) **REVIEW OF RAPID ACQUISITION PROCESS REQUIRED.**—

Deadline.
Reports.

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall complete a review of the process for the fielding of capabilities in response to urgent operational needs and submit a report on the review to the congressional defense committees.

(2) REVIEW AND REPORT REQUIREMENTS.—The review pursuant to this section shall include consideration of various improvements to the acquisition process for rapid fielding of capabilities in response to urgent operational needs. For each improvement, the report on the review shall discuss—

(A) the Department's review of the improvement;

(B) if the improvement is being implemented by the Department, a schedule for implementing the improvement; and

(C) if the improvement is not being implemented by the Department, an explanation of why the improvement is not being implemented.

(3) IMPROVEMENTS TO BE CONSIDERED.—The improvements that shall be considered during the review are the following:

(A) Providing a streamlined, expedited, and tightly integrated iterative approach to—

(i) the identification and validation of urgent operational needs;

(ii) the analysis of alternatives and identification of preferred solutions;

(iii) the development and approval of appropriate requirements and acquisition documents;

(iv) the identification and minimization of development, integration, and manufacturing risks;

(v) the consideration of operation and sustainment costs;

(vi) the allocation of appropriate funding; and

(vii) the rapid production and delivery of required capabilities.

(B) Clearly defining the roles and responsibilities of the Office of the Secretary of Defense, the Joint Chiefs of Staff, the military departments, and other components of the Department of Defense for carrying out all phases of the process.

(C) Designating a senior official within the Office of the Secretary of Defense with primary responsibility for making recommendations to the Secretary on the use of the authority provided by subsections (c) and (d) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (10 U.S.C. 2302 note), as amended by section 803 of this Act, in appropriate circumstances.

(D) Establishing a target date for the fielding of a capability pursuant to each validated urgent operational need.

(E) Implementing a system for—

(i) documenting key process milestones, such as funding, acquisition, fielding, and assessment decisions and actions; and

(ii) tracking the cost, schedule, and performance of acquisitions conducted pursuant to the process.

(F) Establishing a formal feedback mechanism for the commanders of the combatant commands to provide information to the Joint Chiefs of Staff and senior acquisition officials on how well fielded solutions are meeting urgent operational needs.

(G) Establishing a dedicated source of funding for the rapid fielding of capabilities in response to urgent operational needs.

(H) Issuing guidance to provide for the appropriate transition of capabilities acquired through rapid fielding into the traditional budget, requirements, and acquisition process for purposes of contracts for follow-on production, sustainment, and logistics support.

(I) Such other improvements as the Secretary considers appropriate.

(b) DISCRIMINATING URGENT OPERATIONAL NEEDS FROM TRADITIONAL REQUIREMENTS.—

Deadline.

(1) EXPEDITED REVIEW PROCESS.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.

(2) ELEMENTS.—The review process developed and implemented pursuant to paragraph (1) shall—

Applicability.

(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;

(B) identify officials responsible for making determinations described in paragraph (1);

(C) establish appropriate time periods for making such determinations;

(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;

(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and

(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.

(3) COVERED CAPABILITIES.—The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—

(A) can be fielded within a period of two to 24 months;

(B) do not require substantial development effort;

(C) are based on technologies that are proven and available; and

(D) can appropriately be acquired under fixed price contracts.

(4) INCLUSION IN REPORT.—The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).

SEC. 805. ACQUISITION OF MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.

(a) PROGRAM TO IMPROVE INFORMATION TECHNOLOGY PROCESSES.—

(1) IN GENERAL.—Chapter 131 of title 10, United States Code, is amended by inserting after section 2223 the following new section:

“§ 2223a. Information technology acquisition planning and oversight requirements

“(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

“(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

“(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

“(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

“(A) processes and development status of investments in major automated information system programs;

“(B) continuous process improvement of such programs;

and

“(C) achievement of program and investment outcomes;

“(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

“(4) a process to ensure sufficient resources and infrastructure capacity for test and evaluation of information technology systems;

“(5) a process to ensure that military departments and Defense Agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

“(6) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by inserting after the item relating to section 2223 the following new item:

“2223a. Information technology acquisition planning and oversight requirements.”.

(b) ANNUAL REPORT TO CONGRESS.—Section 2445b(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

“(5) For each major automated information system program for which such information has not been provided in a previous annual report—

“(A) a description of the business case analysis (if any) that has been prepared for the program and key functional requirements for the program;

“(B) a description of the analysis of alternatives conducted with regard to the program;

“(C) an assessment of the extent to which the program, or portions of the program, have technical requirements of sufficient clarity that the program, or portions of the program, may be feasibly procured under firm, fixed-price contracts;

“(D) the most recent independent cost estimate or cost analysis for the program provided by the Director of Cost Assessment and Program Evaluation in accordance with section 2334(a)(6) of this title;

“(E) a certification by a Department of Defense acquisition official with responsibility for the program that all technical and business requirements have been reviewed and validated to ensure alignment with the business case; and

“(F) an explanation of the basis for the certification described in subparagraph (E).

“(6) For each major automated information system program for which the information required under paragraph (5) has been provided in a previous annual report, a summary of any significant changes to the information previously provided.”.

10 USC 2304
note.

SEC. 806. REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK.

(a) **AUTHORITY.**—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) **DETERMINATION AND NOTIFICATION.**—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 2304(f)(3) of title 10, United States Code;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

(A) notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) ensure the confidentiality of any such notifications.

(e) DEFINITIONS.—In this section:

(1) HEAD OF A COVERED AGENCY.—The term “head of a covered agency” means each of the following:

(A) The Secretary of Defense.

(B) The Secretary of the Army.

(C) The Secretary of the Navy.

(D) The Secretary of the Air Force.

(2) COVERED PROCUREMENT ACTION.—The term “covered procurement action” means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 2319 of title 10, United States Code, for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor

Notification.

providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) COVERED PROCUREMENT.—The term “covered procurement” means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 2305(a)(1)(C)(ii) of title 10, United States Code, or an evaluation factor, as provided in section 2305(a)(2)(A) of such title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 2304c(d)(3) of title 10, United States Code, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) SUPPLY CHAIN RISK.—The term “supply chain risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) COVERED SYSTEM.—The term “covered system” means a national security system, as that term is defined in section 3542(b) of title 44, United States Code.

(6) COVERED ITEM OF SUPPLY.—The term “covered item of supply” means an item of information technology (as that term is defined in section 11101 of title 40, United States Code) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

(f) EFFECTIVE DATE.—The requirements of this section shall take effect on the date that is 180 days after the date of the enactment of this Act and shall apply to—

(1) contracts that are awarded on or after such date; and

Applicability.

(2) task and delivery orders that are issued on or after such date pursuant to contracts that awarded before, on, or after such date.

(g) SUNSET.—The authority provided in this section shall expire on the date that is three years after the date of the enactment of this Act.

Subtitle B—Provisions Relating to Major Defense Acquisition Programs

SEC. 811. COST ESTIMATES FOR PROGRAM BASELINES AND CONTRACT NEGOTIATIONS FOR MAJOR DEFENSE ACQUISITION AND MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.

Section 2334 of title 10, United States Code, is amended—

(1) in subsection (d)—

(A) in paragraph (1)—

(i) by striking “paragraph (2)” and inserting “paragraph (3)”; and

(ii) by striking “, the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and” and inserting “and the rationale for selecting such confidence level;”;

(B) by redesignating paragraph (2) as paragraph (3);

and

(C) by inserting after paragraph (1) the following new paragraph (2):

“(2) ensure that such confidence level provides a high degree of confidence that the program can be completed without the need for significant adjustment to program budgets; and”;

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(3) by inserting after subsection (d) the following new subsection (e):

“(e) ESTIMATES FOR PROGRAM BASELINE AND ANALYSES AND TARGETS FOR CONTRACT NEGOTIATION PURPOSES.—(1) The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of subsection (a) shall provide that—

“(A) cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (a)(6) are not to be used for the purpose of contract negotiations or the obligation of funds; and

“(B) cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government’s reasonable expectation of successful contractor performance in accordance with the contractor’s proposal and previous experience.

“(2) The Program Manager and contracting officer for each major defense acquisition program and major automated information system program shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of paragraph (1) and the policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation.

“(3) Funds that are made available for a major defense acquisition program or major automated information system program in accordance with a cost estimate conducted pursuant to subsection (a)(6), but are excess to a cost analysis or target developed pursuant to paragraph (2), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

“(4) Funds described in paragraph (3)—

“(A) may be used—

“(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to paragraph (2);

“(ii) to acquire additional end items in accordance with the requirements of section 2308 of this title; or

“(iii) to cover the cost of risk reduction and process improvements; and

“(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.”.

10 USC 2430
note.

Deadline.

SEC. 812. MANAGEMENT OF MANUFACTURING RISK IN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) **GUIDANCE REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue comprehensive guidance on the management of manufacturing risk in major defense acquisition programs.

(b) **ELEMENTS.**—The guidance issued under subsection (a) shall, at a minimum—

(1) require the use of manufacturing readiness levels as a basis for measuring, assessing, reporting, and communicating manufacturing readiness and risk on major defense acquisition programs throughout the Department of Defense;

(2) provide guidance on the definition of manufacturing readiness levels and how manufacturing readiness levels should be used to assess manufacturing risk and readiness in major defense acquisition programs;

(3) specify manufacturing readiness levels that should be achieved at key milestones and decision points for major defense acquisition programs;

(4) identify tools and models that may be used to assess, manage, and reduce risks that are identified in the course of manufacturing readiness assessments for major defense acquisition programs; and

(5) require appropriate consideration of the manufacturing readiness and manufacturing readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

(c) **MANUFACTURING READINESS EXPERTISE.**—The Secretary shall ensure that—

(1) the acquisition workforce chapter of the annual strategic workforce plan required by section 115b of title 10, United States Code, includes an assessment of the critical manufacturing readiness knowledge and skills needed in the acquisition workforce and a plan of action for addressing any gaps in such knowledge and skills; and

(2) the need of the Department for manufacturing readiness knowledge and skills is given appropriate consideration, comparable to the consideration given to other program management functions, as the Department identifies areas of need for funding through the Defense Acquisition Workforce Development Fund established in accordance with the requirements of section 1705 of title 10, United States Code.

(d) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term “major defense acquisition program” has the meaning given that term in section 2430(a) of title 10, United States Code.

SEC. 813. MODIFICATION AND EXTENSION OF REQUIREMENTS OF THE WEAPON SYSTEM ACQUISITION REFORM ACT OF 2009.

(a) EXTENSION OF REPORTING REQUIREMENTS.—Section 102(b) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1714; 10 U.S.C. 2430 note) is amended—

(1) in paragraph (2), by inserting “, and not later than February 15 of each year from 2011 through 2014” after “Not later than 180 days after the date of the enactment of this Act”; and

(2) in paragraph (3), by striking “The first annual report” and inserting “Each annual report from 2010 through 2014”.

(b) CLARIFICATION THAT PROTOTYPES MAY BE ACQUIRED FROM COMMERCIAL, GOVERNMENT, OR ACADEMIC SOURCES.—Paragraph (4) of section 203(a) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1722; 10 U.S.C. 2430 note) is amended to read as follows:

“(4) That prototypes—

“(A) may be required under paragraph (1) or (3) for the system to be acquired or, if prototyping of the system is not feasible, for critical subsystems of the system; and

“(B) may be acquired from commercial, government, or academic sources.”.

(c) CLARIFICATION THAT CERTIFICATIONS ARE NOT REQUIRED FOR MAJOR DEFENSE ACQUISITION PROGRAMS FOLLOWING MILESTONE C APPROVAL.—Section 204(c)(2) of the Weapon Systems Acquisition Reform Act of 2009 (123 Stat. 1724) is amended—

(1) in subparagraph (A), by striking “; and” and inserting a semicolon;

(2) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(C) has not yet achieved a Milestone C approval.”.

(d) CLARIFICATION THAT CERTAIN MILESTONE B CERTIFICATION CRITERIA MAY BE WAIVED.—

(1) WAIVER AUTHORITY.—Effective as of May 22, 2009, section 2366b(d) of title 10, United States Code, as amended by section 205(a)(1) of the Weapon Systems Acquisition Reform Act of 2009 (123 Stat. 1724), is amended—

(A) in paragraph (1), by striking “specified in paragraph (1) or (2) of subsection (a)” and inserting “specified in paragraph (1), (2), or (3) of subsection (a)”; and

(B) in paragraph (2), by striking “specified in paragraphs (1) and (2) of subsection (a)” and inserting “specified in paragraphs (1), (2), and (3) of subsection (a)”.

10 USC 2366a
note.

Effective date.
10 USC 2366b
note.

Effective date. (2) DETERMINATION REGARDING SATISFACTION OF CERTIFICATION COMPONENTS.—Effective as of May 22, 2009, and as if included therein as enacted, section 205(b)(1) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2366b note) is amended by striking “certification components specified in paragraphs (1) and (2) of subsection (a) of section 2366b of title 10, United States Code” and inserting “certification components specified in paragraphs (1), (2), and (3) of subsection (a) of section 2366b of title 10, United States Code”.

Effective date. (e) CORRECTION TO REFERENCE.—Effective as of May 22, 2009, and as if included therein as enacted, section 205(c) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2433a note) is amended by striking “section 2433a(c)(3)” and inserting “section 2433a(c)(1)(C)”.

SEC. 814. INCLUSION OF MAJOR SUBPROGRAMS TO MAJOR DEFENSE ACQUISITION PROGRAMS UNDER VARIOUS ACQUISITION-RELATED REQUIREMENTS.

(a) REPORTING REQUIREMENTS.—Section 2430a(b) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting “(1)” before “If the Secretary”;

(3) in subparagraph (A), as so redesignated, by inserting “(other than as provided in paragraph (2))” before the semicolon; and

(4) by adding at the end the following new paragraph:

“(2) For a major defense acquisition program for which a designation of a major subprogram has been made under subsection (a), unit costs under this chapter shall be submitted in accordance with the definitions in subsection (d).”.

(b) MILESTONE A APPROVAL CERTIFICATION REQUIREMENTS.—Section 2366a of such title is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking “a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program” and inserting “a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram”; and

(B) in paragraph (2), by inserting “or designated major subprogram” after “major defense acquisition program”; and

(2) in subsection (c)—

(A) by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively; and

(B) by inserting after paragraph (1) the following new paragraph (2):

Definition. “(2) The term ‘designated major subprogram’ means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.”.

(c) MILESTONE B APPROVAL CERTIFICATION REQUIREMENTS.—Section 2366b of such title is amended—

(1) in subsection (b)(1)—

(A) by striking “any changes to the program” and inserting “any changes to the program or a designated major subprogram of such program”; and

(B) in subparagraph (B), by striking “otherwise cause the program” and inserting “otherwise cause the program or subprogram”; and

(2) in subsection (g)—

(A) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

(B) by inserting after paragraph (1) the following new paragraph (2):

“(2) The term ‘designated major subprogram’ means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.”.

Definition.

(d) CONFORMING AMENDMENTS TO SECTION 2399.—Subsection (a) of section 2399 of such title is amended to read as follows:

10 USC 2399.

“(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a covered major defense acquisition program or a covered designated major subprogram may not proceed beyond low-rate initial production until initial operational test and evaluation of the program or subprogram is completed.

“(2) In this subsection:

Definitions.

“(A) The term ‘covered major defense acquisition program’ means a major defense acquisition program that involves the acquisition of a weapon system that is a major system within the meaning of that term in section 2302(5) of this title.

“(B) The term ‘covered designated major subprogram’ means a major subprogram designated under section 2430a(a)(1) of this title that is a major subprogram of a covered major defense acquisition program.”.

(e) CONFORMING AMENDMENTS TO SECTION 2434.—Section 2434(a) of such title is amended—

(1) by inserting “(1)” before “The Secretary of Defense”; and

(2) by adding at the end the following new paragraph:

“(2) The provisions of this section shall apply to any major subprogram of a major defense acquisition program (as designated under section 2430a(a)(1) of this title) in the same manner as those provisions apply to a major defense acquisition program, and any reference in this section to a program shall be treated as including such a subprogram.”.

Applicability.

Subtitle C—Amendments to General Contracting Authorities, Procedures, and Limitations

SEC. 821. PROVISIONS RELATING TO FIRE RESISTANT FIBER FOR PRODUCTION OF MILITARY UNIFORMS.

(a) EXTENSION.—Section 829 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 229; 10 U.S.C. 2533a note) is amended in subsection (f) by striking “on the date that is five years after the date of the enactment of this Act” and inserting “on January 1, 2015”.

(b) PROHIBITION ON SPECIFICATION IN SOLICITATIONS.—No solicitation issued before January 1, 2015, by the Department of Defense may include a requirement that proposals submitted pursuant to such solicitation must include the use of fire resistant rayon fiber.

(c) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than March 15, 2011, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the supply chain for fire resistant fiber for the production of military uniforms.

(2) ELEMENTS.—The report required by paragraph (1) shall include, at a minimum, an analysis of the following:

(A) The current and anticipated sources of fire resistant rayon fiber for the production of military uniforms.

(B) The extent to which fire resistant rayon fiber has unique properties that provide advantages for the production of military uniforms.

(C) The extent to which the efficient procurement of fire resistant rayon fiber for the production of military uniforms is impeded by existing statutory or regulatory requirements.

(D) The actions the Department of Defense has taken to identify alternatives to fire resistant rayon fiber for the production of military uniforms.

(E) The extent to which such alternatives provide an adequate substitute for fire resistant rayon fiber for the production of military uniforms.

(F) The impediments to the use of such alternatives, and the actions the Department has taken to overcome such impediments.

(G) The extent to which uncertainty regarding the future availability of fire resistant rayon fiber results in instability or inefficiency for elements of the United States textile industry that use fire resistant rayon fiber, and the extent to which that instability or inefficiency results in less efficient business practices, impedes investment and innovation, and thereby results or may result in higher costs, delayed delivery, or a lower quality of product delivered to the Government.

(H) The extent to which any modifications to existing law or regulation may be necessary to ensure the efficient acquisition of fire resistant fiber or alternative fire resistant products for the production of military uniforms.

SEC. 822. REPEAL OF REQUIREMENT FOR CERTAIN PROCUREMENTS FROM FIRMS IN THE SMALL ARMS PRODUCTION INDUSTRIAL BASE.

(a) REPEAL.—Section 2473 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 146 of such title is amended by striking the item relating to section 2473.

SEC. 823. REVIEW OF REGULATORY DEFINITION RELATING TO PRODUCTION OF SPECIALTY METALS.10 USC 2533b
note.

(a) **REVIEW REQUIRED.**—The Secretary of Defense shall review the regulations specified in subsection (b) to ensure that the definition of the term “produce” in such regulations complies with the requirements of section 2533b of title 10, United States Code. In carrying out the review, the Secretary shall seek public comment, consider congressional intent, and revise the regulations as the Secretary considers necessary and appropriate.

Public comment.

(b) **REGULATIONS SPECIFIED.**—The regulations referred to in subsection (a) are any portion of subpart 252.2 of the defense supplement to the Federal Acquisition Regulation that includes a definition of the term “produce” for purposes of implementing section 2533b of title 10, United States Code.

(c) **COMPLETION OF REVIEW.**—The Secretary shall complete the review required by subsection (a) and any necessary and appropriate revisions to the defense supplement to the Federal Acquisition Regulation not later than 270 days after the date of the enactment of this Act.

Deadline.

SEC. 824. GUIDANCE RELATING TO RIGHTS IN TECHNICAL DATA.10 USC 2320
note.

(a) **REVIEW OF GUIDANCE.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall review guidance issued by the military departments on the implementation of section 2320(e) of title 10, United States Code, to ensure that such guidance is consistent with the guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the requirements of this section. Such guidance shall be designed to ensure that the United States—

(1) preserves the option of competition for contracts for the production and sustainment of systems or subsystems that are developed exclusively with Federal funds as defined in accordance with the amendments made by this section; and

(2) is not required to pay more than once for the same technical data.

(b) **RIGHTS IN TECHNICAL DATA.**—Section 2320(a) of title 10, United States Code, is amended—

(1) in paragraph (2)(F)(i)—

(A) by redesignating subclauses (I) and (II) as subclauses (II) and (III), respectively; and

(B) by inserting before subclause (II), as so redesignated, the following new subclause (I):

“(I) rights in technical data described in subparagraph (A) for which a use or release restriction has been erroneously asserted by a contractor or subcontractor;” and

(2) in paragraph (3), by striking “for the purposes of definitions under this paragraph” and inserting “for the purposes of paragraph (2)(B), but shall be considered to be Federal funds for the purposes of paragraph (2)(A)”.

(c) **VALIDATION OF PROPRIETARY DATA RESTRICTIONS.**—Section 2321(d)(2) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking “A challenge” and inserting “Except as provided in subparagraph (C), a challenge”; and

(2) by adding at the end the following new subparagraph (C):

“(C) The limitation in this paragraph shall not apply to a case in which the Secretary finds that reasonable grounds exist to believe that a contractor or subcontractor has erroneously asserted a use or release restriction with regard to technical data described in section 2320(a)(2)(A) of this title.”.

SEC. 825. EXTENSION OF SUNSET DATE FOR CERTAIN PROTESTS OF TASK AND DELIVERY ORDER CONTRACTS.

Paragraph (3) of section 2304c(e) of title 10, United States Code, is amended to read as follows:

“(3) Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.”.

SEC. 826. INCLUSION OF OPTION AMOUNTS IN LIMITATIONS ON AUTHORITY OF THE DEPARTMENT OF DEFENSE TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (A), by inserting “(including all options)” after “not in excess of \$100,000,000”; and

(B) in subparagraph (B), by inserting “(including all options)” after “in excess of \$100,000,000”; and

(2) in subsection (e)(3)(A), by inserting “(including all options)” after “does not exceed \$50,000,000”.

SEC. 827. PERMANENT AUTHORITY FOR DEFENSE ACQUISITION CHALLENGE PROGRAM; PILOT EXPANSION OF PROGRAM.

(a) PERMANENT AUTHORITY.—Section 2359b of title 10, United States Code, is amended—

(1) by striking subsections (j) and (k); and

(2) by redesignating subsection (l) as subsection (j).

(b) PILOT PROGRAM.—Section 2359b of title 10, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection (k):

“(k) PILOT PROGRAM FOR PROGRAMS OTHER THAN MAJOR DEFENSE ACQUISITION PROGRAMS.—

“(1) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall carry out a pilot program to expand the use of the authority provided in this section to provide opportunities for the introduction of innovative and cost-saving approaches to programs other than major defense acquisition programs through the submission, review, and implementation, where appropriate, of qualifying proposals.

“(2) QUALIFYING PROPOSALS.—For purposes of this subsection, a qualifying proposal is an offer to supply a nondevelopmental item that—

“(A) is evaluated as achieving a level of performance that is at least equal to the level of performance of an item being procured under a covered acquisition program and as providing savings in excess of 15 percent after considering all costs to the Government of implementing such proposal; or

“(B) is evaluated as achieving a level of performance that is significantly better than the level of performance of an item being procured under a covered acquisition program without any increase in cost to the Government.

“(3) REVIEW PROCEDURES.—The Under Secretary shall adopt modifications as may be needed to the procedures applicable to the Challenge Program to provide for Department of Defense review of, and action on, qualifying proposals. Such procedures shall include, at a minimum, the issuance of a broad agency announcement inviting interested parties to submit qualifying proposals in areas of interest to the Department.

“(4) DEFINITIONS.—In this subsection:

“(A) NONDEVELOPMENTAL ITEM.—The term ‘nondevelopmental item’ has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

“(B) COVERED ACQUISITION PROGRAM.—The term ‘covered acquisition program’ means any acquisition program of the Department of Defense other than a major defense acquisition program, but does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.)

“(C) LEVEL OF PERFORMANCE.—The term ‘level of performance’, with respect to a nondevelopmental item, means the extent to which the item demonstrates required item functional characteristics.

“(5) SUNSET.—The authority to carry out the pilot program under this subsection shall terminate on the date that is five years after the date of the enactment of this Act.”.

SEC. 828. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) COMPETITION REQUIREMENTS FOR TASK OR DELIVERY ORDERS UNDER ENERGY SAVINGS PERFORMANCE CONTRACTS.—Section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) is amended by adding at the end the following:

“(c) TASK OR DELIVERY ORDERS.—(1) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

“(A) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities and, following a reasonable period of time to provide a proposal in response to the notice, soliciting from such contractors the submission of expressions of interest in, and contractor qualifications for, performing site surveys or investigations and feasibility designs and studies, and including in the notice summary information concerning energy use for any facilities that the agency has specific interest in including in such task or delivery order;

“(B) reviewing all expressions of interest and qualifications submitted pursuant to the notice under subparagraph (A);

“(C) selecting two or more contractors (from among those reviewed under subparagraph (B)) to conduct discussions concerning the contractors’ respective qualifications to implement potential energy conservation measures, including—

“(i) requesting references and specific detailed examples with respect to similar efforts and the resulting energy savings of such similar efforts; and

“(ii) requesting an explanation of how such similar efforts relate to the scope and content of the task or delivery order concerned;

“(D) selecting and authorizing—

“(i) more than one contractor (from among those selected under subparagraph (C)) to conduct site surveys, investigations, feasibility designs and studies, or similar assessments for the energy savings performance contract services (or for discrete portions of such services), for the purpose of allowing each such contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures; or

“(ii) one contractor (from among those selected under subparagraph (C)) to conduct a site survey, investigation, feasibility design and study, or similar assessment for the purpose of allowing the contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures;

“(E) providing a debriefing to any contractor not selected under subparagraph (D);

“(F) negotiating a task or delivery order for energy savings performance contracting services with the contractor or contractors selected under subparagraph (D) based on the energy conservation measures identified; and

“(G) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

“(2) The issuance of a task or delivery order for energy savings performance contracting services pursuant to paragraph (1) is deemed to satisfy the task and delivery order competition requirements in section 2304c(d) of title 10, United States Code, and section 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d)).

“(3) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to paragraph (1).”.

42 USC 8287
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) is inapplicable to task or delivery orders issued before the date of enactment of this Act.

SEC. 829. DEFINITION OF MATERIALS CRITICAL TO NATIONAL SECURITY.

(a) DEFINITIONS.—Section 187 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) DEFINITIONS.—In this section:

“(1) The term ‘materials critical to national security’ means materials—

“(A) upon which the production or sustainment of military equipment is dependent; and

“(B) the supply of which could be restricted by actions or events outside the control of the Government of the United States.

“(2) The term ‘military equipment’ means equipment used directly by the armed forces to carry out military operations.

“(3) The term ‘secure supply’, with respect to a material, means the availability of a source or sources for the material, including the full supply chain for the material and components containing the material.”.

(b) AMENDMENT RELATING TO DUTIES.—Subsection (b) of section 187 of such title is amended to read as follows:

10 USC 187.

“(b) DUTIES.—In addition to other matters assigned to it by the Secretary of Defense, the Board shall—

“(1) determine the need to provide a long term secure supply of materials designated as critical to national security to ensure that national defense needs are met;

Determination.

“(2) analyze the risk associated with each material designated as critical to national security and the effect on national defense that the nonavailability of such material would have;

“(3) recommend a strategy to the President to ensure a secure supply of materials designated as critical to national security;

Strategy.

“(4) recommend such other strategies to the President as the Board considers appropriate to strengthen the industrial base with respect to materials critical to national security; and

Strategies.

“(5) publish not less frequently than once every two years in the Federal Register recommendations regarding materials critical to national security, including a list of specialty metals, if any, recommended for addition to, or removal from, the definition of ‘specialty metal’ for purposes of section 2533b of this title.”.

Deadline.
Federal Register,
publication.
Recommendations.

Subtitle D—Contractor Matters

SEC. 831. OVERSIGHT AND ACCOUNTABILITY OF CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS.

(a) ENHANCEMENT OF OVERSIGHT AND ACCOUNTABILITY.—Section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking “comply with regulations” and inserting “ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with regulations”;

(B) in subparagraph (B)—

(i) by striking “comply with” and all that follows through “in accordance with” and inserting “ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with”; and

(ii) by striking “and” at the end;

(C) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following new subparagraph:

“(D) ensure that the contract clause is included in subcontracts awarded to any subcontractor at any tier who is responsible for performing private security functions under the contract.”;

(2) by redesignating subsections (c) and (d) as subsections (f) and (g), respectively; and

(3) by inserting after subsection (b) the following new subsections:

“(c) OVERSIGHT.—It shall be the responsibility of the head of the contracting activity responsible for each covered contract to ensure that the contracting activity takes appropriate steps to assign sufficient oversight personnel to the contract to—

“(1) ensure that the contractor responsible for performing private security functions under such contract comply with the regulatory requirements prescribed pursuant to subsection (a) and the contract requirements established pursuant to subsection (b); and

“(2) make the determinations required by subsection (d).

“(d) REMEDIES.—The failure of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) or the contract clause inserted in a covered contract pursuant to subsection (b), as determined by the contracting officer for the covered contract—

“(1) shall be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of the past performance of the contractor for the purpose of a contract award decision, as provided in section 6(j) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(j));

“(2) in the case of an award fee contract—

“(A) shall be considered in any evaluation of contract performance by the contractor for the relevant award fee period; and

“(B) may be a basis for reducing or denying award fees for such period, or for recovering all or part of award fees previously paid for such period; and

“(3) in the case of a failure to comply that is severe, prolonged, or repeated—

“(A) shall be referred to the suspension or debarment official for the appropriate agency; and

“(B) may be a basis for suspension or debarment of the contractor.

“(e) RULE OF CONSTRUCTION.—The duty of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) and the contract clause inserted into a covered contract pursuant to subsection (b), and the availability of the remedies provided in subsection (d), shall not be reduced or diminished by the failure of a higher or lower tier contractor under such contract to comply with such requirements, or by a failure of the contracting activity to provide the oversight required by subsection (c).”.

(b) REVISED REGULATIONS AND CONTRACT CLAUSE.—

(1) DEADLINE FOR REGULATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall revise the regulations prescribed pursuant to section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to incorporate the requirements of the amendments made by subsection (a).

(2) COMMENCEMENT OF APPLICABILITY OF REVISIONS.—The revision of regulations under paragraph (1) shall apply to the following:

(A) Any contract that is awarded on or after the date that is 120 days after the date of the enactment of this Act.

(B) Any task or delivery order that is issued on or after the date that is 120 days after the date of the enactment of this Act pursuant to a contract that is awarded before, on, or after the date that is 120 days after the date of the enactment of this Act.

(3) COMMENCEMENT OF INCLUSION OF CONTRACT CLAUSE.—A contract clause that reflects the revision of regulations required by the amendments made by subsection (a) shall be inserted, as required by such section 862, into the following:

(A) Any contract described in paragraph (2)(A).

(B) Any task or delivery order described in paragraph (2)(B).

SEC. 832. EXTENSION OF REGULATIONS ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS TO AREAS OF OTHER SIGNIFICANT MILITARY OPERATIONS.

(a) AREAS OF OTHER SIGNIFICANT MILITARY OPERATIONS.—Section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note), as amended by section 831, is further amended—

(1) by striking “combat operations” each place it appears and inserting “combat operations or other significant military operations”; and

(2) in subsection (f), as redesignated by such section 831—

(A) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(B) in paragraph (1)—

(i) by inserting “either” after “constituting”; and

(ii) by adding at the end the following: “In making designations under this paragraph, the Secretary shall ensure that an area is not designated in whole or part as both an area of combat operations and an area of other significant military operations.”; and

(C) by inserting after paragraph (1) the following new paragraph (2):

“(2) OTHER SIGNIFICANT MILITARY OPERATIONS.—For purposes of this section, the term ‘other significant military operations’ means activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.”.

Definition.

(b) ADDITIONAL AREAS CONSIDERED FOR DESIGNATION.—

(1) DETERMINATION REQUIRED FOR CERTAIN AREAS.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense shall make a written determination for each of the following areas regarding whether or not the area constitutes an area of combat operations or an area of other significant military operations for purposes of designation as such an area under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note), as amended by this section:

Deadline.

(A) The Horn of Africa region.

(B) Yemen.

	(C) The Philippines.
Deadline.	(2) SUBMISSION TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of each written determination under paragraph (1), together with an explanation of the basis for such determination.
	(c) LIMITATION AND EXCEPTION.—Section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2302 note), as amended by subsection (a) and by section 831, is further amended—
	(1) by redesignating subsection (g), as redesignated by such section 831, as subsection (h) and inserting after subsection (f) the following new subsection (g):
Applicability.	“(g) LIMITATION.—With respect to an area of other significant military operations, the requirements of this section shall apply only upon agreement of the Secretary of Defense and the Secretary of State. An agreement of the Secretaries under this subsection may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this section shall always apply.”; and
	(2) in subsection (h), as so redesignated—
	(A) by striking the subsection designation and “EXCEPTION.—” and inserting the following:
	“(h) EXCEPTIONS.—
	“(1) INTELLIGENCE ACTIVITIES.—”; and
	(B) by adding at the end the following new paragraph:
	“(2) NONGOVERNMENTAL ORGANIZATIONS.—The requirements of this section shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.”.
	(d) REPORT ON IMPLEMENTATION.—Not later than 180 days after a designation of an area as an area of combat operations or an area of other significant military operations pursuant to subsection (b)(2), the Secretary of Defense, in coordination with the Secretary of State, shall submit to Congress a report on steps taken or planned to be taken to implement the regulations prescribed under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2302 note) in such area. In the case of any agreement by the Secretaries to limit the applicability of such section or exempt nongovernmental organizations from such section, pursuant to subsections (g) or (h)(1) of such section (as added by subsection (c)), the report shall document the basis for such agreement.
10 USC 2302 note.	SEC. 833. STANDARDS AND CERTIFICATION FOR PRIVATE SECURITY CONTRACTORS.
Deadline.	(a) REVIEW OF THIRD-PARTY STANDARDS AND CERTIFICATION PROCESSES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall—
Determination.	(1) determine whether the private sector has developed—

(A) operational and business practice standards applicable to private security contractors; and

(B) third-party certification processes for determining whether private security contractors adhere to standards described in subparagraph (A); and

(2) review any standards and processes identified pursuant to paragraph (1) to determine whether the application of such standards and processes will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations.

(b) REVISED REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the regulations promulgated under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to ensure that such regulations—

Deadline.
Criteria.

(1) establish criteria for defining standard practices for the performance of private security functions, which shall reflect input from industry representatives as well as the Inspector General of the Department of Defense; and

(2) establish criteria for weapons training programs for contractors performing private security functions, including minimum requirements for weapons training programs of instruction and minimum qualifications for instructors for such programs.

(c) INCLUSION OF THIRD-PARTY STANDARDS AND CERTIFICATIONS IN REVISED REGULATIONS.—

(1) STANDARDS.—If the Secretary determines that the application of operational and business practice standards identified pursuant to subsection (a)(1)(A) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) shall incorporate a requirement to comply with such standards, subject to such exceptions as the Secretary may determine to be necessary.

(2) CERTIFICATIONS.—If the Secretary determines that the application of a third-party certification process identified pursuant to subsection (a)(1)(B) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) may provide for the consideration of such certifications as a factor in the evaluation of proposals for award of a covered contract for the provision of private security functions, subject to such exceptions as the Secretary may determine to be necessary.

(d) DEFINITIONS.—In this section:

(1) COVERED CONTRACT.—The term “covered contract” means—

(A) a contract of the Department of Defense for the performance of services;

(B) a subcontract at any tier under such a contract;
or

(C) a task order or delivery order issued under such a contract or subcontract.

(2) **CONTRACTOR.**—The term “contractor” means, with respect to a covered contract, the contractor or subcontractor carrying out the covered contract.

(3) **PRIVATE SECURITY FUNCTIONS.**—The term “private security functions” means activities engaged in by a contractor under a covered contract as follows:

(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(e) **EXCEPTION.**—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

SEC. 834. ENHANCEMENTS OF AUTHORITY OF SECRETARY OF DEFENSE TO REDUCE OR DENY AWARD FEES TO COMPANIES FOUND TO JEOPARDIZE THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL.

(a) **EXPANSION OF DISPOSITIONS SUBJECT TO AUTHORITY.**—Section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2412; 10 U.S.C. 2302 note) is amended—

(1) in subsection (c), by adding at the end the following new paragraph:

“(5) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to subsection (d).”;

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (c) the following new subsection (d):

“(d) **DETERMINATIONS OF CONTRACTOR FAULT BY SECRETARY OF DEFENSE.**—

“(1) **IN GENERAL.**—In any case described by paragraph (2), the Secretary of Defense shall—

“(A) provide for an expeditious independent investigation of the causes of the serious bodily injury or death alleged to have been caused by the contractor as described in that paragraph; and

“(B) make a final determination, pursuant to procedures established by the Secretary for purposes of this subsection, whether the contractor, in the performance of a covered contract, caused such serious bodily injury or death through gross negligence or with reckless disregard for the safety of civilian or military personnel of the Government.

“(2) **COVERED CASES.**—A case described in this paragraph is any case in which the Secretary has reason to believe that—

“(A) a contractor, in the performance of a covered contract, may have caused the serious bodily injury or death of any civilian or military personnel of the Government; and

“(B) such contractor is not subject to the jurisdiction of United States courts.

“(3) **CONSTRUCTION OF DETERMINATION.**—A final determination under this subsection may be used only for the purpose

of evaluating contractor performance, and shall not be determinative of fault for any other purpose.”.

(b) **DEFINITION OF CONTRACTOR.**—Paragraph (1) of subsection (e) of such section, as redesignated by subsection (a)(2) of this section, is amended to read as follows:

10 USC 2302
note.

“(1) The term ‘contractor’ means a company awarded a covered contract and a subcontractor at any tier under such contract.”.

(c) **TECHNICAL AMENDMENT.**—Subsection (c) of such section is further amended in the matter preceding paragraph (1) by striking “subsection (a)” and inserting “subsection (b)”.

(d) **INCLUSION OF DETERMINATIONS OF CONTRACTOR FAULT IN DATABASE FOR FEDERAL AGENCY CONTRACT AND GRANT OFFICERS AND SUSPENSION AND DEBARMENT OFFICIALS.**—Section 872(c)(1) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4556) is amended by adding at the end the following new subparagraph:

41 USC 2313.

“(E) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note).”.

(e) **EFFECTIVE DATE.**—The requirements of section 823 of the National Defense Authorization Act for Fiscal Year 2010, as amended by subsections (a) through (c), shall apply with respect to the following:

Applicability.
10 USC 2302
note.

(1) Any contract entered into on or after the date of the enactment of this Act.

(2) Any task order or delivery order issued on or after the date of the enactment of this Act under a contract entered into before, on, or after that date.

SEC. 835. ANNUAL JOINT REPORT AND COMPTROLLER GENERAL REVIEW ON CONTRACTING IN IRAQ AND AFGHANISTAN.

Section 863 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) is amended to read as follows:

“SEC. 863. ANNUAL JOINT REPORT AND COMPTROLLER GENERAL REVIEW ON CONTRACTING IN IRAQ AND AFGHANISTAN.

“(a) JOINT REPORT REQUIRED.—

“(1) IN GENERAL.—Except as provided in paragraph (6), every 12 months, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall submit to the relevant committees of Congress a joint report on contracts in Iraq or Afghanistan.

“(2) PRIMARY MATTERS COVERED.—A report under this subsection shall, at a minimum, cover the following with respect to contracts in Iraq and Afghanistan during the reporting period:

“(A) Total number of contracts awarded.

“(B) Total number of active contracts.

“(C) Total value of all contracts awarded.

“(D) Total value of active contracts.

“(E) The extent to which such contracts have used competitive procedures.

“(F) Total number of contractor personnel working on contracts at the end of each quarter of the reporting period.

“(G) Total number of contractor personnel who are performing security functions at the end of each quarter of the reporting period.

“(H) Total number of contractor personnel killed or wounded.

“(3) ADDITIONAL MATTERS COVERED.—A report under this subsection shall also cover the following:

“(A) The sources of information and data used to compile the information required under paragraph (2).

“(B) A description of any known limitations of the data reported under paragraph (2), including known limitations of the methodology and data sources used to compile the report.

“(C) Any plans for strengthening collection, coordination, and sharing of information on contracts in Iraq and Afghanistan through improvements to the common databases identified under section 861(b)(4).

“(4) REPORTING PERIOD.—A report under this subsection shall cover a period of not less than 12 months.

“(5) SUBMISSION OF REPORTS.—The Secretaries and the Administrator shall submit an initial report under this subsection not later than February 1, 2011, and shall submit an updated report by February 1 of every year thereafter until February 1, 2013.

“(6) EXCEPTION.—If the total annual amount of obligations for contracts in Iraq and Afghanistan combined is less than \$250,000,000 for the reporting period, for all three agencies combined, the Secretaries and the Administrator may submit, in lieu of a report, a letter stating the applicability of this paragraph, with such documentation as the Secretaries and the Administrator consider appropriate.

“(7) ESTIMATES.—In determining the total number of contractor personnel working on contracts under paragraph (2)(F), the Secretaries and the Administrator may use estimates for any category of contractor personnel for which they determine it is not feasible to provide an actual count. The report shall fully disclose the extent to which estimates are used in lieu of an actual count.

“(b) COMPTROLLER GENERAL REVIEW AND REPORT.—

“(1) IN GENERAL.—Within 180 days after submission of each annual joint report required under subsection (a), but in no case later than August 5 of each year until 2013, the Comptroller General of the United States shall review the joint report and submit to the relevant committees of Congress a report on such review.

“(2) MATTERS COVERED.—A report under this subsection shall, at minimum—

“(A) assess the data and data sources used in developing the joint report;

“(B) review how the Department of Defense, the Department of State, and the United States Agency for International Development are using the data and the data sources used to develop the joint report in managing, overseeing, and coordinating contracting in Iraq and Afghanistan;

“(C) assess the plans of the departments and agency for strengthening or improving the common databases identified under section 861(b)(4); and

“(D) review and make recommendations on any specific contract or class of contracts that the Comptroller General determines raises issues of significant concern.

“(3) ACCESS TO DATABASES AND OTHER INFORMATION.—The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall provide to the Comptroller General full access to information on contracts in Iraq and Afghanistan for the purposes of the review carried out under this subsection, including the common databases identified under section 861(b)(4).”.

Subtitle E—Other Matters

SEC. 841. IMPROVEMENTS TO STRUCTURE AND FUNCTIONING OF JOINT REQUIREMENTS OVERSIGHT COUNCIL.

(a) VICE CHAIRMAN OF JOINT CHIEFS OF STAFF TO BE CHAIRMAN OF COUNCIL.—Subsection (c) of section 181 of title 10, United States Code, is amended—

(1) in paragraph (1), by inserting “Vice” before “Chairman of the Joint Chiefs of Staff”;

(2) in paragraph (2), by striking “, other than the Chairman of the Joint Chiefs of Staff,” and inserting “under subparagraphs (B), (C), (D), and (E) of paragraph (1)”;

(3) by striking paragraph (3).

(b) ROLE OF COMMANDERS OF COMBATANT COMMANDS AS MEMBERS OF COUNCIL.—Paragraph (1) of subsection (c) of such section is further amended—

(1) in subparagraph (D), by striking “and” at the end;

(2) in subparagraph (E), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following new subparagraph:

“(F) in addition, when directed by the chairman, the commander of any combatant command (or, as directed by that commander, the deputy commander of that command) when matters related to the area of responsibility or functions of that command will be under consideration by the Council.”.

(c) CIVILIAN ADVISORS.—

(1) ADDITIONAL CIVILIAN ADVISORS.—Subsection (d) of such section is amended by striking “The Under Secretary” and all that follows through “and expertise.” and inserting: “The following officials of the Department of Defense shall serve as advisors to the Council on matters within their authority and expertise:

“(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(B) The Under Secretary of Defense (Comptroller).

“(C) The Under Secretary of Defense for Policy.

“(D) The Director of Cost Assessment and Program Evaluation.

“(E) The Director of Operational Test and Evaluation.

“(F) Such other civilian officials of the Department of Defense as are designated by the Secretary of Defense for purposes of this subsection.”.

10 USC 181. (2) CONFORMING AMENDMENT.—Subsection (b)(3) of such section is amended by striking “Under Secretary of Defense (Comptroller), the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Director of Cost Assessment and Performance Evaluation” and inserting “advisors to the Council under subsection (d)”.

(d) RECOGNITION OF PERMANENT NATURE OF COUNCIL.—Subsection (a) of such section is amended by striking “The Secretary of Defense shall establish” and inserting “There is”.

SEC. 842. DEPARTMENT OF DEFENSE POLICY ON ACQUISITION AND PERFORMANCE OF SUSTAINABLE PRODUCTS AND SERVICES.

(a) FINDING.—Congress finds the following:

(1) Executive Order No. 13514, dated October 5, 2009, requires the departments and agencies of the Federal Government to establish an integrated strategy towards the procurement of sustainable products and services.

(2) The Department of Defense Strategic Sustainability Performance Plan, issued in August 2010, provides a framework for the Department’s compliance with Executive Order No. 13514 and other applicable sustainability requirements.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the achievement by the Department of Defense of the objectives and goals on the procurement of sustainable products and services established by section 2(h) of Executive Order No. 13514.

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) A description of the actions taken, and to be taken, by the Department to identify particular sustainable products and services that contribute to the achievement of the objectives and goals described in paragraph (1).

(B) An assessment of the tools available to the Department to promote the use of particular sustainable products and services identified pursuant to the actions described in subparagraph (A) across the Department, and a description of the actions taken, and to be taken, by the Department to use such tools.

(C) A description of strategies and tools identified by the Department that could assist the other departments and agencies of the Federal Government in procuring sustainable products and services, including a description of mechanisms for sharing best practices in such procurement, as identified by the Department, among the other departments and agencies of the Federal Government.

(D) An assessment of the progress the Department has made toward the achievement of the objectives and goals described in paragraph (1), including the scorecard identified in its Strategic Sustainability Performance Plan.

SEC. 843. ASSESSMENT AND PLAN FOR CRITICAL RARE EARTH MATERIALS IN DEFENSE APPLICATIONS.

(a) ASSESSMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall undertake an assessment of the supply and demand for rare earth materials in defense applications and identify which, if any, rare earth material meets both of the following criteria:

(A) The rare earth material is critical to the production, sustainment, or operation of significant United States military equipment.

(B) The rare earth material is subject to interruption of supply, based on actions or events outside the control of the Government of the United States.

(2) EVALUATION OF SUPPLY.—The assessment shall include a comprehensive evaluation of the long-term security and availability of all aspects of the supply chain for rare earth materials in defense applications, particularly the location and number of sources at each step of the supply chain, including—

(A) mining of rare earth ores;

(B) separation of rare earth oxides;

(C) refining and reduction of rare earth metals;

(D) creation of rare earth alloys;

(E) manufacturing of components and systems containing rare earth materials; and

(F) recycling of components and systems to reclaim and reuse rare earth materials.

(3) EVALUATION OF DEMAND.—The assessment shall include a comprehensive evaluation of the demand for and usage of rare earth materials in all defense applications, including—

(A) approximations of the total amounts of individual rare earth materials used in defense applications;

(B) determinations of which, if any, defense applications are dependent upon rare earth materials for proper operation and functioning; and

(C) assessments of the feasibility of alternatives to usage of rare earth materials in defense applications.

(4) OTHER STUDIES AND AGENCIES.—Any applicable studies conducted by the Department of Defense, the Comptroller General of the United States, or other Federal agencies during fiscal year 2010 may be considered as partial fulfillment of the requirements of this section. The Secretary may consider the views of other Federal agencies, as appropriate.

(5) SPECIFIC MATERIAL INCLUDED.—At a minimum, the Secretary shall identify sintered neodymium iron boron magnets as meeting the criteria specified in paragraph (1).

(b) PLAN.—For each rare earth material identified pursuant to subsection (a)(1), the Secretary shall develop a plan to ensure the long-term availability of such rare earth material, with a goal of establishing an assured source of supply of such material in critical defense applications by December 31, 2015. In developing the plan, the Secretary shall consider all aspects of the material's supply chain, as described in subsection (a)(2). The plan shall include consideration of numerous risk mitigation methods with respect to the material, including—

Deadline.

(1) an assessment of including the material in the National Defense Stockpile;

(2) in consultation with the United States Trade Representative, the identification of any trade practices known to the Secretary that limit the Secretary's ability to ensure the long-term availability of such material or the ability to meet the

goal of establishing an assured source of supply of such material by December 31, 2015;

(3) an assessment of the availability of financing to industry, academic institutions, or not-for-profit entities to provide the capacity required to ensure the availability of the material, as well as potential mechanisms to increase the availability of such financing;

(4) an assessment of the benefits, if any, of Defense Production Act funding to support the establishment of an assured source of supply for military components;

(5) an assessment of funding for research and development related to any aspect of the rare earth material supply chain or research on alternatives and substitutes;

(6) any other risk mitigation method determined appropriate by the Secretary that is consistent with the goal of establishing an assured source of supply by December 31, 2015; and

(7) for steps of the rare earth material supply chain for which no other risk mitigation method, as described in paragraphs (1) through (6), will ensure an assured source of supply by December 31, 2015, a specific plan to eliminate supply chain vulnerability by the earliest date practicable.

(c) REPORT.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional committees described in paragraph (2) a report containing the findings of the assessment required under subsection (a) and the plan developed under subsection (b).

(2) CONGRESSIONAL COMMITTEES.—The congressional committees described in this paragraph are as follows:

(A) The congressional defense committees.

(B) The Committee on Science and Technology, the Committee on Financial Services, and the Committee on Ways and Means of the House of Representatives.

(C) The Committee on Energy and Natural Resources, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 844. REVIEW OF NATIONAL SECURITY EXCEPTION TO COMPETITION.

(a) REVIEW REQUIRED.—The Comptroller General of the United States shall review the use of the national security exception to full and open competition provided in section 2304(c)(6) of title 10, United States Code, by the Department of Defense.

(b) MATTERS REVIEWED.—The review of the use of the national security exception required by subsection (a) shall include—

(1) the pattern of usage of such exception by acquisition organizations within the Department to determine which organizations are commonly using the exception and the frequency of such usage;

(2) the range of items or services being acquired through the use of such exception;

(3) the process for reviewing and approving justifications involving such exception;

(4) whether the justifications for use of such exception typically meet the relevant requirements of the Federal Acquisition Regulation applicable to the use of such exception;

(5) issues associated with follow-on procurements for items or services acquired using such exception; and

(6) potential additional instances where such exception could be applied and any authorities available to the Department other than such exception that could be applied in such instances.

(c) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the review required by subsection (a), including a discussion of each of the matters specified in subsection (b). The report shall include any recommendations relating to the matters reviewed that the Secretary considers appropriate. The report shall be submitted in unclassified form but may include a classified annex.

SEC. 845. REQUIREMENT FOR ENTITIES WITH FACILITY CLEARANCES THAT ARE NOT UNDER FOREIGN OWNERSHIP CONTROL OR INFLUENCE MITIGATION.

10 USC 428 note.

(a) **REQUIREMENT.**—The Secretary of Defense shall develop a plan to ensure that covered entities employ and maintain policies and procedures that meet requirements under the national industrial security program. In developing the plan, the Secretary shall consider whether or not covered entities, or any category of covered entities, should be required to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

Plans.

(b) **COVERED ENTITY.**—A covered entity under this section is an entity—

(1) to which the Department of Defense has granted a facility clearance; and

(2) that is not subject to foreign ownership control or influence mitigation measures.

(c) **GUIDANCE.**—The Secretary of Defense shall issue guidance, including appropriate compliance mechanisms, to implement the requirement in subsection (a). To the extent determined appropriate by the Secretary, the guidance shall require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

(d) **REPORT.**—Not later than 270 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the plan developed pursuant to subsection (a) and the guidance issued pursuant to subsection (c). The report shall specifically address the rationale for the Secretary's decision on whether or not to require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

SEC. 846. PROCUREMENT OF PHOTOVOLTAIC DEVICES.

10 USC 2534 note.

(a) **CONTRACT REQUIREMENT.**—The Secretary of Defense shall ensure that each contract described in subsection (b) awarded by

the Department of Defense includes a provision requiring the photovoltaic devices provided under the contract to comply with the Buy American Act (41 U.S.C. 10a et seq.), subject to the exceptions to that Act provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

(b) **CONTRACTS DESCRIBED.**—The contracts described in this subsection include energy savings performance contracts, utility service contracts, land leases, and private housing contracts, to the extent that such contracts result in ownership of photovoltaic devices by the Department of Defense. For the purposes of this section, the Department of Defense is deemed to own a photovoltaic device if the device is—

(1) installed on Department of Defense property or in a facility owned by the Department of Defense; and

(2) reserved for the exclusive use of the Department of Defense for the full economic life of the device.

(c) **DEFINITION OF PHOTOVOLTAIC DEVICES.**—In this section, the term “photovoltaic devices” means devices that convert light directly into electricity through a solid-state, semiconductor process.

SEC. 847. NON-AVAILABILITY EXCEPTION FROM BUY AMERICAN REQUIREMENTS FOR PROCUREMENT OF HAND OR MEASURING TOOLS.

Section 2533a(c) of title 10, United States Code, is amended by striking “subsection (b)(1)” and inserting “subsection (b)”.

SEC. 848. CONTRACTOR LOGISTICS SUPPORT OF CONTINGENCY OPERATIONS.

Deadline.

(a) **DEFENSE SCIENCE BOARD REVIEW OF ORGANIZATION, TRAINING, AND PLANNING.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall direct the Defense Science Board to carry out a review of Department of Defense organization, doctrine, training, and planning for contractor logistics support of contingency operations.

(b) **MATTERS TO BE ADDRESSED.**—

(1) **IN GENERAL.**—The matters addressed by the review required by subsection (a) shall include, at a minimum, the following:

(A) Department of Defense policies and procedures for planning for contractor logistics support of contingency operations.

(B) Department organization and staffing for the implementation of such policies and procedures.

(C) The development of Department doctrine for contractor logistics support of contingency operations.

(D) The training of Department military and civilian personnel for the planning, management, and oversight of contractor logistics support of contingency operations.

(E) The extent to which the Department should rely upon contractor logistics support in future contingency operations, and the risks associated with reliance on such support.

(F) Any logistics support functions for contingency operations for which the Department should establish or retain an organic capability.

(G) The scope and level of detail on contractor logistics support of contingency operations that is currently included

in operational plans, and that should be included in operational plans.

(H) Contracting mechanisms and contract vehicles that are currently used, and should be used, to provide contractor logistics support of contingency operations.

(I) Department organization and staffing for the management and oversight of contractor logistics support of contingency operations.

(J) Actions that could be taken to improve Department management and oversight of contractors providing logistics support of contingency operations.

(K) The extent to which logistics support of contingency operations has been, and should be, provided by subcontractors, and the advantages and disadvantages of reliance upon subcontractors for that purpose.

(L) The extent to which logistics support of contingency operations has been, and should be, provided by local nationals and third country nationals, and the advantages and disadvantages of reliance upon such sources for that purpose.

(2) FINDINGS AND RECOMMENDATIONS.—The review required by subsection (a) shall include findings and recommendations related to—

(A) legislative or policy guidance to address the matters listed in paragraph (1); and

(B) whether and to what extent the quadrennial defense review (conducted pursuant to section 118 of title 10, United States Code) or assessments by the Chairman of the Joint Chiefs of Staff for the biennial review of the national military strategy (conducted pursuant to section 153(d) of such title) should be required to address requirements for contractor support of the Armed Forces in conducting peacetime training, peacekeeping, overseas contingency operations, and major combat operations, and the risks associated with such support.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report on the results of the review required by subsection (a). The report shall include the findings and recommendations of the Defense Science Board, including such recommendations for legislative or administrative action as the Board considers appropriate, together with any comments the Secretary considers appropriate.

Subtitle F—Improve Acquisition Act

SEC. 860. SHORT TITLE.

This subtitle may be cited as the “Improve Acquisition Act of 2010”.

Improve
Acquisition
Act of 2010.
10 USC 2545
note.

PART I—DEFENSE ACQUISITION SYSTEM

SEC. 861. IMPROVEMENTS TO THE MANAGEMENT OF THE DEFENSE ACQUISITION SYSTEM.

10 USC 2545. (a) MANAGEMENT OF THE DEFENSE ACQUISITION SYSTEM.—Part IV of title 10, United States Code, is amended by inserting after chapter 148 the following new chapter:

“CHAPTER 149—DEFENSE ACQUISITION SYSTEM

“Sec.

“2545. Definitions.

“2546. Civilian management of the defense acquisition system.

“2547. Acquisition-related functions of chiefs of the armed forces.

“2548. Performance assessments of the defense acquisition system.

“§ 2545. Definitions

“In this chapter:

“(1) The term ‘acquisition’ has the meaning provided in section 4(16) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(16)).

“(2) The term ‘defense acquisition system’ means the workforce engaged in carrying out the acquisition of property and services for the Department of Defense; the management structure responsible for directing and overseeing the acquisition of property and services for the Department of Defense; and the statutory, regulatory, and policy framework that guides the acquisition of property and services for the Department of Defense.

“(3) The term ‘element of the defense acquisition system’ means an organization that employs members of the acquisition workforce, carries out acquisition functions, and focuses primarily on acquisition.

“(4) The term ‘acquisition workforce’ has the meaning provided in section 101(a)(18) of this title.

“§ 2546. Civilian management of the defense acquisition system

“(a) RESPONSIBILITY OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Subject to the authority, direction and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for the management of the defense acquisition system and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of the defense acquisition system, including the duties enumerated and assigned to the Under Secretary elsewhere in this title.

“(b) RESPONSIBILITY OF THE SERVICE ACQUISITION EXECUTIVES.—Subject to the direction of the Under Secretary of Defense for Acquisition, Technology, and Logistics on matters pertaining to acquisition, and subject to the authority, direction, and control of the Secretary of the military department concerned, a service acquisition executive of a military department shall be responsible for the management of elements of the defense acquisition system in that military department and shall exercise such control of the system and perform such duties as are necessary to ensure

the successful and efficient operation of such elements of the defense acquisition system.

“§ 2547. Acquisition-related functions of chiefs of the armed forces

“(a) PERFORMANCE OF CERTAIN ACQUISITION-RELATED FUNCTIONS.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps assist the Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

“(1) The development of requirements relating to the defense acquisition system (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).

“(2) The coordination of measures to control requirements creep in the defense acquisition system.

“(3) The development of career paths in acquisition for military personnel (as required by section 1722a of this title).

“(4) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.

“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the assignment of functions under section 3014(c)(1)(A), section 5014(c)(1)(A), or section 8014(c)(1)(A) of this title, except as explicitly provided in this section.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘requirements creep’ means the addition of new technical or operational specifications after a requirements document is approved by the appropriate validation authority for the requirements document.

“(2) The term ‘requirements document’ means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

“(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

“(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

“(C) identifies production attributes required for a single increment of a program.

“§ 2548. Performance assessments of the defense acquisition system

“(a) PERFORMANCE ASSESSMENTS REQUIRED.—Not later than 180 days after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense

Deadline.
Guidance.

to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

“(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

“(2) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

“(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title

“(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

“(A) the extent to which acquisitions conducted by the element of the defense acquisition system under review meet applicable cost, schedule, and performance objectives; and

“(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

“(2) The Secretary of Defense shall ensure that the performance assessments required by this section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

“(A) the selection of contractors, including—

“(i) the extent of competition and the use of exceptions to competition requirements;

“(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

“(iii) the quality of market research;

“(iv) the effective consideration of contractor past performance; and

“(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

“(B) the negotiation of contracts, including—

“(i) the appropriate application of section 2306a of this title (relating to truth in negotiations);

“(ii) the appropriate use of contract types appropriate to specific procurements;

“(iii) the appropriate use of performance requirements;

“(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

“(v) the timely definitization of any undefinitized contract actions; and

“(C) the management of contractor performance, including—

“(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

“(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

“(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

“(iv) the appropriate use of integrated testing.

“(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

“(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;

“(2) the frequency with which such performance assessments should be conducted;

“(3) goals, standards, tools, and metrics for use in conducting performance assessments;

“(4) the composition of the teams designated to perform performance assessments;

“(5) any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments;

“(6) procedures for tracking the implementation of recommendations made pursuant to performance assessments;

“(7) procedures for developing and disseminating lessons learned from performance assessments; and

“(8) procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of the Office of Performance Assessment and Root Cause Analysis as needed to assist them in performing their responsibilities under this section.

“(d) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE RESULTS ACT OF 1993.—Beginning with fiscal year 2012, the annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

Effective date.

“(e) REPORTING REQUIREMENTS.—Beginning with fiscal year 2012—

Effective date.

“(1) the annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31, United States Code, shall address the Department’s success in achieving performance goals established pursuant to such section for elements of the defense acquisition system; and

“(2) the annual report prepared by the Director of the Office of Performance Assessment and Root Cause Analysis pursuant to section 103(f) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2430 note), shall include information on the activities undertaken by the Department pursuant to such section, including a summary of significant findings or recommendations arising out of performance assessments.”.

(b) CLERICAL AMENDMENTS.—The table of chapters at the beginning of subtitle A of title 10, United States Code, and at the beginning of part IV of such subtitle, are each amended by inserting after the item relating to chapter 148 the following new item:
“149. Defense Acquisition System 2545”.

SEC. 862. COMPTROLLER GENERAL REPORT ON JOINT CAPABILITIES INTEGRATION AND DEVELOPMENT SYSTEM.

(a) REPORT REQUIRED.—The Comptroller General of the United States shall carry out a comprehensive review of the Joint Capabilities Integration and Development System (in this section referred to as “JCIDS”). Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the review and include in such report any recommendations the Comptroller General considers necessary and advisable to improve or replace JCIDS.

(b) CONTENT OF THE REVIEW.—

(1) PURPOSE.—The purpose of the review required by subsection (a) is to evaluate the effectiveness of JCIDS in achieving the following objectives:

(A) Timeliness in delivering capability to the warfighter.

(B) Efficient use of the investment resources of the Department of Defense.

(C) Control of requirements creep.

(D) Responsiveness to changes occurring after the approval of a requirements document (including changes to the threat environment, the emergence of new capabilities, or changes in the resources estimated to procure or sustain a capability).

(E) Development of the personnel skills, capacity, and training needed for an effective and efficient requirements process.

(2) MATTERS CONSIDERED.—In performing the review, the Comptroller General shall gather information on and consider the following matters:

(A) The time that requirements documents take to receive approval through JCIDS.

(B) The quality of cost information considered in JCIDS and the extent of its consideration.

(C) The extent to which JCIDS establishes a meaningful level of priority for requirements.

(D) The extent to which JCIDS is considering trade-offs between cost, schedule, and performance objectives.

(E) The quality of information on sustainment considered in JCIDS and the extent to which sustainment information is considered.

(F) An evaluation of the advantages and disadvantages of designating a commander of a unified combatant command for each requirements document for which the Joint Requirements Oversight Council is the validation authority to provide a joint evaluation task force to participate in a materiel solution and to—

(i) provide input to the analysis of alternatives;

(ii) participate in testing (including limited user tests and prototype testing);

- (iii) provide input on a concept of operations and doctrine;
- (iv) provide end user feedback to the resource sponsor; and
- (v) participate, through the combatant commander concerned, in any alteration of the requirement for such solution.

(c) DEFINITIONS.—In this section:

(1) JOINT CAPABILITIES INTEGRATION AND DEVELOPMENT SYSTEM.—The term “Joint Capabilities Integration and Development System” means the system for the assessment, review, validation, and approval of joint warfighting requirements that is described in Chairman of the Joint Chiefs of Staff Instruction 3170.01G

(2) REQUIREMENTS DOCUMENT.—The term “requirements document” means a document produced in JCIDS that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) REQUIREMENTS CREEP.—The term “requirements creep” means the addition of new technical or operational specifications after a requirements document is approved.

(4) MATERIEL SOLUTION.—The term “materiel solution” means the development, acquisition, procurement, or fielding of a new item, or of a modification to an existing item, necessary to equip, operate, maintain, and support military activities.

SEC. 863. REQUIREMENTS FOR THE ACQUISITION OF SERVICES.

(a) ESTABLISHMENT OF REQUIREMENTS PROCESSES FOR THE ACQUISITION OF SERVICES.—The Secretary of Defense shall ensure that the military departments and Defense Agencies each establish a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services. 10 USC 2330 note.

(b) OPERATIONAL REQUIREMENTS.—With regard to requirements for the acquisition of services in support of combatant commands and military operations, the Secretary shall ensure— 10 USC 2330 note.

(1) that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps implement and bear chief responsibility for carrying out, within the Armed Force concerned, the process established pursuant to subsection (a) for such Armed Force; and

(2) that commanders of unified combatant commands and other officers identified or designated as joint qualified officers have an opportunity to participate in the process of each military department to provide input on joint requirements for the acquisition of services.

(c) SUPPORTING REQUIREMENTS.—With regard to requirements for the acquisition of services not covered by subsection (b), the 10 USC 2330 note.

Secretary shall ensure that the secretaries of the military departments and the heads of the Defense Agencies implement and bear chief responsibility for carrying out, within the military department or Defense Agency concerned, the process established pursuant to subsection (a) for such military department or Defense Agency.

10 USC 2330
note.

(d) IMPLEMENTATION PLANS REQUIRED.—The Secretary shall ensure that an implementation plan is developed for each process established pursuant to subsection (a) that addresses, at a minimum, the following:

- (1) The organization of such process.
- (2) The level of command responsibility required for identifying, assessing, reviewing, and validating requirements for the acquisition of services in accordance with the requirements of this section and the categories established under section 2330(a)(1)(C) of title 10, United States Code.
- (3) The composition of positions necessary to operate such process.
- (4) The training required for personnel engaged in such process.
- (5) The relationship between doctrine and such process.
- (6) Methods of obtaining input on joint requirements for the acquisition of services.
- (7) Procedures for coordinating with the acquisition process.
- (8) Considerations relating to opportunities for strategic sourcing.

Deadline.
10 USC 2330
note.

(e) MATTERS REQUIRED IN IMPLEMENTATION PLAN.—Each plan required under subsection (d) shall provide for initial implementation of a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services not later than one year after the date of the enactment of this Act and shall provide for full implementation of such process at the earliest date practicable.

10 USC 2330
note.

(f) CONSISTENCY WITH JOINT GUIDANCE.—Whenever, at any time, guidance is issued by the Chairman of the Joint Chiefs of Staff relating to requirements for the acquisition of services in support of combatant commands and military operations, each process established pursuant to subsection (a) shall be revised in accordance with such joint guidance.

10 USC 2330
note.

(g) DEFINITION.—The term “requirements for the acquisition of services” means objectives to be achieved through acquisitions primarily involving the procurement of services.

10 USC 2330
note.

(h) REVIEW OF SUPPORTING REQUIREMENTS TO IDENTIFY SAVINGS.—The secretaries of the military departments and the heads of the Defense Agencies shall review and validate each requirement described in subsection (c) with an anticipated cost in excess of \$10,000,000 with the objective of identifying unneeded or low priority requirements that can be reduced or eliminated, with the savings transferred to higher priority objectives. Savings identified and transferred to higher priority objectives through review and revalidation under this subsection shall count toward the savings objectives established in the June 4, 2010, guidance of the Secretary of Defense on improved operational efficiencies and the annual reduction in funding for service support contractors required by the August 16, 2010, guidance of the Secretary of Defense on efficiency initiatives. As provided by the Secretary, cost avoidance shall not count toward these objectives.

(i) **EXTENSION OF AUTHORITY.**—Subsection (e) of section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (15 U.S.C. 637 note) is amended by striking “September 30, 2010” and inserting “December 31, 2011”.

SEC. 864. REVIEW OF DEFENSE ACQUISITION GUIDANCE.

(a) **REVIEW OF GUIDANCE.**—The Secretary of Defense shall review the acquisition guidance of the Department of Defense, including, at a minimum, the guidance contained in Department of Defense Instruction 5000.02 entitled “Operation of the Defense Acquisition System”.

(b) **MATTERS CONSIDERED.**—The review performed under subsection (a) shall consider—

(1) the extent to which the acquisition of commercial goods and commodities, commercial and military unique services, and information technology should be addressed in Department of Defense Instruction 5000.02 and other guidance primarily relating to the acquisition of weapon systems, or should be addressed in separate instructions and guidance;

(2) whether long-term sustainment and energy efficiency of weapon systems is appropriately emphasized;

(3) whether appropriate mechanisms exist to communicate information relating to the mission needs of the Department of Defense to the industrial base in a way that allows the industrial base to make appropriate investments in infrastructure, capacity, and technology development to help meet such needs;

(4) the extent to which earned value management should be required on acquisitions not involving the acquisition of weapon systems and whether measures of quality and technical performance should be included in any earned value management system; and

(5) such other matters as the Secretary considers appropriate.

(c) **REPORT.**—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing any changes in the acquisition guidance of the Department of Defense identified during the review required by subsection (a), and any actions taken, or planned to be taken, to implement such changes.

SEC. 865. REQUIREMENT TO REVIEW REFERENCES TO SERVICES ACQUISITION THROUGHOUT THE FEDERAL ACQUISITION REGULATION AND THE DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT.

(a) **REVIEW REQUIRED.**—The Secretary of Defense, in consultation with the Administrator for Federal Procurement Policy and the heads of such other Federal agencies as the Secretary considers appropriate, shall review the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement to ensure that such regulations include appropriate guidance for and references to services acquisition that are in addition to references provided in part 37 and the Defense Supplement to part 37.

(b) **MATTERS CONSIDERED.**—The review required by subsection (a) shall consider the extent to which additional guidance is needed—

(1) to provide the tools and processes needed to assist contracting officials in addressing the full range of complexities that can arise in the acquisition of services; and

(2) to enhance and support the procurement and project management community in all aspects of the process for the acquisition of services, including requirements development, assessment of reasonableness, and post-award management and oversight.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing—

(1) a summary of the findings of the review required by subsection (a); and

(2) any recommendations that the Secretary may have for changes to the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement to address such findings, including identifying any changes that are necessary to improve part 37 (which specifically addresses services acquisitions).

SEC. 866. PILOT PROGRAM ON ACQUISITION OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS.

10 USC 2302
note.

(a) PILOT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasibility and advisability of acquiring military purpose nondevelopmental items in accordance with this section.

(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may enter into contracts with nontraditional defense contractors for the acquisition of military purpose nondevelopmental items in accordance with the requirements set forth in subsection (b).

10 USC 2302
note.

(b) CONTRACT REQUIREMENTS.—Each contract entered into under the pilot program—

(1) shall be a firm, fixed price contract, or a firm, fixed price contract with an economic price adjustment clause awarded using competitive procedures in accordance with chapter 137 of title 10, United States Code;

(2) shall be in an amount not in excess of \$50,000,000, including all options;

(3) shall provide—

(A) for the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

(B) that failure to make delivery as provided for under subparagraph (A) may result in the termination of such contract for default; and

(4) shall be—

(A) exempt from the requirement to submit certified cost or pricing data under section 2306a of title 10, United States Code, and the cost accounting standards under section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422); and

(B) subject to the requirement to provide data other than certified cost or pricing data for the purpose of price

reasonableness determinations, as provided in section 2306a(d) of title 10, United States Code.

(c) REGULATIONS.—If the Secretary establishes the pilot program authorized under subsection (a), the Secretary shall prescribe regulations governing such pilot program. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation and shall include the contract clauses and procedures necessary to implement such program.

10 USC 2302
note.

(d) REPORTS.—

10 USC 2302
note.

(1) REPORTS ON PROGRAM ACTIVITIES.—Not later than 60 days after the end of any fiscal year in which the pilot program is in effect, the Secretary shall submit to the congressional defense committees a report on the pilot program. The report shall be in unclassified form but may include a classified annex. Each report shall include, for each contract entered into under the pilot program in the preceding fiscal year, the following:

(A) The contractor.

(B) The item or items to be acquired.

(C) The military purpose to be served by such item or items.

(D) The amount of the contract.

(E) The actions taken by the Department of Defense to ensure that the price paid for such item or items is fair and reasonable.

(2) PROGRAM ASSESSMENT.—If the Secretary establishes the pilot program authorized under subsection (a), not later than four years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the assessment of the Comptroller General of the extent to which the pilot program—

(A) enabled the Department to acquire items that otherwise might not have been available to the Department;

(B) assisted the Department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

(C) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired.

(e) DEFINITIONS.—In this section:

10 USC 2302
note.

(1) The term “military purpose nondevelopmental item” means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. For purposes of this paragraph, an item shall not be considered to be developed exclusively at private expense if development of the item was paid for in whole or in part through—

(A) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(B) foreign government funding.

(2) The term “nondevelopmental item”—

(A) has the meaning given that term in section 4(13) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(13)); and

(B) also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement in subsection (b)(3)(A).

(3) The term “nontraditional defense contractor” has the meaning given that term in section 2302(9) of title 10, United States Code (as added by subsection (g)).

(4) The terms “independent research and developments costs” and “bid and proposal costs” have the meaning given such terms in section 31.205–18 of the Federal Acquisition Regulation.

10 USC 2302
note.

(f) SUNSET.—

(1) IN GENERAL.—The authority to carry out the pilot program shall expire on the date that is five years after the date of the enactment of this Act.

(2) CONTINUATION OF CURRENT CONTRACTS.—The expiration under paragraph (1) of the authority to carry out the pilot program shall not affect the validity of any contract awarded under the pilot program before the date of the expiration of the pilot program under that paragraph.

(g) STATUTORY DEFINITION OF NONTRADITIONAL DEFENSE CONTRACTOR.—

(1) NONTRADITIONAL DEFENSE CONTRACTOR.—Section 2302 of title 10, United States Code, is amended by adding at the end the following:

“(9) The term ‘nontraditional defense contractor’, with respect to a procurement or with respect to a transaction authorized under section 2371(a) of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense:

“(A) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section.

“(B) Any other contract in excess of \$500,000 under which the contractor is required to submit certified cost or pricing data under section 2306a of this title.”.

(2) CONFORMING AMENDMENT.—Section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note) is amended to read as follows:

“(f) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED.—In this section, the term ‘nontraditional defense contractor’ has the meaning provided by section 2302(9) of title 10, United States Code.”.

PART II—DEFENSE ACQUISITION WORKFORCE**SEC. 871. ACQUISITION WORKFORCE EXCELLENCE.**

(a) **ACQUISITION WORKFORCE EXCELLENCE.**—Subchapter I of chapter 87 of title 10, United States Code, is amended by inserting after section 1701 the following new section:

“§ 1701a. Management for acquisition workforce excellence

“(a) **PURPOSE.**—The purpose of this chapter is to require the Department of Defense to develop and manage a highly skilled professional acquisition workforce—

“(1) in which excellence and contribution to mission is rewarded;

“(2) which has the technical expertise and business skills to ensure the Department receives the best value for the expenditure of public resources;

“(3) which serves as a model for performance management of employees of the Department; and

“(4) which is managed in a manner that complements and reinforces the management of the defense acquisition system pursuant to chapter 149 of this title.

“(b) **PERFORMANCE MANAGEMENT.**—In order to achieve the purpose set forth in subsection (a), the Secretary of Defense shall—

“(1) use the full authorities provided in subsections (a) through (d) of section 9902 of title 5, including flexibilities related to performance management and hiring and to training of managers;

“(2) require managers to develop performance plans for individual members of the acquisition workforce in order to give members an understanding of how their performance contributes to their organization’s mission and the success of the defense acquisition system (as defined in section 2545 of this title);

“(3) to the extent appropriate, use the lessons learned from the acquisition demonstration project carried out under section 1762 of this title related to contribution-based compensation and appraisal, and how those lessons may be applied within the General Schedule system;

“(4) develop attractive career paths;

“(5) encourage continuing education and training;

“(6) develop appropriate procedures for warnings during performance evaluations for members of the acquisition workforce who consistently fail to meet performance standards;

“(7) take full advantage of the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2496; 10 U.S.C. 1580 note prec.);

“(8) use the authorities for highly qualified experts under section 9903 of title 5, to hire experts who are skilled acquisition professionals to—

“(A) serve in leadership positions within the acquisition workforce to strengthen management and oversight;

“(B) provide mentors to advise individuals within the acquisition workforce on their career paths and opportunities to advance and excel within the acquisition workforce; and

“(C) assist with the design of education and training courses and the training of individuals in the acquisition workforce; and

“(9) use the authorities for expedited security clearance processing pursuant to section 1564 of this title.

“(c) NEGOTIATIONS.—Any action taken by the Secretary under this section, or to implement this section, shall be subject to the requirements of chapter 71 of title 5.

“(d) REGULATIONS.—Any rules or regulations prescribed pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2) of title 5, and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1) of such title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 1701 the following new item:

“1701a. Management for acquisition workforce excellence.”.

SEC. 872. AMENDMENTS TO THE ACQUISITION WORKFORCE DEMONSTRATION PROJECT.

(a) CODIFICATION INTO TITLE 10.—

(1) IN GENERAL.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1761 the following new section:

“§ 1762. Demonstration project relating to certain acquisition personnel management policies and procedures

“(a) COMMENCEMENT.—The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

“(b) TERMS AND CONDITIONS.—(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

“(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—

“(A) ‘180 days’ in subsection (b)(4) of such section shall be deemed to read ‘120 days’;

“(B) ‘90 days’ in subsection (b)(6) of such section shall be deemed to read ‘30 days’; and

“(C) subsection (d)(1) of such section shall be disregarded.

“(3) Paragraph (2) shall not apply with respect to a demonstration project unless—

“(A) for each organization or team participating in the demonstration project—

“(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

“(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the

acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

“(B) the demonstration project commences before October 1, 2007.

“(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in the demonstration project under this section may not exceed 120,000.

“(d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

“(e) ASSESSMENTS.—(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).

“(2) Each such assessment shall include the following:

“(A) A description of the workforce included in the project.

“(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran’s preferences.

“(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

“(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

“(E) How the project allows the organization to better meet mission needs.

“(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

“(G) Whether there is a process for—

“(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

“(ii) setting timetables for performance appraisals.

“(H) The project’s impact on career progression.

“(I) The project’s appropriateness or inappropriateness in light of the complexities of the workforce affected.

“(J) The project’s sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

“(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

“(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

“(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees

Deadlines.

- a copy of each assessment within 30 days after receipt by the Secretary of the assessment.
- Definition. “(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term ‘covered congressional committees’ means—
- “(1) the Committees on Armed Services of the Senate and the House of Representatives;
 - “(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and
 - “(3) the Committee on Oversight and Government Reform of the House of Representatives.
- “(g) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration program under this section shall terminate on September 30, 2017.
- Deadline. “(h) CONVERSION.—Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.”.
- “(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of chapter 87 of title 10, United States Code, is amended by inserting after the item relating to section 1761 the following new item:
- “1762. Demonstration project relating to certain acquisition personnel management policies and procedures.”.
- (b) CONFORMING REPEAL.—Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 1701 note) is repealed.
- SEC. 873. CAREER DEVELOPMENT FOR CIVILIAN AND MILITARY PERSONNEL IN THE ACQUISITION WORKFORCE.**
- (a) CAREER PATHS.—
- (1) AMENDMENT.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1722a the following new section:
- “§ 1722b. Special requirements for civilian employees in the acquisition field**
- “(a) REQUIREMENT FOR POLICY AND GUIDANCE REGARDING CIVILIAN PERSONNEL IN ACQUISITION.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish policies and issue guidance to ensure the proper development, assignment, and employment of civilian members of the acquisition workforce to achieve the objectives specified in subsection (b).
- “(b) OBJECTIVES.—Policies established and guidance issued pursuant to subsection (a) shall ensure, at a minimum, the following:
- “(1) A career path in the acquisition field that attracts the highest quality civilian personnel, from either within or outside the Federal Government.
 - “(2) A deliberate workforce development strategy that increases attainment of key experiences that contribute to a highly qualified acquisition workforce.
 - “(3) Sufficient opportunities for promotion and advancement in the acquisition field.
 - “(4) A sufficient number of qualified, trained members eligible for and active in the acquisition field to ensure adequate

capacity, capability, and effective succession for acquisition functions, including contingency contracting, of the Department of Defense.

“(5) A deliberate workforce development strategy that ensures diversity in promotion, advancement, and experiential opportunities commensurate with the general workforce outlined in this section.

“(c) INCLUSION OF INFORMATION IN ANNUAL REPORT.—The Secretary of Defense shall include in the report to Congress required under section 115b(d) of this title the following information related to the acquisition workforce for the period covered by the report (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, Marine Corps, Defense Agencies, and Office of the Secretary of Defense):

“(1) The total number of persons serving in the Acquisition Corps, set forth separately for members of the armed forces and civilian employees, by grade level and by functional specialty.

“(2) The total number of critical acquisition positions held, set forth separately for members of the armed forces and civilian employees, by grade level and by other appropriate categories (including by program manager, deputy program manager, and division head positions), including average length of time served in each position. For each such category, the report shall specify the number of civilians holding such positions compared to the total number of positions filled.

“(3) The number of employees to whom the requirements of subsections (b)(2)(A) and (b)(2)(B) of section 1732 of this title did not apply because of the exceptions provided in paragraphs (1) and (2) of section 1732(c) of this title, set forth separately by type of exception.

“(4) The number of times a waiver authority was exercised under section 1724(d), 1732(d), 1734(d), or 1736(c) of this title or any other provision of this chapter (or other provision of law) which permits the waiver of any requirement relating to the acquisition workforce, and in the case of each such authority, the reasons for exercising the authority. The Secretary may present the information provided under this paragraph by category or grouping of types of waivers and reasons.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of chapter 87 of such title is amended by inserting after the item relating to section 1722a the following new item:

“1722b. Special requirements for civilian employees in the acquisition field.”.

(b) CAREER EDUCATION AND TRAINING.—Section 1723 of such title is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection:

“(b) CAREER PATH REQUIREMENTS.—For each career path, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish requirements for the completion of course work and related on-the-job training and demonstration of qualifications in the critical acquisition-related duties and tasks of the career path. The Secretary of Defense, acting through the Under Secretary, shall also—

“(1) encourage individuals in the acquisition workforce to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities; and

“(2) develop key work experiences, including the creation of a program sponsored by the Department of Defense that facilitates the periodic interaction between individuals in the acquisition workforce and the end user in such end user’s environment to enhance the knowledge base of such workforce, for individuals in the acquisition workforce so that the individuals may gain in-depth knowledge and experience in the acquisition process and become seasoned, well-qualified members of the acquisition workforce.”.

SEC. 874. RECERTIFICATION AND TRAINING REQUIREMENTS.

(a) CONTINUING EDUCATION.—Section 1723 of title 10, United States Code, as amended by section 873, is further amended by amending subsection (a) to read as follows:

“(a) QUALIFICATION REQUIREMENTS.—(1) The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements, the Secretary shall ensure the availability and sufficiency of training in all areas of acquisition, including additional training courses with an emphasis on services contracting, market research strategies (including assessments of local contracting capabilities), long-term sustainment strategies, information technology, and rapid acquisition.

“(2) In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.

“(3) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish requirements for continuing education and periodic renewal of an individual’s certification. Any requirement for a certification renewal shall not require a renewal more often than once every five years.”.

(b) STANDARDS FOR TRAINING.—

(1) IN GENERAL.—Subchapter IV of Chapter 87 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1748. Fulfillment standards for acquisition workforce training

“The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop fulfillment standards, and implement and maintain a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of this title. Such fulfillment standards shall consist of criteria for determining whether an individual has demonstrated competence in the areas that would be taught in the training courses required under those sections. If an individual meets the appropriate fulfillment standard, the applicable training requirement is fulfilled.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“1748. Fulfillment standards for acquisition workforce training.”.

(3) DEADLINE FOR FULFILLMENT STANDARDS.—The fulfillment standards required under section 1748 of title 10, United States Code, as added by paragraph (1), shall be developed not later than 270 days after the date of the enactment of this Act.

10 USC 1748
note.

(4) CONFORMING REPEAL.—Section 853 of Public Law 105–85 (111 Stat. 1851) is repealed.

10 USC 1723
note.
10 USC 1723
note.

SEC. 875. INFORMATION TECHNOLOGY ACQUISITION WORKFORCE.

(a) PLAN REQUIRED.—The Secretary of Defense shall develop and carry out a plan to strengthen the part of the acquisition workforce that specializes in information technology. The plan shall include the following:

(1) Defined targets for billets devoted to information technology acquisition.

(2) Specific certification requirements for individuals in the acquisition workforce who specialize in information technology acquisition.

(3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

(b) DEFINITIONS.—In this section:

(1) The term “information technology” has the meaning provided such term in section 11101 of title 40, United States Code, and includes information technology incorporated into a major weapon system.

(2) The term “major weapon system” has the meaning provided such term in section 2379(f) of title 10, United States Code.

(c) DEADLINE.—The Secretary of Defense shall develop the plan required under this section not later than 270 days after the date of the enactment of this Act.

SEC. 876. DEFINITION OF ACQUISITION WORKFORCE.

Section 101(a) of title 10, United States Code, is amended by inserting after paragraph (17) the following new paragraph:

“(18) The term ‘acquisition workforce’ means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.”.

SEC. 877. DEFENSE ACQUISITION UNIVERSITY CURRICULUM REVIEW.

(a) CURRICULUM REVIEW.—Not later than one year after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall lead a review of the curriculum offered by the Defense Acquisition University to ensure it adequately supports the training and education requirements of acquisition professionals, particularly in service contracting, long term sustainment strategies, information technology, and rapid acquisition. The review shall also involve the service acquisition executives of each military department.

Deadline.

(b) ANALYSIS OF FUNDING REQUIREMENTS FOR TRAINING.—Following the review conducted under subsection (a), the Secretary of Defense shall analyze the most recent future-years defense program to determine the amounts of estimated expenditures and

proposed appropriations necessary to support the training requirements of the amendments made by section 874, including any new training requirements determined after the review conducted under subsection (a). The Secretary shall identify any additional funding needed for such training requirements in the separate chapter on the defense acquisition workforce required in the next annual strategic workforce plan under 115b of title 10, United States Code.

(c) REQUIREMENT FOR ONGOING CURRICULUM DEVELOPMENT WITH CERTAIN SCHOOLS.—

(1) REQUIREMENT.—Section 1746 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) CURRICULUM DEVELOPMENT.—The President of the Defense Acquisition University shall work with the relevant professional schools and degree-granting institutions of the Department of Defense and military departments to ensure that best practices are used in curriculum development to support acquisition workforce positions.”.

(2) AMENDMENT TO SECTION HEADING.—(A) The heading of section 1746 of such title is amended to read as follows:

“§ 1746. Defense Acquisition University”.

(B) The item relating to section 1746 in the table of sections at the beginning of subchapter IV of chapter 87 of such title is amended to read as follows:

“1746. Defense Acquisition University.”.

PART III—FINANCIAL MANAGEMENT

10 USC 2222
note.

SEC. 881. AUDIT READINESS OF FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE.

(a) INTERIM MILESTONES.—

Deadline.

(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller), in consultation with the Deputy Chief Management Officer of the Department of Defense, the secretaries of the military departments, and the heads of the defense agencies and defense field activities, shall establish interim milestones for achieving audit readiness of the financial statements of the Department of Defense, consistent with the requirements of section 1003 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note).

(2) MATTERS INCLUDED.—The interim milestones established pursuant to paragraph (1) shall include, at a minimum, for each military department and for the defense agencies and defense field activities—

(A) an interim milestone for achieving audit readiness for each major element of the statement of budgetary resources, including civilian pay, military pay, supply orders, contracts, and funds balance with the Treasury; and

(B) an interim milestone for addressing the existence and completeness of each major category of Department of Defense assets, including military equipment, real property, inventory, and operating material and supplies.

(3) DESCRIPTION IN SEMIANNUAL REPORTS.—The Under Secretary shall describe each interim milestone established pursuant to paragraph (1) in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note). Each subsequent semiannual report submitted pursuant to section 1003(b) shall explain how the Department has progressed toward meeting such interim milestones.

(b) VALUATION OF DEPARTMENT OF DEFENSE ASSETS.—

(1) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall, in consultation with other appropriate Federal agencies and officials—

Deadline.

(A) examine the costs and benefits of alternative approaches to the valuation of Department of Defense assets;

(B) select an approach to such valuation that is consistent with principles of sound financial management and the conservation of taxpayer resources; and

(C) begin the preparation of a business case analysis supporting the selected approach.

(2) The Under Secretary shall include information on the alternatives considered, the selected approach, and the business case analysis supporting that approach in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note).

(c) REMEDIAL ACTIONS REQUIRED.—In the event that the Department of Defense, or any component of the Department of Defense, is unable to meet an interim milestone established pursuant to subsection (a), the Under Secretary of Defense (Comptroller) shall—

(1) develop a remediation plan to ensure that—

(A) the component will meet the interim milestone no more than one year after the originally scheduled date; and

(B) the component's failure to meet the interim milestone will not have an adverse impact on the Department's ability to carry out the plan under section 1003(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note); and

(2) include in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note)—

(A) a statement of the reasons why the Department of Defense, or component of the Department of Defense, will be unable to meet such interim milestone;

(B) the revised completion date for meeting such interim milestone; and

(C) a description of the actions that have been taken and are planned to be taken by the Department of Defense, or component of the Department of Defense, to meet such interim milestone.

(d) INCENTIVES FOR ACHIEVING AUDITABILITY.—

Deadlines.

(1) **REVIEW REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall review options for providing appropriate incentives to the military departments, Defense Agencies, and defense field activities to ensure that financial statements are validated as ready for audit earlier than September 30, 2017.

(2) **OPTIONS REVIEWED.**—The review performed pursuant to paragraph (1) shall consider changes in policy that reflect the increased confidence that can be placed in auditable financial statements, and shall include, at a minimum, consideration of the following options:

(A) Consistent with the need to fund urgent warfighter requirements and operational needs, priority in the release of appropriated funds.

(B) Relief from the frequency of financial reporting in cases in which such reporting is not required by law.

(C) Relief from departmental obligation and expenditure thresholds to the extent that such thresholds establish requirements more restrictive than those required by law.

(D) Increases in thresholds for reprogramming of funds.

(E) Personnel management incentives for the financial and business management workforce.

(F) Such other measures as the Under Secretary considers appropriate.

(3) **REPORT.**—The Under Secretary shall include a discussion of the review performed pursuant to paragraph (1) in the next semiannual report pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2439; 10 U.S.C. 2222 note) and for each option considered pursuant to paragraph (2) shall include—

(A) an assessment of the extent to which the implementation of the option—

(i) would be consistent with the efficient operation of the Department of Defense and the effective funding of essential Department of Defense programs and activities; and

(ii) would contribute to the achievement of Department of Defense goals to prepare auditable financial statements; and

(B) a recommendation on whether such option should be adopted, a schedule for implementing the option if adoption is recommended, or a reason for not recommending the option if adoption is not recommended.

10 USC 2222
note.
Deadline.

SEC. 882. REVIEW OF OBLIGATION AND EXPENDITURE THRESHOLDS.

(a) **PROCESS REVIEW.**—Not later than one year after the date of the enactment of this Act, the Chief Management Officer of the Department of Defense, in coordination with the Chief Management Officer of each military department, the Director of the Office of Performance Assessment and Root Cause Analysis, the Under Secretary of Defense (Comptroller), and the Comptrollers of the military departments, shall complete a comprehensive review of the use and value of obligation and expenditure benchmarks and propose new benchmarks or processes for tracking financial performance, including, as appropriate—

(1) increased reliance on individual obligation and expenditure plans for measuring program financial performance;

(2) mechanisms to improve funding stability and to increase the predictability of the release of funding for obligation and expenditure; and

(3) streamlined mechanisms for a program manager to submit an appeal for funding changes and to have such appeal evaluated promptly.

(b) **TRAINING.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller) shall ensure that, as part of the training required for program managers and business managers, an emphasis is placed on obligating and expending appropriated funds in a manner that achieves the best value for the Government and that the purpose and limitations of obligation and expenditure benchmarks are made clear.

(c) **REPORT.**—The Deputy Chief Management Officer of the Department of Defense shall include a report on the results of the review under this section in the next update of the strategic management plan transmitted to the Committees on Armed Services of the Senate and the House of Representatives under section 904(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 275; 10 U.S.C. note prec. 2201) after the completion of the review.

SEC. 883. DISCLOSURE AND TRACEABILITY OF THE COST OF DEPARTMENT OF DEFENSE HEALTH CARE CONTRACTS.

(a) **REPORT.**—

(1) **REQUIREMENT.**—Not later than September 30, 2011, the Comptroller General of the United States shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a detailed report on the additional cost to the Department of Defense associated with compliance with the Patient Protection and Affordable Care Act (Public Law 111-148) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(2) **MATTERS COVERED.**—The report required by paragraph (1) shall include an estimate of—

(A) the additional costs, if any, incurred on health care contracts to comply with such Acts; and

(B) any other additional costs to the Department of Defense to comply with such Acts.

(b) **HEALTH CARE CONTRACT DEFINED.**—In this section, the term “health care contract” means a contract awarded by the Department of Defense in an amount greater than the simplified acquisition threshold for the acquisition of any of the following:

(1) Medical supplies.

(2) Health care services and administration, including the services of medical personnel.

(3) Durable medical equipment.

(4) Pharmaceuticals.

(5) Health care-related information technology.

PART IV—INDUSTRIAL BASE

10 USC 2501
note.

SEC. 891. EXPANSION OF THE INDUSTRIAL BASE.

(a) **PROGRAM TO EXPAND INDUSTRIAL BASE REQUIRED.**—The Secretary of Defense shall establish a program to expand the industrial base of the Department of Defense to increase the Department's access to innovation and the benefits of competition.

(b) **IDENTIFYING AND COMMUNICATING WITH FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.**—The program established under subsection (a) shall use tools and resources available within the Federal Government and available from the private sector to provide a capability for identifying and communicating with firms that are not traditional suppliers, including commercial firms and firms of all business sizes, that are engaged in markets of importance to the Department of Defense in which such firms can make a significant contribution.

(c) **OUTREACH TO LOCAL FIRMS NEAR DEFENSE INSTALLATIONS.**—The program established under subsection (a) shall include outreach, using procurement technical assistance centers, to firms of all business sizes in the vicinity of Department of Defense installations regarding opportunities to obtain contracts and subcontracts to perform work at such installations.

(d) **INDUSTRIAL BASE REVIEW.**—The program established under subsection (a) shall include a continuous effort to review the industrial base supporting the Department of Defense, including the identification of markets of importance to the Department of Defense in which firms that are not traditional suppliers can make a significant contribution.

(e) **FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.**—For purposes of this section, a firm is not a traditional supplier of the Department of Defense if it does not currently have contracts and subcontracts to perform work for the Department of Defense with a total combined value in excess of \$500,000.

Definition.

(f) **PROCUREMENT TECHNICAL ASSISTANCE CENTER.**—In this section, the term “procurement technical assistance center” means a center operating under a cooperative agreement with the Defense Logistics Agency to provide procurement technical assistance pursuant to the authority provided in chapter 142 of title 10, United States Code.

10 USC 2306a
note.

SEC. 892. PRICE TREND ANALYSIS FOR SUPPLIES AND EQUIPMENT PURCHASED BY THE DEPARTMENT OF DEFENSE.

(a) **PRICE TREND ANALYSIS PROCEDURES.**—

(1) **IN GENERAL.**—The Secretary of Defense shall develop and implement procedures that, to the maximum extent practicable, provide for the collection and analysis of information on price trends for covered supplies and equipment purchased by the Department of Defense. The procedures shall include an automated process for identifying categories of covered supplies and equipment described in paragraph (2) that have experienced significant escalation in prices.

(2) **CATEGORY OF COVERED SUPPLIES AND EQUIPMENT.**—A category of covered supplies and equipment referred to in paragraph (1) consists of covered supplies and equipment that have the same National Stock Number, are in a single Federal Supply Group or Federal Supply Class, are provided by a single

contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends.

(3) **REQUIREMENT TO EXAMINE CAUSES OF ESCALATION.**—An analysis conducted pursuant to paragraph (1) shall include, for any category in which significant escalation in prices is identified, a more detailed examination of the causes of escalation for such prices within the category and whether such price escalation is consistent across the Department of Defense.

(4) **REQUIREMENT TO ADDRESS UNJUSTIFIED ESCALATION.**—The head of a Defense Agency or the Secretary of a military department shall take appropriate action to address any unjustified escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

(b) **ANNUAL REPORT.**—Not later than April 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted for categories of covered supplies and equipment during the preceding fiscal year under the procedures implemented pursuant to paragraph (1). The report shall include a description of the actions taken to identify and address any unjustified price escalation for the categories of items.

(c) **DEFINITIONS.**—In this section:

(1) **SUPPLIES AND EQUIPMENT.**—The term “supplies and equipment” means items classified as supplies and equipment under the Federal Supply Classification System.

(2) **COVERED SUPPLIES AND EQUIPMENT.**—The term “covered supplies and equipment” means all supplies and equipment purchased by the Department of Defense. The term does not include major weapon systems but does include individual parts and components purchased as spare or replenishment parts for such weapon systems.

(d) **SUNSET DATE.**—This section shall not be in effect on and after April 1, 2015.

SEC. 893. CONTRACTOR BUSINESS SYSTEMS.

(a) **IMPROVEMENT PROGRAM.**—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of Department of Defense programs by the contractor and by the Department.

(b) **APPROVAL OR DISAPPROVAL OF BUSINESS SYSTEMS.**—The program developed pursuant to subsection (a) shall—

(1) include system requirements for each type of contractor business system covered by the program;

(2) establish a process for reviewing contractor business systems and identifying significant deficiencies in such systems;

(3) identify officials of the Department of Defense who are responsible for the approval or disapproval of contractor business systems;

(4) provide for the approval of any contractor business system that does not have a significant deficiency; and

(5) provide for—

(A) the disapproval of any contractor business system that has a significant deficiency; and

10 USC 2302
note.
Deadline.

(B) reduced reliance on, and enhanced scrutiny of, data provided by a contractor business system that has been disapproved.

(c) REMEDIAL ACTIONS.—The program developed pursuant to subsection (a) shall provide the following:

(1) In the event a contractor business system is disapproved pursuant to subsection (b)(5), appropriate officials of the Department of Defense will be available to work with the contractor to develop a corrective action plan defining specific actions to be taken to address the significant deficiencies identified in the system and a schedule for the implementation of such actions.

(2) An appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems of the contractor has been disapproved pursuant to subsection (b)(5) and has not subsequently received approval.

(3) The amount of funds to be withheld under paragraph (2) shall be reduced if a contractor adopts an effective corrective action plan pursuant to paragraph (1) and is effectively implementing such plan.

(d) GUIDANCE AND TRAINING.—The program developed pursuant to subsection (a) shall provide guidance and training to appropriate government officials on the data that is produced by contractor business systems and the manner in which such data should be used to effectively manage Department of Defense programs.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit an official of the Department of Defense from reviewing, approving, or disapproving a contractor business system pursuant to any applicable law or regulation in force as of the date of the enactment of this Act during the period between the date of the enactment of this Act and the date on which the Secretary implements the requirements of this section with respect to such system.

(f) DEFINITIONS.—In this section:

(1) The term “contractor business system” means an accounting system, estimating system, purchasing system, earned value management system, material management and accounting system, or property management system of a contractor.

(2) The term “covered contractor” means a contractor that is subject to the cost accounting standards under section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422).

(3) The term “covered contract” means a cost-reimbursement contract, incentive-type contract, time-and-materials contract, or labor-hour contract that could be affected if the data produced by a contractor business system has a significant deficiency.

(4) The term “significant deficiency”, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense and the contractor to rely upon information produced by the system that is needed for management purposes.

(g) **DEFENSE CONTRACT AUDIT AGENCY LEGAL RESOURCES AND EXPERTISE.**—

(1) **REQUIREMENT.**—The Secretary of Defense shall ensure that—

(A) the Defense Contract Audit Agency has sufficient legal resources and expertise to conduct its work in compliance with applicable Department of Defense policies and procedures; and

(B) such resources and expertise are provided in a manner that is consistent with the audit independence of the Defense Contract Audit Agency.

(2) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the steps taken to comply with the requirements of this subsection.

SEC. 894. REVIEW AND RECOMMENDATIONS ON ELIMINATING BARRIERS TO CONTRACTING WITH THE DEPARTMENT OF DEFENSE.

(a) **REVIEW AND RECOMMENDATIONS.**—The Secretary of Defense, acting through the Director of Small Business Programs in the Department of Defense, shall review barriers to firms that are not traditional suppliers to the Department of Defense wishing to contract with the Department of Defense and its defense supply centers and develop a set of recommendations on the elimination of such barriers. The Director shall identify and consult with a wide range of firms that are not traditional suppliers to the Department of Defense for the purpose of identifying such barriers and developing such recommendations.

Consultation.

(b) **DEFINITION.**—For the purposes of this section, a firm is not a traditional supplier of the Department of Defense if it does not currently have contracts and subcontracts to perform work for the Department of Defense with a total combined value in excess of \$500,000.

(c) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report summarizing the findings and recommendations of the review conducted pursuant to this section.

SEC. 895. INCLUSION OF THE PROVIDERS OF SERVICES AND INFORMATION TECHNOLOGY IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.

(a) **REVISED DEFINITIONS.**—Section 2500 of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “or maintenance” and inserting “integration, services, or information technology”;

(2) in paragraph (4), by striking “or production” and inserting “production, integration, services, or information technology”;

(3) in paragraph (9)(A), by striking “and manufacturing” and inserting “manufacturing, integration, services, and information technology”; and

(4) by adding at the end the following new paragraph:
“(15) The term ‘integration’ means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy program requirements.”.

10 USC 2501.

(b) **REVISED OBJECTIVES.**—Section 2501(a) of such title is amended—

(1) in paragraph (1), by striking “Supplying and equipping” and inserting “Supplying, equipping, and supporting”;

(2) in paragraph (2), by striking “and logistics for” and inserting “logistics, and other activities in support of”;

(3) in paragraph (4), by striking “and produce” and inserting “, produce, and support”; and

(4) by redesignating paragraph (6) as paragraph (8) and inserting after paragraph (5) the following new paragraphs:

“(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

“(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.”.

(c) **REVISED ASSESSMENTS.**—Section 2505(b)(4) of such title is amended by inserting after “of this title)” the following “or major automated information system programs (as defined in section 2445a of this title)”.

(d) **REVISED POLICY GUIDANCE.**—Section 2506(a) of such title is amended by striking “budget allocation, weapons” and inserting “strategy, management, budget allocation,”.

SEC. 896. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MANUFACTURING AND INDUSTRIAL BASE POLICY; INDUSTRIAL BASE FUND.

(a) **DEPUTY ASSISTANT SECRETARY OF DEFENSE.**—Chapter 7 of title 10, United States Code, is amended by inserting after section 139d the following new section:

“§ 139e. Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy

“(a) **APPOINTMENT.**—There is a Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, who shall be appointed by the Under Secretary of Defense for Acquisition, Technology, and Logistics and shall report to the Under Secretary.

“(b) **RESPONSIBILITIES.**—The Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy shall be the principal advisor to the Under Secretary of Defense for Acquisition, Technology, and Logistics in the performance of the Under Secretary’s duties relating to the following:

“(1) Providing input on industrial base matters to strategy reviews, including quadrennial defense reviews conducted pursuant to section 118 of this title.

“(2) Establishing policies of the Department of Defense for maintenance of the defense industrial base of the United States.

“(3) Providing recommendations to the Under Secretary on budget matters pertaining to the industrial base.

“(4) Providing recommendations to the Under Secretary on supply chain management and supply chain vulnerability.

“(5) Providing input on industrial base matters to defense acquisition policy guidance.

“(6) Establishing the national security objectives concerning the national technology and industrial base required under section 2501 of this title.

“(7) Executing the national defense program for analysis of the national technology and industrial base required under section 2503 of this title.

“(8) Performing the national technology and industrial base periodic defense capability assessments required under section 2505 of this title.

“(9) Establishing the technology and industrial base policy guidance required under section 2506 of this title.

“(10) Executing the authorities of the Manufacturing Technology Program under section 2521 of this title.

“(11) Carrying out the activities of the Department of Defense relating to the Defense Production Act Committee established under section 722 of the Defense Production Act of 1950 (50 U.S.C. App. 2171).

“(12) Consistent with section 2(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2062(b)), executing other applicable authorities provided under the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), including authorities under titles I and II of such Act.

“(13) Establishing policies related to international technology security and export control issues.

“(14) Establishing policies related to industrial independent research and development programs under section 2372 of this title.

“(15) Such other duties as are assigned by the Under Secretary.

“(c) RULE OF CONSTRUCTION.—Nothing in subsection (b)(9) may be construed to limit the authority or modify the policies of the Committee on Foreign Investment in the United States established under section 721(k) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(k)).”

(b) INDUSTRIAL BASE FUND.—

(1) IN GENERAL.—Chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2508. Industrial Base Fund

“(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Industrial Base Fund (in this section referred to as the ‘Fund’).

“(b) CONTROL OF FUND.—The Fund shall be under the control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.

“(c) AMOUNTS IN FUND.—The Fund shall consist of amounts appropriated or otherwise made available to the Fund.

“(d) USE OF FUND.—Subject to subsection (e), the Fund shall be used—

“(1) to support the monitoring and assessment of the industrial base required by this chapter;

“(2) to address critical issues in the industrial base relating to urgent operational needs;

“(3) to support efforts to expand the industrial base; and

“(4) to address supply chain vulnerabilities.

- Procedures.
- “(e) USE OF FUND SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to use the Fund under this section in any fiscal year is subject to the availability of appropriations for that purpose.
- “(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:
- “(1) Direct obligations from the Fund.
- “(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.”.
- (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:
- “2508. Industrial Base Fund.”.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Department of Defense Management

- Sec. 901. Reorganization of Office of the Secretary of Defense to carry out reduction required by law in number of Deputy Under Secretaries of Defense.

Subtitle B—Space Activities

- Sec. 911. Integrated space architectures.
- Sec. 912. Limitation on use of funds for costs of terminating contracts under the National Polar-Orbiting Operational Environmental Satellite System Program.
- Sec. 913. Limitation on use of funds for purchasing Global Positioning System user equipment.
- Sec. 914. Plan for integration of space-based nuclear detection sensors.
- Sec. 915. Preservation of the solid rocket motor industrial base.
- Sec. 916. Implementation plan to sustain solid rocket motor industrial base.
- Sec. 917. Review and plan on sustainment of liquid rocket propulsion systems industrial base.

Subtitle C—Intelligence-Related Matters

- Sec. 921. Five-year extension of authority for Secretary of Defense to engage in commercial activities as security for intelligence collection activities.
- Sec. 922. Modification of attendees at proceedings of Intelligence, Surveillance, and Reconnaissance Integration Council.
- Sec. 923. Report on Department of Defense interservice management and coordination of remotely piloted aircraft support of intelligence, surveillance, and reconnaissance.
- Sec. 924. Report on requirements fulfillment and personnel management relating to Air Force intelligence, surveillance, and reconnaissance provided by remotely piloted aircraft.

Subtitle D—Cyber Warfare, Cyber Security, and Related Matters

- Sec. 931. Continuous monitoring of Department of Defense information systems for cybersecurity.
- Sec. 932. Strategy on computer software assurance.
- Sec. 933. Strategy for acquisition and oversight of Department of Defense cyber warfare capabilities.
- Sec. 934. Report on the cyber warfare policy of the Department of Defense.
- Sec. 935. Reports on Department of Defense progress in defending the Department and the defense industrial base from cyber events.

Subtitle E—Other Matters

- Sec. 941. Two-year extension of authorities relating to temporary waiver of reimbursement of costs of activities for nongovernmental personnel at Department of Defense Regional Centers for Security Studies.
- Sec. 942. Additional requirements for quadrennial roles and missions review in 2011.

Sec. 943. Report on organizational structure and policy guidance of the Department of Defense regarding information operations.

Sec. 944. Report on organizational structures of the geographic combatant command headquarters.

Subtitle A—Department of Defense Management

SEC. 901. REORGANIZATION OF OFFICE OF THE SECRETARY OF DEFENSE TO CARRY OUT REDUCTION REQUIRED BY LAW IN NUMBER OF DEPUTY UNDER SECRETARIES OF DEFENSE.

(a) REDESIGNATION OF CERTAIN POSITIONS IN OFFICE OF SECRETARY OF DEFENSE.— 10 USC 131 note.

(1) REDESIGNATION.—Positions in the Office of the Secretary of Defense are hereby redesignated as follows:

(A) The Director of Defense Research and Engineering is redesignated as the Assistant Secretary of Defense for Research and Engineering.

(B) The Director of Operational Energy Plans and Programs is redesignated as the Assistant Secretary of Defense for Operational Energy Plans and Programs.

(C) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs is redesignated as the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.

(2) REFERENCES.—Any reference in any law, rule, regulation, paper, or other record of the United States to an office of the Department of Defense redesignated by paragraph (1) shall be deemed to be a reference to such office as so redesignated.

5 USC 3104 note;
10 USC 1071
note, 2358 note,
2362, 2521 and
note, 2925;
20 USC 9631;
22 USC 2751
note.

(b) AMENDMENTS TO CHAPTER 4 OF TITLE 10 RELATING TO REORGANIZATION.—

(1) REPEAL OF SEPARATE PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE PROVISIONS.—Sections 133a, 134a, and 136a of title 10, United States Code, are repealed.

(2) COMPONENTS OF OSD.—Subsection (b) of section 131 of such title is amended to read as follows:

“(b) The Office of the Secretary of Defense is composed of the following:

“(1) The Deputy Secretary of Defense.

“(2) The Under Secretaries of Defense, as follows:

“(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(B) The Under Secretary of Defense for Policy.

“(C) The Under Secretary of Defense (Comptroller).

“(D) The Under Secretary of Defense for Personnel and Readiness.

“(E) The Under Secretary of Defense for Intelligence.

“(3) The Deputy Chief Management Officer of the Department of Defense.

“(4) Other officers who are appointed by the President, by and with the advice and consent of the Senate, and who report directly to the Secretary and Deputy Secretary without intervening authority, as follows:

Appointments.
President.

“(A) The Director of Cost Assessment and Program Evaluation.

“(B) The Director of Operational Test and Evaluation.

“(C) The General Counsel of the Department of Defense.

“(D) The Inspector General of the Department of Defense.

“(5) The Principal Deputy Under Secretaries of Defense.

“(6) The Assistant Secretaries of Defense.

“(7) Other officials provided for by law, as follows:

“(A) The Deputy Assistant Secretary of Defense for Developmental Test and Evaluation appointed pursuant to section 139b(a) of this title.

“(B) The Deputy Assistant Secretary of Defense for Systems Engineering appointed pursuant to section 139b(b) of this title.

“(C) The Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy appointed pursuant to section 139c of this title.

“(D) The Director of Small Business Programs appointed pursuant to section 144 of this title.

“(E) The official designated under section 1501(a) of this title to have responsibility for Department of Defense matters relating to missing persons as set forth in section 1501 of this title.

“(F) The Director of Family Policy under section 1781 of this title.

“(G) The Director of the Office of Corrosion Policy and Oversight assigned pursuant to section 2228(a) of this title.

“(H) The official designated under section 2438(a) of this title to have responsibility for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

“(8) Such other offices and officials as may be established by law or the Secretary of Defense may establish or designate in the Office.”.

(3) PRINCIPAL DEPUTY UNDER SECRETARIES OF DEFENSE.—Section 137a of such title is amended—

(A) in subsections (a)(1), (b), and (d), by striking “Deputy Under” and inserting “Principal Deputy Under”;

(B) in subsection (a)(2), by striking “(A) The” and all that follows through “(5) of subsection (c)” and inserting “The Principal Deputy Under Secretaries of Defense”;

(C) in subsection (c)—

(i) in paragraphs (1), (2), (3), (4), and (5), by striking “One of the Deputy” and inserting “One of the Principal Deputy”;

(ii) in paragraphs (1), (2), and (3), by striking “appointed” and all that follows through “this title”;

(iii) in paragraphs (4) and (5), by striking “shall be” and inserting “is”; and

(iv) in paragraph (5), by inserting before the period at the end the following: “, who shall be appointed from among persons who have extensive expertise in intelligence matters”; and

(D) in subsection (d), by adding at the end the following new sentence: “The Principal Deputy Under Secretaries shall take precedence among themselves in the order prescribed by the Secretary of Defense.”.

(4) ASSISTANT SECRETARIES OF DEFENSE GENERALLY.—Section 138 of such title is amended—

10 USC 138.

(A) in subsection (a)—

(i) in paragraph (1), by striking “12” and inserting “16”; and

(ii) in paragraph (2), by striking “(A) The” and all that follows through “The other” and inserting “The”;

(B) in subsection (b)—

(i) in paragraphs (2), (3), (4), (5), and (6), by striking “shall be” and inserting “is”;

(ii) in paragraph (7), by striking “appointed pursuant to section 138a of this title”; and

(iii) by adding at the end the following new paragraphs:

“(8) One of the Assistant Secretaries is the Assistant Secretary of Defense for Research and Engineering. In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Research and Engineering shall have the duties specified in section 138b of this title.

“(9) One of the Assistant Secretaries is the Assistant Secretary of Defense for Operational Energy Plans and Programs. In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Operational Energy Plans and Programs shall have the duties specified in section 138c of this title.

“(10) One of the Assistant Secretaries is the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs. In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall have the duties specified in section 138d of this title.”; and

(C) in subsection (d), by striking “and the Director of Defense Research and Engineering” and inserting “the Deputy Chief Management Officer of the Department of Defense, the officials serving in positions specified in section 131(b)(4) of this title, and the Principal Deputy Under Secretaries of Defense”.

(5) ASSISTANT SECRETARY FOR LOGISTICS AND MATERIEL READINESS.—Section 138a(a) of such title is amended—

(A) by striking “There is a” and inserting “The”; and

(B) by striking “, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Assistant Secretary”.

(6) ASSISTANT SECRETARY FOR RESEARCH AND ENGINEERING.—Section 139a of such title is transferred so as to appear after section 138a, redesignated as section 138b, and amended—

(A) by striking subsection (a);

(B) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively;

(C) in subsection (a), as so redesignated, by striking “Director of Defense Research and Engineering” and

inserting “Assistant Secretary of Defense for Research and Engineering”; and

(D) in subsection (b), as so redesignated—

(i) in paragraph (1), by striking “Director of Defense Research and Engineering,” and inserting “Assistant Secretary of Defense for Research and Engineering,”; and

(ii) in paragraph (2), by striking “Director” and inserting “Assistant Secretary”.

10 USC 139.

(7) ASSISTANT SECRETARY FOR OPERATIONAL ENERGY PLANS AND PROGRAMS.—Section 139b of such title is transferred so as to appear after section 138b (as transferred and redesignated by paragraph (6)), redesignated as section 138c, and amended—

(A) in subsection (a), by striking “There is a” and all that follows through “The Director” and inserting “The Assistant Secretary of Defense for Operational Energy Plans and Programs”;

(B) by striking “Director” each place it appears and inserting “Assistant Secretary”;

(C) in subsection (d)(2)—

(i) by striking “Not later than” and all that follows through “military departments” and inserting “The Secretary of each military department”;

(ii) by striking “who will” and inserting “who shall”; and

(iii) by inserting “so designated” after “The officials”; and

(D) in subsection (d)(4), by striking “The initial” and all that follows through “updates to the strategy” and inserting “Updates to the strategy required by paragraph (1)”.

(8) ASSISTANT SECRETARY FOR NUCLEAR, CHEMICAL, AND BIOLOGICAL DEFENSE PROGRAMS.—Section 142 of such title is transferred so as to appear after section 138c (as redesignated and transferred by paragraph (7)), redesignated as section 138d, and amended—

(A) by striking subsection (a);

(B) by redesignating subsection (b) as subsection (a) and in that subsection, as so redesignated, by striking “The Assistant to the Secretary” and inserting “The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs”; and

(C) by striking subsection (c) and inserting the following new subsection (b):

“(b) The Assistant Secretary may communicate views on issues within the responsibility of the Assistant Secretary directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.”.

(c) DEPUTY CHIEF MANAGEMENT OFFICER.—

(1) IN GENERAL.—Chapter 4 of title 10, United States Code, is further amended by inserting after section 132 the following new section:

“§ 132a. Deputy Chief Management Officer

“(a) APPOINTMENT.—There is a Deputy Chief Management Officer of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. President.

“(b) RESPONSIBILITIES.—The Deputy Chief Management Officer assists the Deputy Secretary of Defense in the Deputy Secretary’s capacity as Chief Management Officer of the Department of Defense under section 132(c) of this title.

“(c) PRECEDENCE.—The Deputy Chief Management Officer takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, and the Under Secretaries of Defense.”.

(2) CONFORMING AMENDMENT.—Section 132(c) of such title is amended by striking the second sentence. 10 USC 132.

(d) SENIOR OFFICIAL RESPONSIBLE FOR PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES OF MDAPs.—Section 103 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1715; 10 U.S.C. 2430 note) is transferred to chapter 144 of title 10, United States Code, inserted so as to appear after section 2437, redesignated as section 2438, and amended—

(1) in subsection (b)(2), by striking “section 2433a(a)(1) of title 10, United States Code (as added by section 206(a) of this Act)” and inserting “section 2433a(a)(1) of this title”;

(2) in subsection (b)(5)—

(A) by striking “section 2433a of title 10, United States Code (as so added)” and inserting “section 2433a of this title”; and

(B) by striking “prior to” both places it appears and inserting “before”;

(3) in subsection (d), by striking “section 2433a of title 10, United States Code (as so added)” and inserting “section 2433a of this title”; and

(4) in subsection (f), by striking “beginning in 2010,”.

(e) REDESIGNATION OF DDTE AS DEPUTY ASSISTANT SECRETARY FOR DEVELOPMENTAL TEST AND EVALUATION AND DSE AS DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.—Section 139d of title 10, United States Code, is amended—

(1) by striking “Director of Developmental Test and Evaluation” each place it appears and inserting “Deputy Assistant Secretary of Defense for Developmental Test and Evaluation”;

(2) by striking “Director of Systems Engineering” each place it appears and inserting “Deputy Assistant Secretary of Defense for Systems Engineering”;

(3) in subsection (a)—

(A) by striking the subsection heading and inserting “DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENTAL TEST AND EVALUATION.—”;

(B) by striking “Director” each place it appears in paragraphs (2), (3), and (6) and inserting “Deputy Assistant Secretary”;

(C) in paragraph (4), by striking the paragraph heading and inserting “COORDINATION WITH DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.—”;

(D) in paragraph (5), by striking “Director” in the matter preceding subparagraph (A) and inserting “Deputy Assistant Secretary”; and

(E) in paragraph (6), by striking “Director’s” and inserting “Deputy Assistant Secretary’s”; and
(4) in subsection (b)—

(A) by striking the subsection heading and inserting “DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.—”;

(B) by striking “Director” each place it appears in paragraphs (2), (3), (5), and (6) and inserting “Deputy Assistant Secretary”;

(C) in paragraph (4), by striking the paragraph heading and inserting “COORDINATION WITH DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENTAL TEST AND EVALUATION.—”; and

(D) in paragraph (6), by striking “Director’s” and inserting “Deputy Assistant Secretary’s”.

(f) REORGANIZATION OF CERTAIN PROVISIONS WITHIN CHAPTER 4 TO ACCOUNT FOR OTHER TRANSFERS OF PROVISIONS.—Chapter 4 of title 10, United States Code, is further amended by redesignating sections 139c, 139d (as amended by subsection (e)), and 139e (as added by section 896 of this Act) as sections 139a, 139b, and 139c, respectively.

(g) REPEAL OF STATUTORY REQUIREMENT FOR OFFICE FOR MISSING PERSONNEL IN OSD.—Section 1501(a) of title 10, United States Code, is amended—

(1) by striking the subsection heading and inserting the following: “RESPONSIBILITY FOR MISSING PERSONNEL.—”;

(2) in paragraph (1)—

(A) by striking “establish within the Office of the Secretary of Defense an office to have responsibility for Department of Defense policy” in the first sentence and inserting “designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters”;

(B) by striking the second sentence;

(C) by striking “of the office” and inserting “of the official designated under this paragraph”;

(D) by striking “and” at the end of subparagraph (A);

(E) by redesignating subparagraph (B) as subparagraph (C); and

(F) by inserting after subparagraph (A) the following new subparagraph (B):

“(B) policy, control, and oversight of the program established under section 1509 of this title, as well as the accounting for missing persons (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased); and”;

(3) by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively;

(4) by inserting after paragraph (1) the following new paragraph (2):

“(2) The official designated under paragraph (1) shall also serve as the Director, Defense Prisoner of War/Missing Personnel Office, as established under paragraph (6)(A), exercising authority, direction, and control over that activity.”.

(5) in paragraph (3), as so redesignated—

Designation.

(A) by striking “of the office” the first place it appears; and

(B) by striking “head of the office” and inserting “official designated under paragraph (1) and (2)”;

(6) in paragraph (4), as so redesignated—

(A) by striking “office” and inserting “designated official”; and

(B) by inserting after “evasion” the following: “and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased)”;

(7) in paragraph (5), as so redesignated, by striking “office” and inserting “designated official”; and

(8) in paragraph (6), as so redesignated—

(A) in subparagraph (A)—

(i) by inserting after “(A)” the following: “The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office.”; and

(ii) by striking “office” both places it appears and inserting “activity”;

(B) in subparagraph (B)(i), by striking “to the office” and inserting “activity”;

(C) in subparagraph (B)(ii)—

(i) by striking “to the office” and inserting “activity”; and

(ii) by striking “of the office” and inserting “of the activity”; and

(D) in subparagraph (C), by striking “office” and inserting “activity”.

(h) CLARIFICATION OF HEAD OF OFFICE FOR FAMILY POLICY.—Section 1781 of title 10, United States Code, is amended—

(1) in subsection (a), by striking the second sentence and inserting the following new sentence: “The office shall be headed by the Director of Family Policy, who shall serve within the office of the Under Secretary of Defense for Personnel and Readiness.”; and

(2) by striking “the Office” each place it appears and inserting “the Director”.

(i) MODIFICATION OF STATUTORY LIMITATION ON NUMBER OF DEPUTY UNDER SECRETARIES OF DEFENSE.—

(1) DELAY IN LIMITATION ON NUMBER OF DUSDS.—Section 906(a)(2) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2426; 10 U.S.C. 137a note) is amended by striking “January 1, 2011” and inserting “January 1, 2015”.

(2) TEMPORARY AUTHORITY FOR ADDITIONAL DUSDS.—During the period beginning on the date of the enactment of this Act and ending on January 1, 2015, the Secretary of Defense may, in the Secretary’s discretion, appoint not more than five Deputy Under Secretaries of Defense in addition to the five Principal Deputy Under Secretaries of Defense authorized by section 137a of title 10, United States Code (as amended by subsection (b)(3)).

(3) REPORT ON PLAN FOR REORGANIZATION OF OSD.—

Time period.
10 USC 137a
note.

(A) REPORT REQUIRED.—Not later than September 15, 2013, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a plan for the realignment of the organizational structure of the Office of the Secretary of Defense to comply with the requirement of section 906(a)(2) of the National Defense Authorization Act for Fiscal Year 2010, as amended by paragraph (1).

(B) ELEMENTS.—In preparing the report required by subparagraph (A), the Secretary shall consider, at a minimum, the feasibility of taking the following actions on or before January 1, 2015:

(i) A merger of the position of Deputy Under Secretary of Defense (Installations and Environment) and the position of Assistant Secretary of Defense for Operational Energy Plans and Programs (as established in accordance with the amendments made by subsection (b)(7)) into a single Assistant Secretary position.

(ii) A realignment of positions within the Office of the Under Secretary of Defense for Policy to eliminate the position of Deputy Under Secretary of Defense (Strategy, Plans, and Forces).

(j) OTHER CONFORMING AMENDMENTS TO TITLE 10.—

(1) Section 179(c) of title 10, United States Code, is amended—

(A) in paragraphs (2) and (3), by striking “Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs” and inserting “Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs”; and

(B) in paragraph (3), by striking “that Assistant to the Secretary” and inserting “Assistant Secretary”.

(2) Section 2272 of such title is amended by striking “Director of Defense Research and Engineering” each place it appears and inserting “Assistant Secretary of Defense for Research and Engineering”.

(3) Section 2365 of such title is amended—

(A) in subsection (a), by striking “Director of Defense Research and Engineering” and inserting “Assistant Secretary”;

(B) in subsection (d)(1), by striking “Director” and inserting “Assistant Secretary”;

(C) in subsection (d)(2)—

(i) by striking “Director of Defense Research and Engineering” and inserting “Assistant Secretary of Defense for Research and Engineering”; and

(ii) by striking “Director may” and inserting “Assistant Secretary may”; and

(D) in subsection (e), by striking “Director” and inserting “Assistant Secretary”.

(4) Sections 2350a(g)(3), 2366b(a)(3)(D), 2374a(a), and 2517(a) of such title are amended by striking “Director of Defense Research and Engineering” and inserting “Assistant Secretary of Defense for Research and Engineering”.

(5) Section 2902(b) of such title is amended—

(A) in paragraph (1), by striking “Deputy Under Secretary of Defense for Science and Technology” and inserting

“official within the Office of the Assistant Secretary of Defense for Research and Engineering who is responsible for science and technology”; and

(B) in paragraph (3), by striking “Deputy Under Secretary of Defense” and inserting “official within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics who is”.

(k) SECTION HEADING AND CLERICAL AMENDMENTS.—

(1) SECTION HEADING AMENDMENTS.—

(A) The heading of section 137a of title 10, United States Code, is amended to read as follows:

“§ 137a. Principal Deputy Under Secretaries of Defense”.

(B) The heading of section 138b of such title, as transferred and redesignated by subsection (b)(6), is amended to read as follows:

“§ 138b. Assistant Secretary of Defense for Research and Engineering”.

(C) The heading of section 138c of such title, as transferred and redesignated by subsection (b)(7), is amended to read as follows:

“§ 138c. Assistant Secretary of Defense for Operational Energy Plans and Programs”.

(D) The heading of section 138d of such title, as transferred and redesignated by subsection (b)(8), is amended to read as follows:

“§ 138d. Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs”.

(E) The section heading of section 139b of such title, as redesignated by subsection (f), is amended to read as follows:

“§ 139b. Deputy Assistant Secretary of Defense for Developmental Test and Evaluation; Deputy Assistant Secretary of Defense for Systems Engineering: joint guidance”.

(F) The heading of section 2438 of such title, as transferred and redesignated by subsection (d), is amended to read as follows:

“§ 2438. Performance assessments and root cause analyses”.

(2) CLERICAL AMENDMENTS.—

(A) The table of sections at the beginning of chapter 4 of such title is amended—

(i) by inserting after the item relating to section 132 the following new item:

“132a. Deputy Chief Management Officer.”;

(ii) by striking the items relating to sections 133a, 134a, and 136a;

(iii) by striking the item relating to section 137a and inserting the following new item:

“137a. Principal Deputy Under Secretaries of Defense.”;

(iv) by inserting after the item relating to section 138a the following new items:

“138b. Assistant Secretary of Defense for Research and Engineering.
 “138c. Assistant Secretary of Defense for Operational Energy Plans and Programs.
 “138d. Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.”;

(v) by striking the items relating to sections 139a, 139b, 139c, and 139d and inserting the following new items:

“139a. Director of Cost Assessment and Program Evaluation.
 “139b. Deputy Assistant Secretary of Defense for Developmental Test and Evaluation; Deputy Assistant Secretary of Defense for Systems Engineering: joint guidance.
 “139c. Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.”; and

(vi) by striking the item relating to section 142.
 (B) The table of sections at the beginning of chapter 144 of such title is amended by inserting after the item relating to section 2437 the following new item:

“2438. Performance assessments and root cause analyses.”.

(1) OTHER CONFORMING AMENDMENTS.—

(1) PUBLIC LAW 111–23.—Section 102(b) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1714; 10 U.S.C. 2430 note) is amended—

(A) by striking “Director of Developmental Test and Evaluation and the Director of Systems Engineering” each place it appears and inserting “Deputy Assistant Secretary of Defense for Developmental Test and Evaluation and the Deputy Assistant Secretary of Defense for Systems Engineering”; and

(B) in paragraph (3)—

(i) by striking the paragraph heading and inserting “ASSESSMENT OF REPORTS BY DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENTAL TEST AND EVALUATION AND DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.—”; and

(ii) by striking “Directors” and inserting “Deputy Assistant Secretaries of Defense”.

(2) PUBLIC LAW 110–181.—Section 214 of the National Defense Authorization Act of Fiscal Year 2008 (10 U.S.C. 2521 note) is amended by striking “Director of Defense Research and Engineering” and inserting “Assistant Secretary of Defense for Research and Engineering”.

(m) TECHNICAL AMENDMENTS.—

(1) Section 131(a) of title 10, United States Code, is amended by striking “his” and inserting “the Secretary’s”.

(2) Section 132 of such title is amended by redesignating subsection (d), as added by section 2831(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2669), as subsection (e).

(3) Section 135(c) of such title is amended by striking “clauses” and inserting “paragraphs”.

(n) EXECUTIVE SCHEDULE AMENDMENTS.—

(1) NUMBER OF ASSISTANT SECRETARY OF DEFENSE POSITIONS.—Section 5315 of title 5, United States Code, is amended

by striking the item relating to Assistant Secretaries of Defense and inserting the following new item:

“Assistant Secretaries of Defense (16).”.

(2) POSITIONS REDESIGNATED AS ASD POSITIONS.—

(A) Section 5315 of such title is further amended by striking the item relating to Director of Defense Research and Engineering. 5 USC 5315.

(B) Section 5316 of such title is amended by striking the item relating to Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs.

(3) AMENDMENTS TO STRIKE REFERENCES TO POSITIONS IN SENIOR EXECUTIVE SERVICE.—Section 5316 of such title is further amended—

(A) by striking the item relating to Director, Defense Advanced Research Projects Agency, Department of Defense;

(B) by striking the item relating to Deputy General Counsel, Department of Defense;

(C) by striking the item relating to Deputy Under Secretaries of Defense for Research and Engineering, Department of Defense; and

(D) by striking the item relating to Special Assistant to the Secretary of Defense.

(o) INAPPLICABILITY OF APPOINTMENT REQUIREMENT TO CERTAIN INDIVIDUALS SERVING ON EFFECTIVE DATE.—

(1) IN GENERAL.—Notwithstanding this section and the amendments made by this section, the individual serving as specified in paragraph (2) on December 31, 2010, may continue to serve in the applicable position specified in that paragraph after that date without the requirement for appointment by the President, by and with the advice and consent of the Senate. 10 USC 131 note.

(2) COVERED INDIVIDUALS AND POSITIONS.—The individuals and positions specified in this paragraph are the following:

(A) In the case of the individual serving as Director of Defense Research and Engineering, the position of Assistant Secretary of Defense for Research and Engineering.

(B) In the case of the individual serving as Director of Operational Energy Plans and Programs, the position of Assistant Secretary of Defense for Operational Energy Plans and Programs.

(C) In the case of the individual serving as Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, the position of Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.

(p) EFFECTIVE DATE.—

10 USC 131 note.

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on January 1, 2011.

(2) CERTAIN MATTERS.—Subsection (i) and the amendments made by that subsection, and subsection (o), shall take effect on the date of the enactment of this Act.

Subtitle B—Space Activities

10 USC 2271
note.

SEC. 911. INTEGRATED SPACE ARCHITECTURES.

The Secretary of Defense and the Director of National Intelligence shall develop an integrated process for national security space architecture planning, development, coordination, and analysis that—

(1) encompasses defense and intelligence space plans, programs, budgets, and organizations;

(2) provides mid-term to long-term recommendations to guide space-related defense and intelligence acquisitions, requirements, and investment decisions;

(3) is independent of, but coordinated with, the space architecture planning, development, coordination, and analysis activities of each military department and each element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))); and

(4) makes use of, to the maximum extent practicable, joint duty assignment (as defined in section 668 of title 10, United States Code) positions.

SEC. 912. LIMITATION ON USE OF FUNDS FOR COSTS OF TERMINATING CONTRACTS UNDER THE NATIONAL POLAR-ORBITING OPERATIONAL ENVIRONMENTAL SATELLITE SYSTEM PROGRAM.

None of the funds authorized to be appropriated or otherwise made available by this Act to the Secretary of Defense for the National Polar-Orbiting Operational Environmental Satellite System Program may be obligated or expended for the costs of terminating a contract awarded under the Program unless the Secretary of Defense and the Secretary of Commerce enter into an agreement under which the Secretary of Defense and the Secretary of Commerce will each be responsible for half the costs of terminating the contract.

10 USC 2281
note.

SEC. 913. LIMITATION ON USE OF FUNDS FOR PURCHASING GLOBAL POSITIONING SYSTEM USER EQUIPMENT.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), none of the funds authorized to be appropriated or otherwise made available by this Act or any other Act for the Department of Defense may be obligated or expended to purchase user equipment for the Global Positioning System during fiscal years after fiscal year 2017 unless the equipment is capable of receiving the military code (commonly known as the “M code”) from the Global Positioning System.

(b) EXCEPTION.—The limitation under subsection (a) shall not apply with respect to the purchase of passenger vehicles or commercial vehicles in which Global Positioning System equipment is installed.

(c) WAIVER.—The Secretary of Defense may waive the limitation under subsection (a) if the Secretary determines that—

(1) suitable user equipment capable of receiving the military code from the Global Positioning System is not available; or

(2) with respect to a purchase of user equipment, the Department of Defense does not require that user equipment

to be capable of receiving the military code from the Global Positioning System.

SEC. 914. PLAN FOR INTEGRATION OF SPACE-BASED NUCLEAR DETECTION SENSORS.

(a) **IN GENERAL.**—The Secretary of Defense shall, in consultation with the Director of National Intelligence and the Administrator for Nuclear Security, submit to the congressional defense committees a plan to integrate space-based nuclear detection sensors in a geosynchronous orbit on the Space-Based Infrared System or other satellite platforms.

(b) **LIMITATION ON USE OF FUNDS FOR THE SPACE-BASED INFRARED SYSTEM.**—

(1) **IN GENERAL.**—Not more than 90 percent of the amounts specified in paragraph (2) may be obligated or expended before the date on which the Secretary of Defense submits to the congressional defense committees the plan required by subsection (a).

(2) **AMOUNTS SPECIFIED.**—The amounts specified in this paragraph are the following:

(A) The amount authorized to be appropriated by section 103 for procurement for the Air Force for missiles for the Space-Based Infrared System.

(B) The amount authorized to be appropriated by section 201 for research, development, test, and evaluation for the Air Force for the Space-Based Infrared System.

SEC. 915. PRESERVATION OF THE SOLID ROCKET MOTOR INDUSTRIAL BASE.

(a) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Administrator of the National Aeronautics and Space Administration, submit to the appropriate committees of Congress a report on the impact of the cancellation of the Constellation program of the National Aeronautics and Space Administration on any anticipated next generation mission requirements for missile defense interceptors, tactical and strategic missiles, targets, and satellite and human spaceflight launch vehicles.

(b) **ELEMENTS.**—The report required under subsection (a) shall include the following:

(1) A description and assessment of the effects on Department of Defense programs that utilize solid rocket motors of the cancellation of the Ares I, the Ares V, or their solid rocket alternatives or derivatives, and all supporting elements.

(2) A description of the plans of the Department of Defense to mitigate the impact of the cancellation of the Ares I, the Ares V, or their solid rocket alternatives or derivatives, and all supporting elements, on the United States solid rocket motor industrial base, including a description of the National Aeronautics and Space Administration and Department of Defense funding required to implement such plans between fiscal years 2012 and 2017.

(3) A description of the impact of the cancellation of the Ares I, Ares V, or their solid rocket alternatives or derivatives, and all supporting elements, on international partners in programs such as the D–5 Trident missile.

(4) A detailed description of the source of the data used in the report.

(c) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this subsection, the term “appropriate committees of Congress” means—

- (1) the Committees on Armed Services, Commerce, Science, and Transportation, and Appropriations of the Senate; and
- (2) the Committees on Armed Services, Science and Technology, and Appropriations of the House of Representatives.

SEC. 916. IMPLEMENTATION PLAN TO SUSTAIN SOLID ROCKET MOTOR INDUSTRIAL BASE.

(a) **IN GENERAL.**—The Secretary of Defense shall develop an implementation plan to sustain the solid rocket motor industrial base that—

- (1) is based on the recommendations included in the report submitted to the congressional defense committees under section 1078 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2479); and
- (2) includes a funding plan for carrying out the implementation plan.

(b) **SUBMITTAL TO CONGRESS.**—The implementation plan required by subsection (a) shall be submitted to Congress with the budget of the President for fiscal year 2012 as submitted under section 1105(a) of title 31, United States Code.

SEC. 917. REVIEW AND PLAN ON SUSTAINMENT OF LIQUID ROCKET PROPULSION SYSTEMS INDUSTRIAL BASE.

(a) **IN GENERAL.**—The Secretary of Defense shall, in consultation with the Administrator of the National Aeronautics and Space Administration, review, and develop a plan to sustain, the liquid rocket propulsion systems industrial base.

(b) **ELEMENTS.**—The review and plan required by subsection

(a) shall address the following:

- (1) The capacity to maintain currently available liquid rocket propulsion systems.
- (2) The maintenance of an intellectual and engineering capacity to support next generation liquid rocket propulsion systems and engines, as needed.
- (3) Opportunities for interagency collaboration and research and development on future propulsion systems.

(c) **SUBMITTAL TO CONGRESS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees the plan required by subsection (a).

Deadline.

Subtitle C—Intelligence-Related Matters

SEC. 921. FIVE-YEAR EXTENSION OF AUTHORITY FOR SECRETARY OF DEFENSE TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES.

The second sentence of section 431(a) of title 10, United States Code, is amended by striking “December 31, 2010” and inserting “December 31, 2015”.

SEC. 922. MODIFICATION OF ATTENDEES AT PROCEEDINGS OF INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE INTEGRATION COUNCIL.

(a) **FINDINGS.**—Section 923(a)(4) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–163; 117

Stat. 1574; 10 U.S.C. 426 note) is amended by striking “National Foreign Intelligence Program (NFIP), Joint Military Intelligence Program (JMIP), and Tactical Intelligence and Related Activities Program (TIARA)” and inserting “National Intelligence Program (NIP) and a Military Intelligence Program (MIP)”.

(b) ADDITIONAL AUTHORIZED ATTENDEES.—Section 426(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) Each Secretary of a military department may designate an officer or employee of such military department to attend the proceedings of the Council as a representative of such military department.”.

SEC. 923. REPORT ON DEPARTMENT OF DEFENSE INTERSERVICE MANAGEMENT AND COORDINATION OF REMOTELY PILOTED AIRCRAFT SUPPORT OF INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE.

(a) REPORT REQUIRED.—

(1) REPORT TO SECRETARY OF DEFENSE BY CHIEFS OF STAFF.—Not later than 120 days after the date of the enactment of this Act, the Chief of Staff of the Army, the Chief of Naval Operations, and the Chief of Staff of the Air Force shall jointly submit to the Secretary of Defense a report, in accordance with this section, on remotely piloted aircraft (RPA) support of intelligence, surveillance, and reconnaissance (ISR) within their respective Armed Forces.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after the receipt of the report required by paragraph (1), the Secretary shall transmit the report, together with the assessment and any recommendations of the Secretary (including the matters required pursuant to subsection (b)(2)), to the congressional defense committees.

Assessment.
Recommendations.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) In the case of the report required by subsection (a)(1), a description by each chief of staff referred to in that subsection of—

(A) current and planned remotely piloted aircraft inventories to support intelligence, surveillance, and reconnaissance requirements over the period 2011 to 2020, including an identification of systems each Armed Force considers organic and the systems capable of providing theater-level support to the commanders of the combatant commands;

(B) policy and processes of each Armed Force for coordinating investments in remotely piloted aircraft to meet joint force requirements for intelligence, surveillance, and reconnaissance and to eliminate unnecessary duplication in both development and capability; and

(C) the current employment of remotely piloted aircraft by each Armed Force, including the number of remotely piloted aircraft deployed in support operations, the number of remotely piloted aircraft assigned for training, and the number of remotely piloted aircraft warehoused, the capacity of each Armed Force to process, exploit, and disseminate intelligence, surveillance, and reconnaissance data collected, and the extent to which assets are provided

to the joint community to meet requirements of the combatant commands.

(2) In the case of the transmittal required by subsection (a)(2)—

(A) an assessment of the effectiveness of the employment of remotely piloted aircraft by each Armed Force, and a description of the percentage of joint force requirements for intelligence, surveillance, and reconnaissance that are being met by the remotely piloted aircraft of each Armed Force;

(B) a description of the joint concept of operations under which each Armed Force provides intelligence, surveillance, and reconnaissance capabilities through remotely piloted aircraft to meet the requirements of the combatant commands;

(C) a description of the processes by which current requirements of the commanders of the combatant commands for intelligence, surveillance, and reconnaissance are validated, and how the remotely piloted aircraft capabilities of each Armed Force are assigned against validated requirements;

(D) a description of the current intelligence, surveillance, and reconnaissance requirements of each combatant command through remotely piloted aircraft;

(E) a description of how the requirements described under subparagraph (D) are being met;

(F) an identification of any mission degradation or failure within the combatant commands due to lack of intelligence, surveillance, and reconnaissance support;

(G) a description of various means of addressing any shortfalls in meeting the requirements described under subparagraph (D), including temporary shortfalls and permanent shortfalls;

(H) a description of the organization of the Unmanned Aerial System Task Force, including the goals and objectives of the task force and the participation and roles of each Armed Force within the task force;

(I) a description of the organization of the Intelligence, Surveillance, and Reconnaissance Task Force, including the goals and objectives of the task force and the participation and roles of each Armed Force within the task force; and

(J) an identification of any theater-level intelligence, surveillance, and reconnaissance capacity of an Armed Force that is not being made available by services to fulfill joint force requirements for intelligence, surveillance, and reconnaissance.

(c) REMOTELY PILOTED AIRCRAFT DEFINED.—In this section, the term “remotely piloted aircraft” means any unmanned aircraft operated remotely, whether within or beyond line-of-sight, including unmanned aerial systems (UAS), unmanned aerial vehicles (UAV), remotely piloted vehicles (RPV), and remotely piloted aircraft (RPA).

SEC. 924. REPORT ON REQUIREMENTS FULFILLMENT AND PERSONNEL MANAGEMENT RELATING TO AIR FORCE INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE PROVIDED BY REMOTELY PILOTED AIRCRAFT.

(a) **REPORT REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Air Force shall, in coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Intelligence, submit to the appropriate committees of Congress a report on requirements fulfillment and personnel management in connection with Air Force intelligence, surveillance, and reconnaissance (ISR) provided by remotely piloted aircraft (RPA).

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following:

(1) A description of the Joint Concept of Operation under which the Air Force operates to fulfill intelligence, surveillance, and reconnaissance requirements provided by remotely piloted aircraft.

(2) A description of the current requirements of each combatant command for Air Force intelligence, surveillance, and reconnaissance provided by remotely piloted aircraft, including—

(A) the number of orbits or combat air patrols for each major platform and sensor payload combination;

(B) the number of aircraft, aircraft operators, and ground crews in each orbit or combat air patrol, variations in the numbers of each, and the explanation for such variations;

(C) a description of how requirements are being met by the management of personnel, platforms, sensors, and networks; and

(D) a description of various means of addressing any shortfalls in meeting such requirements, including temporary shortfalls and permanent shortfalls.

(3) A description of manpower management to fulfill Air Force mission requirements for intelligence, surveillance, and reconnaissance requirements provided by remotely piloted aircraft, including the current number of personnel associated with each combat air patrol by remotely piloted aircraft for aircraft pilots, sensor operators, mission intelligence coordinators, and processing, exploitation, and dissemination analysts (in this section referred to as “operators and analysts for remotely piloted aircraft”).

(4) A description of current Air Force manpower requirements for operators and analysts for remotely piloted aircraft, and any plans for meeting such requirements, including—

(A) an identification of any shortfalls in personnel, skill specialties, and grades; and

(B) any plans of the Air Force to address such shortfalls, including—

(i) plans to address shortfalls in applicable career field retention rates; and

(ii) plans for utilization of National Guard and other reserve component personnel to address shortfalls in such personnel, skill specialties, and grades.

(5) A description of the projected Air Force manpower requirements for operators and analysts for remotely piloted aircraft in each of 2015 and 2020, including—

(A) an identification of any significant challenges to achieving such requirements in particular skill specialties and grades; and

(B) any plans of the Air Force to address such challenges.

(6) A description of the collaboration of the Air Force with, and the reliance of the Air Force on, the other Armed Forces and the combat support agencies, in asset management for intelligence, surveillance, and reconnaissance by remotely piloted aircraft, including personnel for processing, exploitation, and dissemination.

(7) A description of potential adverse consequences of operating intelligence, surveillance, and reconnaissance by remotely piloted aircraft, and associated intelligence support infrastructure, in a surge, understaffed state, or both, including—

(A) the impact of having to provide forward processing, exploitation, and dissemination to support emerging capabilities; and

(B) any plans of the Air Force to mitigate such consequences.

(8) A description of the status of Air Force training programs for operators and analysts for remotely piloted aircraft, including the ability to meet Air Force manpower requirements for such operators and analysts, and plans for increasing training capacity to match plans for expanding Air Force intelligence, surveillance, and reconnaissance capabilities.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

Subtitle D—Cyber Warfare, Cyber Security, and Related Matters

10 USC 2223
note.

SEC. 931. CONTINUOUS MONITORING OF DEPARTMENT OF DEFENSE INFORMATION SYSTEMS FOR CYBERSECURITY.

(a) IN GENERAL.—The Secretary of Defense shall direct the Chief Information Officer of the Department of Defense to work, in coordination with the Chief Information Officers of the military departments and the Defense Agencies and with senior cybersecurity and information assurance officials within the Department of Defense and otherwise within the Federal Government, to achieve, to the extent practicable, the following:

(1) The continuous prioritization of the policies, principles, standards, and guidelines developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) based upon the evolving threat of information security

incidents with respect to national security systems, the vulnerability of such systems to such incidents, and the consequences of information security incidents involving such systems.

(2) The automation of continuous monitoring of the effectiveness of the information security policies, procedures, and practices within the information infrastructure of the Department of Defense, and the compliance of that infrastructure with such policies, procedures, and practices, including automation of—

(A) management, operational, and technical controls of every information system identified in the inventory required under section 3505(c) of title 44, United States Code; and

(B) management, operational, and technical controls relied on for evaluations under section 3545 of title 44, United States Code.

(b) DEFINITIONS.—In this section:

(1) The term “information security incident” means an occurrence that—

(A) actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information such system processes, stores, or transmits; or

(B) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies with respect to an information system.

(2) The term “information infrastructure” means the underlying framework, equipment, and software that an information system and related assets rely on to process, transmit, receive, or store information electronically.

(3) The term “national security system” has the meaning given that term in section 3542(b)(2) of title 44, United States Code.

SEC. 932. STRATEGY ON COMPUTER SOFTWARE ASSURANCE.

10 USC 2224
note.
Deadline.

(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop and implement, by not later than October 1, 2011, a strategy for assuring the security of software and software-based applications for all covered systems.

(b) COVERED SYSTEMS.—For purposes of this section, a covered system is any critical information system or weapon system of the Department of Defense, including the following:

(1) A major system, as that term is defined in section 2302(5) of title 10, United States Code.

(2) A national security system, as that term is defined in section 3542(b)(2) of title 44, United States Code.

(3) Any Department of Defense information system categorized as Mission Assurance Category I.

(4) Any Department of Defense information system categorized as Mission Assurance Category II in accordance with Department of Defense Directive 8500.01E.

(c) ELEMENTS.—The strategy required by subsection (a) shall include the following:

(1) Policy and regulations on the following:

(A) Software assurance generally.

(B) Contract requirements for software assurance for covered systems in development and production.

(C) Inclusion of software assurance in milestone reviews and milestone approvals.

(D) Rigorous test and evaluation of software assurance in development, acceptance, and operational tests.

(E) Certification and accreditation requirements for software assurance for new systems and for updates for legacy systems, including mechanisms to monitor and enforce reciprocity of certification and accreditation processes among the military departments and Defense Agencies.

(F) Remediation in legacy systems of critical software assurance deficiencies that are defined as critical in accordance with the Application Security Technical Implementation Guide of the Defense Information Systems Agency.

(2) Allocation of adequate facilities and other resources for test and evaluation and certification and accreditation of software to meet applicable requirements for research and development, systems acquisition, and operations.

(3) Mechanisms for protection against compromise of information systems through the supply chain or cyber attack by acquiring and improving automated tools for—

(A) assuring the security of software and software applications during software development;

(B) detecting vulnerabilities during testing of software; and

(C) detecting intrusions during real-time monitoring of software applications.

(4) Mechanisms providing the Department of Defense with the capabilities—

(A) to monitor systems and applications in order to detect and defeat attempts to penetrate or disable such systems and applications; and

(B) to ensure that such monitoring capabilities are integrated into the Department of Defense system of cyber defense-in-depth capabilities.

(5) An update to Committee for National Security Systems Instruction No. 4009, entitled “National Information Assurance Glossary”, to include a standard definition for software security assurance.

(6) Either—

(A) mechanisms to ensure that vulnerable Mission Assurance Category III information systems, if penetrated, cannot be used as a foundation for penetration of protected covered systems, and means for assessing the effectiveness of such mechanisms; or

(B) plans to address critical vulnerabilities in Mission Assurance Category III information systems to prevent their use for intrusions of Mission Assurance Category I systems and Mission Assurance Category II systems.

(7) A funding mechanism for remediation of critical software assurance vulnerabilities in legacy systems.

(d) REPORT.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report on the strategy required by subsection (a). The report shall include the following:

(1) A description of the current status of the strategy required by subsection (a) and of the implementation of the

strategy, including a description of the role of the strategy in the risk management by the Department regarding the supply chain and in operational planning for cyber security.

(2) A description of the risks, if any, that the Department will accept in the strategy due to limitations on funds or other applicable constraints.

SEC. 933. STRATEGY FOR ACQUISITION AND OVERSIGHT OF DEPARTMENT OF DEFENSE CYBER WARFARE CAPABILITIES.

(a) **STRATEGY REQUIRED.**—The Secretary of Defense, in consultation with the Secretaries of the military departments, shall develop a strategy to provide for the rapid acquisition of tools, applications, and other capabilities for cyber warfare for the United States Cyber Command and the cyber operations components of the military departments.

(b) **BASIC ELEMENTS.**—The strategy required by subsection (a) shall include the following:

(1) An orderly process for determining and approving operational requirements.

(2) A well-defined, repeatable, transparent, and disciplined process for developing capabilities to meet such requirements, in accordance with the information technology acquisition process developed pursuant to section 804 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2225 note).

(3) The allocation of facilities and other resources to thoroughly test such capabilities in development, before deployment, and before use in order to validate performance and take into account collateral damage and other so-called second-order effects.

(c) **ADDITIONAL ELEMENTS.**—The strategy required by subsection (a) shall also provide for the following:

(1) Safeguards to prevent—

(A) the circumvention of operational requirements and acquisition processes through informal relationships among the United States Cyber Command, the Armed Forces, the National Security Agency, and the Defense Information Systems Agency; and

(B) the abuse of quick-reaction processes otherwise available for the rapid fielding of capabilities.

(2) The establishment of reporting and oversight processes for requirements generation and approval for cyber warfare capabilities, the assignment of responsibility for providing capabilities to meet such requirements, and the execution of development and deployment of such capabilities, under the authority of the Chairman of the Joint Requirements Oversight Council, the Under Secretary of Defense for Policy, and other officials in the Office of the Secretary of Defense, as designated in the strategy.

(3) The establishment and maintenance of test and evaluation facilities and resources for cyber infrastructure to support research and development, operational test and evaluation, operational planning and effects testing, and training by replicating or emulating networks and infrastructure maintained and operated by the military and political organizations of potential United States adversaries, by domestic and foreign

telecommunications service providers, and by the Department of Defense.

(4) An organization or organizations within the Department of Defense to be responsible for the operation and maintenance of cyber infrastructure for research, development, test, and evaluation purposes.

(5) Appropriate disclosure regarding United States cyber warfare capabilities to the independent test and evaluation community, and the involvement of that community in the development and maintenance of such capabilities, regardless of classification.

(6) The role of the private sector and appropriate Department of Defense organizations in developing capabilities to operate in cyberspace, and a clear process for determining whether to allocate responsibility for responding to Department of Defense cyber warfare requirements through Federal Government personnel, contracts with private sector entities, or a combination of both.

(7) The roles of each military department, and of the combat support Defense Agencies, in the development of cyber warfare capabilities in support of offensive, defensive, and intelligence operational requirements.

(8) Mechanisms to promote information sharing, cooperative agreements, and collaboration with international, inter-agency, academic, and industrial partners in the development of cyber warfare capabilities.

(9) The manner in which the Department of Defense will promote interoperability, share innovation, and avoid unproductive duplication in cyber warfare capabilities through specialization among the components of the Department responsible for developing cyber capabilities.

(d) REPORT ON STRATEGY.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the strategy required by subsection (a). The report shall include a comprehensive description of the strategy and plans (including a schedule) for the implementation of the strategy.

(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 934. REPORT ON THE CYBER WARFARE POLICY OF THE DEPARTMENT OF DEFENSE.

(a) REPORT REQUIRED.—Not later than March 1, 2011, the Secretary of Defense shall submit to Congress a report on the cyber warfare policy of the Department of Defense.

(b) ELEMENTS.—The report required under this section shall include the following:

(1) A description of the policy and legal issues investigated and evaluated by the Department in considering the range

of missions and activities that the Department may choose to conduct in cyberspace.

(2) The decisions of the Secretary with respect to such issues, and the recommendations of the Secretary to the President for decisions on such of those issues as exceed the authority of the Secretary to resolve, together with the rationale and justification of the Secretary for such decisions and recommendations.

(3) A description of the intentions of the Secretary with regard to modifying the National Military Strategy for Cyberspace Operations.

(4) The current use of, and potential applications of, modeling and simulation tools to identify likely cybersecurity vulnerabilities, as well as new protective and remediation means, within the Department.

(5) The application of modeling and simulation technology to develop strategies and programs to deter hostile or malicious activity intended to compromise Department information systems.

(c) FORM.—The report required under this section shall be submitted in unclassified form, but may include a classified annex.

SEC. 935. REPORTS ON DEPARTMENT OF DEFENSE PROGRESS IN DEFENDING THE DEPARTMENT AND THE DEFENSE INDUSTRIAL BASE FROM CYBER EVENTS.

(a) REPORTS ON PROGRESS REQUIRED.—Not later than 180 days after the date of the enactment of this Act, and March 1 every year thereafter through 2015, the Secretary of Defense shall submit to the congressional defense committees a report on the progress of the Department of Defense in defending the Department and the defense industrial base from cyber events (such as attacks, intrusions, and theft).

(b) ELEMENTS.—Each report under subsection (a) shall include the following:

(1) In the case of the first report, a baseline for measuring the progress of the Department of Defense in defending the Department and the defense industrial base from cyber events, including definitions of significant cyber events, an appropriate categorization of various types of cyber events, the basic methods used in various cyber events, the vulnerabilities exploited in such cyber events, and the metrics to be utilized to determine whether the Department is or is not making progress against an evolving cyber threat.

(2) An ongoing assessment of such baseline against key cyber defense strategies (described in subsection (c)) to determine implementation progress.

(3)(A) A description of the nature and scope of significant cyber events against the Department and the defense industrial base during the preceding year, including, for each such event, a description of the intelligence or other Department data acquired, the extent of the corruption or compromise of Department information or weapon systems, and the impact of such event on the Department generally and on operational capabilities.

(B) For any such event that has been investigated by or on behalf of the Damage Assessment Management Office,

a synopsis of each damage assessment report, with emphasis on actions needing remediation.

(4) A comparative assessment of the offensive cyber warfare capabilities of current representative potential United States adversaries and nations with advanced cyber warfare capabilities with the capacity of the United States to defend—

- (A) military networks and mission capabilities; and
- (B) critical infrastructure.

(5) A comparative assessment of the offensive cyber warfare capabilities of the United States with the capacity of current representative potential United States adversaries and nations with advanced cyber warfare capabilities to defend against cyber attacks.

(6) A comparative assessment of the degree of dependency of current representative potential United States adversaries, nations with advanced cyber warfare capabilities, and the United States on networks that can be attacked through cyberspace.

(7) A description of known or suspected identified supply chain vulnerabilities, including known or suspected supply chain attacks, and actions to remediate such vulnerabilities.

(c) **KEY CYBER DEFENSE STRATEGIES.**—For purposes of subsection (b)(2), key cyber defense strategies include the following:

- (1) Relevant valid Homeland Security Presidential Directives and National Security Presidential Directives.
- (2) The Comprehensive National Cybersecurity Initiative.
- (3) The National Military Strategy for Cyberspace Operations implementation plan.

(d) **PERFORMANCE OF CERTAIN ASSESSMENTS.**—The comparative assessment of critical infrastructure required by subsection (b)(4)(B) shall be performed by the Secretary of Homeland Security, in coordination with the Secretary of Defense and the heads of other agencies of the Government with specific responsibility for critical infrastructure.

(e) **FORM.**—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

Subtitle E—Other Matters

SEC. 941. TWO-YEAR EXTENSION OF AUTHORITIES RELATING TO TEMPORARY WAIVER OF REIMBURSEMENT OF COSTS OF ACTIVITIES FOR NONGOVERNMENTAL PERSONNEL AT DEPARTMENT OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES.

(a) **EXTENSION OF WAIVER.**—Paragraph (1) of section 941(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4577; 10 U.S.C. 184 note) is amended by striking “fiscal years 2009 and 2010” and inserting “fiscal years 2009 through 2012”.

(b) **ANNUAL REPORT.**—Paragraph (3) of such section is amended by striking “in 2010 and 2011” and inserting “in each year through 2013”.

SEC. 942. ADDITIONAL REQUIREMENTS FOR QUADRENNIAL ROLES AND MISSIONS REVIEW IN 2011.

(a) **ADDITIONAL ACTIVITIES CONSIDERED.**—As part of the quadrennial roles and missions review conducted in 2011 pursuant to section 118b of title 10, United States Code, the Secretary of Defense shall give consideration to the following activities, giving particular attention to their role in counter-terrorism operations:

- (1) Information operations.
- (2) Detention and interrogation.

(b) **ADDITIONAL REPORT REQUIREMENT.**—In the report required by section 118b(d) of such title for such review in 2011, the Secretary of Defense shall—

- (1) provide clear guidance on the nature and extent of which core competencies are associated with the activities listed in subsection (a); and
- (2) identify the elements of the Department of Defense that are responsible or should be responsible for providing such core competencies.

Guidance.

SEC. 943. REPORT ON ORGANIZATIONAL STRUCTURE AND POLICY GUIDANCE OF THE DEPARTMENT OF DEFENSE REGARDING INFORMATION OPERATIONS.

10 USC 113 note.

(a) **REPORT REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the organizational structure and policy guidance of the Department of Defense with respect to information operations.

(b) **REVIEW.**—In preparing the report required by subsection (a), the Secretary shall review the following:

- (1) The extent to which the current definition of “information operations” in Department of Defense Directive 3600.1 is appropriate.
- (2) The location of the office within the Department of the lead official responsible for information operations of the Department, including assessments of the most effective location and the need to designate a principal staff assistant to the Secretary of Defense for information operations.
- (3) Departmental responsibility for the development, coordination, and oversight of Department policy on information operations and for the integration of such operations.
- (4) Departmental responsibility for the planning, execution, and oversight of Department information operations.
- (5) Departmental responsibility for coordination within the Department, and between the Department and other departments and agencies of the Federal Government, regarding Department information operations, and for the resolution of conflicts in the discharge of such operations, including an assessment of current coordination bodies and decisionmaking processes.
- (6) The roles and responsibilities of the military departments, combat support agencies, the United States Special Operations Command, and the other combatant commands in the development and implementation of information operations.
- (7) The roles and responsibilities of the defense intelligence agencies for support of information operations.

(8) The role in information operations of the following Department officials:

(A) The Assistant Secretary of Defense for Public Affairs.

(B) The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict.

(C) The senior official responsible for information processing and networking capabilities.

(9) The role of related capabilities in the discharge of information operations, including public affairs capabilities, civil-military operations capabilities, defense support of public diplomacy, and intelligence.

(10) The management structure of computer network operations in the Department for the discharge of information operations, and the policy in support of that component.

(11) The appropriate use, management, and oversight of contractors in the development and implementation of information operations, including an assessment of current guidance and policy directives pertaining to the uses of contractors for these purposes.

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form, with a classified annex, if necessary.

(d) DEPARTMENT OF DEFENSE DIRECTIVE.—Upon the submittal of the report required by subsection (a), the Secretary shall prescribe a revised directive for the Department of Defense on information operations. The directive shall take into account the results of the review conducted for purposes of the report.

(e) INFORMATION OPERATIONS DEFINED.—In this section, the term “information operations” means the information operations specified in Department of Defense Directive 3600.1, as follows:

(1) Electronic warfare.

(2) Computer network operations.

(3) Psychological operations.

(4) Military deception.

(5) Operations security.

SEC. 944. REPORT ON ORGANIZATIONAL STRUCTURES OF THE GEOGRAPHIC COMBATANT COMMAND HEADQUARTERS.

(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the organizational structures of the headquarters of the geographic combatant commands.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of the organizational structure of the headquarters of each geographic combatant command.

(2) An assessment of the benefits and limitations of the different organizational structures in meeting the broad range of military missions of the geographic combatant commands.

(3) A description and assessment of the role and contributions of other departments and agencies of the Federal Government within each organizational structure, including a description of any plans to expand interagency participation in the geographic combatant commands in the future.

(4) A description of any lessons learned from the ongoing reorganization of the organizational structure of the United States Southern Command and the United States Africa Command, including an assessment of the value, if any, added by the position of civilian deputy to the commander of the United States Southern Command and to the commander of the United States Africa Command.

(5) Any other matters the Secretary and the Chairman consider appropriate.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

- Sec. 1001. General transfer authority.
- Sec. 1002. Authorization of additional appropriations for operations in Afghanistan, Iraq, and Haiti for fiscal year 2010.
- Sec. 1003. Budgetary effects of this Act.

Subtitle B—Counter-Drug Activities

- Sec. 1011. Unified counter-drug and counterterrorism campaign in Colombia.
- Sec. 1012. Extension and modification of joint task forces support to law enforcement agencies conducting counter-terrorism activities.
- Sec. 1013. Reporting requirement on expenditures to support foreign counter-drug activities.
- Sec. 1014. Support for counter-drug activities of certain foreign governments.
- Sec. 1015. Notice to Congress on military construction projects for facilities of the Department of Defense and foreign law enforcement agencies for counter-drug activities.

Subtitle C—Naval Vessels and Shipyards

- Sec. 1021. Extension of authority for reimbursement of expenses for certain Navy mess operations.
- Sec. 1022. Expressing the sense of Congress regarding the naming of a naval combat vessel after Father Vincent Capodanno.
- Sec. 1023. Requirements for long-range plan for construction of naval vessels.

Subtitle D—Counterterrorism

- Sec. 1031. Extension of certain authority for making rewards for combating terrorism.
- Sec. 1032. Prohibition on the use of funds for the transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1033. Certification requirements relating to the transfer of individuals detained at Naval Station, Guantanamo Bay, Cuba, to foreign countries and other foreign entities.
- Sec. 1034. Prohibition on the use of funds to modify or construct facilities in the United States to house detainees transferred from United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1035. Comprehensive review of force protection policies.

Subtitle E—Homeland Defense and Civil Support

- Sec. 1041. Limitation on deactivation of existing Consequence Management Response Forces.

Subtitle F—Studies and Reports

- Sec. 1051. Interagency national security knowledge and skills.
- Sec. 1052. Report on establishing a Northeast Regional Joint Training Center.
- Sec. 1053. Comptroller General report on previously requested reports.
- Sec. 1054. Biennial report on nuclear triad.
- Sec. 1055. Comptroller General study on common alignment of world regions in departments and agencies with international responsibilities.
- Sec. 1056. Required reports concerning bomber modernization, sustainment, and recapitalization efforts in support of the national defense strategy.
- Sec. 1057. Comptroller General study and recommendations regarding security of southern land border of the United States.

Subtitle G—Miscellaneous Authorities and Limitations

- Sec. 1061. Public availability of Department of Defense reports required by law.

- Sec. 1062. Prohibition on infringing on the individual right to lawfully acquire, possess, own, carry, and otherwise use privately owned firearms, ammunition, and other weapons.
- Sec. 1063. Development of criteria and methodology for determining the safety and security of nuclear weapons.

Subtitle H—Other Matters

- Sec. 1071. National Defense Panel.
- Sec. 1072. Sale of surplus military equipment to State and local homeland security and emergency management agencies.
- Sec. 1073. Defense research and development rapid innovation program.
- Sec. 1074. Authority to make excess nonlethal supplies available for domestic emergency assistance.
- Sec. 1075. Technical and clerical amendments.
- Sec. 1076. Study on optimal balance of manned and remotely piloted aircraft.
- Sec. 1077. Treatment of successor contingency operation to Operation Iraqi Freedom.
- Sec. 1078. Program to assess the utility of non-lethal weapons.
- Sec. 1079. Sense of Congress on strategic nuclear force reductions.

Subtitle A—Financial Matters

SEC. 1001. GENERAL TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—

Determination.

(1) AUTHORITY.—Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2011 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) LIMITATION.—Except as provided in paragraph (3), the total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed \$4,000,000,000.

(3) EXCEPTION FOR TRANSFERS BETWEEN MILITARY PERSONNEL AUTHORIZATIONS.—A transfer of funds between military personnel authorizations under title IV shall not be counted toward the dollar limitation in paragraph (2).

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

SEC. 1002. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OPERATIONS IN AFGHANISTAN, IRAQ, AND HAITI FOR FISCAL YEAR 2010.

In addition to the amounts otherwise authorized to be appropriated by this division, the amounts authorized to be appropriated

for fiscal year 2010 in title XV of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) are hereby increased, with respect to any such authorized amount, as follows:

(1) The amounts provided in sections 1502 through 1507 of such Act for the following procurement accounts are increased as follows:

- (A) For aircraft procurement, Army, by \$182,170,000.
- (B) For weapons and tracked combat vehicles procurement, Army, by \$3,000,000.
- (C) For ammunition procurement, Army, by \$17,055,000.
- (D) For other procurement, Army, by \$1,997,918,000.
- (E) For the Joint Improvised Explosive Device Defeat Fund, by \$400,000,000.
- (F) For aircraft procurement, Navy, by \$104,693,000.
- (G) For other procurement, Navy, by \$15,000,000.
- (H) For procurement, Marine Corps, by \$18,927,000.
- (I) For aircraft procurement, Air Force, by \$209,766,000.
- (J) For ammunition procurement, Air Force, by \$5,000,000.
- (K) For other procurement, Air Force, by \$576,895,000.
- (L) For the Mine Resistant Ambush Protected Vehicle Fund, by \$1,123,000,000.
- (M) For defense-wide activities, by \$189,276,000.

(2) The amounts provided in section 1508 of such Act for research, development, test, and evaluation are increased as follows:

- (A) For the Army, by \$61,962,000.
- (B) For the Navy, by \$5,360,000.
- (C) For the Air Force, by \$187,651,000.
- (D) For defense-wide activities, by \$22,138,000.

(3) The amounts provided in sections 1509, 1511, 1513, 1514, and 1515 of such Act for operation and maintenance are increased as follows:

- (A) For the Army, by \$11,700,965,000.
- (B) For the Navy, by \$2,428,702,000.
- (C) For the Marine Corps, by \$1,090,873,000.
- (D) For the Air Force, by \$3,845,047,000.
- (E) For defense-wide activities, by \$1,188,421,000.
- (F) For the Army Reserve, by \$67,399,000.
- (G) For the Navy Reserve, by \$61,842,000.
- (H) For the Marine Corps Reserve, by \$674,000.
- (I) For the Air Force Reserve, by \$95,819,000.
- (J) For the Army National Guard, by \$171,834,000.
- (K) For the Air National Guard, by \$161,281,000.
- (L) For the Defense Health Program, by \$33,367,000.
- (M) For Drug Interdiction and Counterdrug Activities, Defense-wide, by \$94,000,000.
- (N) For the Afghanistan Security Forces Fund, by \$2,604,000,000.
- (O) For the Iraq Security Forces Fund, by \$1,000,000,000.
- (P) For Overseas Humanitarian, Disaster, and Civic Aid, by \$255,000,000.
- (Q) For Overseas Contingency Operations Transfer Fund, by \$350,000,000.

(R) For Working Capital Funds, by \$974,967,000.

(4) The amount provided in section 1512 of such Act for military personnel accounts is increased by \$1,895,761,000.

SEC. 1003. BUDGETARY EFFECTS OF THIS ACT.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, as long as such statement has been submitted prior to the vote on passage of this Act.

Subtitle B—Counter-Drug Activities

SEC. 1011. UNIFIED COUNTER-DRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

Section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2042), as most recently amended by section 1011 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2441), is further amended—

(1) in subsection (a), by striking “2010” and inserting “2011”; and

(2) in subsection (c), by striking “2010” and inserting “2011”.

SEC. 1012. EXTENSION AND MODIFICATION OF JOINT TASK FORCES SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.

(a) EXTENSION.—Subsection (b) of section 1022 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 371 note) is amended by striking “2010” and inserting “2011”.

(b) AVAILABILITY OF AUTHORITY.—

(1) ADDITIONAL CONDITION ON AUTHORITY FOR SUPPORT AND ASSOCIATED WAIVER AUTHORITY.—Subsection (d) of such section is amended—

(A) by inserting “(1)” before “Any support”; and

(B) by adding at the end the following new paragraph:

Determination. “(2)(A) Support for counter-terrorism activities provided under subsection (a) may only be provided if the Secretary of Defense determines that the objectives of using the counter-drug funds of any joint task force to provide such support relate significantly to the objectives of providing support for counter-drug activities by that joint task force or any other joint task force.

Waiver authority. “(B) The Secretary of Defense may waive the requirements of subparagraph (A) if the Secretary determines that such a waiver is vital to the national security interests of the United States. The Secretary shall promptly submit to Congress notice in writing of any waiver issued under this subparagraph.

Notice. “(C) The Secretary of Defense may delegate any responsibility of the Secretary under subparagraph (B) to the Deputy Secretary of Defense or to the Under Secretary of Defense for Policy. Except as provided in the preceding sentence, such a responsibility may not be delegated to any official of the Department of Defense or any other official.”

(2) ANNUAL CERTIFICATION OF COMPLIANCE.—Subsection (c) of such section is amended by adding at the end the following new paragraph: 10 USC 371.

“(4) A certification by the Secretary of Defense that any support provided under subsection (a) during such one-year period was provided in compliance with the requirements of subsection (d).”.

(3) INTERIM COMPLIANCE REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report setting forth—

(A) a description of each support activity provided by a joint task force under subsection (a) of section 1022 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 371 note), as of the date of the submittal of such report; and

(B) a certification as to whether or not each such activity has been provided in compliance with the requirements of subsection (d) of such section, as amended by paragraph (1) of this subsection.

SEC. 1013. REPORTING REQUIREMENT ON EXPENDITURES TO SUPPORT FOREIGN COUNTER-DRUG ACTIVITIES.

Section 1022(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-255), as most recently amended by section 1013 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2442), is further amended by striking “February 15, 2010” and inserting “February 15, 2011”.

SEC. 1014. SUPPORT FOR COUNTER-DRUG ACTIVITIES OF CERTAIN FOREIGN GOVERNMENTS.

(a) IN GENERAL.—Subsection (a)(2) of section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1881), as most recently amended by section 1014(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2442), is further amended by striking “2010” and inserting “2012”.

(b) MAXIMUM AMOUNT OF SUPPORT.—Subsection (e)(2) of such section is amended by striking “either of fiscal years 2009 and 2010” and inserting “any of the fiscal years 2009 through 2012”.

SEC. 1015. NOTICE TO CONGRESS ON MILITARY CONSTRUCTION PROJECTS FOR FACILITIES OF THE DEPARTMENT OF DEFENSE AND FOREIGN LAW ENFORCEMENT AGENCIES FOR COUNTER-DRUG ACTIVITIES.

(a) NOTICE TO CONGRESS.—

(1) NOTICE.—Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) is amended—

(A) in subsection (b)(4), by inserting “for the purpose of facilitating” after “within or outside the United States or”; and

(B) in subsection (h)(2)(A)—

(i) by striking “modification or repair” and inserting “construction, modification, or repair”; and

(ii) by striking “a Department of Defense facility” and inserting “any facility”; and

- (iii) by striking “purpose” and inserting “purposes”.
- (2) CONSTRUCTION OF NOTICE.—Subsection (h) of such section is further amended by adding at the end the following new paragraph:
- “(3) This subsection may not be construed as an authorization for the use of funds for any military construction project that would exceed the approved cost limitations of an unspecified minor military construction project under section 2805(a)(2) of title 10, United States Code.”
- (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to facilities projects for which a decision is made to be carried out on or after that date.

10 USC 374 note.

10 USC 374 note.

Subtitle C—Naval Vessels and Shipyards

SEC. 1021. EXTENSION OF AUTHORITY FOR REIMBURSEMENT OF EXPENSES FOR CERTAIN NAVY MESS OPERATIONS.

(a) EXTENSION.—Subsection (b) of section 1014 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4585) is amended by striking “September 30, 2010” and inserting “September 30, 2015”.

(b) CLARIFICATION OF SCOPE OF AUTHORITY.—Subsection (a) of such section is amended by inserting “in any fiscal year” after “may be used”.

SEC. 1022. EXPRESSING THE SENSE OF CONGRESS REGARDING THE NAMING OF A NAVAL COMBAT VESSEL AFTER FATHER VINCENT CAPODANNO.

(a) FINDINGS.—Congress makes the following findings:

(1) Father Vincent Capodanno was born on February 13, 1929, in Staten Island, New York.

(2) After attending Fordham University for a year, he entered the Maryknoll Missionary Seminary in upstate New York in 1949, and was ordained a Catholic priest in June 1957.

(3) Father Capodanno’s first assignment as a missionary was working with aboriginal Taiwanese people in the mountains of Taiwan where he served in a parish and later in a school. After several years, Father Capodanno returned to the United States for leave and then was assigned to a Maryknoll school in Hong Kong.

(4) Father Vincent Capodanno volunteered as a Navy Chaplain and was commissioned a Lieutenant in the Chaplain Corps of the United States Naval Reserve in December 28, 1965.

(5) Father Vincent Capodanno selflessly extended his combat tour in Vietnam on the condition he was allowed to remain with the infantry.

(6) On September 4, 1967, during a fierce battle in the Thang Binh District of the Que-Son Valley in Vietnam, Father Capodanno went among the wounded and dying, giving last rites and caring for the injured. He was killed that day while taking care of his Marines.

(7) On January 7, 1969, Father Vincent Capodanno was awarded the Medal of Honor posthumously for comforting the

wounded and dying during the Vietnam conflict. For his dedicated service, Father Capodanno was also awarded the Bronze Star, the Purple Heart, the Presidential Unit Citation, the National Defense Service Medal, the Vietnam Service Medal, the Vietnam Gallantry Cross with Palm, and the Vietnam Campaign Medal.

(8) In his memory, the U.S.S. Capodanno was commissioned on September 17, 1973. It is the only Naval vessel to date to have received a Papal blessing by Pope John Paul II in Naples, Italy, on September 4, 1981.

(9) The U.S.S. Capodanno was decommissioned on July 30, 1993.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Navy should name a combat vessel of the United States Navy the “U.S.S. Father Vincent Capodanno”, in honor of Father Vincent Capodanno, a lieutenant in the Navy Chaplain Corps.

SEC. 1023. REQUIREMENTS FOR LONG-RANGE PLAN FOR CONSTRUCTION OF NAVAL VESSELS.

(a) IN GENERAL.—Section 231 of title 10, United States Code, is amended to read as follows:

“§ 231. Long-range plan for construction of naval vessels

“(a) QUADRENNIAL NAVAL VESSEL CONSTRUCTION PLAN.—At the same time that the budget of the President is submitted under section 1105(a) of title 31 during each year in which the Secretary of Defense submits a quadrennial defense review, the Secretary of the Navy shall submit to the congressional defense committees a long-range plan for the construction of combatant and support vessels for the Navy that supports the force structure recommendations of the quadrennial defense review.

“(b) MATTERS INCLUDED.—The plan under subsection (a) shall include the following:

“(1) A detailed construction schedule of naval vessels for the 10-year period beginning on the date on which the plan is submitted, including a certification by the Secretary that the budget for the fiscal year in which the plan is submitted and the budget for the future-years defense program submitted under section 221 of this title are sufficient for funding such schedule.

“(2) A probable construction schedule for the 10-year period beginning on the date that is 10 years after the date on which the plan is submitted.

“(3) A notional construction schedule for the 10-year period beginning on the date that is 20 years after the date on which the plan is submitted.

“(4) The estimated levels of annual funding necessary to carry out the construction schedules under paragraphs (1), (2), and (3).

“(5) For the construction schedules under paragraphs (1) and (2)—

“(A) a determination by the Director of Cost Assessment and Program Evaluation of the level of funding necessary to execute such schedules; and

“(B) an evaluation by the Director of the potential risk associated with such schedules, including detailed

effects on operational plans, missions, deployment schedules, and fulfillment of the requirements of the combatant commanders.

“(c) NAVAL COMPOSITION.—In submitting the plan under subsection (a), the Secretary shall ensure that such plan is in accordance with section 5062(b) of this title.

“(d) ASSESSMENT WHEN BUDGET IS INSUFFICIENT.—If the budget for a fiscal year provides for funding of the construction of naval vessels at a level that is less than the level determined necessary by the Director of Cost Assessment and Program Evaluation under subsection (b)(5), the Secretary of the Navy shall include with the defense budget materials for that fiscal year an assessment that describes and discusses the risks associated with the budget, including the risk associated with a reduced force structure that may result from funding naval vessel construction at such a level.

Deadline.
Reports.

“(e) CBO EVALUATION.—Not later than 60 days after the date on which the congressional defense committees receive the plan under subsection (a), the Director of the Congressional Budget Office shall submit to such committees a report assessing the sufficiency of the estimated levels of annual funding included in such plan with respect to the budget submitted during the year in which the plan is submitted and the future-years defense program submitted under section 221 of this title.

Reports.

“(f) CHANGES TO THE CONSTRUCTION PLAN.—In any year in which a quadrennial defense review is not submitted and the budget of the President submitted under section 1105(a) of title 31 decreases the number of vessels requested in the future-years defense program submitted under section 221 of this title, the Secretary of the Navy shall submit to the congressional defense committees a report on such decrease including—

“(1) an addendum to the most recent quadrennial defense review that fully explains and justifies the decrease with respect to the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a); and

“(2) a description of the additional reviews and analyses considered by the Secretary after the previous quadrennial defense review was submitted that justify the decrease.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘budget’, with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

“(2) The term ‘defense budget materials’, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

“(3) The term ‘quadrennial defense review’ means the review of the defense programs and policies of the United States that is carried out every four years under section 118 of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 9 of such title is amended by striking the item relating to section 231 and inserting the following new item:

“231. Long-range plan for construction of naval vessels.”.

Subtitle D—Counterterrorism

SEC. 1031. EXTENSION OF CERTAIN AUTHORITY FOR MAKING REWARDS FOR COMBATING TERRORISM.

Section 127b(c)(3)(C) of title 10, United States Code, is amended by striking “2010” and inserting “2011”.

SEC. 1032. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

None of the funds authorized to be appropriated by this Act for fiscal year 2011 may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who—

Khalid Sheikh
Mohammed.

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after January 20, 2009, at United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

SEC. 1033. CERTIFICATION REQUIREMENTS RELATING TO THE TRANSFER OF INDIVIDUALS DETAINED AT NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES.

(a) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act, the Secretary of Defense may not use any of the amounts authorized to be appropriated by this Act or otherwise available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or effective control of the individual’s country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) by not later than 30 days before the transfer of the individual.

Time period.
Deadline.

(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction. The Secretary shall notify Congress promptly upon issuance of any such order.

Notification.

(b) CERTIFICATION.—The certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State, that the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred—

(1) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

(2) maintains effective control over each detention facility in which an individual is to be detained if the individual is to be housed in a detention facility;

(3) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

(4) has agreed to take effective steps to ensure that the individual cannot take action to threaten the United States, its citizens, or its allies in the future;

(5) has taken such steps as the Secretary determines are necessary to ensure that the individual cannot engage or re-engage in any terrorist activity; and

(6) has agreed to share any information with the United States that—

(A) is related to the individual or any associates of the individual; and

(B) could affect the security of the United States, its citizens, or its allies.

(c) PROHIBITION AND WAIVER IN CASES OF PRIOR CONFIRMED RECIDIVISM.—

Time period.

(1) PROHIBITION.—Except as provided in paragraph (3), during the one-year period beginning on the date of the enactment of this Act, the Secretary of Defense may not use any amount authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or effective control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to the foreign country or entity and subsequently engaged in any terrorist activity.

Determination.

(2) WAIVER.—The Secretary of Defense may waive the prohibition in paragraph (1) if the Secretary determines that such a transfer is in the national security interests of the United States and includes, as part of the certification described in subsection (b) relating to such transfer, the determination of the Secretary under this paragraph.

Notification.

(3) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction. The Secretary shall notify Congress promptly upon issuance of any such order.

(d) DEFINITIONS.—For the purposes of this section:

(1) The term “individual detained at Guantanamo” means any individual who is located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(B) is—

(i) in the custody or under the effective control of the Department of Defense; or

(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

(2) The term “foreign terrorist organization” means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

SEC. 1034. PROHIBITION ON THE USE OF FUNDS TO MODIFY OR CONSTRUCT FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) **IN GENERAL.**—None of the funds authorized to be appropriated by this Act may be used to construct or modify any facility in the United States, its territories, or possessions to house any individual described in subsection (c) for the purposes of detention or imprisonment in the custody or under the effective control of the Department of Defense.

(b) **EXCEPTION.**—The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) **INDIVIDUALS DESCRIBED.**—An individual described in this subsection is any individual who, as of October 1, 2009, is located at United States Naval Station, Guantanamo Bay, Cuba, and who—

(1) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(2) is—

(A) in the custody or under the effective control of the Department of Defense; or

(B) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

(d) **REPORT ON USE OF FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM GUANTANAMO.**—

(1) **REPORT REQUIRED.**—Not later than April 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report, in classified or unclassified form, on the merits, costs, and risks of using any proposed facility in the United States, its territories, or possessions to house any individual described in subsection (c) for the purposes of detention or imprisonment in the custody or under the effective control of the Department of Defense.

(2) **ELEMENTS OF THE REPORT.**—The report required in paragraph (1) shall include each of the following:

(A) A discussion of the merits associated with any such proposed facility that would justify—

(i) using the facility instead of the facility at United States Naval Station, Guantanamo Bay, Cuba; and

(ii) the proposed facility's contribution to effecting a comprehensive policy for continuing military detention operations.

(B) The rationale for selecting the specific site for any such proposed facility, including details for the processes and criteria used for identifying the merits described in subparagraph (A) and for selecting the proposed site over reasonable alternative sites.

(C) A discussion of any potential risks to any community in the vicinity of any such proposed facility, the measures that could be taken to mitigate such risks, and the likely cost to the Department of Defense of implementing such measures.

(D) A discussion of any necessary modifications to any such proposed facility to ensure that any detainee transferred from Guantanamo Bay to such facility could not come into contact with any other individual, including any other person detained at such facility, that is not approved

for such contact by the Department of Defense, and an assessment of the likely costs of such modifications.

(E) A discussion of any support at the site of any such proposed facility that would likely be provided by the Department of Defense, including the types of support, the number of personnel required for each such type, and an estimate of the cost of such support.

(F) A discussion of any support, other than support provided at a proposed facility, that would likely be provided by the Department of Defense for the operation of any such proposed facility, including the types of possible support, the number of personnel required for each such type, and an estimate of the cost of such support.

(G) A discussion of the legal issues, in the judgment of the Secretary of Defense, that could be raised as a result of detaining or imprisoning any individual described in subsection (c) at any such proposed facility that could not be raised while such individual is detained or imprisoned at United States Naval Station, Guantanamo Bay, Cuba.

SEC. 1035. COMPREHENSIVE REVIEW OF FORCE PROTECTION POLICIES.

(a) **COMPREHENSIVE REVIEW REQUIRED.**—The Secretary of Defense shall conduct a comprehensive review of Department of Defense policies, regulations, instructions, and directives pertaining to force protection within the Department.

(b) **MATTERS COVERED.**—The review required under subsection (a) shall include an assessment of each of the following:

(1) Information sharing practices across the Department of Defense, and among the State, local, and Federal partners of the Department of Defense.

(2) Antiterrorism and force protection standards relating to buildings, including standoff distances.

(3) Protective standards relating to chemical, biological, radiological, nuclear, and high explosives threats.

(4) Standards relating to access to Department bases.

(5) Standards for identity management within the Department, including such standards for identity cards and biometric identifications systems.

(6) Procedures for validating and approving individuals with regular or episodic access to military installations, including military personnel, civilian employees, contractors, family members of personnel, and other types of visitors.

(7) Procedures for sharing with appropriate Department of Defense officials with responsibility for force protection—

(A) information from the intelligence or law enforcement community regarding possible threats from terrorists or terrorist groups, criminal organizations, or other state and non-state foreign entities actively working to undermine the security interests of the United States; and

(B) information regarding personnel who have engaged in potentially suspicious activities or may otherwise pose a threat.

(8) Any legislative changes recommended for implementing the recommendations contained in the review.

(c) **INTERIM REPORT.**—Not later than September 1, 2012, the Secretary of Defense shall submit an interim report on the comprehensive review required under subsection (a).

(d) **FINAL REPORT.**—Not later than March 1, 2013, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a final report on the comprehensive review required under subsection (a). The final report shall include such findings and recommendations as the Secretary considers appropriate based on the review, including recommended actions to be taken to implement the specific recommendations in the final report. The final report shall be submitted in an unclassified format, but may include a classified annex.

Subtitle E—Homeland Defense and Civil Support

SEC. 1041. LIMITATION ON DEACTIVATION OF EXISTING CONSEQUENCE MANAGEMENT RESPONSE FORCES.

(a) **LIMITATION.**—The Secretary of Defense shall ensure that no Chemical, Biological, Radiological, Nuclear, or High-Yield Explosive Consequence Management Response Force established as of October 1, 2009, is deactivated or disestablished until the Secretary provides a certification described in subsection (b).

Certification.

(b) **CERTIFICATION.**—The certification described in this subsection is a written certification to the congressional defense committees that there exists within the United States Armed Forces an alternative chemical, biological, radiological, nuclear, or high-yield explosive consequence management response capability that is at least as capable as two Chemical, Biological, Radiological, Nuclear, or High-Yield Explosive Consequence Management Response Forces.

(c) **REPORT REQUIRED.**—

(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report on plans of the Department of Defense to establish Homeland Response Forces for domestic emergency response to incidents involving weapons of mass destruction.

(2) **ELEMENTS OF REPORT.**—The report required by this subsection shall include the following:

(A) A detailed description of the analysis that led to the decision to establish Homeland Response Forces described in paragraph (1), including—

- (i) whether consideration was given to establishing Homeland Response Forces within the Reserves; and
- (ii) the reasons for not planning to establish any Homeland Response Forces within the Reserves.

(B) A detailed description of the plans to establish Homeland Response Forces, including—

- (i) the cost and schedule to establish, equip, maintain, and operate the proposed Homeland Response Forces;
- (ii) guidelines for the employment of Homeland Response Forces; and
- (iii) the portion of the costs of Homeland Response Forces that will be borne by the States.

(C) A detailed description of the proposed number and composition of Homeland Response Forces, including—

(i) the number and type of units in each Homeland Response Force; and

(ii) the number of personnel in each Homeland Response Force.

(D) A comparative assessment of the emergency response capabilities of a Homeland Response Force with the capabilities of a Chemical, Biological, Radiological, Nuclear, or High-Yield Explosive Consequence Management Response Force, including—

(i) a comparison of the equipment proposed for each type of force;

(ii) a comparison of the proposed means of transportation for each type of force;

(iii) an estimate of the time it would take each type of force to deploy to an incident site; and

(iv) an estimate of the operational duration of each type of force at such a site.

(E) A description of the command and control arrangements proposed for the Homeland Response Forces, including a description of the degree to which the Homeland Response Forces would be subject to the direction and control of the Department of Defense, as compared to the Governor of the State in which they are located.

(F) The results of the United States Northern Command study of the possible concepts of operations and of the implementation of the Homeland Response Force plan in such a manner as to provide adequate capability to provide Federal defense support to civil authorities during domestic incidents involving weapons of mass destruction.

(G) Any other matters the Secretary considers appropriate.

(3) FORM OF REPORT.—The report required by this subsection shall be in unclassified form, but may include a classified annex.

Subtitle F—Studies and Reports

SEC. 1051. INTERAGENCY NATIONAL SECURITY KNOWLEDGE AND SKILLS.

(a) STUDY REQUIRED.—

(1) SELECTION OF INDEPENDENT STUDY ORGANIZATION.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall select and enter into an agreement with an appropriate independent, nonprofit organization to conduct a study of the matters described in subsection (b).

(2) QUALIFICATIONS OF ORGANIZATION SELECTED.—The organization selected shall be qualified on the basis of having relevant expertise in the fields of national security and human capital development, and on the basis of such other criteria as the Secretary of Defense may determine.

(b) MATTERS TO BE COVERED.—The study required by subsection (a) shall assess the current state of interagency national

Deadline.
Contracts.

Recommendations.

security knowledge and skills in Department of Defense civilian and military personnel, and make recommendations for strengthening such knowledge and skills. At minimum, the study shall include assessments and recommendations on—

(1) interagency national security training, education, and rotational assignment opportunities available to civilians and military personnel;

(2) integration of interagency national security education into the professional military education system;

(3) levels of interagency national security knowledge and skills possessed by personnel currently serving in civilian executive and general or flag officer positions, as represented by the interagency education, training, and professional experiences they have undertaken;

(4) incentives that enable and encourage military and civilian personnel to undertake interagency assignment, education, and training opportunities, as well as disincentives and obstacles that discourage undertaking such opportunities; and

(5) any plans or current efforts to improve the interagency national security knowledge and skills of civilian and military personnel.

(c) **REPORT.**—Not later than December 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report containing the findings and recommendations from the study required by subsection (a).

(d) **DEFINITION.**—In this section, the term “interagency national security knowledge and skills” means an understanding of, and the ability to efficiently and expeditiously work within, the structures, mechanisms, and processes by which the departments, agencies, and elements of the Federal Government that have national security missions coordinate and integrate their policies, capabilities, budgets, expertise, and activities to accomplish such missions.

SEC. 1052. REPORT ON ESTABLISHING A NORTHEAST REGIONAL JOINT TRAINING CENTER.

(a) **REPORT REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the need for the establishment of a Northeast Regional Joint Training Center.

(b) **CONTENTS OF REPORT.**—The report required under subsection (a) shall include each of the following:

(1) A list of facilities in the Northeastern United States at which, as of the date of the enactment of this Act, the Department of Defense has deployed or has committed to deploying joint training.

(2) A description of the extent to which such facilities have sufficient unused capacity and expertise to accommodate and fully utilize joint training.

(3) A list of potential locations for the Northeast Regional Joint Training Center discussed in the report.

(c) **CONSIDERATIONS WITH RESPECT TO LOCATION.**—In determining potential locations for the Northeast Regional Joint Training Center to be discussed in the report required under subsection (a), the Secretary of Defense shall take into consideration Department of Defense facilities that have—

(1) a workforce of skilled personnel;

(2) live, virtual, and constructive training capabilities, and the ability to digitally connect them and the associated battle command structure at the tactical and operational levels;

(3) an extensive deployment history in Operation Enduring Freedom and Operation Iraqi Freedom;

(4) a location in the Northeastern United States;

(5) the capacity or potential capacity to accommodate a target training audience range of 500 to 4,000 additional personnel; and

(6) the capability to accommodate the training of current and future joint forces.

SEC. 1053. COMPTROLLER GENERAL REPORT ON PREVIOUSLY REQUESTED REPORTS.

(a) **REPORT REQUIRED.**—Not later than March 1, 2011, the Comptroller General of the United States shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report evaluating the sufficiency, adequacy, and conclusions of the following reports:

(1) The report on Air Force fighter force shortfalls, as required by the report of the House of Representatives numbered 111-166, which accompanied the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84).

(2) The report on procurement of 4.5 generation fighters, as required by section 131 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2218).

(3) The report on combat air forces restructuring, as required by the report of the House of Representatives numbered 111-288, which accompanied the conference report for the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84).

(b) **MATTERS COVERED BY REPORT.**—The report required by subsection (a) shall examine the potential costs and benefits of each of the following:

(1) The service life extension program costs to sustain the legacy fighter fleet to meet inventory requirements with an emphasis on the service life extension program compared to other options such as procurement of 4.5 generation fighters.

(2) The Falcon Structural Augmentation Roadmap of F-16s, with emphasis on the cost-benefit of such effort and the effect of such efforts on the service life of the airframes.

(3) Any additional programs designed to extend the service life of legacy fighter aircraft.

(c) **PROHIBITION.**—No fighter aircraft may be retired from the Air Force or the Air National Guard inventory in fiscal year 2011 until the date that is 90 days after the date on which the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives receive the report required under subsection (a).

10 USC 113 note.

SEC. 1054. BIENNIAL REPORT ON NUCLEAR TRIAD.

Effective date.

(a) **REPORT.**—Not later than March 1 of each even-numbered year, beginning March 1, 2012, the Secretary of Defense, in consultation with the Administrator for Nuclear Security, shall submit to the congressional defense committees a report on the nuclear triad.

(b) **MATTERS INCLUDED.**—The report under subsection (a) shall include the following:

(1) A detailed discussion of the modernization and sustainment plans for each component of the nuclear triad over the 10-year period beginning on the date of the report.

(2) The funding required for each platform of the nuclear triad with respect to operation and maintenance, modernization, and replacement.

(3) Any industrial capacities that the Secretary considers vital to ensure the viability of the nuclear triad.

(c) **NUCLEAR TRIAD DEFINED.**—In this section, the term “nuclear triad” means the nuclear deterrent capabilities of the United States composed of ballistic missile submarines, land-based missiles, and strategic bombers.

SEC. 1055. COMPTROLLER GENERAL STUDY ON COMMON ALIGNMENT OF WORLD REGIONS IN DEPARTMENTS AND AGENCIES WITH INTERNATIONAL RESPONSIBILITIES.

(a) **STUDY REQUIRED.**—The Comptroller General of the United States shall conduct a study to assess the need for and implications of a common alignment of world regions in the internal organization of departments and agencies of the Federal Government with international responsibilities.

(b) **DEPARTMENTS AND AGENCIES.**—The following departments and agencies, at a minimum, shall be included in the study:

(1) The Department of State.

(2) The Department of the Treasury.

(3) The Department of Defense.

(4) The Department of Justice.

(5) The Department of Commerce.

(6) The Department of Homeland Security.

(7) The United States Agency for International Development.

(8) The agencies comprising the intelligence community.

(9) Such other departments, agencies, and Federal organizations with significant international responsibilities as the Comptroller General considers appropriate.

(c) **COOPERATION AND ACCESS.**—The heads of the departments and agencies included in the study shall provide full cooperation with, and access to appropriate information on organizational structures to, the Comptroller General for the purposes of conducting the study.

(d) **MATTERS COVERED.**—The study required under subsection (a) shall, at a minimum, assess—

(1) problems and inefficiencies resulting from lack of a common alignment, including impediments to interagency collaboration;

(2) obstacles to implementing a common alignment;

(3) advantages and disadvantages of a common alignment; and

(4) measures taken to address challenges associated with the lack of a common alignment.

(e) **REPORT.**—The Comptroller General shall submit to Congress a report on the study required under subsection (a) not later than 180 days after the date of the enactment of this Act.

SEC. 1056. REQUIRED REPORTS CONCERNING BOMBER MODERNIZATION, SUSTAINMENT, AND RECAPITALIZATION EFFORTS IN SUPPORT OF THE NATIONAL DEFENSE STRATEGY.

(a) AIR FORCE REPORT.—

(1) **REPORT REQUIRED.**—Not later than 360 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the congressional defense committees a report that includes—

(A) a discussion of the cost, schedule, and performance of all planned efforts to modernize and keep viable the existing B-1, B-2, and B-52 bomber fleets and a discussion of the forecasted service-life and all sustainment challenges that the Secretary of the Air Force may confront in keeping those platforms viable until the anticipated retirement of such aircraft;

(B) a discussion, presented in a comparison and contrast type format, of the scope of the 2007 Next-Generation Long Range Strike Analysis of Alternatives guidance and subsequent Analysis of Alternatives report tasked by the Under Secretary of Defense for Acquisition, Technology, and Logistics in the September 11, 2006, Acquisition Decision Memorandum, as compared to the scope and directed guidance of the year 2010 Long Range Strike Study effort currently being conducted by the Under Secretary of Defense for Policy and the Office of the Secretary of Defense's Cost Assessment and Program Evaluation Office; and

(C) a discussion of the preliminary costs, any development, testing, fielding and operational employment challenges, capability gaps, limitations, and shortfalls of the Secretary of Defense's plan to field a long-range, penetrating, survivable, persistent and enduring "family of systems" as compared to the preliminary costs, any development, testing, fielding, and operational employment of a singular platform that encompasses all the required aforementioned characteristics.

(2) **PREPARATION OF REPORT.**—The report under paragraph (1) shall be prepared by a federally funded research and development center selected by the Secretary of the Air Force and submitted to the Secretary for submittal by the Secretary in accordance with that paragraph.

(b) COST ANALYSIS AND PROGRAM EVALUATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of the Cost Analysis and Program Evaluation of the Office of the Secretary of Defense shall submit to the congressional defense committees a report that includes—

(1) the assumptions and estimated life-cycle costs of the Department's long-range, penetrating, survivable, persistent, and enduring "family of systems" platforms; and

(2) the assumptions and estimated life-cycle costs of the Next Generation Platform program, as planned, prior to the cancellation of the program on April 6, 2009.

**SEC. 1057. COMPTROLLER GENERAL STUDY AND RECOMMENDATIONS
REGARDING SECURITY OF SOUTHERN LAND BORDER OF
THE UNITED STATES.**

(a) **STUDY AND REPORT REQUIRED.**—The Comptroller General of the United States shall conduct a study of the security of the southern land border of the United States and ongoing United States Government efforts to improve such security. Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the findings of the study and such recommendations based on such findings as the Comptroller General considers to be appropriate.

(b) **ISSUES ADDRESSED.**—The study and report required by subsection (a) shall address, at a minimum, the following issues:

(1) The extent to which the United States has or has not achieved and maintained operational control over the southern land border of the United States, as defined in section 2(b) of the Secure Fence Act of 2006 (Public Law 109-367; 8 U.S.C. 1701 note).

(2) The extent to which any lack of operational control over the southern land border of the United States has resulted in the operation of illicit networks trafficking in people, drugs, illegal weapons and money, violence associated with such illegal activities, and other impacts adverse to the interests of the United States.

(3) The costs and benefits of steps, including but not limited to the steps identified in subsection (c), that could be taken by elements of the United States Government to achieve operational control over the southern land border of the United States.

(4) The costs and benefits of an increased role for the Department of Defense in taking any such steps.

(5) The adequacy of current information sharing agreements and other related agreements between Federal, State, local, and tribal law enforcement authorities with regard to the security of the southern land border of the United States.

(6) The impact of any increased deployment of unmanned aerial systems or unmanned aircraft on the use and availability of the National Airspace in the area of the southern land border of the United States.

(c) **SPECIFIC STEPS TO BE CONSIDERED.**—The steps to be considered by the Comptroller General pursuant to paragraphs (3) and (4) of subsection (b) shall include the following:

(1) The deployment of additional units or members of the National Guard or other Department of Defense personnel to the southern land border of the United States.

(2) The commitment of additional border patrol agents or other civilian law enforcement personnel to the southern land border of the United States.

(3) The construction of additional fencing, including double-layer and triple-layer fencing.

(4) The increased use of ground-based mobile surveillance systems by military or civilian personnel.

(5) The deployment of additional unmanned aerial systems and manned aircraft to provide surveillance of the southern land border of the United States.

(6) The deployment and provision of capability for radio communications interoperability between U.S. Customs and Border Protection and State, local, and tribal law enforcement agencies.

(7) The construction of checkpoints along the southern land border of the United States.

(8) The use of additional mobile patrols by military or civilian personnel, particularly in rural, high-trafficked areas, as designated by the Commissioner of Customs and Border Protection.

Subtitle G—Miscellaneous Authorities and Limitations

SEC. 1061. PUBLIC AVAILABILITY OF DEPARTMENT OF DEFENSE REPORTS REQUIRED BY LAW.

(a) PUBLIC AVAILABILITY.—

(1) IN GENERAL.—Chapter 3 of title 10, United States Code, is amended by inserting after section 122 the following new section:

“§ 122a. Public availability of Department of Defense reports required by law

“(a) IN GENERAL.—The Secretary of Defense shall ensure that each report described in subsection (b) is made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs.

“(b) COVERED REPORTS.—(1) Except as provided in paragraph (2), a report described in this subsection is any report that is required by law to be submitted to Congress by the Secretary of Defense, or by any element of the Department of Defense.

“(2) A report otherwise described in paragraph (1) is not a report described in this subsection if the report contains—

“(A) classified information;

“(B) proprietary information;

“(C) information that is exempt from disclosure under section 552 of title 5 (commonly referred to as the ‘Freedom of Information Act’); or

“(D) any other type of information that the Secretary of Defense determines should not be made available to the public in the interest of national security.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by inserting after the item relating to section 122 the following new item:

“122a. Public availability of Department of Defense reports required by law.”.

10 USC 122a
note.

(b) EFFECTIVE DATE.—Section 122a of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act, and shall apply with respect to reports that are required by law to be submitted to Congress on or after that date.

SEC. 1062. PROHIBITION ON INFRINGING ON THE INDIVIDUAL RIGHT TO LAWFULLY ACQUIRE, POSSESS, OWN, CARRY, AND OTHERWISE USE PRIVATELY OWNED FIREARMS, AMMUNITION, AND OTHER WEAPONS.

10 USC 1030
note prec.

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense shall not prohibit, issue any requirement relating to, or collect or record any information relating to the otherwise lawful acquisition, possession, ownership, carrying, or other use of a privately owned firearm, privately owned ammunition, or another privately owned weapon by a member of the Armed Forces or civilian employee of the Department of Defense on property that is not—

(1) a military installation; or

(2) any other property that is owned or operated by the Department of Defense.

(b) EXISTING REGULATIONS AND RECORDS.—

(1) REGULATIONS.—Any regulation promulgated before the date of enactment of this Act shall have no force or effect to the extent that it requires conduct prohibited by this section.

(2) RECORDS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall destroy any record containing information described in subsection (a) that was collected before the date of enactment of this Act.

Deadline.

(c) RULE OF CONSTRUCTION.—Subsection (a) shall not be construed to limit the authority of the Secretary of Defense to—

Records.

(1) create or maintain records relating to, or regulate the possession, carrying, or other use of a firearm, ammunition, or other weapon by a member of the Armed Forces or civilian employee of the Department of Defense while—

(A) engaged in official duties on behalf of the Department of Defense; or

(B) wearing the uniform of an Armed Force; or

(2) create or maintain records relating to an investigation, prosecution, or adjudication of an alleged violation of law (including regulations not prohibited under subsection (a)), including matters related to whether a member of the Armed Forces constitutes a threat to the member or others.

(d) REVIEW.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall—

Deadline.

(1) conduct a comprehensive review of the privately owned weapons policy of the Department of Defense, including legal and policy issues regarding the regulation of privately owned firearms off of a military installation, as recommended by the Department of Defense Independent Review Related to Fort Hood; and

(2) submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report regarding the findings of and recommendations relating to the review conducted under paragraph (1), including any recommendations for adjustments to the requirements under this section.

Reports.

(e) MILITARY INSTALLATION DEFINED.—In this section, the term “military installation” has the meaning given that term under section 2687(e)(1) of title 10, United States Code.

SEC. 1063. DEVELOPMENT OF CRITERIA AND METHODOLOGY FOR DETERMINING THE SAFETY AND SECURITY OF NUCLEAR WEAPONS.

(a) IN GENERAL.—The Secretary of Energy and the Secretary of Defense shall, acting through the Nuclear Weapons Council, develop the following:

(1) Criteria for determining the appropriate baseline for safety and security of nuclear weapons through the life cycle of such weapons.

(2) A methodology for determining the level of safety and security that may be achieved through a life extension program for each type of nuclear weapon.

(b) REPORT REQUIRED.—Not later than March 1, 2012, the Secretary of Energy and the Secretary of Defense shall jointly submit to the congressional defense committees a report containing the criteria and the methodology developed pursuant to subsection (a).

Subtitle H—Other Matters

SEC. 1071. NATIONAL DEFENSE PANEL.

Subsection (f) of section 118 of title 10, United States Code, is amended to read as follows:

“(f) NATIONAL DEFENSE PANEL.—

Deadline.

“(1) ESTABLISHMENT.—Not later than February 1 of a year in which a quadrennial defense review is conducted under this section, there shall be established an independent panel to be known as the National Defense Panel (in this subsection referred to as the ‘Panel’). The Panel shall have the duties set forth in this subsection.

“(2) MEMBERSHIP.—The Panel shall be composed of ten members from private civilian life who are recognized experts in matters relating to the national security of the United States. Eight of the members shall be appointed as follows:

“(A) Two by the chairman of the Committee on Armed Services of the House of Representatives.

“(B) Two by the chairman of the Committee on Armed Services of the Senate.

“(C) Two by the ranking member of the Committee on Armed Services of the House of Representatives.

“(D) Two by the ranking member of the Committee on Armed Services of the Senate.

Appointment.

“(3) CO-CHAIRS OF THE PANEL.—In addition to the members appointed under paragraph (2), the Secretary of Defense shall appoint two members from private civilian life to serve as co-chairs of the panel.

“(4) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Panel. Any vacancy in the Panel shall be filled in the same manner as the original appointment.

“(5) DUTIES.—The Panel shall have the following duties with respect to a quadrennial defense review:

“(A) While the review is being conducted, the Panel shall review the updates from the Secretary of Defense required under paragraph (8) on the conduct of the review.

“(B) The Panel shall—

“(i) review the Secretary of Defense’s terms of reference and any other materials providing the basis for, or substantial inputs to, the work of the Department of Defense on the quadrennial defense review;

“(ii) conduct an assessment of the assumptions, strategy, findings, and risks of the report on the quadrennial defense review required in subsection (d), with particular attention paid to the risks described in that report;

“(iii) conduct an independent assessment of a variety of possible force structures of the armed forces, including the force structure identified in the report on the quadrennial defense review required in subsection (d);

“(iv) review the resource requirements identified pursuant to subsection (b)(3) and, to the extent practicable, make a general comparison to the resource requirements to support the forces contemplated under the force structures assessed under this subparagraph; and

“(v) provide to Congress and the Secretary of Defense, through the report under paragraph (7), any recommendations it considers appropriate for their consideration.

Recommendations.

“(6) FIRST MEETING.—If the Secretary of Defense has not made the Secretary’s appointments to the Panel under paragraph (3) by February 1 of a year in which a quadrennial defense review is conducted under this section, the Panel shall convene for its first meeting with the remaining members.

“(7) REPORT.—Not later than 3 months after the date on which the report on a quadrennial defense review is submitted under subsection (d) to the congressional committees named in that subsection, the Panel established under paragraph (1) shall submit to those committees an assessment of the quadrennial defense review, including a description of the items addressed under paragraph (5) with respect to that quadrennial defense review.

“(8) UPDATES FROM SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that periodically, but not less often than every 60 days, or at the request of the co-chairs, the Department of Defense briefs the Panel on the progress of the conduct of a quadrennial defense review under subsection (a).

Deadlines.

“(9) ADMINISTRATIVE PROVISIONS.—

“(A) The Panel may request directly from the Department of Defense and any of its components such information as the Panel considers necessary to carry out its duties under this subsection. The head of the department or agency concerned shall cooperate with the Panel to ensure that information requested by the Panel under this paragraph is promptly provided to the maximum extent practical.

“(B) Upon the request of the co-chairs, the Secretary of Defense shall make available to the Panel the services of any federally funded research and development center that is covered by a sponsoring agreement of the Department of Defense.

“(C) The Panel shall have the authorities provided in section 3161 of title 5 and shall be subject to the conditions set forth in such section.

“(D) Funds for activities of the Panel shall be provided from amounts available to the Department of Defense.

“(10) TERMINATION.—The Panel for a quadrennial defense review shall terminate 45 days after the date on which the Panel submits its final report on the quadrennial defense review under paragraph (7).”.

SEC. 1072. SALE OF SURPLUS MILITARY EQUIPMENT TO STATE AND LOCAL HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCIES.

(a) STATE AND LOCAL AGENCIES TO WHICH SALES MAY BE MADE.—Section 2576 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “State and local law enforcement and firefighting agencies” and inserting “State and local law enforcement, firefighting, homeland security, and emergency management agencies”; and

(B) by striking “in carrying out law enforcement and firefighting activities” and inserting “in carrying out law enforcement, firefighting, homeland security, and emergency management activities”; and

(2) in subsection (b), by striking “State or local law enforcement or firefighting agency” both places it appears and inserting “State or local law enforcement, firefighting, homeland security, or emergency management agency”.

(b) TYPES OF EQUIPMENT THAT MAY BE SOLD.—Subsection (a) of such section is further amended by striking “and protective body armor” and inserting “personal protective equipment, and other appropriate equipment”.

(c) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

“§ 2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies”.

(2) TABLE OF SECTIONS.—The item relating to section 2576 in the table of sections at the beginning of chapter 153 of such title is amended to read as follows:

“2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies.”.

10 USC 2359a
note.

SEC. 1073. DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM.

(a) PROGRAM ESTABLISHED.—The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies). The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert

such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

(b) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

Deadlines.

(1) The issuance of an annual broad agency announcement or the use of any other competitive or merit-based processes by the Department of Defense and by each military department for candidate proposals in direct support of primarily major defense acquisition programs, but also other defense acquisition programs as described in subsection (a).

(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

(3) The total amount of funding provided to any project under the program shall not exceed \$3,000,000, unless the Secretary, or the Secretary's designee, approves a larger amount of funding for the project. Any such approval shall be made on a case-by-case basis and notice of any such approval shall be submitted to the congressional defense committees by not later than 30 days after such approval is made.

(4) No project shall be funded under the program for more than two years, unless the Secretary, or the Secretary's designee, approves funding for any additional year. Any such approval shall be made on a case-by-case basis and notice of any such approval shall be submitted to the congressional defense committees by not later than 30 days after such approval is made.

Notice.

(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

(d) FUNDING.—Subject to the availability of appropriations for such purpose, the amounts authorized to be appropriated for research, development, test, and evaluation for each of fiscal years 2011 through 2015 may be used for any such fiscal year for the program established under subsection (a).

(e) TRANSFER AUTHORITY.—The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program. The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

(f) REPORT.—Not later than 60 days after the last day of a fiscal year during which the Secretary carries out a program under this section, the Secretary shall submit to the congressional defense committees a report that includes a list and description of each

project funded under this section, including, for each such project, the amount of funding provided for the project, the defense acquisition program that the project supports, including the extent to which the project meets needs identified in its acquisition plan, the anticipated timeline for transition for the project, and the degree to which a competitive, merit-based process was used to evaluate and select the performers of the projects selected under this program.

Time period.

(g) **TERMINATION.**—The authority to carry out a program under this section shall terminate on September 30, 2015. Any amounts made available for the program that remain available for obligation on the date the program terminates may be transferred under subsection (e) during the 180-day period beginning on the date of the termination of the program.

SEC. 1074. AUTHORITY TO MAKE EXCESS NONLETHAL SUPPLIES AVAILABLE FOR DOMESTIC EMERGENCY ASSISTANCE.

(a) **DOMESTIC AUTHORITY.**—Section 2557 of title 10, United States Code, is amended—

(1) in subsection (a)(1), by adding at the end the following new sentence: “In addition, the Secretary may make nonlethal excess supplies of the Department available to support domestic emergency assistance activities.”; and

(2) in subsection (b)—

(A) by inserting “(1)” before “Excess”; and

(B) by adding at the end the following new paragraph: “(2) Excess supplies made available under this section to support domestic emergency assistance activities shall be transferred to the Secretary of Homeland Security. The Secretary of Defense may provide assistance in the distribution of such supplies at the request of the Secretary of Homeland Security.”.

(b) **CLERICAL AMENDMENTS.**—

(1) **SECTION HEADING.**—The heading of such section is amended to read as follows:

“§ 2557. Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance”.

(2) **TABLE OF SECTIONS.**—The item relating to such section in the table of sections at the beginning of chapter 152 of such title is amended to read as follows:

“2557. Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance.”.

SEC. 1075. TECHNICAL AND CLERICAL AMENDMENTS.

(a) **TITLE 5, UNITED STATES CODE.**—Title 5, United States Code, is amended as follows:

(1) Section 8344(l)(2)(B), as added by section 1122(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2505), is amended by striking “5201 et seq.” and inserting “5211 et seq.”.

(2) Section 9902(a)(2), as added by section 1113(d) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2499), is amended by striking “chapters” both places it appears and inserting “chapter”.

(b) **TITLE 10, UNITED STATES CODE.**—Title 10, United States Code, is amended as follows:

(1) The tables of chapters at the beginning of subtitle A and at the beginning of part II of such subtitle are amended by striking “1031” in the item relating to chapter 53 and inserting “1030”.

(2) Section 127a is amended—

10 USC 127.

(A) in subsection (a)(1)(A), by striking “Armed Forces” and inserting “armed forces”; and

(B) in subsection (b)(1) by striking “Armed Forces” both places it appears and inserting “armed forces”.

(3) Section 127d(d)(1) is amended by striking “Committee on International Relations” and inserting “Committee on Foreign Affairs”.

(4) Section 132 is amended—

(A) by redesignating subsection (d), as added by section 2831(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2669), as subsection (e); and

(B) in such subsection, by striking “Guam Executive Council” and inserting “Guam Oversight Council”.

(5) Section 139c(d)(4) is amended by adding at period at the end.

(6) Section 139d(a)(6) is amended by striking “propriety” and inserting “proprietary”.

(7) Section 172 is amended—

(A) by striking “(a)” before “The Secretaries”; and

(B) by striking subsection (b).

(8) Section 181(b)(3) is amended by striking “Performance Evaluation” and inserting “Program Evaluation”.

(9) Section 186 is amended by redesignating the second subsection (c) (relating to definitions) as subsection (d).

(10)(A) Section 382 is amended by striking “section 175 or 2332c” in subsections (a), (b)(2)(C), and (d)(2)(A)(ii) and inserting “section 175, 229, or 2332a”.

(B) The heading of such section is amended by striking “**chemical or biological**”.

(C) The table of sections at the beginning of chapter 18 is amended by striking the item relating to section 382 and inserting the following new item:

“382. Emergency situations involving weapons of mass destruction.”.

(11) Section 428(f) is amended by striking “, United States Code,”.

(12) Section 525 is amended—

(A) in subsection (d), by striking “section 601(b)(4)” and inserting “section 601(b)(5)”; and

(B) in subsection (g)(1)—

(i) by striking “and is not” and inserting “and are not”; and

(ii) by adding at period at the end.

(13) Section 841(c) is amended by striking “trail counsel” and inserting “trial counsel”.

(14) Section 843(b)(2)(B)(v) is amended by striking “Kidnaping; indecent assault;” and inserting “Kidnaping, indecent assault,”.

(15) Section 1030(e)(1) is amended by striking “3 years,” and inserting “three years.”.

(16) Section 1146 is amended—

(A) in subsection (a), by striking “(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEPARATED.—”, as added by section 5(1) of Public Law 110–317 (122 Stat. 3528);

(B) by redesignating the second subsection (b) as subsection (c); and

(C) in subsection (c), as so redesignated—

(i) by striking “BENEFITS FOR” in the subsection heading;

(ii) by striking “Armed Forces” in the matter preceding paragraph (1) and inserting “armed forces”; and

(iii) by striking “the members entitlement” in paragraph (2) and inserting “the member’s entitlement”.

10 USC 1174.

(17) Section 1174(i) is amended by striking “Armed Forces” each place it appears and inserting “armed forces”.

(18) Section 1175a(j)(3) is amended by striking “title 10” and inserting “this title”.

(19) Section 1203(b)(4)(B) is amended by striking “determination,” and inserting “determination,”.

(20) Section 1482a(c)(3) is amended by striking “section 1482(a)(11)” and inserting “section 1482(e)(5)(A)”.

(21) Section 1566a(a)(1) is amended by inserting a close parenthesis before the period at the end.

(22) Section 1599c(a)(2)(B) is amended by striking “subchapter 1” and inserting “subchapter I”.

(23) Section 1781b(d) is amended by striking “March 1, 2008, and each year thereafter” and inserting “March 1 each year”.

(24) Section 1781c(h)(1) is amended by striking “180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010, and annually thereafter” and inserting “April 30 each year”.

(25) Section 1788(b) is amended by striking “Armed Forces” and inserting “armed forces”.

(26) Section 2004b(b)(1) is amended by striking “pay grade 0–3” and inserting “pay grade O–3”.

(27) The table of sections at the beginning of chapter 104 is amended by transferring the item relating to section 2113a to appear after the item relating to section 2113.

(28) Section 2130a(b)(1) is amended by striking “Training Program” both places it appears and inserting “Training Corps program”.

(29) Section 2222(a) is amended by striking “Effective October 1, 2005, funds” and inserting “Funds”.

(30) The table of sections at the beginning of subchapter I of chapter 134, as amended by section 1031(a)(2) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2448), is amended by transferring the item relating to section 2241a from the end of the table of sections to appear after the item relating to section 2241.

(31) Section 2323(a)(1)(D) is amended by inserting a close parenthesis before the semicolon.

(32) Section 2362(e)(1) is amended by striking “IV” and inserting “V”.

(33) Section 2366a(c) is amended—

(A) by inserting a space between “(c)” and the subsection heading; and

(B) in paragraph (4), by striking “section 125a(a) of this title” and inserting “section 118b(c)(3) of this title”.

(34) Section 2433(a)(1) is amended by striking “section 2430a(c)” and inserting “section 2430a(d)”. 10 USC 2433.

(35) Section 2433a(b)(2)(B) is amended by striking “section 181(g)((1)” and inserting “section 181(g)(1)”.

(36) Section 2476(d)(2)(D) is amended by striking “Navy Depots” and inserting “Navy depots”.

(37) Section 2488(f) is amended by striking “Armed Forces” both places it appears and inserting “armed forces”.

(38) Section 2533a(d) is amended in paragraphs (1) and (4) by striking “(b)(1)(A), (b)(2), or (b)(3)” and inserting “(b)(1)(A) or (b)(2)”.

(39) Section 2603 is amended by striking “Armed Forces” both places it appears and inserting “armed forces”.

(40) Section 2642(a)(3) is amended by striking “During the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010” and inserting “During the period beginning on October 28, 2009, and ending on October 28, 2014”.

(41) Section 2667(e) is amended—

(A) in paragraph (1)(A)(ii), by striking “sections 2668 and 2669” and inserting “section 2668”; and

(B) in paragraph (5), by striking “subsection (f)” and inserting “subsection (g)”.

(42) Section 2671(a)(2) is amended by striking “Armed Forces” and inserting “armed forces”.

(43) Section 2684a(g)(1) is amended by striking “March 1, 2007, and annually thereafter” and inserting “March 1 each year”.

(44) Section 2687a(a) is amended by striking “31for” and inserting “31 for”.

(45) Section 2694c(d)(4) is amended by inserting “Authorization” after “Military Construction”.

(46) Chapter 160 is amended—

(A) in section 2700(2), by inserting “‘pollutant or contaminant,’” after “‘person,’”; and

(B) in section 2701(b)(1), by striking “hazardous substances, pollutants, and contaminants” and inserting “a hazardous substance or pollutant or contaminant”.

(47) The table of subchapters at the beginning of chapter 173 is amended by inserting “Sec.” above “2911”.

(48) Section 2922d is amended by striking “1 or more” each place it appears and inserting “one or more”.

(49) Section 7042(a)(1)(A) is amended by striking the comma after “captain”.

(50) Section 9515 is amended—

(A) in subsection (b), by striking “Section 1356 of the National Defense Authorization Act for 2008” and inserting “section 1356 of the National Defense Authorization Act for Fiscal Year 2008”;

(B) in subsection (f)(2), by striking “paragraph (2)” and inserting “paragraph (1)”; and

(C) in subsection (j)(1), by striking “United States Code,”.

(51) Section 10214 is amended by striking “14508(e)” and inserting “14508(h)”.

10 USC 10216.

(52) Section 10216 is amended by striking “section 115(c)” in subsections (b)(1), (c)(1), and (c)(2)(A) and inserting “section 115(d)”.

(53) Section 10217(c)(1) is amended—

(A) by striking “Effective October 1, 2007, the” and inserting “The”; and

(B) by striking “after the preceding sentence takes effect”.

(54) Section 12203(a) is amended by striking “above” in the first sentence and inserting “of”.

(55) Section 16132a is amended—

(A) in subsection (b)(1), by striking “agreement to service” and inserting “agreement to serve”; and

(B) in subsection (i)(2), by striking “whose”.

(56) Section 16163a(b)(2) is amended by striking “section (j)” and inserting “subsection (j)”.

(c) TITLE 37.—Title 37, United States Code, is amended as follows:

(1) Section 303a(e)(3)(B) is amended by inserting “of” after “result”.

(2) The table of sections at the beginning of chapter 5 is amended by striking the item related to section 312 and inserting the following new item:

“312. Special pay: nuclear-qualified officers extending period of active service.”.

(3) The table of sections at the beginning of chapter 7 is amended—

(A) by striking the item related to section 438 and inserting the following new item:

“411k. Travel and transportation allowances: non-medical attendants for members who are determined to be very seriously or seriously wounded, ill, or injured.”; and

(B) by striking the item related to section 438 and inserting the following new item:

“438. Preventive health services allowance.”.

(4) Section 411k(d)(1) is amended by striking “allowances section” and inserting “allowances under section”.

10 USC 525 note.
Effective date.

(d) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010.—Effective as of October 28, 2009, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) is amended as follows:

(1) Section 325(d)(4) (123 Stat. 2254) is amended by striking “section 236” and inserting “section 235”.

10 USC 525.

(2) Section 502(c)(3) (123 Stat. 2274) is amended by striking “officers” and inserting “general officers and flag officers”.

42 USC 1973ff–2.

(3) Section 581(a)(1)(C) (123 Stat. 2326) is amended by striking “subsection (f)” and inserting “subsection (g), as redesignated by section 582(b)(1)”.

42 USC 1973ff.

(4) Section 584(a) (123 Stat. 2330) is amended by striking “such Act” and inserting “the Uniformed and Overseas Citizens Absentee Voting Act”.

42 USC 1973ff.

(5) Section 585(b)(1) (123 Stat. 2331) is amended by striking subparagraphs (A) and (B), and inserting the following new subparagraphs:

“(A) in paragraph (2), by striking ‘section 102(4)’ and inserting ‘section 102(a)(4)’; and

“(B) by striking paragraph (4) and inserting the following new paragraph:

“(4) prescribe a suggested design for absentee ballot mailing envelopes;” and”.

(6) Section 589 (123 Stat. 2334; 42 U.S.C. 1973ff–7) is amended—

(A) in subsection (a)(1)—

(i) by striking “section 107(a)” and inserting “section 107(1)”; and

(ii) by striking “1973ff et seq.” and inserting “1973ff–6(1)”; and

(B) in subsection (e)(1), by striking “1977ff note” and inserting “1973ff note”.

(7) The undesignated section immediately following section 603 (123 Stat. 2350) is designated as section 604.

(8) Section 714(c) (123 Stat. 2382; 10 U.S.C. 1071 note) is amended—

(A) by striking “feasability” both places it appears and inserting “feasibility”; and

(B) by striking “specialities” both places it appears and inserting “specialties”.

(9) Section 813(a)(3) (123 Stat. 2407) is amended by inserting “order” after “task” in the matter to be struck. 10 USC 2302 note.

(10) Section 921(b)(2) (123 Stat. 2432) is amended by inserting “subchapter I of” before “chapter 21”. 10 USC 421 prec.

(11) Section 1014(c) (123 Stat. 2442) is amended by striking “in which the support” and inserting “in which support”.

(12) Section 1043(d) (123 Stat. 2457; 10 U.S.C. 2353 note) is amended by striking “et 13 seq.” and inserting “et seq.”.

(13) Section 1055(f) (123 Stat. 2462) is amended by striking “Combating” and inserting “Combatting”. 10 USC 2371; 50 USC 2369.

(14) Section 1063(d)(2) (123 Stat. 2470) is amended by striking “For purposes of this section, the” and inserting “The”. 10 USC 113 note.

(15) Section 1080(b) (123 Stat. 2479; 10 U.S.C. 801 note) is amended—

(A) by striking “title 14” and inserting “title XIV”;

(B) by striking “title 10” and inserting “title X”; and

(C) by striking “the Military Commissions Act of 2006 (10 U.S.C. 948 et seq.; Public Law 109–366)” and inserting “chapter 47A of title 10, United States Code”.

(16) Section 1111(b) (123 Stat. 2495; 10 U.S.C. 1580 note prec.) is amended by striking “the Secretary” in the first sentence and inserting “the Secretary of Defense”.

(17) Section 1113(g)(1) (123 Stat. 2502; 5 U.S.C. 9902 note) is amended by inserting “United States Code,” after “title 5,” the first place it appears.

(18) Section 1202(c) (123 Stat. 2512) is amended—

(A) by striking “1208(f) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2086) is amended in the second sentence” and inserting “1208(f)(2) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2086), as amended by section 1202(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 363), is further amended”; and

(B) by redesignating paragraphs (1) through (8), as proposed to be inserted, as subparagraphs (A) through (H), respectively and indenting the left margin of such subparagraphs, as so redesignated, 4 ems from the left margin.

(19) Section 1261 (123 Stat. 2553; 22 U.S.C. 6201 note) is amended by inserting a space between the first short title and “or”.

22 USC 5959.

(20) Section 1306(b) (123 Stat. 2560) is amended by striking “fiscal year” and inserting “Fiscal Year”.

10 USC 802.

(21) Subsection (b) of section 1803 (123 Stat. 2612) is amended to read as follows:

10 USC 801 note.

“(b) APPELLATE REVIEW UNDER DETAINEE TREATMENT ACT OF 2005.—

“(1) DEPARTMENT OF DEFENSE, EMERGENCY SUPPLEMENTAL APPROPRIATIONS TO ADDRESS HURRICANES IN THE GULF OF MEXICO, AND PANDEMIC INFLUENZA ACT, 2006.—Section 1005(e) of the Detainee Treatment Act of 2005 (title X of Public Law 109-148; 10 U.S.C. 801 note) is amended by striking paragraph (3).

“(2) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006.—Section 1405(e) of the Detainee Treatment Act of 2005 (Public Law 109-163; 10 U.S.C. 801 note) is amended by striking paragraph (3).”.

5 USC 5304 note;
39 USC 1005.

(22) Section 1916(b)(1)(B) (123 Stat. 2624) is amended by striking the comma after “5941”.

10 USC 2851.

(23) Section 2804(d)(2) (123 Stat. 2662) is amended by inserting “subchapter III of” before “chapter 169”.

10 USC 2687
note.

(24) Section 2835(f)(1) (123 Stat. 2677) is amended by striking “publically-available” and inserting “publicly available”.

46 USC 51301.

(25) Section 3503(b)(1) (123 Stat. 2719) is amended by striking the extra quotation marks.

49 USC 109.

(26) Section 3508(1) (123 Stat. 2721) is amended by striking “headline” and inserting “heading”.

(e) DUNCAN HUNTER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2009.—The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417) is amended as follows:

(1) Section 143(b)(1) (122 Stat. 4381; 10 U.S.C. 2304 note) is amended by striking “identifies” and inserting “identify”.

(2) Section 231(b) (122 Stat. 4391; 10 U.S.C. 2431 note) is amended by striking “section” and inserting “subsection”.

10 USC 2431
note.

(3) Section 233(a)(3) (122 Stat. 4393) is amended by striking “122 Stat. 42” and inserting “122 Stat. 43”.

(4) Section 324(b) (122 Stat. 4416; 10 U.S.C. 8062 note) is amended by striking “their” and inserting “its”.

(5) Section 332(e) (122 Stat. 4420; 10 U.S.C. 2911 note) is amended by striking “section (d)” and inserting “subsection (d)”.

(6) Section 358(b) (122 Stat. 4427; 10 U.S.C. 2302 note) is amended by inserting a comma after “Agent”.

(7) Section 596(b)(1)(D) (10 U.S.C. 1071 note), as amended by section 594 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2338), is amended by striking “or flag” the second place it appears.

- (8) Section 597(f) (122 Stat. 4481) is amended by striking “meeting” and inserting “meanings”. 10 USC 2120 note.
- (9) Section 604(b) (122 Stat. 4483) is amended by inserting “of” after “(a)(1)”. 37 USC 427 note.
- (10) Section 619(d) (122 Stat. 4489; 37 U.S.C. 353 note) is amended by striking “such subsections” and inserting “such subsection”.
- (11) Section 711(d)(2) (122 Stat. 4501) is amended by striking “1111(b)” and inserting “1111(b)(3)”. 10 USC 1079 note.
- (12) Effective as of October 14, 2008, and as if included in Public Law 110–417 as enacted, section 727(b)(2) is amended by striking “compelling”. Effective date. 10 USC 1203 and note.
- (13) Section 822(c)(1)(A) (122 Stat. 4532) is amended by striking “this title” and inserting “title 10, United States Code”. 10 USC 2320 note.
- (14) Section 863(b)(3)(A) (122 Stat. 4547) is amended by striking “subsection (d)(2)(A)” and inserting “subsection (d)(3)(A)”. 41 USC 3302.
- (15) Section 869 (122 Stat. 4553) is amended— 41 USC 1704.
- (A) in subsection (b), by striking “433(a)” and inserting “433a(a)”; and
- (B) in subsection (c)(4)—
- (i) by striking “37(j)” and inserting “37(g)”; and
- (ii) by striking “433(j)” and inserting “433(g)”.
- (16) Section 873(a)(4) (122 Stat. 4558; 10 U.S.C. 6101 note) is amended by striking “to Government” and inserting “to the Government”.
- (17) Section 1111 (10 U.S.C. 143 note), as amended by section 1109 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2492), is amended—
- (A) in subsection (a)(1), by striking “section 821” and inserting “section 833”; and
- (B) in subsection (b)—
- (i) in the matter preceding paragraph (1), by striking “secretary of a military department” and inserting “Secretary of a military department”; and
- (ii) in paragraph (1)—
- (I) by striking “the the requirements” and inserting “the requirements”; and
- (II) by striking “this title” and inserting “such title”; and
- (iii) in paragraph (2), by striking “any any of the following” and inserting “any of the following”.
- (18) Section 1602(5) (122 Stat. 4653; 22 U.S.C. 2368 note) is amended by striking “a Active” and inserting “an Active”.
- (19) Section 3113 (122 Stat. 4754; 50 U.S.C. 2444) is amended—
- (A) in subsection (b)(2), by inserting a close parenthesis before the semicolon; and
- (B) in subsection (d)(2), by striking “fails repay” and inserting “fails to repay”.
- (20) Section 3512 (122 Stat. 4770; 48 U.S.C. 1421r) is amended by inserting a period at the end of subsection (f).
- (f) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008.—The National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181) is amended as follows:

Effective date.
10 USC 2533b
and note.

(1) Section 624 (122 Stat. 153; 37 U.S.C. 307a note) is amended—

(A) in subsection (a), by striking “Operating” and inserting “Operation”; and

(B) in subsection (b), by striking “Operating” and inserting “Operation”.

(2) Effective as of January 28, 2008, and as if included in Public Law 110–181 as enacted, section 804 (122 Stat. 208) is amended—

(A) in subsection (a)(3), by striking “speciality” and inserting “specialty”; and

(B) in subsection (e), by striking “subsection (c)” and inserting “subsection (d)(1)”.

(3) Section 808 (122 Stat. 215; 10 U.S.C. 2330 note) is amended by redesignating the second subsection (c) as subsection (d).

(4) Section 827(a)(2) (122 Stat. 228; 10 U.S.C. 2410n note) is amended by striking “subsection (a)” and inserting “paragraph (1)”.

(5) Section 843 (122 Stat. 236) is amended—

10 USC 2304c.

(A) in subsection (a)(2)(C), by striking “paragraph (1)” and inserting “subparagraph (A)”; and

41 USC 4106.

(B) in subsection (b)(2)(C), by striking “paragraph (1)” and inserting “subparagraph (A)”.

(6) Section 890 (122 Stat. 269; 10 U.S.C. 2302 note) is amended—

(A) in subsection (a), by inserting “Act” before “of 1979”;

(B) in subsection (b), by inserting “Act” before “of 1979”;

and

(C) in subsection (d)(1), by striking “sections” and inserting “parts”.

10 USC 14310.

(7) Section 1063(a)(16) (122 Stat. 322) is amended by striking “(1)”.

Effective date.

(8) Effective as of January 28, 2008, and as if included in Public Law 110–181 as enacted, section 1075(a) (122 Stat. 333) is amended by striking “June” and inserting “September”.

50 USC 2301

note.

8 USC 1157 note.

(9) Section 1243(c) (122 Stat. 396) is amended by striking “(4))” and inserting “(4)))”.

8 USC 1157 note.

(10) Section 1244(a)(3) (122 Stat. 396) is amended by striking “(4))” and inserting “(4)))”.

10 USC 2663

note.

Effective date.

(g) JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007.—Effective as of October 17, 2006, and as if included therein as enacted, the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) is amended as follows:

(1) Section 321(a)(1) (120 Stat. 2144; 10 U.S.C. 2222 note) is amended by striking “Public Law 190–163” and inserting “Public Law 109–163”.

10 USC 113 note.

(2) Section 348(2) (120 Stat. 2159) is amended in the matter to be struck from and inserted in section 366(d) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2523) by striking “within” both places it appears and inserting “Within”.

10 USC 1030

note prec.

(3) Section 355(b)(1) (120 Stat. 2162) is amended in the matter to be struck from section 344 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. note prec. 1030) by striking “Operation Iraqi Freedom

and Operation Enduring Freedom” and inserting “Operation Enduring Freedom and Operation Iraqi Freedom”.

(4) Section 511(b)(3) (120 Stat. 2183) is amended in the matter preceding subparagraph (A) by striking “section” and inserting “title”. 10 USC 14311.

(5) Section 705(b)(2) (120 Stat. 2281; 10 U.S.C. 1074g note) is amended by striking “section 1074g(a)(2)(E)” and inserting “section 1074g(a)(2)”.

(6) Section 2821(b)(1) (120 Stat. 2474) is amended by inserting “by striking” after “subsection (a)(1),”. 10 USC 2663.

(h) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006.—Effective as of January 6, 2006, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) is amended as follows: 10 USC 2651 note. Effective date.

(1) Section 515(h) (119 Stat. 3237; 10 U.S.C. 10101 note) is amended by striking “10 USC 10101 note.”.

(2) Section 535(b) (119 Stat. 3249; 10 U.S.C. 2101 note) is amended by inserting “of” after “Committee on Armed Services” the first place it appears.

(3) Section 1056(e)(2) (119 Stat. 3440) is amended by striking “Section” and inserting “Effective as of December 2, 2002, and as if included in Public Law 107–314 as enacted, section”. Effective date. 31 USC 3702.

(4) Section 1057 (119 Stat. 3440) is amended—

(A) in subsection (a)—

(i) in paragraph (5), by striking “4778,”; and 10 USC 4778.

(ii) in paragraph (6), by striking “4747” and inserting “2651”; 10 USC 2651.

(B) in subsection (b)(3)—

(i) by striking “109,”; and 32 USC 109.

(ii) by adding at the end the following new sentence: “Section 109 is amended by striking ‘State or Territory, Puerto Rico, the Virgin Islands, or the District of Columbia’ each place it appears and inserting ‘State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands’”; and

(C) in subsection (b)(5)—

(i) in the language to be struck from section 324 of title 32, United States Code, by striking the comma after “Rico”; and 32 USC 324.

(ii) in the language to be inserted in section 324 of title 32, United States Code, by inserting “of” after “Virgin Islands,”.

(5) Section 1104 (119 Stat. 3448) is amended— 10 USC 2192 note.

(A) in subsection (a)(3)(A), by inserting “the first place it appears” before “and inserting”; and

(B) in subsection (c), by striking “subsection (c)(1)” and inserting “subsection (b)(2)”.

(6) Section 2806(c)(2)(A) (119 Stat. 3507) is amended in the matter to be struck from and inserted in section 2884(b)(1) of title 10, United States Code, by striking “a” both places it appears and inserting “A”. 10 USC 2884.

(i) RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005.—The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) is amended as follows: 10 USC 113 note.

(1) Section 577(b)(12) (10 U.S.C. 113 note), as amended by section 563(e) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4471) is amended by striking “The Secretary shall implement” and inserting “Implementation of”.

(2) Section 1085 (118 Stat. 2065; 10 U.S.C. 113 note), as amended by section 360(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 78) is amended by striking “subsection (a)” and inserting “section 360(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 77)”.

(j) BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003.—Section 1032(a) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2358 note) is amended by striking “thereafter,” and inserting “thereafter.”.

10 USC 2366b
note.
Effective date.

(k) WEAPON SYSTEMS ACQUISITION REFORM ACT OF 2009.—Effective as of May 22, 2009, and as if included therein as enacted, section 205 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1724) is amended—

(1) in subsection (a)(1)(B), by striking “paragraphs (1) and (2)” in the matter to be inserted and inserting “paragraphs (1), (2), and (3)”; and

10 USC 2433a
note.

(2) in subsection (c), by striking “2433a(c)(3)” and inserting “2433a(c)(1)(C)”.

(l) TECHNICAL CORRECTION REGARDING SBIR EXTENSION.—Section 9(m)(2) of the Small Business Act (15 U.S.C. 638(m)(2)), as added by section 847(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2420), is amended by striking “is authorized” and inserting “are authorized”.

(m) TECHNICAL CORRECTION REGARDING SMALL SHIPYARDS AND MARITIME COMMUNITIES ASSISTANCE PROGRAM.—Section 3506 of the National Defense Authorization Act for Fiscal Year 2006, as reinstated by the amendment made by section 1073(c)(14) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2475), is repealed.

46 USC 53101
note.

(n) TECHNICAL CORRECTION REGARDING DOT MARITIME HERITAGE PROPERTY.—Section 6(a)(1)(C) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(a)(1)(C)), as amended by section 3509 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2721), is amended by striking “the date of enactment of the Maritime Administration Authorization Act of 2010” and inserting “October 28, 2009”.

41 USC 7105.

(o) TECHNICAL CORRECTION OF CITATION.—Section 42 of the Office of Federal Procurement Policy Act (41 U.S.C. 438) is amended—

(1) in subsection (c)(1) by striking “(41 U.S.C. 607(b))” and inserting “(41 U.S.C. 607(d))”; and

(2) in subsection (c)(2)(A) by inserting “of 1978” after “Contract Disputes Act”.

SEC. 1076. STUDY ON OPTIMAL BALANCE OF MANNED AND REMOTELY PILOTED AIRCRAFT.

(a) STUDY.—

Deadline.

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall commission a study by an independent, non-profit organization

on the optimal balance between manned and remotely piloted aircraft of the Armed Forces.

(2) **SELECTION.**—The independent, non-profit organization selected for the study under paragraph (1) shall be qualified on the basis of having performed work in the fields of national security and combat systems.

(b) **MATTERS INCLUDED.**—The study under subsection (a) shall include the following:

(1) With respect to each military department, an assessment of the feasibility and desirability of a more rapid transition from manned to remotely piloted aircraft for a range of operations, including combat operations.

(2) An evaluation of the current ability of each military department to resist attacks mounted by foreign militaries with significant investments in research and development and deployment of remotely piloted aircraft, including an assessment of each military department's ability to defend against—

(A) a large enemy force of remotely piloted aircraft; and

(B) any other relevant scenario involving remotely piloted aircraft that the Secretary determines appropriate.

(3) An analysis of—

(A) current and future capabilities of foreign militaries in developing and deploying remotely piloted aircraft; and

(B) identified vulnerabilities of United States weapons systems to foreign remotely piloted aircraft.

(4) Conclusions on the matters described in paragraphs (1) through (3) and what the independent, non-profit organization conducting the study determines is the optimal balance of investment in development and deployment of manned versus remotely piloted aircraft.

(c) **REPORT.**—Not later than December 1, 2011, the Secretary of Defense shall submit to the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes the study under subsection (a).

(d) **FORM.**—

(1) **STUDY.**—The study under subsection (a) shall include a classified annex with respect to the matters described in subsection (b)(3).

(2) **REPORT.**—The report under subsection (c) may include a classified annex.

(e) **REMOTELY PILOTED AIRCRAFT DEFINED.**—In this section, the term “remotely piloted aircraft” means any unmanned aircraft operated remotely, whether within or beyond line-of-sight, including unmanned aerial systems, unmanned aerial vehicles, remotely piloted vehicles, and remotely piloted aircraft.

Classified
information.

SEC. 1077. TREATMENT OF SUCCESSOR CONTINGENCY OPERATION TO OPERATION IRAQI FREEDOM.

10 USC 113 note.

Any law applicable to Operation Iraqi Freedom shall apply in the same manner and to the same extent to the successor contingency operation known as Operation New Dawn, except as specifically provided in this Act, any amendment made by this Act, or any other law enacted after the date of the enactment of this Act.

Applicability.

10 USC 2358
note.

SEC. 1078. PROGRAM TO ASSESS THE UTILITY OF NON-LETHAL WEAPONS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should support the research, development, test, and evaluation, procurement, and fielding of effective non-lethal weapons and technologies explicitly designed to, with respect to counterinsurgency operations, reduce military casualties and fatalities, improve military mission accomplishment and operational effectiveness, reduce civilian casualties and fatalities, and minimize undesired damage to property and the environment.

(b) PROGRAM REQUIRED.—

(1) DEMONSTRATION AND ASSESSMENT.—The Secretary of Defense, acting through the Executive Agent for Non-lethal Weapons and in coordination with the Secretaries of the military departments and the combatant commanders, shall carry out a program to demonstrate and assess the utility and effectiveness of non-lethal weapons to provide escalation of force options in counter-insurgency operations.

(2) NON-LETHAL WEAPONS EVALUATED.—In evaluating non-lethal weapons under the program under this subsection, the Secretary shall include non-lethal weapons designed for counter-personnel and counter-materiel missions.

(c) REPORT.—

(1) REPORT REQUIRED.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report on the role and utility of non-lethal weapons and technologies in counterinsurgency operations.

(2) ELEMENTS.—The report under paragraph (1) shall include the following:

(A) A description of the results of any demonstrations and assessments of non-lethal weapons conducted during fiscal year 2011.

(B) A description of the Secretary's plans for any demonstrations and assessments of non-lethal weapons to be conducted during fiscal years 2012 and 2013.

(C) A description of the extent to which non-lethal weapons doctrine, training, and employment include the use of strategic communications strategies to enable the effective employment of non-lethal weapons.

(D) A description of the input of the military departments in developing concepts of operations and tactics, techniques, and procedures for incorporating non-lethal weapons into the current escalation of force procedures of each department.

(E) A description of the extent to which non-lethal weapons and technologies are integrated into the standard equipment and training of military units.

SEC. 1079. SENSE OF CONGRESS ON STRATEGIC NUCLEAR FORCE REDUCTIONS.

It is the sense of Congress that no action should be taken to implement the reduction of the strategic nuclear forces of the United States below the levels described in the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms signed on April 8, 2010 (commonly known as the "New START

President.
Reports.
Assessment.
Certification.

Treaty”), unless the President submits to the congressional defense committees a report on such reduction, including—

- (1) the justification for such reduction;
- (2) an assessment of the strategic environment, threat, and policy and the technical and operational implications of such reduction; and
- (3) written certification by the President that—
 - (A) either—
 - (i) the strategic environment or the assessment of the threat allows for such reduction; or
 - (ii) technical measures to provide a commensurate or better level of safety, security, and reliability as before such reduction have been implemented for the remaining strategic nuclear forces of the United States;
 - (B) the remaining strategic nuclear forces of the United States provide a sufficient means of protection against unforeseen technical challenges and geopolitical events;
 - (C) such reduction is compensated by other measures (such as nuclear modernization, conventional forces, and missile defense) that together provide a commensurate or better deterrence capability and level of credibility as before such reduction; and
 - (D) measures to modernize the nuclear weapons complex are being implemented (or have been implemented) to provide a sufficiently responsive infrastructure to support the remaining strategic nuclear forces of the United States.

TITLE XI—CIVILIAN PERSONNEL MATTERS

- Sec. 1101. Clarification of authorities at personnel demonstration laboratories.
- Sec. 1102. Requirements for Department of Defense senior mentors.
- Sec. 1103. One-year extension of authority to waive annual limitation on premium pay and aggregate limitation on pay for Federal civilian employees working overseas.
- Sec. 1104. Extension and modification of enhanced Department of Defense appointment and compensation authority for personnel for care and treatment of wounded and injured members of the Armed Forces.
- Sec. 1105. Rate of overtime pay for Department of the Navy employees performing work aboard or dockside in support of the nuclear aircraft carrier forward deployed in Japan.

SEC. 1101. CLARIFICATION OF AUTHORITIES AT PERSONNEL DEMONSTRATION LABORATORIES.

(a) CLARIFICATION OF APPLICABILITY OF DIRECT HIRE AUTHORITY.—Section 1108 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4618; 10 U.S.C. 1580 note) is amended—

10 USC 1580
note prec.

- (1) in subsection (b), by striking “identified” and all that follows and inserting “designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.”; and
- (2) in subsection (c), by striking “2 percent” and inserting “5 percent”.

(b) **CLARIFICATION OF APPLICABILITY OF FULL IMPLEMENTATION REQUIREMENT.**—Section 1107 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 357; 10 U.S.C. 2358 note) is amended—

(1) in subsection (a), by striking “that are exempted by” and all that follows and inserting “designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2486; 10 U.S.C. 2358 note) as Department of Defense science and technology reinvention laboratories.”; and

(2) in subsection (c), by striking “as enumerated in” and all that follows and inserting “designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2486) as a Department of Defense science and technology reinvention laboratory.”.

(c) **CORRECTION TO SECTION REFERENCE.**—Section 1121 of the National Defense Authorization Act for Fiscal Year 2010 (123 Stat. 2505) is amended—

5 USC 9902.

(1) in subsection (a), by striking “Section 9902(h) of title 5, United States Code” and inserting “Section 9902(g) of title 5, United States Code, as redesignated by section 1113(b)(1)(B)”; and

(2) in subsection (b), by striking “section 9902(h) of such title 5” and inserting “such section”.

5 USC 9902 note.

(d) **EFFECTIVE DATE.**—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect as of October 28, 2009.

(2) The amendment made by subsection (a)(2) shall take effect as of the date of enactment of this Act.

5 USC 9903 note.

SEC. 1102. REQUIREMENTS FOR DEPARTMENT OF DEFENSE SENIOR MENTORS.

Policy.
Procedures.

(a) **IN GENERAL.**—The Secretary of Defense shall issue appropriate policies and procedures to ensure that all senior mentors employed by the Department of Defense are—

(1) hired as highly qualified experts under section 9903 of title 5, United States Code; and

(2) required to comply with all applicable Federal laws and regulations on personnel and ethics matters.

(b) **SENIOR MENTOR DEFINED.**—In this section, the term “senior mentor” means a retired flag, general, or other military officer or retired senior civilian official who provides expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staffs, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

SEC. 1103. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

Effective date.

Effective January 1, 2011, section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as amended by section 1106(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2487), is further amended by striking “calendar years 2009 and 2010” and inserting “calendar years 2009 through 2011”.

SEC. 1104. EXTENSION AND MODIFICATION OF ENHANCED DEPARTMENT OF DEFENSE APPOINTMENT AND COMPENSATION AUTHORITY FOR PERSONNEL FOR CARE AND TREATMENT OF WOUNDED AND INJURED MEMBERS OF THE ARMED FORCES.

(a) DESIGNATION OF OCCUPATIONS COVERED BY RECRUITMENT AND APPOINTMENT AUTHORITY.—Subsection (a)(2) of section 1599c of title 10, United States Code, is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking “shortage category positions” and inserting “a shortage category occupation or critical need occupation”; and

(B) in clause (ii), by striking “highly qualified persons directly” and inserting “qualified persons directly in the competitive service”; and

(2) by adding at the end the following new subparagraph:

“(C) Any designation by the Secretary for purposes of subparagraph (A)(i) shall be based on an analysis of current and future Department of Defense workforce requirements.”.

(b) EXTENSION.—Subsection (c) of such section is amended—

(1) in paragraph (1)—

(A) by inserting “under subsection (a)(1)” after “Secretary of Defense”; and

(B) by striking “September 30, 2012” and inserting “December 31, 2015”; and

(2) in paragraph (2), by striking “September 30, 2012” and inserting “December 31, 2015”.

SEC. 1105. RATE OF OVERTIME PAY FOR DEPARTMENT OF THE NAVY EMPLOYEES PERFORMING WORK ABOARD OR DOCKSIDE IN SUPPORT OF THE NUCLEAR AIRCRAFT CARRIER FORWARD DEPLOYED IN JAPAN.

(a) OVERTIME PAY AT TIME-AND-A-HALF RATE.—Section 5542(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

“(B) Subparagraph (A) shall expire on September 30, 2014.”. Expiration date.

(b) REPORTS.—

(1) SECRETARY OF NAVY REPORT.—Not later than September 30, 2013, the Secretary of the Navy shall submit to the Secretary of Defense and the Director of the Office of Personnel Management a report that—

(A) describes the use of the authority under paragraph (6) of section 5542(a) of title 5, United States Code, as added by subsection (a), including associated costs, and including an evaluation of the extent to which exercise

of the authority helped the Navy in meeting its mission; and

(B) provides a recommendation on whether an extension of the provisions of that paragraph is needed.

(2) REPORT TO CONGRESS.—Not later than March 31, 2014, the Director of the Office of Personnel Management shall submit to the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Oversight and Governmental Reform of the House of Representatives a report that—

(A) addresses the use of paragraph (6) of section 5542(a) of title 5, United States Code, as so added, including associated costs, and including an evaluation of the extent to which exercise of the authority helped the Navy in meeting its mission;

(B) describes the extent to which other employees experience the same circumstances as were experienced by those described in that paragraph before its enactment;

(C) provides an analysis of the advantages and disadvantages that would be anticipated from extending the expiration date of the authority under that paragraph, and from expanding the authority under that paragraph to include other employees; and

(D) conveys the report of the Secretary of the Navy referred to in paragraph (1).

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Subtitle A—Assistance and Training

- Sec. 1201. Expansion of authority for support of special operations to combat terrorism.
- Sec. 1202. Addition of allied government agencies to enhanced logistics interoperability authority.
- Sec. 1203. Expansion of temporary authority to use acquisition and cross-servicing agreements to lend certain military equipment to certain foreign forces for personnel protection and survivability.
- Sec. 1204. Authority to pay personnel expenses in connection with African cooperation.
- Sec. 1205. Authority to build the capacity of Yemen Ministry of Interior Counter Terrorism Forces.
- Sec. 1206. Air Force scholarships for Partnership for Peace nations to participate in the Euro-NATO Joint Jet Pilot Training program.
- Sec. 1207. Modification and extension of authorities relating to program to build the capacity of foreign military forces.

Subtitle B—Matters Relating to Iraq, Afghanistan, and Pakistan

- Sec. 1211. Limitation on availability of funds for certain purposes relating to Iraq.
- Sec. 1212. One-year extension and modification of Commanders' Emergency Response Program.
- Sec. 1213. Extension of authority for reimbursement of certain coalition nations for support provided to United States military operations.
- Sec. 1214. Extension of authority to transfer defense articles and provide defense services to the military and security forces of Iraq and Afghanistan.
- Sec. 1215. No permanent military bases in Afghanistan.
- Sec. 1216. Authority to use funds for reintegration activities in Afghanistan.
- Sec. 1217. Authority to establish a program to develop and carry out infrastructure projects in Afghanistan.
- Sec. 1218. Extension of logistical support for coalition forces supporting operations in Iraq and Afghanistan.
- Sec. 1219. Recommendations on oversight of contractors engaged in activities relating to Afghanistan.

Sec. 1220. Extension and modification of Pakistan Counterinsurgency Fund.

Subtitle C—Reports and Other Matters

- Sec. 1231. One-year extension of report on progress toward security and stability in Afghanistan.
- Sec. 1232. Two-year extension of United States plan for sustaining the Afghanistan National Security Forces.
- Sec. 1233. Modification of report on responsible redeployment of United States Armed Forces from Iraq.
- Sec. 1234. Report on Department of Defense support for coalition operations.
- Sec. 1235. Reports on police training programs.
- Sec. 1236. Report on certain Iraqis affiliated with the United States.
- Sec. 1237. Report on Department of Defense's plans to reform the export control system.
- Sec. 1238. Report on United States efforts to defend against threats posed by the anti-access and area-denial capabilities of certain nation-states.
- Sec. 1239. Defense Science Board report on Department of Defense strategy to counter violent extremism outside the United States.
- Sec. 1240. Report on merits of an Incidents at Sea agreement between the United States, Iran, and certain other countries.
- Sec. 1241. Requirement to monitor and evaluate Department of Defense activities to counter violent extremism in Africa.
- Sec. 1242. NATO Special Operations Headquarters.
- Sec. 1243. National Military Strategy to Counter Iran and required briefings.

Subtitle A—Assistance and Training

SEC. 1201. EXPANSION OF AUTHORITY FOR SUPPORT OF SPECIAL OPERATIONS TO COMBAT TERRORISM.

Section 1208(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2086), as most recently amended by section 1202(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2511), is further amended by striking “\$40,000,000” and inserting “\$45,000,000”.

SEC. 1202. ADDITION OF ALLIED GOVERNMENT AGENCIES TO ENHANCED LOGISTICS INTEROPERABILITY AUTHORITY.

(a) ENHANCED INTEROPERABILITY AUTHORITY.—Subsection (a) of section 127d of title 10, United States Code, is amended—

- (1) by inserting “(1)” before “Subject to”;
- (2) by inserting “of the United States” after “armed forces”;
- (3) by striking the second sentence; and
- (4) by adding at the end the following new paragraphs:

“(2) In addition to any logistic support, supplies, and services provided under paragraph (1), the Secretary may provide logistic support, supplies, and services to allied forces solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in combined operations with the United States in order to facilitate such operations. Such logistic support, supplies, and services may also be provided under this paragraph to a nonmilitary logistics, security, or similar agency of an allied government if such provision would directly benefit the armed forces of the United States.

“(3) Provision of support, supplies, and services pursuant to paragraph (1) or (2) may be made only with the concurrence of the Secretary of State.”.

(b) CONFORMING AMENDMENTS.—Such section is further amended—

- (1) in subsection (b), by striking “subsection (a)” in paragraphs (1) and (2) and inserting “subsection (a)(1)”; and

- (2) in subsection (c)—
 - (A) in paragraph (1)—
 - (i) by striking “Except as provided in paragraph (2), the” and inserting “The”; and
 - (ii) by striking “this section” and inserting “subsection (a)(1)”; and
 - (B) in paragraph (2), by striking “In addition” and all that follows through “fiscal year,” and inserting “The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not”.

SEC. 1203. EXPANSION OF TEMPORARY AUTHORITY TO USE ACQUISITION AND CROSS-SERVICING AGREEMENTS TO LEND CERTAIN MILITARY EQUIPMENT TO CERTAIN FOREIGN FORCES FOR PERSONNEL PROTECTION AND SURVIVABILITY.

(a) **EXPANSION FOR TRAINING FOR DEPLOYMENT.**—Paragraph (3) of section 1202(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2412), as most recently amended by section 1252(a) of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-181; 122 Stat. 402), is further amended—

(1) by striking “only in Iraq or Afghanistan, or in a peacekeeping operation described in paragraph (1), as applicable, and”; and

(2) by striking “those forces.” and inserting “those forces and only—

“(A) in Iraq or Afghanistan;

“(B) in a peacekeeping operation described in paragraph (1); or

“(C) in connection with the training of those forces to be deployed to Iraq, Afghanistan, or a peacekeeping operation described in paragraph (1) for such deployment.”.

(b) **NOTICE AND WAIT ON EXERCISE OF ADDITIONAL AUTHORITY.**—Such section is further amended by adding at the end the following new paragraph:

“(5) **NOTICE AND WAIT ON PROVISION OF EQUIPMENT FOR CERTAIN PURPOSES.**—Equipment may not be provided under paragraph (1) in connection with training as specified in paragraph (3)(C) until 15 days after the date on which the Secretary of Defense submits to the specified congressional committees written notice on the provision of such equipment for such purpose.”.

Deadline.

SEC. 1204. AUTHORITY TO PAY PERSONNEL EXPENSES IN CONNECTION WITH AFRICAN COOPERATION.

(a) **IN GENERAL.**—Chapter 53 of title 10, United States Code, is amended by inserting after section 1050 the following new section:

“§ 1050a. African cooperation: payment of personnel expenses

“The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of African countries and other expenses that the Secretary considers necessary for African cooperation.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 53 of such title is amended by inserting after the item relating to section 1050 the following new item:

“1050a. African cooperation: payment of personnel expenses.”.

SEC. 1205. AUTHORITY TO BUILD THE CAPACITY OF YEMEN MINISTRY OF INTERIOR COUNTER TERRORISM FORCES.

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, provide assistance during fiscal year 2011 to enhance the ability of the Yemen Ministry of Interior Counter Terrorism Forces to conduct counterterrorism operations against al Qaeda in the Arabian Peninsula and its affiliates.

(b) TYPES OF ASSISTANCE.—

(1) AUTHORIZED ELEMENTS.—Assistance under subsection (a) may include the provision of equipment, supplies, and training.

(2) REQUIRED ELEMENTS.—Assistance under subsection (a) shall be provided in a manner that promotes—

(A) observance of and respect for human rights and fundamental freedoms; and

(B) respect for legitimate civilian authority in Yemen.

(3) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in this subsection that is otherwise prohibited by any provision of law.

(c) FUNDING.—Of the amount authorized to be appropriated by section 301 for operation and maintenance for fiscal year 2011, \$75,000,000 may be utilized to provide assistance under subsection (a).

(d) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Not less than 15 days before providing assistance under subsection (a), the Secretary of Defense shall submit to the committees of Congress specified in paragraph (2) a notice setting forth the assistance to be provided, including the types of such assistance, the budget for such assistance, and the completion date for the provision of such assistance. Deadline.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

SEC. 1206. AIR FORCE SCHOLARSHIPS FOR PARTNERSHIP FOR PEACE NATIONS TO PARTICIPATE IN THE EURO-NATO JOINT JET PILOT TRAINING PROGRAM.

10 USC 1051
note.

(a) ESTABLISHMENT OF SCHOLARSHIP PROGRAM.—The Secretary of the Air Force may establish and maintain a demonstration scholarship program to allow personnel of the air forces of countries that are signatories of the Partnership for Peace Framework Document to receive undergraduate pilot training and necessary related training through the Euro-NATO Joint Jet Pilot Training (ENJJPT) program. The Secretary of the Air Force shall establish the program

Regulations.

pursuant to regulations prescribed by the Secretary of Defense in consultation with the Secretary of State.

(b) TRANSPORTATION, SUPPLIES, AND ALLOWANCE.—Under such conditions as the Secretary of the Air Force may prescribe, the Secretary may provide to a person receiving a scholarship under the scholarship program—

(1) transportation incident to the training received under the ENJJPT program;

(2) supplies and equipment to be used during the training;

(3) flight clothing and other special clothing required for the training;

(4) billeting, food, and health services; and

(5) a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the Armed Forces of the United States under similar circumstances.

(c) RELATION TO EURO-NATO JOINT JET PILOT TRAINING PROGRAM.—

(1) ENJJPT STEERING COMMITTEE AUTHORITY.—Nothing in this section shall be construed or interpreted to supersede the authority of the ENJJPT Steering Committee under the ENJJPT Memorandum of Understanding. Pursuant to the ENJJPT Memorandum of Understanding, the ENJJPT Steering Committee may resolve to forbid any airman or airmen from a Partnership for Peace nation to participate in the Euro-NATO Joint Jet Pilot Training program under the authority of a scholarship under this section.

(2) NO REPRESENTATION.—Countries whose air force personnel receive scholarships under the scholarship program shall not have privilege of ENJJPT Steering Committee representation.

(d) LIMITATION ON ELIGIBLE COUNTRIES.—The Secretary of the Air Force may not use the authority in subsection (a) to provide assistance described in subsection (b) to any foreign country that is otherwise prohibited from receiving such type of assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or any other provision of law.

(e) COST-SHARING.—For purposes of ENJJPT cost-sharing, personnel of an air force of a foreign country who receive a scholarship under the scholarship program may be counted as United States pilots.

(f) PROGRESS REPORT.—Not later than February 1, 2012, the Secretary of the Air Force shall submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on the status of the demonstration program, including the opinion of the Secretary and NATO allies on the benefits of the program and whether or not to permanently authorize the program or extend the program beyond fiscal year 2012. The report shall specify the following:

(1) The countries participating in the scholarship program.

(2) The total number of foreign pilots who received scholarships under the scholarship program.

(3) The amount expended on scholarships under the scholarship program.

(4) The source of funding for scholarships under the scholarship program.

(g) DURATION.—No scholarship may be awarded under the scholarship program after September 30, 2012.

(h) FUNDING SOURCE.—Amounts to award scholarships under the scholarship program shall be derived from amounts authorized to be appropriated for operation and maintenance for the Air Force.

SEC. 1207. MODIFICATION AND EXTENSION OF AUTHORITIES RELATING TO PROGRAM TO BUILD THE CAPACITY OF FOREIGN MILITARY FORCES.

(a) TEMPORARY LIMITATION ON AMOUNT FOR BUILDING CAPACITY TO PARTICIPATE IN OR SUPPORT MILITARY AND STABILITY OPERATIONS.—

(1) IN GENERAL.—Subsection (c)(5) of section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3456), as added by section 1206(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2514), is further amended—

(A) by striking “and not more than” and inserting “not more than”; and

(B) by inserting after “fiscal year 2011” the following: “, and not more than \$100,000,000 may be used during fiscal year 2012”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply with respect to programs under subsection (a) of such section that begin on or after that date.

Applicability.

(b) ONE-YEAR EXTENSION OF AUTHORITY.—Subsection (g) of such section, as most recently amended by section 1206(c) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4625), is further amended by—

(1) by striking “September 30, 2011” and inserting “September 30, 2012”; and

(2) by striking “fiscal years 2006 through 2011” and inserting “fiscal years 2006 through 2012”.

Subtitle B—Matters Relating to Iraq, Afghanistan, and Pakistan

SEC. 1211. LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN PURPOSES RELATING TO IRAQ.

No funds appropriated pursuant to an authorization of appropriations in this Act may be obligated or expended for a purpose as follows:

(1) To establish any military installation or base for the purpose of providing for the permanent stationing of United States Armed Forces in Iraq.

(2) To exercise United States control of the oil resources of Iraq.

SEC. 1212. ONE-YEAR EXTENSION AND MODIFICATION OF COMMANDERS' EMERGENCY RESPONSE PROGRAM.

(a) ONE-YEAR EXTENSION OF CERP AUTHORITY.—Subsection (a) of section 1202 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3455), as most recently amended by section 1222 of the National Defense Authorization

Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2518), is further amended—

(1) in the subsection heading, by striking “FISCAL YEAR 2010” and inserting “FISCAL YEAR 2011”;

(2) by striking “fiscal year 2010” and inserting “fiscal year 2011”; and

(3) by striking “operation and maintenance” and all that follows and inserting “operation and maintenance—

“(1) not to exceed \$100,000,000 may be used by the Secretary of Defense in such fiscal year to provide funds for the Commanders’ Emergency Response Program in Iraq; and

“(2) not to exceed \$400,000,000 may be used by the Secretary of Defense in such fiscal year to provide funds for the Commanders’ Emergency Response Program in Afghanistan.”.

(b) QUARTERLY REPORTS.—Subsection (a) of such section, as so amended, is further amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) FORM OF REPORTS.—Each report required under paragraph (1) shall be submitted, at a minimum, in a searchable electronic format that enables the congressional defense committees to sort the report by amount expended, location of each project, type of project, or any other field of data that is included in the report.”.

(c) RESTRICTION ON AMOUNT OF PAYMENTS; NOTIFICATION.—Such section, as so amended, is further amended—

(1) by redesignating subsection (g) as subsection (i); and

(2) by inserting after subsection (f) the following new subsections:

“(g) RESTRICTION ON AMOUNT OF PAYMENTS.—Funds made available under this section for the Commanders’ Emergency Response Program may not be obligated or expended to carry out any project if the total amount of funds made available for the purpose of carrying out the project, including any ancillary or related elements of the project, exceeds \$20,000,000.

“(h) NOTIFICATION.—Not less than 15 days before obligating or expending funds made available under this section for the Commanders’ Emergency Response Program for a project in Afghanistan with a total anticipated cost of \$5,000,000 or more, the Secretary of Defense shall submit to the congressional defense committees a written notice containing the following information:

“(1) The location, nature, and purpose of the proposed project, including how the project is intended to advance the military campaign plan for Afghanistan.

“(2) The budget and implementation timeline for the proposed project, including any other funding under the Commanders’ Emergency Response Program that has been or is anticipated to be contributed to the completion of the project.

“(3) A plan for the sustainment of the proposed project, including any agreement with either the Government of Afghanistan, a department or agency of the United States Government other than the Department of Defense, or a third party contributor to finance the sustainment of the activities and maintenance of any equipment or facilities to be provided through the proposed project”.

Electronic
submission.

Deadline.

(d) DEFINITION.—Subsection (i) of such section, as redesignated by subsection (c)(1) of this section, is amended by striking “means the program” and all that follows and inserting “means the program that—

“(1) authorizes United States military commanders to carry out small-scale projects designed to meet urgent humanitarian relief requirements or urgent reconstruction requirements within their areas of responsibility; and

“(2) provides an immediate and direct benefit to the people of Iraq or Afghanistan.”.

SEC. 1213. EXTENSION OF AUTHORITY FOR REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) EXTENSION OF AUTHORITY.—Subsection (a) of section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 393), as amended by section 1223 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2519), is further amended by striking “section 1509(5) of the National Defense Authorization Act for Fiscal Year 2010” and inserting “section 1510 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011”.

(b) LIMITATION ON AMOUNT.—Subsection (d)(1) of such section, as so amended, is further amended in the second sentence by inserting “or 2011” after “fiscal year 2010”.

(c) EXCEPTION FROM NOTICE TO CONGRESS REQUIREMENTS.—Subsection (e) of such section, as so amended, is further amended—

(1) by striking “(e) NOTICE TO CONGRESS.—The Secretary of Defense” and inserting the following:

“(e) NOTICE TO CONGRESS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense”; and

(2) by adding at the end the following new paragraph:

“(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.”.

(d) EXTENSION OF NOTICE REQUIREMENT RELATING TO REIMBURSEMENT OF PAKISTAN FOR SUPPORT PROVIDED BY PAKISTAN.—Section 1232(b)(6) of the National Defense Authorization Act for Fiscal Year 2008 (122 Stat. 393), as most recently amended by section 1223 of the National Defense Authorization Act for Fiscal Year 2010, is further amended by striking “September 30, 2011” and inserting “September 30, 2012”.

SEC. 1214. EXTENSION OF AUTHORITY TO TRANSFER DEFENSE ARTICLES AND PROVIDE DEFENSE SERVICES TO THE MILITARY AND SECURITY FORCES OF IRAQ AND AFGHANISTAN.

(a) EXTENSION OF AUTHORITY.—Subsection (h) of section 1234 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2532) is amended by striking “September 30, 2010” and inserting “December 31, 2011”.

(b) QUARTERLY REPORTS.—Subsection (f)(1) of such section is amended by striking “during fiscal year 2010” and inserting “through March 31, 2012”.

SEC. 1215. NO PERMANENT MILITARY BASES IN AFGHANISTAN.

None of the funds authorized to be appropriated by this Act may be obligated or expended by the United States Government to establish any military installation or base for the purpose of providing for the permanent stationing of United States Armed Forces in Afghanistan.

SEC. 1216. AUTHORITY TO USE FUNDS FOR REINTEGRATION ACTIVITIES IN AFGHANISTAN.

(a) **AUTHORITY.**—The Secretary of Defense, with the concurrence of the Secretary of State, may utilize not more than \$50,000,000 from funds made available to the Department of Defense for operation and maintenance for fiscal year 2011 to support the reintegration into Afghan society of those individuals who pledge—

- (1) to cease all support for the insurgency in Afghanistan;
- (2) to live in accordance with the Constitution of Afghanistan;
- (3) to cease violence against the Government of Afghanistan and its international partners; and
- (4) that they do not have material ties to al Qaeda or affiliated transnational terrorist organizations.

Deadlines.

(b) **SUBMISSION OF GUIDANCE.**—

(1) **INITIAL SUBMISSION.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of the guidance issued by the Secretary or the Secretary's designee concerning the allocation of funds utilizing the authority of subsection (a). Such guidance shall include—

(A) mechanisms for coordination with the Government of Afghanistan and other United States Government departments and agencies as appropriate; and

(B) mechanisms to track rates of recidivism among individuals described in subsection (a).

(2) **MODIFICATIONS.**—If the guidance in effect for the purpose stated in paragraph (1) is modified, the Secretary of Defense shall submit to the congressional defense committees a copy of the modification not later than 15 days after the date on which such modification is made.

(c) **REPORTS.**—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of Defense shall submit to the appropriate congressional committees a report on activities carried out utilizing the authority of subsection (a).

(d) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

- (1) the congressional defense committees; and
- (2) the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(e) **EXPIRATION.**—The authority to utilize funds under subsection (a) shall expire at the close of December 31, 2011.

SEC. 1217. AUTHORITY TO ESTABLISH A PROGRAM TO DEVELOP AND CARRY OUT INFRASTRUCTURE PROJECTS IN AFGHANISTAN.22 USC 7513
note.

(a) **AUTHORITY.**—The Secretary of Defense and the Secretary of State are authorized to establish a program to develop and carry out infrastructure projects in Afghanistan in accordance with the requirements of this section.

(b) **FORMULATION AND EXECUTION OF PROGRAM.**—

(1) **IN GENERAL.**—The Secretary of State and the Secretary of Defense shall jointly develop any project under the program authorized under subsection (a). Except as provided in paragraph (2), the Secretary of State, in coordination with the Secretary of Defense, shall implement any project under the program authorized under subsection (a).

(2) **EXCEPTION.**—The Secretary of Defense shall implement a project under the program authorized under subsection (a) if the Secretary of Defense and the Secretary of State jointly determine that the Secretary of Defense should implement the project.

Determination.

(c) **TYPES OF PROJECTS.**—Infrastructure projects under the program authorized under subsection (a) may include—

(1) water, power, and transportation projects; and

(2) other projects in support of the counterinsurgency strategy in Afghanistan.

(d) **AUTHORITY IN ADDITION TO OTHER AUTHORITIES.**—The authority to establish the program and develop and carry out infrastructure projects under subsection (a) is in addition to any other authority to provide assistance to foreign countries.

(e) **APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**—

(1) **IN GENERAL.**—The administrative provisions of chapter 2 of part III of the Foreign Assistance Act of 1961 (22 U.S.C. 2381 et seq.) shall apply to funds made available to the Secretary of State for purposes of carrying out infrastructure projects under the program authorized under subsection (a) to the same extent and in the same manner as such administrative provisions apply to funds made available to carry out part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.).

(2) **GIFTS, ETC.**—The Secretary of Defense and the Secretary of State may accept and use in furtherance of the purposes of this section, money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for such purposes.

(f) **FUNDING.**—

(1) **IN GENERAL.**—The Secretary of Defense may use up to \$400,000,000 of funds made available to the Department of Defense for operation and maintenance for fiscal year 2011 to carry out the program authorized under subsection (a).

(2) **AVAILABILITY.**—Funds made available by paragraph (1) are authorized to remain available until September 30, 2012.

(g) **CONGRESSIONAL NOTIFICATION.**—The Secretary of Defense shall notify the appropriate congressional committees not less than 30 days before obligating or expending funds to carry out a project or transferring funds to the Secretary of State for the purpose of implementing a project under the program authorized under subsection (a). Such notification shall be in writing and contain a description of the details of the proposed project, including—

Deadline.

- (1) a plan for the sustainment of the project; and
- (2) a description of how the project supports the counterinsurgency strategy in Afghanistan.

(h) RETURN OF UNEXPENDED FUNDS.—

Determination.

(1) IN GENERAL.—Any unexpended funds transferred to the Secretary of State for the purpose of implementing a project under the program authorized under subsection (a) shall be returned to the Secretary of Defense if the Secretary of State, in coordination with the Secretary of Defense, determines that the project cannot be implemented for any reason or that the project no longer supports the counterinsurgency strategy in Afghanistan.

(2) AVAILABILITY.—Any funds returned to the Secretary of Defense under this subsection shall be available for use under this section and shall be treated in the same manner as funds not transferred to the Secretary of State.

(i) REPORTS.—

(1) REPORT REQUIRED.—Not later than 30 days after the end of each fiscal year in which funds are obligated, expended, or transferred under the program authorized under subsection (a), the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees a report regarding implementation of the program during such fiscal year.

(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall include the following:

(A) The allocation and use of funds under the program during the fiscal year.

(B) A description of each project for which funds were expended or transferred during the fiscal year.

(j) DEFINITION.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.

SEC. 1218. EXTENSION OF LOGISTICAL SUPPORT FOR COALITION FORCES SUPPORTING OPERATIONS IN IRAQ AND AFGHANISTAN.

Section 1234 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 394) is amended by striking “fiscal year 2008” each place it appears and inserting “fiscal year 2011”.

SEC. 1219. RECOMMENDATIONS ON OVERSIGHT OF CONTRACTORS ENGAGED IN ACTIVITIES RELATING TO AFGHANISTAN.

Deadline.

(a) RECOMMENDATIONS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Special Inspector General for Afghanistan Reconstruction shall, in consultation with the Inspector General of the Department of Defense, the Inspector General of the United States Agency for International Development, and the Inspector General of the Department of State—

(1) issue recommendations on measures to increase oversight of contractors engaged in activities relating to Afghanistan;

(2) report on the status of efforts of the Department of Defense, the United States Agency for International Development, and the Department of State to implement existing recommendations regarding oversight of such contractors; and

(3) report on the extent to which military and security contractors or subcontractors engaged in activities relating to Afghanistan have been responsible for the deaths of Afghan civilians.

(b) ELEMENTS OF RECOMMENDATIONS.—The recommendations issued under subsection (a)(1) shall include recommendations for reducing the reliance of the United States on—

(1) military and security contractors or subcontractors engaged in activities relating to Afghanistan that have been responsible for the deaths of Afghan civilians; and

(2) Afghan militias or other armed groups that are not part of the Afghan National Security Forces.

SEC. 1220. EXTENSION AND MODIFICATION OF PAKISTAN COUNTER-INSURGENCY FUND.

(a) EXTENSION.—Subsection (h) of section 1224 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2521) is amended by striking “September 30, 2010” both places it appears and inserting “September 30, 2011”.

(b) REQUIRED ELEMENTS OF ASSISTANCE.—Subsection (b) of such section is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) REQUIRED ELEMENTS OF ASSISTANCE.—Assistance provided to the security forces of Pakistan under this section in a fiscal year after fiscal year 2010 shall be provided in a manner that promotes—

“(A) observance of and respect for human rights and fundamental freedoms; and

“(B) respect for legitimate civilian authority within Pakistan.”.

Subtitle C—Reports and Other Matters

SEC. 1231. ONE-YEAR EXTENSION OF REPORT ON PROGRESS TOWARD SECURITY AND STABILITY IN AFGHANISTAN.

Section 1230(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 385), as amended by section 1236 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–81; 123 Stat. 2535), is further amended by striking “2011” and inserting “2012”.

SEC. 1232. TWO-YEAR EXTENSION OF UNITED STATES PLAN FOR SUSTAINING THE AFGHANISTAN NATIONAL SECURITY FORCES.

Section 1231(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 390) is amended by striking “2010” and inserting “2012”.

SEC. 1233. MODIFICATION OF REPORT ON RESPONSIBLE REDEPLOYMENT OF UNITED STATES ARMED FORCES FROM IRAQ.

(a) **REPORT REQUIRED.**—Subsection (a) of section 1227 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2525; 50 U.S.C. 1541 note) is amended—

(1) by striking “December 31, 2009” and inserting “December 31, 2010”; and

(2) by striking “90 days thereafter” and inserting “180 days thereafter”.

(b) **ELEMENTS.**—Subsection (b) of such section is amended—

(1) in paragraph (5), by striking “Multi-National Force-Iraq” each place it occurs and inserting “United States Forces-Iraq”; and

(2) by adding at the end the following:

“(6) An assessment of progress to transfer responsibility of programs, projects, and activities carried out in Iraq by the Department of Defense to other United States Government departments and agencies, international or nongovernmental entities, or the Government of Iraq. The assessment should include a description of the numbers and categories of programs, projects, and activities for which such other entities have taken responsibility or which have been discontinued by the Department of Defense. The assessment should also include a discussion of any difficulties or barriers in transitioning such programs, projects, and activities and what, if any, solutions have been developed to address such difficulties or barriers.

“(7) An assessment of progress toward the goal of building the minimum essential capabilities of the Ministry of Defense and the Ministry of the Interior of Iraq, including a description of—

“(A) such capabilities both extant and remaining to be developed;

“(B) major equipment necessary to achieve such capabilities;

“(C) the level and type of support provided by the United States to address shortfalls in such capabilities; and

“(D) the level of commitment, both financial and political, made by the Government of Iraq to develop such capabilities, including a discussion of resources used by the Government of Iraq to develop capabilities that the Secretary determines are not minimum essential capabilities for purposes of this paragraph.

“(8) A listing and assessment of the anticipated level and type of support to be provided by United States special operations forces to the Government of Iraq and Iraqi special operations forces during the redeployment of United States conventional forces from Iraq. The assessment should include a listing of anticipated critical support from general purpose forces required by United States special operations forces and Iraqi special operations forces. The assessment should also include combat support, including rotary aircraft and intelligence, surveillance, and reconnaissance assets, combat service support, and contractor support needed through December 31, 2011.”.

(c) **SECRETARY OF STATE COMMENTS.**—Such section is further amended by striking subsection (c) and inserting the following:

“(c) SECRETARY OF STATE COMMENTS.—Prior to submitting the report required under subsection (a), the Secretary of Defense shall provide a copy of the report to the Secretary of State for review. At the request of the Secretary of State, the Secretary of Defense shall include an appendix to the report which contains any comments or additional information that the Secretary of State requests.”.

(d) FORM.—Subsection (d) of such section is amended by striking “, whether or not included in another report on Iraq submitted to Congress by the Secretary of Defense,”.

(e) TERMINATION.—Such section is further amended by adding at the end the following:

“(f) TERMINATION.—The requirement to submit the report required under subsection (a) shall terminate on September 30, 2012.”.

(f) REPEAL OF OTHER REPORTING REQUIREMENTS.—The following provisions of law are hereby repealed:

(1) Section 1227 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3465; 50 U.S.C. 1541 note) (as amended by section 1223 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 373)).

(2) Section 1225 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 375).

10 USC 113 note.

SEC. 1234. REPORT ON DEPARTMENT OF DEFENSE SUPPORT FOR COALITION OPERATIONS.

(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of the coalition support authorities of the Department of Defense during Operation Iraqi Freedom and Operation Enduring Freedom.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of the purpose and use of each coalition support authority of the Department of Defense.

(2) For the period of Operation Enduring Freedom ending on September 30, 2010, a summary of the amount of training, equipment, services, or other assistance provided or loaned under any coalition support authority of the Department of Defense set forth, for each such authority, by amount provided or loaned during each fiscal year of such period for each recipient country.

(3) For the period of Operation Iraqi Freedom ending on September 30, 2010, a summary of the amount of training, equipment, services, or other assistance provided or loaned under any coalition support authority of the Department of Defense set forth, for each such authority, by amount provided or loaned during each fiscal year of such period for each recipient country.

(4) An assessment of the effectiveness of each coalition support authority of the Department of Defense in meeting its intended purpose.

(5) For each recipient country of coalition support under a coalition support authority of the Department of Defense—

(A) a description of the contribution of such country to coalition operations in Operation Enduring Freedom or Operating Iraqi Freedom; and

(B) an assessment of the extent to which coalition support provided by the United States enhanced the ability of such country to participate in coalition operations in Operation Enduring Freedom or Operating Iraqi Freedom.

(6) A description of the actions taken by the Department of Defense to eliminate duplication and overlap in coalition support provided under the coalition support authorities of the Department of Defense.

(7) An assessment by the Secretary of Defense whether there is an ongoing need for each coalition support authority of the Department of Defense, and an estimate of the anticipated future demand for coalition support under such coalition support authorities.

(c) **COALITION SUPPORT AUTHORITIES OF THE DEPARTMENT OF DEFENSE DEFINED.**—In this section, the term “coalition support authorities of the Department of Defense” means the following:

(1) Coalition Support Funds, including the authority to provide specialized training and loan specialized equipment under the Coalition Support Fund (commonly referred to as the “Coalition Readiness Support Program”).

(2) Lift and sustain authority under appropriations Acts or under section 1234 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 394).

(3) Global lift and sustain authority under section 127c of title 10, United States Code.

(4) The authority to provide logistic support, supplies, and services to allied forces participating in combined operations under section 127d of title 10, United States Code.

(5) The temporary authority to lend significant military equipment under acquisition and cross-servicing agreements pursuant to section 1202 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

(6) The authority under section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) to provide assistance to build the capacity of foreign nations to support military or stability operations in which the United States Armed Forces are a participant.

(7) Any other authority that the Secretary of Defense designates as a coalition support authority of the Department of Defense for purposes of the report required by subsection (a).

SEC. 1235. REPORTS ON POLICE TRAINING PROGRAMS.

(a) **DoD INSPECTOR GENERAL REPORT ON AFGHAN NATIONAL POLICE TRAINING PROGRAM.**—

(1) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Defense shall, in consultation with the Inspector General of the Department of State, submit to the appropriate committees of Congress a report on the Afghan National Police training program.

(2) **REVIEW.**—In preparing the report required by paragraph (1), the Inspector General of the Department of Defense shall

conduct a review of the Afghan National Police training program that focuses on developments since the Inspector General of the Department of Defense and the Inspector General of the Department of State released the report entitled “Department of Defense Obligations and Expenditures of Funds Provided to the Department of State for the Training and Mentoring of the Afghan National Police” (DODIG Report No. D-2010-042, DOSIG Report No. MERO-A-10-06, February 9, 2010).

(3) ELEMENTS OF REPORT.—The report required by paragraph (1) shall include the following:

(A) A description of the components, planning, and scope of the Afghan National Police training program since the United States assumed control of the program in 2003.

(B) A description of the cost to the United States of the Afghan National Police training program, including the source and amount of funding, and a description of the allocation of responsibility between the Department of Defense and the Department of State for funding the program.

(C) A description of the allocation of responsibility between the Department of Defense and the Department of State for the oversight and execution of the program.

(D) A description of the personnel and staffing requirements for overseeing and executing the program, both in the United States and in theater, including United States civilian government and military personnel, contractor personnel, and nongovernmental personnel, and non-United States civilian and military personnel, contractor personnel, and nongovernmental personnel.

(E) An assessment of the cost, performance metrics, and planning associated with the transfer of administration of the contract for the Afghan National Police training program from the Department of State to the Department of Defense.

(b) GAO REPORT ON USE OF GOVERNMENT PERSONNEL RATHER THAN CONTRACTORS FOR TRAINING AFGHAN NATIONAL POLICE.—

(1) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the use of United States Government personnel rather than contractors for the training of the Afghan National Police.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

(A) A description of the roles and responsibilities of contractors and United States Government personnel in the Afghan National Police training program and a description of how the division of roles and responsibilities between such contractors and personnel has been determined.

(B) An assessment of the relative advantages and disadvantages of using contractors or United States Government personnel in the Afghan National Police training program, including an assessment of—

(i) the shortfalls and inefficiencies, if any, in contractor performance in the program; and

(ii) options for leveraging United States Government resources and capacity to address the shortfalls and inefficiencies described in clause (i) and to better address current and future needs under the program.

(C) An assessment of the factors, such as oversight, cost considerations, performance, policy, and other factors, that would be impacted by transferring responsibilities for the performance of the Afghan National Police training program from contractors to United States Government personnel.

(D) A review of the lessons learned from the execution and oversight of the police training program in Iraq, and any other relevant police training programs led by the Department of Defense, regarding the relative advantages and disadvantages of using United States Government personnel or contractors to carry out police training programs for foreign nations.

(c) REPORT ON GOVERNMENT POLICE TRAINING AND EQUIPPING PROGRAMS.—

President.

(1) REPORT.—Not later than 1 year after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report on United States Government police training and equipping programs outside the United States.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

(A) A list of all United States Government departments and agencies involved in implementing police training and equipping programs.

(B) A description of the scope, size, and components of all police training and equipping programs for fiscal years 2010 and 2011, to include for each such program—

(i) the name of each country that received assistance under the program;

(ii) the types of recipient nation units receiving such assistance, including national police, gendarmerie, counternarcotics police, counterterrorism police, Formed Police Units, border security, and customs;

(iii) the purpose and objectives of the program;

(iv) the funding and personnel levels for the program in each such fiscal year;

(v) the authority under which the program is conducted;

(vi) the name of the United States Government department or agency with lead responsibility for the program and the mechanisms for oversight of the program;

(vii) the extent to which the program is implemented by contractors or United States Government personnel; and

(viii) the metrics for measuring the results of the program.

(C) An assessment of the requirements for police training and equipping programs, and what changes, if any, are required to improve the capacity of the United States Government to meet such requirements.

(D) An evaluation of the appropriate role of United States Government departments and agencies in coordinating on and carrying out police training and equipping programs.

(E) An evaluation of the appropriate role of contractors in carrying out police training and equipping programs, and what modifications, if any, are needed to improve oversight of such contractors.

(F) Recommendations for legislative modifications, if any, to existing authorities relating to police training and equipping programs.

(d) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Committees on Armed Services, Foreign Relations, Homeland Security and Governmental Affairs, and Appropriations of the Senate; and

(2) the Committees on Armed Services, Foreign Affairs, Oversight and Government Reform, and Appropriations of the House of Representatives.

SEC. 1236. REPORT ON CERTAIN IRAQIS AFFILIATED WITH THE UNITED STATES.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Administrator of the United States Agency for International Development, and the heads of other appropriate Federal agencies (as determined by the Secretary of Defense), shall submit to the Congress a report containing the information described in subsection (b). In preparing such report, the Secretary of Defense shall use available information from organizations and entities closely associated with the United States mission in Iraq that have received United States Government funding through an official and documented contract, award, grant, or cooperative agreement.

(b) **INFORMATION.**—The information described in this subsection is the following:

(1) The number of Iraqis who were or are employed by the United States Government in Iraq or who are or were employed in Iraq by an organization or entity closely associated with the United States mission in Iraq that has received United States Government funding through an official and documented contract, award, grant, or cooperative agreement.

(2) The number of Iraqis who have applied—

(A) for resettlement in the United States as a refugee under section 1243 of the Refugee Crisis in Iraq Act of 2007 (subtitle C of title XII of division A of Public Law 110-181; 122 Stat. 395 et seq.);

(B) to enter the United States as a special immigrant under section 1244 of such Act; or

(C) to enter the United States as a special immigrant under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 8 U.S.C. 1101 note).

(3) The status of each application described in paragraph (2).

Plan. (4) The estimated number of individuals described in paragraph (1) who have been injured or killed in Iraq.

(c) EXPEDITED PROCESSING.—The Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security shall develop a plan using the report submitted under subsection (a) to expedite the processing of the applications described in subsection (b)(2) in the case of Iraqis at risk as the United States withdraws from Iraq.

SEC. 1237. REPORT ON DEPARTMENT OF DEFENSE'S PLANS TO REFORM THE EXPORT CONTROL SYSTEM.

(a) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the Department of Defense's plans to implement the reforms to the United States export control system recommended by the interagency task force established at the direction of the President on August 13, 2009.

(b) MATTERS TO BE INCLUDED.—The report required under subsection (a) shall include an assessment of the extent to which the plans to reform the export control system will—

(1) impact the Defense Technology Security Administration of the Department of Defense;

(2) affect the role of the Department of Defense with respect to export control policy; and

(3) ensure greater protection and monitoring of militarily critical technologies.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate.

SEC. 1238. REPORT ON UNITED STATES EFFORTS TO DEFEND AGAINST THREATS POSED BY THE ANTI-ACCESS AND AREA-DENIAL CAPABILITIES OF CERTAIN NATION-STATES.

(a) FINDING.—Congress finds that the 2010 report on the Department of Defense Quadrennial Defense Review concludes that “[a]nti-access strategies seek to deny outside countries the ability to project power into a region, thereby allowing aggression or other destabilizing actions to be conducted by the anti-access power. Without dominant capabilities to project power, the integrity of United States alliances and security partnerships could be called into question, reducing United States security and influence and increasing the possibility of conflict”.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, in light of the finding in subsection (a), the Secretary of Defense should ensure that the United States has the appropriate authorities, capabilities, and force structure to defend against any potential future threats posed by the anti-access and area-denial capabilities of potentially hostile foreign countries.

(c) REPORT.—Not later than April 1, 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on United States efforts to defend against any potential future threats posed

by the anti-access and area-denial capabilities of potentially hostile nation-states.

(d) ELEMENTS.—The report required under subsection (c) shall include the following:

(1) An assessment of any potential future threats posed by the anti-access and area-denial capabilities of potentially hostile foreign countries, including an identification of the foreign countries with such capabilities, the nature of such capabilities, and the possible advances in such capabilities over the next 10 years.

(2) A description of any efforts by the Department of Defense to address the potential future threats posed by the anti-access and area-denial capabilities of potentially hostile foreign countries.

(3) A description of the authorities, capabilities, and force structure that the United States may require over the next 10 years to address the threats posed by the anti-access and area-denial capabilities of potentially hostile foreign countries.

(e) FORM.—The report required under subsection (c) shall be submitted in unclassified form, but may contain a classified annex if necessary.

(f) DEFINITIONS.—In this section—

(1) the term “anti-access”, with respect to capabilities, means any action that has the effect of slowing the deployment of friendly forces into a theater, preventing such forces from operating from certain locations within that theater, or causing such forces to operate from distances farther from the locus of conflict than such forces would normally prefer; and

(2) the term “area-denial”, with respect to capabilities, means operations aimed to prevent freedom of action of friendly forces in the more narrow confines of the area under a potentially hostile nation-state’s direct control, including actions by an adversary in the air, on land, and on and under the sea to contest and prevent joint operations within a defended battlespace.

SEC. 1239. DEFENSE SCIENCE BOARD REPORT ON DEPARTMENT OF DEFENSE STRATEGY TO COUNTER VIOLENT EXTREMISM OUTSIDE THE UNITED STATES.

(a) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act, the Defense Science Board shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the strategy of the Department of Defense to counter violent extremism outside the United States.

(b) ELEMENTS.—The report required by subsection (a) shall include, at a minimum, the following:

(1) A review of the current strategy, research activities, resource allocations, and organizational structure of the Department of Defense for countering violent extremism outside the United States.

(2) A review of interagency coordination and decision-making processes for executing and overseeing strategies and programs for countering violent extremism outside the United States.

(3) An analysis of alternatives and options available to the Department of Defense to counter violent extremism outside the United States.

(4) An analysis of legal, policy, and strategy issues involving efforts to counter violent extremism outside the United States as such efforts potentially affect domestic efforts to interrupt radicalization efforts within the United States.

(5) An analysis of the current information campaign of the Department of Defense against violent extremists outside the United States.

(6) Such recommendations for further action to address the matters covered by the report as the Defense Science Board considers appropriate.

(7) Such other matters as the Defense Science Board determines relevant.

SEC. 1240. REPORT ON MERITS OF AN INCIDENTS AT SEA AGREEMENT BETWEEN THE UNITED STATES, IRAN, AND CERTAIN OTHER COUNTRIES.

(a) **REPORT REQUIRED.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees a report assessing the relative merits of a multilateral or bilateral Incidents at Sea military-to-military agreement between the United States, the Government of Iran, and other countries operating in the Persian Gulf aimed at preventing accidental naval conflict in the Persian Gulf and the Strait of Hormuz.

(b) **MATTERS TO BE INCLUDED.**—Such assessment should consider and evaluate the current maritime security situation in the Persian Gulf and the effect that such an agreement might have on military and other maritime activities in the region, as well as other United States regional strategic interests.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

(2) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

SEC. 1241. REQUIREMENT TO MONITOR AND EVALUATE DEPARTMENT OF DEFENSE ACTIVITIES TO COUNTER VIOLENT EXTREMISM IN AFRICA.

(a) **IN GENERAL.**—The Secretary of Defense, in consultation with the Secretary of State, shall monitor and evaluate the impact of United States Africa Command (USAFRICOM) Combined Joint Task Force-Horn of Africa’s (CJTF-HOA) activities to counter violent extremism in Africa, including civil affairs, psychological operations, humanitarian assistance, and operations to strengthen the capacity of partner nations.

(b) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the following:

(1) An evaluation of the impact of CJTF-HOA’s activities described in subsection (a) to advance United States security objectives in the Horn of Africa, including the extent to which CJTF-HOA’s activities—

- (A) disrupt or deny terrorist networks;
- (B) combat violent extremist ideology;
- (C) are aligned with USAFRICOM's mission; and
- (D) complement programs conducted by the United States Agency for International Development.

(2) USAFRICOM's efforts to monitor and evaluate the impact of CJTF–HOA's activities described in subsection (a), including—

(A) the means by which CJTF–HOA follows up on such activities to evaluate the effectiveness of such activities;

(B) USAFRICOM's specific assessments of CJTF–HOA's activities; and

(C) a description of plans by the Secretary of Defense to make permanent CJTF–HOA's presence in Djibouti.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

(2) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

SEC. 1242. NATO SPECIAL OPERATIONS HEADQUARTERS.

(a) IN GENERAL.—Section 1244 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2541) is amended—

(1) in subsection (a)—

(A) by striking “fiscal year 2010” and inserting “fiscal year 2011”;

(B) by striking “pursuant to section 301(1)”; and

(C) by striking “\$30,000,000” and inserting “\$50,000,000”;

(2) in subsection (b)—

(A) by striking “NATO Special Operations Coordination Center” and inserting “NATO Special Operations Headquarters”; and

(B) by striking “NSCC” and inserting “NSHQ”; and

(3) in subsection (c), by striking “NSCC” each place it appears and inserting “NSHQ”.

(b) CONFORMING AMENDMENT.—The heading of such section is amended by striking “NATO SPECIAL OPERATIONS COORDINATION CENTER” and inserting “NATO SPECIAL OPERATIONS HEADQUARTERS”.

SEC. 1243. NATIONAL MILITARY STRATEGY TO COUNTER IRAN AND REQUIRED BRIEFINGS.

(a) NATIONAL MILITARY STRATEGY REQUIRED.—The Secretary of Defense shall develop a strategy, to be known as the “National Military Strategy to Counter Iran”. The strategy should—

(1) provide strategic guidance for activities of the Department of Defense that support the objective of countering threats posed by Iran;

(2) undertake a review of the intelligence in the possession of the Department of Defense to develop a list of gaps in intelligence that limit the ability of the Department of Defense to counter threats emanating from Iran that the Secretary considers to be critical;

(3) undertake a review of the ability of the Department of Defense to counter threats to the United States, its forces, allies, and interests from Iran, including—

(A) contributions of the Department of Defense to the efforts of other agencies of the United States Government to counter or address the threat emanating from Iran; and

(B) any gaps in the capabilities and authorities of the Department.

Deadline.

(b) BRIEFINGS TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall brief the congressional defense committees in classified session regarding any resources, capabilities, or changes to current law the Secretary believes are necessary to address the gaps identified in the strategy required in subsection (a).

TITLE XIII—COOPERATIVE THREAT REDUCTION

Sec. 1301. Specification of Cooperative Threat Reduction programs and funds.

Sec. 1302. Funding allocations.

Sec. 1303. Limitation on use of funds for establishment of centers of excellence in countries outside of the former Soviet Union.

Sec. 1304. Plan for nonproliferation, proliferation prevention, and threat reduction activities with the People's Republic of China.

SEC. 1301. SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501 of the National Defense Authorization Act for Fiscal Year 1997 (50 U.S.C. 2362 note).

(b) FISCAL YEAR 2011 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term “fiscal year 2011 Cooperative Threat Reduction funds” means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for fiscal years 2011, 2012, and 2013.

SEC. 1302. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the \$522,512,000 authorized to be appropriated to the Department of Defense for fiscal year 2011 in section 301(20) for Cooperative Threat Reduction programs, the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, \$66,732,000.

(2) For strategic nuclear arms elimination in Ukraine, \$6,800,000.

(3) For nuclear weapons storage security in Russia, \$9,614,000.

(4) For nuclear weapons transportation security in Russia, \$45,000,000.

(5) For weapons of mass destruction proliferation prevention in the states of the former Soviet Union, \$79,821,000.

(6) For biological threat reduction in the former Soviet Union, \$209,034,000.

(7) For chemical weapons destruction, \$3,000,000.

(8) For defense and military contacts, \$5,000,000.

(9) For Global Nuclear Lockdown, \$74,471,000.

(10) For activities designated as Other Assessments/Administrative Costs, \$23,040,000.

(b) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2011 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (10) of subsection (a) until 15 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2011 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title or any other provision of law.

(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—

(1) IN GENERAL.—Subject to paragraph (2), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2011 for a purpose listed in paragraphs (1) through (10) of subsection (a) in excess of the specific amount authorized for that purpose.

(2) NOTICE-AND-WAIT REQUIRED.—An obligation of funds for a purpose stated in paragraphs (1) through (10) of subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

SEC. 1303. LIMITATION ON USE OF FUNDS FOR ESTABLISHMENT OF CENTERS OF EXCELLENCE IN COUNTRIES OUTSIDE OF THE FORMER SOVIET UNION.

Not more than \$500,000 of the fiscal year 2011 Cooperative Threat Reduction funds may be obligated or expended to establish a center of excellence in a country that is not a state of the former Soviet Union until the date that is 15 days after the date on which the Secretary of Defense submits to the congressional defense committees a report that includes the following:

(1) An identification of the country in which the center will be located.

(2) A description of the purpose for which the center will be established.

(3) The agreement under which the center will operate.

(4) A funding plan for the center, including—

(A) the amount of funds to be provided by the government of the country in which the center will be located; and

Time period.
Reports.

(B) the percentage of the total cost of establishing and operating the center the funds described in subparagraph (A) will cover.

SEC. 1304. PLAN FOR NONPROLIFERATION, PROLIFERATION PREVENTION, AND THREAT REDUCTION ACTIVITIES WITH THE PEOPLE'S REPUBLIC OF CHINA.

Deadline.

(a) **IN GENERAL.**—Not later than April 1, 2011, the Secretary of Defense and the Secretary of Energy shall jointly submit to the congressional defense committees a plan to carry out activities of the Department of Defense Cooperative Threat Reduction Program and the Department of Energy Defense Nuclear Nonproliferation program relating to nonproliferation, proliferation prevention, and threat reduction with the Government of the People's Republic of China during fiscal years 2011 through 2016.

(b) **ELEMENTS.**—The plan required by subsection (a) shall include the following:

- (1) A description of the activities to be carried out under the plan.
- (2) A description of milestones and goals for such activities.
- (3) An estimate of the annual cost of such activities.
- (4) An estimate of the amount of the total cost of such activities to be provided by the Government of the People's Republic of China.

TITLE XIV—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

- Sec. 1401. Working capital funds.
- Sec. 1402. Study on working capital fund cash balances.
- Sec. 1403. Modification of certain working capital fund requirements.
- Sec. 1404. Reduction of unobligated balances within the Pentagon Reservation Maintenance Revolving Fund.
- Sec. 1405. National Defense Sealift Fund.
- Sec. 1406. Chemical Agents and Munitions Destruction, Defense.
- Sec. 1407. Drug Interdiction and Counter-Drug Activities, Defense-wide.
- Sec. 1408. Defense Inspector General.
- Sec. 1409. Defense Health Program.

Subtitle B—National Defense Stockpile

- Sec. 1411. Authorized uses of National Defense Stockpile funds.
- Sec. 1412. Revision to required receipt objectives for previously authorized disposals from the National Defense Stockpile.

Subtitle C—Chemical Demilitarization Matters

- Sec. 1421. Consolidation and reorganization of statutory authority for destruction of United States stockpile of lethal chemical agents and munitions.

Subtitle D—Other Matters

- Sec. 1431. Authorization of appropriations for Armed Forces Retirement Home.
- Sec. 1432. Authority for transfer of funds to Joint Department of Defense—Department of Veterans Affairs Medical Facility Demonstration Fund for Captain James A. Lovell Health Care Center, Illinois.

Subtitle A—Military Programs

SEC. 1401. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

- (1) For the Defense Working Capital Funds, \$160,965,000.
- (2) For the Defense Working Capital Fund, Defense Commissary, \$1,273,571,000.

SEC. 1402. STUDY ON WORKING CAPITAL FUND CASH BALANCES.

(a) **STUDY REQUIRED.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into a contract with a federally funded research and development center with appropriate expertise in revolving fund financial management to carry out a study to determine a sufficient operational level of cash that each revolving fund of the Department of Defense should maintain in order to sustain a single rate or price throughout the fiscal year. Contracts.

(b) **CONTENTS OF STUDY.**—In carrying out a study pursuant to a contract entered into under subsection (a), the federally funded research and development center shall—

(1) qualitatively analyze the operational requirements and inherent risks associated with maintaining a specific level of cash within each revolving fund of the Department;

(2) for each such revolving fund, take into consideration any effects on appropriation accounts that have occurred due to changes made in the rates charged by the fund during a fiscal year;

(3) take into consideration direct input from the Secretary of Defense and officials of each of the military departments with leadership responsibility for financial management;

(4) examine the guidance provided and regulations prescribed by the Secretary of Defense and the Secretary of each of the military departments, as in effect on the date of the enactment of this Act, including such guidance with respect to programming and budgeting and the annual budget displays provided to Congress;

(5) examine the effects on appropriations accounts that have occurred due to congressional adjustments relating to excess cash balances in revolving funds;

(6) identify best business practices from the private sector relating to sufficient cash balance reserves;

(7) examine any relevant applicable laws, including the relevant body of work performed by the Government Accountability Office; and

(8) address—

(A) instances where the fiscal policy of the Department of Defense directly follows the law, as in effect on the date of the enactment of this Act, and instances where such policy is more restrictive with respect to the fiscal management of revolving funds than such law requires;

(B) instances where current Department fiscal policy restricts the capability of a revolving fund to achieve the most economical and efficient organization and operation of activities;

(C) fiscal policy adjustments required to comply with recommendations provided in the study, including proposed adjustments to—

(i) the Department of Defense Financial Management Regulation;

(ii) published service regulations and instructions; and

(iii) major command fiscal guidance; and

(D) such other matters as determined relevant by the center carrying out the study.

(c) **AVAILABILITY OF INFORMATION.**—The Secretary of Defense and the Secretary of each of the military departments shall make available to a federally funded research and development center carrying out a study pursuant to a contract entered into under subsection (a) all necessary and relevant information to allow the center to conduct the study in a quantitative and analytical manner.

(d) **REPORT.**—Any contract entered into under subsection (a) shall provide that not later than 9 months after the date on which the Secretary of Defense enters into the contract, the chief executive officer of the entity that carries out the study pursuant to the contract shall submit to the Committees on Armed Services of the Senate and House of Representatives and the Secretary of Defense a final report on the study. The report shall include each of the following:

(1) A description of the revolving fund environment, as of the date of the conclusion of the study, and the anticipated future environment, together with the quantitative data used in conducting the assessment of such environments under the study.

(2) Recommended fiscal policy adjustments to support the initiatives identified in the study, including adjustments to—

(A) the Department of Defense Financial Management Regulation;

(B) published service regulations and instructions; and

(C) major command fiscal guidance.

(3) Recommendations with respect to any changes to any applicable law that would be appropriate to support the initiatives identified in the study.

(e) **SUBMITTAL OF COMMENTS.**—Not later than 90 days after the date of the submittal of the report under subsection (d), the Secretary of Defense and the Secretaries of each of the military departments shall submit to the Committees on Armed Services of the Senate and House of Representatives comments on the findings and recommendations contained in the report.

SEC. 1403. MODIFICATION OF CERTAIN WORKING CAPITAL FUND REQUIREMENTS.

Section 2208 of title 10, United States Code, is amended—

(1) in subsection (c)(1), by inserting before the semicolon the following: “, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment”; and

(2) in subsection (k)(2), by striking “\$100,000” and inserting “\$250,000”.

SEC. 1404. REDUCTION OF UNOBLIGATED BALANCES WITHIN THE PENTAGON RESERVATION MAINTENANCE REVOLVING FUND.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall transfer \$53,000,000 from the unobligated balances of the Pentagon Reservation Maintenance Revolving Fund established under section 2674(e) of title 10, United

Recommendations.

Deadline.

Deadline.

States Code, to the Miscellaneous Receipts Fund of the United States Treasury.

SEC. 1405. NATIONAL DEFENSE SEALIFT FUND.

Funds are hereby authorized to be appropriated for the fiscal year 2011 for the National Defense Sealift Fund in the amount of \$934,866,000.

SEC. 1406. CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for Chemical Agents and Munitions Destruction, Defense, in the amount of \$1,467,307,000, of which—

(1) \$1,067,364,000 is for Operation and Maintenance;

(2) \$392,811,000 is for Research, Development, Test, and Evaluation; and

(3) \$7,132,000 is for Procurement.

(b) **USE.**—Amounts authorized to be appropriated under subsection (a) are authorized for—

(1) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), as amended by section 1421 of this Act; and

(2) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

SEC. 1407. DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE-WIDE.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-wide, in the amount of \$1,160,851,000.

SEC. 1408. DEFENSE INSPECTOR GENERAL.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense, in the amount of \$317,154,000.

SEC. 1409. DEFENSE HEALTH PROGRAM.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for the Defense Health Program, in the amount of \$30,959,611,000.

Subtitle B—National Defense Stockpile

SEC. 1411. AUTHORIZED USES OF NATIONAL DEFENSE STOCKPILE FUNDS.

(a) **OBLIGATION OF STOCKPILE FUNDS.**—During fiscal year 2011, the National Defense Stockpile Manager may obligate up to \$41,181,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h)

for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

Notification. (b) **ADDITIONAL OBLIGATIONS.**—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

Time period. (c) **LIMITATIONS.**—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

50 USC 98d note. **SEC. 1412. REVISION TO REQUIRED RECEIPT OBJECTIVES FOR PREVIOUSLY AUTHORIZED DISPOSALS FROM THE NATIONAL DEFENSE STOCKPILE.**

Section 3402(b)(5) of the National Defense Authorization Act for Fiscal Year 2000 (50 U.S.C. 98d note), as most recently amended by section 1412(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 418), is amended by striking “\$710,000,000” and inserting “\$730,000,000”.

Subtitle C—Chemical Demilitarization Matters

SEC. 1421. CONSOLIDATION AND REORGANIZATION OF STATUTORY AUTHORITY FOR DESTRUCTION OF UNITED STATES STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) **RESTATEMENT OF STATUTORY AUTHORITY WITH CONSOLIDATION AND REORGANIZATION.**—Section 1412 of the National Defense Authorization Act, 1986 (50 U.S.C. 1521) is amended to read as follows:

“SEC. 1412. DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

“(a) **IN GENERAL.**—The Secretary of Defense shall, in accordance with the provisions of this section, carry out the destruction of the United States’ stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

“(b) **DATE FOR COMPLETION.**—(1) The destruction of such stockpile shall be completed by the stockpile elimination deadline.

“(2) If the Secretary of Defense determines at any time that there will be a delay in meeting the requirement in paragraph (1) for the completion of the destruction of chemical weapons by the stockpile elimination deadline, the Secretary shall immediately notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that projected delay.

Definition. “(3) For purposes of this section, the term ‘stockpile elimination deadline’ means the deadline established by the Chemical Weapons Convention, but not later than December 31, 2017.

“(c) **INITIATION OF DEMILITARIZATION OPERATIONS.**—The Secretary of Defense may not initiate destruction of the chemical

munitions stockpile stored at a site until the following support measures are in place:

“(1) Support measures that are required by Department of Defense and Army chemical surety and security program regulations.

“(2) Support measures that are required by the general and site chemical munitions demilitarization plans specific to that installation.

“(3) Support measures that are required by the permits required by the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.) for chemical munitions demilitarization operations at that installation, as approved by the appropriate State regulatory agencies.

“(d) ENVIRONMENTAL PROTECTION AND USE OF FACILITIES.—

(1) In carrying out the requirement of subsection (a), the Secretary of Defense shall provide for—

“(A) maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions referred to in subsection (a), including but not limited to the use of technologies and procedures that will minimize risk to the public at each site; and

“(B) adequate and safe facilities designed solely for the destruction of lethal chemical agents and munitions.

“(2) Facilities constructed to carry out this section shall, when no longer needed for the purposes for which they were constructed, be disposed of in accordance with applicable laws and regulations and mutual agreements between the Secretary of the Army and the Governor of the State in which the facility is located.

“(3)(A) Facilities constructed to carry out this section may not be used for a purpose other than the destruction of the stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

“(B) The prohibition in subparagraph (A) shall not apply with respect to items designated by the Secretary of Defense as lethal chemical agents, munitions, or related materials after November 8, 1985, if the State in which a destruction facility is located issues the appropriate permit or permits for the destruction of such items at the facility.

“(e) GRANTS AND COOPERATIVE AGREEMENTS.—(1)(A) In order to carry out subsection (d)(1)(A), the Secretary of Defense may make grants to State and local governments and to tribal organizations (either directly or through the Federal Emergency Management Agency) to assist those governments and tribal organizations in carrying out functions relating to emergency preparedness and response in connection with the disposal of the lethal chemical agents and munitions referred to in subsection (a). Funds available to the Department of Defense for the purpose of carrying out this section may be used for such grants.

“(B) Additionally, the Secretary may provide funds through cooperative agreements with State and local governments, and with tribal organizations, for the purpose of assisting them in processing, approving, and overseeing permits and licenses necessary for the construction and operation of facilities to carry out this section. The Secretary shall ensure that funds provided through such a cooperative agreement are used only for the purpose set forth in the preceding sentence.

“(C) In this paragraph, the term ‘tribal organization’ has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

“(2)(A) In coordination with the Secretary of the Army and in accordance with agreements between the Secretary of the Army and the Administrator of the Federal Emergency Management Agency, the Administrator shall carry out a program to provide assistance to State and local governments in developing capabilities to respond to emergencies involving risks to the public health or safety within their jurisdictions that are identified by the Secretary as being risks resulting from—

“(i) the storage of lethal chemical agents and munitions referred to in subsection (a) at military installations in the continental United States; or

“(ii) the destruction of such agents and munitions at facilities referred to in subsection (d)(1)(B).

Deadlines.

“(B) Assistance may be provided under this paragraph for capabilities to respond to emergencies involving an installation or facility as described in subparagraph (A) until the earlier of the following:

“(i) The date of the completion of all grants and cooperative agreements with respect to the installation or facility for purposes of this paragraph between the Federal Emergency Management Agency and the State and local governments concerned.

“(ii) The date that is 180 days after the date of the completion of the destruction of lethal chemical agents and munitions at the installation or facility.

Deadlines.
Reports.

“(C) Not later than December 15 of each year, the Administrator shall transmit a report to Congress on the activities carried out under this paragraph during the fiscal year preceding the fiscal year in which the report is submitted.

“(f) REQUIREMENT FOR STRATEGIC PLAN.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of the Army shall jointly prepare, and from time to time shall update as appropriate, a strategic plan for future activities for destruction of the United States’ stockpile of lethal chemical agents and munitions.

“(2) The plan shall include, at a minimum, the following considerations:

“(A) Realistic budgeting for stockpile destruction and related support programs.

“(B) Contingency planning for foreseeable or anticipated problems.

“(C) A management approach and associated actions that address compliance with the obligations of the United States under the Chemical Weapons Convention and that take full advantage of opportunities to accelerate destruction of the stockpile.

“(3) The Secretary of Defense shall each year submit to the Committee on the Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the strategic plan as most recently prepared and updated under paragraph (1). Such submission shall be made each year at the time of the submission to the Congress that year of the President’s budget for the next fiscal year.

“(g) MANAGEMENT ORGANIZATION.—(1) In carrying out this section, the Secretary of Defense shall provide for a management organization within the Department of the Army. The Secretary of the Army shall be responsible for management of the destruction of agents and munitions at all sites except Blue Grass Army Depot, Kentucky, and Pueblo Chemical Depot, Colorado

Establishment.

“(2) The program manager for the Assembled Chemical Weapons Alternative Program shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Blue Grass Army Depot, Kentucky, and Pueblo Army Depot, Colorado, including management of the pilot-scale facility phase of the alternative technology selected for the destruction of lethal chemical munitions. In performing such management, the program manager shall act independently of the Army program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition, Technology, and Logistics

“(3) The Secretary of Defense shall designate a general officer or civilian equivalent as the director of the management organization established under paragraph (1). Such officer shall have—

“(A) experience in the acquisition, storage, and destruction of chemical agents and munitions; and

“(B) outstanding qualifications regarding safety in handling chemical agents and munitions.

“(h) IDENTIFICATION OF FUNDS.—(1) Funds for carrying out this section, including funds for military construction projects necessary to carry out this section, shall be set forth in the budget of the Department of Defense for any fiscal year as a separate account. Such funds shall not be included in the budget accounts for any military department.

“(2) Amounts appropriated to the Secretary of Defense for the purpose of carrying out subsection (e) shall be promptly made available to the Administrator of the Federal Emergency Management Agency.

“(i) ANNUAL REPORTS.—(1) Except as provided by paragraph (3), the Secretary of Defense shall transmit, by December 15 each year, a report to Congress on the activities carried out under this section during the fiscal year ending on September 30 of the calendar year in which the report is to be made.

“(2) Each annual report shall include the following:

“(A) A site-by-site description of the construction, equipment, operation, and dismantling of facilities (during the fiscal year for which the report is made) used to carry out the destruction of agents and munitions under this section, including any accidents or other unplanned occurrences associated with such construction and operation.

“(B) A site-by-site description of actions taken to assist State and local governments (either directly or through the Federal Emergency Management Agency) in carrying out functions relating to emergency preparedness and response in accordance with subsection (e).

“(C) An accounting of all funds expended (during such fiscal year) for activities carried out under this section, with a separate accounting for amounts expended for—

“(i) the construction of and equipment for facilities used for the destruction of agents and munitions;

“(ii) the operation of such facilities;

“(iii) the dismantling or other closure of such facilities;

“(iv) research and development;

“(v) program management;

“(vi) travel and associated travel costs for Citizens’ Advisory Commissioners under subsection (m)(7); and

“(vii) grants to State and local governments to assist those governments in carrying out functions relating to emergency preparedness and response in accordance with subsection (e).

“(D) An assessment of the safety status and the integrity of the stockpile of lethal chemical agents and munitions subject to this section, including—

“(i) an estimate on how much longer that stockpile can continue to be stored safely;

“(ii) a site-by-site assessment of the safety of those agents and munitions; and

“(iii) a description of the steps taken (to the date of the report) to monitor the safety status of the stockpile and to mitigate any further deterioration of that status.

“(3) The Secretary shall transmit the final report under paragraph (1) not later than 120 days following the completion of activities under this section.

“(j) SEMIANNUAL REPORTS.—(1) Not later than March 1 and September 1 each year until the year in which the United States completes the destruction of its entire stockpile of chemical weapons under the terms of the Chemical Weapons Convention, the Secretary of Defense shall submit to the members and committees of Congress referred to in paragraph (3) a report on the implementation by the United States of its chemical weapons destruction obligations under the Chemical Weapons Convention.

“(2) Each report under paragraph (1) shall include the following:

“(A) The anticipated schedule at the time of such report for the completion of destruction of chemical agents, munitions, and materiel at each chemical weapons demilitarization facility in the United States.

“(B) A description of the options and alternatives for accelerating the completion of chemical weapons destruction at each such facility, particularly in time to meet the stockpile elimination deadline.

“(C) A description of the funding required to achieve each of the options for destruction described under subparagraph (B), and a detailed life-cycle cost estimate for each of the affected facilities included in each such funding profile.

“(D) A description of all actions being taken by the United States to accelerate the destruction of its entire stockpile of chemical weapons, agents, and materiel in order to meet the current stockpile elimination deadline under the Chemical Weapons Convention of April 29, 2012, or as soon thereafter as possible.

“(3) The members and committees of Congress referred to in this paragraph are—

“(A) the majority leader and the minority leader of the Senate and the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(B) the Speaker of the House of Representatives, the majority leader and the minority leader of the House of Representatives, and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

“(k) AUTHORIZED USE OF TOXIC CHEMICALS.—Consistent with United States obligations under the Chemical Weapons Convention, the Secretary of Defense may develop, produce, otherwise acquire, retain, transfer, and use toxic chemicals and their precursors for purposes not prohibited by the Chemical Weapons Convention if the types and quantities of such chemicals and precursors are consistent with such purposes, including for protective purposes such as protection against toxic chemicals and protection against chemical weapons.

“(l) SURVEILLANCE AND ASSESSMENT PROGRAM.—The Secretary of Defense shall conduct an ongoing comprehensive program of—

“(1) surveillance of the existing United States stockpile of chemical weapons; and

“(2) assessment of the condition of the stockpile.

“(m) CHEMICAL DEMILITARIZATION CITIZENS’ ADVISORY COMMISSIONS.—(1)(A) The Secretary of the Army shall establish a citizens’ commission for each State in which there is a chemical demilitarization facility under Army management.

Establishment.

“(B) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall establish a chemical demilitarization citizens’ commission in Colorado and in Kentucky.

Colorado.
Kentucky.

“(C) Each commission under this subsection shall be known as the ‘Chemical Demilitarization Citizens’ Advisory Commission’ for the State concerned.

“(2)(A) The Secretary of the Army, or the Department of Defense with respect to Colorado and Kentucky, shall provide for a representative to meet with each commission established under this subsection to receive citizen and State concerns regarding the ongoing program for the disposal of the lethal chemical agents and munitions in the stockpile referred to in subsection (a) at each of the sites with respect to which a commission is established pursuant to paragraph (1).

“(B) The Secretary of the Army shall provide for a representative from the Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) to meet with each commission under Army management.

“(C) The Department of Defense shall provide for a representative from the Office of the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs to meet with the commissions in Colorado and Kentucky.

“(3)(A) Each commission under this subsection shall be composed of nine members appointed by the Governor of the State. Seven of such members shall be citizens from the local affected areas in the State. The other two shall be representatives of State government who have direct responsibilities related to the chemical demilitarization program.

“(B) For purposes of this paragraph, affected areas are those areas located within a 50-mile radius of a chemical weapons storage site.

“(4) For a period of five years after the termination of any commission under this subsection, no corporation, partnership, or other organization in which a member of that commission, a spouse of a member of that commission, or a natural or adopted child

Time period.

of a member of that commission has an ownership interest may be awarded—

“(A) a contract related to the disposal of lethal chemical agents or munitions in the stockpile referred to in subsection (a); or

“(B) a subcontract under such a contract.

“(5) The members of each commission under this subsection shall designate the chair of such commission from among the members of such commission.

“(6) Each commission under this subsection shall meet with a representative from the Army, or the Office of the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs with respect to the commissions in Colorado and Kentucky, upon joint agreement between the chair of such commission and that representative. The two parties shall meet not less often than twice a year and may meet more often at their discretion.

“(7) Members of each commission under this subsection shall receive no pay for their involvement in the activities of their commissions. Funds appropriated for the Chemical Stockpile Demilitarization Program may be used for travel and associated travel costs for commissioners of commissions under this subsection when such travel is conducted at the invitation of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) or the invitation of the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs for the commissions in Colorado and Kentucky.

Termination.

“(8) Each commission under this subsection shall be terminated after the closure activities required pursuant to regulations prescribed by the Administrator of the Environmental Protection Agency pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) have been completed for the chemical agent destruction facility in such commission’s State, or upon the request of the Governor of such commission’s State, whichever occurs first.

“(n) INCENTIVE CLAUSES IN CHEMICAL DEMILITARIZATION CONTRACTS.—(1)(A) The Secretary of Defense may, for the purpose specified in paragraph (B), authorize the inclusion of an incentives clause in any contract for the destruction of the United States stockpile of lethal chemical agents and munitions carried out pursuant to subsection (a).

“(B) The purpose of a clause referred to in subparagraph (A) is to provide the contractor for a chemical demilitarization facility an incentive to accelerate the safe elimination of the United States chemical weapons stockpile and to reduce the total cost of the Chemical Demilitarization Program by providing incentive payments for the early completion of destruction operations and the closure of such facility.

“(2)(A) An incentives clause under this subsection shall permit the contractor for the chemical demilitarization facility concerned the opportunity to earn incentive payments for the completion of destruction operations and facility closure activities within target incentive ranges specified in such clause.

“(B) The maximum incentive payment under an incentives clause with respect to a chemical demilitarization facility may not exceed the following amounts:

“(i) In the case of an incentive payment for the completion of destruction operations within the target incentive range specified in such clause, \$110,000,000.

“(ii) In the case of an incentive payment for the completion of facility closure activities within the target incentive range specified in such clause, \$55,000,000.

“(C) An incentives clause in a contract under this section shall specify the target incentive ranges of costs for completion of destruction operations and facility closure activities, respectively, as jointly agreed upon by the contracting officer and the contractor concerned. An incentives clause shall require a proportionate reduction in the maximum incentive payment amounts in the event that the contractor exceeds an agreed-upon target cost if such excess costs are the responsibility of the contractor.

“(D) The amount of the incentive payment earned by a contractor for a chemical demilitarization facility under an incentives clause under this subsection shall be based upon a determination by the Secretary on how early in the target incentive range specified in such clause destruction operations or facility closure activities, as the case may be, are completed.

“(E) The provisions of any incentives clause under this subsection shall be consistent with the obligation of the Secretary of Defense under subsection (d)(1)(A), to provide for maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions.

“(F) In negotiating the inclusion of an incentives clause in a contract under this subsection, the Secretary may include in such clause such additional terms and conditions as the Secretary considers appropriate.

“(3)(A) No payment may be made under an incentives clause under this subsection unless the Secretary determines that the contractor concerned has satisfactorily performed its duties under such incentives clause.

“(B) An incentives clause under this subsection shall specify that the obligation of the Government to make payment under such incentives clause is subject to the availability of appropriations for that purpose. Amounts appropriated for Chemical Agents and Munitions Destruction, Defense, shall be available for payments under incentives clauses under this subsection.

“(o) DEFINITIONS.—In this section:

“(1) The term ‘chemical agent and munition’ means an agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke and other obscuration materials.

“(2) The term ‘Chemical Weapons Convention’ means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, with annexes, done at Paris, January 13, 1993, and entered into force April 29, 1997 (T. Doc. 103-21).

“(3) The term ‘lethal chemical agent and munition’ means a chemical agent or munition that is designed to cause death, through its chemical properties, to human beings in field concentrations.

“(4) The term ‘destruction’ means, with respect to chemical munitions or agents—

“(A) the demolishment of such munitions or agents by incineration or by any other means; or

“(B) the dismantling or other disposal of such munitions or agents so as to make them useless for military purposes and harmless to human beings under normal circumstances.”.

(b) **REPEAL OF LAWS RESTATED IN SECTION 1412 AND OBSOLETE PROVISIONS OF LAW.**—The following provisions of law are repealed:

(1) Section 125 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1043; 50 U.S.C. 1521 note).

(2) Sections 172, 174, 175, and 180 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2341; 50 U.S.C. 1521 note).

(3) Section 152 of the National Defense Authorization Act for Fiscal Year 1996 (50 U.S.C. 1521 note).

(4) Section 8065 of the Omnibus Consolidated Appropriations Act, 1997 (50 U.S.C. 1521 note).

(5) Section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1521 note).

(6) Section 141 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 537; 50 U.S.C. 1521 note).

(7) Section 8122 of the Department of Defense Appropriations Act, 2003 (Public Law 107–248; 116 Stat. 1566; 50 U.S.C. 1521 note).

(8) Section 923 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2360; 50 U.S.C. 1521 note).

(9) Section 8119 of the Department of Defense Appropriations Act, 2008 (Public Law 110–116; 121 Stat. 1340; 50 U.S.C. 1521 note).

(10) Section 922(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 283; 50 U.S.C. 1521 note).

Subtitle D—Other Matters

SEC. 1431. AUTHORIZATION OF APPROPRIATIONS FOR ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2011 from the Armed Forces Retirement Home Trust Fund the sum of \$71,200,000 for the operation of the Armed Forces Retirement Home.

SEC. 1432. AUTHORITY FOR TRANSFER OF FUNDS TO JOINT DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITY DEMONSTRATION FUND FOR CAPTAIN JAMES A. LOVELL HEALTH CARE CENTER, ILLINOIS.

(a) **AUTHORITY FOR TRANSFER OF FUNDS.**—Of the funds authorized to be appropriated by section 1409 and available for the Defense Health Program for operation and maintenance, \$132,000,000 may be transferred by the Secretary of Defense to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by subsection (a)(1) of section 1704 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2571). For purposes of subsection (a)(2) of such section 1704, any funds so transferred shall be treated

as amounts authorized and appropriated for the Department of Defense specifically for such transfer.

(b) **USE OF TRANSFERRED FUNDS.**—For purposes of subsection (b) of such section 1704, facility operations for which funds transferred under subsection (a) may be used are operations of the Captain James A. Lovell Federal Health Care Center, consisting of the North Chicago Veterans Affairs Medical Center, the Navy Ambulatory Care Center, and supporting facilities designated as a combined Federal medical facility under an operational agreement pursuant to section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 455).

TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

Subtitle A—Authorization of Additional Appropriations

- Sec. 1501. Purpose.
- Sec. 1502. Army procurement.
- Sec. 1503. Joint Improvised Explosive Device Defeat Fund.
- Sec. 1504. Navy and Marine Corps procurement.
- Sec. 1505. Air Force procurement.
- Sec. 1506. Defense-wide activities procurement.
- Sec. 1507. National Guard and Reserve equipment.
- Sec. 1508. Mine Resistant Ambush Protected Vehicle Fund.
- Sec. 1509. Research, development, test, and evaluation.
- Sec. 1510. Operation and maintenance.
- Sec. 1511. Military personnel.
- Sec. 1512. Working capital funds.
- Sec. 1513. Defense Health Program.
- Sec. 1514. Drug Interdiction and Counter-Drug Activities, Defense-wide.
- Sec. 1515. Defense Inspector General.

Subtitle B—Financial Matters

- Sec. 1521. Treatment as additional authorizations.
- Sec. 1522. Special transfer authority.

Subtitle C—Limitations and Other Matters

- Sec. 1531. Limitations on availability of funds in Afghanistan Security Forces Fund.
- Sec. 1532. Limitations on availability of funds in Iraq Security Forces Fund.
- Sec. 1533. Continuation of prohibition on use of United States funds for certain facilities projects in Iraq.
- Sec. 1534. Joint Improvised Explosive Device Defeat Fund.
- Sec. 1535. Task Force for Business and Stability Operations in Afghanistan and economic transition plan and economic strategy for Afghanistan.

Subtitle A—Authorization of Additional Appropriations

SEC. 1501. PURPOSE.

The purpose of this subtitle is to authorize appropriations for the Department of Defense for fiscal year 2011 to provide additional funds for overseas contingency operations being carried out by the Armed Forces.

SEC. 1502. ARMY PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement accounts of the Army in amounts as follows:

- (1) For aircraft procurement, \$1,373,803,000.
- (2) For missile procurement, \$343,828,000.
- (3) For weapons and tracked combat vehicles procurement, \$687,500,000.
- (4) For ammunition procurement, \$384,441,000.
- (5) For other procurement, \$5,827,274,000.

SEC. 1503. JOINT IMPROVISED EXPLOSIVE DEVICE DEFEAT FUND.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the Joint Improvised Explosive Device Defeat Fund in the amount of \$3,465,868,000.

SEC. 1504. NAVY AND MARINE CORPS PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement accounts of the Navy and Marine Corps in amounts as follows:

- (1) For aircraft procurement, Navy, \$420,358,000.
- (2) For weapons procurement, Navy, \$93,425,000.
- (3) For ammunition procurement, Navy and Marine Corps, \$565,084,000.
- (4) For other procurement, Navy, \$480,735,000.
- (5) For procurement, Marine Corps, \$1,705,069,000.

SEC. 1505. AIR FORCE PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2011 for procurement accounts of the Air Force in amounts as follows:

- (1) For aircraft procurement, \$1,096,520,000.
- (2) For ammunition procurement, \$292,959,000.
- (3) For missile procurement, \$56,621,000.
- (4) For other procurement, \$2,992,681,000.

SEC. 1506. DEFENSE-WIDE ACTIVITIES PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the procurement account for Defense-wide activities in the amount of \$844,546,000.

SEC. 1507. NATIONAL GUARD AND RESERVE EQUIPMENT.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the procurement of aircraft, missiles, wheeled and tracked combat vehicles, tactical wheeled vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces in the amount of \$700,000,000.

SEC. 1508. MINE RESISTANT AMBUSH PROTECTED VEHICLE FUND.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the Mine Resistant Ambush Protected Vehicle Fund in the amount of \$3,415,000,000.

SEC. 1509. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the use of the Department of Defense for research, development, test, and evaluation as follows:

- (1) For the Army, \$150,906,000.
- (2) For the Navy, \$60,401,000.
- (3) For the Air Force, \$266,241,000.
- (4) For Defense-wide activities, \$661,240,000.

SEC. 1510. OPERATION AND MAINTENANCE.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the use of the Armed Forces for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

- (1) For the Army, \$63,202,618,000.
- (2) For the Navy, \$8,692,173,000.
- (3) For the Marine Corps, \$4,136,522,000.
- (4) For the Air Force, \$13,487,283,000.
- (5) For Defense-wide activities, \$9,436,358,000.
- (6) For the Army Reserve, \$286,950,000.
- (7) For the Navy Reserve, \$93,559,000.
- (8) For the Marine Corps Reserve, \$29,685,000.
- (9) For the Air Force Reserve, \$129,607,000.
- (10) For the Army National Guard, \$544,349,000.
- (11) For the Air National Guard, \$350,823,000.
- (12) For the Afghanistan Security Forces Fund, \$11,619,283,000.
- (13) For the Iraq Security Forces Fund, \$1,500,000,000.
- (14) For the Overseas Contingency Operations Transfer Fund, \$506,781,000.

SEC. 1511. MILITARY PERSONNEL.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the Department of Defense for military personnel in the amount of \$15,275,502,000.

SEC. 1512. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in the amount of \$485,384,000.

SEC. 1513. DEFENSE HEALTH PROGRAM.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for the Defense Health Program in the amount of \$1,398,092,000 for operation and maintenance.

SEC. 1514. DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE-WIDE.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount of \$457,110,000.

SEC. 1515. DEFENSE INSPECTOR GENERAL.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2011 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense in the amount of \$10,529,000.

Subtitle B—Financial Matters

SEC. 1521. TREATMENT AS ADDITIONAL AUTHORIZATIONS.

The amounts authorized to be appropriated by this title are in addition to amounts otherwise authorized to be appropriated by this Act.

SEC. 1522. SPECIAL TRANSFER AUTHORITY.

(a) **AUTHORITY TO TRANSFER AUTHORIZATIONS.**—

(1) **AUTHORITY.**—Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this title for fiscal year 2011 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) **LIMITATION.**—The total amount of authorizations that the Secretary may transfer under the authority of this subsection may not exceed \$4,000,000,000.

(b) **TERMS AND CONDITIONS.**—Transfers under this section shall be subject to the same terms and conditions as transfers under section 1001.

(c) **ADDITIONAL AUTHORITY.**—The transfer authority provided by this section is in addition to the transfer authority provided under section 1001.

Subtitle C—Limitations and Other Matters

SEC. 1531. LIMITATIONS ON AVAILABILITY OF FUNDS IN AFGHANISTAN SECURITY FORCES FUND.

(a) **APPLICATION OF EXISTING LIMITATIONS.**—Funds made available to the Department of Defense for the Afghanistan Security Forces Fund for fiscal year 2011 shall be subject to the conditions contained in subsections (b) through (g) of section 1513 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 428), as amended by subsection (b) of this section.

(b) **MODIFICATION OF PRIOR NOTICE AND REPORTING REQUIREMENTS.**—Section 1513 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 428) is amended—

(1) in subsection (e), by striking “five days” and inserting “15 days”; and

(2) in subsection (g), by adding at the end the following new sentence: “The Secretary may treat a report submitted under section 9010 of the Department of Defense Appropriations Act, 2010 (Public Law 111–118; 123 Stat. 3466), or a successor provision of law, with respect to a fiscal-year quarter as satisfying the requirements for a report under this subsection for that fiscal-year quarter.”.

SEC. 1532. LIMITATIONS ON AVAILABILITY OF FUNDS IN IRAQ SECURITY FORCES FUND.

(a) **APPLICATION OF EXISTING LIMITATIONS.**—Subject to subsection (b), funds made available to the Department of Defense for the Iraq Security Forces Fund for fiscal year 2011 shall be subject to the conditions contained in subsections (b) through (g) of section 1512 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 426), as amended by subsection (d) of this section.

(b) **COST-SHARE REQUIREMENT.**—

(1) **REQUIREMENT.**—If funds made available to the Department of Defense for the Iraq Security Forces Fund for fiscal year 2011 are used for the purchase of any item or service for Iraq Security Forces, the funds may not cover more than 80 percent of the cost of the item or service.

(2) **EXCEPTION.**—Paragraph (1) does not apply to any item that the Secretary of Defense determines—

(A) is an item of significant military equipment (as such term is defined in section 47(9) of the Arms Export Control Act (22 U.S.C. 2794(9))); or

(B) is included on the United States Munitions List, as designated pursuant to section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).

(c) **LIMITATION ON OBLIGATION OF FUNDS PENDING CERTAIN COMMITMENT BY GOVERNMENT OF IRAQ.**—

(1) **LIMITATION.**—Of the amount available to the Iraq Security Forces Fund as described in subsection (a), not more than \$1,000,000,000 may be obligated until the Secretary of Defense certifies to Congress that the Government of Iraq has demonstrated a commitment to each of the following:

Certification.

(A) To adequately build the logistics and maintenance capacity of the Iraqi security forces.

(B) To develop the institutional capacity to manage such forces independently.

(C) To develop a culture of sustainment for equipment provided by the United States or acquired with United States assistance.

(2) **BASIS FOR CERTIFICATION.**—The certification of the Secretary under paragraph (1) shall include a description of the actions taken by the Government of Iraq that, in the determination of the Secretary, support the certification.

(d) **MODIFICATION OF PRIOR NOTICE AND REPORTING REQUIREMENTS.**—Section 1512 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 426) is amended—

(1) in subsection (e), by striking “five days” and inserting “15 days”; and

(2) in subsection (g), by adding at the end the following new sentence: “The Secretary may treat a report submitted under section 9010 of the Department of Defense Appropriations Act, 2010 (Public Law 111–118; 123 Stat. 3466), or a successor provision of law, with respect to a fiscal-year quarter as satisfying the requirements for a report under this subsection for that fiscal-year quarter.”.

SEC. 1533. CONTINUATION OF PROHIBITION ON USE OF UNITED STATES FUNDS FOR CERTAIN FACILITIES PROJECTS IN IRAQ.

Section 1508(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4651) shall apply to funds authorized to be appropriated by this title.

Applicability.

SEC. 1534. JOINT IMPROVISED EXPLOSIVE DEVICE DEFEAT FUND.

(a) **USE AND TRANSFER OF FUNDS.**—Subsections (b) and (c) of section 1514 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2439), as in effect before the amendments made by section 1503 of the

Applicability.

Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4649), shall apply to the funds made available to the Department of Defense for the Joint Improvised Explosive Device Defeat Fund for fiscal year 2011.

(b) MONTHLY OBLIGATIONS AND EXPENDITURE REPORTS.—

(1) REPORTS REQUIRED.—Not later than 15 days after the end of each month of fiscal year 2011, the Secretary of Defense shall provide to the congressional defense committees a report on the Joint Improvised Explosive Device Defeat Fund explaining monthly commitments, obligations, and expenditures by line of action.

(2) REPEAL OF SUPERSEDED REPORTING REQUIREMENT.—Section 1514 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2439) is amended by striking subsection (e).

SEC. 1535. TASK FORCE FOR BUSINESS AND STABILITY OPERATIONS IN AFGHANISTAN AND ECONOMIC TRANSITION PLAN AND ECONOMIC STRATEGY FOR AFGHANISTAN.

(a) PROJECTS OF TASK FORCE FOR BUSINESS AND STABILITY OPERATIONS IN AFGHANISTAN.—

(1) IN GENERAL.—The Task Force for Business and Stability Operations in Afghanistan may carry out projects to assist the commander of United States Forces-Afghanistan and the Ambassador of the United States Mission in Afghanistan to reduce violence, enhance stability, and support economic normalcy in Afghanistan through strategic business and economic activities.

(2) DIRECTION, CONTROL, AND CONCURRENCE.—A project carried out under paragraph (1) shall be subject to—

(A) the direction and control of the Secretary of Defense; and

(B) the concurrence of the Secretary of State.

(3) SCOPE OF PROJECTS.—The projects carried out under paragraph (1) may include projects that facilitate private investment, industrial development, banking and financial system development, agricultural diversification and revitalization, and energy development in and with respect to Afghanistan.

(4) FUNDING.—The Secretary may use funds available for overseas contingency operations for operation and maintenance for the Army for additional activities to carry out projects under paragraph (1). The amount of funds used under authority in the preceding sentence may not exceed \$150,000,000.

(5) PROHIBITION ON USE OF CERTAIN FUNDS.—Funds provided for the Commanders' Emergency Response Program may not be utilized to support or carry out projects of the Task Force for Business and Stability Operations.

(6) REPORT.—Not later than October 31, 2011, the Secretary of Defense shall submit to the appropriate congressional committees a report describing—

(A) the activities of the Task Force for Business and Stability Operations in Afghanistan in support of Operation Enduring Freedom during fiscal year 2011, including the projects carried out under paragraph (1) during that fiscal year; and

(B) how the activities of the Task Force for Business and Stability Operations in Afghanistan support the long-term stabilization of Afghanistan.

(7) EXPIRATION OF AUTHORITY.—The authority provided in paragraph (1) shall expire on September 30, 2011.

(b) PLAN FOR TRANSITION OF TASK FORCE ACTIVITIES TO AGENCY FOR INTERNATIONAL DEVELOPMENT.—

(1) PLAN REQUIRED.—The Secretary of Defense, the Administrator of the Agency for International Development, and the Secretary of State shall jointly develop a plan to transition the activities of the Task Force for Business and Stability Operations in Afghanistan to the Department of State.

(2) ELEMENTS OF PLAN.—The plan shall describe at a minimum the following:

(A) The activities carried out by the Task Force for Business and Stability Operations in Afghanistan in fiscal year 2011.

(B) Those activities that the Task Force for Business and Stability Operations in Afghanistan carried out in fiscal year 2011 that the Agency for International Development will continue in fiscal year 2012, including those activities that, rather than explicitly continued, may be merged with similar efforts carried out by the Agency for International Development.

(C) Any activities carried out by the Task Force for Business and Stability Operations in Afghanistan in fiscal year 2011 that the Agency for International Development will not continue and the reasons that such activities shall not be continued.

(D) Those actions that may be necessary to transition activities carried out by the Task Force for Business and Stability Operations in Afghanistan in fiscal year 2011 and that will be continued by the Agency for International Development in fiscal year 2012 from the Department of Defense to the Agency for International Development.

(3) REPORT REQUIRED.—At the same time that the budget of the President is submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2012, the Secretary of Defense shall submit the plan to the appropriate congressional committees.

(c) REPORT ON ECONOMIC STRATEGY FOR AFGHANISTAN.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the President, acting through the Secretary of State and the Secretary of Defense, shall submit to the appropriate congressional committees a report on an economic strategy for Afghanistan that—

(A) supports the United States counterinsurgency campaign in Afghanistan;

(B) promotes economic stabilization in Afghanistan, consistent with a longer-term development plan for Afghanistan; and

(C) enhances the establishment of sustainable institutions in Afghanistan.

(2) ELEMENTS.—The report shall include the following:

(A) An identification of the sectors within the Afghanistan economy that offer the greatest economic opportunities

to support the purposes of the economic strategy for Afghanistan set forth under paragraph (1).

(B) An assessment of the capabilities of the Government of Afghanistan to increase revenue generation to meet its own operational and developmental costs in the short-term, medium-term, and long-term.

(C) An assessment of the infrastructure (water, power, rail, road) required to underpin economic development in Afghanistan.

(D) A description of the potential role in the economic strategy for Afghanistan of each of the following:

(i) Private sector investment, including investment by and through the Overseas Private Investment Corporation.

(ii) Efforts to promote public-private partnerships.

(iii) National Priority Programs of the Government of Afghanistan, including the Afghanistan National Solidarity Program, and public works projects.

(iv) International financial institutions, including the International Bank for Reconstruction and Development and the Asian Development Bank.

(v) Efforts to promote trade, including efforts by and through the Export-Import Bank of the United States.

(vi) Department of Defense policies to promote economic stabilization and development, including the Afghanistan First procurement policy and efforts by the Department to enhance transportation, electrification, and communications networks both within Afghanistan and between Afghanistan and neighboring countries.

(E) An evaluation of the regional dimension of an economic strategy for Afghanistan, including a description of economic areas suitable for regional collaboration and a prioritization among such areas for attention under the strategy.

(F) A timeline and milestones for activities that can promote economic stabilization, development, and sustainability in Afghanistan in the short-term, medium-term, and long-term.

(G) Metrics for assessing progress under the economic strategy for Afghanistan.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committees on Armed Services, Foreign Relations, and Appropriations of the Senate; and

(2) the Committees on Armed Services, Foreign Affairs, and Appropriations of the House of Representatives.

TITLE XVI—IMPROVED SEXUAL ASSAULT PREVENTION AND RESPONSE IN THE ARMED FORCES

Sec. 1601. Definition of Department of Defense sexual assault prevention and response program and other definitions.

Sec. 1602. Comprehensive Department of Defense policy on sexual assault prevention and response program.

Subtitle A—Organizational Structure and Application of Sexual Assault Prevention and Response Program Elements

Sec. 1611. Sexual Assault Prevention and Response Office.

Sec. 1612. Oversight and evaluation standards.

Sec. 1613. Report and plan for completion of acquisition of centralized Department of Defense sexual assault database.

Sec. 1614. Restricted reporting of sexual assaults.

Subtitle B—Improved and Expanded Availability of Services

Sec. 1621. Improved protocols for providing medical care for victims of sexual assault.

Sec. 1622. Sexual assault victims access to Victim Advocate services.

Subtitle C—Reporting Requirements

Sec. 1631. Annual report regarding sexual assaults involving members of the Armed Forces and improvement to sexual assault prevention and response program.

Sec. 1632. Additional reports.

SEC. 1601. DEFINITION OF DEPARTMENT OF DEFENSE SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM AND OTHER DEFINITIONS.

10 USC 1561
note.

(a) **SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM DEFINED.**—In this title, the term “sexual assault prevention and response program” refers to Department of Defense policies and programs, including policies and programs of a specific military department or Armed Force, that, as modified as required by this title—

(1) are intended to reduce the number of sexual assaults involving members of the Armed Forces, whether members are the victim, alleged assailant, or both; and

(2) improve the response of the Department of Defense, the military departments, and the Armed Forces to reports of sexual assaults involving members of the Armed Forces, whether members are the victim, alleged assailant, or both, and to reports of sexual assaults when a covered beneficiary under chapter 55 of title 10, United States Code, is the victim.

(b) **OTHER DEFINITIONS.**—In this title:

(1) The term “Armed Forces” means the Army, Navy, Air Force, and Marine Corps.

(2) The terms “covered beneficiary” and “dependent” have the meanings given those terms in section 1072 of title 10, United States Code.

(3) The term “department” has the meaning given that term in section 101(a)(6) of title 10, United States Code.

(4) The term “military installation” has the meaning given that term by the Secretary concerned.

(5) The term “Secretary concerned” means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy and the Marine Corps; and

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force.

(6) The term “sexual assault” has the definition developed for that term by the Secretary of Defense pursuant to subsection (a)(3) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note), subject to such modifications as the Secretary considers appropriate.

10 USC 1561
note.

**SEC. 1602. COMPREHENSIVE DEPARTMENT OF DEFENSE POLICY ON
SEXUAL ASSAULT PREVENTION AND RESPONSE PRO-
GRAM.**

Deadline.

(a) **COMPREHENSIVE POLICY REQUIRED.**—Not later than March 30, 2012, the Secretary of Defense shall submit to the congressional defense committees a revised comprehensive policy for the Department of Defense sexual assault prevention and response program that—

(1) builds upon the comprehensive sexual assault prevention and response policy developed under subsections (a) and (b) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note);

(2) incorporates into the sexual assault prevention and response program the new requirements identified by this title; and

(3) ensures that the policies and procedures of the military departments regarding sexual assault prevention and response are consistent with the revised comprehensive policy.

(b) **CONSIDERATION OF TASK FORCE FINDINGS, RECOMMENDATIONS, AND PRACTICES.**—In developing the comprehensive policy required by subsection (a), the Secretary of Defense shall take into account the findings and recommendations found in the report of the Defense Task Force on Sexual Assault in the Military Services issued in December 2009.

(c) **SEXUAL ASSAULT PREVENTION AND RESPONSE EVALUATION PLAN.**—

(1) **PLAN REQUIRED.**—The Secretary of Defense shall develop and implement an evaluation plan for assessing the effectiveness of the comprehensive policy prepared under subsection (a) in achieving its intended outcomes at the department and individual Armed Force levels.

(2) **ROLE OF SERVICE SECRETARIES.**—As a component of the evaluation plan, the Secretary of each military department shall assess the adequacy of measures undertaken at military installations and by units of the Armed Forces under the jurisdiction of the Secretary to ensure the safest and most secure living and working environments with regard to preventing sexual assault.

(d) **PROGRESS REPORT.**—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report—

(1) describing the process by which the comprehensive policy required by subsection (a) is being revised;

(2) describing the extent to which revisions of the comprehensive policy and the evaluation plan required by subsection (c) have already been implemented; and

(3) containing a determination by the Secretary regarding whether the Secretary will be able to comply with the revision deadline specified in subsection (a).

(e) **CONSISTENCY OF TERMINOLOGY, POSITION DESCRIPTIONS, PROGRAM STANDARDS, AND ORGANIZATIONAL STRUCTURES.**—

(1) **IN GENERAL.**—The Secretary of Defense shall require the use of consistent terminology, position descriptions, minimum program standards, and organizational structures throughout the Armed Forces in implementing the sexual assault prevention and response program.

Requirement.

(2) **MINIMUM STANDARDS.**—The Secretary of Defense shall establish minimum standards for—

(A) the training, qualifications, and status of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates for the Armed Forces; and

(B) the curricula to be used to provide sexual assault prevention and response training and education for members of the Armed Forces and civilian employees of the department to strengthen individual knowledge, skills, and capacity to prevent and respond to sexual assault.

(3) **RECOGNIZING OPERATIONAL DIFFERENCES.**—In complying with this subsection, the Secretary of Defense shall take into account the responsibilities of the Secretary concerned and operational needs of the Armed Force involved.

Subtitle A—Organizational Structure and Application of Sexual Assault Prevention and Response Program Elements

SEC. 1611. SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE.

10 USC 1561
note.

(a) **APPOINTMENT OF DIRECTOR.**—There shall be a Director of the Sexual Assault Prevention and Response Office. During the development and implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program, the Director shall operate under the oversight of the Advisory Working Group of the Deputy Secretary of Defense.

(b) **DUTIES OF DIRECTOR.**—The Director of the Sexual Assault Prevention and Response Office shall—

(1) oversee implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program;

(2) serve as the single point of authority, accountability, and oversight for the sexual assault prevention and response program; and

(3) provide oversight to ensure that the military departments comply with the sexual assault prevention and response program.

(c) **ROLE OF INSPECTORS GENERAL.**—

(1) **IN GENERAL.**—The Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force shall treat the sexual assault prevention and response program

as an item of special interest when conducting inspections of organizations and activities with responsibilities regarding the prevention and response to sexual assault.

(2) COMPOSITION OF INVESTIGATION TEAMS.—The Inspector General inspection teams shall include at least one member with expertise and knowledge of sexual assault prevention and response policies related to a specific Armed Force.

(d) STAFF.—

Deadline.

(1) ASSIGNMENT.—Not later than 18 months after the date of the enactment of this Act, an officer from each of the Armed Forces in the grade of O–4 or above shall be assigned to the Sexual Assault Prevention and Response Office for a minimum tour length of at least 18 months.

(2) HIGHER GRADE.—Notwithstanding paragraph (1), of the four officers assigned to the Sexual Assault Prevention and Response Office under this subsection at any time, one officer shall be in the grade of O–6 or above.

10 USC 1561
note.

SEC. 1612. OVERSIGHT AND EVALUATION STANDARDS.

(a) ISSUANCE OF STANDARDS.—The Secretary of Defense shall issue standards to assess and evaluate the effectiveness of the sexual assault prevention and response program of each Armed Force in reducing the number of sexual assaults involving members of the Armed Forces and in improving the response of the department to reports of sexual assaults involving members of the Armed Forces, whether members of the Armed Forces are the victim, alleged assailant, or both.

(b) SEXUAL ASSAULT PREVENTION EVALUATION PLAN.—The Secretary of Defense shall use the sexual assault prevention and response evaluation plan developed under section 1602(c) to ensure that the Armed Forces implement and comply with assessment and evaluation standards issued under subsection (a).

10 USC 1561
note.

SEC. 1613. REPORT AND PLAN FOR COMPLETION OF ACQUISITION OF CENTRALIZED DEPARTMENT OF DEFENSE SEXUAL ASSAULT DATABASE.

(a) REPORT AND PLAN REQUIRED.—Not later than April 1, 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report—

(1) describing the status of development and implementation of the centralized Department of Defense sexual assault database required by section 563 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4470; 10 U.S.C. 113 note);

(2) containing a revised implementation plan under subsection (c) of such section for completing implementation of the database; and

(3) indicating the date by which the database will be operational.

(b) CONTENT OF IMPLEMENTATION PLAN.—The plan referred to in subsection (a)(2) shall address acquisition best practices associated with successfully acquiring and deploying information technology systems related to the centralized sexual assault database, such as economically justifying the proposed system solution and effectively developing and managing requirements.

SEC. 1614. RESTRICTED REPORTING OF SEXUAL ASSAULTS.10 USC 1561
note.

The Secretary of Defense shall clarify the limitations on the ability of a member of the Armed Forces to make a restricted report regarding the occurrence of a sexual assault and the circumstances under which information contained in a restricted report may no longer be confidential.

Subtitle B—Improved and Expanded Availability of Services

**SEC. 1621. IMPROVED PROTOCOLS FOR PROVIDING MEDICAL CARE
FOR VICTIMS OF SEXUAL ASSAULT.**10 USC 1561
note.

The Secretary of Defense shall establish comprehensive and consistent protocols for providing and documenting medical care to a member of the Armed Forces or covered beneficiary who is a victim of a sexual assault, including protocols with respect to the appropriate screening, prevention, and mitigation of diseases. In establishing the protocols, the Secretary shall take into consideration the gender of the victim.

**SEC. 1622. SEXUAL ASSAULT VICTIMS ACCESS TO VICTIM ADVOCATE
SERVICES.****(a) AVAILABILITY OF VICTIM ADVOCATE SERVICES.—**

(1) AVAILABILITY.—A member of the Armed Forces or a dependent, as described in paragraph (2), who is the victim of a sexual assault is entitled to assistance provided by a qualified Sexual Assault Victim Advocate.

(2) COVERED DEPENDENTS.—The assistance described in paragraph (1) is available to a dependent of a member of the Armed Forces who is the victim of a sexual assault and who resides on or in the vicinity of a military installation. The Secretary concerned shall define the term “vicinity” for purposes of this paragraph.

(b) NOTICE OF AVAILABILITY OF ASSISTANCE; OPT OUT.—The member or dependent shall be informed of the availability of assistance under subsection (a) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator. The victim shall also be informed that the services of a Sexual Assault Response Coordinator and Sexual Assault Victim Advocate are optional and that these services may be declined, in whole or in part, at any time.

(c) NATURE OF REPORTING IMMATERIAL.—In the case of a member of the Armed Forces, Victim Advocate services are available regardless of whether the member elects unrestricted or restricted (confidential) reporting of the sexual assault.

Subtitle C—Reporting Requirements

**SEC. 1631. ANNUAL REPORT REGARDING SEXUAL ASSAULTS
INVOLVING MEMBERS OF THE ARMED FORCES AND
IMPROVEMENT TO SEXUAL ASSAULT PREVENTION AND
RESPONSE PROGRAM.**10 USC 1561
note.

(a) ANNUAL REPORTS ON SEXUAL ASSAULTS.—Not later than March 1, 2012, and each March 1 thereafter through March 1, 2017, the Secretary of each military department shall submit to

the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.

(b) CONTENTS.—The report of a Secretary of a military department for an Armed Force under subsection (a) shall contain the following:

(1) The number of sexual assaults committed against members of the Armed Force that were reported to military officials during the year covered by the report, and the number of the cases so reported that were substantiated.

(2) The number of sexual assaults committed by members of the Armed Force that were reported to military officials during the year covered by the report, and the number of the cases so reported that were substantiated. The information required by this paragraph may not be combined with the information required by paragraph (1).

(3) A synopsis of each such substantiated case, organized by offense, and, for each such case, the action taken in the case, including the type of disciplinary or administrative sanction imposed, if any, including courts-martial sentences, non-judicial punishments administered by commanding officers pursuant to section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice), and administrative separations.

(4) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by the report in response to incidents of sexual assault involving members of the Armed Force concerned.

(5) The number of substantiated sexual assault cases in which the victim is a deployed member of the Armed Forces and the assailant is a foreign national, and the policies, procedures, and processes implemented by the Secretary concerned to monitor the investigative processes and disposition of such cases and any actions taken to eliminate any gaps in investigating and adjudicating such cases.

(6) A description of the implementation of the accessibility plan implemented pursuant to section 596(b) of such Act, including a description of the steps taken during that year to ensure that trained personnel, appropriate supplies, and transportation resources are accessible to deployed units in order to provide an appropriate and timely response in any case of reported sexual assault in a deployed unit, location, or environment.

(c) CONSISTENT DEFINITION OF SUBSTANTIATED.—Not later than December 31, 2011, the Secretary of Defense shall establish a consistent definition of “substantiated” for purposes of paragraphs (1), (2), (3), and (5) of subsection (b) and provide synopses for those cases for the preparation of reports under this section.

(d) SUBMISSION TO CONGRESS.—Not later than April 30 of each year in which the Secretary of Defense receives reports under subsection (a), the Secretary of Defense shall forward the reports to the Committees on Armed Services of the Senate and House of Representatives, together with—

(1) the results of assessments conducted under the evaluation plan required by section 1602(c); and

(2) such assessments on the reports as the Secretary of Defense considers appropriate.

(e) REPEAL OF SUPERSEDED REPORTING REQUIREMENT.—

(1) REPEAL.—Subsection (f) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) is repealed.

(2) SUBMISSION OF 2010 REPORT.—The reports required by subsection (f) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) covering calendar year 2010 are still required to be submitted to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives pursuant to the terms of such subsection, as in effect before the date of the enactment of this Act.

SEC. 1632. ADDITIONAL REPORTS.

(a) EXTENSION OF SEXUAL ASSAULT PREVENTION AND RESPONSE SERVICES TO ADDITIONAL PERSONS.—The Secretary of Defense shall evaluate the feasibility of extending department sexual assault prevention and response services to Department of Defense civilian employees and employees of defense contractors who—

(1) are victims of a sexual assault; and

(2) work on or in the vicinity of a military installation or with members of the Armed Forces.

(b) EXTENSION OF SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM TO RESERVE COMPONENTS.—The Secretary of Defense shall evaluate the application of the sexual assault prevention and response program to members of the reserve components, including, at a minimum, the following:

(1) The ability of members of the reserve components to access the services available under the sexual assault prevention and response program, including policies and programs of a specific military department or Armed Force.

(2) The quality of training provided to Sexual Assault Response Coordinators and Sexual Assault Victim Advocates in the reserve components.

(3) The degree to which the services available for regular and reserve members under the sexual assault prevention and response program are integrated.

(4) Such recommendations as the Secretary of Defense considers appropriate on how to improve the services available for reserve members under the sexual assault prevention and response program and their access to the services.

(c) COPY OF RECORD OF COURT-MARTIAL TO VICTIM OF SEXUAL ASSAULT.—The Secretary of Defense shall evaluate the feasibility of requiring that a copy of the prepared record of the proceedings of a general or special court-martial involving a sexual assault be given to the victim in cases in which the victim testified during the proceedings.

(d) ACCESS TO LEGAL ASSISTANCE.—The Secretary of Defense shall evaluate the feasibility of authorizing members of the Armed Forces who are victims of a sexual assault and dependents of members who are victims of a sexual assault to receive legal assistance provided by a military legal assistance counsel certified as competent to provide legal assistance related to responding to sexual assault.

Evaluations.
10 USC 1561
note.

(e) **USE OF FORENSIC MEDICAL EXAMINERS.**—The Secretary of Defense shall evaluate the feasibility of utilizing, when sexual assaults involving members of the Armed Forces occur in a military environment where civilian resources are limited or unavailable, forensic medical examiners who are specially trained regarding the collection and preservation of evidence in cases involving sexual assault.

(f) **SUBMISSION OF RESULTS.**—The Secretary of Defense shall submit the results of the evaluations required by this section to the Committees on Armed Services of the Senate and House of Representatives.

Military
Construction
Authorization
Act for Fiscal
Year 2011.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the “Military Construction Authorization Act for Fiscal Year 2011”.

SEC. 2002. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) **EXPIRATION OF AUTHORIZATIONS AFTER THREE YEARS.**—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVII and title XXIX of this division for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment Program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2013; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014.

(b) **EXCEPTION.**—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment Program (and authorizations of appropriations therefor), for which appropriated funds have been obligated before the later of—

(1) October 1, 2013; or

(2) the date of the enactment of an Act authorizing funds for fiscal year 2014 for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment Program.

SEC. 2003. FUNDING TABLES.

(a) **IN GENERAL.**—The amounts authorized to be appropriated by sections 2104, 2204, 2304, 2403, 2411, 2502, 2606, 2701, and 2703 shall be available in the amounts specified in the funding table in section 3001.

(b) **OVERSEAS CONTINGENCY OPERATIONS.**—The amounts authorized to be appropriated by sections 2901, 2902, and 2903 shall be available in the amounts specified in the funding table in section 3002.

TITLE XXI—ARMY MILITARY CONSTRUCTION

- Sec. 2101. Authorized Army construction and land acquisition projects.
 Sec. 2102. Family housing.
 Sec. 2103. Improvements to military family housing units.
 Sec. 2104. Authorization of appropriations, Army.
 Sec. 2105. Use of unobligated Army military construction funds in conjunction with funds provided by the Commonwealth of Virginia to carry out certain fiscal year 2002 project.
 Sec. 2106. Modification of authority to carry out certain fiscal year 2009 project.
 Sec. 2107. Modification of authority to carry out certain fiscal year 2010 project.
 Sec. 2108. Extension of authorizations of certain fiscal year 2008 projects.

SECTION 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) **INSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or Location	Amount
Alabama	Fort Rucker	\$69,650,000
Alaska	Fort Greely	\$26,000,000
	Fort Richardson	\$113,238,000
	Fort Wainwright	\$173,000,000
California	Presidio Monterey	\$140,000,000
Colorado	Fort Carson	\$106,350,000
Florida	Eglin Air Force Base	\$6,900,000
	Miami-Dade County	\$41,000,000
Georgia	Fort Benning	\$145,400,000
	Fort Gordon	\$4,150,000
	Fort Stewart	\$125,250,000
Hawaii	Fort Shafter	\$81,000,000
	Schofield Barracks	\$212,000,000
	Tripler Army Medical Center	\$28,000,000
Kansas	Fort Leavenworth	\$7,100,000
	Fort Riley	\$57,100,000
Kentucky	Fort Campbell	\$143,900,000
	Fort Knox	\$18,800,000
Louisiana	Fort Polk	\$63,250,000
Maryland	Aberdeen Proving Ground	\$14,600,000
	Fort Meade	\$32,600,000
Missouri	Fort Leonard Wood	\$111,700,000
New Mexico	White Sands	\$29,000,000
New York	Fort Drum	\$228,800,000
	U.S. Military Academy	\$132,324,000
North Carolina	Fort Bragg	\$310,900,000
Oklahoma	Fort Sill	\$13,800,000
	McAlester Army Ammunition Plant	\$3,000,000
South Carolina	Fort Jackson	\$91,000,000
Texas	Fort Bliss	\$149,950,000
	Fort Hood	\$145,050,000
	Fort Sam Houston	\$22,200,000
Virginia	Fort A.P. Hill	\$93,600,000
	Fort Eustis	\$18,000,000
	Fort Lee	\$18,400,000

Army: Inside the United States—Continued

State	Installation or Location	Amount
Washington	Fort Lewis	\$171,800,000
	Yakima Firing Range	\$3,750,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(2), the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or Location	Amount
Afghanistan	Bagram	\$101,500,000
Germany	Ansbach	\$31,800,000
	Grafenwoehr	\$75,500,000
	Rhine Ordnance Barracks	\$35,000,000
	Sembach Air Base	\$9,100,000
	Wiesbaden Air Base	\$126,500,000
Honduras	Soto Cano Air Base	\$20,400,000
Korea	Camp Walker	\$19,500,000

SEC. 2102. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(5)(A), the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, in the number of units, and in the amounts set forth in the following table:

Army: Family Housing

Country	Installation or Location	Units	Amount
Alaska	Fort Wainwright	110	\$21,000,000
Germany	Baumholder	64	\$34,329,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(5)(A), the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$2,040,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2104(5)(A), the Secretary of the Army may improve existing military family housing units in an amount not to exceed \$35,000,000.

SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of \$4,565,507,000, as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), \$3,152,562,000.

(2) For military construction projects outside the United States authorized by section 2101(b), \$419,300,000.

(3) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, \$23,000,000.

(4) For host nation support and architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$249,636,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, \$92,369,000.

(B) For support of military family housing (including the functions described in section 2833 of title 10, United States Code), \$518,140,000.

(6) For the construction of increment 4 of a brigade complex operations support facility at Vicenza, Italy, authorized by section 2101(b) of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110–181; 122 Stat. 505), \$25,000,000.

(7) For the construction of increment 4 of a brigade complex barracks and community support facility at Vicenza, Italy, authorized by section 2101(b) of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110–181; 122 Stat. 505), \$26,000,000.

(8) For the construction of increment 2 of the Command and Battle Center at Wiesbaden, Germany, authorized by section 2101(b) of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4662), \$59,500,000.

SEC. 2105. USE OF UNOBLIGATED ARMY MILITARY CONSTRUCTION FUNDS IN CONJUNCTION WITH FUNDS PROVIDED BY THE COMMONWEALTH OF VIRGINIA TO CARRY OUT CERTAIN FISCAL YEAR 2002 PROJECT.

(a) FIRE STATION AT FORT BELVOIR, VIRGINIA.—Section 2836(d) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1314), as amended by section 2846 of the Military Construction Authorization Act for Fiscal Year 2006 (division B of Public Law 109–163; 119 Stat. 3527) and section 2849 of the Military Construction Authorization Act for Fiscal Year 2007 (division B of Public Law 109–364; 120 Stat. 2486), is further amended—

(1) in paragraph (2), by inserting “through a project for construction of an Army standard-design, two-company fire station at Fort Belvoir, Virginia,” after “Building 191”; and

(2) by adding at the end the following new paragraph:

“(3) The Secretary may use up to \$3,900,000 of available, unobligated Army military construction funds appropriated for a fiscal

year before fiscal year 2011, in conjunction with the funds provided under paragraph (1), for the project described in paragraph (2).”.

(b) CONGRESSIONAL NOTIFICATION.—The Secretary of the Army shall provide information, in accordance with section 2851(c) of title 10, United States Code, regarding the project described in the amendment made by subsection (a). If it becomes necessary to exceed the estimated project cost of \$8,780,000, including \$4,880,000 contributed by the Commonwealth of Virginia, the Secretary shall utilize the authority provided by section 2853 of such title regarding authorized cost and scope of work variations.

SEC. 2106. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2009 PROJECT.

The table in section 2101(b) of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4661) is amended by striking “Katterbach” and inserting “Grafenwoehr”.

SEC. 2107. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2010 PROJECT.

In the case of the authorization contained in the table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2628) for Fort Riley, Kansas, for construction of a Brigade Complex at the installation, the Secretary of the Army may construct up to a 40,100 square-foot brigade headquarters consistent with the Army’s construction guidelines for brigade headquarters.

SEC. 2108. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2008 PROJECTS.

(a) EXTENSION.—Notwithstanding section 2002 of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110–181; 122 Stat. 503), authorizations set forth in the table in subsection (b), as provided in section 2101 of that Act (122 Stat. 504), shall remain in effect until October 1, 2011, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2012, whichever is later.

(b) TABLE.—The table referred to in subsection (a) is as follows:

Army: Extension of 2008 Project Authorizations

State	Installation or Location	Project	Amount
Georgia	Fort Stewart	Unit Operations Facilities	\$16,000,000
Hawaii	Schofield Barracks	Tactical Vehicle Wash Facility	\$10,200,000
		Barracks Complex-Wheeler 205	\$51,000,000
Louisiana	Fort Polk	Brigade Headquarters ..	\$9,800,000
		Child Care Facility	\$6,100,000
Missouri	Fort Leonard Wood	Multipurpose Machine Gun Range	\$4,150,000
Oklahoma	Fort Sill	Multipurpose Machine Gun Range	\$3,300,000
Washington	Fort Lewis	Alternative Fuel Facility	\$3,300,000

TITLE XXII—NAVY MILITARY CONSTRUCTION

Sec. 2201. Authorized Navy construction and land acquisition projects.
 Sec. 2202. Family housing.
 Sec. 2203. Improvements to military family housing units.
 Sec. 2204. Authorization of appropriations, Navy.
 Sec. 2205. Technical amendment to reflect multi-increment fiscal year 2010 project.
 Sec. 2206. Extension of authorization of certain fiscal year 2008 project.

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) **INSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(1), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Inside the United States

State	Installation or Location	Amount
Alabama	Mobile	\$29,082,000
Arizona	Marine Corps Air Station, Yuma	\$285,060,000
California	Marine Corps Base, Camp Pendleton ...	\$362,124,000
	Naval Base, Coronado	\$67,160,000
	Marine Corps Air Station, Miramar	\$190,610,000
	San Diego	\$193,706,000
	Marine Corps Base, Twentynine Palms	\$53,158,000
Florida	Blount Island Command	\$74,620,000
Georgia	Naval Submarine Base, Kings Bay	\$60,664,000
Hawaii	Marine Corps Base, Camp Smith	\$29,960,000
	Marine Corps Base, Kaneohe Bay	\$109,660,000
	Naval Station, Pearl Harbor	\$108,468,000
Maryland	Naval Support Facility, Indian Head ...	\$34,328,000
	Naval Air Station, Patuxent River	\$42,211,000
North Carolina	Marine Corps Base, Camp Lejeune	\$789,393,000
	Marine Corps Air Station, Cherry Point	\$65,510,000
Rhode Island	Naval Station, Newport	\$27,007,000
South Carolina	Marine Corps Air Station, Beaufort	\$129,410,000
Virginia	Naval Station, Norfolk	\$12,435,000
	Marine Corps Base, Quantico	\$143,632,000
Washington	Bangor	\$56,893,000

(b) **OUTSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(2), the Secretary of the Navy may acquire real property and carry out military construction projects for the installation or location outside the United States, and in the amounts, set forth in the following table:

Navy: Outside the United States

Country	Installation or Location	Amount
Bahrain	Southwest Asia	\$213,153,000
Djibouti	Camp Lemonier	\$11,148,000
Guam	Naval Activities, Guam	\$66,730,000
Japan	Atsugi Naval Air Facility	\$6,908,000
Spain	Naval Station, Rota	\$23,190,000

SEC. 2202. FAMILY HOUSING.

(a) **CONSTRUCTION AND ACQUISITION.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(5)(A), the Secretary of the Navy may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, in the number of units, and in the amounts set forth in the following table:

Navy: Family Housing

Location	Installation or Location	Units	Amount
Cuba	Guantanamo Bay	71	\$37,169,000

(b) **PLANNING AND DESIGN.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(5)(A), the Secretary of the Navy may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$3,255,000.

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(5)(A), the Secretary of the Navy may improve existing military family housing units in an amount not to exceed \$146,020,000.

SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of \$4,068,963,000, as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), \$2,865,001,000.

(2) For military construction projects outside the United States authorized by section 2201(b), \$321,129,000.

(3) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, \$20,877,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$120,050,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, \$186,444,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), \$366,346,000.

(6) For the construction of increment 7 of a limited area production and storage complex at Bangor, Washington, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2005 (division B of Public Law 108-375; 118 Stat. 2106), \$19,116,000.

(7) For the construction of increment 2 of a ship repair pier replacement at Norfolk Naval Shipyard, Virginia, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2633), \$100,000,000.

(8) For the construction of increment 2 of a wharves improvement at Apra Harbor, Guam, authorized by section 2201(b) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2633), \$40,000,000.

(9) For the construction of increment 2 of a tertiary water treatment plant at Marine Corps Base Camp Pendleton, California, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2632), \$30,000,000.

SEC. 2205. TECHNICAL AMENDMENT TO REFLECT MULTI-INCREMENT FISCAL YEAR 2010 PROJECT.

Section 2204 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2634) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

“(14) For the construction of the first increment of a tertiary water treatment plant at Marine Corps Base, Camp Pendleton, California, authorized by section 2201(a), \$112,330,000.”; and

(2) in subsection (b), by adding at the end the following new paragraph:

“(7) \$30,000,000 (the balance of the amount authorized under section 2201(a) for North Region Tertiary Treatment Plant, Camp Pendleton, California).”.

SEC. 2206. EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 2008 PROJECT.

(a) **EXTENSION.**—Notwithstanding section 2002 of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110–181; 122 Stat. 503), the authorization set forth in the table in subsection (b), as provided in section 2201(c) of that Act (122 Stat. 511), shall remain in effect until October 1, 2011, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2012, whichever is later.

(b) **TABLE.**—The table referred to in subsection (a) is as follows:

Navy: Extension of 2008 Project Authorization

Location	Installation or Location	Project	Amount
Worldwide	Unspecified	Host Nation Infrastructure	\$2,700,000

TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION

Sec. 2301. Authorized Air Force construction and land acquisition projects.

Sec. 2302. Family housing.

Sec. 2303. Improvements to military family housing units.

Sec. 2304. Authorization of appropriations, Air Force.

Sec. 2305. Extension of authorization of certain fiscal year 2007 project.

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) **INSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(1), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or Location	Amount
Alabama	Maxwell Air Force Base	\$13,400,000
Alaska	Eielson Air Force Base	\$28,000,000
.....	Elmendorf Air Force Base	\$30,274,000
Arizona	Davis-Monthan Air Force Base ...	\$48,500,000
.....	Luke Air Force Base	\$64,410,000
Colorado	Buckley Air Force Base	\$12,160,000
.....	Peterson Air Force Base	\$24,800,000
.....	U.S. Air Force Academy	\$27,600,000
Delaware	Dover Air Force Base	\$3,200,000
District of Columbia	Bolling Air Force Base	\$13,200,000
Florida	Eglin Air Force Base	\$11,400,000
.....	Hurlburt Field	\$34,670,000
.....	Patrick Air Force Base	\$158,009,000
Louisiana	Barksdale Air Force Base	\$18,140,000
Nevada	Creech Air Force Base	\$11,710,000
.....	Nellis Air Force Base	\$51,640,000
New Jersey	McGuire Air Force Base	\$26,440,000
New Mexico	Cannon Air Force Base	\$34,000,000
.....	Holloman Air Force Base	\$37,970,000
.....	Kirtland Air Force Base	\$24,402,000
New York	Fort Drum	\$20,440,000
North Dakota	Minot Air Force Base	\$18,770,000
Oklahoma	Tinker Air Force Base	\$14,000,000
South Carolina	Charleston Air Force Base	\$15,000,000
Texas	Dyess Air Force Base	\$4,080,000
.....	Lackland Air Force Base	\$127,280,000
Utah	Hill Air Force Base	\$14,900,000
Virginia	Langley Air Force Base	\$8,800,000
Wyoming	Camp Guernsey	\$4,650,000

(b) **OUTSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(2), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Air Force: Outside the United States

Country	Installation or Location	Amount
Afghanistan	Bagram	\$42,960,000
Bahrain	SW Asia	\$45,000,000
Germany	Kapaun	\$19,600,000
.....	Ramstein Air Base	\$22,354,000
.....	Vilseck	\$12,900,000

Air Force: Outside the United States—Continued

Country	Installation or Location	Amount
Guam	Andersen Air Force Base	\$50,300,000
Italy	Aviano Air Base	\$29,200,000
Korea	Kunsan Air Base	\$7,500,000
Qatar	Al Udeid	\$62,300,000
United Kingdom	RAF Mildenhall	\$15,000,000

SEC. 2302. FAMILY HOUSING.

Using amounts appropriated pursuant to the authorization of appropriations in section 2304(5)(A), the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$4,225,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(5)(A), the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed \$73,800,000.

SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2009, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of \$1,885,112,000, as follows:

- (1) For military construction projects inside the United States authorized by section 2301(a), \$901,845,000.
- (2) For military construction projects outside the United States authorized by section 2301(b), \$307,114,000.
- (3) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, \$18,000,000.
- (4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$66,336,000.
- (5) For military family housing functions:
 - (A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, \$78,025,000.
 - (B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), \$513,792,000.

SEC. 2305. EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 2007 PROJECT.

(a) **EXTENSION.**—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2007 (division B of Public Law 109–364; 120 Stat. 2463), authorization set forth in the table in subsection (b), as provided in section 2302 of that Act (120 Stat. 2455) and extended by section 2306 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2638), shall remain in effect until October 1, 2011, or the date of the enactment of an Act authorizing

funds for military construction for fiscal year 2012, whichever is later.

(b) TABLE.—The table referred to in subsection (a) is as follows:

Air Force: Extension of 2007 Project Authorization

State	Installation	Project	Amount
Idaho	Mountain Home Air Force Base ..	Replace Family Housing (457 units)	\$107,800,000

TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION

Subtitle A—Defense Agency Authorizations

Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.

Sec. 2402. Energy conservation projects.

Sec. 2403. Authorization of appropriations, Defense Agencies.

Sec. 2404. Modification of authority to carry out certain fiscal year 2010 projects.

Subtitle B—Chemical Demilitarization Authorizations

Sec. 2411. Authorization of appropriations, chemical demilitarization construction, defense-wide.

Sec. 2412. Modification of authority to carry out certain fiscal year 2000 project.

Subtitle A—Defense Agency Authorizations

SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(1), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following tables:

Defense Agencies: Inside the United States

State	Installation or Location	Amount
Arizona	Yuma Proving Ground	\$8,977,000
California	Point Magu Naval Base	\$3,100,000
Colorado	Fort Carson	\$3,717,000
District of Columbia	Bolling Air Force Base	\$3,000,000
Florida	Eglin Air Force Base	\$6,030,000
Georgia	Augusta	\$12,855,000
	Fort Benning	\$26,865,000
	Fort Stewart	\$35,100,000
	Hunter Air National Guard Station	\$2,400,000
	Hunter Army Airfield	\$3,318,000
Hawaii	Hickam Air Force Base	\$8,500,000
	Pearl Harbor	\$28,804,000
Idaho	Mountain Home Air Force Base	\$27,500,000
Illinois	Scott Air Force Base	\$1,388,000
Kentucky	Fort Campbell	\$38,095,000
Maryland	Andrews Air Force Base	\$14,000,000
	Bethesda Naval Hospital	\$80,000,000

Defense Agencies: Inside the United States—Continued

State	Installation or Location	Amount
	Fort Detrick	\$45,700,000
	Fort Meade	\$219,360,000
Massachusetts	Hanscom Air Force Base	\$2,900,000
New Mexico	Cannon Air Force Base	\$116,225,000
	White Sands Missile Range	\$22,900,000
New York	United States Military Academy	\$27,960,000
North Carolina	Camp Lejeune	\$16,646,000
	Fort Bragg	\$168,693,000
Ohio	Defense Supply Center, Columbus	\$7,400,000
Pennsylvania	Defense Distribution Depot New Cumberland	\$96,000,000
Texas	Lackland Air Force Base	\$162,500,000
Virginia	Craney Island	\$58,000,000
	Fort Belvoir	\$6,300,000
	Pentagon Reservation	\$63,324,000
	Marine Corps Base, Quantico	\$47,355,000
Washington	Fort Lewis	\$8,400,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(2), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following tables:

Defense Agencies: Outside the United States

Country	Installation or Location	Amount
Belgium	Brussels	\$99,174,000
Germany	Katterbach	\$37,100,000
	Panzer Kaserne	\$48,968,000
	Vilseck	\$34,800,000
Japan	Kadena Air Base	\$3,000,000
	Misawa Air Base	\$31,000,000
Korea	Camp Carroll	\$19,500,000
Puerto Rico	Fort Buchanan	\$58,708,000
Qatar	Al Udeid	\$1,961,000
United Kingdom	Menwith Hill Station	\$2,000,000
	Royal Air Force Alconbury	\$30,308,000
	Royal Air Force Mildenhall	\$15,900,000

SEC. 2402. ENERGY CONSERVATION PROJECTS.

(a) PROJECTS AUTHORIZED.—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(6), the Secretary of Defense may carry out energy conservation projects under chapter 173 of title 10, United States Code, in the amount of \$120,000,000.

(b) AVAILABILITY OF FUNDS FOR RESERVE COMPONENT PROJECTS.—Of the amount authorized to be appropriated by section 2403(6) for energy conservation projects, the Secretary of Defense shall reserve a portion of the amount for energy conservation projects for the reserve components in an amount that is not less than an amount that bears the same proportion to the total amount

authorized to be appropriated as the total quantity of energy consumed by reserve facilities (as defined in section 18232(2) of title 10, United States Code) during fiscal year 2010 bears to the total quantity of energy consumed by all military installations (as defined in section 2687(e)(1) of such title) during that fiscal year, as determined by the Secretary.

SEC. 2403. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) in the total amount of \$3,116,137,000, as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), \$1,373,312,000.

(2) For military construction projects outside the United States authorized by section 2401(b), \$382,419,000.

(3) For unspecified minor military construction projects under section 2805 of title 10, United States Code, \$42,856,000.

(4) For contingency construction projects of the Secretary of Defense under section 2804 of title 10, United States Code, \$10,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$431,617,000.

(6) For energy conservation projects under chapter 173 of title 10, United States Code, \$120,000,000.

(7) For military family housing functions:

(A) For support of military family housing (including functions described in section 2833 of title 10, United States Code), \$50,464,000.

(B) For credits to the Department of Defense Family Housing Improvement Fund under section 2883 of title 10, United States Code, and the Homeowners Assistance Fund established under section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374), \$17,611,000.

(8) For the construction of increment 5 of the Army Medical Research Institute of Infectious Diseases Stage I at Fort Detrick, Maryland, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2007 (division B of Public Law 109–364; 120 Stat. 2457), \$17,400,000.

(9) For the construction of increment 3 of replacement fuel storage facilities at Point Loma Annex, California, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110–181; 122 Stat. 521), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2646), \$20,000,000.

(10) For the construction of increment 3 of the United States Army Medical Research Institute of Chemical Defense replacement facility at Aberdeen Proving Ground, Maryland, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4689), \$105,000,000.

(11) For the construction of increment 3 of a National Security Agency data center at Camp Williams, Utah, authorized as a Military Construction, Defense-Wide project by the Supplemental Appropriations Act, 2009 (Public Law 111–32; 123 Stat. 1888), \$398,358,000.

(12) For the construction of increment 2 of the hospital at Fort Bliss, Texas, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2642), \$147,100,000.

SEC. 2404. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2010 PROJECTS.

(a) AUTHORIZATION OF PROJECT FOR WHICH FUNDS HAVE BEEN APPROPRIATED.—

(1) AUTHORIZATION.—The table relating to the Missile Defense Agency in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2641) is amended by adding at the end the following:

Worldwide Unspecified	Range Facility	\$68,500,000
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(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2404(a)(1) of that Act (123 Stat. 2644) is amended by striking “\$1,048,783,000” and inserting “\$1,117,283,000”.

(3) PROJECT DESCRIPTION.—In the case of the authorization contained in the amendment made by paragraph (1), the authorized project relates to an Aegis ashore test facility for which funds were made available by title I of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2010 (division E of Public Law 111–117; 123 Stat. 3286) under the heading “MILITARY CONSTRUCTION, DEFENSE-WIDE”.

(b) PURPOSE OF FORT BRAGG PROJECT.—In the case of the authorization contained in the table relating to the TRICARE Management Activity in section 2401(a) of the Military Construction Authorization Act of Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2642) for Fort Bragg, North Carolina, for construction of a Health Clinic at the installation, the Secretary of Defense may construct a Behavioral Health clinic that predominantly provides behavioral health specialty care.

Subtitle B—Chemical Demilitarization Authorizations

SEC. 2411. AUTHORIZATION OF APPROPRIATIONS, CHEMICAL DEMILITARIZATION CONSTRUCTION, DEFENSE-WIDE.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for military construction and land acquisition for chemical demilitarization in the total amount of \$124,971,000, as follows:

(1) For the construction of phase 12 of a chemical munitions demilitarization facility at Pueblo Chemical Activity, Colorado, authorized by section 2401(a) of the Military Construction

Authorization Act for Fiscal Year 1997 (division B of Public Law 104-201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106-65; 113 Stat. 839), section 2407 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2698), and section 2413 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4697), \$65,569,000.

(2) For the construction of phase 11 of a munitions demilitarization facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106-65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1298), section 2405 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2698), and section 2414 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4697), and section 2412 of this Act, \$59,402,000.

SEC. 2412. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2000 PROJECT.

(a) MODIFICATION.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106-65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1298), section 2405 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2698), and section 2414 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4697), is amended—

(1) in the item relating to Blue Grass Army Depot, Kentucky, by striking “\$492,000,000” in the amount column and inserting “\$746,000,000”; and

(2) by striking the amount identified as the total in the amount column and inserting “\$1,203,920,000”.

(b) CONFORMING AMENDMENT.—Section 2405(b)(3) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106-65; 113 Stat. 839), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1298), section 2405 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2698), and section 2414 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4697), is further amended by striking “\$469,200,000” and inserting “\$723,200,000”.

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVEST- MENT PROGRAM

Sec. 2501. Authorized NATO construction and land acquisition projects.

Sec. 2502. Authorization of appropriations, NATO.

SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment Program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment Program authorized by section 2501, in the amount of \$258,884,000.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

Sec. 2601. Authorized Army National Guard construction and land acquisition projects.

Sec. 2602. Authorized Army Reserve construction and land acquisition projects.

Sec. 2603. Authorized Navy Reserve and Marine Corps Reserve construction and land acquisition projects.

Sec. 2604. Authorized Air National Guard construction and land acquisition projects.

Sec. 2605. Authorized Air Force Reserve construction and land acquisition projects.

Sec. 2606. Authorization of appropriations, National Guard and Reserve.

Sec. 2607. Extension of authorizations of certain fiscal year 2008 projects.

SEC. 2601. AUTHORIZED ARMY NATIONAL GUARD CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2606(1), the Secretary of the Army may acquire real property and carry out military construction projects for the Army National Guard locations inside the United States, and in the amounts, set forth in the following table:

Army National Guard: Inside the United States

State	Location	Amount
Arizona	Florence	\$16,500,000
Arkansas	Camp Robinson	\$30,000,000
	Fort Chaffee	\$21,500,000
California	Camp Roberts	\$19,000,000
Colorado	Colorado Springs	\$20,000,000
	Fort Carson	\$40,000,000

Army National Guard: Inside the United States—Continued

State	Location	Amount
	Gypsum	\$39,000,000
	Windsor	\$7,500,000
Connecticut	Windsor Locks	\$41,000,000
Delaware	New Castle	\$27,000,000
Georgia	Cumming	\$17,000,000
	Dobbins Air Reserve Base	\$10,400,000
Hawaii	Kalaeloa	\$38,000,000
Idaho	Gowen Field	\$17,500,000
	Mountain Home	\$6,300,000
Illinois	Springfield	\$15,000,000
Kansas	Wichita	\$67,000,000
Kentucky	Burlington	\$19,500,000
Louisiana	Fort Polk	\$5,500,000
	Minden	\$28,000,000
Maryland	St. Inigoes	\$5,500,000
Massachusetts	Hanscom Air Force Base	\$23,000,000
Michigan	Camp Grayling Range	\$19,000,000
Minnesota	Arden Hills	\$29,000,000
	Camp Ripley	\$8,750,000
Nebraska	Lincoln	\$3,300,000
	Mead	\$11,400,000
New Hampshire	Pembroke	\$36,000,000
New Mexico	Farmington	\$8,500,000
North Carolina	High Point	\$1,551,000
North Dakota	Camp Grafton	\$11,200,000
Rhode Island	East Greenwich	\$27,000,000
South Dakota	Watertown	\$25,000,000
Texas	Camp Maxey	\$2,500,000
	Camp Swift	\$2,600,000
Washington	Tacoma	\$25,000,000
West Virginia	Moorefield	\$14,200,000
	Morgantown	\$21,000,000
Wisconsin	Madison	\$5,700,000
Wyoming	Laramie	\$14,400,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2606(1), the Secretary of the Army may acquire real property and carry out military construction projects for the Army National Guard locations outside the United States, and in the amounts, set forth in the following table:

Army National Guard: Outside the United States

Country	Location	Amount
Guam	Barrigada	\$19,000,000
Virgin Islands	St. Croix	\$25,000,000
Puerto Rico	Camp Santiago	\$12,300,000

SEC. 2602. AUTHORIZED ARMY RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2606(2), the Secretary of the Army may acquire real property and carry out military construction projects for the Army Reserve locations inside the United States, and in the amounts, set forth in the following table:

Army Reserve

State	Location	Amount
California	Fairfield	\$26,000,000
	Fort Hunter Liggett	\$52,000,000
Florida	North Fort Myers	\$13,800,000
	Orlando	\$10,200,000
	Tallahassee	\$10,400,000
Georgia	Macon	\$11,400,000
Illinois	Quincy	\$12,200,000
Indiana	Michigan City	\$15,500,000
Iowa	Des Moines	\$8,175,000
Massachusetts	Devens Reserve Forces Training Area	\$4,700,000
Missouri	Belton	\$11,800,000
New Mexico	Las Cruces	\$11,400,000
New York	Binghamton	\$13,400,000
Texas	Denton	\$12,600,000
	Rio Grande	\$6,100,000
	San Marcos	\$8,500,000
Virginia	Fort A.P. Hill	\$15,500,000
	Fort Story	\$11,000,000
	Roanoke	\$14,800,000
Wisconsin	Fort McCoy	\$19,800,000

SEC. 2603. AUTHORIZED NAVY RESERVE AND MARINE CORPS RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2606(3), the Secretary of the Navy may acquire real property and carry out military construction projects for the Navy Reserve and Marine Corps Reserve locations inside the United States, and in the amounts, set forth in the following table:

Navy Reserve and Marine Corps Reserve

State	Location	Amount
California	Marine Corps Base, Twentynine Palms	\$5,991,000
Louisiana	New Orleans	\$16,281,000
Virginia	Williamsburg	\$21,346,000
Washington	Yakima	\$13,844,000

SEC. 2604. AUTHORIZED AIR NATIONAL GUARD CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2606(4), the Secretary of the Air Force may acquire real property and carry out military construction projects for the Air National Guard locations inside the United States, and in the amounts, set forth in the following table:

Air National Guard

State	Location	Amount
Alabama	Montgomery Regional Airport (ANG)	\$7,472,000
Arizona	Davis Monthan Air Force Base	\$4,650,000
	Fort Huachuca	\$11,000,000
Delaware	New Castle County Airport	\$1,500,000
Florida	Jacksonville International Airport	\$6,700,000

Air National Guard—Continued

State	Location	Amount
Georgia	Savannah/Hilton Head International Airport	\$7,450,000
Hawaii	Hickam Air Force Base	\$71,450,000
Illinois	Capital Municipal Airport	\$16,700,000
Indiana	Hulman Regional Airport	\$4,100,000
Maryland	Martin State Airport	\$11,400,000
New York	Fort Drum	\$2,500,000
	Stewart International Airport	\$14,250,000
North Carolina	Stanly County Airport	\$2,000,000
Pennsylvania	State College Air National Guard Station	\$4,100,000
Tennessee	Nashville International Airport	\$5,500,000
Texas	Ellington Field	\$7,000,000

SEC. 2605. AUTHORIZED AIR FORCE RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2606(5), the Secretary of the Air Force may acquire real property and carry out military construction projects for the Air Force Reserve location inside the United States, and in the amount, set forth in the following table:

Air Force Reserve

State	Location	Amount
Florida	Patrick Air Force Base	\$3,420,000

SEC. 2606. AUTHORIZATION OF APPROPRIATIONS, NATIONAL GUARD AND RESERVE.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), in the following amounts:

(1) For the Department of the Army, for the Army National Guard of the United States, \$873,664,000.

(2) For the Department of the Army, for the Army Reserve, \$318,175,000.

(3) For the Department of the Navy, for the Navy and Marine Corps Reserve, \$61,557,000.

(4) For the Department of the Air Force, for the Air National Guard of the United States, \$194,986,000.

(5) For the Department of the Air Force, for the Air Force Reserve, \$7,832,000.

SEC. 2607. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2008 PROJECTS.

(a) EXTENSION.—Notwithstanding section 2002 of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110–181; 122 Stat. 503), the authorization set forth in the tables in subsection (b), as provided in section 2601 and

2604 of that Act, shall remain in effect until October 1, 2011, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2012, whichever is later.

(b) TABLE.—The tables referred to in subsection (a) are as follows:

Army National Guard: Extension of 2008 Project Authorization

State	Installation or Location	Project	Amount
Pennsylvania	East Fallowfield Township	Readiness Center (SBCT)	\$ 8,300,000

Air National Guard: Extension of 2008 Project Authorization

State	Installation or Location	Project	Amount
Vermont	Burlington	Base Security Improvements	\$ 6,600,000

TITLE XXVII—BASE REALIGNMENT AND CLOSURE ACTIVITIES

- Sec. 2701. Authorization of appropriations for base realignment and closure activities funded through Department of Defense Base Closure Account 1990.
 Sec. 2702. Authorized base realignment and closure activities funded through Department of Defense Base Closure Account 2005.
 Sec. 2703. Authorization of appropriations for base realignment and closure activities funded through Department of Defense Base Closure Account 2005.
 Sec. 2704. Transportation plan for BRAC 133 project under Fort Belvoir, Virginia, BRAC initiative.

SEC. 2701. AUTHORIZATION OF APPROPRIATIONS FOR BASE REALIGNMENT AND CLOSURE ACTIVITIES FUNDED THROUGH DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for base realignment and closure activities, including real property acquisition and military construction projects, as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) and funded through the Department of Defense Base Closure Account 1990 established by section 2906 of such Act, in the total amount of \$360,474,000, as follows:

- (1) For the Department of the Army, \$73,600,000.
- (2) For the Department of the Navy, \$162,000,000.
- (3) For the Department of the Air Force, \$124,874,000.

SEC. 2702. AUTHORIZED BASE REALIGNMENT AND CLOSURE ACTIVITIES FUNDED THROUGH DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005.

Using amounts appropriated pursuant to the authorization of appropriations in section 2703, the Secretary of Defense may carry out base realignment and closure activities, including real property acquisition and military construction projects, as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) and

funded through the Department of Defense Base Closure Account 2005 established by section 2906A of such Act, in the amount of \$2,354,285,000.

SEC. 2703. AUTHORIZATION OF APPROPRIATIONS FOR BASE REALIGNMENT AND CLOSURE ACTIVITIES FUNDED THROUGH DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, for base realignment and closure activities, including real property acquisition and military construction projects, as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) and funded through the Department of Defense Base Closure Account 2005 established by section 2906A of such Act, in the total amount of \$2,354,285,000.

SEC. 2704. TRANSPORTATION PLAN FOR BRAC 133 PROJECT UNDER FORT BELVOIR, VIRGINIA, BRAC INITIATIVE.

Deadline.

(a) **SUBMISSION OF TRANSPORTATION PLAN.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the congressional defense committees a transportation plan for the BRAC 133 project.

(b) **TRANSPORTATION PLAN CONDITIONS.**—The transportation plan for the BRAC 133 project must address ingress and egress of all personnel to and from the BRAC 133 project site. The transportation plan shall also assess the costs and programming of short-, medium-, and long-term projects, and the use of other methods of transportation, that are necessary to maintain existing level of service, and the proposed funding source to obtain such levels of service, at the following six intersections

(1) The intersection of Beauregard Street and Mark Center Drive.

(2) The intersection of Beauregard Street and Seminary Road.

(3) The intersection of Seminary Road and Mark Center Drive.

(4) The intersection of Seminary Road and the northbound entrance-ramp to I–395.

(5) The intersection of Seminary Road and the northbound exit-ramp from I–395.

(6) The intersection of Seminary Road and the southbound exit-ramp from I–395.

(c) **INSPECTOR GENERAL REPORT.**—Not later than September 15, 2011, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report evaluating the sufficiency and coordination conducted in completing the requisite environmental studies associated with the site selection of the BRAC 133 project pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Inspector General shall give specific attention to the transportation determinations associated with the BRAC 133 project and review and provide comment on the transportation plan for the BRAC 133 project and the plan’s adherence to the conditions imposed by subsection (b).

(d) **DEFINITIONS.**—In this section:

(1) The term “BRAC 133 project” refers to the proposed office complex to be developed at an established mixed-use

business park in Alexandria, Virginia, to implement recommendation 133 of the Defense Base Closure and Realignment Commission contained in the report of the Commission transmitted to Congress on September 15, 2005, under section 2903(e) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) The term “level of service” has the meaning given that term in the most-recent Highway Capacity Manual of the Transportation Research Board.

TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

- Sec. 2801. Availability of military construction information on Internet.
- Sec. 2802. Use of Pentagon Reservation Maintenance Revolving Fund for construction or alteration at Pentagon Reservation.
- Sec. 2803. Reduced reporting time limits for certain military construction and real property reports when submitted in electronic media.
- Sec. 2804. Authority to use operation and maintenance funds for construction projects inside the United States Central Command area of responsibility.
- Sec. 2805. Sense of Congress and report regarding employment of veterans to work on military construction projects.

Subtitle B—Real Property and Facilities Administration

- Sec. 2811. Notice-and-wait requirements applicable to real property transactions.
- Sec. 2812. Treatment of proceeds generated from leases of non-excess property involving military museums.
- Sec. 2813. Limitation on enhanced use leases of non-excess property.
- Sec. 2814. Repeal of expired authority to lease land for special operations activities.
- Sec. 2815. Former Naval Bombardment Area, Culebra Island, Puerto Rico.

Subtitle C—Provisions Related to Guam Realignment

- Sec. 2821. Extension of term of Deputy Secretary of Defense’s leadership of Guam Oversight Council.
- Sec. 2822. Utility conveyances to support integrated water and wastewater treatment system on Guam.
- Sec. 2823. Report on types of facilities required to support Guam realignment.
- Sec. 2824. Report on civilian infrastructure needs for Guam.

Subtitle D—Energy Security

- Sec. 2831. Consideration of environmentally sustainable practices in Department energy performance plan.
- Sec. 2832. Enhancement of energy security activities of the Department of Defense.

Subtitle E—Land Conveyances

- Sec. 2841. Land conveyance, Defense Fuel Support Point (DFSP) Whittier, Alaska.
- Sec. 2842. Land conveyance, Fort Knox, Kentucky.
- Sec. 2843. Land conveyance, Naval Support Activity (West Bank), New Orleans, Louisiana.
- Sec. 2844. Land conveyance, former Navy Extremely Low Frequency communications project site, Republic, Michigan.
- Sec. 2845. Land conveyance, Marine Forces Reserve Center, Wilmington, North Carolina.

Subtitle F—Other Matters

- Sec. 2851. Limitation on availability of funds pending report regarding construction of a new outlying landing field in North Carolina and Virginia.
- Sec. 2852. Requirements related to providing world class military medical centers.
- Sec. 2853. Report on fuel infrastructure sustainment, restoration, and modernization requirements.
- Sec. 2854. Naming of Armed Forces Reserve Center, Middletown, Connecticut.
- Sec. 2855. Sense of Congress on proposed extension of the Alaska Railroad corridor across Federal land in Alaska.

Sec. 2856. Sense of Congress on improving military housing for members of the Air Force.

Sec. 2857. Sense of Congress regarding recreational hunting and fishing on military installations.

Subtitle A—Military Construction Program and Military Family Housing Changes

SEC. 2801. AVAILABILITY OF MILITARY CONSTRUCTION INFORMATION ON INTERNET.

(a) MODIFICATION OF INFORMATION REQUIRED TO BE PROVIDED.—Paragraph (2) of subsection (c) of section 2851 of title 10, United States Code, is amended—

(1) by striking subparagraph (F); and

(2) by redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(b) EXPANDED AVAILABILITY OF INFORMATION.—Such subsection is further amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(c) CONFORMING AMENDMENTS.—Such subsection is further amended—

(1) in paragraph (1), by striking “that, when activated by a person authorized under paragraph (3), will permit the person” and inserting “that will permit a person”; and

(2) in paragraph (3), as redesignated by subsection (b)(2)—

(A) by striking “to the persons referred to in paragraph (3)” and inserting “on the Internet site required by such paragraph”; and

(B) by striking “to such persons”.

SEC. 2802. USE OF PENTAGON RESERVATION MAINTENANCE REVOLVING FUND FOR CONSTRUCTION OR ALTERATION AT PENTAGON RESERVATION.

Section 2674(e) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking “Monies” and inserting “Subject to paragraphs (3) and (4), monies”; and

(2) by adding at the end the following new paragraphs:

“(3) If the cost of a construction or alteration activity proposed to be financed in whole or in part using monies from the Fund will exceed the limitation specified in section 2805 of this title for a comparable unspecified minor military construction project, the activity shall be subject to authorization as provided by section 2802 of this title before monies from the Fund are obligated for the activity.

“(4) The authority of the Secretary to use monies from the Fund to support construction or alteration activities at the Pentagon Reservation expires on September 30, 2012.”.

Expiration date.

SEC. 2803. REDUCED REPORTING TIME LIMITS FOR CERTAIN MILITARY CONSTRUCTION AND REAL PROPERTY REPORTS WHEN SUBMITTED IN ELECTRONIC MEDIA.

(a) CONVEYANCE OF PROPERTY FOR NATURAL RESOURCE CONSERVATION.—Section 2694a(e) of title 10 United States Code, is amended by inserting before the period at the end the following: “or, if earlier, a period of 14 days has elapsed from the date

on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

(b) NATO SECURITY INVESTMENT CONTRIBUTIONS.—Section 2806(c)(2)(B) of such title is amended by inserting before the period at the end the following: “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

10 USC 2806.

(c) FORD ISLAND DEVELOPMENT.—Section 2814(g)(2) of such title is amended by inserting before the period at the end the following: “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

(d) LEASING OF MILITARY FAMILY HOUSING.—Section 2828(f)(2) of such title is amended by inserting before the period at the end the following: “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

(e) LEASING OF MILITARY FAMILY HOUSING TO BE CONSTRUCTED.—Section 2835(g)(2) of such title is amended—

(1) by striking “calendar”; and

(2) by inserting before the period at the end the following: “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the analysis is provided in an electronic medium pursuant to section 480 of this title”.

(f) ACQUISITION OR CONSTRUCTION OF MILITARY UNACCOMPANIED HOUSING.—Section 2881a(e)(2) of such title is amended by inserting before the period at the end the following: “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

(g) USE OF MILITARY CONSTRUCTION ALTERNATIVE AUTHORITY.—Section 2884(a)(4) of such title is amended by inserting before the period at the end the following: “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

SEC. 2804. AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS INSIDE THE UNITED STATES CENTRAL COMMAND AREA OF RESPONSIBILITY.

(a) INCLUSION OF AREA FORMERLY WITHIN UNITED STATES CENTRAL COMMAND AREA OF RESPONSIBILITY.—Subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as amended by subsections (a) and (b) of section 2806 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111-84; 123 Stat. 2662), is amended by striking “United States Central Command area of responsibility” and inserting “area of responsibility of the United States Central Command or the area of responsibility and area of interest of Combined Task Force-Horn of Africa”.

(b) ANNUAL LIMITATION ON USE OF AUTHORITY IN AFGHANISTAN.—Subsection (c)(2) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as amended by section 2806(c) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111-84; 123 Stat. 2663), is amended—

(1) by striking “\$300,000,000 in funds available for operation and maintenance for fiscal year 2010 may be used in Afghanistan upon completing the prenotification requirements under subsection (b)” and inserting “\$100,000,000 in funds available for operation and maintenance for fiscal year 2011 may be used in Afghanistan subject to the notification requirements under subsection (b)”; and

(2) by striking “\$500,000,000” and inserting “\$300,000,000”.

(c) ONE-YEAR EXTENSION OF AUTHORITY.—Subsection (h) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as added by section 2806(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111-84; 123 Stat. 2662), is amended—

(1) in paragraph (1), by striking “September 30, 2010” and inserting “September 30, 2011”; and

(2) in paragraph (2), by striking “fiscal year 2011” and inserting “fiscal year 2012”.

(d) DEFINITION.—Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723) is amended by adding at the end the following new subsection:

“(i) DEFINITIONS.—In this section:

“(1) The term ‘area of responsibility’, with respect to the Combined Task Force-Horn of Africa, is Kenya, Somalia, Ethiopia, Sudan, Eritrea, Djibouti, and Seychelles.

“(2) The term ‘area of interest’, with respect to the Combined Task Force-Horn of Africa, is Yemen, Tanzania, Mauritius, Madagascar, Mozambique, Burundi, Rwanda, Comoros, Chad, the Democratic Republic of Congo, and Uganda.”.

SEC. 2805. SENSE OF CONGRESS AND REPORT REGARDING EMPLOYMENT OF VETERANS TO WORK ON MILITARY CONSTRUCTION PROJECTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should establish a Veterans to Work program to provide an opportunity for apprentices, who are also veterans, to work on military construction projects.

(b) REPORT.—

(1) REPORT REQUIRED.—Not later than 180 days after enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report that includes at a minimum the following:

(A) An assessment of the number of unemployed apprentices, who are also veterans, with data presented by appropriate age groupings.

(B) An evaluation of benefits to be derived from establishing a program to employ apprentices, who are also veterans, in military construction projects, including the impacts of the program on the following:

(i) Workforce sustainability.

(ii) Workforce skills enhancement.

(iii) Short- and long-term cost-effectiveness.

(iv) Improved veteran employment in sustainable wage fields.

(C) Any challenges, difficulties, or problems projected in recruiting apprentices, who are also veterans.

(2) CONSULTATION.—The Secretary of Defense shall prepare the report in consultation with the Secretary of Labor and the Secretary of Veterans Affairs.

(c) DEFINITIONS.—In this section:

(1) The term “apprentice” means an individual who is employed pursuant to, and individually registered in, a qualified apprenticeship program.

(2) The term “qualified apprenticeship program” means an apprenticeship or other training program that qualifies as an employee welfare benefit plan, as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(3) The term “veteran” has the meaning given such term in section 101(2) of title 38, United States Code.

Subtitle B—Real Property and Facilities Administration

SEC. 2811. NOTICE-AND-WAIT REQUIREMENTS APPLICABLE TO REAL PROPERTY TRANSACTIONS.

(a) EXCEPTION FOR LEASES UNDER BASE CLOSURE PROCESS.—Subsection (a)(1)(C) of section 2662 of title 10, United States Code, is amended by inserting after “United States” the following: “(other than a lease or license entered into under section 2667(g) of this title)”.

(b) REPEAL OF ANNUAL REPORT ON MINOR REAL ESTATE TRANSACTIONS.—Subsection (b) of such section is repealed.

(c) GEOGRAPHIC SCOPE OF REQUIREMENTS.—Subsection (c) of such section is amended—

(1) by striking “GEOGRAPHIC SCOPE; EXCEPTED” and inserting “EXCEPTED”;

(2) by striking the first sentence; and

(3) by striking “It does not” and inserting “This section does not”.

(d) REPEAL OF NOTICE AND WAIT REQUIREMENT REGARDING GSA LEASES OF SPACE FOR DOD.—Subsection (e) of such section is repealed.

(e) ADDITIONAL REPORTING REQUIREMENTS REGARDING LEASES OF REAL PROPERTY OWNED BY THE UNITED STATES.—Such section is further amended by inserting after subsection (a) the following new subsection:

“(b) ADDITIONAL REPORTING REQUIREMENTS REGARDING LEASES OF REAL PROPERTY OWNED BY THE UNITED STATES.—(1) In the case of a proposed lease or license of real property owned by the United States covered by paragraph (1)(C) of subsection (a), the Secretary concerned shall comply with the notice-and-wait requirements of paragraph (3) of such subsection before—

“(A) issuing a contract solicitation or other lease offering with regard to the transaction; and

“(B) providing public notice regarding any meeting to discuss a proposed contract solicitation with regard to the transaction.

“(2) The report under paragraph (3) of subsection (a) shall include the following with regard to a proposed transaction covered by paragraph (1)(C) of such subsection:

“(A) A description of the proposed transaction, including the proposed duration of the lease or license.

“(B) A description of the authorities to be used in entering into the transaction.

“(C) A statement of the scored cost of the entire transaction, determined using the scoring criteria of the Office of Management and Budget.

“(D) A determination that the property involved in the transaction is not excess property, as required by section 2667(a)(3) of this title, including the basis for the determination.

“(E) A determination that the proposed transaction is directly compatible with the mission of the military installation or Defense Agency at which the property is located and a description of the anticipated long-term use of the property at the conclusion of the lease or license.

“(F) A description of the requirements or conditions within the contract solicitation or other lease offering for the person making the offer to address taxation issues, including payments-in-lieu-of taxes, and other development issues related to local municipalities.

“(G) If the proposed lease involves a project related to energy production, a certification by the Secretary of Defense that the project, as it will be specified in the contract solicitation or other lease offering, is consistent with the Department of Defense performance goals and plan required by section 2911 of this title.

“(3) The Secretary concerned may not enter into the actual lease or license with respect to property for which the information required by paragraph (2) was submitted in a report under subsection (a)(3) unless the Secretary again complies with the notice-and-wait requirements of such subsection. The subsequent report shall include the following with regard to the proposed transaction:

“(A) A cross reference to the prior report that contained the information submitted under paragraph (2) with respect to the transaction.

“(B) A description of the differences between the information submitted under paragraph (2) and the information regarding the transaction being submitted in the subsequent report.

“(C) A description of the payment to be required in connection with the lease or license, including a description of any in-kind consideration that will be accepted.

“(D) A description of any community support facility or provision of community support services under the lease or license, regardless of whether the facility will be operated by a covered entity (as defined in section 2667(d) of this title) or the lessee or the services will be provided by a covered entity or the lessee.

“(E) A description of the competitive procedures used to select the lessee or, in the case of a lease involving the public benefit exception authorized by section 2667(h)(2) of this title, a description of the public benefit to be served by the lease.”.

(f) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “the Secretary submits” in the matter preceding subparagraph (A) and inserting “the Secretary concerned submits”; and

(B) in paragraph (3), by striking “the Secretary of a military department or the Secretary of Defense” and inserting “the Secretary concerned”;

(2) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively;

(3) in subsection (f), as so redesignated—

(A) in paragraph (1), by striking “, and the reporting requirement set forth in subsection (e) shall not apply with respect to a real property transaction otherwise covered by that subsection,”;

(B) in paragraph (3), by striking “or (e), as the case may be”; and

(C) by striking paragraph (4); and

(4) by adding at the end the following new subsection:

“(g) SECRETARY CONCERNED DEFINED.—In this section, the term ‘Secretary concerned’ includes, with respect to Defense Agencies, the Secretary of Defense.”

(g) CONFORMING AMENDMENTS TO LEASE OF NON-EXCESS PROPERTY AUTHORITY.—Section 2667 of such title is amended—

10 USC 2667.

(1) in subsection (c), by striking paragraph (4);

(2) in subsection (d), by striking paragraph (6);

(3) in subsection (e)(1), by striking subparagraph (E); and

(4) in subsection (h)—

(A) by striking paragraphs (3) and (5); and

(B) by redesignating paragraph (4) as paragraph (3).

SEC. 2812. TREATMENT OF PROCEEDS GENERATED FROM LEASES OF NON-EXCESS PROPERTY INVOLVING MILITARY MUSEUMS.

Section 2667(e)(1) of title 10, United States Code, as amended by section 2811(g), is amended by inserting after subparagraph (D) the following new subparagraph (E):

“(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum described in section 489(a) of this title, the proceeds shall be available for activities described in subparagraph (C) only at that museum.”

SEC. 2813. LIMITATION ON ENHANCED USE LEASES OF NON-EXCESS PROPERTY.

(a) IN GENERAL.—Section 2667(b)(7) of title 10, United States Code, is amended by striking the period at the end and inserting “, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount.”

(b) ARMED FORCES RETIREMENT HOME.—Section 1511(i)(2) of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 411(i)(2)) is amended—

(1) in subparagraph (D), by striking “; and” and inserting a semicolon;

(2) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(F) may not provide for a leaseback by the Retirement Home with an annual payment in excess of \$100,000, or otherwise commit the Retirement Home or the Department of Defense to annual payments in excess of such amount.”

SEC. 2814. REPEAL OF EXPIRED AUTHORITY TO LEASE LAND FOR SPECIAL OPERATIONS ACTIVITIES.

(a) **REPEAL.**—Section 2680 of title 10, United States Code, is repealed.

10 USC 2680
note.

(b) **EFFECT OF REPEAL.**—The amendment made by subsection (a) shall not affect the validity of any contract entered into under section 2680 of title 10, United States Code, on or before September 30, 2005.

(c) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 159 of such title is amended by striking the item relating to section 2680.

SEC. 2815. FORMER NAVAL BOMBARDMENT AREA, CULEBRA ISLAND, PUERTO RICO.

Deadline.

(a) **STUDY REQUIRED.**—At the request of the Commonwealth of Puerto Rico, the Secretary of Defense shall conduct a study relating to the presence of unexploded ordnance in a portion of the former bombardment area at Culebra Island, Puerto Rico, transferred to the Commonwealth of Puerto Rico by quitclaim deed. The Secretary shall complete the study within 270 days after receiving the request from the Commonwealth.

(b) **CONTENTS OF STUDY.**—The study shall include a specific assessment of Flamenco Beach located within the former bombardment area and shall include the following elements for each area:

(1) An estimate of the type and amount of unexploded ordnance.

(2) An estimate of the cost of removing unexploded ordnance.

(3) An examination of the impact of such removal on any endangered or threatened species and their habitat.

(4) An examination of current public access to the former bombardment area.

(5) An examination of any threats to public health or safety and the environment from unexploded ordnance.

(c) **CONSULTATION WITH COMMONWEALTH.**—In conducting the study, the Secretary of Defense shall consult with the Commonwealth of Puerto Rico regarding the Commonwealth's planned future uses of the former bombardment area. The Secretary shall consider the Commonwealth's planned future uses in developing any conclusions or recommendations the Secretary may include in the study.

(d) **DEFINITIONS.**—In this section:

(1) The term “quitclaim deed” refers to the quitclaim deed from the United States to the Commonwealth of Puerto Rico, signed by the Secretary of the Interior on August 11, 1982, for that portion of Tract (1b) consisting of the former bombardment area on the island of Culebra, Puerto Rico.

(2) The term “unexploded ordnance” has the meaning given that term by section 101(e)(5) of title 10, United States Code.

Subtitle C—Provisions Related to Guam Realignment

SEC. 2821. EXTENSION OF TERM OF DEPUTY SECRETARY OF DEFENSE'S LEADERSHIP OF GUAM OVERSIGHT COUNCIL.

Subsection (d) of section 132 of title 10, United States Code, as added by section 2831(a) of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2669), is amended by striking “September 30, 2015” and inserting “September 30, 2020”.

SEC. 2822. UTILITY CONVEYANCES TO SUPPORT INTEGRATED WATER AND WASTEWATER TREATMENT SYSTEM ON GUAM.

(a) CONVEYANCE OF UTILITIES.—The Secretary of Defense may convey to the Guam Waterworks Authority (in this section referred to as the “Authority”) all right, title, and interest of the United States in and to the water and wastewater treatment utility systems on Guam, including the Fena Reservoir, for the purpose of establishing an integrated water and wastewater treatment system on Guam.

(b) CONSIDERATION.—

(1) CONSIDERATION REQUIRED.—As consideration for the conveyance of the water and wastewater treatment utility systems on Guam, the Authority shall pay to the Secretary of Defense an amount equal to the fair market value of the utility infrastructure to be conveyed, as determined pursuant to an agreement between the Secretary and the Authority.

Payments.

(2) DEFERRED PAYMENTS.—At the discretion of the Authority, the Authority may elect to pay the consideration determined under paragraph (1) in equal annual payments over a period of not more than 25 years, starting with the first year beginning after the date of the conveyance of the water and wastewater treatment utility systems to the Authority.

Time period.

(3) ACCEPTANCE OF IN-KIND SERVICES.—The consideration required by paragraph (1) may be paid in cash or in-kind, as acceptable to the Secretary of Defense. The Secretary of Defense, in consultation with the Secretary of the Interior, shall consider the value of in-kind services provided by the Government of Guam pursuant to section 311 of the Compact of Free Association between the Government of the United States and the Government of the Federated States of Micronesia, approved by Congress in the Compact of Free Association Amendments Act of 2003 (Public Law 108–188; 117 Stat. 2781), section 311 of the Compact of Free Association between the Government of the United States and the Government of the Republic of the Marshall Islands, approved by Congress in such Act, and the Compact of Free Association between the Government of the United States and the Government of the Republic of Palau, approved by Congress in the Palau Compact of Free Association Act (Public Law 99–658; 100 Stat. 3672).

(c) CONDITION OF CONVEYANCE.—As a condition of the conveyance under subsection (a), the Secretary of Defense must obtain at least a 33 percent voting representation on the Guam Consolidated Commission on Utilities, including a proportional representation as chairperson of the Commission.

(d) IMPLEMENTATION REPORT.—

(1) REPORT REQUIRED.—If the Secretary of Defense determines to use the authority provided by subsection (a) to convey the water and wastewater treatment utility systems to the Authority, the Secretary shall submit to the congressional defense committees a report containing—

(A) a description of the actions needed to efficiently convey the water and wastewater treatment utility systems to the Authority; and

(B) an estimate of the cost of the conveyance.

(2) SUBMISSION.—The Secretary shall submit the report not later than 30 days after the date on which the Secretary makes the determination triggering the report requirement.

Contracts.

(e) NEW WATER SYSTEMS.—If the Secretary of Defense determines to use the authority provided by subsection (a) to convey the water and wastewater treatment utility systems to the Authority, the Secretary shall also enter into an agreement with the Authority, under which the Authority will manage and operate any water well or wastewater treatment plant that is constructed by the Secretary of a military department on Guam on or after the date of the enactment of this Act.

(f) ADDITIONAL TERM AND CONDITIONS.—The Secretary of Defense may require such additional terms and conditions in connection with the conveyance under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) TECHNICAL ASSISTANCE.—

(1) ASSISTANCE AUTHORIZED; REIMBURSEMENT.—The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may provide technical assistance to the Secretary of Defense and the Authority regarding the development of plans for the design, construction, operation, and maintenance of integrated water and wastewater treatment utility systems on Guam.

(2) CONTRACTING AUTHORITY; CONDITION.—The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may enter into memoranda of understanding, cooperative agreements, and other agreements with the Secretary of Defense to provide technical assistance as described in paragraph (1) under such terms and conditions as the Secretary of the Interior and the Secretary of Defense consider appropriate, except that costs incurred by the Secretary of the Interior to provide technical assistance under paragraph (1) shall be covered by the Secretary of Defense.

(3) REPORT AND OTHER ASSISTANCE.—Not later than one year after date of the enactment of this Act, the Secretary of the Interior and the Secretary of Defense shall submit to the congressional defense committees, the Committee on Natural Resources of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate a report detailing the following:

(A) Any technical assistance provided under paragraph (1) and information pertaining to any memoranda of understanding, cooperative agreements, and other agreements entered into pursuant to paragraph (2).

(B) An assessment of water and wastewater systems on Guam, including cost estimates and budget authority, including authorities available under the Acts of June 17,

1902, and June 12, 1906 (popularly known as the Reclamation Act; 43 U.S.C. 391) and other authority available to the Secretary of the Interior, for financing the design, construction, operation, and maintenance of such systems.

(C) The needs related to water and wastewater infrastructure on Guam and the protection of water resources on Guam identified by the Authority.

SEC. 2823. REPORT ON TYPES OF FACILITIES REQUIRED TO SUPPORT GUAM REALIGNMENT.

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of the Act, the Secretary of Defense shall submit to the congressional defense committees a report on the structural integrity of facilities required to support the realignment of military installations and the relocation of military personnel on Guam.

(b) **CONTENTS OF REPORT.**—The report required by subsection (a) shall contain the following elements:

(1) A threat assessment to the realigned forces, including natural and manmade threats.

(2) An evaluation of the types of facilities and the enhanced structural requirements required to deter the threat assessment specified in paragraph (1).

(3) An assessment of the costs associated with the enhanced structural requirements specified in paragraph (2).

SEC. 2824. REPORT ON CIVILIAN INFRASTRUCTURE NEEDS FOR GUAM.

(a) **REPORT REQUIRED.**—The Secretary of the Interior shall prepare a report—

(1) detailing the civilian infrastructure improvements needed on Guam to directly and indirectly support and sustain the realignment of military installations and the relocation of military personnel on Guam; and

(2) identifying, to the maximum extent practical, the potential funding sources for such improvements from other Federal departments and agencies and from existing authorities and funds within the Department of Defense.

(b) **CONSULTATION.**—The Secretary of the Interior shall prepare the report required by subsection (a) in consultation with the Secretary of Defense, the Government of Guam, and the Interagency Group on the Insular Areas established by Executive Order No. 13537.

(c) **SUBMISSION.**—The Secretary of the Interior shall submit the report required by subsection (a) to the congressional defense committees and the Committee on Natural Resources of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate not later than 180 days after the date of the enactment of this Act.

Subtitle D—Energy Security

SEC. 2831. CONSIDERATION OF ENVIRONMENTALLY SUSTAINABLE PRACTICES IN DEPARTMENT ENERGY PERFORMANCE PLAN.

Section 2911(c) of title 10, United States Code, is amended—

(1) in paragraph (4), by inserting “and hybrid-electric drive” after “alternative fuels”;

(2) by redesignating paragraph (9) as paragraph (11);

(3) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively;

(4) by inserting after paragraph (4) the following new paragraph:

“(5) Opportunities for the high-performance construction, lease, operation, and maintenance of buildings.”; and

(5) by inserting after paragraph (9) (as redesignated by paragraph (3)) the following new paragraph:

“(10) The value of incorporating electric, hybrid-electric, and high efficiency vehicles into vehicle fleets.”.

SEC. 2832. ENHANCEMENT OF ENERGY SECURITY ACTIVITIES OF THE DEPARTMENT OF DEFENSE.

(a) ENERGY PERFORMANCE MASTER PLAN.—

(1) ENHANCEMENT OF ENERGY PERFORMANCE PLAN TO MASTER PLAN.—Subsection (b) of section 2911 of title 10, United States Code, is amended to read as follows:

“(b) ENERGY PERFORMANCE MASTER PLAN.—(1) The Secretary of Defense shall develop a comprehensive master plan for the achievement of the energy performance goals of the Department of Defense, as set forth in laws, executive orders, and Department of Defense policies.

“(2) The master plan shall include the following:

“(A) A separate master plan, developed by each military department and Defense Agency, for the achievement of energy performance goals.

“(B) The use of a baseline standard for the measurement of energy consumption by transportation systems, support systems, utilities, and facilities and infrastructure that is consistent for all of the military departments.

“(C) A method of measurement of reductions or conservation in energy consumption that provides for the taking into account of changes in the current size of fleets, number of facilities, and overall square footage of facility plants.

“(D) Metrics to track annual progress in meeting energy performance goals.

“(E) A description of specific requirements, and proposed investments, in connection with the achievement of energy performance goals reflected in the budget of the President for each fiscal year (as submitted to Congress under section 1105(a) of title 31).

“(3) Not later than 30 days after the date on which the budget of the President is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Secretary shall submit the current version of the master plan to Congress.”.

(2) CONFORMING AMENDMENTS.—Such section is further amended by striking “plan” each place it appears and inserting “master plan”.

(3) SECTION HEADING AMENDMENT.—The heading of such section is amended to read as follows:

“§ 2911. Energy performance goals and master plan for the Department of Defense”.

(b) EXPANSION OF FACILITIES FOR WHICH USE OF RENEWABLE ENERGY AND ENERGY EFFICIENT PRODUCTS IS REQUIRED.—

(1) RENEWABLE ENERGY.—Subsection (a) of section 2915 of title 10, United States Code, is amended—

Deadline.

(A) by inserting “and facility repairs and renovations” after “military family housing projects”; and

(B) by striking “energy performance plan” and inserting “energy performance master plan”.

(2) CONSIDERATION IN DESIGN.—Subsection (b)(1) of such section is amended by striking “the design” and all that follows and inserting the following: “the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) requires consideration of energy systems using solar energy or other renewable forms of energy when use of a renewable form of energy— 10 USC 2915.

“(A) is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title; and

“(B) supported by the special considerations specified in subsection (c) of such section.”.

(3) ENERGY EFFICIENT PRODUCTS.—Subsection (e) of such section is amended—

(A) by striking the heading and inserting the following: “USE OF ENERGY EFFICIENT PRODUCTS IN FACILITIES.—”;

(B) in paragraph (1)—

(i) by striking “new facility construction” and inserting “construction, repair, or renovation of facilities”; and

(ii) by striking “energy performance plan” and inserting “energy performance master plan”;

(C) by redesignating paragraph (2) as paragraph (3);

and

(D) by inserting after paragraph (1) the following new paragraph (2):

“(2) For purposes of this subsection, energy efficient products may include, at a minimum, the following technologies, consistent with the products specified in paragraph (3):

“(A) Roof-top solar thermal, photovoltaic, and energy reducing coating technologies.

“(B) Energy management control and supervisory control and data acquisition systems.

“(C) Energy efficient heating, ventilation, and air conditioning systems.

“(D) Thermal windows and insulation systems.

“(E) Electric meters.

“(F) Lighting, equipment, and appliances that are designed to use less electricity.

“(G) Hybrid vehicle plug-in charging stations.

“(H) Solar-power collecting structures to shade vehicle parking areas.

“(I) Wall and roof insulation systems and air infiltration-mitigation systems, such as weatherproofing.”.

(4) SECTION HEADING AMENDMENT.—The heading of such section is amended to read as follows:

“§ 2915. Facilities: use of renewable forms of energy and energy efficient products”.

(c) OTHER AMENDMENTS.—

(1) CONFORMING AMENDMENT.—Section 2925(a) of title 10, United States Code, is amended by striking “energy performance plan” each place it appears and inserting “energy performance master plan”.

(2) CLERICAL AMENDMENTS.—The table of sections at the beginning of subchapter I of chapter 173 of such title is amended—

(A) by striking the item relating to section 2911 and inserting the following new item:

“2911. Energy performance goals and master plan for the Department of Defense.”; and

(B) by striking the item relating to section 2915 and inserting the following new item:

“2915. Facilities: use of renewable forms of energy and energy efficient products.”.

Subtitle E—Land Conveyances

SEC. 2841. LAND CONVEYANCE, DEFENSE FUEL SUPPORT POINT (DFSP) WHITTIER, ALASKA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army or the Secretary of the Air Force may convey to the City of Whittier, Alaska (in this section referred to as the “City”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 62 acres, located at the Defense Fuel Support Point (DFSP) Whittier, Alaska, that the Secretary making the conveyance considers appropriate in the public interest.

Payments.

(b) CONSIDERATION.—As consideration for the conveyance under subsection (a), the City shall pay to the Secretary conveying the property an amount that is not less than the fair market value of the property conveyed, as determined by the Secretary. The Secretary’s determination shall be final. In lieu of all or a portion of cash payment of consideration, the Secretary may accept in-kind consideration, including environmental remediation for the property conveyed.

(c) PAYMENT OF COSTS OF CONVEYANCE.—

(1) PAYMENT REQUIRED.—The Secretary conveying property under subsection (a) shall require the City to reimburse the Secretary to cover costs (except costs for environmental remediation of the property) to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and any other administrative costs related to the conveyance. If amounts are collected in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City of Whittier.

(2) TREATMENT OF AMOUNTS RECEIVED.—Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover those costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account and shall be available for the same purposes, and

subject to the same conditions and limitations, as amounts in such fund or account.

(d) COMPLIANCE WITH ENVIRONMENTAL LAWS.—Nothing in this section shall be construed to affect or limit the application of, or any obligation to comply with, any environmental law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(e) TREATMENT OF CASH CONSIDERATION RECEIVED.—Any cash payment received by the United States as consideration for the conveyance under subsection (a) shall be deposited in the special account in the Treasury established under subsection (b) of section 572 of title 40, United States Code, and shall be available in accordance with paragraph (5)(B) of such subsection.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the parcel of real property to be conveyed under this section shall be determined by a survey satisfactory to the Secretary of the Interior.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary making the conveyance under subsection (a) may require such additional terms and conditions in connection with the conveyance as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2842. LAND CONVEYANCE, FORT KNOX, KENTUCKY.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the Department of Veterans Affairs of the Commonwealth of Kentucky (in this section referred to as the “Department”) all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 194 acres at Fort Knox, Kentucky, for the purpose of permitting the Department to establish and operate a State veterans home and future expansion of the adjacent State veterans cemetery for veterans and eligible family members of the Armed Forces.

(b) REVERSIONARY INTEREST.—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) PAYMENT OR COSTS OF CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall require the Department to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including costs related to environmental documentation and other administrative costs. This paragraph does not apply to costs associated with the environmental remediation of the property to be conveyed.

(2) TREATMENT OF AMOUNTS RECEIVED.—Amounts received as reimbursements under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts

so credited shall be merged with amounts in such fund or account and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2843. LAND CONVEYANCE, NAVAL SUPPORT ACTIVITY (WEST BANK), NEW ORLEANS, LOUISIANA.

(a) CONVEYANCE AUTHORIZED.—Except as provided in subsection (b), the Secretary of the Navy may convey to the Algiers Development District all right, title, and interest of the United States in and to the real property comprising the Naval Support Activity (West Bank), New Orleans, Louisiana, including—

(1) any improvements and facilities on the real property; and

(2) available personal property on the real property.

(b) CERTAIN PROPERTY EXCLUDED.—The conveyance under subsection (a) may not include—

(1) the approximately 29-acre area known as the Secured Area of the real property described in such subsection, which shall remain subject to the Lease; and

(2) the Quarters A site, which is located at Sanctuary Drive, as determined by a survey satisfactory to the Secretary of the Navy.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Navy.

(d) TIMING.—The authority provided in subsection (a) may only be exercised after—

(1) the Secretary of the Navy determines that the property described in subsection (a) is no longer needed by the Department of the Navy; and

(2) the Algiers Development District delivers the full consideration as required by Article 3 of the Lease.

(e) CONDITION OF CONVEYANCE.—The conveyance authorized by subsection (a) shall include a condition that expressly prohibits any use of the property that would interfere or otherwise restrict operations of the Department of the Navy in the Secured Area referred to in subsection (b), as determined by the Secretary of the Navy.

(f) SUBSEQUENT CONVEYANCE OF SECURED AREA.—If at any time the Secretary of the Navy determines and notifies the Algiers Development District that there is no longer a continuing requirement to occupy or otherwise control the Secured Area referred to in subsection (b) to support the mission of the Marine Forces Reserve or other comparable Marine Corps use, the Secretary may convey to the Algiers Development District the Secured Area and the any improvements situated thereon.

(g) SUBSEQUENT CONVEYANCE OF QUARTERS A.—If at any time the Secretary of the Navy determines that the Department of the

Determination.

Navy no longer has a continuing requirement for general officers quarters to be located on the Quarters A site referred to in subsection (b) or the Department of the Navy elects or offers to transfer, sell, lease, assign, gift or otherwise convey any or all of the Quarters A site or any improvements thereon to any third party, the Secretary may convey to the Algiers Development District the real property containing the Quarters A site.

(h) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary of the Navy may require such additional terms and conditions in connection with the conveyance of property under this section, consistent with the Lease, as the Secretary considers appropriate to protect the interest of the United States.

(i) **DEFINITIONS.**—In this section:

(1) The term “Algiers Development District” means the Algiers Development District, a local political subdivision of the State of Louisiana.

(2) The term “Lease” means that certain Real Estate Lease for Naval Support Activity New Orleans, West Bank, New Orleans, Louisiana, Lease No. N47692-08-RP-08P30, by and between the United States, acting by and through the Department of the Navy, and the Algiers Development District dated September 30, 2008.

SEC. 2844. LAND CONVEYANCE, FORMER NAVY EXTREMELY LOW FREQUENCY COMMUNICATIONS PROJECT SITE, REPUBLIC, MICHIGAN.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Navy may convey, without consideration, to Humboldt Township in Marquette County, Michigan, all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, in Republic, Michigan, consisting of approximately seven acres and formerly used as an Extremely Low Frequency communications project site, for the purpose of permitting the Township to use the property for public benefit.

(b) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(c) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2845. LAND CONVEYANCE, MARINE FORCES RESERVE CENTER, WILMINGTON, NORTH CAROLINA.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Navy may convey to the North Carolina State Port Authority of Wilmington, North Carolina (in this section referred to as the “Port Authority”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 3.03 acres and known as the Marine Forces Reserve Center in Wilmington, North Carolina, for the purpose of permitting the Port Authority to use the parcel for development of a port facility and for other public purposes.

(b) **INCLUSION OF PERSONAL PROPERTY.**—The Secretary of the Navy may include as part of the conveyance under subsection (a) personal property of the Navy at the Marine Forces Reserve Center that the Secretary of Transportation recommends is appropriate for the development or operation of the port facility and

the Secretary of the Navy agrees is excess to the needs of the Navy.

(c) INTERIM LEASE.—Until such time as the real property described in subsection (a) is conveyed by deed, the Secretary of the Navy may lease the property to the Port Authority.

(d) CONSIDERATION.—

Regulations.
Determination.

(1) CONVEYANCE.—The conveyance under subsection (a) shall be made without consideration as a public benefit conveyance for port development if the Secretary of the Navy determines that the Port Authority satisfies the criteria specified in section 554 of title 40, United States Code, and regulations prescribed to implement such section. If the Secretary determines that the Port Authority fails to qualify for a public benefit conveyance, but still desires to acquire the property, the Port Authority shall pay to the United States an amount equal to the fair market value of the property to be conveyed. The fair market value of the property shall be determined by the Secretary.

Payments.

(2) LEASE.—The Secretary of the Navy may accept as consideration for a lease of the property under subsection (c) an amount that is less than fair market value if the Secretary determines that the public interest will be served as a result of the lease.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Navy and the Port Authority. The cost of such survey shall be borne by the Port Authority.

(f) ADDITIONAL TERMS.—The Secretary of the Navy may require such additional terms and conditions in connection with the conveyance as the Secretary considers appropriate to protect the interests of the United States.

Subtitle F—Other Matters

SEC. 2851. LIMITATION ON AVAILABILITY OF FUNDS PENDING REPORT REGARDING CONSTRUCTION OF A NEW OUTLYING LANDING FIELD IN NORTH CAROLINA AND VIRGINIA.

(a) FINDINGS.—Congress makes the following findings:

(1) The Navy has studied the feasibility and potential locations of a new outlying landing field on the East Coast since 2001.

(2) Since January 2008, the Navy has studied five potential sites in North Carolina and Virginia, whose communities have expressed opposition. Some local governments where the sites under consideration are located have taken formal action in opposition by resolution or correspondence to the Navy and congressional officials.

(b) LIMITATION ON FUNDS PENDING REPORT.—

(1) IN GENERAL.—The Secretary of the Navy may not obligate or expend funds for the study or development of a new outlying landing field in North Carolina or Virginia after fiscal year 2011 until the Secretary has provided the congressional defense committees a report on the Navy's efforts with respect to the outlying landing field.

(2) **ELEMENTS OF REPORT.**—The report required under paragraph (1) shall include the following:

(A) A description of the actual training requirements and completed training events involving Fleet Carrier Landing Practice operations at Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress for the previous 10 years, to include statistics for the current fiscal year.

(B) An assessment of the aviation training requirements and completed aviation training events conducted on all existing Navy outlying landing fields and installations located in North Carolina and Virginia, to include statistics for the current fiscal year.

(C) An assessment of the suitability of all Naval installations in North Carolina and Virginia to conduct Fleet Carrier Landing Practice operations, including necessary facility modifications and requirements to de-conflict with current operations at each installation.

(D) A description of the estimated funding necessary to construct a new outlying landing field at each of the five sites under current consideration, and a cost comparison analysis between construction of a new outlying landing field versus use of an existing facility.

(E) A description of all completed or pending environmental studies conducted on any of the five sites currently under consideration, including the methodology, conclusions, and recommendations.

(F) Criteria for the basing of the Joint Strike Fighter F-35 aircraft and a description of the outlying landing field facilities that will be required to support its training requirements.

SEC. 2852. REQUIREMENTS RELATED TO PROVIDING WORLD CLASS MILITARY MEDICAL CENTERS.

10 USC 2802
note.

(a) **UNIFIED CONSTRUCTION STANDARD FOR MILITARY CONSTRUCTION AND REPAIRS TO MILITARY MEDICAL CENTERS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish a unified construction standard for military construction and repairs for military medical centers that provides a single standard of care. This standard shall also include—

Deadline.

(1) size standards for operating rooms and patient recovery rooms; and

(2) such other construction standards that the Secretary considers necessary to support military medical centers.

(b) **INDEPENDENT REVIEW PANEL.**—

(1) **ESTABLISHMENT; PURPOSE.**—The Secretary of Defense shall establish an independent advisory panel for the purpose of—

(A) reviewing the unified construction standards established pursuant to subsection (a) to determine the standards consistency with industry practices and benchmarks for world class medical construction;

(B) reviewing ongoing construction programs within the Department of Defense to ensure medical construction standards are uniformly applied across applicable military medical centers;

(C) assessing the approach of the Department of Defense approach to planning and programming facility improvements with specific emphasis on—

(i) facility selection criteria and proportional assessment system; and

(ii) facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the military departments;

(D) assessing whether the Comprehensive Master Plan for the National Capital Region Medical, dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the plan result in world class military medical centers in the National Capital Region; and

(E) making recommendations regarding any adjustments of the master plan referred to in subparagraph (D) that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

(2) MEMBERS.—

(A) APPOINTMENTS BY SECRETARY.—The panel shall be composed of such members as determined by the Secretary of Defense, except that the Secretary shall include as members—

(i) medical facility design experts;

(ii) military healthcare professionals;

(iii) representatives of premier health care centers in the United States; and

(iv) former retired senior military officers with joint operational and budgetary experience.

(B) CONGRESSIONAL APPOINTMENTS.—The chairmen and ranking members of the Committees on the Armed Services of the Senate and House of Representatives may each designate one member of the panel.

(C) TERM.—Members of the panel may serve on the panel until the termination date specified in paragraph (7).

(D) COMPENSATION.—While performing duties on behalf of the panel, a member and any adviser referred to in paragraph (4) shall be reimbursed under Government travel regulations for necessary travel expenses.

(3) MEETINGS.—The panel shall meet not less than quarterly. The panel or its members may make other visits to military treatment centers and military headquarters in connection with the duties of the panel.

(4) STAFF AND ADVISORS.—The Secretary of Defense shall provide necessary administrative staff support to the panel. The panel may call in advisers for consultation.

(5) REPORTS.—

(A) INITIAL REPORT.—Not later than 120 days after the first meeting of the panel, the panel shall submit to the Secretary of Defense a written report containing—

Recommendations.

Deadlines.

(i) an assessment of the adequacy of the plan of the Department of Defense to address the items specified in subparagraphs (A) through (E) of paragraph (1) relating to the purposes of the panel; and

(ii) the recommendations of the panel to improve the plan.

(B) ADDITIONAL REPORTS.—Not later than February 1, 2011, and each February 1 thereafter until termination of the panel, the panel shall submit to the Secretary of Defense a report on the findings and recommendations of the panel to address any deficiencies identified by the panel.

(6) ASSESSMENT OF RECOMMENDATIONS.—Not later than 30 days after the date of the submission of each report under paragraph (5), the Secretary of Defense shall submit to the congressional defense committees a report including—

Deadline.
Reports.

(A) a copy of the panel's assessment;

(B) an assessment by the Secretary of the findings and recommendations of the panel; and

(C) the plans of the Secretary for addressing such findings and recommendations.

(7) TERMINATION.—The panel shall terminate on September 30, 2015.

(c) DEFINITIONS.—In this section:

(1) NATIONAL CAPITAL REGION.—The term “National Capital Region” has the meaning given the term in section 2674(f) of title 10, United States Code.

(2) WORLD CLASS MILITARY MEDICAL CENTER.—The term “world class military medical center” has the meaning given the term “world class military medical facility” by the National Capital Region Base Realignment and Closure Health Systems Advisory Subcommittee of the Defense Health Board in appendix B of the report titled “Achieving World Class—An Independent Review of the Design Plans for the Walter Reed National Military Medical Center and the Fort Belvoir Community Hospital” and published in May 2009, as required by section 2721 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4716).

SEC. 2853. REPORT ON FUEL INFRASTRUCTURE SUSTAINMENT, RESTORATION, AND MODERNIZATION REQUIREMENTS.

Not later than 270 days after the date of the enactment of this Act, the Director of the Defense Logistics Agency shall submit to the congressional defense committees a report on the fuel infrastructure of the Department of Defense. The report shall include the following:

(1) Fiscal projections for fuel infrastructure sustainment, restoration, and modernization requirements to fully meet Department of Defense sustainment models and industry recapitalization practices.

(2) An assessment of the risk associated with not providing adequate funding to support such fuel infrastructure sustainment, restoration, and modernization requirements.

(3) An assessment of fuel infrastructure real property deficiencies impacting the ability of the Defense Logistics Agency to fully support mission requirements.

(4) An assessment of environmental liabilities associated with current fueling operations.

(5) A list of real property previously used to support fuel infrastructure and an assessment of the environmental liabilities associated with such real property and whether any of such real property can be declared excess to the needs of the Department of Defense.

(6) An assessment of the real property demarcation between the Secretaries of the military departments and the Defense Logistics Agency.

SEC. 2854. NAMING OF ARMED FORCES RESERVE CENTER, MIDDLETOWN, CONNECTICUT.

Designation.

The newly constructed Armed Forces Reserve Center in Middletown, Connecticut, shall be known and designated as the “Major General Maurice Rose Armed Forces Reserve Center”. Any reference in a law, map, regulation, document, paper, or other record of the United States to such Armed Forces Reserve Center shall be deemed to be a reference to the Major General Maurice Rose Armed Forces Reserve Center.

SEC. 2855. SENSE OF CONGRESS ON PROPOSED EXTENSION OF THE ALASKA RAILROAD CORRIDOR ACROSS FEDERAL LAND IN ALASKA.

(a) **FINDING.**—Congress finds that the Alaska Railroad proposes the extension of its railroad corridor over approximately 950 acres of land located south and east of North Pole, Alaska, including lands located near or adjacent to the Chena River spillway, Eielson Air Force Base, Tanana Flats Training Area (Fort Wainwright), Donnelly Training Area (Fort Wainwright), and Fort Greely.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the Department of the Army and the Department of the Air Force should explore means of accommodating the railroad corridor expansion referred to in subsection (a) using existing authorities that will not adversely impact military missions, operations, and training.

SEC. 2856. SENSE OF CONGRESS ON IMPROVING MILITARY HOUSING FOR MEMBERS OF THE AIR FORCE.

(a) **FINDING.**—Congress makes the following findings:

(1) In the mid-1990s, the Department of Defense became concerned that inadequate and poor quality housing for members of the Armed Forces was adversely affecting the quality of life for members and their families and adversely affecting military readiness by contributing to decisions by members to leave the Armed Forces.

(2) At that time, the Department of Defense designated about 180,000 houses, or nearly two-thirds of its domestic family housing inventory, as inadequate and needing repair or complete replacement.

(3) The Department of Defense believed that it would need about \$20,000,000,000 in appropriated funds and would take up to 40 years to eliminate poor quality military housing through new construction or renovation using its traditional military construction approach.

(4) In 1996, Congress enacted the Military Housing Privatization Initiative to provide the Department of Defense with a variety of authorities to obtain private sector financing

and management for the repair, renovation, construction, and management of military family housing.

(5) The Air Force has used the Military Housing Privatization Initiative to award 27 projects at 44 military bases to improve over 37,000 homes.

(6) The Air Force has received \$7,100,000,000 in total development investment from the private sector for new housing with a taxpayer contribution of approximately \$425,000,000, representing a 15 to 1 leveraging of taxpayer dollars.

(7) The Air Force, like the other military services, has been able to leverage varying conditions of housing at military bases into fiscally viable projects by packaging housing inventories at multiple bases into a single transaction.

(8) Congress has approved transactions involving the packaging of multiple bases as a critical tool to maximize the efficient use of taxpayer funds.

(9) Congress supports the goal of the Air Force to complete transactions for the repair, renovation, construction, and management of 100 percent of their military family housing inventory in the United States by December 31, 2012.

(10) The Air Force currently has 6 project solicitations prepared for open competition at 22 Air Force installations to improve over 15,000 homes.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Air Force should use existing authority to carry out solicitations for the 6 military housing projects involving the packaging of 22 bases consistent with the goal of improving 15,000 homes for Air Force personnel and their families by December 31, 2012.

SEC. 2857. SENSE OF CONGRESS REGARDING RECREATIONAL HUNTING AND FISHING ON MILITARY INSTALLATIONS.

It is the sense of the Congress that—

(1) military installations that permit public access for recreational hunting and fishing should continue to permit such hunting and fishing where appropriate;

(2) permitting the public to access military installations for recreational hunting and fishing benefits local communities by conserving and promoting the outdoors and establishing positive relations between the civilian and defense sectors;

(3) any military installations that make recreational hunting and fishing permits available for purchase should provide a discounted rate for active and retired members of the Armed Forces and veterans with disabilities; and

(4) the Department of Defense, all of the service branches, and military installations that permit public access for recreational hunting and fishing should promote access to such installations by making the appropriate accommodations for members of the Armed Forces and veterans with disabilities.

TITLE XXIX—OVERSEAS CONTINGENCY OPERATIONS MILITARY CONSTRUCTION

Sec. 2901. Authorized Army construction and land acquisition projects.

Sec. 2902. Authorized Air Force construction and land acquisition project.

Sec. 2903. Authorized Defense Wide Construction and Land Acquisition Projects and Authorization of Appropriations.

SEC. 2901. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) OUTSIDE THE UNITED STATES.—The Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or Location	Amount
Afghanistan	Bagram Air Base	\$270,000,000
	Delaram II	\$4,400,000
	Dwyer	\$74,100,000
	Frontenac	\$8,400,000
	Kandahar	\$80,400,000
	Maywand	\$7,000,000
	Shank	\$98,300,000
	Sharana	\$12,400,000
	Shindand	\$6,100,000
	Tarin Kowt	\$29,600,000
	Tombstone/Bastion	\$112,600,000
	Various locations	\$100,000,000
	Wolverine	\$13,000,000

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) OUTSIDE THE UNITED STATES.—For military construction projects outside the United States authorized by subsection (a), funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$816,300,000.

(2) UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$78,350,000.

(3) ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN.—For architectural and engineering services and construction design under section 2807 of title 10, United States Code, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$79,716,000.

(4) OVERSIGHT.—For the Department of Defense Inspector General, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$7,000,000.

SEC. 2902. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECT.

(a) OUTSIDE THE UNITED STATES.—The Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Air Force: Outside the United States

Country	Installation or Location	Amount
Oman	Al Musannah	\$69,000,000
Qatar	Al Udeid	\$63,000,000

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) OUTSIDE THE UNITED STATES.—For military construction projects outside the United States authorized by subsection (a), funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$132,000,000.

(2) UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$49,584,000.

(3) ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN.—For architectural and engineering services and construction design under section 2807 of title 10, United States Code, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$13,422,000.

SEC. 2903. AUTHORIZED DEFENSE WIDE CONSTRUCTION AND LAND ACQUISITION PROJECTS AND AUTHORIZATION OF APPROPRIATIONS.

(a) OUTSIDE THE UNITED STATES.—The Secretary of Defense may acquire real property and carry out military construction projects for the Defense Agencies for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Defense Wide: Outside the United States

Country	Installation or Location	Amount
Classified Location	Classified Project	\$41,900,000

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) OUTSIDE THE UNITED STATES.—For military construction projects outside the United States authorized by subsection (a), funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$41,900,000.

(2) ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN.—For architectural and engineering services and construction design authorized by section 2807 of title 10, United States Code, funds are hereby authorized

to be appropriated for fiscal years beginning after September 30, 2010, in the total amount of \$4,600,000.

TITLE XXX—MILITARY CONSTRUCTION FUNDING TABLES

Sec. 3001. Military construction.

Sec. 3002. Overseas contingency operations.

SEC. 3001. MILITARY CONSTRUCTION.

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
	Alabama			
Army	Fort Rucker	Aviation Component Maintenance Shop ...	29,000	29,000
Army	Fort Rucker	Aviation Maintenance Facility	36,000	36,000
Army	Fort Rucker	Training Aids Center	4,650	4,650
	Alaska			
Army	Fort Greely	Fire Station	26,000	26,000
Army	Fort Richardson	Brigade Complex, Ph 1	67,038	67,038
Army	Fort Richardson	Multipurpose Machine Gun Range	12,200	12,200
Army	Fort Richardson	Simulations Center	34,000	34,000
Army	Fort Wainwright	Aviation Task Force Complex, Ph 1 Incr 2	30,000	0
Army	Fort Wainwright	Aviation Task Force Complex, Ph 2A (Hangar).	142,650	142,650
Army	Fort Wainwright	Aviation Task Force Complex, Ph 2B (Company Ops Facility).	27,000	27,000
Army	Fort Wainwright	Urban Assault Course	3,350	3,350
	California			
Army	Fort Irwin	Water Treatment and Distro System	0	0
Army	Presidio Monterey	Advanced Individual Training Barracks ...	63,000	63,000
Army	Presidio Monterey	General Instruction Building	39,000	39,000
Army	Presidio Monterey	Satellite Communications Facility	38,000	38,000
	Colorado			
Army	Fort Carson	Automated Sniper Field Fire Range	3,650	3,650
Army	Fort Carson	Battalion Headquarters	6,700	6,700
Army	Fort Carson	Brigade Complex	56,000	56,000
Army	Fort Carson	Simulations Center	40,000	40,000
	Florida			
Army	Eglin Ab	Chapel	6,900	6,900
Army	Miami-Dade County	Command & Control Facility	41,000	41,000
Army	US Army Garrison Miami	Commissary	19,000	0
	Georgia			
Army	Fort Benning	Land Acquisition	12,200	12,200
Army	Fort Benning	Museum Operations Support Building	32,000	0
Army	Fort Benning	Trainee Barracks, Ph 2	51,000	51,000
Army	Fort Benning	Training Battalion Complex, Ph 2	14,600	14,600
Army	Fort Benning	Training Battalion Complex, Ph 2	14,600	14,600
Army	Fort Benning	Vehicle Maintenance Shop	53,000	53,000
Army	Fort Gordon	Qualification Training Range	0	0
Army	Fort Gordon	Training Aids Center	4,150	4,150
Army	Fort Stewart	Automated Infantry Platoon Battle Course.	6,200	6,200
Army	Fort Stewart	Automated Multipurpose Machine Gun Range.	9,100	9,100
Army	Fort Stewart	Aviation Unit Operations Complex	47,000	47,000
Army	Fort Stewart	Battalion Complex	18,000	18,000
Army	Fort Stewart	General Instruction Building	8,200	8,200
Army	Fort Stewart	Modified Record Fire Range	3,750	3,750
Army	Fort Stewart	Simulations Center	26,000	26,000
Army	Fort Stewart	Training Aids Center	7,000	7,000

SEC. 3001. MILITARY CONSTRUCTION
(In Thousands of Dollars)

Account	State/Country and Installation	Project Title	Budget Request	Agreement
	Hawaii			
Army	Fort Shafter	Command & Control Facility, Ph 1	58,000	58,000
Army	Fort Shafter	Flood Mitigation	23,000	23,000
Army	Schofield Barracks	Barracks	98,000	98,000
Army	Schofield Barracks	Barracks	90,000	90,000
Army	Schofield Barracks	Training Aids Center	24,000	24,000
Army	Tripler Army Medical Center	Barracks	28,000	28,000
	Kansas			
Army	Fort Leavenworth	Vehicle Maintenance Shop	7,100	7,100
Army	Fort Riley	Automated Infantry Squad Battle Course	4,100	4,100
Army	Fort Riley	Automated Qualification/Training Range	14,800	14,800
Army	Fort Riley	Battalion Complex, Ph 1	31,000	31,000
Army	Fort Riley	Known Distance Range	7,200	7,200
	Kentucky			
Army	Fort Campbell	Automated Sniper Field Fire Range	1,500	1,500
Army	Fort Campbell	Brigade Complex	67,000	67,000
Army	Fort Campbell	Company Operations Facilities	25,000	25,000
Army	Fort Campbell	Infantry Squad Battle Course	0	0
Army	Fort Campbell	Rappelling Training Area	5,600	5,600
Army	Fort Campbell	Shoot House	0	0
Army	Fort Campbell	Unit Operations Facilities	26,000	26,000
Army	Fort Campbell	Urban Assault Course	3,300	3,300
Army	Fort Campbell	Vehicle Maintenance Shop	15,500	15,500
Army	Fort Knox	Access Corridor Improvements	6,000	6,000
Army	Fort Knox	Military Operation Urban Terrain Collective Training Facility	12,800	12,800
Army	Fort Knox	Rail Head Upgrade	0	0
	Louisiana			
Army	Fort Polk	Barracks	29,000	29,000
Army	Fort Polk	Emergency Services Center	0	0
Army	Fort Polk	Heavy Sniper Range	4,250	4,250
Army	Fort Polk	Land Acquisition	24,000	24,000
Army	Fort Polk	Land Acquisition	6,000	6,000
	Maryland			
Army	Aberdeen Proving Ground	Auto Tech Evaluate Facility, Ph 2	14,600	14,600
Army	Fort Meade	Indoor Firing Range	7,600	7,600
Army	Fort Meade	Wideband SATCOM Operations Center	25,000	25,000
	Missouri			
Army	Fort Leonard Wood	Barracks	29,000	29,000
Army	Fort Leonard Wood	Brigade Headquarters	12,200	12,200
Army	Fort Leonard Wood	General Instruction Building	7,000	7,000
Army	Fort Leonard Wood	Information Systems Facility	15,500	15,500
Army	Fort Leonard Wood	Training Barracks	19,000	19,000
Army	Fort Leonard Wood	Transient Advanced Trainee Barracks, Ph 2	29,000	29,000
	New Mexico			
Army	White Sands	Barracks	29,000	29,000
	New York			
Army	Fort Drum	Aircraft Fuel Storage Complex	14,600	14,600
Army	Fort Drum	Aircraft Maintenance Hangar	16,500	16,500
Army	Fort Drum	Alert Holding Area Facility	0	0
Army	Fort Drum	Battalion Complex	61,000	61,000
Army	Fort Drum	Brigade Complex, Ph 1	55,000	55,000
Army	Fort Drum	Infantry Squad Battle Course	8,200	8,200
Army	Fort Drum	Railhead Loading Area	0	0
Army	Fort Drum	Training Aids Center	18,500	18,500
Army	Fort Drum	Transient Training Barracks	55,000	55,000
Army	U.S. Military Academy	Science Facility, Ph 2	130,624	130,624

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Army	U.S. Military Academy North Carolina	Urban Assault Course	1,700	1,700
Army	Fort Bragg	Battalion Complex	33,000	33,000
Army	Fort Bragg	Brigade Complex	41,000	41,000
Army	Fort Bragg	Brigade Complex	25,000	25,000
Army	Fort Bragg	Brigade Complex	50,000	50,000
Army	Fort Bragg	Command and Control Facility	53,000	53,000
Army	Fort Bragg	Company Operations Facilities	12,600	12,600
Army	Fort Bragg	Dining Facility	11,200	11,200
Army	Fort Bragg	Murchison Road Right of Way Acquisition	17,000	17,000
Army	Fort Bragg	Staging Area Complex	14,600	14,600
Army	Fort Bragg	Student Barracks	18,000	18,000
Army	Fort Bragg	Vehicle Maintenance Shop	7,500	7,500
Army	Fort Bragg	Vehicle Maintenance Shop	28,000	28,000
Army	Oklahoma Fort Sill	General Purpose Storage Building	13,800	13,800
Army	Fort Sill	Museum Operations Support Building	12,800	0
Army	McAlester	Igloo Storage, Depot Level	3,000	3,000
Army	South Carolina Fort Jackson	Trainee Barracks	28,000	28,000
Army	Fort Jackson	Trainee Barracks Complex, Ph 1	46,000	46,000
Army	Fort Jackson	Training Aids Center	17,000	17,000
Army	Texas Corpus Christi NAS	Rotor Blade Processing Facility, Ph 2	0	0
Army	Fort Bliss	Automated Multipurpose Machine Gun Range.	6,700	6,700
Army	Fort Bliss	Company Operations Facilities	18,500	18,500
Army	Fort Bliss	Digital Multipurpose Training Range	22,000	22,000
Army	Fort Bliss	Heavy Sniper Range	3,500	3,500
Army	Fort Bliss	Indoor Swimming Pool	15,500	15,500
Army	Fort Bliss	Light Demolition Range	2,100	2,100
Army	Fort Bliss	Live Fire Exercise Shoothouse	3,150	3,150
Army	Fort Bliss	Scout/Reconnaissance Crew Engagement Gunnery Complex.	15,500	15,500
Army	Fort Bliss	Squad Defense Range	3,000	3,000
Army	Fort Bliss	Theater High Altitude Area Defense Bat- tery Complex.	17,500	17,500
Army	Fort Bliss	Transient Training Complex	31,000	31,000
Army	Fort Bliss	Urban Assault Course	2,800	2,800
Army	Fort Bliss	Vehicle Bridge Overpass	8,700	8,700
Army	Fort Hood	Battalion Complex	40,000	40,000
Army	Fort Hood	Brigade Complex	38,000	38,000
Army	Fort Hood	Company Operations Facilities	4,300	4,300
Army	Fort Hood	Convoy Live Fire	3,200	3,200
Army	Fort Hood	Live Fire Exercise Shoothouse	2,100	2,100
Army	Fort Hood	Soldier Readiness Processing Center	0	0
Army	Fort Hood	Unmanned Aerial System Hangar	55,000	55,000
Army	Fort Hood	Urban Assault Course	2,450	2,450
Army	Fort Sam Houston	Simulations Center	16,000	16,000
Army	Fort Sam Houston	Training Aids Center	6,200	6,200
Army	Virginia Fort A.P. Hill	1200 Meter Range	14,500	14,500
Army	Fort A.P. Hill	Indoor Firing Range	6,200	6,200
Army	Fort A.P. Hill	Known Distance Range	3,800	3,800
Army	Fort A.P. Hill	Light Demolition Range	4,100	4,100
Army	Fort A.P. Hill	Military Operation Urban Terrain Collec- tive Training Facility.	65,000	65,000
Army	Fort Eustis	Warrior in Transition Complex	18,000	18,000
Army	Fort Lee	Automated Qualification Training Range	7,700	7,700
Army	Fort Lee	Company Operations Facility	4,900	4,900
Army	Fort Lee	Museum Operations Support Building	30,000	0
Army	Fort Lee	Training Aids Center	5,800	5,800
Army	Washington Fort Lewis	Barracks	47,000	47,000
Army	Fort Lewis	Barracks Complex	40,000	40,000

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Army	Fort Lewis	Rappelling Training Area	5,300	5,300
Army	Fort Lewis	Regional Logistic Support Complex	63,000	63,000
Army	Fort Lewis	Regional Logistic Support Complex Ware- house.	16,500	16,500
Army	Yakima	Sniper Field Fire Range	3,750	3,750
	Afghanistan			
Army	Bagram AB	Army Aviation HQ Facilities	19,000	19,000
Army	Bagram AB	Barracks	18,000	18,000
Army	Bagram AB	Consolidated Community Support Area ...	14,800	14,800
Army	Bagram AB	Eastside Electrical Distribution	10,400	10,400
Army	Bagram AB	Eastside Utilities Infrastructure	29,000	29,000
Army	Bagram AB	Entry Control Point	7,500	7,500
Army	Bagram AB	Joint Defense Operations Center	2,800	2,800
	Germany			
Army	Ansbach	Physical Fitness Center	13,800	13,800
Army	Ansbach	Vehicle Maintenance Shop	18,000	18,000
Army	Grafenwoehr	Barracks	20,000	20,000
Army	Grafenwoehr	Barracks	19,000	19,000
Army	Grafenwoehr	Barracks	19,000	19,000
Army	Grafenwoehr	Barracks	17,500	17,500
Army	Rhine Ordnance Barracks	Barracks Complex	35,000	35,000
Army	Sembach AB	Confinement Facility	9,100	9,100
Army	Wiesbaden AB	Command and Battle Center, Incr 2	59,500	59,500
Army	Wiesbaden AB	Construct New Access Control Point	5,100	5,100
Army	Wiesbaden AB	Information Processing Center	30,400	30,400
Army	Wiesbaden AB	Sensitive Compartmented Information Facility.	91,000	91,000
	Honduras			
Army	Soto Cano AB	Barracks	20,400	20,400
	Italy			
Army	Vicenza	Brigade Complex—Barracks/Community, Incr 4.	26,000	26,000
Army	Vicenza	Brigade Complex—Operations Support Facility, Incr 4.	25,000	25,000
	Korea			
Army	Camp Walker	Electrical System Upgrade & Natural Gas System.	19,500	19,500
	Unspecified			
Army	Troop Trainee Housing	Training Barracks	0	0
	Worldwide Unspec- ified			
Army	Unspecified World- wide Locations	Host Nation Support FY 11	28,000	28,000
Army	Unspecified World- wide Locations	Minor Construction FY 11	23,000	23,000
Army	Unspecified World- wide Locations	Planning and Design FY 11	221,636	221,636
Total Military Construction, Army			4,078,798	3,954,998
	Alabama			
Navy	Mobile	T-6 Outlying Landing Field	29,082	29,082
	Arizona			
Navy	Yuma	Aircraft Maintenance Hangar	40,600	40,600
Navy	Yuma	Aircraft Maintenance Hangar	63,280	63,280
Navy	Yuma	Communications Infrastructure Upgrade	63,730	63,730
Navy	Yuma	Intermediate Maintenance Activity Facil- ity.	21,480	21,480
Navy	Yuma	Simulator Facility	36,060	36,060
Navy	Yuma	Utilities Infrastructure Upgrades	44,320	44,320
Navy	Yuma	Van Pad Complex Relocation	15,590	15,590
	California			
Navy	Camp Pendleton	Bachelor Enlisted Quarters—13 Area	42,864	42,864
Navy	Camp Pendleton	Bachelor Enlisted Quarters—Las Flores ..	37,020	37,020

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Navy	Camp Pendleton	Center for Naval Aviation Technical Training/Fleet Replacement Squadron—Aviation Training and Bachelor Enlisted Quarters.	66,110	66,110
Navy	Camp Pendleton	Conveyance/Water Treatment	100,700	100,700
Navy	Camp Pendleton	Marine Aviation Logistics Squadron—39 Maintenance Hangar Expansion.	48,230	48,230
Navy	Camp Pendleton	Marine Corps Energy Initiative	9,950	9,950
Navy	Camp Pendleton	North Region Tert Treat Plant (Incremented).	30,000	30,000
Navy	Camp Pendleton	Small Arms Magazine—Edson Range	3,760	3,760
Navy	Camp Pendleton	Truck Company Operations Complex	53,490	53,490
Navy	Coronado	Maritime Expeditionary Security Group—One (Mesg-1) Consolidated Boat Maintenance Facility.	0	0
Navy	Coronado	Rotary Hangar	67,160	67,160
Navy	Miramar	Aircraft Maintenance Hangar	90,490	90,490
Navy	Miramar	Hangar 4	33,620	33,620
Navy	Miramar	Parking Apron/Taxiway Expansion	66,500	66,500
Navy	Monterey NSA	International Academic Instruction Building.	0	0
Navy	San Diego	Bachelor Enlisted Quarters, Homeport Ashore.	75,342	75,342
Navy	San Diego	Berthing Pier 12 Replace & Dredging, Ph 1.	108,414	108,414
Navy	San Diego	Marine Corps Energy Initiative	9,950	9,950
Navy	Twentynine Palms	Bachelor Enlisted Quarters & Parking Structure.	53,158	53,158
Navy	Connecticut New London NSB	Submarine Group 2 Headquarters	0	0
Navy	Florida Blount Island	Consolidated Warehouse Facility	17,260	17,260
Navy	Blount Island	Container Staging and Loading Lot	5,990	5,990
Navy	Blount Island	Container Storage Lot	4,910	4,910
Navy	Blount Island	Hardstand Extension	17,930	17,930
Navy	Blount Island	Paint and Blast Facility	18,840	18,840
Navy	Blount Island	Washrack Expansion	9,690	9,690
Navy	Panama City NSA	Land Acquisition	0	0
Navy	Panama City NSA	Purchase 9 Acres	0	0
Navy	Tampa	Joint Comms Support Element Vehicle Paint Facility.	2,300	0
Navy	Georgia Albany MCLB	Maintenance Center Test Firing Range ...	0	0
Navy	Kings Bay	Security Enclave & Vehicle Barriers	45,004	45,004
Navy	Kings Bay	Waterfront Emergency Power	15,660	15,660
Navy	Hawaii Camp Smith	Physical Fitness Center	29,960	29,960
Navy	Kaneohe Bay	Bachelor Enlisted Quarters	90,530	90,530
Navy	Kaneohe Bay	Waterfront Operations Facility	19,130	19,130
Navy	Pacific Missile Range Facility	Replace North Loop Electrical Distribution System.	0	0
Navy	Pearl Harbor	Center for Disaster Mgt/Humanitarian Assistance.	9,140	9,140
Navy	Pearl Harbor	Fire Station, West Loch	0	0
Navy	Pearl Harbor	Joint Pow/Mia Accounting Command	99,328	99,328
Navy	Pearl Harbor	Pre-Fab Bridge Nohili Ditch	0	0
Navy	Pearl Harbor	Welding School Shop Consolidation	0	0
Navy	Maine Portsmouth NSY	Consolidation of Structural Shops	0	0
Navy	Portsmouth NSY	Structural Shops Addition, Ph 1	0	0
Navy	Maryland Indian Head	Advanced Energetics Research Lab Complex Phase 2.	0	0
Navy	Indian Head	Agile Chemical Facility, Ph 2	34,238	34,238
Navy	Patuxent River	Atlantic Test Range Addition	0	0
Navy	Patuxent River	Broad Area Maritime Surveillance & E Facility.	42,211	42,211

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Navy	Mississippi Gulfport	Branch Health Clinic	0	0
Navy	North Carolina Camp Lejeune	2nd Intel Battalion Maintenance/Ops Complex.	90,270	90,270
Navy	Camp Lejeune	Armory- II Mef—Wallace Creek	12,280	12,280
Navy	Camp Lejeune	Bachelor Enlisted Quarters—Courthouse Bay.	42,330	42,330
Navy	Camp Lejeune	Bachelor Enlisted Quarters—Courthouse Bay.	40,780	40,780
Navy	Camp Lejeune	Bachelor Enlisted Quarters—French Creek.	43,640	43,640
Navy	Camp Lejeune	Bachelor Enlisted Quarters—Rifle Range	55,350	55,350
Navy	Camp Lejeune	Bachelor Enlisted Quarters—Wallace Creek.	51,660	51,660
Navy	Camp Lejeune	Bachelor Enlisted Quarters—Wallace Creek North.	46,290	46,290
Navy	Camp Lejeune	Bachelor Enlisted Quarters—Camp John- son.	46,550	46,550
Navy	Camp Lejeune	Explosive Ordnance Disposal Unit Ad- dition—2nd Marine Logistics Group.	7,420	7,420
Navy	Camp Lejeune	Hangar	73,010	73,010
Navy	Camp Lejeune	Maintenance Hangar	74,260	74,260
Navy	Camp Lejeune	Maintenance/Ops Complex—2nd Air Naval Gunfire Liaison Company.	36,100	36,100
Navy	Camp Lejeune	Marine Corps Energy Initiative	9,950	9,950
Navy	Camp Lejeune	Mess Hall—French Creek	25,960	25,960
Navy	Camp Lejeune	Mess Hall Addition—Courthouse Bay	2,553	2,553
Navy	Camp Lejeune	Motor Transportation/Communications Maintenance Facility.	18,470	18,470
Navy	Camp Lejeune	Utility Expansion—Hadnot Point	56,470	56,470
Navy	Camp Lejeune	Utility Expansion—French Creek	56,050	56,050
Navy	Cherry Point Ma- rine Corps Air Station	Bachelor Enlisted Quarters	42,500	42,500
Navy	Cherry Point Ma- rine Corps Air Station	Mariners Bay Land Acquisition—Bogue ...	3,790	3,790
Navy	Cherry Point Ma- rine Corps Air Station	Missile Magazine	13,420	13,420
Navy	Cherry Point Ma- rine Corps Air Station	Station Infrastructure Upgrades	5,800	5,800
Navy	Pennsylvania Naval Support Ac- tivity Mechan- icsburg	North Gate Security Improvements	0	0
Navy	Naval Support Ac- tivity Mechan- icsburg	Quiet Propulsion Load House	0	0
Navy	Rhode Island Newport	Electromagnetic Facility	27,007	27,007
Navy	Newport	Gate Improvements	0	0
Navy	Newport	Submarine Payloads Integration Labora- tory.	0	0
Navy	South Carolina Beaufort	Air Installation Compatable Use Zone Land Acquisition.	21,190	21,190
Navy	Beaufort	Aircraft Hangar	46,550	46,550
Navy	Beaufort	Physical Fitness Center	15,430	15,430
Navy	Beaufort	Training and Simulator Facility	46,240	46,240
Navy	Texas Kingsville NAS	Youth Center	0	0
Navy	Virginia Dahlgren	Building 1200—Missile Support Facility Replacement Phase 1.	0	0

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Navy	Norfolk	Pier 9 & 10 Upgrades for Ddg 1000	2,400	2,400
Navy	Norfolk	Pier 1 Upgrades to Berth Usns Comfort ...	10,035	10,035
Navy	Portsmouth	Ship Repair Pier Replacement, Incr 2	100,000	100,000
Navy	Quantico	Academic Facility Addition—Staff Non Comissioned Officer Academy.	12,080	12,080
Navy	Quantico	Bachelor Enlisted Quarters	37,810	37,810
Navy	Quantico	Research Center Addition—MCU	37,920	37,920
Navy	Quantico	Student Officer Quarters—the Basic School.	55,822	55,822
Navy	Washington Bangor	Commander Submarine Development Squadron 5 Laboratory Expansion Ph1.	16,170	16,170
Navy	Bangor	Limited Area Emergency Power	15,810	15,810
Navy	Bangor	Waterfront Restricted Area Emergency Power.	24,913	24,913
Navy	Naval Base Kitsap	Charleston Gate Ecp Improvements	0	0
Navy	Naval Base Kitsap	Limited Area Product/Strg Complex (In- cremented).	19,116	19,116
Navy	Bahrain Island SW Asia	Navy Central Command Ammunition Magazines.	89,280	89,280
Navy	SW Asia	Operations and Support Facilities	60,002	60,002
Navy	SW Asia	Waterfront Development, Ph 3	63,871	63,871
Navy	Guam	Anderson AFB North Ramp Parking, Ph 1, Inc 2.	93,588	0
Navy	Guam	Anderson AFB North Ramp Utilities, Ph 1, Inc 2.	79,350	0
Navy	Guam	Apra Harbor Wharves Improvements, Ph 1.	40,000	40,000
Navy	Guam	Defense Access Roads Improvements	66,730	66,730
Navy	Guam	Finegayan Site Prep and Utilities	147,210	0
Navy	Japan Atsugi	MH–60r/S Trainer Facility	6,908	6,908
Navy	Spain Rota	Air Traffic Control Tower	23,190	23,190
Navy	Djibouti Camp Lemonier	Camp Lemonier HQ Facility	12,407	0
Navy	Camp Lemonier	General Warehouse	7,324	7,324
Navy	Camp Lemonier	Horn of Africa Joint Operations Center ...	28,076	0
Navy	Camp Lemonier	Pave External Roads	3,824	3,824
Navy	Worldwide Unspec- ified	Planning and Design	120,050	120,050
Navy	Unspecified World- wide Locations	Unspecified Minor Construction	20,877	20,877
Total Military Construction, Navy			3,879,104	3,516,173
AF	Alabama Maxwell AFB	Adal Air University Library	13,400	13,400
AF	Alaska Eielson AFB	Repair Central Heat Plant & Power Plant Boilers.	28,000	28,000
AF	Elmendorf AFB	Add/Alter Air Support Operations Squad- ron Training.	4,749	4,749
AF	Elmendorf AFB	Construct Railhead Operations Facility ...	15,000	15,000
AF	Elmendorf AFB	Dod Joint Regional Fire Training Facility	0	0
AF	Elmendorf AFB	F–22 Add/Alter Weapons Release Systems Shop.	10,525	10,525
AF	Arizona Davis-Monthan AFB	Aerospace Maintenance and Regeneration Group Hangar.	25,000	25,000
AF	Davis-Monthan AFB	HC–130 Aerospace Ground Equipment Maintenance Facility.	4,600	4,600

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
AF	Davis-Monthan AFB	HC–130J Aerial Cargo Facility	10,700	10,700
AF	Davis-Monthan AFB	HC–130J Parts Store	8,200	8,200
AF	Fort Huachuca	Total Force Integration-Predator Launch and Recovery Element Beddown.	11,000	0
AF	Luke AFB	F–35 Academic Training Center	0	54,150
AF	Luke AFB	F–35 Squadron Operations Facility	0	10,260
	California			
AF	Edwards AFB	Flightline Fire Station	0	0
AF	Los Angeles AFB	Consolidated Parking Area, Ph 2	0	0
	Colorado			
AF	Buckley AFB	Land Acquisition	0	0
AF	Buckley AFB	Security Forces Operations Facility	12,160	12,160
AF	Peterson AFB	Rapid Attack Identification Detection Re- pair System Space Control Facility.	24,800	24,800
AF	U.S. Air Force Academy	Const Center for Character & Leadership Development.	27,600	27,600
	Delaware			
AF	Dover AFB	C–5M/C–17 Maintenance Training Facil- ity, Ph 2.	3,200	3,200
	District of Columbia			
AF	Bolling AFB	Joint Air Defense Operations Center	13,200	13,200
	Florida			
AF	Eglin AFB	F–35 Fuel Cell Maintenance Hangar	11,400	11,400
AF	Hurlburt Field	Adal Special Operations School Facility ...	6,170	6,170
AF	Hurlburt Field	Add to Visiting Quarters (24 Rm)	4,500	4,500
AF	Hurlburt Field	Base Logistics Facility	24,000	24,000
AF	Patrick AFB	Air Force Technical Application Center ...	158,009	158,009
AF	Patrick AFB	Relocate Main Gate	0	0
	Georgia			
AF	Robins AFB	54th Combat Communications Squadron Warehouse Facility, Ph 2.	0	0
	Louisiana			
AF	Barksdale AFB	Weapons Load Crew Training Facility	18,140	18,140
	Missouri			
AF	Whiteman AFB	Consolidated Air Ops Facility	0	0
	Montana			
AF	Malmstrom AFB	Physical Fitness Center, Phase II	0	0
	Nebraska			
AF	Offutt AFB	Kenney/Bellevue Gates	0	0
	Nevada			
AF	Creech AFB	UAS Airfield Fire/Crash Rescue Station ..	11,710	11,710
AF	Nellis AFB	Communication Network Control Center	0	0
AF	Nellis AFB	F–35 Add/Alter 422 Test Evaluation Squadron Facility.	7,870	7,870
AF	Nellis AFB	F–35 Add/Alter Flight Test Instrumenta- tion Facility.	1,900	1,900
AF	Nellis AFB	F–35 Flight Simulator Facility	13,110	13,110
AF	Nellis AFB	F–35 Maintenance Hangar	28,760	28,760
	New Jersey			
AF	McGuire AFB	Base Ops/Command Post Facility (TFI) ...	8,000	8,000
AF	McGuire AFB	Dormitory (120 Rm)	18,440	18,440
	New Mexico			
AF	Cannon AFB	Dormitory (96 Rm)	14,000	14,000
AF	Cannon AFB	Family Support Center	0	0
AF	Cannon AFB	UAS Squadron Ops Facility	20,000	20,000
AF	Holloman AFB	Parallel Taxiway, Runway 07/25	0	0
AF	Holloman AFB	UAS Add/Alter Maintenance Hangar	15,470	15,470
AF	Holloman AFB	UAS Maintenance Hangar	22,500	22,500
AF	Kirtland AFB	Aerial Delivery Facility Addition	3,800	3,800
AF	Kirtland AFB	Armament Shop	6,460	6,460
AF	Kirtland AFB	H/MC–130 Fuel System Maintenance Fa- cility.	14,142	14,142
AF	Kirtland AFB	Military Working Dog Facility	0	0
AF	Kirtland AFB	Replace Fire Station 3	0	0
	New York			

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
AF	Fort Drum	20th Air Support Operations Squadron Complex.	20,440	20,440
AF	North Carolina Pope AFB	Crash/Fire/Rescue Station	0	0
AF	North Dakota Grand Forks AFB	Central Deployment Center	0	0
AF	Minot AFB	Control Tower/Base Operations Facility ...	18,770	18,770
AF	Oklahoma Tinker AFB	Air Traffic Control Tower	0	0
AF	Tinker AFB	Upgrade Building 3001 Infrastructure, Ph 3.	14,000	14,000
AF	South Carolina Charleston AFB	Civil Engineer Complex (TFI)—Ph 1	15,000	15,000
AF	South Dakota Ellsworth AFB	Maintenance Training Facility	0	0
AF	Texas Dyess AFB	C–130J Add/Alter Flight Simulator Facility.	4,080	4,080
AF	Ellington Field	Upgrade Unmanned Aerial Vehicle Maintenance Hangar.	7,000	0
AF	Lackland AFB	Basic Military Training Satellite Classroom/Dining Facility No 2.	32,000	32,000
AF	Lackland AFB	One-Company Fire Station	5,500	5,500
AF	Lackland AFB	Recruit Dormitory, Ph 3	67,980	67,980
AF	Lackland AFB	Recruit/Family Inprocessing & Info Center.	21,800	21,800
AF	Laughlin AFB	Community Event Complex	0	0
AF	Randolph AFB	Fire Crash Rescue Station	0	0
AF	Utah Hill AFB	Consolidated Transportation Facilities, Phase I.	0	0
AF	Hill AFB	F–22 T–10 Engine Test Cell	2,800	2,800
AF	Hill AFB	F–35 Add/Alt Building 118 for Flight Simulator.	0	3,600
AF	Hill AFB	F–35 Add/Alt Hangar 45W/AMU	0	6,500
AF	Hill AFB	F–35A Modular Storage Magazine	0	2,000
AF	Virginia Langley AFB	F–22 Add/Alter Hangar Bay Lo/Cr Facility.	8,800	8,800
AF	Washington Fairchild AFB	Precision Measurement Equipment Laboratory (Pmel) Facility.	0	0
AF	McChord AFB	Chapel Center	0	0
AF	Wyoming Camp Guernsey	Nuclear/Space Security Tactics Training Center.	4,650	4,650
AF	Afghanistan Bagram AFB	Consolidated Rigging Facility	9,900	9,900
AF	Bagram AFB	Fighter Hangar	16,480	16,480
AF	Bagram AFB	Medevac Ramp Expansion/Fire Station	16,580	16,580
AF	Bahrain Island SW Asia	North Apron Expansion	45,000	45,000
AF	Germany Kapaun	Dormitory (128 Rm)	19,600	19,600
AF	Ramstein AB	Construct C–130J Flight Simulator Facility.	8,800	8,800
AF	Ramstein AB	Deicing Fluid Storage & Dispensing Facility.	2,754	2,754
AF	Ramstein AB	Unmanned Aerial System Satellite Communication Relay Pads & Facility.	10,800	10,800
AF	Vilseck	Air Support Operations Squadron Complex.	12,900	12,900
AF	Guam Andersen AFB	Combat Communications Operations Facility.	9,200	9,200
AF	Andersen AFB	Commando Warrior Open Bay Student Barracks.	11,800	11,800

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
AF	Andersen AFB	Guam Strike Ops Group & Tanker Task Force.	9,100	9,100
AF	Andersen AFB	Guam Strike South Ramp Utilities, Ph 1	12,200	12,200
AF	Andersen AFB	Red Horse Headquarters/Engineering Facility.	8,000	8,000
	Italy			
AF	Aviano AFB	Air Support Operations Squadron Facility	10,200	10,200
AF	Aviano AFB	Dormitory (144 Rm)	19,000	19,000
	Korea			
AF	Kunsan AFB	Construct Distributed Mission Training Flight Simulator Facility.	7,500	7,500
	Qatar			
AF	Al Udeid	Blatchford-Preston Complex Ph 3	62,300	62,300
	United Kingdom			
AF	Royal Air Force Mildenhall	Extend Taxiway Alpha	15,000	15,000
	Worldwide Unspecified			
AF	Unspecified Worldwide Locations	F-35 Academic Training Center	54,150	0
AF	Unspecified Worldwide Locations	F-35 Flight Simulator Facility	12,190	0
AF	Unspecified Worldwide Locations	Planning & Design	66,336	66,336
AF	Unspecified Worldwide Locations	Unspecified Minor Construction—FY11 ...	18,000	18,000
AF	Various Worldwide Locations	F-35 Squadron Operations Facility	10,260	0
Total Military Construction, Air Force			1,311,385	1,293,295
	Arizona			
Def-Wide	Marana	Special Operations Forces Parachute Training Facility.	0	0
Def-Wide	Yuma	Special Operations Forces Military Free Fall Simulator.	8,977	8,977
	California			
Def-Wide	Point Loma Annex	Replce Storage Facility, Incr 3	20,000	20,000
Def-Wide	Point Mugu	Aircraft Direct Fueling Station	3,100	3,100
	Colorado			
Def-Wide	Fort Carson	Special Operations Forces Tactical Unmanned Aerial Vehicle Hangar.	3,717	3,717
	District of Columbia			
Def-Wide	Bolling AFB	Replace Parking Structure, Ph 1	3,000	3,000
	Florida			
Def-Wide	Eglin AFB	Special Operations Forces Ground Support Battalion Detachment.	6,030	6,030
	Georgia			
Def-Wide	Augusta	National Security Agency/Central Security Service Georgia Training Facility.	12,855	12,855
Def-Wide	Fort Benning	Dexter Elementary School Construct Gym	2,800	2,800
Def-Wide	Fort Benning	Special Operations Forces Company Support Facility.	20,441	20,441
Def-Wide	Fort Benning	Special Operations Forces Military Working Dog Kennel Complex.	3,624	3,624
Def-Wide	Fort Stewart	Health Clinic Addition/Alteration	35,100	35,100
Def-Wide	Hunter Angs	Fuel Unload Facility	2,400	2,400
Def-Wide	Hunter Army Airfield	Special Operations Forces Tactical Equipment Maintenance Facility Expansion.	3,318	3,318
	Hawaii			
Def-Wide	Hickam AFB	Alter Fuel Storage Tanks	8,500	8,500
Def-Wide	Pearl Harbor	Naval Special Warfare Group 3 Command and Operations Facility.	28,804	28,804
	Idaho			
Def-Wide	Mountain Home AFB	Replace Fuel Storage Tanks	27,500	27,500
	Illinois			

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Def-Wide	Scott Air Force Base	Field Command Facility Upgrade	1,388	1,388
	Kentucky			
Def-Wide	Fort Campbell	Landgraf Hangar Addition, 160th Soar	0	0
Def-Wide	Fort Campbell	Special Operations Forces Battalion Ops Complex.	38,095	38,095
	Maryland			
Def-Wide	Aberdeen Proving Ground	US Army Medical Research Institute of In- fectious Diseases Replacement, Inc 3.	105,000	105,000
Def-Wide	Andrews AFB	Replace Fuel Storage & Distribution Fa- cility.	14,000	14,000
Def-Wide	Bethesda Naval Hospital	National Naval Medical Center Parking Expansion.	17,100	17,100
Def-Wide	Bethesda Naval Hospital	Transient Wounded Warrior Lodging	62,900	62,900
Def-Wide	Fort Detrick	Consolidated Logistics Facility	23,100	23,100
Def-Wide	Fort Detrick	Information Services Facility Expansion ..	4,300	4,300
Def-Wide	Fort Detrick	National Interagency Biodefense Campus Security Fencing and Equipment.	2,700	2,700
Def-Wide	Fort Detrick	Supplemental Water Storage	3,700	3,700
Def-Wide	Fort Detrick	US Army Medical Research Institute of In- fectious Diseases—Stage I, Inc 5.	17,400	17,400
Def-Wide	Fort Detrick	Water Treatment Plant Repair & Supple- ment.	11,900	11,900
Def-Wide	Fort Meade	North Campus Utility Plant, Incr 1	219,360	219,360
	Massachusetts			
Def-Wide	Hanscom AFB	Mental Health Clinic Addition	2,900	2,900
	Mississippi			
Def-Wide	Stennis Space Center	SOF Western Maneuver Area (Phase II) ..	0	0
Def-Wide	Stennis Space Center	SOF Western Maneuver Area (Phase III)	0	0
Def-Wide	Stennis Space Center	Special Operations Forces Land Acquisi- tion, Ph 3.	0	0
	New Mexico			
Def-Wide	Cannon AFB	Special Operations Forces Add/Alt Simu- lator Facility for MC–130.	13,287	13,287
Def-Wide	Cannon AFB	Special Operations Forces Aircraft Park- ing Apron (MC–130J).	12,636	12,636
Def-Wide	Cannon AFB	Special Operations Forces C–130 Parking Apron Phase I.	26,006	26,006
Def-Wide	Cannon AFB	Special Operations Forces Hangar/AMU (MC–130J).	24,622	24,622
Def-Wide	Cannon AFB	Special Operations Forces Operations and Training Complex.	39,674	39,674
Def-Wide	White Sands	Health and Dental Clinics	22,900	22,900
	New York			
Def-Wide	U.S. Military Academy	West Point MS Add/Alt	27,960	27,960
	North Carolina			
Def-Wide	Camp Lejeune	Tarawa Terrace I Elementary School Re- place School.	16,646	16,646
Def-Wide	Fort Bragg	McNair Elementary School—Replace School.	23,086	23,086
Def-Wide	Fort Bragg	Murray Elementary School—Replace School.	22,000	22,000
Def-Wide	Fort Bragg	SOF Baffle Containment for Range 19C ...	0	0
Def-Wide	Fort Bragg	SOF Medical Support Addition	0	0
Def-Wide	Fort Bragg	Special Operations Forces Admin/Com- pany Operations.	10,347	10,347
Def-Wide	Fort Bragg	Special Operations Forces C4 Facility	41,000	41,000
Def-Wide	Fort Bragg	Special Operations Forces Joint Intel- ligence Brigade Facility.	32,000	32,000
Def-Wide	Fort Bragg	Special Operations Forces Operational Communications Facility.	11,000	11,000
Def-Wide	Fort Bragg	Special Operations Forces Operations Ad- ditions.	15,795	15,795

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)						
Account	State/Country and Installation	Project Title	Budget Request	Agreement		
Def-Wide	Fort Bragg	Special Operations Forces Operations Support Facility.	13,465	13,465		
Def-Wide	Ohio Columbus	Replace Public Safety Facility	7,400	7,400		
Def-Wide	Pennsylvania Def Distribution Depot New Cumberland	Replace Headquarters Facility	96,000	96,000		
Def-Wide	Texas Fort Bliss	Hospital Replacement, Incr 2	147,100	147,100		
Def-Wide	Lackland AFB	Ambulatory Care Center, Ph 2	162,500	162,500		
Def-Wide	Utah Camp Williams	Comprehensive National Cybersecurity Initiative Data Center Increment 2.	398,358	398,358		
Def-Wide	Virginia Crane Island	Replace Fuel Pier	58,000	58,000		
Def-Wide	Fort Belvoir	Dental Clinic Replacement	6,300	6,300		
Def-Wide	Pentagon	Pentagon Metro & Corridor 8 Screening Facility.	6,473	6,473		
Def-Wide	Pentagon	Power Plant Modernization, Ph 3	51,928	51,928		
Def-Wide	Pentagon	Secure Access Lane-Remote Vehicle Screening.	4,923	4,923		
Def-Wide	Quantico	New Consolidated Elementary School	47,355	47,355		
Def-Wide	Washington Fort Lewis	Preventive Medicine Facility	8,400	8,400		
Def-Wide	Fort Lewis	Special Operations Forces Military Working Dogs Kennel.	0	0		
Def-Wide	Belgium Brussels	NATO Headquarters Facility	31,863	31,863		
Def-Wide	Brussels	Replace Shape Middle School/High School	67,311	67,311		
Def-Wide	Germany Katterbach	Health/Dental Clinic Replacement	37,100	37,100		
Def-Wide	Panzer Kaserne	Replace Boeblingen High School	48,968	48,968		
Def-Wide	Vilseck	Health Clinic Add/Alt	34,800	34,800		
Def-Wide	Guam Agana NAS	Hospital Replacement, Incr 2	70,000	0		
Def-Wide	Japan Kadena AB	Install Fuel Filters-Separators	3,000	3,000		
Def-Wide	Misawa AB	Hydrant Fuel System	31,000	31,000		
Def-Wide	Korea Camp Carroll	Health/Dental Clinic Replacement	19,500	19,500		
Def-Wide	Qatar Al Udeid	Qatar Warehouse	1,961	1,961		
Def-Wide	Puerto Rico Fort Buchanan	Antilles Elementary School/Intermediate School—Replace School.	58,708	58,708		
Def-Wide	United Kingdom Menwith Hill Station	Menwith Hill Station PSC Construction—Generators 10 & 11.	2,000	2,000		
Def-Wide	Royal Air Force Alconbury	Alconbury Elementary School Replacement	30,308	30,308		
Def-Wide	Royal Air Force Mildenhall	Replace Hydrant Fuel Distribution System.	15,900	15,900		
Def-Wide	Various Locations Unspecified World-wide Locations	General Reduction	0	0		
Def-Wide	Worldwide Unspecified Unspecified World-wide Locations	Contingency Construction	10,000	10,000		
Def-Wide	Unspecified World-wide Locations	Energy Conservation Investment Program.	120,000	120,000		
Def-Wide	Unspecified World-wide Locations	Planning and Design (DODEA)	79,763	79,763		
Def-Wide	Unspecified World-wide Locations	Planning and Design (DSS)	1,988	1,988		

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Def-Wide	Unspecified World- wide Locations	Planning and Design (NSA)	28,239	28,239
Def-Wide	Unspecified World- wide Locations	Planning and Design (SOCOM)	30,836	30,836
Def-Wide	Unspecified World- wide Locations	Planning and Design (TMA)	230,300	230,300
Def-Wide	Unspecified World- wide Locations	Planning and Design (Undistributed)	54,221	54,221
Def-Wide	Unspecified World- wide Locations	Planning and Design (WHS)	6,270	6,270
Def-Wide	Unspecified World- wide Locations	Planning and Design-ECIP	0	0
Def-Wide	Unspecified World- wide Locations	Unspecified Minor Construction (DODEA)	13,841	13,841
Def-Wide	Unspecified World- wide Locations	Unspecified Minor Construction (JCS)	8,210	8,210
Def-Wide	Unspecified World- wide Locations	Unspecified Minor Construction (TMA)	4,884	4,884
Def-Wide	Unspecified World- wide Locations	Unspecified Minor Construction (Undis- tributed).	3,000	3,000
Def-Wide	Various Worldwide Locations	Unspecified Minor Construction (DLA)	5,258	5,258
Def-Wide	Various Worldwide Locations	Unspecified Minor Construction (SOCOM)	7,663	7,663
Total Military Construction, Defense-Wide			3,118,062	3,048,062
Chem Demil	Colorado Pueblo Depot	Ammunition Demilitarization Facility, Ph 12.	65,569	65,569
Chem Demil	Kentucky Blue Grass Army Depot	Ammunition Demilitarization Ph 11	59,402	59,402
Total Chemical Demilitarization Construction, Defense			124,971	124,971
NATO	Worldwide Unspec- ified NATO Security In- vestment Pro- gram	NATO Security Investment Program	258,884	258,884
Total NATO Security Investment Program			258,884	258,884
Army NG	Alabama Fort McClellan	Live Fire Shoot House	0	0
Army NG	Arizona Florence	Readiness Center	16,500	16,500
Army NG	Arkansas Camp Robinson	Combined Support Maintenance Shop	30,000	30,000
Army NG	Fort Chaffee	Combined Arms Collective Training Facil- ity.	19,000	19,000
Army NG	Fort Chaffee	Convoy Live Fire/Entry Control Point Range.	0	0
Army NG	Fort Chaffee	Live Fire Shoot House	2,500	2,500
Army NG	California Camp Roberts	Combined Arms Collective Training Facil- ity.	19,000	19,000
Army NG	Colorado Colorado Springs	Readiness Center	20,000	20,000
Army NG	Fort Carson	Regional Training Institute	40,000	40,000
Army NG	Gypsum	High Altitude Army Aviation Training Site/Army Aviation Support Facility.	39,000	39,000
Army NG	Watkins	Parachute Maintenance Facility	0	0
Army NG	Windsor	Readiness Center	7,500	7,500
Army NG	Connecticut Windsor Locks	Readiness Center (Aviation)	41,000	41,000

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Army NG	Delaware New Castle	Armed Forces Reserve Center(JFHQ)	27,000	27,000
Army NG	Georgia Cumming	Readiness Center	17,000	17,000
Army NG	Dobbins ARB	Readiness Center Add/Alt	10,400	10,400
Army NG	Hawaii Kalaeloa	Combined Support Maintenance Shop	38,000	38,000
Army NG	Idaho Gowen Field	Barracks (Operational Readiness Training Complex) Ph1.	17,500	17,500
Army NG	Mountain Home	Tactical Unmanned Aircraft System Facility.	6,300	6,300
Army NG	Illinois Marseilles TA	Simulation Center	0	0
Army NG	Springfield	Combined Support Maintenance Shop Add/Alt.	15,000	15,000
Army NG	Iowa Camp Dodge	Combined Arms Collective Training Facility.	0	0
Army NG	Kansas Topeka Army Aviation Support Facility	Taxiway, Parking Ramps and Hanger Alterations.	0	0
Army NG	Wichita	Field Maintenance Shop	24,000	24,000
Army NG	Wichita	Readiness Center	43,000	43,000
Army NG	Kentucky Burlington	Readiness Center	19,500	19,500
Army NG	Louisiana Fort Polk	Tactical Unmanned Aircraft System Facility.	5,500	5,500
Army NG	Minden	Readiness Center	28,000	28,000
Army NG	Maryland St. Inigoes	Tactical Unmanned Aircraft System Facility.	5,500	5,500
Army NG	Massachusetts Hanscom AFB	Armed Forces Reserve Center(JFHQ)Ph2	23,000	23,000
Army NG	Michigan Camp Grayling Range	Barracks Replacement, Phase Ii	0	0
Army NG	Camp Grayling Range	Combined Arms Collective Training Facility.	19,000	19,000
Army NG	Camp Grayling Range	Light Demolition Range	0	0
Army NG	Minnesota Arden Hills	Field Maintenance Shop	29,000	29,000
Army NG	Camp Ripley	Infantry Squad Battle Course	4,300	4,300
Army NG	Camp Ripley	Tactical Unmanned Aircraft System Facility.	4,450	4,450
Army NG	Missouri Fort Leonard Wood	Regional Training Institute	0	0
Army NG	Nebraska Lincoln	Readiness Center Add/Alt	3,300	3,300
Army NG	Mead	Readiness Center	11,400	11,400
Army NG	Nevada Las Vegas	Cst Ready Building	0	0
Army NG	Nevada National Guard	Las Vegas Field Maintenance Shop	0	0
Army NG	New Hampshire Pembroke	Barracks Facility (Regional Training Institute).	15,000	15,000
Army NG	Pembroke	Classroom Facility (Regional Training Institute).	21,000	21,000
Army NG	New Mexico Farmington	Readiness Center Add/Alt	8,500	8,500
Army NG	New York Ronkonkoma	Flightline Rehabilitation	0	0

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Army NG	North Carolina			
Army NG	High Point	Readiness Center Add/Alt	1,551	1,551
Army NG	Morrisville	Aasf 1 Fixed Wing Aircraft Hangar Annex.	0	0
Army NG	North Dakota			
Army NG	Camp Grafton	Readiness Center Add/Alt	11,200	11,200
Army NG	Ohio			
Army NG	Camp Sherman	Maintenance Building Add/Alt	0	0
Army NG	Rhode Island			
Army NG	East Greenwich	United States Property & Fiscal Office	27,000	27,000
Army NG	Middletown	Readiness Center Add/Alt	0	0
Army NG	South Dakota			
Army NG	Watertown	Readiness Center	25,000	25,000
Army NG	Texas			
Army NG	Camp Maxey	Combat Pistol/Military Pistol Qualifica- tion Course.	2,500	2,500
Army NG	Camp Swift	Urban Assault Course	2,600	2,600
Army NG	Washington			
Army NG	Tacoma	Combined Support Maintenance Shop	25,000	25,000
Army NG	West Virginia			
Army NG	Moorefield	Readiness Center	14,200	14,200
Army NG	Morgantown	Readiness Center	21,000	21,000
Army NG	Wisconsin			
Army NG	Madison	Aircraft Parking	5,700	5,700
Army NG	Wausau	Field Maintenance Shop	0	0
Army NG	Wyoming			
Army NG	Laramie	Field Maintenance Shop	14,400	14,400
Army NG	Guam			
Army NG	Barrigada	Combined Support Maint Shop Ph1	19,000	19,000
Army NG	Puerto Rico			
Army NG	Camp Santiago	Live Fire Shoot House	3,100	3,100
Army NG	Camp Santiago	Multipurpose Machine Gun Range	9,200	9,200
Army NG	Virgin Islands			
Army NG	St. Croix	Readiness Center (JFHQ)	25,000	25,000
Army NG	Unspecified			
Army NG	Varlocs	Varlocs	0	0
Army NG	Worldwide Unspec- ified			
Army NG	Unspecified World- wide Locations	Planning & Design	25,663	25,663
Army NG	Unspecified World- wide Locations	Unspecified Minor Construction	11,400	11,400
Total Military Construction, Army National Guard			873,664	873,664
Army Res	California			
Army Res	Fairfield	Army Reserve Center	26,000	26,000
Army Res	Fort Hunter	Equipment Concentration Site Tactical	22,000	22,000
Army Res	Liggett	Equipment Maint Facility.		
Army Res	Fort Hunter	Equipment Concentration Site Warehouse	15,000	15,000
Army Res	Liggett			
Army Res	Fort Hunter	Grenade Launcher Range	1,400	1,400
Army Res	Liggett			
Army Res	Fort Hunter	Hand Grenade Familiarization Range (Live).	1,400	1,400
Army Res	Liggett			
Army Res	Fort Hunter	Light Demolition Range	2,700	2,700
Army Res	Liggett			
Army Res	Fort Hunter	Tactical Vehicle Wash Rack	9,500	9,500
Army Res	Liggett			
Army Res	Florida			
Army Res	North Fort Myers	Army Reserve Center/Land	13,800	13,800
Army Res	Orlando	Army Reserve Center/Land	10,200	10,200
Army Res	Tallahassee	Army Reserve Center/Land	10,400	10,400
Army Res	Georgia			
Army Res	Macon	Army Reserve Center/Land	11,400	11,400
Army Res	Illinois			
Army Res	Quincy	Army Reserve Center/Land	12,200	12,200

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Army Res	Rockford Usarc	Army Reserve Center	0	0
Army Res	Indiana Michigan City	Army Reserve Center/Land	15,500	15,500
Army Res	Iowa Des Moines	Army Reserve Center	8,175	8,175
Army Res	Massachusetts Devens Reserve Forces Training Area	Automated Record Fire Range	4,700	4,700
Army Res	Missouri Belton	Army Reserve Center	11,800	11,800
Army Res	New Jersey Fort Dix	Automated Multipurpose Machine Gun Range.	0	0
Army Res	New Mexico Las Cruces	Army Reserve Center/Land	11,400	11,400
Army Res	New York Binghamton	Army Reserve Center/Land	13,400	13,400
Army Res	Texas Denton	Army Reserve Center/Land	12,600	12,600
Army Res	Fort Hood	Army Reserve Center	0	0
Army Res	Rio Grande	Army Reserve Center/Land	6,100	6,100
Army Res	San Marcos	Army Reserve Center/Land	8,500	8,500
Army Res	Virginia Fort A.P. Hill	Army Reserve Center	15,500	15,500
Army Res	Fort Story	Army Reserve Center	11,000	11,000
Army Res	Roanoke	Army Reserve Center/Land	14,800	14,800
Army Res	Wisconsin Fort McCoy	AT/MOB Billeting Complex, Ph 1	9,800	9,800
Army Res	Fort McCoy	Nco Academy, Ph 2	10,000	10,000
Army Res	Unspecified Varlocs	Varlocs	0	0
Army Res	Worldwide Unspec- ified	Planning and Design	25,900	25,900
Army Res	Unspecified World- wide Locations	Unspecified Minor Construction	3,000	3,000
Total Military Construction, Army Reserve			318,175	318,175
N/MC Res	California Twentynine Palms	Tank Vehicle Maintenance Facility	5,991	5,991
N/MC Res	Louisiana New Orleans	Joint Air Traffic Control Facility	16,281	16,281
N/MC Res	Virginia Williamsburg	Navy Ordnance Cargo Logistics Training Camp.	21,346	21,346
N/MC Res	Washington Yakima	Marine Corps Reserve Center	13,844	13,844
N/MC Res	Unspecified Varlocs	Varlocs	0	0
N/MC Res	Varlocs	Varlocs	0	0
N/MC Res	Worldwide Unspec- ified	Mcnr Unspecified Minor Construction	2,238	2,238
N/MC Res	Unspecified World- wide Locations	Planning and Design	1,857	1,857
Total Military Construction, Naval Reserve			61,557	61,557
Air NG	Alabama Montgomery Re- gional Airport (ANG) Base	Fuel Cell and Corrosion Control Hangar ..	7,472	7,472

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Air NG	Montgomery Re- gional Airport (ANG) Base	Replace Squad Ops Facility	0	0
	Alaska			
Air NG	Eielson AFB	Add/Alter Communications Facility	0	0
	Arizona			
Air NG	Davis Monthan AFB	TFI—Predator FOC—Increased Mission Orbit Tasking.	4,650	4,650
Air NG	Fort Huachuca	Total Force Integration—Predator Launch and Recovery Element Beddown.	0	11,000
	Arkansas			
Air NG	Little Rock AFB	Fuel Cell and Corrosion Control Hangar ..	0	0
	Colorado			
Air NG	Buckley AFB	Taxiway Juliet and Lima	0	0
	Delaware			
Air NG	New Castle Coun- ty Airport	C–130 Aircraft Maintenance Shops (Phase III).	0	0
Air NG	New Castle Coun- ty Airport	Joint Forces Operations Center-ANG Share.	1,500	1,500
	Florida			
Air NG	Jacksonville IAP	Security Forces Training Facility	6,700	6,700
	Georgia			
Air NG	Savannah/Hilton Head IAP	Relocate Air Supt Opers Sqdn (Asos) Fac	7,450	7,450
	Hawaii			
Air NG	Hickam AFB	F–22 Beddown Infrastructure Support	5,950	5,950
Air NG	Hickam AFB	F–22 Hangar, Squadron Operations and AMU.	48,250	48,250
Air NG	Hickam AFB	F–22 Upgrade Munitions Complex	17,250	17,250
	Illinois			
Air NG	Capital Map	CNAF Beddown-Upgrade Facilities	16,700	16,700
	Indiana			
Air NG	Hulman Regional Airport	Asos Beddown-Upgrade Facilities	4,100	4,100
	Iowa			
Air NG	Des Moines	Corrosion Control Hangar	0	0
Air NG	Des Moines IAP	Corrosion Control Hangar	0	0
	Maryland			
Air NG	Martin State Air- port	Replace Ops and Medical Training Facil- ity.	11,400	11,400
	Massachusetts			
Air NG	Barnes ANGB	Add to Aircraft Maintenance Hangar	0	0
Air NG	Barnes Municipal Airport	Additions and Renovations to Building 15	0	0
	Michigan			
Air NG	Alpena Combat Readiness Training Center	Replace Troop Quarters, Phase II	0	0
	Minnesota			
Air NG	Duluth	Load Crew Training and Weapon Release Shops.	0	0
	New Jersey			
Air NG	177th Fighter Wing, Atlantic City	Fuel Cell and Corrosion Control Hanger ..	0	0
Air NG	Atlantic City IAP	Fuel Cell and Corrosion Control Hangar ..	0	0
	New York			
Air NG	Fort Drum	Reaper Infrastructure Support	2,500	2,500
Air NG	Stewart IAP	Aircraft Conversion Facility	0	0
Air NG	Stewart IAP	Base Defense Group Beddown	14,250	14,250
	North Carolina			
Air NG	Stanly County Air- port	Upgrade Asos Facilities	2,000	2,000
	Ohio			
Air NG	Toledo Express Airport	Replace Security Forces Complex	0	0

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Air NG	Toledo Express Airport	Replace Security Forces Complex	0	0
Air NG	Oregon Kingsley Field ANG Base	Replace Fire Station	0	0
Air NG	Pennsylvania State College Angs	Add to and Alter AOS Facility	4,100	4,100
Air NG	Rhode Island Quonset State Air- port	C–130 Parking Apron	0	0
Air NG	South Carolina Mcentire	Training/Operations Center	0	0
Air NG	Mcentire Joint Na- tional Guard Base	Replace Operations and Training	0	0
Air NG	South Dakota Joe Foss Field	Aircraft Maintenance Shops	0	0
Air NG	Tennessee Mcghee Tyson ANG Base	Hobbs Road Acquisition	0	0
Air NG	Nashville IAP	Renovate Intel Squadron Facilities	5,500	5,500
Air NG	Texas Ellington Field	Upgrade Unmanned Aerial Vehicle Main- tenance Hangar.	0	7,000
Air NG	Vermont Burlington Inter- national Airport	Upgrade Taxiways and Replace Arm/Dis- arm Pads.	0	0
Air NG	West Virginia Yeager AFB	Communications Training Fac.	0	0
Air NG	Yeager AFB	Force Protection/Antiterrorism	0	0
Air NG	Wisconsin General Mitchell International Airport	Replace Fire Station	0	0
Air NG	Unspecified Varlocs	Varlocs	0	0
Air NG	Worldwide Unspec- ified	Minor Construction	8,000	8,000
Air NG	Unspecified World- wide Locations	Planning & Design	9,214	9,214
Total Military Construction, Air National Guard			176,986	194,986
AF Res	Florida Patrick AFB	Weapons Maintenance Facility	3,420	3,420
AF Res	New York Niagara ARS	C–130 Flightline Operations Facility, Ph 1.	0	0
AF Res	Unspecified Varlocs	Varlocs	0	0
AF Res	Worldwide Unspec- ified	Planning and Design	1,653	1,653
AF Res	Unspecified World- wide Locations	Unspecified Minor Construction	2,759	2,759
Total Military Construction, Air Force Reserve			7,832	7,832
FH Con Army	Alaska Fort Wainwright	Family Housing Replacement Constrution (110 Units).	21,000	21,000
FH Con Army	Germany Baumholder	Family Housing Replacement Construc- tion (64 Units).	34,329	34,329

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
	Worldwide Unspec- ified			
FH Con Army	Unspecified World- wide Locations	Construction Improvements (235 Units) ...	35,000	35,000
FH Con Army	Unspecified World- wide Locations	Family Housing Planning & Design	2,040	2,040
Total, Family Housing Construction, Army			92,369	92,369
	Worldwide Unspec- ified			
FH Ops Army	Unspecified World- wide Locations	Leasing	203,184	203,184
FH Ops Army	Unspecified World- wide Locations	Maintenance of Real Property	120,899	120,899
FH Ops Army	Unspecified World- wide Locations	Miscellaneous Account	1,201	1,201
FH Ops Army	Unspecified World- wide Locations	Operations	96,142	96,142
FH Ops Army	Unspecified World- wide Locations	Privatization Support Costs	27,059	27,059
FH Ops Army	Unspecified World- wide Locations	Utilities Account	69,655	69,655
Total, Family Housing Operation And Maintenance, Army			518,140	518,140
	Guantanamo Bay, Cuba			
FH Con Navy	Guantanamo Bay	Replace GTMO Housing	37,169	37,169
Total, Family Housing Construction, Navy And Marine Corps			37,169	37,169
	Worldwide Unspec- ified			
FH Con AF	Unspecified World- wide Locations	Classified Project	50	0
FH Con AF	Unspecified World- wide Locations	Construction Improvments	73,750	73,800
Total, Family Housing Construction, Air Force			73,800	73,800
	Worldwide Unspec- ified			
FH Con Navy	Unspecified World- wide Locations	Design	3,255	3,255
FH Con Navy	Unspecified World- wide Locations	Improvements	146,020	146,020
Total Family Housing Construction, Navy And Marine Corps			149,275	149,275
	Worldwide Unspec- ified			
FH Con AF	Unspecified World- wide Locations	Planning & Design	4,225	4,225
Total Family Housing Construction, Air Force			4,225	4,225
	Worldwide Unspec- ified			
FH Ops Navy	Unspecified World- wide Locations	Furnishings Account	14,478	14,478
FH Ops Navy	Unspecified World- wide Locations	Leasing	97,484	97,484
FH Ops Navy	Unspecified World- wide Locations	Maintenance of Real Property	87,134	87,134
FH Ops Navy	Unspecified World- wide Locations	Management Account	63,551	63,551

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
FH Ops Navy	Unspecified World- wide Locations	Miscellaneous Account	464	464
FH Ops Navy	Unspecified World- wide Locations	Privatization Support Costs	26,526	26,526
FH Ops Navy	Unspecified World- wide Locations	Services Account	16,790	16,790
FH Ops Navy	Unspecified World- wide Locations	Utilities Account	59,919	59,919
Total Family Housing Operation And Maintenance, Navy And Marine Corps			366,346	366,346
Worldwide Unspec- ified				
FH Ops AF	Unspecified World- wide Locations	Furnishings Account	35,399	35,399
FH Ops AF	Unspecified World- wide Locations	Housing Privatization	53,903	53,903
FH Ops AF	Unspecified World- wide Locations	Leasing	95,143	95,143
FH Ops AF	Unspecified World- wide Locations	Leasing Account	528	528
FH Ops AF	Unspecified World- wide Locations	Maintenance	159,725	159,725
FH Ops AF	Unspecified World- wide Locations	Maintenance Account	1,971	1,971
FH Ops AF	Unspecified World- wide Locations	Management Account	1,561	1,561
FH Ops AF	Unspecified World- wide Locations	Management Account	54,633	54,633
FH Ops AF	Unspecified World- wide Locations	Miscellaneous Account	1,710	1,710
FH Ops AF	Unspecified World- wide Locations	Services Account	19,974	19,974
FH Ops AF	Unspecified World- wide Locations	Utilities Account	89,245	89,245
Total Family Housing Operation And Maintenance, Air Force			513,792	513,792
Worldwide Unspec- ified				
FH Ops DW	Unspecified World- wide Locations	Furnishings Account	4,501	4,501
FH Ops DW	Unspecified World- wide Locations	Furnishings Account	18	18
FH Ops DW	Unspecified World- wide Locations	Leasing	10,293	10,293
FH Ops DW	Unspecified World- wide Locations	Leasing	34,124	34,124
FH Ops DW	Unspecified World- wide Locations	Maintenance of Real Property	707	707
FH Ops DW	Unspecified World- wide Locations	Maintenance of Real Property	70	70
FH Ops DW	Unspecified World- wide Locations	Management Account	365	365
FH Ops DW	Unspecified World- wide Locations	Operations	50	50
FH Ops DW	Unspecified World- wide Locations	Services Account	29	29
FH Ops DW	Unspecified World- wide Locations	Utilities Account	10	10
FH Ops DW	Unspecified World- wide Locations	Utilities Account	297	297
Total Family Housing Operation And Maintenance, Defense-Wide			50,464	50,464

SEC. 3001. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
	Worldwide Unspec- ified			
HOAP	Unspecified World- wide Locations	Homeowners Assistance Program	16,515	16,515
Total Homeowners Assistance Fund			16,515	16,515
	Worldwide Unspec- ified			
FHIF	Unspecified World- wide Locations	Family Housing Improvement Fund	1,096	1,096
Total DOD Family Housing Improvement Fund			1,096	1,096
	Maryland			
BRAC 05	Bethesda (Wrnmme)	Defense Access Roads—Medical Center Entrance.	20,000	20,000
BRAC 05	Bethesda (Wrnmme)	Traffic Mitigation, Incr 2	7,600	7,600
	Texas			
BRAC 05	Fort Sam Houston	San Antonio Military Medical Center (North), Incr 4.	93,941	93,941
	Virginia			
BRAC 05	Fort Belvoir	Hospital Replacement, Incr 5	63,637	63,637
BRAC 05	Fort Belvoir	NGA Headquarters Facility	83,328	83,328
BRAC 05	Fort Belvoir	Office Complex, Incr 4	5,610	5,610
	Worldwide Unspec- ified			
BRAC 05	Unspecified World- wide Locations	Rescission	0	0
BRAC 05	Various	Environmental	19,555	19,555
BRAC 05	Various	Environmental	73,511	73,511
BRAC 05	Various	Environmental	15,201	15,201
BRAC 05	Various	Military Personnel Permanent Change of Station.	1,456	1,456
BRAC 05	Various	Military Personnel Permanent Change of Station.	1,277	1,277
BRAC 05	Various	Operation and Maintenance	476,764	476,764
BRAC 05	Various	Operation and Maintenance	99,570	99,570
BRAC 05	Various	Operation and Maintenance	887,231	887,231
BRAC 05	Various	Operation and Maintenance	321,888	321,888
BRAC 05	Various	Other	121,584	121,584
BRAC 05	Various	Other	3,601	3,601
BRAC 05	Various	Other	6,853	6,853
BRAC 05	Various	Other	51,678	51,678
Total Base Realignment and Closure Account 2005			2,354,285	2,354,285
	Worldwide Unspec- ified			
BRAC IV	Base Realignment & Closure, Air Force	Base Realignment & Closure	124,874	124,874
BRAC IV	Base Realignment & Closure, Army	Base Realignment & Closure	73,600	73,600
BRAC IV	Base Realignment & Closure, Navy	Base Realignment & Closure	162,000	162,000
Total Base Realignment and Closure Account 1990			360,474	360,474
	Unspecified			
GR	Unspecified World- wide Locations	General Reductions	0	0
Total General Reductions			0	

SEC. 3001. MILITARY CONSTRUCTION
(In Thousands of Dollars)

Account	State/Country and Installation	Project Title	Budget Request	Agreement
Total Military Construction			18,747,368	18,190,547

SEC. 3002. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS.

SEC. 3002. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS
(In Thousands of Dollars)

Account	State/Country and Installation	Project Title	Budget Request	Agreement
	Afghanistan			
Army	Airborne	Rotary Wing Parking	1,200	0
Army	Bagram AFB	Army Aviation HQ Facilities	0	0
Army	Bagram AFB	Barracks	0	0
Army	Bagram AFB	Command & Control Facility	13,600	13,600
Army	Bagram AFB	Consolidated Community Support Area ...	0	0
Army	Bagram AFB	Consolidated Laboratory	0	13,800
Army	Bagram AFB	Counter-Improvised Explosive Device Task Force Compound.	24,000	24,000
Army	Bagram AFB	Detention Facility in Parwan Detainee Housing.	23,000	0
Army	Bagram AFB	Dining Facility	2,650	6,000
Army	Bagram AFB	Eastside Electrical Distribution	0	0
Army	Bagram AFB	Eastside Utilities Infrastructure	0	0
Army	Bagram AFB	Entry Control Point	0	0
Army	Bagram AFB	Joint Defense Operations Center	0	0
Army	Bagram AFB	Military Police HQ	2,800	5,500
Army	Bagram AFB	Replace Temporary Guard Towers	5,500	5,500
Army	Bagram AFB	Role III Hospital	35,000	42,000
Army	Bagram AFB	Tanker Truck Off-Load Facility	5,700	0
Army	Bagram AFB	Task Force Freedom Compound	18,000	18,000
Army	Bagram AFB	Troop Housing, Ph 4	23,000	23,000
Army	Bagram AFB	Troop Housing, Ph 5	29,000	29,000
Army	Bagram AFB	Troop Housing, Ph 6	29,000	29,000
Army	Bagram AFB	Troop Housing, Ph 7	29,000	29,000
Army	Bagram AFB	Troop Housing, Ph 8	29,000	29,000
Army	Bagram AFB	Vet Clinic & Kennel	2,600	2,600
Army	Delaram Ii	Entry Control Point and Access Roads	0	4,400
Army	Dwyer	Dining Facility	6,000	9,000
Army	Dwyer	Entry Control Point	5,100	5,100
Army	Dwyer	Rotary Wing Apron	44,000	44,000
Army	Dwyer	Wastewater Treatment Facility	16,000	16,000
Army	Frontenac	Waste Management Complex	4,200	4,200
Army	Frontenac	Wastewater Treatment Facility	4,200	4,200
Army	Jalalabad	Rotary Wing Parking	1,100	0
Army	Kandahar	Command & Control Facility	5,200	5,200
Army	Kandahar	North Area Utilities, Ph 2	21,000	26,000
Army	Kandahar	Special Operations Forces Joint Operations Center.	6,000	9,200
Army	Kandahar	Troop Housing, Ph 4	20,000	20,000
Army	Kandahar	Troop Housing, Ph 5	20,000	20,000
Army	Kandahar	Troop Housing, Ph 6	20,000	0
Army	Kandahar	Troop Housing, Ph 7	20,000	0
Army	Maywand	Wastewater Treatment Facility	7,000	7,000
Army	Shank	Ammunition Supply Point	25,000	23,000
Army	Shank	Electrical Utility Systems, Ph 2	0	6,400
Army	Shank	Expand Extended Cooperation Programme 1 and Extended Cooperation Programme 2.	16,000	16,000
Army	Shank	Guard Towers	2,400	5,200
Army	Shank	Roads and Utilities, Ph 1	8,000	25,000
Army	Shank	Special Operations Forces Parking Apron	0	15,000
Army	Shank	Wastewater Treatment Plant	0	7,700

SEC. 3002. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
Army	Sharana	Bulk Materials Transfer Station	12,400	12,400
Army	Shindand	Medical Facility	7,700	0
Army	Shindand	Waste Management Complex	0	6,100
Army	Tarin Kowt	Medical Facility	5,500	0
Army	Tarin Kowt	Rotary Wing Parking and Taxiway, Ph 2	24,000	24,000
Army	Tarin Kowt	Wastewater Treatment Facility	4,200	5,600
Army	Tombstone/Bastion	Command & Control HQ	0	13,600
Army	Tombstone/Bastion	Contingency Housing	41,000	0
Army	Tombstone/Bastion	Dining Facility	12,800	27,000
Army	Tombstone/Bastion	Paved Roads	0	9,800
Army	Tombstone/Bastion	Rotary Wing Parking	35,000	35,000
Army	Tombstone/Bastion	Waste Management Complex Expansion ..	0	14,200
Army	Tombstone/Bastion	Wastewater Treatment Facility	13,000	13,000
Army	Various Locations	Air Pollution Abatement	0	0
Army	Various Locations	Community Facilities	0	0
Army	Various Locations	Hospital and Medical Facilities	0	0
Army	Various Locations	Operational Facilities	0	0
Army	Various Locations	Route Gypsum, Ph 1	40,000	50,000
Army	Various Locations	Route Gypsum, Ph 2	0	50,000
Army	Various Locations	Supply Facilities	0	0
Army	Various Locations	Supporting Activities	0	0
Army	Various Locations	Troop Housing Facilities	0	0
Army	Various Locations	Utility Facilities	0	0
Army	Wolverine	Perimeter Fence	5,100	0
Army	Wolverine	Rotary Wing Apron	24,000	0
Army	Wolverine	Wastewater Treatment Facility	13,000	13,000
	Worldwide Unspec- ified			
Army	Unspecified World- wide Locations	Minor Construction	78,330	78,330
Army	Unspecified World- wide Locations	Planning & Design	89,716	79,716
Army	Unspecified World- wide Locations	Rescission (Public Law 111–117)	0	0
Army	Unspecified World- wide Locations	Transfer to DOD Inspector General	0	7,000
Total Military Construction, Army			929,996	981,346
Navy	Bahrain Island Sw Asia	Navy Central Command Ammunition Magazines.	0	0
Navy	Sw Asia	Operations & Support Facilities	0	0
	Djibouti			
Navy	Camp Lemonier	General Warehouse	0	0
Navy	Camp Lemonier	Pave External Roads	0	0
Total Military Construction, Navy			0	
	Afghanistan			
AF	Bagram AFB	Consolidated Rigging Facility	0	0
AF	Bagram AFB	Fighter Hanger	0	0
AF	Bagram AFB	Medevac Ramp Expansion/Fire Station ...	0	0
AF	Kandahar	Expand Cargo Handling Area	7,100	0
AF	Kandahar	Expeditionary Airlift Shelter	7,400	0
AF	Sharana	Runway	35,000	0
AF	Shindand	Passenger & Cargo Terminal	15,800	0
AF	Tombstone/Bastion	Expand Fuels Operations and Storage	2,500	0
AF	Tombstone/Bastion	Parallel Taxiway	86,000	0
AF	Tombstone/Bastion	Refueler Apron	55,000	0
AF	Various Locations	Maintenance and Production Facilities ...	0	0
AF	Various Locations	Operational Facilities	0	0
AF	Various Locations	Supply Facilities	0	0
AF	Warrior	Runway	8,700	0
	Bahrain Island			
AF	Sw Asia	North Apron Expansion	0	0
	Oman			

SEC. 3002. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	Budget Request	Agreement
AF	AL Musannah	Airlift Ramp & Fuel Facilities	0	69,000
	Qatar			
AF	AL Udeid	Blatchford-Preston Complex, Ph 3	0	0
AF	AL Udeid	Tactical Ramp/Vehicle Maintenance Facility.	0	63,000
	Worldwide Unspecified			
AF	Unspecified Worldwide Locations	Planning & Design	13,422	13,422
AF	Unspecified Worldwide Locations	Rescission (Public Law 111–117)	0	0
AF	Unspecified Worldwide Locations	Unspecified Minor Construction—FY11 OCO.	49,584	49,584
Total Military Construction, Air Force			280,506	195,006
	Conus Classified			
Def-Wide	Classified Location	Classified Project	41,900	41,900
Def-Wide	Worldwide Unspecified	Planning and Design	4,600	4,600
	Qatar			
Def-Wide	AL Udeid	Qatar Warehouse	0	0
Total Military Construction, Defense-Wide			46,500	46,500
Total Military Construction			1,257,002	1,222,852

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs Authorizations

- Sec. 3101. National Nuclear Security Administration.
 Sec. 3102. Defense environmental cleanup.
 Sec. 3103. Other defense activities.
 Sec. 3104. Energy security and assurance.

Subtitle B—Program Authorizations, Restrictions, and Limitations

- Sec. 3111. Aircraft procurement.
 Sec. 3112. Biennial plan on modernization and refurbishment of the nuclear security complex.
 Sec. 3113. Comptroller General assessment of adequacy of budget requests with respect to the modernization and refurbishment of the nuclear weapons stockpile.
 Sec. 3114. Notification of cost overruns for certain Department of Energy projects.
 Sec. 3115. Establishment of cooperative research and development centers.
 Sec. 3116. Future-years defense environmental management plan.
 Sec. 3117. Extension of authority of Secretary of Energy for appointment of certain scientific, engineering, and technical personnel.
 Sec. 3118. Extension of authority of Secretary of Energy to enter into transactions to carry out certain research projects.
 Sec. 3119. Extension of authority relating to the International Materials Protection, Control, and Accounting Program of the Department of Energy.
 Sec. 3120. Extension of deadline for transfer of parcels of land to be conveyed to Los Alamos County, New Mexico, and held in trust for the Pueblo of San Ildefonso.

- Sec. 3121. Repeal of sunset provision for modification of minor construction threshold for plant projects.
- Sec. 3122. Enhancing private-sector employment through cooperative research and development activities.
- Sec. 3123. Limitation on use of funds for establishment of centers of excellence in countries outside of the former Soviet Union.
- Sec. 3124. Department of Energy energy parks program.

Subtitle C—Reports

- Sec. 3131. Report on graded security protection policy.

Subtitle A—National Security Programs Authorizations

SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2011 for the activities of the National Nuclear Security Administration in carrying out programs necessary for national security in the amount of \$11,214,755,000, to be allocated as follows:

- (1) For weapons activities, \$7,028,835,000.
- (2) For defense nuclear nonproliferation activities, \$2,667,167,000.
- (3) For naval reactors, \$1,070,486,000.
- (4) For the Office of the Administrator for Nuclear Security, \$448,267,000.

(b) AUTHORIZATION OF NEW PLANT PROJECTS.—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary of Energy may carry out new plant projects for the National Nuclear Security Administration as follows:

- (1) Project 11-D-801, reinvestment project phase 2, Los Alamos National Laboratory, Los Alamos, New Mexico, \$20,000,000.
- (2) Project 11-D-601, sanitary effluent reclamation facility expansion, Los Alamos National Laboratory, Los Alamos, New Mexico, \$15,000,000.

SEC. 3102. DEFENSE ENVIRONMENTAL CLEANUP.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2011 for defense environmental cleanup activities in carrying out programs necessary for national security in the amount of \$5,588,039,000.

SEC. 3103. OTHER DEFENSE ACTIVITIES.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2011 for other defense activities in carrying out programs necessary for national security in the amount of \$878,209,000.

SEC. 3104. ENERGY SECURITY AND ASSURANCE.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2011 for energy security and assurance programs necessary for national security in the amount of \$6,188,000.

Subtitle B—Program Authorizations, Restrictions, and Limitations

SEC. 3111. AIRCRAFT PROCUREMENT.

Of the amounts authorized to be appropriated and made available for obligation under section 3101(1) for weapons activities for any fiscal year before fiscal year 2012, the Secretary of Energy may procure not more than two aircraft.

SEC. 3112. BIENNIAL PLAN ON MODERNIZATION AND REFURBISHMENT OF THE NUCLEAR SECURITY COMPLEX.

(a) IN GENERAL.—Subtitle A of title XLII of the Atomic Energy Defense Act (50 U.S.C. 2521 et seq.) is amended by inserting after section 4203 the following new section:

“SEC. 4203A. BIENNIAL PLAN ON MODERNIZATION AND REFURBISHMENT OF THE NUCLEAR SECURITY COMPLEX.

50 USC 2523a.

“(a) IN GENERAL.—In each even-numbered year, beginning in 2012, the Administrator for Nuclear Security shall include in the plan for maintaining the nuclear weapons stockpile required by section 4203 a plan for the modernization and refurbishment of the nuclear security complex.

Effective date.

“(b) PLAN DESIGN.—

“(1) IN GENERAL.—The plan required by subsection (a) shall be designed to ensure that the nuclear security complex is capable of supporting the following:

“(A) Except as provided in paragraph (2), the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a).

“(B) The nuclear posture of the United States as set forth in the most recent Nuclear Posture Review.

“(2) EXCEPTION.—If, at the time the plan is submitted under subsection (a), a national security strategy report has not been submitted to Congress under section 108 of the National Security Act of 1947 (50 U.S.C. 404a), the plan required by subsection (a) shall be designed to ensure that the nuclear security complex is capable of supporting the national defense strategy recommended in the report of the most recent Quadrennial Defense Review.

“(c) PLAN ELEMENTS.—The plan required by subsection (a) shall include the following:

“(1) A description of the modernization and refurbishment measures the Administrator determines necessary to meet the requirements of—

“(A) the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a) or the national defense strategy recommended in the report of the most recent Quadrennial Defense Review, as applicable under subsection (b); and

“(B) the Nuclear Posture Review.

“(2) A schedule for implementing the measures described in paragraph (1) during the ten years following the date on

which the plan for maintaining the nuclear weapons stockpile required by section 4203 and into which the plan required by subsection (a) is incorporated is submitted to Congress under section 4203(c).

“(3) Consistent with the budget justification materials submitted to Congress in support of the Department of Energy budget for the fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), an estimate of the annual funds the Administrator determines necessary to carry out the plan required by subsection (a), including a discussion of the criteria, evidence, and strategies on which the estimate is based.

“(d) FORM.—The plan required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

“(e) NUCLEAR WEAPONS COUNCIL ASSESSMENT.—

“(1) ASSESSMENT REQUIRED.—For each plan required by subsection (a), the Nuclear Weapons Council established by section 179 of title 10, United States Code, shall conduct an assessment that includes the following:

“(A) An analysis of the plan, including—

“(i) whether the plan supports the requirements of the national security strategy of the United States or the most recent Quadrennial Defense Review, whichever is applicable under subsection (b), and the Nuclear Posture Review; and

“(ii) whether the modernization and refurbishment measures described under paragraph (1) of subsection (c) and the schedule described under paragraph (2) of such subsection are adequate to support such requirements.

“(B) An analysis of whether the plan adequately addresses the requirements for infrastructure recapitalization of the facilities of the nuclear security complex.

“(C) If the Nuclear Weapons Council determines that the plan does not adequately support modernization and refurbishment requirements under subparagraph (A) or the nuclear security complex facilities infrastructure recapitalization requirements under subparagraph (B), a risk assessment with respect to—

“(i) supporting the annual certification of the nuclear weapons stockpile under section 4203; and

“(ii) maintaining the long-term safety, security, and reliability of the nuclear weapons stockpile.

“(2) REPORT REQUIRED.—Not later than 180 days after the date on which the Administrator submits the plan required by subsection (a), the Nuclear Weapons Council shall submit to the congressional defense committees a report detailing the assessment required under paragraph (1).

“(f) DEFINITIONS.—In this section:

“(1) The term ‘nuclear security complex’ means the physical facilities, technology, and human capital of the following:

“(A) The national security laboratories (as defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)).

“(B) The Kansas City Plant, Kansas City, Missouri.

“(C) The Nevada Test Site, Nevada.

“(D) The Savannah River Site, Aiken, South Carolina.

“(E) The Y-12 National Security Complex, Oak Ridge, Tennessee.

“(F) The Pantex Plant, Amarillo, Texas.

“(2) The term ‘Quadrennial Defense Review’ means the review of the defense programs and policies of the United States that is carried out every four years under section 118 of title 10, United States Code.”.

(b) CLERICAL AMENDMENT.—The table of contents for the Atomic Energy Defense Act is amended by inserting after the item relating to section 4203 the following new item:

“Sec. 4203A. Biennial plan on modernization and refurbishment of the nuclear security complex.”.

SEC. 3113. COMPTROLLER GENERAL ASSESSMENT OF ADEQUACY OF BUDGET REQUESTS WITH RESPECT TO THE MODERNIZATION AND REFURBISHMENT OF THE NUCLEAR WEAPONS STOCKPILE.

(a) IN GENERAL.—Section 3255 of the National Nuclear Security Administration Act (50 U.S.C. 2455) is amended to read as follows:

“SEC. 3255. COMPTROLLER GENERAL ASSESSMENT OF ADEQUACY OF BUDGET REQUESTS WITH RESPECT TO THE MODERNIZATION AND REFURBISHMENT OF THE NUCLEAR WEAPONS STOCKPILE.

“(a) GAO STUDY AND REPORTS.—(1) For the nuclear security budget materials submitted in each fiscal year by the Administrator, the Comptroller General of the United States shall conduct a study on whether both the budget for the fiscal year following the fiscal year in which such budget materials are submitted and the future-years nuclear security program submitted to Congress in relation to such budget under section 3253 provide for funding of the nuclear security complex at a level that is sufficient for the modernization and refurbishment of the nuclear security complex.

“(2) Not later than 90 days after the date on which the Administrator submits the nuclear security budget materials, the Comptroller General shall submit to the congressional defense committees a report on the study under paragraph (1), including—

“(A) the findings of such study; and

“(B) whether the nuclear security budget materials support the requirements for infrastructure recapitalization of the facilities of the nuclear security complex.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘budget’ means the budget for a fiscal year that is submitted to Congress by the President under section 1105(a) of title 31, United States Code.

“(2) The term ‘nuclear security budget materials’ means the materials submitted to Congress by the Administrator in support of the budget for a fiscal year.

“(3) The term ‘nuclear security complex’ means the physical facilities, technology, and human capital of the following:

“(A) The national security laboratories.

“(B) The Kansas City Plant, Kansas City, Missouri.

“(C) The Nevada Test Site, Nevada.

“(D) The Savannah River Site, Aiken, South Carolina.

“(E) The Y-12 National Security Complex, Oak Ridge, Tennessee.

“(F) The Pantex Plant, Amarillo, Texas.”.

(b) CLERICAL AMENDMENT.—The table of contents for the National Nuclear Security Administration Act is amended by striking the item relating to section 3255 and inserting the following new item:

“Sec. 3255. Comptroller General assessment of adequacy of budget requests with respect to the modernization and refurbishment of the nuclear weapons stockpile.”.

SEC. 3114. NOTIFICATION OF COST OVERRUNS FOR CERTAIN DEPARTMENT OF ENERGY PROJECTS.

(a) IN GENERAL.—Subtitle A of title XLVII of the Atomic Energy Defense Act (50 U.S.C. 2741 et seq.) is amended by adding at the end the following new section:

“SEC. 4713. NOTIFICATION OF COST OVERRUNS FOR CERTAIN DEPARTMENT OF ENERGY PROJECTS.

“(a) ESTABLISHMENT OF COST AND SCHEDULE BASELINES.—

“(1) STOCKPILE LIFE EXTENSION PROJECTS.—

“(A) IN GENERAL.—The Administrator for Nuclear Security shall establish a cost and schedule baseline for each nuclear stockpile life extension project of the National Nuclear Security Administration.

“(B) PER UNIT COST.—The cost baseline developed under subparagraph (A) shall include, with respect to each life extension project, an estimated cost for each warhead in the project.

“(C) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Administrator shall submit the cost and schedule baseline to the congressional defense committees.

“(2) DEFENSE-FUNDED CONSTRUCTION PROJECTS.—

“(A) IN GENERAL.—The Secretary of Energy shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each construction project that is—

“(i) in excess of \$50,000,000; and

“(ii) carried out by the Department using funds authorized to be appropriated for a fiscal year pursuant to a DOE national security authorization.

“(B) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

“(3) DEFENSE ENVIRONMENTAL MANAGEMENT PROJECTS.—

“(A) IN GENERAL.—The Secretary shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each defense environmental management project that is—

“(i) in excess of \$50,000,000; and

“(ii) carried out by the Department pursuant to such protocols.

“(B) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the

Deadlines.
50 USC 2753.

Secretary shall submit the cost and schedule baseline to the congressional defense committees.

“(b) NOTIFICATION OF COSTS EXCEEDING BASELINE.—The Administrator or the Secretary, as applicable, shall notify the congressional defense committees not later than 30 days after determining that—

“(1) the total cost for a project referred to in paragraph (1), (2), or (3) of subsection (a) will exceed an amount that is equal to 125 percent of the cost baseline established under subsection (a) for that project; and

“(2) in the case of a stockpile life extension project referred to in subsection (a)(1), the cost for any warhead in the project will exceed an amount that is equal to 200 percent of the cost baseline established under subsection (a)(1)(B) for each warhead in that project.

“(c) NOTIFICATION OF DETERMINATION WITH RESPECT TO TERMINATION OR CONTINUATION OF PROJECTS.—Not later than 90 days after submitting a notification under subsection (b) with respect to a project, the Administrator or the Secretary, as applicable, shall—

“(1) notify the congressional defense committees with respect to whether the project will be terminated or continued; and

“(2) if the project will be continued, certify to the congressional defense committees that—

Certification.

“(A) a revised cost and schedule baseline has been established for the project and, in the case of a stockpile life extension project referred to in subparagraph (A) or (B) of subsection (a)(1), a revised estimate of the cost for each warhead in the project has been made;

“(B) the continuation of the project is necessary to the mission of the Department of Energy and there is no alternative to the project that would meet the requirements of that mission; and

“(C) a management structure is in place adequate to manage and control the cost and schedule of the project.

“(d) APPLICABILITY OF REQUIREMENTS TO REVISED COST AND SCHEDULE BASELINES.—A revised cost and schedule baseline established under subsection (c) shall—

“(1) be submitted to the congressional defense committees with the certification submitted under subsection (c)(2); and

“(2) be subject to the notification requirements of subsections (b) and (c) in the same manner and to the same extent as a cost and schedule baseline established under subsection (a).”

(b) CLERICAL AMENDMENT.—The table of contents for the Atomic Energy Defense Act is amended by inserting after the item relating to section 4712 the following new item:

“Sec. 4713. Notification of cost overruns for certain Department of Energy projects.”

SEC. 3115. ESTABLISHMENT OF COOPERATIVE RESEARCH AND DEVELOPMENT CENTERS.

(a) COOPERATIVE RESEARCH AND DEVELOPMENT CENTERS.—

(1) IN GENERAL.—Section 4813 of the Atomic Energy Defense Act (division D of Public Law 107-314; 50 U.S.C. 2794) is amended—

(A) by redesignating subsection (b) as subsection (c);
and

(B) by inserting after subsection (a) the following new subsection (b):

“(b) COOPERATIVE RESEARCH AND DEVELOPMENT CENTERS.—

(1) Subject to the availability of appropriations provided for such purpose, the Administrator for Nuclear Security shall establish a cooperative research and development center described in paragraph (2) at each national security laboratory.

“(2) A cooperative research and development center described in this paragraph is a center to foster collaborative scientific research, technology development, and the appropriate transfer of research and technology to users in addition to the national security laboratories.

“(3) In establishing a cooperative research and development center under this subsection, the Administrator—

Contracts.

“(A) shall enter into cooperative research and development agreements with governmental, public, academic, or private entities; and

“(B) may enter into a contract with respect to constructing, purchasing, managing, or leasing buildings or other facilities.”.

(2) DEFINITION.—Subsection (c) of such section, as redesignated by paragraph (1)(A), is amended by adding at the end the following new paragraph:

“(5) The term ‘national security laboratory’ has the meaning given that term in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471).”.

(3) SECTION HEADING.—The heading of such section is amended by inserting “AND COOPERATIVE RESEARCH AND DEVELOPMENT CENTERS” after “PARTNERSHIPS”.

(b) CLERICAL AMENDMENT.—The table of contents for the Atomic Energy Defense Act is amended by striking the item relating to section 4813 and inserting the following new item:

“Sec. 4813. Critical technology partnerships and cooperative research and development centers.”.

SEC. 3116. FUTURE-YEARS DEFENSE ENVIRONMENTAL MANAGEMENT PLAN.

(a) IN GENERAL.—Title XLIV of the Atomic Energy Defense Act (50 U.S.C. 2581 et seq.) is amended by inserting after section 4402 the following new section:

50 USC 2582a.

“SEC. 4402A. FUTURE-YEARS DEFENSE ENVIRONMENTAL MANAGEMENT PLAN.

“(a) IN GENERAL.—The Secretary of Energy shall submit to Congress each year, at or about the same time that the President’s budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, United States Code, a future-years defense environmental management plan that—

“(1) reflects the estimated expenditures and proposed appropriations included in that budget for the Department of Energy for environmental management; and

“(2) covers a period that includes the fiscal year for which that budget is submitted and not less than the four succeeding fiscal years.

“(b) ELEMENTS.—Each future-years defense environmental management plan required by subsection (a) shall contain the following:

“(1) A detailed description of the projects and activities relating to defense environmental management to be carried out during the period covered by the plan at the sites specified in subsection (c) and with respect to the activities specified in subsection (d).

“(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support such projects and activities.

“(3) With respect to each site specified in subsection (c), the following:

“(A) A statement of each milestone included in an enforceable agreement governing cleanup and waste remediation for that site for each fiscal year covered by the plan.

“(B) For each such milestone, a statement with respect to whether each such milestone will be met in each such fiscal year.

“(C) For any milestone that will not be met, an explanation of why the milestone will not be met and the date by which the milestone is expected to be met.

“(c) SITES SPECIFIED.—The sites specified in this subsection are the following:

“(1) The Idaho National Laboratory, Idaho.

“(2) The Waste Isolation Pilot Plant, Carlsbad, New Mexico.

“(3) The Savannah River Site, Aiken, South Carolina.

“(4) The Oak Ridge National Laboratory, Oak Ridge, Tennessee.

“(5) The Hanford Site, Richland, Washington.

“(6) Any defense closure site of the Department of Energy.

“(7) Any site of the National Nuclear Security Administration.

“(d) ACTIVITIES SPECIFIED.—The activities specified in this subsection are the following:

“(1) Program support.

“(2) Program direction.

“(3) Safeguards and security.

“(4) Technology development and deployment.

“(5) Federal contributions to the Uranium Enrichment Decontamination and Decommissioning Fund established under section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g).”.

(b) CLERICAL AMENDMENT.—The table of contents for the Atomic Energy Defense Act is amended by inserting after the item relating to section 4402 the following new item:

“Sec. 4402A. Future-years defense environmental management plan.”.

SEC. 3117. EXTENSION OF AUTHORITY OF SECRETARY OF ENERGY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.

Section 4601(c)(1) of the Atomic Energy Defense Act (50 U.S.C. 2701(c)(1)) is amended by striking “September 30, 2011” and inserting “September 30, 2016”.

SEC. 3118. EXTENSION OF AUTHORITY OF SECRETARY OF ENERGY TO ENTER INTO TRANSACTIONS TO CARRY OUT CERTAIN RESEARCH PROJECTS.

Section 646(g)(10) of the Department of Energy Organization Act (42 U.S.C. 7256(g)(10)) is amended by striking “September 30, 2010” and inserting “September 30, 2015”.

SEC. 3119. EXTENSION OF AUTHORITY RELATING TO THE INTERNATIONAL MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAM OF THE DEPARTMENT OF ENERGY.

Section 3156(b)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 50 U.S.C. 2343(b)(1)) is amended by striking “January 1, 2013” and inserting “January 1, 2018”.

42 USC 2391
note.

SEC. 3120. EXTENSION OF DEADLINE FOR TRANSFER OF PARCELS OF LAND TO BE CONVEYED TO LOS ALAMOS COUNTY, NEW MEXICO, AND HELD IN TRUST FOR THE PUEBLO OF SAN ILDEFONSO.

(a) ENVIRONMENTAL RESTORATION.—If the Secretary of Energy determines under any authority previously established by law that a parcel of land described in subsection (c) requires environmental restoration or remediation, the Secretary shall, to the maximum extent practicable, complete the environmental restoration or remediation of the parcel not later than September 30, 2022, and otherwise in compliance with such law.

(b) CONVEYANCE OR TRANSFER.—If the Secretary determines under any authority previously established by law that environmental restoration or remediation cannot reasonably be expected to be completed with respect to a parcel of land described in subsection (c) by September 30, 2022, the Secretary shall not convey or transfer the parcel of land.

(c) PARCELS OF LAND.—A parcel of land described in this subsection is a parcel of land under the jurisdiction or administrative control of the Secretary at or in the vicinity of Los Alamos National Laboratory that the Secretary has previously identified as suitable for conveyance or transfer in a report submitted to the congressional defense committees prior to the date of the enactment of this Act.

SEC. 3121. REPEAL OF SUNSET PROVISION FOR MODIFICATION OF MINOR CONSTRUCTION THRESHOLD FOR PLANT PROJECTS.

(a) MINOR CONSTRUCTION THRESHOLD.—Paragraph (3) of section 4701 of the Atomic Energy Defense Act (50 U.S.C. 2741(3)), as amended by section 3118(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2709), is amended by striking “\$5,000,000” and inserting “\$10,000,000”.

50 USC 2743
note.

(b) NOTIFICATION.—Section 3118(c) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2709) is amended by striking “during fiscal year 2010”.

50 USC 2465.

SEC. 3122. ENHANCING PRIVATE-SECTOR EMPLOYMENT THROUGH COOPERATIVE RESEARCH AND DEVELOPMENT ACTIVITIES.

(a) IN GENERAL.—The Administrator for Nuclear Security shall encourage cooperative research and development activities at the

national security laboratories (as defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)) that lead to the creation of new private-sector employment opportunities.

(b) **REPORTS.**—Not later than January 31 of each year from 2012 through 2017, the Administrator shall submit to Congress a report detailing the number of new private-sector employment opportunities created as a result of the previous years' cooperative research and development activities at each national security laboratory.

SEC. 3123. LIMITATION ON USE OF FUNDS FOR ESTABLISHMENT OF CENTERS OF EXCELLENCE IN COUNTRIES OUTSIDE OF THE FORMER SOVIET UNION.

Not more than \$500,000 of the funds authorized to be appropriated by section 3101(a)(2) for defense nuclear nonproliferation activities may be obligated or expended to establish a center of excellence in a country that is not a state of the former Soviet Union until the date that is 15 days after the date on which the Administrator for Nuclear Security submits to the congressional defense committees a report that includes the following:

Deadline.
Reports.

- (1) An identification of the country in which the center will be located.
- (2) A description of the purpose for which the center will be established.
- (3) The agreement under which the center will operate.
- (4) A funding plan for the center, including—
 - (A) the amount of funds to be provided by the government of the country in which the center will be located; and
 - (B) the percentage of the total cost of establishing and operating the center the funds described in subparagraph (A) will cover.

SEC. 3124. DEPARTMENT OF ENERGY ENERGY PARKS PROGRAM.

50 USC 2814.

(a) **IN GENERAL.**—The Secretary of Energy may establish a program to permit the establishment of energy parks on former defense nuclear facilities.

(b) **OBJECTIVES.**—The objectives for establishing energy parks pursuant to subsection (a) are the following:

- (1) To provide locations to carry out a broad range of projects relating to the development and deployment of energy technologies and related advanced manufacturing technologies.
- (2) To provide locations for the implementation of pilot programs and demonstration projects for new and developing energy technologies and related advanced manufacturing technologies.
- (3) To set a national example for the development and deployment of energy technologies and related advanced manufacturing technologies in a manner that will promote energy security, energy sector employment, and energy independence.
- (4) To create a business environment that encourages collaboration and interaction between the public and private sectors.

(c) **CONSULTATION.**—In establishing an energy park pursuant to subsection (a), the Secretary shall consult with—

- (1) the local government with jurisdiction over the land on which the energy park will be located;

(2) the local governments of adjacent areas; and

(3) any community reuse organization recognized by the Secretary at the former defense nuclear facility on which the energy park will be located.

(d) **REPORT REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of the program under subsection (a). The report shall include such recommendations for additional legislative actions as the Secretary considers appropriate to facilitate the development of energy parks on former defense nuclear facilities.

(e) **DEFENSE NUCLEAR FACILITY DEFINED.**—In this section, the term “defense nuclear facility” has the meaning given the term “Department of Energy defense nuclear facility” in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

Subtitle C—Reports

SEC. 3131. REPORT ON GRADED SECURITY PROTECTION POLICY.

(a) **REPORT.**—Not later than February 1, 2011, the Secretary of Energy shall submit to the congressional defense committees a report on the implementation of the graded security protection policy of the Department of Energy.

(b) **MATTERS INCLUDED.**—The report under subsection (a) shall include the following:

(1) A comprehensive plan and schedule (including any benchmarks, milestones, or other deadlines) for implementing the graded security protection policy.

(2) An explanation of the current status of the graded security protection policy for each site with respect to the comprehensive plan under paragraph (1).

(3) An explanation of the Secretary’s objective end-state for implementation of the graded security protection policy (such end-state explanation shall include supporting justification and rationale to ensure that robust and adaptive security measures meet the graded security protection policy requirements).

(4) Identification of each site that has received an exception or waiver to the graded security protection policy, including the justification for each such exception or waiver.

(5) A schedule for “force-on-force” exercises that the Secretary considers necessary to maintain operational readiness.

(6) A description of a program that will provide proper training and equipping of personnel to a certifiable standard.

(c) **FORM.**—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

SEC. 3201. AUTHORIZATION.

There are authorized to be appropriated for fiscal year 2011, \$28,640,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

TITLE XXXIV—NAVAL PETROLEUM RESERVES

Sec. 3401. Authorization of appropriations.

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNT.—There are hereby authorized to be appropriated to the Secretary of Energy \$23,614,000 for fiscal year 2011 for the purpose of carrying out activities under chapter 641 of title 10, United States Code, relating to the naval petroleum reserves.

(b) PERIOD OF AVAILABILITY.—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

TITLE XXXV—MARITIME ADMINISTRATION

Sec. 3501. Authorization of appropriations for national security aspects of the merchant marine for fiscal year 2011.

Sec. 3502. Extension of Maritime Security Fleet program.

Sec. 3503. United States Merchant Marine Academy nominations of residents of the Northern Mariana Islands.

Sec. 3504. Research authority.

SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL SECURITY ASPECTS OF THE MERCHANT MARINE FOR FISCAL YEAR 2011.

Funds are hereby authorized to be appropriated for fiscal year 2011, to be available without fiscal year limitation if so provided in appropriations Acts, for the use of the Department of Transportation for Maritime Administration programs associated with maintaining national security aspects of the merchant marine, as follows:

(1) For expenses necessary for operations of the United States Merchant Marine Academy, \$100,020,000, of which—

(A) \$63,120,000 shall remain available until expended for Academy operations;

(B) \$6,000,000 shall remain available until expended for refunds to Academy midshipmen for improperly charged fees; and

(C) \$30,900,000 shall remain available until expended for capital improvements at the Academy.

(2) For expenses necessary to support the State maritime academies, \$15,007,000, of which—

(A) \$2,000,000 shall remain available until expended for student incentive payments;

(B) \$2,000,000 shall remain available until expended for direct payments to such academies; and

(C) \$11,007,000 shall remain available until expended for maintenance and repair of State maritime academy training vessels.

(3) For expenses necessary to dispose of vessels in the National Defense Reserve Fleet, \$10,000,000.

(4) For expenses to maintain and preserve a United States-flag merchant marine to serve the national security needs of the United States under chapter 531 of title 46, United States Code, \$174,000,000.

(5) For the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)) of loan guarantees under the program authorized by chapter 537 of title 46, United States Code, \$60,000,000, of which \$3,688,000 shall remain available until expended for administrative expenses of the program.

SEC. 3502. EXTENSION OF MARITIME SECURITY FLEET PROGRAM.

Chapter 531 of title 46, United States Code, is amended—

(1) in section 53104(a), by striking “2015” and inserting “2025”;

(2) in section 53106(a)(1)(C), by striking “for each fiscal years 2012, 2013, 2014, and 2015” and inserting “for each of fiscal years 2012 through 2025”; and

(3) in section 53111(3), by striking “2015” and inserting “2025”.

SEC. 3503. UNITED STATES MERCHANT MARINE ACADEMY NOMINATIONS OF RESIDENTS OF THE NORTHERN MARIANA ISLANDS.

Section 51302(b) of title 46, United States Code, is amended—

(1) in paragraph (3), by inserting “the Northern Mariana Islands,” after “Guam,”; and

(2) by striking paragraph (5) and redesignating paragraph (6) as paragraph (5).

SEC. 3504. RESEARCH AUTHORITY.

Section 51301 title 46, United States Code, is amended—

(1) by inserting “as an institution of higher education” after “Academy”; and

(2) by striking “States.” and inserting “States, to conduct research with respect to maritime-related matters, and to provide such other appropriate academic support, assistance,

training, and activities in accordance with the provisions of this chapter as the Secretary may authorize.”.

Approved January 7, 2011.

LEGISLATIVE HISTORY—H.R. 6523:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 17, considered and passed House.

Dec. 22, considered and passed Senate, amended. House concurred in Senate amendments.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2011):

Jan. 7, Presidential statement.

